

ETHICS OPINION

Robert Slocum, County Administrator
Terry Baker, County Commissioner

Ryan Miner filed a complaint with the Ethics Commission against County Administrator, Robert Slocum, and County Commissioner and President of the Board of County Commissioners, Terry Baker, alleging violations of Ethics Ordinance prohibitions against misuse of prestige of office and disclosure of confidential information, respectively.

Background

On September 19, 2017, Public Relations and Community Affairs Manager James Jenkins released the following statement from the County Commissioners to the Herald-Mail related to the results of an independent counsel investigation into a complaint of sexual harassment filed by former Assistant County Administrator Sarah Lankford Sprecher against Commissioner LeRoy Myers:

“After an extensive investigation over the course of four months, the independent investigator found:

1. No evidence of unlawful harassment.
2. No evidence of unlawful retaliation.
3. No evidence of any unlawful conduct whatsoever.

There is no additional information or direction at this time.”

The public statement resulted from the Commissioners’ instruction to County Administrator Slocum that the public be informed as soon as possible of the results of the independent counsel investigation. The content of the statement was initially authored by outside legal counsel Charles G. Meyer III, Esq., then reviewed, revised and released later on the same day that the Commissioners learned of the results of the investigation.

On October 5, 2017, the Herald-Mail published a story including comments from Commissioner Baker which appear to confirm that the investigation of independent counsel concluded that Commissioner Myers kissed Ms. Sprecher during a business reception on October 8, 2016. Commissioner Baker referred to what he described as a “one-time incident, never happened before and never happened since,” and the investigator’s conclusion that such conduct did not violate state or federal law but may have violated a County workplace harassment policy.

Questions Presented

1. Was County Administrator Slocum's authorization of the issuance of the public statement of the findings of the independent investigation the intentional use of the prestige of Slocum's office for the private gain of himself or another in violation of Section 4(g)(1) of the Ordinance?
2. Were Terry Baker's comments to the Herald Mail, as reported on October 5, 2017, the disclosure of confidential information in violation of Section 4(i) of the Ordinance?

Discussion

The provisions of the Ethics Ordinance apply to Washington County elected officials, employees, and appointees to County boards and commissions. Ordinance, § 3.

Section 4(g), entitled "[u]se of prestige of office," states that, "(1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another. (2) This subsection does not prohibit the performance of usual and customary constituent services by an elected local official without additional compensation."

Section 4(i), entitled "[d]isclosure of confidential information," states that "[o]ther than in the discharge of official duties, an official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the official's or employee's public position and that is not available to the public, for the economic benefit of the official or employee or that of another person."

Administrator Slocum

The Commission heard from the Complainant, Mr. Miner; County Administrator Rob Slocum; and Commissioner Terry Baker. In addition, the Commission reviewed Mr. Miner's initial complaint and supplemental written submission. The Commission also reviewed the confidential report of independent legal counsel's investigation into Ms. Sprecher's complaint regarding Commissioner Myers.

After receiving notice of Ms. Sprecher's complaint regarding Commissioner Myers, County officials engaged with the County's legal counsel regarding the complaint. In order to ensure the internal investigation into the substance of Ms. Sprecher's complaint

was done without bias or constraint, independent legal counsel was secured to investigate the matter and report to the Commissioners. Upon the completion of that investigation, counsel provided a written report. That report was, on its face, intended as confidential and legally privileged advice from independent counsel regarding a potential or pending legal claim relating to a personnel matter. Because Ms. Sprecher's notice of claim was released to the media and reported in the June 1, 2017, edition of the Herald-Mail, the facts and details of the claim were known to the public.

Administrator Slocum testified credibly that, promptly after learning the results of the independent counsel investigation, the Commissioners requested the immediate release of a statement of the material findings. In response to that request, Mr. Slocum consulted with counsel and a draft statement was circulated to the Commissioners for review. Commissioner Cline responded with the suggestion that the statement include verbiage addressing a possible personnel policy violation. Mr. Slocum consulted with counsel, the language was modified, and the final statement issued. Administrator Slocum testified that he authorized the release of the statement as it was drafted and revised by counsel on behalf of the County Commissioners. No evidence was brought before this Commission indicating that Mr. Slocum intended to misrepresent the findings of the independent investigator, either by misstatement or material omission, or that he in fact did so. Therefore, County Administrator Slocum's authorized issuance of the public statement cannot have resulted in the intentional use of the prestige of office or public position for the private gain of himself or the private gain of another. Accordingly, Mr. Slocum did not engage in conduct prohibited by the Ethics Ordinance.

Commissioner Baker

The information apparently confirmed by Commissioner Baker in statements printed in the October 5 Herald-Mail article, that Myers did kiss Ms. Sprecher, would appear only to work to Myers' detriment, not his benefit, economic or otherwise, since those statements could be construed to subject Commissioner Myers to public scorn or criticism. Thus, to the extent that Commissioner Baker's comments may have disclosed confidential information not previously available to the public, we cannot conclude that any violation of the Ethics Ordinance occurred since there is no evidence of direct economic benefit for himself or another in so doing. Further, to the extent that Mr. Miner alleges that Commissioner Baker's conduct benefited himself at the cost of Commissioner Myers (as the two are, strictly speaking, political adversaries for at-large offices), the notion that such political gain inevitably leads to direct economic benefit is speculative at best and therefore beyond the scope of the Ordinance.

As to Commissioner Baker's endorsement of the September 19 public statement by his comments set forth in the October 5 Herald-Mail article, Administrator Slocum credibly testified to the Commission that the content of that statement was as drafted, reviewed, and revised by counsel, and released as an official public statement authorized by the County Commissioners. Thus, the endorsement of that statement by Commissioner Baker cannot itself constitute a violation of any provision of the Ethics Ordinance.

Conclusion

No evidence was brought before this Commission indicating that County Administrator Slocum intended to misrepresent the findings of the independent investigator, either by misstatement or material omission, or that he in fact did so. Therefore, County Administrator Slocum did not engage in prohibited conduct under the Ethics Ordinance.

To the extent that Commissioner Baker's comments may have disclosed confidential information not previously available to the public, we cannot conclude that any violation of the Ethics Ordinance occurred since there is no evidence of economic benefit for himself or another in so doing within the scope of the Ordinance.

As to Commissioner Baker's endorsement of the September 19 public statement by his comments set forth in the October 5 Herald-Mail article, the content of that statement was as drafted, reviewed, and revised by counsel, and released as an official public statement authorized by the County Commissioners and therefore cannot constitute a violation of any provision of the Ethics Ordinance.

For the foregoing reasons, we conclude that there is no basis on which to find County Administrator Slocum or Commissioner Baker in violation of the Ethics Ordinance.

WASHINGTON COUNTY
ETHICS COMMISSION

By: J. Emmet Burke, Chair

Issued this 30th day of November, 2017.