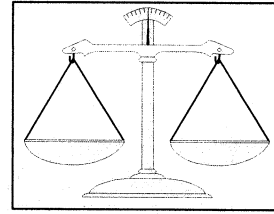


FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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



LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **City Council**

FROM: **Kit Williams**, City Attorney

DATE: **January 26, 2007**

RE: **Litigation Highlights of 2006**

Because the City Council has primary responsibility over the financial health of the City of Fayetteville Government and its budget, I believe I should regularly report to you about the most significant lawsuits involving the City. Accordingly, attached are the "Highlights of 2006" that I previously supplied Mayor Coody. As stated there, the City in 2006 has again suffered NO litigation defeats.

I also want to congratulate Assistant City Attorney **David Whitaker** who was named **Outstanding Government Attorney for 2006** by the Government Practice Section of the Arkansas Bar Association.

Of course the majority of our time is not devoted to litigation but is spent reviewing (and sometimes revising) agenda items and contracts, preparing Resolutions and Ordinances (including major projects like the Hillside, Sign, Impact Fee, Island Annexation, Annexation Election, Sales Tax Election, Downtown Master Plan, Redevelopment District {TIF}, Bonds, etc.) and responding to inquiries and requests for legal opinions or work from City Staff and Aldermen.

The major litigations we are handling do require large chunks of our time for discovery (written interrogatories often require thirty pages of answers); depositions take days away from the office; summary judgment motions, hearings, trial preparation and trials require days of undivided

attention; and appeals take further days for abstract and brief writing and an overnight trip to Little Rock for oral argument.

I truly enjoy my job and its litigation and appellate work. I have ended the previous practice of the City Attorney's Office which farmed out litigation work to outside lawyers in major cases. (The City spent millions of dollars for outside lawyers to represent us {unsuccessfully} in the late 80's to mid 90's.)

The staff (two lawyers and a legal secretary) of the Fayetteville City Attorney's Office has not been increased since the 80's. Indeed, for a while in the 90's, the part-time clerk position was funded and staffed. The rapid population growth of Fayetteville in the last two decades has been reflected in the growth and increased complexity of our City Government which increases the demands on the City Attorney's Office.

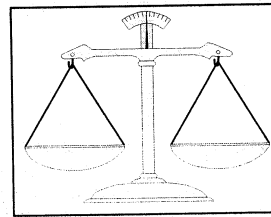
The aggressive and energetic agenda and programs of the Mayor and City Council have further increased the workload of my office. Unless the litigation burden eases during the next several months, I will ask that the part-time position in my office be funded next year (as it was for a while in the 90's) so I can hire a lawyer for 12-20 hours a week mainly to assist in discovery preparation, responses to FOI requests, etc.

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LEGAL DEPARTMENT

TO: **Mayor Dan Coody**
Susan Thomas, Public Information & Policy Advisor

FROM: **Kit Williams**, City Attorney

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

DATE: **December 15, 2006**

RE: **Litigation Highlights of 2006**

2006 has been a very busy year in the City Attorney's Office with several cases resolved through Summary Judgment Motions or at Trial and with one case, the TIF lawsuit, appealed to the Arkansas Supreme Court awaiting oral arguments. **The good news again this year is that Fayetteville has suffered no litigation defeats.** Although I realize it is impossible never to lose in Court, the City of Fayetteville has not suffered a litigation defeat since I became City Attorney almost six years ago.

The City Prosecutor's Office has also had a very good year. Not only have they achieved a conviction rate of 96% for over a thousand DWI's prosecuted so far, but they have also achieved a conviction rate in the mid-90's for the seven to eight thousand other charges they have prosecuted.

The City Prosecutor has also forced the payment of over **\$100,000.00** in unpaid, overdue Hotel, Motel and Restaurant taxes. More than **\$160,000.00** has been recovered for Fayetteville merchants by the Hot Check Program. This program also collected over **\$110,000.00** in prosecutor's fees, fines and costs for hot checks.

HIGHLIGHTS OF 2006 State of the City

Court Actions

2006 continued the substantial litigation trend of 2005 and kept the City Attorney's office very busy. Fortunately, we have been able to prevail in every case decided in 2006. The more significant cases decided in 2006 are discussed below:

1. **City of Fayetteville v. Washington County Assessor, Washington County, Fayetteville School District, Fayetteville Public Library, et. al., Washington County Circuit Court Case No. CV 05-559-**

2. The City Council authorized the City Attorney to file a Declaratory Judgment suit in order to clarify the law concerning how the tax increment should be distributed by the Assessor after the formation of the Highway 71 East Square Redevelopment District No. 1. This TIF district's project is the acquisition and demolition of the blighted area involving the Mountain Inn, Court's Building, old Niblock Law Firm and Red Bird Café, as well as sidewalk and crosswalk improvements throughout the district.

The Trust Indenture approved by the City Council requires the City to seek the maximum amount of tax increment allowed by law to pay off the TIF bonds which will fund the project.

Following a bench trial, the Circuit Judge ruled that the amounts used for funding the Redevelopment Bonds as certified by the County Assessor were **correct**. Although this amount should be sufficient to fully pay the TIF bonds, the Trust Indenture requires the City to seek additional millage increment and so an appeal to the Arkansas Supreme Court was necessary.

The City has filed all of its briefs and requested oral arguments. The Arkansas Supreme Court should set oral arguments in early 2007.

2. **John LaTour v. City of Fayetteville, et. al – United States District Court # 02-5001**. After losing his demand for Ten Million Dollars, Mr. LaTour appealed to the Eighth Circuit Court of Appeals which upheld the local Federal Judge's decision for us.

3. **Brock White v. City of Fayetteville** – Washington County Circuit Court Case No. CIV 05-113-4. Six months after Mr. White purchased his house on Amber Lane, the City was hit with several unusually large, localized rainfall events which flooded his home (April 22-July 2, 2004). The City Council authorized up to \$100,000.00 to enlarge the drainage structures installed decades earlier by the developer. After this drainage improvement was finished, Mr. White sued the City claiming the City had inversely condemned all of his property to be used as a detention pond.

During his deposition, Brock White was forced to admit that his house was not intended to be nor could it serve as a detention pond. Mr. White admitted his house had not suffered substantial devaluation because of the City's action, but actually increased in value. The City Attorney filed substantial briefs to support the City's Motion For Summary Judgment and won a **dismissal with prejudice** for all charges after oral arguments in support of the City's Motion For Summary Judgment.

4. **Miller v. City of Fayetteville** – CV 2005-1801-2 – A woman who was injured when she fell into a damaged storm sewer inlet filed a Complaint against the City right before the three year statute of limitation expired claiming (with no factual support) that the City intentionally and recklessly failed to correct the damaged storm sewer inlet (of which the City did not know). The City Attorney filed a Motion To Dismiss with Supporting Brief based upon our sovereign immunity and then filed a Reply to Plaintiff's Response. **The Court granted the City's Motion and dismissed the case.**

5. **Spicer v. City of Fayetteville** – CV 2005-2578-2 – The Spicers sued the City for permitting a lot split on their neighbors' property. The City filed a Motion To Dismiss because the Spicers failed to appeal timely or properly from the Planning Commission's action. The Court granted the City's Motion and dismissed the City from this suit. The Plaintiff filed an Amended Complaint bringing the City back into this case. The City Attorney filed another Motion To Dismiss based upon *res judicata* and other grounds, and the **City was again Dismissed With Prejudice.**

6. **Jeanny Romine v. City of Fayetteville** – Washington County Circuit Court Case No. CV 05-1221-4. Ms. Romine sued the City for Inverse Condemnation on June 10, 2005 because of what the City

believes is a private sewer line (but what Ms. Romine alleges is a city sewer main) caused sewer overflow onto her property. The City had offered to build a city sewer main across her property in 1998 to fix this problem, but Ms. Romine refused to give access by a sewer easement for this project. Ms. Romine is demanding not less than \$250,000.00 even though the property tax appraisal of her property is \$93,500.00.

The City Attorney has answered and denied liability. Discovery and deposition of the plaintiff have been accomplished. Two months before the scheduled trial, Ms. Romine sued her neighbors and alleged new grounds against the City, so the City filed a Motion For Continuance which was granted. Ms. Romine recently filed her Third Amended Complaint.

7. **Fuller v. City** – This is another pro se inmate case who claims he was not treated well when he initially wore a wire for the police, but later tipped off the suspect. He was sent to prison for other reasons. We have filed an Answer and a Motion For Summary Judgment. The Magistrate Judge filed her report recommending that our Motion For Summary Judgment be granted. **The District Judge granted our Motion and awarded a judgment to the City.**

8. **Howell v. Fayetteville Police Officer Lee, et al.** – CV 06-195-4. Mr. Howell was arrested for domestic battery and terroristic threatening by Officer Lee after a 9-1-1 call from Susan Howell. Probable cause was found by Judge Ray Reynolds during a hearing two days later. Mr. Howell claimed he was arrested without probable cause. The City, by insurance lawyer Randy P. Murphy, filed an Answer and Motion To Dismiss. The City Attorney obtained affidavits from the officers and 9-1-1 operator and a transcript of Mr. Howell's Rule 8.1 hearing for use in a Motion For Summary Judgment if necessary. **The Court dismissed Mr. Howard's claims.**

9. **Shirkey v. City of Fayetteville** – CV 2006-1687-1 – A neighbor and another person have sought to appeal the City Council's approval of the Large Scale Development of Divinity Hotel and Condos. The City has filed a Motion To Dismiss alleging lack of standing and failure to join a necessary party, the developer/owner of Divinity Hotels and Condo property.

The Court held that the appellants had standing, but allowed the intervention of the developer/owner of the Divinity Hotel/Condo LSD and set the *de novo* trial for early 2007.