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April 10, 2008

Karen Rodia
Town Charter Revision Committee
Stratford Town Council
2725 Main Street
Stratford, CT 06615

**RE: Impeachment/ Suspension Procedure/ Discipline for Chief Elected
Official Violates the Charter, Collective Bargaining Agreement, or
Fails to Fund Approved Expenditure**

Dear Mrs. Rodia:

At a recent Charter Revision Commission meeting, you requested that we research the following question:

“What is the proper procedure for the impeachment, suspension or discipline of the chief elected official of the town if he or she violates the charter, collective bargaining agreement, or fails to fund an approved expenditure.”

There is no precedent in this state for the impeachment, suspension or discipline of a chief elected official on the bases set forth above. We have, however, researched the issue and believe the following options are available:

A) Quo Warranto

Quo warranto, for the purposes of this opinion, usually arises as a result of a plaintiff's claim that some governmental or corporate official is wrongfully exercising powers beyond those authorized by statute or by the corporation's charter. Quo warranto will be granted, and under some laws is the exclusive remedy, to determine the right of one who is charged with usurping, intruding upon, or unlawfully holding or executing, a public office. The writ is the proper method to test the right to the office of mayor. *McQuillin's Municipal Corporations* § 50:1, et seq.

A complaint in the nature of a quo warranto may be brought "[w]hen any person ... usurps the exercise of any office ... [and] the Superior Court may proceed ... to punish such person ... for such usurpation, according to the course of the common law and may proceed therein and render judgment according to the course of the common law." *General Statutes* § 52-491. "A quo warranto proceeding under the common law lies only to test the defendant's right to hold office de jure." *Cheshire v. McKenney*, 182 Conn. 253, 256-57, 438 A.2d 88 (1980). It is well established that in quo warranto proceedings the burden is upon the defendant to show a complete title to the office in dispute." *Id.* If the defendant fails to meet his burden of proof, the court will order that the defendant be ousted from office and the position be declared vacant. *Beccia v. Waterbury*, 185 Conn. 445, 456, 441 A.2d 131 (1981). Once the position is vacant, a mandamus action may be brought to request an order that a valid appointment be made. *Id.* at 457.

B) Mandamus

A writ of mandamus is issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly. It is a judicial remedy in the form of an order to any government, subordinate court, corporation or public authority to do or forbear from doing some specific act which that body is obliged under law to do or refrain from doing, as the case may be, and which is in the nature of public duty and in certain cases of a statutory duty. *McQuillin's* § 51.1, et. seq.

A writ of mandamus was the remedy sought in *Lyons v. Serrani*, 1991 WL 127159, 2 (Conn.Super. 1991). In *Lyons*, the mayor of the City of Stamford refused to implement an ordinance duly enacted by the legislative branch of the city allowing for rear yard garbage pickup. Instead, the mayor directed that homeowners bring their refuse to the curb. The stated reason for this decision was the general fiscal problems facing Stamford in particular, and the northeast in general, and the desire to cut back on city expenses. *Lyons v. Serrani*, 1991 WL 127159, 2 (Conn.Super. 1991)

The Court in *Lyons* addressed *Hennessey v. Bridgeport*, 213 Conn. 656, 569 A.2d 1122 (1990), which discussed the issuance of a mandamus in a municipal setting. In *Hennessey* the court found that such a writ may be granted only when a party proves: "(1) that the plaintiff has a clear legal right to the performance of a duty by the defendant; (2)

that the defendant has no discretion with respect to performance of that duty; and (3) that the plaintiff has no adequate remedy at law." *Id.* at 659. The Supreme Court describes these criteria as a "demanding test", and also indicates that "special caution" is required before granting such a writ because it involves public funds and an impact on taxpayers. *Id.* at 659-660.

In *Hennessey*, the plaintiff, who had been appointed administrator for humane affairs, was dismissed by the mayor of Bridgeport due to what was described by the court as a "severe deterioration in the city's financial condition." *Id.* at 657. The charter provided that the mayor was obliged to appoint an administrator for humane affairs "for a term of four years". The court held that fiscally motivated layoffs are permissible "unless some charter provision expressly imposes such constraints on fiscal layoffs," *Id.* at 663, and that the Bridgeport charter had no limitation on such layoffs. The court held "... that the mayor's responsibility to manage the city's finances affords him the implied power to dismiss city personnel for serious fiscal reasons," *Id.* at 661. The Court also held that mandamus would not lie where an executive authority has "discretion" to perform or not perform his duties. *Id.* at 664, n. 6.

The defendants in *Lyons* cited *Hennessey* in support of their argument that the executive branch should be permitted to, in effect, ignore municipal ordinances if the financial conditions of that municipality are sufficiently serious to warrant such action. The Court, however, found *Hennessey* to be distinguishable for several reasons. First, the dispute in *Lyons* revolved only around the actual implementation of the ordinance, as opposed to the mayor's termination of employment of refuse collection division employees. Second, while the plaintiff in *Hennessey* conceded that he was not "disputing that the city's financial crisis was the sole reason for his dismissal," the plaintiff in *Lyons* denied any kind of financial crisis warranting the decision. In fact, the money for rear yard pickup had already been appropriated Stamford's fiscal year budget. In addition, tax bills containing a charge for rear yard pickup had already been sent to those residents of the city who have municipal garbage collection. Thus, the Court found the stated reasons for curbside pickup were not credible: (i) "a reduction in funding", as there has been no such reduction, because both the Board of Finance and the Board of Representatives have approved sufficient funding, albeit for six months, to implement rear yard pickup; and (ii) "in the interest of reducing taxes," but, as mentioned previously, the tax bills that have already been sent out to those Stamford residents who are entitled to municipal pickup include a charge or tax for rear yard pickup.

The Court noted that "[a] municipality must follow its own valid ordinances." *AD-EX, Inc. v. City of Chicago*, 565 N.E.2d 669 (Ill.App. 1 Dist.1991). It then went on to cite *McQuillan, Municipal Corporations*, § 15.42, stating that "A city may suspend an ordinance by ordinance. But the operation of an ordinance cannot be suspended by the act of municipal officers, even though the suspension is attempted by resolution ... In other words, corporate authorities have no power other than legislative power duly exercised to abrogate or suspend an ordinance or to authorize a violation of it."

The Court found that the ordinance mandating rear yard pickup is a valid exercise of legislative authority and that the ordinance must be obeyed. The Court further held, however, that it is the responsibility of the executive branch to use its own discretion in implementing the ordinance. Ultimately, the Court held that a writ of mandamus should issue directing the defendants to implement the ordinance concerning rear yard pickup of garbage. Lyons, *supra* at 3-4.

Based upon this holding, it appears that, in the event the Mayor violates a charter or collective bargaining agreement or fails to fund an approved expenditure, a taxpayer may seek specific performance through a writ of mandamus. It should, however, be noted that the Courts will grant the mayor broad authority in implementing, interpreting or acting according to town charter provisions or ordinances.

In the final analysis, there is no statutory basis for creating a power of impeachment, suspension, or such other removal power regarding the duly elected Mayor. If a Mayor is improperly holding office the remedy is a Quo Warrant action. As previously stated one may resort to the judicial system where a writ of mandamus is the appropriate remedy.

I trust this opinion will prove helpful.

Sincerely yours,



RICHARD J. BUTURLA
STRATFORD TOWN ATTORNEY