

OFFICE OF THE INDEPENDENT ADVOCATE
REPORT OF INVESTIGATION

K #:07-025

Date Opened: March 6, 2008

Date Closed: March 18, 2008

Name of investigator: Kennedy Rosario and Breno Penichet
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Allegation: On November 19, 2007 Golden Beach town resident Stanley Feinman requested public records from the Town of Golden Beach concerning the disposal / sale of a Police Department Jeep vehicle that had been deemed a “surplus personal property” item via Town resolution. Subsequently Mr. Feinman requested that the COE look into the matter alleging that both the Town Mayor and Town Manager exploited their official position in the manner in which the vehicle was sold.

Background:

In a February 16, 2006 memorandum from Police Chief James Skinner to then Town Manager Bonilyn Wilbanks-Free, Chief Skinner recommended that their 2002 Jeep wrangler police vehicle be sold at auction and the proceeds be returned to the Law Enforcement Trust Fund.

On March 2, 2006 the Town Council passed and adopted Resolution Number 1768.06 authorizing the sale of the vehicle “via public auction” citing Town of Golden Beach Code Article VIII Chapter 2.

The vehicle was kept in a parking area adjacent to the guard house that serves as the entranceway into the town.

On or about October 16, 2007 town resident James MacDougall presented the Town of Golden Beach a cashier’s check in the amount of \$1200.00 for the purchase of the vehicle.

Investigation:

On March 13, 2008 COE Investigators Breno Penichet and Kennedy Rosario responded to 212 Golden Beach Drive, the known residence of James MacDougall, and therein met with Ms. Jane Caswell, the property owner.

Caswell, in response to investigator questions, stated the following;

She is the girlfriend of Mr. MacDougall.

MacDougall was currently in Scotland.

To her recollection MacDougall first expressed an interest in the Jeep in late 2007.

The Jeep had been parked by the guard house "for along time". MacDougall would see the Jeep "sitting there and sitting there", he then went to see the current Town Manager, Alexander Diaz, to find out "what's happening with the Jeep". Diaz responded that there was "nothing happening with the Jeep" in reference to its sale.

MacDougall and Diaz then negotiated the sale price.

Approximately a week later Diaz called MacDougall and stated that he had spoken with Town Mayor Glenn Singer agreeing to the purchase price of \$1200.00 but that there was "a problem" with the vehicle title "in Tallahassee".

MacDougall soon thereafter called Diaz and asked "can I get the Jeep with out the title to begin taking off the decals?" referring to the Police department insignias that still adorned the vehicle.

Diaz agreed.

The Jeep was full of rust and MacDougall spent along time working on the vehicle in front of the residence.

Sometime later Diaz called advising them that there was a problem with the sale of the Jeep due to a resident's complaint concerning the way in which the vehicle was sold.

At this point MacDougall returned the Jeep to Town Hall.

Diaz then wrote out a Town check to MacDougall in the amount of \$1200.00 as reimbursement of the purchase price.

Diaz later reimbursed MacDougall for the work he had put into the Jeep and removal of the Police insignias.

Ms. Caswell recalls asking Diaz if the complainant was Stan Feinman as Feinman two days prior to the call from the manager had dropped by their residence, ostensibly to discuss "olives", and asked about the Jeep.

Ms. Caswell mentioned that Feinman had opposed Singer in a Mayoral election.

Ms. Caswell was certain that Mayor Singer was not involved in any conversations with MacDougall related to the Jeep.

Ms. Caswell assured the COE that she would communicate with MacDougall in Scotland and relay the message to contact Investigator Rosario.

After the meeting with Ms. Caswell the COE investigators met with Town Manager Diaz in his Town Hall office.

Diaz related that MacDougall expressed interest in purchasing the Jeep in late 2007.

Diaz utilized the "blue book" to determine the value of the jeep noting that it was water damaged.

Diaz recalls a "lawn man" also expressing interest in the Jeep, offering \$800.00, but Diaz felt it was potentially worth more if sold as scrap metal.

According to Diaz, Feinman also expressed an interest in the Jeep to re-sell it for its parts.

Diaz explained his decision process in selling the vehicle to MacDougall

1. Diaz researched State law as to the disposal of surplus equipment with a value under \$5000.00 determining that it was within the Mayor / Manager's discretion to dispose of the vehicle in a manner that benefitted the Town.
2. Advertising in the Herald would be too costly given the Jeep's value.

Neither Diaz, the new Town Clerk nor the Town Attorney had knowledge of the Town resolution that dictated the Jeep was to be sold at a public auction until Feinman pointed it out to Diaz.

Diaz however believes that the resolution may be in conflict with F.S. Statue Chapter 274.06, Alternative Procedure to dispose of tangible property. Nevertheless Diaz advised MacDougall to return the Jeep and subsequently reimbursed MacDougall the \$1200.00.

Diaz consulted with Mayor Singer about the sale of the Jeep only once prior to agreeing to sell the vehicle to MacDougall. There was no conversation / negotiation between MacDougall and the Mayor.

On March 18, 2008 Investigator Rosario received a telephone call from MacDougall from Scotland.

MacDougall recalled having a conversation with Diaz expressing his desire to purchase the Jeep, offering \$1000.00. Diaz advising him that there was an offer of \$1,100.00, and would he go to \$1200.00.

MacDougall agreed.

Diaz told MacDougall that he had to run it by the Mayor.

In a later telephone call from Diaz to MacDougall, Diaz told him "you can have it".

MacDougall states that he had no direct conversation with the Mayor concerning the purchase of the Jeep.

MacDougall expressed his opinion that “Stan has an axe to grind with Golden Beach” which may be the catalyst for Feinman’s complaint further adding that he “was used as a pawn to get to Diaz / Singer”

MacDougall’s belief is that Diaz “made a genuine mistake” in allowing him to purchase the Jeep.

Also on March 18, 2008 COE Investigators Rosario and Penichet met with Mayor Glenn Singer and Town Attorney Steve Helfman.

Singer states that he has never met MacDougall.

Singer had no part in the negotiation / sale of the Jeep other than his conversation with Diaz and subsequent approval of the sale.

The sale of the vehicle to his belief, at the time of the sale, was authorized under his / manager’s discretionary powers until the discovery of the resolution.

Singer has no recollection of any other offers for the Jeep, nor was he told that Feinman had an interest in the Jeep.

The sale price was agreed upon by taking into consideration the “blue book” value as well as the cost to be borne by the Town for an advertisement in the newspaper

CONCLUSION:

The Miami-Dade Conflict of Interest and Code of Ethics Ordinance, in part, specifically 2-11.1 (g), prohibits the use of an official position to secure special privileges or exemptions for himself or others, was not violated.

Note: Town Manager Alexander Diaz assured the COE that once the vehicle title issue was resolved and the vehicle properly sold the proceeds will be returned to the Law Enforcement Trust Fund.