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May 20, 2015

MEMORANDUM TO: MAYOR AND CITY COUNCILORS

FROM: WILLIAM H. MORGAN, JR., CITY ATTORNEY

RE: AMERICAN LEGION ABC PERMIT MATTER

Ladies and Gentlemen: I was asked, during our May 11 City Council Meeting, to report to Council regarding the Affidavit executed by Mayor Peel approximately a year ago, apparently in connection with the Post 223 American Legion's permit for allowing the consumption of alcoholic beverages during events at its property. First, I have not seen a copy of the Affidavit or the similar Affidavit executed by Police Chief Buffaloe, but I was present, of course, when the Mayor's Affidavit was read aloud during our Meeting. Nor have I seen copies of any Police Incident Reports or other documents which purport to discuss specific incidents which led to ALE efforts to revoke the Post's ABC license. I am, therefore, not in a position to comment on the license or permit itself.

During our discussions on May 11, a Motion was made, and properly seconded, to direct Mayor Peel to send a letter of apology to the officers and members of the Post. I indicated at the time that the Motion was, in my opinion, out of order. Mayor Pro Tem Hummer agreed and so ruled. The morning following our Meeting, I asked City Clerk White to seek a ruling from the appropriate Professor(s) at the School of Government on the issue. Please see the attached email she received from Trey Allen, Assistant Professor of Public Law and Government, which I trust you will find self-explanatory.



William H. Morgan, Jr.

William Morgan

From: Vivian White <vwhite@cityofec.com>
Sent: Tuesday, May 12, 2015 3:45 PM
To: wmmorgan@embarqmail.com
Subject: Response from SOG about motion out of order

Here you go, Bill!

Vivian White, CMC/NCCMC
City Clerk
City of Elizabeth City
306 E. Colonial Avenue ~ P. O. Box 347
Elizabeth City, NC 27907-0347
Phone: 252.337.6955 ~ Fax: 252.337.6956

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From: Allen, Trey [mailto:tallen@sog.unc.edu]
Sent: Tuesday, May 12, 2015 3:44 PM
To: Vivian White
Subject: RE: Need some help

Vivian:

In the comments to Rule 13 in his *Suggested Rules of Procedure for a City Council*, Fleming Bell observes that a substantive motion "may deal with any subject within the council's legal powers, duties, and responsibilities." The latest edition of *Robert's Rules of Order* makes essentially the same point in negative terms as part of its discussion of main motions that aren't in order. According to *Robert's*, a main motion is not in order if it conflicts with an organization's charter, constitution, or bylaws or with federal, state, or local law. RONR (11th ed.) p. 111, ll. 4-10.

North Carolina's courts have repeatedly declared that local governments in this state have only those powers conferred on them by the legislature. *E.g., High Point Surplus Co. v. Pleasants*, 264 N.C. 650, 654 (1965) ("A municipal corporation is a creature of the General Assembly, has no inherent powers, and can exercise only such powers as are expressly conferred by the General Assembly and such as are necessarily implied by those expressly given.") I am not aware of any statutory authority that would permit a city council to compel a mayor to apologize. Accordingly, a motion to require such action would not be in order. Please note, however, that a council may express its opinion regarding a mayor's conduct. A council could, for example, adopt a resolution urging the mayor to apologize for some action, even though it may not force the mayor to do so.

I hope that you find this response to be helpful. Please contact me if you have additional questions.



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