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September 23, 2020

Robert P. Sullivan, Esquire
City Attorney
City of Portsmouth
One Junkins Avenue
Portsmouth, New Hampshire 03801

Re: Ethics Complaint Against Esther Kennedy

Dear Bob:

Accompanying this transmission is the respondent Esther Kennedy's request for findings of fact and conclusions of law.

In the interests of full disclosure, these proposed findings were drafted by Jerry Zelin, rather than by myself, although I have signed them and stand behind them, as they are fully consistent with Esther Kennedy's contentions and, I believe, faithful to the facts.


I know that you and the committee members feel that there has been an unnecessary proliferation of paper in this case--a position with which, by the way, I strongly disagree; if this were a lawsuit or other civil proceeding in court, the amount of paperwork that has been filed in this case would be no more than average--but I have a duty to Esther Kennedy as her attorney and a duty to make my record for appeal, in case there is a need for one. For that reason, I would respectfully ask that the Committee take this request for findings seriously.

I was a bit dismayed that at the conclusion of Monday's hearing there was no opportunity given for summation--a closing argument, as it were. I am well aware that I have worn out my welcome with this Committee, but I would like to leave its members with just this one brief, final thought:

I think that it is important to remember that the issue in this case is not whether Councilor Kennedy was wise or foolish, whether there weren't better ways that she could have solved the problem with which she found herself to be confronted, or whether there were not other, alternative avenues which she could have exhausted. Rather, the narrow issue, as framed in your letter

6. When Ms. Kennedy registered the trade name "PopUp Portsmouth," she engaged in an "action," but not a "transaction."
7. Even if registering the trade name was a transaction, Ms. Kennedy did not violate Section 1.802-A of the Code of Ethics unless the transaction was "in conflict with the proper discharge of her/or her [sic] official duties."
8. Section 1.801-D-1 of the Code of Ethics defines "Official Duties" as follows: "In the case of members of the City Council ... those duties and responsibilities set forth in the City Charter and/or established by State law."
9. The complainant ignored that precise and narrow definition of "Official Duties." She failed to explain how Ms. Kennedy's actions violated any specific *duty or responsibility set forth in the City Charter or established by State law*. The complainant did not even mention the City Charter or relevant state laws.
10. The evidence does not establish that Ms. Kennedy engaged in a transaction that was in conflict with the proper discharge of her official duties and responsibilities set forth in the City Charter or established by State law.
11. Ms. Kennedy was motivated to protect the City's interests, not to compromise them for personal gain. Her loyalties were not divided by any conflict of interest.

Date: September 23, 2020

By: 
Duncan MacCallum
Attorney for Esther Kennedy

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Zoom and/or Channel 22, except when the committee members are conferring with you specifically for legal advice in your role as City Attorney.

That's all that I have for now. I look forward to watching the proceedings tonight, and Councilor Kennedy will be available via Zoom to field any questions.

Very truly yours,



Duncan J. MacCallum

DJM/eap

Enclosure

cc. John Tabor, Committee Chairman
Ann Walker
Richard Gamester
Tom Hart
Esther Kennedy
Nancy Pearson

VIA E-MAIL ONLY