

**IMMIGRATION ENFORCEMENT REVIEW BOARD
STATE OF GEORGIA**

IN RE:)	
)	
COMPLAINT FILED BY LIEUTENANT)	COMPLAINT
GOVERNOR’S OFFICE AGAINST THE)	NO. 2017-13
CITY OF DECATUR)	
_____)	

**MOTION OF THE CITY OF DECATUR
FOR MEMBER PHIL KENT TO RECUSE HIMSELF**

COMES NOW, the CITY OF DECATUR, Respondent in the above matter (the “City” or “Respondent”), by and through its undersigned counsel, and requests that Board member Phil Kent recuse himself from further participation in this matter.

I. INTRODUCTION

As of February 28, 2018, Phil Kent is one of the two members of the Immigration Enforcement Review Board (“IERB”) assigned to the “Review Panel” that will make decisions regarding this case. This same individual has made public statements and social media posts that indicate that his mind was made up even before this proceeding was commenced. IERB member Phil Kent is clearly biased and openly hostile to the City of Decatur. In order to avoid further eroding the public’s confidence in the fairness and neutrality of the IERB and to avoid violating State ethics laws, Mr. Kent must immediately recuse himself from further involvement in this case.

II. PROCEDURAL POSTURE

In its Response to Complaint filed January 18, 2018, the City objected to the involvement in this proceeding of a Board member who made comments on television supportive of Lieutenant Governor Casey Cagle for “taking a shot” at the City of Decatur regarding the City’s

alleged failure to cooperate with federal immigration authorities. [Response, Objection no. 14, pp. 11-12.] Mr. Kent did not recuse himself. Instead, despite his clear bias and the City's formally stated objection to his involvement, Mr. Kent was appointed on February 28, 2018, to serve as one of only two members of the "Review Panel" for this case. The City objected to his appointment at the February 28 meeting, but Mr. Kent still did not recuse himself. The City is left with no choice but to file this formal Motion to Recuse.

III. ANALYSIS

Mr. Kent's own public statements provide direct, irrefutable evidence of his bias against the City of Decatur and in favor of the Office of Lieutenant Governor, which filed the complaint in this action.¹ Applicable law demands that Mr. Kent recuse himself from further participation in this matter.

A. Kent's public statements show bias and his already-formed opinions against Decatur and in favor of the Lieutenant Governor

On October 29, 2017, Mr. Kent--who regularly appears on the Atlanta Fox 5 television program "Georgia Gang"-- made certain remarks praising Lieutenant Governor Cagle's attacks on the City of Decatur over the issues that are now before the IERB.² In the program's section

¹ The complaint in this action was filed by the "Office of Lieutenant Governor." Georgia law only allows a Georgia resident who is registered to vote to file a complaint with the IERB. Therefore, the City has challenged the validity of the complaint on this basis. This issue is pending before the IERB (specifically before the appointed "Review Panel," consisting of Chairman Hanley and member Phil Kent) as the Board has decided to revisit its November 15, 2017 decision. In this Motion, Respondent uses the terms "Lieutenant Governor" and "Office of Lieutenant Governor," as well as references to the individual, Casey Cagle, who currently holds the position of Lieutenant Governor. Through use of these various references, Respondent does not waive its continuing objection to the standing of the "Office of Lieutenant Governor" to be the complaining party in this case.

² *Georgia Gang* 10/29/2017 (<https://www.youtube.com/watch?v=FkDI79CcC-s> at 22:30). A copy of the video is attached as Exhibit A.

called “Winners and Losers,” when panelists can choose their own “winners or losers” making news over the past week, Mr. Kent proclaimed:

My winner is Lt. Governor Casey Cagle. He made some news this past week by taking a shot at the City of Decatur. The City of Decatur is not honoring requests from Immigration Control & Enforcement and Homeland Security when it comes to some of these criminal illegal immigrants, some of them gang members. And so he [Cagle] laid down a marker and even said ‘by November 1st, you better be in compliance with the feds.’

Kent’s choice of Cagle as his “winner” newsmaker because of Cagle’s attacks on Decatur itself disqualifies Kent in that he reveals deep biases. Kent’s statements revealed his pre-judgment and fixed opinions on the factual and legal issues that are now before the IERB. Kent lauded Cagle and apparently adopted Cagle’s specific claims without objective facts in support, even stating as fact that the City of Decatur is not detaining “gang members” (which is false). Kent’s statements show opinions already formed *against* the City of Decatur on issues such as whether the City is complying with federal law (the City is complying with federal law).

B. Kent’s public postings on Twitter provide further evidence of bias against Decatur and in favor of the Lieutenant Governor

Kent’s public expressions against the City of Decatur and for the Lieutenant Governor on the very issues before the IERB also occurred on social media.



On October 27, 2017, two days before his “Georgia Gang” appearance, Kent posted an article headline stating: “GA Lt Gov @CaseyCagle Warns Decatur on Harboring Illegal Aliens; Gives Nov. 1 Deadline.” As a member of the IERB, Mr. Kent undoubtedly knew that if the City did not comply with the Lieutenant Governor’s deadline, the matter could be brought before the IERB, of which he is a member. Even more disturbing is the fact that the October 27 posting linked to an article on InsiderAdvantage.com, an on-line political newsletter, for which Phil Kent serves as CEO. By posting a link to an article on his paid subscription-based newsletter about a topic that could be brought before the IERB, Kent mixed his public duties with his business interests.³

Even after the complaint in this case was filed (on November 6, 2017) and the IERB had made preliminary decisions regarding the case (on November 15, 2017), Mr. Kent took to social media to share that he was reviewing outside opinions that the City had violated state law. In a January 7, 2018 tweet, Mr. Kent posted that he was “Currently reading: Georgia On Our Minds: Decatur is a Sanctuary City, But it’s Not the only One.” In the parlance of the issues presented by the complaint in this case, Kent’s implicit endorsement of the expression “Decatur is a Sanctuary City” indicates that he already decided the ultimate issue in the case. Remarkably, the City had not yet even had the opportunity to submit its formal Response to the IERB, much less defend itself at a hearing in the case (in the event the complaint is not dismissed).

³ See Secretary of State listing, attached as Exhibit B.

C. State Ethics Law requires that Mr. Kent recuse himself.

Mr. Kent has pre-judged the allegations made by the Office of Lieutenant Governor, and his statements against the City of Decatur and in favor of the Lieutenant Governor reveal his bias, proving that he cannot be fair and neutral in adjudicating the Complaint.

Although the IERB as a whole cannot force Mr. Kent to recuse himself, it is clear he must do so voluntarily or he will violate the Georgia Code of Ethics for public board members. See Ga. Op. Atty. Gen. 89-9 (1989 WL 411611). In an official opinion, the Georgia Attorney General recommends that “any member of [a state board] who is the focus of a motion to recuse [should] be mindful of the requirements imposed upon [him] by O.C.G.A. § 45-10-3 ... and the sanctions contained in O.C.G.A. § 45-10-4 for violation of the Code of Ethics.” Id. In that official opinion, the Attorney General directed that any board member who is the subject of a motion to recuse must decide for themselves whether their participation “on a particular case is appropriate, or whether he or she should voluntarily abstain.” Id.

Mr. Kent’s participation in this proceeding, despite his clear bias and partiality, violates at least three subsections of Georgia’s Code of Ethics for members of boards, commissions, and authorities created by general statute:

Notwithstanding any provisions of law to the contrary, each member of all boards, commissions, and authorities created by general statute shall:

- (1) Uphold the Constitution, laws, and regulations of the United States, the State of Georgia, and all governments therein and never be a party to their evasion;
- (2) Never discriminate by the dispensing of special favors or privileges to anyone, whether or not for remuneration;
- (8) Never engage in other conduct which is unbecoming to a member or which constitutes a breach of public trust;

O.C.G.A. § 45-10-3.

1. Because his participation denies the City due process protections, Kent's participation circumvents the United States and Georgia Constitutions.

For Mr. Kent to continue to participate in this proceeding and vote and advocate against the City -- apparently a foregone conclusion per his own public statements -- would evade rather than uphold the due process requirements of the United States and Georgia Constitutions. Kent's continued participation therefore violates subsection (1) of O.C.G.A. § 45-10-3.

The U.S. and Georgia Constitutions, respectively, guarantee the City of Decatur the right to due process throughout these proceedings, which requires that the issues presented be reviewed by a fair and neutral decision maker. "In order to comply with the requirements of due process, the hearing granted by an administrative body must be a full and fair one, before an impartial officer, board, or body free of bias, hostility and pre-judgment." *Georgia Bd. of Dentistry v. Pence*, 223 Ga. App. 603, 604 (1996); *Dept. of Transp. v. Del-Cook Timber Co.*, 248 Ga. 734, 740 (1982). "A 'fair trial in a fair tribunal is a basic requirement of due process.' *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). This applies to administrative agencies which adjudicate as well as to courts. *Gibson v. Berryhill*, 411 U.S. 564, 579, 93 S.Ct. 1689, 1698, 36 L.Ed.2d 488 (1973). Not only is a biased decision maker constitutionally unacceptable but 'our system of law has always endeavored to prevent even the probability of unfairness.' *In re Murchison*, supra, 349 U.S. at 136, 75 S.Ct. at 625; cf., *Tumey v. Ohio*, 273 U.S. 510, 532, 47 S.Ct. 437, 444, 71 L.Ed. 749 (1927)." *Dept. of Transp. v. Del-Cook Timber Co.*, 248 Ga. at 740.

Mr. Kent's own public statements confirm his pre-judgment in this matter and thus his disqualification as a neutral arbiter. And Mr. Kent's appointment on February 28 as one of just two IERB members assigned to review the complaint's legal sufficiency highlights the immediate need for recusal.

2. Kent's participation is a "special favor" to gubernatorial candidate Casey Cagle.

Mr. Kent has publicly expressed his admiration for the Lieutenant Governor's "taking a shot" at the City of Decatur. In turn, Mr. Cagle is making extensive use of this proceeding to further his campaign for Governor. For example, he frequently boasts about his efforts to have the IERB impose sanctions against the City of Decatur. [See, e.g., Cagle's Facebook post "Defund Decatur," attached as Exhibit C.] When one views these facts together (i.e., Kent's endorsement of Cagle's actions coupled with Cagle's use of this proceeding to improve his chances of becoming Governor), it becomes clear that Mr. Kent's continued participation constitutes a "special favor" to Mr. Cagle. Indeed, Kent will be one of just two board members who will be in a position to advance the complaint as part of the Rule 291-2-.02 "Initial Review." Assuming Kent continues to support advancing the complaint, he will provide a direct benefit to the Cagle campaign as it will continue to get political mileage out of its efforts to "Defund Decatur" through this IERB proceeding.

Kent's involvement in this case thus far suggests a particular zeal on his part to rule against and punish the City. For example, at the November 15, 2017 meeting, Kent was the board member who made the motion to move the complaint forward. He also questioned counsel for the City during counsel's explanation as to why the Office of Lieutenant Governor is not a proper party.⁴ These actions raise serious concerns given that just over two weeks previously, the political newsletter operated by Kent ran an article written by "IAG Staff" that trumpeted Cagle's "campaign to hold Decatur's liberal officials accountable to Georgia law."⁵

⁴ Transcript of 11/15/17 meeting, pp. 4, 14-15, copies of which are attached as Exhibit D. It should be noted that the City's counsel learned about the Georgia Gang comments and Twitter posts subsequent to the 11/15/17 meeting.

⁵ See copy of first two paragraphs of article attached as Exhibit E. Only paid subscribers can access the full article.

Subsection (2) of O.C.G.A. § 45-10-3 prohibits a member of a State board from dispensing special favors. At minimum, Mr. Kent's continued involvement in this case creates the appearance that he is dispensing a special favor to gubernatorial candidate Casey Cagle.

3. Kent's participation undermines the public trust in the IERB.

Kent's continued participation despite his clear bias undermines the public's trust that IERB proceedings are fair and lawful, thereby violating subsection (3) of O.C.G.A. § 45-10-3.

Part of the bedrock of our democratic system is the impartiality of adjudicative bodies. Independence, impartiality and integrity of judges and adjudicatory bodies, such as the IERB, promotes public confidence in our systems of justice. Yet, in light of his public statements on television and his social media posts, no reasonable Georgia citizen can believe that Mr. Kent is impartial with respect to this proceeding. Therefore, Kent's continued participation in this case erodes the public confidence in the overall fairness and neutrality of the IERB.


IV. CONCLUSION

Mr. Kent must recuse himself from the proceedings in this case in order to comply with his ethical obligations under State law. If Mr. Kent continues to participate in the decision-making process, this Board will become a mockery in the public's eyes. A board that includes a member who expresses publicly his personal, political and ideological bias against a party, as well as his pre-judgement of who already was the "winner," cannot provide due process, fundamental fairness, or even the appearance of impartiality. This is especially true where the board delegates decision-making authority to that openly biased board member.

Respectfully submitted, this 15th day of March, 2018.

WILSON, MORTON & DOWNS, LLC

By: _____


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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the **MOTION OF CITY OF DECATUR FOR MEMBER PHIL KENT TO RECUSE HIMSELF** on all parties of record by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

Irene Munn, Esq.
Attorney for Complaining Party
Office of the Lieutenant Governor
240 State Capitol
Atlanta, GA 30334

This 15th day of March, 2018.



Bryan A. Downs
Georgia Bar No. 228437