

RESOLUTION NO. 17 -2018

A RESOLUTION FOR THE PURPOSE OF AUTHORIZING THE MAYOR TO REDEFINE THE CITY'S COMMITMENT TO THE LADY BASS ANGLERS ASSOCIATION AND FOR OTHER PURPOSES;

WHEREAS, on April 19, 2018, Diamond City's Mayor, Jan Hudson, executed a contract pledging that the City of Diamond City, Arkansas would provide \$4,000.00 to the Lady Bass Anglers Association for event funding for the Lady Bass Anglers Association Bass Classic on Bull Shoals Lake and in Diamond City, Arkansas.

WHEREAS, Arkansas Code Annotated Section 14-54-302 provides that the execution of all contracts shall be performed by the Mayor and Recorder, when authorized by a resolution in writing and approved by a majority vote of the governing body of the municipality present and participating.

WHEREAS, after review of City Records, it appears that the contract with the Lady Bass Anglers Association was not authorized by a resolution in writing and approved by a majority vote of the City Council and was not executed by the Recorder.

WHEREAS, although the contract made by the previous mayor was not in proper form and may not have ultimately been enforceable in a Court, the City of Diamond City, Arkansas, would have likely incurred significant legal expense as a result of disputing the contract.

WHEREAS, with these considerations, the Mayor has approved and paid the claim for payment made by the LBAA. This action was taken to satisfy the City of Diamond City's obligations under the contract and to avoid a likely source of potential legal expense.

WHEREAS, the City of Diamond City Arkansas has been donated \$2,000 by On the Lake Publications, LLC, which was earmarked to pay for the LBAA event funding, and has been donated another \$2,000.00 by various sources to reimburse the City of Diamond City, Arkansas for the cost of the LBAA event.

WHEREAS, it is the opinion of the City Council of Diamond City, Arkansas, that it is in the best interest of the City of Diamond City, Arkansas for the City Council to ratify and approve the contract with the LBAA and to ratify and approve the payment of the LBAA's claim.

WHEREAS, it is the opinion of the City Council of Diamond City, Arkansas, that it is in the best interest of Diamond City, Arkansas, to ratify and approve the Mayor's action to pay the claim of the LBAA in the amount of \$4,000.00.

WHEREAS, it is the opinion of the City Council of Diamond City, Arkansas, that the City of Diamond City, Arkansas has been made whole by the donation of funds to the City to reimburse the City for the appropriation made to the LBAA.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF DIAMOND CITY, ARKANSAS:

Section 1. The City Council of Diamond City, Arkansas, hereby ratifies and approves the Mayor paying and settling the claim of the LBAA for \$4,000.00;

Section 2. The City Council of Diamond City, Arkansas, hereby finds that the City of Diamond City, Arkansas has been made whole by the donation of funds to the City to reimburse the City for the appropriation made to the LBAA.

Section ~~2~~³ That this resolution shall become effective from and after the date of its adoption.

Section ~~3~~⁴ Severability. In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this resolution is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the resolution which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional were not originally a part of the resolution.

Section ~~4~~⁵ Repealer. All laws, ordinances, resolutions, or parts of the same, that are inconsistent with the provisions of this resolution, are hereby repealed to the extent of such inconsistency.

PASSED AND APPROVED this the 27 day of September, 2018, in a regular meeting.

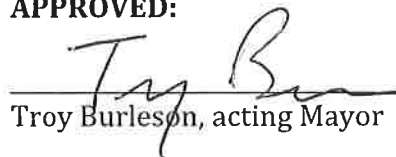
Aye 3 Nay _____ Absent 3 Abstain _____

(Mayor vote affirm passage)

ATTEST:


Tina Jackson, Recorder

APPROVED:


Troy Burleson, acting Mayor



The Law Office of Steven L. Grady, PLLC

Steven@northarkansaslaw.com
northarkansaslaw.com

200 E. Rush Avenue, Suite #5B | P O Box 1097
Harrison, AR 72601 | Harrison, AR 72602

Telephone: (870) 416-7226
Facsimile: (870) 292-3519

September 27, 2018

Diamond City Mayor and City Council
P.O. Box 1300
Diamond City, AR 72630

RE: Attorney Opinion Concerning Appropriation of \$4,000.00 for Event Funding for
LBAA Bass Tournament

Dear Mayor and City Council:

Please review this opinion letter concerning the City making an appropriation of funds for "event funding" to the Lady Bass Anglers Association Bass Classic (hereinafter "LBAA"). I am issuing this opinion letter in response to a request to prepare a Resolution ratifying, authorizing, and approving the appropriation of \$4,000.00 to the LBAA.

It is my understanding that the appropriation has already been completed, and the appropriated funds have been recovered by the City through donations from local businesses and citizens. It is also my understanding that the payment to LBAA was made to satisfy the City's obligation on a written contract executed by a previous mayor, and was made to avoid any potential liability that the City may have incurred as a result of breaching the contract with the LBAA. The purpose of the Resolution is to formally ratify these actions and to clarify the position of the City moving forward so that no similar issues arise in the future.

It is my legal opinion that the appropriation to the LBAA may have violated Arkansas Constitution Article 12, § 5 and the "public purpose" doctrine. For that reason, I must advise that the City not appropriate funds in this manner in the future without first obtaining an opinion from the Arkansas Attorney General concerning the appropriation.

Arkansas Constitution Article 12, § 5(a) and the "public purpose" doctrine are controlling on appropriations similar to the appropriation to the LBAA. Arkansas Constitution Article 12, § 5(a) provides: "No county, city, town or other municipal corporation, shall become a stockholder in any company, association, or corporation; or obtain or appropriate money for, or loan its credit to, any corporation, association, institution or individual." The leading case, *Halbert v. Helena-West Helena Industrial Development Corp.*, 226 Ark 620, 625-26, (1956), "establishes beyond all question that a municipality cannot contribute to a private,...corporation regardless of whether the corporation serves a 'public purpose'" *Ark. Op. Atty Gen. No. 1999-408*. The "public

purpose" doctrine, further requires that any expenditure of public funds be for a "public purpose." *Chandler v. Board of Trustees of the Teacher Retirement System of the State of Arkansas*, 236 Ark. 256, 365 S.W.2d 447 (1963). The doctrine requires that "no expenditure can be allowed legally except in a clear case where it appears that the welfare of the community and its inhabitants is involved and direct benefit results to the public." *McQuillin, Municipal Corporations*, § 12, 190.

In *Ark. Op. Att'y Gen. No. 2001-135 (June 5, 2001)*, the Attorney General opined that it would be illegal for the City of Fayetteville to appropriate money to go to the Fayetteville Boys and Girls Club. The Attorney General reasoned that the appropriation would be illegal both because the Boys and Girls Club is a corporation and because the Boys and Girls Club only provided benefits to paying members of the Boys and Girls Club. The indirect benefits associated with having an improved Boys and Girls Club were not persuasive to the Attorney General.

In several instances, cities across the state have been permitted to hold festivals or events for the benefit of the citizens of the city. In those cases, the primary, direct effect of the appropriation was to provide a benefit the public at large. It is relatively clear from the law that cities may only appropriate funds if the funds will be used to directly benefit the public at large, and not any city officials, employees, their families or other discrete individuals.

In this case, I was provided with a copy of a letter dated April 19, 2018, from Shari L. Marshall and Jan Hudson to the LBAA, informing the LBAA that Diamond City, Arkansas, Parks and Recreation would appropriate \$2,000.00 for "event funding" for a bass tournament in Diamond City, Arkansas. I have also been given a copy of a letter dated May 18, 2018, from the LBAA to Shari L. Marshall and Gina Whited acknowledging the agreement.

After a review of the LBAA's corporate filings and discussing the matter with Secret York, Shari Marshall and others, it appears the LBAA is a private, for profit, limited liability company formed under Kentucky law. The LBAA website provides that "all anglers wishing to participate in any LBAA tournament event must be a current member in the Lady Bass Anglers Association." To become a member of the LBAA, it appears that you must be a female and must pay a significant membership fee. From a review of the LBAA website, it also appears that the tournament held in Diamond City, Arkansas is a closed event requiring that contestants qualify in other tournaments prior to competing in this tournament. It is also my understanding that the LBAA is partnering with other non-profit groups which may indirectly provide benefit to the public.

Determining if any appropriation violates the Constitution or the "public purpose" doctrine will necessarily involve a factual inquiry and determination that I am simply not equipped or authorized to make. Any final determination is subjective and would ultimately be made by a Court. Reasonable minds can disagree, and I am certainly mindful that many may disagree on this issue. Although the ultimate determination is subjective, it is my legal opinion that appropriating funds to the LBAA or any other private corporation or individual in this manner could result in liability for the City and may violate the Constitution and the "public purpose" doctrine. For these reasons, I must advise the City to refrain from making similar

appropriations, or in the least to exercise extreme caution in making similar appropriations in the future. In the event the City wishes to fund similar projects in the future, I believe it may be advisable to structure those projects in a different manner.

It has also come to my attention that the City of Diamond City, Arkansas has been refunded any and all of the appropriated funds, and that the City has been made whole. I believe that this was the best action to mitigate the City's liability. For that reason, I have prepared a Resolution ratifying, authorizing and approving the appropriation/settlement and have presented that Resolution to the Mayor.

Please review this opinion and feel free to call me with any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Steven L. Grady". The signature is written in a cursive style with a prominent flourish at the end.

Steven L. Grady