

STATE OF MISSOURI )  
 ) ss.  
COUNTY OF BUTLER )

IN THE CIRCUIT COURT OF BUTLER COUNTY, MISSOURI

CITY OF POPLAR BLUFF, )  
A Municipal Corporation, )  
 )  
 PLAINTIFF, )  
 )  
v.s.. ) CASE NO.  
 )  
 DOUGLAS BAGBY, )  
 )  
 DEFENDANT. )

PETITION FOR DECLARATORY JUDGMENT

COMES NOW the Plaintiff, City of Poplar Bluff, by and through its attorney, Robert L. Smith, Attorney at Law, LLC, and for its Petition for Declaratory Judgment pursuant to Rule 87.02 of the Missouri Rules of Civil Procedure against the Defendant, Douglas Bagby, states as follows:

1. That Plaintiff, City of Poplar Bluff, is a third class Municipal Corporation, located in Butler County, State of Missouri.
2. That Defendant, Douglas Bagby, is a resident of Butler County, Missouri.
3. That on or about August 26, 2003, Plaintiff and Defendant did allegedly enter into an **AGREEMENT FOR EMPLOYMENT BY AND BETWEEN THE CITY OF POPLAR BLUFF, MISSOURI, AND DOUG BAGBY**, attached hereto and made a part hereof.
4. That a real controversy exists as to the validity of the agreement/contract.
5. That the Plaintiff states that the then mayor of the City of Poplar Bluff, did not have authority to enter into said agreement as stated by the ordinances of the City of

Poplar Bluff, the Revised Statutes of the State of Missouri, and the Missouri State Constitution and said contract is void.

6. That Section 78.610 RSMo states that the City Manager "... shall hold his office at the pleasure of the council, or may be employed for a term not to exceed one year." and also see Article VI, Section 26(a) of the Constitution of Missouri, where city can not enter into any agreement over one year.

7. That the City of Poplar Bluff did choose to have the City Manager serve at the pleasure of the council as adopted in City Ordinance Section 115.050: Term, "The City Manager shall serve at the pleasure of the Council."

8. That the City of Poplar Bluff as a statutory entity may only enter into agreements or act within the statutory authority granted it and that therefore the Plaintiff was without authority to enter into said agreement and such an act was ultra vires

9. That by reason of the foregoing, a declaratory judgment is both necessary and proper in order to set forth and determine the rights, obligations and liabilities that exist among the parties.

WHEREFORE, Plaintiff respectfully requests this Court to enter Judgment declaring the contract void and determining the rights of the parties under the contract/agreement stated above and for such other and further relief as the Court deems just and proper under the circumstances.

\_\_\_\_\_/s/ Robert L. Smith\_\_\_\_\_  
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