

OFFICE OF GENERAL COUNSEL  
CITY OF JACKSONVILLE  
117 WEST DUVAL STREET  
SUITE 480  
JACKSONVILLE, FL 32202



**LEGAL MEMORANDUM**

TO: Stephanie Burch, Deputy Chief Administrative Officer

THROUGH: Jason Teal, Deputy General Counsel, Regulatory and Constitutional Law

FROM: Kealey A. West, Assistant General Counsel *KAW*

RE: Disposition of the Confederate Monument - *Hemming*

DATE: October 12, 2020

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**Questions Presented**

1. Do the descendants of Charles Hemming have a claim or right to have the Monument that was removed from what is now known as James Weldon Johnson Park returned to them by the City?
2. What process would the City need to go through to return the monument to the Hemming Family or donate to a third party?

**Short Answers**

The Hemming family does not have a claim or right to the monument. The monument was donated to the State of Florida as a gift, and upon delivery and acceptance, ownership in the monument passed to the State. Since the monument was gifted to the State, the City has no

authority to make a determination regarding its disposition.<sup>1</sup> However, since the monument belongs to the State, the State can decide to return the monument to the Hemming family, relieving the City of its custodianship obligations. Additionally, the State could also disclaim or acquiesce ownership in the monument to the City, and since the monument was privately funded, the process to dispose of the monument would then be at the City's discretion.

### **Discussion**

#### **The Monument**

The monument was a gift from Charles C. Hemming, a confederate veteran and former resident of the City of Jacksonville. Hemming funded the purchase of the monument and selected the location for its placement, and committees of the R. E. Lee Camp, No. 58, U.C.V. reviewed and selected the design of the monument. *See Pamphlet - Dedication of Monument to Confederate Dead of Florida*, Jacksonville, FL, June 18, 1898 (Jacksonville, DaCosta Printing Comp. 1901).

The Monument consists of the entire 62-foot-high granite and bronze structure. Its features include a three-terrace base, a die stone, a round pillar, and a bronze statue of a Confederate soldier standing atop.

The base of the monument is comprised of three terraces, with the ground terrace measuring 20.8 feet and the words "TO THE SOLDIERS OF FLORIDA" carved on the east side of the base. Atop the base rests a 10-ton square granite die stone. Each side of the die stone is defined by square pilasters that visually support a cornice and pediment. The pediment carved into the stone displays crossed cannons on the west side, an anchor, and oars on the east side, and crossed rifles on the north and south sides. Framed in each panel is attached a bronze plaque with

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<sup>1</sup> Please note, as previously opined, the City did have the authority to remove the monument from a public space owned by the City since nothing in the City's custodianship of the monument required it to remain in any particular place.

images of Southern heroes sculpted in relief. Sitting on top of the die stone is a 17.5-foot tall round pillar constructed out of a single slab of granite. Crowned atop of the monument is a bronze statue of a Confederate soldier in winter uniform.

### Background

In March 1896, the Mayor and City Council designated a portion of the square then known as St. James Park as a suitable site for the "Soldier's Monument." *Jacksonville, Fla., Ordinance No. C. 39* (1896). On June 16, 1898, a dedication and unveiling ceremony was held. At the ceremony, the then-Governor of the State of Florida, William D. Bloxham, accepted "on behalf of the State" the monument given by Hemming. *Pamphlet - Dedication of Monument to Confederate Dead of Florida* at p. 17. Subsequently, the City Council by Resolution thanked Hemming for the monument "donated to the State of Florida and located and erected in this city." *Jacksonville City Council Meeting Minutes*, Vol. A, p. 256 (1899). In October 1899, the Mayor and City Council changed and designated the square then known as St. James Park to Hemming Park. *Jacksonville, Fla., Ordinance No. E. 9* (1899)

### Analysis

A "gift" is a voluntary transfer of property by one person to another without any consideration or compensation. Am. Jur. 2d, Gifts §1. The elements of a valid gift are generally considered to be donative intent on the part of the donor, effective transfer and delivery of the gift, and acceptance by the donee. *Green v. Green*, 314 So.2d 801, 802 (Fla. Dist. Ct. App. 1975). A claim that a gift has been made "must be sustained by clear and satisfactory evidence of every element." *Lowry v. Florida Nat'l Bank*, 42 So.2d 368 (Fla. 1949), quoting *Garner v. Bemis*, 81 Fla. 60 (Fla. 1921). It is clear and without dispute that Hemming's intention was to donate the monument, the monument was delivered, and the Governor, in his official capacity, accepted the

monument on behalf of the State. As a valid gift, ownership of the monument transferred from Hemming to the State upon the Governor's acceptance; therefore, no other has a claim or right in its ownership.

Since the State is the owner of the monument, the City is without authority to make final disposition and would need to dispose of the monument in accordance with instructions provided by the State. As the owner of the gift, the State can certainly dispose of the gift in any manner it has the authority to do so, which may include transferring title to the monument over to the Hemming family. Additionally, the City has been the custodian and caretaker of the monument since its placement in 1898; therefore, the State may disclaim or acquiesce ownership to the City, assuming the City elects to accept the transfer of title. Pursuant to chapter 113, Jacksonville Ordinance Code, the Mayor would have the authority to accept or reject the monument on behalf of the City. If the Mayor elects to accept the monument, the City would become the monument's legal owner, and disposition would be in accordance with Chapter 122 of the Ordinance Code related to disposition of real property.