

(Published in the Tulsa Daily Commerce
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_____, 2011.)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF TULSA FINDING THE CITY OF TULSA HAS NO CONFIDENCE IN THE CURRENT INTERIM CITY ATTORNEY; STATING IT NO LONGER DESIRES THE LEGAL SERVICES OF THE INTERIM CITY ATTORNEY; AND DEMANDING THE INTERIM CITY ATTORNEY RESIGN FROM OFFICE AND CEASE ALL DUTIES AND FUNCTIONS AS THE INTERIM CITY ATTORNEY OR LEGAL REPRESENTATION FOR THE CITY OF TULSA.

WHEREAS, the position of City Attorney is a position created under the Tulsa City Charter;

WHEREAS, under the Tulsa City Charter, the City Attorney provides, supervises, and manages all legal services for the City and all offices, divisions, departments, boards, authorities, commissions, and agencies thereof, including the City Council and City Auditor's office;

WHEREAS, the City Attorney's role and responsibility to provide the City of Tulsa and its elected officials legal advice on the various issues they must address. The City Attorney should not interject their personal policy beliefs into a discussion between elected officials, unless specifically requested;

WHEREAS, absent unusual circumstances involving incompetency or a court order, a necessary qualification to serve as an attorney for a client, is the client's desire to be represented by that attorney;

WHEREAS, a client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services;

WHEREAS, on September 30, 2010, the former City Attorney submitted her resignation from the City of Tulsa, effective December 1, 2010. On November 18, 2010, Mayor Bartlett appointed Mr. David Pauling to act as Interim City Attorney effective December 1, 2010;

WHEREAS, in every previous instance, the sitting Mayor has sought the input and advice of the City Council regarding the selection of the City Attorney. However, inexplicitly, Mayor Bartlett did not consult with any elected official of the City of Tulsa regarding the selection of Mr. Pauling;

WHEREAS, Section 710 of the City of Tulsa policies and procedures require:

The City strives to be a workplace where issues of nepotism are avoided. Separation of spouses and family members lessens the opportunity for favoritism, disciplinary inconsistency, and other actual or perceived workplace issues. Where these relationships do exist, the following policies are to be followed.

.1 When more than two levels of exempt managers separate immediate family members, an immediate family member must not have any involvement, discretion, influence or decision-making authority in any individual personnel matter relating to his or her immediate family member and all such matters relating to that immediate family member must be referred to the department head (or the Mayor or his designee if the department head is involved as an immediate family member) for handling or decision.

WHEREAS, there were only two (not more than two) levels of exempt supervision between Mr. Pauling and his wife, when he took office. Further, one of Mr. Pauling's first actions as Interim City Attorney was to reassign his wife's immediate supervisor to be the full time attorney for the Tulsa Authority for the Recovery of Energy, effectively reducing the amount of supervision to only one level between Mr. Pauling and his wife. Mr. Pauling is in direct violation of the City of Tulsa's personnel policy regarding family members in the workplace;

WHEREAS, on December 7, 2010, during a public meeting (which was also televised), Mr. Pauling publicly revealed legal advice protected by Attorney-Client privilege and which he had previously given to the City Council via memorandum regarding his analysis of the weaknesses and vulnerabilities of a proposed ballot title;

WHEREAS, within six (6) days after taking office and on the eve of a vote to override a Mayoral veto on a proposed Charter Amendment, at the Mayor's request, Mr. Pauling rendered a legal opinion stating a proposed Charter Amendment and ballot title, which had been written and approved by the previous City Attorney, was invalid;

WHEREAS, Mr. Pauling's opinion was not provided to the Councilors until the following morning, with insufficient time to explain any questions regarding the opinion;

WHEREAS, on December 27, 2010, a lawsuit was filed against the City of Tulsa, by naming each City Councilor in their official capacity (*Goodwin vs. The City Council for the City of Tulsa, et al*, case number CV-2010-1442.) The City Clerk received service of the petition and an order for a temporary injunction hearing set for January 4, 2011. Additionally, two City Councilors were subpoenaed to appear at the hearing to testify.

WHEREAS, Mr. Pauling was timely aware of the lawsuit and service of the petition and the improper service of the subpoenas to testify upon the two City Councilors;

WHEREAS, Mr. Pauling refused to provide legal representation, directly or indirectly, his client, the City of Tulsa, at the January 4, 2011 hearing. He did not even make a special entry of appearance to request the Court to continue the hearing to allow the City to obtain outside counsel to provide representation in the matter;

WHEREAS, when asked by a City Councilor if the Councilor had a duty to appear despite being improperly served, Mr. Pauling responded: "I would say, the public interest is not going to be served by tap dancing on service technicalities and delay tactics." Essentially, telling the elected official of the City of Tulsa he should appear in Court without any legal representation;

WHEREAS, on January 4, 2011, at 10:00am, Councilor Westcott appeared at Court for the hearing and was forced to state his own objections, because Mr. Pauling refused to provide him legal representation. Councilor Westcott was ordered to testify without any legal representation provided by the City Attorney's Office;

WHEREAS, after the hearing of January 4, 2011, where the City of Tulsa was unrepresented, the Court entered a Temporary Injunction staying the February 2011, City Election for five months;

WHEREAS, on January 4, 2011, at 2:00pm, a Special Meeting was held by the City Council to discuss the *Goodwin* lawsuit and providing legal representation for the City of Tulsa. At that meeting, Mr. Pauling attacked Councilor Westcott stating Council Westcott was not properly served, was not under the jurisdiction of the Court, and he should not have gone to the hearing and voluntarily submitted himself to the jurisdiction of the Court. This was in direct contrast to his previous advice to Councilor Westcott;

WHEREAS, in a memorandum dated December 28, 2010, Mr. Pauling publicly attacked City Councilors and said their actions "which, in a private setting, could have been considered as slanderous, and actionable...." He continued in his attacks against the City's elected officials and declared "[i]t is unfortunate that two of the Councilors...believe they have a proper role in meting out political punishment...." Mr. Pauling's memorandum was made available to the local newspaper, the Tulsa World, for publication;

WHEREAS, Mr. Pauling's memorandum of December 28, 2010, was supposed to provide an opinion on whether the Mayor violated the City's ordinance, and it did not. Instead, he chose to attack the City Council, City Councilors, and the Council Attorney, not on any legal basis, but purely on his personal policy beliefs;

WHEREAS, in multiple meetings and opportunities, Mr. Pauling has clearly shown that he cannot represent all elected officials of the City of Tulsa equally, nor is he willing to provide fair and unbiased advice to the City of Tulsa;

WHEREAS, Mr. Pauling is not part of the Classified Service, nor has made application to be such;

WHEREAS, Mr. Pauling's selection was made without the input or advice of any other elected official whom he would represent as City Attorney;

WHEREAS, Mr. Pauling's advice and conduct, his inability to work with the City Council, his inability to follow City procedures, his inability to provide fair and unbiased advice, and his refusal and inability to provide the City itself with representation create substantial concerns on his ability to perform the requirements of his position; and

WHEREAS, Mr. Pauling's attitude while dealing with Councilors and members of the public has been confrontational, disrespectful, biased, arrogant, and brought disrespect upon the City of Tulsa.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF TULSA, OKLAHOMA:

Section 1. That the corporate entity, the City of Tulsa, Oklahoma, a municipal corporation, affirmatively states it does not have confidence in the Interim City Attorney, Mr. David Pauling, to appropriately perform his functions in the best interest of the City of Tulsa, and affirmatively states it no longer desires the legal services of Mr. David Pauling as City Attorney, Interim City Attorney, nor any other legal capacity for the City of Tulsa.

Section 2. That Mr. Pauling should immediately resign, and cease all duties and functions as the Interim City Attorney for the City of Tulsa.

Section 3. *SEVERABILITY CLAUSE. If any section, sentence, clause or phrase of this resolution or any part thereof is for any reason found to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this resolution or any part thereof.*

ADOPTED by the Council, this _____ day of _____, 2011.

Chairman of the Council

ADOPTED as an emergency measure _____
Date

Chairman of the Council

OFFICE OF THE MAYOR

Received by the Mayor: _____, at _____
Date Time

Dewey F. Bartlett, Jr., Mayor

By: _____
Secretary

APPROVED by the Mayor of the City of Tulsa, Oklahoma: _____,
Date
at _____
Time

Mayor

(Seal)
ATTEST:

City Clerk

APPROVED:

City Attorney