**OFFICE OF GENERAL COUNSEL**

**CITY OF JACKSONVILLE**

**117 WEST DUVAL STREET**

**SUITE 480**

**JACKSONVILLE, FL 32202**

**PHONE: (904) 255-5055**

 **MEMORANDUM**

**TO:** Special Investigatory Committee on JEA Matters

 Honorable Council Member Brenda Priestly Jackson, Chair

 Honorable Council Member Randy DeFoor

Honorable Council Member Rory Diamond

 Honorable Council President Scott Wilson

**CC:** Jason Gabriel, General Counsel

 Smith Hulsey and Busey

**FROM:** Margaret M. Sidman, Deputy Legislative Affairs & Managing Deputy 

**RE: Summary of Assertions of Executive Privilege in Hughes Transcript**

**DATE:** August 31, 2020

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At the request of the Special Investigatory Committee on JEA Matters, on August 24, 2020, OGC was asked to review the transcript of the City’s Chief Administrative Officer to determine where assertions of executive privilege were made, and for what executive policy matters.

SUMMARY OF ASSERTIONS OF EXECUTIVE PRIVILEGE IN HUGHES TRANSCRIPT

In order of their appearance in the transcript, all discussions related to executive privilege assertions are below:

1. Pages 5-6: Counsel for Mr. Hughes offers two exhibits for the record, one of which is a memo on executive privilege. See Exhibit 1 attached to the transcript.
2. On pages 69, Lns. 2-18, the following exchange is had: Q – “Well, the JEA board is a pretty significant appointment?” A – “It is.” Q – “And I’m sure you talked to the Mayor about it?” A – “I talked to him about most appointments, regardless of what he might judge as the level of significance.” Q – “Tell me about your conversation with the Mayor about this appointment.” A – “Because of the privileged doctrine we have, I’m not going to get into specifics of the conference with the Mayor…” Follow-up then ensues on page 70. Mr. Hughes is asked again about discussing whether Zahn was qualified. Mr. Hughes then said that the only person he spoke to about the appointment was the Mayor, and that it was the Mayor’s decision that Zahn be appointed, but once again declined to divulge specifics about the conversation.
3. Beginning at page 71, Ln. 1, and continuing to page 72, Ln. 1, Mr. Hughes is asked again about his conversation with the Mayor “regarding why Aaron Zahn was appropriate” to be appointed to the Board for JEA. Mr. Hughes invokes privilege as follow: “It’s not just that conversation. I’m not prepare to speak with specifics about any of the conversations I had with the Mayor because you work for legislative body and I work for the executive and privilege document is an analysis of what privilege exists for and why it’s there.” A follow-up question is then asked: “You’re claiming an executive privilege when I ask you to tell me about your conversation with Mayor about Aaron Zahn? A – “…I’m going to offer privilege… or claim privilege every time you ask me about a conversation with the Mayor. I will talk about the policy – the ultimate outcome. I will talk in broad strokes about… thoughts I had or what made me think something and why I may be advised, but when it comes to did you say this to the Mayor, did the Mayor say this to you, I’m going to… use the privilege that the Office of General Counsel says I and other senior members of the administration have.”
4. Subsequent to the exchange immediately above, slight variations of the same question, and slight variations of the same answer, appear three time on pages 72-73. Essentially Mr. Hughes maintained that any time he was asked a question about his specific conversations with the Mayor, he would claim executive privilege, regardless of the topic. (Note that the initial question related to conversations about Zahn’s qualifications to be on the Board; the later variations of the question simply referred to conversations about Zahn. It should be noted that Mr. Hughes was not asked about specific conversations with the Mayor about the sale of JEA. However, he did answer a general question in that regard by saying that “the Mayor has never talked about the sale of JEA outside the context of explore privatization and what the future may hold on a variety of topics. So, no, the Mayor never would have put me or anyone else in charge of the sale of the JEA because privatization and sale are not the same thing.” Page 40, Lns. 4-9)

For any assertions of executive privilege, Office of General Counsel will review on a case by case basis for both applicability of the assertion and for the policy purpose. Please let us know of any further questions or concerns.

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