

Begin forwarded message:

From: "Nixon, Joe" <[REDACTED]>

Date: May 23, 2016 at 3:41:24 PM CDT

To: Arin Vilo <[REDACTED]>

Subject: Re: Verified Petition to Remove Joel Baker from Office

Dear Mr. Bingham:

Thank you for your questions. Given the questions you have posed to the Attorney General in the investigation from which you recused yourself, it is apparent that a civil proceeding may give your office the best avenue to obtain the information you seek. If you join in this case, where there will be a litigation privilege among the parties, we would be pleased to provide you the information my clients have obtained. Because some of our clients have been interviewed by both the Attorney General and the FBI, they are reluctant to allow us to share that information at this time.

Joseph M. Nixon
Board Certified Civil Trial Law, Texas Board of Legal Specialization

Beirne, Maynard & Parsons, LLP
1300 Post Oak Blvd., Suite 2300
Houston, TX 77056
Tel.: 713-871-6809
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FW: Questions about Petition to Remove
From: "Trainor, Trey" [REDACTED]
To: 'JoAnn Fleming' [REDACTED]
Sent: Mon, May 09, 2016 11:50 AM
fyi

Trey Trainor
Beirne, Maynard & Parsons, L.L.P.
(512) 623-6700

From: Arin Vilo [mailto:[REDACTED]]
Sent: Monday, May 09, 2016 11:40 AM
To: Trainor, Trey; Nixon, Joe
Cc: Leigh Porter ([REDACTED]); Phillip Smith: [REDACTED]
Subject: Questions about Petition to Remove

Dear Mr. Nixon and Mr. Trainor

I am in the process of reading the Verified Petition to Remove Judge Baker, provided to me by Leigh and Greg Porter, and the Affidavits attached thereto. I would love to talk with you this week, by phone, concerning the Petition and get from you any evidence you feel supports same. I do have a couple of questions, starting out, that I was hoping you could answer. The questions are as follows:

- 1) You stated in your Petition that the Agreement and contract for operation of an automated control system is prohibited under Attorney General's Opinion No. GA-0846. Doesn't this TAG Opinion deal specifically with "Municipalities"? Is it your position that Smith County is a "Municipality"?
- 2) You stated in your Petition that the Agreement was discussed and approved during closed session on or about August 12, 2014, and no details were made available to the public at that time. The copies of the certified minutes are public record and are available on line. A certified copy of the minutes from the Commissioners Court meeting on August 12, 2014 (Item VIII.17), shows the approval of the Agreement was done in open session. Are you challenging the validity of the Certified Minutes? Do you believe the Certified Minutes do not show this?
- 3) You stated in paragraph 8 of the Verified Petition, and each individual Plaintiff swore, that the initial bidding process was not through a competitive process. It appears, unless I am mistaken, that the Agreement was purchased through a purchasing co-op called HGAC Buy. It is my understanding that because the Agreement was purchased through the HGAC Buy co-op, it was purchased through a competitive process. Do you disagree with this or feel it is not accurate?

I am going to have additional questions for you concerning these and other allegations in the Plaintiff's Verified Petition to Remove before the May 27th deadline. If you can answer these questions (by email) starting out, at your convenience, I would really appreciate it. I would like to have as much information as I possibly can as I make my decisions. I would certainly appreciate it if you could provide me with all the records, paperwork, recordings (if any), or other evidence, of any kind, you have that supports the Plaintiff's Verified Petition to Remove Joel Baker from office. I will be happy to provide my FedEx number for you to send it.

Please contact me by email at this address, [REDACTED].

D. Matt Bingham
Criminal District Attorney
Smith County, Texas

Trey Trainor
Beirne, Maynard & Parsons, L.L.P.
(512) 623-6700

Sent from my BlackBerry 10 smartphone.

From: Arin Vilo <[REDACTED]>

Sent: Tuesday, May 10, 2016 2:45 PM

To: Trainor, Trey; Nixon, Joe

Cc: Leigh Porter ([REDACTED]); Phillip Smith; [REDACTED]

Subject: Verified Removal Petition on Joel Baker

Dear Mr. Nixon and Mr. Trainor,

I have a few more questions regarding items listed in the "Factual Background" section of the Petition you filed.

Based on my research, it appears that the Local Government Code section 87.011 states that incompetency means gross ignorance of official duties or the gross carelessness in the discharge of those duties. According to DeAnda vs. State, 131 S.W.3d 198(Tex.App-San Antonio 2004), this standard is more than an error in judgment or ordinary negligence. The petition you filed asks to remove Judge Baker based on incompetency as to the Agreement only. It is my understanding that a contract can only be considered and agreed to by the Commissioner's Court as a body. Judge Baker cannot bind the county to a contract as the County Judge. Additionally, as noted in a previous email, the Agreement was approved in open court on August 12, 2014. The vote was unanimous, as all members of the Court present voted for it. Moreover, the Agreement, it appears, was properly bid, in accordance with state law, through the HGAC Buy purchasing co-op. With this said, can you provide answers to the following, along with the evidence you have that supports same:

- 1.) What evidence do have that the Agreement with "ATS" was executed prior to the Smith County Commissioner's Court having knowledge of the final terms of the said Agreement? If a contract or agreement can only bind Smith County if it is agreed to and considered by all the Commissioner's, and you believe paragraph #7 in your Petition is a basis for an elected official to be recused, why is only Judge Baker the subject of the Petition to Remove?

- 2.) In looking at Local Government Code section 87.011 and DeAnda vs. State, 131 S.W.3d 198(Tex.App.-San Antonio 2004), which requires gross ignorance of official duties, or gross carelessness in the discharge of your duties, and not just an error in judgment, is it your position that Judge Baker should be removed from Office because he and the Commissioner's agreed to and considered an Agreement with ATS whereby the fees paid by Smith County were \$8700 per camera and Kaufman County negotiated a similar agreement where it paid \$2,900 per camera? Can you provide a copy of the Kaufman County Agreement you referenced in your petition?

- 3.) You have alleged in paragraph 11 of your petition that Judge Baker engaged in numerous communications with an anonymous female and sent her explicit sexual references

and photographs. Is this based on what was reported in the media or do you have evidence of this independent of the media accounts? If you do have evidence of this independent of the media accounts, can you provide me with a copy of said evidence?

I have spoken to Private Investigator Tim McLemee who has informed me that the communications were sexually explicit, but in his opinion were not illegal because the female receiving same was a consenting adult. Do you have any evidence to the contrary? For an act to qualify as Official Misconduct, it must satisfy three requirements: (1) must be intentional, (2) must be unlawful, and (3) it must be related to the official duties of that officer. What evidence do you have that the content of the communications or photographs sent by Judge Baker to the female were illegal?

4.) You allege in paragraph 15 of your verified petition that the inappropriate sexting of the anonymous female during State Commission for Judicial Conduct (SCJC), "while conducting county government business", and while on tax-payer trips amounts to official misconduct. Again, for an act to qualify as Official Misconduct, it must satisfy three requirements: (1) must be intentional, (2) must be unlawful, and (3) it must be related to the official duties of that officer. Is it your position that Judge Baker was conducting "County" business while he sat on the SCJC? Is it your position that sitting on the SCJC is an "official duty" of an elected County Judge? There are no other County Judges on the SCJC, and sitting on the SCJC is not a requirement to be elected to serve as a County Judge. I guess the question I'm asking is how then serving on the SCJC relates to his official duties as a County Judge?

If the communications between Judge Baker and the female themselves are not illegal, is it your position that just sending a text during a SCJC meeting is unlawful, thereby meeting the second prong of the definition of Official Misconduct? What evidence do you have that this occurred? If this was unlawful, then wouldn't it be unlawful for any member of the SCJC who did anything on an electronic device that was not related to the meeting at hand be committing an unlawful act?

Thank you for taking the time to look at my email, helping me fully understand your arguments, and for providing me with any evidence you have in support of them. Please email me at this address and let me know how I can get all the records, etc., that you have in support of this Petition.

Sincerely,

D. MATT BINGHAM
Criminal District Attorney
Smith County, Texas

Arin O. Vilo
Legal Assistant to District Attorney D. Matt Bingham
and First Assistant District Attorney April Sikes
Smith County District Attorney's Office
100 N. Broadway Ave.
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