PUBLIC DOCUMENT
INDEX No.
#93841
CITY CLERK'S OFFICE
MUSCATINE, IOWA

RECEIVED
MAY 02 2017
By

**BEFORE THE MUSCATINE, IOWA CITY COUNCIL**

| **IN THE MATTER OF:**<br><br>**Diana L. Broderson, Respondent.** | **FINDINGS OF FACT AND ORDER ON THE CITY OF MUSCATINE'S WRITTEN CHARGES OF REMOVAL** |
|---|---|

On March 23rd and April 1st of 2017, the above-captioned cause came for hearing before the undersigned. The Written Charges of Removal were presented by Special Counsel John A. Nahra. The Respondent, Mayor Diana L. Broderson, was present and represented by Counsel William Sueppel and Catherine S. Gerlach. The undersigned after having heard the evidence, reviewed the exhibits, heard arguments of counsel and otherwise being fully advised in the premises finds as follows.

The Written Charges of Removal were filed on February 17, 2017 with the Muscatine City Clerk, and were authorized by the City Council pursuant to Iowa Code Chapter 66 and City Code Section 1-7-6. Subsequently, the City Council scheduled the matter for hearing on March 23, 2017. Respondent, Mayor Diana L Broderson, was personally served with an original notice and the Written Charges of Removal on March 9, 2017, as required by City Code. Thereafter, on March 14, 2017, Mayor Broderson was served with notice of the hearing date, with written transcripts containing all available sworn testimony of the City's witnesses, and with detailed "Minutes of Evidence" which included statements concerning the anticipated testimony of every witness that the city intended to call before the undersigned.

The hearing before the undersigned was conducted in the city council chamber before a certified court reporter. Before testifying each witness was placed under oath to tell the truth.

The removal hearing began on March 23, 2017 and resumed and concluded on April 1, 2017. The Respondent was present for the entirety of this hearing with her counsel. The Mayor

had the opportunity to cross-examine all of the witnesses presented against her, the opportunity to present her own witnesses and exhibits, as well as to examine all of the exhibits entered in the record. These procedures satisfied the due process requirements that the Mayor receive notice of the charges against her and that she be allowed a reasonable opportunity to defend as provided by State and City Code. During the hearing the Mayor had the opportunity to present evidence and witnesses on her behalf.

At the outset it is necessary to address the credibility of Mayor Diana L. Broderson. In assessing the credibility of Mayor Broderson we must also look to the testimony of the other persons called to testify during this hearing. We have considered the reasonableness and probability of the statements made by witnesses other than Mayor Broderson and determined whether their testimony is corroborated or contradicted by other witnesses or facts proven, and from all of these and all other facts and circumstances proven upon the hearing to determine where to give credit and where to withhold the same. Upon review of all of the evidence we find the credibility of Mayor Broderson to be incredible as compared to credible. Simply put, at times her testimony was not only inconsistent with statements she had previously made and inconsistent with press releases she had authorized but also contrary and inconsistent with the testimony of others and evidence we believe. The undersigned acting as judges of the weight of the evidence and credibility of the witnesses find Mayor Broderson not credible.

## I. The Mayor Violated City Code.

We find there is sufficient evidence to support a finding that Mayor Broderson formed two ad hoc committees/task forces without City Council approval. The evidence is overwhelming that the Mayor declared at a City Council meeting on April 14, 2016, that she was going to create a task force to look into the form of local government and on April 18, 2016, she

issued a press release indicating she had created a group she referred to as "Millennial Muscatine" and the Mayor's special task force which would look into the varying forms of local government. Despite the Mayor's denial of the formation of these two (2) committees during the hearing the record before us clearly indicates the Mayor formed these two (2) committees or task forces when she knew the sole authority for creation of such entities was solely with the City Council.

Additionally, the evidence and testimony presented supports our finding that on at least three (3) occasions, the Mayor directly contacted city staff without the approval of the City Administrator. The city code clearly provides that any such contact shall be "solely" through the City Administrator. As set forth during the hearing and in the post-hearing brief submitted by the city, the facts demonstrate that the Mayor has repeatedly violated the city code and acted beyond the scope of her authority.

**II. The Mayor Violated the City Code of Ethics.**

We also find the evidence and testimony presented supports that the Mayor made personal attacks upon the character or motives of elected officials and City staff, which is in direct violation of the City Code of Ethics, on at least five (5) occasions.

1. On February 29, 2016, the Mayor alleged the City Council refused to vote on all of her appointments because she was being discriminated against and attacked by the City Council and the City Administrator, and the Mayor made these allegations public by sending her email correspondence to the Muscatine Journal. There was no basis found to support her accusations.
2. On May 21, 2016, the Mayor held a public "Coffee with the Mayor" wherein she made a number of allegations deprecating upon the character and motives against the City

Council, City Administrator, and City Attorney. There was no basis found to support her accusations.

3. On June, 20, 2016, the Mayor sent correspondence to members of the public in which she alleged numerous statements deprecating upon the character and motives of the City Council and City Administrator, including, but not limited to, they are attempting to destroy the Office of the Mayor of Muscatine; they are offended by diversity and open government; and they lack respect and professionalism. There was no basis found to support her accusations.
4. On August 1, 2016, the Mayor sent a second correspondence to members of the public making allegations against the character and motives by stating the City Council was blocking her appointments due to partisanship or failed to consider her recommendations. There was no basis found to support her claims.
5. On October 13, 2016, the Mayor was interviewed by Mary Mason of the Voice of Muscatine, wherein she made personal charges on the character and motives of the Council and City staff, which include, but are not limited to, the City Administrator's goal has been to remove her from office since she got elected, the City Council was using closed sessions impermissibly, and the Council and Administrator are unwilling to accept her as mayor and accept the people's vote.

There was no evidence presented to support the Mayor's accusations. The facts conclude that the Mayor repeatedly violated the City Code of Ethics.

## III. The Mayor Asserted False and Baseless Allegations.

We find the evidence and testimony indicates the Mayor asserted false, baseless or unsubstantiated improprieties against City staff, City Council and various members of the public. The allegations and findings are as follows:

1. The Mayor made a complaint to the Iowa Public Employees Retirement System alleging City staff violated the law by hiring a retired employee, Randy Hill, as a consultant. IPERS did not take action in the matter.

2. The Mayor alleged the City Administrator accepted a gift, gratuity, or kickback in the form of airline tickets or a ride on a private plane from a contractor in exchange for the contractor being awarded a Muscatine construction project. No basis was found to support this allegation.

3. The Mayor alleged the Muscatine Community Development Director, Dave Gobin, accepted a gift, gratuity or kickback in the form of airline tickets or a ride on a private plane from a contractor in exchange for the contractor being awarded a Muscatine construction project. No basis was found to support this allegation.

4. On February 19, 2016, the Mayor claimed she was the subject of gender bias or discrimination by the City Administrator. This claim was investigated by the City and a third-party, Homefront Security and was found to be unsubstantiated.

5. At the time of the investigation, the Mayor's complaint of gender bias her accusations grew to include that she was the subject of a hostile work environment by the City Council and the City Administrator. This claim was investigated by the City and a third-party, Homefront Security and was found to be unsubstantiated.

6. On February 26, 2016, the Mayor accused two Muscatine employees of violating the social media policy and investigation was taken by the City. These employees were later identified as Shelley Meyer and Michelle Metzger. The City did investigate the matter and no basis was found to support this allegation.

7. On February 29, 2016, the Mayor sent a list of appointments to the city council via email. When councilmembers requested additional information about the nominees Mayor Broderson responded by alleging the city council's refusal to vote on her appointments was evidence she was being discriminated against by the City Council. No basis was found to support this allegation.

8. On February 29, 2016, the Mayor notified the city attorney, that against the advice of the city attorney, she had met with the State Ombudsman and made a complaint alleging a violation of the law regarding the city's health inspection program against City staff and the City Administrator. No basis was found to support this allegation.

9. On March 1, 2016, during the investigation interview with Homefront Security, the Mayor falsely asserted the existence of a mental illness by a private citizen of Muscatine, Iowa. No basis was found to support this allegation.

10. On April 22, 2016, the Mayor emailed the City Attorney alleging that the Mayor's Community Improvement Action Team committee and the City's China committee were not properly authorized by the Council under the City Code. No basis was found to support this allegation.

11. On April 28, 2016, Mayor Broderson contacted the city attorney to discuss allegations of alleged criminal conduct by a city council member and upon receiving the opinion of the city attorney that the matter did not involve criminal conduct and she later raised the same allegation with the Muscatine County Attorney in the summer of 2016 against Councilmember Fitzgerald. No basis was found to support this allegation.

12. On April 28, 2016, the city attorney was notified by the Iowa Public Information Board that Mayor Broderson had filed a complaint against the City Council, the City Administrator and the City Attorney. This complaint was dismissed as legally insufficient by the Iowa Public Information Board.

13. On May 11, 2016, the City received notice that the Auditor of Iowa had received an anonymous complaint to perform a review of the City's 2014/2015 audit. The City subsequently learned that the complaint had been filed by the Mayor and involved the City's Sister-City and economic development opportunities with China. The Mayor did not discuss this request or her underlying concerns with City staff or the Council prior to filing her complaint. The State Auditor has not concluded that the City made any errors in the audit.

14. On May 21, 2016, Mayor Broderson held a "Coffee with the Mayor" stating that the city employees were afraid for their jobs and specifically referred to Chief Talkington. This allegation proved to be false.

15. On or about October 17, 2016, Mayor Broderson contacted the Muscatine County Attorney to discuss and request criminal charges against two journalists, namely Emily Wegner of the Muscatine Journal and Mary Mason of the Voice of Muscatine. No basis was found to support this allegation.

16. On October 31, 2016, the Mayor filed another complaint with the Iowa Public Information Board alleging she had been inappropriately excluded from a meeting by

the City Council, the City Administrator and the City Attorney. The complaint was dismissed as legally insufficient by the Iowa Public Information Board.

17. On or about December 13, 2016, the Mayor contacted the Muscatine County Attorney to discuss criminal charges be commenced against the City Council, the City Administrator and the City Attorney. No basis was found to support this allegation.

18. Shortly after December 13, 2016, the Mayor asserted that the Muscatine County Attorney had been ordered to file criminal charges by the Attorney General against the City Council, the City Administrator and the City Attorney. This allegation proved to be false.

The evidence in this case demonstrate that the Mayor repeatedly made false and baseless allegations.

**IV. The Mayor Misused Her Power to Obtain Personal Benefits.**

We find the evidence and testimony presented supports that the Mayor misused her position in an attempt to obtain personal benefit not available to members of the general public in violation of Iowa Code Section 68B.2A. At the hearing, the evidence established that in the summer of 2016 the Mayor, introducing herself as Mayor of Muscatine Diana Broderson, contacted the Manager of the property locally known as the Tower Apartments, Ms. Deana Fleming, regarding various grievances. At the time of the call, the Mayor did not indicate that the call was personal in nature and, more importantly, did not indicate that her mother was a resident at this facility. In light of these facts, the Mayor attempted to utilize her position as Mayor to benefit her mother, and these benefits were not available to other members of the public.

The Mayor further misused and or abused her powers by suggesting to Ms. Fleming that the Towers should host a spaghetti supper for the police department presumably to receive better service from the police department. Additionally, through her status as Mayor, she repeatedly met/contacted the County Attorney to discuss criminal charges against reporters, elected officials

and City staff, which is not available to members of the public. The facts conclude the Mayor misused her power to obtain personal benefits.

The City Council finds that the Mayor engaged in misconduct and maladministration of office by repeatedly acting outside the scope of her powers and abusing or misusing the office of Mayor to gain advantages or benefit for her personal agenda which is not available to similarly situated members of the public. The City Council also finds that based on the frequent, repeated and knowing nature of the Mayor's conduct, she engaged in such conduct willfully and with an evil or malicious motive.

In addition to the specific findings made above we find the evidence establishes that Mayor Broderson has repeatedly exceeded the scope of her lawful authority by violating City Code provisions, by violating the City Code of Ethics, by asserting false and baseless allegations and by misusing or abusing her authority or office for personal benefit. The Mayor's repeated violation of the Code of Ethics and repeated assertions of false and baseless allegations were made consciously, with full knowledge of the consequences that could attach to the city. Further her continued conduct of operating outside the scope of her authority, after being advised of the possible adverse consequences to the city, amounts to willful or habitual neglect and/or willful misconduct in office. We further find that her repeated conduct and frequency of misconduct is evidence that her conduct was made with an evil or malicious motive.

We further find the false, baseless and inappropriate actions of Mayor Broderson have cost the City of Muscatine in excess of $100,000.

## V. The Actions of the Mayor Rise to the Level of Removal.

Section 1-7-6 of the City Code states that the Mayor may be removed from office by action of the City Council for, *inter alia*, willful or habitual neglect or refusal to perform the duties of his or her office; for willful misconduct or maladministration in office; or corruption. Removal from public office is a significant action as the object is to rid the community of an incapable or unworthy official. *See State v. Callaway*, 268 N.W.2d 841 (Iowa 1978) (citations omitted).

Legal authorities provide that a neglect of duties occurs when there is a substantial failure to perform the official duties of office. *See Luckritz v. City of Camanche*, 2008 Iowa App. LEXIS 501, *13 (Ia. Ct. App. July 16, 2008) (removal for failure to show up for a trial); *see also Shields v. State*, 89 P.2D 756 (Okla. 1939) (neglect of duty when an office acts or fails to act contractor to a known duty); 4 McQuillin, supra, §12.325. The above authority suggests that the failure to perform can be either a significant single action (such as the commission of a crime) or a number of repeated actions (repeatedly breaching a fiduciary duty—especially after being repeatedly warned not to take said actions).

The Iowa Attorney General's office has stated that misconduct and/or maladministration includes "any unlawful behavior by a public officer in relation to the duties of his office, willful in character, and embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act." *See* 1997 Iowa AG LEXIS 26, *11-14. Other legal authorities define misconduct as that which 'affects, interrupts, or interferes' with the performance of an official duty. *See* 4 McQuillin Mun. Corp, § 12:327. As for maladministration, it has been held to simply mean 'wrong' administration. *See Minkler v. State*, 15 N.W. 330 (Neb. 1883).

To determine that an action constitutes misconduct to support removal, the fact finder will often find that "the alleged misconduct was committed willfully and with an evil purpose." *See State v. Bartz*, 224 N.W.2d 632 (Iowa 1974). An "evil purpose" is found by "grave misconduct or such flagrant incompetency" to show an "unfitness for the position." *State ex rel. Crowder v. Smith*, 4 N.W.2d 267 (Iowa 1942). Courts have also found evil purpose/malice by looking at the frequency of the conduct in question to infer malicious intent. *See State ex rel. Collins v. Garretson*, 207 Iowa 627 (Iowa 1929) (noncompliance happened so frequently as to be the rule, not the exception); *see also, State v. Callaway*, 268 N.W.2d 841 (Iowa 1978) (a repeated pattern of misconduct warranted removal).

In a related case, a mayor was removed for misfeasance after contacting the treasurer and directing them to write off a delinquent water account after falsely stating the council had voted to write-off said debt. *See In re Recall of Lee*, 122 Wn.2d 613 (Wash. 1993) (mayor's conduct "affected" the performance of both mayor's and treasurer's duties and the mayor "carried out her duties in an improper manner and failed to perform her duties faithfully.") In another case, the mayor was removed after making a false report to the council about a police chief, which was contradicted by the testimony of other witnesses. *See Boyer v. City of Potosi*, 77 S.W.3d 62 (Mo. Ct. App., 2002). Violations of ethics codes have also been found to be grounds for removal, such as a case where a city removed an elected official after he twice violated that city's ethics code by representing himself in front of the city's zoning board. *See Price v. San Marcos*, 744 S.W.2d 349 (Tex. App. Austin 1988) ("the City's goals of preventing the appearance of impropriety, conflicts of interest, and self-dealing in local government—all legitimate ends—were rationally related to and achieved by applying the ethics ordinance to [the elected official] and his removal from office.")

Based on a thorough review of the evidence of this case—including the witness statements, exhibits, testimony and briefs, we find that the City's special prosecutor has satisfied the elements for the removal of the Mayor of the City of Muscatine. Specifically, pursuant to Section 1-7-6 of the City Code, we find that, as set forth above, the Mayor has willful and habitual neglected to perform her duties, she has failed and refused to perform her duties, she has committed willful misconduct and maladministration in office, and she has used her office and title in a dishonest and fraudulent manner tantamount to corruption. We further find that the Mayor repeatedly willful acted contrary to her affirmative duties to do otherwise and that the Mayor's behavior affected, interrupted and interfered with the performance of official City duties. Finally, we find that the Mayor has engaged in grave misconduct and flagrant incompetency showing she is unfit for her position—especially given the frequency of her misconduct.

ORDER

IT IS THEREFORE THE ORDER OF THE CITY COUNCIL that Mayor Diana L. Broderson shall be immediately removed from the office of the Mayor of the City of Muscatine, and further order that she immediately relinquish all City property to the City Clerk.

Dated this 11th day of May 2017.

Bob Bynum

Scott Natvig

Philip Fitzgerald

Michael Rehwaldt

Allen Harvey

Santos Saucedo

Tom Spread

City Clerk to mail copies to:
William J. Sueppel
Meardon, Sueppel & Downer, P.L.C.
122 South Linn Street
Iowa City, IA 52240
ATTORNEYS FOR RESPONDENT

John A. Nahra
6204 Emery Court
Bettendorf, IA 52722
SPECIAL PROSECUTOR FOR CITY