

Bob Mollette

3rd Ward Councilman

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Michael Jones, Solicitor
728 Second Street
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Re: Requesting Opinion related to Public Money Appropriations and Public Speaking

I am requesting a legal opinion to guarantee compliance by the City legislative body while conducting official business during Council meetings. I need reassurance appropriations are being made lawfully by Council and that citizens are being allowed their reasonable opportunity to be heard at any such meeting. Based on recent actions by Council I question compliance.

Briefly, I am aware the "*Rules for the Government of Council – Portsmouth, Ohio*" Item 28 states Council shall be guided, where pertinent and in the order named; Constitution of the United States of America and the Acts of Congress; Revised Code of the State of Ohio; Charter of the City of Portsmouth; Ordinances, Resolutions, and Motions of the Council; and the General Rules of Deliberative Bodies as laid in Robert's Rules of Order.

Keep in mind the City has received noncompliance citations (#2006-003) within the most recent single audit for the fiscal year 2006. The noncompliance citation involved expenditures without the certification of the Auditor in violation of the Ohio Revised Code Section 5705.41(D) (1). As reported, twenty-five percent (25%) of the expenditures tested were not properly certified.

During the August 25, 2008 City Council Meeting I requested your legal opinion on Item 7a, which authorized an additional appropriation of the General Fund monies in the amount of \$16,000 into the Engineering Contractual Line Item No. 101.663.5299; this transfer is to pay an outstanding balance and future services. I was perplexed and disappointed this request for additional funds was being requested after an outstanding balance of \$14,532.47 was created as of August 1, 2008. I requested the Auditor to certify that \$16,000 was available in the General Fund per the City Charter (Section 57 – Money required to be in Treasury). The Auditor was unable to certify this amount. I voted against passage of this appropriations ordinance until resources could be identified. The City is prohibited from generating expenditures without an identified revenue resource, but a majority of the Council members voted and passed the ordinance. Please evaluate this evolution and provide your legal opinion.

On May 2, 2008 (#08-017), I expressed a growing concern that expenditures must not exceed the approved 2008 Operating Budget without prior approval. The Municipal Court Fund (Line Item No. 101.111.5299) Sheriff (court security) was approved for \$8,000. It appears this amount has escalated from \$20,343.16, reported April 22, 2008, to now over \$50,000.00. The Ohio Revised Code (ORC) Section 5705.39 states that an appropriation from each fund shall not exceed the total estimated revenue and ORC Section 5705.41 (B) states that no subdivision or taxing unit is to expend money unless it has been appropriated. To date, no documentation has been provided to the legislative authority for approval or certification of available funds.

Also consider compliance of the City Charter Section 4 – Meetings of Council which provides that citizens of the City shall have a reasonable opportunity to be heard at any such meeting in regard to any matter considered thereat. Council routinely adds ordinances to the legislative agenda on the night of the Council meeting and often suspends the rules and passes the ordinance. This practice prevents prior notice to the public and prohibits public input. I believe these actions are in conflict with the City Charter.

Now consider recent actions by Council:

- At the August 11, 2008 Council meeting a majority of Council members amended the City Center/Justice Center November ballot language ordinance, suspended the three-reading rule, and passed the ordinance. Citizens requested the opportunity to speak on the ordinance after it was amended and prior to passage; this request was denied. I feel our citizens should have had an opportunity to speak prior to passing this ordinance.
- At the August 11, 2008 Council meeting a Resolution for the 2008-2009 DARE Grant Funds was added to the Agenda and adopted by Council without prior notice or allowing the public to comment. I requested the opportunity to open the floor for public comment but was denied by Council President. Again, I do not feel this meets the intent of the City Charter.
- On September 25, 2007 (#07-051) I requested the Solicitor and Council to amend the Rules for the Government of Council to require an ordinance to be read completely for the public prior to being added to the legislative agenda by a vote of Council. Also Council should always strive to avoid adding items to the legislative agenda unless the public can be notified prior to City Council meetings and avoid suspending the rules through better planning. These items have not been considered to date.

I have requested improvements in the past and will continue to seek ways to improve the actions of Council. I am requesting your assistance to encourage these improvements to avoid future litigation.

If you have any questions or comments contact me.

Respectfully,



Bob Mollette, 3rd Ward Advocate and Representative on City Council

rwm

cc: Honorable Council Members
Jim Kalb, Mayor
Trent Williams, Auditor
Jo Ann Aeh, Clerk (Record)