

Memo

To: Heather Burgess, Port of Olympia Counsel
From: Thomas McPhee
Date: November 15, 2018
Re: Resolution 2008-16 investigation and report – Complaint re
Commissioner McGregor

This report follows my appointment as independent investigator to investigate and report on the allegation of conflict of interest by Commissioner McGregor contained in the document dated October 8, 2018. The appointment is to investigate the allegation and report to the Port Counsel pursuant to Resolution 2008-16.

Resolution 2008-16 does not define investigation, but a fair reading of Resolution 2008-16 as a whole, including the section titled Enforcement / Administration, compels the conclusion that the investigation focus on the allegation delivered in writing to Port Counsel; the investigator is not empowered to search for or consider possible violations of Resolution 2008-16 that are not evident in the written allegation. In other respects, the investigator is not constrained except by the usual and customary interpretation of the word “investigate”. Conversely, Resolution 2008-16 specifically defines the scope of the obligation to report; it is to sustain the allegation, find no basis for the allegation, find the allegation trivial, or a fourth category not relevant here.¹

In undertaking the investigation aspect of this assignment, I invited the complainant and Comm. McGregor to:

- submit any evidence either felt was relevant to the allegation,
- identify and discuss pertinent legal authorities, and
- argue the merits of the allegation.

All responses were to be in writing; either could respond through private legal counsel. I received written submissions from both principals. I viewed and listened to the video recording of relevant parts of the Port Commission meetings on March 27, 2017, January 8, 2018, and October 8, 2018. I also viewed and listened

¹ The language of the fourth category, “cannot make a valid determination on the basis of undisputed facts”, is ambiguous; it is susceptible to several interpretations.

to the video of a Commission Work Session on September 20, 2018. These were all of the relevant meetings identified by either principal.

The complaint alleging conflict of interest focuses on the Port participation in the Lacey Maker Space project. It alleges four elements as the basis for the complaint:

- Comm. McGregor invited Lacey Maker Space's executive committee advocates to present the project to the commission.
- Comm. McGregor recommended the Port contribute \$15,000 per year in funding for the Lacey Maker Space project.
- Lacey Maker Space is located in District 2, Comm. McGregor's home district.
- Some members of the Lacey Maker Space Executive Committee and Steering Committee were supporters of Comm. McGregor's 2017 election campaign.

On these factual allegations, the complainant contends that portions of Resolution 2008-16 have been violated, specifically:

Port Commissioners may not have interests, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the Commissioner's official duties as a Port Commissioner. (RCW 42.52.020) Nor shall the Port Commissioners adopt policy or other decisions to gain or convey financial or other benefits for themselves or their immediate family, friends or business associates.

No commissioner shall intentionally engage in any act which conflicts with his or her performance of Port duties. . . For an exception to apply, the commissioner shall formally disclose his/her interest, shall not influence the decision, and may not vote on the contract or action.

The first paragraph broadly identifies four prohibitions:

1. Commissioners may not have interests, financial or otherwise, direct or indirect, that [are] in conflict with the proper discharge of the Commissioner's official duties
2. Commissioners may not engage in a business or transaction or professional activity that is in conflict with the proper discharge of the Commissioner's official duties.
3. Commissioners may not incur an obligation of any nature that is in conflict with the proper discharge of the Commissioner's official duties.
4. Commissioners may not adopt policy or other decisions to gain or convey financial or other benefits for themselves or their immediate family, friends or business associates.

The second paragraph constrains the acts of a commissioner if a conflict of interest exists. The constraints are broad (e.g., no influence, no vote), but apply only if a conflict is found to be present.

In response, Comm. McGregor contends that a different provision of Resolution 2008-16 applies to his action regarding Lacey Maker Space:

When a Commissioner is designated by the Port Commission to serve on the board of or as a representative to a local . . . association . . . for the purpose of representing the Port's interests, such appointments are considered part of the Commissioner's official duties. . . . A

Commissioner may participate in Commission decisions relating to such organization as long as full disclosure of the commissioner's participation on the board is provided at the meeting and reflected in the minutes.

Very little evidence supporting complainant's allegations was submitted to the investigator. As provided in my instructions to both principals, each was invited, but not required, to present factual contentions and legal arguments. Comm. McGregor responded. Complainant did not further address the gravamen of the complaint, but did submit an email dated October 16, 2018, regarding purchase of a building. The relevance to the conflict of interest complaint was not apparent.

From the evidence before me, I find:

- Comm. McGregor introduced the Lacey Maker Space project to the Commission in early 2017. He was designated as Commission representative for [sic] Makers Space.
- At the Commission meeting on March 27, 2017, Comm. McGregor led the presentation of the project by a member of Lacey Maker Space executive committee. At the meeting Comm. McGregor disclosed that he was the Commission's representative to the Lacey Maker Space project and served on its board. He presented a proposed letter of support for the project by the Port. The Commission approved the letter unanimously. The letter did not commit the Port for any financial contribution at that time.
- On January 8, 2018, Comm. McGregor was reappointed by the Commission to serve as the Port's representative to the Lacey Maker Space board.
- On September 20, 2018, the Commission held a work session with members of the Lacey Maker Space board. All Commissioners participated. The work session included discussion of a proposed contribution by the Port.
- At the commission meeting on October 8, 2018, an advisory presentation on the Lacey Maker Space project occurred, led by Comm. McGregor. In the course of that presentation, Comm. McGregor proposed a \$15,000 contribution to the project by the Port. He explained that the commitment would be \$15,000 for three years. No vote was taken.
- Lacey Maker Space is located in District 2, Comm. McGregor's home district.

Among the allegations in the complaint is the allegation that, "Some members of the Lacey Maker Space Executive Committee and Steering Committee were supporters of Comm. McGregor's 2017 election campaign." No evidence to support this allegation was offered by complainant, but Comm. McGregor disclosed that one member, and only one member, of Lacey Maker Space

contributed (\$100) to his campaign. My fact finding on this allegation is limited to that disclosure.

Based on the foregoing findings, I conclude that Comm. McGregor has not violated Resolution 2008-167. Further, and perhaps more to the point of the complaint, I conclude that Comm. McGregor's continued participation in the Commission's consideration of the Lacey Maker Space project, including voting on the proposed contribution, will not be a violation of the resolution. There is no showing that such action is an interest that is in conflict with the proper discharge of his official duties as Port Commissioner. All of the actions in the bulleted findings above are consistent with portion of the resolution relied on by Comm. McGregor. His acceptance of a single, very modest campaign contribution does not create an interest in conflict with his duties as Commissioner. Accordingly, I find no basis for the allegation.