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VIA HAND DELIVERY

Members of the Town of
St. John Police Commission

In re: Counsel Report and Legal Opinion; Incident from Monday, July 9, 2018;
Subjects: Town of St. John Chief of Police James Kveton and Corporal Michael
D. Moffitt.

Members of the Town of St. John Police Commission:

As you are aware, I was engaged by the Town of St. John Police Commission ("Police Commission") for the single purpose of preparing a full legal opinion concerning the issue of the incident alleged to have occurred between Chief of Police James Kveton ("Chief Kveton") and Corporal Michael D. Moffitt ("Corporal Moffitt"). In preparing this Counsel Report and Legal Opinion, I reviewed the following items, and undertook the following actions:

1. Items Reviewed:

- a. July 12, 2018 Memorandum from Corporal Timothy Gardenhire ("Corporal Gardenhire") to Patrol Commander Jay Dahlin ("Commander Dahlin").
- b. July 16, 2019 Memorandum from Commander Dahlin to Commander Steven Flores ("Commander Flores").
- c. July 16, 2018 letter from Corporal Moffitt to Commander Dahlin.
- d. July 16, 2018 Memorandum from Chief Kveton to former Police Commission Chairperson Rose Hejl ("Commissioner Hejl").
- e. July 16, 2018 Memorandum from Detective Ronald Olson ("Detective Olson") to Commander Flores.
- f. June 17, 2018 Memorandum from Commander Flores to Commissioner Hejl.¹
- g. July 23, 2018 Memorandum from Commander Flores to Commissioner Hejl.

¹ This Document appears to be incorrectly dated in the heading as "Date: 7/16/2018" as it bears a date of "June 17, 2018" immediately beneath the signature line.

- h. Garrity Warning signed by Chief Kveton, dated June 16, 2018.
- i. Inquiry of the St. John Police Department prepared by professional investigator Steve J. Pestikas (“Mr. Pestikas”), dated June 26, 2018.²
- j. November 26, 2018 letter from attorney Joseph C. Svetanoff to Clerk-Treasurer Beth Hernandez concerning policies and procedures for investigations of the members of the St. John Police Department.

2. Actions Taken:

- a. Interview with Corporal Moffitt.
- b. Preparing Affidavit for Corporal Moffitt.
- c. Discussions with William Enslin, counsel for Chief Kveton.
- d. Discussions with Mr. Pestikas.

3. Opinion:

The incident in question occurred between Chief Kveton and Corporal Moffitt. It seems that Corporal Moffitt was late in recording his working hours. Chief Kveton had a conversation with Corporal Moffitt concerning the issue, and “slapped” Corporal Moffitt on the hand. After a careful review of the preceding documents and analysis of my discussions with the named individuals, it is my opinion that the issue at hand comes down to a question of degree. That is to say, put in the most simplistic terms, how hard was the slap on the hand, and what was the intention of Chief Kveton. Corporal Moffitt has one feeling about the contact and Chief Kveton has another.

Chief Kveton has stated that he did not wish to engage in official discipline against Corporal Moffitt concerning the time reporting issue. Of course, the euphemistic “slap on the hand” is another way of saying that all is well, with the implication being that someone received little if any punishment for the commission of a wrong. All indications are that Chief Kveton is in complete disbelief that Corporal Moffitt feels that he was stricken in anger with any substantial degree of force. Chief Kveton completely denies that the action was intended to actually harm Corporal Moffitt in any way.

Cororal Moffitt, however, states that the physical contact was of substantial force, and caused physical pain and redness to occur on the top of his hand. I see no way of reconciling these divergent statements. In point of actual fact, the other members of the St. John Police Department that provided statements concerning the incident were not direct witnesses to the

² Said Inquiry is for internal consumption only, and not made a part hereof. The exhibits to said inquiry are likewise non-public documents. This redaction is necessary due to the limiting language contained in the exhibits and the confines of the United States Supreme Court opinions in *Garrity v. New Jersey*, 385 U.S. 493 (1967), *Spevak v. Klein*, 385 U.S. 511 (1967) and *Gardner v. Broderick*, 392 U.S. 273 (1968).

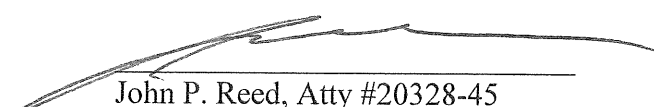
actual occurrence. The evidence provided by these individuals was comprised entirely of hearsay from Corporal Moffitt. Essentially, those statements are merely a recap of what Corporal Moffitt said in his statement, and of no particular or additional value to the investigation that was conducted.

Mr. Pestikas is known to me to be a highly qualified and respected investigator. I am very comfortable relying on his impressions of the interviews he conducted and other items that he reviewed. As to the ultimate conclusions contained in the report, Mr. Pestikas states that, in his professional opinion, there is insufficient evidence to bring any formal charges against Chief Kveton. The standard of proof for such proceedings is one of *clear and convincing evidence*.³ I see nothing in the report or the exhibits thereto that lead me to any other conclusion.

In addition, and of great importance, Corporal Moffitt has stated to me that he is satisfied with the outcome of the investigation, does not fear any retaliation from Chief Kveton and that he does not desire any disciplinary actions to be taken. In fact, Corporal Moffitt stated to me that he did not even want to write a formal report of the incident, but was forced to do so by the direct order of a superior officer. Chief Kveton has apologized to Corporal Moffitt face-to-face, and Corporal Moffitt is satisfied with said apology. As an aside, I do not view said apology as an admission of any chargeable wrongdoing, but, rather, as a gesture of goodwill and gentlemanly behavior.

Therefore, and for all of the preceding reasons and a thorough analysis, it is my opinion and recommendation to this body that no further action be taken in regard to this matter. Of course, the Police Commission would have to vote on this matter in an open and public meeting, and make the results of said vote known to the Town Council for final action.

Respectfully submitted,



John P. Reed, Atty #20328-45

³ "Clear and Convincing Evidence" is an evidentiary standard defined under Indiana Law as "Proof by clear and convincing evidence is a higher standard of proof than proof by the greater weight of the evidence. Proof of a claim by clear and convincing evidence means that the facts supporting that claim are highly probable. In criminal law we require that crimes be proved by an even higher standard of proof called beyond a reasonable doubt. We do not use this higher standard in civil cases, but the concept of beyond a reasonable doubt helps us to understand the concept of clear and convincing evidence. Clear and convincing evidence is a higher standard than the greater weight of the evidence, but a lower standard than beyond a reasonable doubt. *Indiana Model Jury Instruction 113.*