

**IN THE SUPERIOR COURT OF CHATHAM COUNTY
STATE OF GEORGIA**

CITY OF POOLER, GEORGIA,
Plaintiff,

v.

ROBERT H. BYRD, JR.,
Defendant.

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Civil Action No.: SPCV24-00274-ST

**COMPLAINT FOR DECLARATORY JUDGMENT
AND REQUEST FOR INJUNCTION**

COMES NOW The City of Pooler, Georgia (“Pooler”), and files this Complaint for Declaratory Judgment and Request for Injunction against Defendant as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff City of Pooler, Georgia is a municipal corporation in Chatham County, Georgia, existing under the laws of Georgia and Charter for the City of Pooler.
2. Defendant Robert H. Byrd, Jr. is a citizen and resident of Chatham County, Georgia, and may be served with process at 509 Everett Drive, Pooler, Georgia 31322.
3. This matter concerns a contract executed and to be performed in Chatham County, Georgia.
4. Jurisdiction and venue are proper in this honorable court under OCGA § 9-4-1 *et seq.* and Article VI, Section II of the Constitution of the State of Georgia.

GENERAL ALLEGATIONS

5. Pooler files this action to obtain a judicial determination and declaration of the parties’ respective rights and obligations under a Mutual Separation Agreement (“MSA”) between Pooler and Defendant.
6. An actual and justiciable controversy has arisen and now exists relating to the parties’ respective rights, duties, and obligations under the MSA.
7. The MSA was adopted by the former¹ Mayor and Council of Pooler on December 4, 2023.
8. The MSA was prepared and adopted without the City Attorney for Pooler first drafting or reviewing/approving the MSA.

¹ Pooler held a general municipal election in November 2023, and the current Mayor and Council were sworn in to office on January 4, 2024. The “former Mayor and Council” refers to the prior administration.

9. On more than one occasion, the City Attorney conveyed to the former Mayor and Council there were multiple concerns as to the legal validity of the MSA after he had a chance to review it.
10. On December 28, 2023, in response to the concerns raised by the City Attorney, the former Mayor, who is also an attorney, sent a letter to the City Attorney and copied all of the then Councilmembers.
11. The December 28th letter stated the opinions given by Pooler's City Attorney were incorrect and quoted an unnamed lawyer from the law firm of Elarbee Thompson,² stating as follows:

“As I mentioned several times there has been a thorough review of the mutual separation agreement. To explicitly respond with one attorney's comments to convince you that your opinion is incorrect I will provide quotes.”

12. Thus, the Mayor and Council of Pooler were presented with two conflicting legal opinions as to the legal validity of the MSA.
13. In addition to seeking any written opinions from any other attorney(s) who reportedly reviewed the MSA and deemed it valid, the Pooler City Attorney sought a review of his opinions as to the illegality of the MSA from Georgia's Attorney General's office.
14. The opinions submitted to the Attorney General's Office by the City Attorney were:
 - a. The Mutual Separation Agreement presented on December 4, 2023, in an Executive Session, containing two years full salary (totaling close to \$500,000.00), medical insurance benefits, and the sale of a 2023 King Ranch Supercrew Cab pickup truck for \$10,000.00 violates the Gratuities Clause of the state of Georgia. Ga. Const., Art. III, Sect. VI, Para. VI(a).
 - b. The sale of a city-owned 2023 F150 Ford King Ranch Supercrew Cab truck to Mr. Byrd for \$10,000.00 (substantially below actual value), without seeking sealed bids or being put up for auction after proper advertisement violates OCGA § 36-37-6.
 - c. The Mutual Separation Agreement violates OCGA § 36-30-3(a) as a prior council may not bind a later council by limiting the ability to freely legislate.
15. As a courtesy, on February 5, 2024, a Deputy Attorney General with the Attorney General's Office responded with an informal opinion as follows: “[W]e have done an initial review of your memorandum as a courtesy and have not found any legal authority that conflicts with your advice.”

² Elarbee Thompson is contracted through the Georgia Interlocal Risk Management Association (GIRMA) to provide “helpline” services to member cities on labor and employment issues.

16. The former Mayor and Council adopted the MSA against the advice of the Pooler City Attorney. Instead, they relied on the representations of the former Mayor the MSA had been reviewed by multiple attorneys and all stated it was valid.
17. The MSA provides in part, “Both the Employer and Employee agree to terminate the employment relationship effective December 31, 2023.”
18. The MSA provides Defendant will receive two years’ salary as severance pay, payable over 24 months, at the rate as of December 31, 2023, amounting to over \$500,000.00 in taxpayer funds.
19. The MSA provides Defendant will remain on Pooler’s group medical, dental, and vision insurance plans for two years following the end of Defendant’s employment.
20. The MSA provides for the sale of a 2023 F150 Ford King Ranch Supercrew Cab truck, owned by Pooler to Defendant for the amount of \$10,000.00.
21. The value of said 2023 F-150 Ford King Ranch Supercrew Cab Truck is well in excess of \$10,000.00.
22. To date, Defendant has received title to the F150 truck and collected over \$50,000.00 in taxpayer money under the MSA—which the City Attorney believes is invalid.
23. The total value of the MSA including salary, payroll taxes, insurance benefits, and the F150 truck is approximately \$608,605.26. The vehicle was purchased in 2023 at a discounted rate given to municipalities for \$62,805.00 dollars.
24. The current administration does not want to set a precedent of overturning decisions of a prior administration, however when the matter involves potential illegality, there must be some action taken to ensure the prior action was in fact legal, particularly when it could affect the taxpayers of Pooler.
25. To demonstrate this concern, and for illustrative purposes only, Pooler has approximately 8,600 residential properties, of which 4,847 have Homestead Exemptions. This translates to approximately 56% of the residences in Pooler are owner occupied. Using this figure, the average homeowner-resident of Pooler could pay approximately \$125.00 towards the MSA.
26. Questions as to the legality of the MSA have arisen such to the extent that the current Mayor and Council for Pooler need a judicial determination to afford relief from uncertainty of future actions due to the conflicting legal opinions provided by the City Attorney and the former Mayor.
27. Specifically, the payment of two years’ salary per the MSA violates the Gratuities Clause of the Constitution of the State of Georgia (Art. III, Sect. VI, Para. VI(a)), thus the current Mayor and Council are uncertain as to whether there is an obligation to make the payments.

28. The provision of continued insurance benefits per the MSA violates the Gratuities Clause of the Constitution of the State of Georgia (Art. III, Sect. VI, Para. VI(a)), thus the current Mayor and Council are uncertain as to whether there is an obligation to continue the insurance coverage.
29. The sale of the 2023 F150 Ford King Ranch Supercrew Cab truck violates the Gratuities Clause of the Constitution of the State of Georgia (Art. III, Sect. VI, Para. VI(a), and OCGA § 36-37-6, requiring the sale of municipal property (only after being properly advertised) either by auction or sealed bid, thus the current Mayor and Council are uncertain as to whether there is an obligation to try and recover the truck.
30. The MSA improperly binds a successor council in violation of OCGA § 36-30-3(a), thus the current Mayor and Council are uncertain as to whether there is an obligation to perform under the MSA.
31. Adoption of the MSA was in violation of the Pooler Charter, Section 6-30, requiring the City Attorney to either draft or review/approve all contracts that bind Pooler; thus, the current Mayor and Council are uncertain as to whether the MSA is legally binding on Pooler. A certified copy of relevant provisions of the Pooler City Charter requiring all contracts be drafted or approved by the City Attorney, evidenced by signature thereon, are attached hereto as Exhibit "A".

COUNT I – DECLARATORY JUDGMENT

32. Pooler incorporates and realleges the above paragraphs as if fully set forth herein.
33. A bona-fide controversy exists between Pooler and Defendant with respect to the legality of the MSA.
34. On January 16, 2024, at the regular meeting of Mayor and Council for Pooler, it was publicly stated the MSA was under legal review.
35. On February 5, 2024, the Pooler City Attorney received notification from Counsel for Defendant he had been retained to represent Defendant in regards to the MSA.
36. If the MSA, or any part thereof, is found to be violative of Georgia or Local law, then Pooler must terminate the MSA.
37. Assuming arguendo the MSA is terminated, the parties' rights and obligations are in direct conflict.
38. The current Mayor and Council are at a crossroads with respect to the legal validity of the MSA, and are in danger of loss or detriment if they choose the wrong course of action.

39. Therefore, Pooler is entitled to a judicial determination as to the legality of the MSA, so it may choose the legal course of conduct in the future regarding the MSA.

COUNT II – TEMPORARY INJUNCTION

40. Pooler incorporates and realleges the above paragraphs as if fully set forth herein.

41. The sale of the 2023 F150 Ford King Ranch Supercrew Cab truck to Defendant was completed prior to December 31, 2023, while the outgoing Mayor and Council were still in office.

42. Due to the uncertainty of the legality of the sale, an injunction should be granted.

43. Specifically, Defendant should be enjoined from transferring the vehicle to any other person or entity until such time as this Court orders otherwise.

44. Furthermore, Defendant should be enjoined from use of the vehicle so as to not unnecessarily expose the vehicle to risk of damage.

45. In addition to the vehicle injunction, due to the uncertainty of the legality of the salary payments, an injunction should be granted.

46. Specifically, Pooler should be permitted to pay all salary payments into the registry of the Court until such time as this Court orders otherwise.

47. Defendant should also be required to provide proof the vehicle is properly insured and maintain such insurance until a ruling by this Court.

WHEREFORE, Pooler respectfully requests one or more of the following forms of relief:

- a) Process issue and be served upon Defendant;
- b) A hearing be held expediently as the risk of loss or detriment to Pooler increases every day and the vehicle continues to depreciate in value;
- c) Injunction be entered preventing Defendant's transfer and use of the vehicle;
- d) Injunction be entered stopping the Defendant from receiving any more monies under the MSA and allow Pooler to pay such money into the registry of the Court;
- e) As there are no disputes of fact, only application of law, this matter be heard by the Court and without a jury;
- f) Judgment be entered stating the salary payments in the MSA violate the Gratuities Clause of the Georgia Constitution;

- g) Judgment be entered stating the insurance benefits in the MSA violate the Gratuities Clause of the Georgia Constitution;
- h) Judgment be entered stating the sale of the vehicle in the MSA violates Georgia statutory law;
- i) Judgment be entered stating the MSA is void for failure to comply with the Pooler City Charter;
- j) Judgment be entered stating the MSA is not automatically binding upon the current Mayor and Council for Pooler;
- k) Any and all other relief deemed just and proper under the circumstances.

This 23rd day of February, 2024.

/s/ Craig Call

Craig A. Call

Georgia Bar No.: 825753

Attorney for City of Pooler

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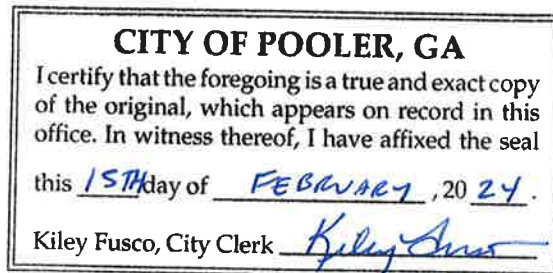
Civil Action No.: SPCV24-00274-ST

CERTIFICATION OF KILEY FUSCO

1. My name is Kiley Fusco, I am over 18 years of age and of sound mind.
2. This certification is made upon my own personal knowledge.
3. I employed by the City of Pooler as the City Clerk.
4. My duties as City Clerk include certifying official records of the City of Pooler.
5. I hereby certify the one page attached hereto contains a true and correct copy of Pooler City Charter, Part I, Article VI, Section 6.30, and Pooler City Charter, Part I, Article VII, Section 7.13.

SIGNED and SEALED, this 15TH day of February, 2024.


KILEY FUSCO
Clerk of Council, City of Pooler



EXHIBIT

A

Section 6.30.

Procurement and property management.

No contract with the city shall be binding on the city unless:

- (1) It is in writing;
- (2) It is drawn or submitted and reviewed by the city attorney and, as a matter of course, is signed by him or her to indicate such drafting or review; and
- (3) It is made or authorized by the city council and such approval is entered in the city council journal of proceedings pursuant to Section 3.14 of this charter.

Section 7.13.

Definitions and construction.

- (a) Section captions in this charter are informative only and shall not be considered as a part thereof.
- (b) The word "shall" is mandatory and the word "may" is permissive.
- (c) The singular shall include the plural, the masculine shall include the feminine, and vice versa.