



KWAME M. KILPATRICK, MAYOR
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July 30, 2008

Mr. Kelly Keenan Esq.
Legal Counsel to the Governor
The Honorable Jennifer M. Granholm
George W. Romney Bldg
111 South Capitol Avenue
Lansing, Michigan 48909

Re: Proceedings before the Honorable Jennifer M. Granholm pursuant to MCL 168.327
Response to Counsel, William Goodman's letter of July 1, 2008

Dear Mr. Keenan,

I write to respond to Mr. Goodman's letter of July 1, 2008. The fire in the CAYMAC building delayed my response to his letter. Preliminarily, I want to disclose that I have discussed that letter with Mr. Goodman and I believe that we have come to some agreement as to the appropriateness of the letter and its tone. I have great respect for Mr. Goodman as an attorney and a gentleman: It is for that reason that I was so appalled at the insulting and degrading tone of his July 1st letter.

As I explained to Mr. Goodman, in my view, you were seeking from us comments on the preliminary matters, including procedures to which we might agree in the event of proceedings before the Governor. I felt it important to raise the issues being litigated in a declaratory judgment action pending now in the Wayne County Circuit Court, to wit: A vote on any resolution that seeks to forfeit an office of an elected official must be adopted by a supermajority, or two-thirds of the Council.

In that the votes of the Council, aimed at forfeiture of the office of Mayor Kwame M. Kilpatrick, were not adopted by two thirds of the Council, they all fail for lack of a sufficient majority. This is significant not only with regard to the proceedings that Council is attempting to undertake but also with regard to the Governor's process. The Council vote to request removal of the Mayor by the Governor failed as well, in that it was a vote of 5-4, and not a supermajority of 6-3. While it is possible that one member of



Council could have sought forfeiture, in this case that did not happen. The request to the Governor was done by formal resolution of a simple majority of the members of Council.

I believe that Mr. Goodman now understands my position as to what it was that you were asking us to file and why I responded as I did.

I will not specifically address the insulting and demeaning statements or tone of the letter from Mr. Goodman, except to say that I have discussed my concerns with him and I have accepted his explanation that he did not intend to be insulting.

Parenthetically, I want to address the usual media manipulation of a very targeted example of media frenzy directed at creating public opinion against a defendant: My reference to the Rosenberg case, a national tragedy, was not intended to suggest that "death" would be the result of the case against the Mayor; as it was in the Rosenberg case (Mr. Goodman knows better). A review of the history of this terrible injustice will demonstrate that the media convicted the Rosenbergs in the court of public opinion before they were charged. Mayor Kilpatrick has been the subject of front-page, tabloid-like coverage by the print media and the electronic media. It is difficult to imagine a situation that has received more unfavorable press. Moreover, instead of reporting the facts, the press has been clear in its condemnation of the Mayor and its belief in his "guilt".

With regard to the specific substantive issues raised in the July 1st letter from Mr. Goodman, I respond as follows:

To his paragraph initiated by the word "First"-

I did cite, contrary to Mr. Goodman's assertion, authority for the proposition that any vote leading to the forfeiture of an elected office requires a supermajority to be adopted. The City Charter does not control the everyday conduct of business within the Committee of the Whole. The Council rules as adopted do indicate the required number of votes for such resolutions is to be determined with reference to Robert's Rules most recent edition. Robert's Rules, 10th edition, Chapter 13, Voting, page 388 Lines 22-24.

My reference to my own service as a member of the Council, while admittedly gratuitous, was obviously relevant and became more so when members of the Council later appeared in the media and denied having adopted Council Rules.



To his paragraph initiated by the word "Second"-

Mr. Goodman asserts that the Respondent "can provide a robust defense without his own testimony". This view ignores the very real possibility that attempting to defend one in three separate proceedings will inevitably lead to production of testimonial evidence which could impact his defense in the criminal case. I suspect that Mr. Goodman would see the dilemma if it were his client being asked to provide a "robust defense" in three different forums. Moreover, as I am sure we are all aware, one is held to the representations made by his attorney: Thus, there is no question that it will not be possible to defend vigorously while criminal charges are pending.

To his paragraph initiated by the word "Third"-

Since he has raised the issue of my former position as a member of Council and concluded that I have agreed that Council was "hoodwinked", I must respond. While I would prefer to ignore the assertions, it is important that I clearly and unequivocally state that my position is not now, nor has it ever been that Council is ever "hoodwinked" by the administration. Often, the administration and Council disagree but this does not lead to the conclusion that one is "hoodwinking" the other.

I am not sure what proofs Mr. Goodman is referencing in his offer to prove that Council is not "routinely kept in the dark". No proofs are required: I agree with him. Council was not kept in the dark in the Brown case and Council is never kept in the dark. Council is always informed of the critical terms of settlements. In that the now infamous "extortion letter" from attorney Stefani did not arrive until after the Law Department provided Council with the settlement memorandum, I am perplexed as to how the extortion letter or the confidentiality agreements, which were not signed until two months after the Council vote, could have been provided to them? Hundreds of cases are settled every year in the City of Detroit, with a recommendation from Law. In the Brown case, the settlement memo from Law was more detailed than those that Council usually receives. To suggest that Law should have included information that it did not have defies logic.

My final comment, as to the "third" paragraph, is in response to Mr. Goodman's suggestion that he intends to call me as a witness in the Council proceedings and that anything I say about the Council process is therefore inappropriate. As General Counsel to the Mayor, I am unable to testify to anything that my client said or did due to the attorney-client privilege. Unless Mr. Goodman intends to call me to describe my tenure and experience as a member of City Council, his assertion that my remarks are not appropriate, since I will be a witness, is without merit.



Finally, it is with sincere regret that I must address the insulting remarks in the final paragraph of Mr. Goodman's letter. While I did not agree with his letter of July 1st, and though it does not cite any authority for any proposition that he advances therein, I would not suggest that his letter is not "lawyerly": We each represent a client and it is important that we remember that we do no service to our clients when we attack each other. I will endeavor to treat my fellow counsel with the respect that his long and exemplary tenure as a practitioner of law demands. I hope that he will do the same.

Sincerely,

Sharon McPhail

General Counsel to the Mayor of the City of Detroit

Cc: William Goodman
James Thomas