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**To:** Roze Acup <racup@sbcglobal.net>

**Cc:** Kate Demeter <kate@ellisville.mo.us>; Adam Paul <quintage21@aol.com>; Adam Paul <Adam.Paul@amdocs.com>; Anglins <anglinz@charter.net>; Matt Pirrello <pirrello@charter.net>; Linda Reel <reelones@yahoo.com>; Troy Pieper <troy.pieper.lo1m@statefarm.com>; troy <troy@troypieper.com>; Shelly Murray <shellymurray@sbcglobal.net>; Kevin Bookout <kbookout@ellisville.mo.us>

**Subject:** Re: Resolution with Exhibits

**Date:** Wed, Feb 20, 2013 6:57 am

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**Privileged Attorney-Client Communication**

To follow up on last night's e-mail . . .

Section 3.6 of the Charter provides that the Council "shall be the judge of all questions" pertaining to the qualifications of all council members "and of the sufficiency of the grounds for forfeiture of their office." To proceed under Section 3.6, the Council "shall adopt by an affirmative vote of a majority of the unaffected members a preliminary resolution stating the reasons a member . . . has forfeited office".

The charged member may file a written request for a public hearing within five days of the delivery of the resolution. If so requested, the hearing must be held "not earlier than fifteen days nor later than 30 days" after the request is filed. After the hearing, a final resolution must be adopted for removal, with decisions to be reviewed by the St. Louis County Circuit Court.

The standard that must be met for a court to uphold the removal of an elected official in Missouri is "misfeasance, malfeasance, or nonfeasance" in office. Misfeasance is the improper performance of some act which may lawfully be done. Malfeasance is the commission of some act wholly beyond the actor's authority. Nonfeasance is the failure to perform a required duty.

Before the Council chooses to proceed with a preliminary resolution, be advised that I will not be able to participate in any hearing, either as the prosecutor of the charges or as attorney for the Council, as I anticipate that I will be a witness at the hearing, should it come to pass. My disqualification would not be effective until the Council passed the preliminary resolution for removal, so I may assist in its preparation.

Because of my disqualification, the City would need to hire a special prosecutor to present the charges at the removal hearing and another attorney to advise the Council throughout the 3.6 process. In that the special prosecutor will need to be engaged immediately to adequately present the charges given the Charter's time frame for a hearing, and in that the Council will need a legal advisor after the adoption of the preliminary resolution (due to my disqualification), I recommend that the resolution also authorize the hiring of counsel. If the council chooses to proceed with the drafting of a preliminary resolution, I'll suggest two attorneys/firms to fill this role.

Also, while under the Charter the mayor *may* request a public hearing (assuming the adoption of a preliminary resolution), he is not obligated to do so. I am concerned that constitutional due process may not be served if the mayor fails to request a hearing. In other words, the constitution may *require* a hearing, even if the mayor doesn't request one, to enable the Council to exercise its authority to remove him from office. The Council should also consider that it will have to meet again to schedule a hearing, assuming the mayor requests one, and that any delay in setting a hearing date may impinge on the time limits established by the charter. I'd recommend any preliminary resolution include a date for hearing the charges, to ensure that (a) the mayor is afforded all process due by law, (b) the Council is not forced to reconvene to schedule a hearing, and (c) a hearing may be scheduled as expeditiously as possible within the time frame required by the Charter. That date can be determined at the time the resolution is considered.

Finally, in that City staff, myself included, have knowledge of some of the acts that may be deemed by the Council to constitute misfeasance, malfeasance, or nonfeasance in office, the resolution should authorize and direct the staff to participate fully in the preparation of the preliminary resolution and the 3.06 proceeding, regardless of whether staff's knowledge consists of information that might be deemed "closed" under the Sunshine Law.

This is all I can think of at this time. The council can discuss the matter further at tonight's closed session.

On Tue, Feb 19, 2013 at 9:45 PM, Roze Acup <[racup@sbcglobal.net](mailto:racup@sbcglobal.net)> wrote:

As I'm reading the CEC recommendation I only see one issue addressed (giving a direct order to police officers) although Katie has listed other violations in the last paragraph. In addition there have been instances such as discussing with petitioners outside of a public meeting, specifically Ruby's Guns and the Walmart relocation specialist. Will these occurrences be addressed?

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**From:** Kate Demeter <[kate@ellisville.mo.us](mailto:kate@ellisville.mo.us)>

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**Sent:** Tuesday, February 19, 2013 8:29 AM

**Subject:** Resolution with Exhibits

I did not attach exhibits earlier. Please see the attached.  
Kate

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