

FOR IMMEDIATE RELEASE

On Friday, January 8, 2010, a complaint was filed with the chair of the Ethics Committee of the Indianapolis City-County Council against David Horth, chairman of the Indianapolis Animal Care & Control (IACC) board. The complaint was filed by Greg Brush and Warren Patitz, representatives of two local animal welfare organizations. Mayor Greg Ballard was also copied on the complaint and a request made that Mayor Ballard dismiss Horth from his position on the IACC board.

Shortly after Chairman Horth's decision and announcement to stop government cable 16 coverage of IACC board meetings and subsequent overruling by Mayor Greg Ballard, an e-mail document was obtained with further evidence that Mr. Horth offered to be absent to cause the cancellation of the September 9, 2009 IACC board meeting. The e-mail, obtained through the Indiana Access to Public Records Act, disclosed communication between Mr. Horth and Erin Pratt. Ms. Pratt is the assistant to then interim Public Safety Director Mark Renner and is also the appointed secretary to the IACC board. In the e-mail, Mr. Horth indicated that he was able to come to the September meeting, but he would stay home sick if there weren't "specific issues" to discuss. Shortly after that e-mail was sent, Ms. Pratt announced that the meeting was cancelled.

The September 2009 IACC board meeting would have been the last public meeting to discuss critically important issues regarding the agency's operations under IACC administrator Doug Rae. Mr. Rae had been placed on probation by interim director Renner at the beginning of August and the probationary period ended at the beginning of October when Rae was subsequently fired. Critics of the firing contend that Mr. Rae had complied with the terms of his probation, there had been significant improvement in many areas of IACC operations and these improvements were going to be made public at the September board meeting.

David Horth was appointed to the IACC board by Mayor Ballard in 2008. The city ordinance requires a representative from the Humane Society of Indianapolis (HSI) hold a seat on the IACC board. Until recently, Horth served as the chairman of the board for HSI, and still serves on their board. In late July, 2009, HSI hosted a closed-door meeting between a small number of animal welfare groups, select city-county councilors and interim public safety director Renner to discuss dissatisfaction by those animal groups with Mr. Rae's performance as IACC administrator. Notably not invited to the meeting was Rae himself. In an article appearing in a September issue of NUVO, HSI was the only group to go on record as being openly critical of Rae.

While the specific reason for Horth wanting the September 9, 2009 board meeting canceled is currently unknown, the e-mail clearly indicates that Mr. Horth was acting in a way intended to prohibit the opportunity for open discussion and suppress a legally-mandated forum for the public to be involved in understanding and voicing their opinions on the operation of a division of their city's government. Taken into context with Mr. Horth's recent attempt to keep IACC board meetings from being covered by government cable 16, a pattern emerges suggesting that Mr. Horth wants to keep the public's knowledge of and involvement in the operation of the city's embattled animal shelter under his control.

Attachments: Ethics complaint

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COMPLAINT FOR VIOLATION OF STANDARDS OF ETHICAL CONDUCT

I. THE PARTIES

A. David Horth, Indianapolis Animal Care & Control (IACC) Board member

1. David Horth is the chairman of the board of the Humane Society of Indianapolis (“HSI”).
2. Pursuant to Revised Code of the Consolidated City and County INDIANAPOLIS/MARION, INDIANA (“Revised Code”) § 251-332(a)(3) David Horth was appointed to the IACC Board by the mayor.

II. THE ETHICS COMMISSION

The Ethics Code establishes the city-county ethics commission (“Ethics Commission”) to promptly resolve matters within its jurisdiction. Revised Code § 293-331. This matter, a violation of the Ethics Code within the prior two years by an appointee, David Horth, is within the Ethics Commission’s jurisdiction. Revised Code § 293-334.

A violation of the Ethics Code “shall be subject to the enforcement procedures and penalties” set forth by Revised Code § 103-3. Revised Code § 293-402(c). A person who has violated the Ethics Code “shall be fined, by way of a penalty therefore, an amount not exceeding any limitation under Indiana Code (“IC”) § 36-1-3-8 for each such violation, act or omission,” and may be subject to an injunction by the city. Revised Code § 103-3

III. FACTS

1. An IACC Board Meeting was scheduled for September 9, 2009 at 6:00 p.m.
2. On September 9, 2009 the IACC Board was composed of the following duly sworn members:
 - Warren Patitz, Chairman
 - David Horth, mayoral appointee, representing the Humane Society of Indianapolis
 - Janelle Canaday, council appointee, representing Health and Hospital Corporation
 - Dr. Marcie Short, mayoral appointee, a licensed Marion County veterinarian
 - A fifth, council-appointed board position had been vacant for several months.
 - Doug Rae, IACC administrator and *ex officio* member of the board
2. Mr. Mark Renner is an employee of the City of Indianapolis who was, on September 9, 2009, acting Public Safety director.
3. Ms. Erin Pratt is an employee of the City of Indianapolis, working as an assistant to the Public Safety director, and had been appointed by the Public Safety director to the role of recording secretary for the IACC board.
4. On September 9, 2009, at 9:05 a.m., Mr. Horth sent an email message (hereafter “message”) to Erin Pratt (hereto attached as Exhibit A). The time is stamped 10:05 a.m. but per analysis it appears Mr. Horth’s computer clock is off an hour and the translation for this time zone suggest this is a message sent at 9:05 a.m.
5. In the message, Mr. Horth asks Ms. Pratt and Mr. Renner if they thought an IACC Board meeting should be held that night, stating that he would rather stay home unless Ms. Pratt or Mr. Renner had specific issues they wished to cover.
6. In his message, Mr. Horth referenced by inclusion an e-mail from Janelle Canaday sent September 9, 2009 at 8:38 a.m. (actually 7:38 a.m.) to Mr. Patitz, Dr. Short, and Mr. Horth

- advising that she would be absent from the IACC board meeting due to illness.
7. In his message, Mr. Horth recognized that if he chose to stay home, there would be no quorum as required by 251-333(b), causing the cancellation of the IACC board meeting.
 8. At 9:10 a.m. Ms. Pratt addressed an e-mail to the IACC board, Mr. Renner, Adam Collins (corporation counsel) and carbon copied Adam Garrett (IACC staff) announcing the cancellation of the IACC board meeting. Ms. Pratt's e-mail stated "Due to a lack of a quorum tonight's meeting will be cancelled."
 9. At approximately 10:20 a.m., Mr. Patitz called Ms. Pratt inquiring about the meeting cancellation due to lack of a quorum per her e-mail. Ms. Pratt indicated it was due to the absence of Ms. Canaday and Mr. Horth, failing to satisfy the requirement for a quorum.
 10. Mr. Patitz and the board had been copied on the e-mail from Ms. Canaday announcing her absence due to illness.
 11. Neither Mr. Patitz nor the board received a copy of any e-mail from Mr. Horth indicating the reason for his absence.
 12. Mr. Patitz requested Ms. Pratt provide him with a copy of the e-mail she stated that she had received from Mr. Horth.
 13. Ms. Pratt refused to provide the email she received from Mr. Horth to Mr. Patitz and would not disclose any information to Mr. Patitz other than Mr. Horth was going to be absent due to illness.
 14. The IACC board meeting of September 9, 2009 was canceled.
 15. No IACC board meeting was held in September 2009.
 16. On October 7, 2009, Mr. Patitz filed a request for a copy of the September 9, 2009 e-mail from Mr. Horth to Ms. Pratt and Mr. Renner pursuant to IC § 5-14-3.
 17. On December 14, 2009, Mr. Patitz received a copy of the requested e-mail from Indianapolis Corporation Counsel (see Exhibit A).

IV. VIOLATION OF STANDARDS OF ETHICAL CONDUCT

"The purpose the ethics code is to set clear and high ethical standards for the official conduct of officials, appointees, and employees of city and county government...so that the public will have confidence that the conduct of city and county business is always conducive to the public good. Public confidence in the integrity of government is essential to the exercise of good government," per Revised Code § 293-101.

Revised Code § 293-101 (c)(2) states that "decisions and policy should not be made outside of proper channels of city and county government".

1. Mr. Horth's statements indicate that his attendance would be based on whether or not Ms. Pratt and/or Mr. Renner "have specific issues" to cover, indicate that he was willing to attend, and that his absence would not be due to illness.
2. It is also clear from his statements that Mr. Horth recognized his role in determining whether there would be a quorum at and cancellation of the September 9, 2009 IACC board meeting.
3. Revised Code § 251-333(c) specifies that IACC board meetings must occur "at least every month, or on special call of the chair, or upon the written request of any three (3) members".
4. Revised Code § 251-331 *et seq.* enumerate the many duties and responsibilities of the IACC board and IACC board members. It is clear that there are ample important duties to be performed by board members at every meeting, and there is no recognition that holding IACC board meetings, or IACC board member attendance at meetings are contingent upon an

arbitrary determination of “specific issues” by a member of the board, the Public Safety Director, or the IACC board recording secretary.

5. The September IACC board meeting was to be the last public IACC meeting prior to the end of the probationary period of then-Administrator Rae. There was a considerable amount of change and discussion about the activities of IACC and of Administrator Rae. The suggestion that there weren't ample important issues for the board and public to discuss is completely lacking in substance.
6. The statements made by Mr. Horth clearly:
 - A. Indicate that his attendance of the September 9, 2009 IACC board meeting would be dependent SOLELY on factors that are not recognized within Revised Code § 251-331 *et seq*;
 - B. Indicate that his actions did cause the cancellation of the IACC board meeting;
 - C. Show that he had knowledge of the duties and responsibilities regarding his sworn duty as a board member, but by action, did show contempt of and disregard for his duties as a sworn IACC board member by causing the cancellation of the September 9, 2009 IACC board meeting;
 - D. Show that in causing the cancellation of the September 9, 2009 IACC board meeting, he demonstrated a complete lack of respect for the importance of the public's ability to interact with, see and understand the functioning their city government.

Revised Code § 293-214 states that it shall be a violation of this chapter knowingly to induce, encourage, or aid, either directly or indirectly, anyone to violate any provision of this article.

1. Revised Code § 251-333(c) specifies that IACC board meetings must occur “at least every month, or on special call of the chair, or upon the written request of any three (3) members”.
2. Revised Code § 251-331 *et seq.* do not recognize that holding IACC board meetings, or IACC board member attendance at meetings are contingent upon an arbitrary determination of “specific issues” by a member of the board, the Public Safety Director, or the IACC board recording secretary.
3. Mr. Horth's email clearly suggests and encourages Mr. Renner and/or Ms. Pratt to cancel the meeting if they had no “specific issues” to discuss.
4. Mr. Renner and/or Ms. Pratt did cancel the meeting that is mandated by Revised Code § 251-333 (c).
5. Mr. Horth did knowingly encourage or aid Mr. Renner and/or Ms. Pratt in violating Revised Code § 251-333 (c).

WHEREFORE, the undersigned respectfully requests that the Ethics Commission determine that the Respondent, David Horth, violated the Ethics Code and subjects him to the enforcement procedures and penalties prescribed by the Ethics Code, including a fine and an injunction under Revised Code § 103-3.

RESPECTFULLY SUBMITTED,

Greg Brush
Feral Bureau of Indiana, Inc.

Warren G. Patitz
Move to Act, Inc.

From: David Horth [mailto:DavidHorth@QuestCRE.com]
Sent: Wednesday, September 09, 2009 10:05 AM
To: Pratt, Erin
Subject: FW: Meeting tonight

Erin

I assume Janelle sent this to you separately but thought I would forward in case not.

Frankly, I'm wondering if we need to meet tonight at all. Do you and Mark have specific issues you want to cover? If so, I will attend as planned and we will have a quorum. If not, then I would much rather stay home as I am not feeling well either. Of course, my absence would remove the quorum and require a cancelation.

Please let me know your thoughts. Feel free to phone me if that is easier.

Thanks,
David

David R. Horth

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From: Janelle Canaday [mailto:JCanaday@HHCorp.org]
Sent: Wednesday, September 09, 2009 8:38 AM
To: Warren Patitz
Cc: Marcie Short; David Horth
Subject: Meeting tonight

I'm not going to be able to attend tonight's meeting. I'm home sick with flu symptoms and I don't want to get anyone ill. Sorry to miss the meeting and the licensing discussion.

Janelle M. Canaday MPH MA CP-FS
Team Leader
Department of Food and Consumer Safety
221-2242

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