

**THE JEFF SCOTT OLSON LAW FIRM, S. C.**

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August 30, 2019

*via email to derek.woellner@ci.merrill.wi.us*

Derek Woellner, Mayor  
City Hall  
1004 E. 1st St.  
Merrill, WI 54452

Re: City Administrator Dave Johnson

Dear Mayor Woellner:

I represent Merrill City Administrator Dave Johnson. Mr. Johnson has two Master's Degrees and 40 years of local government experience, and by all accounts has done an excellent job as Merrill City Administrator. Yet he seems to have, in your eyes, one fatal liability: he is 67 years old and has no immediate plans to retire - he expects to work until he is 71.

Recently, you have talked about taking action to eliminate his position. I can only guess that you may be unaware that it would be a violation of both state and federal law to take any sort of adverse action against Mr. Johnson, in whole or in part because of his age. You may think that you are capable of constructing some alternative rationale for taking action against Mr. Johnson, but as an experienced litigator of employment discrimination cases, including age discrimination cases, I can tell you that it is a rare luxury for a lawyer to have available the plethora of direct evidence of age bias that I would be able to bring to bear on behalf of Mr. Johnson.

In a meeting with Mr. Johnson on July 23, 2018 (of which he made a contemporaneous memorandum):

- You said, "You don't need to work at your age."
- You asked Mr. Johnson "why someone your age doesn't want to retire," and said you thought Mr. Johnson would "want to take it easy."
- You asked Mr. Johnson: "At your age don't you have a nice nest egg put away for retirement? Why would you want to work?"

You had previously stated that you wanted younger people in elected positions and city management positions.

Age has been a constant theme in your public and private remarks. You once said, "We have already done too much for old people in Merrill. We need to do more for the young people."

In litigating an age discrimination claim on behalf of Mr. Johnson, I would also have the advantage of being able to tie your desire to terminate Mr. Johnson's employment to the same time frame when you made these blatantly biased remarks, because at that same meeting you demanded Mr. Johnson's resignation within twenty-four hours, and said that you would "take it to the media" if Mr. Johnson did not resign. You told Mr. Johnson that if he did not resign, "It will not go well for you," and that "This will not turn out the way you think it will."

If we have to file an age discrimination lawsuit, we will consider adding claims for defamation, as you have sometimes justified your desire to act against Mr. Johnson with provably false statements. For example, you falsely accused him of bullying Bill Heideman. You also stated that Mr. Johnson was not fulfilling the terms of his contract because he was not properly maintaining the City's website, when you knew or should have known that maintaining the City's website is the responsibility of the IT Manager, not the City Administrator.

If we are successful in an age discrimination lawsuit against the City, we will recover Mr. Johnson's lost compensation and benefits, and, since you are now aware of the law, an equal amount of money as liquidated damages for a willful violation. We would also stand to recover Mr. Johnson's attorneys' fees, calculated at my regular hourly rate, which is \$675 per hour.

I have advised Mr. Johnson that if his employment is terminated, whatever the stated reason, he will have a very viable age discrimination case and I will represent him on a contingent-fee basis. We could, at this point, just remain silent and continue to gather evidence, but Mr. Johnson would rather be serving the people of Merrill than litigating even a very strong case against the City, so he has asked me to write you this letter, explaining the potential consequences of the actions you have said you wish to

Derek Woellner, Mayor

August 30, 2019


Page 3 of 3

take against him. I am sending copies of this letter to local news outlets so that there can never be any question of your knowledge of it.

If you do not relish the thought of discussing your negative remarks and adverse actions against Mr. Johnson with me, under oath, in open court, all you have to do is stop them. If you do, you will probably never hear from me again.

Sincerely yours,

THE JEFF SCOTT OLSON LAW FIRM, S. C.

A handwritten signature in black ink, appearing to read "Jeff Scott Olson", with a long, sweeping horizontal line extending to the right.

Jeff Scott Olson

cc: Dave Johnson

JSO:tim