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MEMORANDUM
CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

TO: Felix George, DuPage Township Supervisor
Members of the Board of Trustees, DuPage Township

FROM: Burton S. Odelson, ODELSON & STERK, LTD.

CC: Ross D. Secler, ODELSON & STERK, LTD.

DATE: October 1, 2019

RE: Report on Status of Pending Investigation

As requested, this Memorandum is prepared to apprise DuPage Township (the “Township”) of the status, to the extent possible, of pending investigations concerning past actions of former Township officials. By providing this Memorandum, we are hoping to provide an explanation as to the legality of certain actions in a hope that current Township Officials refrain from repeating past conduct that could put them and the Township in legal jeopardy.

The individual issues and allegations are discussed, in turn, below.

I. Former Supervisor Compensation

The first and most substantiated issue is that of the Former Township Supervisor,¹ William M. Mayer’s (the “Former Supervisor”), practice of taking payroll advances and then, in 2018, entered onto the Township’s employee health insurance plan without approval to do so prior to the relevant term of office. Ultimately, these practices raise *serious* concerns of which the Township must be informed.

Since at least 2013, the Former Supervisor routinely received “payroll advances” that ranged from around \$1,000.00 to over \$13,000.00 in a given calendar and fiscal year. The Township has financial and payroll records that show (i) the payroll advances taken and (ii) that all the pay advances were eventually paid back to the Township via payroll deductions. It further appears that the advances were, at least in part, only approved by written statement signed by the

¹ William M. Mayer resigned as DuPage Township Supervisor effective January 22, 2019.



Former Supervisor and the Township's Former Bookkeeper. We are unaware of any Ordinance, policy, or any action by the Township that would support and/or approve of this conduct.

While the payroll advance funds appear to have been paid back in full, the law in Illinois is particularly strict when it comes to elected officials whose conduct amounts to obtaining a personal advantage as a result of official action. As discussed herein, the Supreme Court of Illinois has upheld felony convictions for similar conduct.

As of July 3, 2012, Section 65-5 of the Illinois Township Code, 60 ILCS 1/1-1, *et seq.*, specifically provides that "[c]ompensation shall be for the time served, and no township officer may receive compensation for any future or anticipated days of duty." 60 ILCS 1/65-5; *see* P.A. 97-736 (eff. July 3, 2012). This provision stems from Article VII, Section 9(b) of the Illinois Constitution that states:

An increase or decrease in the salary of an elected officer of any unit of local government shall not take effect during the term for which that officer is elected.

IL. CONST., Art. VII, §9(b). Furthermore, Article 8, Section 1 of the Illinois Constitution requires, *inter alia*, that:

- (a) Public funds, property or credit shall be used only for public purposes.
- (b) The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance.

IL. CONST., Art. VIII, §1, (a) and (b).

Obviously, a pay advance that is paid back through future payroll deductions can be classified as payment for "future or anticipated days of duty," in violation of Section 65-5 of the Illinois Township Code. **Nevertheless, the issue remaining even after the advances were paid back in full is that the action of taking a payroll advance by an elected official constitutes a possible felony offense.**

In the case of *People v. Howard*, 228 Ill.2d 428 (2008), the Supreme Court of Illinois affirmed the criminal, felony conviction of a former public official who took "essentially an interest-free loan," *id.* at 430, by using the government's credit card for personal purposes even though the former



official would pay the amounts back. *Id.* at 439. In *Howard*, the defendant municipal officer was convicted under Section 33-3(c) of the Criminal Code of 2012, 720 ILCS 5/1-1, *et seq.*, for official misconduct based on the personal advantages obtained when the defendant took cash advances from the City's credit card. *Id.* at 430-31.

What is concerning is that some of the elements in *Howard* appear to be similar to the conduct of the Former Supervisor in that the Former Supervisor essentially took a personal, interest-free loan on the Township's credit. Thus, if it were found that the Former Supervisor violated the Illinois Township Code and the Illinois Constitution, it is possible that the former supervisor violated Section 33-3 of Criminal Code of 2012, which provides that:

- (a) A public officer or employee or special government agent commits misconduct when, in his official capacity or capacity as a special government agent, he or she commits any of the following acts:
 - ...
 - (3) With intent to obtain a personal advantage for himself or another, he performs an act in excess of his lawful authority; or
 -

- (c) A public officer or employee or special government agent convicted of violating any provision of this Section forfeits his or her office or employment or position as a special government agent. In addition, he or she commits a Class 3 felony.

720 ILCS 5/33-3.

It has also been documented that the Former Supervisor received pre-tax health insurance through the Township's employee health insurance plan in 2018. While it is not clear whether the Township Board ever reviewed or approved the Former Supervisor's receiving health insurance coverage after his term of office had started, the resolution establishing the salaries for Township Elected Officials for the 2017-2021 term of office (Township Resolution 16-03), adopted by the Township on August 23, 2016, did not include insurance benefits for the office of Township Supervisor. The Illinois Attorney General has opined that the provision of health insurance to township officers constitutes additional compensation that may not be initiated during the term of office without violating the Illinois Constitution. Ill. Atty. Gen. Op. No. 94-022 (Oct. 25, 1994). Therefore, even if the Former Supervisor was paying the full premium cost of the health insurance, it would likely



be found that his ability to participate on the Township's health insurance plan, and to do so on a pre-tax basis, is a benefit that was not conferred upon his office prior to the start of his term and, therefore, would be illegal.

Our research has not uncovered a case or law tempering or altering the holding of *Howard* or the Illinois Attorney General's Opinion regarding benefits received by local government officials and, therefore, we are providing this information to the current Township officials in order to avoid any future problems. With respect to the specific case of the Former Supervisor, the Township has conducted its due diligence and has provided any information required to the proper agencies who have discretion and authority to take any further action, but we are unable to comment on any specific statuses or provide any further details at this time. However, we do not believe that it is in the best interest of the Township to individually pursue this matter further.

II. Allegations of Illegal Expenditures to Social Service Organizations

There have been a number of allegations surrounding the Township's practice of expending funds for various social service programs to private organizations. Allegations generally fall into two different types: (i) that the Township lacks authority to expend such funds and (ii) that said expenditures are purely politically motivated or constitute political "payback." These allegations have been raised with respect to the Former Supervisor and past administrations in addition to the current Township administration.

As to the more serious type of issues, namely claims about "political payback" or any type of nefarious, political-based pressure surrounding the awarding of Township social service agreements and Township funds are, at least regarding the *current administration*, baseless. Beyond the complainants' own personal agendas, and despite our requests for evidence, there has been absolutely no valid, truthful allegation of malfeasance made against the current Township administration.

Regarding previous Township administrations, the complaints we are aware of generally allege that: (i) the Former Supervisor had adopted a practice of requiring campaign contributions from various organizations in order for the organization to be considered by the township for an award of township funds (or, somehow, for general assistance funds); and (ii) that the Former Supervisor routinely approved transactions through General Assistance when he wanted to do make expenditures and enter into agreements without the scrutiny of the Township Board (and thus explains how the Township spends a significant amount of General Assistance money without having any General Assistance clients).



From the information and materials currently available to us, we currently are unable to provide a full opinion as to whether any or all of the above allegations against the Former Supervisor have any factual basis. **To be clear, these allegations are *extremely* troubling, and our review has shown accounting and financial practices that were, *at best*, incompetent.** Of course, the past problems with the bookkeeping and overall account reconciliation only serves to leave more “grey” area and limits our ability to know the true nature of certain transactions. Therefore, we do not have sufficient information to render a definitive opinion regarding the alleged conduct that, if the proven, could carry felony-level consequences. The reason for discussing this matter in such detail is to highlight how important it is for the Township to adopt and follow legally compliant and transparent accounting practices so that the type of conduct alleged here either could not occur or would be immediately caught if someone had attempted same.

As such, since Supervisor George’s appointment, the Township has taken, and continues to take, action to increase transparency and accountability by overhauling the process by which funding requests are made and how they are considered by the Township Board. For example, the Township has implemented a uniform funding partnership and funding request application and has formed standing committees that will provide further review of various partnership and funding requests and will provide recommendations and reports to the Township Board. While there *may* have been problems with how previous Township administrations handled these matters, the current Township Board and the Township’s staff are working to ensure all Township expenditures are now transparent, fair, and legal. This is something that the current Township Board should be extremely proud of accomplishing.

As to the specific legality of certain Township Expenditures, the expenditures where issues have been raised (i.e. to the Community Service Council, Heart Haven, and the Bolingbrook Buccaneers) are within the Township’s authority to make. While we recommend entering into a formal cooperative service agreement or contract with these proposed grant recipients, the legal basis for the expenditure of Township funds is well grounded.

In general, the Township may only exercise the powers provided to it by law. The Township’s corporate powers are found in Article 85 of the Illinois Township Code. *See* 60 ILCS 1/85-10, 85-15. Specifically, Section 85-10 of the Illinois Township Code begins with:

- (a) Every township has the corporate capacity to exercise the powers granted to it, or necessarily implied, and no others.
- ...
- (d) A township may make all contracts necessary in the exercise of the township's powers.



60 ILCS 1/85-10.

Hence, while the Township's powers are limited, the power granted (or necessarily implied) to the Township may be exercised and, in particular, the Township has the authority to enter into contracts in order to exercise that authority.

Article 85 then provides specific methods for the Township to expend funds for specific social service programs. Section 85-13 provides, *inter alia*:

(a) The township board may either expend funds directly or may enter into any cooperative agreement or contract with any other governmental entity, not-for-profit corporation, non-profit community service association, or any for-profit business entity as provided in subsection (b) with respect to the expenditure of township funds, or funds made available to the township under the federal, State and Local Fiscal Assistance Act of 1972, to provide any of the following services to the residents of the township:

(1) Ordinary and necessary maintenance and operating expenses for the following:

- (A) Public safety (including law enforcement, fire protection, and building code enforcement).
- (B) Environmental protection (including sewage disposal, sanitation, and pollution abatement).
- (C) Public transportation (including transit systems, paratransit systems, and streets and roads).
- (D) Health.
- (E) Recreation.
- (F) Libraries.
- (G) Social services for the poor and aged.

(2) Ordinary and necessary capital expenditures authorized by law.

(3) Development and retention of business, industrial, manufacturing, and tourist facilities within the township.

...



(d) Township governments that directly expend or contract for senior citizen services may contract with for-profit (or not-for-profit) and non-sectarian organizations as provided in Sections 220-15 and 220-35.

60 ILCS 5/85-13.

Section 85-13 has been the main source of contention because it is relatively limiting on how the Township may expend money to provide services. However, Section 85-13 does not contain the only source of authority for the Township's social service programming. Specifically, for example, Section 190-10 (mental health services), Article 215 (Youth Services), Article 220 (Senior Citizen Services), and Article 225 (Services for Persons with Disabilities) provide further detail and authority for the expenditure of Township funds to provide various social services. Hence, the general authority and procedure for expending funds for social service programming contained in Section 85-13 of the Illinois Township Code must be read in conjunction with any further statutory authority for other programming types. Again, while a written cooperative agreement or contract with each organization receiving funds is recommended, the process by which the Township evaluates and provides funding for various social service programs is, in general, legally compliant.

As an aside and as mentioned above, the allegations of requiring some sort of "connection" (political or otherwise) to be able to receive grant funding is utterly unfounded, at least for the time since Supervisor George's appointment. To reiterate, since February 2019, the Township has overhauled the process by which grant funding requests are made and how they are considered by the Township Board of Trustees to make the entire process uniform and transparent.

III. Other Allegations & Pending Investigations

There are a number of other allegations, accusations, and potentially on-going investigations that all stem from the time prior to Supervisor George's appointment. Those include allegations regarding the Former Supervisor's (or any Township Elected Official's) direct, pecuniary interest in certain vendor contracts or other agreements for the Township. In particular, the circumstances surrounding the Former Supervisor's departure and the Township's entering into a new contract with Call One raises serious concerns. However, beyond documents showing that the Former Supervisor had previously worked for Call One (in approx. 2012), and that he and his wife may have at one point established a corporation for the purposes of consulting with companies like Call One, we currently have insufficient evidence of a legally impermissible conflict of interest and violation of any law. Allegations also raise the issue that the Former Supervisor may have current



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employment relationships with Call One and that, somehow, that relationship was fostered out of Call One's previous (and previously renewed) contract with the Township. However, based on the information available to us, we are unable to definitively substantiate the full nature of the alleged, nefarious and potentially illegal conduct and cannot otherwise opine on these matters without further information or evidence.

However, should any other, corroborated information arise, we will ensure that the proper agency is notified of same. At this point, it is more important to emphasize how careful each Township Official and even each Township Employee must be when doing anything on behalf of the Township and how extremely vital it is that everything is done in accordance with the strictest ethical standards (which are codified in State Law and within the Township's policies and ordinances). Everyone in the Township works for the *people* and self-dealing should not be tolerated. Further, personal squabbles and issues should not be, in *any* way, part of any decision, discussion, or matter done as part of any official duty. For the Township to have functioned in such a way in the past, frankly, reflects extremely poorly on all the elected officials, which we note so that certain past practices do not re-emerge.

To reiterate and to be extremely clear: it does not matter what your personal feelings about each other are. The Township previously functioned in a manner that often seemed to ignore financial and legal safeguards. That time has ended. Individual, petty disagreements should be left outside of the Township Board Meetings and *all* Trustees should help to ensure that the Township implements and follows its new policies and procedures in order to effectively and efficiently deliver the needed services to its residents.

CONCLUSION

We do hope that this Memorandum is helpful in explaining why some of the past practices potentially put the Township (and individual officers) in serious legal jeopardy and why not to repeat some of those mistakes. Additionally, we are aware of certain volatile elements (particularly in social media channels) that continue to make various allegations and are attempting to turn any personal and political animosity amongst the Board into vindictive Township action. We must reiterate that by providing this Memorandum, we are hoping that the above explanations put many of these matters to rest so that the Township can continue looking forward and working on improving the efficient provision of services to Township residents.

Should you have any questions or require any additional information, please do not hesitate to contact our office.

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