

Letters to the editor...

City attorney responds to Steward's comments

Dear Editor:

I am compelled to respond to the false statements made in Sam Steward's letter to the editor that was published in the July 28, 2009, edition of *The Lincoln County Journal* and in *The Elsberry Democrat*. I do not want Elsberry to continue to focus on the negativism that Mr. Steward's termination has generated. But I also do not want to be silent in the face of false statements that not only damage my personal and professional reputation but damage the City of Elsberry as well.

1. Mr. Steward claims that I did not notify him of the concerns that were raised to the board and that I did not notify his lawyer of the final draft of those concerns. This is false. I notified Mr. Steward in writing on May 19, 2009. When he hired a lawyer, I was ethically prohibited from contacting Mr. Steward. I then informed his lawyer of the concerns orally and by e-mail in May. I sent his lawyer the final draft in writing on June 11, 2009—well in advance of the hearing.

2. Mr. Steward says that he would like to publish the concerns that were raised. However, Mr. Steward was asked if he wanted to have the hearing to be open or closed. Mr. Steward asked that it be closed. The board honored his choice.

3. Mr. Steward claims I wrote an ordinance that took power away from the Mayor and gave it to the Aldermen, and it was explained to me that I could not legally write such an ordinance. This is false. Mr. Steward does not identify any such ordinance, but he may be referring to the ordinance concerning the appointment of the Chief of Police. Before I became City Attorney, the city ordinances provided that the Board of Aldermen ap-

pointed the Chief of Police (Ordinance 4-01-05). I did not write this ordinance. When the Emergency Services Committee asked to add a reporting requirement to the police chief's duties, I drafted a bill that added it to the existing ordinance provision as requested. However, before the bill was considered, I advised the city that the appointment provision of the existing ordinance was contrary to a recent case that gave the mayor the power of appointment. On my own initiative, I proposed that the City amend the existing ordinance to comply with the case law. No one "explained to me" that this ordinance should be written. Mr. Steward did hire a lawyer to negotiate his contract and we discussed the reporting issue. But that lawyer did not bring up the appointment issue. I did. The board adopted the ordinance that I recommended, ordinance 04-02-2008, which gave the mayor the power to appoint the Chief of Police. So, Mr. Steward has his facts backwards. The ordinance that I recommended actually took power away from the aldermen and gave it to the mayor. Mr. Steward's failure to recognize that I was not the city attorney at the time the prior ordinance was adopted has led him to falsely accuse me.

4. Mr. Steward claims I wrote an unconstitutional ordinance for Foley. This is also false.

5. Mr. Steward claims that I violated the Sunshine Law by improperly obtaining a police investigative report concerning the burglary at the Elsberry Police Department's offices and that no one outside the police department may see police reports. This is false for two reasons. First, certain officials outside the police department may see police

reports if they perform law enforcement functions, in-

cluding the mayor (see Mo. Attorney General Opinions 106-96 and 51-87). I am the city prosecutor who has the responsibility to enforce the laws. As the prosecutor, I am authorized to see such reports. Indeed, Mr. Steward himself has sent me police reports in the past. Second, I am the city attorney which means I am also the attorney for the police department. When *The Elsberry Democrat* asked for records concerning the burglary, I was asked to review that request as city attorney. This is a proper function of the city attorney. Mr. Steward seems to believe the police department is not a part of the city.

6. Mr. Steward's claim that I compromised the burglary investigation is also false. I did not disclose any information concerning the burglary that would not have been in an open incident report. In addition, the ordinance that Mr. Steward cites (71.060.7) is for neglect of duty by a police officer. No officer involved in providing me with a copy of the investigative report violated their duty in doing so.

7. Mr. Steward states that the 'city government' did not have the authority to 'confiscate' the police department computer that Mr. Steward used while he was employed by the city. Again, Mr. Steward's charge apparently stems from the belief that the police department is not part of the city government.

This is wrong. The computer was the city's computer. The city did not confiscate it...the city owned it all the time.

8. Mr. Steward claims that I have publically stated that I "am not well versed" on the Sunshine Law. This is false. I have never said

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that I am not well versed on the Sunshine Law. I do know the Sunshine Law and I have been advising many governmental clients about it for over 15 years. None of those clients have ever been sued or sanctioned for a violation of the Sunshine Law.

9. Finally, I have not sought to persecute Mr.

Steward as he seems to believe. Indeed, I was the one who suggested that the board give him a chance to address the concerns in a hearing. Although some may agree with the board's decision, and some may disagree, I believe that each of the six aldermen voted for what they honestly believed was best for Elsberry.

Mr. Steward asked that I answer his questions for the citizens of Elsberry. I have done so. Now, I will turn my efforts towards helping the mayor and board of aldermen to address the important issues facing the city that I love. I hope the other citizens will join me. I know that those who truly love Elsberry will.

Sincerely,
Robert J. Guinness
Elsberry, Mo.

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