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Manager Contract and Severance Agreements

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Legal Background

“The General Assembly shall not authorize any county, municipality, or other political subdivision of this state, through taxation, contribution, or otherwise, to appropriate money for or to lend its credit to any person or to any nonpublic corporation or association except for purely charitable purposes.” - Ga. Const. art. IX, § 2, ¶ VIII



Legal Background

“One council may not, by an ordinance, bind itself or its successors so as to prevent free legislation in matters of municipal government.” – O.C.G.A. 36-30-3(a)

- Extends to counties as well, See Madden v. Bellew, 260 Ga. 530 (1990); Ledbetter Bros. v. Floyd County, 237 Ga. 22 (1976); Brennan v. Chatham County Commissioners, 209 Ga. App. 177 (1993); International Brotherhood of Police Officers Local #471 v. Chatham County, 232 Ga. App. 507 (1998); Buckhorn Ventures, LLC v. Forsyth County, 262 Ga. App. 299 (2003).



Legal Background

Disposal of Personal Property

- Municipalities must dispose of property as dictated by state law. These laws are mostly found in O.C.G.A. 36-37-6
- Counties must dispose of property as dictated by state law. These laws are mostly found in O.C.G.A. 36-9-3



Legal Background

Contracts

- “Where a city charter specifically provides how a municipal contract shall be made and executed, the city may only make a contract in the method prescribed; otherwise, “the contract is invalid and unenforceable.” A municipality's method of contracting, once prescribed by law or charter, is absolute and exclusive. City of Baldwin v. Woodard & Curran, Inc., 293 Ga. 19, 26, 743 S.E.2d 381, 387 (2013)
- “All contracts entered into by the county governing authority with other persons in behalf of the county shall be in writing and entered on its minutes.” – O.C.G.A. 36-10-1



The Local Government, the Local Government Attorney, and You



- Who is the client and who does the local government attorney represent?
- Preserving confidences – who decides?
- Understanding what the local government attorney actually does.



City of McDonough v. Campbell

289 Ga. 216 (2011)

- Summer of 2005 - Certain employees with the City of McDonough were given employment contracts which automatically renewed each year unless the city took action to terminate the employee, in which case the employee would be entitled to a year's salary as severance, plus insurance and retirement benefits
- January 2006, the new governing authority for the city declares the contracts null and void and one employee (Campbell) demands severance pay of one year's salary, which the city denies



City of McDonough v. Campbell

289 Ga. 216 (2011)

- Supreme Court of Georgia holds that “the employment contract between the city and Campbell restricts the ability of a successor council to terminate Campbell's employment and to enter an agreement with others because the severance provision renders the cost of terminating the contract exorbitant.”
- Supreme Court also holds that city charters authorize cities to establish positions of employment but they do not expressly authorize “automatically renewable contracts containing substantial severance packages which have the effect of binding the hands of successor councils.”
- Finally, the Court held that the reasonableness of a contract “is not determined solely by the length of time it continues beyond the term of the officers entering into the contract...[but also turns on] whether the contract places a substantial financial obligation on the part of the city.”



Byrd v. City of Pooler

Active Litigation

- December 2023 – The former mayor and council for the City of Pooler adopt a Mutual Separation Agreement (MSA) between the city and the city manager.
- The MSA is prepared and adopted without the city attorney drafting, reviewing, or approving the document, though the city attorney did express concerns as to the legal validity of the MSA
- The former mayor, also an attorney, disagreed with the city attorney and informed the rest of the government body that the MSA had been thoroughly reviewed and was legally valid



Byrd v. City of Pooler

Active Litigation

- The MSA promised to pay the city manager for two years of service (totaling over \$500,000) plus the title of a city-owned 2023 Ford F-150, worth over \$60,000, for a price of \$10,000
- The new governing authority directed the city attorney to conduct additional legal review and the city attorney provided legal opinions that the MSA violated state laws governing Gratuities, disposal of property, and binding succeeding councils



Byrd v. City of Pooler

Active Litigation

- City filed a declaratory judgment action seeking to nullify the MSA as being ultra vires and in early 2024, the trial court agreed with the city
- The former city manager has since appealed and the city has sought a superseadas bond (an appeal bond)
 - It should be noted that the former city manager had already received around \$150,000 in payments along with the use of the city truck



Benefits Issues

- If offering additional employment benefits, such as additional years of service for a retirement plan, the local government should adopt an employment agreement but, more importantly, the retirement plan should likely be amended to protect against claims of binding succeeding councils
- One such benefit is in the plan it is considered a benefit under Georgia case law and IRS rules, and cannot be taken away.
- If such additional benefit is only in the employment agreement, it would likely be at risk, especially if there is a question of binding succeeding councils



Other Issues

- What is the reaction both the local government and the employee will face in the court of public perception with exorbitant agreements?
- What reputational damages may occur?



Employment Contracts Going Forward

- First, bear in mind that the Pooler litigation is still active litigation, so some things may change
- In football terminology, don't outkick your coverage



Employment Contracts Going Forward

- Regardless, if the length of tenure with the local government, all employees should keep in mind that politics can change quickly and state law protects the ability of new governing authorities to make their own decisions
- A valid contract may continue for a reasonable time beyond the official term and what is a reasonable length of time differs upon the circumstances of each case
 - More flexibility is given to proprietary functions
 - Employment contracts tend to be more governmental and financial



Key Takeaways

- Have your local government attorney review all contracts, especially employment contracts
- Rely upon the legal advice of your local government attorney, even if other attorneys have different opinions
- Remember that it is not the city's money – it is the taxpayer's money
- Do not place the local government in a position where you are getting something of high value from the local government for a much lower price – that will likely be a gratuity, and unconstitutional



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