

INVESTIGATIVE REPORT

I. INTRODUCTION

On May 30, 2017 the undersigned was retained by the City of Stuart to conduct an investigation to determine whether Thomas F. Campenni made comments or engaged in behavior which deviates from the proper role of a City Commissioner.

Further, the undersigned was to determine if Mr. Campenni's actions violated any of the following:

- Age Discrimination in Employment Act of 1967 (ADEA)
- Chapter 760, Florida Statutes, Florida Civil Rights Act (FCRA)
- City Charter, Sec. 2.02 – General Powers of City Commission
- City Charter, Sec. 3.01 – Designation of Charter Officers
- City Charter, Sec. 3.02 – Appointment of Charter Officers
- City Charter, Sec. 3.03 – Charter Officers' Authority
- City Charter, Sec. 3.04 – City Manager

It should be noted that employee Samuel Amerson, Public Works Director, submitted a written complaint against Mr. Campenni alleging, among other things, that Mr. Campenni made inappropriate age-related comments to Mr. Amerson while trying to dissuade him from applying for the position of City Manager. That complaint was investigated by the City. While the investigation concluded that Mr. Campenni did not violate the law, he did step down as Mayor and agreed to completely remove himself from the entire selection process for a new City Manager.

As part of this investigation, on June 13 and 14, 2017, the undersigned interviewed employees of the City and City Commissioners in the presence of Rosamond "Roz" Johnson, Director of Human Resources.

II. INITIAL ALLEGATION

As previously noted, an allegation was made against Mr. Campenni by a City employee and that complaint was investigated, which resulted in an Investigation

Summary Report (attached hereto). Mr. Amerson was again interviewed and reiterated the comments attributed to him in the earlier investigation. Mr. Campenni had similar conversations with four (4) other City employees advising them that he wanted Police Chief David Dyess to be the next City Manager, and strongly discouraged some of them from applying for the City Manager position. In discouraging employees from applying for the City Manager position, Mr. Campenni made comments such as the following:

- "I want someone with new fresh ideas."
- "We need a younger person."
- "We need a younger City Manager, someone on their way up who will build their experience here, not end it."

It is fair to conclude that Mr. Campenni had pre-selected his personal choice for a new City Manager, and that he wanted someone who was a "younger" individual.

III. ADDITIONAL ALLEGATIONS

Most of the employees interviewed relayed a common theme with respect to Mr. Campenni's interactions with them. Nearly all the individuals interviewed characterized Mr. Campenni as being aggressive, strongly opinionated, and very involved in the City's business; regularly visiting employee offices during business hours. In fairness to Mr. Campenni, some interviewees characterized Mr. Campenni as enthusiastic and having his heart in the right place. However, the investigation uncovered serious concerns regarding Mr. Campenni's direct involvement in the work of City employees, including pushing certain projects, giving direct orders to take actions, and otherwise involving himself in the daily activities of City employees.

A. Interfering In The Daily Operations Of The City

Multiple employees stated that Mr. Campenni wanted special attention given to the Palm City Road area. Mr. Campenni inquired about extending tram service to Palm City Road. Mr. Campenni continued to press for the extension of the tram service even after

being asked to take the issue to the City Manager. Mr. Campenni also repeatedly insisted that a new sidewalk be built down Palm City Road even after being asked to address the issue with the City Manager.

Mr. Campenni also went to Department Heads and gave them assignments to do on a regular basis wanting reports to be run and research to be done on various issues.

Mr. Campenni directed an employee to repair a "No Left Turn" sign located on private property, something the City does not do. Due to Mr. Campenni's repeated insistence, the City repaired the sign. Further, Mr. Campenni ordered the City to find a noise violation with reference to a lounge named Terra Fermata saying that he "has it out for the owner." Mr. Campenni was persistent in his demand that Terra Fermata be found in violation of the noise ordinance and when it was not, he accused the code enforcement employees of taking money from Ron Hart, the owner of Terra Fermata. Mr. Campenni later apologized to the employees.

Mr. Campenni was also extremely insistent that splash pads be built at the Kiwanis Park¹ and for the 10th Street Community Center. Mr. Campenni gave a direct order to secure grant funding for the 10th Street splash pad. Because of Mr. Campenni's insistence, a sketch of the splash pad was done, along with a cost estimate.

In a more general sense, it should be noted that Mr. Campenni very frequently visits the various departments making demands on staff and even questioning where the Department Head is if he/she is absent.

B. Making Derogatory Remarks Regarding City Employees

Mr. Campenni has made numerous remarks concerning City employees, including a comment, even before being elected, to the effect that "All City employees are third rate." In this same conversation, Mr. Campenni said that if someone could not make it in Florida they could not make it anywhere. Mr. Campenni also stated that City employees should be lucky to have their jobs and that they were country bumpkins not fit to do the

¹ Apparently, the splash pad for Kiwanis Park has been budgeted for.

same job in New York.

Mr. Campenni directly told an employee that his intention when getting elected was to terminate the employee. When asked why, Mr. Campenni said because of not being notified regarding the results of a roof inspection on his home, which passed the inspection.

Mr. Campenni had stated to other City employees that Teresa Lamar-Sarno should be terminated. He has stated to a newly promoted employee that he had a problem with this employee receiving the promotion.

After a meeting with several individuals, including a local State Representative, where a City employee expressed his opinion, Mr. Campenni addressed him outside the meeting. In that conversation, he castigated the employee telling him twice he needed to learn to shut the F--- up. While making these statements Mr. Campenni pointed his finger at the employee in an intimidating gesture.

C. General Statements By Employees Concerning Interactions With Mr. Campenni

Nearly every employee I spoke with characterized Mr. Campenni as a “bully” and as having an aggressive, confrontational manner. Because of these characteristics, Mr. Campenni’s communications with employees tends to be intimidating.

IV. THE COMMISSIONER – MANAGER FORM OF GOVERNMENT

I have reviewed the Charter for the City of Stuart (hereinafter “City Charter”) and it is clear that the City has adopted a form of government known as the “commissioner - manager plan”. The commissioner-manager form of government places the executive and administrative functions of government in the hands of a City Manager. Florida AGO 78-31 citing McQuillan Municipal Corporations, s. 9.21, p. 678 and 63 C.J.S. Municipal Corporations s. 543(b), p.999.

According to the City Charter, under this system of government, the City Commission consists of five (5) elected residents who form the governing body with

powers to pass ordinances, adopt resolutions and appoint a chief administrative officer known as the City Manager. Article II, Sec. 2.01, City Charter. The Commission is vested with all powers, except those specifically given to the City's charter officers. Article II, Sec 2.02, City Charter. The City Manager and City Attorney are specifically designated in the City Charter as charter officers and are vested with authority to administer the assigned duties of their offices. Article III, Secs. 3.01 and 3.03, City Charter. The City Manager is responsible for the efficient administration of all departments, except those controlled by the City Attorney. Article III, Sec. 3.04, City Charter.

The term "administration" is not defined in the City Charter. However, the term, "administration" is defined by Black's Law Dictionary as:

Management or conduct of an office or employment; the performance of the executive duties of an institution, business, or the like. In public law, the administration of government means the practical management and direction of the executive department, or of the public machinery or functions, or of the operations of the various organs or agencies. Direction or oversight of any office, service, or agencies. Direction or oversight of any office, service, or employment. Greene v. Wheeler, C.C.A.Wis., 29 F.2d 468, 469. Administration, Black's Law Dictionary.

Further, the City Charter specifies the responsibilities of the City Manager as follows:

The City Manager shall:

- (a) See that the laws and ordinances are enforced;
- (b) Propose ordinances to designate the job titles of subordinates that are to be considered directors of departments;
- (c) Appoint and, except as otherwise provided in this charter, remove any director of any department at will;
- (d) Be authorized to remove all non-probationary subordinate officers and employees, union and nonunion, in the departments, for cause, obsolescence of position, or to satisfy budgetary restrictions;
- (e) Be authorized to deal with subordinate officers and employees, both and union and nonunion, and to negotiate collective bargaining agreements to be approved by the

commission;

(f) Administer all departments and divisions created by the commission except as otherwise provided in this charter;²

(g) Attend all meetings of the commission, except as excused, with the right to take part in the discussion, but having no vote;

(h) Recommend to the commission all measures necessary and expedient for the proper governance and management of the city;

(i) Keep the commission fully advised as to the management, governance and needs of the city;

(j) Be the purchasing agent for the city subject to policies promulgated by the commission;

(k) Recommend an annual budget to the commission; and

(l) Perform all other duties prescribed by law or direction of the commission.

Article III, Sec. 3.05, City Charter. (emphasis added).

Accordingly, it logically follows from the sections of the City Charter referenced above that the Commission (and its individual members) does not have the power to administer any department, including giving direction to employees and generally circumventing the City Manager. Such power is reserved by the City Charter for the City Manager. Article II, Sec 2.02, City Charter.

Further, Article VII, of the City Charter describes the duties of the Mayor as follows:

The mayor shall preside at meetings of the commission and shall be recognized as head of the city government for service of process, ceremonial matters, and execution of contracts, deeds, and other documents. The mayor shall have no administrative duties other than those necessary to accomplish these duties or any other duties provided by Florida law.

Article VII, Sec. 7.09, City Charter. (emphasis added).

² The term "administer" is not defined in the City Charter but, according to Black's Law Dictionary, it is generally understood to mean, "to manage or conduct. Glocksens v. Holmes, 299 Ky. 626, 186 S.W.2d 634, 637. To discharge the duties of an office; to take charge of business; to manage affairs." Administer, Black's Law Dictionary.

Accordingly, it is clear from this section of the City Charter alone that the duties of the mayor do not include the administrative functions that are reserved for the City Manager.

V. CONCLUSION

I do not believe that Mr. Campenni's actions or comments violate the ADEA or the FCRA as to his age-related comments. His comments were made as an individual, and the City took quick action to investigate the matter and Mr. Campenni is no longer Mayor or involved in the selection process for a new City Manager.

As to the potential violation of the City Charter, it is clear that some of Mr. Campenni's actions and comments violate both the letter and spirit of the Charter. The actions described under Paragraph III. ADDITIONAL ALLEGATIONS, a. Interfering In The Daily Operations Of The City, outline some of the conduct which I believe violates Sections 2.02, 3.01, 3.02, 3.03 and 3.04 of the Charter based on the assessment of the Charter outlined in Paragraph IV. THE COMMISSIONER – MANAGER FORM OF GOVERNMENT.

I also believe Mr. Campenni's actions in suggesting that an employee should be terminated, that Mr. Campenni had a problem with an employee's promotion and the castigating of an employee using foul language, also violate the Charter as an intrusion into the City Manger's domain.

I do not make a judgment as to whether Mr. Campenni's bullying, confrontational manner and aggressive behavior "deviates from the proper role of a City Commissioner," but characterizations do not, standing alone, violate the Charter.

I would note that Mr. Campenni's attorney advised the City Attorney that Mr. Campenni would not agree to speak with me. Accordingly, I assume the information acquired through the interviews is accurate.

Dated: June 22, 2017



Robert L. Norton, Esquire
Allen Norton & Blue P.A.
121 Majorca Avenue, Suite 300
Coral Gables, FL 33134
RNorton@anblaw.com
Tel: (305) 445-7801
Fax: (305) 442-1578

Investigation Summary Report

Age Discrimination
City Commission

Complaint: On May 18, 2017, Samuel Amerson, Public Works Director, submitted a written complaint against Thomas Campenni, City of Stuart Mayor. In his complaint, Mr. Amerson alleges Mayor Campenni discouraged him from submitting an application for the City Manager vacancy, stating he desired a “younger guy with fresh ideas.”

Findings: A meeting between Mr. Amerson and Roz Johnson, Human Resources Director, commenced the same date. After discussing his complaint, Mr. Amerson expressed his desire to apply for the City Manager vacancy, should he choose to do so, without any interference or discrimination from Mayor Campenni or any other party to the decision-making process. In short, Mr. Amerson wants the application, interview, and selection process to “run its course,” allowing for the most qualified candidate to earn the appointment of City Manager.

On the morning of May 19, 2017, Mayor Campenni visited Ms. Johnson’s office to discuss the issue, although he did not wish to read the written complaint, nor did he wish to know the complainant’s name. Rather, he acknowledged forming relationships with some employees that he deemed “too close,” resulting in conversation that may have been casual or “too friendly,” perhaps with unintentional messages. When provided specifics in the complaint:

- “Younger guy” – Mayor Campenni denies, but admits to making the comment he “prefers a candidate who is not close to retirement”
- Discouraging anyone from applying – Mayor Campenni does not recall discouraging anyone from applying for the vacancy but admits that his comments could have implied this unintentionally

Related City Policies and Federal Law: City Policies, State and Federal Laws that address discrimination in the workplace, as related to recruitment and selection in particular, include:

Employee Handbook: Affirmative Action Policy

It is the Affirmative Action policy of the City of Stuart to provide equal employment opportunity to all persons based on individual merit and fitness and to recruit and administer hiring, working conditions, benefits and privileges of employment, compensation, training, appointments for advancement, including upgrading and promotions, transfers and termination of employment without discrimination based on race, color, religion, national origin, sex, or age, or physical or mental handicaps where the handicapped persons are able to perform the work they are seeking with reasonable accommodation.

Employee Handbook: Section 4, Recruitment

The goal of the City of Stuart is to select the best qualified people to be City employees without regard to race, color, religion, national origin, sex, marital status, age, or other basis prohibited

Investigation Summary Report

Age Discrimination
City Commission

by law. The City shall treat all job candidates uniformly and give consideration to internal promotion and affirmative recruitment.

Florida State Statutes: 760.10

760.10 *Unlawful employment practices.*

(1) *It is an unlawful employment practice for an employer:*

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

(2) *It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status or to classify or refer for employment any individual on the basis of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.*

Age Discrimination in Employment Act (ADEA)

The EEOC enforces compliance with the ADEA and states: Age discrimination involves treating someone (an applicant or employee) less favorably because of his or her age. The Age Discrimination in Employment Act (ADEA) only forbids age discrimination against people who are age 40 or older. It is not illegal for an employer or other covered entity to favor an older worker over a younger one, even if both workers are age 40 or older. Discrimination can occur when the victim and the person who inflicted the discrimination are both over 40.

Conclusion and Recommendation: Based on information available, it does not appear there was an intent to discriminate based on age, because the concern expressed by the Mayor related to how long a candidate may continue to work in the position. In order to avoid any appearance of discrimination, Mayor Campenni stated his intention to remove himself from the process if the complainant applies and rises to a level where voting would occur. This would require notification to the Mayor throughout the process and can be managed by the firm selected to provide executive search services for the City of Stuart. Mayor Campenni stated his desire to foster a selection process that is fair and equitable to all candidates.

Investigation Summary Report

Age Discrimination
City Commission

However, it is recommended that Mayor Campenni remove himself from the entire selection process unless the Commission takes action otherwise. As well, the selected executive search firm should be apprised of this matter to ensure an impartial City Manager selection process, adhered to without interference.

A handwritten signature in black ink, appearing to read "Roz Johnson", with a long horizontal flourish extending to the right.

Roz Johnson
Human Resources Director
May 22, 2017