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October 22, 2020

By Overnight Mail and Email

Mary Bulso
Taylor Greene
Robert Kluchevitz
Subcommittee of Board of Selectmen
Town of Blackstone
15 St. Paul Street
Blackstone, MA 01504

Re: Town of Blackstone; Investigation for Subcommittee of
Board of Selectmen Appointed August 11, 2020

Dear Selectmen Bulso, Greene and Kluchevitz:

The Subcommittee of the Blackstone Board of Selectman, appointed on August 11, 2020 (the “Subcommittee”), retained this firm with instructions to investigate: (1) the allocation or use of CARES Act funds, (2) employment issues, and (3) consideration of a forensic audit. This letter constitutes a report of the investigation to date, which this firm understands the Subcommittee may make public at a meeting of the Board of Selectmen.

After consultation with Town Counsel to facilitate the investigation, this firm has interviewed the following witnesses in person: Gail LeClair, Kenneth Cotnoir, Jan Geiger, Lauren Taylor, Greg Tappan, Sandy Lemoine, Daniel Keefe, Colleen Strapponi, and Dan Keyes. Because of an injury, Robert Dubois was interviewed by telephone. This firm interviewed the following witnesses also by telephone: Fransciena “Frankie” Schandelmayer-Davis, Elizabeth Deifenbach, Patricia Salomone, Ross Atsupenas, and Tara Sullivan. In addition, Daniel Keefe participated in a second interview, which was completed by telephone. My firm also participated in telephone conversations with Wendy Timmons, Robert Varieur, Pat Costello and Stephen Pfaff, all of whom cooperated to facilitate the gathering of information, but who we deemed not material witnesses for the limited purposes of this investigation. Several of the witnesses produced pertinent documents, such as emails, attachments and other correspondence, and Mr. Keefe had prepared and publicized a lengthy written statement before the start of this investigation.

All of the witnesses participated voluntarily in the interviews. At the start of interviews, witnesses were informed that my firm represented the Subcommittee, that the witness was not a client of my firm, and that any attorney-client privilege belonged to the Subcommittee, which is the client that possesses the right to assert or waive the attorney-client privilege. All witnesses expressed a willingness to answer questions. None of the witnesses refused to answer any questions during these interviews.

The undersigned has practiced law for more than 28 years and has conducted numerous internal investigations at the request of management boards, in connection with government investigations and otherwise, and has served as a federal prosecutor in charge of more than 100 investigations and/or prosecutions. A private investigator with several decades of experience in federal law enforcement, including in a supervisory capacity, accompanied the undersigned to interviews, participated in telephonic interviews and reviewed the factual background set forth in this letter for accuracy.

Many of the material facts underlying this investigation are not actually in dispute or appear in contemporaneous documents sufficiently clear to inform key findings and recommendations on the topics that have been assigned for the investigation.

AUTHORITY OF BOARD OF SELECTMEN AND THE SUBCOMMITTEE

Before commencing the investigation, my firm assessed the authority of the Board of Selectmen and the Subcommittee to pursue this investigation.

According to the Charter for the Town of Blackstone, the form of town government is consistent with what is known as a “Selectmen - Town Administrator - Open Town Meeting Plan.” A five-person Board of Selectmen serves as the chief executive body of the Town. The Board of Selectmen have the powers that Selectmen have under the Massachusetts General Laws and the bylaws of the Town of Blackstone, including powers not specifically set forth in its Charter.

On August 11, 2020, the Board of Selectmen voted to appoint the Subcommittee. During the course of the investigation, nobody questioned or objected to the authority of the Board of Selectmen to appoint the Subcommittee, although a couple of individuals have since raised questions about the scope of the investigation. Nobody has questioned that proper notice was given before the vote to appoint the Subcommittee and that all members of the Board of Selectmen received notice of that vote and had an opportunity to participate in whether the Subcommittee should be appointed. No formal objection has been maintained to the validity of the August 11, 2020 meeting, which can be viewed online. The actual scope of the investigation completed to date has not exceeded any position that anyone has taken about the proper scope of it, and care has been taken to prevent any of the findings and recommendations herein from exceeding the authorized request by the Subcommittee.

The law in the Commonwealth has long been clear about the need for a Board of Selectmen or duly-appointed committee to act as a body, *not* separately as individuals:

The selectmen are public officers who are to act together as a board. Ordinarily they cannot act legally without a meeting of all the members, or a reasonable notice to all, such as to give every member, if he pays proper attention to his public duties, an opportunity to be present with the others and participate in the business before the board.

Damon v. Walsh, 195 Mass. 72, 77 (1907). “The general rule that such a board of public officers should act jointly, and that all should have an opportunity to participate in their action, is unanimously recognized.” *Id.* at 78. Accordingly, each member of the Board of Selectmen is without special powers or authority on his or her own, but the full Board of Selectmen or a duly-appointed committee carries the substantial executive powers conferred by the Charter of the Town of Blackstone. Here, the Subcommittee consists of a majority of members of the Board of Selectmen and the only members who would not have to recuse themselves from subjects of the investigation. Accordingly, the Subcommittee has acted with valid authority.

ROLE OF THE TOWN ADMINISTRATOR

The events at issue implicate the powers and duties of the Town Administrator, including in the interaction with the Board of Selectmen. Article V of the applicable Charter provides in pertinent part the following:

- All offices under supervision of the Town Administrator shall have the powers and duties contained in the General Laws, the Town bylaws and this Charter. ***The authority to appoint, remove and supervise employees*** exercised by persons subordinate to the Town Administrator shall be considered a delegation of his authority, and ***he shall have the power of final approval of their exercise of that authority.***
- He shall prepare and present to the Selectmen for their approval the annual budgets for all departments and offices under his supervision.
- He shall keep the Board of Selectmen fully advised as to the financial condition and future needs of the Town, and ***make such recommendations to the Board concerning any affairs of the Town as he deems advisable.***
- He shall receive and answer complaints and refer complaints to the proper department for attention. When he deems it advisable he shall make recommendations to the Board of Selectmen concerning the disposition of complaints.
- As specified by the Board of Selectmen he shall act as its representative in relations with labor unions that represent, or seek to represent Town employees.
- ***He shall keep informed about, and at the instruction of the Board of Selectmen, he shall work to obtain, resources from federal, state and other government jurisdictions that further Town purposes.***

CARES ACT FUNDS

The first topic assigned in the investigation involved the use or allocation of CARES Act funds. In response to the harm caused by the Covid-19 Pandemic, the federal government enacted the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”), which established a relief fund that, in part, could cover certain expenses of units of local government throughout the country. The federal government has allocated at least \$150 billion for a Coronavirus Relief Fund to accomplish these and other objectives.

According to the United States Treasury, in pertinent part, the CARES Act requires that the payments from the Coronavirus Relief Fund only be used to cover expenses that—

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19);
2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.¹

The federal government has promulgated various guidelines for the use of such funds by local town units. The nuances of those guidelines do not appear directly at issue in this investigation.

According to a memorandum from the Executive Office for Administration and Finance to the Chief Executives of Massachusetts Cities and Towns, dated May 14, 2020, \$822,252 was earmarked for the potential use by the Town of Blackstone for qualifying purposes, if and to the extent such purposes exist. Importantly here, witnesses have confirmed that none of the funds allocated for the Town of Blackstone had been used by the time of the interviews. The portion of the investigation concerning CARES Act funds has therefore focused on attempted allocations of those funds.

On or about March 10, 2020, town offices shut down to the public, and most employees of the Town of Blackstone worked, if at all, from home. Events in June 2020 and early July 2020 predominate the efforts to allocate CARES Act funds at issue in this investigation. Not much during these efforts is in dispute. The allocation efforts arose with the Town Administrator, Dan Keyes. Prior to June 16, 2020, Mr. Keyes had discussions with Mr. Keefe, who was then the Chair of the Board of Selectmen, about remunerations for those who had gone “above and beyond” during the coronavirus crisis. At a public hearing of the Board of Selectmen on June 16, 2020, as reflected in minutes, Mr. Keyes described staffing changes and savings.² At a public

¹ See <https://home.treasury.gov/policy-issues/cares/state-and-local-governments>.

² According to minutes, at a meeting on June 16, 2020, the Board of Selectmen voted Robert Dubois as the new Chair to replace Mr. Keefe. The dynamic at the Board of Selectmen by then and since has not been an entirely friendly one. As a general matter, to say the least, Mr. Keefe and Mr. Dubois do not have a healthy working

hearing of the Board of Selectmen on June 23, 2020, Mr. Keyes stated that he received correspondence regarding the CARES Act and suggested there would be an ongoing process to be placed on a future agenda. Prior to June 30, 2020, Mr. Keyes telephoned the Town Accountant, Lauren Taylor, to discuss staffing and employee compensation issues. Mr. Keyes raised the possibility of stipends for those who went “above and beyond” or “took on more work” during sheltering because of the Coronavirus, as well as to discuss pay increases for fiscal year 2021.

Mr. Keyes and Ms. Taylor met in the town offices and discussed employees in each town department. They shared opinions about the people who were regularly in the building or made themselves available despite the sheltering that accompanied the first wave of the coronavirus. Mr. Keyes and Ms. Taylor maintained notes of their discussions. They decided to bring department heads into the discussions. Ms. Taylor credibly corroborates a sequence of discussions between Mr. Keyes and department heads, which mostly took place on June 30, 2020. As a general matter, Mr. Keyes informed department heads what he wanted to accomplish in terms of providing stipends for certain employees who had given more of themselves to their work during the crisis. The Town Clerk refused a stipend and asked to give it to assistants. Mr. Keyes essentially said no.³ Otherwise there was only modest questioning by any department head about the amounts, and Mr. Keyes explained that amounts could possibly be added later. Despite the series of meetings, Mr. Keyes and Ms. Taylor made no changes to the proposals they had constructed.

Despite the separate meetings with each department head, nothing changed in the plans that Mr. Keyes had developed for the amounts and recipients of stipends, except that the Town Clerk refused a stipend. After meeting with department heads, Ms. Taylor’s notes included the information she needed for a list of recipients and amounts, though not in the format of a list. On July 1, 2020, Ms. Taylor learned that Selectman Daniel Keefe asked for a list of proposed stipends and pay increases during a meeting in the Board of Selectmen’s offices in which he was participating with Mr. Keyes and the Chair of the Board of Selectmen, Robert Dubois.

Ms. Taylor’s recount of these June 30 and July 1 events appeared consistently credible, but shed limited light into how the meeting came together and what the participants said to each other

relationship. For instance, reports suggest that Mr. Keefe has led efforts for a possible recall of the vote for Mr. Dubois, and Mr. Keefe has engaged in significant and public efforts to challenge Mr. Dubois’ registration or licensing of his business. These matters go beyond the scope of the investigation and need not be resolved in terms of which, if either, individual is right or wrong in these positions. This dynamic is mentioned in part to indicate that the two of them do not have the sort of relationship that would likely lead them to work secretly together for their mutual benefit.

³ The exact discussion between the Town Clerk and Mr. Keyes on June 30, as well as between the Town Clerk and each of Mr. Dubois and Mr. Keefe, separately, appear disputed albeit in immaterial ways for purposes of this report. Everyone agrees that the Town Clerk declined a stipend when offered it. She attempted to avoid compensation that, in her view, could later be questioned by taxpayers. Instead of accepting a potential stipend, she encouraged the use of those funds as compensation for assistants in her department. While she has a recollection of her interaction with Mr. Keefe that differs somewhat from the description of it in his lengthy written statement, ultimately the discrepancy does not impact the conclusions or recommendations in this report.

during the meeting. The participants in the meeting have told a largely consistent story about what occurred outside of Ms. Taylor's presence. Emails and notes also corroborated these matters.

On June 30, 2020, both Mr. Keefe and Mr. Dubois learned about Mr. Keyes proposing specific stipends and salary increases in discussions with town department heads. According to Mr. Keefe, his wife, who is the Director of the Council on Aging for the Town of Blackstone, came home reporting that she had been called in for a meeting with Mr. Keyes in which he informed her she would be receiving a \$2,000 stipend and a \$2,000 salary increase. Mr. Keefe also spoke with Colleen Strapponi, the Zoning Code Enforcement Officer, who reported some dissatisfaction with the determination of the recipients and/or amounts of the stipends. Mr. Keefe reached out for Mr. Dubois to arrange a discussion of these matters.

During their brief discussion on the evening of June 30, Mr. Keefe raised the issue of bonuses seeking to learn whether Mr. Dubois knew about a plan for them. According to Mr. Keefe, Mr. Dubois appeared in a rush, but agreed to meet with Mr. Keefe the next morning and that Mr. Keyes should attend the meeting. When Mr. Dubois arrived at the offices of the Board of Selectman at about 9:05 am on July 1, Mr. Keefe was there. Initially they spoke about a small compensation dispute with someone named Patricia Marvelle Ring. They spoke briefly about this matter before Mr. Keyes joined them. One of them pointed out the dispute involved only a few hundred dollars and, in light of the limited amount, Mr. Keyes undertook to determine whether it could simply be resolved directly or with the assistance of Town Counsel. (The resolution of disputes with a settlement amount below \$1,000 pose simpler levels of town official review.)⁴

The subject of the July 1 meeting then turned to the stipends and salary increases. Mr. Keefe asked for a list of the recipients and amounts. Ms. Taylor prepared and promptly provided one. Mr. Keefe explained during his interview that he equated the increases to a rating on a scale up to 10, where the largest amount was a \$10,000 raise. At the July 1 meeting, Mr. Keefe asked Mr. Keyes how he came up with this "merit system about who gets a 4 or a 10 or a 2?" Mr. Keyes responded asking, "What do you mean a merit system?" Mr. Keefe suggested that, instead, they add up the amounts and divide by the number of recipients to make it "fair and equitable."

Mr. Keefe repeatedly described his goal as one of being "fair and equitable" by giving everyone on the list the same amount of an increase, which worked out to approximately \$6,000 each. As a purely mathematical exercise, Mr. Keefe's proposal of "fair" and equal increases would generate a \$6,000 increase for his wife, rather than the \$2,000 increase that Mr. Keyes had proposed. Mr. Keefe then addressed bonuses, criticizing the discrepancies among employees ranging from \$1,500 to \$2,500. Mr. Keefe suggested everyone receive \$2,500 and that they expand the list of

⁴ The undersigned made an effort to contact Patricia Marvelle Ring by telephone. Given the limited size of her dispute and its lack of significant connection to the remainder of the investigation, no further recommendations are made concerning this matter. It is understood that Town Counsel will address any ongoing dispute with Ms. Marvelle Ring.

recipients. By doing so, the list would include some lower-level employees who had not been reporting to town offices during sheltering, and Mr. Keefe's wife would receive an extra \$500. Mr. Keyes expressed concern that giving bonuses for people who were not even working at the town offices might not work, reflecting his view of the CARES Act requirements. At Mr. Keefe's request, a second list was created reflecting Mr. Keefe's proposal, which also would have provided a \$2,500 stipend for Mr. Dubois' wife, rather than a \$1,500 stipend as Mr. Keyes had originally planned. Mr. Keefe insisted on his notion of "fair and equitable" amounts that gave the same amount to everyone.

The three participants in the meeting agreed that Mr. Keyes should send the proposal to the entire Board of Selectmen. Mr. Keyes instructed Ms. Taylor to create the new lists reflecting Mr. Keefe's proposal of equal amounts. Ms. Taylor forwarded both the original and amended lists by email to Mr. Keyes, who in turn forwarded these lists by email to the entire Board of Selectmen. The next morning Mr. Dubois and Mr. Keyes spoke and expressed mutual discomfort with the changes that Mr. Keefe had proposed. The changes in the lists posed issues under the CARES Act requirements because the stipends to those who did not perform extra work did not appear due to the public health emergency. By July 2, 2020, Mr. Keyes withdrew the proposals from the Board of Selectmen.

Ms. Taylor recalls Mr. Keyes being upset after the July 1 meeting that he had with Mr. Keefe and Mr. Dubois. She recalls she and Mr. Keyes had previously spent substantial time with each other and each department head, only for Mr. Keyes to report that Mr. Keefe pushed for changes as "fair and equitable" based on spreading increases and stipends out equally and to a wider list of recipients. Ms. Taylor called each member of the Board of Selectmen informing them that Mr. Keyes was pulling the proposals.

Ms. Taylor confirmed that the CARES Act funds were not actually spent. She acknowledged that the Town of Blackstone had not yet accessed any of the \$822,252 in potentially earmarked funds that might otherwise become or remain unavailable. In other words, the result of the informal meeting on July 1 and surrounding events can be viewed as a significant lost opportunity for the Town of Blackstone.

The July 1 meeting among Mr. Keyes, Mr. Keefe and Mr. Dubois pose both conflict-of-interest issues and questions concerning the role of Selectmen at informal meetings without the benefit of participation by the other members of the Board of Selectmen in a transparent setting.

Conflicts-of-Interest and Self-Dealing

The Commonwealth's State Ethics Commission provides the following pertinent guidance and restrictions concerning conflicts-of-interest and self-dealing:

The law generally prohibits you from taking any official action on matters affecting your own financial interests, *or the financial interests of: your immediate family members (i.e., your spouse and the parents, siblings and*

children of either you or your spouse); partners; your employer(s) other than your town; anyone with whom you are negotiating or have an arrangement concerning prospective employment; or organizations for which you serve as an officer, director, partner, employee or trustee. (3) As a Selectman, you may not act in any way that affects these interests, positively or negatively, nor may you act on any matter that affects these interests within the foreseeable future. If a matter affecting one of these interests comes up for consideration at a Selectmen's meeting, the wisest course of action is to leave the room during discussion, deliberation and the vote on the matter, and make sure that the minutes of the meeting reflect your recusal.

The prohibition on acting in these matters is very broad. You may not participate as a selectman in any way: you may not vote on these matters; ***you may not participate in, moderate or chair discussions***; you may not delegate these matters to a subordinate; you may not prepare official documents concerning these matters; and ***you may not take any other type of official action regarding these matters.***

For example, if a budget line item ***includes the salary of an immediate family member, you may not discuss that line item with your colleagues***, even during informal conversations.⁵

These restrictions do not generally implicate First Amendment rights because “[a]ny incidental limitation of First Amendment freedoms is clearly justified by the Commonwealth’s substantial interest in regulating the conduct of public officials.” *Zora v. State Ethics Com’n*, 415 Mass. 640, 651 (1993) (applying conflict-of-interest rules to family members acting indirectly on behalf of interested entities in matters otherwise within their public authority).

Mr. Keefe has stated that he did not believe his conduct violated conflict-of-interest rules. He has explained that he planned to recuse himself when the Board of Selectmen would vote on any proposal that would affect his wife. For purposes of this report, I credit Mr. Keefe’s statement that he had planned to recuse himself for the vote by the Board of Selectmen. Nevertheless, Mr. Keefe acknowledged openly in Paragraph 16 of his written statement that, at the July 1 meeting, he “said it needs to be fair and equitable across the board and then presented to the entire board,” and that he “recommended that it should be divided equally and then the TA could then present his reasoning for who gets less and who gets more to the board.” He repeated a similar statement, during his interview, that he had suggested at the July 1 meeting adding up the total amount and dividing it by the number of recipients. Even if not a primary motivation, the proposal by Mr. Keefe of what he deemed a “fair and equitable” compensation increase would have generated several thousand dollars more for his wife, making the proposal a form of self-dealing. His proposal directly impacted the Town Administrator’s official work and plans, resulting in an

⁵ See <https://www.mass.gov/service-details/board-of-selectmen-members-explanation-of-the-conflict-of-interest-law> (emphases added).

actual change in the scope of documented proposals that the Town Administrator advanced to the Board of Selectmen. Accordingly, Mr. Keefe's active participation in a proposal that would have benefitted his wife violated fundamental conflict-of-interest rules that prohibit self-dealing.

Mr. Dubois also participated in the July 1 meeting and his wife also would have benefitted from what Mr. Keefe has described as a "fair and equitable" allocation of funds. Descriptions of Mr. Dubois' involvement at the meeting, however, attribute to him an early suggestion that any proposal go directly to the entire Board of Selectmen. The competent evidence concerning Mr. Dubois' participation in the July 1 meeting reflects primarily an information-gathering process, while encouraging that the topic proceed to the full Board of Selectmen. These types of informal meetings pose risks, create an appearance of a lack of transparency, and should be discouraged. With respect to informal meetings generally, by definition there is no formal record of recusals or limitations on an individual's extent of participation. The better practice than that which Mr. Dubois allowed would have been to consult with Town Counsel before participating in any meeting or discussion that could result in official action other than in a properly-noticed public hearing or formal executive session. The importance of best practices was heightened in light of the potential financial interest that Mr. Dubois would have had in his wife's compensation, but the investigation did not identify any effort or suggestion on his part to increase his wife's compensation. As quoted above from a Commonwealth website on the topic of conflicts of interest, Selectmen should recuse themselves not just from votes, but from any discussions in which a family member's compensation could be directly affected.⁶

To the extent that Mr. Keyes participated in the July 1 meeting, he did so in an official capacity, within his authorized duties as Town Administrator. As noted above, among other things, the powers and duties of the Town Administrator for the Town of Blackstone include keeping "informed about, and at the instruction of the Board of Selectmen, ... work[ing] to obtain, resources from federal, state and other government jurisdictions that further Town purposes." His authority included exploration of obtaining CARES Act funds. Again, however, the better practice would have been to consult with Town Counsel before allowing any informal discussions with individual members of the Board of Selectmen to evolve into official action without the benefit of participation by the other members of the Board of Selectmen. The investigation identified no conflict-of-interest, however, on the part of Mr. Keyes during the July 1 meeting.

⁶ The Town Clerk has stated that both Mr. Keefe and Mr. Dubois separately visited with her shortly after their July 1 meeting with Mr. Keyes. As a result of these visits, she was left with the impression that a proposal would provide stipends for both her and her assistants, even though the Town Administrator had previously suggested that she, but not her assistants, would receive a stipend, and that she had declined to receive one. She has explained that these visits were relatively short and that she cannot remember exactly what was said by either of the two Selectmen, and acknowledged that what she heard from one may have affected how she interpreted what the other had said. As a result, the conclusions and recommendations in this report are not affected by her description of these visits. It is worth noting that the Town Clerk steadfastly maintains, in an entirely credible way, that she consistently expressed that she did not want to receive the potential stipend, feeling that taxpayers should have a direct right in voting on her total compensation.

REMEDIES FOR CONFLICTED ACTS

Common potential remedies for self-dealing or other form of conflicted action by a town official include a referral for criminal investigation, a referral to the State Ethics Commission, or a letter of reprimand to the pertinent town official.⁷

In the view of the undersigned, the investigation did not reveal sufficient evidence to warrant a criminal referral, though such a referral could be revisited if future actions would establish a pattern of conduct or otherwise reveal willfulness in connection with the July 1 meeting. A number of factors appear present that mitigate the likelihood that Mr. Keefe acted willfully when taking or causing official actions to be taken while suffering from a conflict-of-interest. First, no money was actually paid or received as a result of any conflicted action. Second, the July 1 meeting was relatively short in nature and resulted in a prompt referral of the proposals for stipends and salary increases to the entire Board of Selectmen, reflecting that there was no intention to cause a secret payment. Third, the amounts at issue by which Mr. Keefe's wife would have benefitted were limited to just several thousand dollars. Fourth, Mr. Keefe intended to recuse himself from the Board of Selectmen's vote on the proposal (though he did knowingly initiate changes to the existing documented proposal in a way that would have benefitted his wife if approved). Fifth, Mr. Keefe's conduct occurred in the presence of both the Town Administrator and the Chair of the Board of Selectmen. Sixth, Mr. Keefe has devoted substantial time in the past to public service without known ethical violations or disciplinary issues. Seventh, the pertinent meeting occurred in the context of unprecedented circumstances surrounding sheltering. Accordingly, in the absence of future conduct of a similar nature reflecting a willful disregard of conflict-of-interest rules, this matter appears sufficiently limited to make a criminal referral excessive and unlikely to result in any criminal prosecution, let alone a successful prosecution.

The Subcommittee should, however, provide the information in this report to the State Ethics Commission. During the interview of him, Mr. Keefe has stated that he affirmatively reached out to the State Ethics Commission about these matters. In the interest of completeness, the Subcommittee should work with Town Counsel to provide promptly this letter report and the documented proposals to the State Ethics Commission.

It is also recommended that the Subcommittee should issue a letter of reprimand to Mr. Keefe concerning his actions at the July 1 meeting that caused the Town Administrator to make an additional documented proposal to the Board of Selectmen, which would have provided Mr. Keefe's wife with additional compensation. The Subcommittee should work with Town Counsel to prepare an appropriate letter of reprimand to be issued to Mr. Keefe concerning this violation of conflict-of-interest rules that prohibit self-dealing.

With respect to Mr. Dubois and Mr. Keyes, they should be reminded that informal meetings,

⁷ See, e.g., <https://www.mass.gov/news/former-pepperell-selectman-roland-nutter-pays-6000-civil-penalty-for-violating-conflict-of> (State Ethics Commission involvement for actions of Selectman that affected wife);

involving less than the full Board of Selectmen held upon proper notice, should be limited to avoid the possibility of unauthorized official acts. Mr. Dubois (and all members of the Board of Selectmen) should refrain from official discussions of compensation issues that could directly impact his family members. In a close-call situation, Mr. Dubois (and all members of the Board of Selectmen) and Mr. Keyes should be reminded to consult with Town Counsel, which can help ensure conduct does not create the appearance of a lack of requisite transparency.

TOWN EMPLOYEE ISSUES

As a result of coronavirus-related shutdowns, by action of the Town Administrator, the town terminated the employment of three employees, Gail Leclair, Elizabeth Deifenbach, and Jan Geiger.⁸ During the investigation, issues have been raised about whether Mr. Keefe caused these terminations as a matter of retaliation or otherwise.

As noted above, except for properly delegated authority to a committee, the Board of Selectmen acts as a collective. Individuals on the Board of Selectmen should therefore not engage in day-to-day management over town employees. During the course of this investigation, multiple witnesses have complained that Mr. Keefe appears regularly at the town offices, engages in hands-on management, and has expressed openly his desire to act as a Town Administrator or Assistant Town Administrator. In one recent situation, Town Counsel became involved because of an employee (who has been terminated) expressing fear of Mr. Keefe. This dynamic has caused Mr. Keefe to be linked to determinations concerning layoffs and other employment determinations. While town employees can be assured that individual members of the Board of Selectmen do not have managerial authority because the Board of Selectmen's power exists as a collective body, the Board of Selectmen should also discourage its members from improperly interacting with employees as if individual members of the Board have day-to-day management powers. To be clear, there is nothing *automatically* wrongful about informal discussions among town officials, including members of the Board Selectmen. After all, they may regularly need to gather information to set agendas and gather input from and participation by citizenry for their public meetings. Individual members of the Board of Selectmen act without authority, however, when they take or cause official actions without the benefit of input from the entire Board of Selectmen.

Compounding these issues, in an odd conflict, Mr. Keefe has affirmatively participated in the recruitment of potential claimants against the Town of Blackstone. Of course there is no prohibition on him or his wife consulting with their own counsel. He has, however, invited others to consult with his wife's counsel about their employment-related issues against the Town of Blackstone. It is axiomatic that, as a member of the Board of Selectmen, he should not be

⁸ Another issue has arisen with respect to an individual named Patricia Marvelle Ring. Because witnesses have described her dispute as involving less than \$400, which appears to arise from the amount of time "clocked in," this matter has simply been referred to Town Counsel for resolution.

participating in the advocacy on behalf of others on employment issues against the Town of Blackstone, by working to combine their efforts or otherwise, concerning matters that could fall within the jurisdiction of the Board of Selectmen. Nevertheless, he has done so by recruiting claimants and/or facilitating group claims behind the scenes. For example, on September 15, 2020, Mr. Keefe wrote an email to a former employee of the Town of Blackstone, stating in part:

I spoke to attorney Doyle today and he has asked that all parties involved email a description of the events in relation to the town that have affected them. I have cc'd attorney Doyle so you may send to him directly. Once all parties have emailed attorney Doyle a meeting will be set up.

Obviously, a member of a Board of Selectmen should not actively and secretly recruit claimants against the town on matters in which he has prior or ongoing involvement in an official capacity. Indeed, Mr. Keefe has commented publicly on related employment issues while serving as a member of the Board of Selectmen, thereby creating the appearance that he used his official role to advance his personal interests in generating or facilitating such disputes through his wife's lawyer. Mr. Keefe has not recused himself from discussions about employment matters or any votes on such employment matters or issues, but he should do so going forward. In addition, Mr. Keefe recruited claimants to use or consult with his wife's personal counsel, which on its face reflects a potential benefit to her. As a result, the letter of reprimand to Mr. Keefe should include, as a second infraction, actions taken by him to instigate or facilitate disputes against the Town of Blackstone on matters potentially falling within the Board of Selectmen's official duties.

While some witnesses suspected that Mr. Keefe's extensive efforts to participate in day-to-day management of town employees suggested that he may have retaliated against some by causing terminations, the investigation did not uncover actions by Mr. Keefe or anyone else to retaliate against employees in this way. As Town Administrator, Mr. Keyes consulted with department heads to identify those employees for whom there was insufficient work as a result of coronavirus-related shutdowns or slowdowns. Ms. Leclair worked as a Nutrition Site Manager and Activities Coordinator for dining functions that are closed. While her record appears spotless and the Town Administrator has given assurances of an intention to offer her the position if and when the dining functions reopen, nobody can guaranty that will happen at any particular time. Elizabeth Deifenbach has worked in Recycling, Board of Health, and Inspectional Services, and was terminated during coronavirus-related shutdowns. Ms. Deifenbach acknowledges that she had concerns about the on-the-job risks because of the virus and needed time at home for childcare purposes. She also acknowledged that she spoke with Mr. Keyes in connection with the termination, and agreed that a termination could help provide her with additional unemployment funds that she preferred at the time. After the fact, she has questioned whether she would have preferred a period of unpaid leave over a termination, but she has confirmed that she is not interested at this time in returning to her former position. To the extent that Ms. Leclair or Ms. Deifenbach pursue any claims against the Town of Blackstone, they should be handled in the ordinary course of events with the participation of Town Counsel and the Town Administrator, subject to review by unconflicted members of the Board of Selectmen.

One of the terminations poses a unique issue, with respect to Jan Geiger. Mr. Keyes has emphasized that he made the termination⁹ decisions after consultation with department heads about the positions that were not necessary during the shutdowns. In doing so, he made clear his reliance on department heads concerning potential terminations in an effort to save costs. With respect to the Assessor's office, Mr. Keyes spoke with Patricia Salomone, Assistant to the Assessor. Ms. Salomone has confirmed that she did not suggest her department could spare Ms. Geiger, but rather believed that Mr. Keyes was requiring her to identify someone in the department to be furloughed temporarily as she thought would be occurring in most or all town departments. Ms. Salomone has explained that the termination of Ms. Geiger has actually caused her department to incur additional expenses, rather than save costs, because in Ms. Geiger's absence, Ms. Salomone has taken on such portions of Ms. Geiger's work that the department has had to outsource other work that Ms. Salomone would normally complete. As a result, the Town Administrator should promptly revisit the termination and reinstatement of Ms. Geiger.

Other employment issues have arisen, but either have or should be resolved in the normal course. For example, issues arose concerning how to treat quarantine periods for Fire Lieutenant Kenneth Cotnoir, but he reports that the issues have been resolved.¹⁰ He still has questions about safety and health protocol on a prospective basis, but those issues are beyond the scope of this investigation. Recently, Town Counsel has discussed with the undersigned other potential employment matters, but they appear of a nature that should be resolved in the normal course of business for the Town of Blackstone, while ensuring that Mr. Keefe recuse himself from any review by the members of the Board of Selectmen concerning employment matters in which he has participated in an employee's or former employee's pursuit of claims or selection of counsel.

Investigation into Prior Employment Issues

During the course of this investigation, multiple witnesses provided information about the termination of Police Chief Ross Atsupenas, and the surrounding investigations. Significant red flags exist concerning the conclusion of the investigation underlying the separation of Police Chief Atsupenas from his official role.¹¹ Former Police Chief Atsupenas had opened investigations into the conduct of certain police officers in his department, namely Officers Craig

⁹ Witnesses have differed in characterizing the employment actions as terminations or layoffs and as permanent or temporary. In letters that the Town Administrator issued, he referred to the pertinent actions as indefinite, but with the intention to rehire the individuals if and when the positions reopen. The letters appear imperfect and potentially confusing, but the terminations occurred during a confusing and unprecedented time. For purposes of this report, the employment actions are referred to herein simply as terminations, which does not affect the conclusions or recommendations herein.

¹⁰ Mr. Dubois wrote a letter to the editor that related to his view of interviewing the entire department about these matters. Mr. Cotnoir inferred from that skepticism about his claims, but Mr. Dubois stated it was not his intention to imply anything adverse about Mr. Cotnoir. Without delving deeply into the balance of First Amendment rights and limits on public statements by public officials, which appears beyond the scope of this investigation, members of the Board of Selectmen should consider using great care when making statements to the media concerning matters within the jurisdiction of the Board of Selectmen, particularly employment or personnel matters.

¹¹ When referring to the unresolved investigations into certain conduct by police officers, this letter report distinguishes the never-completed investigation that former Police Chief Atsupenas opened into the conduct of Officers Metz, Hurwitz and Gilmore from any grievances that those individuals filed, which may have been resolved.

Metz, Maxwell Hurwitz and Gregory Gilmore, with topics involving the integrity of one or more of those officers. For example, as reported as a departure from standard protocol, apparently one of the officers with personal knowledge did not complete a written report of an incident, instead supplying a version of events to another one of the officers who provided a written report instead, even though the officer submitting the written report lacked personal knowledge of the particular events. The Town Administrator and Mr. Keefe supported an investigation of Police Chief Atsupenas as a review of the department, before the conclusion of the open investigations into conduct of Officers Metz, Hurwitz and Gilmore. The credibility of the investigation into Police Chief Atsupenas is further called into question by the way in which it focused on personality conflicts between Police Chief Atsupenas and certain members of his department, leading to a conclusion that Police Chief Atsupenas caused a “toxic environment” there, while passively ending open investigations into Officers Metz, Hurwitz and Gilmore without a meaningful analysis of their conduct under investigation. During his interview, Mr. Keefe expressed pride in having interceded to help the career of one or more of these officers. Mr. Keefe’s statements during his interview, and descriptions of his interaction with the police department, suggest a closeness between him and certain members of the police department.

The Supreme Judicial Court has held, multiple times, that “[f]ew institutions depend as heavily on their integrity and credibility for the effective performance of their duties as do police departments.” *Furtado v. Town of Plymouth*, 451 Mass. 529, 533 (2008). “A citizenry’s full and fair assessment of a police department’s internal investigation of its officer’s actions promotes the core value of trust between citizens and police essential to law enforcement and the protection of constitutional rights.” *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester*, 58 Mass. App. Ct. 1, 7-8 (App. Ct. 2003). Perhaps now more than ever, integrity and transparency in the internal investigation of police officers is of the utmost importance.

Without completing the investigation into the conduct of Officers Metz, Hurwitz and Gilmore, Mr. Keefe’s role in the employment actions taken with respect to former Police Chief Atsupenas cannot be fully assessed.¹² The incomplete investigation into the conduct of Officers Metz, Hurwitz and Gilmore is, however, beyond the scope of the present investigation as assigned by the Subcommittee. Consistent with the SJC’s standards governing the overriding interest of towns and their citizenry in the integrity of their local police departments, it is recommended that the investigation into Officers Metz, Hurwitz and Gilmore, which Police Chief Atsupenas opened, should be completed by an independent investigator.

¹² With respect to other potential investigative efforts, information has been provided to the undersigned suggesting that someone has used electronic interception or recording devices in or near the office of the Board of Selectmen. Massachusetts is what is known as a dual-consent state, and Massachusetts law makes it a criminal offense to record others without their consent. *See* Mass. Gen. Laws ch. 272, § 99.C. The potential impropriety of such devices is not within the scope of the pending investigation. Someone with direct knowledge of the discovery of such a recording device should refer the matter to unconflicted law enforcement. If there is a belief that local law enforcement has been involved in such recordings, then the matter could be referred to the FBI, which has jurisdiction to investigate unlawful wiretaps and electronic interception of communications, as well as abuse of authority by public officials.

Forensic Audit

Without substantial guidance, the Subcommittee has requested that this investigation explore and determine whether a forensic audit be conducted into financial matters involving the Town of Blackstone. Nothing in the investigation identified a particularized topic for a forensic audit. Nevertheless, the Subcommittee is reminded that the Board of Selectmen has the power to approve a forensic audit. For example, if a member of the Board of Selectmen wishes to conduct an audit of the identity of vendors and payees for potential flags, or a review of items of a certain size, the member could simply seek a vote by the Board of Selectmen in favor of such an audit.

Conclusion

Based on the investigation, the Subcommittee should remind Messrs. Keyes and Dubois that informal meetings, with less than the full Board of Selectmen upon proper notice, should be limited to avoid the possibility of unauthorized official acts and, in a close-call situation, to consult with Town Counsel before any problems arise or participants create an appearance of a lack of requisite transparency. With respect to Mr. Keefe's conduct at issue, the Subcommittee should issue a letter of reprimand to Mr. Keefe concerning his actions at the July 1, 2020 meeting that caused the Town Administrator to make an additional documented proposal to the Board of Selectmen, which would have provided Mr. Keefe's wife with additional compensation, a form of self-dealing. The letter of reprimand to Mr. Keefe should also include, as a second infraction, actions taken by him to instigate or facilitate disputes against the Town of Blackstone on matters potentially falling within the Board of Selectmen's official duties. The Subcommittee should work with Town Counsel to prepare an appropriate letter of reprimand to be issued to Mr. Keefe concerning these conflicts-of-interest. Also, particularly in light of Mr. Keefe's statement that he has made an oral report of these matters to the State Ethics Commission, the Subcommittee should provide a copy of this letter report to the State Ethics Commission. Finally, I recommend that the Subcommittee retain an independent investigator (who does not regularly perform work for the Town of Blackstone) and complete the investigation that former Police Chief Atsupenas opened into conduct by Officers Metz, Hurwitz and Gilmore, which was not completed because of the separation of former Police Chief Atsupenas from his official position.

Sincerely,



Barry S. Pollack