



City of Saratoga Springs  
CITY ATTORNEY'S OFFICE  
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June 18, 2019

Ann C. Bullock  
86 Lincoln Ave.  
Saratoga Springs, NY 12866

William J. McTygue  
15 York St.  
Saratoga Springs, NY 12866

Re: Energy Procurement Contracts: City of Saratoga Springs

Dear Ms. Bullock and Mr. McTygue,

I am in receipt of your June 6, 2019 correspondence addressed to this office, as well as the offices of Commissioner of Accounts, John Franck and Board of Ethics Chair, Justin Hogan, in which you claim that the contracts recently approved by the City Council for electric and gas delivery should be deemed "null and void" based upon certain "conflicts of interest".

Please be advised that your claim lacks merit and fails to set forth a sufficient legal basis which would warrant disturbing the action taken by City Council relative to the aforesaid contracts.

While you cite various provisions of the City's Code of Ethics and NYS General Municipal Law in support of your contentions, you misinterpret and/or misapply each and every cited provision.

You assert that Section 13-3(G) of the City's Code of Ethics required Mr. Miller to disclose interests he may or may not have had in a contract awarded by Council. However, Section 13-3(G) is wholly inapplicable and does not in any way relate to contracts. Instead, it relates to legislation and provides, in relevant part, that an officer or employee "who participates in the discussion or gives official opinion to the City Council on any *legislation* before the City Council" shall disclose "the nature and extent of any direct or indirect financial or other private interest he or she has in such *legislation*" (emphasis added).

You then cite Section 13-2 in claiming that Ms. Foresta meets the definition of a City "officer or employee" in her capacity as a member of the Housing Authority Board and, thus, was likewise required to provide disclosure under the same inapplicable provision you cited with regard to Mr. Miller (13-3(G)). To be clear, the Housing Authority is not a "board, body, council, commission, agency, department, district, administration, bureau or committee of the City of Saratoga Springs" (See §13-2, Definitions, Officer or Employee). The Housing Authority is an

independent corporation, legally separate and distinct from the City of Saratoga Springs and, consequently, its members are not City officers or employees. Ciulla v. State of New York, 191 Misc. 528. Indeed, your confusion on this issue is particularly troubling, in light of the fact that Ms. Bullock serves on the very same Board with the Housing Authority as Ms. Foresta.

You also cite Section 13-3(P) of the Code and Section 801 of the General Municipal Law to support your claim that each was violated and, further, that such violation requires that the subject contracts be deemed “null and void”. This is incorrect.

Section 13-3(P) provides that “[n]o City officer or employee shall have any financial interest in a business relationship, financial instrument, contract with the City, or an interest in a bank or trust company, that is prohibited by § 801 of the General Municipal Law of the State of New York.” Section 801 provides that “no municipal officer or employee shall have an interest in any contract with the municipality of which he is an officer or employee, when such officer or employee, individually or as a member of a board, has the power or duty to (a) negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder (b) audit bills or claims under the contract, or (c) appoint an officer or employee who has any of the powers or duties set forth above”.

Mr. Miller is employed with the City as a Water Treatment Plant Operator with the Department of Public Works. He has neither the power nor the duty to “negotiate, propose, authorize or approve” *any* contracts on behalf of the City, let alone the contracts which are the subject of your meritless claim. Having served as Deputy Commissioner and then subsequently appointed to serve as Director, one would reasonably expect Mr. McTygue to have at least a basic understanding of the position held by Mr. Miller. Thus it curious how you could be so unfamiliar with the duties and responsibilities of a Water Treatment Plant Operator.

Lastly, it should be noted that your claims relating to Ms. Foresta and Mr. Miller’s involvement with the Independence Party are without merit. You should be aware that an officer or employee’s right to engage in political activity outside of the workplace is not prohibited by the Code of Ethics. To the contrary, it is expressly protected.

As you have included the Board of Ethics Chair in your correspondence, I will leave it to Mr. Hogan and the Board to proceed as they deem appropriate. However, as it regards this office, I have forwarded your correspondence to the Mayor and each Commissioner to make them aware of your claim and, by copy of this correspondence, advising them that it should be disregarded in its entirety.

Very truly yours,



Vincent J. DeLeonardis  
City Attorney

cc: City Council Members – *via email only*  
Justin Hogan – *via email only*