

PHIL FRAZIER  
SHARON PHILLIPS

*Frazier & Phillips*  
*Attorneys at Law*  
*A Professional Association*

TELEPHONE  
TULSA (918) 744-7200  
FAX (918) 744-7210

*1424 Terrace Drive*

*Tulsa, Oklahoma 74104-4626*

April 29, 2009

Mayor Ray Bowen  
5908 E 141<sup>st</sup> Street  
Bixby, OK 74008

Vice Mayor Dennis Loudermilk  
6944 E 115<sup>th</sup> Place  
Bixby, OK 74008

Stephen Sutton, Councilman  
11052 S 91<sup>st</sup> E Ave  
Tulsa, OK 74133

John Easton, Councilman  
11225 S 90<sup>th</sup> E Ave  
Bixby, OK 74012

Steve Todoroff  
PO Box 582  
Bixby, OK 74008

Dear Council Members:

Oklahoma Law is very restrictive with respect to municipalities regarding the Open Meeting Act and what can and cannot be addressed in executive session. I am attaching a copy of Oklahoma's Open Meeting Act, Title 25 § 301-314, as it applies to executive session. You will note that there are five subjects that may be discussed in executive session for municipalities. No action may be taken in executive session and discussion is limited strictly to the agenda item designated for executive session.

Any matter set for executive session must have the statutory reference. For instance, if the council desires to discuss the purchase or appraisal of real property there must be a statutory reference which would be 11 O.S. § 307 (b)(3).

Oklahoma Law imposes harsh penalties for violation of the Open Meeting Act, both civil and criminal. I have personally prevailed in four civil suits against municipalities for Open Meeting Violations. Two of these suits were in federal court. All four suits resulted in substantial monetary recoveries against the various municipalities. During my time as City Attorney at Bixby, we have had three council members who were incarcerated for violations of the Open Meeting Act and/or personnel issues. In each instance I cautioned the council members on

Bixby Council Members

April 29, 2009

Page 2

several occasions regarding violations which ultimately led to the criminal charges being filed. The most troublesome statute for city council members to understand and comply with is 11 O.S. § 10-107. I am enclosing a copy for your review. Adherence to 11 O.S. § 10-107 is particularly troublesome because council members are elected to perform a job for the constituents and it is frequently thought to be in the interest of the constituents that problems be addressed that involve personnel. This is even more troublesome in view of 11 O.S. § 10-106(3)(4)(6). Each of those subsections seem to impose as a duty to the council member, exactly what is forbidden in § 10-107. Generally, council members reconcile § 10-106 and § 10-107 through the process of the annual budget preparation. Subsections (3)(4) and (6) are all areas which can properly be addressed through the preparation of the annual budget.

Council member are frequently approached by employees with complaints or work issues. Council members may "inquire" of the city manger, but may not direct or request any particular action be taken by the city manager as a result of the inquiry.

Members of the FOP or IAFF frequently target council members for a "friendly ear" in support for the Union's position. Careful consideration must be given by the council member regarding the Union employee's request, inquiry and/or complaint regarding working conditions or other alleged grievances.

I have been somewhat lax in my letting the conversation in executive session go beyond the subject matter as designated by the posted agenda. I ask your understanding and patience as I become more concerned about wandering from the agenda item(s).

Keep in mind, my job is to represent the City and keep council within the statutory restrictions as mandated by Oklahoma Law.

Please do not hesitate to call if you have any questions or comments regarding any matter whatsoever concerning legal practice, procedure or events within the City of Bixby.

Bixby's future is bright and I think we now have the best qualified Council I have had the pleasure to work with. You are the best educated, experienced, and qualified Council that I can recall in my twenty years with the City of Bixby and well in excess of thirty years working with other cities and towns.

I am proud to be a part of the City of Bixby and look forward to working with each of you as our City continues to grow and prosper. Again, please do not hesitate to call should you have any questions, comments or issues of a legal nature regarding the City of Bixby.

Yours truly,

Phil Frazier  
Attorney at Law

PF/st

Enclosures

MICKY WEBB  
P.O. BOX 1055  
BIXBY, OKLAHOMA 74008

To the Bixby City Council:

I am writing you to voice my concerns over the recent activities of the Bixby City Council (the "Council"), including the events leading up to and including the meeting of the Council in executive session on Monday, April 27, 2009, and the pre-disciplinary hearing for City Clerk Cheryl Sasser, which is presently set for 3:00 p.m. today, April 30, 2009. As set forth below, the Council has knowingly engaged in conduct that violates the *Charter of the City of Bixby, Oklahoma* (the "Charter") as well as the laws of the State of Oklahoma.

Section 3.4 of the Charter delineates the powers and duties of the City Manager, which include the power "[t]o appoint and to remove all directors or heads of departments and all subordinate officers and employees in such departments, subject to the majority approval of the council." In that same vein, Section 2.4 of the Charter provides as follows:

Neither the council, the mayor, nor any of its other members may direct or request the appointment of any person to, or his removal from, office or employment by the city manager. . . or, except as provided in this charter, participate in any manner in the appointment or removal of officers and employees of the city. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager, and neither the council nor any member thereof may give orders on administrative matters to any subordinate of the city manger either publicly or privately.

In the meeting of the Council in executive session on Monday, I was directed, and received an unsolicited recommendation, to take action and terminate the employment of city employees Sasser, Court Clerk Debbie Sheridan, Assistant City Clerk Janda Williams, Neighborhood Coordinator Vic Bell, and Assistant City Manager Mike Webster. Your directive to me to take such action is in clear violation of the above-quoted provisions of the Charter and the laws of the State of Oklahoma.

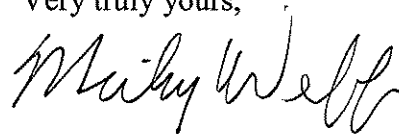
I will not be conducting the pre-disciplinary hearing of Ms. Sasser today. I am not considering Sasser for termination because, in my professional judgment, any alleged misconduct on her part does not rise to an offense warranting immediate termination -- particularly considering the fact that Ms. Sasser has an exemplary record of service to the City of Bixby spanning nearly a decade. This is not to say that I will not counsel Ms. Sasser with respect to many of the items raised in my letter to her dated April, 24' 2009. Rather, it is in recognition of the fact that, but for being pressured by the Mayor and certain members of the Council to terminate Ms. Sasser, I would not have written her and scheduled a pre-disciplinary hearing. Furthermore, by carrying out the pre-disciplinary hearing, I would be ratifying the

Council's illegal conduct and overstepping of its authority. In that regard, I am notifying Ms. Sasser that she may return to work immediately.

Finally, I wish to express concern over the Council's violation of the Oklahoma Open Meeting Act, 25 O.S. § 301, *et seq.* (the "Act"). During the meeting of the Council in executive session on April 27, 2009, the Council discussed -- and I was given strict directives regarding -- the termination of certain city employees, as well as the adjustment of the salaries of other city employees. Irrespective of the fact that the Council is prohibited from directing the City Manager to remove a city employee from office, the Council failed to comply with the notice provisions of 25 O.S. § 311(B). Furthermore, the Council members exceeded the boundaries of 25 O.S. § 307(E) by not publicly voting and recording the actions that were taken on items of business (improperly) considered in the executive session. This conduct on the part of the members of the Council subjects such members to criminal sanctions as provided in 25 O.S. § 314.

Since the matters addressed herein implicate criminal sanctions and are, without doubt, a matter of public concern, I am forwarding a copy of this communication to Bixby City Attorney Phil Frazier and Tulsa County District Attorney Tim Harris.

Very truly yours,

A handwritten signature in cursive script that reads "Micky Webb". The signature is written in black ink and is positioned above the printed name.

Micky Webb

Cc: Phil Frazier, Esq.  
District Attorney Tim Harris