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Memorandum

To: Commissioner White

cc: Mayor Kirkland
Sally McCranie, Town Clerk
Sherri MacDonald, Deputy Town Clerk

Re: Memorandum directed to me dated 5/15/14

Date: May 15, 2014

Your objection to me giving my opinion or “change any ones (sic) recollection of there (sic) response” is noted.

As to giving my opinion, with all due respect, you do not have authority to order me to the sidelines in this case. In fact, your attempt to do so could reasonably be considered an attempt to “interfere” with the Town’s investigation of the incident in question.

As to your charge of “changing anyone’s recollection of their response” and “dictating and manipulating” - beyond it being ridiculous - I take note of this statement in your May 13, 2014 memo:

“The liability to the town ***knowing these events occurred and doing nothing about these actions*** is tremendous. Any other town would have dealt with this the day we knew about it.”

This statement, combined with today’s “order,” makes it clear you have already reached a conclusion and seek only statements which support that conclusion.

The touchstone of American law is “fundamental fairness” - every proceeding, be it in a courtroom or before the Town Commission, must be fundamentally fair, and not just to one party - to ***all*** parties. For example, prosecutors are required to disclose evidence which tends to support the accused’s ***innocence***, which hardly makes sense - we all “know” the prosecutor’s job is to “get convictions.” Right? Wrong - prosecutors are obliged to pursue ***justice***, not just convictions.

Memorandum to Commissioner White

May 15, 2014

Page 2

The disciplinary policies you recently voted to approve for Town employees require fundamental fairness, under which the object of the investigation is to find out what happened - all of it, favorable and unfavorable (however you wish to define those terms in the context of this matter). The investigator is obliged to present all the evidence obtained to the accused employee and to give the accused employee an opportunity to respond. The investigator has authority to continue the investigation if, based upon what the accused has to say, he or she deems it necessary, with the same obligation to give the accused an opportunity to review and respond to any new information. All this is done because the investigator's job is not to "build a case against the accused" - it's to "find out what happened."

So - does a Commissioner accused of misconduct deserve a "less fair" investigation than a similarly situated employee? Or is the Town's obligation the same - find out everything there is to learn about the incident, good and bad, so the Commission can make an informed decision?

Likewise, if and when the Town Commission takes up the matter, the process should be fair, both to the interests of the Town and to the accused Commissioner, to insure that the accused Commissioner's conduct is judged based upon all the evidence. Any such proceeding will, as a matter of right, afford the accused Commissioner an opportunity to present any and all exculpatory evidence.

So - - would you rather the Town find out about any exculpatory evidence now, or wait and hear about it for the first time at the Commission meeting?

In conclusion ...

I don't see attending to these important issues as "interfering" with anything. If you think otherwise, then I suggest you request a Special Meeting to determine whether the full Commission wishes to order me to the sidelines.