



Memo

To: Clai Brown, City Manager
City of Avondale Estates

From:  Stephen G. Quinn, Esq. and Robert E.  Wilson, City Attorney

Date: March 6, 2015

Re: Legal Questions Raised by Ethics Complaint Filed by Joseph C. Mandarino

On March 4, 2015, Joseph C. Mandarino filed an ethics complaint against “all four commissioners of the Board of Mayor and Commissioners”. The lengthy complaint contains a series of legal arguments and legal conclusions. In essence, the complaint argues that the Board of Mayor and Commissioners was divested of all capacity to take official action when former Mayor Rieker resigned, that the four remaining Board of Mayor and Commissioners members misled the community when they promised to be transparent regarding annexation matters and that the annexation of Stratford Green townhomes was not properly advertised and therefore invalid. On the final page of the complaint, Mr. Mandarino sets out four “proposed remedies” for the alleged ethics violations. He requests the following:

1. That the four current members of the Board of Mayor and Commissioners be requested to resign;
2. That the City take action to “unwind, terminate, rescind, revoke, cancel and nullify the purported annexation” of Stratford Green;
3. That residents of Stratford Green not be permitted to vote in the upcoming special election to fill the vacant mayor’s position and that the special election be delayed; and
4. That “an investigation into the circumstances of the annexation” of Stratford Green be conducted by “an impartial third party.”

Questions Presented:

You have asked the following:

1. Can the Board of Mayor and Commissioners legally do business with four members (due to the resignation of former Mayor Rieker) or does a resignation by a BOMC member “effectively deactivate the Board until any vacancies are filled by election”?
2. Was the annexation of Stratford Green Townhomes properly advertised to meet the requirements of Georgia Law?

3. Does the City of Avondale Estates Ethics Board have the authority to grant the four remedies sought on page 9 of the above-referenced ethics complaint?

Legal Analysis:

As an initial matter, we note that the ethics complaint does not allege any particular wrongdoing by any particular BOMC member. The allegations are against the group as a whole for its official acts. It is our opinion that this type of complaint does not fit within the framework of a proper ethics complaint. The allegation that BOMC members broke a promise to the electorate (which does not appear to be factually supported) also is not a violation of the Code of Ethics even if it were true. We also reject the complaint's contention that providing city services and voting rights to annexation area residents is a "special privilege." These are privileges enjoyed by every citizen and are not "special" within the meaning of the Code of Ethics.

We address your three specific questions as follows:

The BOMC was Not Incapacitated by the Resignation of Mayor Rieker.

Mr. Mandarino contends in his complaint that "there is no Board during the period of vacancy" created by the resignation of former Mayor Rieker. The complaint cites to Section 2.10 of the City Charter, which defines the BOMC as consisting of "a Mayor and four commissioners" as support for this unusual legal argument. Quite frankly, Mr. Mandarino's argument is so illogical and travels so far afield from Georgia law that there is no case law directly addressing it. Nonetheless, we can state with 100% confidence that the BOMC is not incapacitated by a single vacancy in its membership. The City Charter and Georgia general law support our conclusion.

Section 2.20 of the Charter provides that "three members of the Board of Mayor and Commissioners shall constitute a quorum and shall be authorized to transact business" (emphasis added). This Charter section belies Mr. Mandarino's assertion that all five BOMC members are necessary to take official action. Section 2.32 of the City Charter provides for a mayor pro tempore to be chosen from among the commissioners. The mayor pro tempore performs the duties of the office of mayor in the absence or disability of the mayor. *Id.* This section of the Charter would not exist if the absence of the mayor effectively disables the BOMC.

Furthermore, Title 45 of the Code of Georgia deals extensively with vacancies in municipal offices and absolutely nothing in Title 45 even hints at or suggests that a vacancy will divest a municipal governing body of the power to take action on behalf of the citizens that elected them. Instead, as long as a quorum of the elected officials are holding office and present at a meeting, the governing body continues to exist and may carry out its powers, duties and obligations to the people of the city.

It is obvious that the rule proposed by Mr. Mandarino would render absurd results. For example, in this instance, Mayor Rieker resigned back on October 2, 2014. The next available special election date under Georgia law to fill the vacancy was not until March 17, 2015. It

would defeat the very purpose of city government if a single resignation could completely disable the City legislative function for almost half a year. Laws should always be construed to avoid an absurd result. State v. Fielden, 280 Ga. 444, 448 (2006).

The Stratford Green Annexation was Properly Advertised.

Stratford Green was annexed by means of the “60% Method” (O.C.G.A. § 36-36-31 et seq.) Georgia law requires that a public hearing be held prior to approving a 60% annexation and that two notices of the hearing be published in a newspaper of general circulation. The public hearing was held on November 17, 2014. We have reviewed copies of the DeKalb Champion (our legal organ) showing that the public hearing was advertised in the “Public Hearings” section of the Champion on October 30th and again on November 6th. The notices published in the Champion were also posted on the Georgia Legal Notices website and remain there to this date. In addition, the public hearing was advertised by a sign posted at Stratford Green from October 30th through November 18th. The hearing was announced to recipients of the City’s e-newsletter on October 27th and November 3rd, 10th, and 17th. A brief article noticing the forthcoming hearing also ran in the Atlanta Journal Constitution on November 7, 2014. The evidence provided to us conclusively establishes that Mr. Mandarino’s claim of a “secret annexation effort” that was not advertised is patently false.

The Avondale Estates Ethics Board Lacks Authority to Grant Any of the Four Remedies Sought by the Complaint.

The powers of the Ethics Board are set out in Code Section 2-100. The Ethics Board cannot itself grant any of the remedies proposed by Mr. Mandarino. The Ethics Board is limited to receiving and hearing complaints and reporting findings to the BOMC with a suggested course of action (if appropriate). The BOMC is authorized to issue penalties to its own members at the conclusion of an ethics complaint investigation after findings by the Ethics Board. The BOMC does have the power to request a member to resign. City Code Section 2-104(3). Presumably a request for resignation would be reserved for an egregious ethics violation, which certainly does not seem to be presented here in as much as the complaint is actually an ill-conceived legal challenge, not an ethical one.

The request about nullifying the Stratford Green annexation is completely unavailable under the Ethics Code. The idea of restraining residents of Stratford Green from voting in the special election for mayor is completely unavailable under the Ethics Code. Only a court of competent jurisdiction could grant this type of relief (where appropriate). The Ethics Board can itself conduct an investigation if it determines that the complaint is not frivolous and unfounded, but there is no provision in the City Code for the Ethics Board to initiate an investigation by an “impartial third-party” as requested.

Conclusion:

Mr. Mandarino’s “ethics complaint” is more in the nature of a legal challenge than a complaint of unethical conduct by an elected official. Interestingly, according to the blog “Decaturish.com,” Mr. Mandarino has indicated that he considered filing a lawsuit rather than an

ethics complaint. Decaturish.com quoted Mr. Mandarino as stating that “rather than filing a lawsuit which would be kind of expensive, I am giving the easier way out.” However, an ethics complaint is not a viable alternative to a lawsuit for raising challenges to undo official actions of the City’s governing body. An ethics complaint and a legal challenge are not interchangeable. Even if it were, Mr. Mandarino’s legal arguments are contrary to State law, contrary to the City’s Charter, contrary to the facts and contrary to common sense.

The core concept of the complaint – that the city’s legislative body is disabled by the resignation of a single official – is totally unsupported at law and frankly ridiculous. The allegations that the Stratford Green annexation public meeting was not advertised is proven false by the advertisements you have provided. Finally, even if Mr. Mandarino were correct about the facts and legal conclusions contained in his complaint, the City’s Ethics Board does not have the authority to grant any of the four requested items of relief. The Ethics Board is the wrong forum for the allegations set forth in the complaint.

The next step is for the Ethics Board to hold a probable cause hearing within the next 30 days to assess the ethics complaint. If the Ethics Board determines that Mr. Mandarino’s complaint “does not set forth sufficient facts to constitute an alleged violation and is found unjustified, frivolous or patently unfounded” then the Board of Ethics should dismiss the complaint without further proceedings and notify Mr. Mandarino as well as the four members of the Board of Mayor and Commissioners complained against.