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GOODMAN KALAHAR, P.C.

May 21, 2008

John Johnson
Corporation Counsel for the City of Detroit
City of Detroit Law Department
660 Woodward Ave Ste 1650
Detroit, MI 48226

Re: Petition to Governor for Removal of Mayor Kwame M. Kilpatrick

Dear Mr. Johnson:

I am in receipt of your letter dated May 20, 2008, in regard to the Detroit City Council's Resolution to file a charge with the Governor, wherein you state, among other things:

"Section 4-119 contains ten (10) exceptions to the Mayor's power to veto actions taken by the City Council. However, the above-referenced proposed resolution does not fall within any one of these exceptions."

While it would have been helpful had you cited either reasons or authority the assertions in your letter, based on our independent research, your conclusion is simply incorrect in several critical respects:

First – there is a clear applicable provision among the exceptions¹ to the Mayor's veto power, set forth in Section 4-119, i.e. Section 4-109, the Council's broad power to "make any investigations into the affairs of the city and the conduct of any city agency." This would, by law, include all activities *associated* with such an investigation. Most certainly this is a "broad" power that clearly includes the undertaking of action based upon an investigation of Council, as was the investigation that included three days of public hearings which, ultimately, directly resulted in the passage of the Resolution in question to file a charge with the Governor. The passage of this Resolution was thus clearly an inherent part of the investigative process. See *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963),²

¹ In fact there are more than the 10 exceptions that you have mentioned in your letter.

² In *Gibson*, the U.S. Supreme Court stated: "As this Court said in considering the propriety of the congressional inquiry challenged in *Watkins v. United States*, (cite omitted) ... 'The power * * * to conduct investigations is inherent in the legislative process. *That power is broad*. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them.' ... And, more recently, it was declared that 'The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.' *Barenblatt v. United States*, (cite omitted)" *Id.*, 545.

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Second – as to the other cited exceptions to the Mayor's veto power, you ignore that this list of exceptions is merely a list of examples of "quasi-judicial acts of the city council." The Council's quasi-judicial function is intended to be broad and covered by traditional definitions of such activity. See, e.g., *Petz v. Secretary of State*, 125 Mich. App. 335 (1983)³, *People ex rel. Clardy v. Balch*, 268 Mich. 196 (1934). This Resolution falls within the definition of a "quasi-judicial act";

Third – from any policy perspective, it would be patently absurd to claim that the Charter intends to allow the Mayor to veto a Resolution that seeks his own involuntary ouster, through the processes of state law. Most certainly such a quasi-judicial and investigative action is, as it must be, outside the power of the Mayor to veto.

Also, you claim that the action of filing the petition and charges with the Governor is somehow invalid, in that the Resolution is not yet effective and therefore the action on the Resolution violates the City Charter. For the reasons set forth above, this is also absurd. Since this Resolution and consequent action is not subject to the Mayor's veto, of course, the Council was at liberty to act when it did.

Finally, of course, Council did act through Resolution in this matter as a way to best speak to its concerns. However, since MCL 168.327 does not require the action of a public body in order to mandate the Governor's action, but rather, only a writing supported by a sworn affidavit and since those requirements have been met, a veto by your client cannot stop the process that Council has now set in motion.

I am taking the opportunity to forward your letter and this response to Mr. Kelly Keenan, counsel to the Governor, so as to fully disclose to the Governor's office, all pertinent developments. I appreciate your continuing cooperation.

Very truly yours,

GOODMAN & HURWITZ, P.C.


William H. Goodman
Special Counsel to Detroit City Council

WHG:lmo
Enclosures

cc: Members of Detroit City Council
Kelly Keenan, Esq., Legal Counsel to the Governor
James Thomas, Esq., Legal Counsel to the Honorable Kwame M. Kilpatrick

³The Court of Appeals has defined "quasi-judicial" as, "(a) term applied to the *action*, discretion, etc., of public administrative officers, who are required to investigate facts, or ascertain the existence of facts, and draw conclusions from them, as a basis for their official action..." *Id.* fn 17