



City of Grand Island

Tuesday, August 07, 2007

Special Council Session

Item J2

Approving Payment of Claim Submitted by Howard Maxon

This item relates to the aforementioned Resolution Item I-2.

Staff Contact: Dale Shotkoski

ANGLE, MURPHY, VALENTINO & CAMPBELL, P.C.

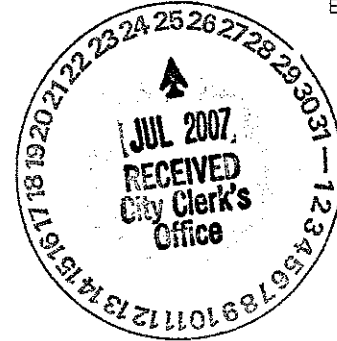
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MICHAEL J. MURPHY
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WALLACE W. ANGLE
(1921-2001)

July 24, 2007



City of Grand Island
Ranae Edwards, City Clerk
100 East First Street
P.O. Box 1968
Grand Island, NE 68802-1968

RE: Maxon v. City of Grand Island/Amended Claim

Dear Ms. Edwards:

Our office represents Howard Maxon regarding his termination from employment claim on March 29, 2005 against the City of Grand Island, and the subsequent ruling of the Supreme Court on May 25, 2007. At the time of the hearing before the City Council, Mr. Maxon was making \$32.7706 per hour, \$5,680.24 per month, or \$68,162.95 per year, plus benefits. Those benefits included family health coverage that was provided to him at an approximate monthly cost of \$139.70. Further, he had a 6% pension accrual benefits match of approximately \$8,179.60 per year and a savings bond deduction of \$25.00 every two weeks, at interest. There was also a supplemental pension benefit contribution made of \$16.00 per month by the City plus the increased pay in 2003. Howard and his wife Colleen were forced to withdraw \$159,640.62 from their retirement accounts for living expenses, incurring penalties and a tax liability of over \$70,000.00.

As a result of his termination, he was forced to purchase his family coverage on a COBRA basis from April 1, 2005 through September 30, 2005 at a cost of \$1,075.00 per month. The price of this coverage increased to \$1,150.00 per month from October 30, 2005 through September 30, 2006. When the 18 months on COBRA eligibility ended, Mr. Maxon procured alternative family health coverage from October 1, 2006 through May 31, 2007, the final cost of health coverage was \$9,690.84, or an average cost of \$1,076.76 per month health insurance cost. The total health insurance cost on an out-of-pocket basis was \$31,090.84.

One must assume an interest factor on the sums owed to Maxon by his employer for the wage amounts and other losses. As of April 21, 2005, the Nebraska Supreme Court had a published interest rate of 5.125%; as of July 21, 2005 of 5.429%; and as of October 20, 2005 of 6.420%. One would assume some type of cost of living increase to his base salary of 2.5% to 3% of each fiscal year. Certainly, the pay of his successors in

office might provide a guide since Mr. Maxon had over twenty-five years in emergency management, and his salary would have been at \$72,000.00 per year by October 1, 2006, given reasonable assumptions.

Lost Wages (Without interest or cost-of-living increase)

April 1, 2005 through December 31, 2005	\$ 51,122.15
January 1, 2006 through December 31, 2006	\$ 68,162.95
January 1, 2007 through August 1, 2007	\$ 39,761.68
(Assumes no annual increase in salary for Maxon)	<u>\$159,046.78</u>

Annual interest lost on \$51,122.16
 @ 5.125% = \$3,147.79 per year or \$8.62 per day
 Annual interest lost on \$68,162.95
 @ 6.420% = \$4,376.06 per year or \$11.98 per day
 Annual interest lost on \$39,761.68
 @ 6.420% = \$2,552.69 per year or \$6.99 per day

Health Insurance Loss

\$1,075 per month (April 1, 2005 to September 30, 2005)	\$ 6,450.00
\$1,150 per month (October 1, 2005 to September 30, 2005)	\$14,950.00
\$1,076.76 per month (October 1, 2006 to present)	<u>\$ 9,690.84</u>
	\$31,090.84

These expenses incurred on an out-of-pocket basis are subject to an interest factor as well, as they were incurred monthly.

Lost Retirement/Pension Benefits

Mr. Maxon's contribution plus employer match annually was approximately \$8,179.60. He lost earned interest on his contribution and the match in his account from April 1, 2005 to present or \$8,861.23, without interest, on his accounts. The additional amount of contribution to the 2005 supplemental program is unknown, but the current account statement shows an approximate balance of \$800.00. This would have started in 2003.

Lost Pension Contributions:	
Assumes 6%/match with no salary increases	<u>\$ 8,179.60</u>
Current Wage and benefits losses without interest or cost-of-living increases	\$198,317.22
Plus penalties/tax for retirement withdrawals/without cost of lost investment interest	<u>\$ 70,000.00</u>
	\$268,317.22

Howard Maxon believes a reasonable interest factor applied to these sums would yield approximately \$13,000.00 per year. Additionally, he incurred other expenses for his appeal, including the cost of the transcript of \$2,341.80 and attorneys fees of approximately \$15,000.00. Further, each day he is not allowed to work he accrues lost pay, which increases the total amount of lost pay, retirement, and other benefits. Assuming a salary loss of \$72,000.00 from October 1, 2006, his lost wages would increase by another \$4,000.00 from and after October 1, 2007, not including any increased retirement percentage.

As a result of the recent Supreme Court decision regarding Mr. Maxon on May 25, 2007, Mr. Maxon believes his claims for past and current salary, benefits, and reimbursements have accrued, and hereby amends his demand for payment of said amounts. Further, he should be entitled to those increases paid to his successors in office, and the above amounts calculated and adjusted accordingly, including a severance for resigning voluntarily of six months salary of \$36,000.00, not including any retirement contribution amounts. Further, if payments are extended over a four year time frame, Mr. Maxon loses approximately \$16,200.00 in interest per year for his forbearance cost of waiting for his payments. Accordingly, Mr. Maxon demands the total sum of \$325,000.00 for his claims. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Vincent Valentino".

Vincent Valentino
For the Firm

VV/mde

CC: Howard Maxon
Dale Shotkoski