



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
(479) 575-8323

Legislation Text

File #: 2023-754

A RESOLUTION TO AUTHORIZE THE MAYOR OF THE CITY OF FAYETTEVILLE TO PURCHASE REAL ESTATE TO BE RETURNED TO THE NWA BLACK HERITAGE ASSOCIATION FOR RESTORATION, REDEVELOPMENT, AND ADVANCEMENT TO THE AFRICAN AMERICAN COMMUNITY INTO THE VIBRANT AND THRIVING DISTRICT IT IS MEANT TO BE

WHEREAS, City of Fayetteville Resolution 213-20, File Number 2020-0662 was Passed by the Fayetteville City Council on 8/18/2020 declaring, “Section 1: That the City Council of the City of Fayetteville, Arkansas hereby declares racism is a public health emergency, the City of Fayetteville will recognize the severe impact of racism on the well-being of residents and city overall and allocate funding, staff, and additional resources to actively engage in racial equity in order to name, reverse, and repair harm done to African Americans in this City, including...” but not limited to sixteen (16) stated actions; and

WHEREAS, Black and underserved do not equal blight as was declared in the 1968 City of Fayetteville Community Renewal Plan, many parts of which continue in effect today. And per Action Item 8 of City of Fayetteville Resolution 213-20, this City will take action to reduce the number of... “minorit[ized] citizens displaced by redevelopment of existing neighborhoods.”; and

WHEREAS, the original landscape of the City of Fayetteville was created by enslaved Black people who felled and removed trees to create the built environment; and

WHEREAS, the last remaining historic African American community formed at emancipation was named by the system, “Tin Cup” to designate “Black” as was routine across Arkansas and the South, and ongoing plans to eliminate it were discussed in the first written City Master Plan of 1945; and

WHEREAS, by the 2040 Master Plan adopted in 2019, the name of the community was deleted from the City Maps with Special Thanks for engagement efforts given to various entities including the University of Arkansas and the Artist’s Laboratory Theater who conducted community engagement sessions under the guise of supporting Black community needs and desiring their input; and

WHEREAS, in a September 2022 meeting discussing Jefferson School properties for sale in the African American community, the City and the Fayetteville School Board discussed the neighborhood as an “Infill Laboratory” which aligns with the 2040 Master Plan; and

WHEREAS, the erasure of African Americans from their historic community at Lafayette St. and

Fletcher Ave to the northeast and along Spout Spring Branch continues at an alarming rate without an approved Racial Equity Strategic Action Plan to stop the erasure process; and

WHEREAS, members of the City of Fayetteville’s Black Heritage Preservation Commission (BHPC) at the May 18, 2023, meeting expressed support of NWA Black Heritage Association’s effort to stop the erasure of the last remaining historic African American community that benefits all of Fayetteville and the NWA region.

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

Section 1: That the City Council of the City of Fayetteville hereby authorizes the Mayor of the City of Fayetteville to purchase real estate to be returned to NWA Black Heritage Association for restoration, redevelopment, and advancement of the African American community into the vibrant and thriving district it is meant to be.



OFFICE OF THE
CITY ATTORNEY

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TO: Mayor Lioneld Jordan
City Council

CC: Susan Norton, Chief of Staff
Paul Becker, Chief Financial Officer

FROM: Kit Williams, City Attorney

DATE: May 26, 2023

RE: Constitutional restrictions for tax revenue expenditures

A year ago, I needed to explain why the City could not constitutionally donate \$6,000.00 as requested by the Black Heritage Preservation Commission and Council Member D’Andre Jones for a black reunion event in celebration of Juneteenth. As I explained in that May 16, 2022 memo, the *Arkansas Constitution* prohibits certain tax revenue expenditures by cities. I will quote a small part of that memo which discussed the general constitutional principles.

“As Council Member Jones will remember from my email, *Arkansas Constitution, Article 12§5* limits how Arkansas cities can legally spend their tax revenue:

‘No county, city, town, or other municipal corporation shall ... obtain or appropriate money for ... any corporation, association, institution, or individual.’

This obviously does not prevent a city from purchasing public services for its citizens at a fair, adequate and equitable rate from a corporation. Thus, it is constitutional for Fayetteville to pay an engineering firm to design a project and a construction firm to build it. However, the Arkansas Supreme Court in *Halbert v. Helena-West Helena Industrial Development Corp.* 226 Ark. 620, 625-626 (1956) held that *Article 12§5* “establishes beyond all question that a municipality cannot contribute to a private, non-profit corporation regardless of whether the corporation serves a ‘public purpose.’ ” (emphasis added.)

This brings me to the proposed Resolution to authorize Mayor Jordan "to purchase real estate to be returned to NWA Black Heritage Association for restoration, redevelopment, and advancement of the African American community into the vibrant and thriving district it is meant to be." The mere authorization for Mayor Jordan to spend taxpayer revenue this way is not unconstitutional because nothing would have yet occurred that violates *Article 12 §5* of the *Arkansas Constitution*. Only if Mayor Jordan actually used such authority and purchased property would a probably unconstitutional action have occurred.

However, I am concerned about passing any Resolution that authorizes a likely unconstitutional act even if the Mayor properly refuses to exercise the likely unconstitutional power within that Resolution. I now have a duty to advise the Mayor and City Council of the Constitutional infirmities and dangers of this proposed Resolution when it has been provided to them and made public along with the rest of the Tentative Agenda. I previously advised the sponsors, Council Members D'Andre Jones and Sonia Harvey privately of the City Attorney Office's concerns. Neither asked that their Resolution not be submitted for the consideration of the Council, so I must now inform the City Council of my concerns through this memo.

City taxpayer funds cannot be spent in a way that violates *Arkansas Constitution, Article 12 §5*. If that spending did occur, it would likely be an illegal exaction prohibited by *Arkansas Constitution, Article 16 §13* **Illegal exactions**. "Any citizen of any county, city or town may institute suit, in behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever."

One type of illegal exaction "involves the prevention of a misapplication of public funds. . . ." *Pledger v. Featherlite Precast Corp.* 308 Ark. 124, 823 S.W.2d 852, 855 (1992). This means spending taxpayer money improperly such as in violation of the *Constitution*.

"We have given this type of exaction an expansive interpretation because taxpayers are the equitable owners of all funds collected by a government and, in most cases, are liable to replenish the funds exhausted by a misappropriation or wrongful payment. Under these conditions taxpayers are entitled to broad relief." *Id.*

In the late 1980's, the Fayetteville Board of Directors believing they were doing the right thing committed two legal errors which led to paying over Five Million Taxpayer Dollars to the attorneys representing taxpayers and ratepayers who successfully sued the City. Partly because of these errors and litigation, Fayetteville citizens petitioned and then voted to remove the Fayetteville Board of Directors from their positions by changing the form of government to Mayor/Council. Only one of the seven members of the Fayetteville Board of Directors survived this change of government and was elected to the City Council.

“We have stated that monies collected for one purpose cannot be spent for another purpose. . . . The Arkansas Constitution forbids county or municipal funds to be given to any corporation, association, institution, or individual.” *City of Jacksonville v. Venhaus*, 302 Ark. 204, 788 S.W.2d 478,481 (1990).

This proposed Resolution would have the Mayor “purchase real estate to be returned to NWABH (Northwest Arkansas Black Heritage)” It is not expressly claimed nor is it likely that the private and independent NWA Black Heritage association or group actually previously owned the houses and other buildings which the Mayor would be supposed to buy, so such property could not be “returned” to this group. I believe the author of this Resolution must have meant given or conveyed to NWA Black Heritage rather than “returned”.

The purpose of such purchase and conveyance of so far not identified houses or buildings is stated in the Resolution to be for the “restoration, redevelopment, and advancement of the African American community into the vibrant and thriving district it is meant to be.”

If Mayor Jordan did as this Resolution requests, he would be spending hundreds of thousands of taxpayer funds to purchase houses and buildings to give to a private independent group of persons for the “restoration, redevelopment, and advancement of the African American community. . . .” This would be same legally as giving this private group those hundreds of thousands of taxpayer dollars directly which appears to me to be in direct violation of the *Constitution*.

Our sales taxes are collected to be spent for general municipal government services for all of our citizens. The City can pay wages, buy tools and equipment, pay contractors to construct City buildings and infrastructure, buy software and insurance, and buy real property as long as everything is a fair cost for providing normal municipal public purpose services for our general citizenry. This proposed Resolution directs the benefit from these hundreds of thousands of dollars of real estate to a private group to solely benefit “the African American community.”

“(T)he law almost uniformly is to the effect that a ‘**public purpose**’ **contemplates that the use must be in common to all and not to a particular group.**” *City of Fayetteville v. Phillips*, 320 Ark. 540, 899 S.W.2d 57, 59 (1995)(emphasis added.) This proposed Resolution limits its purpose to the “advancement of the African American community” which is another independent problem calling into question the legality of what this Resolution proposes. The City Attorney’s Office believes this Resolution almost certainly violates the *Arkansas Constitution* and would expose the City to a probably successful illegal exaction lawsuit. Thus, we recommend it not be passed.