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ROSS TOWNSHIP BOARD**

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MEMORANDUM

**THIS DOCUMENT IS SUBJECT TO THE ATTORNEY CLIENT
PRIVILEGE AND IS EXEMPT FROM DISCLOSURE UNDER MCL
15.243(1)(g); AND MAY BE CONSIDERED IN A CLOSED SESSION
UNDER MCL 15.268(1)(h)**

To: Ross Township Board of Trustees

Re: Township Clerk Issues

Date: May 31, 2023

From: Robert E. Thall, Township Attorney

This memo is intended to summarize the issues Board members and staff have had with Clerk Harris and the report received today from the Township's IT service provider. This memorandum is not all encompassing as there are and may be other issues but this is highlighting the main issues for consideration.

1. The Township experienced payroll issues with Clerk Harris not properly deducting payment for his dependent's insurance coverage from his pay. It is believed by some that Clerk Harris knew this deduction was to be made and intentionally did not make it. This issue was brought before the Township Board and Clerk Harris in open session indicated that everything was now being done properly and that he did not owe anything further for repayment. Later he admitted to the Supervisor that she would find out anyway, but he still owed approximately \$70. This amount has since been paid up but does not absolve the fact that some believed the failure to deduct was intentional and was only corrected upon its discovery. Further, Clerk Harris lied to the Township Board about being paid up. This failure to deduct was reported to the police. The police have investigated and have now submitted the matter to the County prosecutor for consideration of charges.

2. Clerk Harris for the benefit of his deputy unilaterally altered the pay period for his deputy and banked time to be paid in different periods because “this elevated pay, combined with his final checks from the Sherman Lake YMCA would have raised concerns with the State and possibly disqualified him from an upcoming surgery”. The reason for this banking of time was more fully indicated in a written statement from Clerk Harris stating that that:

“When Bruce began working for the township, the State just so happened to be evaluating his income to verify qualification for his insurance program. This evaluation was based on income wherein a snapshot of income for one month is reviewed. As he came aboard during the push for absentee ballot distribution, the demand for his time was high and so a full paycheck would not represent the typical 16 hour (or less) work week that he would average over the year. Also, due to a delay receiving approval of background vetting for the position as Deputy Clerk, his hours worked had accrued (67hrs), and so a first paycheck would have been quite substantial. This elevated pay, combined with his final checks from the Sherman Lake YMCA would have raised concerns with the State and possibly disqualified him from an upcoming surgery. So, in an effort to have his pay more closely represent his anticipated weekly average pay from the township, time worked over 16hours per week was banked to be distributed evenly in the months post-election season when the demand on Bruce's time will be substantially less.”

This matter was disclosed to the Township Board in open session after the Township Treasurer raised concern with the Board regarding retroactive pay to the Clerk's deputy. The matter was not willingly brought before the Township Board previously by the Clerk and instead the action was unilaterally performed by Clerk Harris. Clerk Harris did not have the authority to unilaterally change the pay period and discounted the Township CPA's advice that time should not be banked. By follow-up, after this issue was raised, the CPA emailed that he felt misled by Clerk Harris when they discussed the matter. This matter has now been submitted to the State by the Township Supervisor regarding possible insurance fraud/qualification issues.

3. An IT investigation shows that Clerk Harris released the confidential attorney client privileged memorandum dated May 18, 2023 without authority to his deputy. On May 23, 2023 at 3:39 p.m. Clerk Harris forwarded the confidential memorandum to his deputy, Bruce Matheison. Clerk Harris was well aware that he was not supposed to share this document with anyone but chose to do it anyway. This memo was intended for Township Board of Trustee members only and such release breached the attorney client privilege and constituted an unethical release of confidential information. This is a violation of the Standards of Conduct for Public Officers and Employees pursuant to MCL 15.342(1) which provides that:

“A public officer or employee shall not divulge to an unauthorized person, confidential information acquired in the course of employment in advance of the time prescribed for its authorized release to the public.”

The memo was also forwarded from Clerk Harris’ computer to Clerk Harris’ personal email account on May 22, 2023 at 9:42 p.m. I have no information where it went from there.

Infosafe concluded that Clerk Harris “sent the confidential memo to both a secondary, personal email account and to the Deputy Clerk. Clerk Harris also printed out that report in paper form. Steps were taken to obfuscate and hide this activity by way of “deleting” the message (which only sends them to the “Deleted Items” folder as noted previously), and then later ‘purging’ them by “Permanently Deleting” them from the Deleted Messages folder (again, as noted in the cover materials “Readers Note”).”

4. Further review is occurring to determine if documents were released by Clerk Harris to third parties for personal (not Township business) without going through FOIA and potential misuse of Township resources to this end.

Clerk Harris is an elected official so there is not much the Township Board can do about his behavior. The following are some options:

1. Restrict hours of when he can be in the office.
2. Pass an Ethics Ordinance. This will provide enforcement for ethical violations.
3. Ask him to resign.
4. Ask the Governor to remove him from office.
5. Continue to report violations to proper authorities.
6. Release issues to the public.

If Clerk Harris is convicted of a felony his office will be vacated. Additionally, Clerk Harris may be subject to public recall.

EXEMPT FROM FOIA/CLOSED SESSION MOTION

This correspondence constitutes confidential attorney-client privileged communication to remain confidential among the members of the Township Board. As such, this letter is exempt

from disclosure under the Michigan Freedom of Information Act, MCL 15.243(1)(g), the Board may meet in a closed session to consider its contents pursuant to the Michigan Open Meetings Act, MCL 15.268(1)(h).

As this letter is subject to the attorney-client privilege, it can be considered by the Board in closed session if the Board passes a motion, such as the following:

“Move that the Township Board convene in closed session under section 8(1)(h) of the Open Meetings Act, to consider material exempt from disclosure by state statute, section 13(1)(g) of the Freedom of Information Act, being the letter from our attorney dated May 31, 2023, for the reason that the letter is exempt from disclosure under State law as attorney-client privileged.”

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