

**THE CITY OF OKLAHOMA CITY
OFFICE OF
THE MUNICIPAL COUNSELOR**

Council Agenda
Item No. XI. Q
11/7/2023

TO: Mayor and City Council

FROM: Kenneth Jordan, Municipal Counselor

1. Joint Resolution with the Oklahoma City Municipal Facilities Authority authorizing the firm Collins, Zorn, & Wagner, P.C. to represent City employees Bryan Locke, Houston Dilbeck and Michael Azzam, in the case of *Thomas Adkins v. Bryan Locke, et al.*, United States District Court, Case No. CIV-23-157-J;

AND/OR

2. Enter into executive session on advice of the Municipal Counselor to receive confidential communications from its attorney concerning the above pending litigation, as authorized by 25 O.S. (2023 Supp.) §307(B)(4), because disclosure would seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

On May 30, 2023, Plaintiff Thomas Adkins filed his Pro Se Prisoner Civil Rights Third Amended Complaint in United States District Court, Western District of Oklahoma against City of Oklahoma City employees Bryan Locke, Houston Dilbeck and Michael Azzam alleging these officers violated his civil rights under 42 U.S.C. §1983 by false arrest, unreasonable seizure, and excessive force. Plaintiff Thomas Adkins alleges violations under the Fourth, Eighth and Fourteenth Amendments. The incident which led to Plaintiff's arrest occurred on February 6, 2023 when OCPD officer Locke was traveling southbound on South May Avenue at approximately 4:32 pm and he observed a traffic violation and stopped the vehicle. Plaintiff Thomas Adkins was driving and his adult son, Lance Adkins, was in the passenger seat. Driver Plaintiff Thomas Adkins advised Officer Locke that his son needed to go to the hospital for high blood pressure, and Officer Locke requested EMSA to the location. Upon checking passenger Lance Adkins, it was determined he had a Cleveland County felony warrant under case number CF-2007-949. EMSA advised Lance Adkins' blood pressure was fine, so he was placed in custody by Officer Azzam for the active felony warrant and taken to Cleveland County Jail. Lance Adkins is not a party to this lawsuit.

When Officer Locke asked Plaintiff Thomas Adkins for his identification as the driver of the vehicle in the traffic stop, he produced an Oklahoma Driver's License with the name "Francis Bell". Upon running the driver's license through OLETS, it was determined that Francis Bell is deceased. When Plaintiff Thomas Adkins was confronted with this information, Plaintiff continued to insist he was Francis Bell, thus lying to Officer Locke. Officer Locke was able to locate Plaintiff's wallet, which had an Oklahoma Identification Card with the name Thomas Henry Woodrow Adkins. At this point, Plaintiff Thomas Adkins attempted to run, and he was grabbed,

taken to the ground and handcuffed. It appeared Plaintiff Thomas Adkins was injured during this struggle, so he was placed with EMSA and transported to Southwest Integris Hospital, where he was cleared from any serious injury. Plaintiff Thomas Adkins was then transported to the Oklahoma County Detention Center because he had one active Grady County felony warrant (CF-2021-00113) and two active McClain County felony warrants (CF-2015-00100 and CF-2022-0043). The Oklahoma County District Attorney's Office also approved two new felonies on Plaintiff Thomas Adkins for Displaying or Representing as One's Own a License not issued to the Possessor.

These employees have requested that the firm of Collins, Zorn & Wagner, P.C. represent and defend them in this lawsuit. The facts and documents available at this time indicate the defendant officers were acting in good faith and within the course and scope of their employment during all times of the events set forth in the above-styled lawsuit. It is the recommendation of this office that outside counsel be retained to represent the municipal employees and that this representation be at the expense of the City so long as such representation seems appropriate to the Mayor and Council subject to the requirements of 51 Okla. Stat. §151, *et seq.*, 11 Okla. Stat. §23-101, *et seq.*, and the applicable case law, because there is a potential of a conflict of interest between the City and its employees if the Plaintiff's allegations are true.

Title 51 Section 162 of the Oklahoma Statutes requires:

A. [A]ny political subdivision, subject to the procedure requirements imposed by this section, other applicable statute, ordinance, resolution or written policy, shall:

1. Provide a defense for any employee . . . when liability is sought for any violation of property rights or any rights, privileges or immunities secured by the constitution or laws of the United States when alleged to have been committed by the employee while acting within the scope of employment;

Title 11, Section 23-101 states:

...if an action is brought against a municipal employee in any civil action or special proceeding in the courts of this state or of the United States by reason of any act done or omitted in good faith in the course of employment, the governing body of the municipality shall direct the municipal attorney or other designated legal counsel to appear and defend the action or proceeding on the behalf of the employee in accordance with the provisions of Section 11-23-102 of this title.

Further, Article 26 of the Collective Bargaining Agreement between the Oklahoma City Police Department and the Fraternal Order of Police, Lodge 123 states:

All police officers who are sued for violation of constitutional rights while acting in the capacity of a police officer in which they are individually named as Defendants and punitive damages are sought shall have the right to representation by outside counsel. The officer shall be represented by private counsel who is approved by FOP

Lodge 123 and the City Council as having expertise in the defense of police officers in civil rights actions. The City agrees to pay the reasonable fees and costs for said services as set forth in the contract between the City and outside counsel and pursuant to 11 O.S § 23-101.

It is the recommendation of this office that outside counsel be retained to represent employees Bryan Locke, Michael Azzam and Houston Dilbeck, and that this representation be at the expense of the City subject to the requirements of 51 Okla. Stat. §151, *et seq.*, 11 Okla. Stat. §23-101, *et seq.*, and applicable case law. If additional discussion is necessary, it is the recommendation of the Municipal Counselor that the Mayor and Council enter executive session to discuss the ongoing litigation.

Source of Funding:

Comprehensive Retainer Agreement between City and CZW

Review:

Municipal Counselor's Office

Recommendation: Resolution be adopted.