



**Kit Williams**  
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**TO: Mayor Jordan**  
**City Council**

**CC: Don Marr, Chief of Staff**  
**Lindsley Smith, Communications & Marketing Director**

**FROM: Kit Williams, City Attorney**

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

**DATE: December 15, 2010**

## **LITIGATION & NEGOTIATION HIGHLIGHTS OF 2010**

### **I. Litigation Highlights**

#### *A. Hill v. Fayetteville Board of Adjustment – CV 2009-408-9*

The Hills sued the Fayetteville Board of Adjustment for its refusal to deny their requests for substantial variance from setback requirements. Following mediation, a settlement was achieved and the Hills' appeal was withdrawn.

B. All condemnations needed for the Mt. Comfort Road widening project were settled before trial.

#### *C. Rogers Group, Inc. v. City of Fayetteville – Civil Case No. 09-5426*

After the Federal District Court granted Rogers Group, Inc.'s Motion For Preliminary Injunction in an Opinion that questioned the statutory validity of the Rock Quarry Operating License Ordinance, Fayetteville appealed to the Eighth Circuit. We are still waiting for the Eighth Circuit Court of Appeals' decision. Both Rogers Group and the City of Fayetteville have filed motions for summary judgment which have not been ruled upon by the Federal District Court. The Arkansas Attorney General answered a question about this ordinance and opined that it was within the City Council's power to enact the ordinance.

D. *McGilton v. Creamer v. City of Fayetteville* – CV 2009-839-6

Plaintiff sued the City of Fayetteville about a plane wreck in which Mr. McGilton was injured. We filed a Motion to Dismiss which was granted by the Circuit Judge.

E. *Manuel Jones v. City of Fayetteville, et al.* – CV 10-2219-5

Mr. Jones filed libel and slander charges against the city and several city employees related to discussions about a nonprofit corporation in which Mr. Jones was the director or primary manager. We filed a Motion To Dismiss for failure of service of process within the allowable time, the statute of limitation and the lack of merit in all of Mr. Jones' allegations. The Circuit Judge dismissed Mr. Jones' complaint.

### **Litigation Conclusion**

Again in 2010 and for the ninth time in my decade 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.

## **II. Negotiation Highlights**

1. *Annexation of 99 acres of the City of Johnson and entry into long term sewer and water contracts with Johnson.*

After lack of any progress for years on the issue of annexing land from Johnson which will be immediately north of the extension of Van Ashe Boulevard, Mayor Jordan authorized the City Attorney to meet with the Johnson City Attorney and attorneys representing the affected landowners to see if any agreement was possible. The City Attorney presented a possible agreement to Mayor Jordan who agreed with it and presented the proposed agreement to the City Council. The City Councils of both Fayetteville and Johnson agreed to the negotiated agreement in which Fayetteville gained sufficient land (99 acres) on the north of where the Van

Ashe Boulevard will be constructed to justify this multimillion project which will also substantially improve access to the Northwest Arkansas Mall area. Long term water and sewer contracts were also approved.

*2. SouthPass/Chambers Bank conveyance of 210 acres free of charge to the City of Fayetteville.*

When the owners of SouthPass Development Company, LLC could not convey the 210 acres promised to the City by warranty deed with all liens released, the City negotiated with the mortgage holder, Chambers Bank. After months of further negotiations, the owners of SouthPass Development Company, LLC conveyed their land to Chambers Bank in lieu of foreclosure and Chambers Bank immediately conveyed 200 acres by warranty deed to the City of Fayetteville for use as our new community or regional park. Chambers Bank also deeded the ten acre water tank site to the City which we would otherwise have had to purchase for \$100,000.00 in the near future.