

INVESTIGATION OF MAYOR RICE

On March 22, 2004, I received a letter from North Canton Law Director Paul Pusateri, in which he requested that I investigate allegations made by former City Councilmember Chuck Osborne and current City Councilmember Marsha Kielsing, against North Canton Mayor Tom Rice. Along with his letter, Pusateri included several documents for my review.¹ Pusateri requested that I determine if there is merit to Osborne's allegations, and, if so, whether that conduct violates Ohio criminal law or the North Canton City Charter. Kielsing presented her own allegations.

A. BACKGROUND

In addition to reviewing the information provided to me as described below, I have conducted independent interviews of approximately 25 witnesses. I have interviewed the following individuals, either in person or by telephone.

- 1) Chuck Osborne; Ex-City Councilmember;
- 2) David Held, Prior City Administrator;
- 3) Kimberly George, Administrative Assistant to the Mayor;
- 4) Linda Teis, Administrative Assistant to the Mayor;
- 5) Judy Juenemann, City Engineer;
- 6) Jim Benekos, Engineer's Office;
- 7) Police Chief Grimes;
- 8) Chief Bacon of the Fire and EMS;
- 9) Nick Navarro, Resident;
- 10) Marsha Kiesling, City Councilmember;
- 11) Doug Foltz, City Councilmember;
- 12) Robert Tscholl, Attorney at Law;
- 13) Jack P. DeSario, Attorney at Law;
- 14) Gary Johnson, Attorney at Law;
- 15) Victor Berardi, North Canton resident;
- 16) Brian Hill, North Canton City employee;
- 17) John Hockensmith, North Canton City employee;
- 18) Richard Steinhebel, North Canton City employee;
- 19) Joe Olesky, North Canton City employee;

¹These documents include: a copy of my previous investigation of Mayor Rice; Mayor Rice's Ohio Campaign Finance Report; a letter from Attorney Lee Plakas to City Council President Jon Snyder, with attachments; a letter dated August 12, 2003, from Paul M. Nick, Chief Investigator for the Ohio Ethics Committee and a letter dated February 22, 2004, from Osborne to Snyder, along with attachments.

- 20) Mary Raymond, North Canton City employee;
- 21) Bill McKinney, North Canton City employee;
- 22) Mike Hickey, North Canton City employee;
- 23) Bernie Clements, North Canton resident and business owner;
- 24) David Lindower, City Councilmember and
- 25) Jon Snyder, City Councilmember.

Finally, I met with Mayor Tom Rice and his attorney Lee Plakas, on April 20, 2004. I also met with Rice's attorney Lee Plakas and Christopher Huryn on May 3, 2004.

B. TOPICS OF INVESTIGATION

The topics of the investigation are outlined in a letter dated March 22, 2004, by Councilmember Marsha Kiesling and letter dated March 29, 2004, by Chuck Osborne. In order to present a thorough and objective evaluation, I will address every allegation submitted.

1. The Mayor used the City complaint log for sign locations.

There is no direct evidence that Mayor Rice used the complaint log in the Mayor's Office as a source to obtain sign locations. I conclude there is no criminal conduct or any violation of the North Canton Charter.

2. The Mayor used City offices to sell fundraiser tickets on City time.

Both administrative assistants in the Mayor's Office, Linda Ties and Judy Juenemann, have indicated that they voluntarily attended a campaign meeting with Rice at Don Pablo's Restaurant. They both independently state that Rice advised all members of the group, as well as members of the staff at work, that no one is to engage in any political activities while on duty at the City of North Canton. Juenemann does acknowledge that at times she would go to the Mayor's place of business, Dopco to solicit North Canton residents for sign locations and assist in other campaign activities.

Mike Hickey, an employee, states he purchased a ticket from Ms. Juenemann in the parking lot of the Mayor's office after work. Mr. Hickey also indicated he sold tickets to employees prior to work hours. However, Mary Raymond and Bill McKinney of the Recreational/Rentals Department state that they were solicited by Hickey during working hours. They found this improper and annoying. However, there is no evidence that Hickey's actions were at Rice's directions.

I conclude there is no criminal conduct or any violation of the North Canton City Charter. It should be noted that the total amount of employee's contribution to Rice's campaign is \$550.00 as listed in the Financial Disclosure Report Rice filed with the Board of Elections. These contributions, in large part, were in amounts of \$25.00 or \$50.00.

3. Mayor's Administrative Assistant, Kimberly George, improperly demanded City employees purchase tickets for the fundraiser.

There were allegations presented that the Mayor's Administrative Assistant, Kimberly George, demanded certain City employees purchase fundraiser tickets on City time. Employees mentioned as solicited were Chief Grimes, of the Police Department, Chief Bacon, of the Fire & EMS Department and Jim Benekos, City Engineer.

Both Police Chief Grimes and Chief Bacon denied being solicited by Kimberly George to purchase any fundraiser tickets. Both individuals admitted that they got along with Rice. Both stated if they attended the fundraiser, it would have been on their own initiative. Benekos admitted he purchased tickets through the Mayor's Office since he got along with Rice and he has worked in political offices for over 20 years. Benekos simply felt the purchase of the tickets was expected. Furthermore, Benekos states that he went to dinner weekly with Rice and Held to discuss City business.

I conclude there is no criminal conduct or any violation of the North Canton City Charter.

4. The Mayor's office improperly solicited a sign location from Nick Navarra and the Mayor's Office.

It is alleged that someone in the Mayor's Office placed a call regarding a sign location at the residence of Nick Navarra, 214 James Street, S.W. It is further claimed that Navarra contacted David Held and was concerned that the call was made from City Hall.

Navarra acknowledged a call from a Mayor's representative requesting a sign location. Navarra cannot recall that it specifically came from the Mayor's Office. Navarra did advise Held if these calls were from the Mayor's Office it would be improper and should be stopped. Judy Juenemann admits that she made the call, but from Mayor Rice's business, Dopco, during the evening hours.

I conclude there is no criminal conduct or any violation of the North Canton City Charter.

C. CONFLICT OF INTEREST

While the conduct described herein falls short of meeting the necessary elements and state of mind to support a criminal charge, the Mayor's actions (or inaction) on several occasions, present disturbing instances involving his use of position and possible conflicts of interest.

POSSIBLE CONFLICT OF INTEREST NO. 1
RELATIONSHIP OF MAYOR WITH ATTORNEY JACK DESARIO AND
LAW FIRM OF JOHNSON & ANGELO

Mayor Rice and City Administrator David Held were re-evaluating their decision to hire legal counsel for labor negotiations. In the past, North Canton had hired Attorney Robert Tscholl of Canton, Ohio to provide legal services in the area of labor negotiations and employee relations. For the time period of July 11, 2000 to December 4, 2000, Tscholl was paid \$14,375.00. These services were billed at a rate of \$125.00 per hour.

Tscholl no longer wanted to negotiate the contracts. This required the City of North Canton to examine other alternatives. On February 21, 2003, Gary C. Johnson, a partner of Johnson & Angelo forwarded a proposal to David J. Held, Director of Administration. (See Exhibit 1) In that agreement, Johnson proposed that the "costs for evaluating labor agreements as \$1,000.00 per contract. ...". However, Johnson indicated that the total cost would probably be less than \$7,000.00. Finally, Johnson stated:

"I would propose a range between \$5,000.00 and \$7,000.00, depending upon the similarities of the various agreements."

On February 24, 2003, David J. Held submitted a letter to then Law Director Roy Batistta and attached the quote from Johnson for a review and assessment. He also attached background information from the firm of Johnson & Angelo for his review. On March 5, 2003, Held forwarded to Johnson seven collective bargaining agreements for the City of North Canton. (See Exhibit 2) The assessment was requested and Held reminded Johnson that the cost of the work was to be between \$5,000.00 and \$7,000.00. On March 5, 2003, a purchase order for the first \$6,000.00 retainer was paid by the City of North Canton to Johnson & Angelo. Held points out that all agreements with Johnson were with the knowledge and approval of Rice.

On May 27, 2003, Rice privately entered into a contract with D & R Consulting and Jack DeSario, for consulting services in his re-election campaign. (See Exhibit 3) A review of the web site Johnson & Angelo "www.lawyers.com/johnson&angelo" lists Jack DeSario as one of the attorneys for the firm.² (See Exhibits 4 and 5) Rice paid D & R Consulting \$1,000.00 on May 27, 2003. (See Exhibit 6) He paid additional funds on August 25, 2003, in the amount of \$750.00 and on November 26, 2003, \$750.00. (See Exhibit 7)

From reviewing the minutes of the special Board of Control and the minutes of City Council meetings, I have determined at no time does Rice advise Council of his relationship

²In fairness to Rice, there are also several web sites of Johnson & Angelo where DeSario is not listed as a member of the firm.

between his political consultant DeSario, D & R Consulting and the law firm of Johnson & Angelo of Cleveland, Ohio.

The contract for public legal services was not required by law to be put out for bid by the City of North Canton. Johnson & Angelo were the only individuals to submit proposals regarding legal services. Johnson & Angelo billed an hourly rate between \$150.00 to \$195.00 per hour. Rice did not disclose his personal relationship with the members of the law firm to anyone whom he intended to award the professional services contract.

In the course of the investigation, I contacted Jack DeSario to obtain a true understanding of the relationship between DeSario, Rice and the law firm of Johnson & Angelo. DeSario admits he provided private consultation to Rice for his 2003 campaign. DeSario states he discussed with Rice hiring legal counsel for labor agreements and labor issues for the City of North Canton. DeSario claims that he advised Rice of the law firm Johnson & Angelo's availability.

I then contacted Gary Johnson the senior partner of the law firm of Johnson & Angelo. I inquired as to whether Johnson was aware that DeSario entered into a consulting agreement with Rice during the time period that Rice was hiring his firm for legal services. Attorney Johnson replied that "it did not matter because DeSario was not a member of the firm". I advised Johnson that I had spoken to DeSario one hour earlier and DeSario admitted that he "was a member of the law firm". Johnson advised me that DeSario does some work for him in the summer months and does other consulting work for the firm.³ Johnson advised me "I guess it just depends on what the definition of a member of the firm is."⁴

An hour later I called the law firm of Johnson & Angelo at 216-696-5222 and asked if DeSario was available. A receptionist stated he was not in. I asked whether DeSario was a member of the law firm, and the receptionist stated "Kinda of-I think". She then referred me to DeSario's number at Mount Union College.

In Rice's defense, Rice claims he had no involvement in the selection of Johnson & Angelo. Rice alleges there was a committee including Councilman Snyder and

³A review of the W-2's forms for DeSario display that DeSario received income of \$8,400.00 from the law firm of Johnson & Angelo for 2002 and \$8,400.00 for 2003. (See Exhibit 8 and 9)

⁴On April 5, 2004, I sent a letter to Attorney Gary C. Johnson (See Exhibit 18) requesting copies of (a) all employment agreements between their firm and DeSario (b) all W-2 forms and (c) all proposals, bids and billing statements with North Canton. Mr. Johnson refused to respond. However, in a letter to me dated April 22, 2004, Johnson admits "I will confirm Mr. DeSario works for us on a part-time basis..."

Councilman Lindower who interviewed three different law firms before selecting Johnson & Angelo. Snyder and Lindower deny such a committee existed and that any other firms were seriously considered.

Rice's failure to disclose his private relationship with DeSario and D & R Consulting creates a presumption of favoritism in the City's selection of the law firm of Johnson & Angelo.⁵ This presumption is reinforced by Johnson's donation to the Mayor's campaign of \$200.00 on July 3, 2003. (See Exhibit 10) I have no information that suggests the consideration of any other lawyer or firm for this work. This obviously creates the question of quid pro quo between Rice, D & R Consulting and the law firm, Johnson & Angelo. It is certainly understandable why City Councilmembers would be upset when the examination of the cost of labor negotiations by previous counsel, Attorney Tscholl averaged \$15,000.00 per year when the charges for Johnson & Angelo from July 11, 2003, through January 8, 2004, totaled \$54,448.22. (See Exhibit 11 and 12)

While Rice's actions do not represent criminal conduct they may be a violation of North Canton City Charter 6.01. (See below for text of Charter provision)

POSSIBLE CONFLICT OF INTEREST NO. 2 **MAYOR'S FUNDRAISER ACTIVITIES**

David Held claimed that he was pressured by Rice to sell tickets and at one time was forwarded 50 fundraiser tickets to sell. When Held advised Rice that employees were not interested in buying the tickets, he states that Rice threatened "tell the employees that they work at the pleasure of the Mayor". Rice does not recall such a conversation. After the election, Rice terminated Held. This fact may compromise Held's objectivity. However, Held's allegation was substantiated by City Engineer, Jim Benekos.

This phrase "tell the employees that they work at the pleasure of the Mayor" appears to be a common threat in the Rice Administration. Several Department Heads (who asked not to be named for fear of their job) note that this was raised often by Held and Rice when they provided opposing opinions to Rice's position.

While it is not unheard of for public officials to remind those who benefit from patronage that "job security" may be judged, at least in part, by loyalty and financial support, most do it in a way that does not conjure an image of a bully making thinly-veiled threats through intermediaries.

However, given the realities of politics, to characterize Rice's conduct as "criminal" might cast too wide a net over the type of common practices, some subtle, some not, occurring every day at every level.

⁵Held states that Rice reviewed the Johnson & Angelo Law Firm brochure and pointed out that DeSario was listed as a partner.

While Rice's actions do not represent criminal conduct, they may be in violation of North Canton City Charter 6.01

POSSIBLE CONFLICT OF INTEREST NO. 3 **HEISER PROPERTY**

Richard Heiser owned a large parcel of property adjacent to Rice's neighborhood. Heiser wanted to develop this parcel and lease it to an auto dealership. Eight (8) of the twenty three (23) acres would be deeded to the City for land designated as a City park. The portion that abuts Rice's property was designed as part of the park.

On May 29, 2002, Tom and Jennifer Rice had their attorney send a letter to Heiser. The letter requested a Quit Claim Deed for part of the Heiser's land that abuts Rice's backyard. (See Exhibit 15) The letter states that since Tom and Jennifer Rice had been homeowners for 21-years they owned Heiser's property by way of adverse possession.

Heiser's attorney responded that the Rices had not and they could not meet the Ohio requirements for adverse possession. Heiser did not agree to meet the demand of the Rices. Heiser offered to grant a revocable license to the Rices for the use of the land for the same purpose as in the past. (See Exhibit 16)

On July 15, 2002, the Rices attorney sent another letter to Heiser indicating that the Rices rejected the offer and that they were beginning to work on an adverse possession complaint. The letter also stated Heiser should be aware the land in question was to be donated to the City and would be of no value to the City. (See Exhibit 17) Rice claims that these letters were sent out by his wife without permission.⁶ According to Heiser, a portion of the buffer tract adjacent to Rice could only benefit Rice. City Engineer, Jim Benekos, claims that this additional parcel of land would increase Rice's property value by \$20,000 to \$30,000. The approximate square footage of Rice's property is close to 14,000 square feet. The approximate square footage of the land that Rice attempted to claim by adverse possession was approximately 4,300 square feet.

However, a neutral private appraiser hired as part of the investigation finds the value of the land at approximately \$1,500.00. The parcel is in a flood zone and the parcel of land would be land locked. This parcel has very limited useage because of flooding from a nearby creek.

Rice had a conflict of interest when as Mayor of North Canton he was demanding a parcel that was designated as part of a park for the citizens of North Canton and

⁶There is no record Rice subsequently provided any type of written notification to Council or Heiser that these two letters were sent at the insistence of his wife without his knowledge or consent.

threatened litigation as an alternative. When the public becomes aware of public officials' actions which appear self-serving, the public loses confidence in government.

Previously, I suggested a better alternative would have been for Rice to forward a request to Council to purchase the property as a private citizen. The property could have been appraised and a fair value determined. Rice's interest would have been publically disclosed and Council would be the ultimate authority to approve such a transaction at arm's length.

Mayor Rice's conduct, while acting with conflicting motives, does not meet the prerequisite of Ohio Revised Code Sections 102.03(d) or 102.03(e). Rice's conduct demonstrates a conflict of interest, but it does not rise to the level of criminal conduct under Ohio Revised Code Section 102.03(d) or 102.03(e). Ohio Revised Code Section 102.03(d) and (e) state in pertinent part:

- “(d) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.
- (e) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.”

Initially, Rice's actions appear to be motivated by the desire to protect the interests of the property owners near the Heiser property. It is logical that neighboring property owners would look to Rice more than other City officials, because he stood to be adversely affected in the same way.

The point at which Rice could obtain for himself a parcel of land, the nature of his involvement changed. It could no longer clearly be seen if Rice's actions were for the sole benefit of his constituents or whether the opportunity for personal gain guided his conduct. As the Mayor and long time public official, Rice should have recognized this conflict. Viewing these events in the perspective in which they occurred, it would be too great a leap to determine that Rice's sole motive during an extended period on a controversial and complicated matter was driven by the “knowing” state of mind required for criminal conduct.

POSSIBLE CONFLICT OF INTEREST NO. 4
MAYOR'S INVOLVEMENT IN POLITICAL ACTION COMMITTEE

In 2003, North Canton City Council adopted legislation to purchase Arrowhead Country Club. The public purpose apparently was the desire to preserve the 105 acres of prime undeveloped real estate.

It is also apparent that there was a group led by Osborne who opposed the preservation effort in favor of development of the property. These opponents organized an effort to subject the legislation to a referendum. ("Referendum Petition Against the Arrowhead Preservation Purchase Legislation")

In response to the referendum effort, Mayor Rice led a group to discourage citizens from signing the referendum petition. In furtherance of this effort, Rice initiated a "Political Action Committee" ("PAC"). Rice, however, did not act directly in the activities of the PAC, but through the assistance of Victor Berardi. Berardi claims to have been acting as "nothing more than a concerned citizen", but did admit that he was encouraged by Rice and also received monetary assistance from Rice and those who held key positions in the Mayor's Office. Berardi stated he picked up checks and cash from Rice at Rice's office in City Hall.

From reviewing the donors of the Ohio Campaign Finance Report, it is obvious that this was sponsored by Rice. (See Exhibit 13) The Committee raised \$1,300.00. A good portion of it can be attributed to Rice or Rice's Office. For example, the following individuals listed donations:

- (a) Tom Rice, Mayor, \$100.00
- (b) Timothy Held, Business Manager, \$100.00
- (c) Timothy Morrow, campaign member of the Mayor, \$100.00

It is obvious that the Mayor's Office was involved in the creation of the Committee and its plan. The most incriminating evidence is the attached e-mails which were received by Victor Berardi dated April 30, 2003, at 11:08 a.m., 11:33 a.m. and 12:42 p.m. Here, Kimberly George, the Mayor's Administrative Assistant encourages the preparation of the flyer but also gives directions of items to mention on the flyer including an endorsement by *The Canton Repository*. (See Exhibit 14)

There is certainly nothing inherently questionable about involvement in an issue of public concern, but the evidence suggests that Rice and his staff and their activities used the resources of the Office to further their cause.

Rice in this instance is using his public position to recruit a political action committee and encouraging City employees to donate funds which represent his interest.

D. COUNCIL'S ROLE IN DETERMINING A CONFLICT OF INTEREST

The City of North Canton, through its Charter, has developed its own mechanism to determine whether Rice's actions are a conflict of interest under City Charter Section 6.01 titled Conflict of Interest. The four possible conflicts of interest which I have outlined, may be considered under Section 6.01 of the Charter. It states in pertinent part:

"no elected ... official ... shall have any financial interest, direct or indirect, in any contract or proceeding to which the municipality is a party, or any expenditure of money by the municipality other than the fixed compensation and traveling or some other expense incidental to the authorized furtherance of the interest of the municipality".

Under Section 6.01 of the Charter, the first inquiry is whether Rice's actions were a willful violation of this Section. Secondly, Section 6.01 instructs Council to determine whether the willful violation constitutes malfeasance in office.⁷

Section 5.06 explains Council's ability to order removal from office. Under 5.06 it notes that the office of an elected officer in the municipality could be declared vacant by a resolution of Council upon determination that the elected officer:

"(5) is guilty of **gross** misconduct, **gross** neglect of duty, misfeasance, malfeasance, or nonfeasance in office."

Under Section 5.06 City Council would be the sole judge of the elected official's conduct. A decision of Council to remove an elected officer shall be made only upon the concurrence of five (5) or more members of Council after public hearing upon the charge or charges brought, and, provided further, that the accused elected official shall have been notified in writing of the charge or charges against the elected official at least fifteen (15) days in advance of such public hearing; and, provided further, that the accused elected official's counsel shall have been given an opportunity to be heard, present evidence, and examine witnesses appearing in support of such charge or charges. The decision of Council after compliance with this section shall be final.

It is readily apparent from even a cursory reading of these Charter provisions that they closely parallel the process of impeachment and/or censure. Before embarking on such a course of action, Council must consider the full consequences, not only in terms of

⁷Further, it is important to consider that Rice's actions may render any contracts with the law firm Johnson & Angelo as voidable if it is determined that the alleged conflict of interest incurred with the knowledge, express or implied of the person or corporation contracting with the municipality.

the time and resources taken from other beneficial public endeavors, but also in the public opinion of how and where time and money is spent.

In addition, Council must consider its own share of responsibility regarding the selection of the law firm of Johnson & Angelo. While Rice's relationships have been questioned, a review of Council meetings and minutes demonstrate no objections or requests for further information regarding its selection of the law firm. Especially when the Johnson & Angelo firm proposed a much higher hourly rate than previous counsel.

Those who will not learn from the lessons of history are destined to repeat failures.

We have seen on the national level that the process to remove a public official is divisive and emotionally charged. It produces nothing positive and should be reserved for only the most compelling instance.

Those in a position of public trust know they must be vigilant not only to act properly, but more importantly to avoid the appearance of impropriety.

Rice's actions demonstrate a failure to comprehend the appearance of impropriety. These incidents outlined, while troubling in many respects, should not override the mandate of the voters who have re-elected Rice into office.

An alternative option that is not outlined in the North Canton City Charter but may be an effective tool, is a public reprimand. Council has the power to pass a resolution reprimanding the Mayor for his intimidating tactics and apparent lack of his ability to separate his public and private interests. This alternative would permit the North Canton voters who elected him to be the ultimate arbitrator of his conduct, good or bad, in next years election.

E. CONCLUSION

In the past fourteen (14) months North Canton City Council has requested three (3) investigations of the Mayor and of a Councilmember. A voluminous interview of witnesses and thorough review and examination of City Charters, Council Minutes, e-mails and letters have demonstrated no criminal activity.

During these investigations City employees of North Canton and residents have expressed a strong desire to see an end to the divisiveness, friction and acrimony that currently exists between the Mayor, certain Councilmembers and a former Councilmember.

The City of North Canton faces serious issues in the future. The same energy channeled in opposition towards one another may be more effective directed towards solutions to jobs, zoning and flooding problems. The City of North Canton needs "problem solvers" not "problem creators".

Respectfully,

Francis G. Forchione
Canton City Prosecutor

FGF/sks
rice.revised