Dennis K. Bayer Attorney

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May 21, 2025

Town of Marineland

RE: Replacement of Gary Inks

Dear Town Officials,

Due to the rescheduling of the emergency commission meeting from May 22, 2025, to May 21, 2025, I will not be able to attend in person as I have a meeting with staff of Daytona Beach on a condemnation matter set for 5:00 pm. I will try to appear by Zoom. Due to the significant decision that is going to be made this evening, I feel obligated to outline my position in my role as town attorney.

Based upon my research, I respectfully do not believe that Commissioner Dew has the legal authority to appoint a commissioner. Attached are communications and two pages of the Town charter outlining the opposing legal positions that I have exchanged with Commissioner Dew and his attorney, Rick Rumrell. It should be mentioned that I have also dealt with Mr. Rumrell in his capacity as attorney for JDI, LLC on issues related to the town marina.

Due to the difference of opinion, I did suggest that we obtain a legal opinion from the Attorney General's office. The Town can continue to function while awaiting the opinion- there are no pressing matters that require a full quorum. I was told not to do so by Commissioner Dew and Mr. Rumrell.

As most of you know, I have served as town attorney since 1997 with a gap of only several years. After the establishment of the River to Sea Preserve (RTS) and the transition of ownership of the JDI property out of the bankruptcy proceedings, the Town underwent major changes in 2000. Prior to 2000, elected officials lived either in the UF Whitney dorms, on boats at the marina or in campers in the campgrounds. The campers were removed by the Town and County due to the area now being a park. The boats were evicted by JDI Marineland, LLC (JDI) as part of the marina improvements. The Town now owns the marina. It was also in this time frame that the trailers were placed on the JDI property to be used as temporary housing for persons involved with the development of the property.

As a result of the loss of most of its registered voters, one county commissioner and a state representative, Doug Wiles, supported the dissolution of the Town charter and sought an Attorney General's opinion which is attached. No formal action was taken. Since that time,

elected officials have included county employees living in the trailer at RTS, JDI employees living in the trailers, and UF professors living in the Whitney dorms. Typically, there was a balance of the shareholders' interests in the composition of the elected commission.

The Town currently has very few residents. According to Mr. Rumrell, no persons residing in the Whitney dorms qualify to serve as an elected commissioner since the dorms are temporary housing. If this position is correct, which I do not agree it is, then the trailers would also qualify as temporary housing due to the fact that they were initially placed on the property. Furthermore, if Mr. Rumrell is correct, then basically every decision that has been made by the Town since 1997 could now be called into question.

One final point that I feel compelled to point out. In speaking with Mr. Rumrell this week, he asked what options the town had under the circumstances following Mayor Inks' passing. I responded one option would be to dissolve the Town charter. He responded, point blank that, if that was my position, I should resign. He then proceeded to tell me that I would have "blood on my hands" if I did not go along with the current plan to appoint a new commissioner.

In conversations with a firm specializing in local government law, it was suggested that another option would be for the Town could petition the Court to have a receiver appointed until a proper legal framework is established to deal with the current legal issues.

I had hoped that more time would have been devoted to ensuring that the decision to be made is handled in accordance with due process and legal precedence. I do not agree that summarily appointing a new commissioner, who only recently qualified as a resident, without proper analysis and review is appropriate.

Regards,

Dennis K. Bayer

Dennis Bayer

From:

Dennis Bayer

Sent:

Tuesday, May 20, 2025 1:29 PM

To:

Rick Rumrell

Cc: Subject: dewey@townofmarineland.org; Dennis Bayer

RE: Powers of the Mayor-Commissioner

Mr. Rumrell,

I think use of the phrase "blood on his hands" is a bit extreme and unnecessary. I have put aside a number of important matters to try to have a diplomatic discussion with you on this very critical issue. For you to suggest yesterday that I should resign if I discussed dissolution of the town charter also seemed a bit extreme as I was responding to a question you raised on what options were available.

I have also spoken with several local government attorneys who do not share your opinion. My recommendation remains to get an opinion from the Attorney General's office.

Commissioner Dew can act as Mayor. To that end, he should proceed to get signing powers from the banks and handle other administrative processes. To my knowledge there are no major pending issues at this time. There are no developments proposed. There are no pending ordinances. We are working with the county and NERR staff on the River to Sea issues, but this is not really the Town's issue, it is an issue with the two stakeholders.

In reviewing the Charter, page 12 provides that the Mayor has the power and responsibility to direct officers and employees appointed by the Commission and to suspend officers and employees, except Commissioners. On page 13, the Mayor has the power to appoint persons to perform temporarily the duties of any disabled or suspended officers or employees.

In my opinion, the Mayor can suspend officers and employees. He cannot suspend commissioners. The Mayor can replace disabled or suspended officers and employees. Since the Mayor cannot suspend commissioners, how can he appoint a commissioner? The Charter distinguishes between officers and commissioners.

The Town of Marineland is in unchartered waters. We need to proceed with due caution.

Dennis

From: Rick Rumrell <rumrell@gmail.com>
Sent: Tuesday, May 20, 2025 12:35 PM
To: Dennis Bayer <dennis@Bayerlegal.com>

Cc: dewey@townofmarineland.org

Subject: Re: Powers of the Mayor-Commissioner

Based on the facts there is no quorum presently because there are not two or more town commissioners, it is essential to follow the only charter that I sent to you.

Secondarily there is nothing in the charter except what's stated on pages 11 and 12, that even refers to what occurs when a commissioner is disabled

as to how you could even temporarily appoint another person who legally could serve even temporarily.

I told you I shared the language that showed the Commissioners were " "employees or officers" because the Charter gave an exception that all other "employees or officers" were subject to removal according to the Charter.

On page 12 it is clear that any person could be appointed by the Mayor who was an employee or officers.

I asked you to send me the Charter in your office and to provide me any definitions that defines "employees or officers." You told me the Charter I sent you yesterday was the only Charter.

Since the Town of Marineland cannot have a quorum it is essential to proceed as Dewey Dew is the Vice-Mayor now with the powers under the Charter to appoint someone as the Commissioner that is vacant. Today the Vice Mayor met with folks from Flagler County. Without a quorum it destroys this Town without proceeding to move forward.

It is my legal position that any failure to have the Town move forward would be blood on the hands of anyone placing a vice-mayor proceeding today for a Thursday meeting.

I can also add everything we spoke yesterday if it becomes necessary but I spoke to another Cuty Attorney who agreed with me.

Its time to move forward and protect the Town of Marineland so people will continue to have one of the best small towns in Florida.

Best regards Rick Rumrell Cell: 904.591.6428 (Please excuse typos) Sent from my iPhone

On May 19, 2025, at 2:31 PM, Dennis Bayer < dennis@bayerlegal.com > wrote:

I do not see that this language allows the mayor to appoint commissioners- officers and staff yes.

Please send me the rest of the charter.

Dennis

Dennis Knox Bayer Attorney and Circuit Court Mediator 109 S. 6th Street, Flagler Beach, Fl., 32136

Dennis@bayerlegal.com

Website: Bayerlegal.com Phone: 386-439-2332

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From: Dewey Dew, Town of Marineland Commissioner < dewey@townofmarineland.org>

Sent: Monday, May 19, 2025 1:04 PM

To: Dennis Bayer < dennis@Bayerlegal.com >; rumrell@gmail.com

Subject: Powers of the Mayor-Commissioner

Attached is the charter for pages 11 and 12 related to the action that needs to be taken today. Look forward to hearing back from you as promptly and as early as possible today so that we will move forward.

Best regards,

Acting Mayor Commissioner and Vice Mayor of the Town of Marineland

Dewey Dew



marineland charter 1969.pdf



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any policemen of the Town to make lawful arrests and execute warrants issued by the proper authority of the Town on Sunday.

3. MAYOR-COMMISSIONER.

The Toun Commission shall, at the time of annual organization elect one of its members as Mayor-Commissioner of the Toun. In case the members of the Commission are unable to agree as to the new Mayor-Commissioner at the annual organizational meeting of the Toun Commission, the immediate prior Mayor-Commissioner shall continue as Mayor-Commissioner until his successor in office shall have been elected and qualified, whether he be a member of the new Town Commission or not.

4. POWERS OF MAYOR-COMMISSIONER.

The Hayor-Commissioner shall preside at all meetings of the Commission and perform such other duties consistent with the office as may be imposed by it; he shall have a vote in the proceedings of the Commission but no veto power.

It shall be the duty of the Mayor-Commissioner to see that all ordinances of the Town Commission are executed. He shall use the title Mayor-Commissioner in the execution of all instruments and documents first authorized by the Commission to be executed, in fulfilling his duty as the administrative head of the Town Commission; he shall further represent the Town in all matters of its relations with other governmental bodies; for purposes of service of civil processes by the Courts; and for all administrative functions required in carrying out the ordinances and directions of the Town Commission.

The Mayor-Commissioner shall have the power and responsibility of directing the officers and employees appointed by the Commission as to the execution of their duties; the power to suspend any officer or employee, except Commissioners, at any time for gross neglect or dereliction of duty, at the same time notifying such officer or employee in writing of the cause of suspension

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marineland charter 1969.pdf



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and giving him notice to appear at the next regular meeting of the Town Commission. At said meeting, the Hayor-Commissioner shall report the suspension and the reason for said suspension. If the Commission deems the cause sufficient for removal, it shall remove the suspended officer or employee, and the vacancy shall be filled by the Commission. If the Commission does not deem the cause sufficient, they shall reinstate the officer or employee, with pay.

The Hayor-Commissioner shall have the power to appoint persons to perform temporarily, the duties of any disabled or suspended officer or employee of the Town of Marineland.

The Commissioners shall appoint a Vice-Nayor-Commissioner to serve in all manners as the Mayor-Commissioner when the Hayor-Commissioner is not present at a meeting, or is prevented from functioning in his usual capacity.

Section 6. ELECTIONS.

- (1) The first election of municipal officers under this Act shall be held on the first Tuesday in September of 1969, and shall be to elect Commissioners for terms as set forth in Section 5, Paragraph 1 of this Act. The annual election shall be held on the first Tuesday of September of each and every year thereafter.
- (2) The Commissioners shall appoint a Clerk and two Inspectors to conduct the annual election and regulate the said election in a manner consistent with all State laws governing elections. The candidate in each group who has a majority of the votes cast in his group shall be the elected Commissioner for the group. In cases where there is no majority, the Town Commission shall provide for a runoff between the candidates having the two highest votes cast in the group, and this runoff shall be set for the third Tuesday in September. The candidate receiving the majority of the votes cast in the group in this election shall be the Commissioner for the group.
 - (3) Candidates for the Commissioner Groups to become vacant at the

2098

Status of Town of Marineland

Number: INFORMAL Date: March 14, 2000

The Honorable Doug Wiles Representative, District 20 Post Office Box 2161 St. Augustine, Florida 32085-2161

Dear Representative Wiles:

Your letter to the Secretary of State, the Honorable Katherine Harris, was forwarded to this office for assistance. You ask about the current status of the Town of Marineland.

An examination of the special acts indicates that in 1969, the Legislature enacted Chapter 69-1295, Laws of Florida, which sought to abolish the then existing Town of Marineland and create and establish a new municipality to be known as the Town of Marineland.

Article VIII, section 2(a), Florida Constitution, provides:

"Municipalities may be established or abolished and their charters amended pursuant to general or special law. When any municipality is abolished, provision shall be made for the protection of its creditors."

Chapter 165, Florida Statutes, the Formation of Municipalities Act, provides general law standards and procedures for forming and dissolving municipalities in lieu of any procedure or standards now provided by general or special law. Section 165.022, Florida Statutes, states that the act shall be the exclusive procedure pursuant to general law for forming or dissolving municipalities in this state, except in those counties operating under a home rule charter which provides for an exclusive method as specifically authorized by Article VIII, section 6(e), of the Florida Constitution.[1] Any provisions of a general or special law existing on July 1, 1974, in conflict with the act is not effective to the extent of such conflict.

Section 165.051(1), Florida Statutes, states that:

"The charter of any existing municipality may be revoked and the municipal corporation dissolved by either:

- (a) A special act of the Legislature; or
- (b) An ordinance of the governing body of the municipality, approved by a vote of the qualified voters."

If a vote of the qualified voters is required, the governing body of the municipality or, if the municipal governing body does not act within 30 days, the governing body of the county where the municipality is located, shall set the date of the election.[2] The election shall be the next regularly scheduled election or a special election held prior to such election, if approved by a

majority of the members of the governing body of each governmental unit affected. It may not, however, be held until more than 30 days after passage of the ordinance. Notice of the election is required to be published at least once each week for two consecutive weeks prior to the election in a newspaper of general circulation in the municipality. "Municipality" is defined in 165.031(4), Florida Statutes, to mean a municipality created pursuant to general or special law authorized or recognized pursuant to Article VIII, sections 2 or 6 of the Florida Constitution. The Town of Marineland, created as a municipality by special act, would appear to be subject to Chapter 165, Florida Statutes.

Section 165.052, Florida Statutes, establishes special dissolution procedures. The statute authorizes the Secretary of State by proclamation to declare inactive any municipality in this state upon a report being filed by the Department of Community Affairs which shall show that the municipality is no longer active, based upon a finding:

- "(a) That the municipality has not conducted an election for membership in its legislative body within the 4 years immediately preceding, or as otherwise provided by law;
- (b) That a notice of the proposed proclamation has been published at least once each week for 2 consecutive weeks in a newspaper of general circulation within the county wherein the territory of the municipality is located, stating the name of said municipality, the law under which it was organized and operating, a general description of the territory included in said municipality, and stating that any objections to the proposed proclamation or to any debts of said municipality shall be filed not later than 60 days following the date of last publication with the department; and (c) That 60 days have elapsed from the last publication date of the notice of proposed proclamation and no sustained objections have been filed."[3]

Any special law authorizing the incorporation or creation, or relating only to the powers or duties, of a municipality declared inactive by the Secretary of State shall be reported by the Governor to the presiding officers of both houses of the Legislature.[4] The proclamation of inactive status constitutes sufficient notice as required by Article III, section 10, Florida Constitution, to authorize the Legislature to repeal any special laws so reported.[5]

If a municipality declared inactive by the Secretary owes any debt at the time of proclamation, any property or assets of such unit shall be subject to legal process for the payment of such debt.[6] After the payment of all the debts, the remainder of the municipality's property or assets shall escheat to the county wherein located. If it is necessary to levy any taxes on the property in the territory or limits of the inactive municipality in order to pay its debts, such taxes may be assessed and levied by order of the board of county commissioners and shall be assessed by the county property appraiser and collected by the county tax collector.

This office has not been informed of any special law abolishing the Town of Marineland, nor has this office been advised that the town has surrendered its franchise or otherwise been dissolved pursuant to the general law methods of municipal dissolution. This office has been advised by the Secretary of State's Office that it has not issued a proclamation declaring the town inactive.

I trust that the above informal advisory comments may be of assistance.

Sincerely,

Robert A. Butterworth Attorney General

cc: Ms	. Deborah K	(. Kearney
General Counsel		

- [1] See Op. Att'y Gen. Fla. 76-96 (1976), stating that the mere enactment of Ch. 165, Fla. Stat., by Ch. 74-192, Laws of Florida, did not abolish any existing municipality, but merely established a new general-law method for the formation and dissolution of municipalities subsequent to its effective date.
- [2] Section 165.051(2), Fla. Stat.
- [3] Section 165.052(1), Fla. Stat. *And see* s. 165.052(2), Fla. Stat., requiring the state agency charged with collecting financial information from municipalities to report to the Department of State and the Department of Community Affairs any municipality which has failed to file a report within the time set by law. *Cf. Treadwell v. Town of Oak Hill*, 175 So. 2d 777 (Fla. 1965), in which the court held that where the town's charter had never been nullified or abolished by the Legislature but the town's government had ceased to function for 30 years and, under the provisions of the charter, only the last elected officials of the town were authorized to call an election for purposes of filling vacancies and such officials were all deceased, an equity court could, in the absence of remedy for rights of the town's citizens at law, call an election and appoint a board of elections to conduct same for purpose of re-activating the municipality.
- [4] Section 165.052(4), Fla. Stat.
- [5] *Id.*
- [6] Section 165.052(3), Fla. Stat.