

**IN THE CITY OF JOHNS CREEK
STATE OF GEORGIA**

Cathy Eads, Complainant

vs.

Cori Davenport, Council Member

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Re: Ethics Complaint

HEARING OFFICER'S ORDER

Background

This matter concerns an Ethics Complaint filed by Cathy Eads (“Eads”) against Council Member Cori Davenport (“Council Member” or “Davenport”). The complaint was filed on March 2, 2015, and subsequently certified by the City Clerk.¹ Pursuant to Section 2-264 of the Johns Creek Code of Ordinances, the undersigned hearing officer was appointed to hear the matter. Davenport filed her response on March 24, 2015.

The Complaint

Eads’ allegations arise from the negotiation and settlement of an ongoing dispute and litigation between various billboard companies and Johns Creek. Eads appears to rely on statements made during a City Council meeting on October 20, 2014, in which the settlement was discussed and unanimously approved by the City Council. She alleges that Davenport violated several provisions of the Johns Creek Charter and Code of Ethics by serving as a “lead” negotiator on behalf of the City in the context of resolving the billboard litigation. She also cites various purported conflict of interest provisions and states that the Council Member had a personal financial interest in one of the billboard companies at the time the negotiations were

¹ Eads simultaneously filed similar complaints against Mayor Mike Bodker and Council Member Bob Gray largely arising out of the same facts.

taking place. She asserts that the ability to negotiate contracts is reserved to the City Manager per the Charter. In furtherance of her Complaint, she submits the City's Charter, Code of Ethics, Facebook postings and pictures, and a DVD which captures the October 20, 2014, Council Meeting in which the settlement was approved.

Evidentiary Standard

The Johns Creek Ethics Ordinance provides that the burden of proof shall be on the complaining party (Eads). The standard of proof required to establish a violation under the Ordinance shall be beyond a reasonable doubt. Section 2-264(c), Code of Ethics.

However, an initial inquiry is conducted by the hearing officer to determine:

- 1) Whether the complaint is in conformity of the requirements of section 2-263;
- 2) Whether upon consideration of the complaint and answer, the complaint is unjustified, frivolous, patently unfounded; or
- 3) Whether upon consideration of the complaint and answer, the complaint demonstrates facts sufficient to invoke disciplinary jurisdiction as set forth in this article.

See Section 2-265(b), Code of Ethics.

Findings of Fact and Conclusions of Law

The billboard litigation has a rich and complex history. The underlying applications essentially pre-date the incorporation of the City and were originally filed with Fulton County. While the procedural posture of the litigation and appeals are not relevant to this complaint, suffice it to say that it is an important issue for the City of Johns Creek and will undoubtedly impact the community. As background to the settlement, the companies filed 31 billboard applications and the Supreme Court ruled that Fulton County's ordinance was unconstitutional and thus the billboard company's rights had vested to the applications. The litigation also

involved the newly formed cities of Sandy Springs and Milton. Despite the Supreme Court's ruling, some of the local jurisdictions declined to issue permits to erect the billboards. The Fulton County Superior Court subsequently issued an order compelling the issuance of the permits.

The City Council took up the issue of approving a settlement with the billboard companies at its October 20, 2014, meeting. In essence, the settlement agreement provided for a maximum of 10 billboards with various conditions and restrictions (e.g. location, content, size, illumination, etc.) and the plaintiff would not seek any monetary damages or attorney fees or pursue the 21 additional billboard applications. The City Attorney's office reviewed the settlement during the meeting and outside counsel was present to answer any questions as well. Generally, each council member made a statement concerning the settlement and ultimately stated that they believed they were making the best decision in the interest of Johns Creek. In this context, it was alleged by Eads that Council Member Davenport committed various ethical violations. In her complaint, Eads sets forth six different counts which are discussed below.

Count I. The first count alleged by Eads concerns Section 3-26 or "Council interference with administration". This section somewhat codifies what is known as a council/manager form of government or a professional management form of government. In other words, the City Manager directs the work of other employees and department heads as opposed to elected officials managing the day-to-day operations of the City and its employees.

Here, the complainant does nothing more than make a conclusory statement that because Davenport purportedly worked with City staff during the negotiations a violation occurred. First, the allegations solely rely on a statements made during the Council meeting and offer no evidence of Davenport communicating with or directing City staff. Davenport states her only

involvement was facilitating a meeting between the Mayor and one of the principals of the billboard companies. However, even if true, the mere fact that Davenport took part in negotiations of a settlement of a pending lawsuit or discussed same with City staff does not constitute an ethics violation. The complaint does not cite any order or directive that Davenport gave to an employee of Johns Creek. No mention is made of how Davenport usurped the authority of the City Manager or improperly exercised her authority.

Count I is dismissed.

Count II. The second count alleges a violation of Section 2.15(a) (1) of the City's Charter. 2.15(a) (1) provides that no elected official shall knowingly

Engage in any business or transaction or have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of official duties or which would tend to impair the independence of his or her judgment or action in the performance of official duties.

Eads claims that because Davenport had a personal interest in this matter she should not be involved in the negotiations or discussions concerning the billboard litigation. Eads states that Council Member Davenport "has a close personal friendship with members of the billboard companies in which she was negotiating with". In support of this allegation, Eads included various Facebook pictures and posts which depict both the Council Member and the Hartrampf family. She also included a map which showed the close proximity of their lake houses.

Davenport readily admits to being friends with Christie Hartrampf, the wife of the one of the principals of Action Outdoor Advertising. If Davenport indeed had a financial interest, then recusal from the process and vote would have been warranted. However, no allegation is present or facts set forth that Davenport holds any position or has any financial interest in Action Outdoor or the outcome of the litigation.

Facilitating a meeting between two parties in a lawsuit, one of which is a personal friend, does not rise to the level of an ethics violation. Further, the billboard settlement was approved in an open meeting by a unanimous vote of the City Council. The facts and evidence do not indicate how Davenport's judgment was allegedly impaired or how she did not properly discharge her duties.

Count II is dismissed.

Count III is similar to the second count alleging a conflict of interest and stating that Council Member Davenport was obligated to disclose her "private financial interest" and that she recuse herself in the vote approving the settlement agreement. Again, no evidence is present that suggests Davenport had a personal financial interest in Action Outdoor or would derive any financial benefit from the agreement. If Davenport was an employee, officer, shareholder, etc. then disclosure and recusal would be required and appropriate, however the facts do not indicate this is the case. Further, this is not the case where a council member steered a City contract to a personal friend or associate. The billboard litigation predated Davenport's election to office and the settlement is not properly construed as a contract in this context.

Count III is dismissed.

Count IV relies on Section 2-262 of the Code of Ethics and essentially states that Davenport deviated from her proper role as an elected official by directing or interfering with the activities of City staff. As discussed *supra*, Eads fails to allege whom or how Davenport interfered with a City employee. Notwithstanding the lack of specificity required to sustain an allegation, this argument assumes that the City Manager is the only person authorized to negotiate the settlement agreement. A contract contemplated under the Charter (funded in the City's budget and purchase and procurement) is vastly different than an agreement to end years

of litigation and a pending civil action.

Count IV is dismissed.

Count V asserts that Davenport violated Section 3.25(8) of the City Charter purportedly because the City Manager is the individual to make and execute all contracts. This allegation does not cite a prohibition on an elected official or an ethics violation but rather cites a provision of the City Charter granting certain powers and authority to the City Manager. Thus, an elected official cannot conceivably violate this provision.

Construing this Count in the most favorable light towards Eads, one must assume she is asserting that Davenport usurped the City Manager's duty in negotiating the settlement agreement with the billboard companies. This argument assumes that the settlement agreement can be equated to a "contract" as set forth in Section 3.25 of the City Charter. However, a contract contemplated under the Charter (funded in the City's budget and purchase and procurement) is vastly different than an agreement to end years of litigation and a pending civil action.

Notwithstanding the above reasons, this argument also fails when one realizes that any contract/settlement of this nature must be approved by the City Council. Said differently, the City Manager could not enter into a settlement or agreement with the billboard companies absent City Council approval.

Count V is dismissed.

Count VI, the final count set forth by Eads, is very similar to the other allegations in that it centers on Davenport serving as a "lead negotiator" concerning the billboard settlement agreement. The section cited in the Charter, Section 3.11(a), provides for an organizational meeting the first regular meeting in January and sets forth council member oath.

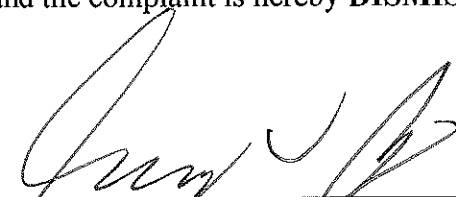
Similar to Count V, this provision of the Charter does not impose an obligation or contain a prohibition on an elected official. Although it is unclear if Davenport did anything more than arrange a meeting, even assuming *arguendo* that she heavily participated in the negotiations with the billboard companies, this is not in itself a violation of any Charter provision or Code of Ethics.

Count VI is dismissed.

No prohibition exists that prevents an elected official from facilitating a meeting, negotiating, attending mediation, or taking part in the resolution of existing litigation. Further, Eads failed to present any facts that suggest Davenport interfered with a staff employee or gave an order or directive to an employee of the City.

The City's conflict of interest provisions are present to protect the public's interest versus the private pecuniary gain of an elected official. No evidence of any financial interest or gain on the part of Davenport was offered nor does she hold a position with Action Outdoor Advertising. Her friendship with a principal of the billboard company does not give rise to an ethics violation under these facts. The Hearing Officer finds that Council Member Davenport did not did not violate any provision of the City's Charter or Ethics Code. Further, the Hearing Officer finds that the Complaint and each allegation therein fail to either meet the specificity requirements of Section 2-263(d) and/or are unjustified, frivolous, and unfounded. The facts are not sufficient to invoke any further proceedings in this case and the complaint is hereby **DISMISSED**.

This 10th day of April, 2015.



Gregory D Jay, Hearing Officer
Georgia Bar No. 389801

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