



**OFFICE OF THE CITY COUNCIL  
RESEARCH DIVISION**

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**CITY COUNCIL WORKSHOP  
CURRENT STATUS AND FUTURE NEEDS OF THE OFFICE OF GENERAL COUNSEL**

**Meeting Minutes**

**March 31, 2023  
9:00 a.m.**

**Location:** Lynwood Roberts Room, 1<sup>st</sup> floor, City Hall

**In attendance:** Workshop Member Brenda Priestly Jackson

**Excused:** Workshop Member Terrance Freeman

**Also:** Council Member Randy DeFoor (arr. 9:59); Barbara Hobson and Rebecca Bolton – Legislative Services Division; Jeff Clements – Council Research Division; Steve Cassada – Council Public Information Division; Jason Teal, Rita Mairs, Mary Staffopoulos - Office of General Counsel; Kim Taylor – Council Auditor’s Office; Amber Lehman, Gerrie Ford-Harden - ECAs

**Meeting Convened:** 9:10 a.m.

Chairwoman Priestly Jackson convened the meeting and introduced former General Counsels Rick Mullaney and Jason Gabriel. The attendees introduced themselves for the record.

Rick Mullaney said he was General Counsel for 13 years and enjoyed leading one of the most important law firms in the city. He gave some historical context on consolidation in 1968, which is one of the most complete government restructurings in Florida and U.S. history. Consolidation created a very strong mayor form of government and a very strong General Counsel which were both key features of accountability in the new government. The General Counsel has 3 primary roles: 1) chief legal officer; 2) providing legal services to all entities of the City government; and 3) issuing binding legal opinions. Prior to city/county consolidation in 1968 every governmental entity hired its own lawyers which was expensive, produced gridlock and led to much intra-governmental litigation. That no longer happens in Jacksonville because the General Counsel represents every part of the government. Jacksonville’s independent authorities are less independent than other similar authorities in the state because the Mayor appoints many or all of their board members and because they all have the General Counsel as their

attorney. Consolidated legal services work because every agency and officer gave up some of their independence for the good of the consolidated government as a whole.

Mr. Mullaney said the authority to issue binding legal opinions is crucial to the functioning of the Office of General Counsel, but has been very unpopular at times with those impacted by those decisions. It enables the consolidated government to speak with one definitive voice. Over time various officers and entities have lobbied for their own legal counsel and sometimes the General Counsel authorizes hiring of outside counsel for purposes of obtaining specialized expertise when needed. General Counsels are often criticized for being biased toward the mayor. He attended mayor's staff meetings when he was General Counsel, unlike some others who have held the position, because he felt it was important for the CEO of a major corporation to have legal counsel close at hand when making major decisions. The demands of the office of General Counsel are so great now that the original model of short-term general counsels (leaving private practice for a couple of years and then returning) doesn't really work any more. There is too much work and too much administration needed for a large law firm to have short-term leaders changing every few years.

Jason Gabriel said he came to the office from the private sector, was intrigued by the nature and diversity of the work of the OGC, and served as General Counsel for 7 years. The breadth of the practice areas is breathtaking and a tremendous opportunity for attorneys. Charter amendments approved by referendum in 2015 changed some parts of the General Counsel selection process. The last two years of his term in 2019 and 2020 were some of the most tumultuous in the City's history due to the COVID pandemic and several very contentious policy issues. He thanked Mr. Mullaney for having greatly upgraded and strengthened the OGC during his time in the position and setting the table for future success. He noted that in the wake of the Great Recession in 2008-10 the OGC was down to 27 attorneys due to the financial stress the City was under and that was far too few to properly run the office. He is glad to hear that the complement of attorneys is now up to 47 because of the huge workload and vast scope of the City government and its authorities and constitutional officers. He believes the OGC is the glue that holds the consolidated City government together and must have sufficient resources to meet the entity's needs. Attorneys who haven't worked in OGC have trouble understanding how it can work without multiple conflicts of interest in the office because of its multiple competing clients.

Mr. Gabriel said that binding legal opinion 16.02 affirming that the General Counsel was the chief legal officer for the Police and Fire Pension Board was a prime example of a deeply researched, well-reasoned opinion that deals with those conflicts. The City Charter spells out exactly what the OGC can do and it has equal stature with state law because it is a state law, is also authorized by the Florida Constitution, was approved by voter referendum, and has been interpreted many times by the courts. It's hard to understand the role and powers of the General Counsel until you've occupied the position and experienced it. He agreed with Mr. Mullaney that the use of outside counsel is sometimes warranted for very weighty issues and areas requiring very particular expertise, and outside counsel is also sometimes warranted because of unique conflicts of interest within the office. But those outside counsels are ultimately under the control and direction of the General Counsel, which is crucial.

Rick Mullaney said that institutional memory is a vital commodity in city government, and he has long been worried by the lack of continuity and transfer of institutional knowledge when mayoral administrations and city councils turn over. The General Counsel and Council Auditor provide that continuity of knowledge although it isn't a formal responsibility of those offices to play that role.

Current General Counsel Jason Teal said that the comments just provided by Mr. Mullaney and Mr. Gabriel reinforce his remarks from last week and bolster the argument for the importance of the General Counsel as the linchpin of the consolidated government.

CM Priestly Jackson asked if binding legal opinions are publicly available. Mr. Mullaney said that while he was General Counsel he had the binding opinions issued during the first 40 years of consolidation compiled, indexed and published in 2 printed volumes. Those and the opinions issued since should be published on the General Counsel's website. CM Priestly Jackson asked for the distinction between a binding legal opinion and other forms of legal memoranda or opinions. Mr. Mullaney explained the provisions in the City Charter about who can request a formal binding legal opinion. He said he tried to avoid issuing binding opinions unless absolutely necessary in order to avoid giving the appearance of choosing sides in a policy conflict. The purpose of a binding opinion is to settle a matter of law, not to favor one policy option over another. Policy makers make policy, not the General Counsel. Mr. Gabriel said the OGC spends more of its collective time working on business for the executive branch of government because that branch, including the constitutional officers and independent authorities, are carrying out the day-to-day functions of government that generate a huge volume of routine work. He said there is far less need for binding legal opinions in recent years because the first two general counsels did so much work in issuing opinions that set up the form and function of the consolidated government. They should be rare because they should only be used to clarify unusual issues.

Mr. Gabriel said that the actions of the OGC with regard to the Mayor and City Council may appear to be different because of the nature of how discussions are held – in private with the Mayor and his staff versus in the public with City Council. The General Counsel says “no” to the administration very often, it just happens in private rather than in a public meeting with citizens and the media in attendance as is often the case in addressing the City Council. Mr. Mullaney said the system is self-correcting – General Counsels sometimes have to restrict the power of officers and entities which makes them unpopular for a time.

CM DeFoor said it is understandable that there would be a tendency for general counsels to lean slightly toward the desires of the Mayor because they are appointed by the mayor and have so much more daily contact with the administration than they do with the City Council. She asked Mr. Mullaney if the recent JEA privatization controversy illuminated any changes that ought to be made to provide greater safeguards. He said he didn't have any immediate ideas but is convinced that having separate attorneys for each agency would have produced a far worse outcome. Mr. Gabriel recounted some of the OGC's inner workings on the JEA issue and how they related to the JEA's hiring of outside counsel.

CM Priestly Jackson asked what options are available to authorities and constitutional officers when they feel the OGC is being unfair to them. The City Council has specific authority to hire a legislative attorney – what can the others do? Mr. Gabriel cited the example of a Property Appraiser challenging the ability of the City Council to amend his budget given the state statute that also governs how that office's budget is adopted. His office was in the process of hiring outside counsel to represent both the City Council and the Property Appraiser in order to stay out of the conflict before the parties ultimately settled their issue.

CM Priestly Jackson said that OGC decisions interpreting the law inescapably have an effect on how policy decisions get made. She asked for any recommendations the former general counsels may have about how to explain to the Council and the public how legal opinions are requested and how they were determined so that everyone understands that the OGC is not trying to help or hinder any particular position. How can we inject more transparency into the process while still maintaining attorney/client privilege? Mr. Mullaney said the power of the General Counsel to issue binding opinions and represent all City entities must be highlighted and reaffirmed. No one likes to have their authority and power restricted or restrained, but that's what must happen for the greater good. He said council members should be prepared to hear from authorities and officers who aren't happy with restrictions. Mr. Mullaney recommended that binding legal opinions be clearly titled as such so there's no confusion about their binding status.

Mr. Teal posed 3 questions to the former general counsels for their perspectives:

- 1) How do you deal with politicization of issues?
- 2) What is the proper role of outside counsel?
- 3) City Counsel authority to legislative counsel – what are the limits of that counsel’s powers?

CM DeFoor cited the issue of the recent reactivation of the Special Investigatory Committee on JEA to examine the disclosure of CM Cumber about conflicts that she or a family member may have had as an example of the politicization issue. Mr. Teal said the Council has the power to create special committees, but within limited scope. He limited the scope of the Council President’s charge of what the reactivated special committee could study to comply with the original charge of the committee since it was a reactivation of the original committee. The charge of the committee was to propose legislative remedies to whatever shortcomings were identified. CM DeFoor said her role as a corporate attorney is to provide advice on both the “can you” and the “should you” questions facing her clients and asked if the OGC plays that same role. Mr. Teal said they do, giving legal guidance on the “can you” question and advising, but not directing, a client on the “should you” question. Mr. Gabriel said the public often sees only the “can you” decision but doesn’t see the many private conversations that take place on the “should you” questions because the attorneys try to maintain confidentiality with their clients and not embarrass them in public settings, as much as some parties would like to see those discussions made public. Mr. Mullaney said issues often come to the General Counsel not as simple “can we” questions, but as complicated mixtures of law, policy, and politics. That’s why he was involved in mayoral policy-making during his term, to play the role of trusted advisor who sees the bigger picture beyond just the facts of the law to include the policy, fiscal and political considerations of a potential decision.

CM Priestly Jackson said she always asks OGC attorneys about the legal basis from which their advice is derived – does it come from state law, the City Charter, the Ordinance Code, or other authority.

CMs Priestly Jackson and DeFoor thanked the three general counsels for their service to the City and their willingness to answer question and provide good advice to council members over the years.

With no further business, the Chairwoman adjourned the meeting. The next workshop will be on April 14th at 9:00 am.

**Meeting adjourned:** 11:00 a.m.

Minutes: Jeff Clements, Council Research Division

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