

December 19, 2022

Aaron O. Lavine, Esq.  
City of Ithaca Attorney  
Office of the City Attorney  
108 East Green Street, 4<sup>th</sup> Floor  
Ithaca, New York 14850

**Re: Ethics Investigation (Complaint of Cynthia L Brock)**

Dear Mr. Lavine:

As you know, this firm serves as counsel for the Tompkins County Ethics Advisory Board (“TCEAB”). I am in receipt of your letter dated December 3, 2022. Please accept the following as our response on behalf of the TCEAB.

Despite your repeated assertions, the TCEAB has repeatedly and fully responded to your purported concerns about the scope of the Board’s advisory jurisdiction in my letter dated October 12, 2022. We have provided a comprehensive legal analysis which specifically addressed your purported concerns and objections to the TCEAB investigation. We have repeatedly requested that you provide any contrary legal authority for our consideration. No such contrary legal authority has been submitted. In short, the TCEAB is well within its legal authority under the General Municipal Law to investigate the previously identified nine (9) limited areas of inquiry which clearly and directly relate to allegations of actual, potential and/or appearance of conflicts of interest by the City of Ithaca, its officials, and employees. Again, those issues refer, relate and/or involve the following matters:

- (a) if there were any actual, potential or appearance of conflicts of interests by City officers and employees, whether paid or unpaid, including members of any administrative board, commission, or other agency thereof; Gen. Mun. Law §§ 800(5), 805-a (a), (c) and (d); Ithaca City Code § 55-7(A)-(E).
- (b) whether there was proper avoidance of any actual, potential or appearance of conflicts of interest by City officers and employees; Ithaca City Code § 55-7(E).

- (c) if there were any actual, potential or appearance of conflicts of interest, did the officer or employee declare the nature of the conflict of interest and where appropriate, refrain from taking any action or inaction that would affect the outcome of the matter; Ithaca City Code § 55-8.
- (d) whether any City official or employee was offered or accepted anything of value in excess of \$75.00 from which it could reasonably be inferred that the gift or promise was intended to influence him or her or could be reasonably expected to influence him or her in the performance of their official duties or intended as a reward for any official action on his or her part; Gen. Mun. Law § 805-a (a); Ithaca City Code § 55-7(B).
- (e) if any City official or employee received, or entered into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any city agency of which he or she is an officer, member or employee of any city agency over which he or she has jurisdiction or to which he or she has the power to appoint any member, officer or employee; Gen. Mun. Law § 805-a (a)(c); Ithaca City Code § 55-7(C).
- (f) whether any City official or employee was influenced or rewarded for any official action or appointment; Gen. Mun. Law § 805-a (a)(c)(d); Ithaca City Code § 55-5.
- (g) if there were any actual, potential or appearance of conflicts of interests, did the City official or employee exercise due diligence in attempting to avoid the actual, potential or appearance of conflicts of interest when voting or taking other discretionary action regarding all matters with which he or she deals on behalf of the city; Ithaca City Code § 55-7(E)(1).
- (h) if there were any actual, potential or appearance of conflicts of interests, did the City official or employee attempt to avoid taking any action that could reasonably be interpreted as benefiting his or her career advancement, salary or standing within the entity that employs him or her; Ithaca City Code § 55-7(E)(2).
- (i) were there any violations of the City Gifting and Soliciting Policy which create any actual, potential, or perceived conflicts of interest.

The TCEAB strongly believes that a transparent investigation of the allegations with the full cooperation of the City, its administration, officials and employees is in the best interest of the public. It remains unclear why you and/or various other City officials and employees are unwilling to cooperate in this ethics investigation-especially since it appears there was full cooperation with the investigation commissioned by the City. The TCEAB once again requests you and other City officials and employees cooperate in this ethics investigation.

It is unclear how you obtained information discussed during Executive Session of the TCEAB. However, you are correct that the TCEAB considered the possibility of submitting written questions to you, Mayor Lewis, Alderperson Cantelmo and other City officials and employees based upon their refusal to meet directly with the Board. The TCEAB rejected that concept for several reasons, including but not limited to its inability to obtain any meaningful cooperation and participation from those individuals since July. The TCEAB remains willing to make reasonable opportunities for Mayor Lewis, Alderperson Cantelmo, you, and possibly other City officials and employees to meet with the TCEAB. However, the TCEAB is required to promptly investigate all submitted ethics complaints and must schedule these meeting in the near future. Again, please be advised that in the absence of cooperation including, but not limited to, appearance for the requested meetings, the TCEAB will be forced to reach its findings based upon information obtained from other sources and adverse inferences may be made against the City, its officials, and employees. As you know, an adverse inference permits a finder of fact to conclude that evidence was not produced because it would be unfavorable to the person or entity being asked for the information. The TCEAB sincerely hopes this will not be necessary.

The TCEAB adamantly denies your accusations that its investigation is unfair, biased or has proceeded with any "hidden agenda". Unlike the City's commissioned "investigation", the TCEAB has been completely transparent in its investigation by posting all requests for information and all written responses on its website for review by any member of the public.

Besides Mr. John, the TCEAB is comprised of four (4) other members of the Ithaca and Tompkins County communities. They are not politicians, elected or appointed officials, or otherwise public figures. Instead, they have volunteered their time and energies in this public service. Any attempt to impunge and otherwise denigrate their integrity or character is wholly unwarranted, misguided and slanderous. As you are aware, the TCEAB requires four (4) votes to make any decisions or take any actions, including the initial determination whether there was a basis for investigating certain allegations raised in Ms. Brock's complaint. Similarly, it will require four (4) vote supermajority of the Board to approve any advisory opinion at the conclusion of its investigation. Once again, it is important to reaffirm that the TCEAB has made no determinations and is still in the investigatory stages. The investigation has been hindered by your and/or the City's lack of cooperation and refusal to provide the requested information.

As you know, the Tompkins County Ethics Code requires that one of the members of the TCEAB is a member of the Tompkins County Legislature. Mr. John is an elected member of the County Legislature. As an elected official, it is his obligation to pay attention to public events and at times to form and express certain opinions. As a County Legislator, Mr. John was involved with the RPS process from the beginning and voted on certain aspects during the process. Mr. John has consistently supported RPS and believes in the importance of building public trust. It is important to note that Mr. John did not have any involvement with any of the alleged actions or omissions taken by the City and its officials and/or employees which are the subject of Ms. Brock's complaint before the TCEAB.

It is a matter of public record that Mr. John authored an op-ed article concerning the RPS process. Mr. John provided comments to an op-ed article written by Ms. Brock. Mr. John's comments were based upon public information available at that time. When Mr. John provided those comments, he did not know that Ms. Brock was contemplating or would file an ethics complaint. Similarly, when Mr. John provided his comments, he had no knowledge that any unknown ethics complaint would be referred to the Tompkins County Ethics Advisory Board. As soon as Mr. John learned that Ms. Brock was filing a complaint, he informed her that he could have no further communications with her on this subject. Mr. John categorically denies your accusation that he coordinated the filing of the ethics complaint with Ms. Brock. As far as the TCEAB is aware, the decision to file the complaint was Ms. Brock's alone. Despite your assertions, Mr. John did not conspire with Ms. Brock or anyone else to file the pending ethics complaint.

Given your most recent specious accusations, it is important to once again emphasize that the TCEAB has made no determination as to allegations within the pending complaint, which requires further investigation. Moreover, the TCEAB is fully committed to a full, fair and unbiased investigation. Again, the TCEAB requests the City and its officials and employees cooperate with the investigation by meeting with the Board and providing the requested information. We believe that the meetings and production of information will resolve many outstanding issues.

Finally, I believe this continuing exchange of correspondence is unproductive to the resolution of the issues. Instead, I suggest either we or you and the Board meet to discuss your purported concerns. Please contact me upon receipt of this letter so we may schedule a mutually convenient meeting.

Very truly yours,

COSTELLO, COONEY & FEARON, PLLC



Paul G. Ferrara

PGF/cc