

22 December 2009

Sent via certified mail, return receipt requested
Sent via email to: GreenSus@cityofgalveston.org

Susie Green
City Attorney
City of Galveston
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Galveston, TX 77553

Dear Ms. Green:

Many people have asked us why the GOGP has concentrated our efforts, since we discovered *Thompson v. HUD*, on City government rather than on the GHA or County government. The answer is quite simple; *Thompson* established the need to dissolve the GHA in favor of a countywide housing authority, and since City government, acting through the Commissioners, on 21 March 1940, formed the GHA, only the City government, acting through the Council, has the authority to dissolve it. Once dissolved, Council can work with the County Commissioners to form the Galveston County Housing Authority.

The major flaw in the city-manager form of government is that no one knows for sure who is responsible. For example, what responsibility does the City Manager have to make sure that the 1996 Consent Decree was implemented, or to make sure that the City has an adequate Assessment of Impediments so that it can certify that it "affirmatively furthers fair housing"? His responsibility would seem to end after he informs Council that the City is either in compliance, or not in compliance with a list of necessary changes. He has no power to actually implement policy.

What responsibility does the City Manager have to keep informed on the latest court rulings effecting Public Housing, and to determine if the City is in compliance? If he has no responsibility to do so, what about after he is informed of the new court rulings?

All of these same questions must also be asked about the City Attorney's role in the process.

It would seem that the City Manager's and City Attorney's responsibilities would end after they inform the City Council of their obligations under federal law, and of the effect of recent court rulings. At that point, if the Council fails to take action to ensure that the local housing authority is operating appropriately; the culpability would be all theirs.

It should also be noted that as titular head of the City, and the only person empowered to appoint GHA Commissioners, the Mayor has more responsibility to ensure the proper and lawful operation of the housing authority than any other person in the City; and certainly the most culpability when it does not.

We do not know what kind of advice that you and the City Manager have offered to the Council since the 1996 Consent Decree regarding these issues, or more recently, based on our research and correspondence with local officials, but we certainly hope that you will review these cases, and forward your opinion to the City Council so that it becomes part of the official record.

The GOP has now documented numerous communications with the Council on this matter, and their indifference and unwillingness to act, i.e. nonfeasance is now duly noted and also part of the official record.

We are curious, and also baffled, why the Council refuses to put these issues on the agenda for review and discussion with or without our participation. In an earlier correspondence, we noted that in the original Thompson filings, the Mayor and City

Council of Baltimore were named as defendants. As we continued our research, we stumbled across one possible explanation for the inaction of our City Council on the [Texas Municipal League web site](#). "Home Rule Cities Handbook for Mayors and Councilmembers", Chapter 10 is entitled "[Personal Liability of Councilmembers](#)", and it states:

Liability Under Federal Law

During the 1950s and 1960s, the federal courts generally held that mayors and councilmembers enjoyed "qualified" immunity from liability for their tortious acts. In order to be eligible for immunity, a local official had to meet two qualifications: (1) he or she had to be acting in a ministerial capacity – that is, performing an act that he or she was legally required to perform; and (2) it had to be demonstrated that the act in question was made in good faith.

Beginning in the 1970s, the federal courts began to narrow the scope of a local official's immunity from personal liability for official acts. First, in 1974, the U.S. Supreme Court held that when a public official acts under state law in a manner that violates the U.S. Constitution, *"he comes into conflict with the superior authority of that Constitution and is stripped of his official or representative character and subjected in his person to consequences of his individual conduct."* **The Court thus held that a councilmember is personally liable for damages if he or she votes to have the city perform an act that has the effect of depriving citizens of their constitutional rights – even in cases where the councilmember and the city are required by state law to perform the particular act.**

Civil Rights Liability

Civil rights represent another area in which local officials can be held personally liable for

damages. Every councilmember needs to know the risks expressly contained in [Section 1983, Title 42, of the United States Code](#):

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured."

The literal language of Section 1983 makes all persons, councilmembers included, personally liable for damages if their acts result in depriving others of their civil rights, regardless of whether such acts were reasonable and made in good faith. Additionally, the U.S. Supreme Court has held that Section 1983 does not require proof that a defendant deliberately intended to deprive the plaintiff of his legal rights; the mere deprivation is itself a violation.

Liability under Section 1983 is not limited to the direct infliction of physical injuries to persons or property. Several types of policy decisions affecting city employees or citizens could render councilmembers liable under Section 1983, depending on the specific facts of the situation. An example of potential liability under Section 1983 would be the council's decision to deny a developer the right to use land by denying a rezoning or building permit to the developer because the construction plans are opposed by a vocal neighborhood group.

Another significant area of potential liability for councilmembers under Section 1983 relates to race discrimination and other violations of the Equal

Protection Clause of the U.S. Constitution, such as sex-biased personnel policies and practices.

Section 1983 seems to say that even if the City Council has established the "custom" of approving the plans of the Galveston Housing Authority without providing a thorough and detailed oversight process, if their action or inaction "subjects..any citizen of the United States..to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, (they) **shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.."**

This made us wonder whether the City Council believes that they can limit their own potential collective and personal liability by forcing the GHA and its Commissioners, and possibly even the Planning Commissioners to make all of the actual decisions on the number and locations of housing units, and, therefore, the degree of potentially unlawful segregation in the GHA's rebuilding plans, while attempting to limit their role to funding approval. If this is what Council is trying to do, it doesn't make any sense to us. We certainly don't think that Council can avoid liability by evading their responsibility to address segregation issues in this city, but our opinion is not the one that counts. It will be up to HUD, the Department of Justice, and maybe even a federal court.

We continue to try to play an informational and not an adversarial role with City Council, on this matter, and hope that even though they will not listen to us, that they will eventually listen to you. Our singular goal is for the City and County elected officials to cooperate to form a countywide housing authority that will reconfigure the location of public housing within the County according to the guidelines laid down by Thompson, which will offer a tremendous opportunity to the former residents of the GHA Housing Projects, and will also be of great benefit to the City.

Barring an unforeseen development, this should be our last letter to you on this subject. We will still do our presentation for the Planning Commission next month, and stand ready to give the presentation to any group that requests us to do so, but our requests to the Mayor and the City Council, to be placed on the agenda, have ended. Their refusal to do so is now also part of the official record.

If the City Council and the County Commissioners do not begin the process of forming a new housing authority, by 16 January 2010, we will start drafting a formal Administrative Complaint to be filed with the Secretary of HUD, as [Texas Appleseed](#) and [TXLIHIS](#) have already done. However, unlike these two groups, our complaint will NOT be lodged against the State of Texas; it will be confined to the City and County of Galveston. Due to the Texas Appleseed Complaint, HUD has frozen CDBG funds earmarked to flow to the State, but our Complaint will only ask HUD to freeze funds targeted for Galveston.

Unlike these two groups, we will be raising the issue of *Thompson v. HUD*, so it is likely that our Complaint could have statewide implications, even though that is not our intent. For this reason, we will make every attempt to get the Governor's attention to make him aware of the nature of the problem in Galveston County, and ask him to intervene to help motivate our local political officials to create a countywide housing authority to prevent our Complaint from affecting the entire state.

Our AC will comment on the substantially inadequate Assessment of Impediments on file for the City and County of Galveston, in light of *U.S. v. Westchester County*, and the clear parallels between Galveston and Baltimore, and how *Thompson v. HUD* does apply here. We will also include a detailed chronological description of the positions, statements, actions, and non-actions taken by the GHA, since the Hurricane, that paint a picture of an agency that is less than truthful, and far from transparent. A review of the City Council's role in this process will reveal that collectively and individually they did not demonstrate the needed leadership as the controversy over rebuilding intensified,

confining their comments to such vague statements as “We need to bring these people home”, while ignoring the real problems and issues involved. Finally, when the Council was repeatedly informed about recent court rulings that had a direct bearing on the matter, they refused to put a discussion of these judicial decisions on the agenda, allowing the GHA to vote for a plan that is clearly in violation of these rulings.

The highlight of our complaint will be a description of how the plan adopted by the GHA stands in extreme contradiction to the court rulings in the Thompson v. HUD case ordering the de-segregation of public housing on a countywide or even regional basis, leaving the County, the City and the GHA wide open for a variety of lawsuits that would force them into compliance.

One of our advisers has suggested that we also file a formal complaint with the Civil-Rights Division of the Justice Department to focus the maximum amount of scrutiny on fair housing issues in this city.

We will request a very aggressive and thorough investigation of these issues, by HUD and the DOJ, in the hope that the federal government will mandate a solution that will make Galveston County the new national model for Public Housing. When the Galveston County Housing Authority is established, it must begin with a clean slate, so it should exclude former members of the GHA management team, while it includes strict outside oversight from HUD and the DOJ to prevent a replay of the problems that have plagued the GHA for years, on a larger scale.

We include a hard copy of the GOGP presentation with this letter so that it will become part of the official record.

If we are forced to move forward to draft an AC, we will send you a copy as soon as it is available.

For further documentation go to: [GOGP on the GHA](#)

Thank you for your wise counsel and assistance,

Best regards, and have a Merry Christmas,

David Stanowski and Chris Toombs
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Cc: Governor Rick Perry, sent via fax to: 512-463-1849

Cc: Ellen Witt, the Governor's Director of the Division of Disaster
Recovery and Renewal, sent via fax to: 512-936-4318