

KEUSCH, FLINTOFT & FINK, PLLC

ATTORNEYS AT LAW

119 SOUTH MAIN STREET

POST OFFICE BOX 187

CHELSEA, MICHIGAN 48118

TELEPHONE (734) 475-8671

FAX (734) 475-1622

JOHN P. KEUSCH (DECEASED)
YEARS OF PRACTICE 1933-2013

PETER C. FLINTOFT
MARIAH EVANS FINK

WEB SITE:
www.keuschlaw.com

E-MAIL:
flintoft@keuschlaw.com
mariah@keuschlaw.com

July 5, 2022

Roy Atkinson
City Manager
City of Chelsea Offices
305 South Main Street
Suite 1
Chelsea, Michigan 48118

RE: Advisory Opinion.

Dear Mr Atkinson:

As City Attorney our firm tenders the following Opinion intended for guidance of your office regarding issues of ‘incompatibility of office’ and/or ‘conflict of interest’ as defined by statute, the City Charter, Council Rules and legal authorities. This letter is not intended to be within the attorney-client privilege and may be distributed as you see fit.

As to ‘incompatibility of office’, a public officer, who takes a second public office at the same time, risks losing one or both offices, if they are deemed to be ‘incompatible’. This doctrine was originally a common law rule developed by the Courts to prevent a conflict between competing loyalties or public interests of an officer holding both positions. The rule has been formalized by statute in the Incompatible Public Offices Act, MCL 15.181, *et seq.* The Act establishes a three-part test to determine whether two positions are “incompatible.” If one position: (1) subordinates another position; (2) supervises another position; or (3) causes a breach of duty of public offices, then holding those two positions constitutes an incompatible office and an individual must step down from one of the positions to avoid the incompatibility issue. MCL 15.181(b).

As to ‘conflicts of interest’, traditionally, a conflict of interest has been

understood as a pecuniary interest which substantially influences an officer's actions to his own benefit. See, Conflict of Interest Act, MCL 15.301 *et seq.*, which governs state officers.

In 2021, complaints were made which alleged that being an officer of the 'One World One Family' organization, a private entity, was incompatible with the elected City offices of Mayor or City Councilpersons, and the officers were thereby engaged in conflicts of interest.

Holding membership or office in any community group is not a violation of the Incompatible Public Offices Act, since the Act only restricts the holding of incompatible public offices, and ignores private offices or memberships. We find no authority to the contrary.

As to 'conflict[s] of interest', the complaints alleged that 'One World One Family' and other community groups were engaged in illegal activity and therefore association with these organizations was disqualifying, such that the Mayor and/or Councilpersons should be removed. Further discussion of conflicts of interest seem unnecessary since they are secondary to actual claims made, i.e., grounds for removal.

The Charter specifies certain acts or conditions for removal of an elected City officer. First, the Governor can remove when authorized by statute, §5.8 [a], City of Chelsea Charter.

Secondly removal by the Council can be ordered 'for any act declared by this charter to constitute misconduct in office' §5.8 [b], ibid..

The Charter also enumerates specific 'act[s] declared by this charter to constitute misconduct in office' which are:

§6.6 [a] failure to attend meetings.

§6.6 [b] disorderly conduct at meetings.

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§6.7 [c] failure to vote unless excused.

§6.8 [b] failure to obey a Council issued summonses or produce ordered books etc.

§15.12 [q]: ‘For the purpose of this charter, the offense of "misconduct" in office includes doing a wrongful act, doing a lawful act in a wrongful manner, failure to perform an act required by the duties of the office or by rule established by the city council’.

The source of this last standard is the common law crime of misfeasance in office, encompassing a possible allegation of everything from felony, misdemeanor, or failure to act, commonly referred to as nonfeasance. To the best of my knowledge none of the prior complaints alleged a wrongful act, acting in a wrongful manner, or failure to act required by office or rule of council. Further comment would be speculation and beyond the scope of this Opinion.

I would be happy to discuss these points further at your convenience.

Yours very truly,

KEUSCH, FLINTOFT & FINK, PLLC



Peter C. Flintoft

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