

# KANTOR|DAVIDOFF

Kantor, Davidoff, Mandelker, Twomey, Gallanty & Kokhba, P.C.  
415 Madison Avenue, 16<sup>th</sup> Floor  
New York, New York 10017  
Tel: (212) 682-8383  
Fax: (212) 949-5206  
www.kantordavidoff.com

Connecticut Office  
495 Post Road East  
Westport, CT 06880  
Tel: (203) 222-1100  
Fax: (203) 226-7323

Laurence D. Laufer  
Of Counsel  
Writer's extension: 720  
Writer's e-mail: laufer@kantordavidoff.com

February 26, 2018

## **BY OVERNIGHT DELIVERY**

Nicole Lucio, Chair  
City of Mount Vernon Board of Ethics  
One Roosevelt Square  
Mount Vernon, NY 10550

Re: Mayor Richard Thomas's Financial  
Disclosure Statement Review

Dear Ms. Lucio:

This firm represents Mayor Richard Thomas. Mr. Thomas is in receipt of a letter, dated January 22, 2018, stating the City of Mount Vernon Board of Ethics (the "Board") has been reviewing Financial Disclosure Statements and requesting that Mayor Thomas "supplement" his financial disclosure statement(s) pursuant to City of Mount Vernon Code sections 24-7(F), (G) and (H). Subsequently, the Board sent a so-called "reminder" letter, dated February 13, 2018, to Mayor Thomas. On behalf of Mayor Thomas, we hereby respond to the Board's requests.

As a preliminary matter, we wish to note the Board's grossly negligent disregard of the clearly defined limits of its jurisdiction and delegated authority. One could surmise that such recklessness and truly astounding incompetence suggest that the Board and its legal mandate are being manipulated by outside parties in service of political agendas. We certainly hope this is not the case. In any event, we hereby reserve all rights, privileges and remedies with respect to the Board's misuse of its public office and trust.

Mayor Thomas last submitted a Financial Disclosure Statement to the Board on or about May 31, 2017. To the extent the Board's request pertains to transactions and events occurring after the time periods covered by that May 31,

2017 submission (generally, calendar year 2016 or, in the case of reportable liabilities, as of the date the statement was filed), the request to supplement previously submitted disclosure statements is, inter alia, premature. While the Board certainly has authority under Code section 24-7(G) to review the financial disclosure statements it has received, it has no authority to accelerate the statutory deadline for submission of disclosure statements pertaining to transactions and events in a subsequent time periods.

Likewise, the Board has no authority to require supplemental disclosure of information that either is not required or expressly exempt from disclosure. For example, the General Municipal Law excludes the following information from disclosure:

- gifts from a relative
- any real property which is the primary or secondary personal residence of the reporting individual or the reporting individual's spouse
- any loan issued in the ordinary course of business by a financial institution to finance, inter alia, the cost of home purchase.

See General Municipal Law §812(5)(9), (15), (19); Code section 24-7(G)(1).

With these considerations in mind, we address each of the three areas in which the Board requests Mayor Thomas to supplement prior Financial Disclosure Statement(s).

1. *77 Douglas Place*. For the above-stated reasons, none of the information the Board has requested in relation to this home purchase is legally subject to disclosure on the Financial Disclosure Statements that have been completed and submitted for the Board's review.
2. *Amani Public Charter School*. The Board's January 22, 2018 letter states: "Your Financial Disclosure Statement dated May 31, 2017 states you are a Board Member of the Amani Public Charter School..." This statement pertains to the calendar year 2016 time period, which was the first calendar year in which Mr. Thomas held the office of mayor. There appears to be a misunderstanding. The relevant Financial Disclosure Statement does not state that Mr. Thomas was a board member of or received any compensation from the Amani Public Charter School in 2016 or at any point during his term as Mayor. Given the factually

inaccurate premise of the inquiry, there is no responsive information to submit.

3. *Cherish Celetti School Loan Debt.* The General Municipal Law states:

Any loan issued in the ordinary course of business by a financial institution to finance educational costs, the cost of home purchase or improvements for a primary or secondary residence, or purchase of a personally owned motor vehicle, household furniture or appliances shall be excluded.

See General Municipal Law §812(19) (emphasis added); see also Code section 24-7(G)(1). Thus, the requested information is not subject to disclosure.

For the reasons stated above, the Board lacks a sufficient legal and factual basis for requesting Mayor Thomas to supplement prior disclosure statements. Thus, the request is not a proper exercise of the Board's functions, powers and duties under Code section 24-7(F).

Additionally troubling is the Board's claim in the January 22, 2018 letter that it is requesting information pursuant to Code section 24-7(H), which states:

If a person required to file a financial disclosure statement with the Board has failed to file a disclosure statement or has filed a deficient statement, the Board shall notify the reporting person in writing, state the failure to file or detail the deficiency, provide the person with a fifteen-day period to cure the deficiency, and advise the person of the penalties for failure to comply with the reporting requirements. Such notice shall be confidential. If the person fails to make such filing or fails to cure the deficiency within the specified time period, the Board shall send a notice of delinquency to the reporting person and to the appointing authority for such person.

The Board has not issued any notice in writing to Mayor Thomas alleging that he "has failed to file a disclosure statement" or detailing any "deficiency" in his disclosure statements. It is highly prejudicial and contrary to due process for the Board to threaten a civil penalty for failure to file or for deficient disclosure where the Board has failed to provide the written notice expressly required by Code section 24-7(H).

Finally, the “statutory notice” contained in the February 13, 2018 letter claims for the Board authority to impose a \$10,000 civil penalty and references the Code section 24-7(J) as authority. As you are no doubt aware, the Board’s authority to assess civil penalties is limited as follows:

A reporting individual who knowingly and willfully fails to file an annual statement of financial disclosure or who knowingly and willfully with intent to deceive makes a false statement or gives information which such individual knows to be false on such statement of financial disclosure filed pursuant to this section shall be assessed a civil penalty in an amount not to exceed \$10,000.

See Code section 24-7(J) and General Municipal Law §812(6). The Board has no authority to assess civil penalties against any person for not reporting information that is not subject to disclosure pursuant to General Municipal Law §§810-813 and Code section 24-7(G).<sup>1</sup> In its letters of January 22 and February 13, 2018, the Board therefore not only improperly requested Mayor Thomas to supplement his previous financial disclosure statements with information that is not required to be included in those financial disclosure statements, but it also improperly claimed non-existent authority to assess a civil penalty for any failure to submit such information.

We understand that the Board recently sought to be delegated authority to issue subpoenas. We wish to underscore that Mayor Thomas’ justified refusal to comply with the Board’s *ultra vires* requests should not be used to demonstrate the Board’s need for such power. The manner in which the Board has abused its functions, powers and duties in this inquiry points to the Board’s clear lack of fitness for being entrusted with any additional unsupervised legal authority, let alone subpoena power. We expect the Board to adhere to the actual confines of its legal authority in the future.

Thank you for your attention in this matter.

Very Truly Yours,  
KANTOR, DAVIDOFF, MANDELKER,  
TWOMEY, GALLANTY & KOKHBA, P.C.



LAURENCE D. LAUFER

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<sup>1</sup> Please also be advised that the February 13, 2018 letter inaccurately references Code section 24-7(G).