

Mayor Mulder asks Deltona City Commission to reverse citizen-lawsuit vote

Issues statement calling for March 2 action

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posted Feb 25, 2009 - 7:12:09pm

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After consulting with a First Amendment attorney he paid for himself, Deltona Mayor Dennis Mulder is asking his colleagues on the City Commission to reverse their vote to sue citizens who criticize Deltona government.

In a two-page letter sent to the news media by City Hall this evening, Feb. 25, Mulder apologized for what he called a "rookie mistake" in urging the City Commission to vote to approve the lawsuits.

"After reading the reactions by the media and by my fellow citizens, I determined that perhaps I had not considered the constitutional implications of such an action," Mulder wrote.

After discussing the constraints of the First Amendment and the pains of harsh criticism he and his family have endured, the mayor's letter continues, "... we must all begin on common ground, and that common ground is respect for the Constitution of the United States."

He concluded the statement by suggesting someone make a motion at the Monday, March 2, City Commission meeting to repeal the action taken Feb. 16 to authorize lawsuits.

The 30-year-old has been at the helm of the largest city in Volusia County for more than three years. His term in office has been dotted by lively controversy, from the elimination of prayer at City Commission meetings, to a brouhaha over artwork with religious themes hung at City Hall, to the challenged annexation of a huge chunk of rural land where urban-level development was proposed.

"I am a political novice," Mulder wrote. "I was not inherently prepared for the caustic and petty partisan attacks that often come along with positions of political leadership."

Mulder has been at the center of a storm since the City Commission approved his suggestion about taking the city's critics to court.

In a 4-3 vote, Mulder and three other commissioners approved using city resources to take legal action against people the mayor claims unfairly or wrongly denounce city policies and leaders.

Mulder discussed the controversy at his Feb. 24 Mayor's Table, but stopped short of repudiating the vote. He told those attending the informal meeting the city had no firm plans to sue anyone.

Mulder had told fellow commissioners his enemies are spreading malicious and false allegations about him. He said the false statements hurt his businesses and his family, and he described anonymous letters, telephone threats, vandalism and even break-ins at his home.

Reaction to the vote came swiftly.

One of Mulder's harshest critics filed a complaint against him with the Florida Ethics Commission, charging Mulder with improper use of taxpayers' dollars.

Jeff Ensminger operates two anti-Mulder Web sites. After the Feb. 16 City Commission decision, he hired an attorney to be ready to defend himself against any legal action by the city.

The fate of Ensminger's complaint, in light of Mulder's action Feb. 25, is unknown.

"The issue, as I see it, is the mayor using public resources for his own personal gain," Ensminger said. "He wants to use public resources for his own purpose."

Ensminger, who runs a home-based computer business, set up his first Web site, www.deltonabonafide.com/, in 2006, the year after Mulder became mayor.

Monitoring the City Commission's actions and blogging about them takes up a great deal of his time, Ensminger said.

"It feels like a full-time job, but it does not pay," he said.

He wants a recall of Mulder. A recall is a citizens' petition drive for a special election to determine whether a person should remain in office. Florida law allows recall proceedings under special circumstances in cities and charter counties.

Recalls are rare, and successes — in which officials are actually forced out — are even rarer.

Ensminger launched the Web site www.recallmulder.com/ to promote the idea of a recall.

"It's my effort, strictly," Ensminger said. "Preparations are under way. Make no mistake about that."

Deltona's next regular municipal election will be in 2010. Ensminger said he will not run for mayor.

Mulder speaks

Mulder made an impassioned speech, complete with a slide show, to sway the City Commission to vote his way on legal action against critics.

When the backlash hit, including charges the mayor wanted to use public money to defend himself and his private businesses, first Mulder tried to clarify his intent.

"I want you all to be aware I plan on spending private money to defend myself, family and businesses, not public money," read an earlier statement by Mulder that was published on city stationery and distributed by City Hall Feb. 23.

"Public money would be used only to defend the city itself from damages current and future," the statement continues. "The many personal references made in my presentation were made to illustrate the damage and danger of a select

few. Assaulting, slandering etc. our staff members would be a different story of course, as would damages the city itself has suffered.”

Two days later, however, Mulder’s latest statement revealed he had been advised by a First Amendment attorney that the Feb. 16 action was ill-advised.

SLAPP suits

Civil suits by government officials against private citizens are known as SLAPP suits. SLAPP is an acronym for strategic lawsuit against public participation.

Government-initiated suits against citizens are fraught with constitutional problems, noted Stetson University political-science professor T. Wayne Bailey, especially when trying to silence opponents.

“Public officials are not immune to criticism,” Bailey said. “There is a host of Supreme Court decisions that leave almost no protection for public officials.”

For decades, the U.S. Supreme Court has held public figures must meet higher standards in proving malice and defamation than private individuals, corporations or other entities.

DCAC stand

Nancy Schleicher, who chairs the Deltona Citizens Action Committee (DCAC), had earlier asked the City Commission to reconsider its vote on suing citizens.

“Right now, the strongest thing we can do is condemn the action,” she said before Mulder’s latest letter was made public. She had urged commissioners: “Do the right thing and rescind the vote.”

Still learning

Bailey described Mulder, 30, as a politician who is still learning.

“I think it’s good to have Mayor Mulder on the scene, but he does need to keep an open mind,” Bailey said. “I think his motives and his spirit are good ones.”

Read Mulder's full statement below:

Mayor issues statement for discussion at March 2 Commission meeting

By [Dennis Mulder](#)

MAYOR OF DELTONA

posted Feb 25, 2009 - 7:14:28pm

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Feb. 25, 2009 — Mayor Dennis Mulder sent his City Commission the following statements which he hopes will be discussed during the next meeting of the Deltona City Commission (scheduled for March 2):

Following the last commission meeting and the revised memo regarding my intentions our legal staff has found that our actions were both legal and ethical, however I have prepared some comments for your consideration after much reflection on this issue.

I ran for office in order to bring a new kind of leadership to the City of Deltona. Any time that a political leader seeks to bring change, there will be those who wish to keep things stuck in the past, run by the same old-boy network that has run things for so long.

I am a political novice. I was not inherently prepared for the caustic and petty partisan attacks that often come along with positions of political leadership. This experience as Mayor has been a rude awakening.

As anyone would, I have had a very emotional response to personal attacks upon me, my fellow City Council members, and our families, launched by a small but vocal group of people who wish to bring our collective dreams for this town to a grinding halt.

There has been a lot of criticism of our initiative, passed last week, to provide municipal support for those of us who are attacked in this manner. In a free society, the press has an exalted position. It must stand as the fourth estate, often the most important pillar of our form of government. The press's job is to stand as a watchdog over those of us who hold political power, and to inform the public of our actions. When we are wrong, it is their job to bring that to the public's attention. I believe that the press has partially done its job in this scenario.

It is a poor leader who allows the editorial pages to dictate policy. However, it is an even worse leader who fails to consider the fact that the editorial pages can also be reflective of the conscience of a community. I have taken the criticisms made of my actions to heart, and I have reflected upon them in order to serve my constituents better.

Prior to proposing the defamation measure, I sought advice from various individuals; however, **I made a rookie mistake.** I failed to reach outside of the community for opinions that would not be colored by the toxic political environment that brought about this measure in the first place.

After reading the reactions by the media and by my fellow citizens, I determined that perhaps I had not considered the constitutional implications of such an action. Accordingly, **using my own personal funds, I retained a law firm that specializes in First Amendment and constitutional issues to provide me with an objective analysis of these actions.**

I have their advice here in hand.

I must say that upon reading this opinion, I was disappointed. This is not what I wanted to hear. I wanted to hear that it was possible for the City of Deltona to marshal its resources to defend those who have been attacked for merely wishing to serve the City's greater good. However, my attorneys have advised me otherwise.

In a free society, often political leaders must face the reality that the First Amendment may stand as an impediment to their desire to deal with problems quickly, efficiently, and to their liking. In this situation, I had hoped that we could use this mechanism to have the City combat the distractions brought up by this small but vocal and mean-spirited partisan group, so that we could move forward with the business of governing Deltona in a manner that is most advantageous to the greatest number of its citizens.

However much it may emotionally pain me to hear my family and colleagues attacked, it pains me even more to think that I could have unwittingly failed to consider the constitutional implications of my actions. Accordingly, I am taking

my First Amendment attorney's opinion to heart and asking that the City Council immediately repeal the measure that we passed. In order to make this a great city, we must all begin on common ground, and that common ground is respect for the Constitution of the United States.

We may disagree on how to spend municipal funds, or on small municipal projects. These are disputes and disagreements that are part of the normal democratic process. However, I will not allow this community to be divided on constitutional issues.

I apologize for my error. I ask my political opponents **on the Commission** to forgive this mistake.

I offer this apology and this repudiation of the measure of Feb. 16 as an indication that I am not only willing to work with my opponents and friends alike, to forgive this mistake, and believe me when I say that this has been a genuine learning experience. Accordingly, I ask them and all the members of the City Commission to join me in unanimously repealing this measure.

That being said I think someone should make a motion to repeal the action taken at the last regular commission meeting in regards to legal expenditures and that the city manager place on the agenda for the next commission meeting an agenda item discussing security and employee safety at work.

— Sincerely Mayor Dennis Mulder