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June 8, 2023

Andrew C. Mitchell Jr., Esquire
311 E. Main Street
P. O. Box 37
Fruitland, MD 21826

Re: Wicomico County
Our File No. 34867

Dear Andy:

I have read your May 26, 2023, letter. We obviously have different opinions about the purpose and meaning of Charter Sections 315, 413 and 414.

We do agree on the underlying facts:

1. Ms. Lankford was employed by the County in a position of Civil Engineer prior to the election of Executive Giordano.
2. After the election of Executive Giordano, Ms. Lankford was appointed Acting Director of Public works pursuant to Charter Section 414.
3. As the Acting Public Works Director ninety (90) day appointment was concluding, Executive Giordano requested an extension of the Acting Public Works Director designation for another ninety (90) days pursuant to Charter Section 414.
4. The County Council declined to extend the Acting Public Works Director designation for another ninety (90) days.
5. Executive Giordano then appointed Ms. Lankford as Acting Deputy Director of Public Works.

The procedural analysis of the "Acting" or temporary appointment of a deputy director is as set forth in Article IV-Executive Branch. All acting appointments are at the discretion of the Executive. See Charter Sections 413 and 414. The plain language of Section 414 specifically addresses the Executive's power to appoint an acting director of administration or acting department head, and provides for ninety (90) day extensions of only those positions by the Council. There is no acting appointment council confirmation process as is required in Charter

Section 315 for the permanent appointment of department heads, director of administration, assistant director of administration or deputy directors.

As was stated in the case of *O'Connor v. Baltimore County*, 382 Md 102 (2004), the Court would not “devine a legislative intention contrary to the plain language of a statute or judicially insert language to impose exceptions, limitations, or restrictions not set forth by the Legislature.” The full text of the pertinent Court of Appeals language is:

Local ordinances and charters are interpreted under the same canons of construction that apply to the interpretation of statutes. *Howard Research v. Concerned Citizens*, 297 Md. 357, 364(1983). The cardinal rule of statutory interpretation is to ascertain the intention of the legislature. *Oaks v. Connors*, 339 Md. 24, 35 (1995). The primary source of the legislative intent is, of course, the language of the statute itself. *State v. Pagano*, 341 Md. 129, 133 (1996). When interpreting a statute, we assign the words their ordinary and natural meaning. *Lewis v. State*, 348 Md. 648, 653 (1998). We will not “divine a legislative intention contrary to the plain language of a statute or judicially insert language to impose exceptions, limitation or restrictions not set forth by the legislature.” *Langston v. Langston*, 366 Md. 490, 515 (2001). Similarly, “we neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words the Legislature used or engage in a forced or subtle interpretation in an attempt to extend or limit the statute’s meaning.” *Taylor v. NationsBank*, 365 Md. 166, 181 (2001).

In addition, I have again attached the exhibit compiled by the Human Resources Department, which confirms that the Executive has solely made the “Acting” capacity appointments over the past several years. The Executive’s “Acting” capacity appointments are guided by Chapter 13 of the *Personnel Manual*.

The plain language of Charter Section 414 allows for Council approval of a ninety (90) day extension for an acting director of administration or an acting department head. The “Acting” appointment of a deputy director is not subject to the ninety (90) day extension language, and would not apply to the appointment of Ms. Lankford as the Acting Deputy Director of Public Works.

Sincerely,


Paul D. Wilber

PDW/mam
Enclosures

Wicomico County, MD
Tuesday, May 30, 2023

Chapter C. County Charter

Article IV. The Executive Branch

Section 413. Administrative appointments.

[Amended 8-13-2018 by Res. No. 82-2018]

The County Executive shall appoint a single officer to head each department or agency of the executive branch, the Director of Administration, and the Assistant Director of Administration and may remove the same at his discretion, and shall also appoint the deputy directors of each such department or agency. Within six months after each election for County Executive, the County Executive shall appoint the Director of Administration, and the Assistant Director of Administration and all heads of each department or agency of the executive branch as defined by Section 502 and 503 of this Charter and the Code of Wicomico County, subject to confirmation by the Council as required by Section 315 of this Charter, provided that this sentence does not apply to the then appointed and serving deputy directors. The County Executive shall also appoint the members of all boards and commissions in the executive branch, except as otherwise provided for by law, subject to confirmation by the Council as required by Section 315 of this Charter. All employees of the executive branch, other than those specifically provided for in this Charter or the Code of Wicomico County, shall be appointed and removed by the heads of the several agencies of the county government in accordance with the provisions of the County Personnel Law.

*Wicomico County, MD
Thursday, May 18, 2023*

Chapter C. County Charter

Article IV. The Executive Branch

Section 414. Temporary administrative appointments.

- A. Director of Administration, department head. When a vacancy occurs in the position of the Director of Administration or the head of a department or agency of the executive branch, the County Executive shall appoint an Acting Director of Administration or acting head of the department or agency.
- B. Term. The appointment of any person appointed as "Acting Director of Administration" or acting head of a department may not exceed 90 calendar days, except by Council approval. This appointment may be extended by the Council every 90 calendar days.
[Amended 8-2-2016 by Res. No. 101-2016]
- C. Procedures instituted. when a vacancy or absence that warrants a temporary appointment occurs, the County Executive shall ensure that the appropriate procedures are immediately instituted to provide a qualified person for the position.

Wicomico County, MD
Thursday, May 18, 2023

Chapter C. County Charter

Article III. The Legislative Branch

Section 315. Confirmation of appointments.

[Amended 8-2-2016 by Res. No. 101-2016]

- A. Director of Administration, Assistant Director of Administration, department heads and the initial appointment of deputy directors. Appointment by the County Executive of the Director of Administration, the Assistant Director of Administration, department heads or the initial appointment of a deputy director of a department in the executive branch of the county government shall be subject to confirmation by the County Council. If the Council fails to act to confirm or reject any appointment within 45 days of its submission to the County Council, at its legislative session, by the County Executive, the appointment shall stand approved.

[Amended 7-3-2018 by Res. No. 65-2018]

- B. Boards and commissions. Appointment by the County Executive to membership on a board or commission shall be subject to confirmation by the County Council. If the Council fails to act to confirm or reject any appointment within forty-five days of its submission to the County Council, at its legislative session, by the County Executive, the appointment shall stand approved.

Emp #	Name	Wkst Stat	Job Code	Job Title	Loc	Loc Desc	Group/B	Group/BU Desc	Comment	Action Desc	Action Code	Action Cst	Eff Date	Appr Date	Entry User	Entry Date
21030	HYNES, DAVID W	I	441	OPERATIONS MAINTENANCE SUPV	0052	AIRPORT	EFTM	EXEMPT FULL TIME MERIT	ACTING AIRPORT MANAGER 4% INC	ACTING	23	SALARY CHA	01/03/2017	01/17/2017	4797swallace	01/07/2017
3651	SMART, DANIELLE N	A	449	SR ASST ASSIGN COMMISSIONER	0002	CIRCUIT COURT	APFE	APPOINTED NONEXEMPT OFFICIAL	EFF INMVD TILL 12/15/24 ACTING SR ASSIGN COMMISSIONER	ACTING	23	SALARY CHA	10/24/2014	10/29/2014	4797swallace	10/24/2014
3721	MEIBUSCHEN, CHEBBIE T	I	813	SR COURT ADMINISTRATOR SPECIALIST	0002	CIRCUIT COURT	APEX	APPOINTED EXEMPT OFFICIALS	ACTING COURT ADMINISTRATOR 8% INC \$7,887.24	ACTING	23	SALARY CHA	03/16/2015	03/17/2015	4797swallace	04/09/2015
3791	MANUEL, PAUL A P	B	U013	FAMILY SERVICES CASE MANAGER	0002	CIRCUIT COURT	GREX	GRANT EXEMPT	ACTING CAPACITY PAY INCREASE 11/30/2020-12/31/2020	ACTING	23	SALARY CHA	11/03/2020	01/28/2021	4797chuston	01/27/2021
3791	MANUEL, PAUL A P	B	U013	FAMILY SERVICES CASE MANAGER	0002	CIRCUIT COURT	GREX	GRANT EXEMPT	ACTING CAPACITY PAY INCREASE 1/1/2021 UNTIL FILLED	ACTING	23	SALARY CHA	01/01/2021	02/02/2021	4797chuston	01/27/2021
2853	JAMISON, MICHAEL A	A	809	DEPUTY DIRECTOR CORRECTIONS	0021	CORRECTIONS	COFT	CORRECTIONAL OFFICER FULL TIME MERIT	ACTING CAPACITY WARDEN \$133,610	ACTING	23	SALARY CHA	03/20/2023	03/20/2023	4797chuston	03/24/2023
12840	SCHUEVEL, JACK E	A	247	CR MAINTENANCE SUPPLY OFFICER	0021	CORRECTIONS	NFTM	NONEXEMPT FULL TIME MERIT	ACTING AS CO II INCREASE	ACTING	23	SALARY CHA	03/27/2021	03/27/2021	4797chuston	03/27/2021
21392	WILLIAMS, CHRISTINE A	A	248	MAIL CLERK	0021	CORRECTIONS	NFTM	NONEXEMPT FULL TIME MERIT	ACTING INMATES ACCOUNTS EFF 12/01/2022	ACTING	23	SALARY CHA	08/05/2021	08/11/2021	4797chuston	08/04/2021
21241	SIMPSON, JOCELYN C	I	201	DEPARTMENT ASSISTANT	0053	ELECTRICAL BOARD	NFTM	NONEXEMPT FULL TIME MERIT	ACTING P/Z ADMIN OFF SUP 8% INC TO \$30,294	ACTING	23	SALARY CHA	09/25/2017	09/28/2017	4797swallace	09/25/2017
19233	CHOPPER, LORENZO R	A	708	DEPUTY DIRECTOR EMERGENCY SV	0022	EMERGENCY SERVICES	EFTM	EXEMPT FULL TIME MERIT	ACTING DIRECTOR EMS 8% INCREASE \$71,280 EFF 4/21/2022	ACTING	23	SALARY CHA	04/21/2022	04/27/2022	4797chuston	04/26/2022
22381	PSOTA, JOHN D	I	A000	DIRECTOR OF ADMINISTRATION	0005	EXECUTIVE ADMINISTRATION	APEX	APPOINTED EXEMPT OFFICIALS	ACTING COUNTY EXECUTIVE BY COUNCIL	ACTING	23	SALARY CHA	09/18/2020	09/24/2020	4797chuston	09/24/2020
19944	OLAND, PAMELA B	A	504	DIRECTOR FINANCE	0008	FINANCE	APEX	APPOINTED EXEMPT OFFICIALS	ACTING FINANCE DIRECTOR \$104,200	ACTING	23	SALARY CHA	08/13/2020	08/25/2020	4797chuston	08/24/2020
7461	PARKS, DAWN	I	707	MANAGER DISBURSEMENT ACCT	0008	FINANCE	EFTM	EXEMPT FULL TIME MERIT	PUT INTO ACTING CAPACITY FROM 1/5/15 TILL 3/28/15	ACTING	23	SALARY CHA	01/05/2015	01/14/2015	4797swallace	05/13/2015
18095	CAMPBELL, LISA L	I	509	COMMUNITY PROGRAM COORDIN	0054	LOCAL MANAGEMENT BOARD	GREX	GRANT EXEMPT	ACTING DIRECTOR LMB	ACTING	23	SALARY CHA	08/01/2016	03/01/2016	4797swallace	03/01/2016
23101	LANFORD, HEATHER A	A	802	MANAGER CIVIL ENGINEER	0024	PUBLIC WORKS	EFTM	EXEMPT FULL TIME MERIT	ACTING CAP PUBLIC WORKS DIRECTOR \$114,000	ACTING	23	SALARY CHA	02/16/2023	02/20/2023	4797swallace	02/17/2023
7251	LUCHACO, DAWN M	A	470	SR PURCHASING ASSISTANT	0010	PURCHASING	NFTM	NONEXEMPT FULL TIME MERIT	ACTING CAPACITY \$86,300 EFF 8/4/2022	ACTING	23	SALARY CHA	08/04/2021	08/09/2021	4797chuston	08/04/2021
15204	WISK, ANDREW P	I	805	DEPUTY DIR REC. PIS & TOURISM	0060	RECREATION	EFTM	EXEMPT FULL TIME MERIT	ACTING DIR OF REC AND PARKS 12% INC	ACTING	23	SALARY CHA	05/14/2015	05/27/2015	4797swallace	06/17/2015
21223	ROUSE, KATIE M	A	805	DEPUTY DIR REC. PIS & TOURISM	0060	RECREATION	EFTM	EXEMPT FULL TIME MERIT	ACTING YCC DEPUTY DIRECTOR \$71,160	ACTING	23	SALARY CHA	08/13/2020	08/25/2020	4797swallace	08/24/2020
19944	OLAND, PAMELA B	A	504	DEPUTY DIR REC. PIS & TOURISM	0060	RECREATION	EFTM	EXEMPT FULL TIME MERIT	ACTING DIRECTOR \$41,854 INC	ACTING	23	SALARY CHA	09/03/2015	09/08/2015	4797swallace	09/09/2015
22488	TAYLOR, CHRISTOPHER A	A	515	DEPUTY SHERIFF/CORPORAL	0037	SHERIFFS DEPARTMENT	LEFT	LAW ENFORCEMENT FULL TIME	ACTING SERGEANT \$67,310.00	ACTING	23	SALARY CHA	11/17/2015	11/22/2015	4797swallace	11/17/2015
22725	DEAR, HEATHER R	A	106	MAINTENANCE WORKER	0031	SOLID WASTE	NFTM	NONEXEMPT FULL TIME MERIT	ACTING CAPACITY SW SUPERINTENDENT \$47,039	ACTING	23	SALARY CHA	05/23/2022	06/24/2022	4797chuston	06/22/2022
19141	WHEATLEY, NICOLE R	A	406	SR MARKETING/PK SPECIALIST	0062	TOURISM	EFTM	EXEMPT FULL TIME MERIT	ACTING DIRECTOR OF MARKETING AND PUBLIC RELATIONS	ACTING	23	SALARY CHA	08/27/2014	08/29/2014	4797swallace	08/27/2014
19534	SIMMONS, JAMES E	A	628	SENIOR TOURISM SPECIALIST	0062	TOURISM	EFTM	EXEMPT FULL TIME MERIT	ACTING TOURISM MANAGER 8% INC SEE ATTACHMENT	ACTING	23	SALARY CHA	06/20/2016	06/20/2016	4797swallace	04/09/2016
16242	RITTER, JUDY A	A	462	BOX OFFICE MANAGER	0061	YOUTH & CIVIC CENTER	EFTM	EXEMPT FULL TIME MERIT	ACTING CAPACITY TO BOX OFFICE MANAGER 8% INCREASE	ACTING	23	SALARY CHA	01/07/2020	01/29/2020	4797swallace	01/27/2020
4820	WILKINS, JASON E	I	208	SUPER ASSIST OPS & MAIN	0061	YOUTH & CIVIC CENTER	NFTM	NONEXEMPT FULL TIME MERIT	ACTING CAPACITY PAY INC TO \$45,295	ACTING	23	SALARY CHA	01/31/2019	02/01/2019	4797swallace	01/17/2019
4980	BOONE, STANLEY A	I	207	ASSISTANT MAINTENANCE FOREMAN	0061	YOUTH & CIVIC CENTER	NFTM	NONEXEMPT FULL TIME MERIT	ACTING ASSISTANT MAIN FOREMAN 8% INC \$32,319	ACTING	23	SALARY CHA	12/07/2016	12/19/2016	4797swallace	12/09/2016