

# *CITY OF FOND DU LAC - Memorandum*

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## **City Attorney/Human Resources Department**

**Date:** April 28, 2019

**To:** City Council Member Patrick Mullen

**From:** Deborah Hoffmann,  City Attorney/Director – Human Resources

**Re:** Conflict of Interest Opinion

### **CONFIDENTIAL – DO NOT COPY –**

I have been asked about the possible conflict of interest of Council Member Patrick Mullen (CM Mullen) due to his prior participation in the lawsuit brought against the City by The Friends of Lakeside Park, (The Friends) an unincorporated Wisconsin Association. Mr. Mullen is a member of this group.

#### ISSUES SUMMARY

1. Is it a conflict of interest for a City Council member to take part in the decision-making and legislative process for the Lakeside Park Project when he had previously been a named party in a lawsuit against the City that has been resolved?
  - a. Answer: No

#### FACTS

The Friends files a Petition for Writ of Mandamus against the City of Fond du Lac in October 2020. CM Mullen was a named Petitioner in the lawsuit. The lawsuit was briefed and arguments were heard by Judge Basiliere on February 5, 2021. Judge Basiliere opined that the proposed ordinances were not proper subjects for direct legislation. The deadline for appealing her order was April 26<sup>th</sup>. The Friends have chosen not to appeal. The lawsuit is over. Further, CM Mullen reports that he has had no involvement in the lawsuit since November 2020 when he decided to run for City Council. CM Mullen is not an officer in the Friends of Lakeside Park. Mary Beth Hayes is Mullen's life partner but is not an officer in the Friends of Lakeside Park. Mr. Mullen and Ms. Hayes are not personally liable for the debts of the Friends of Lakeside Park, so they have no pecuniary interest in the organization.

#### LAW

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**§19.59** Codes of ethics for local government officials, employees and candidates (*Wis. Stats.*)

**(1)(a)** No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated

#### ANALYSIS

**Issue 1** - Does CM Mullen's role as a Petitioner in the Friends of Lakeside Park's lawsuit create a conflict of interest with his role as a City Council Member?

The elements of Section 19.59(1)(a):

No local public official  
May use his or her office or position  
To obtain anything of substantial value or substantial benefit  
For an organization with which the official is associated

CM Mullen is a public official. The questions to be answered include:

1. Has he used his office or position
2. to obtain anything of substantial value or substantial benefit
3. For an Organization
4. With which he is associated

CM Mullen has spoken in favor of the position of the Friends of Lakeside Park multiple times prior to becoming a City Council member and in his campaign for the council seat. He sued the City of Fond du Lac, but that lawsuit is now finished. There is nothing left to be done regarding the lawsuit.

Did this obtain anything of value for the Friends of Lakeside Park? The Friends were unsuccessful in their lawsuit and have decided against appealing to a higher Court.

Section 19.42(2) Wis. Stats. provides:

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Associated. When used with reference to an organization, includes any organization in which an individual ... is a director, officer or trustee .. or of which an individual ... is an authorized representative or agent.

CM Mullen is not a director, officer or trustee of the Friends of Lakeside Park. His partner, Mary Beth Hayes, is not a director, officer or trustee of the Friends of Lakeside Park. Neither Mullen or Hayes is personally liable for the debts of the Friends and have no pecuniary interest in the organization.

A local elected official owes a duty of undivided loyalty to the public whom the official serves while participating in decision in an official capacity. The thrust of the ethics code is to help resolve conflicts between a government official's public responsibilities and the official's private interests in favor of fulfilling one's responsibilities to the public.

#### OPINION

While CM Mullen may have had divided loyalties, it does not appear he has used or is using his position to obtain a substantial benefit for an organization he is associated with.

#### OPINION

This does not appear to create any conflict of interest.

Please do reach out to me if you have any questions. Thanks for your attention.