ALEX
HOY
TAYLOR

No. 112488

IN THE
SUPREME COURT OF ILLINOIS

JOSEPH M. FERGUSON, in his official capacity as Inspector General of the City of Chicago,

Respondent-Appellant,

v.

MARA S. GEORGES, in her official capacity as Corporation Counsel of the City of Chicago,

Petitioner-Appellee.

On Petition for Leave to Appeal from the Appellate Court of Illinois
First Judicial District, No. 10-1152
There Heard on Appeal from the Circuit Court of Cook County,
County Department, Chancery Division
No. 09 CH 43287

PETITION FOR LEAVE TO APPEAL

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PRAYER FOR LEAVE TO APPEAL

The Corporation Counsel of the City of Chicago petitions this court, pursuant to its Rule 315, to review the appellate court's judgment.[1]

STATEMENT OF THE JUDGMENT BELOW

The Inspector General of the City of Chicago sued the Corporation Counsel, seeking to compel production of unredacted copies of documents the Inspector General's Office ("IGO") had subpoenaed from the City of Chicago Department of Law. The Inspector General alleged that the attorney-client privilege, which the Corporation Counsel had asserted in response to the subpoena, was unavailable to the City in the context of IGO investigations. The circuit court dismissed the complaint, ruling that the privilege was available and that the Inspector General lacked capacity to sue. The Inspector General appealed. In an opinion issued on April 29, 2011, the appellate court, over a dissent, reversed and remanded for the circuit court to review the documents in camera and make factual findings whether they are privileged. No petition for rehearing was filed.

POINTS RELIED ON FOR REVIEW

The judgment below warrants this court's review because the appellate

[1] Mara S. Georges, the named defendant, was the Corporation Counsel of the City of Chicago until May 25, 2011, when Steven R. Patton became Acting Corporation Counsel. Mr. Patton was confirmed as the Corporation Counsel on June 8, 2011.

court's opinion raises issues critical to the operation and organization of municipal government. In particular, the majority ruled that the courts have jurisdiction to entertain lawsuits between officials of the same municipality in their official capacity, which will cause interference by the courts in disputes that should be resolved internally by the executive. The majority also handed to a municipal official with purely administrative powers the authority to unilaterally retain counsel and sue, without the approval of the Corporation Counsel, even though the Chicago City Council did not grant such authority in the ordinance creating that office. These rulings not only upend settled understandings about the structure of municipal government, but are particularly menacing in light of the context in which they arise here -- the assertion by a governmental entity of the attorney-client privilege. In this lawsuit, the Inspector General sued to cast aside this privilege, which is vital to the proper functioning of government because it fosters open communication with government counsel by public officials who must uphold and execute myriad laws and regulations, which in turn ensures the best possible legal advice.

In particular, the majority's ruling that it had jurisdiction to entertain an official-capacity suit between two municipal officials conflicts with two other decisions by the appellate court, one holding that intragovernmental disputes are nonjusticiable, and another holding that the City may not be both plaintiff and defendant in the same action. The majority relied instead

on decisions involving other levels of government and elected officials, none of which addressed justiciability, and supported its decision only on the basis that "we have considered analogous situations in the past and are willing to do so again." A7, infra.[2] The majority hinted at no discernable limits or guiding principles to this approach, which opens the door to lawsuits between any number of agencies of municipal government across Illinois.

The majority also endorsed the Inspector General's unilateral decision to bypass the Corporation Counsel and hire his own attorney, and to then sue the Corporation Counsel. Yet, the ordinance creating the IGO contains nothing like an affirmative grant to the Inspector General of the power to sue; and the City Council, in fact, expressly vested the City's litigating authority exclusively in the Corporation Counsel. Under the Chicago Municipal Code, a dispute between the Inspector General and the Corporation Counsel is, like any other disagreement between City officers, the Mayor's to resolve. For the same reasons, there was no warrant for the court to approve the Inspector General's strategy of hiring an attorney without the Corporation Counsel's involvement, and, after the fact, seeking the court's approval for that retention. Sweeping all of this aside, the majority, in effect, supplanted the structure of City government established by the City Council with one of its own making. Such judicial interference

[2] The appellate court's opinion, along with the ordinances involved in this case, is included in the appendix to this petition.

with legislative action cannot stand.

The appellate court remanded the case solely for in camera review of the sought-after documents. Its decision on jurisdiction and capacity to sue were fully resolved, are ripe for review, and merit this court's intervention.

STATEMENT OF FACTS

On November 4, 2009, First Deputy Inspector General Mary Hodge, through counsel the IGO had retained, filed this action in her official capacity against the Corporation Counsel in her official capacity. C. 3-12. In December 2009, after Joseph Ferguson was confirmed as Inspector General by the City Council, he was substituted as plaintiff. C. 46. The complaint alleged as follows. In January 2007, the IGO began investigating the involvement by some current and former City employees in the City's award of a sole-source contract to a former City employee, and ultimately conducted multiple interviews and reviewed documents from five City departments or offices. C. 6 ¶¶ 12, 14. As part of the investigation, on August 15, 2008, the IGO requested in writing that the Law Department turn over all documents relating to the contract award. C. 6 ¶ 15.

The Law Department produced responsive documents, but redacted some based on claims of attorney-client privilege and/or work-product protection. C. 6 ¶ 15; C. 22-23. The IGO responded that it believed a City department cannot assert privilege in an IGO investigation. C. 7 ¶ 17. On October 8, 2009, the IGO served a subpoena on the Corporation Counsel

seeking unredacted copies of the documents. C. 21. The Corporation Counsel objected to the subpoena and, following unsuccessful negotiations, refused to produce the documents without redactions. According to the complaint, this prevented the IGO from completing its investigation. C. 6 ¶ 24. The complaint sought a declaration that the Corporation Counsel may not assert privilege in response to a request for documents by the IGO as part of an "official IGO investigation"; issuance of a writ of mandamus compelling the Corporation Counsel to disclose the withheld information; and an order enforcing the subpoena. C. 9-12.

The Corporation Counsel moved to dismiss pursuant to 735 ILCS 5/2-619 and 5/2-615 (2008). C. 46-47, 52-70. The motion argued that chapter 2-56 of the Municipal Code, which creates the IGO and defines its powers ("IGO ordinance"), does not abrogate the attorney-client privilege, and the rules of professional conduct bar the Corporation Counsel from disclosing confidential client communications absent informed consent; that the Inspector General lacks capacity to sue; and that the court lacks jurisdiction to entertain a dispute between two officers of the same governmental entity in their official capacities. C. 56-68. The Corporation Counsel also argued that the complaint did not state a claim for a declaratory judgment or mandamus. C. 17-19. The circuit court granted the motion, concluding that the Corporation Counsel could invoke privilege and that the Inspector General lacks the capacity to sue. Tr. 38-41; C. 128.

The appellate court, by a 2-1 vote, reversed and remanded. A1-A18. The majority determined it had jurisdiction because it had "considered analogous situations in the past," and was "willing to do so again." A7-A8. Next, the majority held the Inspector General had capacity to sue here and could unilaterally retain his own attorney to do so. A8-A15. Relying on the provision of the IGO ordinance that the Inspector General "shall take no action to enforce [a] subpoena" for seven days after an objection is made, among other things, the majority held, "at least in the limited situation where the Corporation Counsel is served with a subpoena by the Inspector General and objects to its enforcement . . . the Inspector General may seek to enforce the subpoena in the circuit court by hiring its own counsel." A10-A12. The majority stated that, given the Inspector General's "unique role," requiring him to take to the Mayor a dispute with the Corporation Counsel would "tie [his] hands," which the City Council could not have intended. A14. The majority also ruled the Inspector General had followed "proper procedures for the appointment of special counsel." A15. Finally, the majority declined to review the "finding" that the attorney-client privilege was available absent information "concerning the documents at issue," such as their authors and recipients. A17. The court remanded for the "limited purpose" of in camera review of and factfinding about the documents. A17.

Justice Cahill's dissent observed that the City Council did not grant

the Inspector General power to "bypass the city's attorney and the mayor himself" by suing to enforce a subpoena. A19. The dissent added that, unlike independent agencies at other levels of government, Inspectors General do not have "a legal existence independent of the unit of government of which they are a part." A19-A20.

ARGUMENT

The decision below merits this court's review. The Inspector General sought to compel disclosure of documents the Corporation Counsel asserted were covered by the attorney-client privilege. When that dispute reached an impasse, the Inspector General unilaterally retained counsel -- despite the City Council's express allocation of responsibility for all of the City's legal affairs exclusively to the Corporation Counsel -- and sued the Corporation Counsel. The dispute, which pits the City against itself in litigation, is nonjusticiable, and the majority's contrary ruling conflicts with several other appellate decisions. In addition, the majority's holding that the Inspector General had the authority, without involving the Corporation Counsel, to retain his own attorney and to sue, contravenes settled principles of statutory construction. To reach this result, the majority read into the ordinance creating the IGO powers that are not there, while casting aside the ordinance that plainly confers those powers exclusively on the Corporation Counsel. More than that, the majority's revision of the ordinance decision allows the Inspector General to bypass the Mayor himself, who, under the Municipal

Code, is the proper mediator of intra-City disputes.

The majority not only created confusion in the law by departing from settled principles governing intragovernmental disputes, but, by approving of this lawsuit between the heads of municipal departments or offices rather than leaving the dispute for orderly, internal resolution by the municipality, invites chaos in municipal government statewide. Nor was the court free to disregard the City Council's intent by judicially amending duly-enacted legislation. The decision severely intrudes upon the right of municipalities to prescribe to their officials the powers they see fit and to arrange for themselves their organizational structure. This court's review is amply warranted.

I. THE MAJORITY OPINION IMPROPERLY APPROVES OF JUDICIAL RESOLUTION OF INTRAGOVERNMENTAL DISPUTES.

As a legal matter, the IGO, as an arm of City government, is indistinguishable from the City itself. Thus, a lawsuit brought by the Inspector General in his official capacity is effectively an action by the City. Similarly, a suit against the Corporation Counsel in his official capacity is a suit against the City. Here, the official-capacity action by one City officer against another pits the City against itself, in contravention of two settled rules: that intramunicipal disputes are non-justiciable, and that a party cannot be both plaintiff and defendant in the same case.

In Tanner v. Solomon, 58 Ill. App. 2d 134 (1965), one member of a

municipal board sued the other board members for declaratory relief, alleging they permitted applicants who did not meet the criteria to become police officers or to become eligible for such positions. See id. at 135-36. The court held that the plaintiff, who sued in his capacity as a member of the board rather than as a taxpayer, did not have an interest sufficient to confer standing. See id. at 138. Rather, he raised an "intra-agency dispute[ ]," in which "judicial interference" was inappropriate. Id.

This case, too, pits members of the same legal entity against each other. Settled law treats an official-capacity suit "as another form of action against the governmental entity of which the [official] is a part." Schlicher v. Board of Police & Fire Commissioners, 363 Ill. App. 3d 869, 883 (2006); see also, e.g., City of Elmhurst v. Kegerreis, 392 Ill. 195, 204 (1945). This is therefore a suit by the City against the City. And as the appellate court has previously recognized -- relying on a case following Tanner -- the City, like any party, "may not be both plaintiff and defendant in an action." City of Chicago v. Beythel Outcast Church, 375 Ill. App. 3d 317, 320 (2007) (quoting Hume v. Town of Blackberry, 131 Ill. App. 3d 32, 35 (1985)). The majority's ruling below conflicts with Tanner and Beythel Outcast Church.

The majority did not cite Beythel Outcast Church, and attempted to distinguish Tanner on the ground that here, "we do not have one individual suing another individual from the same body but instead have the head of one municipal office suing the head of a different municipal office." A7. If

this is a distinction at all, it is immaterial. As we explain, municipal officials in their official capacity are not legally distinct from the City itself. Rather, both are the City. As a leading treatise explains, unless a municipality's legislature has provided otherwise, municipal departments do not have separate legal existence from the municipality. See 17 Eugene McQuillin, The Law of Municipal Corporations § 49:2 (3d ed. 2004). Here, the City Council did not provide otherwise. And consistent with this, courts have repeatedly held that City departments have no independent legal existence. See, e.g., Lewis v. City of Chicago, 496 F.3d 645, 656 (7th Cir. 2007) (City was "real party in interest" in suit naming Chicago Police Department as defendant) (citing Chan v. Wodnicki, 123 F.3d 1005, 1007 (1997)). See also, e.g., Dr. Martin Luther King, Jr. Movement Inc. v. City of Chicago, 435 F. Supp. 1289, 1294 (N.D. Ill. 1977) (Department of Streets and Sanitation did not "enjoy independent legal existence"). See also Stevanovic v. City of Chicago, 385 Ill. App. 3d 630, 631 (1st Dist. 2008). It follows that, as the dissent recognized, the IGO, too, does not "have a legal existence independent" of the City. A20. To be sure, the appellate court was not bound by federal cases; but those courts apply an established rule, and the appellate court should have applied it as well.

Here, the majority's only stated basis for allowing the suit to proceed was that it had "considered analogous situations in the past and [was] willing to do so again." A7. But any analogy is at most superficial, and the

lack of any analysis or limits leaves both municipalities and municipal officials guessing about its scope. None of the prior cases was an action by an appointed head of a municipal office or department against another unelected municipal officer. In fact, two were disputes within county rather than municipal government, see Burnette v. Stroger, 389 Ill. App. 3d 321, 322 (2009) (Cook County public defender sued Cook County board president); Read v. Sheahan, 359 Ill. App. 3d 89, 90 (2005) (members of Cook County Board of Corrections sued Cook County sheriff), and can be put to the side for the reason that the county and City do not have the same organization and are not subject to the same legal constraints -- counties must conform to the Illinois Counties Code, see 55 ILCS 5/1-1001 et seq. (2008), while municipalities are subject to the Illinois Municipal Code, see 65 ILCS 5/1-1-1 et seq. (2008). Furthermore, the Public Defender is not a mere arm of local government like the Inspector General -- the Public Defender is an office separately created by an Illinois statute, see 55 ILCS 5/3-4000 et seq. (2008), and the State pays two-thirds of his salary, see id. 5/3-4007(b) -- so Burnette was not purely an official-capacity suit between two officials within the same entity. Nor was Read, which involved a suit against an independent, elected official -- the Sheriff -- by county board members. While the third case the majority cited involved a municipality, it was an action by elected members of the legislative branch against the elected head of the executive branch, see Sampson v. Graves, 304 Ill. App. 3d 961, 962-63 (1999) (City of Harvey

aldermen sued city's mayor). Whatever the right result there, it does not bear on this case, which pits one appointed official against another. The reason this distinction is important is that under the Chicago Municipal Code, the Mayor supervises such officers. See Municipal Code of Chicago, Ill. §§ 2-4-020 (2010); see also id. § 2-4-010 (Mayor appoints all City officers except where a statute provides otherwise). This plainly contemplates that disputes between them will be resolved by the Mayor.

A second problem with the cases the majority relied on is that none even addresses justiciability. Absent any discussion or mention of the issue, the cases are not authoritative on the issue of justiciability. They should not control here, where justiciability was put squarely at issue.

Worse still, the majority's ad hoc approach threatens to wreak havoc in the affairs of municipalities across Illinois. The majority's ruling will no doubt be invoked in support of other litigation over intramunicipal affairs, regardless whether a municipality has an Inspector General; after all, the court did not say in discussing jurisdiction that there was anything in particular about the IGO, as opposed to any other department, that supported jurisdiction here. And confusion is particularly likely given the majority's failure to articulate any principles to guide lower courts in determining jurisdiction over an intragovernmental dispute. Thus, the majority's ruling on justiciability presents an issue of general importance warranting further review.

II. THE MAJORITY IMPROPERLY AMENDED A CITY ORDINANCE TO GRANT THE INSPECTOR GENERAL THE POWER TO SUE.

The majority's determination that the Inspector General may unilaterally retain his own attorney and sue to enforce a subpoena also merits review. Nowhere does the IGO ordinance expressly grant the Inspector General the power to sue. This is dispositive, for "unless the political entity that created the department [of a city] has taken explicit steps to grant that department the authority, the department lacks the capacity to sue or be sued." 17 McQuillin, The Law of Municipal Corporations § 49:2. Here, the IGO has no such authority. To the contrary, the City Council vested the Corporation Counsel alone with authority to "[s]uperintend and conduct all the law business" of the City, Municipal Code of Chicago, Ill. § 2-60-020(a), and to "[a]ppear for and protect" the rights and interests of the City and its officials in litigation, id. § 2-60-020(b).

The majority ignored the Corporation Counsel's exclusive control over the City's legal affairs and reallocated substantial power to the Inspector General based on the requirement under the IGO ordinance that the Inspector General, for seven days after receiving a timely objection to a subpoena, "take no action to enforce" the subpoena or "to initiate prosecution" of the objector. Municipal Code of Chicago, Ill. § 2-56-040 (2010). The majority found the "most natural reading" of this to be that after seven days

the Inspector General may take "some sort of enforcement action," A12, even though it expressly acknowledged that the ordinance does not "direct the Inspector General's actions" when negotiations to resolve a timely objection to a subpoena fail. A10. Thus, the court filled in enforcement authority where the City Council left that out. It had no license to do so. Where statutory language is clear, it must be given its plain and ordinary meaning; a court may not "construe a statute by altering its language in a way that constitutes a change in the plain meaning" of the statute. U.S. Bank National Association v. Clark, 216 Ill. 2d 334, 346 (2005).[3] And the error in adding more authority for the IGO is particularly egregious here, where the IGO ordinance does not confer authority and another ordinance expressly provides that the Corporation Counsel alone superintends and conducts "all the law business" of the City. Municipal Code of Chicago, Ill. § 2-60-020(a). Subpoena enforcement is part of the City's "law business," so any enforcement by the IGO contravenes the exclusive power of the Corporation Counsel.

Moreover, as Justice Cahill noted in dissent, the majority's revision of the IGO ordinance allows the Inspector General to bypass "the mayor himself," A19, who, under section 2-4-030 of the Municipal Code, is authorized to enforce "any ordinance of the city in all cases where an

[3] The same rules govern interpretation of statutes and ordinances. See, e.g., In re Application of County Collector, 132 Ill. 2d 64, 72 (1989).

ordinance fails to specify the officer who shall be charged with the duty of enforcement." Municipal Code of Chicago, Ill. § 2-4-030 (2010). This provision shows that the Mayor has the authority to resolve issues regarding subpoena enforcement. See A19. The majority cast aside this provision on the basis that it "merely gives the mayor the *authority* to act . . . . It does not provide that the mayor is the *sole* enforcement officer." A12. But regardless whether other officials have some enforcement power, nonetheless they do not have any enforcement power the City Council did not confer upon them, and here, as we explain, it did not give the Inspector General enforcement power. In addition, as we have noted, the Mayor has supervisory authority over City officials. See Municipal Code of Chicago, Ill. § 2-4-020. Legislative language should be "interpreted in light of relevant provisions" in the same enactment, not "construed in isolation." Hubble v. Bi-State Development Agency of the Illinois-Missouri Metropolitan District, 238 Ill. 2d 262, 268 (2010). There is no authority for the Inspector General to simply retain his own counsel and sue. Reading the IGO ordinance in conjunction with the Corporation Counsel ordinance and sections 2-4-020 and -030, it is clear that the Inspector General must take enforcement issues to the Corporation Counsel, and, if there is a disagreement, to the Mayor. See A19.

Furthermore, this structure belies the majority's sweeping claim that absent authority for the Inspector General to sue to enforce a subpoena against the Corporation Counsel, the Law Department would be "immune

from investigation." A10. The Mayor, in fact, has the power to intervene, as the majority acknowledged. A14. Nor is it fair to assume, as the majority implicitly did, that the Corporation Counsel would obstruct an IGO investigation of the Law Department. A12 (it would be "unrealistic and nonproductive [sic] for Inspector General to request that the Corporation Counsel take action to enforce a subpoena against her own office"). The Inspector General has never alleged that he approached the Corporation Counsel about retaining counsel and pursuing an enforcement action, and so the court was not in a position to speculate about what might have happened if he had. In fact, as part of the exclusive authority over all of the City's legal affairs, the Corporation Counsel had the authority to retain independent counsel for the Inspector General, and there is no basis to say such a request would have been refused.

Thus, requiring the Inspector General to consult with the Corporation Counsel and, if necessary, the Mayor, does not "tie [his] hands," render his investigative process "meaningless," A14, or "frustrate the very purpose for which the IGO was created," A9. On the contrary, it honors the precise structure that the City Council put in place. The City Council recognized the importance of the IGO and gave the Inspector General broad investigative power and political independence. But the IGO remains an arm of City government. The City Council did not create a legally independent agency with power to unilaterally hire counsel and sue other City departments. As

the dissent observed, although the powers of Inspectors General "are broad within the unit of which they are a part, including the power to share investigation materials with law enforcement agencies, Inspectors General do not have a legal existence independent of the unit of local government of which they are a part." A20. The majority's disagreement with the legislature's choices was no license to stray from the language of the Municipal Code.

The majority looked to Department of Public Aid v. Kessler, 72 Ill. App. 3d 802 (1979), see A10-A11, but the court there did not hold that the power to issue a subpoena necessarily confers the power to bring an enforcement action; rather, "because the circuit courts, rather than the agency itself" enforce subpoenas, "the absence of standards and procedures" for enforcement in a statute granting a state agency subpoena power did not show that the agency lacked enforcement authority, id. at 804. The court did not address which official or agency was authorized to decide to enforce a subpoena in court, and, in fact, the agency that had issued the subpoena was being represented by the Attorney General, see 72 Ill. App. 3d at 803, not outside counsel retained by the agency acting independently. Indeed, even the majority acknowledged Kessler did not address which state agency or office was the "proper party" to bring the action. A11. In any event, whatever else can be said of Kessler, it plainly does not bear on the capacity of a municipal, as opposed to a state, department or office to sue on its own.

Burnette v. Stroger, 389 Ill. App. 3d 321 (2009), see A12-A13, does not support the majority's position, either, as the dissent recognized, A19. The court held there that the Public Defender had the capacity to sue the county board president, explaining that under the applicable statutory scheme, the Public Defender was entitled to indemnification and partial immunity, which clearly contemplated that he could sue; and that this court had "repeatedly" permitted public defenders to sue to "protect and define" their authority. Id. at 328-29. None of this is true of the Inspector General. And as the dissent noted, Burnette relied on case law recognizing the "unique role of public defenders as independent agencies within the criminal justice system." A19; see also, e.g., Burnette v. Terrell, 232 Ill. 2d 522, 539 (2009) (under Counties Code, Cook County Public Defender has sole authority to assign work to assistant public defenders); Maloney v. Bower, 113 Ill. 2d 473, 479 (1986) ("legislatively created office" of public defender need not take on duties beyond "important responsibilities" imposed by statute); Burnette, 389 Ill. App. 3d at 328. Further evincing that independence, the Public Defender, as we have noted, unlike the Inspector General, is not purely an arm of local government, but was separately created by statute, see 55 ILCS 5/3-4000 et seq., and two-thirds of his salary is paid by the State, see id. 5/3-4007(b), not the county. The majority strained to fit the Inspector General into the same unique and independent category, citing his role to investigate wrongdoing of other City officials; the duty of City employees and others to cooperate with

IGO investigations; and the Inspector General's fixed term and protection from removal without cause. See A13-A14. But, again, as the dissent observed, see A19, this court has never equated that kind of political independence with authority to sue. Rather, the IGO, like all City departments and offices, was created by the City Council and given only limited powers, which, for the IGO, do not include the power to sue.

Regarding appointment of special counsel, the majority did what it claimed it would not do: resolve, among other things, "the procedure to be followed in the event the Corporation Counsel has a conflict of interest." A8. In doing so, the majority again drew the wrong inference from the City Council's silence. In particular, the court recognized that no ordinance provides for appointment of counsel where the Corporation Counsel is "interested" in a case, A9, but determined nonetheless that the Inspector General "followed proper procedures for the appointment of special counsel" when he unilaterally retained counsel, sued, and mentioned to the circuit court that it could retroactively approve the retention, A15. Again, the City Council allocated to the Corporation Counsel authority over "all the law business" of the City, and did not qualify that role where the Corporation Counsel has a conflict. In such circumstances, the Corporation Counsel may surely as part of this authority retain independent counsel for the Inspector General; otherwise, the dispute "lands on the desk of the mayor, who must decide how to resolve it." A19. This is the structure the City Council put in

place, and that hierarchy reflects the City Council's intent that internal conflicts within the City are to be resolved in-house. See Municipal Code of Chicago, Ill. § 2-4-020 (Mayor supervises all City officials). A different procedure may well be appropriate for the State's Attorney's office, see A15 (citing Suburban Cook County Regional Office of Education v. Cook County Board, 282 Ill. App. 3d 560 (1996)), since a statute authorizes appointment of special counsel where the State's Attorney is "interested" in a case, 55 ILCS 5/3-9008 (2008). But that is not the case here, so there was no basis for the majority to conclude that the Inspector General had the authority to proceed to court unilaterally with his own attorney and seek the court's after-the-fact approval. Moreover, allowing such an action would make the City financially responsible for the costs of litigation over which it would have no control.

CONCLUSION

For these reasons, the petition for leave to appeal should be allowed.

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