

HELPING • PLANNING • PROTECTING

FROM THE DESK OF:
MICHAEL DAVID BLAND
DBLAND@WBBATTY.COM

**WEAVER
BENNETT
& BLAND** P.A.
ATTORNEYS AT LAW

MAILING ADDRESS:
196 N. TRADE STREET
MATTHEWS, NC 28105
TELEPHONE: (704) 844-1400
FAX: (704) 845-1503

June 22, 2018

Sent via Certified Mail, US Mail, and Email

The Hon. Joseph E. Pollino, Jr.
Mayor of the Village of Marvin
1253 Firethorne Club Dr.
Marvin, NC 28173
joepollino@marvinnc.org

Melanie Cox
Attorney for the Village of Marvin
PO Box 178
Waxhaw, NC 28173
melanie@coxlawnnc.com

Councilmember Robert Epps
Village of Marvin Council
517 Pacer Lane
Marvin, NC 28173
robertepps@marvinnc.org

John Aldridge, IV
Attorney for Union County Sheriff
3344 Presson Road
Monroe, NC 28112
john.aldrige@unioncountync.gov

Councilmember Kim Vandenberg
Village of Marvin Council
806 Capington Lane
Marvin, NC 28173
kimvandenberg@marvinnc.org

The Hon. Eddie Cathey
Union County Sheriff
3344 Presson Road
Monroe, NC 28112
eddiecathey@unioncountync.gov

Councilmember Nick Dispenziere
Village of Marvin Council
104 Orchard Hill Ct.
Marvin, NC 28173
nickdispenziere@marvinnc.org

RE: Councilmember Mary Shkut

Dear Sir/Madam:

This firm represents Mary Shkut. On May 31, 2018, at a duly-scheduled regular meeting of the Village Council (“the Council”) of the Village of Marvin, North Carolina (“the Village”), Councilmember Ron Salimao resigned his seat, effective upon the selection and qualification of his successor in office. Though it was not necessary for it to do so, the Council accepted his

resignation by 2-1 vote, with Councilmembers Robert Epps and Ron Salimao voting in favor, and Councilmember Kim Vandenberg voting against.

Mr. Salimao's resignation, expressly made effective upon the selection and qualification of his successor, empowered the Council to appoint his successor to fill his seat pursuant to N.C. Gen. Stat. § 160A-63. That statute provides as follows:

A vacancy that occurs in an elective office of a city shall be filled by appointment of the city council. If the term of the office expires immediately following the next regular city election, or if the next regular city election will be held within 90 days after the vacancy occurs, the person appointed to fill the vacancy shall serve the remainder of the unexpired term. Otherwise, a successor shall be elected at the next regularly scheduled city election that is held more than 90 days after the vacancy occurs, and the person appointed to fill the vacancy shall serve only until the elected successor takes office. The elected successor shall then serve the remainder of the unexpired term. If the number of vacancies on the council is such that a quorum of the council cannot be obtained, the mayor shall appoint enough members to make up a quorum, and the council shall then proceed to fill the remaining vacancies. If the number of vacancies on the council is such that a quorum cannot be obtained and the office of mayor is vacant, the Governor may fill the vacancies upon the request of any remaining member of the council, or upon the petition of any five registered voters of the city. Vacancies in appointive offices shall be filled by the same authority that makes the initial appointment. This section shall not apply to vacancies in cities that have not held a city election, levied any taxes, or engaged in any municipal functions for a period of five years or more.

In cities whose elections are conducted on a partisan basis, a person appointed to fill a vacancy in an elective office shall be a member of the same political party as the person whom he replaces if that person was elected as the nominee of a political party.

N.C. Gen. Stat. § 160A-63 (emphasis added).

A quorum of the Council was in attendance at the May 31 meeting, comprising Mayor Joe Pollino, and Councilmembers Salimao, Epps, and Vandenberg. *See* N.C. Gen. Stat. § 160A-74 ("A majority of the actual membership of the council plus the mayor, excluding vacant seats, shall constitute a quorum."). Furthermore, since he expressly made his resignation effective only upon the selection and qualification of his successor, Mr. Salimao was entitled to vote on such appointment. Even had his resignation taken immediate effect, Mr. Salimao's resignation would have made him a holdover officer entitled to vote to appoint his successor pursuant to N.C. Gen. Stat. § 160A-62, which provides that "[a]ll city officers, whether elected or appointed, shall continue to hold office until their successors are chosen and qualified."

After voting to accept Mr. Salimao's resignation, the Council voted to appoint Mrs. Shkut to fill Mr. Salimao's vacant seat by 2-1 vote, with Mr. Epps and Mr. Salimao voting in favor of the appointment, and Mrs. Vandenberg voting against. Mrs. Shkut took the oath of office pursuant to N.C. Gen. Stat. § 160A-61, and immediately entered upon the duties of the office of Village Councilmember. Following Mrs. Shkut's appointment, the Council conducted further business, voting 3-0 to schedule a special meeting on June 4, 2018, and then adjourned the meeting. These facts—reflected in the audio recording of the May 31 meeting and to be reflected in the forthcoming minutes of that meeting—demonstrate that Mrs. Shkut was duly-appointed to the office of Village Councilmember at the May 31 meeting and that her appointment accorded in all respects with applicable state and local law.

The Council has not conducted business at any meeting since May 31, 2018. Only Mrs. Shkut and Mr. Robert Epps attended the June 4, 2018, special meeting. A regular meeting was scheduled for June 12, 2018, but cancelled after several Councilmembers indicated that they would not attend. Prior to the June 12, 2018, meeting, the Council published an agenda that indicated that it would discuss and consider Mr. Salimao's resignation (approved by 2-1 vote at the May 31 meeting) and the appointment of his successor-in-office (also accomplished by 2-1 vote at the May 31 meeting.) The Council never reached those agenda items on June 12 because, again, the Council cancelled the June 12 meeting before it took place. The next regular meeting of the Council is currently scheduled for June 28, and the circulated agenda for that meeting indicates once again that the Council intends to take those matters—already resolved at the May 31 meeting—into consideration.

The agendas for the June 12 and June 28 meeting and other facts and information reported to this law firm indicate that some or all of you have discussed, planned, and intend to take coordinated action to prevent or otherwise impede Mrs. Shkut in her exercise and discharge of the rights, duties, and privileges of her office, or to appoint or attempt to appoint another person to usurp her office. The facts and information reported to us go so far as to indicate that some or all of you intend to order Mrs. Shkut to leave the June 28 meeting and, if she fails to do so, to have her arrested and escorted from the meeting room.

Any such action on the part of any or all of you would violate clearly established state and federal law. Mrs. Shkut was appointed by majority vote of the Council to fill Mr. Salimao's vacant seat at the May 31 meeting pursuant to N.C. Gen. Stat. §§ 160A-62 and 160A-63. She took the oath of office. She is a Councilmember. As such, she has the right—and the obligation—under the U.S. Constitution, the N.C. Constitution, and the N.C. General Statutes to attend Council meetings and vote her conscience in the interests of her constituency. Any interference with her exercise and discharge of those rights and obligations would infringe on her civil liberties, if not the civil liberties of each and every resident of the Village of Marvin, all of whom are entitled to have their Councilmembers act in accordance with their sworn oath to uphold the law. Her arrest and removal from the June 28 meeting, moreover, would be a false arrest, wholly devoid of reasonable cause.

If you believe that Mrs. Shkut's appointment was somehow ineffective, then there is a proper course. Article 41 of Chapter 1 of the N.C. General Statutes sets forth the sole and exclusive remedy under such circumstances, that being an action to try title to Mrs. Shkut's seat. *See Corey v. Hardison*, 236 N.C. 147, 153, 72 S.E.2d 416, 421 (1952) ("[T]he title to a public office can only be determined in a direct proceeding brought for that purpose under the statutes incorporated in Article 41 of Chapter 1 of the General Statutes."). To our knowledge, no person has instituted any such action, through the Office of the Attorney General or otherwise. Unless and until such action is instituted and a court of competent jurisdiction determines that Mrs. Shkut's appointment failed in some way to conform to the law, Mrs. Shkut is entitled to and will act as Village Councilmember. If you obtain a lawful, final order and judgment through a proceeding under Article 41 directing Mrs. Shkut to step down, she will, of course, do so. Without that order, neither you nor anyone else has the power or authority to remove Mrs. Shkut from Council meetings, to prevent her from voting at such meetings, or to otherwise interfere with Mrs. Shkut in the lawful exercise of the rights and privileges of her office.

Votes have consequences, and for a unit of local government to function properly, its leaders must recognize, honor, and give effect to those consequences. Do not take the law into your own hands. If you do, Mrs. Shkut, and this law firm, will hold all responsible persons accountable.

Mrs. Shkut looks forward to working with the Council to continue to promote the best interests and welfare of the residents of the Village of Marvin, and we look forward to your cooperation.

Sincerely yours,

WEAVER, BENNETT & BLAND, P.A.



Michael David Bland