

CITY OF PORT ALLEN



INVESTIGATIVE AUDIT
ISSUED JUNE 19, 2013

**LOUISIANA LEGISLATIVE AUDITOR
1600 NORTH THIRD STREET
POST OFFICE BOX 94397
BATON ROUGE, LOUISIANA 70804-9397**

LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

ASSISTANT LEGISLATIVE AUDITOR
FOR LOCAL AUDIT SERVICES
ALLEN F. BROWN, CPA, CFE

DIRECTOR OF INVESTIGATIVE AUDIT
AND ADVISORY SERVICES
ERIC SLOAN, CPA

Under the provisions of state law, this report is a public document. A copy of this report has been submitted to the Governor, to the Attorney General, and to other public officials as required by state law. A copy of this report is available for public inspection at the Baton Rouge office of the Louisiana Legislative Auditor and at the office of the parish clerk of court.

This document is produced by the Louisiana Legislative Auditor, State of Louisiana, Post Office Box 94397, Baton Rouge, Louisiana 70804-9397 in accordance with Louisiana Revised Statute 24:513. Six copies of this public document were produced at an approximate cost of \$33.24. This material was produced in accordance with the standards for state agencies established pursuant to R.S. 43:31. This report is available on the Legislative Auditor's website at www.la.la.gov. When contacting the office, you may refer to Agency ID No. 2196 or Report ID No. 50130008 for additional information.

In compliance with the Americans With Disabilities Act, if you need special assistance relative to this document, or any documents of the Legislative Auditor, please contact Kerry Fitzgerald, Chief Administrative Officer, at 225-339-3800.



LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

June 19, 2013

**THE HONORABLE DEMETRIC SLAUGHTER, MAYOR,
AND THE CITY COUNCIL
CITY OF PORT ALLEN**
Port Allen, Louisiana

We have audited certain transactions of the City of Port Allen. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the propriety of certain allegations we received.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*.

The accompanying report presents our findings and recommendations as well as management's response. This is a public report. Copies of this report have been delivered to the District Attorney for the Eighteenth Judicial District of Louisiana and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/ch

PORT ALLEN 2013

TABLE OF CONTENTS

	Page
Executive Summary	2
Background and Methodology.....	3
Findings and Recommendations:	
Mayor’s Salary	4
Mayor’s Improper Car Allowance	5
Mayor’s Improper Travel Expenses	5
Recommendations	6
Legal Provisions.....	7
Management’s Response	Appendix A

EXECUTIVE SUMMARY

Mayor's Salary

In practice, the City Council has historically set the Mayor's salary in the annual budget that is adopted by a budget ordinance. Since the City's budget ordinances do not provide any specific language addressing the Mayor's salary (as interpreted by the Court), the salary may not have been properly set by the Council. However, to expend more than the amount approved by the Council for the Mayor's salary would require a budget amendment.

Mayor's Improper Car Allowance

Mayor Demetric Slaughter is receiving a car allowance that was neither budgeted nor approved by the City Council in an ordinance, which may violate state law.

Mayor's Improper Travel Expenses

Mayor Demetric Slaughter may have violated state law by receiving City funds totaling \$2,432 as reimbursement of travel expenses related to her trip to Washington, D.C., in January 2013. Mayor Slaughter's written explanation of the trip does not include a public purpose that provided a benefit to the residents of the City of Port Allen.

BACKGROUND AND METHODOLOGY

The City of Port Allen (City) is located in West Baton Rouge Parish, has a population of 5,180 (Year 2010 Census), and is the parish seat. Port Allen was incorporated in 1916 under the provisions of the Lawrason Act, which is a mayor-city council form of government. Ms. Demetric Slaughter took office as mayor on January 1, 2013, and is currently serving her first elected four-year term. The City Council consists of five elected members. The City provides public safety (police and fire), streets, sanitation, recreation, public improvements and general administrative services.

This audit was initiated after receiving allegations regarding the Mayor's salary and use of City funds to travel to Washington, D.C.

The procedures performed during this audit included:

- (1) interviewing employees of the City;
- (2) interviewing other persons as appropriate;
- (3) examining selected documents and records of the City;
- (4) gathering documents from external parties; and
- (5) reviewing applicable state laws and regulations.

FINDINGS AND RECOMMENDATIONS

Mayor's Salary

In practice, the City Council has historically set the Mayor's salary in the annual budget that is adopted by a budget ordinance. Since the City's budget ordinances do not provide any specific language addressing the Mayor's salary (as interpreted by the Court),¹ the salary may not have been properly set by the Council. However, to expend more than the amount approved by the Council for the Mayor's salary would require a budget amendment.

State law² requires the City Council to set the mayor's salary by ordinance. It has been the long standing practice of the City Council to set the mayor's salary through the adjustment of the annual budget and subsequent passage of a budget ordinance. In June 2012, the former mayor and City Council discussed lowering the mayor's salary and passed an ordinance to adopt the City's annual (July 1, 2012 to June 30, 2013) operating budget. This budget included a \$19,960 annual pay rate reduction in the amount budgeted for "executive salary."^A According to former Mayor Roger Bergeron, the reduced amount in executive salary was intended to take effect on January 1, 2013, the beginning of the next mayoral term. Mayor Bergeron was to continue receiving pay at the same level (\$84,960 annually) for the remainder of his term (six month period from July 1, 2012 to December 31, 2012), and then the mayor's annual salary was to be reduced from \$84,960 to \$65,000 at the beginning of the next term (January 1, 2013).

The current mayor, Ms. Demetric Slaughter, won the mayoral election in the fall of 2012 and took office on January 1, 2013. On January 2, 2013, Mayor Slaughter instructed (in a memorandum) the city's payroll clerk to pay her an annual salary of \$84,960, the same salary that was paid to former Mayor Bergeron. Ms. Audrey McCain, Chief Financial Officer, requested the city attorney, Mr. Victor Woods, to provide a legal opinion to address if the City Council had properly reduced the mayor's salary through its passage of the budget ordinance in June 2012. Mr. Woods opined that the City Council did not properly reduce the mayor's salary and cited a Second Circuit Court of Appeal (Second Circuit) ruling¹ that found a budget ordinance should have a specific line item detail sufficient to set the salary of an elected official as required by state law.² Since Mayor Slaughter took office, the city has complied with her instructions and is paying her based on the same annual salary it paid to former Mayor Bergeron.

The Second Circuit's ruling¹ also states "at a bare minimum, any ordinance that attempts to set the salary of an elected official must clearly state some version of 'the salary of the _____ (elected official) is hereby fixed at \$_____.'" The Second Circuit further cited an older Louisiana First Circuit Court of Appeal case, *Matt v. Town of Eunice*, 6 La. App. 465 (1927) which had concluded that once a municipal officer's salary is established by ordinance, the established salary cannot be reduced by adoption of a budget which does not clearly indicate an intent to reduce the salary of the specific officer. Given the City Council's practice of setting the mayor's salary through budget adjustments and passage of a budget ordinance, we asked Mayor

^A The executive salary line item in the City of Port Allen's budget pertains only to the mayor's salary. The executive salary is split between two funds in the budget, "General Fund" and "Water and Gas Fund."

Slaughter, Ms. McCain, and Mr. Woods to provide us with a copy of any ordinance that specifically addressed the current and former mayor's salary. None of these city officials could provide us with city ordinances setting the mayor's salary other than the budget ordinances.

The budget is the legal authority to spend and should be complied with. Whether or not the mayor's salary was properly set appears to be a matter for the courts. However, to expend more than the amount appropriated by the Council for the mayor's salary would require, at a minimum, a budget amendment.

Mayor's Improper Car Allowance

Mayor Demetric Slaughter is receiving a car allowance that was neither budgeted nor approved by the City Council in an ordinance, which may violate state law.²

Since Mayor Slaughter took office in January 2013, she has received a \$231 biweekly (\$6,000 annual) car allowance. The mayor provided us with a written explanation that stated the car allowance was budgeted for the prior mayor (Mr. Bergeron) and approved by the City Council. As previously noted, state law² requires the City Council to set the mayor's salary by ordinance. Since a car allowance is additional salary/compensation to the mayor, it should be included in the mayor's salary. However, in addition to the City not having an ordinance that properly set the mayor's salary, including the car allowance, the City's budgets for the prior (2012) and current fiscal year (2013) do not include additional funds for the payment of such car allowance. By receiving compensation that was never set by ordinance and not included in the annual budget, Mayor Slaughter and former Mayor Bergeron may be in violation of state law.²

Mayor's Improper Travel Expenses

Mayor Demetric Slaughter may have violated state law^{3,4} by receiving City funds totaling \$2,432 as reimbursement of travel expenses related to her trip to Washington, D.C., in January 2013. Mayor Slaughter's written explanation of the trip does not include a public purpose that provided a benefit to the residents of the City of Port Allen.

On January 31, 2013, Mayor Slaughter was reimbursed \$2,432 for travel expenses (to Washington, D.C.) she claimed she incurred while "Meeting Congressional Delegation and Presidential Inauguration." The mayor included \$2,075 of travel expenses in her receipts that were paid by Mr. Ralph Slaughter, her brother-in-law. The mayor claims that she gave funds to Mr. Slaughter and that he prepaid those expenses for her. According to a written response we received from Mayor Slaughter, her daily itinerary was as follows:

Date	Explanation
January 20, 2013	“Had the opportunity to network, meet and greet with the Congressional staffers from Senator Landrieu office including her new appointed Chief of Staff Donald R. Cravins, Jr. Later that evening I had the opportunity to network, meet and greet Senator Mary Landrieu.”
January 21, 2013	“Traveled to the United States Capitol to represent the City of Port Allen at the Inauguration Ceremonies of United States President Barack Obama.”
January 22, 2013	“Traveled around Alexandria, VA, Washington DC and Maryland to get ideas and concepts of riverfront development and other economic development projects.”

Mayor Slaughter’s written response further stated that she received an official invitation to attend the inauguration and that it was an opportunity for her to network, meet and greet and have face-to-face conversations with congressional staffers, a member of congress, and other state and local officials. However, her response also stated, “No grant proposal was taken on this trip. I had only been in office a couple of weeks. The trip allowed me to develop relationships with federal officials and others to benefit the City of Port Allen.”

Senator Mary Landrieu stated in a local media interview that all she did was throw a party. According to Mr. Donald Cravins Jr., Senator Landrieu’s chief of staff, Senator Landrieu hosted a party and that there was no official business meetings held that weekend because the Senator’s office was closed. Since Mayor Slaughter cannot provide an instance of City business conducted on this trip, she may have violated state law.^{3,4}

Recommendations

We recommend that the City:

- (1) seek a declaratory judgment of the Eighteenth Judicial District Court to obtain final resolution on the legality of paying the mayor’s salary and car allowance, including whether the attempt to decrease the mayor’s salary by the City Council was properly accomplished;
- (2) seek legal advice as to the appropriate actions to be taken regarding City funds improperly used to reimburse travel expenses, including recovering such City funds; and
- (3) amend the budget by separate ordinance setting the mayor’s salary as per the declaratory judgment decision.

LEGAL PROVISIONS

¹ **Rogers vs. Town of Arcadia, 813 So. 2d 1110 (LA App.2nd Cir 2002)** states, in part, “We find that Budget Ordinance No. 2018 simply does not set the salary of the Chief of Police, and cannot be relied upon as authority for doing so. ... At a bare minimum, any ordinance that attempts to set the salary of an elected official must clearly state some version of ‘the salary of the _____ (elected official) is hereby fixed at \$_____.’ Ordinance No. 2018 does not even do this.”

² **Louisiana Revised Statute (R.S) 33§404.1** states, in part, “The board of aldermen shall by ordinance fix the compensation of the mayor, aldermen, clerk, chief of police, and all other municipal officers.”

³ **R.S. 14§67(A)** provides, in part, “theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations.”

⁴ **R.S. 42§1461(A)** states, in part, “Officials, whether elected or appointed and whether compensated or not, and employees of any "public entity"... by the act of accepting such office or employment assume a personal obligation not to misappropriate, misapply, convert, misuse, or otherwise wrongfully take any funds, property, or other thing of value belonging to or under the custody or control of the public entity in which they hold office or are employed.”

APPENDIX A

Management's Response

June 14, 2013

Daryl G. Purpera, CPA, CPE
Louisiana Legislative Auditor
P.O. Box 94397
Baton Rouge, LA 70804-9397

Dear Mr. Purpera:

This letter will serve as the reply to your 3rd draft audit report that was received on Monday, June 10, 2013. We hereby incorporate the official legal opinion of the City Attorney 2013-001, Exhibit A and the legal opinion of the Phelps Dunbar firm Exhibit B. We request that the entirety of the response accompany your report.

Mayor's Salary

We agree that the City Council has historically set the mayor's salary in the annual budget that is adopted by budget ordinance. Any effort, however, by the City Council to use this practice to decrease the mayor's salary is a violation of the Louisiana Constitution and state law. The Louisiana Courts have indicated that a specific ordinance is required to "fix" the compensation of the Mayor and to "increase or decrease their compensation."

Louisiana Revised Statute 33:404.1 states the Board of Alderman **SHALL** by ordinance fix the compensation of the mayor, alderman, clerk, chief of police and all other municipal officers. The board of alderman may by **ordinance** increase or **decrease** their compensation and the compensation of any nonelected municipal officer and may increase the compensation of other elected officials. However, the board of alderman shall not reduce the compensation of any elected official during the term for which he is elected.

As you indicated in your first paragraph under 'Mayor's salary,' "the city's budget ordinances do not provide any specific language addressing the mayor's salary (as interpreted by the Court)." The Courts have also ruled that this process cannot be used to reduce the Mayor's salary.

The City Council has not complied with the Louisiana Constitution and State law. They have not enacted an ordinance that meets the requirements of Article 6 Section 12 and Revised Statute

An Equal Opportunity Employer

33:404.1 nor are there any minutes of the City of Port Allen where the City Council voted to reduce the Mayor's salary.

More importantly, there is NO specific ordinance that has been adopted by the City Council to reduce the Mayor's salary as required by required by Louisiana Revised Statute 33:404.1

Your report states that "according to former Mayor Bergeron, the reduced amount was intended to take effect on July 1, 2013." Regardless of former Mayor Bergeron's intention, State law and the legal cases require any reduction of the salary of any elected municipal official to be done by a separate ordinance.

Your report also states that the "executive salary" pertains to the mayor's salary. As noted in the *Rogers* case cited in the official legal opinion issued by the City Attorney, there is nothing in the budget that states the administrative salary (executive salary in this case) was applicable to the elected official (Mayor).

Your statement that the budget is the legal authority to spend and should be complied with (for elected officials pay) is a violation of the Louisiana Constitution and State law when the issue involves an elected official pay. For example, if the Council voted to reduce the Mayor salary in the upcoming 2013-2014 budget, under your theory, the elected official's salary would be reduced because you have said the budget is the legal authority to spend. Under these circumstances, the council would be able to use the budget to circumvent the Constitution and state law.

As noted in the attached legal opinion from Phelps Dunbar on page 6, the 2012 budget ordinance is not any specific ordinance meeting the requirements of La Rev 3:404.1.

The opinion further states "Nonetheless, we believe that, regardless how La. R.S. 33:404.1 can be interpreted, the failure of the City Council to properly authorize your compensation cannot result in any diminution of that salary. This is because the "fixing of your compensation is not merely statutory but a constitutional matter. This constitutional provision unambiguously establishes that no statute or ordinance can operate to reduce a local elected official compensation during that official term office. Under this provision, the only pertinent question is whether the Mayor's compensation is less than that of which was paid to his predecessor, if so then the result is unconstitutional and cannot stand."

Former Mayor Bergeron was paid \$84,960 from January 1, 2012 to December 31, 2012. There was never a vote taken by the City Council to reduce the Mayor's salary. The official legal opinion of the duly authorized City Attorney has stated that the Mayor's salary has not been reduced. The Mayor has relied upon his legal opinion. The Mayor has also relied upon Louisiana

Revised Statute 33:404.1 which states that any “decrease” in the Mayor’s salary must be done by ordinance.

We disagree that a declaratory judgment of the Eighteen Judicial District to obtain final resolution of the legality of paying the mayor’s salary including whether the attempt to decrease the mayor’s salary by the City Council was properly accomplished.

Since the City Council has not performed the duty imposed upon it by the Legislature i.e, “the board of aldermen shall by ordinance fix the compensation of the mayor, aldermen, clerk, chief of police and all other municipal officers,” the Mayor will seek to address this failing by introducing an ordinance that in the form required by *Rogers* case that properly “fixes” the compensation of the mayor, aldermen, clerk, chief of police and all other municipal officers.” As noted in the Phelps Dunbar opinion, In so “fixing” the compensation of these officers, the City Council will be constitutionally and statutorily bound not to decrease the Mayor’s compensation from that of the Mayor’s predecessor. Should the City Council decline to execute its clear legislative mandate in this regard, a writ of mandamus is the accepted method for remedying the failure of a local governmental body to authorize expenditures pursuant to legislative mandate. *Perron v. Evangeline Parish Police Jury*, 798 So.2d 67, 2001-0603 (La. 10/16/01).

Mayor’s Improper Travel Expenses

We disagree with your finding that “Mayor Demetric Slaughter may have violated state law by receiving city funds totaling \$2,432 as reimbursement of travel expenses related to her trip to Washington D.C. in January 2013. Mayor Slaughter’s written explanation of the trip does not include a public purpose that provided a benefit to the residents of the City of Port Allen.”

Exhibit C is a copy of the official invitation to the inauguration ceremonies for the United States President Barack Obama. The inauguration for the United States President was established by the United States Constitution. The Mayor was honored as Mayor of the City of Port Allen to receive this official invitation to represent the City at this historic event that was attended by heads of foreign countries, head of states, mayors and other elected officials. The trip also was an opportunity for the Mayor to network, meet and greet and have face to face conversations with congressional staffers, a member of Congress and other state and local officials which allowed Mayor Slaughter to promote the City of Port Allen and develop contacts and relationships for future funding requests.

Additionally, Mayor Slaughter was invited to the home of Senator Mary Landrieu in advance of the trip. Mayor Slaughter met Senator Mary Landrieu to discuss the development of Port Allen’s riverfront. After a discussion of federal funding for the Port Allen river front, Mayor Slaughter invited Senator Landrieu to Port Allen and Senator Landrieu agreed to visit the City.

Also as an invited guest of Senator Landrieu, Mayor Slaughter had the opportunity to meet and to network with members of Senator Landrieu's staff including Senator Landrieu's Chief of Staff, Donald R. Cravins, Jr. as well as other elected officials and members of Congress. Mayor Slaughter has given you a copy of Mr. Cravins' business card that Mr. Cravins gave to her at that meeting. Attached as Exhibit D is a copy of a photograph of Mayor Slaughter and Senator Landrieu taken at Senator Landrieu's home after the discussion between Mayor Slaughter and Senator Landrieu.

It is difficult to believe that you would make an audit finding or determination of "public purpose" based on a media report when you state in the report "Senator Mary Landrieu stated in a local media interview that all she did was throw a party."

Your report states further that "According to Mr. Donald Cravins, Jr., Senator Landrieu Chief of Staff, Senator Landrieu hosted a party and that there was no official business meetings held that weekend because the Senator's office was closed."

An official meeting is a meeting between officials. There is no requirement based on the Attorney General Opinions and the legal cases cited in the Phelps Dunbar opinion, that official business meetings have to take place in the Senator's office to be official. What do you think happens at dinner meetings and receptions. Official business takes place in these informal settings because these settings allow for the exchange of ideas and information.

Mayor Slaughter has maintained and continues to maintain that she is "duly entitled" to the reimbursement of her travel expenses due to the public nature of her travels. She at all times presented herself as the Mayor of Port Allen and the majority of her discussions with each person she met focused on the promotion of the City of Port Allen.

The issue as to whether or not Mayor Slaughter is "duly entitled" to reimbursement of her travel expenses is a question of regarding the proper use of public funds which is under the jurisdiction of the Attorney General. The Attorney General has advised in La. Atty. Gen. Op. No. 99-65, March 3, 1999, that there is nothing in the law that prohibits the reimbursement of reasonable travel expenses. In fact, the Attorney General, when questioned on the use of public funds for travel, held:

"In order for our democracy to function efficiently and effectively there must be a free flow of information at all levels of government. It is impossible for federal, state and local officials to be responsive to the needs of their constituents by working in a vacuum. Thus, it is not uncommon for public officials to exchange ideas and information through various forms of communication, including written correspondence, telephone conference calls, E-mail and personal audience. **Such discourse is essential.** The selection of the

method used obviously must lie within the sound discretion of those communicating.”
La. Atty. Gen. Op. No. 99-65, March 3, 1999. [Emphasis added.]

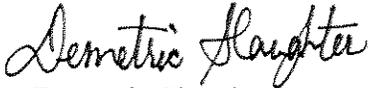
Further as stated in the Phelps Dunbar legal opinion, on page 3, “the Attorney General later echoed this same sentiment in Opinion No. 03-0156, in which the Attorney General opined that if a mayor “properly determine[s] that it is in the best economic interest if the town to be represented in Washington with regard to a particular economic development prospect, then [the mayor] can approve such travel on behalf of the Town.”

Mayor Slaughter relied on the Attorney General Opinions 99-0065 and 03-0156.

We disagree that the City seek legal advice as to the appropriate actions to be taken regarding city funds improperly used to reimburse travel expensed, including recovering such city funds, when there are clearly established legal opinions by the Louisiana Attorney General who by state law, Revised Statute 24:513(H) “shall render his opinion in writing on any subject requested by the legislative auditor”

In an effort to have this matter resolved in a legal manner, if necessary, I will upon the issuance of your report place the amount of the reimbursement check in an escrow account of the city to allow any council member to file a legal suit to claim the funds. If there is no suit filed by the end of January 2014, one year after the date of the reimbursement, I will withdraw the funds from the escrow account.

Sincerely,



Demetric Slaughter
Mayor

Honorable Demetric Slaughter,
Mayor, City of Port Allen
Court Street
Port Allen, LA 70767

Re: Title: City Attorney Opinion 2013-01
Subject: Elected Official's Salary Reduction

Dear Mayor Slaughter:

As requested by the Chief Financial Officer, please be advised this opinion herein is rendered regarding whether an elected official's salary may be legally reduced through the City's annual general budget ordinance.

I hereby find the relevant information is as follows:

PERTINENT ISSUE:

Whether the salary of an elected official may be reduced pursuant to the annual general budget ordinance passed by the City's legislative body prior to the new term beginning for the said elected office.

HOLDING:

No, the salary of an elected official may not be reduced unless there is an affirmative vote specifically on the proposed reduction detailing such.

FACTUAL SYNOPSIS:

The prior administration introduced its budget for passage to the City Council of Port Allen, Louisiana on or about June 13, 2012. As part of its said budget, the annual amount allocated for the position of Mayor was reduced from the prior year's budget. An informal request was made to the Chief Financial Officer by the undersigned to verify whether the reduction was referred to any manner in the budget ordinance. The undersigned was informed nothing in the said budget refers specifically to the proposed reduction nor does it denote when the said reduction was to occur. The previous administration stated during discussion of its budget that it desired the reduction to begin at the start of the new term for Mayor beginning January 1, 2013. During the said meeting, the undersigned City Attorney informed the counsel that it must be clear and unequivocal when the reduction was to take affect or it would have no effect. The said amount of the reduction is irrelevant for purposes of this opinion. Although the proposed reduction was discussed, neither the budget ordinance nor any of its attached exhibits specifically referred to the reduction. Further there was no specific ordinance presented or specific vote by the legislative body to reduce the salary of the mayor. As of this date, no such vote or ordinance has been proposed or passed.

PERTINENT STATUTES AND JURISPRUDENCE:

- A. LSA-Const. Art. VI Sec. 12
- B. LSA-R.S. 33:401
- C. Rogers vs. Town of Arcadia, 813 So. 2d 1110 (LA App. 2nd. Cir 2002) citing Matt vs. Town of Eunice, 6 La. App. 465 (LA 1st Cir. 1927)

LEGAL CONCLUSION:

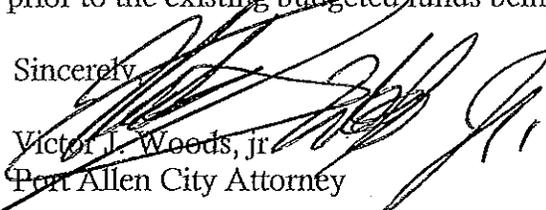
LSA-R.S. 33:401 authorizes the City Council to reduce the salary of the Mayor by ordinance; however, the question arises as to whether such can be done by reducing the budgeted amount of the Mayor's salary in the annual general budget ordinance. Pursuant to Rogers vs. Town of Arcadia, 813 So. 2d 1110 attempting do so is improper in that adequate notice is not given, and further, an attempt to do such is in violation of LSA-R.S. 33:404.1 because the issue proposed was not introduced by way of ordinance as a single item.

LSA-R.S. 33:404.1 authorizes the budget to be introduced as an in globo document, but all other matters must be presented as a singular item in the form of an ordinance when considered by the legislative body. Such was not done in this case. As a result, the Mayor's salary was not reduced from the prior year by way of a general budget appropriation. Failure to pay the salary as previously determined would be in direct violation of LSA-Const. Art. VI Section 12.

The newly elected Mayor's rate of pay must equal that of her predecessor due to the fact the prior established salary was never reduced. In prior years the Mayor's salary has been increased by way of general budget allocation which is allowable, but it can only be reduced by a specific ordinance detailing such. Such reduction would not take affect until the new term of the Mayor. Since the new term of the Mayor has begun, her salary cannot be reduced until her current term ends.

One may suggest that Rogers, supra. is persuasive authority and not mandatory upon the City; however, Rogers cites the First Circuit Court of Appeals opinion, of Matt, supra. which is mandatory authority. Lastly, the Chief Financial Officer has suggested that payment at the required salary cannot be made due to the fact the amount was not budgeted. The City's budget reflects an annual amount allocated; therefore, the required amendment can be made any time prior to the existing budgeted funds being depleted.

Sincerely,


Victor J. Woods, Jr.
Port Allen City Attorney

VJW/vw
Attachments:

LSA-Const. Art. VI Sec. 12
Rogers vs. Town of Arcadia, 813 So. 2d 1110 (LA App. 2nd. Cir 2002)

§12. Local Officials; Compensation

Section 12. The compensation or method of fixing the compensation of an elected official of any local governmental subdivision which operates under a home rule charter or plan of government, as provided in Sections 4 and 5 of this Article, shall be provided in its charter. The compensation or method of fixing the compensation of an elected official of any other local governmental subdivision shall be provided by law. Compensation of a local official shall not be reduced during the term for which he is elected.

§404.1. Compensation of municipal officers

The board of aldermen shall by ordinance fix the compensation of the mayor, aldermen, clerk, chief of police, and all other municipal officers. The board of aldermen may by ordinance increase or decrease their compensation and the compensation of any nonelected municipal officer and may increase the compensation of other elected officials. However, the board of aldermen shall not reduce the compensation of any elected official during the term for which he is elected.

Added by Acts 1978, No. 125, §1. Acts 1985, No. 890, §1, eff. Jan. 1, 1986; Acts 1986, No. 1076, §1, eff. Jan. 1, 1987; Acts 1997, No. 309, §1.

{{NOTE: SEE ACTS 1985, NO. 890, §3.}}

Page 1110
813 So.2d 1110
Victor W. ROGERS, Plaintiff-Appellee,
v.
TOWN OF ARCADIA, Defendant-Appellant.
No. 35,742-CA.
Court of Appeal of Louisiana, Second Circuit.
April 3, 2002.

Hubert Russell Davis, James Douglas Slack, Counsel for Defendant-Appellant.

Jonathan M. Stewart, Arcadia, Counsel for Plaintiff-Appellee.

Page 1111

Before NORRIS, GASKINS and CARAWAY, JJ.

NORRIS, Chief Judge

Defendant, the Town of Arcadia, ("Arcadia") appeals a trial court judgment finding the salary of the plaintiff, Victor W. Rogers, Chief of Police of the Town of Arcadia, ("Rogers") to be \$26,890.56, and awarding him judicial interest and costs. Rogers answers the appeal, contending the trial court erred in not awarding him damages and attorney fees. For the following reasons, we affirm the judgment on the merits but remand for the calculation of court costs.

Facts

Rogers sought and won re-election for the office of Chief of Police of the Town of Arcadia on October 3, 1998. His was to be a four year term commencing on January 1, 1999.

Prior to this he had been serving as Chief of Police for Arcadia from January 1, 1995, through December 31, 1998. His salary for fiscal year 1998 had been \$26,890.56 per year.

On November 24, 1998, after he was reelected for the term beginning January 1, 1999, but before he began serving his new term as Chief of Police, the Board of Aldermen of the Town of Arcadia met and introduced Ordinance

No.2018. This ordinance proposed to set the annual operating budget for the Town of Arcadia for 1999. The Board of Aldermen also intended to use this ordinance as the vehicle to reduce the salary of Chief Rogers because they were personally dissatisfied with his performance. Notice of a public hearing was given in the local paper and, at the meeting on December 8, 1998, the ordinance was adopted.

The Board of Aldermen then reduced the annual salary of the Chief of Police from \$26,890.56 to \$12,000.00. Thereafter, Rogers filed this suit alleging that, insofar as it attempts to reduce his salary, the Ordinance is unlawful under La. R.S. 33:404.1, Article VI, § 12 of the Louisiana Constitution of 1974, and La. R.S. 33:406 B(1).

The trial court found in favor of Rogers, basing its ruling on La. R.S. 33:406 B(1). It ruled that Ordinance No. 2018 failed in its attempt to reduce the Chief's salary "as it contains more than one subject, does not indicate in its title any change to the salary of the Chief, and does not specify that it reduces the Chiefs salary."¹

Having found that Ordinance No.2018 did not fix the Chief's salary, the court sought to do so itself. The court concluded that the salary of \$12,000.00 for the Chief of Police was lower than any of the salaries of his officers, lower than the salaries of Chiefs of Police of similar municipalities, lower than any other full time town employee, and therefore unreasonable. The court found that the prior year's salary for the Chief of \$26,890.56 was comparable with that for Chiefs of towns of similar size, was reasonable, and fixed the Chiefs salary for 1999

at its 1998 amount of \$26,890.56. Arcadia appeals.

Discussion — Ordinance

Arcadia argues that Ordinance No.2018 was legally adopted and operates to reduce the salary of the Chief of Police. The Town of Arcadia operates under the "Lawrason Act," La. R.S. 33:321 *et seq.* Specifically, Arcadia argues that it complied

Page 1112

with La. R.S. 33:404.1 which states in pertinent part,

The board of aldermen shall by ordinance fix the compensation of the mayor, aldermen, clerk, chief of police, and all other municipal officers.... However, the board of aldermen shall not reduce the compensation of any elected official during the term for which he is elected.

Arcadia submits that La. R.S. 33:406 B, which provides for the introduction of proposed ordinances, specifically states that budget ordinances may have more than one subject. Arcadia contends that Ordinance No.2018 was a budget ordinance, that it was legally adopted on December 8, 1998, in accordance with the Lawrason Act, and that it served to set the salary of the Chief of Police for the coming term of January 1, 1999 through December 31, 1999.

Ordinance No.2018 states in pertinent part:

Police Dept.

Administrative Salary	\$12,000
Salaries	\$89,620
Salaries — overtime	\$ 6,000

It differs from the budget ordinance for 1998 by the addition of the "Administrative Salary" line item and a reduction of the "Salaries" line item by approximately \$26,000.00, among other things.

Arcadia cites the case of *Smith v. Town of Cotton Valley*, 584 So.2d 1199 (La.App. 2 Cir.1991), *writ denied*, 589 So.2d 1057 (1991), in which this court interpreted the prohibition against a salary reduction for an elected official "during the term for which he is elected." The court *Cotton Valley* found that until the elected official had begun to serve the term in question, an ordinance may reduce the salary of the official for that term, so long as the new salary is still reasonable.

Rogers cites *Avoyelles Parish Justice of the Peace v. Avoyelles Parish Police Jury*, 98-543 (La.App. 3 Cir. 6/23/99), 758 So.2d 161, *writ denied*, 99-2210 (La.12/17/99), 754 So.2d 217, as opposite to the *Cotton Valley* decision. The Third Circuit held that the salary of an elected official was fixed upon the date of his or her election to office. *Id.*, citing *Calogero v. State ex rel. Treen*, 445 So.2d 736 (La.1984).

We find that Budget Ordinance No. 2018 simply does not set the salary of the Chief of Police, and cannot be relied upon as authority for doing so. *See Matt v. Town of Eunice*, 6 La.App. 465, 1927 WL 3521 (La.App. 1 Cir.1927) (stating that under the Lawrason Act, the annual salary of the elected town marshal is not reduced by the adoption of a budget which does not clearly indicate an intent to reduce the salary of the town marshal). At a bare minimum, any ordinance that attempts to set the salary of an elected official must clearly state some version of "the salary of the _____ (elected official) is hereby fixed at \$_____." Ordinance No. 2018 does not even do this. As the trial court stated:

[T]he Town has an Assistant Chief whose salary could just as well be included in the \$12,000.00, or one could just as easily argue that the Chief would get an increase of \$12,000.00.

[The ordinance] contains more than one subject, does not indicate in its title any change to the salary of the Chief, and does not specify that it reduces the Chiefs salary.

Ordinance No. 2018 does not "fix the compensation of the . . . chief of police" with sufficient certainty to satisfy the requirements of La. R.S. 33:404.1 and 33:406 B(1). *Matt v. Town of Eunice, supra*. The trial court was not plainly wrong to find that the citizens of Arcadia would not have known with any certainty that the Chiefs salary was being reduced even if

Page 1113

they had been at the public hearing and/or read the proposed ordinance. Because we find that the trial court was not in error, we pretermitt the issue of the *Cotton Valley/Avoyelles Parish* debate.

Salary

Arcadia also claims that the trial court erred in fixing Rogers's salary at \$26,890.56. Arcadia argues that the authority to establish the salary of elected officials is vested in the Board of Aldermen, and that it was error for the trial court to fix the salary of the Chief of Police.

This court does not find it necessary, however, to attempt to set the salary of the Chief of Police. It is clear from the record that the Chief of Police was paid the salary of \$26,890.56 for January 1, 1998, to December 31, 1998. Because Ordinance No. 2018 did not operate to reduce the salary of the Chief of Police, the Chief of Police's salary for January 1, 1999, through December 31, 1999, continued unchanged from the previous year in the amount of \$26,890.56. Furthermore, it is clear under both *Cotton Valley* and *Avoyelles Parish* that once Rogers began actually serving his new term of office on January 1, 1999, it was beyond the powers of the Board of Aldermen to reduce his compensation for that term.

Because we find that the salary of the Chief of Police of Arcadia continued unchanged by Ordinance No.2018, Arcadia's assignments of error concerning the reasonableness of a \$12,000 salary and the possible relevance of his past performance are considered moot.

Costs

fastcase

The Town of Arcadia also assigns as error the trial court's assessment of costs against it. La. R.S. 13:4521 and La. R.S. 13:5112 provide that court costs may be assessed against political subdivisions and public boards of the state if they are expressed in a dollar amount in a judgment of the court. The trial court judgment simply stated, "all costs of this proceeding are assessed to the defendant, Town of Arcadia." Therefore, we remand this matter to the trial court for assessment of court costs in a dollar amount. *Gordon v. Louisiana State Bd. of Nursing*, 2000-0164 (La.App. 1 Cir. 6/22/01), 804 So.2d 34, writ denied, 2001-2130 (La.11/16/01), 802 So.2d 607.

Damages and Attorney Fees

Rogers contends in his Answer to this appeal that the trial court erred in failing to award him tort damages and attorney fees. His claim for damages is based upon a tort theory of intentional infliction of emotional distress. Rogers argues that the reduction of his salary impaired his standard of living and caused him embarrassment and humiliation.

A trial court's findings of fact may not be reversed absent manifest error or unless they are clearly wrong. *Stobart v. State of Louisiana, through Dep't of Transp. and Dev.*, 92-1328 (La.4/12/93), 617 So.2d 880.

To recover under a claim of intentional infliction of emotional distress, a plaintiff must establish (1) that the conduct of the defendant was extreme and outrageous; (2) that the emotional distress suffered by the plaintiff was severe; and (3) that the defendant desired to inflict severe emotional distress or knew that severe emotional distress would be certain or substantially certain to result from his conduct. *White v. Monsanto*, 585 So.2d 1205, (La.1991); *Nicholas v. Allstate Ins. Co.*, 99-2522 (La.8/31/00), 765 So.2d 1017.

Upon review of the record, the trial court was entitled to find that Rogers has failed to carry his burden of proof on his claim for

damages. We note that his tort claims were not vigorously asserted at trial,

Page 1114

and we find that the trial court's denial of tort damages to Rogers was not manifestly erroneous. *See R. p. 684.*

Furthermore, Rogers has failed to identify any statute or contract which purports to provide for the assessment of attorney fees in this case. As a general rule, attorney fees are not allowed in Louisiana unless they are authorized by statute or provided for by contract. *Langley v. Petro Star Corp. of La.*, 2001-0198 (La.6/29/01), 792 So.2d 721; *Efner v. Ketteringham*, 217 La. 719, 47 So.2d 331 (La. 1950). We find that the trial court's denial of Rogers's request for attorney fees was not erroneous.

Conclusion

For the foregoing reasons, we AFFIRM the judgment of the trial court, we REMAND the case for a determination of the precise dollar amount of the court costs to be assessed the defendant, Town of Arcadia. Costs of appeal in the amount of \$116.50 are assessed to the Town of Arcadia.

AFFIRMED and REMANDED.

Notes:

1. La. R.S. 33:406 B(1) provides in pertinent part, "An ordinance shall contain only one subject which shall be indicated in its title except for ordinances involving the annual operating budget, a capital improvements budget, or a codification of municipal ordinances."

B

PHELPS DUNBAR
LLP

Louisiana · Mississippi · Texas · Florida · Alabama · North Carolina · London

SHELTON DENNIS BLUNT
Partner
Baton Rouge Office
(225) 376-0231
blunt@dunbar.com

June 13, 2013

22423-0001

VIA E-MAIL

Honorable Demetric Slaughter
Mayor, City of Port Allen
375 Court Street
Post Office Box 468
Port Allen, LA 70767-0468
mayor@portallen.org

Re: Travel Expenses and Compensation Reduction

Dear Mayor Slaughter:

On February 25, 2013 you requested legal opinions as to the two following issues. First, you asked whether it is appropriate for you to request reimbursement from the City of Port Allen for your trip to the 2013 Presidential Inauguration in Washington, D.C. Subsequently, you requested our opinion regarding whether it was proper for you to continue receiving the same compensation paid to your predecessor, in the absence of any ordinance specifically fixing your compensation at some greater or lesser amount. Please see our following response.

1. Whether it is appropriate for you to request reimbursement from the City of Port Allen for your trip to the 2013 Presidential Inauguration in Washington, D.C.

This issue must be examined in light of the provisions of Article VII, Section 14 of the Louisiana Constitution of 1974, which contains the standard for the lawful use of public funds and property. La. Const. Art. VII, Sec. 14 generally prohibits the state and its political subdivisions from loaning, pledging or donating public funds, assets or property to persons, associations or corporations, public or private. In light of the Louisiana Supreme Court's holding in *Board of Directors of the Industrial Development Board of the City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of the City of Gonzales, et al.*, 2005-2298 (La. 9/6/06), 938 So. 2d 11, in order for an expenditure or transfer of public funds to be constitutionally permissible, the public entity must have the legal authority to make the expenditure and show: (1) a public purpose for the expenditure or transfer that comports with the governmental purpose the public entity has legal authority to pursue; (2) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (3) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds.

----- COUNSELORS AT LAW -----

With respect to the first issue, it is our opinion that the City can reimburse you for your trip to the 2013 Presidential Inauguration if it can be demonstrated that your attendance was in furtherance of your duties as Mayor of the City of Port Allen, that the City has an objective expectation of receiving value from your trip that is equivalent to the expenditures made, and that the expenses were reasonable. If you can clearly demonstrate that the Inauguration was used as an opportunity for you to connect and have face-to-face meetings with various individuals regarding the City's business, this would likely be viewed as a public purpose comporting with the governmental purpose the City has authority to pursue. As mayor of Port Allen, you are tasked with promoting the City and working to create opportunities for growth and expansion, which sometimes requires you to interface with lawmakers and other individuals on a local and national level. It is possible that an event such as the Presidential Inauguration, which brings together dignitaries from across the country, could serve as a venue for meetings during which you could promote the City and its agenda. If you can show that this was the purpose of your trip, that this purpose was in fact furthered, and that the expenses incurred were reasonable, we do not see a reason for denying the reimbursement request based on La. Const. Art. VII, Sec. 14.

However, it is also important to analyze this issue in the context of the City's specific policies. The City of Port Allen's Travel Policy as set forth in the Employee Handbook recognizes that "[o]n occasion it may be necessary for you to travel outside the City of Port Allen for meetings, conferences or seminars related to your job." Again, if you can clearly demonstrate that your attendance of the Presidential Inauguration and associated events relate to your work as Mayor of the City, then reimbursement would not appear to conflict with this policy. We must note that there does not appear to be any guidance within the Travel Policy (or any other document which we have been provided) as to what documentation is required to prove whether an event is "related to your job." We are unaware of anything specifying that verification beyond the mayor's own representations is required; however, if additional verification is required, examples of supporting documentation could be letters or affidavits from the individuals with whom you held official meetings, correspondence sent in advance or as a follow-up to those meetings, and agendas from those meetings. It may be advisable going forward that the City's policy be amended to specify whatever documentation is deemed necessary to satisfactorily establish that a governmental purpose is in fact being served.

We note further that some instructive guidance, consistent with our conclusions set forth herein, is provided by several pertinent opinions of the Attorney General. In Opinion No. 99-0065, the Attorney General concluded that there was no legal prohibition upon certain parish council-members and a sheriff traveling to Washington, D.C. to meet with members of the Louisiana Congressional delegation. The Attorney General specifically noted that such meetings were essential to the proper functioning of our republican form of government:

In order for our democracy to function efficiently and effectively there must be a free flow of information at all levels of government. It is impossible for federal, state and local officials to be responsive to the needs of their constituents by working in a vacuum. Thus, it is not uncommon for public officials to exchange ideas and information through various forms of communication, including written correspondence, telephone conference calls, E-mail and personal audience. Such discourse is essential.

The Attorney General went on to observe that the method chosen for such communications, including face-to-face discussions in Washington, D.C., was a discretionary matter:

The selection of the method used obviously must lie within the sound discretion of those communicating. In the case at hand, the Claiborne Parish Police Jury and Sheriff have apparently determined that it is necessary to meet personally with our Congressional Delegation in Washington, D. C. We can find no legal prohibition for this meeting.

The Attorney General later echoed this same sentiment in Opinion No. 03-0156, in which the Attorney General opined that if a mayor "properly determine[s] that it is in the best economic interest of the town to be represented in Washington with regard to a particular economic development prospect, then [the mayor] can approve such travel on behalf of the Town."

Thus, the applicable authorities, including the written travel policy of the City of Port Allen itself, the applicable constitutional provision, and the written opinions of the Attorney General discussing the issue of travel to Washington, D.C. by local officials, all indicate that a meeting with Louisiana's federal representatives, in Washington, D.C., can be in the best interests of a Louisiana municipality, and further suggest that the determination (whether such a public interest exists) is a matter of executive discretion, in the context of a municipality, mayoral discretion. Furthermore, these authorities place no restriction upon the time, place, and manner of such meeting, instead recognizing the reality that people do business not just in offices, but also over dinner or in other social occasions. If your trip to Washington, D.C. included discussions with other officials, and those discussions were designed to further the political and business interests of the City of Port Allen, such that the potential value to the City of Port Allen exceeded the amount for which you seek reimbursement, we believe that your trip served a legitimate governmental purpose.

Assuming you can establish that the trip serves a legitimate governmental purpose, the specific reimbursement requests must comply with the established Policy. While we know that the Inauguration took place on January 21st, we are presently unaware of the dates and times of any meetings you attended. This information would be useful in demonstrating that the length of your stay, and thus the amount of lodging reimbursement requested, was appropriate. The Policy provides that "[t]he most cost effective method of transportation that will accomplish the purpose of travel should be selected" and "[c]ommon carrier (train, bus airplane) are generally appropriate for out-of-state travel." It does not appear to us that air fare to and from Washington D.C. in the amount of \$569.80 is, on its face, unreasonable. However, as mentioned above, the dates on which any meetings you attended took place is relevant to determining whether your travel may have been adjusted in order to obtain more cost efficient fares.

2. Whether it is was proper for you to continue receiving the same compensation paid to your predecessor, in the absence of a specific ordinance establishing your level of compensation.

It is our understanding that the charge has been made that 1) you cannot receive more than the \$65,000 which was budgeted for the "executive salary" by the 2012 budget ordinance, and 2) you cannot receive *any* compensation for your service unless and until the City Council enacts an ordinance specifically setting your compensation. These charges will be addressed in turn.

a. whether the 2012 budget ordinance effected a reduction in your compensation prior to your term of office.

La. R.S. 33:404.1 is the key statute on this point. It reads as follows:

§404.1. Compensation of municipal officers

The board of aldermen shall by ordinance fix the compensation of the mayor, aldermen, clerk, chief of police, and all other municipal officers. The board of aldermen may by ordinance increase or decrease their compensation and the compensation of any nonelected municipal officer and may increase the compensation of other elected officials. However, the board of aldermen shall not reduce the compensation of any elected official during the term for which he is elected.

The plain language of this statute prohibits any ordinance which might reduce the compensation of any *elected* municipal officer (including the mayor, aldermen, and in certain municipalities the chief of police). Louisiana courts have held that this language does not prohibit the reduction of an elected official's salary prior to that official commencing her term in office. *Smith v. Town of Cotton Valley*, 584 So.2d 1199 (La. App. 2 Cir.1991), *writ denied*, 589 So.2d 1057 (1991). Conversely, however, the term of an elected official is "fixed" upon their first day in office, and cannot thereafter be reduced. *Avoyelles Parish Justice of the Peace v. Avoyelles Parish Police Jury*, 98-543 (La.App. 3 Cir. 6/23/99), 758 So.2d 161, *writ denied*, 99-2210 (La.12/17/99), 754 So.2d 217.

Thus, the salient issue, as to the first charge to be considered, is whether the 2012 budget ordinance was effective in reducing your salary prior to your taking office. This issue is disposed of by *Rogers v. Town of Arcadia*, 35,742 (La. App. 2 Cir. 4/3/02), 813 So.2d 1110, in which the Court found that a line item addressing the "administrative salary" (understood to be the chief of police's salary) in the police department's budget, which was clearly intended by the town council to reduce the salary of the chief of police, failed to do so because the ordinance did not meet the requirements of La. R.S. 33:404.1. The *Rogers* Court was quite specific about the requirements of La. R.S. 33:404.1: "At a bare minimum, any ordinance that attempts to set the salary of an elected official must clearly state some version of 'the salary of the _____ (elected official) is hereby fixed at \$_____.'" If a budget ordinance does not use such language, then any attempt in that ordinance to reduce the compensation of any elected official (prior to that official's term of office) is ineffective.

We note that the Legislative Auditor has adopted the reasoning of the *Rogers* opinion in its current proposed findings and recommendations. Given the clear statement of the applicable law in *Rogers*, it is incontrovertible that the 2012 budget ordinance of the City of Port Allen, which did not expressly fix the compensation of the mayor, but rather only reduced the "executive salary" line item, did not legally reduce the compensation paid to the mayor. As in the *Rogers* case, the fact that the City Council may have intended to effect such a compensation reduction is immaterial.

b. whether any reduction in your compensation, from the level paid to your predecessor, is currently authorized by law.

You have advised us that the further charge has been made that the failure of the City Council to specifically set your compensation precludes you from being paid. The premise for this charge is the same La. R.S. 33:404.1, which requires that the City Council set by ordinance the compensation for the mayor, aldermen, clerk, chief of police, and "all other municipal officers." This latter term includes, at a minimum, the municipal tax collector. La. R.S. 33:381(A).

We observe at the outset that, beyond the 2012 budget ordinance referenced above, there does not appear to be any specific ordinance, meeting the requirements of La. R.S. 33:404.1, as interpreted by *Rogers* and adopted by the Legislative Auditor, setting the salaries of any public officer of the City of Port Allen. Thus, if the receipt by you of compensation is illegal, the same illegality attends the payment of all public officers of the City of Port Allen.

Returning to the language of La. R.S. 33:404.1, the last sentence of that statute provides that "the board of aldermen shall not reduce the compensation of any elected official during the term for which he is elected." "The obvious meaning of the prohibition against salary reduction is to prevent a vindictive board of aldermen from punishing an elected official by reducing his salary during the term he is presently serving." *Smith*, 584 So.2d at 1201. Given this "obvious meaning," interpreting the statute in such a way as to permit City Council inaction to produce the prohibited result (reduction of the mayor's salary) would seem to be a legal fallacy.

Nonetheless, we believe that, regardless how La. R.S. 33:404.1 can be interpreted, the failure of the City Council to properly authorize your compensation cannot result in any diminution of that salary. This is because the "fixing" of your compensation is not merely a statutory, but a constitutional matter.

LSA-Const. Art. 6, § 12, with emphasis supplied, reads as follows:

Section 12. The compensation or method of fixing the compensation of an elected official of any local governmental subdivision which operates under a home rule charter or plan of government, as provided in Sections 4 and 5 of this Article, shall be provided in its charter. The compensation or method of fixing the compensation of an elected official of any other local governmental subdivision shall be provided by law. ***Compensation of a local official shall not be reduced during the term for which he is elected.***

This constitutional provision unambiguously establishes that no statute or ordinance can operate to reduce a local elected official's compensation during that official's term of office. Under this provision, the only pertinent question is whether the Mayor's compensation is less than that which was paid to his predecessor; if so, then the result is unconstitutional and cannot stand.

It is absolutely true that the second sentence of this constitutional provision assigns to the Legislature the authority to prescribe how a municipality will set the compensation of its elected officials. The Legislature has exercised this authority by enacting La. R.S. 33:404.1. In exercising that authority, however, the Legislature could not override the prohibition set forth in the third sentence of Section 12; the Legislature recognized this when it included in the statute the caveat that "the board of aldermen shall not reduce the compensation of any elected official during the term for which he is elected." The notion that the Legislature could somehow grant the City Council the authority, by failing to enact a proper compensation ordinance, to effectively suspend your salary, is absurd, and produces a result which is patently unconstitutional. See *Prejean v. Barousse*, 2012-1177 (La. 1/29/13), 107 So.3d 569 (statute that required forfeiture of portion of judge's salary when judgments were not timely rendered was unconstitutional violation of Louisiana constitutional provision specifying that judge's compensation could not be reduced during term in office); *Hoag v. State ex rel. Kennedy*, 2001-1076 (La. App. 1 Cir. 11/20/02), 836 So.2d 207 (Legislature's failure to appropriate funds to pay coroners violated constitutional provision specifying that elected officers' compensation could not be reduced during their term), writ denied, 2002-3199 (La. 3/28/03), 840 So.2d 570; Attorney General Opinion No. 05-0100 (compensation of an official appointed to complete the term of an elected official cannot legally or constitutionally be "rolled back" to salary established by ordinance which was enacted prior to the expiration of the term of office). In sum, any statute or ordinance which can be read to require a reduction in your salary during your term of office is unconstitutional, and can be given no legal effect.

As an item of concern, however, it must be emphasized that the protection of compensation levels set forth in La. R.S. 33:404.1 and LSA-Const. Art. 6, § 12 extend only to "elected officials," and do not include appointed officials such as the city clerk or tax collector. Thus, it appears, in the absence of a specific ordinance fixing the salary of these officers, that these officers are being paid illegally, in violation of the procedure specified in La. R.S. 33:404.1 (as interpreted by *Rogers* and the Legislative Auditor). Furthermore, as an item of simple municipal governance, we believe that while the mayor, aldermen, and chief of police are insulated from diminution in their compensation by the constitutional protections afforded them, it is always best policy to comply with the procedures specified by the Legislature.

It appears as though the City Council, has not performed the duty imposed upon it by the Legislature, *i.e.*, "[t]he board of aldermen *shall* by ordinance fix the compensation of the mayor, aldermen, clerk, chief of police, and all other municipal officers." It is thus our recommendation that the mayor seek to address this failing by introducing an ordinance that, in the form required by *Rogers* and the Legislative Auditor, properly "fixes" the compensation of the mayor, aldermen, clerk, chief of police, and all other municipal officers." In so "fixing" the compensation for these officers, the City Council will be constitutionally and statutorily bound not to decrease your compensation from that received by your predecessor. Should the City Council decline to execute its clear legislative mandate in this regard, a writ of mandamus is the

Honorable Demetric Slaughter
June 13, 2013
Page 7

accepted method for remedying the failure of a local governmental governing body to authorize expenditures pursuant to legislative mandate. *Perron v. Evangeline Parish Police Jury*, 798 So.2d 67, 2001-0603 (La. 10/16/01).

Please feel free to call me if you have any questions or would like to discuss matters further. Thank you for the opportunity to be of service.

With kindest regards, I remain

Very truly yours,

PHELPS DUNBAR LLP

A handwritten signature in black ink, appearing to read 'Shelton Dennis Blunt', with a long horizontal line extending to the right.

Shelton Dennis Blunt

APL:

Inauguration Ceremonies

JANUARY 21, 2013

ADMIT BEARER TO WEST FRONT OF CAPITOL

Ceremonies—11:30 A.M.
Musical Prelude—Prior to
Ceremonies

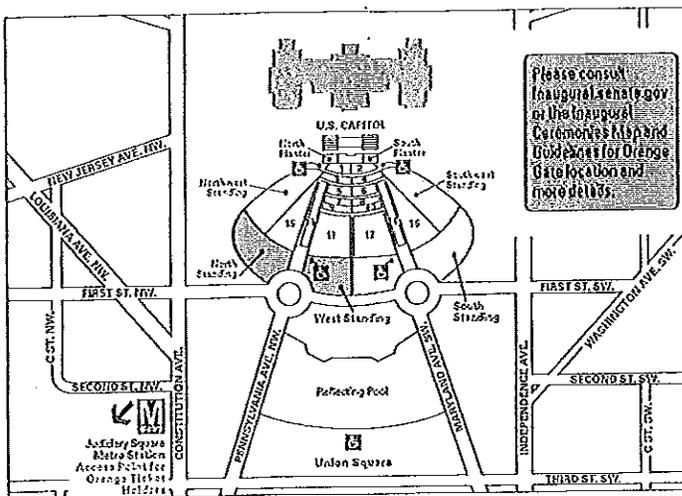
Charles E. Schumer
Charles E. Schumer
Chairman
Congressional Inaugural Committee

*Please arrive early due to large crowds.
Ticket holders will be required to
pass through security screening.*

**THIS TICKET DOES NOT ADMIT
TO CAPITOL BUILDING**

WEST STANDING • ORANGE

ENTER ORANGE GATE



NO ADMITTANCE WITHOUT TICKET • NOT FOR SALE
Ticket holders will be required to pass through security screening. Packages, coolers, thermos bottles, mace, pepper spray, weapons, and supports for signs or posters **ARE PROHIBITED.**

