

MEMO

FROM: CHARLES MICHELS
TO: NOLENSVILLE BOARD OF COMMISSIONERS
DATE: 10-24-2022
RE: GARRAMONE ET. AL., ETHICS REVIEW

Issues: Whether any state statute governing conduct by municipal officials, as well as the Town Ethics Policy, were violated by Commissioner Lisa Garramone (and Commissioner Wendy Cook-Mucci), Chief Parker, and the Nolensville Police Department regarding ticket fixing, inappropriate use of an elected or appointed official, and public intoxication and/or driving under the influence.

Conclusions: After reviewing three videos, questioning four officers and Chief Parker, and receiving input from commissioners, my findings are as follows:

- 1) Based on facts presented to the Board of Commissioners, the Board should determine whether any penalty/censure is warranted under the Town Ethics Policy against Commissioner Lisa Garramone and Commissioner Wendy Cook-Mucci for receiving, regardless of intent or knowledge, the nullification of traffic citations. The Town Ethics Policy prohibits the receipt of any money/gift or gratuity that “might reasonably be inferred” as an attempt to influence their actions as commissioners.

Commissioner Garramone committed a violation of the Town’s Ethics Policy by accepting the nullification of the traffic citation regardless of her intent in receiving the benefit. A reasonable person could believe, based on the situation and Chief Parker’s comment that nullifying the citation was in the best interest of the police department and Town, that the ticket was rescinded in order to attempt to influence the Board of Commissioner’s interactions with the Police Department. The penalty, if any, is as determined by the Board of Commissioners and is limited to a censure.

Commissioner Cook-Mucci, while not recalling whether she received a warning or a citation, is subject to the same analysis, as video of her traffic stop shows a citation was issued.

Commissioners Garramone and Cook-Mucci did not violate any other provisions of the Town Ethics Policy.

- 2) No clear and convincing evidence exists to find that Commissioner Garramone violated any laws pertaining to public intoxication and/or driving under the influence.

- 3) Chief Parker violated the ticket fixing statute in voiding/modifying Commissioner Garramone and, potentially, Commissioner Cook-Mucci's citations. The statute of limitations for a violation of the ticket fixing statute is one year and Chief Parker has not violated this statute in the past year.

Chief Parker also likely violated § 4-509 of the Town Ethics Policy by nullifying a citation, which is prohibited by state law. Chief Parker intended to secure a privilege for the police department not authorized by law, avoiding animosity with the Board of Commissioners by nullifying traffic citations.

- 4) No evidence exists to find that Chief Parker and/or the Nolensville PD violated any duties to investigate a suspected crime or other provisions of the Town Ethics Policy.

Analysis:

1) Video/Interviews:

The following video was reviewed: a traffic citation issued to Commissioner Cook-Mucci June 2, 2020, a traffic citation issued to Commissioner Garramone December 11, 2020, and a response to an immobile vehicle by the Nolensville PD on October 17, 2020. The following persons were interviewed: Commissioner Cook-Mucci, Commissioner Garramone, Chief Roddy Parker, Officer Todd Upchurch, Officer David Hayslett, Officer Greg Moore, and Officer Rob Hayes. Brief answers regarding Nolensville PD citations and general practices were provided by Commissioners Gallik and Miller, and Mayor Adams.

A) June 2, 2020, Video and Interviews, Citation

The June 2, 2020, video of Commissioner Cook-Mucci shows that a traffic citation is issued and handed to Commissioner Cook-Mucci. Commissioner Cook-Mucci does not recall whether the ticket was originally issued as a citation or a warning.

Nothing from the video (specifically images of the ticket itself in the video) gives any indication that the citation was actually a warning. When the citation is handed to Commissioner Cook-Mucci it does not include the word "WARNING". The Town's copy of the citation includes a court date, but is unsigned, and has the word "WARNING" written at the top and bottom of the citation.

Through interviews, Officer Hayslett commented that Officer Hayes later told Officer Hayslett, as verified by the December 11, 2020, video, that a citation he previously issued to a commissioner (presumably this citation) was changed to a warning without Officer Hayes' knowledge. Officer Hayes did not recall the incident, nor did Chief Parker. None of the other officers learned of this incident until recently.

Commissioner Cook-Mucci knows she did not request that any citation be cancelled or modified to a warning.

B) December 11, 2020, Video and Interviews

The December 11, 2020, video shows Commissioner Garramone being issued a citation for speeding at 53 (49) mph in a 30-mph zone. Nothing during the video indicates that the citation would be rescinded. I believe the Nolensville PD officers were Rob Hayes and David Hayslett.

During the stop, Hayslett mentions that Commissioner Garramone is one of the members of the BOC. Hayes responds that Chief will be calling about her, we will have to void this out. Discussion ensued about commissioners not being permitted to break the law because they hold public office, and whose name to put on the ticket as the issuing officer. Officer Hayes further commented that Chief already called him (Hayes) for writing a ticket to a commissioner (again, presumably Commissioner Cook-Mucci) and Chief took care of it. Prior to Hayes learning that he had stopped a commissioner, Commissioner Garramone commented to Hayes that she attended an event with Chief Parker at Summerlyn earlier in the evening.

Hayes asked Hayslett if he wanted to make the ticket a warning instead of a citation, Hayslett said he wanted it to remain a citation. There is a call between Hayslett and Officer Todd Upchurch during this stop that references Commissioner Garramone's presence at a Nolensville PD scene on October 17, 2020, showing up drunk.

Per Commissioner Garramone, Chief Parker mentioned voiding the ticket one or two days after the incident. Commissioner Garramone said Chief Parker's reason was to keep Commissioner Garramone's name out of the court system. While Commissioner Garramone thought voiding the ticket was odd, she viewed Chief Parker as an authority figure. Per Commissioner Garramone, it was implied that the ticket was voided because she is a commissioner. Commissioner Garramone never intended to take advantage of anyone or the situation, but she did initially accept the ticket being voided.

Commissioner Garramone later paid the ticket and took a traffic school course. She did this after two events occurred: 1) a FOIA request for the October 2020 incident; and 2) her attendance at a TML event in which ethics were discussed. Per Chief Parker, payment of the fine and attendance of traffic school is likely all that would have been required by the judge.

C) October 17, 2020, Video and Interviews

The video dated October 17, 2020, involves an immobile car (uber driver) being handled by the Nolensville PD. A car pulls into a driveway adjacent to the scene. Commissioner Garramone is seen getting out of the driver's side of the vehicle and approaching the officers, Todd Upchurch and Greg Moore. In the video Commissioner Garramone comments she is trying to determine if anyone is hurt, asks if the police are from Nolensville, references that she is a commissioner, and asks if there is anything we can do to help the stuck driver out. Commissioner Garramone asks the officers whether she needs to move her car out of the driveway, notes she is behaving herself. Commissioner Garramone asks the Uber driver the name of the person he was driving, he didn't want to provide and asked why, and Commissioner Garramone stated because

she is a commissioner. The name was not provided. Commissioner Garramone mentions she had talked to Chief Parker earlier in the night.

As Commissioner Garramone leaves the scene and walks up to a barn/house further up the driveway, Officer Upchurch and Officer Moore discuss the incident. Upchurch states Commissioner Garramone was driving, he saw her get out of the driver's side of the vehicle, that only one other person got out of the passenger side and started walking. Officer Moore, who initially thought Garramone exited the passenger side of the vehicle, states commissioner or not next time she's out drinking and driving I'll arrest her ass. Nothing in the video indicates the officers would have handled this situation differently if it had been anyone other than a commissioner that approached the scene. However, the video indicates that Moore, had he initially believed Commissioner Garramone was driving the vehicle, would have acted. Officer Moore discussed this with Chief the next day, advising him he would arrest Commissioner Garramone if she was driving again.

Chief Parker's name does not come up during the video until Commissioner Garramone is walking away, and only as referenced by Officer Moore in his comments regarding a future arrest if this were to happen again.

Through interviews, Commissioner Garramone admits she was drinking on October 17, 2020. Commissioner Garramone states she was not driving the vehicle, she exited the rear passenger door on the driver's side of the vehicle and that there were multiple other passengers in the vehicle. These names will be released at a later date.

Officer Moore believes that Commissioner Garramone was intoxicated. Officer Moore states that, had he seen Commissioner Garramone drive, he would have arrested her.

Officer Upchurch believed Commissioner Garramone was intoxicated, but he wasn't close enough to smell alcohol. Per Officer Upchurch, Commissioner Garramone was leaning on the car of the stuck Uber driver, swaying a bit, asking if there is anything she could do to help. Officer Upchurch saw Commissioner Garramone get out of the driver's side of the vehicle, and saw another person get out of the passenger side of the vehicle and walk towards a house. Officer Upchurch said he could have arrested her since she was driving but that, absent an emergency situation where harm already occurred, he attends to one scene at a time. When this incident occurred Commissioner Garramone was already out of the vehicle, and she did not get back into the vehicle.

Officer Hayslett, who was not on the scene, recalls being told that Commissioner Garramone was hammered drunk.

D) General Nolensville PD Practices Regarding Commissioners

With the exception of Commissioner Garramone and (presumably) Commissioner Cook-Mucci, no commissioners received traffic citations or are aware of any favoritism given to commissioners.

Through interviews, no one with firsthand knowledge commented that the Nolensville PD had/has any policy/practice of voiding/cancelling citations issued to members of the Board of Commissioners¹. All officers said they recently became aware this happened. Officer Hayslett further stated that he (Officer Hayslett) heard that a Fire Chief had asked Chief Parker to get rid of a ticket for a Fire Department employee since he (Chief Parker) had done it for a number of commissioners. Per Chief David Windrow, who joined Nolensville in late 2020, states he did not make this request.

Officer Hayslett and Officer Hayes discussed the voiding of tickets for commissioners, during the December 11, 2020, traffic stop referenced above. Officer Hayes told Officer Hayslett that a citation Officer Hayes issued to (presumably) Commissioner Cook-Mucci was changed to a warning. As noted above, Officer Hayes did not remember this situation, and did not remember the discussion he had with Officer Hayslett during the December 11, 2020, traffic citation wherein he tells Officer Hayslett (per video) that we will have to void this ticket because she (Commissioner Garramone) is a commissioner, and Chief had done this previously to him (Officer Hayes) regarding another commissioner (Commissioner Cook-Mucci).

Officer Hayslett took issue with the citation to (again, presumably) Commissioner Cook-Mucci being rescinded when he learned about it during Commissioner Garramone's traffic stop.

Officer Hayslett further stated during his interview that Rob Hayes told him (Officer Hayslett) that Chief Parker told him (Officer Hayes) that the PD needs to be careful with commissioners because the commissioners oversee the PD's budget, or something similar to that, officers just need to be careful with commissioners.

Officer Hayslett also stated he was recently in Chief Parker's office discussing these issues. Per Officer Hayslett, Chief Parker advised Hayslett that he (Chief Parker) was not accusing him (Officer Hayslett) of anything. Officer Hayslett recalled something from the conversation that Chief Parker said this is just me and you talking, have to be careful what you say on video.

Chief Parker has no recollection of voiding/cancelling any citations, with the exception of Commissioner Garramone's. There was one ticket that should have been a warning that was written as a citation. A statement had to be filed with the court and reviewed by the judge in order to modify the citation to a warning.

As to Commissioner Garramone's payment of the citation and traffic school course, Chief Parker advised the judge routinely allows this. Further, during the video of the incident, Officer Hayes comments that Commissioner Garramone is still eligible for traffic school.

At the time Chief Parker voided Commissioner Garramone's citation, Chief Parker believed he had authority to modify a ticket prior to the ticket entering the court system. Chief Parker has not voided/cancelled any tickets since Commissioner Garramone's.

¹ A few of the officers said traffic warnings were in writing, others said warnings were always verbal.

Further, Chief Parker states he voided Commissioner Garramone's ticket because the Town recently moved past the election of a new board of commissioners after a contentious change to a city manager commissioner charter. Chief Parker wanted to avoid another issue arising within the Town that could cause additional friction, in this case a recently elected commissioner receiving a speeding ticket and thereafter having a negative view of Town staff, including the police department. Chief Parker believes what is good for the police department is good for the Town and vice versa. Chief Parker did not intend to obtain any benefit for himself in voiding the citation, nor did he intend to benefit Commissioner Garramone specifically. He would have done it for any commissioner at the time. To summarize, Chief Parker intended to benefit the Town generally and believed he had discretion to void the traffic citation.

2) Legal Analysis

A) Tenn. Code Ann. § 55-10-204 and Tenn. Code Ann. § 39-16-402.

Tenn. Code Ann. § 55-10-204 provides that it is a Class C misdemeanor for any person to cancel or solicit the cancellation of any traffic citation. A traffic citation is any written or electronic citation prepared by a law enforcement officer with the intent that the citation shall be filed with a court having jurisdiction over the alleged offense. Tenn. Code Ann. § 55-10-207. As referenced above, Commissioner Garramone, and likely Commissioner Cook-Mucci, had traffic citations cancelled, and there is no indication that either citation was not intended to be filed with a court. At least one (Commissioner Garramone's) and possibly both citations were cancelled by Chief Parker. Solicit generally means to ask for or obtain something from someone.

There is no evidence that Commissioner Cook-Mucci or Commissioner Garramone requested that their respective traffic citations be cancelled. Thus, neither Commissioner violated Tenn. Code Ann. § 55-10-204.

Chief Parker cancelled at least Commissioner Garramone's citation, and lack of knowledge of the law is not a defense. Thus, Chief Parker violated Tenn. Code Ann. § 55-10-204. As a Class C misdemeanor, the statute of limitations for a violation is one year. Tenn. Code Ann. § 40-2-102. Because at least one year has passed since the last citation was cancelled by Chief Parker there can be no prosecution for any violation of Tenn. Code Ann. § 55-10-204.

A violation of Tenn. Code Ann. § 55-10-204 typically results in a violation of Tenn. Code Ann. § 39-16-402. Williams v. City of Burns, 465 S.W.3d 96, 106 (Tenn. 2015). A conviction under Tenn. Code Ann. § 39-14-502 is a Class E felony and results in removal from office or other municipal position. The modification of a single citation/report, when done with the intent to benefit a relative/friend/curry favor, can violate Tenn. Code Ann. § 39-16-402. State v. Brewer, 945 S.W.2d 803, 807 (Tenn. Crim. App. 1997).

The only evidence that is not hearsay within hearsay (a statement repeated by a person, who heard the statement from a second person, who heard the statement from a first person) is Chief Parker's statement that he cancelled the traffic citation to avoid animosity within the Town after the contentious recent charter change and election and to benefit the police department and

Town generally, not himself, and not specifically Commissioner Garramone. Because there is no direct evidence of an intent to benefit himself or curry favor, there is no violation of the official misconduct statute.

Based on the above, and with the exception of Chief Parker's violation of Tenn. Code Ann. § 55-10-204, there are no violations of Tenn. Code Ann. § 55-10-204 or Tenn. Code Ann. § 39-16-402.

B) Tenn. Code Ann. § 8-47-101, Ouster

Tenn. Code Ann. § 8-47-101 provides that every person holding government office, who shall knowingly or willfully commit misconduct in office, who shall knowingly refrain from performing a duty required by the official's office under the laws of the state, or be in a public place in a state of intoxication by strong drink voluntarily taken, shall forfeit such office. Per Tenn. Code Ann. § 8-47-103, it is the duty of any attorney general, county attorney, and/or city attorney to investigate an alleged charge that an official is guilty of any of the acts set forth in Tenn. Code Ann. § 8-47-103. The ouster statute is remedial, meaning it requires a violation of another statute prior to proceeding with ouster. State v. Ward, 163 Tenn. 265, 43 S.W.2d 217, 219 (1931). A public official acting in good faith, who through ignorance violates some statute, is not subject to ouster.

Chief Parker voided at least one traffic citation in violation of state law; however, nothing suggests that Chief Parker knowingly violated any law. Chief Parker believed he had discretion to void a citation prior to the citation being filed with a court having jurisdiction over the conduct in question.

Regarding Commissioner Garramone, an ouster action is only appropriate where there is clear and convincing evidence of official dereliction, and, as noted above, a violation of a separate statute or common law. State ex rel. Thompson v. Walker, 845 S.W.2d 752, 759 (Tenn. Ct. App. 1992).

For Commissioner Garramone to be deemed in a public place in a state of intoxication, there would need to be a violation of either Tenn. Code Ann. § 55-10-401 (driving under the influence) or Tenn. Code Ann. § 39-17-310 (public intoxication.)

There is no clear and convincing proof of driving under the influence. Commissioner Garramone states she was not driving on October 17th, 2020 and will provide the identities of other passengers in the vehicle who can confirm this. Officer Greg Moore initially believed Commissioner Garramone exited the passenger side of the vehicle that night. No one saw Commissioner Garramone drive off in the vehicle. Commissioner Garramone admits she exited the rear door on the driver's side of the vehicle. Officer Upchurch and video of the incident confirm Commissioner Garramone exited on the driver's side of the vehicle. While Officer Upchurch states he saw one other person leave the passenger side of the vehicle, it was dark (as noted by the officers who arrived on the scene) and nothing indicates he continued watching the vehicle after Commissioner Garramone exited.

Further, there is no clear and convincing evidence of public intoxication in violation of Tenn. Code Ann. § 39-17-310. To commit an offense under the statute the offender must act in a way such that: a) the offender may be endangered; b) other persons or property may be endangered; or c) the offender unreasonably annoys other persons in the vicinity. Nothing in the video indicates the officers were unreasonably annoyed by Commissioner Garramone's presence, for example neither officer requested that Commissioner Garramone leave the scene.

Based on the above, there is no violation of Tenn. Code Ann. § 8-47-101.

C) Town of Nolensville Ethics Policy

The Town of Nolensville Ethics Policy includes the following:

§ 4-506: An official or employee may not receive, directly or indirectly, any money, gift, gratuity, or other consideration from anyone other than the Town that might reasonably be interpreted as an attempt to influence his or her action in executing municipal business.

§ 4-509: An official or employee may not use or attempt to use his/her position to secure any privilege or exemption for himself or others that is not authorized by the charter, general law, or ordinance or municipal policy.

§ 4-511(3) The interpretation that a reasonable person would apply shall be used in interpreting and enforcing this code of ethics.

§ 4-512 An official who violates the Ethics Policy such individual is subject to punishment by censure or other penalty provided by applicable law. An employee or appointed official who violates the Ethics Policy is subject to disciplinary action.

Here, regardless of what Commissioner Garramone believed at the time she had a traffic citation nullified, and whether Commissioner Cook-Mucci recalls she received a citation or a warning, the Board of Commissioners may find that either or both violated Town Code § 4-506 and a censure or other discipline is warranted. A reasonable person could believe that both accepted a gratuity/gift when they did not have to pay their traffic citations. While Commissioner Cook-Mucci does not recall whether the citation was a citation or a warning (nor does she recall having a conversation with Chief Parker regarding a citation being changed to a warning), the video, statements of others, and a copy of the citation indicate it was a citation, and the ethics policy speaks to the "receipt" of a benefit, not whether any person understood they were receiving a benefit. Further, while Commissioner Garramone ultimately came back and paid her ticket, she did initially accept the gift for a period of time.

Thus, while there is no evidence that Commissioner Garramone and/or Commissioner Cook-Mucci believed that any nullification of a citation was a gift that Chief Parker granted in order to influence their actions as commissioners, a reasonable person could view the receipt and the rescinding of tickets as such. For example, Officer Hayslett commented that he was told by Rob Hayes that Chief Parker rescinded tickets for commissioners because commissioners oversee the police department's budget. Officer Hayslett, when asked, did not state he believed

Officer Hayes was exaggerating. And again, Officer Hayes has no recollection of this statement, and Chief Parker commented that he rescinded Commissioner Garramone's ticket because it was in the best interest of the police department and Town.²

As to Chief Parker, the pertinent sections of the Ethics Policy require an intent to act in a way that secures a privilege or exemption to himself or others that is not otherwise authorized by law. As referenced above, in nullifying the ticket of Commissioner Garramone, Chief Parker stated that he rescinded the ticket because he felt it was in the best interest of the Town and police department. Because voiding the citations was illegal under state law, this can be viewed as an attempt to secure a privilege not otherwise authorized by law in favor of the police department, in violation of the Ethics Policy, § 4-509.

Further, Officer Hayslett's recent meeting with Chief Parker does not violate the Ethics Policy. Nothing repeated by Officer Hayslett indicates an intent by Chief Parker to secure a privilege or exemption to himself or the police department, as set forth in § 4-509. The statement "be careful what you say on video" may mean a number of things, and there's no clear evidence of any intent that Officer Hayslett make or refrain from making any specific statements.

Thus, Commissioner Cook-Mucci and Commissioner Garramone, to the extent a reasonable person can find that they received a nullification of their traffic citations, and that a reasonable person could perceive the nullification as an attempt to influence their action as commissioners (ie to favor the police department in decision making, such as budgets) violated § 4-506. The punishment, at most, is a censure by the Board of Commissioners, as there are no grounds to believe these acts constitute grave misconduct showing unfitness for public duty, as required under Town Charter § 6-20-220 for removal from office.

Therefore, based on the discussion above, Chief Parker violated the Town Ethics Policy in nullifying the citation but not in speaking with Officer Hayslett, and Commissioner Cook-Mucci and Commissioner Garramone have violated the Ethics Policy (presuming the Board believes both received a benefit and that a reasonable person could view the nullification of their traffic citations as an attempt to view the police department favorably when making official decisions), with any punishment to be determined by the Board.

D) Tenn. Code Ann. § 6-54-401 and Tenn. Code Ann. § 6-21-103

Tenn. Code Ann. §§ 6-54-401 and 6-21-103 generally require municipal officials to uphold and enforce city laws and enforcement of laws against intoxication. As noted above, despite believing Commissioner Garramone to be intoxicated, neither Officer Moore nor Officer Upchurch took any action to investigate. As noted above, there is not sufficient evidence to find

² As previously noted, neither Commissioner Cook-Mucci nor Chief Parker recall a discussion that a citation issued to Commissioner Cook-Mucci was going to be changed to a warning, and Commissioner Cook-Mucci cannot recall whether she was issued a citation or a warning. Video of the June 2, 2020 traffic stop indicates that a citation was issued, and such citation did not include the word "WARNING" at the top and bottom when given to Commissioner Cook-Mucci. The Town's copy of the citation includes the word "WARNING" at the top and bottom.

Commissioner Garramone was driving while intoxicated, or otherwise committed the offense of being drunk in public, so these statutes were not violated. Regardless, such statutes do not impose a mandatory duty to investigate every suspected crime. Ezell v. Cockrell, 902 S.W.2d 394, 403 (Tenn. 1995).