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Milwaukee County

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May 1, 2018

Chief Patrick Mitchell
City of West Allis Police Department
11301 W. Lincoln Avenue
West Allis, WI 53227
Via email: dmitchell@westalliswi.gov

Subj: *Complaint by former Alderwoman Cathi Probst*

Dear Chief Mitchell:

At your request, Investigator Kent Corbett, Milwaukee County District Attorney's Office, investigated the above matter. I reviewed his reports and determined the complaint unsubstantiated. Please see my attached case review memorandum. Inv. Corbett's reports are available upon request.

Very truly yours,


Kurt Benkley
Assistant District Attorney

encl: case review memo

cc: Inv. Kent Corbett

- MILWAUKEE COUNTY DISTRICT ATTORNEY'S OFFICE -

Date: May 1, 2018
From: ADA Kurt Benkley *KBS*
To: Ted Atkinson file

Subj: Case review

This matter should be closed as unsubstantiated.

Former Alderwoman Cathi Probst, City of West Allis, filed a written complaint with the city attorney and the city administrator alleging official misconduct by Ted Atkinson, former Director, Buildings Inspection and Neighborhood Services. Referring to a derelict auto repair shop at 7070 W. National Avenue, West Allis, WI, Ms. Probst wrote as follows.

Ted Atkinson, former head of Director of Buildings Inspection and Neighborhood Services, changing his mind, 2.5 months before retirement, holding no conversation with me, from raze to rehabilitation on the structure, after an email between Jenna and Ted, in which he asks if the building needed to be razed or could be rehabilitated. Her reply that it needed to be razed. It has further been alleged by a taxpayer/former employee of Ben Marjaama, that Ted and his family, as well as other city officials, had their auto repair work done there for free for years. Supporting email (witness prepared to come forward...Ben Carpenter). Pay for play?

Ms. Probst made further allegations that relate to non-criminal issues within City of West Allis government. Those non-criminal issues are beyond the scope of my review.

I read Ms. Probst's complaint as accusing Mr. Atkinson of using his official position to obtain personal benefits, and, of providing official favors in recompense for these benefits. If true, such conduct would potentially violate the Code of Ethics for Local Government Officials and the criminal Misconduct in Public Office statute:

No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family... (§ 19.59(1), Wis. Stats.)

and,

Any public officer or employee who does any of the following is guilty of a class I felony:

* * *

(2) In the officer's or employee's capacity as such officer or employee, does an act which the officer or employee knows...the officer or employee is forbidden by law to do in the officer's or employee's official capacity. (§946.12, Wis. Stats.).

Inv. Kent Corbett, Milwaukee County District Attorney's Office, thoroughly investigated this matter. His investigation does not support Ms. Probst's claims.

Ms. Probst identifies Ben Carpenter as her witness against Mr. Atkinson. Mr. Carpenter wrote a letter, dated May 15, 2017, alleging Mr. Atkinson received free auto repairs at Expert Automotive, 7030 W. National Avenue, West, Allis, WI. Inv. Corbett interviewed Mr. Carpenter. Mr. Carpenter stated as follows. He worked as a mechanic at Expert Automotive from 2003-2009. During that time, Expert Automotive made free auto repairs for Mr. Atkinson and his family. Mr. Carpenter believes that management provided free repairs to people "who could possibly do things for them."

Mr. Carpenter's allegations are insufficient for the following reasons:

1. The alleged free repairs occurred approximately a decade ago and far beyond the six year statute of limitations.

2. No billing or repair records remain to substantiate the allegations. Expert Automotive is long defunct. The owner, Richard Waldkirch, is dead. His widow, Marci Waldkirch, states that the business records have been destroyed.

3. Mr. Atkinson denies receiving free repairs.

4. Ben Marjaama was the service manager at Expert Automotive. He denies authorizing free repairs to Mr. Atkinson.

5. Mr. Carpenter has motive to lie and is dishonest. Both Mr. Marjaama and Ms. Waldkirch stated that management caught Mr. Carpenter stealing from Expert Automotive on two occasions. Mr. Marjaama fired Mr. Carpenter. Mr. Carpenter also has a conviction for burglary in Milwaukee County Circuit Court Case No. 1999CF006426.

6. After he was fired in 2009, Mr. Carpenter did not work for Mr. Marjaama. Mr. Carpenter could have no personal knowledge of any subsequent dealings between Mr. Marjaama and Mr. Atkinson.

Mr. Carpenter's bare allegations cannot serve as the basis for any prosecutorial action.

Rebecca Grill, City Administrator, hired Attorney Mark Goldstein to investigate Ms. Probst's complaint including her free auto repairs allegation. In a memorandum dated December 11, 2017, Attorney Goldstein wrote as follows.

We found evidence to suggest that Ted Atkinson (previous Director of Building Inspection and Neighborhood Services) and perhaps others received free auto services from Expert Automotive and its successor auto shop Expert Car Care. One could conclude that this affected prior determinations with respect to the Property and related issues.

Inv. Corbett asked Attorney Goldstein what evidence supported his conclusions. Mr. Goldstein acknowledged the free repairs evidence consisted solely of Mr. Carpenter's uncorroborated statement.

The second prong of Ms. Probst's allegation is that many years after the alleged free auto repairs, Mr. Atkinson gave preferential treatment to Mr. Marjaama. Mr. Marjaama sought

to purchase and rehabilitate the vacant Expert Automotive property. Ms. Probst states that Mr. Atkinson, in his capacity as Director, Building Inspection and Neighborhood Services Department, recommended the property be removed from the raze list. Ms. Probst suggests Mr. Atkinson's action involved "Pay to Play".

Ms. Probst's claim that Mr. Atkinson gave preferential treatment to Mr. Marjaama fails for the following reasons.

1. The more than five year gap between alleged free repairs in 2003-2009 and alleged preferential treatment in 2014 makes any suggested connection too remote.

2. Mr. Waldkirch owned Expert Automotive. As owner, Mr. Waldkirch, and not his service manager, Mr. Marjaama, ate any free repairs costs. No one receiving free repairs from Expert Automotive would have been beholden to Mr. Marjaama.

3. Rather than supporting Mr. Marjaama's efforts to buy and rehabilitate the property, Mr. Atkinson obtained the raze order.

4. Mr. Marjaama told Inv. Corbett that "Atkinson was not on his (Marjaama's) side regarding Marjaama's desire to purchase the building at 7030 W. National Avenue due to Atkinson being responsible for implementing the raze order..."

5. Commencing in 2012/2013, Patrick Schloss Community Development Manager, City of West Allis, helped with Mr. Marjaama's proposal to rehabilitate the property. Mr. Schloss, and not Mr. Atkinson, worked to promote Mr. Marjaama's rehabilitation plans.

6. Mr. Atkinson's request to remove the property from the raze list was consistent with the Common Council's intentions. Mr. Atkinson's email requesting the property be removed from the raze list was dated October 1, 2014. On October 7, 2014, the Common Council voted to approve a transitional use permit and a special use permit for Mr. Marjaama to establish an auto repair facility on the property.

The facts do not show Mr. Atkinson improperly favored Mr. Marjaama.