

Cape May sues

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eral and state law require the municipal governing body to exercise civilian administrative oversight and supervision of the police department.

"The potential liability exposure to the city would be a significant and irresponsible risk to the taxpayers if the city accepted the county prosecutor's intervention and followed his orders on this issue," it stated. "These orders would require that the city hand over supervision of the police force in a noncriminal matter to the county prosecutor, which is believed to be illegal."

In his statement, Gelfand said if the court tells the city that the prosecutor can lawfully assume responsibility for administrative control over the police department to the exclusion of the governing body and the city manager, then the city would have some level of comfort that the responsibility does not rest on the governing body and should not fall on the city's taxpayers.

Based on the advice of council, the responsibility for supervision and oversight of the operations of the police force and all noncriminal matters rests solely with the governing body and the city manager as the appropriate authority, Monzo said.

The matter is scheduled to be heard in Cape May County Superior Court May 22.

"The city has never had the desire to be adversarial with the county prosecutor. Every effort was made to avoid litigation over these issues," Monzo said. "These matters, however, have become such a public

controversy by virtue of the actions of the county prosecutor, as a result the time has come to let the court decide the merits of the disagreement between the city and the county prosecutor based upon statutes, case law and the state constitution."

Councilman Shaine Meier said council received a letter signed by four former Cape May mayors — Jerry Inderwies, William J. Gaffney, Robert Elwell and Thomas Phelan — recommending the use of a mediator on the issue of Lt. Chuck Lear being paid comp time.

"Since we see the problem here as basically an administrative issue over the use of comp time and therefore a labor dispute, what we would propose would be to have a professional labor mediator provided by the state meet with the mayor, city manager, a council representative, Capt. Sheehan and representative from the Cape May County Prosecutor's Office, in an effort to work out their differences in a mutually agreeable fashion," stated the letter.

"Unfortunately, in my opinion, we've gone too far for this," Meier said.

He said he would have preferred Sheehan had been reappointed, the comp time issue dealt with and an ordinance passed not allowing overtime.

"Who knows? This may go beyond the county Prosecutor's Office, so you may get what you asked for at the end," Meier said.

He suggested the city consider purchasing a digital time clock system and require employees to clock in and out. The city has used an honor system

to record employees' hours, which may have contributed to the comp time problem, he said.

Councilman Jack Wichterman, who rejoined council April 2, said he requested all correspondence relating to the police comp time issue.

"In my opinion, nobody is clean in this problem, nobody," he said. "This started back when I was on the council last year when Bruce pointed out to us that there was a problem. I guess it was around the middle of the year."

Wichterman said he assumed it was an administrative problem and would be handled by MacLeod.

"It was his duty to say 'No, you cannot use comp time. All you have to do is read your contract. You do not get comp time, period, end of discussion,'" Wichterman said. "That's not what happened, so consequently it got further than that and there's nothing we can do now except spend taxpayers' money, which in my opinion is a travesty."

He said he has not seen Lear since December.

"I'm wondering why somebody in the city didn't say 'Where's Chuck Lear?'" Wichterman said.

He said he blamed the city for "not catching it and the police department for allowing it to happen."

Wichterman said City Council should have been more diligent last year asking MacLeod what he was going to do about Lear's comp time.

"I'm sorry it's gotten to where it is. I don't like to see animosity within this city, it normally runs very smoothly," Wichterman said.

Prosecutor

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Taylor's answer notes the county prosecutor has clear statutory authority to prevent civilian city officials from interfering with law-enforcement operations that potentially harm or hamper the detection of crime in the city. The prosecutor can install a monitor to help prevent that interference in the detection of crime and arrest of offenders, it states.

Taylor also states City Manager Bruce MacLeod "must disqualify himself based upon his previous involvement in the internal affairs investigations as a complainant, the improper release of confidential information, his status as a potential witness and his criticism of the chief of police for the city police department's arrest of the city solicitor's son."

"This matter involves two confidential internal affairs investigations against officers of the city of Cape May Police Department. The Cape May County Prosecutor's Office has taken over and assumed jurisdiction of these investigation, inter alia, due to the repeated and persistent violation of New Jersey Attorney General Guidelines on confidentiality of internal affairs investigations by the city of Cape May and some of its officials," states the answer.

The prosecutor's March 31 letter to the city's special counsel, Todd J. Gelfand, in response to his March 27 letter clearly states "the city of Cape May ... has no jurisdiction over any investigation involving what you call 'supervisory officer or officers' stemming from allegations of 'improper time records, improper recording of police records and use of unapproved compensatory time,'" according to Taylor's answer.

Taylor's answer states at a

public City Council meeting March 3, City Solicitor Tony Monzo improperly read a portion from the first assistant prosecutor's March 2 letter falsely implying that Chief Robert Sheehan was under criminal investigation.

"On an additional occasion, the city solicitor after being warned by the county prosecutor orally and in writing by letter dated March 6, 2015, again released confidential information in an interview with a local newspaper that was published. The city solicitor is in a clear conflict of interest position because his son was arrested by the city Police Department for 3rd degree crime for committing a burglary on December 24, 2014, and charged January 12. Contrary to clear rules of court, he attempted to bypass the Prosecutor's Office and get discovery directly from the police department. Yet, the solicitor continued to participate in council meetings and provide legal advice about this matter, which must be questioned as to its objectivity. To protect the integrity ... and due process of the investigations, the county prosecutor after consulting the Attorney General's Office, installed a monitor for the Cape May City Police Department," stated Taylor's answer.

It notes an "even more egregious violation" of Attorney General Guidelines, the city held a press conference March 19 with the participation of the city manager, mayor and solicitor and improperly released information regarding the ongoing confidential internal affairs investigation being conducted by the Prosecutor's Office.

"At a City Council meeting on March 24, 2015, the mayor falsely stated and implied that Chief Sheehan was under criminal investigation, had failed to

cooperate in the investigation and used the term 'theft' of city or taxpayer monies to describe the investigation," according to Taylor's answer.

It states the monitor and city manager recently discussed the hiring of special police officers in a businesslike fashion.

"But the city manager requested all evaluations of all police officers be removed from the police department and be delivered to him. I denied the request after consulting with the Attorney General's Office," Taylor stated.

The answer states the city manager, city solicitor and other city employees have refused to be interviewed by the Prosecutor's Office.

"The city manager is in a direct conflict of interest as appropriate authority having criticized the chief of police over the arrest of the city solicitor's son by the police department. The city manager and city solicitor were interviewed early on as fact witnesses in the underlying investigation and were basically complainants. The city solicitor continues to discuss publicly the facts of the confidential investigation with a reporter from The Press of Atlantic City as recently as April 21, 2015," states the answer.

The answer states the relationship between the city and Sheehan "is very strained." "The city Police Department needs a monitor to act as a buffer between the city manager and Captain Sheehan as the chief executive to maintain the effectiveness of the department's operations."

In its conclusion, the answer states, "For the above stated reasons, defendants respectfully request this honorable court to deny the relief requested by the city and dismiss the city's complaint with prejudice.

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Recall Mahaney

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It noted the firefighter's union is considering a lawsuit against the city for creating an unsafe work environment.

According to the committee, the last recall election occurred in 1990 when former mayors Robert Elwell Sr. and Jerry Gaffney replaced recalled councilmen Angelo

Infanto and Joseph Tracy.

Under state law for a recall election to occur, the committee needs signatures from 25 percent of Cape May's 1,900 registered voters collected within a period of 160 days. The city clerk has until this Thursday to approve or reject the petition.

"Given the enormous challenge in collecting nearly 500 signatures in the coming

months, the committee will need concerned registered voters to serve as petition circulators," stated Hendricks.

He said the committee would like to have all necessary signatures in place by August because a general election is scheduled for November.

"It won't cost the town anything," Hendricks said.

He said the ballot would ask, "Do you favor recalling Mayor Mahaney, yes or no." A second ballot question would name three or four candidates for the mayor's seat. He said no one has committed at this time to run for mayor.

Hendricks said if the recall were successful, the new mayor would be seated within one day of the election.

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