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December 13, 2014

Mr. Bryan F. "Rusty" Russ, Jr., City Attorney
City of Hearne
Hearne, Texas

Via facsimile and email
(979) 279-3712 and bryanruss@palmosruss.com

Re: *In re Milton Johnson, Hazel Embra, Joyce Rattler, and Lashunda White*,
Case No. 10-14-00341-CV, Tenth Court of Appeals of Texas

Mr. Russ:

Thank you for your quick response to my December 12, 2014 letter. My clients assure me that you did *not* brief the Hearne City Council regarding the counter-claims that you filed in *Hearne Citizen Oversight Committee, et al. v. Hearne Texas City Council, et al.*, Cause No. 14-08-19,607, 82nd District Court of Robertson County, Texas, much less seek or obtain the council's permission to file those counter-claims. Likewise, they assure me that you did not consult with the council before appearing in the Tenth Court matter listed above.

Since you did not obtain the council's approval to file the counter-claims or to oppose the petition for mandamus, you are acting without authority:

Cities can express and bind themselves only by way of a duly assembled meeting. *Cent. Power & Light Co. v. City of San Juan*, 962 S.W.2d 602, 612 (Tex.App.-Corpus Christi 1998, *pet. dismissed w.o.j.*). "A city's governing body may not delegate the right to make decisions affecting the transaction of city business." *Id.* at 613. However, cities may "delegate to others the right to perform acts and duties necessary to the transaction of the city's business, but can do so only by resolution or ordinance, by a majority vote." *Id.*

City of San Benito v. Rio Grande Valley Gas Co., 109 S.W.3d 750, 757 (Tex. 2003). In context, *City of San Benito* was addressing a city's right to delegate decisions concerning litigation. Thus the city council could not have delegated any authority for you to initiate counter-claims or oppose the petition for mandamus unless it adopted a resolution or ordinance "by a majority vote." *Id.*

I would also direct your attention to *In re Salazar*, where the court wrote that “[w]e are aware of no statute or common law rule allowing attorneys to prosecute a suit in the name of a corporation or other entity on behalf of only one faction or part of that corporation or entity against another part or faction.” 315 S.W.3d 279, 285 (Tex.App.–Fort Worth 2010, *orig. proceeding*). While that case dealt with a dispute for control of a corporation, the court relied on Rule 1.12 of the Texas Disciplinary Rules of Professional Conduct, which would apply with equal force here. As I previously wrote, you have essentially given yourself the tie-breaking vote on the city council, deciding which half gets to speak for the city and which does not. More to the point, you are representing one half of the council against the other, which is a conflict of interest. By virtue of the 3-3 deadlock, the City of Hearne is officially neutral with regard to the proceedings in the district court and the court of appeals, and that means you cannot arbitrarily pick sides as city attorney.

Your representation of the interests of Mayor Gomez, Councilman Werlinger, and Councilwoman Vaughn conflicts with the interests of the three council members whom I represent, and it conflicts with the interests of your ultimate client, *i.e.*, the Hearne City Council, because the council has not taken a position in these disputes. I urge you again to consult the state bar's ethics hotline, because these are serious matters. In *Salazar*, the court granted mandamus compelling the trial court not only to bar the attorneys who appeared without authority, but to strike all of their pleadings.

If you do not withdraw all of your pleadings and withdraw as counsel in the cases listed above by 5 p.m. on Monday, December 15, 2014, I will bring these matters to the attention of the respective courts. If Mayor Gomez, Councilman Werlinger, and Councilwoman Vaughn wish to continue pursuing claims in these courts, they should hire private counsel to re-submit your pleadings.

Thank you in advance for your attention to these matters.

Sincerely,

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

Ty Clevenger

cc: Councilwoman Hazel Embra
Councilwoman Joyce Rattler
Councilwoman Lashunda White
Mr. Bryan F. “Trey” Russ, III, Asst. City Attorney