

PAINE  HAMBLENSM

A T T O R N E Y S

Peter C. Erbland
Partner
peter.erbland@paineamblyen.com

October 22, 2010

Mayor Sandi Bloem
City Hall
710 E. Mullan Avenue
Coeur d'Alene, ID 83814

Re: Brannon v. City of Coeur d'Alene and Mike Kennedy

Dear Mayor Bloem:

On May 27, 2010, we sent a tort claim demand letter to the City of Coeur d'Alene. A copy is attached to provide the recital of facts regarding the litigation up to that date.

As you are aware, District Judge Charles W. Hosack entered a Memorandum Opinion confirming the validity of the election and dismissing the complaint of Jim Brannon. Judgment will be submitted for Judge Hosack's signature.

Along the way, defendant Kennedy initiated a contempt proceeding against William McCrory relating to his violation of the Confidentiality Agreement and disclosing the results of the Brannon inspection of the county records on the election returns.

At the hearing on October 12th, Judge Hosack gave a lengthy discourse from the bench and excoriated McCrory for filing his affidavit and then publishing the same on opennda.com.

Judge Hosack then dismissed the contempt proceeding with our total approval. The net effect is that McCrory is obligated to pay his attorney a reputed \$20,000 which is twice the amount he would have been required to pay under the rules applicable to contempt. This dismissal of the contempt proceedings brings the entire lawsuit to a conclusion.

The results of this case after multiple motions and a 5 ½ day trial are the vindication of everything that the city and the county did before, during and after the November 3rd election.

Mayor Sandi Bloem

October 22, 2010

Page 2

On behalf of Mike Kennedy, we will be submitting to the clerk a cost bill seeking costs. Filing fees and payment for costs of printed court hearings should be allowed as a matter of right. The fees paid by Mike Kennedy for an investigator are in the category of discretionary costs, which may or may not be allowed by the court.

We will not be seeking an award of attorney's fees with submission of our cost bill to the court. The general American rule is that a party may not recover attorney's fees from the losing party unless there is a contract or statute allowing fees. The exception in Idaho is that fees be allowed when the suit is frivolous, unreasonably pursued and without foundation.

Starr Kelso's lawsuit on behalf of Mr. Brannon resulted in an extraordinary amount of time and effort to defend. However, we would never be able to persuade the Court that suit was frivolous. Judge Simpson initially set a bond of \$40,000.00 because he anticipated that the attorney's fees could be recovered. After hearing and reading the opposition, Judge Simpson decided that these fees would not be recoverable and reduced the bond to \$5,000.00.

Since that time, on behalf of Mike Kennedy we filed a motion to dismiss which was denied, a motion for summary judgment, which was denied, several motions at the initial initiation of the trial which were denied and all of this was followed by a 5 ½ day trial with a 20-page opinion. There is no likelihood that Judge Hosack would find that the lawsuit was frivolous. If we filed a request for attorney's fees, we might be sanctioned under Rule 11 Idaho Rules of Civil Procedure for a pleading that was bound to fail.

It is very apparent from the affidavit filed by Jim Brannon after Judge Simpson set the bond, that the carrying on of the litigation and the intended investigation could only have occurred with the support of unidentified persons. Reports in the Coeur d'Alene Press identified Mike Jorgensen contributing \$1,000.00 and the County Republican Party contributing \$2,500.00. We have to believe that the time spent by attorney Kelso and the costs of investigation are even higher than the attorney fees incurred in defending Councilperson Kennedy.

Election procedures are complex, as shown by the interaction between municipal election law contained in Idaho Code Title 50 and general election law contained in Idaho Code Title 34. The Idaho legislature last year made a complete revision of these election laws, but the changes are not effective until January 1, 2011.

The Kootenai County Elections Department performed well. It is comforting to find at the end of almost a year of investigation by Brannon and several months of investigation on behalf of Mike Kennedy that there were only four votes out of 6,325 which were deemed to be invalid and subject to be charged against the totals of the candidates.

Mayor Sandi Bloem
October 22, 2010
Page 3

We are therefore submitting to you our respective statements of time spent and hourly charges. We request on behalf of Councilperson Kennedy that our attorney fees be paid by the City of Coeur d'Alene. We are submitting a short memorandum of law supporting the responsibility of the City for the legal work done for Incumbent Councilperson Mike Kennedy.

In closing, we wish to commend your attorney Mike Haman for all of the excellent legal briefing and argument and participation in the trial. His service to the City was absolutely first-class. We very much appreciate the close cooperation of attorney Haman which helped receive the result of vindicating the election.

Very truly yours,

PAINE HAMBLEN LLP


Peter C. Erbland

Very truly yours,


Scott W. Reed

cc: City Attorney Mike Gridley
Councilperson Mike Kennedy