

HULSEY, OLIVER & MAHAR, LLP
SUBMISSION TO THE CITY OF DUNWOODY TO PROVIDE LEGAL SERVICES

1) Overview of the firm (to include history of firm, staffing levels, physical location, services provided):

Hulsey, Oliver & Mahar, LLP enjoys an AV Preeminent Peer Review rating by Martindale Hubbell, which is the highest rating a firm can receive. Our law firm consists of fifteen (15) attorneys and eleven (11) staff. In 2014, we celebrated our founder E.D. Kenyon's 100th anniversary of providing legal services to the North Georgia community. We have a strong history of service to a myriad of nonprofit organizations in the area, and five (5) members of our law firm have served on the Gainesville City School Board. We are located at 200 E. E. Butler Parkway, N.E., Gainesville, Georgia 30501.

Colonel Ed, as E.D. Kenyon was affectionately called, began practicing law on June 1, 1914. In 1946, Colonel Ed was joined by his son, A. R. "Dick" Kenyon, and William D. Gunter in a partnership known as Kenyon, Kenyon & Gunter. William D. Gunter served as City Attorney for Gainesville during the 1950s and 1960s. Our firm offers a full-service legal practice, and we have developed a strong local government law practice over the years, representing the State of Georgia, agencies and authorities, municipal corporations, and counties. Our firm has expertise in a wide variety of issues relating to local government representation, including employment issues, eminent domain, zoning, real estate, and litigation.

2) Municipal services Hulsey, Oliver & Mahar, LLP are capable of providing:

Our firm is uniquely equipped to handle all local government legal matters because of our experience and concentration in the following areas:

- Open meetings and Open Records Acts
- Zoning and development codes
- SPLOST
- Election laws
- Condemnation, including road rights-of-way, sewer plant, and extensions of airport runways
- Employment law
- Water and sewerage
- Administrative law
- Government ethics
- Environmental law
- Local government finance and issuance of bonds
- Ad valorem taxation
- Real estate
- Law enforcement issues

Additionally, many of our attorneys are seasoned trial lawyers with experience in both state and

federal courts. We have extensive experience in the drafting of municipal ordinances, personnel matters, federal Section 1983 claims, zoning hearings, LOST and SPLOST negotiations, annexations, and other nuts and bolts issues pertaining to municipalities. One member is past chairman of the local government section of the State Bar of Georgia. A number of our attorneys serve as Special Assistant Attorneys General (“SAAGs”), by special appointment of the Attorney General of the State of Georgia in order to represent various State agencies and authorities, such as:

- Georgia Department of Transportation
- Lake Lanier Islands Development Authority
- Georgia Department of Natural Resources
- Georgia Mountain Community Services
- Georgia Environmental Finance Authority
- Superior Court Clerk’s Retirement Authority

3) What other governments do you currently serve or have you served in the past? How long have you served these governments?

Hulsey, Oliver & Mahar, LLP either currently serves or in the past has served as City Attorney or County Attorney for the following local governments:

- City of Gainesville (1954 – 1970 and 2016 to present)
- City of Blue Ridge (2003 to present)
- City of Baldwin (1994 to present)
- City of Clermont (2005 to present)
- City of Tallulah Falls (2006 – 2013)
- City of Maysville (2007 to present)
- City of Gillsville (1995 to present)
- City of Flowery Branch (1988 – 1997)
- Hall County (1979 – 1989)
- Jackson County (2005 – 2013)
- Jackson County Water and Sewerage Authority (2005 – to present)
- Jackson County Airport Authority (2005 – 2013)
- White County (2006 – 2012)
- Union County (1996 – 2000)¹

Additionally, in the past and at present, we continue to be employed by city and county attorneys to perform specific legal services on behalf of various local governments, identified as follows:

- City of Oakwood
- City of Blairsville
- City of Dahlonega

¹ The dates given are best estimates.

- Town of Braselton
- Hall County
- Dougherty County
- Lumpkin County
- Fannin County
- Pickens County
- Washington County
- Stephens County
- Towns County
- Forsyth County
- Morgan County
- Walton County
- Hart County

4) Who will be the primary attorney? (Provide resume)

Abbott S. Hayes, Jr. will serve as the primary attorney. His resume is attached.

5) What is the hourly rate for your attorneys, paralegals, secretaries, and other personnel?

Our hourly rate for all attorneys would be \$200.00 per hour. The \$200.00 per hour rate is significantly less than our standard rates for private clients. There is no charge for legal secretaries and other personnel.

6) References

Bryan Lackey
City Manager, City of Gainesville
678-602-2249
blakckey@gainesville.org

Matt Tate
Planner, City of Gainesville
770-531-6573
mtate@gainesville.org

VITA OF ABBOTT S. HAYES, JR.

- DATE OF BIRTH:** Born Gainesville, Georgia, May 21, 1969.
- EDUCATION:** Gainesville High School, 1987.
- University of Georgia, B.A. Degree, 1990.
- University of Georgia School of Law, 1994.
- EMPLOYMENT HISTORY:** Internships during Law School at Myers & Stroberg, Stewart, Melvin & Frost, Hulsey, Oliver & Mahar, and Hall County DA's Office, 1991-1994.
- Law Clerk to Honorable Richard W. Story, 1994-1996.
- Hulsey, Oliver & Mahar, 1996-present.
- PROFESSIONAL AND CIVIC ACTIVITIES:** President, Gainesville-Northeastern Bar Association, 2012-2013.
- President, Chattahoochee American Inn of Court, 2010-2011.
- Boys & Girls Clubs of Hall County Board member, including service as President, Vice-President, Board Development Chair, Resource Development Chair, 1996-2016.
- Gainesville First United Methodist Church lifetime member, including service as chair of Capital Campaign, Debt Campaign, Outreach Committee, and Evangelism Committee.
- President, Gainesville High School Athletic Booster Club, 2013 - 2015.
- Meals on Wheels volunteer, 2003-present.
- Hall County Mentor Program Board member, including service as President, 1995-2000.
- Named Young Man of the Year for Gainesville/Hall County by Gainesville Jaycees, 2003-2004.
- Kiwanis Youth Service Award winner, 2014.
- Active member of the State Bar of Georgia and the Gainesville-Northeastern Bar Association.
- Martindale-Hubble Lawyer Competency Rating is AV, which is highest rating given by fellow attorneys.

LAW OFFICES
HULSEY, OLIVER & MAHAR, LLP

200 E. E. BUTLER PARKWAY

POST OFFICE BOX 1457

GAINESVILLE, GEORGIA 30503

TELEPHONE (770) 532-6312

FAX (770) 531-9230 OR (770) 532-6822

WWW.HOMELAW.COM

JULIUS M. HULSEY
R. DAVID SYRAN
THOMAS L. FITZGERALD
THOMAS D. CALKINS
ABBOTT S. HAYES, JR.
PAUL B. SMART
JASON A. DEAN
T. WESLEY ROBINSON
JASON E. VOYLES
JESSICA M. LUND
VANESSA R. SYKES
MONICA B. HATFIELD

E. D. KERNYON
(1890-1981)
SAMUEL L. OLIVER
(1942-2011)

OF COUNSEL
JAMES E. MAHAR, JR.
(Practice Limited to
Mediation and Arbitration)

JANE A. RANGE

MEMORANDUM

To: Eric Linton

From: Abb Hayes 

Re: Questions from City of Dunwoody re conflicts of interest

Date: 8-19-16

This memorandum is in response to your request that I address two issues: (1) whether the June 13, 2016 executive session was proper; and (2) whether I agree with the June 6, 2016 Memorandum from Cecil McLendon and Leonid Felgin (hereinafter referred to as "the Memo") regarding conflicts of interest. In examining these issues, I have reviewed documents provided to me by you, as well as the video recording of the June 24, 2016 Council meeting. I have talked to you, Laurel Henderson, Cecil McLendon, and Lenny Felgin, and I have researched local and state law on the topics.

EXECUTIVE SESSION

My opinion as to the propriety of the June 13, 2016 executive session is based on two documents: (1) Closed Meeting Affidavit dated June 14, 2016; and (2) Executive Session Minutes dated June 13, 2016. In the Affidavit, the Mayor stated that the subject matter of the meeting was to discuss litigation, real estate, and personnel.¹ The redacted Minutes contain a short discussion of the Memo.

O.C.G.A. § 50-14-2(1) allows executive sessions "to consult and meet with legal counsel pertaining to pending or potential litigation ... brought or to be brought by or against the agency or any officer or employee or in which the agency or any officer or employee may be directly involved[.]" I understand that the issues and concerns discussed in the Memo arose, in part, because they were raised in pending litigation against the City, which litigation is presently being handled primarily by attorney Laurel Henderson. I understand that the issues and concerns contained in the Memo were part of a

¹ Please note that the checked personnel section of the Affidavit contains a reference to O.C.G.A. § 50-14-3(6). The correct reference is O.C.G.A. § 50-14-3(b)(2). You should consider amending your affidavit form.

consultation with City attorneys to review the pending case and also to avoid potential future litigation and claims involving conflicts of interest.

O.C.G.A. § 50-14-3(b)(2) allows executive sessions “when discussing or deliberating upon the appointment . . . of a public officer[.]” I understand that the issues and concerns discussed in the Memo were designed to assist the Council in evaluating how conflicts of interest should affect the Council’s appointment of public officers.

Based on the limited information that I have reviewed, I believe that the executive session was proper.

MEMO

In looking at the issue of conflicts of interest, one must look to the City’s own ethics code. In the case of Dick v. Williams, 215 Ga. App. 629, 631 (1994), the defendant Cobb County argued that the existence of a conflict of interest should be determined under state law, and not under the Ethics Code of Cobb County. The Court of Appeals disagreed and stated, “We find no merit to this contention. Rather, we believe that state law provides a floor and not a ceiling for the boundaries of ethical conduct by government officials. Local county and municipal governments are free to impose higher standards, and individuals who seek and retain office in local jurisdictions are bound by the standards of the government they serve.”

An “officer” is defined in City Charter § 2-2-8 as “any person elected or appointed to hold an office, as defined in the city Charter.” City Charter § 2-209(c)(3) provides, “It is sound public policy for standards of ethical conduct for public servants to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are personal, material and avoidable[.]” City Charter § 2-213(a)(1) provides, “No elected official, appointed officer, or employee of the city or any agency or political entity to which this Charter applies shall knowingly: ... have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of official duties or which would tend to impair the independence of his or her judgment or action in the performance of official duties[.]”

The issue of whether participation by Dunwoody elected officials and/or appointees in the DHA is a conflict of interest is not crystal clear. Like most ethical issues not involving direct financial conflict, it is a judgment call. The City has passed an ethics code recognizing that public servants’ primary responsibility in their performance of their official duties is to put the City first and avoid conflicts. A city attorney’s primary responsibility in representing a city client is to protect that city. Based on those considerations, I agree with Mr. McLendon and Mr. Felgin, as well as Ms. Henderson, that active participation by Dunwoody elected officials and appointees in DHA activities, such as service on committees, service as an officer, and attendance at meetings to consider rezoning and other applications made to the City, is a conflict of interest that arguably tends to impair the independence of his or her judgment or action in the performance of official duties, in violation of City Charter § 2-213(a)(1).

Just as one example for the basis of my opinion, I refer you to the July 17, 2016 "DHA Message Regarding City of Dunwoody Board Policy" that you sent to me, which can also be found under the "News" tab on the DHA website. In the second paragraph, the DHA states, "We have fought some developments—and supported others." When serving as an appointee or an elected official, a public servant must be independent when hearing applications and making decisions and/or recommendations on applications. To align oneself with the DHA, which expressly states that it supports and opposes developments, would raise a potential appearance of conflict.

I recognize from a review of the DHA website that it is possible to be a member of the DHA simply by filling out a short application and paying a \$40 annual fee. Again, a city attorney's primary responsibility in representing a city is to protect that city. That requires a cautious approach. A public servant refraining from even joining the DHA as a member would be the best way to eliminate any potential appearance of conflict. However, joining as a member, without taking a more active role and attending meetings, does not strike me as a serious conflict, and I believe that Dunwoody elected officials and appointees could choose to merely join the DHA without subjecting the City to serious problems.

RECENT PRESS AND DHA MEMO

You have alerted me to the recent coverage of this issue by the press, as well as the issuance of a legal memo by an attorney for the DHA, and I want to address a few issues related to that coverage. Based on my understanding of what transpired at the closed meeting, the City Council did not adopt a policy, verbal or otherwise, that elected officials and board appointees are banned from being members of or serving on the Board of Directors of the DHA.

The Memo at no point communicates that Dunwoody elected officials and board appointees are banned from being members of or serving on the Board of Directors of the DHA. Nor does the Memo imply that membership in a church or a PTO could result in a conflict of interest. In fact, the Memo specifically distinguishes the DHA from more traditional homeowners associations, churches, and other community organizations based on the fact that the DHA takes upon itself a role that could be considered to be a quasi-governmental policy organization.

What the Memo does provide is a legal opinion that participation by elected officials and board appointees in the DHA presents an issue that may affect, or may be perceived as affecting, the independent decision-making role of the City officials and therefore can have the damaging effect of undermining the process to the City's detriment: financially, legally, and otherwise. As set forth above, I am generally in agreement with the City's attorneys' assessment of the potential conflict of interest. However, these opinions are legal opinions intended to protect the City. They do not amount to a ban, by policy or law, which unconstitutionally abridges, or potentially unconstitutionally abridges, anyone's right of association or freedom of speech.

As set forth above, it is my opinion that active participation by Dunwoody elected officials and appointees in DHA activities, such as service on committees, service as an officer, and attendance at meetings to consider rezoning and other applications made to the City, is a conflict of interest that arguably tends to impair the independence of his or her judgment or action in the performance of

official duties and therefore should be avoided in order to protect the City. As previously stated, membership as a passive member, through payment of annual dues, gives me less pause with respect to the conflict of interest analysis.

CONCLUSION

In your initial communications, you mentioned that the City may need help in developing new policies on conflicts of interest and a code of conduct for board appointees as it relates to zoning matters. Please let me know if I can be of further assistance with those items or if you have questions or comments concerning this memorandum.