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December 5, 2012

BY FACSIMILE TRANSMISSION & U.S. MAIL

James K. Scott, Esq.
City Attorney, City of Lenoir City
Pemberton & Scott, PLLP
9539 Kinston Pike
Knoxville, TN 37922

RE: Lenoir City Housing Authority

Dear Mr. Scott:

In connection with this firm's representation of the Lenoir City Housing Authority (the "Authority") and the issues surrounding the composition of the Board of Commissioners of the Authority, Rob Quillin asked that I respond to your letter of November 30, 2012 as I served as Law Director for the City of Knoxville, a municipality established under the Home Rule provisions of the Tennessee Constitution. After reviewing your letter and looking into the matters further, it remains our legal opinion that the Mayor lacked the legal authority to make two of the three appointments he purported to make on November 21, 2012 to the Authority's Board.

First, I am somewhat perplexed by the brevity of your letter given the thoroughness of Mr. Quillin's analysis in his letter of November 29, 2012. In his letter, Mr. Quillin carefully explains that, pursuant to the express requirements of state law, commissioners of a housing authority are appointed to staggered terms of five years and can only be removed for inefficiency, neglect of duty, or misconduct in office. T.C.A. § 13-20-411(a). Under state law, as construed by the Tennessee Court of Appeals, a commissioner must be given written notice of any claims against him, and he will have an opportunity to defend himself in a public hearing prior to being removed from office. *Mayor of City of Jackson v. Thomas*, 313 S.W.2d 468 (Tenn. App. 1957). This comports with the most basic requirements of due process under the United States Constitution and the Tennessee Constitution. *Matthews v. Eldridge*, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) and *Martin v. Sizemore*, 78 S.W.3d 249, 267 (Tenn. Ct. App. 2001).

In response to Mr. Quillin's analysis, you simply state that Lenoir City is a Home Rule municipality and cite *Mink v. City of Memphis*, 222 Tenn. 216 (1968). After reading *Mink*, reviewing the Charter of the City of Lenoir City, and looking at the various documents by which

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the Authority was established in 1959, I cannot understand why you think that case has any applicability whatsoever to the present situation.

In *Mink*, the Court considered whether, under the terms of the Charter of the City of Memphis, the Mayor of Memphis could unilaterally remove members of the Memphis housing authority without giving the commissioners an opportunity to defend themselves. Unlike the provisions of the Lenoir City Charter, in which the mayor has *no authority to appoint or remove members of boards or commissions*, the relevant provision of the Memphis charter provided that the mayor could appoint and remove members of all boards and commissions of the city with the approval of a majority of the city council. Also unlike the Lenoir City Charter, the housing authority for Memphis was created in 1935 “pursuant to an amendment of the Charter of the City of Memphis, being Chapter 615, Private Acts of the General Assembly in 1935.” *Mink*, 222 Tenn. at 218. In other words, by a private act of the state legislature, the Memphis charter had been amended to create a local housing authority. That is, the Memphis housing authority only existed under the terms of Memphis charter.

On December 13, 1967, the Mayor of Memphis, with the concurrence of the city council, appointed Wayne Mink to fill an unexpired term on the housing authority board. Just a few weeks later, for reasons which were not given in the opinion, the Mayor decided to remove Mr. Mink. Mr. Mink sued. Given the fact that the Memphis housing authority only existed pursuant to the terms of the charter and given the fact that the mayor had the express power to appoint and remove board members, with the concurrence of the council, it was not surprising that the *Mink* court found that no hearing was required, regardless of the wisdom and fairness of such a procedure. Discussing the general state statutes applicable to the creation of housing authorities, the Court said:

These statutes are authority for municipalities to establish a housing authority, which a municipality may or may not accept.

Mink, 222 Tenn. at 221. The Court found that the creation of the Memphis housing authority was not subject to the general state law because the housing authority was not created pursuant to that law. Discussing the case more recently, the Court of Appeals said that the *Mink* case stands for the proposition that, “under the general housing authority legislation it was left to the discretion of municipalities whether or not to create a housing authority. . . .” *City of Alcoa v. Blount County*, 658 S.W.2d 116, 118 (Tenn. Ct. App.), *perm. app. den.* 1983.

Interestingly, that is precisely what the City of Lenoir City did in 1959: it employed the provisions of the applicable housing authority statute, T.C.A. § 13-20-401 *et seq.*, to establish a housing authority under the procedures described therein. Enclosed, please find multiple documents relating to the creation of the Authority. First, I have enclosed the petition from July 10, 1959, by which the statutorily mandated number of citizens petitioned for the creation of a housing authority pursuant to Section 4 of the Housing Authorities Law of the State of Tennessee, Chapter 20, Public Acts of Tennessee, 1st Special Session, 1935, as amended by Chapter 234, Public Acts of Tennessee, 1937. Also enclosed are the public notice of the petition, the Affidavit of Publication from July 30, 1959, and the resolution of the City Council of the City of Lenoir City declaring the need for the creation of a housing authority pursuant to the

Housing Authorities Law. Finally, I have enclosed the Certificate of Incorporation of the Lenoir City Housing Authority issued by the Department of State of the State of Tennessee on October 8, 1959, pursuant to the Housing Authorities Law.

In short, in 1959, the Lenoir City Council followed the procedures established under state law for the creation of a local housing authority. Unlike the situation in *Mink*, the Authority was not created in the City Charter and, in fact, is not even mentioned in the Charter.

Since its creation in 1959, the Authority has functioned as an independent governmental entity, governed by a board of commissioners, operating pursuant to the requirements of the Housing Authorities Law. The Board of Commissioners makes policies for the Authority and has responsibility for the Authority's funds, which are primarily federal funds from the Department of Housing and Urban Development ("HUD"). The City does not contribute funds to the Authority and has no legal power over the operation of the Authority. Pursuant to the Housing Authorities Law and not the City Charter, the sitting mayor of Lenoir City has the right to appoint commissioners to the terms of office defined in the Housing Authority Law, and Mayor Aikens' predecessor, Mayor Matt Brookshire, duly appointed all five of the present commissioners.

I trust this explanation and the enclosed documents clear up any misunderstanding you may have. To avoid further confusion, please notify two of the three persons that Mayor Aikens purported to appoint that this was an error and that he was without legal authority to appoint them. Also, Mr. Quillin and I would be pleased to host a meeting at our office between Mayor Aikens, yourself, and representatives of the Authority if it would be productive to discuss this matter in person.

Sincerely,

KENNERLY, MONTGOMERY & FINLEY, P.C.

By: 
Michael S. Kelley

MSK/rm

cc: Debbie Cook, Executive Director