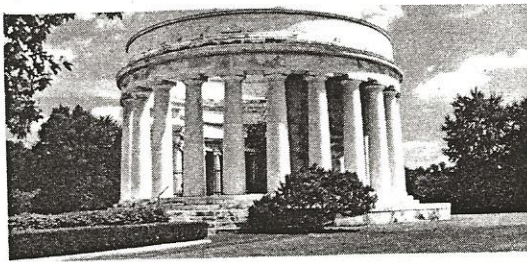


CITY OF MARION



OFFICE OF THE LAW DIRECTOR
233 West Center Street
Marion, Ohio 43302
(740) 387-4817
(740) 387-4956

MARK D. RUSSELL, LAW DIRECTOR

To: Marion City Council

From: Mark D. Russell, Law Director

Date: May 14, 2021

Re: Letter dated April 12, 2021 – follow-up questions received by me related thereto

The purpose of this communication is to follow-up my letter to Council dated April 12, 2021 and to provide clarity and avoid confusion as to my role applying Ohio law as the Select Committee conducts its investigation and determines the facts in regard to the February 9, 2021 payment of 1.2 million dollars to the federal government and the statement related to the financial condition of the City.

In my capacity as Law Director, my role will be consistent with Ohio law providing guidance to process and Ohio law. As provided in the Marion City Code: The Law Director shall, when requested by any member of Council or any administrative officer, give a verbal opinion on any question of law concerning municipal affairs. He/she may, if he/she deems the matter of importance, take a reasonable time to submit his/her opinion in writing.

Ohio Revised Code 733.53 provides, "[the] law director, "when required to do so by resolution of the legislative authority of the city, shall prosecute or defend on behalf of the city, all complaints, suits, and controversies in which the city is a party, and such other suits, matters, and controversies as he is, by resolution or ordinance, directed to prosecute....

The Ohio Supreme Court has held, in relevant part, "Plaintiffs suggest that the law director cannot represent the city because he has a "bias" in favor of [Executive Officer or The Council] This alleged "bias" or conflict of interest, however, is insufficient to disqualify the law director from representing the city.... The existence of this purported conflict of interest should not, by itself, disqualify the law director from representing the city. CITY OF CUYAHOGA FALLS et al., Appellees and Cross-Appellants, v. ROBART, Mayor, et al., Appellants and Cross-Appellees. 58 Ohio St.3d 1 (Ohio 1991) 567 N.E.2d 987, No. 89-1769. Supreme Court of Ohio. February 27, 1991

[Ohio statutes] are intended to prevent a municipal corporation from becoming plaintiff in court without its consent.... When it consents, its solicitor is its representative, with his duties defined

by statute, not by the court, and for his conduct he is primarily responsible to his city, its people.... CITY OF LAKEWOOD et al. v. REES et al. 51 Ohio App. 490; 1 N.E.2d 953 (Ohio App. 1936) Court of Appeals of Ohio, Eighth District, Cuyahoga; February 27, 1936

In conclusion, I remind Councilmembers it is through documents and evidence that a determining body reaches a proper determination and conclusion.

Very truly,



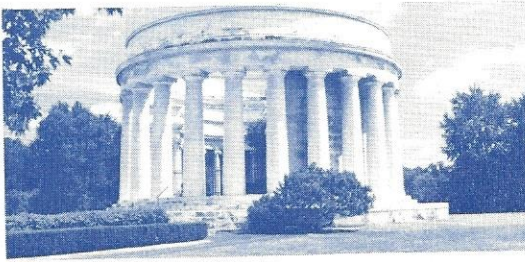
Mark D. Russell
Law Director

MDR\

Cc: Mayor Schertzer
Auditor Landon
Treasurer Pannett

ATTACHMENT: 04/12/2021 letter

CITY OF MARION



OFFICE OF THE LAW DIRECTOR
233 West Center Street
Marion, Ohio 43302
(740) 387-4817
(740) 387-4956

MARK D. RUSSELL, LAW DIRECTOR

To: Marion City Council
From: Mark D. Russell, Law Director
Date: April 12, 2021
Re: Response to inquiry dated March 2, 2021

During the Finance Committee meeting on March 1, 2021 City Auditor Landon informed the Committee that he determined it necessary to make a 1.2 million dollar payment to the federal government. We have since learned that payment was made on February 9, 2021.

On March 2, 2021, Councilperson Jason Schaber informed me as to the above and made the following requests for opinion:

1. Was the February 9, 2021 payment of 1.2 million dollars to the federal government made without the necessary approval of Council ?
2. If the payment was made without the necessary approval of Council, what steps are available to the Council to undertake to address the matter ?

The Council is the entity which, under Ohio law, must determine whether or not it has found the payment of 2021 appropriated monies or unappropriated cash on hand monies (at this point it is not clear which was the source of funds) to pay obligations for calendar year 2020 without prior approval of Council was without authority in Ohio law. In order for a Council to reach this determination Ohio Revised Code enables a City Council to conduct an investigation, determine the facts and as a Council make its findings and determine what additional course of action, if any, is necessary.

While it is the Council which determines what facts it finds to be most important some of the most pertinent are:

1. What was the actual source of funds used on February 9, 2021 to pay the obligations related to calendar year 2020 ?
2. Is there a legal authority other than ORC 5705.41 which prohibits such a payment ?

O.R.C. 5705.41 Restriction upon appropriation and expenditure of money

No subdivision or taxing unit shall:

(B) Make any expenditure of money unless it has been appropriated as provided in such chapter;

(C) Make any expenditure of money except by a proper warrant drawn against an appropriate fund;

3. If the subject payment was made from "available General Fund unappropriated cash balance" is there a legal authority other than the State Auditor's Ohio Compliance Supplement which states, in relevant part:

"..., advances do require a formal resolution by the taxing authority. On a cash basis, subdivisions should classify the cash payment/repayment as advances out / in, not transfers"

Finally, as the Council takes the necessary and appropriate steps to conduct its' review, documents such as that which I have attached will be important along the way. It is through documents and testimony that a determining body reaches a proper determination and conclusion. As always, as questions arise, please do not hesitate to contact me.

Very truly,



Mark D. Russell
Law Director

MDR\

Cc: Mayor Schertzer
Auditor Landon
Treasurer Pannett



ROBERT LANDON

— CITY OF MARION AUDITOR —

233 WEST CENTER STREET - MARION, OHIO 43302

February 24, 2021

City Administrators
233 W. Center St.
Marion, Ohio 43302

Re: Inter-Department Transfers / Approval Process

On this date, the Auditor of the State of Ohio provided a response to assist in our review of inter-department transfers and associated approval processes. In order to avoid future audit findings, it is my recommendation that inter-department transfers be placed in Resolution form, submitted to Finance and thereafter proceed to full Council for approval.

I have worked with Law Director Russell who has advised, it is a *best practice* to conform our processes as outlined above to avoid having to contest future audit findings.

Sincerely,



Auditor Robert Landon