

Bob Mollette
3rd Ward Councilman

1705 Franklin Blvd.
Portsmouth, Ohio 45662

Phone: 740-353-0099
email: mollette@mollette.info
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Correspondence#: 08-031

September 8, 2008

Nancy H. Rogers, Attorney General of Ohio
30 East Broad Street, 17th Floor
Columbus, Ohio 43215-3428

Mary Taylor, CPA, Ohio Auditor of State's Office
88 East Broad Street, 5th Floor
Columbus, Ohio 43215

Re: Requesting Assistance related to Public Money Appropriations and Public Speaking

As a public official, I am requesting your support to encourage a positive change for the City of Portsmouth.

August 28, 2008, I requested assistance from the City Solicitor (enclosed) to ensure legal compliance on the part of our legislative body pertaining public speaking and the appropriation of public monies. On September 3, 2008 I received an impertinent response from our City Solicitor (enclosed), which implied following the laws were at the discretion of the legislative body. I feel a paradigm shift is needed to promote a representative form of government rather than a despotic government.

I realize majority rules but the majority must follow the laws. The rules for our City are listed in the "*Rules for the Government of Council – Portsmouth, Ohio.*" Specifically, 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.

Choosing to ignore improper or illegal actions by elected officials will not move the City of Portsmouth forward in a positive way. Correspondence is enclosed for your review, link to the August 25th City Council Meeting minutes @ http://www.ci.portsmouth.oh.us/government/agenda_minutes.html, and link to a video @ <http://portsmouthcitizens.info/Council/Highlights/8-25-08/8-25-08-7aOrdinance.wmv> documenting action taken on Item 7a. Please consider the above information and recommend appropriate actions to encourage compliance of the laws and to avoid selective compliance.

If you have any questions or comments, contact me.

Respectfully,



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

rwm

Enclosure

cc: Governor Ted Strickland @ Riffe Center, 30th Floor; 77 South High Street; Columbus, Ohio 43215-6108
Honorable Council Members
Michael Jones, City Solicitor
Trent Williams, City Auditor
Jim Kalb, Mayor
Jo Ann Aeh, City Clerk (Record)

Bob Mollette

3rd Ward Councilman

1705 Franklin Blvd.
Portsmouth, Ohio 45662

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Correspondence#: 08-030

August 28, 2008

Michael Jones, Solicitor
728 Second Street
Portsmouth, Ohio 45662

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)

The City of Portsmouth

"Where the Ohio and Scioto Meet"

Department of Law
Municipal Building

Room 22
728 Second Street
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MICHAEL L. JONES
City Solicitor



State of Ohio

September 3, 2008

Mr. Bob Mollette, 3rd Ward Councilman

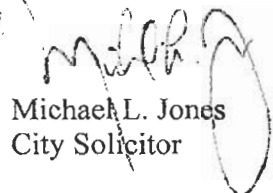
Re: Your request dated August 28, 2008 for an opinion related to Public Money Appropriations and Public Speaking

I am writing in response to your letter dated August 28, 2008 in which you requested an opinion related to public money appropriations and public speaking. Quite frankly, your letter appears to be an indirect attack on your fellow council members and city government office holders. I have been in office now for nearly nine months and continue to be amazed at the inability and apparent unwillingness on your part to work in a positive way to make Portsmouth a better city. As you are a city council member, I would hope that your motivations are to move Portsmouth forward with a positive vision. Unfortunately, this letter appears on its face to be yet another example of your attempt to create controversy where none exists.

Nevertheless, I will attempt to address your vague request for an opinion. As to the issue of citizens having the right to speak at council meetings, you are correct in stating that the City Charter provides citizens with a reasonable opportunity to be heard at such meetings. However, this right is not without reasonable restrictions and limitations. Specifically, the Rules for the Government of Council provide that citizens present in council chambers shall have an opportunity to make statements or remarks on "Items Listed on the Agenda" and then another opportunity to make statements or remarks on "Items Not Listed on the Agenda." These rules provide that citizens are limited to five minutes at each separate opportunity to speak. Furthermore, these rules state that "all citizens who wish to express themselves in Council meetings shall do so with dignity, shall avoid personal references, and shall adhere to the question at hand." Finally, the President of Council, or others members of Council, shall take adequate steps to evict noisy, unruly, undignified, or profane individuals or groups from the Council meetings when necessary. In my opinion, it is within the discretion of the President of Council to take such action when he deems necessary. In summary, while I encourage citizens to speak at council meetings, this right is subject to reasonable limitations.

As to the issue of public money appropriations, city council, as the legislative body of our city government has the authority to appropriate funds. Your letter appears to be questioning this authority. In my opinion, council always had, and continues today to exercise this authority.

Sincerely,



Michael L. Jones
City Solicitor

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