

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 2009-CA-006572
DIVISION CV-A

CONCERNED TAXPAYERS OF DUVAL
COUNTY, INC., a Florida corp.: JOHN S.
WINKLER, ANTHONY BATES, LYNNE A
PRICE, G. SCOTT MacNAUGHTON,
JESSIE JOHNSON, JOSEPH ANDREWS,
PHILLIP LAIBE, ROD MORRILL, SHANE
SCHUMERTH, VICTOR WILHELM,
CONRAD MARKLE and CURTIS WOLF,
individually and as representative citizens and
electors of Duval County and the
consolidated City of Jacksonville,

Plaintiff(s),

vs.

JOHN PEYTON, as Elected Mayor of the
CITY OF JACKSONVILLE, and RONNIE
FUSSELL, as President of the
JACKSONVILLE CITY COUNCIL,

Defendant(s)

MOTION TO DISMISS

The Defendants, JOHN PEYTON, as Elected Mayor of the CITY OF JACKSONVILLE (Mayor), and RONNIE FUSSELL, as President of the JACKSONVILLE CITY COUNCIL (Council President)(collectively, the "Defendants"), by and through the undersigned counsel, and pursuant to Rule 1.140(b), Fla.R.Civ.P., move this Court to enter an order dismissing the Complaint For Declaratory and Supplemental Relief of Plaintiffs, CONCERNED TAXPAYERS OF DUVAL COUNTY, INC., a Florida corp.: JOHN S. WINKLER, ANTHONY BATES, LYNNE A PRICE, G. SCOTT MacNAUGHTON, JESSIE JOHNSON, JOSEPH ANDREWS,

PHILLIP LAIBE, ROD MORRILL, SHANE SCHUMERTH, VICTOR WILHELM, CONRAD MARKLE and CURTIS WOLF, individually and as representative citizens and electors of Duval County and the consolidated City of Jacksonville (Plaintiffs). In support thereof, Defendants state:

1. Complaint should be dismissed on grounds of mootness. The Complaint focuses upon proposed Ordinance 2008-538, previously pending before the Jacksonville City Council (“City Council” or “Council”), and raises issues concerning the legality of City Council’s enacting said proposed ordinance. Ordinance 2008-538 was not enacted by the City Council, but instead, was unanimously withdrawn by the Council on April 28, 2009; therefore, any request that this Court rule upon the legality of the proposed Ordinance 2008-538 or enjoin Council’s enacting of said ordinance is moot and should be dismissed.

2. Plaintiffs lack standing to bring this action to the extent the Complaint seeks construction of an instrument or instruments to which the Plaintiffs are not parties. Paragraph 14 of the Complaint seeks a judicial determination of the City’s 1990 Request for Proposals (RFP), which RFP resulted in the City’s current landfill operation agreement. Paragraph 19 of the Complaint alleges the need for this Court to determine the “specific nature of the ‘operations’ covered by the 1990 RFP.” Plaintiffs are not parties to the landfill operation agreement and were not involved in the 1990 RFP. Plaintiffs, therefore, do not have standing to request an interpretation of the RFP or of the City’s landfill operation agreement.

3. Plaintiffs also lack standing in that Plaintiffs have not alleged (and cannot establish) any special injury as a basis for a complaint for declaratory and injunctive relief against the Mayor and the Council President.

4. Count II seeks a ruling upon a legal opinion prepared for Council Member Hyde, dated December 18, 2008 (December 18 legal opinion). The Charter of the City of Jacksonville (Charter) provides that a legal opinion rendered by the General Counsel to resolve disputes between agencies of the consolidated government constitutes the final legal authority for such dispute, and when signed by the General Counsel, is binding upon all agencies of consolidated government, unless overruled or modified by a court of competent jurisdiction. §7.202 Jacksonville Charter. The December 18 legal opinion is not a binding legal opinion in resolution of an interagency dispute for which the Charter contemplates judicial review. Furthermore, the December 18 legal opinion addresses the Council's authority to waive certain provisions of the Jacksonville Ordinance Code in relation to the proposed Ordinance 2008-538. As previously stated, proposed Ordinance 2008-538 was withdrawn by City Council and is now moot.

5. The Complaint raises no actual judicial issue over which this Court has jurisdiction. In order to maintain an action for declaratory judgment, there should be a ripening controversy, and the relief sought should involve a present interest and relationship between the parties with a bona fide need to declare the parties' rights. Otherwise, this Court's opinion would be simply advisory. City Council withdrew proposed Ordinance 2008-538; therefore, there is no ripening controversy with respect to the proposed ordinance. Paragraph 18 of the Complaint alleges that even if proposed Ordinance 2008-538 is defeated, this Court needs to address the December 18 legal opinion because another contract and waiver of the ordinance "may be presented at any time" to the City Council by the administration. The mere possibility of a controversy at some indeterminate time in the future concerning possible future action by the City Council is not a proper basis for a declaratory judgment under Chapter 86, Florida Statutes.

6. The Complaint should be dismissed to the extent it seeks injunctive relief against the Jacksonville City Council in that neither the Mayor nor the Council President has control over the votes of individual Council members. To the extent the Complaint seeks injunctive relief against the City, it should be dismissed as the City is not properly named. The Mayor and Council President are synonymous with the City when sued in their official capacity.

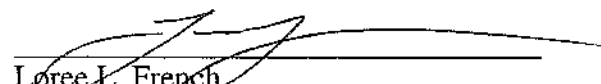
WHEREFORE, for the foregoing reasons, Defendants respectfully request that this Court enter an order dismissing the Complaint and providing for such other relief as this Court deems proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to John S. Winkler, Esquire, John S. Winkler, P.A., 2515 Oak Street, Jacksonville, FL 32204, by U.S. mail, this 18th day of May, 2009.

Respectfully submitted,

RICHARD A. MULLANEY
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