



May 29, 2015

Merv Bennett President
Colorado Springs City Council
City Hall
107 N. Nevada Avenue
Colorado Springs CO 80903

The Independent Ethics Commission ("IEC") concluded its investigation of Complaint 2015-01 as of May 26th, 2015 and is hereby submitting this Advisory Opinion with recommendations. Eight hard copies are being delivered to you, per your request. Councilwoman Collins will not receive a copy per your instructions.

Per Ethics Code Resolution 58-13 Section 4:

If City Council elects to issue any formal ethics charges based on the recommendations of the IEC, City Council will notify the accused party of such formal ethics charges in writing within five (5) business days after the decision is made. The accused party shall be given ten (10) business days to respond in writing submitted to the City Attorney and the President of City Council, either admitting the violations or requesting an evidentiary hearing. The City Council will consider the accused party's failure to respond within ten (10) business days to be an admission and will then move to impose sanctions.

At least one of the IEC Commissioners requested that Councilwoman Collins receive a copy of the Advisory Opinion in an effort to remain fair.

The Advisory Opinion with a timeline is at the front of the three-ring binder, with referring documents following in their respective tabs.

Please note, documents containing personal information of Ms. Collins (ie. Social Security Number, etc.,) have been redacted to ensure protection of privacy.

The Commission submits this Advisory Opinion for Complaint 2015-01.

Respectfully,

Eileen Docherty
Chair,
Independent Ethics Commission
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To: Colorado Springs City Council

From: Independent Ethics Commission

Re: Complaint 2015-01

Introduction

Complaint 2015-01 (“Complaint”) (Tab A)¹ alleges Councilmember Helen Collins (“Collins”) violated a number of provisions of the Code of Ethics (“Code”) by participating in a real estate transaction to the detriment of the City of Colorado Springs (“City”), to which she owes a duty of loyalty. Code § 1.3.106. The Independent Ethics Commission (“Commission”) investigated the allegations, collected relevant documents, and interviewed any witness who had relevant information: Collins; Douglas Bruce (“Seller”); Bonnie Langston (“Buyer”); Anne Turner from the City Attorney’s Office (“CAO”); William McAfee, Sharon Myers, Jessica Sheley of Empire Title Company; Alicia Simon of ET Production Services, LLC; and, James Block, Seller’s Agent. Based on the preponderance of evidence before it, the Commission makes the following findings of fact and conclusions of law. Code § 1.3.103(M), (I). The following are the unanimous findings of the Commission.

Findings of Fact²

Seller has filed a number of lawsuits against the City. Seller represents himself in these lawsuits, and receives copies of all filings in his lawsuits through regular mail sent to a post office box. (*See* Tab I; Tab H.) Two lawsuits filed by Seller resulted in judgments for the City against Seller. The first was for \$15,437.50 plus post-judgment interest recorded on February 10, 2012 (“Judgment #1”). (Material pertaining to Case 11CV231, Tab I.) The second was for \$7569.61 plus post-judgment interest ordered on December 1, 2014, and recorded on December 5 (“Judgment #2”). (Material pertaining to Case 13CV268, Tab J.) Both judgments were recorded and attached to Seller’s property in El Paso County upon recording. (Turner affirmation, Tab H.)

As a Councilmember, Collins receives quarterly updates on litigation involving the City from the CAO. (*See, e.g.*, Extract of Quarterly Report to City Council dated November 2014, Tab K.) This has included multiple updates on litigation involving Seller, including in November 2014. (*Id.*) These updates gave Collins notice that Seller had been ordered to pay costs in the lawsuit that eventually became Judgment #2. (*Id.*)

For many years, Seller owned property at 1240 Samuel Point, Colorado Springs, CO, which he was trying to sell. (Block affidavit, Tab F.) Buyer saw the property advertised for sale on the Internet (Langston statement, Tab G) and after negotiations between Seller and Buyer, agreed to purchase the property for \$140,000 (Contract, Tab L) and paid \$1,000 in earnest money. (Copy of earnest money check, Tab M.) Empire Title Company (“Empire”) was hired

¹ Cites to “Tab” refer to tabs in the binder of exhibits produced with this report.

² Attachment 1 is a timeline to help show the timing of relevant events.

to provide title insurance for the sale, (Myers affidavit, Tab C) and the closing was scheduled for Monday, December 8, 2014. (*Id.*)

On November 25, 2014, Jessica Sheley, an escrow processor who works for Empire, called Anne Turner, Senior Attorney, at CAO, and left a voicemail explaining that Seller's property was being sold, that Empire was aware of the lien the City had placed on the property and would be collecting the amount of Judgment #1 from the proceeds of the sale. (Sheley affidavit, Tab E.) Anne Turner returned Ms. Sheley's call to inform Ms. Sheley that Judgment #1 had grown to over \$21,000, and on December 1 sent Empire a payoff statement showing that \$21,205.09 would be due at the closing. (Letter from Anne Turner to Empire Title, Tab O.)

On Wednesday, December 3, 2014, Sharon Myers, an escrow closing agent for Empire Title, sent Seller's real estate agent a U.S. Housing and Urban Development settlement statement ("HUD Statement") showing that Empire would be collecting Judgment #1 from the proceeds of sale. (Myers affidavit, Tab C.) Documents Seller provided during his interview show that his real estate agent, James Block, forwarded the HUD Statement via email to Seller the following day. (Tab P.) Upon receipt of the HUD Statement, Seller called Empire and asked for a copy of the deed on the property at 1240 Samuel Point, which contained the legal description of the property, and Ms. Myers emailed a copy of that deed to the Seller at 3:01 p.m. on December 4. (Tab C.)

At 4:18 p.m. on December 4, Seller recorded a Warranty Deed transferring the property to Collins. (Warranty Deed, Tab Q.) At his interview, Seller stated that he asked Collins to accept the property for him because of the presence of the City's lien for Judgment #1 on the HUD statement. Collins did not receive any money for accepting ownership of the property until sale of the property to Buyer. Seller stated that he asked Collins because there was only one business-day between when he got the HUD statement and the closing and so time was of the essence.

Later on December 4, Seller came to Empire Title's office and presented Sharon Myers with the Deed transferring the property to Collins. (Myers affidavit, Tab C.) Seller told Ms. Myers that by transferring title to Collins before title was conveyed to Bonnie Langston, he could avoid Judgment #1. (*Id.*) Ms. Myers told the Seller he was not correct. (*Id.*) Seller disagreed, stating that he was a lawyer and asked to speak to someone else about the issue. (*Id.*) Ms. Myers told the Seller he could talk to Alicia Simon, who is Title Manager at ET Production Services in Colorado Springs. (*Id.*) Ms. Myers got Ms. Simon on the phone, gave the phone to the Seller, and left the room to handle other matters. (*Id.*) Seller told Ms. Simon that a Satisfaction of Judgment should not be on the title insurance commitment for the property because he no longer owned the property. (Simon affidavit, Tab D.) Ms. Simon told Seller that the judgment, while against Seller personally, attached to all real estate owned by him at the moment the judgment was recorded and the lien must be taken care of so that clear title could be conveyed to Buyer. (*Id.*)

The next morning, December 5, Collins and Seller came into Empire and asked if they could complete the transfer of title of the property to Collins. (Myers affidavit, Tab C.) Seller explained that Collins could not be present during the closing with Buyer because she had to

attend a City Council meeting. (*Id.*) Ms. Myers agreed, and prepared the necessary documents showing that the City of Colorado Springs had a lien on Seller's property that would be collected during closing on December 8. (*Id.*) Ms. Myers told Collins that because she was the owner of record of the property which was not her primary residence, she would be getting an IRS Form 1099 which showed the amount of the sale for tax purposes. (*Id.*) Collins responded, "Oh great." (*Id.*) Collins denies receiving a 1099. But Collins received a Form 1099S and handwrote her name and social security number on the form, as well as on an IRS form W-9. (Substitute 1099S, Tab R.) Seller told Collins in Ms. Myers's presence that she did not have to worry about the taxes, and that they would work it out. (Tab C.)

At that point in time and in the presence of Ms. Myers, Seller and Collins engaged in a conversation, the substance of which was: Seller claimed the City had been after him as a result of a sewer problem he had at one of his properties; the City first agreed to make the repairs and later reneged on that promise and as a result, he was the "fall guy" and needed to find a way to avoid a judgment the City had obtained against him; what they were doing would right the City's wrong. (*Id.*) Seller also stated that he helped Collins get elected by backing her candidacy. (*Id.*)

The closing continued after this conversation and Collins signed the documents required to transfer title to that property from Collins to Buyer. (*Id.*) Seller asked Ms. Myers if the check that would be delivered at closing the following Monday could be made out to him. (*Id.*) Ms. Myers told him that the check had to be made out to Collins because she was now the owner. (*Id.*) Seller asked if he could pick up the check after the closing. (*Id.*) Ms. Myers told Seller that he could pick up the check if Collins signed a form allowing him to do so, which Collins did in a handwritten note on the closing instructions. (*Id.*; Closing Instructions, Tab T.) Collins and Seller then left Empire Title's office shortly after noon. (Tab C.)

At 3:58 p.m. on December 5, the City recorded Judgment #2, and notified Ms. Sheley approximately ten minutes later. (Sheley affidavit, Tab E; Tab J.) Ms. Turner emailed to Ms. Sheley a copy of the recorded Judgment #2 and the court's order. (Tab E.) Ms. Sheley informed William McAfee, President of Empire, that the City had filed a second lien on the property to collect Judgment #2. (*Id.*) When informed, Mr. McAfee discussed the situation with his underwriter and other personnel and determined that because Collins had accepted title to the property before the City recorded its lien to collect Judgment #2, Empire could not collect Judgment #2 at the closing, and informed Ms. Turner of that fact on December 8. (McAfee affidavit, Tab B.)

Seller came to Empire on December 8 for the closing when title to the property was transferred from Collins to Buyer. (Myers affidavit, Tab C.) Seller was not technically involved in the closing as he no longer had any legal interest in the property, but brought the keys to the property for Buyer. (*Id.*) As Collins had requested, Empire gave the check for the proceeds to Seller. (*Id.*) Seller took the check to Collins, who endorsed it to Seller, and Seller deposited it into his bank account. (Copy of check #442666, Tab W.)

As part of the investigation, Collins and Seller were both asked why they had engaged in this real estate transaction. Collins stated that Seller, who is a close personal friend, is subject to persecution from government and that she acted as a pass-through to prevent governmental

interference with the real estate transaction. When pressed, she had no specific reason to believe that any government was going to interfere in the sale of the property in the time between when she took possession of the property and when it was conveyed to Buyer. Collins also claimed that her involvement in the transaction was to prevent Buyer from backing out of the transaction because Seller is a convicted felon. When asked, she again had no explanation for why she would believe that Buyer would back out of the transaction two business-days before the close based on Seller's criminal record.

Nor did Seller provide any plausible explanation for why the transfer of title to Collins was necessary one business-day before the closing other than his explanation that he wanted to transfer the property after he received the HUD statement. Immediately before his interview with the Commission, Seller paid Judgment #2. (Copy of check # 6001234501, Tab X.) He then claimed in his interview that the payment was not an admission of guilt, but done to make the Commission's investigation moot.

Finally, both Collins and Seller claim that the Complaint was filed by the CAO as part of a political agenda to influence the outcome of Collins's recall election. (Statement of Helen Collins, Tab Z.) The Commission notes that whether the Complaint was politically motivated is not a defense to any of the ethical violations alleged in the Complaint. That being said, the CAO had all relevant information on December 8, 2014, did not file the Complaint until forty-five days later—after the recall election had been announced—and chose to focus the Complaint on Judgment #2 despite knowing that it was extremely unlikely that Collins knew about Judgment #2 at the time of the transaction. The Commission did not investigate why the CAO decided to file the Complaint when it did, as that was not germane to the current Complaint and investigation.

Procedural Background

On March 8, 2015, the Commission met, reviewed the Complaint and determined:

- a. Councilwoman Collins is a covered individual. *See* Code § 1.3.102;
- b. The matters complained of occurred within the proceeding twelve months. *See* Code § 1.3.103(K); and,
- c. That the Complaint was not frivolous. *See* Code § 1.3.103(M).

On March 10, the Commission sent Collins a letter setting forth the procedures of the investigation, and asking her to respond to the Complaint. Between March 10 and May 10, the Commission issued a number of subpoenas to witnesses, conducted interviews, and reviewed documents provided by witnesses. Collins was given an opportunity to respond to the allegations of the Complaint, Resolution 58-13(6), and provided a written statement. (Tab Z.) The Commission was able to interview anyone who might have relevant evidence. On May 26, 2015, the Commission closed its investigation. It also provided Collins a copy of documents relevant to its investigation on the same date it issued this report. *See* Resolution 58-13; Code § 1.3.103(M).

Conclusions of Law

The Colorado Springs Code of Ethics covers all members of the City Council. Code § 1.3.101(A). The CAO has provided training to all members of the Council, including, by her own admission, to Collins. *See* Code § 1.3.107. Collins and every covered person owes a duty of loyalty to the City. Code § 1.3.106. A conflict of interest exists when there is any personal or financial relationship that could influence or be perceived to influence the representation or conduct of business for the City. *Id.*

As an initial matter, Collins could not have known of Judgment #2 at the time she engaged in the real estate transaction with Seller. Due to the manner Judgment #2 was served on Seller, it is unlikely that he knew Judgment #2 was entered against him at the time title passed to Collins. Collins claims that she did not know of Judgment #2 until January 21, 2015. There is no evidence to call that assertion into doubt. That, however, does not end the inquiry as Collins claims it should. The Complaint alleges that Collins's conduct in participating in the real estate transaction "appears to violate multiple provisions" of the Ethics Code. Thus, the question is not whether Collins was trying to keep the City from collecting Judgment #2, but whether Collins actions violated the Code in any form.

The Complaint alleges that Collins breached her duty of loyalty by engaging in four violations of the Code. First, the Complaint alleges that Collins violated the section of the Code that "no covered person shall engage in outside activities that conflict with their official duties and responsibilities." Code § 1.3.106(F). As a member of the City Council, Collins's official duties and responsibilities are defined in the Charter of the City of Colorado Springs, Article III and include: appointing the city auditor and executive director of the Colorado Springs Utilities; approving the city budget; establishing tax rates; serving as the governing board of the Colorado Springs Utilities; setting policies and passing ordinances and resolutions to govern the city; and, performing the Mayor's duties in his/her absence (President of Council).

The Commission finds that Collins did not violate § 1.3.106(F). The closing was to occur at the same time Collins's duties called for her to be in a Council Meeting. Instead of skipping the meeting, she made arrangements for the closing to occur as scheduled while she was at the Council meeting to perform her duties. The Complaint does not specify how the CAO believes Collins violated this provision, but the Commission does not find any way that the real estate transaction conflicted with Collins's official duties and responsibilities.

Second, the Complaint alleges that Collins violated the section of the Code that "no covered person shall tolerate waste, fraud, abuse, and corruption in government or in any of its businesses, operations or services." Code § 1.3.106(G). Collins violated this section. Collins created waste in government. Collins was aware that the City was attempting to collect money from Seller and that her involvement in this transaction was an attempt to circumvent the City's efforts, thereby creating a situation in which the City would be obligated to expend additional resources in continuing to try and collect on its debt.

The real estate transaction between Collins and Seller was also wrought with fraud. According to Collins and Seller, Collins became involved in the real estate transaction only after Seller was given the HUD statement showing Judgment #1 would be collected at the December 8 closing. The transfer of property to Collins was an attempt to circumvent this legal debt. This appears to violate Colorado Uniform Fraudulent Transfer Act which provides for enhanced damages when a person transfers assets with intent to hinder, delay, or defraud creditors. COLO. REV. STAT. § 38-8-108. The transfer was made with the intent to hinder, delay, and defraud the City. Collins knew that was the purpose and nevertheless accepted ownership of the property.

Probably the most disturbing aspect of this case, however, is the corruption shown by Collins placing her friendship with Seller above her loyalty to the City. In Ms. Myers' presence, Seller asserted that Collins was indebted to Seller for helping her get elected to City Council, and that political help was a reason for Collins to act as a pass-through owner of the property to circumvent Judgment #1. Ms. Myers has no incentive to lie, nor do the other witnesses affiliated with Empire. And, in fact, they have incentive to stay on good terms with Seller as someone who, according to him, owns approximately \$2,000,000 worth of property, much of it in the county, and could be a repeat customer. The Commission could not find any reason for any witness at Empire to give this information for political or personal reasons. Thus, based on a preponderance of the evidence, Collins agreed to this transaction at least in part because of past political favors.

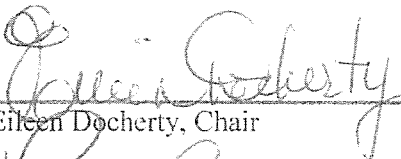
Third, the Complaint alleges that Collins violated the section of the Code that "no covered person shall engage in any actions that may create, or do create, the appearance that they are violating the law or ethical standards." Code § 1.3.106(H). Both the transaction itself and the conversations Collins and Bruce had relating to this transaction create the appearance that Collins was violating the law and ethical standards. By agreeing to act as a pass-through owner, Collins violated the law. Under Colorado law, if a person, intending to defraud a creditor, transfers their interest in property subject to a security interest trying to defeat, impair, or render the security interest worthless or unenforceable, they have committed criminal fraud. COLO. REV. STAT. § 18-5-206. Seller declared to Collins that the intent of transferring the property to Collins was to prevent the City from collecting Judgment #1. This is a felony. *Id.* Collins intended to facilitate Seller's crime, which is also a felony. COLO. REV. STAT. § 18-1-603. After Seller declared his intent to defraud the City to Collins, she continued with the transfer of the property, knowingly aiding Seller's fraud.

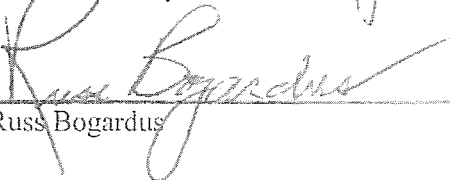
Finally, the Complaint alleges that Collins violated the section of the Code that "no covered person shall engage in any activity that may create, or does create, the appearance of impropriety." Code § 1.3.106 (I). Collins's actions do actually create the appearance of impropriety. She helped a friend try to avoid a lawful judgment at the expense of the City. In attempting to avoid Judgment #1, Collins actually helped Seller, though inadvertently, avoid Judgment #2. The Commission finds Collins's explanation for her actions is not supported by the evidence. There are two plausible explanations for why Collins entered into the real estate transaction with Seller that either separately, or in conjunction, explain what Collins did: Collins wanted to help Seller avoid a lawful lien at the expense of the City (for whatever reason); or, she felt she owed Seller an obligation for helping her get elected to City Council. No matter the reason, Collins's actions actually create the appearance of impropriety.

The Commission finds that Collins violated Code § 1.3.106(G), (H), and (I). Collins participated in a real estate transaction, the intent of which was to prevent the City from collecting Judgment #1, resulting in the City being unable to collect Judgment #2 at the closing, and did so because Seller had helped her get elected to office. Collins placed her friendship with Seller above her duty of loyalty to the city and her ethical obligations, resulting in harm to the City's interests.

Sanctions

The Code provides for only three possible sanctions for an ethics violation. Resolution 58-13 (6). City Council can elect to fine, censure, or remove Collins from office for a violation of the Code. *Id.* The CAO requests a penalty under Code § 1.3.103(N). But this section is inappropriate since Collins did not accept transfer of the property for private gain. The Commission struggled with whether to recommend censure or removal from office. An elected official who allows a political supporter, in return for their political support, to use them in an attempt to circumvent the law has no place in government. The fact that Seller announced in public that Collins should help him because she owed him for getting her elected, and Collins nevertheless completed the transaction makes her temerarious. But the fact that Collins helped Seller circumvent a debt through felonious means after he announced her political debt to him makes her actions unconscionable. The Commission is aware that the voters of Collins's district recently rejected a recall effort and chose to keep Collins as their representative after the Complaint was released and the facts known. No criminal prosecutor has accused, arraigned, or convicted Collins of any crime, which carries a heavier burden of proof than is required to find an ethical violation. So given all the circumstances, the Commission recommends that City Council censure Collins.


Eileen Docherty, Chair


Russ Bogardus


Craig Valentine


William Schmidt

Commissioner Conter recused himself from this investigation and does not participate in this opinion.

Feb. 10, 2012: Judgment #1 recorded. Lien placed on all Seller's Property in El Paso County.

Nov. 2014: Status of Seller's litigation against City (2013CV268) reported in the November Quarterly Report to City Council.

Dec. 3, 2014: Empire Title sends Seller's real estate agent a HUD Statement showing Judgment #1, and noting that Empire Title would be collecting Judgment #1 from the proceeds of the sale at time of closing.

Dec. 4, 2014: 1) Upon receipt of HUD Statement, 2) Seller calls Empire Title requesting property deed.

Dec. 4, 2014@3:01 PM: Empire Title emails property deed to Seller.

Dec 8, 2014@9:45 AM: Empire Title determined that because Seller transferred title to Ms. Collins prior to City recording Judgment #2, Empire Title could not collect Judgment #2 when title transferred to Buyer

Dec 8, 2014: Title transferred from Ms. Collins to Buyer.

Dec 8, 2014@8:42 AM: City attorney sends payoff statement to Empire Title.

Feb 1,
2012

Nov 1,
2014

Dec 1

Jan 1,
2015

Nov 22, 2014: Seller and Buyer sign standard Contract to Buy and Sell Real Estate.

Nov. 24, 2014: Empire Title hired. Closing set for Dec. 8, 2014.

Dec. 4, 2014@4:18 PM: Seller records a Warranty Deed transferring Property to Ms. Collins.

Dec. 5, 2014: In the morning at Empire Title: 1) Seller and Ms. Collins complete transfer of Title, 2) Ms. Collins signs papers required to transfer Property to Buyer, and 3) Ms. Collins instructs Empire Title to give the proceeds check to Seller upon closing.

Dec. 5, 2014@3:58 PM: Judgment #2 recorded. Lien placed on all Seller's Property in El Paso County.

Dec 5, 2014@~4:10 PM: City attorney calls Empire Title regarding Judgment #2. Empire Title asks for a payoff statement.

Time Line of Pertinent Events