

John Long

LATE ITEM - FRANK WRIGHT RE: DIVESTMENT

From: Frank Wright
Sent: Thursday, May 22, 2014 5:26 PM
To: John Long
Subject: Fossil fuel divestment followup response
Attachments: Divestment-followup answers; SRA fossil fuel divest order.BOA conflict 5 22 14.pdf

John: As we just discussed, attached for submission to the Board of Aldermen is my May 20, 2014 letter and supplemental May 22, 2014 letter, both responding to questions concerning the Board's interest in a resolution urging the Retirement Board divesting any investments in fossil fuels. Thank you. Frank

Francis X. Wright, Jr.
City Solicitor
City of Somerville
93 Highland Avenue
Somerville, MA 02143
(617) 625-6600, ext. 4410

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From: Frank Wright
Sent: Wednesday, May 21, 2014 12:13 PM
To: Board of Aldermen
Cc: Susan Tkaczuk
Subject: FW: Fossil fuel divestment followup response

Honorable Board Members: Attached please find my response to questions posed by members of the Board of Aldermen as to the proposed resolution seeking to have the Somerville Retirement Board divest of fossil fuel investments. Please contact me if you have any questions. Thank you.

Francis X. Wright, Jr.
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CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

May 21, 2014

Honorable Board of Aldermen
City Hall
93 Highland Avenue
Somerville, MA 02143

Re: Fossil Fuel Divestment

Dear Honorable Board Members:

You have asked this office to research whether other communities sought legal counsel prior to the legislative body taking official action relative to fossil fuel divestment. Our research has revealed that Amherst, Northampton, Provincetown, Truro and Cambridge did not seek a legal opinion from their respective counsel. Truro's counsel was unaware of the matter being presented to the Board of Selectman, instead of Town Meeting.

You have also asked for the potential penalties for violation of G. L. c. 268A § 19. General Laws, c. 268A, § 19 provides that any person who violates that section "shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both."

Note the according to the FAQ's on the State Ethics Commission website, with respect to the resolution of a complaint, "[t]he resolution varies with every case. If the Commission determines that there is 'reasonable cause to believe' that the conflict of interest law has been violated, then the case can be resolved: with a confidential education letter to the subject in which the Commission finds reasonable cause to believe the subject has violated the law, and the subject consents to publication of the letter; with a public disposition agreement in which the subject admits to violating the conflict of interest law and pays a civil penalty; or with the Enforcement Division issuing an order to show cause, which initiates a public adjudicatory hearing."

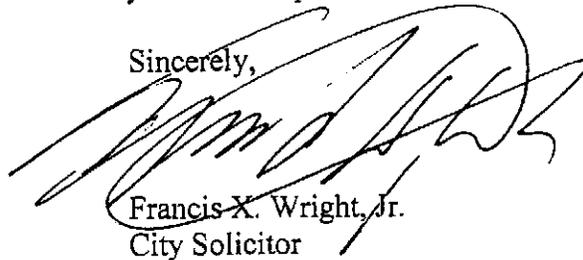


Honorable Board of Aldermen
City of Somerville
May 21, 2014
Page 2

Finally, you have asked whether there was an option to appeal the opinion of the State Ethics Commission. In my opinion, while there is no appeal *per se*, a plaintiff may seek judicial interpretation of a statute by an action for Declaratory Judgment. Graham v. McGrail, 370 Mass. 133 (1976).

Please feel free to contact me with any additional questions.

Sincerely,



Francis X. Wright, Jr.
City Solicitor



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

May 22, 2014

Honorable Board of Aldermen
City Hall
City of Somerville
93 Highland Avenue
Somerville, MA 02143

Re: Fossil Fuel Divestment

Dear Honorable Board members:

In further response to the questions relative to the fossil fuel divestment, you have asked for additional clarification as to whether individual members of the Board of Aldermen may advocate in their official capacity publicly, or in their individual capacity as members of the Somerville Retirement Board, for divestment from fossil fuels.

For the reasons already stated in the opinion letter dated March 12, 2014, in my opinion, individual members of the Board of Alderman may not advocate in their official capacities publicly for divestment. That opinion provides that, according to David Wilson, "no official action by the Board or its members may be taken."

General Laws Chapter 268A, s 19 generally prohibits municipal employees, including elected officials, from participating in matters in which they have a financial interest. Massachusetts General Laws c. 268A, s.1(j) defines "participate" as follows: "participate in agency action or in a particular under the statute."¹

You have also asked whether individual members of the Board of Aldermen may advocate in their private capacity for divestment from fossil fuels.

In my opinion, individual members may lawfully do so in their private capacity and represent their personal points of view. I recommend that it is clearly established that they are acting on their

¹ Previous commission decisions have discussed and addressed the issue of whether conduct rose to the level of personal and substantial. A public employee who discusses and makes recommendations on the merits of a matter will be deemed to have participated personally and substantially. See, e.g. EC-COI-89-2 (discussion of merits of a particular matter); 87-19 (participation includes any discussion, recommendation, vote, investigation) 85-75 (participation includes reviewing and making recommendations to others); 79-74 (participation found where employee discussed with decision-makers factors that were central considerations of the final evaluation of a contract even if employee did not participate in selection, final review, approval and execution of the contract).

Honorable Board of Aldermen

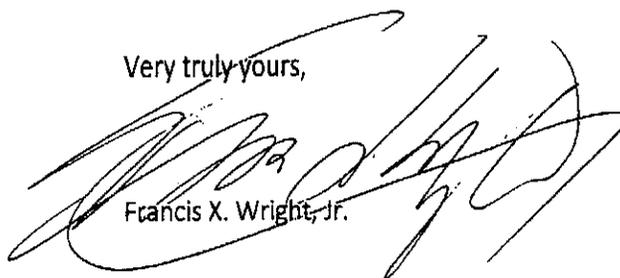
Page 2

May 22, 2014

own behalf, including 1) stating in all written correspondence that they are acting on their own behalf and in their personal capacity, rather than their official role, 2) not using city stationery, resources or supplies to convey their point of view, 3) sitting in the audience before speaking at a hearing or public meeting, rather than sitting with other officials or staff members and 4) making a public declaration, to be included in the minutes of any meeting, that they are acting on their own behalf and in their personal capacities rather than their official role.²

Please contact me with any additional questions.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'Francis X. Wright, Jr.', is written over the typed name.

Francis X. Wright, Jr.

² See State Ethics Commission Advisory No. 88-01.