

May 18, 2016

Nancy Mello, Town Clerk

Tiverton Town Hall

343 Highland Road

Tiverton, RI 02878

RECEIVED
TOWN OF TIVERTON

2016 MAY 18 A 10:26

Dear Ms. Mello,

On May 17, 2016 it came to our attention that the attached letter was in the Tiverton Library general area, and, most disturbing, it was also in a stand on a table in the Children's section. There should not be any campaign activity in our library, and especially not in the children's reading area. This letter was available for distribution to library patrons. In addition, a sign for Budget #1, Save our Library, was in front of both the new library and the Union Library. The letter, and the signs, advocating for a particular budget is in direct conflict with Section 1218 of the Tiverton Town Charter.

Section 1218 - Use of Town Resources to Influence a Voting Contest

No officer or employee of the Town, including the School Department, shall use, or cause to be used, Town property, goods, money, grants, or labor to influence the outcome of an election, ballot question, or referendum; the foregoing shall not prohibit the distribution or publication of election, ballot questions, or referendum; information by the Town Clerk, the Board of Canvassers or a Charter Review Commission.

The new Library is town property, and receives a significant grant from the taxpayers of Tiverton for its operations. Therefore, the library cannot use the building to influence the outcome of an election, ballot question, or referendum which the attached letter clearly does.

We are filing a Citizens Complaint regarding this violation.

Section 1211 Enforcement

(a) Complaints by Citizens

Any qualified elector of the Town may file a sworn statement in the office of the Town Clerk charging that:

2.) That any elected or appointed official or member of any board or commission, or that any official body, board or commission in its corporate capacity, or any Town employee has knowingly or failed to take any action, in his or her official capacity, in violation of any terms or provisions of this Charter, or of any ordinance, rule, or regulation adopted under the authority thereof.

Donna Cook

Donna Cook

192 Hilton Street

Tiverton, RI 02878

401-624-8745

donna.j.cook@cox.net

Nancy L. Driggs

Nancy L. Driggs

61 Peaceful Way

Tiverton, RI 02878

401-835-0099

nancy.driggs@gmail.com

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**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
COUNTY OF NEWPORT**

At a meeting of the Town Council of the Town of Tiverton, County and State aforesaid, held at the Tiverton High School Auditorium, 100 North Brayton Road, on the 13th day of June 2016 A.D. at 6:00 p.m.

President deMedeiros opened the meeting with the Pledge of Allegiance to the Flag.

Roll Call:	Denise M. deMedeiros - President	Jay J. Lambert	Peter A. Mello
	Joan B. Chabot – Vice President	Brett N. Pelletier	David Perry
		Joseph R. Sousa	

Town Administrator, Matthew Wojcik and Town Solicitor Anthony DeSisto were also present.

**TOWN COUNCIL SITTING AS CHARTER MONITORING AND COMPLAINT REVIEW BOARD
CITIZENS COMPLAINT OF CHARTER VIOLATION SECTION 1218 – USE OF TOWN
RESOURCES TO INFLUENCE A VOTING CONTEST**

President deMedeiros reviewed the procedure with the Solicitor. Mrs. Driggs, one of the complainants will give an opening statement; Attorney Ken Tremblay is representing the Library. Mrs. Driggs can have witnesses; the Council will be allowed to ask questions, Attorney Tremblay can present witnesses and ask questions. The public hearing will then be opened for questions or comments from the audience; the public hearing will then be closed and the Council will deliberate. Mrs. Driggs opened with a motion to continue; was aware of the right for the complaint to be heard within 30 days of the filing. Jeff Caron, one of Mrs. Driggs witnesses had filed an Access to Public Records request (APRA) for library documents and received a response from Barbara Donnelly, Chair of the Library Trustees to extend the response time to 20 business days. Mrs. Driggs opined it may be judicially efficient for the Council deliberations. Mrs. Driggs handed the motion to the Town Clerk Nancy Mello. Solicitor DeSisto cited the Charter, Section 1211; have to go forward with something. Solicitor DeSisto suggested starting the hearing, have witnesses and the Council can make that deliberation as the hearing progresses. Councilor Sousa favored postponing to a later date, liked to have more information. Councilor Lambert wanted to hear the opening statement and testimony of the complainants; can make a decision on a continuance later. Councilor Pelletier observed some of the items in the request would have little bearing on the testimony from Mr. Caron; all are emails messages or communications by the Library staff.

Councilor Perry made a motion to not continue and hear this tonight; the motion was seconded by Councilor Lambert. President deMedeiros pointed out would only need a motion to continue the hearing. Councilor Sousa made a motion to continue the hearing to a future date. There was no second to this motion. Councilor Lambert raised a procedural issue; according to Section 1211, subsection a), any qualified elector of the Town may file a sworn statement. Councilor Lambert noticed there was no sworn statement; President deMedeiros discussed with the Solicitor that all the complaints filed in the last several years did not have a sworn statement and were heard. Mrs. Driggs explained she had previously asked about the process. The complaint was handed in by Mrs. Cook; Town Clerk Mello explained the complaint was not handed to her as she was in a meeting at the time; did concur on any of the other complaints taken as long as signature on it. Councilor Lambert noted the Council could waive a sworn statement but the Charter was specific. Mrs. Driggs was asking for

statement; the hearing should proceed or can cure if there is a waiver by the rest of the Council. Councilor Lambert agreed was correct, that requirement can be waived; things can happen here in order for this hearing to proceed.

Councilor Sousa made a motion to waive a sworn statement. The motion was seconded by Councilor P. Mello, Councilor Sousa suggested going forward, was common practice in the past, and should require going forward. The motion passed on a vote of 4-3, Councilors Sousa, P. Mello, deMedeiros and Chabot in favor, Councilors Perry, Lambert and Pelletier opposed.

Mrs. Driggs noted the Council has a copy of the complaint with copies of exhibits seen as pictures. One of the pictures showed a plastic easel with flyers next to budgets; that picture was taken by Mr. Caron around May 17. Pictures were also taken of signs that said vote for budget #1, save our library on the property of the Tiverton Public Library and one triangular sign at the Union Library. The gist of the complaint is the Library, the Director and the Board of Trustees who hires the Director was in violation of 1218 using Town property to advocate a particular budget. Have no idea where the money came from for the signs, the Library gets a significant amount of grant money from the Town. Mrs. Cook took the picture of the sign in front of Union Library on May 18. Mr. Caron took the pictures of the sign on the Library property and in the children's room. Mr. Katz will also testify regarding pictures he took of a woman wearing a placard (very blurry) and the flyers. Solicitor DeSisto when questioned explained it was not illegal to take someone's picture without them signing off, could not take pictures of children.

Councilor Lambert questioned if Mrs. Driggs could identify the officers or employees of the library at that time and whether or not she considered this to be a criminal or civil violation. Councilor Lambert noted the difference is that ignorance of the law was a ground for defense in civil litigation. Councilor Lambert questioned Mrs. Driggs on whether she knew who had direct knowledge of the signs being placed there. Mrs. Driggs opined that was to be determined by the Council after they hear the evidence. Mrs. Driggs could not say who was the officer or employee involved in placing the sign or the flyers.

Attorney Ken Tremblay, representing the Library Board of Trustees (the Trustees) realized the sworn statement could be waived; don't know the charges brought, in order to have a complaint need to identify someone; will not waive the sworn statement. The Charter identifies every officer of the Town and there is no mention of the Library Trustees. Under RIGL 29-4, they are under State Law; under 59-4.5 the Town can set up for the grant, cannot tell the Library Trustees what to charge for a book. Under State Law it is a free library, contended the Council could not sit as a **Charter Complaint** as the Library Trustees are not part of the Charter and they are not officers of the Town of Tiverton. Solicitor DeSisto in response to questions explained the building itself was Town property, section 211 of the Charter identifies any official body, board or commission in its corporate capacity, or any Town employee, has knowingly taken any action or failed to take action, was the appropriate language. Attorney Tremblay is correct the public library is governed by State Law and not the Charter. Solicitor DeSisto noted there are Town employees there and it is a Town building. Councilor Pelletier noted an inconsistency between 1211 (a) (2) and 1218; 1218 specifically says who it applies to; if not either in 1211 then not subject to this authority. Attorney Tremblay disagreed with the Solicitor; the Trustees are not Town employees under the State statute. Mrs. Driggs noted on the official Town of Tiverton website under the Library Board of Trustees the Council appoints the 7 members; the Trustees are responsible for hiring the Director. Mrs. Driggs handed a Flow Chart of the Library Services organization to the Town Clerk. Attorney Tremblay repeated under State Law 29-4 the Trustees are not officers of the Town. Councilor Sousa recalled litigation from many years ago where the Library employees are not employees, questioned if this was correct and if the complaint was directed at the Trustees. Mrs. Driggs affirmed this was directed at the Library Board

of Trustees and the Director of the Library. Councilor Sousa questioned if library funds were used to pay for the sign since the Council gives them a grant. Solicitor DeSisto noted the first issue was to determine who issues checks for the Library employees; Councilor Lambert also had good points, first have to identify if officers and employees of the Town. Councilor Lambert objected to extending the complaint as the party is entitled to know what they are being charged with; paragraph number 1 does not say anything about a misuse of funds. Mrs. Driggs contended they are public employees who put up the signs.

Councilor Pelletier noted the complaint does not specify the Board of Directors or the Trustees; does not identify the individuals. Mrs. Driggs could not identify who put them there. Solicitor DeSisto agreed with Attorney Tremblay the Board of Trustees entirely comes from the State statute but are appointed by the Council; did not agree they were not connected to the Town, considered them officers. Councilor Sousa recalled some years ago the employees of the Library tried to unionize and could not; opined none of those employees are Town employees technically. President deMedeiros noted the Town does not hire fire or discipline them; questioned if they were employees. Solicitor DeSisto was aware they get grant money from the Town, the Town of Tiverton issues checks and will defend them if necessary. Solicitor DeSisto suggested asking some questions of the Town Treasurer on how they get paid. Treasurer Denise Saurette explained the Town receives payroll and invoices for the Library approved by the Board of Directors and pays them as a convenience to the Library; agreed with President deMedeiros cannot hire or fire them. Solicitor DeSisto questioned Attorney Tremblay on who defends the Library if they get sued. Attorney Tremblay was not sure, would have to look at liability insurance documents; everything about them being employees is spelled out in Chapter 29. It says the Library will hire the Director, submit the money to the Town; they approve the bill and the Town pays the bill out of the grant. The only function the Town has with the Library is an appropriation and can appoint the Trustees. Attorney Tremblay will not waive his client's rights for a fishing expedition for the Board of Trustees and will not allow his clients to make statements in front of a Board that has no jurisdiction. Solicitor DeSisto noted the Council has heard from the Treasurer as she characterizes the Library employees, Attorney Tremblay and Mrs. Driggs. Solicitor DeSisto explained, as a predicate matter, the Council needs to make Findings of Fact as to whether they feel the Library employees fall under Section 1218 and are employees of the Town. Solicitor DeSisto was not as firm as to them being employees after listening to the Treasurer. President deMedeiros questioned the Solicitor on whether a private citizen who is not under Town control can put a sign on Town property. Solicitor DeSisto cites a Supreme Court case from 1997 that said a public library is a public forum; are some First Amendment implications here, a private person uses that forum as free speech when it comes to an election. Solicitor DeSisto noted the Council may have to make findings of fact relative to employees before proceeding to the next question; would have to make a motion as to whether the Trustees and Director are officers or employees of the Town. Councilor P. Mello requested the Solicitor's opinion on whether the employees within the Library were employees of the Town. Solicitor DeSisto was going along with what the Treasurer said; she does not consider them to be Town employees. When questioned Town Administrator Wojcik did not consider them employees of the Town; does not evaluate them, give them raises or discipline them. Administrator Wojcik opined the Board of Trustees was responsible for the Library Director. A recent disciplinary matter at the Library was handled by the Director. The Personnel Board is not involved in the hiring; the Personnel Manual was not extended to the Library. Councilor Perry was on the Budget Committee for many years along with Councilor Sousa; hashed this out the Council has no authority over the library. The Town gives them a grant; they spend the money and are on their own. Mrs. Driggs argued the Council appoints the Trustees who are responsible for the Library Director, seem to have some responsibility. Attorney Tremblay cited 29-4-9 that shows the limitations of the Council and repeated the Library Trustees are not subject to the Charter Review Board.

Councilor Perry made a motion that they are not an officer or employee of this Town under State Law Section 24-9-5. Under Section 1218 they are not on any payroll of the Town, cannot discipline them. The motion was seconded by Councilor Lambert, Solicitor DeSisto noted the motion should include the Council relied on the

testimony of the Town Treasurer and Administrator to add to the statement as to the status as not being considered employees of the Town. Councilor Perry amended the motion to state that also, Councilor Lambert seconded the amended motion. Councilor Sousa was in favor of continuing the hearing relative to the public records request. Town Clerk Mello repeated the motion made by Councilor Perry and seconded by Councilor Lambert that the Library Board of Trustees and the Director are not employees of the Town, officers or officials under the State Law or under Section 1218. They are not on the Town payroll, not disciplined by the Town and Mr. DeSisto added we would rely on the testimony of the Town Treasurer and the Town Administrator as to the status of their employment with the Town. Councilor Chabot recapped public libraries are governed by RIGL 29-4, the Board of Trustees are not mentioned in the Town Charter. The Board of Trustees receive a grant from the Town and have ultimate approval authority for the payment of invoices that are paid through the Town accounting department and per RI law 29-4. Section 1218 refers only to officers or employees of the Town and their use of Town resources to influence the outcome of an election. When it comes to enforcement Section 1211 seems to broaden that issue to include others; opined in effect 1211 does not override 1218. Section 1218 is very specific; that being said opined it was correct the Board of Trustees, the Library Director or any employee that works at the libraries are not officers or employees of the Town. Councilor Chabot believed it was very specific and agreed with it. The motion passed on a vote of 6-1, Councilor Sousa opposed.

Before getting to anything else Solicitor DeSisto suggested a motion to deny the complaint based upon the prior motion.

Councilor Lambert made a motion, seconded by Councilor P. Mello to Deny the Complaint based upon the prior motion. Councilor Sousa requested a continuance, wanted more information. The motion passed on a vote of 6-1, Councilor Sousa opposed.

At this time, 8:15 pm a brief ten minute recess was taken.

Approval of Consent Agenda:

All items listed with "(CA)" are to be considered routine by the Town Council and will ordinarily be enacted by one motion. There will be no separate discussion of these items unless a member of the Council, or a member of the public so requests and the Town Council President permits, in which event the item will be removed from Consent Agenda (CA) consideration and considered in its normal sequence on the agenda.

President deMedeiros read the items on the Consent Agenda. Councilor P. Mello requested removal of item CA3c, Councilor Chabot requested removal of item CA3d and Councilor Perry item CA10 a&b.

Councilor Pelletier motioned to Approve the rest of the Consent Agenda. The motion, seconded by Councilor Perry passed unanimously.

The Consent Agenda was as follows:

CONSENT AGENDA

A-1-Approval of Minutes of Previous Meetings:

- a. Approval of Regular Council Meeting Minutes of April 11, 2016
- b. Approval of Special Council Meeting May 2, 2016
- c. Approval of Executive Session Minutes Council Meeting May 23, 2016
- d. Approval of Special Council Meeting June 6, 2016

A-2-Receipt of Minutes from the Following Boards, Commissions:

- a. Cemetery Commission