

BAY COUNTY  
DEPARTMENT OF CORPORATION COUNSEL



AMBER L. DAVIS-JOHNSON  
Corporation Counsel

THOMAS L. HICKNER  
County Executive

July 7, 2015

Cynthia Luczak  
Bay County Clerk  
515 Center Avenue  
Bay City, Michigan 48708

Re: July 1, 2015 letter faxed by Clark Hill – Lansing Office regarding Request  
for Retention of Outside Legal Counsel

Dear Ms. Luczak:

I am in receipt of your letter dated July 1, 2015 faxed to my office by the Clark Hill law firm. For purposes of clarification, please note that I have NOT in fact “den[ie]d [your] request” for the retention of outside counsel as is stated in your most recent correspondence. Rather, I noted that at this juncture I did not believe that your stated issue constituted a conflict of interest that would prohibit the Office of Corporation Counsel from attempting to resolve the matter short of litigation. It is obviously in the best interest of your office, the Board of Commissioners, and, most importantly, the taxpayers of Bay County to attempt to resolve your stated dispute short of litigation. To that end, every attempt to resolve this matter in an amicable fashion should be exhausted.

As stated in my June 18, 2015 correspondence, although I do not believe that a conflict exists at this juncture, in order to avoid even the appearance of impropriety and pursuant to Section 4.B. of the Civil Counsel Guidelines, I retained the law offices of Gilbert, Smith & Borrello to provide me with an independent legal opinion as to whether there exists a non-frivolous, legal basis for you to proceed with legal action against the County Board of Commissioners. This opinion provided by Gilbert, Smith & Borrello is essential to any determination to allow or deny your request to retain outside counsel at the County’s expense should the need arise.

It is my understanding that Amy Lusk of Gilbert, Smith & Borrello contacted you shortly after my June 18<sup>th</sup> letter and you indicated to her that you were too busy to speak with her and would not be available to discuss this matter until after the Holiday weekend. I would strongly encourage you to speak with Ms. Lusk to provide her with the necessary information needed to evaluate your claim. This is especially true in light of the additional assertions you have made in your July 1 2015 letter indicating that you believe both the Board of Commissioners as well as

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the County Executive have discriminated against you based on your gender or retaliated against you based upon any role you may have had in reapportionment.

I also have requested that the Board of Commissioners approve the retention of an expert consultant to conduct an independent analysis of the work flow in your office and make a recommendation as to necessary staffing needs. That request was approved by the Personnel and Human Services Committee on June 16, 2015, and is before the Ways and Means Committee to approve the necessary budget adjustment on today's date. Your cooperation with and input provided to that consultant is also vitally important so that the consultant's recommendation is based on all available information, including hours worked by your staff, volume of work, constitutional and statutorily mandated duties, etc.

Finally, I have also reviewed and considered your new assertion that the County Board of Commissioners has inappropriately diverted fees collected by the County Clerk's Office to the County's general fund in violation of Headlee. A review of the County's financial records reveals that the revenue generated by the County Clerk's office falls short of the cost to staff that office at its current level. This does not take into consideration additional costs for supplies, equipment, etc. which are provided to your office by the County through its general fund.

Other than the newly established Concealed Pistol Licensing Fund created by MCL 28.425x, there is no requirement under Michigan Law that the County segregate the revenues of the Clerk's office into a distinct fund separate from the general fund. The cited cases of *Bolt v City of Lansing* and *Graham v Kochville Twp* do not support any assertion that such a segregated account for County Clerk revenues is required nor even appropriate. It is further my understanding that your separate request to the Board of Commissioners to hire a part time employee to perform functions mandated by the new concealed pistol licensing laws is currently under review and has not been denied at this time.

I would encourage you to engage in an open and honest discussion with both Gilbert, Smith & Borrello and the work flow consultant in order to allow this office to fully evaluate your situation and make a determination of whether a non-frivolous claim exists, if litigation is necessary and therefore the retention of outside counsel at the County's expense. Until this evaluation is complete, you are not authorized to retain the requested outside counsel utilizing county funds.

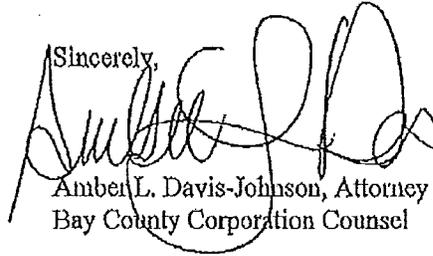
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Once again, I hope that we are able to resolve this issue to everyone's satisfaction such that the residents of Bay County are receiving the best possible services for their tax dollars. Please feel free to contact me with any additional questions.

Sincerely,  
  
Amber L. Davis-Johnson, Attorney  
Bay County Corporation Counsel

Enclosure

cc: Tom Hickner, County Executive  
Ernie Krygier, Chairman, Bay County Board of Commissioners  
Amy Lusk/Andre Borrello

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