

Teresa Mollette

Portsmouth, Ohio

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Correspondence#: 07-001

March 5, 2007

Mr. David Kuhn, City Solicitor, dkuhn@pmcourt.org
728 Second Street
Portsmouth, Ohio 45662

Dear Mr. Kuhn,

RE: Public Records Request

On March 1, 2007, a public records request was made to Jo Ann Aeh, City Clerk of Portsmouth, Ohio, for copies of documents related to the transfer of property from the Security Central National Bank of Portsmouth to the City of Portsmouth, Ohio. Also, a request was made for documents related to the lease agreement signed between the City of Portsmouth, Ohio and the Southern Ohio Museum and Cultural Center (SOMACC). Below is the documents requested:

1. Copy of the Deed of Transfer between the Security Central National Bank of Portsmouth, Ohio and the City of Portsmouth, Ohio;
2. Copy of the two letters referenced in a letter dated June 5, 1984, from C. Clayton Johnson, for the SOMACC, to the City of Portsmouth. One of the letters referenced was dated January 20, 1983 and written by C. Clayton Johnson. The second letter was dated February 22, 1983 and was in response to the first letter, January 20, 1983, and written by Richard T. Schisler, City Solicitor.
3. Copy of the Ordinance approved by Council that would have changed the initial Lease Agreement dated July 13, 1977, between the City of Portsmouth and the SOMACC. The changes made are referenced in the letter dated on June 5, 1984 and written by C. Clayton Johnson;
4. Copy of a written request by the SOMACC for the 20 year renewal option. This condition for written request for the renewal is part of the language of the Lease Agreement signed on July 13, 1977, by both parties; the date of this request should be approximately May 13, 1997. The Lease Agreement reads, *"The Lessor hereby grants to the Lessee an option for an additional term of twenty (20) years, upon the same conditions and terms as set out in the lease. Notice of the exercise of said option shall be given to the Lessor sixty (60) days prior to the expiration of the present term;"*
5. Copy of an approved Ordinance, by Council, for the Lease Renewal Agreement in the July 1997 timeframe.

On March 2, 2007, I went to Ms. Aeh's office to inquire about the status of the records that were requested. At that time I received a copy of the Deed (Item #1) signed between the Security Central National Bank of Portsmouth and the City of Portsmouth, Ohio; none of the other requested items were available by Ms. Aeh, and the following excuses were provided, to me, on the remaining items:

1. Response received to Item #2. Ms. Aeh informed me that there were no copies of mentioned correspondence in the SOMACC folder. She also told me a public office is not required to keep all documents received and only have to retain certain documents for a certain period of time before destruction; she let me know she possessed the power to make that determination for destruction.

I questioned her on the requirements of the law and the Retention Committee, but she let me know she was given the authority to destroy public documents. I then asked her for the detailed letter that listed and approved these documents for destruction by the Retention Committee, the Historical Department, and the Auditors Office. She informed me she did not have to detail items for destruction, but only give a weight associated to the items and provide the date they were destroyed.

I believe this office is in violation of both the State Laws and the laws that govern the City of Portsmouth, Ohio, the City's Codified Ordinances.

2. Response received to Item #3. Ms. Aeh said she looked for an Ordinance associated to the 1984 timeframe that allowed for the changes to the initial Lease Agreement as specified in the letter of June 5, 1984. Ms. Aeh could not find where an Ordinance had been prepared or approved. She further explained to me that since there was already an approved Ordinance pertaining to this Lease Agreement and signed on July 13, 1977, changes would not have to be brought back to Council prior to authorization.

Again, I believe this office is in violation of both the State Laws and the laws that govern the City of Portsmouth, Ohio, the City's Codified Ordinances.

3. Response received to Item #4. Ms. Aeh let me know there was not a copy of the request for renewal, as mandated by the initial Lease Agreement, in the SOMACC folder. She also told me a public office is not required to keep all documents received, and only have to retain certain documents for a predetermined period of time before destruction; she let me know she possessed the power to make that determination for destruction.

I again questioned Ms. Aeh on the requirements of the law and the Retention Committee, but she let me know she was given the authority to destroy public documents at will. I then asked her for the detailed letter that listed and approved these documents for destruction by the Retention Committee, the Historical Department, and the Auditors Office. She informed me she did not have to itemize items for destruction, but only give a weight associated to the items and the date they were destroyed.

Again, I believe this office is in violation of both the State Laws and the laws that govern the City of Portsmouth, Ohio, the City's Codified Ordinances.

4. Response received to Item #5. Ms. Aeh told me that due to Council's previous approval of an Ordinance on July 12, 1977, which had provided the SOMACC the opportunity to renew the agreement in 20 years it was not necessary for Council to initiate and approve an Ordinance in 1997.

Again, I believe this office is in violation of both the State Laws and the laws that govern the City of Portsmouth, Ohio, the City's Codified Ordinances.

Public Records belong to the people. The law on public records retention is covered in both the Ohio Revised Code and the City Charter. I believe Ms. Aeh is not only violating the laws, but providing inaccurate information to not only to the public, her employer, but to City Council and other public offices. The prerequisite for the City Clerk position does not necessitate a law degree nor, to my knowledge, has Ms. Aeh taken the necessary steps to apply and be admitted into the Bar Association. Her job as City Clerk does not give her the authority to change or interpret the law. Also, it does not give her the authority to destroy public records that belong to the people. The City Solicitor, elected by the people, holds a law degree. The City Solicitor, by his qualifications, should be the public office holder, which provides information to legal questions, not only by other City officials but by the public.

With this letter I am requesting a copy of the above mentioned documents or the copy of the properly signed and approved letter(s) for destruction by the appropriate parties.

Below, I am providing the language contained in the laws of Ohio and printed in the Ohio Revised Code (ORC) as it relates to the public records retention and destruction laws.

§ 149.39. City records commission.

There is hereby created ***in each municipal corporation a records commission composed of the chief executive or his appointed representative, as chairman, and the chief fiscal officer, the chief legal officer, and a citizen appointed by the chief executive. The commission shall appoint a secretary, who may or may not be a member of the commission and who shall serve at the pleasure of the commission.*** The commission may employ an archivist to serve under its direction. ***The commission shall meet at least once every six months, and upon call of the chairman. (emphasis added)***

The functions of the commission shall be to provide rules for retention and disposal of records of the municipal corporation and to review applications for one-time records disposal and schedules of records retention and disposition submitted by municipal offices. Records may be disposed of by the commission pursuant to the procedure outlined in this section. The commission may at any time review any schedule it has previously approved, and for good cause shown may revise that schedule.

When municipal records have been approved for disposal, a list of such records shall be sent to the auditor of state. If he disapproves of the action by the municipal commission, in whole or in part, he shall so inform the commission within a period of sixty days and these records shall not be destroyed. ***Before public records are disposed of, the Ohio historical society shall be informed and given the opportunity for a period of sixty days to select for its custody such public records as it considers to be of continuing historical value. (emphasis added)***

HISTORY: GC § 1465-121; 124 v 485; Bureau of Code Revision, 10-1-53; 128 v 1021 (Eff 10-19-59); 138 v H 466 (Eff 8-8-80); 141 v H 201 (Eff 7-1-85); 141 v H 238 (Eff 7-1-85); 141 v H 428. Eff 12-23-86.

Also, below I am providing the language of the City's Codified Ordinances as they apply to the retention and destruction of public records.

**CHAPTER 173
Records Commission**

173.01 ESTABLISHED.

The City Records Commission, as established under Ohio R.C. 149.39 is hereby authorized and directed to provide rules and regulations for the retention and disposal of public records of the City as follows:

(a) The function of the Records Commission shall be to provide rules for retention and disposal of public records of the City and to review records disposal lists submitted by the various offices of the City. ***The disposal lists shall contain those records which have been microfilmed or no longer have administrative, legal or fiscal value to the Municipality or to their residents. (emphasis added)***

(b) When Municipal records have been approved for disposal, a ***list or description shall be sent to the Bureau of Inspection and Supervision of Public Offices of the Auditor of State.*** If such Bureau disapproves of the action by the Records Commission, in whole or in part, it shall so inform the Commission within a period of sixty days and these records shall not be destroyed. ***Before records are otherwise disposed of, the Ohio Historical Society shall be informed and given the opportunity for a period of sixty days to select for its custody or disposal such records as it may deem to be of continuing historical value. (emphasis added)***

(Ord. 1977-179. Passed 10-11-77.)

I am requesting a copy of the City of Portsmouth, Ohio's City Records Commission rules and regulations for the retention and disposal of public records.

I am requesting a list of names for the active members and the Secretary of the City's Records Commission committee, as they are mandated by both State and City laws. In relationship to the committee I am requesting a copy of each of the biannual meeting minutes since 1977, or if not available, a copy of the request for destruction of said meeting minutes.

I am requesting the itemized lists compiled and submitted, to the appropriate parties by law, for destruction since January 1977. I am also requesting, as it relates to the mentioned itemized lists, the corresponding request for destruction approval letters to both the Ohio Historical Society and the Auditor of State with the subsequent approval letter.

I would also like clarification of Ms. Aeh's job duties as the City Clerk, and her qualifications, if any, for providing legal opinions to the public, to Council and other public offices. I would hope, as the current City Solicitor, you take these unacceptable actions by Ms. Aeh seriously and ensure proper ethical behavior by public office holder. Also, to avoid the unnecessary expense on taxpayer dollars it would be advisable not to overlook the inappropriate behavior of Ms. Aeh. I wonder whether you, Solicitor Kuhn, if knowingly overlook this behavior are engaging in unethical behavior and violating your oath of office by tolerating these actions by Ms. Aeh?

See below the language of the Portsmouth City Charter as it relates to the job description of the City Clerk. No where in this description do I find legal advice listed. Nor have I found a City Ordinance that authorizes the City Clerk to provide legal advice. From the way I read the City Charter, the City Clerk "shall serve at the pleasure of the Council," and Council works for their constituents.

City Charter
SECTION 7. CITY CLERK.

The Council shall choose a City Clerk and such other employees thereof as are necessary, **who shall serve at the pleasure of the Council. The Clerk *shall attend the Council as its secretary, shall keep its journal and other records, and make an annual report, giving a summary of its proceedings* and shall perform such other duties as are given him by this Charter or which may be prescribed by ordinance. (emphasis added)**

Thanks in advance for your assistance.

Respectfully,



Teresa K. Mollette

tkm

Attachments: (1) Page 1 of SOMACC Letter dated June 5, 1984
(2) Lease Agreement page 1 of 6

cc w/attachments: Jim Kalb, Mayor, portsmouthmayor@yahoo.com
Jo Ann Aeh, City Clerk, portscityclk@hotmail.com
Council (6)

The Ohio Historical Society
1982 Velma Avenue
Columbus, Ohio 43211
Phone: 614-297-2300 or 800-686-6124

Congresswoman Jean Schmidt
601 Chillicothe St
Portsmouth, Ohio 45662
Phone: 740-354-1440

Office of Auditor of State
88 East Broad Street, 5th Floor
Columbus, Ohio 43215
Phone: 800-282-0370 or 614-466-4514

The Attorney General Office
State Office Tower
30 E. Broad Street, 17th Floor
Phone: 614-466-4320

Governor Ted Strickland
Governor' Office
Riffe Center, 30th Floor
77 South High Street
Columbus, Ohio 43215-6108
Phone: 614-466-3555

The Ohio Ethics Commission
ethics@ethics.ohio.gov
8 East Long Street, 10th Floor
Columbus, Ohio 43215
Phone: 614-466-7090

Representative Todd Book, district39@ohr.state.oh.us
77 S. High St
14th Floor
Columbus, Ohio 43215-6111
Phone: 614-466-2124



southern ohio museum and cultural center - 825 gallia street - p. o. box 990 portsmouth, ohio 45662
Telephone 514/354-5629

June 5, 1984

City of Portsmouth
Municipal Building
728 2nd Street
Portsmouth, Ohio 45662

Attention: Richard Roberts
City Manager

Dear Mr. Roberts:

Reference is made to a certain Lease Agreement dated as of July 13, 1977, by and between the City of Portsmouth and Southern Ohio Museum Corporation, as recorded in Scioto County Lease Volume 45 at Page 479, reference to which is hereby made. Reference is also made to my letter of January 20, 1983, and to the response of Richard T. Schisler, City Solicitor, dated February 22, 1983.

Based upon our discussions and the above correspondence, this letter will evidence our mutual agreement that the above referenced Lease is hereby interpreted, by mutual agreement, and shall hereafter be construed as follows. Wherever the provisions of this letter are in conflict with the provisions of said Lease Agreement, it is understood and agreed that the provisions of this letter will control. Our understanding is as follows:

- (a) The City will continue to carry the Museum as a Coinsured on its fire and extended coverage policy;
- (b) The City will add the Museum as a Coinsured on its liability coverage;
- (c) Without altering the City's obligation for structural maintenance and repair to the building and roof, it is agreed that maintenance and repair of the interior of the building, the elevator, the heating system and the air conditioning system will be shared between the Museum and the City with the Museum being responsible for the first \$500.00 spent in the aggregate for maintenance and repair of the interior of the building, heating system, air conditioning system and elevator in any given calendar year. Any amounts

LEASE

WITNESSETH, that The City of Portsmouth, Ohio, a municipal corporation, Lessor, in consideration of the rents and covenants hereinafter stipulated to be paid and performed by Southern Ohio Museum Corporation, a non-profit corporation organized under Section 1702.01 of the Revised Code of Ohio, Lessee, and its successors and assigns, does hereby grant, demise and lease unto the said Lessee, its successors and assigns, the following described premises, to-wit:

The real estate situate in the City of Portsmouth, County of Scioto and State of Ohio, and being the equal west one-half of the east one-half of Inlot No. 534 as known and designated by that number on the duly recorded plat of the Barr Addition to the City of Portsmouth, and the west 42 feet 3 inches of Lot No. 534 of the Barr Addition to the said City of Portsmouth as said lot is known and designated by said number on the duly recorded plat of said Addition on the Record of Plats of Scioto County, Ohio.

The premises herein leased are commonly known as 825 Gallia Street and 826 Sixth Street in the City of Portsmouth, Ohio, and formerly owned and used as the Main Office of The Security Central National Bank of Portsmouth.

TO HAVE AND TO HOLD the same, with the appurtenances, unto the said Lessee, its successors and assigns, for and during the full term of twenty (20) years next ensuing from the 13th day of July, 1977, and to be fully paid and ended on the 12th day of July, 1997, yielding and paying therefor, during the said term, the sum of One Dollar (\$1.00) per year. The Lessor hereby grants to the Lessee an option for an additional term of twenty (20) years, upon the same conditions and terms as set out in this Lease. Notice of the exercise of said option shall be given to the Lessor sixty (60) days prior to the expiration of the present term. Notice shall be given in writing directed to the City Manager of the Lessor or to the Executive in charge of the City at the time said notice is given.

And the said Lessee, for itself and for its successors and assigns, does hereby COVENANT and AGREE with said Lessor that it will pay said rents, in manner aforesaid, unless said premises shall be destroyed or rendered untenantable by fire or unavoidable accident; that it