

MEMO

March 12, 2014

To: Oak Bluffs Board of Selectmen
From: Atty. John M. (Jack) Collins, Special Labor Counsel
Re: Council on Aging Handling of Non-Town Appropriated Funds

This Memo will update you on progress made during the investigation of possible mishandling of funds based on concerns raised by the Town Accountant that money is being received and expended by the Director of the Oak Bluffs Council on Aging in ways that appeared to violate applicable Massachusetts General Laws. Regrettably, the concerns have proven to be justified.

While one might have hoped this process would take a short time, the lack of information supplied by the Director and a third party that the Director has used as a conduit for disbursing certain funds, and the limited scope of the police review - which only considered possible criminal violations - has not allowed the investigation to fully answer all the questions presented.

I surmise from the news story I read yesterday that a copy of a report from the Police Department was provided to Mr. Wey. This is unfortunate from a number of perspectives. I had seen an interim draft and noted that many areas needed additional investigation. The Police Chief understandably felt this might exceed the scope of their focus, so the need for an outside investigator became apparent. Clearly there is a great deal more investigating to be done and, as the newspaper may have done, one might get the mistaken impression that the Director has somehow been "cleared" of any criminal wrongdoing. This is not the case. The last paragraph of their interim report makes this clear. While the police may feel that they have not yet obtained enough evidence to initiate a criminal prosecution, as discussed below, this may not be the case. They indicated that the matter of their criminal investigation "is closed pending further information." They referred this back to the Board for further instructions. Whether the PD or an outside investigator does the work from here on is up to the Board. Moreover, while I cannot predict the future, once the investigation resumes, they may have to re-think that position.

Clearly, there is ample evidence that funds have been mishandled for years by the Director, both personally and at his direction by others. In some cases this has involved, at a minimum, lack of record keeping. In others, it appears to have taken the form of diversion of town funds or monies that should have been town funds. A substantial number of customary records, bank statements and copies of checks are missing. The source of funds, the identification of donors or others making

payments for one of several "benefits" controlled by the Director or others at his behest, and the identity of alleged beneficiaries, are often unable to be confirmed.

The Town Accountant has reviewed documents supplied by the Director and a third party that the Director has used as a conduit for disbursing certain funds. These documents are what the Town Accountant politely describes as "sparse." Therefore, he concludes that, "due to this shortcoming, I cannot offer assurances as to the validity and therefore can place no reliance on any of the disbursements made from this account." The existence or number of checking accounts or other fund handling mechanisms is not clear. The Town Accountant has been able to identify nearly \$24,000 that has passed through one such checking account since 2007. This included over three thousand dollars of rents from third parties using the COA building that should have been deposited in the town treasury as required by law. How the Director came up with the amount of the rent, whether he complied with the state's public bidding laws, why he decided to not deposit these funds in the town treasury, and how he decided who should be given checks and the amount of the same from this account through a private party, are still unanswered. In addition, nearly eleven thousand dollars of money collected from what some perceive as the Town's "Road Race" were run through this private account. There was an "Oak Bluffs Road Race, Inc." corporation that may have been formed by the Director and others several years ago, but no financial records of any kind were requested or produced, so this remains a potential source of inquiry. Donations accounted for over two thousand dollars, ticket sales exceeded five thousand dollars and what the Accountant lists as "unclassified" deposits exceeded twenty-five hundred dollars. How many were made in cash, how many by checks, and whether they were written to the Oak Bluffs COA or other payees needs further investigation. For those persons that made what they expected were tax-deductible charitable donations, the findings may prove to be troublesome.

The Police investigation was hampered by similar evidentiary shortcomings. The Detective assigned was asked by the Chief to determine if there was sufficient evidence that a "larceny of town funds" had taken place. Based on the lack of available information supplied by the Director and the third party, the Detective understandably has not been able to assemble sufficient evidence to warrant a criminal complaint at this time. This does not mean that no criminal conduct was involved, but only that the present information supplied principally by the Director or on his behalf, were not sufficiently conclusive for the Police Department to proceed criminally. This may or may not change as more information is uncovered. The Chief has made it clear that the Detective has not looked at the issue of violations of any applicable laws that are not criminal in nature. This will require someone with experience in this areas to conduct that phase of the investigation.

The State's Conflict of Interest Law, among other things, prohibits a municipal employee from using his position to benefit himself or others or essentially doing things that a member of the public could not do. The investigation

must look into whether any of the payments benefitted the Director, his family, business associates or friends. This was not an area explored by the police. It is possible that the State Ethics Commission might be asked to conduct this phase of the investigation. Alternatively, the town could look into this aspect a little more and then decide whether referral to the Ethics Commission is warranted.

In my opinion, since the initial findings indicate potentially a great many irregularities, it would be appropriate for you to engage the services of an outside investigator to work with the Town Accountant and myself to conduct a thorough investigation to locate missing documents, to more closely question the Director and others who have knowledge of these matters, and to determine if laws are being violated and if all monies have been properly accounted for in this case.

The following items should be assigned to the independent investigator:
Possible misconduct:

- Failure to comply with applicable state laws concerning handling of municipal funds.
 - Record keeping is largely missing
 - Not deposited in town treasury as required by law
 - Working with non-town employee(s) to disburse what should be town funds
- Using his governmental position for unauthorized purposes, potentially including his own personal gain or that of others, in violation of the State's Conflict of Interest Law
- Renting out town property without proper accounting, without complying with state public bidding laws, and not depositing rents in town treasury. (In addition to the general larceny statute, M.G.L.A. 266 § 30, there is also a statute that makes this a criminal offense when done by a town officer - M.G.L.A. 266 § 51)
- Soliciting donations under false pretenses, implying they would be used for municipally-authorized purposes.
- Creating or causing to be created or sanctioning the creation of a corporation to further the aforementioned unlawful or otherwise inappropriate purposes.
- Policy Violations
 - Inadequate or no accounting as would be expected of a municipal department head
 - Entering into unauthorized transactions such as renting town property

Among the many questions that need to be answered:

- Existence of accounts; where, when, how much, who controls, etc.
- Existence of corporation(s) to handle unauthorized transactions; where, when, how much, who controls, etc.
 - Unlikely filed proper paperwork with Attorney General's Office or IRS for tax purposes or with Secretary of State's office – as one such corporation seems to have been dissolved for failure to file annual reports for many years
- Rentals; where, when, how much, who sets rent, where does the money go, etc.
- Witnesses?
- What can Town Accountant document?
- Possible Criminal Conduct by Town Officer?

As you can see, this is beyond the scope of what the Police Detective was assigned to address. He did a commendable job of starting the investigation, but there is a lot more to do. Once an outline of issues is prepared and approved, the investigation may begin. Since there is the possibility of criminal conduct by the COA Director, the OB PD Detective acted wisely when a referral to the DA's and AG's Offices was made. As I noted in my discussion with the Detective, after discussing this with the head of the AG's Public Corruption Unit, unless the town discovers substantial evidence of fund embezzlement or the like, while there might well be a crime that gets prosecuted by the Barnstable County District Attorney's office or simply by the OB Police Department in the local District Court, this is unlikely to be the kind of case the AG's office normally handles. Once we make our own determination about whether any criminal misconduct was involved, we can discuss how to proceed.

As I have cautioned in the past, while the investigation is conducted, I would recommend that statements to the press be minimized, with all inquiries being referred to the Chair of the Board of Selectmen and/or Special Labor Town Counsel. The Director's reputation should not be harmed by unfounded speculation.

The following is recommended:

1. Add an agenda item to next week's Selectmen's meeting entitled something along the lines of "Report on Investigation of Council on Aging Director." (The Board is NOT required to conduct this in Executive Session, but might be able to do so if they were so inclined. In that case, 48 hour's notice to the Director - with certain wording - would be required.)
2. The Board may discuss this situation with the Council on Aging board, but they are not required to do so. Filling the Director's position on at least an interim basis may be worth consideration.
3. The meeting is not a "hearing" and the Board need not allow discussion by the Director or the public.
4. If the Board is so inclined, the following motion is in order:

I move that the Town's Special Labor Counsel, working in cooperation with the Town Administrator and the Town Accountant, continue the investigation authorized by this Board last month into the handling of funds by the Director at the Council on Aging and, if they deem it appropriate, engage one or more investigators and to produce a report to this Board with their findings and recommendations.

In making this motion, I want to make it clear that this is an investigation, and the presumption of innocence remains.

The Chair may want to remind everyone that last month the Board placed the Director of the Council on Aging on paid administrative leave pending the outcome of the investigation. During such time, the Director was ordered to remain away from the Council on Aging building, not to initiate any communication in any form with the staff of the COA, not to remove or have anyone remove any items from the COA building, and to cooperate with the ongoing investigation. He was directed to provide passwords or other forms of access to any computers, cell phones, or other electronic storage devices containing information owned by the COA, and to supply any banking information, reports or access codes related to any accounts established by him or in coordination with him related to any COA operations, events or projects. Lastly, he was told not to contact any bank concerning any such accounts without being asked or authorized to do so by the investigators.

These conditions remain in effect unless and until the Board of Selectmen votes otherwise.

**OAK BLUFFS POLICE DEPARTMENT
OAK BLUFFS, MA**INCIDENT # / REPORT #

2014000479 / 1

OFFICER

CURELLI, N

RANK

DET

REVIEW STATUS

APPROVED

INCIDENT #2014000479 DATA

As Of 03/06/2014 15:01:28

BASIC INFORMATIONCASE TITLELOCATIONAPT/UNIT #

56 SCHOOL ST

DATE/TIME REPORTED

02/12/2014 08:59:55

DATE/TIME OCCURRED

On or about 02/12/2014 08:59

INCIDENT TYPE/OFFENSE

ASSIST AGENCY: GENERAL

PERSONS

<u>ROLE</u>	<u>NAME</u>	<u>SEX</u>	<u>RACE</u>	<u>AGE</u>	<u>DOB</u>	<u>PHONE</u>
INVOLVED PARTY	WEY, ROGER	MALE	WHITE	72	03/26/1941	(HOME)
	ADDRESS: 24 SUMNER RD OAK BLUFFS, MA					(CELL) 508-693-7887
INVOLVED PARTY	VON STEIGER, SUSAN					(HOME)
	ADDRESS: ,					(CELL)
INVOLVED PARTY	GALLAGHER, ARTHUR			60	02/02/1954	(HOME)
	ADDRESS: 16A MARTHAS WAY EDGARTOWN, MA					(CELL)
INVOLVED PARTY	COGLIANO, ROSE	FEMALE	WHITE			(HOME) 508-693-4724
	ADDRESS: 6 PITCH PINE LANE OAK BLUFFS, MA					(CELL) 774-563-9161
INVOLVED PARTY	BARKAN, GLENNA			87	07/30/1926	(HOME) 508-693-8586
	ADDRESS: 80 PONDVIEW DR OAK BLUFFS, MA					(CELL)

[NO OFFENDERS]

[NO VEHICLES]

[NO PROPERTY]

OFFICER REPORT: 2014000479 - 1 / CURELLI, N (DET)DATE/TIME OF REPORTTYPE OF REPORTREVIEW STATUS

02/12/2014 08:59:55

INCIDENT

APPROVED

NARRATIVE

On Tuesday, 02-11-14, Chief Blake advised I, Detective Nicholas W. Curelli that the Town of Oak Bluffs Accountant, reported that he discovered evidence of a potential larceny involving town funds. Chief Blake instructed me to speak with the Town Accountant and investigate the incident.

At approximately 0900 hrs; on 02-12-14, I spoke with Gallagher, Arthur at the Town Hall. Gallagher is the Town Accountant for Oak Bluffs. Gallagher advised me that he was notified that an individual's name was on an account controlled by the Town of Oak Bluffs. Gallagher told me that person was not a town employee and that account (Quilting Account for Energy) showed no activity for since 2008. Gallagher advised that someone came to Town Hall demanding cash for a check that was denied at Stop and Shop. Gallagher provided me a copy of the check and receipt of goods that were purchased against the check. I observed that the check appeared to be written on 02-02-12. I observed that the checking account was listed as "Quilt Fund For Fuel Assistance, Glenna Barkan, 80 Pondview Drive, Vineyard Haven, MA 02568." The check was #119 from Edgartown National Bank. The check was made out to Stop and Shop for \$200.00 and endorsed by Glenna Barkan, Quilt Fund. Gallagher advised that Barkan was not a Town employee and any funds from that account were supposed to be deposited and withdrawn from the Town's Treasury, through a warrant article. Gallagher provided me with a copy of account activity from the Quilting Fund. He explained that there had been no activity since 2008. Gallagher advised that any donations or funds received by the Quilting Fund were supposed to be deposited into the Town Treasury. Gallagher advised that the Quilter's Group was a group of people who created quilts that were later sold and/or raffled. Gallagher told me that this was the primary source of revenue generated by the Quilters. Gallagher also advised me that he knew of several road races held in Oak Bluffs where the monies generated by registration fees were not deposited into the Town Treasury. Gallagher advised that the annual "Turkey Trot" road race was held in Oak Bluffs and there are usually approximately 200 runners and a fee of \$10.00 per runner. Gallagher advised that these road races are coordinated by Wey, Roger, the Director of the Oak Bluffs Council of Aging. Gallagher provided me with a newspaper report from the MV Times dated 11-30-11. This article stated, "The race was a benefit for the 'Heat Assistance Program' for the elderly. More than \$2,000 was raised for the cause. Roger Wey was the masterly Master of Ceremonies." I know that the "Turkey Trot" is an annual road race and run by Wey because I have been on duty for several of these races and observed Wey announce the race start. I have observed approximately 200 runners for the past several years participate in this race and utilize the OBPD lobby as the registration area. Gallagher told me that he believed that Wey stopped depositing funds from the Quilter's, including revenue generated from the "Turkey Trot", and deposited them into the "Quilt Fund for Fuel Assistance" account in the Edgartown National Bank. Gallagher also advised that there is a volunteer non-profit group of Oak Bluffs residents called the "Friends of the Council on Aging". This group solicits funds for the Oak Bluffs Council on Aging. Gallagher advised that he would provide a written statement regarding his involvement in the matter.

A short time later, Town Administrator Robert Whritenour gave me a letter from the Board of Selectman notifying Wey that he was placed on paid administrative leave and ordering him to stay away from the Council of Aging building, not to remove items from the COA, not to communicate with COA staff and to cooperate with the Police Department's investigation. Whritenour asked me to hand deliver the letter to Wey. I then contacted Wey and he advised me that he was unable to speak with me on this date but would speak with me on the morning of 02-13-14. I advised him of the notice from the Board of Selectmen to stay away from the COA. He told me that he understood and looked forward to speaking with me regarding this matter.

At approximately 1500 hrs; Lt. Williamson and I went to the Oak Bluffs COA building on Wamsutta Avenue to interview employees. We spoke with Assistant Director Rose Cogliano first. She advised that we would need to speak with Barkan regarding the "Quilting Fund". She told us that she has been aware for some time that funds generated from the "Quilters" were being deposited into the Edgartown National Bank checking account as opposed to the Town Treasury. Cogliano also advised us that Wey

allowed Alcoholics Anonymous to utilize the COA building for their meetings. Cogliano also advised that AA members would collect monies amongst their members for using the building and give the money to Wey. Cogliano also told us that we would have to speak with Wey to clarify the background and purpose of the Quilters.

Lt. Williamson and I then spoke with OBCOA Outreach Coordinator Susan Von Steiger. We asked her about the Quilting Fund. She told us that it was run by the Quilters and the account was under the control of Barkan. I asked Von Steiger to explain how the account is managed. She advised that people would request assistance from her or Wey. She told us that they would then ask Barkan to write a check directly for their needs. She stated that Barkan would write checks directly to vendors such as local fuel suppliers, medical providers, taxi services or grocery stores. She also advised that social workers would sometimes petition Wey or herself on behalf of their clients. I asked her if she was aware that Alcoholics Anonymous was using the COA building and donating money. She told us that she knew they used the building but she didn't know who they donate to for using the building.

At approximately 1700 hrs; I spoke with Barkan at her residence. I explained that I was investigating the status of the "Quilting Fund for Fuel Assistance". She invited me into her residence and explained that she started the fund approximately 14 years ago for fuel assistance. She told me that she and a group of women make quilts and raffle them. She told me that they make between \$2000-\$3000 per year on the quilts. She told me that the account is in her name. She told me that the now deceased Town Finance Manager Paul Manzi directed the Council of Aging to make a separate account separate from the Town Treasury for the "Quilter's Fund For Fuel Assistance". She told me that Wey and Von Steiger determine eligibility for need. She told me that she has no idea who actually receives services or goods from the "Quilting Fund" because she gives the written checks for goods or services to Wey or Von Steiger directly.

On 02-13-14, at approximately 0940 hrs; Lt. Williamson and I spoke with Wey in the interview room. The interview was recorded. We advised Wey of his Miranda rights. He agreed to speak with us and signed the waiver form. In summary, Wey told us that Barkan has a checking account for the Quilting Fund that has nothing to do with the Town. Wey told us that the Town doesn't contribute anything to the Quilting Fund and their revenue is generated from the sale of raffle tickets and donations. Wey told us that the Quilting Fund was under the control of the Town. Wey told us that it was suggested to him by the former Oak Bluffs Finance Director Paul Manzi that the Quilting Fund be removed from the Town Treasury control. Wey told us that Manzi suggested this because the Town did not contribute to the Quilting Fund and it made it easier for Wey distribute the money without extra bureaucratic paperwork that took time when the money was urgently needed. Wey told us that last fall, a check from the Quilting Fund was returned to Town Hall by a recipient who complained that Stop and Shop would not accept the check. Wey told us that he explained to the Town Accountant and Town Administrator that the Quilting Fund was not part of the Town and it was run by Barkan. Wey told us that the checks are made out to the fuel companies and other vendors directly. Wey told us that because the Quilters come from all towns on Martha's Vineyard, people of all ages and residents of all Martha's Vineyard towns can receive benefits from the Quilters. Wey told us that he had no records of who received benefits from the Quilting Fund. He told us that he investigates whether or not the person requesting assistance from the Quilters Fund is truly needed. He told us that there is no standard operating practice for that determination or any written of his procedures for need determination. He told us that even though Barkan physically controls the account and writes the checks, he solely controls who receives the benefits. He told us that Barkan should have the names of the people who received the benefits. I again asked him how the Quilters Fund went from a line item in the Town Budget under the control of the Town Treasurer to Barkan. He again told us that Manzi told him to do this. Wey advised that he had no written record of this authorization from Manzi or anyone else. He told us that Barkan and Von Steiger should have some records of who received benefits. Wey reiterated that the Town had nothing to do with the Quilters Fund. Wey also told us that there was a retired Town Accountant from Fairhaven who knew about how and why the Quilters Fund was removed from Town control. Wey told us that he enjoys helping people.

On 02-13-14, at approximately 1100 hrs; I received an anonymous call at OBPD. The caller reported that she was a member of the Quilting Group but she did not want to disclose her identity. She told me that she "enjoys the social thing" with the

Quilters but "was always concerned where the money goes". She told me that Alcoholics Anonymous gives Wey a \$300.00 check which he gives to the Quilters instead of the Town. She told me that she knows that the entry fees from the road races also go to the Quilters. She told me that someone she knew as Dr. Bob Blacklow has a garage sale every year that makes at least \$500.00 and has had one for the past 3-4 years and this all goes to the Quilting Fund. She told me that Quilt Raffle ticket sales generate at least \$4000.00 every year. She told me that she always wondered who the recipients are of the Quilting Fund. She also told me that she knew money has been used to pay for glasses and hearing aides for people.

On 02-13-14, at approximately 1405 hrs; I spoke with Friends of the Oak Bluffs Council on Aging member Leo Gagnon. Gagnon told me that the Friends of the COA are a 501c3 charitable organization that donates money to the Senior Center. He told me that when his group receives donations there is a system to account for all monies received and spent. He told me that the Friends of the COA gave a \$1500.00 donation to Wey for fuel assistance programs for Oak Bluffs senior citizens in need that is distributed through South Shore Community Action Council. Gagnon told me that he knows that there were 240 runners in the Turkey Trot road race who paid \$10.00 each to enter the race. Gagnon also stated that Wey allows Alcoholics Anonymous groups to hold meetings in the COA building and that he has no idea where the money the Alcoholics Anonymous group donates goes.

I then called the Council on Aging and spoke with Von Steiger. I requested that she provide me with any written records related to the Quilting Fund's donations, expenditures, receipts, applications etc. She told me that she couldn't do this because the Quilting Fund was confidential. I then contacted Town Administrator Whritenour and advised him of Von Steiger's reluctance to provide these records. A short time later, Von Steiger came to OBPD with a manila folder containing various papers. She told me that these were the only records that she kept regarding the Quilting Fund. I observed that the records mostly consisted of bank checks and a brief description of what the checks were for.

On 02-18-14, I spoke with Town Accountant Gallagher and Town Administrator Whritenour. Gallagher advised me that he received a copy for a check for \$2000.00 from the Martha's Vineyard Permanent Endowment Fund. Gallagher gave me a copy of the check. I observed that it was made out to the Oak Bluffs Council on Aging and was a grant for fiscal year 2014. Gallagher advised that he had no record that the check was deposited into the Town Treasury but it may have been used for the Fuel Assistance Program the OBCOA has through the South Shore Community Action Council.

I then contacted Lisa Spencer of the Energy Program at South Shore Community Action Council and requested copies of all records from the Oak Bluffs Council on Aging as well as the Quilting Fund. Spencer advised that this request may take a while because their records were stored off-site.

I then contacted Wey and explained the situation regarding the \$2000.00 check from the Permanent Endowment Fund. Wey advised that the check was used for the Fuel Assistance Program administrated by the South Shore Community Action Council. I asked Wey if he could forward all financial records of the OB Council on Aging and or the Quilting Fund to me to assist the Town Accountant with his audit of the finances. Wey became very defensive and told me that he kept no records of any of the finances and asked me why he should have. I explained to him that as the Director of the Council on Aging, I believed that it was his responsibility to manage and document the finances as well as the day to day operations of the of the Council on Aging.

I then contacted Barkan and asked her if she would provide me with any records of the Quilting Fund's banking statements or any other information that may assist the investigation. She told me that she would.

On 02-19-14, Cogliano dropped off materials she located at the Council on Aging regarding the Quilting Fund when it was operated through the Town Treasury.

On 02-20-14, Barkan provided me with bank statements from the Quilting Fund. I then forwarded all relevant materials received from Barkan as well as the materials received from Von Steiger and Cogliano to Town Accountant Gallagher for further processing and auditing.

This matter was forwarded to the Attorney General's Office for review.

On 02-28-14, Tpr. Mahon of the AG's Office, advised that this report was referred to an Assistant Attorney General who requested that I identify the person who received the \$200.00 check from Stop and Shop and ascertain why the check was returned as unpaid.

On 03-04-14, Gallagher advised that Perez, Melanie recieved the check. Gallagher provided me with a phone number for Perez. I located a Perez with the same name and number with an Aquinnah address. I also later spoke with Noyes, Cindy. Noyes is the Assistant Town Accountant and was the Acting Town Accountant in February of 2012. Noyes advised that Perez advised that the check was given to her by Wey. Noyes also advised that Stop and Shop returned the check unpaid because they "had problems with that checking account".

I spoke with the Edgartown Stop and Shop manager who was unable to explain why the check was returned. I also attempted to trace the check through Telecheck, also to no avail.

After reviewing the matter with the Attorney General's Office, I concurred with them on 03-05-14, that probable cause does not currently exist to charge anyone with a criminal violation. This matter is closed pending further information and will be referred to the Board of Selectmen.

OFFICER SIGNATURES

Reporting Officer:	_____	Date:	_____
	CURELLI, N		DET
Approving Officer:	_____	Date:	_____
	MARCHAND, M		SGT