
From: Gabriel, Jason
Sent: Tuesday, January 28, 2020 6:51 PM
To: CM; SS; CAUDIT; Green, Lisa
Cc: Granat, Sean; Sidman Martin, Margaret; Johnston, Paige
Subject: OGC Investigation of Job Performance - JEA/Zahn
Attachments: Coj OGC.pdf

Dear Honorable Council Members –

Please see the attached correspondence that summarizes my office’s findings after conducting our above referenced investigation. This was shared with the JEA Board this morning.

A special thanks to Sean Granat, Deputy of Tort and Employment Litigation who led a team of several lawyers who worked through the holidays and weekends to prepare for and conduct over 30 witness interviews and undertook the review of thousands of documents and emails.

Also, a special thanks to Lisa Green, the Inspector General, and her fine team who assisted our office in this comprehensive undertaking.

Please do not reply all to this email, but certainly let me know of any questions or concerns, individually.

Thank you,

-Jason G.

Jason R. Gabriel

General Counsel
Office of General Counsel
City of Jacksonville
117 W. Duval Street, Suite 480
Jacksonville, Florida 32202
Telephone: (904) 255-5050
Facsimile: (904) 255-5119
email: jgabriel@coj.net

Board Certified - City, County & Local Government Law



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OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE

JASON R. GABRIEL*
GENERAL COUNSEL



CITY HALL, ST. JAMES BUILDING
117 WEST DUVAL STREET, SUITE 480
JACKSONVILLE, FLORIDA 32202

TRISHA D. BOWLES
KAREN M. CHASTAIN
DERREL Q. CHATMON
ARIEL P. COOK
JULIA B. DAVIS
STEPHEN M. DURDEN
SHANNON K. ELLER
CRAIG D. FEISER
GILBERT L. FELTEL, JR.
LOREE L. FRENCH
CHRISTOPHER GARRETT
KYLE GAVIN
MARY MARGARET GIANNINI
SEAN B. GRANAT
SUSAN C. GRANDIN
SONYA HARRELL
KATY A. HARRIS
MIRIAM R. HILL
LAWSIKIA J. HODGES
PAIGE HOBBS JOHNSTON
RITA M. MAIRS

BRETT G. MERENESS
DAVID M. MIGUT
JAMES R. MCCAIN, JR.
WENDY L. MUMMAW
KELLY H. PAPA
TIFFINY DOUGLAS PINKSTAFF
JON R. PHILLIPS
CHERRY SHAW POLLOCK
STEPHEN J. POWELL
ASHLEY B. RUTHERFORD
JOHN C. SAWYER, JR.
MARGARET M. SIDMAN
MARY E. STAFFOPOULOS
JASON R. TEAL
ADINA TEODORESCU
KEALEY WEST
STANLEY M. WESTON
GABY YOUNG

*BOARD CERTIFIED CITY, COUNTY
AND LOCAL GOVERNMENT LAW

January 28, 2020

April Green, Chair
JEA Board of Directors
Jacksonville, Florida

**Re: Aaron Zahn / OGC Investigation of Job Performance
in Consideration of Termination of Employment Contract for Cause**

Dear Madam Chair:

At the direction of the JEA Board of Directors on December 17, 2019, the Office of General Counsel ("OGC") conducted an investigation of Aaron Zahn's performance and conduct as Managing Director/Chief Executive Officer of JEA to determine whether grounds exist to support the termination of Mr. Zahn's employment for cause. Cause for termination is defined in Mr. Zahn's July 23, 2019, employment contract with JEA. Section 3.1.1 of Mr. Zahn's contract provides that:

"Cause" for termination of employment means: (i) a willful breach by Employee of material duties, obligations and policies of JEA which Employee fails to cure within ten (10) days after written notice from JEA specifically identifying such breach; (ii) Employee's gross negligence or gross neglect of duties and obligations required in performance of Employee's duties, or willful misconduct; (iii) Employee's continued violation of written rules and policies of the Board after written notice of same and reasonable opportunity to cure; (iv) conviction of Employee for any criminal act which is a felony; (v) commission by Employee in a public or private capacity of theft, fraud, or misappropriation or embezzlement of funds; or (vi) misconduct as defined in Florida Statutes §443.036(29).

Over the last six weeks, a team of OGC attorneys and staff, with assistance from the City's Inspector General and her staff, conducted over 30 witness interviews and reviewed thousands of documents and emails. After careful consideration of the witness testimony and documents reviewed, the OGC has concluded that evidence does exist to support the termination of Mr. Zahn's employment for cause. This evidence demonstrates that Mr. Zahn's conduct included, but was not limited to, willful misconduct or other misconduct, gross negligence/gross neglect of duties, and/or breach of fiduciary obligations by:

- 1) Providing, or allowing the providing of, inaccurate, incomplete, misleading, biased, and/or selective information regarding material issues before the Board including, but not limited to, information on JEA's past history, current status, public filings, and expert opinions and advice, and portraying the expected forecast of JEA's operational and financial performance as overly pessimistic;
- 2) Failing to adequately inform and advise the Board regarding the terms of the employment agreements for himself and members of the Senior Leadership Team ("SLT");
- 3) Failing to adequately inform and advise the Board regarding the details of the Long-Term Performance Unit Plan ("PUP") and the potential effects a recapitalization event would have on the PUP;
- 4) Failing to adequately inform and advise the Board of the high-value potential for the performance units in the event of a recapitalization event and/or to provide the Board with a calculation of the potential values of the performance units in the event of a recapitalization event prior to recommending approval of the PUP to the Board;
- 5) Failing to include or recommend a cap on the value of the PUP's performance units;
- 6) Misrepresenting the cost of the PUP or allowing the cost to be misrepresented to the Board;
- 7) Causing or allowing the Board to incorrectly believe that the Office of General Counsel had vetted and approved the PUP prior to and/or during the Board's consideration of the plan at the July 23, 2019, board meeting;
- 8) Misrepresenting that the PUP, as presented to the Board, was the product of and supported by JEA's third-party compensation consultant, Willis Towers Watson;
- 9) Failing to inform the Board of Willis Towers Watson's advice regarding a long-term incentive plan as a component of any compensation plan for a public utility;

- 10) Presenting a compensation plan for approval at the Board's July 2019 meeting that was materially inconsistent with the compensation framework presented to the Board at its June 2019 meeting without adequately informing and advising the Board of the inconsistencies;
- 11) Failing to inform and advise the Board of his personal financial interest and potential gain under the terms of the PUP in the event of a recapitalization event;
- 12) Failing to adequately analyze and advise the Board regarding the potential and actual costs to JEA of pursuing the non-traditional scenarios, including the Invitation to Negotiate ("ITN");
- 13) Initiating the ITN process in a manner that has exposed JEA to potential litigation with neighboring counties regarding JEA's holdings and infrastructure in those counties;
- 14) Causing the ITN to be cancelled, after the significant expenditure of funds by JEA, as a result, in part, of his recommending and obtaining Board approval of the PUP without complete and competent analysis and disclosure;
- 15) Engaging in discussions on or before July 11, 2019, with a sitting Board Member to engage the Member's professional services in connection with the ITN process authorized by the Board on July 23, 2019, and failing to inform the Board of the discussions and conflict of interest;
- 16) Altering a document prepared by a third-party consultant, presenting same to the Board in its altered form, and inducing the Board to take official action based, in part, on the accuracy of the altered document;
- 17) Providing false testimony at the public hearing conducted by City Councilmembers Diamond and Salem on December 16, 2019;
- 18) Failing to preserve text messages related to JEA business;
- 19) Creating a conflict of interest between on-site, JEA-designated OGC attorneys and the agency by including the JEA-designated OGC attorneys as participants in the PUP;
- 20) Causing damage to JEA's reputation and standing with neighboring governmental entities, the public utility community and related professions and industries, and the general public;

- 21) Failing to cooperate truthfully, honestly, and completely with the OGC investigation;
- 22) Failing to disclose personal and business conflicts of interest and subsequently misrepresenting associated fact to the Board;
- 23) Violating provisions of Florida Statutes and the Jacksonville Ordinance Code by engaging in conduct that constituted misuse of his position or attempted misuse of confidential information, or both;
- 24) Creating a conflict of interest between himself and JEA and between the other members of the SLT and JEA under the guise of strategic planning so as to prevent the Board from being able to fairly and completely evaluate issues before it for action. For example, the PUP was designed by or at the direction of Mr. Zahn to ensure a financial windfall to participants in the event of a sale, which resulted in the pursuit of a sale over any of the other strategic scenarios presented to the Board. Further, the employment contracts and retention agreements entered into by JEA with Mr. Zahn and the SLT members provided them with a direct financial interest in obtaining a recapitalization of JEA to the exclusion of other options. A conflict of interest would still be present even if a sale did not occur because the PUP's challenge target was too easily achieved and could have been manipulated in various ways, such as by selling property or raising rates. This would have put management at odds with ratepayers because it incentivized rate increases simply to increase book value, which in turn, would have increased the value of the PUP units.

OGC's investigation has been as complete as possible in the limited time available and in view of the massive number of documents and other records that pertain to the issues, some of which have not been reviewed as a matter of priority and some of which have been requested but not yet received. However, it should be noted that additional documentary evidence may exist and witness testimony could be elicited that could bear on this issues described herein and provide further evidence of misconduct or negligence on the part of Mr. Zahn.

Respectfully,

**OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE**



Sean B. Granat, Esq.
Deputy General Counsel
Tort & Employment Litigation