

Richard M. Sepler, AICP
Post Office Box 822
Bellingham, Washington 98227

Via email

Peter J. Eglick eglic@ewlaw.net
cc: Steve Gross sgross@cityofpt.us

Re: Cole Ethics Complaint

Dear Mr. Eglick,

As I understand it, you have asked me (et. al.) to respond to you by October 7, 2016 at 5:00 pm whether I believe that any aspects of the Cole Complaint are not subject to hearings officer review and resolution. Additionally, you have asked the response to indicate whether "...there is jurisdiction over a complaint about them under PTMC Chapter 2.80." This letter includes my specific response regarding these issues.

However, I must preface with an overarching statement: I have never extended special privilege or provided special benefit to any permit applicant in my career. Nor have I ever done so (or would do so) under direction from a superior or elected official.

During my time as Community Services Director in Port Townsend and in my current capacity as Planning and Community Development Director for the City of Bellingham, I have always directed my building staff to adhere to the highest ethical standards in reviewing all applications.

It is important that I establish this context for relief from this complaint: I do not want it construed that I used technical grounds solely to avoid inquiry into my past actions. I am fully confident that any inquiry would find that I acted appropriately. However, as a past-employee I am not subject to this complaint and I wish to avoid the cost to the City of having to provide me legal counsel.

Specific Response to Inquiry:

I. Mr. Cole's Allegations Against Former City Employees, Including Richard Sepler, Are Not Subject to Hearings Officer Review and Resolution Under PTMC Chapter 2.80.

Mr. Cole makes several allegations against me in his complaint.¹ However, these allegations are not subject to hearings officer review and resolution under PTMC Chapter 2.80 because, as a

¹ Based on my understanding of Mr. Cole's complaint, he makes general allegations that, under PTMC 2.80.070(B), I, along with city officials and employees, impermissibly disclosed confidential information to other city officials and employees regarding the "13-048 project" and subsequent "DP/Upstage litigation," but fails to provide any facts

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former city employee, I am not a city “official or employee” within the meaning of the provisions of PTMC Chapter 2.80 cited by Mr. Cole in his complaint (i.e., the provisions of PTMC Chapter 2.80 that he alleges I implicated²).

PTMC 2.80.020(C) defines “city official or employee” for the purposes of PTMC Chapter 2.80 to mean:

every individual elected or appointed to an office or position of employment, whether such individual is paid or unpaid.

I am no longer “appointed to an office or position of employment” with the City of Port Townsend (City), having left City employment in October 2014. In addition, I have never been an elected officer of the City.

It is clear that, as used in PTMC Chapter 2.80, the term “official or employee” by itself does not include former city employees. Beyond the plain language of PTMC 2.80.020(C)’s definition of the term “city official or employee,” note the language of PTMC 2.80.040(E), which may apply to a “*former* official or employee” (emphasis added). The use of the adjective “former” in PTMC 2.80.040(E) to modify the term “official or employee” makes clear that, in adopting PTMC Chapter 2.80, the Port Townsend City Council did not intend that the term “official or employee” include former officials or employees—any other interpretation would render the use of the word “former” in PTMC 2.80.040(E) to be redundant and unnecessary.

As noted above, the only provision of PTMC Chapter 2.80 that may apply to former city employees, such as myself, is PTMC 2.80.040(E). Mr. Cole, however, has not alleged that I took any action that implicated the provisions of PTMC 2.80.040(E).³

In summary, Mr. Cole’s allegations against me are not subject to hearings officer review and resolution under PTMC Chapter 2.80 because: (1) I am not an “official or employee” as defined by PTMC 2.80.020(C); and (2) Mr. Cole has not alleged that I took actions implicating PTMC 2.80.040(E).

to support this allegation. In addition, Mr. Cole appears to invite the hearings officer to redraft PTMC Chapter 2.80 to include a number of other “unethical actions or actions subject to disciplinary actions.” Of Mr. Cole’s proposed additions to PTMC Chapter 2.80, he specifically alleges that I engaged in “improper governmental action” as well as “collusion,” but again fails to offer any specific evidence or even define what these violations would be.

² See footnote 1.

³ Even if Mr. Cole were to make this allegation, I have never taken any action that would implicate PTMC 2.80.040(E).

II. PTMC 2.80.110(C) Bars the Hearings Officer from Reviewing and Resolving Mr. Cole's Allegations Against Richard Sepler that Arise from Actions Taken Prior to June 24, 2013.

PTMC 2.80.110(C) states that “any action taken under this code must be commenced within three years from the date of violation.” Mr. Cole filed his complaint on June 24, 2016. So, pursuant to PTMC 2.80.110(C), the only allegations that the hearings officer may consider are those arising from actions taken by city officials or employees after June 24, 2013.

As I note above, I am not an “employee or official” within the meaning of the provisions of PTMC Chapter 2.80 cited by Mr. Cole in his complaint. Assuming, however, for arguments sake that I am, Mr. Cole, in his complaint, does not allege that I took any improper actions under PTMC Chapter 2.80 after June 24, 2013.⁴ The closest that Mr. Cole's complaint comes to specifying a specific action of mine after June 24, 2013 is his reference at several points to the fact that I was “CC'd” on an email sent by City Manager Timmons on July 3, 2013. However, being “CC'd” on an email is not an action, much less an action by a city official or employee that implicates any provision of PTMC Chapter 2.80.

For these reasons, PTMC 2.80.110(C) bars the hearings officer from reviewing any of Mr. Cole's allegations against me because he cannot point to any improper actions that I took within the three year time period required by PTMC 2.80.110(C). Mr. Cole cannot identify any improper actions because there are none—I did not take any action prohibited by PTMC Chapter 2.80 either before or after June 24, 2013.

Please don't hesitate to contact me directly should you need additional information on this matter.

Sincerely,

(Signature omitted to ensure timely response)

Richard M. Sepler, AICP

⁴ In addition, Mr. Cole does not point to any specific actions that I took prior to June 24, 2013 that are improper under PTMC Chapter 2.80.