

**BEFORE A SPECIAL COMMISSION OF THE THREE RETIRED JUDGES UNDER
OHIO REVISED CODE 3.16
APPOINTED BY
THE CHIEF JUSTICE OF THE
SUPREME COURT OF OHIO**

In re: A Proceeding Under Ohio Revised
Code Section 3.16 concerning Brandon L.
King, Mayor, City of East Cleveland

**REPORT OF THE FINAL
DETERMINATION OF THE SPECIAL
COMMISSION**

This matter involves a final determination by a Special Commission of three retired judges appointed by the Chief Justice of the Supreme Court of Ohio pursuant to R.C. 3.16, regarding whether a public official, Brandon L. King, shall be suspended from office. By a two to one vote, the Special Commission previously issued a Preliminary Determination suspending Mr. King from the Office of Mayor of the City of East Cleveland, Ohio. Mr. King contested that determination under R.C. 3.16(C)(2), and a meeting of the Special Commission convened on December 10, 2024, to hear Mr. King's objection and position on the matter. At the conclusion of that meeting, the Special Commission by a vote of two to one determined that Mr. King's conduct as covered by the charges, adversely affects the functioning of the office or adversely affects the rights and interests of the public, and as a result, Mr. King should be suspended from office.

A. THE SPECIAL COMMISSION HAS A NARROW AND SPECIFIC CHARGE.

As an initial matter it is important to note that a Special Commission, created pursuant to R.C. 3.16, has a specific and narrow charge. It is not the Special Commission's role to weigh the evidence or determine if the allegations against the public official have merit. Rather, the Special Commission is only to determine whether the public official's administration of, or conduct in the performance of the duties of, the official's office as covered by the charges, adversely affects the

functioning of that office, or adversely affects the rights and interests of the public and, as a result whether the public official should be suspended from office. See R.C. 3.16(C)(2). A Special Commission's decision on this narrow and specific point should not be considered evidence of wrongdoing or considered dispositive of any of the charges brought against the public official.

B. BACKGROUND

Mr. King is the Mayor of the City of East Cleveland. Mr. King was most recently re-elected to that position in 2021. Mr. King also served terms as a city council member. In October 2024, a Cuyahoga County grand jury indicted Mr. King on the following charges: two counts of Theft in Office (R.C. 2921.41(A)(1)), felonies of the fourth degree and two counts of Having an Unlawful Interest in a Public Contract (R.C. 2921.42(A)(1)), felonies of the fourth degree. He was also charged with eight misdemeanors, including: two counts of Having an Unlawful Interest in a Public Contract (R.C. 2921.42(A)(1)), misdemeanors of the first degree; four counts of Representation by Public Official or Employee (R.C. 102.03(D)&(E)), misdemeanors of the first degree; one count of Filing a False Disclosure Statement (R.C. 102.02(D)), a misdemeanor of the first degree; and finally one count of Soliciting Improper Compensation (R.C. 2921.43(A)(1)), a misdemeanor of the first degree.

Based on these charges, Cuyahoga County Prosecutor Michael C. O'Malley, initiated the R.C. 3.16 process by sending a notice to the Chief Justice requesting she form a special commission to determine whether Mr. King should be suspended from public office. Prosecutor O'Malley's request was sent on October 10, 2024, and received On October 16, 2024. On November 4, 2024, the Chief Justice established this Special Commission composed of three retired judges of a court of record: Hon. Judge Lisa L. Sadler, Ret.; Hon Judge William Finnegan,

Ret.; and Hon Judge William Woods, Ret. The Chief Justice provided the Special Commission with all the documents and materials received from the Prosecutor's Office as of that date.

The Special Commission held its initial meeting on November 12, 2024 to review the Request to Commence Suspension Proceedings and the documents and materials provided by the Chief Justice, including the criminal indictment against Mr. King and the response documents Mr. King sent to the prosecutor. By a two to one vote, the Special Commission determined that the conduct underlying the charges as set forth in the indictment adversely affects the functioning of Mr. King's office and the rights and interest of the public. On November 18, 2024, the Special Commission issued a Preliminary Determination suspending Mr. King from public office.

C. FINAL DETERMINATION PROCEEDINGS

Mr. King timely filed a Notice Contesting the Preliminary Determination invoking his right under R.C. 3.16(C)(2) to be heard at a meeting of the Special Commission. Mr. King attended the meeting on December 10, 2024 and stated his position against suspension, contending that he is innocent of the charges. Mr. King contends the charges against him are his political adversaries using the power of the prosecutor's office to accomplish what they have not been able to do through recall elections and other means.

1. The alleged conduct relates to Mr. King's position and is sufficient to justify his suspension.

The question before the Special Commission is whether the public official's administration of, or conduct in the performance of the duties of, the official's office as covered by the charges, adversely affects the functioning of that office, or adversely affects the rights and interests of the public and, as a result whether the public official should be suspended from office. See R.C. 3.16(C)(2). The Special Commission, in a two to one vote, finds in the affirmative on each point.

In coming to its decision, the majority members of the Commission again reviewed the materials submitted to the Chief Justice from the Cuyahoga County Prosecutor, Mr. King's response documents, and finally considered the statements made by Mr. King and the exhibits he provided during the December 10, 2024, meeting before the Commission. The majority finds that the Prosecutor provided sufficient facts to warrant Mr. King be suspended. Specifically, Mr. King's line-item veto of a city council budget ordinance that defunded a lease East Cleveland made with Mr. King's family's business, as alleged in Count Two of the indictment, and which would have restored funding to said family business had the line-item veto not been overridden by the East Cleveland City Council, constituted an act that adversely affected the rights and interests of the public and, as a result, Mr. King should be suspended from office.¹

2. DISSENT BY JUDGE WOODS:

As a member of the Special Commission, I have reviewed all the materials provided to the Commission by the Chief Justice, heard Mr. King's statements, and reviewed the exhibits he provided to the Commission during the December 10, 2024, meeting as required by R.C. 3.16(C). R.C. 3.16(C)(2) mandates that once a special commission is established, the commission "shall review" three items: 1) "the document that charges the public official with the felony;" 2) "all other documents and materials pertaining to the matter that were provided by the chief justice under division (C)(1) of this section;" and 3) "the facts and circumstances related to the offense charged." R.C. 3.16(C)(2) provides that the purpose of the commission's review is to determine "... whether the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of that office or adversely

¹ The Cuyahoga County Prosecutor has charged Mr. King with four felonies. For clarity, the Commission is focusing its analysis on Count two of the indictment for its work. It has no opinion on whether the remaining felonies in the indictment would support Mr. King being suspended from his public office.

affects the rights and interest of the public and, as a result, whether the public official should be suspended from office.” In other words, the “specific and narrow purpose” of the commission is to determine “whether the public official should be suspended from office” while criminal felony charges related to the public official’s performance of official duties are pending.

The indictment charges Mr. King with four felonies (Counts 1, 2, 3 & 11) and eight misdemeanors (Counts 4, 5, 6, 7, 8, 9, 10 & 12). The majority of the Commission has determined that “. . . Mr. King’s line-item veto of a city council budget ordinance that defunded a lease East Cleveland made with Mr. King’s family’s business, as alleged in Count Two of the indictment . . . constituted an act that adversely affected the rights and interests of the public and, as a result, Mr. King should be suspended from office” as provided by R.C. 3.16(C)(3)(b) and R.C. 3.16(C)(4). At the outset, it is important to note that none of the four felony offenses charged by the grand jury, including Count Two, relate to Mr. King’s line-item veto of a budget resolution.

For the reasons stated below, I respectfully dissent from the Commission’s decision to temporarily suspend Mr. King from office based upon the information available to the Commission.

a. Based upon “Mr. King’s line-item veto of a city council budget ordinance that defunded a lease East Cleveland made with Mr. King’s family’s business,” Count Six of the Indictment specifically charges Mr. King with a misdemeanor, not a felony offense, as required by the plain text of R.C. 3.16.

The grand jury expressly found that “. . . Mr. King’s line-item veto of a city council budget ordinance that defunded a lease East Cleveland made with Mr. King’s family’s business” was a misdemeanor, not a felony, as required by R.C. 3.16. The suspension of an “elected local official” as provided by R.C. 3.16 must be based upon a felony charge. R.C. 3.16(B)(1) states that “[i]f a public official is charged with a felony,” the prosecuting attorney “shall transmit a copy of the

charging document to the chief justice of the supreme court with a request that the chief justice proceed as provided in division (C) of this section.”

Count Six of the Indictment states the only charge relating to “Mr. King’s line-item veto of a city council budget ordinance.” Count Six alleges a violation of R.C. 102.03(D), a misdemeanor of the first degree, that occurred “on or about April 1, 2024.” Count Six of the Indictment states:

The grand jurors, on their oaths, further find that the Defendant(s) unlawfully

Did, as a public official or employee, use or authorize the use of the authority or influence of office or employment to secure a thing of value or a promise or offer a thing of value that was of such a character as to manifest a substantial and improper influence upon the Defendant with respect to the Defendant’s duties, to wit: Vetoed the intentionally unfunded “rent” line item passed by East Cleveland City Council for the Domestic Violence Fund of the 2024 Appropriations and added the amount of the rental payment the city pays to KMG.

(Veto-KMG)

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

However, without any explanation, the majority determines that “. . . Mr. King’s line-item veto of a city council budget ordinance that defunded a lease East Cleveland made with Mr. King’s family’s business, **as alleged in Count Two of the indictment,**” justifies his suspension from office (Emphasis added). Yet, Count Two of the Indictment makes no mention of a line-item veto. Further, in my opinion, nothing in R.C. 3.16 authorizes the commission to alter or add to the grand jury’s indictment. It was the exclusive province of the grand jury to hear the evidence presented by the prosecuting attorney and determine the appropriate charges, if any.

Count Two, “Having an Unlawful Interest in a Public Contract” in violation of R.C. 2921.42(A)(1), which is the sole basis for the Commission’s suspension of Mr. King from office,

makes no mention of any line-item veto or any other specific acts or omissions committed by Mr. King. Count Two of the Indictment states:

The grand jurors, on their oaths, further find that [Brandon King], [On or about April 1, 2024 through July 30, 2024], unlawfully:

Did while being a public official knowingly authorize or employ the authority or influence of his office to secure authorization of any public contract in which he, a member of his family, or any of his business associates had an interest.

The offense is contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

b. R.C. 2921.42(A)(1) does not apply to a public official's conduct in the funding or defunding of a previously authorized public contract.

R.C. 2921.42(A)(1) does not appear to have any application to the line-item veto of a “budget ordinance that defunded a lease East Cleveland made with Mr. King’s family’s business.” R.C. 2921.42(A)(1) applies to the initial “authorization of any public contract,” such as a lease or renewal of a lease. Nothing in the text of R.C. 2921.42(A)(1) establishes that it applies to a budget resolution funding or defunding a previously authorized public contract or lease. R.C. 2921.42(A)(1) states:

(A) No public official shall knowingly do any of the following:

(1) Authorize, or employ the authority or influence of the public official’s office to secure authorization of any public contract in which the public official, a member of the public official’s family, or any of the public official’s business associates has an interest;

R.C. 2921.42(A)(1) applies to the initial authorization of a public contract, not to the funding of a previously authorized contract or lease.

c. Based upon R.C. 2921.42(C) and the information available to the Commission, R.C. 2921.42(A)(1) does not appear to apply to the circumstances of this case.

The information available to the Commission, suggests that R.C. 2921.42 does not apply to the City's long-standing lease of office space for the Municipal Court's Domestic/Family Violence Program in an office building located at 13308 Euclid Avenue in East Cleveland. The City began leasing office space in the building owned by members of the King family in 2008 -- sixteen years ago. Brandon King became a member of the City Council in 2014 and Mayor in 2016.

R.C. 2921.42 (C) provides that R.C. 2921.42 does not apply under certain circumstances that appear to be present in this case. R.C. 2921.42 (C) states:

(C) This section does not apply to a public contract in which a public official, member of a public official's family, or one of a public official's business associates has an interest, when all of the following apply:

(1) The subject of the public contract is necessary supplies or services for the political subdivision or governmental agency or instrumentality involved;

(2) The supplies or services are unobtainable elsewhere for the same or lower cost, **or are being furnished to the political subdivision or governmental agency or instrumentality as part of a continuing course of dealing established prior to the public official's becoming associated with the political subdivision or governmental agency or instrumentality involved;**

(3) The treatment accorded the political subdivision or governmental agency or instrumentality is either preferential to or the same as that accorded other customers or clients in similar transactions;

(4) The entire transaction is conducted at arm's length, with full knowledge by the political subdivision or governmental agency or instrumentality involved, of the interest of the public official, member of the public official's family, or business associate, and the public official takes no part in the deliberations or decision of the political subdivision or governmental agency or instrumentality with respect to the public contract. (Emphasis added.)

d. The information available to the Commission does not show that “Mr. King’s line-item veto of a city council budget ordinance that defunded a lease East Cleveland made with Mr. King’s family’s business” adversely affects the functioning of [the mayor’s office] or adversely affects the rights and interest of the public, making the suspension of Mr. King from office during the pendency of criminal charges necessary.

R.C. 3.16 is an extraordinary summary remedy. R.C. 3.16 permits an elected local public official to be suspended from public office by a special ad hoc commission acting as an administrative agency while criminal charges are pending against the official in separate judicial proceedings. Under R.C. 3.16(C)(2), the special commission is not charged with making any inquiry into the merits of the felony charges against the official -- that is left to the courts. But R.C. 3.16(C)(2) does require that the commission determine, without conducting an evidentiary hearing applying the rules of evidence, “. . . whether the public official’s administration of, or conduct in the performance of the duties of the official’s office, as covered by the charges, **adversely affects the functioning of that office or adversely affects the rights and interest of the public** and, as a result, whether the public official should be suspended from office.” (Emphasis added)

Putting aside the potentially broader constitutional issue of whether the suspension of an elected public official from office requires a judicial proceeding, it appears to me that the text of R.C. 3.16 and constitutional due process requires the commission to make findings of facts regarding how Mr. King’s conduct, “as covered by the charges, adversely affects the functioning of that office or adversely affects the rights and interest of the public.” Specifically, the commission’s report should make specific findings regarding the: 1) adverse effects on the functioning of the mayor’s office; or 2) the adverse effects on the rights or interest of the public that are likely to occur if Mr. King is not suspended from office while the criminal charges are pending.

The specific misconduct found by the Commission in this case is that “Mr. King’s line-item veto of a city council budget ordinance that defunded a lease East Cleveland made with Mr. King’s family’s business” justifies his suspension from office. The line-item veto of the budget ordinance that defunded a lease with Mr. King’s family business was one of over one hundred line-item vetoes made by Mr. King regarding the city council’s budget ordinance. It was a single act. If this specific veto was a criminal act because of Mr. King’s relationship with KMG, as lessor, then the City will have its remedy in the criminal court. But there is nothing about this particular line-item veto that justifies the removal of Mr. King from office while the criminal case is pending. In fact, it appears unlikely that any issue regarding the Domestic/Family Violence Program lease will be presented to Mr. King before the pending criminal proceedings are concluded. In other words, it does not appear to me any future harm that will come to the functioning of the mayor’s office or will adversely affect “the rights or interest of the public” if Mr. King is not suspended from office while the criminal case is pending. On the contrary, it could be argued that Mr. King’s line-item veto was in the public interest because it avoided the disruption of the important work of the Domestic/Family Violence Program while the Program made an emergency search for new office space to move into.

Further, it is important to note that even if Mr. King is convicted of having an “Unlawful Interest in a Public Contract” in violation of R.C. 2921.42(A)(1) as a felony of the fourth degree, as charged in Count Two of the Indictment, removal from public office is not an authorized sanction. Ohio has two felony criminal statutes that specifically apply to public officials acting in their official capacity, R.C. 2921.41, “Theft in Office,” and R.C. 2921.42, “Unlawful Interest in a Public Contract.” R.C. 2921.41(C), provides that “a public official . . . who pleads guilty to theft in office . . . or a public official . . . against whom a verdict or finding of guilt for committing theft

in office is returned is forever disqualified from holding any public office, employment, or position of trust in this state.” R.C. 2921.42 does not contain a similar provision disqualifying a public official from continuing to hold public office after pleading guilty to or being convicted of having an “Unlawful Interest in a Public Contract.” Therefore, it appears to me that for the Commission to exercise the extraordinary remedy of suspending Mr. King from office based on his indictment for having an “Unlawful Interest in a Public Contract” requires the Commission to specifically articulate the reasons Mr. King’s conduct in vetoing a budget resolution, “as covered by the charges, adversely affects the functioning of that office or adversely affects the rights and interest of the public.”

For the reasons stated above, I dissent from the Commission’s holding that Mr. King should be suspended from office while criminal charges against him are pending.

CONCLUSION

As a result, the Special Commission holds that Brandon L. King be suspended from the office of Mayor of the City of East Cleveland, Ohio, in accordance with R.C. 3.16(C)(3)(b) and R.C. 3.16(C)(4) and the suspension shall commence immediately upon issuance of this report.

Dated: January 28, 2025

/s/Lisa L. Sadler
Hon. Judge Lisa L. Sadler, Ret.

/s/William Woods
Hon. Judge William Woods, Ret.

/s/William Finnegan
Hon. Judge William Finnegan, Ret.

