



E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA

July 8, 2011

The Honorable John Eagleton
City Councilor, District 7
Tulsa City Council
175 East 2nd Street, 4th Floor
Tulsa, OK 74103

Dear Councilor Eagleton:

We have carefully evaluated the *Affidavits for Ouster* and studied all of the supporting materials you have provided to this Office¹ seeking an investigation and possible action for *Ouster* against the Honorable Dewey F. Bartlett, Jr., Mayor of the City of Tulsa, pursuant to Title 51 O.S. 2001, §§ 91 *et seq.* (generally referred to as “the Act”, herein). From this review, I have determined that the jurisdiction of this Office has not been properly invoked because of legal defects in the number and content of verified *Affidavits for Ouster* you have gathered and submitted. Additionally, after careful study of the law and facts, I have determined that even had the jurisdiction of this Office been properly invoked, the law and facts relevant to the several alleged grounds for *Ouster* do not support the bringing of an action for *Ouster*. Accordingly, your request for an investigation and civil action for *Ouster* is respectfully declined.

I.

**THE “AFFIDAVITS FOR OUSTER” ARE INVALID AS TO NUMBER AND CONTENT
TO SUPPLY JURISDICTION BY *CITIZEN NOTICE* UNDER THE ACT**

As you know, the legal jurisdiction of this Office to investigate and bring an action for *Ouster* under the Act is dependent² upon either being directed to undertake such action by the Governor of

¹We refer to the several “*Affidavit for Ouster*” forms, together with all of the supporting materials you forwarded to us, collectively as “your complaint” herein.

²Statutes such as the Act that authorize a forfeiture of a public office, being punitive, are strictly construed, *See Hendrick v. Walters*, 1993 OK 162, 865 P.2d 1232, 1238-1239 [“... When a *declaration of forfeiture* is sought, the general principles of constitutional and statutory construction may be applied. The court must be *mindful of this state’s strong statutory policy (as well as that of the surviving common law) which disfavors both private- and public-law forfeitures*. Courts will neither search for a construction that will bring about a forfeiture, nor adopt a meaning, which would produce that effect, unless the language of the statute or constitutional provision under consideration –giving due respect to its purpose and to extant circumstances—clearly demonstrates the legislature intended that a forfeiture take place.” (Emphasis in original, footnotes omitted)]. The facts set forth in your complaint do not invoke the Attorney General’s jurisdiction to bring an *Ouster* action on his own initiative pursuant to 51 O.S. 2001, § 102.

Oklahoma or, upon being provided written notice verified by “one percent (1%) of the registered voters that voted in the previous election for the political subdivision of which the officer who is the subject of the complaint is an official” (referred to herein as *Citizen Notices*)³. As you are aware, on March 11, 2011, the Honorable Mary Fallin, Governor of Oklahoma, declined your request to direct this Office to pursue such an investigation/civil action. Based upon the number of registered voters voting at the last city-wide election⁴, *Citizen Notice* from at least One Thousand, Forty (1,040) registered voters of the City of Tulsa would be required to confer jurisdiction upon the Attorney General under the Act.

You submitted “*Affidavit for Ouster*” forms containing Two Thousand Eight (2,008) signatures⁵. Of these, nineteen (19) signatories provided addresses⁶ showing residence in cities other than the City of Tulsa and therefore these persons clearly were not electors for that municipality. Of the remaining signatures, we found Six Hundred Two (602) made verification of the “*Affidavit for Ouster*” forms before several Notaries Public, and One Thousand, Three Hundred, Eighty-seven (1,387) are shown to have attempted their verifications before several members of the Tulsa City Council⁷.

Notaries Public are plainly authorized and empowered by State statute “to administer oaths” without qualification or limitation⁸. Tulsa’s City Councilors are not similarly authorized and empowered to administer oaths by State statute⁹. The Tulsa City Charter provides limited authority for City Councilors to administer oaths “in the performance of their duties. . . .”¹⁰ While City

³51 O.S. Supp. 2004, § 94. The alternative of being provided *Citizen Notices* from “fifteen or more reputable citizens of the county” is not available here since more than 1,600 registered voters voted in the previous city-wide election held in the City of Tulsa and thus the number of required registered voters is “greater” than the number of reputable citizens required for invoking the Attorney General’s jurisdiction.

⁴According to Shelly Boggs of the Tulsa County Election Board, the last city-wide election for the City of Tulsa was an election occurring on November 2, 2010, involving two (2) municipal questions pertaining to amendment of the City Charter. The total number of voters reportedly voting in that election was One Hundred Three Thousand, Nine Hundred and Fifty-four (103,954).

⁵This total includes both the signatures that were originally delivered together with your letter dated April 6, 2011 and the signatures that were delivered to this Office together with your letter dated April 26, 2011.

⁶These addresses were in Broken Arrow, Glenpool, Owasso, Pawhuska, Sand Springs and Skiatook.

⁷These forms indicate municipal Councilors Jack R. Henderson, Chris Trail, Roscoe Turner, Maria Barnes, James Mautino and John Eagleton administered the oaths of the signatories on “*Affidavit for Ouster*” forms.

⁸49 O.S. Supp. 2003, §6(A).

⁹11 O.S. 2001, § 8-104. *See also*, 11 O.S. 2001, §§ 16-307, 27-109, 28-104, 28-121, & 44-102 and 51 O.S. 2001, § 21(8).

¹⁰Article 12, § 19, Tulsa City Charter (1989, as amended), providing:

SECTION 19. ADMINISTRATION OF OATHS. The Mayor, *Councilors*, the City Clerk, and the City Attorney *may administer oaths in the performance of their duties*. [Emphasis added by bold italic typeface]

Councilors meeting as the City Council for the City of Tulsa are authorized to conduct hearings and receive evidence and testimony pertaining to the administration of city government¹¹, assisting citizens to prepare *Citizen Notices* for submission of *Ouster* complaints is not set forth as one of the duties of City Councilors under the Tulsa City Charter, nor under the municipal ordinances of the City of Tulsa. The submitted “*Affidavit for Ouster*” forms that were taken before City Councilors were not the product of such proceedings, nor were oaths administered in the performance of the City Councilors’ duties¹². Therefore, all of the verifications made before the City Councilors are not authorized or valid¹³. Presuming the remaining Six Hundred Two (602) signatories are registered voters for elections in the City of Tulsa¹⁴, this remaining number of signatories is insufficient to provide the Attorney General jurisdiction through *Citizen Notice* to proceed under the Act.

Beyond the facial and procedural deficiencies of the submitted *Citizen Notices*, all of the “*Affidavit for Ouster*” forms are likewise deficient as to content to invoke the jurisdiction of the Attorney General since none of them assert the Mayor “has been guilty” of some act for which he might be removed under the Act¹⁵. Instead, the “*Affidavit for Ouster*” forms only request an investigation by the Attorney General to determine if the Mayor should be subjected to an action for *Ouster* for willful failure or neglect to diligently and faithfully perform duties enjoined upon him by

¹¹Article 2, § 17, Tulsa City Charter (1989, as amended). Such proceedings must conform to the Open Meetings Act, *See*, Article 2, § 3.3, Tulsa City Charter, 25 O.S. 2001, §§ 301 et seq.

¹²According to the dates found on these “*Affidavit for Ouster*” forms, only thirty-one (31) signatures were gathered on dates the City Council met. None of the *Agendas* for the meeting dates during the time period these “*Affidavit for Ouster*” forms were gathered show public hearings within which such affidavits might have been gathered. We note in a letter dated April 7, 2011, by the Honorable Maria Barnes, Chairman of the Tulsa City Council, to Joel Wohlgemuth, Esq., an attorney for the Mayor, the efforts of the proponents of the *Ouster* were not undertaken as an official act of the Tulsa City Council

“ . . . [I]t is my assessment that this issue is not a City Council matter; rather, it is an effort by a single elected official, Councilor John Eagleton, which is supported by members of the Tulsa community.”

We also note that Chairman Barnes was one of the members of the City Council who attempted to administer oaths to signatories on some of the *Affidavit for Ouster* forms.

¹³*See, c.f., Beam v. Berryman*, 1930 OK 528, 146 Okl. 94, 293 P. 550, 552 [Where a statute requires that a pleading be verified and no verification sworn to before an officer authorized to administer an oath is attached, there is no proper jurisdiction to grant relief].

¹⁴Given the insufficient number of properly verified signatures, it was not necessary to cross-check the Six Hundred Two (602) signatories with the Tulsa County Election Board to determine whether these persons were registered to vote in city-wide municipal elections for the City of Tulsa.

¹⁵“It shall be the duty of the Attorney General . . . ***upon notice*** being received by the Attorney General ***in writing and verified*** by one percent (1%) of the registered voters that voted in the previous election for the political subdivision of which the officer who is the subject of the complaint is an official . . . before some officer authorized to administer oaths, ***that any officer herein mentioned has been guilty of any of the acts, omissions or offenses*** as set out in Section 93 of this title” [Emphasis added by bold italic typeface]. 51 O.S. Supp. 2004, §94.

state law¹⁶. Failure to conform to all of the formal requirements for invoking jurisdiction fails to invoke the legal jurisdiction sought.¹⁷

Since the legal conditions required to invoke the jurisdiction of the Attorney General to proceed under the Act have not been met, I must respectfully decline your request.

II. THE FACTS UNDERLYING THE ALLEGATIONS IN THE “*AFFIDAVIT FOR OUSTER*” FORMS DO NOT SUPPORT THE BRINGING OF AN ACTION FOR OUSTER

As stated above, and in order to provide clarity and closure, I also have studied the factual bases you have provided this Office for the ten (10) grounds alleged in the “*Affidavit for Ouster*” forms. The Act authorizes an action for *Ouster* against certain officers based upon the commission of “official misconduct” by the officer:

Official misconduct within the meaning of this act is hereby defined to be:

1. Any willful failure or neglect to diligently and faithfully perform any duty enjoined upon such officer by the laws of this state.
2. Intoxication in any public place within the state produced by strong drink voluntarily taken.

¹⁶“We, the undersigned, in writing and verified by an officer authorized to administer oaths, being citizens of the City of Tulsa, *petition the Attorney General to investigate Dewey F. Bartlett, Jr., Mayor of the City of Tulsa, Oklahoma, for willful failure or neglect to diligently and faithfully perform duties enjoined upon him by the laws of this state, and if on such investigation the Attorney General should find* that there is reasonable cause for such complaint(s), the Attorney General shall institute proceedings to oust the Mayor of the City of Tulsa from office.

“The specific complaints are that **Dewey F. Bartlett, Jr.**, while Mayor of the City of Tulsa, has . . . “
[Emphasis added by bold italic typeface].

¹⁷An analogous procedure has been recognized and addressed by the Courts in regard to invoking legal jurisdiction to prosecute criminal offenses. Prior to 2004, District Attorneys were not authorized to invoke the jurisdiction of the District Courts without filing a duly verified Information asserting that the facts alleged therein are “true”. An unverified, or imperfectly verified, Information did not invoke the subject matter jurisdiction of the District Court. The facts of the Information were required to be verified as “true”, Moss v. State, supra. A verification based upon a declaration “that the statements set forth in the above information are true as he is informed and believes” instead of a verification that the facts were “true” was not valid since that only amounted to the statement of an opinion of the verifier and did not constitute legal cause to proceed, Salter v. State, 1909 OK CR 75, 2 Okl. Cr. 464, 102 P. 719 & Official Syllabus ¶ 4. See also Edwards v. State, 1957 OK CR 21, 307 P.2d 872, 874 & Official Syllabus ¶ 4; Snapp v. State, 1909 OK CR 81, 2 Okl. Cr. 515, 103 P. 553 & Official Syllabus ¶ 2. Similar formal requirements for verification are found in certain special civil proceedings, See, Rennie v. Red Star Oil Company, 1920 OK 202, 78 Okl. 208, 190 P. 391, 392 [Petition only verified upon information and belief would not support issuance of a preliminary injunction]; Pallidy v. Beatty, 1905 OK 79, 15 Okl. 626, 83 P. 428 & Official Syllabus ¶ 2 [Petition only verified upon information and belief would not support issuance of a writ of mandamus].

3. Committing any act constituting a violation of any penal statute involving moral turpitude. Such an act has been committed, in the sense of this section, when the official involved has been convicted thereof by a court of record; and suspension from office as provided by § 98 of this title shall be sought and is hereby authorized upon such conviction, even though the official so convicted has appealed such conviction.¹⁸

It is clear that the facts you have supplied to us as the factual bases underlying the several allegations in the *Affidavits for Ouster* forms do not suggest that the Mayor has ever been intoxicated in any public place nor that the Mayor has been convicted of some criminal offense such that the jurisdiction of this Office might be invoked under paragraphs 2 or 3 quoted above. Accordingly, the sole legal basis available for bringing such an action under the facts you have provided is limited to “Any willful failure or neglect to diligently and faithfully perform any duty enjoined upon such officer by the laws of this state.”

Since the Act authorizes an action for the forfeiture of a public office, it is inherently punitive and must be strictly construed¹⁹. The plain meaning of the words used under paragraph 1 limits that ground for forfeiture to legal duties “enjoined upon such officer by the laws of this state.” Accordingly, official duties conferred upon the Mayor only by virtue of a local charter or municipal ordinance are not included within the scope of “official misconduct” justifying *Ouster* under paragraph 1 of Section 93. Consequently, to the extent the allegations set forth in the *Affidavit for Ouster* forms are founded upon violation of local charter or ordinance, they cannot, as a matter of law, serve as grounds for bringing an *Ouster* action.

A. “Received money not allowed by law and in violation of his oath of office”

This allegation is made in reference to a reimbursement of Seven Thousand, Twenty-eight Dollars and Nineteen Cents (\$7,028.19)²⁰ received on or about October 26, 2010 by the Mayor from Tulsa Community Foundation (“TCF” herein) for travel he undertook as Mayor of Tulsa to New York City, NY, and Washington D.C. on various dates in 2010.²¹ It is plain from video excerpts gathered from public meetings that were submitted by you that Mayor Bartlett freely admitted he received the Seven Thousand, Twenty-eight Dollars and Nineteen Cents (\$7,028.19) from TCF to

¹⁸51 O.S. 2001, § 93.

¹⁹See footnote 2, above.

²⁰The Mayor voluntarily provided copies of the TCF reimbursement check, copies of documentation supporting his request for reimbursement from the TCF, copies of his claims against the City of Tulsa for reimbursement for said travel, and a copy of his check to TCF returning the full amount of TCF’s reimbursement.

²¹The dates of travel were March 17-19, 2010 to Washington, D.C.; May 3-6, 2010 to Washington, D.C.; June 18-20, 2010 to Washington, D.C.; and New York City, NY on September 15-17, 2010. The travel undertaken by the Mayor was unquestionably for the general purpose of promoting economic development for the City of Tulsa and for the purpose of giving input upon pending federal legislation affecting cities; which are proper public purposes for official travel.

reimburse him for this travel. From the records provided to this Office, it is very clear the travel was not undertaken at the request of, or on behalf of, or for the benefit of TCF, but instead was undertaken by the Mayor solely for the promotion and benefit of the City of Tulsa²².

The matter of the Mayor's official travel was extensively discussed at a City Council Public Works Committee Meeting on June 8, 2010 due to concerns expressed by certain members of the City Council the travel had at that time been reimbursed by unapproved donations. We note that this was a meeting you attended. The travel was for the purpose of seeking economic development for the City of Tulsa. The Mayor stated as of that date he had personally paid his travel expenses but he thought he might seek reimbursement from TCF for travel. No concern was expressed at this time regarding the contemplated source of the potential donation of the reimbursement. No concern was expressed at the Mayor's travel for economic development; instead such travel was generally praised and congratulated by the meeting participants, including you. The Mayor inquired what the proper procedure was for seeking a donated reimbursement and was told that "in fairness" he should have such donations approved prior to accepting them since that was the procedure other officers and employees followed though it was observed that the relevant City ordinance did not explicitly require prior approval²³.

TCF is a tax-exempt, nonprofit organization that administers charitable funds²⁴. One of the funds²⁵ administered by TCF is "The Mayor's Expense Relief Fund" (MERF herein) that was created on January 18, 2008 pursuant to a private grant of money²⁶. The MERF is a "Designated Fund," which means that the donor of the funds may not direct or advise upon the expenditure of the funds.²⁷ The purposes and use of the fund are stated as follows:

²²There were no facts provided suggesting that the Tulsa Community Foundation granted the reimbursement gift to the Mayor for any purpose or intent of thereby obtaining some advantage in regard to influencing the City's business to its benefit or for some other corrupt motive. Accordingly there is no occasion to accuse the Mayor of being offered or accepting a bribe since *Bribery* requires proof of a corrupt offering, promising, giving or receiving of something of value, *See* 21 O.S. 2001, §§ 265, 381 & 382. *See also* OUJI-CR 3-2 and OUJI-CR-5, Oklahoma Uniform Jury Instructions – Criminal 2^d.

²³In the discussion, Drew Rees, Esq., the City Council's staff person designated "Council Attorney", observed that prior approval of donations for travel expenses was necessary though "it does not explicitly state so in the ordinance."

²⁴See www.tulsacf.org.

²⁵A list of the several funds administered by TCF is found on the website under "About TCF" and sub-tab "Fund List".

²⁶A copy of the indenture creating the Mayor's Expense Relief Fund was provided to this Office. Quotations herein from this indenture will be cited "*Indenture*". The Fund was created prior to Mayor Bartlett taking office. Monies were reportedly disbursed for the benefit of Mayor Bartlett's predecessor's official activities, though apparently not for travel-related purposes.

²⁷"(i) No person or entity has or reasonably expects to have advisory rights with respect to investments or distributions from this Fund. This Fund is not a 'Donor-Advised Fund' as defined by law." *Indenture*, p. 2, ¶ 4(i).

“This fund is solely designed to lessen the burdens of government, specifically the City of Tulsa, though other charitable purposes will likely be fulfilled with distributions from the fund.

“Qualified Expenses for which the Mayor of Tulsa would normally be reimbursed by the City of Tulsa may be fulfilled with distributions from this Fund, as described in section 3 of the Agreement in particular.”²⁸

According to records voluntarily provided to this Office by the Mayor, the monies provided to the Mayor from the MERF for travel reimbursement did not exceed the amounts he believed at the time he had expended in such travel²⁹. The Mayor initiated paperwork to request City Council approval of the travel expense donation on October 22, 2010; though this paperwork was apparently not received by the Office of City Council until November 2, 2010³⁰. The Mayor also initiated his request for a donation of reimbursement of the travel expenses to TCF on October 22, 2010³¹. On November 12, 2010, the Mayor executed a receipt for TCF’s check drawn on MERF funds³². Bank notations on the check copy provided to this Office by the Mayor show it was negotiated on or about November 16, 2011. The Mayor’s request was initially scheduled for consideration before the City

²⁸*Indenture*, page 4, Schedule A. Section 3 of the *Indenture* further provides:

“(a) The Fund shall be used to pay for reasonable and necessary expenses incurred by the Mayor of Tulsa, for which the City of Tulsa or other governmental entity cannot afford to pay on its own and for which no reimbursement will be provided (“Qualified Expenses”). The Foundation may make distributions of income and/or principal from the Fund.

“(b) The Mayor of Tulsa may make direct invoices (for payment of Qualified Expenses) to the Foundation, and the Foundation will consider distributing monies to cover these Qualified Expenses. The Foundation may reimburse the City of Tulsa (or other unit of government) for these expenses and/or the Mayor of Tulsa directly for Qualified Expenses, though reasonable efforts should be made at all times to pay the City or vendors/third parties for Qualified Expenses. The Foundation has final authority in paying or rejecting any Qualified Expense submitted by the Mayor of Tulsa and/or his/her office for payment.” *Indenture*, p. 1, ¶ 3

²⁹The following documents as to each event of travel were voluntarily provided to this Office by the Mayor: a summary of each trip, an itinerary for each trip, copies of invoices for lodging, copies of tickets used for transportation, and misc. receipts for reimbursable expenses. *Compare*, Title 12, §§ 503(B) & 504. The Mayor stated that the reason he sought MERF reimbursement was due to the refusal of the City Council to fund the Mayor’s expense fund in the levels he had sought in a proposed budget.

³⁰The Mayor’s “Request for Action: Donations” form regarding the TCF gift is dated October 22, 2010

³¹A transmittal letter from TCF to the Mayor, dated October 26, 2010, documenting the transmission of the donation check for the travel reimbursement states that the Mayor requested the TCF funds on October 22, 2010, the same date the “Request for Action – Donation Form” was initiated.

³²The TCF transmittal letter requested that the Mayor sign, date, and fax back a copy of the transmittal letter.

Council on November 18, 2010³³, but was not acted upon until December 9, 2010, when it was rejected³⁴ upon grounds that the donation should have received prior approval by the City Council before the donated funds were accepted by the Mayor. According to records voluntarily provided to this Office by the Mayor, the Mayor returned the full amount of the donation to TCF by way of the Mayor's personal check drawn in the amount of Seven Thousand, Twenty-eight Dollars and Nineteen Cents (\$7,028.19)³⁵. The Mayor then claimed reimbursement of the full cost of the same official travel from the City of Tulsa³⁶. As a consequence of this incident, a different procedure has been instituted by the Mayor regarding travel reimbursement. Under the new procedure, the Mayor first claims reimbursement from available City funds and then later a request is made on behalf of the Office of Mayor to the City Council for approval of donation of funds from TCF to replenish the City's travel fund³⁷.

A City ordinance specifically authorizes travel expenses of officials/employees to be defrayed by donations approved by the City Council unless made by governmental entities or agencies:

³³Minutes of the City Council for November 16, 2010, reflect that "Councilor Wescott says the wording [of the agenda item] should be more specific. Should be resubmitted with changes." The matter was apparently tabled, though the Minutes do not reflect this. Also reflected on the "Request for Action: Donation" form was the notation of a meeting date of December 2, 2010. The matter was not listed on the Agenda for that meeting of the City Council on December 2, 2010, nor was the matter taken up at that meeting.

³⁴The meetings of the City Council are recorded and posted on line at www.tgovonline.org. Reference to the video recording of the City Council meeting of December 9, 2010, the Councilors who commented on the Mayor's request for approval of the Donation went to great lengths to state that the Tulsa Community Foundation had not done anything wrong by providing the funds to the Mayor. Councilor Christianson stated in part: . . . In this case, 3(y), the donation from the Tulsa Community Foundation has not been accepted by us and I want to say categorically say, and let everybody know, that this has nothing to do with the Tulsa Community Foundation. This has to do with the process that the Administration did not follow properly to accept this donation . . ." Councilor Trail remarked: ". . . I want to point out that Tulsa is very fortunate to have some of the Foundations that we do that are willing to help out and help the City. We are blessed because of that. I also want to point out that they haven't done nothing improper. You know, they've only tried to help out the City. . . ." Councilor Westcott: ". . . the Mayor violated the City Ordinance. The Kaiser (sic) Foundation did not. . . ." You then moved to deny acceptance of the donation and Councilor Mautino seconded the motion. All nine (9) Councilors voted to reject the donation.

³⁵The Mayor's check to TCF was dated March 3, 2011.

³⁶Although initiated on March 1, 2011, according to the dates on the four (4) Travel Voucher claim forms, processing of the Mayor's travel claims was not accomplished until on or after March 23, 2011 according to the claim forms. Prior to submitting this claim, the Mayor realized approximately Nine Hundred Dollars (\$900.00) had been waived from his fee for the Oklahoma City event and he accordingly reduced the amount he claimed for this travel. On March 9, 2011, the Office of Mayor initiated a request to the City Council for approval of a donation from TCF to replenish the travel fund. The waiver of the Nine Hundred Dollar fee was not a "donation" requiring prior approval, *See*, Title 12, § 501(D), Revised Tulsa Ordinances.

³⁷Under this procedure, the donation by TCF of travel funds reimbursement is not made directly to the Mayor, but instead is made to the City.

SECTION 505. DONATION OF TRAVEL EXPENSES.

All travel expense donations shall be approved by the City Council except those made by governmental entities or agencies, which shall be approved by the Mayor or his designee. Approved travel expense donations shall be documented and accounted for as provided by law³⁸.

“Travel expense donation” as used in Section 505, is specially defined by City ordinance as follows:

D. Travel Expense Donation means any travel-related expense *paid* in whole or in part by any person, firm or corporation other than the City of Tulsa and shall include all contributions, proceeds or honoraria *received* in connection with travel for city business or professional development. *Discounts* and/or *waivers* of travel-related expenses shall not be considered donations³⁹. [Bold typeface in the original – Emphasis added by bold italic typeface]

A gift reimbursing accrued travel expenses to the Mayor was received by him directly from TCF to defray the actual expenses he incurred for official travel. The gift was completely consistent with the charitable public purpose for the fund administered by TCF. The gift was plainly not from a “governmental entity or agency” such that the Mayor could approve it under Section 505. The gift of the Mayor’s travel expenses also was plainly within the meaning of “travel expense donation” as defined in the quote above. A gift of travel expenses from the TCF is authorized under Section 505 when approved by the City Council of the City of Tulsa. When approved, such a gift does not violate the Mayor’s oath of office⁴⁰ since receipt of the gift is allowed by Section 505 when approved by the City Council. Acceptance of such a gift benefits the City of Tulsa since the Mayor’s travel expenses would ordinarily be recoverable from the City of Tulsa by the Mayor from funds budgeted and appropriated for that purpose and acceptance of the donation would preserve unexpended, budgeted funds of the City of Tulsa.

³⁸Title 12, § 505, Revised Tulsa Ordinances. This provision, involving a matter of local concern, supercedes the provisions of 60 O.S. 2001, §§ 390 and 393 to the extent Section 390 might pertain to donations of travel expenses.

³⁹Title 12, § 501(D), Revised Tulsa Ordinances. The plain meaning conveyed by the past tense of the words used in this ordinance appears to authorize the receipt of the donated travel expense donation prior to the approval by the City Council [e.g., something “paid” instead of “to be paid”; something “received” instead of “to be received”].

⁴⁰*See* Article 15, § 1, Oklahoma Constitution, providing in relevant part “. . . I will not knowingly receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office other than the compensation allowed by law. . . .”

From an examination of all of the facts, we find at best a procedural infringement of a local oral policy regarding the approval process for receiving donated funds⁴¹. This local policy is not stated in the City Charter or the Revised Tulsa Ordinances, but instead is a matter of practice followed by the City Council⁴². The Mayor was made aware of the City Council's practice of requiring prior approval of travel expense donations in June 2010. In light of this, the Mayor initiated the process of requesting a donation of travel related expenses from the TCF on the same date as paperwork commenced to place the matter of the donation before the City Council of the City of Tulsa for its acceptance. The Mayor's announcement in a public meeting held some four (4) months prior to seeking both the donation from TCF and the approval of the donation by the City Council of his intent to seek the travel expense donation from TCF, did not appear to cause any concern vis-a-vis the source of the donation of travel expenses by TCF so long as the Mayor, in fairness, played by the same rules as other officials and employees by having the donation pre-approved by the City Council. TCF processed the Mayor's request for donation quicker than the City processed the paperwork to be submitted to the City Council, and the TCF check was issued and delivered to the Mayor prior to the date the City paperwork was processed and sent to the Office of City Council. There was plainly no intent to corrupt the Mayor on the part of TCF by providing the donation and it acted within the terms and procedures of its charitable fund in delivering the reimbursement donation directly to the Mayor⁴³. There was plainly no intention on the part of the Mayor to hide or cover up the donation of travel expenses he received from the TCF since he had previously and very publically announced this intention four (4) months before he made his request to TCF for the donation, the necessary paperwork to submit the donation to the City Council for its approval was commenced the same date as the request for the donation was made, and the Mayor has always candidly and frankly discussed the matter in open public meetings.

The Mayor did not make an unlawful request for donation of the travel reimbursement expenses from TCF because at the time he made the request, such a donation could lawfully be approved by the City Council. In point of fact, had the City Council acted to approve and not reject the Mayor's request for approval of the donation it would have acted consistently with the plain text of the City ordinances even though the donation was received by the Mayor prior to the City Council's approval. When the City Council acted instead to reject the travel expense donation provided to the Mayor by TCF, the Mayor could not lawfully retain the donated money he had already received from TCF⁴⁴ since the City Council unquestionably had the power to ultimately

⁴¹The Mayor's actions, even in their totality, do not appear to violate the plain meaning of the relevant Tulsa Revised Ordinances quoted above.

⁴²This unwritten policy of the City Council appears to conflict with the plain meaning of the words used in the relevant Ordinance, *See* footnote 39, above.

⁴³Delivery of the donation by TCF directly to the Mayor is also consistent with the plain meaning of the words used in the text of the City's relevant ordinances, *See* Title 12, §§ 501(D) & 505, Revised Tulsa Ordinances, quoted above.

⁴⁴Title 12, §§ 505 & 506, Revised Tulsa Ordinances.

accept or reject the proffered travel expense donation. Had the Mayor kept the donated money, the Mayor might have violated his oath of office and possibly subjected himself to criminal prosecution and disqualification from ever again holding office⁴⁵. Instead, the Mayor returned the attempted gift to the TCF⁴⁶.

We find that even if the City Council's unwritten travel expense donation practice was abridged, no crime was committed, nor was there a violation of the Mayor's oath of office regarding this matter, nor was there any violation of a duty "enjoined upon such officer by the laws of this state." No further action by this Office is required regarding this allegation.

B. "Failed to make timely appointments to City authorities, boards and commissions"

This allegation involves the failure of the Mayor to make appointments to certain City authorities, boards and commissions within sixty (60) days. The Mayor's duty to make appointments within that time period is not founded upon a State law, but instead is enjoined upon him by the Tulsa City Charter⁴⁷. It is notable the Mayor's appointments, if tardy, were mostly accepted by the City Council⁴⁸. It also is notable under the City ordinance the failure of the Mayor to make the appointment within the Charter's time period extends the incumbent's term until an appointment is

⁴⁵See, 21 O.S. 2001, § 269(A) [Every executive officer who asks or receives any emolument, gratuity or reward, or the promise of any emolument, gratuity or reward, excepting such as may be authorized by law, for doing any official act is guilty of a misdemeanor]; Article 15, § 2, Oklahoma Constitution. [". . . any person who shall have been convicted of . . . having violated said oath, or affirmation, shall be guilty of perjury, and shall be disqualified from holding any office of trust or profit within the State."]. It should be noted that violation of an official's promise not to accept monies not provided by law is a future promise that is not included within the statutory crime of Perjury, See 21 O.S. 2001, § 493.

⁴⁶It would have been better practice had the Mayor acted more promptly to return the attempted gift to TCF. Considering the turmoil created by the unexpected rejection of the donation, it does not appear that the Mayor's retention of the attempted donation from December 2010 when the donation was rejected by the City Council and March 2011 when it was returned to TCF, reflected an intent to permanently retain the donation as much as confusion over the uproar from the City Council.

⁴⁷Article 12, § 11(B), Tulsa City Charter (1989, as amended).

⁴⁸From the information you provided to this Office, we note that Council Staff observed that the great majority of the Mayor's appointments requiring City Council approval were approved by the City Council: "The fact is that the City Council has approved 145 of the Mayor's 151 appointments and reappointments since he took office in December of 2009. Of the six appointments and reappointments not approved, one was withdrawn by the appointee. In other words, the City Council has worked with Mayor Bartlett and approved over 96% of his appointments and reappointments.

". . . the TGOV recordings show that the majority of these appointees have been commended by the City Council rather than attacked. . . ." Memorandum dated April 13, 2011 from Council Staff to Chris Trail.

made⁴⁹ and also empowers the City Council to fill any vacant positions⁵⁰, thus ensuring the public's business is not compromised if the Mayor fails to act in a timely manner. The facts do not show a violation of some duty "enjoined upon such officer by the laws of this state." No action for *Ouster* by this Office upon this allegation is authorized under the Act.

C. "Failed to attend authority, board and commission meetings where he is a board member"

This allegation pertains to an alleged failure of Mayor Bartlett to attend or to designate a delegate to attend meetings of City boards and authorities of which the Mayor of Tulsa is designated a member. The materials you provided assert that between the time Mayor Bartlett took office and January 1, 2011, the Mayor had only delegated attendance on his behalf to ten (10) of the fifteen (15) City boards and authorities for which the Mayor is a member, and that of the remaining five (5) such boards and authorities⁵¹, the Mayor had only attended 8.3% of the meetings. The Mayor is authorized to designate another person to serve in his place upon each of these boards and authorities⁵². Mayoral membership and attendance at the meetings of the City's boards and authorities is not a duty enjoined by State law, but is conferred by City Charter provision, Public Trust indenture, or interlocal contract. The facts do not show violation of some duty "enjoined upon such officer by the laws of this state." No action for *Ouster* by this Office upon this allegation is authorized under the Act.

D. "Accepted free gifts or services from a city contractor, in violation of the Ethics Code"

The factual basis for this allegation is that Joel Wohlgemuth, Esq., an attorney who served as retained counsel for the City of Tulsa defending certain long-standing civil suits, voluntarily provided legal advice and services *pro bono*⁵³ to the Mayor in relation to a matter pending in the

⁴⁹Article 12, § 11(A), Tulsa City Charter (1989, as amended).

⁵⁰Article 12, § 11(B), Tulsa City Charter (1989, as amended).

⁵¹The five (5) boards and authorities the Mayor is accused of not attending are set forth in a table included with Councilor Eagleton's materials as follows: INCOG, TARE [Article V, §3.1, Tulsa City Charter (Amended 1989)], City County Library Commission [Title 20, § 101, Tulsa Revised Ordinances and 65 O.S. Supp. 2007, § 554(B)(1) (d), serves ex officio. The statute does not establish a duty to maintain some minimum attendance at meetings.], TMUA [Article V, § 2.1, Tulsa City Charter (Amended 1989)] and the Tulsa Performing Arts Center Trust [Title 39, Ch. 12, Appendix, Tulsa Revised Ordinances].

⁵²Article V, §§ 1.3, 2.3 & 3.3, Tulsa City Charter (Amended 1989).

⁵³"*Pro bono*" is a shortened version of the phrase "*pro bono publico*", meaning "for the public good; for the welfare of the whole". Blacks Law Dictionary (6th Ed., West Pub. Co.1990). According to traditional norms of the legal profession, a lawyer owes a duty to the public generally to assure legal representation in the public interest.

Tulsa Ethics Commission based upon the complaint of the City Council⁵⁴. It is alleged that the Mayor's acceptance of *pro bono* representation by Mr. Wohlgemuth in the City Ethics Commission matter violated a City ordinance⁵⁵ because the attorney's contracts to continue to represent the City in these long-standing lawsuits had been amended during the same time period⁵⁶, allegedly in exchange for Mr. Wohlgemuth's *pro bono* representation of the Mayor. There is no evidence that the contracts' amendment approved by the Mayor was for some corrupt reason.⁵⁷ The amendment of Mr. Wohlgemuth's contracts occurred well before he undertook to represent the Mayor⁵⁸. An "apparent" violation of the City's *Ethics Code* ordinance does not constitute the violation of a duty "enjoined upon such officer by the laws of this state." No action for *Ouster* by this Office upon this allegation is authorized under the Act.

Since this duty is owed the public, the client served in such capacity owes the lawyer nothing. Strictly speaking then, providing legal services *pro bono publico* is not a gift to the client, it is a gift to the public.

⁵⁴The complaint was determined to be without merit.

⁵⁵Specifically, *See*, Title 12, § 605(A), Revised Tulsa Ordinances. Under this provision, a city official may not accept a gift "which may influence or be reasonably perceived as influencing a City official in the performance of their (sic) official duties."

⁵⁶Contrary to the allegations of the complaint, the City Auditor found that there was no extension of Mr. Wohlgemuth's contracts with the City after Mr. Wohlgemuth commenced to represent the Mayor, Special Project Ethics Complaint filed August 10, 2010, at p. 2. Having had his professional integrity impugned, Mr. Wohlgemuth denies any intention to contract with the City of Tulsa during the tenure of the current Mayor. Letter of Wohlgemuth to Michael Slankard, Chairman, Ethics Advisory Committee, May 20, 2011, p. 3.

⁵⁷The City Council had previously conducted an investigation based upon an allegation that the Mayor and a subordinate had "lied" to the City Council. Such action would be a violation of a municipal ordinance. Mr. Wohlgemuth appeared for the Mayor after the entire Legal Department recused from the investigation, citing their duty to provide legal advice and counsel to both the Mayor and City Commission. No actual corruption was found by the City Auditor in the relationship between the Mayor and Mr. Wohlgemuth. The City Auditor, specifically found that there was no evidence of a *quid pro quo* between the Mayor and Mr. Wohlgemuth in regard to Mr. Wohlgemuth's providing *pro bono* representation of the Mayor, stating:

"... There was no 'quid pro quo', the Mayor had neither offered nor used any City funds or other City resources in connection with the pro bono legal representation. The Contractor had never requested or received anything from the City or from the Mayor in exchange for the pro bono legal services provided. No payments made pursuant to City contracts were applied for the pro bono legal representation of the Mayor." Special Project Ethics Complaint filed August 10, 2010, p. 2. The Auditor found "an appearance of impropriety" under the City *Ethics Code* that should be avoided in the future. This finding was based solely upon a the City Auditor's interpretation of the City's *Ethics Code* and was not based upon any provision of State law. The *Ethics Code* of the City of Tulsa cannot be enforced through an action for *Ouster* since violation thereof is not violation of a duty "enjoined upon the officer by the laws of the state."

⁵⁸One contract was amended on March 8, 2010 and the other was amended on April 29, 2010. Mr. Wohlgemuth did not commence his *pro bono* representation of the Mayor until July 2, 2010.

E. “Offered to trade favors if a Councilor would vote to approve a donation to the Mayor”

The alleged factual basis for this allegation is that the Mayor offered to “direct the Public Works Department to provide traffic light timing in south Tulsa if [Councilor Christianson] would vote to allow the Mayor to keep the \$7,028.19 previously paid into the Mayor’s personal bank account.” According to the Mayor, this matter reportedly took place on January 28, 2011 over lunch at a local restaurant. Present at the luncheon were the Mayor, the Mayor’s chief of staff, and Councilor Christianson. According to the Mayor, the matter of the traffic light timing was brought up by Councilor Christianson and discussed. According to the Mayor, much later in the conversation, the Mayor sought Councilor Christianson’s support for an increase to the Mayor’s travel budget in light of then-recent increase of sales tax revenue. Mr. Christianson would not agree to support the increase. Reportedly, the Mayor’s chief of staff supports the Mayor’s version of this meeting. According to records submitted by you, the Mayor expedited the approval of resources for the traffic light timing in south Tulsa sought by Councilor Christianson. No increase in the Mayor’s travel budget occurred.

It is possible that Councilor Christianson simply misunderstood what the Mayor was proposing. The matter sought by Councilor Christianson was expedited by the Mayor and no adjustment to the mayor’s travel budget was proposed or approved by the City Council. There is no evidence of any favors having been traded. Sufficient facts do not exist to show the violation of some duty “enjoined upon such officer by the laws of this state.” No action for *Ouster* by this Office upon this allegation is authorized under the Act.

F. “Lied to and allowed a subordinate to provide false information to the City Council”

This matter does not involve any allegation of the commission of perjury or subordination of perjury through giving false sworn testimony. It involved the alleged violation of a municipal ordinance that prohibits intentionally providing untrue information to the City Council.

The facts do not show violation of some duty “enjoined upon such officer by the laws of this state.” No action for *Ouster* by this Office upon this allegation is authorized under the Act.

G. “Used taxpayer money for personal purposes in violation of state law and the Ethics Code”

This matter involves allegations that the Mayor authorized the expenditure of City money to purchase business cards for his wife showing her to be “First Lady” of Tulsa and bearing the

official seal of the City of Tulsa⁵⁹. Mrs. Bartlett also was provided an e-mail address on the City computer system. There is no official office of “First Lady” under the City Charter or City ordinances of the City of Tulsa. According to a sworn affidavit subscribed by Mrs. Bartlett, she is employed full time as a clerk for a federal judge and cannot use her official business cards other than for official purposes. She was provided the questioned city business cards by a staff person of the City of Tulsa to assist her in her uncompensated role as spokesperson for City of Tulsa initiatives⁶⁰. Mrs. Bartlett made numerous public appearances on behalf of the City within her unofficial role as First Lady and unpaid volunteer member of City committees⁶¹. As an unpaid volunteer member of the City committees, Mrs. Bartlett’s efforts on behalf of the City are subject to the provisions of the Ethics Code of Tulsa⁶². Due to her status as an unpaid City volunteer and spokesperson, Mrs. Bartlett being provided city business cards to use only in the performance of her official duties would be for “official,” not personal purposes⁶³.

The facts alleged do not show violation of some duty “enjoined upon such officer by the laws of this state.” No action for *Ouster* by this Office upon this allegation is authorized under the Act.

H. “Solicited individuals to file lawsuits against the City of Tulsa”

The alleged factual basis for this allegation is the Mayor “actively sought out individuals and provided them information and non-monetary support to file litigation against the City of Tulsa” referring to lawsuits filed against the City Council by private persons *sub nom.* Holmes v. Tulsa City Council and Goodwin v. Tulsa City Council.

Although the Mayor denies having done what is alleged, even taken as true, such conduct would not provide grounds for *Ouster* since the facts alleged do not show violation of some duty

⁵⁹According to Mrs. Bartlett’s sworn affidavit, the cards were not provided to her by or upon the request of the Mayor, but were provided by Kim MacLoud, Director of Communications for the City of Tulsa. See, ¶4, Affidavit of Victoria Ann Bartlett, dated August 24, 2010.

⁶⁰According to Mrs. Bartlett’s affidavit, she serves as an unpaid volunteer on the following City committees: tulsa Million Miles, Mentoring to the Max, and the 2010 Census Campaign, See, ¶11, Affidavit of Victoria Ann Bartlett, dated August 24, 2010. An unpaid volunteer who does not exercise governmental authority is not within the scope of the State *Neopotism* laws, See 21 O.S. 2001, §§ 481–487 that contemplate appointment of a person by the person’s relative to a compensated position. A city’s provision of business cards and an e-mail address for the use in her role of spokesperson for the City initiatives is not compensation for the volunteer, but instead is a tool to assist her in providing such unpaid services.

⁶¹See, ¶¶ 13-32, Affidavit of Victoria Ann Bartlett, dated August 24, 2010.

⁶²See, Title 12, § 601-609, Revised Tulsa Ordinances.

⁶³Mrs. Bartlett states in her sworn affidavit that the Mayor had no prior notice of and played no part in her being furnished the city business cards and e-mail address, See, ¶¶ 3 & 10, Affidavit of Victoria Ann Bartlett, dated August 24, 2010. We have not found or been shown evidence to the contrary.

“enjoined upon such officer by the laws of this state.” No action for *Ouster* by this Office upon this allegation is authorized under the Act.

I. “Committed oppression in office by demanding the resignations of Council staff without any lawful authority”

Drew Rees is an attorney. He was originally employed as an Assistant City Attorney but apparently was transferred to the staff of the Tulsa City Council by whom he now is reportedly supervised. He holds himself out as “Council Attorney.” The Tulsa City Charter recognizes the authority of the Tulsa City Council to employ staff⁶⁴, but does not specifically authorize the Tulsa City Council to employ an attorney to advise them. According to the Mayor, Mr. Rees was acting contrary to the direction of the City Attorney regarding a legal matter from which the City Attorney had disqualified the legal staff from participation⁶⁵. Under the Tulsa City Charter, the duty of providing legal advice to the City Council is expressly and unambiguously assigned to the City Attorney⁶⁶. The Mayor has the power under the Tulsa City Charter to “send messages and recommendations to the Council. . . .”⁶⁷ Unlike the City Council that is unambiguously prohibited by the Tulsa City Charter from “directly or indirectly attempt[ing] to dictate, demand, or influence the appointment or removal of any person to or from the classified service,”⁶⁸ the Mayor of Tulsa is not subject to a similar prohibition regarding City Council staff.

The facts alleged against the Mayor appear to be authorized under the fundamental law of the City. The facts alleged do not show any violation of a duty “enjoined upon such officer by the laws of this state.” No action for *Ouster* by this Office upon this allegation is authorized under the Act.

J. “Expended funds contrary to the approved Policy of the City of Tulsa”

The alleged factual basis for this allegation is the Mayor continues to employ and pay David L. Pauling, Esq., Interim City Attorney for the City of Tulsa, after the City Council passed a resolution of “no confidence” regarding that officer over the Mayor’s veto⁶⁹. The Mayor possesses

⁶⁴ Article 3, § 1.4(F), Tulsa City Charter (Amended 1989), authorizes the Mayor to appoint, supervise and remove all officers and employees of the City of Tulsa except for the employees of the City Auditor, “and [except] the employees of the Council, who shall be appointed, supervised and may be removed by the Council, . . .”

⁶⁵ See footnote 57, above.

⁶⁶ Article 3, § 4, Tulsa City Charter (Amended 1989), that provides in relevant part: “The City Attorney shall be the chief legal advisor and attorney for the city and all offices, divisions, departments, boards, authorities, commissions and agencies thereof. The City Attorney shall:

“A. Provide, supervise, and manage all legal service. . . .”

⁶⁷ Article 3, § 1.5(A), Tulsa City Charter (Amended 1989).

⁶⁸ Article 2, § 19, Tulsa City Charter (Amended 1989).

⁶⁹ The City Council apparently was of the view that the City Attorney was not a member of the classified service since it made a finding in the resolution that he was not a member of the classified service.

The Honorable John Eagleton
Tulsa City Councilor, District 7

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July 8, 2011

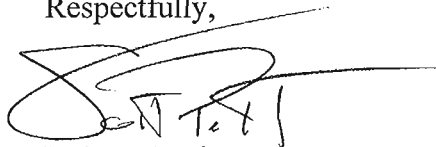
plain legal authority to appoint the City Attorney without City Council approval⁷⁰ and this officer is only subject to removal through the Civil Service Commission proceedings⁷¹. There is no legal authority within the Tulsa City Charter for the City Council to pass “no confidence” resolutions to affect the continued service of City officers and employees and such conduct by the City Council might, in fact, violate the Tulsa City Charter⁷².

The facts alleged do not show violation of some duty “enjoined upon such officer by the laws of this state.” No action for *Ouster* by this Office upon this allegation is authorized under the Act.

CONCLUSION

The several *Affidavit for Ouster* forms submitted by you on behalf of concerned citizens were insufficient in number and form to invoke the jurisdiction of the Attorney General under the *Ouster* statutes. Since analysis of the several grounds submitted in these forms fails to show a factual basis for bringing such an action, even if verified written citizen notices were received in sufficient number and form to invoke the jurisdiction of the Attorney General under the *Ouster* statutes, I do not find factual support for bringing such an action.

Respectfully,



E. Scott Pruitt
Attorney General

cc: Joel Wohlgemuth, Esq., Norman, Wohlgemuth, Chandler & Dowdell, 2900 Mid Continent Tower, Tulsa, OK 74103
Charles S. Rogers, Assistant Attorney General

⁷⁰Article 3, § 1.4(F), Tulsa City Charter (Amended 1989).

⁷¹See, Article 10, Tulsa City Charter (Amended 1989). The City Attorney is a member of the classified service protected by Article 10, *supra*. See, Article 10, § 5, *supra*.

⁷²See, Article 2, § 19, Tulsa City Charter (Amended 1989). Such a violation by the members of the City Council would not be a basis for action in *Ouster* against the City Councilors since the City Councilors would not have violated a duty enjoined upon them by State law.