

City of Wilmington



MICHAEL S. PURZYCKI
Mayor

April 9, 2019

HAND DELIVERED

Velda Jones-Potter
City Treasurer
800 North French Street
Wilmington, DE 19801

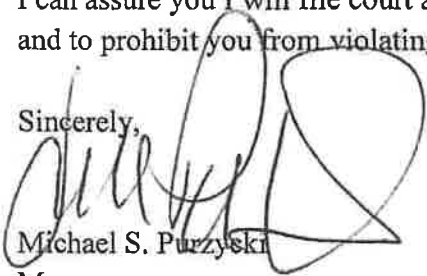
Dear Ms. Jones-Potter:

I am in receipt of a news release dated April 8, 2019, issued by your office, which contains a reference to an outstanding City loan that is associated with the operation of the Wilmington Housing Partnership. Specifically, you have indicated in the news release your intention to pay off \$1.2 million of a \$3.4 million loan to J.P. Morgan Chase.

You have no authority whatsoever under the City Charter or City Code to do so. You are infringing on the exclusive authority of the Mayor and City Council. I have attached the Opinion of the City Solicitor regarding the role of the City Treasurer and process for payments. You are hereby instructed not to make any payment in connection with this loan without prior authorization as required under the law.



I can assure you I will file court action seeking all remedies available to enforce this directive and to prohibit you from violating the City Charter and Code.

Sincerely,


Michael S. Purzycki
Mayor

MEMORANDUM

TO: Michael S. Purzycki, Mayor

FROM: Robert M. Goff Jr., City Solicitor 
Elizabeth D. Power, Senior Assistant City Solicitor 

DATE: April 9, 2019

RE: Role of the City Treasurer and Process for Payments

Pursuant to City Charter Section 4-300, the Law Department "shall furnish legal advice to the mayor, to the council and to all officers, departments, boards and commissioners concerning any matter or thing arising in connection with the exercise of their official powers or the performance of their official duties"

The Mayor has asked the Law Department to provide legal advice concerning (a) the scope of the role of the City Treasurer in the Charter and Code, specifically whether that role includes making or directing the general financial policy of the City; and (b) the process that the Charter prescribes for payments made out of the treasury by the City Treasurer.

In addition, on April 8, 2019, the Treasurer issued a press release in which she claimed the unilateral "authority and duty" to pay 1.2 million dollars of City debt. The release also asserted that it "is supported by the City's legal counsel." This memorandum of the City Solicitor comes to the opposite conclusion.

Section 8-410(4) of the City Charter provides that it "shall be unlawful for any officer, department, board or commission, except for the treasurer with the approval of council, to engage any attorney to represent him or it in any matter or thing relating to his or its public business without approval of the city solicitor." To the extent that Treasurer's view of her authority is derived from legal counsel she has consulted or employed outside of City's Law Department, she does so unlawfully in contravention of the City Charter.

The Role of the City Treasurer

There is no need to guess what the City Treasurer's duties and authority are. They are explicitly set forth and include: (1) receiving daily moneys and making deposits (Charter Section 6-200); (2) making reports of all receipts and deposits (Charter Section 6-200); (3) paying money out of the City treasury upon order of the Auditing Department (Charter Sections 6-201 and 8-101); (4) furnishing a list to the Director of Finance of all City securities and their place of safekeeping (Charter Section 8-105); (5) redeeming or purchasing bonds by the City (as authorized by City Council and the Bond Committee) (Charter Section 6-202); (6) serving as custodian of certain pension funds (various sections of Chapter 39 of the City Code); and (7) serving on various committees, commissions, and boards, such as the Bond Committee and the Board of Pensions and Retirement (various Charter and Code sections). The Charter and Code do not empower the City Treasurer with any unilateral policy-making role regarding the use of City funds. The Treasurer's duty is simply to minister to the City's treasury. In the absence of statutory support for a more expansive role, one may not be read into the law.

In contrast to the narrow and limited duties of the Treasurer are the broad authority and comprehensive duties of the Director of Finance. Among other things, the Director of Finance is charged with: (1) establishing a general accounting system for the City, including complete supervision over the keeping of a detailed accounting record and supervising the accounting for all moneys received and receivable by the City (Charter Section 6-101); (2) preparing and supplying to the Mayor such information as will enable the Mayor to keep acquainted with the financial conditions and prospective receipts and expenditures of the City (Charter Section 6-101); (3) approving all contracts as to the availability of appropriated funds (Charter Section 6-104); (4) reviewing and approving all requisitions (Charter Section 6-105); and (5) having access to all records regarding appropriations made by the City (Charter Section 6-107). The Director of Finance has the rule-making power to limit the authority of the Treasurer to make payments by check. (Charter Section 8-101(2)).

Similarly, the Auditing Department has expansive authority compared to the City Treasurer, and: (1) has the right to access the financial records of every City officer, department, board, or commission (Charter Section 6-305); (2) may order payments out of the City treasury (Charter Section 8-101); and (3) may require evidence justifying any requisition and may summon any City officer or employee to appear before it to testify regarding the requisition (Charter Section 6-302). The authority of the Auditing Department to order payments out of the City treasury and to require evidence justifying requisitions stands in stark contrast to the Treasurer's ministerial duty to pay moneys out of the City treasury only upon order of the Auditing Department. In addition, the Office of Management and Budget plays a key advisory role to the Mayor's Office, including preparation of the City's operating and capital budgets, and monitoring every department's budget for expenditure control (City Code Section 2-361). Finally, it is the Mayor, rather than the Treasurer, who is charged by Charter Section 2-300 with submitting a proposed annual operating budget ordinance to City Council under which all departments, including the Treasurer, must operate.

Most importantly, Charter Section 4-100 provides that "[t]he mayor shall be the chief executive officer of the city" and "shall be responsible for the conduct of the executive and administrative work of the city" Because of the broad authority inherent in that central function, the Mayor directs and makes the policy decisions for the City's Executive and Administrative Branch. The Treasurer is a member of the City's Executive and Administrative Branch (Article VI, Chapter 2 of the Charter and Charter Sections 3-100 and 3-202). Therefore, the City Treasurer, like any other department head, does not have the authority to act unilaterally regarding policy matters and must defer to the Mayor's Office regarding policy decisions.

Process Regarding Making Payments

The City Charter requires the Mayor and all department heads, including the Treasurer, to communicate and cooperate when the law requires cooperation or there are overlapping functions. (Charter Sections 8-400 and 401). In the case of a payment from the treasury, the responsibilities of City Council, the Director of Finance and the Auditing Department intersect with the City Treasurer's, and the Charter requires the following series of cooperative and collaborative actions to occur:

- 1) An appropriation must be made by City Council (Charter Sections 2-300 and 2-301).
- 2) The Director of Finance must receive a requisition from a City officer, department, board, commission, or other agency for the payment and approve it. Once the Director approves the requisition, he or she sends it to the Auditing Department (Charter Section 6-105).

- 3) The Auditing Department must issue an order for the payment (Charter Section 8-101).
- 4) After receiving an order from the Auditing Department, the City Treasurer makes the payment out of the treasury (Charter Section 8-101).

In conclusion, contrary to the Treasurer's April 8, 2019 News Release, the Treasurer has neither the duty nor the authority to pay the 1.2 million dollars on her own. This memorandum comprises the City Solicitor's opinion on this matter and is the actual advice of the "City's counsel," and it *does not* support the Treasurer's assertion of authority.

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