

MEMORANDUM

To: **Loudon County Ethics Committee c/o Billy Pickel, Chairman**
From: **Kyle A. Baisley, Esq.**
Date: **July 18, 2023**
Re: **Recommendation of Action – Ethics Complaint filed by Michelle Harris Fritz dated June 23, 2023**

I was engaged by the Loudon County Ethics Committee to recommend a response to the Ethics Complaint filed by Michelle Harris Fritz on June 23, 2023 against Adam Waller, Chairman of the Loudon County Solid Waste Disposal Commission (the “LCSWDC”).

In preparing this Memorandum, I have reviewed the attached documents, correspondence and information, all of which is attached hereto for your convenience:

- Ethics Complaint dated June 23, 2023 filed by Michelle Harris Fritz (3620 Hirst Circle, Lenoir City, Tennessee 37772; fritzmr@charter.net) by email addressed to “Billy Pickle, Ethics Commissioner c/o Loudon County Highway Department,” including Exhibit 1 thereto (which is the “Agenda Packet” for the June 15, 2023 meeting of the LCSWDC, in which a draft of a TDEC Solid Waste Part I Application to be voted on at such meeting was included (the “Draft Application”)) and Exhibit 2 thereto (which is the 2015 LCSWDC Manual) (attached hereto as **Exhibit A**)
- TDEC Solid Waste Part I Application voted on by the LCSWDC at the June 15, 2023 meeting and, subsequent thereto, signed by Adam Waller, Chairman of the LCSWDC (the “Final Application”) (attached hereto as **Exhibit B**)
- Loudon County, Tennessee Code of Ethics (the “Code of Ethics”), comprised of the following (attached hereto as **Exhibit C**):
 - o 2007 Policy, Code of Ethics, Loudon County, Tennessee and Loudon County Commission Resolution No. 020507-C adopting said Code of Ethics on February 5, 2007
 - o 2010 Amendment to Section 6.7 of the 2007 Policy, Code of Ethics, Loudon County, Tennessee and Minutes from the Loudon County Commission regular meeting held on April 5, 2010, in which said amendment was adopted as Exhibit 04510-B to said Minutes
 - o LCSWDC Resolution 020408-A, First Amendment to the Amended and Restated Loudon County Solid Waste Disposal Agreement, in which the LCSWDC adopted the Loudon County, Tennessee Code of Ethics adopted on February 5, 2007 and all amendments thereto, including the amendment of Section 6.7 thereto as adopted by Loudon County on April 5, 2010
- CTAS – General Conflict of Interest Law dated July 11, 2023 (<http://www.ctas.tennessee.edu/eli/general-conflict-interest-law>) (attached hereto as **Exhibit D**)
- Email exchanges between Michelle Harris Fritz and Ethics Committee members from July 5, 2023 through July 7, 2023 (attached hereto as **Exhibit E**)

Attachment 1 to the Draft Application included in the June 15, 2023 Agenda Packet stated that the members of the LCSWDC were as follows:

- Adam Waller, Chair
- Dave Hall, Vice Chair
- **Henry Cullen, Secretary***
- **Bill Satterfield****
- Larry Rolen
- Pat Hunter

*** Henry Cullen was replaced by Gary Busch, who was duly appointed by the Loudon County Commission on June 5, 2023. Gary Busch was not listed as a member of the LCSWDC on Attachment 1 to the draft Application.**

**** Bill Satterfield resigned his position on the LCSWDC at the same June 5, 2023 Loudon County Commission meeting. Satterfield's seat has not been filled as of the date of this Memorandum.**

Attachment 1 to the Final Application that was before the LCSWDC for a vote at the meeting on June 15, 2023 stated that the members of the LCSWDC were as follows:

- Adam Waller, Chair
- Dave Hall, Vice Chair
- Gary Busch, Secretary
- **Monty Ross*****
- Larry Rolen
- Pat Hunter

***** Monty Ross was appointed by Lenoir City Mayor Tony Aikens prior to the June 15, 2023 meeting; however, I learned that Ross's appointment had not yet been approved by Lenoir City Council as of that meeting. Ross's appointment was approved by Lenoir City Council on June 26, 2023.**

Four (4) of the five (5) duly appointed members of the LCSWDC (Adam Waller, Gary Busch, Larry Rolen and Pat Hunter) were present for the June 15, 2023 meeting. Dave Hall was not present. Although Monty Ross was present, Ross was not, as of the June 15, 2023 meeting, "duly appointed" as the Lenoir City Council had not yet approved Ross' appointment by Mayor Aikens.

Following a proper motion by Adam Waller and seconded by Larry Rolen, three (3) of those duly appointed members of the LCSWDC (Adam Waller, Gary Busch and Larry Rolen) voted in favor of approving the Application, with one (1) member (Pat Hunter) voting against approval. Monty Ross voted in favor of approving the Application; however, Ross's vote cannot be included. Therefore, the vote during the June 15, 2023 meeting that purported to approve the Application failed per the LCSWDC Bylaws, Section 4 found in the 2015 LCSWDC Manual, which provides that an affirmative vote of at least four (4) members of the LCSWDC is required before any action can be adopted.

It is my understanding that the Final Application submitted to the LCSWDC on June 15, 2023 will be presented again at the LCSWDC meeting this upcoming Thursday, July 20, 2023, in which it is anticipated that at least four (4) duly appointed members of the LCSWDC will be present and vote to approve the Final Application. If this occurs, the Final Application will be deemed officially approved per the LCSWDC Bylaws.

Although Ms. Fritz cites within her Ethics Complaint specific language in the Draft Application and the LCSWDC Bylaws, Ms. Fritz failed not only to cite to any language contained in the Code of Ethics. Instead,

Ms. Fritz suggests in her Ethics Complaint that the Ethics Commission should investigate the discrepancies between the Draft Application and Final Application as they relate to Adam Waller, Chairman of the LCSWDC. In looking at the Code of Ethics, the document governing the instant matter before the Ethics Committee, I am unable to find any language that suggests that Adam Waller, or for that matter any other member of the LCSWDC, could be found in violation of the Code of Ethics in connection with the matters raised by Ms. Fritz in her Ethics Complaint.

The Code of Ethics simply does not contain language that governs any of the facts or circumstances raised by Ms. Fritz in her Ethics Complaint. The Code of Ethics does not impose any affirmative obligation on any Loudon County official to ensure that draft documents circulated for an upcoming meeting agenda packet are corrected at the actual meeting, to the extent information contained therein changes prior to the meeting in which the items in the agenda packet are to be presented and voted on. The Code of Ethics also does not govern situations in which one or more Loudon County officials mistakenly believe that a vote carries when, in fact, the requisite number of votes are not obtained.

In summary, the Code of Ethics governs situations in which a Loudon County official or employee has a “personal interest” in voting or non-voting matters within Loudon County in which the official or employee (or their spouse or child) stands to gain some personal financial gain or advantage and sets forth certain disclosure requirements and provides restrictions on such official/employee’s ability to vote on any voting matters or to exercise discretion on non-voting matters in which such a “personal interest” exists. Ms. Fritz’s Ethics Complaint does not allege that Adam Waller (or his spouse or children) had or has a “personal interest” in any of the matters relating to the Draft Application or the Final Application, the discrepancies contained within the Draft Application when compared to the Final Application or the inadequate vote that purported to approve the Final Application at the June 15, 2023 LCSWDC meeting. Further, my independent investigation of the situation did not uncover the existence of any such “personal interest” or facts or circumstances that would lead me to believe that Adam Waller has any “personal interest” relating to the Final Application. Instead, my investigation uncovered what amounts to harmless errors contained within a draft document circulated in an agenda packet prior to a meeting and a good faith, albeit mistaken belief that a vote carried when, in fact, it did not per the LCSWDC Bylaws. Assuming the Final Application is approved as anticipated during the July 20, 2023 LCSWDC meeting, those oversights will undoubtedly be entirely harmless to Loudon County and its residents.

Accordingly, it is my recommendation that the Ethics Committee dismiss Ms. Fritz’s Ethics Complaint at the meeting scheduled for 9:00 am on Tuesday, July 18, 2023 and take no further action in connection therewith.

Ms. Fritz also alleges in her July 5, 2023 email to the Ethics Committee members, without providing any basis, details or citations within the Code of Ethics, that Ethics Committee members Bill Satterfield and Steve Cook and Loudon County Attorney Bob Bowman are conflicted and that Satterfield and Cook should recuse themselves from voting on her Ethics Complaint. I cannot find any language within the Code of Ethics supporting the existence of any such conflict of interest relating to Satterfield, Cook or Bowman after taking into account the facts and circumstances raised by Ms. Fritz in the Ethics Complaint as none of them are the subject of Ms. Fritz’s Ethics Complaint. Nonetheless, I was engaged to advise the Ethics Committee in place of Mr. Bowman, thereby addressing that alleged conflict of interest. I see no reason that Mr. Satterfield or Mr. Cook should recuse themselves from deliberating and voting on Ms. Fritz’s Ethics Complaint.

Accordingly, it is my recommendation that Mr. Satterfield and Mr. Cook participate in any deliberation and vote relating to Ms. Fritz’s Ethics Complaint at the Ethics Committee meeting scheduled for 9:00 am on Tuesday, July 18, 2023.