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Deb Hoffmann  
City Attorney/Director of HR  
City of Fond du Lac  
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Dear City Attorney Hoffmann:

I am following up with my Friday May 7 email altering the City to a potential ethics issue that I was made aware of. On Thursday May 6 I was told the District Attorney's Office should expect to receive an ethics complaint against Councilmember Patrick Mullen which I believe would be pursuant to Wis. Stat. 19.59(8). I send this letter to ensure the City and Councilmember Mullen are aware of this because I am aware an ethics opinion has already been provided to Councilmember Mullen. I have not seen that ethics opinion nor am I aware of the facts that were relied upon in that opinion. I understand there could be additional facts and/or statutes in this letter, which may not have been provided to the City when the initial ethics opinion was released. I also recognize the City Ethics Code does not mirror the State Ethics Code. I ask that you take this information into consideration to ensure that all available facts and law are reviewed in order to assist any councilmembers from inadvertently violating the State Ethics Code.

There appears to be a likely State Ethics Code violation involving Wis. Stat. 19.59(1)(br). This involves Lakeside Park, Councilmember Patrick Mullen, and a political action committee. Last week Thursday May 6, 2021, I spoke with a member of a PAC opposed to certain Lakeside Park Development. This PAC member was responsible for disbursing payments money from the PAC, including legal fees. During this conversation the PAC member discussed a lawsuit filed during the fall of 2020. A party to this lawsuit is now councilmember Patrick Mullen, who was not on the council nor a candidate at the time of joining the lawsuit as a named party. This lawsuit was in relation pending matters in consideration of by the Fond du Lac City Council and opposed certain development at Lakeside Park.

I was also informed that this PAC met with an attorney and received legal advice but ultimately did not hire that lawyer, in part, because of a conflict of interest for that attorney. I was then informed that the spouse of Patrick Mullen then met with an attorney in Madison, made a unilateral decision to hire this attorney, and paid a retainer fee amounting to over \$1,000. This retainer fee was paid by the spouse of Mr. Mullen, not by the PAC. I was informed that this PAC agreed to pay the remaining legal bills incurred to challenging certain park related development and in fact paid those legal bills.

Approximately 2 months after this lawsuit was filed, Mr. Mullen became a candidate for the Fond du Lac City Council, remained a party to this lawsuit throughout his candidacy, and while a member of the Fond du Lac City Council. As a party to the lawsuit, Mr. Mullen opposed development at Lakeside Park, which was a pending matter of consideration before the council, while he was a candidate for local office. During his candidacy the remainder of the legal fees incurred for the unsuccessful challenge to Lakeside Park development was paid by this PAC. The information suggests that Mr. Mullen and his spouse were, at various times, active participants and/or consulted with this PAC. My understanding is that Mr. Mullen was advised that once he was a candidate for City Council he should withdraw as a party to the lawsuit, which he did not do.

I have concern about potential violations of Wis. Stat. 19.59(1)(br) which state as follows:

No local public official or candidate for local public office may, directly or by means of an agent, give, or offer or promise to give, or withhold, or offer or promise to withhold, his or her vote or influence, or promise to take or refrain from taking official action with respect to any proposed or pending matter in consideration of, or upon condition that, any other person make or refrain from making a political contribution, or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, a political party, any committee registered under ch. 11, or any person making a communication that contains a reference to a clearly identified local public official holding an elective office or to a candidate for local public office

The specific concerns relates to Councilmember Mullen being a candidate for local public office and during his candidacy, he was a party to a lawsuit which directly related to pending matters before the Fond du Lac City Council. Mr. Mullen's spouse initiated the retainer of the attorney, paid the fee, and the lawsuit took a position in opposition to the City Council. This was clearly in relation to an issue in consideration of by the counsel. The legal fees, beyond the initial retainer, were paid for by political contributions through a PAC, which Mr. Mullen knew would occur. This PAC also took a contrary position to a pending matter in consideration by the Fond du Lac City Council and it appears that Mr. Mullen may have been an active participant in the PAC or related activities. Mr. Mullen then committed himself to opposition to matters in consideration of by the counsel and benefited from political contributions through a PAC for legal fees. He then continued his position as a member of the lawsuit as a candidate and after assuming office. Political contributions were made to this PAC which paid for the legal fees of participants of this lawsuit, including Mr. Mullen.

If these facts as outlined are accurate, I have concern that any votes taking by Councilmember Mullen in relation to Lakeside Park Development would run awful of Wis. Stat. 19.59(1)(br). Any issues related to Wis. Stat. 19.59(1)(br) can likely be cured by the affected member abstaining from voting on issues germane to the Lakeside Park Development and the lawsuit funded by the PAC.

Sincerely,



Eric J. Toney  
District Attorney