

From: [Phillips, Jon](#)
To: [Rhode, Lynne C. \(City of Jacksonville\)](#)
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT
Date: Tuesday, June 11, 2019 11:42:51 AM

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Sorry Lynne—I did not have time to get to this yesterday. If you have not turned it in yet I could read it today?

From: Rhode, Lynne C. (City of Jacksonville) [<mailto:rhodlc@jea.com>]
Sent: Monday, June 10, 2019 10:57 AM
To: Roesle-Parde, Kort Parde
Cc: Granat, Sean; Gay, Kamaran; Phillips, Jon
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Thank you, Kort. I really appreciate your continued hard work on this and realize we have asked you to opine on an area (ethics) that is difficult and somewhat subjective. Sean and Jon, JEA management is really focused on making sure they address any ethical concerns before moving forward with any program. If either of you have time to review the memo today, I would appreciate your comments. I too will review. I need to get Herschel the memo by COB today.

Lynne C. Rhode
Vice President and Chief Legal Officer
21 West Church Street Jacksonville, FL 32202
Office: (904) 665-4115
Email: rhodlc@jea.com



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From: Roesle-Parde, Kort Parde <KParde@coj.net>
Sent: Monday, June 10, 2019 10:27 AM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Cc: Granat, Sean <SGranat@coj.net>; Gay, Kamaran <KGay@coj.net>; Phillips, Jon <JPhillips@coj.net>
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Lynne,

Attached please find the most recent draft memo. Both Jon and Sean are in meetings but I have copied them on this email.

Kort

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Monday, June 10, 2019 9:34 AM
To: Roesle-Parde, Kort Parde <KParde@coj.net>
Cc: Granat, Sean <SGranat@coj.net>; Gay, Kamaran <KGay@coj.net>
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Assuming Jon / Sean agree and you are okay with this approach -- would you mind please rewording subsection b to summarize what you say below (including a statement that management should not be the sole arbiter of whether JEA achieves financial success but rather should use an independent analyst) and include a statement about how you could not find any ethics opinions or case law on point and recommend that the City Ethics Officer be contacted to further analyze the proposed program?

Then if you could send me a full draft, I will take another look and share any edits/questions.

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To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>

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I spoke with Sean Granat and he said that Jon Phillips had some experience, but my research indicates that the City's Ethic Office would have the most knowledge.

I worked this weekend attempting to draft the analysis you seek, i.e. how to design the program to avoid violations of State's misuse of position and unauthorized compensation ethical provisions. The problem is that an analysis is almost impossible without specifics. The potential to avoid violations is both position specific and bonus terms specific. The best I could do is to generalize which positions, i.e. those JEA management involved in choosing the parameters for the LTIP, are most likely to have potential violation of specific ethics standards. The best we could say is that if JEA wished to implement a bonus scheme based solely on financial metrics, ethical constraints on management would prevent management from being able to be the sole "measure" JEA's finances.

The case law is not on point. I could not find a single decision involving an ethical violation associated with the implementation of a bonus scheme under 215.425.

Kort

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Monday, June 10, 2019 9:00 AM
To: Roesle-Parde, Kort Parde <KParde@coj.net>
Cc: Granat, Sean <SGranat@coj.net>; Gay, Kamaran <KGay@coj.net>
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Thank you, Kort. I think subsection b needs explanation and recommendation (an analysis of the ethical constraints on management of an LTIP in light of the quoted footnoted language and how the program should be designed to avoid violations). Were you able to find anyone at OGC with expertise here who could help provide that analysis? Are there ethics opinions on point?

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From: Roesle-Parde, Kort Parde <KParde@coj.net>
Sent: Sunday, June 9, 2019 7:09 PM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Cc: Granat, Sean <SGranat@coj.net>; Gay, Kamaran <KGay@coj.net>
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Lynne,

Attached please find a draft for Section 3 of the Comp Memo. Our server at the City is having issues, and I also wasn't sure I had the latest draft. I

Thanks
Kort

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Friday, June 7, 2019 4:31 PM
To: Roesle-Parde, Kort Parde <KParde@coj.net>
Cc: Granat, Sean <SGranat@coj.net>; Gay, Kamaran <KGay@coj.net>
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Thank you. Let's discuss possibly a less formal approach.

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From: Roesle-Parde, Kort Parde <KParde@coj.net>
Sent: Friday, June 7, 2019 4:27 PM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Cc: Granat, Sean <SGranat@coj.net>; Gay, Kamaran <KGay@coj.net>
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Here is the Ordinance provision we discussed to seek an advisory opinion from the City.

Kort

From: Roesle-Parde, Kort Parde <KParde@coj.net>
Sent: Thursday, June 6, 2019 12:16 AM
To: Roesle-Parde, Kort Parde <KParde@coj.net>
Subject: FW: CONFIDENTIAL ATTORNEY WORK PRODUCT

Sec. 602.940. - Advisory opinions.

Any person within the jurisdiction of the Commission, when in doubt about the applicability or interpretation of any provision within the Commission's jurisdiction to himself or herself in a particular context, may submit in writing the facts of the situation to the Commission with a request for an advisory opinion to establish the standard of public duty, if any. A person requesting an advisory opinion may withdraw the request at any time up to ten days before the Commission convenes a public meeting to consider the request. An advisory opinion shall be rendered by the Commission on a timely basis, and each such opinion shall be numbered, dated and published.

(Ord. 2011-167-E, § 2)

From: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Sent: Tuesday, June 4, 2019 3:10 PM
To: Roesle-Parde, Kort Parde <KParde@coj.net>
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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I don't think there are many specifics yet. They are looking at a long-term (1-3 year) incentive (form of typically cash or stock) bonus program based on JEA's financial performance and available to all (management and non-management) employees. I think if we hit those four general brackets, that will suffice. Any specific program can be analyzed later. Does that make sense?

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From: Roesle-Parde, Kort Parde <KParde@coj.net>
Sent: Tuesday, June 4, 2019 1:46 PM
To: Rhode, Lynne C. (City of Jacksonville) <rhodlc@jea.com>
Subject: RE: CONFIDENTIAL ATTORNEY WORK PRODUCT

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Lynne,

I think there is some confusion because I literally have no information regarding how or what type of program JEA intends to implement. I have only spoken with you and just received the memo from the other firm.

I will work on this tonight and believe I can answer most of the questions you have posed but any information you can provide me with will really help the end product.

Thank you,
Kort

Sent from my Verizon Motorola Droid

On Jun 4, 2019 1:38 PM, "Rhode, Lynne C. (City of Jacksonville)" <rhodlc@jea.com> wrote:

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Thanks Kort. I think there are some key questions/thoughts that need developing.

- (1) You state on p. 4 that statutory language would not permit a bonus based on JEA's overall financial improvement. Why not? This is THE KEY question and needs to be fleshed out. I don't see that restriction anywhere.
- (2) Need to include language confirming (if accurate) that an LTIP award of *cash or stock* to any employee is permissible
- (3) Need to include language/ analysis about how LTIPs are consistent (if accurate) with municipal purpose, public purpose, and ethical considerations
- (4) I don't understand the "consequences" section and think it can come out. We don't need details on specific aspects of the plan at this point. We just need to know if a long-term incentive cash or stock bonus program available to all employees and based on JEA's financial performance is permissible.
- (5) Need statement about relationship between FS 215.425 and Ord Chap 116
- (6) JEA Charter 21.08 gives JEA broad authority over employment policies – I think JEA's Charter (as the relevant Special Law) must be included in the analysis. JEA employees, by Charter, are expressly subject to City Charter Art 16 & 17 (Civil Service, which excludes management).
- (7) While the 943.22 and 1012.02 programs for police and teachers may be examples for a footnote, don't think they (or their restrictions, except potentially to show the lack of such express restrictions on utilities) are really relevant to the analysis
- (8) All of the 116 examples can just be a footnote – don't need the details if they are not relevant to the LTIP.
- (9) Civil Service and union discussions can be shortened to a note about compliance as long as you don't see any specific conflict with an LTIP (they know that CS and Unions are a factor in any bonus program)

Overall, I think they are looking for a more direct answer (yes, no, or maybe as to each aspect) related to the specific contemplated LTIP program. I think the structure of that analysis (considering at each step constitutional, state, and local laws and ethical factors) would be most useful as – (1) Authority for bonus programs by independent agencies generally, (2) general constraints on such programs, (3) authority for and constraints on the LONG TERM (1-3 years) aspect of the incentive program, (4) authority for and constraints on the availability of the incentive program to MANAGEMENT AND ALL OTHER employees, (5) authority for and constraints on use of FINANCIAL PERFORMANCE as the program's metric, and (6) authority for and constraints on the TYPE of the award (cash, stocks, other).

I don't know if you have any availability to discuss before tomorrow, but if so I am generally available today/tonight and can also be reached on my cell – 904-212-7943 – if not, we can discuss tomorrow at 10.

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Lynne,

As discussed here is the rough draft for us to start with. I look forward to speaking with you tomorrow morning. I have attached it both in word and pdf, just in case it helps.

Kort

Tracey Kort Parde
Assistant General Counsel
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Jacksonville, Florida 32202

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