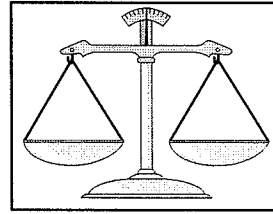


FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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



DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: City Council

FROM: Kit Williams, City Attorney

DATE: January 13, 2005

RE: **Highlights of 2004: Court Actions**

A handwritten signature in black ink, appearing to read 'Kit Williams', written over a horizontal line.

Attached is what I provided Mayor Dan Coody for his State of the City report. When it comes to trials, litigation and judgments, no news is good news. So with "no news" to report, I do not expect nor request much, if any, mention in the State of the City report.

Since you are the conservators and guardians of the public treasury, you do need to be kept informed of cases that could substantially impact city bank accounts. Therefore, attached is the yearly summary of the most significant cases resolved, litigated, or appealed during 2004.

BOTTOM LINE

The City of Fayetteville has suffered no civil litigation defeats again in 2004 and has not had to pay anything to settle any cases against the City in 2002, 2003 or 2004.

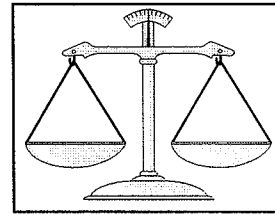
During the 1990's the City of Fayetteville had to pay several million taxpayer dollars for attorney's fees and damages in cases in which the Fayetteville Board of Directors or City Council wanted to do something good for Fayetteville, but did not follow our Constitution, laws or ordinances carefully enough to accomplish their objectives.

I very much appreciate that the aldermen I have served as City Attorney have followed my advice to avoid the type of decisions that led to the financial drain of the previous decade.

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HIGHLIGHTS OF 2004 State of the City

Court Actions

LaTour v. City of Fayetteville – U.S. District Court #02-5001

Mr. LaTour sued the City and various officials demanding Ten Million Dollars in punitive damages and sought an injunction against the City to prevent enforcement of the sign ordinance against him. The City filed Motions to Dismiss the Ten Million Dollar claims which were granted by the Federal Court. Plaintiff's Motion For A Preliminary Injunction was denied. The Federal Court ruled the portion of the sign ordinance which Mr. LaTour had been convicted of violating was constitutional. Sections of the sign ordinance that needed to be amended to meet current constitutional standards were drafted by the City Attorney prior to the Court decision and immediately enacted by the City Council after the Court's decision. Mr. LaTour has appealed to the Eighth Circuit Court of Appeals. This case is still pending before the Eighth Circuit.

French v. City of Fayetteville, Sgt. Yates, Lt. Reynolds et al **Federal District Court No. 02-5210**

Mr. and Mrs. French sued two Fayetteville officers (Yates & Reynolds) and other officers for an arrest and search which occurred in 1999. Mr. French was not convicted when tried in state court for methamphetamine manufacture or possession in 2000. He then sued basically claiming that he had been framed by the officers. The Frenches hired expert witnesses to testify they suffered hundreds of thousands of dollars of lost income and other damages. An arrest by federal authorities and indictment on serious new drug charges led to a dismissal with prejudice of this suit.

Rick Schweik and Free Choice-Fayetteville v. City of Fayetteville and City Clerk Sondra Smith, Case No. CV 03-1774-6

Mr. Schweik and Free Choice-Fayetteville sued the City and City Clerk seeking to have the current smoking ordinance (and any future ordinances) declared illegal as preempted by state statutes. They also sought to challenge the decision of the City Clerk rejecting their petitions for a referendum because the ordinance had not been attached when the petitions were filed. The City Attorney filed an Answer for the City and City Clerk.

A second submission of petitions with the ordinance properly affixed as required by state law and Amendment 7 provided a sufficient petition to call for the referendum which mooted the case except for the preemption issue. The City Attorney filed a Motion to Dismiss on this Court with supporting Brief and later filed a Reply Brief after plaintiffs responded. The Court granted the City's Motion To Dismiss the Preemption issue and later dismissed the whole case.

Wilkins v. Officer Gary Crews, Civil No. 03-5055
Federal District Court

Wilkins sued Detective Gary Crews and the City of Fayetteville claiming his rights were violated when Detective Crews and other Fayetteville Police officers stopped Wilkins for carrying a prohibited weapon (knife) and held his Outlaw Motorcycle Club vest as evidence. Although Wilkins pled guilty to carrying a prohibited weapon and possession of a controlled substance (found after his arrest), he claimed he had been unfairly singled out because he was wearing his Outlaw Motorcycle Club vest with various provocative patches sewn on.

The Federal jury unanimously found in favor of Detective Crews and the Fayetteville police department whose proactive police work to remove a knife from a man in the midst of thousands celebrating Fat Tuesday on Dickson Street was proper, effective police work and did not violate any constitutional rights of free speech, association, or improper seizure of property.

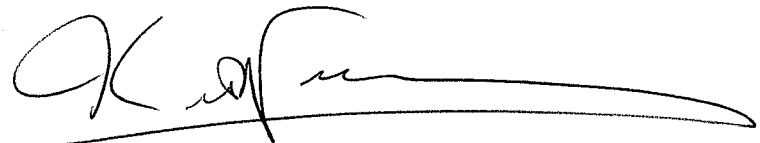
De Palma v. City of Fayetteville, et. al – Case No. CV 04-1685-5

Dr. De Palma sued the City, SWEPCO, and his neighbor for alleged drainage damages. The City filed a Motion to Dismiss with Supporting Brief presenting a defense of sovereign immunity and our overall lack of responsibility for any alleged damages. The City responded to two amended Complaints by filing additional Motions to Dismiss. The City Attorney has accompanied City Staff Engineer Ron Petrie twice to view the drainage problem and structures.

**Basic Construction, Inc. v. City of Fayetteville –
Washington County Circuit Court, Case No. 2004-1757-2**

Gary Combs, President of Basic Construction and Waterford Estates, Inc. sued the City of Fayetteville when the City could not immediately agree to allow the installation of regular fire hydrants at this Goshen property because of limited water capacity. The City answered and submitted an Affidavit from engineering staff that the plaintiff's engineering firm had been notified of the capacity issue months previously. The City asserted a defense of sovereign immunity and has denied all of the plaintiff's claims and asked they be dismissed. The City used its new computer water capacity model to determine that a modified (but adequate) fire hydrant can be allowed. Water and Waste Water Director Greg Boettcher was deposed by plaintiff's attorney and the City Attorney before Greg left to take his new job in Florida. The City will shortly file a Motion For Summary Judgment.

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KIT WILLIAMS
Fayetteville City Attorney