

CITY OF COHOES



MEMBERS

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BOARD OF ETHICS

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DECISION: COMPLAINT #13-3

Background

In a formal complaint (#13-3) dated November 18, 2013, the author reported that on August 22, 2013, two Cohoes Department of Public Works employees and a city-owned “Vac-Truck” were assigned to the Desmond Hotel in the town of Colonie to assist a private contractor. Both DPW employees were paid by the city for four hours labor at their respective overtime rates. Copies of Complaint #13-3 were disseminated to the members of the Board of Ethics at its November 25, 2013 meeting. The Board tabled the matter and scheduled its next regular meeting for January 27, 2014. The private contractor who solicited the service was subsequently interviewed, and the complainant testified at the January 27th Board meeting. A Board meeting was then scheduled for the following week. On February 3, 2013, the Board met and interviewed the three involved DPW employees as well as the city comptroller. The Board scheduled its next meeting for February 24, 2013, at which the mayor was interviewed.

Allegations

The complainant alleged that on August 22, 2013, the DPW commissioner directed a DPW foreman and a laborer to take a city owned “Vac-Truck” to the Desmond Hotel in the town of Colonie to assist a private contractor, in violation of section 36-13 of the Code of Ethics: *“Municipal resources shall be used for lawful municipal purposes. Municipal resources include...municipal personnel and...vehicles, equipment or other property. No municipal officer or employee may use or permit the use of municipal resources for personal or private purposes”*.

Discussion

Following interviews of the aforesaid individuals, it was determined that on August 22, 2013, the DPW commissioner took a call from a private contractor requesting use of the city-owner Vactor Truck to assist with a sewage backup event at the Desmond Hotel, SR-155, in the town of Colonie. Though the call came from a private contractor, the commissioner purportedly misinterpreted the request as being “municipality to municipality” and personally authorized the overtime assignment of his DPW foreman, and the recall to duty (overtime) of a laborer. With instructions to transport the Vactor

Truck and assist with a sewage backup at the Desmond, both employees did exactly that - though it was clear shortly after arrival that the incident involved private property (as opposed to assisting a neighboring municipality). The employees were subsequently compensated by the city with four hours overtime each. On November 11, 2013, the city billed Kilby & Gannon Construction Services, Albany, New York, in the amount of \$1,115.14. As per the city comptroller, this amount, since paid in full, reflects the total costs incurred by the city for labor and equipment. The comptroller added that the billing rate was typical for inter-municipal agreements, but added that he had never heard of assisting a private entity outside the city of Cohoes before, and no similar payment had been made during his time in office.

Conclusion

Investigation into this matter revealed that the DPW commissioner, through misunderstanding or by design, authorized DPW two employees to utilize the DPW Vactor Truck for a private, non-municipal, purpose. Shortly after arrival, it was obvious that those employees would be assisting a private contractor, as opposed to helping the town of Colonie DPW. Rather than re-contacting the commissioner and clarifying the situation – or simply terminating their involvement – the pair followed what amounted to an unlawful order. Accordingly, the Board finds the actions of the commissioner and the two responding DPW employees in violation of subsection 36-13 of the Code of Ethics. Recommend appropriate administrative action.

CONCUR:

William T. Keeler, Chairman
Deborah Usmanu, Member
Charles G. Valenti, Member

PRESENT:

Alternate Member
David Emanatian

February 24, 2014

cc: Common Council