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May 13, 2022

Town of Tabor City
Town Council
c/o Mayor Royce Harper
Post Office Drawer 655
Tabor City, NC 28463

Re: The Brough Law Firm, PLLC – Opinion Letter re. Review of Legal and Ethical Questions re. Real Property Transactions

Mayor,

By letter dated April 22, 2022, the Town of Tabor City (the “Town”) requested that The Brough Law Firm, PLLC (the “Firm”) conduct a factual and legal investigation into the circumstances surrounding the Town’s acquisition of certain real property. This Opinion Letter provides a summary of the Firm’s findings and conclusions.

The findings and conclusions contained herein are based in large part on the facts provided to this Firm by the Town in the Town’s April 22, 2022 letter. If the Town has any reason to believe that the facts relied on in this Opinion Letter are inaccurate, please notify us so that we may evaluate the impact that any inaccuracies may have on our findings and conclusions.

Executive Summary

It is this Firm’s opinion that the Town has not violated any applicable laws or codified ethical guidelines with regard to the Town Manager’s conduct as related to the real property transactions described herein.

Findings and Conclusions

The Town’s April 22, 2022 letter requested that this Firm investigate three particular issues. A more detailed summary of our findings and conclusions related to each of those questions are provided below.

I. Has the Town Manager ever had an ownership interest in the Furniture Store Property?

The Town has asked this Firm to “research the property known as Columbus County Tax Office parcel #10990 (or 128 W. Fifth Street) [(hereinafter referred to as the “Furniture Store Property”)] and advise [the] Town Council of its ownership for the past 40 years?”

The Town Manager has not had any ownership interest in the Furniture Store Property at any time within the past forty years.

a. Ownership of the Furniture Store Property from May 10, 2018 to the Present Date.

Most recently, the Furniture Store Property was acquired by the Town on May 10, 2018 via a General Warranty Deed conveying the Furniture Store Property from Entertainment Amusement International, LLC to the Town. The deed was recorded on May 18, 2018 in Columbus County Deed Book 1179 at Pages 925-927.

The deed was signed on behalf of Entertainment Amusement International, LLC by a Bobby Guimbellot in his capacity as the “Manager/Sole Member” of Entertainment Amusement International, LLC. As such, it appears that Entertainment Amusement International, LLC did not have any other Members. Therefore, the Town Manager could not have had an ownership interest in Entertainment Amusement International, LLC and, by extension, the Furniture Store Property.

b. Ownership of the Furniture Store Property from February 16, 2006 to May 10, 2018.

On February 16, 2006, a General Warranty Deed was executed, conveying the Furniture Store Property from Dorothy P. Grainger to Entertainment Amusement International, LLC. The deed was recorded on February 17, 2006 in Columbus County Deed Book 843 at Pages 117-119.

c. Ownership of the Furniture Store Property prior to February 16, 2006.

On November 23, 1976, a Warranty Deed was executed, conveying all or a portion of the Furniture Store Property—more specifically described as “Lot 22 in Block “A” of a map of West Tabor as per survey made and mapped by W. W. Baker, C.E.”—from J.P. Dicus, Jr. and wife, Wilma R. Dicus (Grantors) to Eugene Grainger and wife, Dorothy Grainger (Grantees). The deed was recorded on December 3, 1976 in Columbus County Deed Book 296 at Page 524-525.

The deed refers to a Survey Map, recorded in Book V-1, page 370, which is not available on Columbus County’s online property records database. The property description referenced in the deed describes the property conveyed, in part, as “on the North side of West 5th Street.” Based on the information presently available, we believe that this refers to all or a portion of the Furniture Store Property.

On January 7, 1964, a deed was executed by and between Waccamaw Bank and Trust Company as the executor for Leona L. Lennon, Deceased, and as trustee of W.B. Lennon, Jr., and W.B. Lennon, Jr. and wife Pat Lennon (Grantors) to Eugene R. Grainger and wife Dorothy P. Grainger (Grantees). The deed was recorded on January 24, 1964 in Columbus County Deed Book 235 at Page 433-434.

The property description referenced in the deed describes the property conveyed, in part, as "on the northern side of Fifth Street." Based on the information presently available, we believe that this refers to all or a portion of the Furniture Store Property.

d. Conclusions regarding the Town Manager alleged ownership interest in the Furniture Store Property

Based on the available public records and the information provided in the Town's April 22, 2022 letter, we do not believe that the Town Manager, either in his individual capacity or as a member or owner of any corporate entity, has had any ownership interest in the Furniture Store Property at any time within the past forty years.

II. Has the Town Manager appropriately divested himself from ownership of the portion of the AT&T Investments Property that the Town may seek to acquire?

The Town has asked this Firm to "research the property known as Columbus County Tax Office parcel #98934 [(hereinafter referred to as the "AT&T Investments Property")] and advise our Town Council if indeed the Town Manager has divested himself from any ownership of this part of the parking lot," and to advise the Town Council on whether "the Council is clear to try and purchase the remaining 40% of the parking lot that we do not own from the sole investor?"

Pursuant to N.C. Gen. Stat. § 14-234, "no public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided" under the statute.

The Town Manager is undoubtedly a "public officer or employee," and is subject to the provisions of this statute.

G.S. 14-234(a1)(2) states that "a public officer or employee is involved in *administering a contract* if he or she oversees the performance of the contract or has authority to make decisions regarding the contract or to interpret the contract." (emphasis added). As related to the Town Manager's role in public contracting, G.S. 14-234(a1)(3) states that "a public officer or employee is involved in *making a contract* if he or she participates in the development of specifications or terms or in the preparation or award of the contract." (emphasis added).

It is common practice among North Carolina municipalities for managers to oversee the performance of contracts, to be authorized to make decisions regarding the contract, and to interpret the contract's provisions. Likewise, it is common practice among North Carolina municipalities for managers to participate in the development of specifications or terms of public

contracts and to otherwise participate in the preparation or award of the contract. Based on the information provided to this Firm, the Town of Tabor City follows these common practices. As a result, the Town Manager would be involved in making and administering any contract to purchase or otherwise acquire real property.

G.S. 14-234(a1)(4) states that “a public officer or employee *derives a direct benefit from a contract* if the person or his or her spouse: (i) has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract; (ii) derives any income or commission directly from the contract; or (iii) acquires property under the contract.” (emphasis added).

AT&T Investments, LLC is a North Carolina limited liability company. According to the Articles of Organization, the Town Manager is a “Member/Manager” of the LLC.

On April 27, 2017, Linda Carter Duncan sold “all of Lots Number Eleven (11), Twelve (12), Thirteen (13), Fourteen (14) and Fifteen (15). . . delineated on a map of a survey entitled MAP OF WEST-TABOR” to AT&T Investment, LLC. The property described in this deed is referred to herein as the “AT&T Investments Property.” Lots 14 and 15 (hereinafter, the “Parking Lot Property”) appear to be the lots on which a portion of the common parking lot, which is shared with the Furniture Store Property, is located. On December 28, 2020, AT&T Investments, LLC conveyed “all of Lots Fourteen (14), and Fifteen (15)” to “Gordon Trent Burroughs, individual.”

As a result of this transaction, AT&T Investments, LLC—and, by extension, the Town Manger—no longer retains any ownership of the Parking Lot Property.

With specific reference to G.S. 14-234, the Town Manager does not have more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract, because the parties to the contract conveying the Parking Lot Property to the Town would be the Town, as the Grantee, and Mr. Burroughs, as the Grantor. Provided that the contract by which the Town would acquire the Parking Lot Property does not allow the Town Manager to derive any income or commission from the contract, and provided that the Town Manager does not acquire any property under the contract, the Town Manager will not have violated G.S. 14-234.

Based on the available records and the information provided in the Town’s April 22, 2022 letter, we believe that the Town Manager has appropriately divested himself from any ownership interest in the Parking Lot Property and that the Town does not face any legal obstacles relative to the Town Manager’s conduct or previous ownership interest in the Parking Lot Property that would prohibit the Town from purchasing or otherwise acquiring the Parking Lot Property from Mr. Burroughs.

III. Has the Town broken any laws by accepting the donation of the Furniture Store Property?

The Town has asked this Firm to “see if any laws were broken when we accepted the donation of the furniture store property [(the “Town Property”)] to the Town at no cost (but was

adjacent to land [(the “AT&T Investments Property”)] owned by one of the investment groups that the Manager participates in.”

N.C. Gen. Stat. § 160A-11 authorizes municipalities to “acquire and hold any property, real and personal, devised, sold, or in any manner conveyed, dedicated to, or otherwise acquired by them.”

a. Potential Legal Issues Related to Voting

N.C. Gen. Stat. § 160A-75 allows governing board members—Town Council Members, in this case—to be excused from voting *only* under the following circumstances: (1) where the governing board member would otherwise be voting on a matter involving his or her own official conduct or financial interest; or (2) other matters on which the governing board member is prohibited from voting pursuant to G.S. 14-234 (criminal self-dealing) or 160D-109 (land use conflicts of interest).

The courts typically grant broad discretion to governing boards when evaluating what constitutes a financial interest. Courts typically consider the following factors: (1) the number of people affected—if the effect on the board member is the same as the effect on a significant number of citizens, then it is fair to allow the individual to vote; (2) the extent of the financial interest and its benefit or detriment to the governing board member—a positive or a negative financial impact may be a basis for excusing a member from voting; and (3) the likelihood that the financial impact will actually occur.

Based on the information available to us, we believe that that no Town Council Members had a financial interest in the Town’s acceptance of the donation of the Furniture Store Property, and that no Town Council Members were otherwise prohibited by law from considering and voting to accept the donation. As a result, we do not believe that any laws were broken relative to the Town’s vote to accept the dedication of the Furniture Store Property.

b. Potential Legal Issues Related to Self-Dealing

As discussed above, G.S. 14-234 prohibits public officers (elected or appointed) and public employees from deriving a direct benefit from any contract in which he or she is involved on behalf of the public entity he or she serves.

Our investigation has not uncovered any information suggesting that Town Council Members derived a direct financial benefit from the Town’s acceptance of the dedication of the Furniture Store Property. As a result, we do not believe that any laws were broken relative to the Town’s contract to accept or acquire the Town Property.

c. Potential Legal Issues Related to the Town Manager’s Ownership Interest in Adjacent and/or Nearby Property

As discussed above, under the criminal self-dealing statute, public officers and employees—such as the Town Manager—are prohibited from deriving a direct benefit from any contract in which he or she is involved on behalf of the public entity he or she serves.

While the Town Manager—in his capacity as a Member of AT&T Investments, LLC—may have received some benefit in the form of an increase in the AT&T Property's value following the Town's acquisition of the Furniture Store Property and the Town's commitment to apply for grant funds to renovate and improve the Furniture Store Property, any such benefit does not qualify as a "direct benefit" under G.S. 14-234(a1)(4).

As a result, we do not believe that the Town Manager has engaged in criminal self-dealing relative to the Town's acceptance of the dedication of the Furniture Store Property to the Town.

d. Conclusions regarding potential violations of the law related to the Town's acceptance of the dedication of the Furniture Store Property

Based on the available facts, it does not appear that the Town or the Town Manager violated any laws relative to conflicts of interest or self-dealing in public contracting when the Town accepted the dedication of the Furniture Store Property to the Town.

Conclusion

As described herein, and based on the facts available to this Firm, we do not believe that the Town Manager has ever had an ownership interest in the Furniture Store Property. Further, we believe that the Town Manager appropriately divested himself of any ownership interest in the Parking Lot Property, such that the Town's acquisition of the Parking Lot Property will not subject the Town Manager to liability under G.S. 14-234 and will not otherwise subject the Town to liability. Finally, we do not believe that the Town has broken any laws related to the Town's acquisition of the Furniture Store Property.

If the Town has any reason to believe that the facts relied on in this Opinion Letter are inaccurate, please notify us so that we may evaluate the impact that any inaccuracies may have on our findings and conclusions.

Sincerely,

THE BROUGH LAW FIRM, PLLC



G. Nicholas Herman



Kevin R. Hornik