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February 6, 2019

Honorable Lester G. Jackson
Senator, 2nd District
110-B State Capitol
Atlanta, Georgia 30334
lester.jackson@senate.ga.gov

RE: Form of government of the City of Port Wentworth

Dear Chairman Jackson:

I write in response to your inquiry concerning the governance structure of the City of Port Wentworth; specifically, you seek guidance on the lawful roles of the mayor and city council regarding the appointment and termination of city officers and the authority for determining the time, place, and rules of procedure concerning meetings of the mayor and city council.

Pursuant to its incorporating Act (charter), the City of Port Wentworth has what is often termed a "weak mayor" form of government, whereby the mayor is required to act in concert with the city council to effectuate administrative actions, including the appointment and termination of city officers and the establishment of meeting times.

I. Background

The City of Port Wentworth was incorporated by an Act of the General Assembly approved on February 6, 1957 (Ga. L. 1957, p. 2003).¹ The Act has been amended on 24 different occasions²

¹Attached as Exhibit A.

²Ga. L. 1958, pp. 2632, 3094; Ga. L. 1961, p. 3066; Ga. L. 1969, p. 2628; Ga. L. 1971, p. 3032; Ga. L. 1975, pp. 3190, 3308; Ga. L. 1976, pp. 3573, 3984; Ga. L. 1980, pp. 4226, 4230; Ga. L. 1981, p. 3911; Ga. L. 1982, p. 4445; Ga. L. 1988, p. 3995; Ga. L. 1989, p. 5105; Ga. L. 2001, pp. 4649, 4656; Ga. L. 2008, p. 3734; Ga. L. 2009, pp. 3555, 3564; Ga. L. 2013, p. 4335; and Ga. L. 2014, pp. 4293, 4295, 4297.

for various purposes since 1957, but none of the amendments to the Act have altered the original governance structure established for the city.

Hence, Section 3 of the Act provides that the municipal government of the city shall consist of a mayor and six councilmembers.

Section 5 of the Act provides that the mayor and councilmembers shall have the full power and authority from time to time to make and establish rules, laws, ordinances, regulations, orders, and resolutions that, as to them, may seem right and proper for the good government of the city.

Section 6 of the Act provides that the mayor shall be the chief executive officer of the city and enumerates the various duties that he or she shall perform, which are largely ministerial in nature. The section provides, among the various duties, that the mayor shall preside at all meetings of the city council; see that the laws, ordinances, rules, regulations, and resolutions of the mayor and council are faithfully executed and enforced; appoint, and be an ex officio member of, all committees; see that all funds of the city are properly accounted for; and inform the council from time to time of the general condition of the city and its affairs.

Section 6 further provides that the mayor shall exercise general supervision and jurisdiction over the affairs of the city and shall have authority to convene the council in extra session as frequently as he or she may deem proper.

Section 9 of the Act provides that "*the mayor and council* of said city may elect a city clerk, a city treasurer, and a city attorney who shall hold office for such period of time and receive from said city such compensation as may be provided by said *mayor and council*. Said *mayor and council* likewise may elect such other city employees as in their opinion should be employed. All such employees shall be elected for such terms and upon such conditions as may be prescribed by said *mayor and council*, and such employees so elected shall receive such compensation from said city as may be provided by the *mayor and councilmen* at the time of election." [Emphasis added.]

Section 11 of the Act provides that "*the mayor and council* of Port Wentworth shall have full power to fix the time, place and rules of procedure of their regular sessions. *The mayor* shall have power to convene the city council in special sessions whenever he [or she] deems it proper; and the mayor and council shall have full authority and power to perform any of their duties or powers at a special or called session." [Emphasis added.]

Section 13 provides that "*the mayor and council* shall have authority to elect a chief of police and such other policemen as they deem desirable and necessary...." [Emphasis added].

Section 14 provides that "*the mayor and councilmen* of said city may provide fire protection,

*They did the amendment
but didn't have it
passed*

and they shall have power to organize, establish and equip a fire department...." [Emphasis added.]

II. Analysis and conclusion

Therefore, the Act incorporating the City of Port Wentworth provides for a form of government whereby the mayor and council act in concert to effectuate administrative actions of the government.

Specifically, the hiring, retention, and compensation of any city clerk, city treasurer, city attorney, or any other city employee is vested in a majority vote of the mayor and council. Furthermore, a majority vote of the mayor and council shall determine the time, place, and rules of procedure for regular sessions of the city council. Nevertheless, the mayor does have power to convene the city council in special sessions whenever he or she deems it proper.

The Code of Ordinances of the City of Port Wentworth, however, attempts to provide for a form of government that is somewhat different than what has been provided for by the General Assembly in the Act incorporating the city.

Under the Code of Ordinances, "the mayor or administrator shall be the executive and administrative officer of the city government" with a chief administrator who "shall appoint competent, qualified officers and employees to the administrative service and shall have the power to dismiss, suspend and discipline, in accordance with the personnel system, all officers and employees in the administrative service under his control, with approval of the mayor and council." Sec. 2-5. In essence, the Code of Ordinances attempts to grant other persons the power to appoint officers and employees; and only upon such other person's actions does the city council gain the power to approve or disapprove of the action.

Nonetheless, cities do not have the power to adopt changes to their form of government. See Jackson v. Inman, 232 Ga. 566 (1974).

"The governing authority of each municipal corporation shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law and which are not inconsistent with the Constitution or any charter provision applicable thereto...." Code Section 36-35-3(a). "A municipal corporation may, as an incident of its home rule power, amend its charter...." (Code Section 36-35-3(b)), but such power "shall not be construed to extend to [any]...action affecting the composition and form of the municipal governing authority...." (Code Section 36-35-6(a)(1)).

As such, any ordinance provision is void to the extent that it attempts to revise the form of government or is inconsistent with an applicable charter provision. Relating to the City of Port

Honorable Lester Jackson

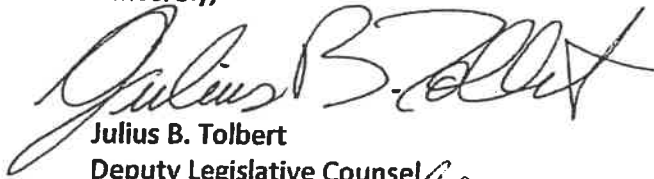
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Wentworth, any ordinance that attempts to provide for anyone other than the mayor and councilmembers directly electing and terminating a city clerk, a city treasurer, a city attorney, or such other city employee is inconsistent with the charter and its established form of government.

Let me know if you have any further questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Julius B. Tolbert". The signature is fluid and cursive, with the first name "Julius" being the most prominent.

Julius B. Tolbert

Deputy Legislative Counsel

Approved for release: 

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