

Jerry Dearinger's response to City's claim of "Investigation"

**From:** Jerry Dearinger <jwdearinger@gmail.com>

**Subject:** **Re: Response to Eric Johnson email regarding County Attorney "investigation"**

**Date:** January 21, 2014 12:52:50 AM MST

**To:** Gary Gygi <ggygi@cedarhills.org>

**Cc:** David Bunker <dbunker@cedarhills.org>, jrees@cedarhills.org, taugustus@cedarhills.org, dzappala@cedarhills.org, rcrawley@cedarhills.org, mgeddes@cedarhills.org, Ken Cromar <kencromar@bluemoonprod.com>, Ken Severn <ksevksev@gmail.com>, Paul Sorensen <paulsorensen7@gmail.com>

Mayor Gygi,

May I begin by adding my thanks to you and the other representatives of the City for taking the time to meet with Ken Cromar and me on December 26th. While it is clear to me that we see a number of things differently, depending on our particular perspective and experiences, hopefully we have opened a dialogue that will eventually result in substantially narrowing our differences and help each of us to begin to see from the other side.

On December 27th Eric Johnson sent out an email addressing an item that was raised in our discussion. I have thought considerably on the matter and feel some compulsion to respond to it. Although it is a matter of past history and need not take up a lot of our time, it may help to underscore how differences in perspective and understanding may lead to different assumptions and conclusions. Hopefully this discussion will lead to helping each of us to be more careful in making assumptions or drawing conclusions that may not be warranted.

Eric begins by referring to "your team's criminal charges," and then later to "your letter." This was not our team's (whoever that may be) criminal charges; rather, I believe Eric is referring to a letter sent to the district court by Paul Sorensen and Ken Severn regarding "Possible Unlawful handling of the City of Cedar Hills public business." I find no statement in their letter stating their charges are "criminal charges," but only a reference to statutory language seeking an investigation into possible "high crimes and misdemeanors or malfeasance in office," citing possible violations of Utah Code Section 10-3-826 (which Mr. Buhman concluded was not a criminal statute). While I agreed substantially with most of the content of their

letter, I did not draft it and was not substantially involved in its creation. I bring the foregoing up primarily to suggest that all of us may want to be more careful in generalizing or assuming the involvement of others in or the genesis of documents or statements, or in giving them handy labels. I would generally prefer direct quotes, hopefully not out of context, if we can.

Getting more to the real subject of Eric's email, he states that Mr. Buhman's letter "plainly shows that the charges in your letter to the court were investigated sufficiently to determine that if your allegations were proven true, they still would not constitute any crime." This statement emphasizes an apparent difference in Eric's and my understanding of an "investigation" in the context of Mr. Buhman's letter. I would say that Mr. Buhman reviewed the "six areas...identified" in the Sorensen-Severn letter and found that even "if true, are not violations of *criminal* statutes;" therefore, his "office does not have authority to conduct an investigation." Although it may be argued that under a broad definition of "investigation," Mr. Buhman's review constituted a preliminary investigation or examination of the accusations made to determine whether, if true, they would violate "*criminal* statutes," thus allowing him to conduct an investigation into whether such conduct really did occur, he did not refer to his review and legal analysis as an investigation. That review, preliminary investigation or examination is not what I (and I don't believe Mr. Cromar or others) have been referring to when I say that he did not conduct an "investigation." I (and I believe others having a similar view) am referring to the "investigation" required to ascertain the truth or veracity of the "six areas" identified, which investigation Mr. Buhman said that he had no authority to conduct, based on his legal analysis of the law as he applied it to the "six areas" identified.

I am not entirely clear as to what Mr. Buhman regards as a "*criminal* statute," but it is clear that he does not consider Utah Code Section 10-3-826 as being one, even though it says a violation thereof is a class A misdemeanor. It is also clear that Mr. Buhman agreed that the accusations made would fall under this statute, as he stated: "You correctly base your request on the language of Utah Code Section 10-3-826." I, and I believe others, were not looking to see these gentlemen go to jail; but if the accusations were found to be true, as provided in Section 10-3-826, I did want them removed from office and not be eligible for any municipal office thereafter. Although they did resign, I have concern that one or the other might seek a municipal office some time in the future. There was no investigation into the accusations made to determine if they were true, nor was it determined whether these gentlemen violated Utah Code Section 10-3-826. Some of us believed that the County

Attorney did have authority to investigate pursuant to Section 10-3-826, but the County Attorney did not so believe.

Although Mr. Buhman did not consider the "six areas" identified as being violations of "*criminal* statutes," in the final paragraph of his letter he did indicate that he had also read the list of "Additional Complaints to be Considered" in the Sorensen-Severn letter. Although he also did not "conduct an investigation" of these claims and would not do so unless he received "credible and material evidence of criminal wrongdoing," he did review them sufficiently to state: "Some of the conduct identified on that list, if true, could *possibly* violate a criminal statute." Again, although Mr. Buhman did not couch it in such terms, under a broad definition of "investigation," it may be argued that his review of these "Additional Complaints" constituted a preliminary investigation or examination as to whether any of these activities or actions, if true, might constitute violations of criminal statutes; nevertheless, there was no "investigation" into the truth or veracity of these complaints or activities, nor did I expect there to be at that point in time.

I will not comment on Eric's discussion of "inaccurate City Council minutes," as I find nothing in the "six areas" identified in the Sorensen-Severn letter that discusses or alludes to such.

At the end of his letter, Eric referred to possible other communications from Mr. Buhman. In response to an April 26, 2012 emailed letter from Sorensen-Severn presenting additional information or evidence, Mr. Buhman sent the following email to them on or about May 3, 2012:

"Our investigators have the information you emailed to our office. They will review the information as they are able and will make a recommendation to me about whether to conduct an investigation. I anticipate that will take a few weeks. If you have any questions please feel free to contact our Bureau of Investigations (emphasis added)."

I believe the foregoing statement further supports my (and I believe Ken's) position that Mr. Buhman's office did not conduct "an investigation," as was contemplated by Mr. Buhman under Judge Taylor's January 2012 Order. Mr. Buhman did not further communicate with any of us, but other personnel in his office verbally communicated that no investigation had been undertaken.

In the end, the status of Mr. Richardson's and Mr. Hildebrandt's activities with respect to their offices of trust within the City of Cedar Hills remains unresolved. We do not know whether the accusations made were "baseless," as claimed by you in a September 20, 2012 press release, or whether they were valid claims of impropriety, as apparently suspected by Mr. Sorensen and Mr. Severn, as well as others of us. No investigation into the veracity of their claims was ever made. The statement of the County Attorney that he did not believe the "six areas" identified, if true, violated what he believed were "criminal statutes" does not address the question as to whether they were true or not, or whether they violated Utah Code Section 10-3-826. We may never know, as we certainly did not have the time or money to pursue much more expensive avenues to find out, and both men are now gone from Cedar Hills government.

I hope this particular discussion is at an end. I also hope that each of us learns something from the history of this matter, so that some of the pitfalls and ruts in that road can be avoided, and that we can develop sufficient amicable communication and openness that will help to avoid such distrust and adversity as we have seen in the past. Things have much improved and hopefully they will continue to do so. I believe all government, good or bad, requires close attention by the citizenry and needs to be challenged from time to time; but hopefully it can be with greater trust and respect from all sides.

Unless you have some good reason to respond to this, it will be unnecessary to do so. I just wanted you to better understand another view or perspective on the matter. I have not responded directly to Eric, as I did not want the City to incur additional costs on this; but you are free to share the contents with him to the extent desired.

Jerry Dearing  
Member of Cedar Hills Citizens for Responsible Government