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FROM: John Michael Williams
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**SUPPLEMENTAL OPINION REGARDING CITY CONTRACT WITH
MID-DEL TECHNOLOGY CENTER**

This Supplemental Opinion augments the Opinion of Williams, Box, Forshee & Bullard, P.C. dated June 5, 2023 (“June 5th Opinion”) by applying the legal principles set forth by the June 5th Opinion to the facts of the School Resource Officer Mutual Cooperation Agreement dated July 1, 2023 (“Contract”) proposed to be entered into by the City of Midwest City (“City”) and Mid-Del School District of Oklahoma County (“Mid-Del”).

Analysis of the Contract

The Contract provides for Mid-Del to pay \$169,884.04 to the City for two police officers of the City to serve as School Resource Officers at Midwest City High School and Carl Albert High School, each located within the corporate limits of the City. The Contract further includes the following provisions:

Assignment of School Resource Officer:

2. The primary function of the School Resource Officer shall be to insure the safety of

the students and faculty and provide campus security. Specifically, the School Resource Officer shall assist in limiting access to the school grounds to authorized persons, provide police protection of school property, personnel and students, investigate criminal acts on school grounds and serve as liaison between the school, the police department, juvenile officials, probation officials, courts and other agencies of the juvenile justice system.

Duties of School Resource Officer:

- C. To act as the designee of the campus Administrator in maintaining the physical plant of the assigned campus to provide a safe environment as to law enforcement matters and school code violations. This includes building(s), grounds, parking lot(s), lockers and other public school property.
- H. The SRO will not be involved in ordinary school discipline.
- M. The SRO is first and foremost a Law Enforcement Officer. This fact must be constantly reinforced.

Employment of School Resource Officer:

- A. The SRO shall be an employee of the Police Department and shall be subject to the administration, supervision and control of the Police Department.
- B. The SRO shall be subject to all personnel policies and practices of the Police Department except as such policies or practices may be modified by the terms and conditions of the Agreement.
- C. The Police Department, in its sole discretion, shall have the power and authority to hire, discharge, and discipline the SRO.

It is our opinion that the effect of the Contract is described below.

Police officers serving as School Resource Officers are at all times serving as police law officers of the City, at locations within the corporate limits of the City, and are at all times subject to the control of the City. As such, the police officers serving as school resource officers are essentially providing law enforcement services just as they do at other locations within the City. Mass shootings occur with frequency on school campuses; accordingly, the City has elected to station police officers on school campuses.

As a part of its general law enforcement authority, the City could lawfully station police officers on public school campuses without the Contract, although such is best done in coordination with Mid-Del, which is accomplished by the Contract. And, by means of the Contract, Mid-Del is defraying the cost of stationing police officers on school campuses,

thereby providing sufficient financial resources for the City to choose on place police offices on school campuses.

Approval of the Contract will facilitate the deployment of police resources in furtherance of the general law enforcement authority of the City for the purpose of protecting lives and property within the City, which is a lawful exercise of the municipal police power.

Midwest City Charter, Article VII, Sec. 12 (“Charter”)

The City Charter prohibits a council member from being “interested...directly or indirectly” in a City contract. The Contract provides for co-ordination of the general law enforcement authority of the City, with the cost thereof defrayed by Mid-Del. The possibility of a council member being “interested” in the Contract in a manner prohibited by the Charter is too remote and speculative to have practical application.

In addition, the Contract provides for Mid-Del to pay money to the City; the City does not pay money to Mid-Del. Thus, the Ward 3 Council member will not receive an implicit benefit because her employer Mid-Del receives money.

Article X, Section 11, Oklahoma Constitution (“Constitution”)

The Constitution prohibits a council member from receiving, directly or indirectly, any interest, profit, or perquisites arising from the Contract.

As discussed above, the Contract provides for co-ordination of the general law enforcement authority of the City, with the cost thereof defrayed by Mid-Del. The possibility of a council member being “interested” in the Contract in a manner prohibited by the Constitution is too remote and speculative to have practical application.

As also discussed above, the Ward 3 Council member will not receive an implicit benefit because her employer Mid-Del receives money.

Opinion

Based on the foregoing, it is our opinion:

- a. that approval of the Contract will not be result in violation of the Charter or the Constitution by the Ward 3 Council member by reason of her employment by Mid-Del; and
- b. therefore, the Contract will not be void because of such a violation of the Charter; and
- c. therefore, that there will be no lawful basis for a successful *qui tam* lawsuit against the City and City officers based on the Contract being void; and

d. It is not necessary for the Ward 3 Council Member to abstain from voting on the Contract by reason of the Charter or the Constitution (violations of which would not be cured by recusal).

City Code of Midwest City, Sec. 2-17 (“Section 2-17”)

Our Opinion deals with the Charter and the Constitution above, which resolves several issues arising under Section 2-17 discussed by our June 5, 2023 Opinion.

Sec. 2-17 provisions remaining relevant are summarized as follows:

b. Council members shall avoid even the appearance of impropriety.

e. Once a conflict of interest is ascertained, the council member shall not participate in the decision related to such conflict.

While the better course of action would be for the Ward 3 Council Member to not vote on the City Budget because of her employment by Mid-Del and thereby avoid the appearance of impropriety to the public, the language of b. above contains the word “avoid” which is not a strong word.

The interpretation of e. above is challenging, and time does not permit resolution in this Opinion, but will be discussed at 4:00 today with the Council.

Violation of b. and e. above will not result in the Contract being void. The likely punishment for violation is sanction by the Council.

Recommendation

We note that that the Oklahoma City School District (I-89) has entered into similar agreements for school security services with the City of Oklahoma City, and have done so pursuant to the Oklahoma Interlocal Cooperation Act, 74 Oklahoma Statutes, Supp 2023, Section 1001 et seq., appearing in the Appendix below. It is recommended that the Contract be reviewed for possible revision to comply with this Act, which will highlight the fact that the Contract is between two local governments, entered into in accordance the public objectives of the Act, and thereby further minimizing a claim of an unlawful interest by the Ward 3 Council Member.

Appendix

§ 1001. Purpose

It is the purpose of Section 1001 et seq. of this title to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and

pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities. The cooperating governmental units can, if they deem it necessary, create an entity to carry out the cooperative functions.

§ 1002. Short title--Interlocal Cooperation Act

This act may be cited as the Interlocal Cooperation Act.

§ 1003. Definitions

A. For the purposes of [Section 1001 et seq.](#) of this title, the term “public agency” shall mean:

1. Any political subdivision of this state;
2. Any agency of the state government or of the United States;
3. Each and every public trust of this state regardless of whether the beneficiary of such trust is a municipality, a county, or the State of Oklahoma, except the Oklahoma Ordnance Works Authority;
4. Any corporation organized not for profit pursuant to the provisions of the Oklahoma General Corporation Act, [Section 1001 et seq. of Title 18 of the Oklahoma Statutes](#), for the primary purpose of developing and providing rural water supply and sewage disposal facilities to serve rural residents or to provide community-based services or assistance to clients of the Department of Mental Health and Substance Abuse Services as provided in [Section 2-106 of Title 43A of the Oklahoma Statutes](#);
5. Any political subdivision of another state; and
6. Any city-county health department created pursuant to [Section 1-210 of Title 63 of the Oklahoma Statutes](#).

B. The term “state” shall mean a state of the United States and the District of Columbia.

§ 1004. Agreements authorized

A. Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this

state, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this act upon a public agency.

B. Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this act. If it becomes advisable and economically advantageous for any Oklahoma public agency administering federal housing programs statewide within the State of Oklahoma to enter into agreements with an agency of the United States or of another state in order to benefit the State of Oklahoma through administration of federal housing programs either within or outside of the State of Oklahoma, such Oklahoma public agency may do so.

Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

C. Any such agreement shall specify the following:

1. Its duration;
2. The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created;
3. Its purpose or purposes;
4. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;
5. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and
6. Any other necessary and proper matters.

D. In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to paragraphs 1, 3, 4, 5 and 6 set forth in subsection C of this section, contain the following:

1. Provisions for an administrator or a joint board responsible for administering the joint or

cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented; and

2. The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking.

E. No agreement made pursuant to this act shall relieve any public agency of any obligation or responsibility imposed upon it by law except that, to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, the performance may be offered in satisfaction of the obligation or responsibility.

F. Every agreement made hereunder, except those agreements authorized by [Section 601 of Title 69 of the Oklahoma Statutes](#) which shall be approved by the district attorney, shall, prior to and as a condition precedent to its entry into force, be submitted to the Attorney General who shall determine whether the agreement is in proper form and compatible with the laws of this state, including any agreements entered into pursuant to the provisions of the Oklahoma Community Economic Development Pooled Finance Act. The Attorney General shall approve any agreement submitted to the Attorney General hereunder unless the Attorney General shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within sixty (60) days of its submission shall constitute approval thereof.

G. Financing of joint projects by agreements shall be as provided by law, including any agreements entered into pursuant to the provisions of the Oklahoma Community Economic Development Pooled Finance Act.

§ 1005. Filing of agreements--Status--Actions

Prior to its entry into force, an agreement made pursuant to this act shall be filed with the county clerk and with the Secretary of State. In the event that an agreement entered into pursuant to this act is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States, said agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose

default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

§ 1006. Approval of agreements

In the event that an agreement made pursuant to this act shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the Attorney General pursuant to [Section 4\(f\)](#) of this act. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the Attorney General.

§ 1007. Appropriation of funds--Personnel or services

Any public agency entering into an agreement pursuant to the act may appropriate funds and may sell, lease, give, or otherwise supply the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.

§ 1008. Contracts for governmental services

A. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties.

B. Except as otherwise specifically provided by law, the acquisition of food items or food products by a state public agency from a public trust created pursuant to [Sections 176 through 180.56 of Title 60 of the Oklahoma Statutes](#) shall comply with competitive bidding procedures pursuant to [Section 85.7](#) of this title.