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W.C. GENTRY MAY JUST BE RICK MULLANEY'S WORST NIGHTMARE.

The former tobacco trial attorney and current Duval County School Board member has made no secret of his contempt for the city's chief legal officer. In recent weeks, Gentry has derided Mullaney's legal acumen, accused him of withholding public records and insisted the School Board has "no confidence in the General Counsel."

What's more, Gentry is pushing the School Board to hire a private attorney to represent its interests — a move that would displace the General Counsel's Office and dramatically alter traditional assumptions of how Jacksonville's consolidated government works.

The source of the conflict is the ongoing push to transform the School Board from an elected body to an appointed one. The change, proposed by the Charter Revision Commission, is controversial for many reasons, but chiefly because it appears to subvert a provision of the state Constitution, which specifically says that School Board members "shall be ... chosen by vote of the electors." Mullaney contends that Constitutional provision is trumped by what he calls the "broad grant of authority" in the Jacksonville Consolidation Amendment, which created our consolidated city/county government.

Whether or not this is true, it is the position of the General Counsel's Office, which issued a formal opinion on the subject on Jan. 28. But as it turns out, not all city attorneys agreed with that opinion.

Deputy General Counsel Karen Chastain, the designated lawyer for the School Board, was asked to analyze the legality of an appointed board and came to a markedly different conclusion. In an opinion drafted in early January at the request of School Board Chair Brenda Priestly Jackson, Chastain offered a detailed look at the dictates of the Constitution and the city charter, and concluded that an appointed board likely isn't permitted by existing law. She noted that the consolidation amendment appears to govern only "county officers" — not the state-run school district — and concluded a mayoral takeover would require a statewide Constitutional amendment, approved by 60 percent of Florida voters.

Chastain was careful to acknowledge that "reasonable minds may disagree" on the matter. However, no such disagreement was permitted: Chastain's Jan. 7 draft opinion was suppressed by Mullaney. In response to her e-mail request to release it to the board, Mullaney wrote, "We have also received a request from the Charter [sic] Revision Commission and we need to have one legal opinion for the Office. Please see me and Steve [Rohan] before [making] any private or public statement or opinion." In case she missed the point, he added, "We

will have one opinion and one point person on this legal issue."

For weeks, the School Board continued to ask for Chastain's opinion — she's their lawyer, after all — via verbal requests and two formal public records requests on Jan. 19 and Jan. 26. But in a shocking display of indifference, Mullaney ignored their requests and kept Chastain's opinion under wraps. It wasn't until two media outlets (Folio Weekly and The Florida Times-Union) made similar requests *last week* that the draft opinion was released.

The three months of stonewalling incensed board members. "We're at the point where ordinarily we would be needing to sue the General Counsel under the Freedom of Information Act to give us the information that they wouldn't give us," Gentry noted last week.

School boards have been dissatisfied with Mullaney before. In 2001, he infuriated the board — and worried many good government watchdogs — when he issued what's called a "binding legal opinion" in the matter of school bus contracts. In issuing that opinion, he overturned a board vote, explaining he had "no choice but to void" their decision. The move effectively silenced the voice of a democratically elected state body. It also made clear that, when Mullaney felt it necessary, he would act not as an advisor to a client, but as a judge (or, as he explained it to Folio Weekly, "the Supreme Court of Jacksonville." See <http://bit.ly/mullaney>).

Though widely viewed as a usurpation of power, Mullaney's decision ultimately went unchallenged. He may not be so lucky this time. Though the Jan. 28 opinion wasn't binding, Mullaney has refused to allow the School Board to hire outside counsel to brace for a takeover fight. Gentry says the actions of the General Counsel's Office prove it can't simultaneously serve the board and the agents trying to destroy the board. If Mullaney refuses to let them hire their own attorney, Gentry says, the Board may well sue the city.

If this were a previous board, Mullaney might dismiss such threats. But in addition to Priestly Jackson, herself an attorney, Gentry was part of the "Dream Team" of attorneys, which won Florida's \$11-billion settlement against Big Tobacco. He's not likely to be cowed by the spectre of a major legal battle; he might even be energized by it. For Mullaney, who's running for mayor in 2011, it may be more fight than he's ready for. □



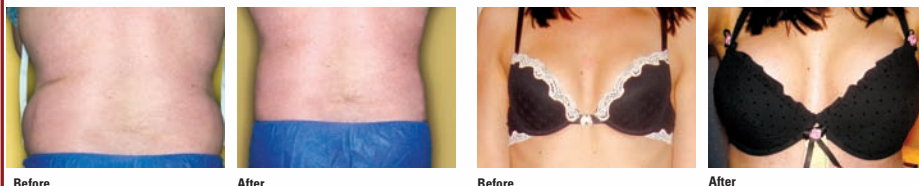
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