

VIA ELECTRONIC MAIL to Richard.Sawyer@ag.ny.gov

Mr. Richard Sawyer  
Special Counsel, Hate Crimes  
NYS Office of the Attorney General, Civil Rights Bureau  
28 Liberty Street  
New York, NY 10005

February 21, 2024

RE: Former Saratoga Springs Mayor Meg Kelly

Dear Mr. Sawyer:

I am writing to you after examining your February 20, 2024 report concerning the City of Saratoga Springs as it relates to my client former Mayor Meg Kelly ("Report").

Simply put, the allegations concerning Mayor Kelly are knowingly untrue, particularly as it relates to her cooperation which was full and complete.

As an initial point of fact, the Report's statement that Mayor Kelly had any ability to create policy and direct City personnel outside of the limited powers of the Office of the Mayor is belied by the City's Charter and its rare Commission form of government. Mayor Kelly did not have the governmental authority to do what you alleged she did.

Second, the Report's carefully crafted language surrounding the concern for children left unattended near traffic at the intersection of Broadway and Lake Avenue is notable in its lack of completeness (see, Report at p. 11-12). I note that you reference a video tape in your possession of this incident, and based on the pending federal court lawsuit, you are directed to preserve and maintain the *complete* video tape of that incident and all other information in your possession related to this Report.

The most egregious, disingenuous, and frankly false statement in the Report involves Mayor Kelly's level of cooperation with the inquiry. As you know, Mayor Kelly fully complied with the subpoena duces tecum dated July 22, 2022, which included a complete mirroring of her *personal* cellular telephone by an experienced third-party vendor. The responsive material was transmitted to you on or about November 16, 2022. After an extended period of time of many months, you finally reached out to discuss a possible interview of Mayor Kelly. Mayor Kelly and I were fully cooperative and planned for the interview. The initial interview was cancelled by you. Soon thereafter, the City of Saratoga Springs and a number of City officers and employees including Mayor Kelly were served with a federal court lawsuit brought by a self-described protestor (see, Exhibit "A", Initial Complaint in *Figueroe v. City of Saratoga Springs, et. al.*, Index No. 1:23-cv-922). Remarkably, the plaintiff in this action publicly stated that he was receiving briefings from your office (see, Exhibit "B", media reports from the Albany Times Union and WAMC). These facts were brought to your attention with the suggestion of discussing the same. Instead of discussing this important legal issue, you bluntly suggested a date that was not mutually convenient and never sought to reschedule the interview. Attached again for your review are our email correspondence with the original attachments consisting of the federal lawsuit and media coverage (Exhibits "A" and "B" herein) concerning this issue of the Office of the Attorney General's coordination with the plaintiff (see, Exhibit "C").

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After reading your Report, it is clear my concerns were well founded.

The Report falsely states that “Kelly failed to turn over key text messages obtained from other sources and refused to cooperate in the scheduling of her oral examination” (see, Report p. 26, §III). On the contrary, Ms. Kelly produced all responsive text messages in her possession. As you also know, Ms. Kelly turned in her government issued cellular telephone at the end of her term as Mayor of the City on or about December 31, 2021. To the extent, you may be referring to text messages on her government issued telephone, we note that former Mayor Ron Kim (an attorney) admitted failure in the preservation of information you sought (see, public statement of Kim dated December 18, 2023; see also, Report at p. 27, §III, A). Your report, further states, “Kelly’s attorney represented that some of the texts Kelly sent may have been stored on a city-issued cell phone that has been wiped ...” The Report is misleading as it was confirmed to your office *by the Kim administration* of their failures. Suggesting that Ms. Kelly had any custody or control over that information after having left public office is absurd. Finally, on the topic of text messages, you suggest that a comparison in the volume of text messages produced by Ms. Dalton as compared to Ms. Kelly is meaningful to push the false narrative of subpoena compliance. The amount of data, is affected by user profile (prolific texter or not), whether data is stored, and the make and model of the device, just to name a few of the variables.

The most egregious aspect of the Report is the falsehood concerning Ms. Kelly’s willingness to cooperate and sit for an interview. In the Report you disingenuously state, “the Attorney General did not have the opportunity to question Kelly on these assertions [text message material] under oath. After the examining attorney had to reschedule the original date for her oral examination, Kelly’s attorney *refused* to provide dates for an adjourned hearing and stopped responding to emails (emphasis added)”. The attached emails clearly show that was not the case (Exhibit “C”).<sup>1</sup> Moreover, as you know, a witness cannot avoid an interview simply by ignoring the Attorney General. Such a statement from the Attorney General is laughable. A review of the Report and public reporting leads to the conclusion that the Attorney General collaborated with the plaintiff in the federal court action. Whether this collaboration was intended to enhance the legal position of current and potentially future plaintiffs in that action remains to be seen. At this juncture, and after reading the Report, it is safe to conclude, at minimum, that my concerns were well-founded.

It is profoundly disappointing that the Attorney General failed to produce a product that could have been a helpful guide to the current City Council to understand the intricacies of the First Amendment and what is, and is not, protected speech. Instead, after several years and a significant expense of taxpayer dollars, the Report is incomplete, error-ridden, and a skewed work product that appears meant for purposes other than improving the City of Saratoga Springs.

Based on the above, I am requesting the Attorney General correct the errors in the Report and make this letter and accompanying Exhibits an addendum to the final Report.

Very truly yours,

LIPPES MATHIAS LLP

Karl J. Sleight

Attachments

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<sup>1</sup> An example of the fallout of the false statements in the Report, is a recent post on a social media by Ron Kim, the former City Mayor who lost badly in last year’s election. He publicly stated, “the press needs to find out why she [Mayor Kelly] refused to testify and if there will be any further ramifications of this refusal.”