



Chalmers, Adams, Backer  
& Kaufman, LLC

5805 STATE BRIDGE ROAD, #G77  
JOHNS CREEK, GEORGIA 30097  
(770)-630-5927  
dchalmers@chalmersadams.com

February 27, 2024

VIA EMAIL (dmecklin@tisingervance.com) and  
CERTIFIED MAIL

C. David Mecklin  
City Attorney - City of Villa Rica  
C/o Tisinger Vance P.C.  
100 Wagon Yard Plaza  
Carrollton, GA 30117

Re: City of Villa Rica - Appointment of Deputy City Manager

Dear Mr. Mecklin:

As you know, this law firm represents Mayor Leslie McPherson of the City of Villa Rica. This letter address the recent appointment of former Mayor Gil McDougal to the position of Deputy City Manager for Villa Rica. For the reasons set out below, we believe this appointment is invalid and violates the City Charter. Accordingly, Mayor McPherson hereby demands the immediate resignation or removal of the former Mayor as Deputy City Manager.

On December 5, 2023, the voters of Villa Rica, by a 2-1 margin, voted to elect Leslie McPherson to replace Gil McDougal as their Mayor. Not willing to accept those election results, the former Mayor has now accepted an appointment to serve as Deputy City Manager. This appointment by the City Manager and a narrow majority of the City Council violates Section 5 of Appendix A (“Code of Ethics and Prohibited Practices”) of the City Charter, which provides that, “[n]o former mayor and no former councilmember shall hold any compensated appointed office in the city until one (1) year after the expiration of the term for which he/she was elected.”

As you and legislative counsel for the General Assembly have noted in recent opinion letters on this subject, the relevant question is whether the position of Deputy City Manager is considered an “appointed office” by the City of Villa Rica. If so, the former Mayor may not serve in that position for at least one year after leaving office. A review of the manner in which the City has handled this position in recent years, and the application of the factors set out in Supreme Court case law for distinguishing an “officer” and an “employee,” establishes that this position is an appointed city office.

February 27, 2024

Page 2

In Brown v Scott, 266 Ga. 44, 464 S.E.2d 607 (1995), the Supreme Court noted that “[t]his Court has held that a public officer and employee can be distinguished on the basis of creation, duration and emoluments of office.” Id., 266 Ga. at 45 (citing Fowler v. Mitcham, 249 Ga 400, 401, 291 S.E.2d 515 (1982)). In Brown, the Court noted that an individual who had been “appointed” to a “durable” position was an officer. Id. As discussed below, that is the case here. Moreover, in Fowler, the Court stated as follows:

An 'officer' is distinguished from an 'employee' in the greater importance, dignity, and independence of his position, in requirement of oath, bond, more enduring tenure, and fact of duties being described by law . . . . In determining whether one is an 'officer' or 'employee,' important tests are the tenure by which a position is held, whether its duration is defined by the statute or ordinance creating it, or whether it is temporary or transient or for a time fixed only by agreement; whether it is created by an appointment or election, or merely by a contract of employment by which the rights of the parties are regulated; whether the compensation is by a salary or fees fixed by law, or by a sum agreed upon by the contract of hiring."

Id., 249 Ga. at 401-02. In this case, as discussed below, application of these factors confirms that the Deputy City Manager position, as it is currently applied by the City, is an “office.”

(1) Manner of Appointment of Deputy City Manager. As an initial matter, the manner in which this appointment took place confirms that the City Manager, the City Council, and you as the City Attorney all view the Deputy City Manager as a city officer and department director, rather than just another employee.

The hiring of city employees in Villa Rica does not generally require City Council approval. On that point, section 2-25 of the City Ordinances states that the City Manager shall have the power and it shall be his duty “(2) [t]o hire and discharge for cause all employees of the city not appointed by the mayor and council or provided for elsewhere in this Code . . . .” On the other hand, Section 3.22 of the Charter provides that, “[a]s chief administrative officer, the city manager shall have the power to appoint and remove all city officers and department directors with the approval of the council.” Id. In other words, the hiring of city employees does not generally require city council approval, but the City Manager must get Council approval before appointing any city officer or department director.

In this case, with your guidance and approval, the City followed the procedure set out in Section 3.22 of the Charter in appointing the former Mayor as the Deputy City Manager. The City Manager sought to appoint the former Mayor as Deputy City Manager, and he requested the approval of the Council for that appointment. The council approved the appointment by a 3-2

February 27, 2024

Page 3

vote at its meeting on February 13, 2024. Quite obviously, that council vote would not have been necessary if the Deputy City Manager position was just another employee, as you now contend, rather than a “city officer” or “department director.” In short, the manner in which the City handled this appointment, all of which was done under your direction, belie your later, ex post facto opinion that the position of Deputy City Manager is not an “appointed office.”

(2) City Attorney Comments on the Office Being Appointed. In addition, the comments that you made during the City Council meeting also make it clear that, for some time, the City has viewed the Deputy City Manager as a department head and an officer. The audio of the City Council meeting records you stating as follows:

CITY ATTORNEY DAVID MECKLIN: The only action in executive session that has come back to the council for a vote relates to a personnel issue on the appointment of a Deputy City Manager. Let me just explain the process and what the charter says so that everybody can know what we're doing. City Charter provides that any department heads, the City Manager recommends a person to be appointed to that. Tom (Barber) is going to make a recommendation in a moment. It will then be up to the council to confirm or deny that appointment. After he makes his recommendation, there'll be a motion from somebody to do something.

CITY COUNCILMAN DANNY CARTER: Question. I didn't know the Deputy City Manager was a department head. How does he get into that position?

CITY ATTORNEY DAVID MECKLIN: It's my understanding that they have always been treated as that, that they are an officer of the city, that they are counted as a department head. They're included in the department head meetings. I don't know that we have any type of a formal tree that would declare that, but they've always been treated forever as a department head. So that's the process. Again, somebody will move to confirm or deny the appointment, and we'll see what the vote is then. . . . The way it's set up is the city manager is in charge of personnel, and he can recommend whoever he chooses for a position, and it then falls to the council if they're a department head or an officer to confirm that or not. I'm saying it as directly as I can.

Transcript of City Council Meeting of February 13, 2024 (emphasis added).

These comments are unequivocal. Based on your years of service as City Attorney, you advised the City Council that the Deputy City Manager has “always been treated as . . . an officer of the city” and a “department head.” You also advised the Council that the appointment needed to take place in the manner set out in Section 3.22 of the Charter, i.e., that the City Council had

February 27, 2024

Page 4

to approve the appointment. These comments - which were not disputed by any member of the City Council or any other City official at the meeting - contradict your subsequent written opinion that the former Mayor may serve as Deputy City Manager because that position is not in fact an “appointed office” of the City.

(3) Record of the Appointment. The record of the City Council meeting also confirms that the former Mayor was appointed to a city office. The “Action Summary of City Council Meeting - February 13, 2024” states in relevant part as follows: “Executive Session: Voted to Appoint Gil McDougal as Deputy City Manager.” In addition, the draft minutes of the meeting say the same thing: “Councilwoman Anna McCoy moved to approve the City Manager’s recommendation to appoint Gil McDougal as Deputy City Manager.” The draft minutes show that this motion was approved by a 3-2 vote, with councilmembers Marchman, Momtahan and McCoy approving, and councilmembers Carter and Warmoth opposed. This was an official appointment, not merely the hiring of an employee.

(4) Job Description. The City’s public job description for the position of Deputy City Manager also highlights the very senior nature of the position. That job description, as posted in LinkedIn, states in relevant part as follows:

This is a high-level executive management position that assists the City Manager in directing and supervising the operations of the City of Villa Rica. Work involves providing oversight of operations and projects as assigned. Assignments could include developing short- and long-range plans; communicating with Mayor and City Council, neighboring governments, and residents; monitoring and ensuring compliance with State/Federal regulations; creating or updating ordinances and policies; training, hiring, evaluating, and disciplining employees.

(Emphasis added).

The description adds that “[t]his position is responsible for managing and supervising several departments in the City.” (Emphasis added). Indeed, the “Major Duties” duties of the office are also described in very expansive terms, effectively encompassing anything that the City Manager could do himself or herself:

Manages activities of Finance, Human Resources, Information Technology and Purchasing. Assigns priorities and objectives to professional staff; reviews/approves management reports regarding departmental and administrative activities.

Develops short- and long-range plans; gathers, interprets, and prepares data for studies, reports and recommendations for decision-making purposes.

February 27, 2024

Page 5

Provides professional advice to the City Manager and the Mayor and City Council.

Communicates official plans, policies, and procedures to staff and the general public.

Oversees preparation and administers annual City budget; monitors revenues and expenditures by assigned area to ensure that City operations are performed within budget and to ensure sound fiscal control.

Advises the City Manager of financial conditions and of current and future City needs.

Supervises purchase of materials, supplies and equipment after soliciting bids from qualified contractors.

Evaluates workflow and process and expedites workflow; studies and standardizes procedures to improve efficiency and effectiveness of operations.

Informs City Manager of departures from City policies, procedures, and ordinances as well as noncompliance with Federal, State, and Local laws.

Tracks legislative issues and alerts the City Manager of proposed or new laws.

Attends all City Council meetings, and local, regional, and state meetings as assigned.

Represents the City Manager before City Boards and Commissions.

Performs other related duties as assigned.

(Emphasis added). It is almost stating a tautology to note that this job description, and this list of duties, describe the position of not just a city officer, but indeed the most important and powerful city officer after the City Manager.

In addition, the City's website also highlights the importance of the Deputy City Manager position in the current administrative practices of the City. In the "Administration" section of the City's website, there are only three positions deemed important enough to be listed: City Clerk, City Manager, and Deputy City Manager. The website also contains this description of the position of Deputy City Manager:

February 27, 2024

Page 6

The Deputy City Manager assists the City Manager in directing and supervising the operations of the City of Villa Rica. This includes communicating with the Mayor and Council, staff, neighboring governments and citizens; developing short and long-range plans; monitoring compliance with federal and state regulations; and creating or updating ordinances and policies. Specifically, the Deputy City Manager oversees the daily functions of Finance, Human Resources, Information Technologies and Purchasing.

(5) Opinion of Office of Legislative Counsel. On February 22, 2024, in response to a request from Representative J. Collins, the Deputy Legislative Counsel of the Georgia General Assembly wrote an opinion letter on this subject. Legislative counsel noted that, as observed above, “neither the city's charter, nor its published code of ordinances, appear to directly address the deputy city manager beyond one small [reference], and so provide no direct guidance as to whether or not the role was designed as one of mere employment versus being an officer of the city.” Having reviewed the manner in which the City describes the position’s job duties on its website, and applying principles established by the Georgia Supreme Court on the question of whether a given public position is an “officer” or “employee,” counsel concluded as follows:

[I]t appears that the deputy city manager oversees the operations of at least four of the city's departments and would supervise at least four department directors. Supervising officers of the city could be a significant indication that the deputy city manager is also an officer of the city, as such a role would appear to be of greater importance, dignity, and independence than is typically possessed by an employee. The other duties of the deputy city manager - assisting in the direction and supervision of city operations, communicating with elected officers and other governments, and developing plans, regulations, and policies - could also strongly indicate that the dignity and importance of the position of deputy city manager rises to the level of one of an officer as apposed to one of employment.

February 22, 2024 letter from D. Stuart Morelli, Deputy Legislative Counsel (emphasis added). We agree with these conclusions, which come from a neutral and independent source.

(6) City Attorney Opinion Letter. Your opinion letter of February 21, 2024 disagrees with the conclusion reached by the Office of Legislative Counsel. You now conclude that the Deputy City Manager is not an officer because “[n]owhere in the Charter nor in the Code of Ordinances of the City of Villa Rica is the position of Deputy City Manager defined as an office within the City. The position is given no legal status and has no defined powers.” There are a number of problems with this reasoning and this conclusion.

February 27, 2024

Page 7

First, this flatly contradicts what you told the City Council at the February 13th City Council meeting. At that meeting, based on your years as City Attorney, you advised that the City has “always” treated the Deputy City Manager as “an officer of the city . . . .”

Second, it also apparent, based both on our conversations and other facts, that the issue of the former City Mayor’s ineligibility to serve as Deputy City Manager was not raised by you prior to or at the City Council meeting on February 13th, notwithstanding the fact that you were present and advised the Council’s discussion of the issue. It was not until after that meeting, and after the appointment had been effectuated, that the issue arose and became a public controversy. In light of that, your opinion letter is candidly less valuable as a neutral and objective legal analysis, because it was necessarily drafted with an eye towards justifying action already taken by the Council. Among other things, your letter omits relevant facts about how the City has treated this office, and that may explain why your opinion and that of the Office of Legislative Counsel “diverge” on whether the Deputy City Manager position is that of a city officer.

Third, a basic problem with your opinion letter is that the manner in which the City has operated in recent years has elevated the Deputy City Manager position to one with a job description and de facto powers which are typically reserved to only the most senior of city officers. Your opinion, which relies primarily on the point that there is no mention of the position of Deputy City Manager in the City Charter, and only one such indirect mention in the Ordinances, ignores that reality, which frankly has occurred on your watch. Indeed, you unequivocally stated at the February 13th City Council meeting that, in practice, the persons holding the position have been treated both as officers and department heads. Your after-the-fact observation that there is no reference to the position in the Charter simply highlights that City government has been allowed to evolve in recent years in ways where it is operating without reference to the City’s governing documents. That was one of Mayor McPherson’s concerns as expressed in the recent campaign, one which resulted in her overwhelming victory.

In voting to appoint a Deputy City Manager at its meeting on February 13th, the City Council effectively ratified the scope of duties that was listed in the publicly-posted job description for that position. The City Council vote also obviously took place after you advised the Council that the Deputy City Manager has “always been treated as . . . an officer of the city.” These actions make it clear that, whether or not there is a position or job description for Deputy City Manager spelled out in the Charter, the Council intended for its vote to create such a position as an officer position, endow it with the scope of duties set out in the posted job description and the City’s website, and then appoint the former Mayor to that office. We believe that these actions and this appointment violate the Charter.

(7) City Attorney Letter to Representative Collins of February 23, 2024. Your letter of February 23, 2024 to Representative Collins references a number of additional factors that you

February 27, 2024

Page 8

believe are relevant to the question of whether the Deputy City Manager is an officer or an employee. With respect to the others, a couple of brief observations are necessary.

First, your letter states that “[t]he Deputy City Manager is subject to the terms and conditions of the Villa Rica personnel handbook.” No support, however, is offered for that assertion. The term “Deputy City Manager” does not appear in the handbook. You also note that “the City Clerk is a defined officer of the City who is also subject to the personnel handbook, so this fact in and of itself is not wholly determinative of the issue.”

Second, your letter also states that “[w]hile I have recognized that the position of Deputy City Manager is an important position within the City, and that it can be equated to service as a department head, I do not believe that enhanced status alone equates to service as an officer of the City.” In so stating, you note that the Charter lists certain persons as being officers of the City, and there is no mention of a Deputy City Manager. Your references to the Charter, however, fail to acknowledge that Section 3.10 references “department directors and other appointed officers of the city,” which suggests that department directors are officers. Moreover, the statement in your letter is belied by the practice in recent years, which has endowed this position with all the characteristics of an office, and by your statement at the February 13th City Council meeting that Deputy City Managers “have always been treated as that, that they are an officer of the city, that they are counted as a department head.” The City Council vote took place after those comments, and confirmed that the intent was for this position to be an office.

(8) Qualifications. In addition to violating Section 5 of Appendix A of the Charter, it appears highly likely that the appointment of the former Mayor violated Section 3.10(d) of the Charter. That provision states that, “[e]xcept as otherwise provided by law, the directors of departments and other appointed officers of the city shall be appointed solely on the basis of their respective administrative and professional qualifications.” (Emphasis added). The City Charter thus mandates that, before the City may appoint a department director or city officer, the City must assess that persons’s “administrative and professional qualifications,” and it must make the appointment based “solely” on those qualifications.

The job description for the Deputy City Manager position that the city posted on LinkedIn stated that the “Minimum Qualifications” for the position are as follows: “Bachelor’s degree in Public Administration or related field; and ten (10) years of progressively responsible experience in local government, or related field; equivalent combination of education and experience.” Was the assessment required by the City Charter, which presumably would have determined if the former Mayor possessed these qualifications, performed? If so, by whom? Did the former Mayor submit a resume or other documentation confirming that he possessed the minimum qualifications? Who determined whether that requirement was satisfied? Who determined that he was better qualified than any other candidates?



February 27, 2024

Page 9

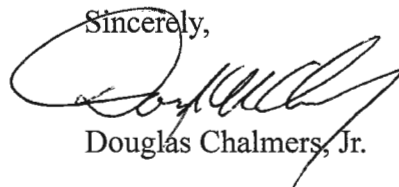
We are aware of no information suggesting that this Charter requirement was satisfied. If you believe that the required assessment was performed, then please let me know, in which case I will submit an Open Records Act for all paperwork related to that assessment and to the City's process for filling this position. Unless the City can document that the required assessment was performed and that the former Mayor was found to possess the minimum qualifications, however, then the appointment of the former Mayor to the position of Deputy City Manager may have violated Section 3.10(d) of the Charter.

(9) Conclusion. The appointment of former Mayor McDougal to the position of Deputy City Manager was an egregious breach of trust with the voters of Villa Rica, who just two months ago rejected his policies and voted him out of office. This is particularly true given that, before he left office, the former Mayor convinced the City Council to adopt an invalid resolution which, sidestepping the normal process for resolution of ethics complaints, called for an investigation of the incoming Mayor. Pursuant to the resolution crafted by the former Mayor, this investigation was to be overseen by the City Manager. The former Mayor has now maneuvered himself into a position as Deputy City Manager, where he very likely will play a role conducting the very investigation that he called for, and for which he drafted the City Council resolution. This is a blatant conflict of interest, one that is understandably bringing embarrassment and condemnation to Villa Rica city government as a whole.

The appointment of former Mayor McDougal to the position of Deputy City Manager is not only a violation of the trust of the voters of Villa Rica, it violates both the letter and the spirit of the City Charter. Mayor McPherson hereby immediately demands that former Mayor McDouglas resign or be removed from this position. If this does not occur by the date of the next regularly-scheduled City Council meeting, the Mayor reserves the right to take all appropriate legal action against any and all of those involved in this invalid and illegal appointment.

Please note that, as a result of various facts, including but not limited to this correspondence and the legal opinion of Office of Legislative Counsel for the General Assembly, the City Manager, Deputy City Manager, and City Council are all on notice that the former Mayor's acceptance of the position of Deputy City Manager, and his continued work in that role, is a willful violation for purposes of Section 7 of Article A of the City Charter. Mayor McPherson expressly reserves all of her rights and remedies under the law with respect to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas Chalmers, Jr.", written over the typed name below.

Douglas Chalmers, Jr.