

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF:	:	
KENNETH JOHNSON	:	
	:	CASE NO:
COUNCIL MEMBER,	:	
CITY OF CLEVELAND, OHIO	:	CHIEF JUSTICE MAUREEN
	:	O'CONNOR

**REQUEST TO COMMENCE SUSPENSION PROCEEDINGS
AGAINST KENNETH JOHNSON, MEMBER OF THE CLEVELAND CITY COUNCIL**

The Ohio Attorney General Dave Yost hereby requests Chief Justice O'Connor and this Court to commence suspension proceedings against Kenneth Johnson, Member of the Cleveland City Council in accordance with R.C. 3.16.

I. INTRODUCTION

On February 18, 2021, Kenneth Johnson, Member of the Cleveland City Council was indicted by a federal grand jury for engaging in two separate schemes to steal over \$175,000.00 in federal grant money over a period of several years. As part of the alleged criminal conspiracy and in addition to the theft of federal funds, Council Member Johnson also falsified numerous official documents including but not limited IRS tax returns for multiple years. Finally, Johnson allegedly tampered with a witness during the grand jury process. A copy of the indictment is attached as Exhibit A.

Kenneth Johnson was first elected to the Cleveland City Council as Ward 4 Representative in 1980. "Kenneth Johnson Ward 4," Cleveland City Council, <http://www.clevelandcitycouncil.org/ward-4>, last accessed February 24, 2021. According to the Indictment, from July 2009 to June 2019, the City of Cleveland received Federal Community Development Funds under Title I of the Housing and Community Development Act of 1974,

issued by the United States Department of Housing and Urban Development (“HUD”). Exh. A at ¶¶11-12. Those federal funds were deposited with the City of Cleveland and could be used for approved purposes including: (1) reimbursements to council members for actual expenses and (2) to fund neighborhood improvement projects through non-profit community improvement corporations. *Id.* at ¶¶11-12, 17-18, 30-31.

Scheme One – As a Member of the Cleveland City Council, Kenneth Johnson had a reimbursement expense account of \$1,200.00 per month, which included, *inter alia*, reimbursement for payments that he made to individuals or entities that provided services benefiting Ward 4. *Id.* at ¶17. Council members were required to provide supporting documentation to verify the legitimacy of the expenses they submitted for reimbursement. *Id.* at ¶18. Robert Fitzpatrick was a regional manager in the City of Cleveland’s Division of Recreation where he oversaw the operations of seven of the City’s recreation centers. *Id.* at ¶ 4. In 2010, Kenneth Johnson asked and Fitzpatrick agreed to perform services in Ward 4. *Id.* at ¶20. For approximately six weeks in 2010, Fitzpatrick cut grass, checked on properties, assisted with snow removal, and looked for rehab-able homes. *Id.* Fitzpatrick never performed work for Ward 4 again. *Id.* For the next eight years (2010-2018), Johnson had his executive assistant deliver time sheets to Fitzpatrick for alleged Ward 4 services and instructed him to sign the time sheets despite the fact that Fitzpatrick did not perform any services for Ward 4. *Id.* at ¶¶24-25. From 2010 through 2018, Johnson submitted false Council Member Expense Reports and Receipts to the City of Cleveland claiming that he had paid Fitzpatrick in cash for Ward 4 services, despite the fact that Fitzpatrick had not performed such services. *Id.* at ¶26. Johnson received a total of \$127,200.00 in reimbursements from the City of Cleveland over the eight year period for the “Fitzpatrick expenses” that he did not incur. *Id.* at ¶28. Johnson did not

report the additional income in form of inflated itemized deductions on his United States Individual Income Tax Returns. *Id.* at ¶¶ 60-64.

Scheme Two – Community improvement corporations are nonprofit entities that are approved to receive federal community development funds through block grants. *Id.* Federal law and Cleveland policies prohibit City officials such as Johnson from personally benefiting from federal community development funds. *Id.* at ¶33. The Buckeye Shaker Square Development Corporation (BSSDC) was the main Community Improvement Corporation in Ward 4. *Id.* at ¶29. BSSDC employed individuals to perform landscaping services for certain properties in Ward 4. *Id.* at ¶35. To receive pay, the employees would complete Block Grant Time Sheets. *Id.* From approximately December 2013 through March 2018, three of the individuals that BSSDC purported to employ were Johnson’s familial relatives and/or under his court-appointed guardianship. *Id.* at ¶¶5-7, 36. It is alleged that all three Johnson-related individuals submitted falsified Block Grant Time Sheets purporting to have performed services that they did not actually perform. *Id.* at ¶47. In total, BSSDC issued approximately \$50,000.00 to the three Johnson-related individuals in checks that were later deposited or transferred into back accounts held and controlled by Johnson. *Id.* at ¶36

Tampering with a Witness – Johnson was the court appointed guardian to a fourth individual who was also a witness in the Grand Jury’s investigation of his alleged criminal activity as described herein. *Id.* at ¶ 8. Johnson and his associate attempted to influence the witness’ testimony before the Grand Jury by providing the witness with false and fraudulent information and records purporting to document charitable donations by Johnson. *Id.* at ¶¶ 65-66.

Johnson was indicted on 15 felony counts in the U.S. District Court for the Northern District of Ohio: (Counts 1-2) Conspiracy to Commit Federal Program Theft in violation of 18 U.S.C. §§ 371; (Counts 3-8) Federal Program Theft in violation of 18 U.S.C. §§ 666(a)(1)(A) and (2); (Counts 9-13) Aiding and Assisting in the Preparation of False Returns in violation of 26 U.S.C. § 7206(2); (Count 14) Tampering with a Witness in violation of 18 U.S.C. §§ 1512(b)(1) and (2); (Count 15) Falsification of Records in Federal Investigations in violation of 18 U.S.C. §§ 1519 and 2. *Id.*, ¶¶ 38-66.

As set forth below, the Ohio Attorney General asserts that the indicted felonies relate to Johnson's administration of, or conduct in the performance of his City Council duties, and that his criminal conduct adversely affects the functioning of his office and the rights and interests of the public under R.C. 3.16(B)(1). Therefore, the Ohio Attorney General respectfully requests that the Chief Justice commence suspension proceedings against Johnson and that he be provisionally suspended from his public office pending the resolution of the felony charges in federal court. *See* R.C. 3.16(C).

II. LAW AND ARGUMENT

A. Statutory Suspension Procedures

R.C. 3.16 authorizes the suspension of a public official who, like Kenneth Johnson, has been charged with a felony in a state or federal court when the felony relates to the performance of the official's duties, and which adversely affects the functioning of that office or adversely affects the rights and interests of the public. R.C. 3.16(A)(2) defines "public official" as "any elected officer of a political subdivision as defined in section 2744.01 of the Revised Code." Kenneth Johnson, as an elected Cleveland City Council Member is a "public official" as defined

by R.C. 3.16(A)(2). The City of Cleveland is a municipal corporation and therefore a political subdivision as defined in R.C. 2744.01.

R.C. 3.16(B)(1) states in pertinent part, "If a public official is charged with a felony in a state or federal court and if the attorney general, if the attorney general is prosecuting the case, or prosecuting attorney with responsibility to prosecute the case determines that the felony relates to the public official's administration of, or conduct in the performance of the duties of, the office of the public official, the attorney general, if the attorney general is prosecuting the case, or prosecuting attorney with responsibility to prosecute the case shall transmit a copy of the charging document to the chief justice of the supreme court with a request that the chief justice proceed as provided in division (C) of [R.C. 3.16]."

R.C. 3.16(C) sets forth the procedures for the suspension of a public official in circumstances identical to those presented in Johnson's case. R.C. 3.16(C)(1) states, "Not sooner than fourteen days after the chief justice's receipt of the attorney general's or prosecuting attorney's request ...the chief justice shall establish a special commission composed of three retired justices or judges of a court of record." Once established, the special commission "shall review the document that charges the public official with the felony, all other documents and materials pertaining to the matter that were provided to the chief justice...and the facts and circumstances related to the offense charged." R.C. 3.16(C)(2). Then, within fourteen days, "the special commission shall make a preliminary determination as to whether the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of that office or adversely affects the rights and interests of the public and, as a result, whether the public official should be suspended from office." *Id.*

A public official may challenge the special commission's preliminary determination that he or she should be suspended from office by submitting written objections and may also attend a meeting to contest the finding. *Id.* At the conclusion of the challenge, the special commission shall issue a final determination by written report. R.C. 3.16(C)(3). Finally, the public official may appeal the special commission's final determination to the Supreme Court. R.C. 3.16(D). The Supreme Court shall uphold the special commission's final determination if the findings are "reasonable and lawful." *Id.*

B. Johnson's alleged criminal conduct directly relates to the performance of his duties as a member of the Cleveland City Council, and adversely affects the functioning of this office and the rights and interests of the public.

Without question, the criminal acts alleged in the federal indictment are directly tied to Johnson's position as a member of the Cleveland City Council. The indictment alleges violations of the very laws that guard against the misuse of public office and authority for personal gain. Johnson misused his influence and position as a sitting City Council member to illegally obtain federal monies that were earmarked for the very community that he was elected to protect and serve. Johnson used his position and official processes that were entrusted to him to enrich himself to the detriment of his constituency and the City of Cleveland. Johnson also abused public trust by submitting multiple false documents all in furtherance of lining his own pockets with public funds. Johnson engaged others to conspire with him in these years long illegal schemes. This abuse of authority would not have been possible but for Johnson's position as an elected member of the Cleveland City Council.

Moreover, Johnson's criminal acts as alleged in the indictment adversely affect not only the functioning of his office, but also the entire City Council. When the citizens of Cleveland elect members to City Council, they vest those members with significant authority to make

decisions that affect their lives and communities in critical ways. Cleveland voters are entitled to have those decisions made in their best interests. The facts alleged in the Indictment destroy any expectation that Johnson will exercise ethical, lawful judgment to benefit the community that elected him and in acting on any official matters before the City Council. Johnson cannot be left to continue to exercise the rights and privileges as a member of the Cleveland City Council while under indictment for misusing the authority of his office.

To be sure, Johnson's alleged criminal conduct adversely affects the interests of the public. Elected officials hold offices of trust and confidence. The allegations leveled against Johnson lay waste to the public's expectation that elected leaders are committed to serving their constituents' interests, and not lining their own pockets. Johnson betrayed the trust and confidence placed in him by the public when he used his position to further his own personal interests.

III. CONCLUSION

For the forgoing reasons, the Ohio Attorney General respectfully requests that the Chief Justice establish a special commission for the purposes of provisionally suspending Johnson from office. Kenneth Johnson's performance of his duties, as alleged in the Indictment, adversely affects the functioning of his office and it adversely affects the rights and interests of the public. Accordingly, Johnson should be provisionally suspended from his position as a Cleveland City Council Member under R.C. 3.16.

Respectfully submitted,

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Ohio Attorney General



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Request to Commence Suspension Proceedings Against Kenneth Johnson, Member of the Cleveland City Council was sent on this the **26th** day of **February, 2021** via the following:

- (1) *Overnight, Certified Mail, Return Receipt Requested and Regular U.S. Mail to:*

Mr. Kenneth Johnson, Council Member, Ward 4
601 Lakeside Avenue, Room 220
Cleveland, Ohio 44114

AND

Attorney Myron Watson
The Fives
75 Erieview Plaza, Ste 108
Cleveland, Ohio 44114

- (2) *Email to:* kjohnson@clevelandcitycouncil.org;
myronwatson@ymail.com


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