New Jersey Libertarian Party

Open Government Advocacy Project

John Paff, Chairman
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January 19, 2012

Patricia McNamara, Secretary
Local Finance Board
101 S Broad St – PO Box 803
Trenton, NJ 08625-0803

Dear Ms. McNamara:

I intend this letter to be my complaint against James Barberio, Mayor of Parsippany Township in Morris County. In accordance with N.J.A.C. 5:35-1.1(b), following are the required elements of the complaint:

1. **State the point of the Local Government Ethics Law alleged to be violated.**

   N.J.S.A. 40A:9-22.5 (c)

2. **State the name(s) and title(s) of the parties involved in the action and against whom the complaint is filed.**

   - Complainant John Paff and the New Jersey Libertarian Party
   - James Barberio, Mayor

3. **Set forth in detail the pertinent facts surrounding the alleged violative action.**

   According to "Mayor and Messmer Face Off Over Moses Letter at Council Meeting," by ParsippanyPatch staff writer Natale Davis, published on November 23, 2011 (copy attached), Barberio used Township letterhead to write to a Superior Court judge requesting leniency for a friend's 26 year old son who was facing charges for conspiracy to distribute eight pounds of marijuana. According to the article, the letter stated "I hope the court will be as lenient as possible when sentencing Daniel . . ."

   Complainant asserts that this violates N.J.S.A. 40A:9-22.5 (c) which states that "[n]o local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others."

4. **Indicate whether the complaint concerns the complainant in any way and what, if any, relationship the complainant has to the subject of the complaint.**

   Complainant has no interest in or relationship to this complaint greater than any other citizen or organization who wishes for all government officers and employees to comply fully with the Local Government Ethics Law.

5. **Indicate any other action previously taken in an attempt to resolve the issue and indicate whether the issue is the subject of pending litigation elsewhere.**

   No other action has been taken previously in an attempt to resolve this issue and this issue is not the subject of any pending litigation.

Thank you for your attention to this matter. I ask that you please acknowledge your receipt of this complaint within 30 days.

Sincerely,

John Paff

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HI:34 LO:25

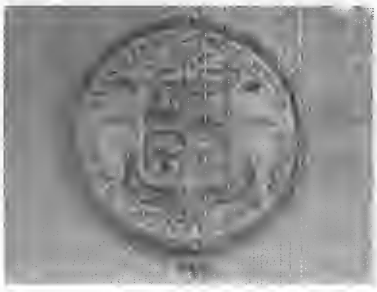
Government

Mayor and Messmer Face Off Over Moses Letter at Council Meeting

Town attorney says whether or not Mayor Barberio asked for leniency for a convicted pot dealer, his letter was 'legal, ethical and appropriate.'

By Natalie Davis Email the author November 23, 2011

Related Topics: ', Town Council, and parsippany



The Parsippany Township Council's Tuesday night meeting at Town Hall provided the backdrop for Mayor James Barberio finally to speak publicly about a controversial correspondence revealed last month. The letter spoke about the case of a friend's grown son, who pleaded guilty to conspiracy to distribute eight pounds of marijuana.

During the meeting's public comment portion, resident Roy Messmer took the mayor to task for using official township letterhead stationery when he wrote to Morris County Superior Court Judge David H. Ironson on behalf of 26-year-old Daniel Moses.

"This does not represent the citizens of Parsippany," Messmer scolded Barberio, stating his opinion that the use of township letterhead was improper.

Messmer also mentioned an Oct. 21 Patch article in which Barberio, when asked about the letter, is quoted as saying:

"I did not ask for leniency. What the young man did was wrong, and he will pay for his crime. I commend the Parsippany Police Department for their work in this case. Yes, I wrote a letter. I wrote it on behalf of Daniel Moses' father, who has been my friend for many years. They're a good family, and he is a good man who has volunteered with many groups for the benefit of Parsippany Troy-Hills. But I never asked for a reduction in sentence, and I am glad justice was done."

Pulling out a copy of Barberio's letter to Judge Ironson, Messmer read the mayor's words from the first sentence of the missive's last paragraph: "I hope the court will be as lenient as possible when sentencing Daniel ..."

Messmer then talked about a drug-related burglary in his neighborhood and said it was representative of a growing "drug problem in the nation, not just in this town."

He then addressed the mayor directly.

"I don't know what you were thinking when you wrote this letter," Messmer said, "but I think the residents, the taxpayers of Parsippany, are due an explanation."

Barberio fired back, saying he had spoken with several members of the press on this topic. He mentioned receiving a call from a reporter and having a conversation in which he never said "leniency."

(Patch stands by the quote from its Oct. 21 report, which was transcribed during a phone call received from the mayor that same day after an event at 1 Sylvan Way.)

The mayor contended that he could not have asked for a reduction in sentence because he did not know what the sentence was. Daniel Moses ultimately received five years in prison with the option of parole in one year.

Barberio then yielded the floor to Justin Marchetta, who was at the council meeting to fill in for absent Township Attorney John Inglesino.

The lawyer read a letter, this one written by Inglesino, Marchetta said, into the public record.

In Inglesino's words, Barberio's letter "was erroneously characterized in court by a Morris County assistant prosecutor as 'inappropriate' because, according to that assistant prosecutor, the Parsippany-Troy Hills Police Department and federal authorities were involved in the investigation and prosecution of Mr. Moses."

Inglesino, through Marchetta, continued, intimating that questioning the appropriateness of the letter revealed a lack of knowledge regarding how the legal system works.

"In the American justice system, a period of time elapses between a criminal conviction or plea bargain arrangement and sentencing," Marchetta read. "Dunng that time, the convicted individual may, and indeed typically does, call upon friends, family, employers, clergy, community leaders and others to submit letters on his or her behalf to the court for purposes of familiarizing the court with the individual."

The letter goes on to say that Inglesino discussed the matter with Prosecutor Robert Bianchi, "who has confirmed to me that the subject letter was not illegal."

In fact, Marchetta–reading Inglesino's ideas–called the mayor's letter "legal, ethical and appropriate."

Kenneth Kaplan Flag as inappropriate

9:22 am on Wednesday, November 23, 2011

When you become a mayor, you don't cease to be a human being. Your heart goes out to a friend whose child is in trouble. I would think a lot less of the Mayor if he had not written a letter on behalf of his friend's son. Using his official stationery did not indicate the backing of the municipality; it just showed that the statement was coming from an individual who had achieved a position of respect in the community.

Log in to reply

Michael Brancato Flag as inappropriate

10:00 am on Wednesday, November 23, 2011

I'm sorry, Kenneth, but I have to disagree with you on one point: using his official staionery absolutely indicates the backing of the municipality. That is exactly what official letterhead is for.

Parsippany Flag as inappropriate

6:00 pm on Wednesday, November 23, 2011

KEN- Open your eyes, that Child in trouble is. Dan Moses is 26 years old DRUG DEALER who got caught with 8 pounds of Marijuana. Most college graduates would have been holding a job for over four years at 26 years old, moving up the corporate ladder. Mayor Barberio would have known this type of ethical behavior is inappropriate, maybe if he Graduated from college and took a course in Ethics he would have known better. SHAME ON YOU MAYOR BARBERIO.

Mel Flag as inappropriate

9:39 am on Wednesday, November 23, 2011

No one should be above the law my friend, had this kid been in possession of a few grams of weed maybe the pleas from the Mayor would be heartfelt....but 8 pounds?
AND using the township's stationery? EXTREMELY INAPPROPRIATE!!!! Barberio and his good 'ol boy methods of leadership are a painful episode for Parsippany.

Log in to reply

Nick Kumburis Flag as inappropriate

1:27 pm on Wednesday, November 23, 2011

It never ceases to amaze me how every one is from such "good families". If that was the case, why is the kid dealing drugs?

And for the lawyers: Legal does not mean right and illegal does not mean wrong. Just because his using the letterhead was not illegal, doesnt make it right. He was intentionally trying to use his influence as Mayor to request leniency to an admitted criminal while using his position to provide favors for his friends. This my friends is wrong.

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 803
TRENTON, NJ 08625-0803

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

November 21, 2012

Mr. John Paff
New Jersey Libertarian Party
PO Box 5424
Somerset, NJ 08875-5424

Re: Local Government Ethics Law
Complaint #LFB-12-006
Notice of Determination

Dear Mr. Paff:

The purpose of this letter is to apprise you of the Local Finance Board's final disposition of the above-referenced complaint. As you are aware, the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., (LGEL) provides the Local Finance Board (Board) with the power to initiate, receive, hear and review complaints, and hold hearings with regard to possible violations of the LGEL, where no local ethics board has been established, and determine if a complaint against a local government officer or employee is within its jurisdiction, frivolous, or without a reasonable factual basis, prior to conducting an investigation. You are hereby notified that the complaint you filed has been dismissed.

In complaint **#LFB-12-006,** as summarized, you alleged that Mayor James Barberio used Township letterhead to write to a Superior Court Judge requesting leniency for a friend's 26 year old son who was facing sentencing in connection with criminal charges.

The complaint specifically cited the following provisions of the LGEL as having been violated:

> **N.J.S.A. 40A: 9-22.5(c) No local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself or others;**

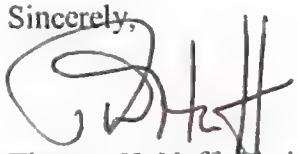
Following a preliminary investigation of the facts and circumstances relevant to this complaint, the Board determined that Mayor Barberio sought the advice of the Borough attorney regarding the appropriateness of submitting the letter to the Court and was advised that it was appropriate to send.

Additionally, it is noted that Mayors have no direct statutory involvement with the selection of Superior Court judges or county prosecutors. Further, elected officials do not, upon taking office, give up their right to support friends and neighbors that other community members may provide. It would be up to the Court to determine if a Mayor's letter has more weight than any other personal reference a defendant has provided to the Court. Therefore, it does not appear that a Mayor is using his/her official position to secure an unwarranted privilege or advantage for a defendant by having a personal letter from him/her at sentencing.

In light of these facts, the Board voted to dismiss the complaint as having no factual basis under the Local Government Ethics Law. This case is now closed.

If you have any questions regarding this matter, please feel free to contact Eileen Brennen at (609) 292-0479.

Sincerely,



Thomas H. Neff, Chair
Local Finance Board

THN:eb
C12-006.Dismissal.complainant