

TY CLEVINGER

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The Hon. Coty Siegert, District Attorney  
Robertson County  
Franklin, Texas 77856

*Via e-mail attachment*  
[cotysiegert@robertsoncounty.org](mailto:cotysiegert@robertsoncounty.org)

Re: Pee Wee Drake and Bryan F. "Rusty" Russ, Jr.

Dear Mr. Siegert:

As you know, I represent Hazel Embra, Joyce Rattler, and Lashunda White, all of whom are members of the Hearne City Council. On behalf of my clients, I request a criminal investigation of Hearne City Manager Pee Wee Drake and City Attorney Bryan F. "Rusty" Russ, Jr.

According to Mrs. Embra and Mrs. Rattler, Mr. Drake removed several items that they and Mrs. White had placed on the agenda for the regularly-scheduled April 7, 2015 city council meeting, and then he added several items of his own choosing. In particular, Mr. Drake removed an agenda item concerning the appointment of a replacement for former Councilwoman Maxine Vaughn. Mrs. Embra and Mrs. Rattler report that when they confronted Mr. Drake about his unauthorized tampering with the agenda, he was unrepentant and even defiant.

This morning, Ms. Rattler and Ms. White served Mr. Drake with a copy of an emergency meeting notice / agenda, and one of the items on that agenda is the termination of Mr. Drake as city manager. According to Ms. Rattler and Ms. White, Mr. Drake said that City Attorney Bryan F. "Rusty" Russ, Jr. directed him to remove some of the items from the original April 7, 2015 meeting agenda. Mr. Russ had previously tried to persuade my clients to remove the same items from the council agenda, and they refused, so apparently he decided to act by force.

As you know, the city council has been unable to reach a quorum – and therefore unable to approve payment of the city's bills – because Mayor Ruben Gomez and Councilman Michael Werlinger have been boycotting all council meetings since Councilwoman Maxine Vaughn was recalled by the voters on March 3, 2015. The city charter requires that a successor be appointed by the council within ten days, and this has been the chief "sticking point" on the agenda.

Mayor Gomez and Councilman Werlinger do not want a replacement appointed, because then the remaining council members would have a quorum to conduct business, regardless of whether Mayor Gomez and Councilman Werlinger attend. My clients have already said that they intend to fire Mr. Russ and Mr. Drake, and I believe this is one of the reasons why Mayor Gomez, Councilman Werlinger, Mr. Russ, and Mr. Drake are fighting so hard to block meetings, tamper with the agenda, etc.

There is another reason why they are impeding the council majority, and I believe it is even more significant. My clients have said repeatedly that they intend to hire an outside audit firm to investigate the city's finances. The city's utility rates are higher than those in most surrounding communities, and there is anecdotal evidence that friends of Mayor Gomez, et al. have lower rates, while the enemies of Mayor Gomez, et al. may experience sudden and drastic increases in their utility rates. I believe that Mayor Gomez and his allies are desperate to prevent an investigative audit, because it will likely uncover financial crimes at city hall. This would not be surprising, particularly in light of Mr. Russ's long history of white-collar criminal activity in Robertson County.

In the altered council agenda prepared by Mr. Drake and Mr. Russ, the city council would only consider the items submitted by them, foremost of which is approval of accounts payable. Mr. Russ has a big stake in this issue, because he gets paid more than \$4,700 per month for his part-time job as city attorney, an amount far higher than city attorneys in cities of comparable size.

Regardless, Mr. Drake and Mr. Russ for the council, not vice versa, and they had absolutely no authority to alter the council agenda, much less defy the wishes of a majority of the council. On first impression, I thought Mr. Drake and Mr. Russ could be charged with tampering with a government record in violation of Section 37.10 of the Texas Penal Code, and perhaps they could. But I believe a stronger case could be made for official oppression.

According to Section 39.03 of the Penal Code, “[a] public servant acting under color of his office or employment commits an offense if he... intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful” or “intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful.”

As council members, and particularly as a *majority* of council members, my clients have the legal right to place items on the council agenda. Mr. Drake and Mr. Russ intentionally impeded their exercise of that right, and I believe the reason is obvious. If my clients are able to fill the current vacancy on the city council, Mr. Drake, Mr. Russ and their allies (*i.e.*, Mayor Ruben Gomez and Councilman Michael Werlinger) will no longer be in a position to prevent a quorum.

Meanwhile, Mr. Drake and Mr. Russ have committed crimes against my clients – and the citizens of Hearne – by assuming dictatorial control over the city council agenda. Please deal with them accordingly.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal flourish extending to the right.

Ty Clevenger