

FERGUS CULLEN

January 15, 2025

Members of the Ethics Commission:

I write to ask you to reconsider the preliminary conclusions reached in my case at your meeting on January 2. I am being held to an unprecedented and unreasonable standard. The real impact of a conviction in this case will be hugely disproportionate to the alleged offense and an injustice.

Our ethics code is not intended to apply to a case like this. Its intent is to head off cases of direct pecuniary benefit, like a councilor voting on a contract going to a company in which he has a hidden financial stake, or acting on non-public information. This case does not meet that threshold. Our ethics code is not intended to prevent an elected official from participation in a small real estate development that is consistent with our ordinances, provided he follows disclosure and recusal rules, which I did.

The complainant failed to meet the burden of proof and the “clear and convincing” threshold of evidence. A focus of the hearing and your deliberation was that the same civil engineering firm was used for the applications at 512 Sixth Street and 566 Sixth Street. Yet the complaint *did not even mention* the use of the civil engineering firm. It was not part of the complaint. This was introduced by the Commission’s chairman – not by the complainant – who argued that employing Dover’s leading civil engineering firm created an unethical financial relationship.

This is an unreasonable standard. By this logic, I would not be able to review an upcoming application to build a new McDonalds restaurant off Durham Road because I have purchased meals at McDonalds and thus established a financial relationship with them. By this logic, it is insufficient that I recuse myself tonight from voting on a lease agreement with Reach for the Top, a non-profit agency that rents space at the McConnell Center, because I pay for my two medically-needy children to receive services there; that constitutes a financial relationship that violates our ethics code. By this logic, it is insufficient that I recuse myself tonight from voting on a grant for Community Action Partnership because I pay for services that organization provides to my medically-needy children; that constitutes a financial relationship that violates our ethics code.

In a community our size, it is inevitable that on occasion, leaders in the community are going to have public and private roles that sometimes intersect. One of the principals of Civil Works, Kevin McEneany, has a business and also chaired the Dover 400 Committee, to which my wife and I donated before I became a client of his firm. This is called social capital and healthy communities are better off when they have more of it. Is the standard really going to be that people who wear multiple hats in a community can never interact or do business with one another for fear of creating an unethical conflict? Was I meant to handicap my own application by hiring an inferior firm less familiar with Dover’s land use ordinances?

Employing a well-known local civil engineering firm – or being a client of a non-profit that rents space from the city or receives grant funding from the city – does not give me a direct, indirect, private, or financial interest in any of those organizations constituting a conflict of the kind intended to be prevented by our ethics code.

It is also unreasonable, and contrary to common sense, to conclude that when I spoke at the City Council meeting on July 10 to address charges made during public forum that I had not just violated the ethics code but also acted criminally, that defending myself was in itself a violation of the ethics code. I was speaking on my own behalf, not appearing on behalf of a private interest before the Council constituting a violation of 21-3.

I respectfully suggest **the preparation of the deliberation checklist in advance of the Commission hearing testimony and reading exhibits on January 2 was improper**. That checklist included multiple references to the civil engineering firm and the owner of 512 Sixth Street that *were not even mentioned* in the complaint. It focused on allegations different from those raised in the complaint, without providing due process notice to the defendant. The checklist framed your deliberation in a way that all but ensured the answer to every question would lead to a conviction. Preparing that document in advance is a little like building a scaffold and testing the trap door, and then opening the trial. I wonder whether the Commission would have arrived at the same conclusions, had you taken a few days to consider what you'd heard and read, and then deliberated in an open-ended conversation without being steered by that document to preordained conclusions.

Finally, I make a more personal plea for justice. I ask you to consider the real impact letting your preliminary decision stand is having, and is going to have, on me and my family; whether that is proportionate to the alleged offense; and whether that verdict serves the cause of justice.

I am self-employed with a family of six to support, including two children with high medical needs. (As it happens, both of them spent time in different hospitals today.) I am concerned about the impact being accused of an ethics violation has already had on my reputation and may have on my ability to support my family. The charge will be prominent in a Google search forever; the nuance of the case will be lost.

My spouse is distraught. She is pleading with me to resign from the athletics committee, the planning board, and the council and to abandon public life altogether, if facing a complaint like this is what comes with serving our community. She questions whether we should remain living in Dover, if this is what happens to a local volunteer working to make our community better.

You may also consider the chilling effect a ritual flogging, attendant media coverage, and getting eviscerated on social media will have on the willingness of other people to risk offering their time, experience, expertise, and talents to the community.

The real punishment in this case goes far beyond any recommended sanction and is vastly disproportionate to any alleged transgression.

A man's reputation is on the line here. Are you certain you are making the right decision and that justice is being served by convicting me on this matter?

Respectfully,

Fergus Cullen

