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July 15, 2019

VIA U.S. MAIL AND EMAIL

Susan Herdina
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Dear Ms. Herdina,

Please accept this initial legal evaluation of the findings of Internal Auditor Robert Majernik's audit ("Audit"), which Charleston City Council ordered on the Office of Mayor John Tecklenburg (the "Mayor"). This evaluation is based on the facts that have been presented to me through my review of Mr. Majernik's draft audit findings and in related discussions with you, Mr. Majernik, and Chief Financial Officer Amy Wharton. This evaluation is preliminary and subject to change as new facts are presented, particularly so given that the Mayor has not yet seen the draft Audit findings and therefore has not had the opportunity to review or respond to them.

EXECUTIVE SUMMARY

1. Under a "Strong Mayor" form of government, the Mayor enjoys significant autonomy over the day-to-day operations of the City, including spending decisions. Further, as an elected official, the City personnel policies do not appear to be applicable to the Mayor's conduct.

2. I found no self-dealing by the Mayor or any actions or conduct showing the Mayor or Mrs. Tecklenburg have personally financially benefitted from their actions. No action of Mayor Tecklenburg or his family appears to be borne out of desire to use the Office of the Mayor for financial gain, but rather they appear to be motivated by their interest in representing the citizens of the City. While Council raises legitimate concerns about Mrs. Tecklenburg's role as "First Lady," there is no violation of the Ethics Act in her holding herself out in this manner.

3. The powers of the Mayor as to spending are not without limitation. The Mayor is considered to be a trustee or agent with respect to public funds and he must exercise due diligence with respect to these funds. Among other responsibilities, the Mayor is to ensure that the expenditure of funds serves a public purpose, rather than a private one. Several expenditures identified in the Audit do not serve an obvious public purpose, but it is appropriate that the Mayor be provided the opportunity to articulate a public purpose for the expenditures whose purpose has been questioned in the Audit. Further, there currently are no City guidelines which describe

permissible purposes of expenditures to private entities. The City may wish to issue guidelines along these lines.

4. In my view, the largest issue of concern under the Ethics Act is the Mayor's participation in increasing the award grant money from City funds to the Fresh Start Prison Program when his wife served on the Board of Directors. The appropriate action would have been for the Mayor to recuse himself from participating in this decision. Also, I note that where any public official sits on a nonprofit board, he should recuse himself from all matters in which the business in which he is associated has an economic interest (with the possible exceptions of honorary or *ex officio* service).

5. The travel expenses the City paid for Mrs. Tecklenburg also present a potential Ethics Act concern for the Mayor. The unused laptop and the business cards are concerns of a secondary nature. The common theme with all these expenses is that they appear to have been undertaken out of a perceived service to the City.

6. While not minimizing the fact that the Ethics Act may have been violated, if so, I would not view them as major violations, but rather violations of an administrative nature. In evaluating the severity of any potential violation, relevant evaluation factors include what I perceive as a lack of intent on the part of the Mayor, the context through which the actions and decision were made, and the relatively small amount of money involved.

BACKGROUND ON AUDIT

At the Council Meeting on May 14, 2019, Council unanimously (including the Mayor) voted for a complete Audit of the Office of the Mayor. This decision came after several Councilmembers initiated a discussion about certain actions and/or decisions of the Mayor, particularly as it related to spending issues. Council made it clear that the Audit would include the issues discussed by Council at that meeting, but would not be limited in scope.

After my review of the Meeting Minutes, it appears that the key issues of concern were:

(1) City expenditures on an official City of Charleston business card for the Mayor's wife, Sandy Tecklenburg, noting her role as "First Lady." Mrs. Tecklenburg's information was on one side of the card and the Mayor's information on the other. Questions were raised about the propriety of these expenses, given that Mrs. Tecklenburg was not an employee or official of the City.

(2) City expenditures for travel for Mrs. Tecklenburg, when accompanying the Mayor on official business. While the Mayor stated that he always paid for his wife's travel, questions were raised about the City initially charging Mrs. Tecklenburg's travel expenses on the City credit card and later being reimbursed.

(3) Questions about whether Mrs. Tecklenburg was driving Mayor Tecklenburg's City-issued vehicle, and whether she was authorized to do so.

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As shown above, a significant portion of Council's discussion focused on the Mayor's wife, Sandy Tecklenburg, who some members of Council perceived as having an improperly active role in City Government despite not being a public official or employee. Questions were raised about whether the ethics laws may have been violated through any of these actions and/or decisions. In defense at the Council meeting, the Mayor stated that there was nothing improper about these actions because his wife was performing a voluntary service to the City through her active but ceremonial role as "First Lady," and in no way was she acting out of a personal financial interest.

Discussion on Mrs. Tecklenburg's role dovetailed into a broader discussion about the finances in the Mayor's Office and whether the Mayor was abiding by the policies and procedures of the City. A specific issue of concern which arose at the meeting was about pay raises for the Mayor's executive staff. These were perceived to be substantial compared to the increases for other employees within City Government given the City's overall budget constraints. In defense of these pay increases, the Mayor stated that these employees were taking on additional duties and his belief that his staff's individual salaries were less than the ones for comparable positions in the previous administration.

LEGAL ANALYSIS

I. Applicability of City Policies to the Mayor.

A. Personnel Policies.

As noted, several Councilmembers expressed their belief that the Mayor's actions violated the City's personnel policies. My primary focus is whether any actions within the scope of the audit possibly violated any laws, rather than examining violations of City policy. However, in order to meaningfully analyze the propriety of the Mayor's actions, it was necessary to examine the powers granted to him by law. Through this examination, I have concluded that it is unlikely the City's personnel policies are applicable to the Mayor and therefore it is unlikely he violated the policies which apply to employees. This includes the concern raised by some Councilmembers that Mrs. Tecklenburg's use of the City's vehicle violated City policies.

As you are aware, the City has adopted a Mayor-Council (aka "Strong Mayor") form of government, pursuant to the Home Rule Act. S.C. Code Ann § 5-9-30 provides in relevant part:

The mayor shall be the chief administrative officer of the municipality. He shall be responsible to the council for the administration of all city affairs placed in his charge by or under Chapters 1 through 17. He shall have the following powers and duties:

...

(2) to direct and supervise the administration of all departments, offices and agencies of the municipality except as otherwise provided by Chapters 1 through 17.

As shown above, under a "Strong Mayor" form of government, the Mayor enjoys significant autonomy over the day-to-day operations of the City. Accordingly, many of the Mayor's spending decisions which are highlighted in the Audit findings are squarely within his discretion.

Furthermore, in my opinion, any attempt by Council to bind the Mayor to any personnel policy would be an unlawful infringement on his duties under the law. See 62 C.J.S. Municipal Corporations § 568 ("Departmental powers conferred by statute cannot be overridden by local ordinance, taken away or limited by the municipal council or governing body, or overridden by an officer acting beyond his or her authority..."); S.C.A.G. Op, 2012 WL 440544 (Jan. 13, 2012)("Council is not authorized to prescribe duties which relate primarily to the daily functioning and operation of the municipality, i.e., to those activities which are specifically vested in the mayor as its chief administrative officer...or in those employees and officers who are under his supervision and subject to his control.").

Even going beyond these statutory powers, the Mayor, as an elected official, would not appear to be subject to discipline in the same way as public employees. First, elected officials were elected to serve by the voters, so I see no enforcement mechanism whereby any elected official can be terminated for an alleged policy violation. Secondly, the nature of the role of Mayor is simply different than an employee who is expected to be on-the-clock between 9 and 5. Whether he is at the office or anywhere else, a Mayor is always the Mayor and thus always "on-the-clock." Along these lines, in Eargle v. Horry County, 344 S.C. 449 (2001), the South Carolina Supreme Court held that a County Administrator under Section 4-9-30 of the County Home Rule Act lacked the authority to discipline *employees* of elected officials. Among the reasons in support of its decision, the court cited a concern about unwarranted control over officials elected by the people: "If the electorate is dissatisfied with the manner in which the elected [official] operates [his] office, it can express its dissatisfaction at the ballot box." 344 S.C. at 456. I must acknowledge that Section 4-9-30(7) specifically exempts elected officials and their employees from county personnel policies, whereas the municipal code is silent on this issue. Still, it is my view that the concerns cited by the court about interference with an elected official's duties fully apply under the circumstances with the Mayor, and should there be any concerns about how the Mayor is managing his duties as the administrative head of government, they are best expressed by the voters at the ballot box.

B. Discretion regarding expenditures within Mayor's Office Budget.

As noted in the preliminary findings of Mr. Majernik, there are questioned expenditures incurred by the Mayor's Office. One of the specific issues which Councilmembers had questioned was pay raises for the Mayor's executive staff which were perceived to be substantial compared to other employees within City Government. Notwithstanding these concerns, I found nothing to indicate that these actions fall outside the Mayor's legal authority. Further, the Audit findings corroborate the Mayor's assertion that the pay raises resulted from additional duties with respect to two employees and another employee's position was converted from a temporary to a part-time employee. The findings further note that the overall salaries for the Mayor's Office were under budget. Subject to the discussion below in Section I.C., under the Strong Mayor form of government, the Mayor has the latitude to spend funds so long as they are within his budget or

otherwise authorized by Council and properly documented. He has the authority to make purchases, set salaries, and can incur reasonable costs related to entertainment and the arts, among many other matters, in his role as administrative head of the City.

C. The Mayor's Duties Under Common Law and Constitution with Regard to Public Funds.

There are some important limitations¹ on the Mayor's latitude with respect to the expenditures of public funds. The S.C. Supreme Court has recognized that

[t]he obligations of public officers as trustees for the public are established as part of the common law fixed by the habits and customs of the people. Among their obligations as recipients of a public trust are to perform the duties of their office honestly, faithfully and to the best of their ability ... (and) to use reasonable skill and diligence Every public officer is bound to perform the duties of his office honestly, faithfully and to the best of his ability, in such manner as to be above suspicion of irregularities and to act primarily for the benefit of the public.

O'Shields v. Caldwell, 207 S.C. 194, 216, 35 S.E.2d 184 (1945). Like all public officers in charge of the expenditure of public funds, the Mayor is considered to be a trustee or agent with respect to such funds. See 63C Am Jur 2d, Public Funds, section 2. "It is the policy of the law to hold an official custodian of public funds to strict accountability, and he must exercise ordinary diligence to keep informed of the conditions of funds subject to his disposal." 67 C.J.S., Officers, § 211.

Along these lines, it is well-settled that all governmental action must serve a public rather than a private purpose. Elliot v. McNair, 250 S.C. 75, 156 S.E.2d 421(1967). A "public officer has no right to give away public funds," and "...must deliver such funds or property to the public official or function for whom or which they were intended." 67 C.J.S.. Officers, § 211. This principle is rooted in the S.C. Constitution. Article X, section 11.²

There are several Audit findings which question the public purpose of expenditures authorized by the Mayor. Based on my review of these, there are two expenditures which strike me as not having an obvious public purpose: (1) the 90th birthday party for a private citizen; and (2) the advertisement in the *Charleston Chronicle* to celebrate another private citizen's 90th birthday. Other expenditures may raise the same concern. I would note that the Mayor has not yet responded to any issues of concern in this Audit. When he does so, I believe it is appropriate that he have the opportunity to articulate a public purpose for these and other expenditures. I would further note

¹ One such limitation that will be discussed below is the Ethics Act.

² Article X, section 11 provides in part that "[t]he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or other private education institution except [public schools and State- established public institutions of learning]."

that there are no City guidelines which describe permissible purposes of expenditures to private entities. The City may wish to issue some guidelines along these lines.

II. Potential Violations of the Ethics Act.

A. General Overview.

The South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 ("Ethics Act") prescribes the Rules of Conduct which are applicable to all state and local public officials and employees in this state. The State Ethics Commission ("Ethics Commission") is the state agency charged with investigating and adjudicating complaints which allege violations of the Ethics Act. There is an administrative hearing process through which complaints are given an initial evaluation for legal sufficiency, investigated by Ethics Commission staff, then presented to the Commission on whether there is probable cause of an Ethics Act violation.³ If probable cause is found, the matter is scheduled for a hearing, and in many cases the respondent is provided an opportunity to resolve the matter informally by consent. If a violation is found, the respondent can be fined up to \$2,000 per violation, levied an administrative fee for staff costs, and given a public warning or reprimand.

Although most ethics Complaints are handled administratively, in cases where the Ethics Commission believes a criminal violation of the Ethics Act may have occurred, it may send the complaint to the Attorney General's Office for possible criminal prosecution. *Based on my review of the Audit findings, I view any potential violations of the Ethics Act, if there are violations, to be of an administrative nature (not criminal) and not what I would consider to be major administrative violations. While these concerns of potential administrative violations of the Ethics Act may require additional review, I found no self-dealing by the Mayor or Mrs. Tecklenburg in their actions or conduct. It is telling that neither the Mayor nor Mrs. Tecklenburg appear to have any outside business interests.*

Further, there may be reasonable counterarguments that the Ethics Act does not apply to the issues raised in the Audit. The Ethics Act is a statutory scheme that is subject to differing interpretations, and the facts and circumstances of this situation must be carefully evaluated in deciding its proper application or reaching any conclusions. It is within the sole province of the Ethics Commission to make the determination that an ethics violation has occurred, through the proper administrative process under the Ethics Act. This administrative process includes due process rights that are available to every respondent. The Mayor has not had the opportunity to review the Internal Auditor's preliminary report or respond to it, and it is important that the Mayor is able to respond to the Audit findings questioning his actions or decisions.

³ Prior to a decision on probable cause, the existence of a complaint is confidential unless this confidentiality is waived by the respondent. After probable cause, the existence of a complaint becomes a matter of public record.

B. General analysis of Section 8-13-700.

As will be shown below, several of the Audit findings potentially implicate Section 8-13-700, which provides in relevant part:

- (A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use that does not result in additional public expense.
- (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest.⁴

In analyzing any potential violation of Section 8-13-700, the first point of analysis is whether the person whose conduct is at issue is a public official, public member, or public employee. The Mayor is certainly a "public official," but for all pertinent purposes his family members are not. So generally speaking, any action taken by a family member of the Mayor who is not a public official or employee will not be subject to the Ethics Act.

Most importantly for this analysis is the concept of "economic interest." "Economic interest," is defined as "an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of **fifty dollars or more.**"⁵ It should be noted that "economic interest" refers to the interest to the recipient, not necessarily the value of the interest.

Section 8-13-700(A) prohibits a "use of position" to "obtain an economic interest" for a "family member," a "business with which he is associated," or an "individual with whom he is associated." Section 8-13-700(B) prohibits making or participating in making a governmental decision which affect the economic interest of a "family member," a "business with which he is associated," or an "individual with whom he is associated. For purposes of the present analysis, I would note:

⁴ Section 8-13-700(B) also provides a recusal mechanism for where a public official may be "required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated," which includes not participating in the decision in any way and providing a written statement.

⁵ There is a "large class exception" to the definition of "economic interest" in Section 8-13-100(11)(b), which is not pertinent to the Audit Findings.

- The definition of “family member” under Section 8-13-100(15) includes a spouse and a child.
- “Business with which he is associated” is defined as a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.” Section 8-13-100(4). Any organization, including a non-profit organization, on which the Mayor’s wife serves on the board would be a “business with which he is associated” under the Ethics Act.
- Likewise, any public official including the Mayor or Council who serve on the boards of non-profit organizations are required to recuse themselves before deliberating or voting on any matters affecting the economic interests of these corporations. However, if a public official serves on a non-profit board in his official capacity as an honorary or ex officio member, that non-profit is not considered a “business with which he is associated” and recusal may not be required. See Ethics Commission Opinion AO 2002-009 (Jan 16, 2002).
- “Individual with whom he is associated” under Section 8-13-100(21) requires a mutual interest between the public official and individual in a *business*. Close personal friends or political associates are excluded from this definition unless these business connections exist.

Finally, the statute provides a carve out for “incidental use of public materials, personnel, or equipment...that does not result in additional public expense.” The term “incidental” relates to the governmental action and resources expended, not the value of the “economic interest.” According to an interpretation of the Attorney General’s Office, if there is only “incidental” use of public resources and no additional public expense, “the public official is deemed by law not to have ‘used’ the office for his or her economic benefit.” S.C.A.G. Op., 2015 WL 9406833 (Dec. 11, 2015). In Ethics Commission Opinion AO 1992-154 (May 27, 1992), the Commission decided that police officers may utilize uniforms, weapons, and equipment while doing off duty security work under this “incidental” carve out. The Commission made it clear that “no additional public expense” cannot be equated with de minimus public expense. In my view, the carve out only applies to “incidental” use of “public materials, personnel, or equipment,” and that no use of public funds can be considered incidental.

C. Observation: Role of Mrs. Tecklenburg and “Economic Interest.”

In my view, it is appropriate to consider whether an “economic interest” exists given the particular facts and circumstances of Mrs. Tecklenburg’s active, but informal role in City government. Several Councilmembers have expressed concern about this role, and it is not difficult to understand why. It is my understanding that under the prior administration, the Mayor’s wife was not nearly as active in the day-to-day operations of the City as Mrs. Tecklenburg. On her biography on the website for the Charleston Symphony Orchestra League, Mrs. Tecklenburg speaks of “stepping in to pinch-hit for [the Mayor] on days when his schedule is tight” and that she

"responsibly views her position as an opportunity to continue endorsing causes she championed as a private citizen."⁶ While she describes herself as "First Lady of Charleston," and this is certainly true in a ceremonial sense, there is no official position that has been established in City Government for a Mayor's spouse to hold herself out as an official City representative. Mrs. Tecklenburg remained a private citizen after her husband's election to Mayor. She was never elected, appointed, or hired to any position in City Government. While a public official's spouse serving in such an active volunteer role is not unique in our current political times, and Council may view this as inappropriate, problematic, and presenting a legal risk, I would emphasize that nothing in that arrangement violates the Ethics Act unless a profit is derived from these activities.

On this note, neither Mrs. Tecklenburg nor the Mayor appear to have any outside business pursuits or otherwise financially gain from this active spouse arrangement, Mrs. Tecklenburg does not appear to be engaging in official travel to benefit financially off her husband's office, but because she views the travel as part of her role as First Lady. She reportedly actively takes part in the seminars at the U.S. Conference of Mayors, covering sessions for the Mayor while he attends other ones. Like the travel expenditures, business cards and the laptop are used to support Mrs. Tecklenburg's support of her husband and what she perceives as their shared service to the City of Charleston. "Economic interest" is often analyzed through the prism of a "but for" scenario: "But for" her husband's position, would Mrs. Tecklenburg not have to purchase her own travel, laptop, and business cards? "But for" him being Mayor, these costs would not be accrued in the first place.

D. Mrs. Tecklenburg driving the Mayor's car.

Based on present evidence, I do not see any Ethics Act issues with the First Lady driving the Mayor's government vehicle. The Mayor apparently told Mr. Majernik that he could not state with absolute certainty that Mrs. Tecklenburg ever drove the car without the Mayor, and nothing was uncovered in the Audit to definitely corroborate that assertion one way or another. The corroborated evidence in the Audit findings reveals that Mrs. Tecklenburg has driven the Mayor's vehicle with the Mayor as a passenger. Because the Mayor is always acting as Mayor, 24 hours and day and 7 days a week, he always has the right to drive the car so there should be no question about personal versus business use. Further, it is expected there is a public benefit in allowing the Mayor to work, including handling emails and making phone calls while his wife is driving. Under the circumstances, I do not see that Mrs. Tecklenburg received an economic benefit from driving the Mayor. If so, I believe the use of the car was "incidental" and not resulting in additional cost to the City. In fact, this was a substantial cost savings to the City because no employee had to be paid to drive the Mayor from January 2016 to the present.

⁶ See [https://www.charlestoncity.org/first-lady/](#) (last accessed July 15, 2019).

E. City expenditures made for family members accompanying the Mayor on official travel.

It appears that on eight occasions, the City paid for Mrs. Tecklenburg to travel with her husband on official business, and on one occasion it did the same for the Mayor's adult son (John Henry). Some of these expenses were reimbursed immediately, but some took longer than sixty days for reimbursement to be made. In one case, which related to City expenditures made for Mrs. Tecklenburg's travel to Mobile, Alabama to accompany her husband on a trip related to the commissioning of the USS Charleston, the City made the payment on August 19, 2017, and was not fully reimbursed until March 30, 2018, when the City deducted the \$712.36 reimbursement from the Mayor's paycheck. In two additional cases, it does not appear that the City expenses made for Mrs. Tecklenburg were reimbursed until the lack of reimbursement was identified as an issue in the Audit.

Ignoring all other arguments against application of an "economic interest," see Section II, Paragraph C, travel expenses which were reimbursed only through payroll deduction or as a result of the Audit will likely be viewed as constituting an "economic interest" under the Ethics Act. The next question is whether the fact that the expenses reimbursed closer to the time the expenditure was made constitutes an "economic interest" as well. Certainly, the fact that the expenses were almost always reimbursed indicates that the Mayor was aware that these were not appropriate City expenses in the first place. With respect to the unreimbursed expenses, on one hand it can be argued that the City was made whole. However, my belief is that there was an economic value in the Mayor or his family having the City pay for the costs up front, using its travel agency, and in being allowed a non-interest accruing penalty to pay the money back. The question is whether the overall value of this "economic interest" meets the \$50 threshold, and the longer it took for the travel costs to be reimbursed, the more likely the requisite value will be found.

As a possible mitigating factor, I would note that the evidence shows that the first time the City paid for Mrs. Tecklenburg's travel expenses was in December 2015, which was after he was elected but before he assumed the position of Mayor. This was done by an employee of the former administration, which could have led the Mayor to believe that it was an acceptable practice for the City to pay up front a spouse's travel costs. Because Mayor Riley's wife reportedly never or very rarely traveled on official business, it is likely the issue never came up in the previous administration.

F. City expenditures for a laptop computer and V-Card for Mrs. Tecklenburg's use in conducting official City business.

There may be some question as to whether the Mayor specifically took official action in requesting that a laptop be issued. Based on present evidence, the Mayor requested that the IT Department present him options to allow Mrs. Tecklenburg to access his calendar, and the provision of the laptop was one option. It is unclear whether the Mayor acted on that option, but we do know that Mrs. Tecklenburg received the laptop. It is a reasonable assumption that the Mayor was aware of the laptop issuance, so official action of the Mayor is most likely not an issue.

Because it does not appear that the laptop was being used prior to being provided to Mrs. Tecklenburg, there may be an argument that the laptop itself falls under the “incidental” exception, but the V-Card had a \$38 value, so there is some public expense and the exception does not apply.

The more important issue here is the value of the “economic interest” to Mrs. Tecklenburg. According to the Audit findings, she turned the laptop in after approximately a month after she experienced technical difficulties in getting it to work. Because it appears that Mrs. Tecklenburg never actually used the laptop and only kept it for about a month, it is my conclusion that there is no “economic interest” with respect to this laptop.

G. City expenditures for a City of Charleston business card for Mrs. Tecklenburg’s use.

The Audit findings revealed that four boxes of business cards were ordered for Mrs. Tecklenburg’s use, with the Mayor’s name printed on one side and Mrs. Tecklenburg’s on the other. The Mayor has stated that he also used these business cards. The cost of the business cards were approximately \$150 per 500 cards, but the price difference between a one-sided and two-sided card was \$10.47 per box of 500 business cards. If the cards were used exclusively by Mrs. Tecklenburg, it is a reasonable application of the law that the approximate \$600 and not the \$41.88 is the appropriate value for an economic interest valuation. This would be over the \$50 threshold, but it is an open question whether there is any “economic interest” involved due to the possible defense identified in Section II, Paragraph C.

H. Mayor’s official actions related to non-profit organizations associated with Mrs. Tecklenburg.

The Audit findings reflect that Mrs. Tecklenburg served on the Board of Directors of several non-profits in the Charleston area, including Fresh Start. As noted, Mrs. Tecklenburg claimed on a biography that she “responsibly views her position as an opportunity to continue endorsing causes she championed as a private citizen.” The Audit finding that the Mayor took action to increase program money to Fresh Start is problematic. Because Mrs. Tecklenburg serves on the board, Fresh Start is likely considered to be a “business with which [the Mayor] is associated.” This could be viewed either as “use of position” to obtain an “economic interest” or a participation in a governmental decision affecting an “economic interest” under Section 8-13-700(A) or (B). It is important to note that there is no evidence that Mrs. Tecklenburg herself financially benefitted from this decision.

Similarly, the Audit findings assert that the Mayor took official action to increase funding for Charleston Sister Cities International, and that the Mayor was an Honorary Board Member and Mrs. Tecklenburg was on the Advisory Council. Based on present information, this should not raise any Ethics Act concerns. With respect to the Mayor, because this service appears to be in his official capacity as Mayor, Charleston Sister Cities should not be considered a “business which he is associated.” See Ethics Commission Opinion AO 1992-154; Ethics Commission Opinion AO 2018-002 (When a Workers’ Compensation Commissioner serves as a board member or officer

on a non-profit in his official capacity, the non-profit is not a "business with which he is associated" under the Ethics Act). As for Mrs. Tecklenburg, under a plain reading of the definition of "business which he is associated," an Advisory Council member is not a director or officer of a corporation.

Aside from the possible honorary or *ex officio* exceptions, I would note that any public official who serves on the boards of non-profit organizations are required to recuse themselves before deliberating or voting on any matters affecting the economic interests of these corporations.

I. Mayor's participation in procurement award to CitiBot.

While the Audit findings raised a concern about the Mayor's participation in a procurement award to Citibot in which the Mayor's outside advisor Roy Willey participated, there does not appear to be any evidence that the Mayor personally profited from this decision, or that any business connection existed between the Mayor and Citibot or its principals. Without this economic interest, I do not see how the Ethics Act is implicated as far as the Mayor is concerned.

As for Mr. Willey, I would question whether he falls into the definition of "consultant" under the Ethics Act. Section 8-13-100(8) provides:

(8) "Consultant" means a person, other than a public official, public member, or public employee who contracts with the State, county, municipality, or a political subdivision thereof to:

(a) evaluate bids for public contracts, or

(b) award public contracts.

Section 8-13-1150 provides:

A consultant must file a statement for the previous calendar year with the appropriate supervisory office no later than twenty-one days after entering into a contractual relationship with the State or a political subdivision of the State and must file an update within ten days from the date the consultant knows or should have known that new economic interests in an entity have arisen in which the consultant or a member of the consultant's immediate family has economic interests:

(1) where the entity's bid was evaluated by the consultant and who was subsequently awarded the contract by the State, county, municipality, or a political subdivision of any of these entities that contracted with the consultant; or

(2) where the entity was awarded a contract by the consultant.

Mr. Willey was not a public employee or official and the Audit findings reveals he, at minimum, participated in discussions regarding the Citibot contract. The timing and extent of his involvement in bid evaluation is unclear based on present evidence, but if he was involved in "evaluat[ing]

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bids” for this public contract, it may be argued that he was a “consultant” under the definition of that term contained in the Ethics Act. This status would require Mr. Willey to electronically file a Statement of Economic Interests with the Ethics Commission, but it does not appear that one has been filed.

CONCLUSION

Nothing in this letter should be interpreted as concluding that the Ethics Act or any other law has been violated by the Mayor. Only the Ethics Commission or a court has that power. In order to ensure a fair process, the Mayor should have the opportunity to respond to the Audit findings.

Very best regards,

A handwritten signature in black ink, appearing to read "Michael R. Burchstead". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael R. Burchstead