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Via email
Hon. Kelly Jones

Re: *Opinion Regarding Retention of Counsel by City of Westworth Village Regarding Cause Number 348-377803-26, Michael Bachand v. Robert Fitzgerald*

Dear Mayor Jones:

Below is my opinion on the above-referenced matter.

Question presented: Whether the City of Westworth Village can vote to authorize public funds for legal representation in Cause Number 348-377803-26, the Bachand v. Fitzgerald election contest case?

Answer: The analysis must examine any *legitimate interest* of Westworth Village in obtaining representation in this election contest. While Westworth Village is prohibited from defending a candidate's title to office, the city council is well within its discretion to be heard and represented when requested relief would compel Westworth Village to perform governmental acts and expend municipal funds in a new election.

Background: On May 2, 2026, the City of Westworth Village, along with a number of other municipalities in Tarrant County, held an election for three places on its City Council. Robert Fitzgerald defeated Michael Bachand for Place 4 by two votes, 274-272.

On May 13, 2026, Bachand filed a lawsuit contesting the election results, arguing that three "illegal" votes were cast in the election. Bachand's petition asserts, without evidence, that the three voters he references are "aligned with the mayor" and therefore voted for his opponent, Robert Fitzgerald.

Bachand's petition prays that he be declared winner of the election **or** "Alternatively, the Court should conclude that the outcome of the Election is uncertain, void its results, and order Westworth Village to conduct a new election, allocating costs to Westworth Village or as the Court deems appropriate."

On June 18, 2026, Westworth Village City Council met in special session. After consulting with counsel, the City Council voted to retain private legal counsel in response to Bachand's lawsuit. On June 21, 2026, Westworth Village received a demand to rescind its June 18 vote to retain private counsel from Christopher Vaughan. Mr. Vaughan argued that Attorney General opinion JM-685 and DM-0431 prohibit political subdivisions from using public funds to defend an elected member's election to a political position.

Official Actions of City Council Presumed Legal and Valid

The official actions of a city, acting by vote of its city council, are presumed to be actions "necessary for the government, interest, welfare, or good order of the municipality as a body politic." Loc. Gov. Code Sec. 51.012. *See e.g., City of Brookside Village v. Comeau*, 633 S.W.2d 790, 792 (Tex. 1982)(city ordinances are presumed valid); *City of Corpus Christi v. Jones*, 144 S.W.2d 388, 398 (Tex. Civ. App.-San Antonio 1940, writ dismissed)(when the "legally constituted body . . . has acted within [its] scope, the courts will not substitute their judgment as to the wisdom and propriety of said action.")

Here, the city is directly implicated in the relief sought: the administration of a second city council election. Although Westworth Village is a small municipality, it will be required under the election rules of Tarrant County with whom it contracts for elections, to pay to staff all polling places across Tarrant County for a city council election involving one city council position in Westworth Village. Because this will be an off-cycle election, Westworth Village will not be cost-sharing with other small cities for election administration and will solely bear all election costs for this second election.

Expenditure of Public Funds: Is a Legitimate Public Purpose Implicated?

The challenger of the decision to hire counsel points to two Attorney General opinions to argue that a political subdivision is "categorically" prohibited from engaging private counsel in an election contest. However, these opinions simply restate the Texas Constitution's ban on expending public funds for private individuals. Both opinions find that a political candidate is always acting as a private individual. Neither opinion prohibits use of public funds if any legitimate public purpose is at stake or even could potentially be at stake.

If any legitimate interest potentially exists, the Attorney General has stated that it gives great deference to the judgment of the elected officials in deciding that a legitimate public purpose exists to engage and use public funds to pay for private counsel.

Public Purpose Doctrine

Article III, Sec. 52 the Texas Constitution prohibits use of public funds for private benefit. The Attorney General decided in JM-968 that if any legitimate public interest exists, such expenditures are proper.

Questions of Fact Must Be Resolved by the Elected Officials

JM-968 examined whether a school board may expend funds to defend a board member in a civil intentional tort case related to the board member's alleged conduct after a school board meeting. The school board in question retained and paid for private counsel to defend the board member. This action was challenged on the basis that public money was being used to defend actions of a trustee who was acting as a private individual outside the scope of his office at the time the alleged tort occurred.

The Attorney General's Office gave great deference to the judgment of the school board when it voted to retain counsel for the trustee. The opinion noted that determining whether a "public interest" exists that justifies expenditure of public funds "*will always be a question of fact.*" JM-968, p. 2 (emphasis added.)

The opinion goes on to state that "[t]his office does not make determinations of fact in the process of issuing legal opinions; that responsibility in this kind of question must rest with the judgment of a majority of the disinterested members of the school board." *Id.* In other words, judgment calls based on the facts before the political body are to be decided within the discretion of the political body and its decision about expenditure of public funds.

JM-968 concludes that the board must use its best judgment to determine if paying for counsel is proper even when a lawsuit contains allegations that the trustee was acting as a private individual at the time of the alleged wrongdoing.

If NO Legitimate Public Purpose Exists, Public Funds Cannot be Expended

JM-685 involved a school board election contest. The opinion focused narrowly on the question of whose interests were being defended in the lawsuit, and turned on the fact that the funds were being used solely for a political candidate:

A school district may retain and pay attorneys to protect its interests in a lawsuit. The school board's authority to employ attorneys is, however, limited to situations where the *legitimate interests of the district*, and not merely the personal interest of the trustee or trustees, requires representation. We must consider whether the election contest suit against the successful candidate *involves the legitimate interest of the district*, and not merely the personal interest of the individual candidate now seated as a trustee." (emphasis added, citations omitted.)

JM-685, p.2.

The school district failed to articulate any interest other than the interest of the candidate who was elected. Because their expenditure lacked any stated legitimate public interest, the Attorney General opined that it was not legal.

DM-431 involves a sheriff who won his election contest lawsuit represented by private counsel. His attorney sought reimbursement from the county commissioners for the sheriff's legal fees after the sheriff prevailed in the election contest lawsuit.

DM-431 echoes JM-968, that "this office usually defers to the government entity to decide in the first instance whether the matter at issue in a particular lawsuit concerns the interests of the government entity." DM-431 goes on to analyze the various arguments raised by the sheriff. While this opinion points out that it is "in the interest of the authority holding the election that justice be served, not that one candidate prevail over another," Westworth Village will be liable for administering a second election and expending public funds should a second election be ordered in this election contest.

The city attorney for Westworth Village issued an opinion at the time of the June 18, 2026 vote that the expenditure of funds for counsel was focused on the official actions of the councilmember in certifying the election, not on his conduct or status as a candidate.

Further, Westworth Village is within its sound discretion to determine retaining counsel for the election contest serves a legitimate public interest to be heard and have due process of law in a lawsuit that could result in Westworth Village being ordered to administer and bear the significant cost of a second election.

The city council of Westworth Village has substantial actual and potential legitimate interest in Cause No. 348-377803-26 such that retaining and paying for private counsel with city funds would be allowable under the analysis set forth in JM-685, DM-431, and JM-968. The city council's vote to retain an attorney in open session of a properly-noticed city council meeting raises a presumption that the city's retention of counsel was "necessary for the government, interest, welfare, or good order of" Westworth Village. The city councilmembers decision was based on the facts then before them, their city attorney's recommendation, and the actual and potential legitimate public interest of Westworth Village in Cause No. 348-377803-26.

The resident requesting yet another decision on this issue from the Attorney General has a direct and significant remedy: to use his First Amendment rights to publicly protest this city council decision, vote against those councilmembers who cast the votes, or even run for office himself.

Please let me know if you have additional questions or information for me to consider regarding this matter.

Best regards,



Mollee Westfall