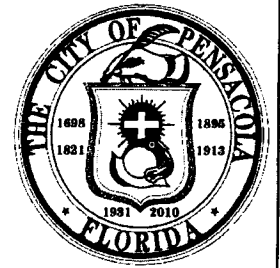


**FROM THE DESK OF DON KRAHER  
COUNCIL EXECUTIVE**



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To: Lysia Bowling – City Attorney  
From: Don Kraher – Council Executive  
Date: 05-09-17  
Re: Councilman Wingate's inquiry regarding questioning a nominee for appointment

Madam City Attorney:

I offer the following for your consideration regarding this matter:

The question pro-offered is, "Will the City Council be able to ask questions of the Police Chief Nominee at a Council meeting wherein consent to his appointment is requested."

On the agenda for the May 11, 2017 City Council meeting is the following item:

**APPOINTMENT OF POLICE CHIEF**

Recommendation: That City Council consent to the appointment of Tommi Lyter as Chief of the Pensacola Police Department.

The City Charter, Section 4.01(a) (7) – Mayor – Powers and Duties states, (7) "To appoint the head of each department, with the consent of the City Council by an affirmative vote of a majority of City Council Members."

Section 4.02 (a)(3) – City Council – Powers and Duties states, (3) "To inquire into the conduct of any municipal office, department, agency or officer and to investigate municipal affairs, and for that purpose, may subpoena witnesses, administer oaths and compel the production of books, papers, or other evidence."

Notwithstanding other pertinent and available case law, I believe a trial court decision and order given by the Honorable J. Scott Duncan, Circuit Judge in the First Judicial Circuit for Escambia County, Florida in the case Sherri F. Myers v. Ashton J. Hayward, 2012 CA 001527 (2012) may speak to this question.

In this case, the question posed involved the Mayor's authority to prohibit all of City Council's communications with employees of the City of Pensacola. In its review, the Court also cited City Charter section 4.04 (b) which states, "*Except for the purpose of inquiries and investigations made in good faith*, the City Council or Council Members shall deal with the City officers and employees, who are subject to the direction and supervision of the Mayor, solely through the Mayor. Neither the City Council nor Council Members shall give orders to any such officer or employee, either publicly or privately."

Within the analysis of this question, the Court found that the term inquiry, "is a request for information." Id. 5. The Court further defined investigations as, "a formal inquiry conducted by a

legislative body incident to its legislative authority. Id. 5. Further the Court went on to say, "While the City Council has the authority to subpoena witnesses, administer oaths and compel the production of books, papers, or other evidence in conducting an investigation, the Charter contains no provision limiting the City Council to conduct inquiries and investigations only in such a manner. Nor does the Court find that inquiries and investigations are limited only to issues of potential malfeasance." Id. 5,6.

The Court cited cases wherein a legislative body's powers of inquiry and investigation are "longstanding traditions of representative government," *Myers at 6*. Tenney v. Brandhove, 314 U.S. 367, 377, "The principle is longstanding that legislature is vested with all investigative power necessary to exercise its function properly." E.g., McGrain v. Daugherty, 273 U.S. 135, 174 (1927) and Chesek v. Jones, 959 A. 2d 795, 802-803 (Md. 2008), "The power of inquiry-with the process to enforce it- is an essential and appropriate auxiliary to the legislative function..."

In substantive part, the court stated the following, "...[T]he Court has considered whether the Mayor has attempted to properly limit the scope of his policy by requesting that individual Council member's "requests" (as opposed to "requests" of the City Council as a legislative body) are affect by the policy. Yet there can be little doubt that individual City Council members *may conduct inquiries and conduct investigations on behalf of the City Council as a legislative body.*" (emphasis added)." *Myers at 7,8*.

The City Council convenes as a Legislative body, in order to meet its requirements under the City Charter. In this case, specifically the necessity to consent to the appointment of a department head and secondarily with the authority to "inquire and investigate," all of this done under the Sunshine as required by Florida Statute.

Based in the definition provided by the Court for the terms, "inquiries and investigations," I would submit to you that not only is the opportunity to question a nominee for appointment in an open meeting appropriate, it is an authorized "good faith" inquiry by the City Council and is consistent with both the City Charter and the Honorable J. Scott Duncan's ruling in Myers v. Hayward.

I would therefore offer that, should a Council Member desire to question the nominee for Police Chief during the consideration of this Legislative Action Item, they be allowed to do so.

Respectfully Submitted,

Don Kraher  
Council Executive