



128 DORRANCE STREET, SUITE 220
PROVIDENCE, RI 02903
401.831.7171 (t)
401.831.7175 (f)
www.riaclu.org

January 11, 2012

The Hon. Robert Flanders
Receiver
City Hall
580 Broad Street
Central Falls, RI 02863

Dear Receiver Flanders:

I am writing regarding your recent action, in your role as Receiver, in enacting an ordinance relating to on-street parking in the City of Central Falls. Our office received a number of complaints about it, and although we are pleased that you have suspended its enforcement, we believe that, in at least one respect, a legitimate concern has been raised about the way the ordinance was initially adopted. That concern raises a more general concern about the manner in which public meetings to deal with city business are being conducted. We therefore request that you take action to address this issue.

A review of agendas and minutes appears to show that your office followed the proper meeting notice procedures in enacting the ordinance. However, in reviewing the minutes of those meetings, we were quite surprised to learn that you were not present at them. Instead, members of your staff appear to have been designated by you to serve in your stead. We believe this is improper.

As you know, although the ACLU strongly opposed the adoption of the statute establishing the receiver process, the R.I. Supreme Court upheld the law in *Moreau v. Flanders*, 15 A.3d 565 (R.I. 2011). However, that opinion made clear that the powers authorized by the statute, as broadly worded as they are, were not untethered.

In the lawsuit challenging the receiver statute, the plaintiffs raised concerns about the "excessive" powers given the receiver. The plaintiffs raised as an example the specter of the receiver being able to act as "a one-person zoning board, with the unlawful ability to brush aside all the statutory protections set forth" in the state zoning statute. The Supreme Court rejected that scenario, stating that "because the [receiver statute] provides only that *the receiver may exercise the powers of an authority or office to the limits of that authority or office, and no further*, we see no inconsistency between the temporary power vested in the receiver and the notice and hearing requirements in zoning matters." *Id.* at 585. (emphasis added)

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Thus, the Court has made clear that, in enacting ordinances for the City of Central Falls, the receiver is obligated to act within the limits that would be imposed on the City Council itself. However, City Council members have no legal authority to designate delegates to act in their place. Similarly, we do not believe you have any such authority in the role of receiver either. That is, we believe it is incumbent that, in order for a legitimate meeting of the receiver to occur, the receiver must be present to take whatever actions are on the agenda.

Although this might seem like a technicality, it is actually a very crucial and basic limitation on the receiver's powers. Third parties, including staff members, simply should not be able to formally exercise the extraordinary powers that have been given the receiver – in this case the actual passage of an ordinance at a public meeting – whether in a pro forma capacity or not. We therefore would respectfully request that you henceforth begin to attend all meetings that you call for the conduct of city business.

It is difficult and painful enough that the residents of Central Falls have been left without any democratic representation for an indefinite period of time. We trust you agree that if a receiver is to take the place of their elected representatives in running the City, it is the receiver who should actually be doing so at the meetings which are required to be held for the conduct of city business.

Thank you in advance for your attention to this matter, and I look forward to hearing back from you about it.

Sincerely,

Steven Brown
Executive Director

cc: Central Falls City Council