



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

Case No.: K14-100	Case Name: Jordan Leonard/ Historic Preservation Issue	Date Open:	<b>CASE CLOSED</b>  Date: <u>11/5/14</u>
Complainant(s): Kathleen Kennedy	Subject(s): Vice Mayor Jordan Leonard	October 10, 2014	

Allegation(s):

The complainant alleged in an e-mail sent to, among others, COE Executive Director Joseph Centorino that Bay Harbor Island (BHI) Vice Mayor Jordan Leonard (Leonard) misrepresented the position of the town's elected body by using the pronoun "we" during his remarks at an Oct. 7, 2014, Miami-Dade County Board of County Commissioners (BCC) meeting. The topic being addressed by the BCC was whether to allow municipalities to "opt out" of the County's historic preservation ordinance and create their own historic preservation boards. The item was passed by an 8-4 vote on its first reading, and had been referred to the BCC's Cultural Affairs Committee for a public hearing.

It was further alleged in the e-mail that Leonard may have misused taxpayer funds to pay for a "high-priced" lawyer, BHI Special Counsel Stanley Price (Price) and for a town planner (referred to as "Mr. Miller") to attend the BCC meeting. The complainant further alleged that Leonard may have violated state Sunshine law by speaking about a matter that is pending before the BHI Town Council.

Relevant Ordinances:

The Miami-Dade County Citizen's Bill of Rights states in applicable part, subsection (A)(2), regarding "Truth in Government," that: *No County or municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.*



## Investigation:

### *Interviews*

Marlene Marante, BHI Town Clerk

Bay Harbor Islands, FL

Oct. 27, 2014

Marante advised that the matter of whether BHI should opt out of the County's historic preservation ordinance was addressed at the most recent town council meeting as part of the manager's report. She said there was no formal item on the agenda for that BHI Council meeting (Oct. 13, 2014), that it was brought up during the "good and welfare" segment. She further advised that no formal council item was pending regarding this matter at the time of the October 7<sup>th</sup> BCC meeting.

Ronald Wasson, BHI Town Manager

Bay Harbor Islands, FL

Oct. 27, 2014

Wasson advised that he did address the concerns raised by the complainant and others at the previous town council meeting. He said that Price and Mike Miller (town planner) attended the Oct. 7, 2014, BCC meeting at his request. He said Leonard was there on his own initiative and not because he was asked by his office or by the town council. He said Leonard has had a long-standing interest in this issue, and had recently proposed legislation regarding historic preservation. He said that legislation was to come before the town council in September but that County Commissioner Sally Heyman's office asked him to hold off on putting it on the agenda until her ordinance was heard.

Wasson stated that Leonard was concerned that property owners were being unduly burdened by the existing process for designating properties to be of historic value. He said property owners are frequently left out of the process until after a hearing has been set to determine whether their properties are of historical significance, and that Leonard's draft legislation would have required notifying property owners earlier in the process. He said Leonard's legislation would have shifted the burden of any appeal to the government.

Wasson said that 30 to 40 properties in BHI could be affected by such a designation. He said he learned through a Miami Herald reporter that the County was conducting a historical survey of BHI and Surfside and that portions of the town could be included in a historical "district" that would restrict the property owners' rights. He said he met with County officials to discuss these concerns. He said he found it "disturbing" the County was conducting a survey without the knowledge of town officials.

Wasson stated he was at the October 7<sup>th</sup> BCC meeting, and said he felt one of the speakers made an unfair personal attack on Leonard. He said he felt Leonard was there in a personal capacity, but noted Leonard has had a long-standing interest in the topic. He said he did not feel that Leonard was misrepresenting himself with respect to the matter and had nothing to do



with his decision, as town manager, to dispatch the town's legal counsel and planner to attend the BCC meeting in the furtherance of the city's interests.

*Document/Audio/Video Review:*

On Oct. 22, 2014, COE reviewed video of the discussion of item 4(c) at the Oct. 7, 2014, BCC meeting in which a number of individuals, including the respondent, voiced opinions about a proposed resolution to allow municipalities to "opt out" of the county's Historic Preservation Ordinance and "to enact their own historic preservation ordinances at any time." Restrictions preventing this are in place at present. Leonard was the fifth of seven speakers, and was followed by the BHI special counsel, Price. The city's planner did not speak.

In his opening remarks, Leonard identified himself as vice mayor of BHI and also as a member of the League of Cities' executive committee. He did use the pronouns "we" and "I" on multiple occasions during his roughly two-minute discourse on the issue.

Leonard did appear to use the pronoun "we" in the collective sense as it relates to his official position as an elected leader of BHI. He stated, for example, that: "We want to have the right to govern ourselves," then went on to state: "I welcome the conversation at the committee level to discuss the real merits of this legislation ..." Leonard further stated: "We, as for the town of Bay Harbor Islands, want to have the opportunity to vote on that issue and have that right again because we missed that opportunity originally."

Leonard was followed as a speaker by Price, who identified himself as representing BHI as its special counsel. He echoed the sentiment of Leonard by urging the commissioners to approve the resolution and allow further discussion at the committee level and defended the town's reputation regarding development interests.

Price was followed by Miami Beach activist Daniel Ciraldo, who identified himself as president of the Public Policy Committee of the Miami Design Preservation League, but added: "However, today I am speaking on my own behalf." He went on to opine that, in his view, the intention of Leonard was not to strengthen historic preservation, but rather sought to opt out of the County's ordinance governing historic preservation in order to allow private developers greater leverage when seeking to redevelop historic properties.

Oct. 28, 2014, COE was advised that minutes to the town's Oct. 17 council meeting would not be available for several weeks. The manager's report about the County's historic preservation ordinance was discussed at this meeting. COE viewed the online video of this exchange, which begins at about the 45 minute mark of the town council meeting with remarks by resident Teri D'amico (D'amico), who voiced concerns about what she called "the vice mayor's unethical behavior."

D'amico claimed Leonard "took it upon (himself) to represent the council," and added that:



“Never did you say you were speaking on your own behalf as everyone else does.” She then went on to ask who approved the appearance of Price on the town’s behalf. She said she felt the BCC may have acted under the false impression the town council supported the ordinance when, in fact, no formal stance had been taken.

Town Manager Wasson responded that he authorized Price to attend, stating that he was an authority on the issue of historic preservation. “As manager, I thought it was appropriate for him to be there,” he said, adding that he also asked the town planner to attend.

Town Mayor Robert Yaffe stated that he believed the manager was acting within his authority and should be empowered to protect the town’s interests. He noted that in a council-manager form of government such as that found in BHI, the manager must answer to the council and that, should the council feel the manager has done something improper, the council could take action against the manager. “He is vested by our charter to run this town on a day-to-day basis, subject to the approval of the town council ... We don’t look over his shoulder 24 hours a day; we are part-time officials.”

The mayor further noted that Commissioner Heyman’s resolution “would not be binding” on the municipalities, and that it would not require them to “opt out” of the County’s ordinance and create their own preservation boards. He noted it is customary for elected officials to attend meetings of other governmental bodies, and said that while some have a tendency to “speak with a royal ‘we’,” he said he did not object to officials stating their official title.

Town Councilwoman Kelly Reid (Reid) stated that she felt like “lines were crossed” with respect to whether speakers at the BCC meeting were formally representing the town. She said she felt that it would have been better for the council to have voted on the matter prior to the commission meeting in order to provide some clear direction for staff and counsel. She said she felt Price, in particular, should not have represented the town had taken a position on the matter. “It was very confusing ... I felt like some lines had been crossed,” she said.

Reid later said she felt it would be a best practice for elected leaders to note that they are acting in a personal capacity when not acting otherwise.

Leonard, on his behalf, stated that he felt entitled to speak on his own behalf, even if he did reference his position as an elected official. He said he has “a right to petition the government,” either in his personal capacity or as an elected leader. “I happen to be the vice mayor, and I mentioned I was the vice mayor ... but regardless of whether I’m elected or not I have the right before the county, that’s my right as an American.”

Oct. 30, 2013, COE spoke to Kathleen Kennedy, the complainant, and advised her that the investigation had been concluded and that no formal complaint would be filed.

Oct. 30, 2014, COE spoke to Leonard and advised him as to the existence of the complaint and that the matter had been closed without further action. He stated the town does have an official position to defend property owners on historic preservation matters.



**Conclusion(s):**

As for violating subsection (A)(2) of the Citizen's Bill of Rights, it could be argued that (a) Leonard was not factually incorrect by identifying himself as vice mayor of BHI, and that (b) he did not explicitly state the town adopted a position with respect to the ordinance, though it may have been implied or inferred. The Vice Mayor, in his remarks, was advocating as much in favor of home rule or local autonomy as he was taking a specific stand on the Heyman ordinance, which he noted should be further debated at committee. This does suggest it should be adopted at first reading, at least for further review of the matter.

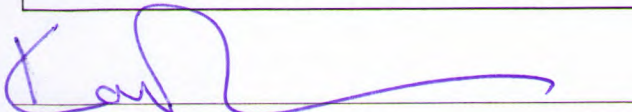
As a general rule, when appearing before another board, elected officials should attempt to make it clear whether they are speaking as individual public officials or on behalf of the public board they sit on. Leonard, as well as other elected officials, should take the very simple step of prefacing their personal remarks by stating something along the lines of "today I am speaking for myself and not for the entire board."

The brief moment that it would take to make such a statement would make clear exactly who they are speaking on behalf of and avoid any confusion.

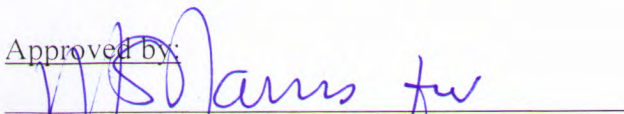
There is also no reason to believe Leonard improperly authorized or committed the use of public funds to enlist the services of the town counsel or town planner. The town manager made it clear in his interview with COE and his public remarks that this was a decision he took as manager and without any input or pressure from the Vice Mayor.

Lastly, there does not appear to be a Sunshine law issue since no resolution or other legislation was pending at the time Leonard addressed the BCC at the Oct. 7, 2014, meeting. The town council had a discussion item that was heard during its August meeting. The item was placed on the agenda at the request of Reid. A subsequent item drafted by the Vice Mayor was never placed on the agenda for the town's September meeting at the request of County Commissioner Heyman.

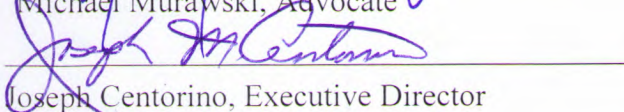
Based on all the facts and circumstances of this case, Leonard's behavior falls short of violating the ethics code and the filing of a complaint is not warranted. However, Leonard should take care to speak more carefully in the future. Accordingly, this matter is closed.



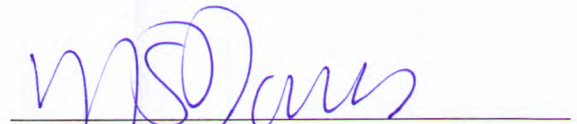
Karl Ross, COE Investigator

Approved by:  


Michael Murawski, Advocate



Joseph Centorino, Executive Director



Miriam S. Ramos, Deputy General Counsel

11/5/14  
Date