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July 22, 2013

Gregory Anderson, Chairman, Finance Committee
City Council At Large, Group 4
Suite 425, St. James Building
City Hall
117 W. Duval Street,
Jacksonville, FL 32202

Re: Legal Opinion 13-2 Issues relating to the reporting of millage and adoption of the annual budget.

Dear Chairman Anderson:

I. Introduction.

You have asked for a legal opinion to provide guidance to you regarding the City budgeting process. City revenues are anticipated to be lower this year than last, and certain expenses have increased considerably. In addressing the upcoming budget hearings, questions have arisen as to the obligations of the City to transmit a budget and millage report by September 30, 2013, and the identification of any potential legal issues or liabilities caused by the failure to do so.

II. Questions Asked.

- A. Whether the Mayor may veto the tentative millage rate?
- B. Whether the Mayor may veto the final millage rate?
- C. Whether the Mayor may veto the budget ordinance?
- D. Whether there is a penalty that would be incurred by the City should the City fail to submit its annual budget and millage report to the State of Florida.

III. Short Answers.

- A. The Mayor may not veto the tentative millage rate. Accordingly, I have asked that Ms. Sidman provide an amendment to Resolution 2013-460, replacing the effective date language to make the resolution effective upon the signature of the Council President. The Administration would still perform the ministerial act of transmitting the rate to the Property Appraiser.
- B. The above answer is also applicable to the final millage rate (Ordinance 2013-461 (Millage – Jacksonville), 2013-462 (Millage – Beaches), 2013-463 (Millage – Baldwin)). The Administration would continue to provide the ministerial acts but the final millage rate would become effective upon signature by the Council President.
- C. The Mayor may only line-item veto expenditures in the budget passed by Council.
- D. The City would be subject to state penalties which include the retention of the City's portion state revenue sharing.

IV. Discussion.

See generally the legal analysis provided by Ms. Sidman to the Finance Committee dated July 22, 2013, a copy of which is attached as Exhibit A for your convenience.

- A. Please see the attached memorandum to file prepared by me in 2009 (Exhibit B), which notes that the legislature has drawn a distinction between the governing body for the setting of taxes, and the City itself.
- B. The opinion, which is incorporated into this opinion, is applicable to both the tentative and the final millage rate and limits the authority of the Mayor to veto either.
- C. The opinion of Mr. Rohan dated August 2009 and attached as Exhibit C is modified herein, to address a question not analyzed by him. The City, through the Executive Branch, performs the ministerial act of transmitting the City Council's tentative millage rate to the Property Appraiser. The use of the word "City" for this ministerial act was not meant to substitute for the analysis, later performed by Mr. Rohan, on whether the Mayor is included in the term "governing body" for purposes of statutory and constitutional authority to set the millage rate.
- D. The State of Florida has provided a detailed schedule of notices, hearings, and adoption regarding the budget, *e.g.*, Fla. Stat. §200.065, that includes a forfeiture of state revenue sharing if not followed:

(13)(a) Any taxing authority in violation of this section, other than subsection (5), shall be subject to forfeiture of state funds otherwise available to it for the 12 months following a determination of noncompliance by the Department of Revenue.

(b) Within 30 days of the deadline for certification of compliance required by §200.068, the department shall notify any taxing authority in violation of this section, other than subsection (5), that it is subject to paragraph (c). Except for revenues from voted levies or levies imposed pursuant to §1011.60(6), the revenues of any taxing authority in violation of this section, other than subsection (5), collected in excess of the rolled-back rate shall be held in escrow until the process required by paragraph (c) is completed and approved by the department. The department shall direct the tax collector to so hold such funds.

This provision would engage the State in the City's business for a significant period of time. In addition, the City would operate under its existing budget, but with the projected revenues being less than the present year budget, the City could be found to be in default of its obligation to have a balanced budget. *See Fla. Stat. §200.065(13)(g)*. It is likely also necessary that the City would need to disclose the failure to meet the state's budgetary deadline to the bond market, although I would ask bond disclosure counsel for an opinion on this matter.

V. Conclusion.

I trust that this opinion provides the guidance you seek. Of course, should you have any further questions or need elucidation of any of these points, please do not hesitate to contact me.

Very truly yours,



Cindy A. Laquidara
General Counsel

Cc: Cheryl Brown, Council Secretary
Mayor Alvin Brown
M. Sidman, Deputy General Counsel & Managing Deputy
D. Chatmon, Chief Deputy General Counsel
K. Sherman, Council Auditor
J. Billy, Deputy Council Auditor

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MEMORANDUM

TO: Finance Committee Members
 Honorable Council Member Greg Anderson, Chair
 Honorable Council Member Stephen Joost, Vice Chair
 Honorable Council Member Reginald Brown
 Honorable Council Member Richard Clark
 Honorable Council Member John Crescimbeni
 Honorable Council Member Dr. Johnny Gaffney
 Honorable Council Member Robin Lumb
 Honorable Council Member Matt Schellenberg
 Honorable Council Member Clay Yarborough

FROM: Margaret Sidman, Deputy Legislative Affairs & Managing Deputy

RE: Questions from Noticed Finance Committee Members Meeting on July 15, 2013.

DATE: July 22, 2013

Analysis

1. What action can Council take on each of the budget bills, and which of the budget bills can be vetoed?

Below is a chart of the 8 budget bills with possible action and the mayor's veto authority, memoranda on the subject of the Mayor's veto authority have been previously circulated.

Budget Bills	Council Action	Mayor Veto – Yes or No
2013-460 – Ad Valorem Tax Millage	Amend/Substitute	No ¹
2013-461 – Levy Annual Taxes – Jacksonville	Amend/Substitute	No ¹
2013-462 – Levy Annual Taxes – Beaches	Amend/Substitute	No ¹
2013-463 – Levy Annual Taxes – Baldwin	Amend/Substitute	No ¹
2013-464 – Budget	Amend/Substitute	Limited line item Veto ²
2013-465 – CIP	Amend/Substitute	Yes
2013-466 – Banking Fund	Amend/Substitute	Yes
2013-467 – ITECH	Amend/Substitute	Yes
¹ SER August 2009 Memo re Millage Process		
² CAL September 2009 Memo re Budget, Millage Issues		

2. Provide the definition of a “balanced budget’ as codified in the Statutes, Code or Charter.

The following provision of the Jacksonville Municipal Ordinance Code, §106.106 (Balanced Budget and Budget Stabilization Reserve) addresses balanced budget, does not seem to address the issue of the content of the budget. There is also a provision in the Jacksonville Municipal Ordinance Code regarding budget content, §106.203 (Content). Both code provisions are provided below. Additionally, Florida Statute §129.01 requires a balanced budget and same be submitted to the State.

Sec. 106.106. Balanced Budget and Budget Stabilization Reserve.

(a) *Balanced Budget.*

- (1) The annual General Fund budget for expenditures of the City of Jacksonville shall be balanced from current year revenues.

- (2) The annual General Fund budget shall contain, at a minimum:
 - (i) Operating costs sufficient to maintain operations for the fiscal year;
 - (ii) Debt service;
 - (iii) Transfers to independent agencies
 - (iv) Funding for renewal, replacement and improvement of capital assets;
 - (v) Funding of reserves; and
 - (vi) Funding of contingencies.

Sec. 106.203. Contents.

- (a) The annual budget ordinance of the general government and of the independent agencies shall be limited to recognizing the City's authorized and approved revenues, expenses, contingencies and reserves, and shall not include reorganizations, codifications, or the establishment of new fees, all of which shall be established by separate ordinance. The annual budget proposals of the general government and of the independent agencies shall be composed of two parts, an operating budget and a capital improvement budget. The operating budget part of the general government shall contain an appropriation to the mobile equipment account of the Fleet Management Division and the mobile equipment accounts of the various activities in the Enterprise Funds in a combined amount at least equal to the depreciation and proceeds from surplus sales of mobile equipment of the current fiscal year. The appropriation shall be calculated as an annualized projection based on the current fiscal year's first six months of depreciation and surplus sales of equipment adjusted as necessary. The annual budget proposals shall in all other ways be set forth in such form and detail as the Mayor or each independent agency may determine.

- (b) Expenditures of Public Funds. All funds shall be expended for a public purpose. Any request for funds in the budget to be expended on food and beverages shall be identified by the public purpose for the expenditure and the persons who will be served. No public funds shall be expended on

food or beverage unless specifically authorized by legislation or ordinance as codified in the Jacksonville Municipal Code.

Florida Statute §129.01 Budget system established.—A budget system for the control of the finances of the boards of county commissioners of the several counties of the state is established as follows:

(1) A budget shall be prepared, approved, adopted, and executed as prescribed in this chapter for each fiscal year. At a minimum, the budget must show for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit which are at least at the level of detail required for the annual financial report under s. 218.32(1).

(2) The budget must conform to the following general directions and requirements:

(a) The budget must be prepared, summarized, and approved by the board of county commissioners of each county.

(b) The budget must be balanced, so that the total of the estimated receipts available from taxation and other sources, including balances brought forward from prior fiscal years, equals the total of appropriations for expenditures and reserves. The budgeted receipts must include 95 percent of all receipts reasonably anticipated from all sources, including taxes to be levied, provided the percent anticipated from ad valorem levies is as specified in s. 200.065(2)(a), and is 100 percent of the amount of the balances estimated to be brought forward at the beginning of the fiscal year. The appropriations must include itemized appropriations for all expenditures authorized by law, contemplated to be made, or incurred for the benefit of the county during the year and the provision for reserves authorized by this chapter. Both the receipts and appropriations must reflect the approximate division of expenditures between countywide expenditures and noncountywide expenditures and the division of county revenues derived from or on behalf of the county as a whole and county revenues derived from or on behalf of a municipal service taxing unit, special district included within the county budget, unincorporated area, service area, or program area, or otherwise not received for or on behalf of the county as a whole.

3. Whether the Council Members could take a position on pension issues that are in Ordinance 2013-366, proposed settlement agreement.

Cindy's response:

I will meet with you and discuss this. With labor negotiations, you cannot take public positions on matters which will be presented to you in an impasse proceeding. There will be no impasse proceeding on this contract dispute with the Pension Board. You can speak freely on this present proposal but please be careful not to repeat advice that I have given you and for which I have included the phrase: "This is attorney client privileged." I hope this helps; please call me to discuss this matter further. I did not want to include your broad cc on this advice without your approval; please just forward it on if you want CityC and Carla Miller copied.

4. Whether outside counsel hired by City Council would be included in any shade meeting on litigation for Denton and Wvsc;

Pursuant to 268.011(8), *Florida Statute*, the City Council can meet privately with the City's lawyers to discuss pending litigation. The legislative counsel is not the City's lawyer. Florida Statute §286.011(8) is attached below.

(8) Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

MEMORANDUM

To: File, City of Jacksonville
From: Cindy A. Laquidara, Office of General Counsel
Re: Budget, Millage Issues
Date: September 2009

I. Introduction and Background.

You have asked for legal guidance on the Mayor's authority as it relates to the passing of the City's budget, and the setting of the City's millage rate. The research on these issues is governed by both Florida general law, through Florida Statutes, and the Charter for the consolidated City of Jacksonville.

The unique aspect of the consolidated government has created some confusion over the years with regard to the respective roles of the Mayor and the City Council. To that end, it should be noted that county commissions do not have a form of government which provides for a veto. Accordingly, when the county is setting the millage rate, the state statutes do not anticipate a process by which the county's actions would be anything but final.

A. Millage Rate

Both Florida statutes and the City's charter provide that the City Council sets the final millage rate. Under Florida Statutes, the City Council must hold the requisite public hearings, including a hearing, within prescribed time, for which the final millage rate will be set:

- (d) Within 15 days after the meeting adopting the tentative budget, the taxing authority shall advertise in a newspaper of general circulation in the county as provided in subsection **(3), its intent to finally adopt a millage rate and budget. A public hearing to finalize the budget and adopt a millage rate shall be held not less than 2 days nor more than 5 days after the day that the advertisement is first published. During the hearing, the governing body of the taxing authority shall amend the adopted tentative budget as it sees fit, adopt a final budget, and adopt a resolution or ordinance stating the millage rate to be levied.** The resolution or ordinance shall state the percent, if

any, by which the millage rate to be levied exceeds the rolled-back rate computed pursuant to subsection (1), which shall be characterized as the percentage increase in property taxes adopted by the governing body. **The adoption of the budget and the millage-levy resolution or ordinance shall be by separate votes. For each taxing authority levying millage, the name of the taxing authority, the rolled-back rate, the percentage increase, and the millage rate to be levied shall be publicly announced prior to the adoption of the millage-levy resolution or ordinance. In no event may the millage rate adopted pursuant to this paragraph exceed the millage rate tentatively adopted pursuant to paragraph (c).**

Nothing in the Charter for the City of Jacksonville would conflict with this provision; and even if it were to conflict, the general law stated above would govern. In the Charter, the process is addressed by providing the Mayor with only a line-item veto of the budget, which line-item veto can be overridden by a simple majority of the council:

- a. Section 6.05 *Mayor's veto power* – The mayor may veto any ordinance or resolution adopted by the council except ordinances and resolutions relating toAny ordinance or resolution adopted by the council over which the mayor has a veto power shall be presented to the mayor for his consideration and recommendations. If he approves the ordinance or resolution he shall sign it and it shall become effective according to the terms thereof. If he disapproves he shall return the ordinance or resolution to the council without his signature, accompanied by a message indicating the reasons for his disapproval and recommendations. Any resolution or ordinance so disapproved by the mayor shall become effective only if, subsequent to its return, it shall be adopted by two-thirds of all the members of the council present at any meeting; **except that if the mayor vetoes any item in the consolidated budget appropriation¹, only a majority vote of the members of the council shall be required to adopt the same as law over the mayor's veto.**

Of course, it should be noted that the Mayor's line-item veto only reduces the budget by removing an approved item; there is no method for the Mayor to increase the budget expenditures. Thus, while this provision may be read to conflict with the statutory provision designating that the Council approve the budget and set the millage rate, finally, at a noticed public meeting in accordance with Fla. Stat. §200.065, that issue need not be reached at this time.

¹ This implies that the mayor could veto only part of the budget ordinance, and not veto the entire ordinance.

For purposes of compliance with Florida law on setting the millage rate and passing the budget, the better reasoning would include the City's consolidated government as a county:

(b) **"Municipality" means a municipality created pursuant to general or special law but excludes metropolitan and consolidated governments as provided in s. 6(c) and (f), Art. VIII of the State Constitution,² which shall be considered county governments.** Such municipality must have held an election for its legislative body pursuant to law and established such a legislative body which meets pursuant to law.

This is also consistent with Section 1.01 *Consolidated government*, in our Charter, which provides in (b) that "The consolidated government has and shall have jurisdiction as a chartered county government . . . and has and shall have jurisdiction as a municipality throughout Duval County except [for the Beaches and Baldwin]. The budget that the City Council adopts is indeed the County budget, inclusive all county expenditures and those municipal expenditures falling within paragraph (b).

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² The Charter for the City of Jacksonville provides that it is passed under Art. 9 section 1 of the 1885 constitution, which is in full force and effect under Article VIII of the Constitution of the State of Florida. Article VIII section 3 provides an additional avenue for the creation of a consolidated government, but only of city-county functions.

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MEMORANDUM

TO: Richard A. Mullaney, General Counsel
FROM: Steven E. Rohan, Managing Deputy General Counsel
RE: Millage Setting Process
DATE: August 2009

Chief Deputy Cindy Laquidara, as lead counsel for the Executive Branch, and I, as lead counsel for the Legislative Branch, have carefully reviewed Chapter 200, Florida Statutes, and the Charter, in order to make recommendations to you as to the Office of General Counsel position regarding the legal process by which the City is obligated to set the 2009 ad valorem millage and the 2009-2010 budget.

Our analysis leaned heavily on principles of statutory construction in general, and recognition of the two terms of art utilized throughout Chapter 200, those being the "Taxing Authority", well understood to be the City of Jacksonville (City), and the "Governing Body" well understood to mean the City Council (Council). This analysis is similar to that used in Legal Advisory Opinion 05-02 wherein you determined the relative responsibilities of the City Council and the Mayor in the establishment of pension benefits in collective bargaining.

The Proposed Millage Resolution; 2009-510

The first obligation of the City is to advise the Property Appraiser of the City's proposed millage rate by August 5th. We believe there is no dispute that this is a responsibility of the "City," which means that the "Council" must pass a resolution, which the Mayor must either approve by signature, disapprove by veto, or allow to become approved by operation of law if neither signed nor timely vetoed.

Of importance is the fact that Section 200.065 provides that if the "City" fails to notify the Property Appraiser by August 5th, the Property is obligated by law to advertised the proposed millage rate as the "Rolled Back Rate" (this year 9.272 mills) which also becomes, as a matter of law, the highest millage rate that may be imposed by the City.

Obviously, the ability of the City to notify the Property Appraiser of its proposed millage rate

accordance with the statute.

For all of the above reasons, we recommend to you that the Office of General Counsel position be that the official City of Jacksonville 2009 ad valorem millage rate will be established by the City Council at their Council meeting on September 22nd; and that the Mayor has no authority to veto Ordinance 2009-511.

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