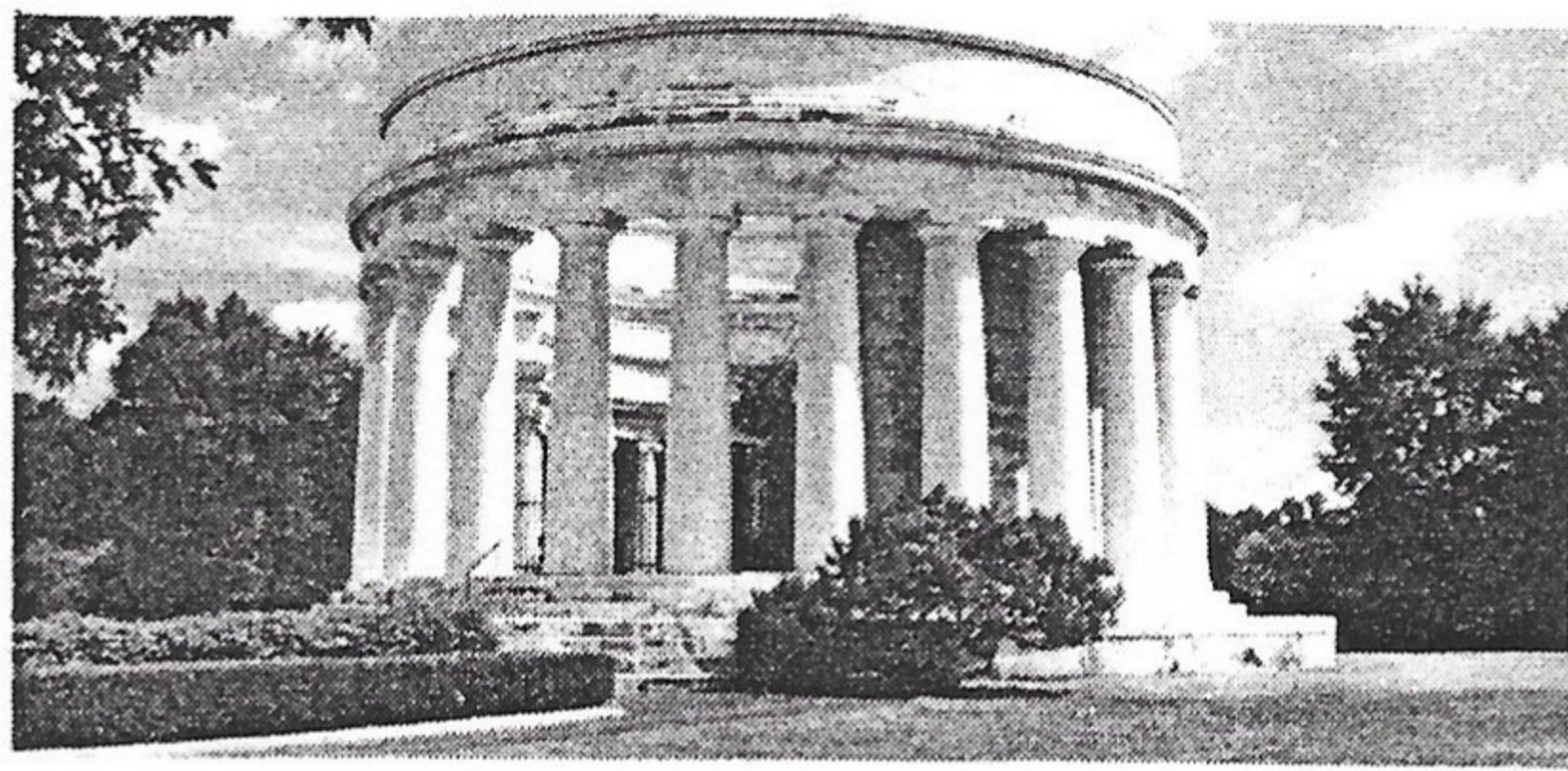


# CITY OF MARION



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 – Select Exploratory/Investigative Committee

From: Mark D. Russell, Law Director

Date: May 11, 2021

Re: Response to question as to State of Ohio law

During the organizational meeting of the Council Select Exploratory/Investigative Committee on May 3, 2021, the following question was presented: “Under Ohio law, does the Committee have the power to issue subpoenas and administer oaths”? In response to that inquiry, I provide the following:

Marion City Council Rule 17, provides in relevant part: Except in case of obvious inconsistency or inapplicability committee meetings shall be governed by the rules applicable to Council proceedings.

Council Rule 48 provides: In the absence of a rule to govern a point of procedure, reference shall be had to the approved practice according to Roberts Rules of Order.

The Courts of Ohio have found the answer to the above to be in the affirmative. The Court of Appeal in the case that follows has gone so far as to say that: “[T]he city council has an inherent power to make full and complete investigation on any matter coming within their operative function, whether in contemplation of future legislation or not.” Furthermore, the authority authorizing council to investigate all departments of the city government would include the City Auditor, as well as any other departments from which it might be determined the proper action of council on the subject being investigated. *STATE ex rel. HOLLOWAY v. RHODES, City Auditor*. Court of Appeals of Ohio, Second District, Franklin. 35 N.E.2d 987 (Ohio App. 2 Dist. 1940) September 21, 1940

Ohio courts have also expressed, a Council (a legislative body) possess an inherent judicial power in regard to investigating matters relating to municipal affairs, including actions which may be determined to be contrary to law or which may have been without necessary legal authorities. Ohio statutes contain specific references as to actions to be undertaken when it is determined an unauthorized or improper act was purposely, knowingly, or recklessly committed with respect to the fiscal duties of the office [a] fiscal officer. It is a



Council which is empowered to investigate and determine its findings, including whether a material misstatement of fact was made in regard to the municipal's fiscal condition.

Under Ohio law, a municipal Council is a legislative body. A legislative body in the State of Ohio has the power to compel the attendance of witnesses and the production of documents. The Courts have expressed, powers of local self-government relate to the internal organization and operation of municipal government.

In closing, Marion City Code provides the Council or Committees thereof with the power to request Officers, Directors, or other city officials to attend upon proper notice to answer questions and to produce documents relating to the affairs of the municipality under their respective supervision and control. As referenced above, if an Officer, Director or other city official refuses a request to appear as to questions or requests for documents related to the affairs of the municipality under their respective supervision the Committee is empowered under Ohio law to issue subpoenas.

Very truly,



Mark D. Russell  
Law Director

MDR\

Cc: Marion City Council members  
Mayor Schertzer  
Auditor Landon  
Treasurer Pannett