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TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
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FROM: Kit Williams, City Attorney

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LITIGATION & NEGOTIATION HIGHLIGHTS OF 2011

I. Litigation Highlights

A. *Rogers Group, Inc. v. City of Fayetteville, United States District Court Case No. 09-5426*

Although the Arkansas Attorney General officially opined that the City of Fayetteville had the state statutory authority to enact the Rock Quarry Ordinance, the Federal District Court interpreted state law differently and granted a preliminary injunction against enforcing the ordinance. When the City could not get this overturned on appeal, the District Court indicated that it would not reconsider this issue. In order to preserve the validity of the Rock Quarry Ordinance within Fayetteville and to save further litigation expenses, the City Attorney requested that the City Council amend the ordinance. After the City Council had amended the ordinance, the District Court determined all of Rogers Group, Inc.'s counts were moot (to which Rogers failed to object) and dismissed its case.

Rogers Group, Inc. then sought an attorney's fee award of \$130,000.00 which the City opposed. The District Court granted an award of \$75,000.00 which was appealed by the City Attorney after authorization by the City Council. All briefs are filed with oral argument expected to be scheduled soon.

B. *City of Fayetteville v. Zara Thomas, Washington County Circuit Court, Case No. 11-930*

The Assistant City Attorney filed a condemnation action against Mr. Thomas to obtain a necessary link for a city trail. The landowner contested the City's public purpose in condemning a trail easement. Following a hearing, Judge Taylor held the City had a proper purpose and its \$17,300.00 payment into Court based upon an appraisal was proper. The Judge then granted the City's Motion for Immediate Possession and construction was started.

The landowner then attempted to appeal the Judge's decision to the Arkansas Supreme Court. The Assistant City Attorney filed a Motion for Expedited Consideration and a Motion To Dismiss with supporting brief as we believe no interlocutory appeal is legally allowed in this situation. The Arkansas Supreme Court granted our Motion For Expedited Consideration, but delayed decision on our Motion To Dismiss until the case is submitted. The City Attorney's Office has filed briefs on all issues and is awaiting the Supreme Court's decision.

C. *Rick Woods v. City of Fayetteville, Washington County Circuit Court, Case No. CV 11-2607-2*

Following the City Council's approval of a Resolution to approve the new Master Street Plan on August 16, 2011, an unhappy home owner filed a Notice of Appeal and requested a trial by jury and a *de novo* review of this Resolution.

The City Attorney filed a Motion To Dismiss with supporting Brief because the City Council's approval of the new Master Street Plan was a legislative decision which must be sustained by the Court unless it was an arbitrary and capricious action. There is no right to a jury trial, nor a *de novo* review unless the City has acted administratively rather than legislatively. **The Circuit Court granted the City's Motion To Dismiss subject to the plaintiff amending his Complaint.**

D. *Fayetteville School District v. Washington County Assessor, Collector and Treasurer and City of Fayetteville, Washington County Circuit Court, Case No. CV 11-3121-4*

The Fayetteville School District filed a Declaratory Judgment suit against Washington County officials and the City of Fayetteville attacking the amount of

the tax increment being distributed to the TIF bond trustee. The City Attorney filed a Motion To Dismiss with Prejudice on grounds of *Res Judicata* because the definition of "total ad valorem rate" disputed by the School District had already been judicially determined in the 2005 Declaratory Judgment case filed by the City and decided by the Supreme Court in 2007.

The School District obtained a preliminary injunction banning distribution of the tax increment funds to the TIF bond trustee pending final decision without the consent of the City nor our opportunity to argue against such injunction. Therefore, the City Attorney filed a Motion To Set Aside or Dissolve such preliminary injunction (with supporting Brief) until it could be addressed in a hearing scheduled for January 17, 2012. The School District agreed to an Order dissolving the preliminary injunction.

Litigation Conclusion

Again in 2011 and for the tenth time in my over a 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. We are appealing the current \$75,000.00 attorney's fee award to the Eighth Circuit.

II. Negotiation Highlights

1. Land for Roundabout intersection near Washington Regional Medical Center.

Rather than expending about \$200,000.00 in taxpayer revenues to acquire over an acre of land from Washington Regional Medical Center for a roundabout intersection of North Hills Boulevard and Futrall Drive, the City Attorney negotiated with WRMC General Counsel to receive this land as a donation. WRMC also agreed to move its sign without compensation. The City agreed to follow the donators' intent as expressed in its deed to the City for the City Hospital land and transfer the land it held in trust for hospital purposes only to Washington Regional Medical Center.

2. Acquiring land for Mount Comfort and Township Road widening projects.

Although a few condemnation cases had to be filed, the City Attorney's Office was able to negotiate settlements with all property owners (which were approved by the City Council) prior to trial. During the decade of my service, the City Attorney's Office has been able to resolve all condemnation actions in fair settlements approved by the City Council without requiring a jury to determine fair compensation.