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December 02, 2020

City Attorney Deborah Hoffmann
City of Fond du Lac
160 S. Macy Street
Fond du Lac, Wisconsin 54935

Re: Verified Ethics Complaint: Councilmember Ben Giles
Fond du Lac County District Attorney's Office Case No. 20FL2909

Dear City Attorney Hoffmann:

Earlier this year, pursuant to Wis. Stat. 19.59(8)(a)¹, a verified ethics complaint was filed with the District Attorney's Office alleging that Fond du Lac City Councilmember Ben Giles violated Wis. Stat. 19.59(1)(b)², which is a civil forfeiture proceeding that, if proven, could result in a fine up to \$1,000.

The verified complaint alleges that Councilmember Giles could reasonably be considered to have received a reward for his votes and advocacy as a councilmember in favor of development at Lakeside Park. Councilmember Giles accepted the position of Executive Director for the Fond du Lac Historical Society, which involved mutual donors of Lakeside Forward and the Historical Society allowing their previous donations to the Historical Society to be reallocated from the capital account to the operations account for an increase in salary and/or benefits when compared to the previous executive director.

The verified complaint is insufficient in detail to prove a violation but sufficient in detail to require follow up investigation. The follow up investigation was completed by the City of Oshkosh Police Department, based on a conflict of interest with the City of Fond du Lac Police Department.

¹ Subsection (1) shall be enforced in the name and on behalf of the state by action of the district attorney of any county wherein a violation may occur, upon the verified complaint of any person.

² Wis. Stat. 19.59(1)(b): No person may offer or give to a local public official, directly or indirectly, and **no local public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the local public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the local public official.** This paragraph does not prohibit a local public official from engaging in outside employment.

The donors that approved the reallocation of funds are members of the Lakeside Forward group offering to donate money to the City of Fond du Lac for development at Lakeside Park. Councilmember Giles has been heavily involved with Lakeside Forward, including as a councilmember, advocating for the completion of a Lakeside Forward proposed development project. This advocacy has occurred through his statements during council meetings and votes in favor of the project. This relationship between Councilmember Giles and the donors, coupled with the transfer of money, could reasonable be considered a reward for his official actions as a local official serving a councilmember on the Fond du Lac City Council.

This investigation appears to show donors were aware Councilmember Giles was being considered for the Executive Director position and that Councilmember Giles was aware of the specifics donors that had or would be approving the transferring of money from one account to another to allow for an increased salary and/or benefits. This represents a probable violation of Wis. Stat. 19.59(1)(b), which does not require a quid pro quo, it only requires that the prohibited activity could reasonable be considered a reward for that official action or inaction.

I am aware that an ethics complaint regarding Councilmember Giles was filed with the City of Fond du Lac Ethics Board. The Ethics Board has since found probable cause exists for three ethics violations alleged to have been committed by Councilmember Giles. A hearing date to address those alleged violations has been set for December 11, 2020 to determine if the matter should be forwarded to the City Council. The Ethics Board complaint encompasses the same allegations submitted to the District Attorney's Office.

Based on the process initiated with the City Ethics Board, the Fond du Lac County District Attorney's Office has declined to pursue any forfeiture proceedings as it would be duplicative process and unwise continued use of limited investigator and prosecutorial resources. The City Ethics Board is well equipped to appropriately determine if any violations occurred and if the matter should be referred to the City Council for an ultimate determination on what should occur. Please advise if me the City wishes to receive a copy of the investigative materials in this matter.

Sincerely,



Eric J. Toney
District Attorney

Cc: Council President Brian Kolstad
Councilmember Ben Giles
City Manager Joseph Moore
Ethics Board: Attorney Paul Czisny
Ethics Complainant