Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

Board of Directors

Ward 1 – Keith D. Lau
Ward 2 – Andre' Good
Ward 3 – Mike Lorenz
Ward 4 – George Catsavis
At Large Position 5 – Pam Weber
At Large Position 6 – Kevin Settle
At Large Position 7 – Philip H. Merry Jr.

AGENDA

Fort Smith Board of Directors

Study Session

February 11, 2014 ~ 12:00 Noon

Fort Smith Public Library Community Room

3201Rogers Avenue

1. Review possibility of fining Whirlpool Corporation for the TCE contamination

2. Discuss legislative priorities for the 2015 session of the Arkansas General Assembly

3. Review preliminary agenda for the February 18, 2014 regular meeting

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MEMORANDUM

February 7, 2014

TO: Mayor and Board of Directors

FROM : Ray Gosack, City Administrator

SUBJECT: Whirlpool TCE Contamination

Attached is a letter from an attorney who is interested in representing the city to take action against Whirlpool for the TCE contamination caused by Whirlpool. The attorney believes that the city can fine Whirlpool for violations of the city's nuisance ordinances. The attorney works on a contingency basis, and would not be compensated unless the city collects fine revenue from Whirlpool.

Pursuing this action could create more accountability for the pollution Whirlpool has caused, and generate one-time revenue for the city. On the other hand, this action could hinder Whirlpool's ability to market/sell the property for re-use. It might also affect the sharing of information by Whirlpool with the city.

Please let me know if there's any questions or a need for more information regarding this enforcement action suggested by the attorney.

- Ray

Attachment

cc: Melissa Sims, Sims Law Office
Jeff Noel, Whirlpool Corporation
Ryan Benefield, Arkansas Dept. of Environmental Quality

SIMS LAW OFFICE
MELISSA K. SIMS, ATTORNEY AT LAW
1216 ELLIOTT LANE
PRINCETON, ILLINOIS 61356
TELEPHONE: (815) 878-4674
FACSIMILE: (815) 224-2900
E-MAIL: SIMSMELISSA7@GMAIL.COM

January 21, 2014

Hon. Ray Gosack
City Administrator
623 Garrison Ave
3rd Floor, Room 315
Fort Smith, AR 72901

Re: City of Fort Smith, Arkansas
CONFIDENTIAL COMMUNICATION

Hon. Gosack:

This follows our telephone conference this afternoon regarding the possibility of representing the City of Fort Smith, Arkansas in environmental claims based in ordinance.

As we discussed, I partner with several top tier law firms in the country and together we represent municipalities in utilizing the city's ordinance violations to fine polluters for contamination on a contingency fee basis. I began this type of practice when I, as the village attorney, utilized the village's nuisance ordinance against Exxon Mobil and CBS Viacom for environmental contamination to the Village of DePue, a tiny town in North Central Illinois. The Seventh Circuit Court of Appeals ruled that no federal preemption applied and we grappled with state law

preemption on the issue of the abatement (injunction) action. Ultimately, the Village of DePue settled with the defendants for $975,000.00.

I have other cases filed---and yet to be filed---in Illinois and other states working with large firms on a contingency fee basis to assist cities such as Fort Smith seek restitution for contamination from old factories which have reaped enormous benefit from spreading hazardous materials. I would be available to speak with you and/or the board in person to discuss the execution of an agreement for the team to investigate the claims your city may have against Whirlpool and other polluters.

I thank you for your time and I look forward to working with you to review and investigate possible claims for your city.

Sincerely,

Melissa Kaye Sims

CONFIDENTIAL COMMUNICATION

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MEMORANDUM

February 7, 2014

TO: Mayor and Board of Directors

FROM : Ray Gosack, City Administrator

SUBJECT: Priorities for 2015 Legislative Session

Attached for the board of directors' review is a list of priorities for the 2015 session of the Arkansas General Assembly. The Arkansas Municipal League (AML) will consider a city's priorities in its legislative package if those priorities have been adopted by the city's governing body. The priorities must be submitted to the AML by mid March in order to be considered for its package. Priorities which are part of the AML's legislative agenda have a better chance of being adopted.

The attached list of priorities were developed with input from the board, staff and the city attorney. We recommend these for inclusion in the city's list of legislative priorities. Please let me know if there's other items the board would like to add to the list.

- Ray

Attachment

CITY OF FORT SMITH
Legislative Priorities for the
2015 Session of the
Arkansas General Assembly

- ***Sales Tax Bond Election Ballot Questions***

Amendment 62 to the Arkansas Constitution allows cities and counties to ask voters to approve bonds for local capital improvement projects. Section 1(a) of Amendment 62 requires that if more than one purpose is proposed on the same ballot, each shall be stated separately on the ballot.

Fort Smith undertook a sales tax bond election in 2012 under Amendment 62 in which there were 5 separate purposes/projects for voters to decide. All of these purposes relied on the same 3/4% sales tax to finance the bonds. During voter education presentations before the election, many citizens questioned why each project/purpose had to be voted separately on the ballot. They said it was confusing, particularly considering the same revenue source was being used to pay the bonds for all of the projects/purposes.

This confusion could be eliminated by deleting the following sentence in Amendment No. 62, section 1(a)

> *If more than one purpose is proposed, each shall be stated separately on the ballot.*

Elimination of this requirement would give cities and counties the option of presenting each purpose/project separately, or combining a number of purposes/projects into one vote. In either case, the voters still decide if the issuance of bonds is approved.

- ***Definition of "Meeting" in Arkansas Freedom of Information Act***

The Arkansas Freedom of Information Act prohibits certain public officials from conducting meetings without proper public notice and without access by the public. The word "meeting" is used 15 times in the act. However, meeting is never defined in the act. The Arkansas Supreme Court, through case law, has defined what a meeting is over time. Creating a definition for meeting should be a legislative function, not a judicial function. The Supreme Court has encouraged the legislature to address this topic. The FOIA/open meeting law of every state surrounding Arkansas includes a definition of "meeting". The Arkansas FOIA should be amended to define a meeting so that disagreements don't have to be resolved through expensive, protracted, and uncertain litigation.

- ***Emergency Lights on Police Vehicles***

A combination of blue and red emergency warning lights on police vehicles are becoming more common across the United States. They help the public identify public safety vehicles. They're also cheaper to purchase than lights that are entirely blue. Arkansas statute doesn't allow for a combination of blue and red lights. Arkansas code 27-49-219(d)(1)(A) should be amended as follows:

> *(A) Motor vehicles used by state, county, or city and municipal police agencies, all of which shall be equipped with:*
>
> *(i) Blue lights; or*
>
> *(ii) Blue, red, or white rotating or flashing emergency lights <u>or any combination of these colors</u>;*

This change would give police agencies the option of using all blue lights, or of using any combination of red, blue and white lights.

- ***Appointment of District Court Clerk***

Arkansas statute 16-17-108(a)(84) provides that each Fort Smith District Court judge shall appoint a district court clerk. A literal interpretation of this provision would result in the court having 3 court clerks. This is neither practical nor the current practice of the court. The judges are recommending that this language be clarified to reflect that the court shall have 1 clerk. They further recommend that this clerk be appointed by and

pursuant to the personnel authority of the City Administrator. The appointment of the clerk will provide stability in the daily administration of the court, provide continuity when new judges are elected or appointed to the court, and will ensure that the appointment and removal from the position will be based on job performance. The statute should be amended as follows:

> *16-17-108.* ***Salaries of personnel and other requirements of various district courts.***
>
> *(a) Unless otherwise provided by law, the salaries of the judges and other personnel of the various district courts shall be established as follows:*
>
> *(84) The Sebastian County District Court — Fort Smith District ~~Judges, Departments 1, 2, and 3, each~~ The Fort Smith City Administrator shall appoint a qualified elector to serve as district court clerk. The ~~salaries~~ salary of the district court clerk~~s and~~ , deputy clerks, court personnel, any special district court judges authorized by this subdivision (a)(84) and the operating expenses of the Sebastian County District Court — Fort Smith District shall be paid seventy percent (70%) by the City of Fort Smith and thirty percent (30%) by Sebastian County;*

- ***Police and Fire Pension Plan Funding***

Many cities across Arkansas have unfunded liabilities for police and fire pension plans, particularly older plans which have been closed to new participants. A solution to these unfunded liabilities would be a constitutional amendment which would permit the use of a special local sales tax, with voter approval, to pay for these unfunded liabilities of closed local police and fire pension plans.