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November 29, 2012

Debbie Cook, Executive Director
Lenoir City Housing Authority
101 Oakwood Drive
Lenoir City, TN 37771

**VIA E-MAIL AND
REGULAR MAIL**

Re: Request for Special Called Board Meeting

Dear Ms. Cook:

You have requested my assistance as counsel for Lenoir City Housing Authority in helping you determine whether a special meeting of the Board of Commissioners of the Authority has been called pursuant to applicable state law and the By-Laws of the Authority for Monday, December 3, 2012.

As I understand the facts you have presented to me, the Board of Commissioners as of November 20, 2012 was composed of the following five, duly-appointed commissioners: Mary Brown, Deloris McAmis, Ott McGill, Jeff Ward, and Linda Garner. The Board of Commissioners consists of five members pursuant to Tenn. Code Ann. § 13-20-408(a). The terms are five-year terms with the appointments staggered pursuant to Tenn. Code Ann. § 13-20-408(a) so that one commissioner's term expires each year with the Mayor of Lenoir City then having authority under the Code to appoint a replacement to a new five-year term. I understand that Commissioner Mary Brown's term expired in September of 2012 and she has been continuing to serve until the Mayor appointed a replacement. The remaining commissioners' terms are scheduled to expire respectively as follows: Commissioner McAmis – September 2013; Commissioner McGill – September 2014; Commissioner Ward – September 2015; and Commissioner Garner – September 2016.

Recently you were provided with Certificates executed by the Mayor of Lenoir City dated November 21, 2012 that purport to appoint Larry Hardison, Frank Hahn, and Cheri Brown to the Board of Commissioners for terms expiring in September 2017. I have reviewed these Certificates and note that they do not indicate which of the three new appointees is being appointed to take the place of Commissioner Mary Brown whose prior term had expired September 2012. Presumably one of the new appointees would be a valid appointee by the

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Mayor to that open seat, however, it would be necessary for the Mayor to determine which person will fill Commissioner Mary Brown's seat. There were no other open seats available for appointment. Therefore, it is my opinion – based upon all of the information I have been provided – that the remaining two new appointees would not be valid appointments.

I understand that the Mayor met with Commissioner McGill and verbally told him that he was being removed from the Board of Commissioners although I am aware of no document at this time that purports to remove Commissioner McGill. I also understand that Commissioner Garner received a letter from the Mayor indicating that the Mayor felt that the Board should move in a different direction and that the Mayor had appointed three new commissioners. However, the letter did not specifically state that Commissioner Garner had been removed from the Board.

Tenn. Code Ann. § 13-20-411(a) sets forth a means by which a mayor may remove a commissioner from a board of commissioners of a housing authority: “The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against such commissioner, which may be made by the mayor, at least ten (10) days prior to the hearing thereon and had an opportunity to be heard in person or by counsel.” The case of *Mayor of City of Jackson v. Thomas*, 313 S.W.2d 468 (Tenn. App. 1957) (copy attached), makes clear that the Mayor in conducting such a hearing is to act not in his ministerial role but in a judicial or quasi-judicial role. Here, the Mayor has made no suggestion that either Commissioner McGill or Commissioner Garner has acted improperly in any regard, much less that any charges are warranted. Further, the Mayor has not conducted a hearing whereby Commissioner McGill or Commissioner Garner has had an opportunity to defend themselves against such charges in person or through counsel as required by state law. As it appears that the Mayor has not removed Commissioners McGill or Garner in the only statutory means available to him under the Code, it appears that they are still duly appointed members of the Board of Commissioners.

Frank Hahn has indicated on behalf of the purported new appointees that they wish to have a special meeting of the Board of Commissioners on Monday, December 3, and they have directed you to publish the call for such a meeting in the newspaper. In light of the circumstances described above, you have asked my opinion as to whether this request by the purported new appointees is effective. Given that apparently only one of the three new appointees is a valid appointment (although we are unsure as to which one) and given that none of the remaining Commissioners has made such a request, I do not believe that the request by the three purported new appointees constitutes an effective request for a special meeting as required by the By-Laws of the Authority. The By-Laws require that two (2) commissioners must request such a special meeting. If only one of the three purported new appointees is a member of the Board, then only one commissioner has requested a special meeting.

Given the problems outlined above as to the current make-up of the Board, it would be best for all of the issues so described to be resolved prior to business being conducted at a meeting of the Board. There appear to be competing claims by various individuals as to who are

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the properly appointed board members. Thus, a cloud would exist as to the legitimacy of any actions of the Board. At your request, I called James K. Scott, Esq., the attorney for the City of Lenoir City, yesterday to make him aware of these issues and to request a meeting with him and the Mayor to try to resolve these issues without impacting the business of the Authority. Attorney Scott was unavailable to meet today and the Mayor is unavailable to meet tomorrow; however, Attorney Scott indicated that he would try to meet with me tomorrow. Under these conditions, it would be wise to delay conducting business at a special meeting until the issues addressed in this letter can be resolved. Doing so, would avoid the problem of someone accusing individuals who believe they may be commissioners of acting without legal authority.

As means of allowing the purported new board members to obtain public information about the Authority that they want and that may be helpful to them if they ultimately are validly appointed to the Board, you could ask the existing Board members if they would support your calling a special workshop, pursuant to your authority as Executive Director, at which present commissioners plus Mr. Hardison, Mr. Hahn and Ms. Brown and the public could ask questions of staff related to the Authority but at which no actual business would be conducted.

Very truly yours,

KENNERLY, MONTGOMERY & FINLEY, P.C.

By 
Rob Quillin

RQ:jb

Enclosure

cc: James K. Scott, Esq. (via e-mail)