



The City of East Cleveland

BRANDON L. KING, MAYOR



LEGAL OPINION –OHIO ETHICS AND “CONTINUING COURSE OF DEALING” APPLICATION TO A NEWLY ELECTED MAYOR

February 23, 2018

To: East Cleveland Mayor Brandon L. King
From: Willa Hemmons, Law Director
Re: Legal Opinion on Ohio Ethics and “Continuing Course of Dealing” Application to a Newly Elected Mayor

BACKGROUND

Mayor Gary A. Norton, Jr. and City Council President Thomas J. Wheeler were recalled, as certified on Monday, December 19, 2016, by the Cuyahoga Board of Elections. Pursuant to Charter Section 114, due to those election result certifications, then City Council Vice President Brandon L. King was sworn in as Interim Mayor of the City of East Cleveland on December 20, 2016. In the General Election held on November 7, 2017, Brandon L. King was elected to become the City’s Mayor. This Election was challenged by Una Kennon at the Ohio Supreme Court level which dismissed that challenge on December 15, 2017. Brandon L. King was then sworn in as Mayor on January 2, 2018. Since July 1, 2004 Brandon L. King has been the managing partner of KMG which has leased office space to the City of East Cleveland for various City projects and departments located at 13308 Euclid Avenue, East Cleveland, Ohio 44112. The lease to the East Cleveland Domestic Violence Department began in 2004; and, since 2016 has automatically renewed without Brandon L. King’s signature. The lease to the Finance Department for storage is for three years commencing on March 2, 2016 and terminates on February 28, 2019. Neither of these lease contracts has been authorized by Brandon L. King since becoming Mayor. The older brother of Brandon L. King is the president and owner of a family business called American Merchandising Services (AMS). AMS sells industrial chemicals; fuels, oils and lubricants; office supply products, janitorial products, laboratory chemical supplies and other miscellaneous items to the City of East Cleveland. Currently, there is no formal contract between the city and AMS but for the past forty years, beginning with Brandon L. King’s father, the city does make “spot-purchases” from AMS which sells to other cities and agencies as well.

OHIO ETHICS LAW & RELATED STATUTES: ORC CHAPTER 102, SECTIONS 2921.42 AND 2921.43.

The Ohio Ethics Law and related statutes generally prohibit public officials and employees from misusing their official positions for their own personal benefit or the benefit of their family members or business associates. It applies to all people who serve as officials and employees for public agencies in Ohio. “Public agencies” include state departments, boards, and commissions, counties, cities, villages, townships, school districts, public colleges and universities, public libraries, port authorities, and all other public entities. R.C. 2921.42(A)(4) prohibits an official from having an interest in the profits or benefits of a public contract entered into by or for the use of a public agency with which she is connected.

CONTINUING COURSE OF DEALING EXEMPTION, OF R.C. §2921.42(C)(2)

... **R.C. §2921.42(C)(2)** can be established where the contract existed prior to the time when the public official becomes associated with the city is automatically renewed after his/her election or appointment if provision for such automatic renewal is a term of the existing contract and if the contract is renewed without action of any office, department, or agency of the city. If however, the existing contract is renewed by action of the city,

modified, extended or otherwise changed after such election of appointment, he/she cannot meet the "continuing course of dealing" exception of Division (C)(2).

CONCLUSION

As to AMS, the "continuing course of dealing exemption" clearly appears to be applicable as long as Mayor Brandon L. King 1) does not authorize the public contract, 2) has not financial or fiduciary interest in the contract does not sign for the contract; and, does not occupy any position of profit in the prosecution of the contract.

As to KMG, the "automatic renewal" exemption appears to be applicable as long as none of the above restrictions cited with reference to AMS apply. However, because of the obvious interest that is indicated by his role as managing partner, Mayor Brandon L. King must divest himself of such role as well as the receipt of any profit or benefit he has in the City related leases of KMG as soon as practicable in light of his ascension to the four year term of Mayor by virtue of his January 2, 2018 swearing in.