

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY



DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Lioneld Jordan**, Mayor
City Council

CC: **Don Marr**, Chief of Staff
Greg Tabor, Police Chief

FROM: **Kit Williams**, City Attorney

A handwritten signature in black ink, appearing to read "Kit Williams", with a long horizontal line extending to the right.

DATE: **December 23, 2009**

RE: **Litigation Highlights of 2009**

I. Excessive Force and other claims against Fayetteville Police Officers

A. Setzke v. Officer Grammar, et. al

Setzke was apprehended by Officer Grammar and sued him and others after the County Police Dog had to be used to subdue the subject. Our pre-trial motions to dismiss were granted.

B. Howell v. Officer Lee, et. al

Howell was arrested for domestic battery (wife went to the hospital), but sued Lee for false arrest. Officer Lee was obviously correct to arrest Howell and our Motion for Summary Judgment was granted.

C. Bunch v. Officers Hoyt, Riley, et. al

Bunch stole methamphetamine component drugs from Walmart and shot his gun at Walmart Loss Prevention employees before our police arrived. Bunch also fired one shot at our pursuing officers. Our officers took cover and did not return fire. After cordoning off the area so Bunch could not escape, our officers searched and found Bunch and began arresting him without firing a shot. Bunch resisted arrest and kicked an officer, but claims we used excessive force in arresting him. Our Motion for Summary Judgment was granted after an evidentiary hearing.

D. Benjamin v. Officer Chandler, et. al

Benjamin was arrested when police responded to a 911 caller which said that Benjamin had pulled a gun on another man. His loaded gun was found in his car. Benjamin claimed the search of the car (yielding the gun) was illegal (although we proved he consented). Our Motion for Summary Judgment was granted.

No excessive force or other civil rights claims against our Fayetteville Police Officers have been sustained in the nine years since I have served as City attorney. **Our highly trained, professional, and disciplined police officers and their leadership should be commended for their excellent performance of their very difficult duties to protect both our citizens' safety and the suspects' constitutional rights.**

II. Condemnation cases

All the condemnation cases that were required because landowners would not agree with our Engineering Department over street widening or trails projects were reasonably settled before trial or are still pending for trial in 2010. As opposed to our sister cities to the north, Fayetteville has not suffered a vastly increased condemnation award after trial during this whole decade.

III. Zoning appeals

The City Council faced difficult decisions in two zoning issues. The Walker Park Neighborhood Zoning District and the refusal to rezone the Washington County Sale Barn site brought suits from unhappy land owners. After I filed a Motion for Summary Judgment in Winkler v. City of Fayetteville, they asked their case to be placed upon the "inactive docket" (virtually abandoning it). After the City filed its Answer in Bartholomew v. City, the plaintiffs voluntarily dismissed their appeal. The City Council has not had any zoning decision reversed in Court this decade.

IV. Other cases

A. In Fisher v. City of Fayetteville, et al, the plaintiff claimed the City had violated his civil rights when it terminated him. Following extensive pre-trial preparation and discovery, the plaintiff voluntarily dismissed his case.

B. Waller v. Chief Greg Tabor – A lawyer sued Chief Greg Tabor over a Freedom of Information request. It is always the City's goal to fully comply with the Freedom of Information Act and even provide more information than might actually be required as long as our employees' privacy rights are respected. I filed a Motion To Strike and a Motion For Summary Judgment which were both granted after extensive argument. Chief Tabor was exonerated, and no attorney fees were awarded to the complaining lawyer.

C. Burton v. Hoskins v. Fayetteville – Tracy Hoskins sued the City of Fayetteville over about a quarter of an acre of land he had received from the City less than three years earlier. He claimed we had breached our deed's warranty provisions. After unsuccessfully trying to have the case against the City thrown out with a Motion for Summary Judgment, I defended the City in Court and eventually prevailed with a Motion For Dismissal and Supporting Brief after the plaintiff and defendant had finished their cases. In Burton v. Hoskins v. City, Mr. Hoskins had been requesting about \$80,000.00 against the City, but received nothing.

D. Rogers Group, Inc. v. Fayetteville – The Rogers Group, Inc. sued the City in Federal Court in late 2009 and was granted a preliminary injunction which prevents the City from enforcing its ordinance until the trial can be conducted. The City has appealed this preliminary injunction to the Eighth Circuit Court of Appeals.

CONCLUSION

Again in 2009 and for the eighth time in my nine years of service as City Attorney, the City of Fayetteville has not suffered a litigation defeat. In the decade before I became City Attorney, the City paid several million dollars to attorneys who successfully sued the City for legal or constitutional errors we committed. The City even spent a few million dollars to hire outside lawyers and pay trustee attorney fees in cases which the City lost in the Arkansas Supreme Court. This decade we have paid attorney's fees only once (and voluntarily) in the modest amount of \$20,000 to help settle the firefighters' suit in 2005.

I want to thank the Mayor, the City Council, and City Staff for their careful decisions and willingness to listen to my concerns about the legality or constitutionality of proposals. **The Mayor and City Council have protected our taxpayers' money this decade which has ensured tax dollars go to build roads, trails and other needed infrastructure, and to pay for city services for our citizens, rather than to pay huge attorney fees for legal or constitutional errors.**