



**HENRY COUNTY
COMMISSIONERS**
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Ed Yanos
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Commissioner
sdellinger@henrycounty.in.gov

December 30, 2020

Ms. Katlynn Holmecki
Public Access Coordinator
Indiana Government South
402 West Washington St., Rm W-470
Indianapolis, IN 46204-2754

Via email: kholmecki@opac.in.gov

RE: Response to Formal Complaint 20-SC-169

Dear Ms. Holmecki:

I am writing to provide a response to the Formal Complaint listed above against the Board of Commissioners of Henry County.

The Board of Commissioners of Henry County is a three person body that functions as the Henry County executive and legislative body. I am one of three Commissioners. The other two Commissioners are Steve Dellinger and Ed Yanos. Mr. Dellinger assumed office in October 2020 after the passing of Kim Cronk. Mr. Dellinger had defeated Mr. Cronk in the June primary election and was unopposed in the general election. He was appointed to fill Mr. Cronk's remaining term. Mr. Yanos' term expires on December 31, 2020. He did not seek reelection. All three Commissioners are Republicans.

I was elected to office in 2018 along with several other County officials. My campaign focused on opposing the development of commercial wind energy projects in Henry County. Many of my supporters are strongly opposed to the development of wind energy projects. Many of the persons that supported my candidacy also supported Mr. Dellinger.

The Board of Commissioners is currently represented by the law firm of Hayes Copenhaver Crider Harvey, LLP. Attorney Joel Harvey serves as the County attorney under a contract that was originally entered into by the then Board of Commissioners in late 2012. Harvey serves as the attorney for the Board of Commissioners, the County Council, the County Drainage Board and various other County offices as described in his contract. The contract provides for a yearly term (January 1 through December 31) that will renew unless notice of termination is provided by either party by November 30.

After Mr. Dellinger assumed office, in October 2020, I contacted Mr. Dellinger by telephone to discuss ending the contract with the County's current attorney and law firm and potentially

retaining a new attorney to serve as the County attorney. Mr. Dellinger indicated to me that he did not have a problem with hiring a new County attorney, but that he did not know the current County attorney or the attorney that I had mentioned as a potential replacement. I also contacted Bobbi Plummer by telephone, who was elected to fill Mr. Yanos's seat in the 2020 general election. Ms. Plummer is not yet a County Commissioner. Ms. Plummer indicated that she did not oppose replacing the County attorney. I also contacted County Council President, Susan Huhn, by telephone to discuss the matter. No one else participated in my phone calls with Ms. Plummer or Ms. Huhn.

After discussing the replacement of the County attorney, I contacted Martin Shields, an attorney with an office in New Castle, by telephone, to determine if he would be interested in serving as the County attorney. Mr. Shields indicated that he would have to think about it and would get back to me.

On November 25, 2020, I reviewed Mr. Harvey's contract again and was reminded of the provision regarding the date to provide written notice of intention to not renew the Agreement. On November 30, 2020, Mr. Dellinger and I met with Martin Shields in his office to inquire as to whether he would be interested in filling the role as the County attorney. Mr. Shields indicated that he would be interested in serving as the County attorney. Following that meeting, I determined that I needed to provide notice of the nonrenewal of the current attorney contract and delivered a written notice to Mr. Harvey's office indicating that his firm's contract would not be renewed for 2021.

On December 16, 2020, in a public meeting, the Board of Commissioners, by a vote of 2 to 1, decided to not renew the contract with Mr. Harvey's firm and to accept proposals from any attorney interested in serving as the County attorney. The Commissioners did not vote to retain Mr. Shields and have not entered into a contract with Mr. Shields.

As an initial matter, I do not believe that my phone conversations with Ms. Plummer or Ms. Huhn constitute a "meeting" under the Open Door Law. Ms. Plummer has not yet assumed office and is therefore not a part of any governing body. Ms. Huhn is the president of the County Council. No other Commissioners or members of the County Council were present or involved in my phone calls with Ms. Plummer or Ms. Huhn.

I do not believe my phone call with Mr. Dellinger, or our conversation with Mr. Shields, constitute a "meeting." As mentioned above, Mr. Dellinger and I are both Republicans and are both among the group of local office holders that were elected to oppose the development of commercial wind energy projects in Henry County. A "caucus" is defined as "a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action." A "caucus" is not a "meeting" under the Open Door Law.

Mr. Dellinger and I are both members of the same political party; we were elected after campaigning on similar issues and were supported by many of the same persons. The purpose of our discussion was to deliberate an issue that was expected to come before the Board of Commissioners at a later date and to evaluate the status of the County attorney for taking official action at a later meeting. The Commissioners took official action on the issues discussed during the December 16, 2020, meeting.

To the extent that my conversations with Mr. Dellinger constituted a "meeting," I do not believe we were required to post or provide notice of the meeting. Indiana Code Section 5-14-

1.5-5(f)(2) provides that the notice requirements are not applicable to meetings of the County Executive to carry out administrative functions. Discussions, regarding the status of the County's attorney, are a matter that relates to the internal management of the County. In addition, while I do not believe that my conversations with Mr. Dellinger constituted a "meeting," I am preparing a written summary of what transpired with respect to the issue that is the subject of this Formal Complaint and will have the summary placed as part of the minutes during an upcoming meeting of the Board of Commissioners.

Thank you for your consideration of this response. If you require additional information, please do not hesitate to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "Edward Tarantino", written in a cursive style.

Edward Tarantino