



**The City of**  
**OKLAHOMA CITY**

OFFICE OF THE MUNICIPAL COUNSELOR  
KENNETH JORDAN  
Municipal Counselor

May 8, 2008

Mr. Richard C. Yarmuth  
Yarmuth, Wilsdon, Calfo, PLLC  
Attorneys at Law  
Fourth & Madison  
925 Fourth Avenue, Suite 2500  
Seattle, Washington 98104

Re: THE BASKETBALL CLUB OF SEATTLE, LLC and CANARSIE HOLDINGS, LLC v.  
THE PROFESSIONAL BASKETBALL CLUB, LLC, Case No. CIV-08-00623-MJP,  
United States District Court for the Western District of Washington.

Dear Mr. Yarmuth:

This office serves as legal counsel for The City of Oklahoma City ("City"), the Mayor and Council of the City, and for the Oklahoma City Public Property Authority ("OCPPA") and its Trustees. We have been advised through local and national news media that your firm has filed the above referenced litigation on behalf of Howard Schultz, by and through The Basketball Club of Seattle, LLC and Canarsie Holdings, LLC, the above referenced Plaintiffs. We have obtained and reviewed a copy of the Complaint, and we have discussed the same with the City Manager and the Mayor.

Since we do not have access to all of the facts surrounding the claims made in the Complaint, it would not be appropriate at this time to comment on the merits of the pending litigation, and that is not the purpose of this letter. The purpose of this letter is to provide information that may be important to you and your client as you weigh the potential outcome of your litigation, and to make clear the position of the City and the OCPPA.

In December 1993, the citizens of Oklahoma City approved the first MAPS (Metropolitan Area Projects) Sales Tax Ordinance. The first MAPS tax was a temporary one-cent sales tax that commenced on January 1, 1994 and ran until January 1, 1999. It was subsequently extended by the voters for an additional six months and expired on July 1, 1999. During the 66 months it was in effect, over \$309 million was collected. In addition, the deposited tax revenue earned about \$54 million in interest. The proceeds were used to help revitalize a blighted section of downtown now known as "Bricktown." Bricktown is now a first class business and entertainment district, which includes a canal that was built by the City with the first MAPS sales tax monies. Some MAPS proceeds were also used on the Oklahoma River Project. It should be noted that all this revitalization has converted this area of the City into a major entertainment attraction.

City leadership also believed that the City could support a major league professional franchise such as a National Hockey League (NHL) team or a National Basketball Association (NBA) team. With that idea in mind, City leadership included the construction of a major sports and concert facility in the initial MAPS plan. In the spring of 1999 construction began on the 20,000-seat Ford Center at a cost of \$87.7 million. The Ford Center opened in June of 2002 and the City has been looking for a major league tenant since that time. The idea was “build it and they will come.”

On August 28, 2005, hurricane Katrina brought unfortunate devastation to New Orleans and the southeastern coast of the United States. While Oklahoma reached out to its neighbors and provided shelter to thousands of displaced storm victims, the New Orleans Hornets and the National Basketball Association reached out to Oklahoma City and the Ford Center as a temporary home to the Hornets. The City and its citizens utilized this opportunity to prove that Oklahoma City could support an NBA franchise. And prove that they did! The citizens of Oklahoma City and the surrounding communities embraced the Hornets and professional basketball. For two basketball seasons the Ford Center was filled with enthusiastic fans. Although it was bittersweet, the Hornets had to return home. However, during the Hornets’ relationship with Oklahoma City, Mayor Mick Cornett seized upon several opportunities he had to visit with NBA Commissioner David Stern to promote The City as a site for possible NBA expansion or relocation. The success of the Hornets in Oklahoma City did not go unnoticed by the Commissioner or the NBA.

The reason for providing the above history is to demonstrate that the Mayor and City Council, and more importantly, the citizens of Oklahoma City are determined to make Oklahoma City a premier location for business and for a major league franchise, such as an NBA team. It is important that you be aware that the City has an outstanding reputation of promoting economic development and that it expects equal cooperation from its business partners.

On or around October 31, 2007 there were media reports that the Oklahoma-based owners of the Seattle SuperSonics (The Professional Basketball Club, LLC, d/b/a the SuperSonics, hereinafter “Team”) had been unable to negotiate a new lease arrangement in Seattle that included the construction of a new arena, and had filed for relocation of the team. These reports seemed consistent with earlier reports that the owners of the Team would consider relocating the Sonics to a different market if an agreement could not be reached. (The cities of Las Vegas, Oklahoma City and Kansas City had been mentioned as possible relocation sites.) In early November the Mayor and City Manager were contacted by Clay Bennett and attorneys from McAfee and Taft, a local law firm, about initiating formal discussions related to a possible relocation of the Team to Oklahoma City. However, before beginning discussions with the Team it was made clear to Mr. Bennett and his lawyers that any agreement between the City and the Team would have to be dependent upon resolution of any prior obligation the Team may have with the City of Seattle and subject to approval of the NBA. In response, the Team indicated that it would continue efforts to negotiate an early termination of the lease with the City of Seattle or that it would relocate at the end of the current lease.

At that time Mr. Bennett and his lawyer represented to the City, as reported in the news media, that the City of Seattle and State of Washington had spurned all offers made by the Team to

make a deal that would keep the Team in Seattle, and that the Team had reached a conclusion that the Washington public entities could not or would not raise sufficient revenues to build a new facility to meet the needs of the Team and the NBA. The Team indicated that it had exhausted its responsibility to stay in the Seattle area and further indicated that staying in that market had become economically unfeasible. (Based upon similar reports of the news media it appears that Mr. Schultz had similar problems while he and his group owned the Team.) The Mayor and City Manager were informed that the Team had given notice to the City of Seattle of its intent to terminate the lease with the City of Seattle as soon as legally possible, and that upon resolution of litigation with the City of Seattle, the Team would relocate to The City of Oklahoma City; provided an agreeable lease could be reached between the City and the Team. The Team also stated that it had submitted an application for relocation with the NBA. (And it has successfully done so.)

Although the New Orleans Hornets had two very successful years at the Ford Center, the Mayor and City Manager were already aware that certain upgrades and improvements would need to be made to the Ford Center in order to support an NBA franchise over a longer term. There had already been long term planning discussions among staff and with the City Council that included options of either upgrading the Ford Center or perhaps building a new arena. (However, since the Ford Center was less than ten-years old and could be upgraded to meet Team needs and NBA standards, construction of a new arena was never seriously considered as an option by either the Team or the City.) Based upon discussions with the Team in early November, preliminary studies were initiated to ascertain the costs related to upgrades to the Ford Center and for construction of a practice facility. Preliminary studies indicated that it would take approximately \$100 million dollars in upgrades to the Ford Center in order to sustain an NBA franchise over a term of years and to bring the Ford Center up to NBA standards. Knowing that there was insufficient funding in the City budget to make that level of commitment, it was decided by the Mayor and City Council that they would call for a special election and ask the citizens of Oklahoma City if they were willing to approve an extension of the soon to expire one-cent sales tax for a period of 12-15 months to fund the needed improvements and upgrades to the Ford Center and, additionally, to purchase land for a site and to construct an NBA quality practice facility (if a lease with an NBA team could be obtained by June 1, 2009). Both City leadership and citizens see this sales tax as an extension of the original MAPS initiative begun in December of 1993.

On January 2, 2008 the Mayor and City Council approved a resolution calling for a special election to be held on March 4, 2008, through which the citizens of Oklahoma City would be asked to approve Ordinance 23,520. (Attachment No. 1), If approved by City voters, Ordinance 23,520 would provide the funding necessary to make the needed improvements and upgrades to the Ford Center and to build an NBA acceptable practice facility. Ordinance 23,320 provided that the Ford Center-related one-cent sales tax would be levied for a period up to an additional 15 months. On March 4, 2008, the citizens of Oklahoma City approved the Ordinance by a vote of 44,849 to 27,564, an overall approval of 61.9 percent. This vote sent a strong message to the Mayor and City Council that the citizens of Oklahoma City were in support of making the upgrades and wanted to join the "Big League." The Mayor and City Council heard the message of the citizens and set out to do what was necessary to accomplish the mission.

Although there were some discussions between city management and representatives of the Team before the vote, after the vote, management for the City, including a representative from this office, engaged in direct discussions with lawyers from McAfee and Taft for the purpose of negotiating a potential lease arrangement with the Team. Since the Team had applied for relocation with the NBA contingent upon resolution of the existing lease with the City of Seattle, the Team and the City desired to have a lease in place prior to consideration by the NBA of the Team's application for relocation.

Negotiations were conducted in good faith with the Team and resulted in the approval of four agreements, including an Arena Use License Agreement (lease), related to the relocation of the Sonics from Seattle to Oklahoma City. On April 15, 2008 the City Council and the OCPPA Trustees jointly approved three agreements with The Professional Basketball Club, LLC, d/b/a Seattle SuperSonics. Those agreements are: Arena Use License Agreement (Attachment No. 2), Practice Facility Lease Agreement (Attachment No. 3), and the Agreement for Arena Upgrades and Practice Facility (Attachment No. 4). On April 29, 2008 the City Council and OCPPA Trustees jointly approved the Food and Beverage Agreement with the Team (Attachment No. 5). These four instruments are hereinafter referred to as the "OKC NBA Agreements."

While we have no expectations regarding whether the Plaintiffs in the above referenced litigation will or will not be successful, there is an expectation by City leadership and citizens that the owners of the Team, whomever they may be, will honor all of the Team's contractual obligations with the City—including the contractual obligation to relocate to Oklahoma City and to play home games at the Ford Center for the duration of the term of the lease. Therefore, it is the intent of this letter to communicate to the Plaintiffs, through you and Mr. Schultz, that The City of Oklahoma City and the OCPPA consider the OKC NBA Agreements with The Professional Basketball Club, LLC, to be fully enforceable against the current and any future owner(s) of the Team. We expect that the OKC Agreements will survive regardless of the outcome of the above referenced litigation. We are unaware of a legal theory that would render the OKC NBA Agreements voidable, regardless of the outcome of the above referenced litigation. It is our position that the OKC NBA Agreements are in effect at this time, notwithstanding that the initial term of the Arena Use License Agreement will not commence until a future date, which is contingent upon expiration or termination of the Team's current lease with the City of Seattle. Simply, we contend that the City now has valid and enforceable agreements with the Team requiring it relocate to Oklahoma City at the end of the current lease with the City of Seattle.

In this regard we would call your attention to certain provisions from the Arena Use License Agreement:

1. § 2.1.6: "...the Team shall play all NBA Regular Season Home Games and all NBA Play-off Home Games in the Arena during the License Term. Not less than one NBA Pre-Season Home Game shall be played by the Team in the Arena for each Basketball Season during the License Term...

2. § 2.3.1(b): The Team is currently a party to a Premises Use and Occupancy Agreement dated February 14, 1994, as amended, with the City of Seattle, Washington (the "Seattle Agreement") pursuant to which it has agreed to play Home Games at Key Arena in Seattle, Washington through the 2009-2010 NBA Basketball Season. The City of Seattle has

sued the Team, contending that it is entitled to specifically enforce the Seattle Agreement. The Team, in turn, has sought a declaration that the Seattle Agreement may not be specifically enforced. The parties agree that the commencement of the Initial License Term hereunder is subject to either (i) the expiration of the Seattle Agreement in accordance with its terms, or (ii) the resolution of the pending litigation in a manner enabling the Team to relocate prior to the expiration of the Seattle Agreement and otherwise on terms satisfactory to the Team. The Team agrees that in no event will it extend the term of the Seattle Agreement and that it will promptly notify the other parties hereto of the circumstances described in (ii) above. (Emphasis Added.)

3. § 2.3.2: Although the Use License Agreement was effective upon signing, this clause sets forth the Commencement Date for initiating the beginning of the initial 15-year license term which could begin as early as August 15, 2008. (Depending on the termination of the Team's lease with the City of Seattle).

4. § 14.2 Team Assignments. Except as otherwise permitted by this Article XIV, the Team shall not voluntarily, involuntarily, by operation of law or otherwise (including by way of merger or consolidation) make or enter into an Assignment of this Agreement, without first obtaining the written consent of the Public Entities, which consent shall not be unreasonably withheld, delayed or conditioned. The Team shall provide the Authority not less than ten (10) days prior written notice of any Assignment.

5. § 14.3.1 The Team may freely transfer, in whole or in part, any or all of its rights and obligations under this Agreement and other Team Operations Agreements to one or more Affiliates of the Team, provided that any such Assignment shall not change, limit, release or otherwise affect the rights, obligations and liabilities of the Team to the Authority, the City or the Operator under the agreements assigned and such Affiliate shall agree to be bound by all of the terms and conditions of such agreements; (Emphasis added).

6. § 14.3.3 The Team may transfer all of the Team's right, title and interest in and to this Agreement and other Team Operations Agreements to any Person that acquires the NBA Membership with the approval of the NBA, provided all of the following conditions are satisfied:

(a) Such assignee or one or more Affiliates of such assignee unconditionally and expressly assumes pursuant to one or more instruments or documents, in form and substance reasonably acceptable to the City, Authority and Operator, all of the obligations of the Team under such agreements and agrees to abide and be bound by all of the terms and provisions of such agreements; and (Emphasis added).

(b) The Team provides the City and Authority with written confirmation that the Transfer of the NBA Membership has been duly approved by the NBA.

7. § 14.4 Release of The Team. No Assignment shall relieve the Team of any of its obligations under this Agreement and other Team Operations Agreements, except that the Team shall be relieved from any obligations arising under this Agreement and other Team Operations Agreements upon an Assignment described in Section 14.3.3 arising after the effective date of such Assignment. (Emphasis added).

8. § 19.4.2 Authorization; No Breach or Violation. The execution, delivery and performance by the Team of the Arena Transaction Documents, having been duly authorized by all necessary limited liability company actions, will not violate, contravene or constitute a breach of or a default under the Team limited liability company governance documents, the NBA Rules and Regulations, any loan or credit agreement to which Team is a party, or any other material contract or agreement to which the Team is a party or by which the Team or its material assets may be bound or affected. The Arena Transaction Documents has been duly executed and delivered by the Team. Accordingly, the Arena Transaction Documents constitute valid, binding and enforceable obligations of the Team. (Emphasis added).

9. § 20.1.1 Covenant to Play in Arena. Subject to the provisions hereof, including, without limitation, the provisions of Section 20.4 hereof, the Team hereby covenants and agrees to play, all of its Home Games in the Arena commencing upon the Commencement Date and continuing throughout the License Term, provided that during each NBA Basketball Season the Team shall (i) not be required to play more than one (1) of its pre-season Home Games at the Arena; and (ii) shall be entitled to play up to two (2) regular season games at designated neutral sites for which the Team is considered by the NBA as a the “home team.”

10. § 20.2.1 Prohibited Actions. Subject to the limited rights set forth in Section 20.2.2, the Team shall not apply for or seek approval from the NBA during the period commencing on the Effective Date hereof through the end of the Non-Relocation Period for the relocation of the Team outside the boundaries of Oklahoma City, Oklahoma. (Emphasis added).

11. 20.3.2 Remedies for Non-Relocation Default. Upon the occurrence of any Non-Relocation Default, the City or Authority shall have the option to pursue any one or more of the following remedies in its sole discretion without any notice or demand whatsoever, other than any notice expressly provided for in this Agreement:

- (a) The City or Authority may seek and obtain Injunctive Relief pursuant to Section 20.3.3; or
- (b) The City or Authority may terminate this Agreement and all other Team Operations Agreements and recover damages as provided in Section 21.3.5.

12. § 20.3.3 Declaratory or Injunctive Relief. The Team acknowledges and agrees that:

- (a) In reliance on the Team’s commitments to play its Home Games in the Arena for the Non-Relocation Period as provided by this Article XX, the City is developing and constructing the Arena Upgrades at a cost to the taxpayers of the City anticipated to be in excess of \$95 million;
- (b) But for the Team’s commitment to play its Home Games in the Arena throughout the Non-Relocation Period as provided by this Agreement, the City and Authority would not have gone forward with developing and constructing the NBA Improvements as part of the Arena Upgrades or constructing the Practice Facility, as provided in the Arena Agreement;

(c) Having the Team play its Home Games in the Arena throughout the Non-Relocation Period provides a unique value to the City and the Authority, not only in terms of generating funds to operate the Arena, but also in terms of generating new jobs, additional revenue sources and economic development and increased tourism for the City;

(d) The City and Authority would suffer immediate and irreparable harm if a Non-Relocation Default were to occur; and

(e) Monetary damages may not adequately compensate the City and the Authority for the damage they would incur if a Non-Relocation Default were to occur.

Therefore, the City or Authority shall be entitled to obtain Injunctive Relief with respect to any Non-Relocation Default.

13. § 20.4.3 Payment. If the Team exercises its option under this Section 20.4, then on the effective date of such termination the Team shall pay to the City an amount equal to the Adjusted Book Value of the NBA Improvements as of such date. Further, in such event the City shall have the option to require the Team to purchase the Practice Facility from the City in accordance with the terms of the Practice Facility Agreement.

14. § 20.4.4 Assignment. No assignee of this Agreement will be entitled to utilize this Section 20.4 unless (a) such assignee is a permitted assignee under Sections 14.3.1 or 14.3.3 hereof and (b) the assignee provides a written commitment to the City that it will take no action seeking to relocate the Team that would be effective at any time prior to the next succeeding Economic Benchmark Testing Date.

15. § 21.3.5 Damages.

(a) The Parties acknowledge that if there is an Event of Default by the Team in its obligations under Section 20.1 the Public Entities will suffer damages. The exact amount of such damages would be difficult to prove and the Parties desire to provide for agreed liquidated damages payable on any such Event of Default. Accordingly, the Parties agree that in the event the Team defaults under Section 20.1 and in such circumstances either (i) the remedies specified in Section 20.3.2 are not available to the City or Authority or (ii) the City or Authority elects not to pursue the remedies set forth in Section 20.3.2, the Team shall be liable for liquidated damages. Such liquidated damages shall be determined as of the date of the Team's default under Section 20.1 and shall equal the sum of (i) the Adjusted Book Value of the NBA Improvements as of such date, (ii) the Adjusted Book Value of the Practice Facility as of such date, (iii) a sum equal to the then present value of the amounts payable under Article IV of this Agreement for the remaining License Term, calculated as though the Team played a full 41 game season of Home Games each remaining Operating Year and based on a discount rate of 8% per annum. The City's or Authority's right to such liquidated damages

in such circumstances shall be in lieu of all other recourse to damages as a result of such Event of Default.

16. § 27.13 Choice of Law. The laws of the State of Oklahoma shall govern the interpretation and enforcement of the Team Operations Agreements.

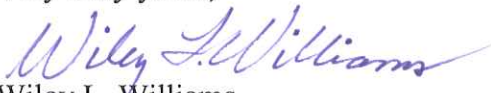
Further, in addition to the above noted provisions, the City and OCPPA are underway, pursuant to the terms of the Arena Upgrades and Practice Facility Agreement, to make significant improvements to the Ford Center, to purchase an acceptable tract of land, and to build an NBA quality basketball practice facility. The projected costs associated with these projects may be as high as \$120 million dollars. These expenses are being incurred based upon the City's good faith agreements with the owners of the Team. If the Team fails to relocate to Oklahoma City for any reason, The City, on behalf of its taxpayers, would be obligated to enforce the terms of the OKC NBA Agreements and seek specific performance and/or damages, which, under the terms of the Arena Use License Agreement, will be substantial.

We are sending this letter to put you and your client(s) on notice of the existence of these contractual rights and obligations and to let you know that we expect the current and all future owner(s) or assignee(s) of the Team to honor the above-referenced Agreements between the Team, the OCPPA and The City.

The Mayor and City Manager of The City of Oklahoma City desire that I express a continuing intent on behalf of The City of Oklahoma City to honor the OKC NBA Agreements regardless of who owns the Team and that there is an expectation, in the event either the Basketball Club of Seattle, LLC or Canarsie Holdings, LLC were to be successful in the referenced litigation, that either entity, or any subsequent owner(s) of the Team, would likewise honor the Team's commitments under the OKC NBA Agreements. The City and OCPPA consider the Team and its owners, both current and future, to be business partners of the City, and we expect that any subsequent owner or owners would join hands with the City, and its citizens, and honor the OKC NBA Agreements, made in good faith, and perform as good corporate neighbors to make NBA basketball a success in Oklahoma City.

Please consider the contents of this letter. We hope that it is received and accepted in the spirit of cooperation in which it is sent, that is, to communicate the City's commitment to honor, uphold, and to enforce the OKC NBA Agreements, as needed, and to express The City's continuing commitment to make Oklahoma City a "Big League City" and to make NBA basketball a success.

Very truly yours,

  
Wiley L. Williams  
Assistant Municipal Counselor

cc: Mr. Howard Schultz (with referenced attachments)

Copy of Letter only to:

Mick Cornett, Mayor

Gary Marrs, Councilman, Ward 1

Sam Bowman, Councilman, Ward 2

Lawrence F. McAtee Jr., Councilman, Ward 3

Pete White, Councilman, Ward 4

J. Brian Walters, Councilman, Ward 5

Ann Simank, Councilwoman, Ward 6

Ronald Skip Kelly, Councilman, Ward 7

Patrick J. Ryan, Councilman, Ward 8

James D. Couch, City Manager

Kenneth Jordan, Municipal Counselor

Clay Bennett, The Professional Basketball Club, LLC

Frank Hill, Esq., McAfee & Taft

Gary Desjardins, SMG

Tom Anderson, Assistant to the City Manager

Richard Forshee, Attorney for SMG