

MEMORANDUM

To: Grover C. Robinson, IV, Mayor
Jewel Cannada-Wynn, Council President
Council Vice President Jared Moore
Councilmember Ann Hill
Councilmember John Jerralds
Councilmember Sherri Myers
Councilmember Andy Terhaar
Councilmember P.C. Wu

From: Susan A. Woolf, City Attorney

Cc: Keith Wilkins, City Administrator
Don Kraher, Council Executive

Date: July 7, 2020

Re: Confederate monument in Lee Square – miscellaneous statutes

Citizens, including one person who called in during the City Council meeting held on June 11, 2020, have cited statutes that they believe are relevant to the matter concerning what action should be taken with regards to Lee Square and the confederate monument. When I use the term “confederate monument,” I am referring to the entire monument, including the pedestal, obelisk, statue, tablets or plaques on the sides of the pedestal, and the cannons. The purpose of this memorandum is to provide you with my analysis of those statutes.

18 U.S.C. §1369

A citizen referenced this statute when he called in to speak at the June 11th City Council meeting. This federal statute, titled “Destruction of veterans’ memorials,” creates a criminal offense for, under certain circumstances, damaging or destroying, or attempting to damage or destroy, a statue or other structure or monument located on public property and “commemorating the service of any person or persons in the armed

forces of the United States” The circumstances that must exist in accordance with the statute are either that: (1) when committing the offense, the accused travels or causes another to travel across state lines or from a foreign country, or (2) the monument at issue is owned by or under the jurisdiction of the federal government. The circumstances required by the statute to be applicable are not present here. Furthermore, the confederate soldiers to which the confederate monument was dedicated were not veterans of the “armed forces of the United States” because the confederacy seceded from the United States. It is my opinion that this statute is inapplicable to the circumstances present here in Pensacola.

Section 872.02, Florida Statutes

Two citizens contacted me regarding §872.02, which they believe is applicable to any removal or damage to the confederate monument. Section 872.02, entitled “Injuring or removing tomb or monument; disturbing contents of grave or tomb; penalties,” is a criminal statute. It creates a third degree felony for anyone who willfully and knowingly destroys or removes a burial-type structure that contains human remains or associated burial artifacts. After delineating a list of burial-type structures, including a tomb, monument, gravestone, and burial mound, it then has catch-all language that includes any “other structure or thing placed or designed for a memorial to the dead” The citizens point to this language as protection for the confederate monument.

While the language could be read – by itself – to include the confederate monument in Lee Square, it is my opinion that a court would limit the language to a monument to the dead that is located in a graveyard or similar burial site. The statute is part of Chapter 872 of the Florida Statutes regarding “Offenses Concerning Dead Bodies and Graves.” Further, the words immediately preceding the language regarding “any other structure ... designed for a memorial to the dead” are all words directly describing a burial site of some nature for the purpose of burying the dead – a tomb, monument, gravestone, burial mound, and earthen or shell monument. “Tomb” is defined later in the statute to encompass a “mausoleum, columbarium, or belowground crypt.” All of the other language of the statute is directed towards protecting burial grounds and human remains. Reading the statute as a whole, I believe that it is unlikely that the court would

apply the statute to removal of a monument erected thirty years after the war as falling within the meaning of §872.02.

Additionally, the confederate monument in Lee Square is the property of the City. It seems highly unlikely that a court would find criminal sanctions are appropriate where the owner of a monument decides to relocate a monument. Specifically, there is an exception to the prohibition described in the statute for any person “otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure” Where there are no human remains or artifacts associated with a particular monument, a court likely would find that the owner of the monument has the authority to remove and relocate a monument as an exception to the prohibition in the statute.

Further, as stated, the statute creates criminal sanctions for violations of the statute, but it does not create a civil cause of action. This means that a private citizen cannot bring a civil lawsuit against the City or any of its elected officers, employees, or agents for an alleged violation of the statute. The State Attorney’s Office would be responsible for prosecuting any criminal charges against any elected City official, City employee, or City agent who was involved in the willful and knowing removal of the confederate monument, and I trust that the State Attorney’s Office has no intention to bring those types of charges for relocation of the confederate monument owned by the City and located on City property.

In summary, it is my opinion that §872.02 does not prohibit the City from removing and relocating the confederate monument.

Please contact me directly if you have any questions or want to discuss any aspect of this memorandum in further detail.

Robyn Tice

From: Don Kraher
Sent: Tuesday, July 7, 2020 3:44 PM
To: Elaine Mager; Ericka Burnett; Robyn Tice; Sonja Gaines
Subject: FW: confederate monument - statutes cited by citizens
Attachments: 00043957.pdf

FYI

Don Kraher
Council Executive
Office of the City Council
222 W. Main Street
Pensacola, FL 32502
(850) 435-1686 – Office
(850) 384-6363 – Cell



City of Pensacola

From: Susan Woolf <swoolf@cityofpensacola.com>
Sent: Tuesday, July 7, 2020 8:18 AM
To: Grover C. Robinson, IV <GRobinson@cityofpensacola.com>; Andy Terhaar <aterhaar@cityofpensacola.com>; Ann Hill <AHill@cityofpensacola.com>; Jared Moore <JMoore@cityofpensacola.com>; Jewel Cannada-Wynn <jcannada-wynn@cityofpensacola.com>; John Jerrals <JJerrals@cityofpensacola.com>; P.C. Wu <pcwu@cityofpensacola.com>; Sherri Myers <smyers@cityofpensacola.com>
Cc: Don Kraher <DKraher@cityofpensacola.com>; Keith Wilkins <KWilkins@cityofpensacola.com>
Subject: confederate monument - statutes cited by citizens

Ladies and Gentlemen,

Good morning. I am providing you a memorandum I wrote to address two statutes – one federal, one state – that have been cited by a few citizens as authority for the assertion that the confederate monument cannot be removed. If you have any questions or want to discuss any aspect of my legal analysis further after reviewing the memorandum, please call me at 435-1619.

Thank you,
Susan

Susan A. Woolf
City Attorney
Visit us at <http://cityofpensacola.com>
City of Pensacola
222 W Main St.

Pensacola, FL 32502

Office: 850.435.1615

Cell: 850.378.6243

swoolf@cityofpensacola.com



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