

April 4, 2018

Darren Klein
dklein@k-plaw.com**BY HAND**Jonathan Sclarsic, Esq.
Director, Division of Open Government
Office of Attorney General Maura Healey
One Ashburton Place
Boston, MA 02108Re: City of Somerville – Board of Aldermen
Open Meeting Law Complaint from Michael Kiely, dated March 16, 2018

Dear Mr. Sclarsic:

The City of Somerville (“City”) Board of Aldermen (the “Board”) is in receipt of a Complaint, dated March 16, 2018 from Mr. Michael Kiely, alleging violations of the Open Meeting Law (“OML”).¹ A copy of the Complaint is enclosed as Exhibit A. The Board acknowledged this Complaint and authorized this response at a duly noticed meeting on March 22, 2018.

In his Complaint, Mr. Kiely alleges that the Board violated the OML when it entered into executive session at its meeting on February 27, 2018 pursuant to G.L. c. 30A, §21(a) (3) to discuss strategy with respect to Mr. Kiely’s request for an investigation under G.L. c. 31, §2(a) to the Civil Service Commission of the City’s police promotional process. For the reasons further detailed below, the City denies that any violation of the OML occurred.

By way of background, Mr. Kiely is a Police Sergeant in the City Police Department. Mr. Kiely applied to be promoted to the position of Police Lieutenant, which is a Civil Service position that is filled from a civil service list. Pursuant to Section 21 of the City Charter, a Police Lieutenant is appointed by the Mayor and confirmed by the Board. At a meeting of the Board on January 30, 2018, the Board voted against confirmation of the promotion of Mr. Kiely to the position of Police Lieutenant.

On February 8, 2018, Mr. Kiely, through legal counsel, filed a request with the Civil Service Commission to conduct an investigation pursuant to G.L. c. 31, §2(a) into the police promotional process utilized by the City and specifically the Board. On February 9, 2018, the

¹ This is the second OML Complaint filed by Mr. Kiely relative to the Board of Aldermen within the past two months. Mr. Kiely previously filed an OML Complaint dated February 20, 2018, and we filed a response with your office on March 12, 2018.

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Director, Division of Open Government
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Civil Service Commission issued an Order to Show Cause in Mr. Kiely's case, which has been assigned Civil Service Docket No. I-18-018, and scheduled a show cause conference for March 6, 2018 regarding Mr. Kiely's request. The Civil Service Commission conference has been rescheduled to April 9, 2018. Copies of Mr. Kiely's request to the Civil Service Commission and the Civil Service Commission's Order to Show Cause are attached hereto as Exhibit B.

On February 23, 2018, the Board published notice of a meeting to occur on February 27, 2018. Among other things, the meeting agenda indicated that the Board would consider outside counsel to advise the Board regarding Mr. Kiely's request for an investigation with the Civil Service Commission No. I-18-018. The Board also indicated that it may convene in executive session to discuss strategy with regard to the litigation. A copy of the Board's agenda for the February 27, 2018 meeting is attached hereto as Exhibit C. Consistent with its agenda, on February 27, 2018, the Board convened in executive session to discuss strategy regarding Mr. Kiely's request for an investigation in Civil Service Commission Docket No. I-18-018.

Following careful review of the allegations in the Complaint, the Committee submits that the Complaint does not allege any conduct that violates the OML. The OML requires that all meetings of a public body be conducted in open session, with some exceptions. G.L. c. 30A, §§20(a), 21(a). Public bodies may enter a closed, executive session, for any of ten enumerated purposes, provided that the chair of the public body first announces in open session the purpose for the executive session "stating all subjects that may be revealed without compromising the purpose for which the executive session was called." G.L. c. 30A, §§21(a), 21(b) (3).

One permissible reason to convene in executive session is "[t]o discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares." G.L. c. 30A, §21(a) (3). When convening in executive session for this purpose, a public body must identify the litigation matter to be discussed, if doing so will not compromise the lawful purpose for secrecy. Executive session minutes may be withheld from disclosure to the public "as long as publication may defeat the lawful purposes of the executive session, but no longer." G.L. c. 30A, §30A, §22(f).

The Board's discussion during executive session at its February 27, 2018 meeting fit squarely within the litigation strategy exception to the OML pursuant to G.L. c. 30A, §21(b)(3). As an initial matter, the Board properly identified the litigation matter to be discussed by reference to the Civil Service Commission Case No. I-18-018. The discussion clearly took place within the context of "litigation." First, a request for an investigation to an administrative body is a form of litigation. Indeed, Mr. Kiely is seeking equitable relief from the Civil Service Commission against the City. Mr. Kiely and the City are also both represented by legal counsel. Mr. Kiely requested that the Civil Service Commission issue subpoenas to the City, although his request was denied. Furthermore, it was reasonable for the Board to discuss "strategy" at its

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February 27, 2017 meeting because the Civil Service Commission's Show Cause hearing had already been scheduled and the conference will include a defense and explanation of the City's actions. See OML 2017-9 (finding executive session to discuss upcoming hearing related to litigation strategy).

For the foregoing reasons, the City of Somerville denies that any violation of the OML occurred with respect to the February 27, 2018 meeting.

If you have any questions in this regard, please feel free to contact me.

Very truly yours,


Darren Klein

DRK/jmp

Enc.

cc: Board of Aldermen
Mr. Michael Kiely

607375/SOME/0001

EXHIBIT A

3.16.18



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108

2018 MAR 16 A 11:58
CITY CLERK'S OFFICE
SOMERVILLE, MA

OPEN MEETING LAW COMPLAINT FORM

Instructions for completing the Open Meeting Law Complaint Form

The Attorney General's Division of Open Government interprets and enforces the Open Meeting Law, Chapter 30A of the Massachusetts General Laws, Sections 18-25. Below is the procedure for filing and responding to an Open Meeting Law complaint.

Instructions for filing a complaint:

- o Fill out the attached two-page form completely and sign it. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- o To file the complaint:
 - o For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body AND to the municipal clerk.
 - o For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
 - o Complaints may be filed by mail, email, or by hand. Please retain a copy for your records.
- o If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

Instructions for a public body that receives a complaint:

- o The chair must disseminate the complaint to the members of the public body.
- o The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- o After review, but within 14 business days, the public body must respond to the complaint in writing and must send the complainant a response and a description of any action the public body has taken to address it. At the same time, the body must send the Attorney General a copy of the response. The public body may delegate this responsibility to its counsel or a staff member, but only after it has met to review the complaint.
- o If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

Once the public body has responded to the complaint:

- o If you are not satisfied with that the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, e-mail, or by hand, but only once you have waited for 30 days after filing the complaint with the public body.
- o When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- o The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

If you have questions concerning the Open Meeting Law complaint process, we encourage you to contact the Division of Open Government by phone at (617) 963-2540 or by e-mail at openmeeting@state.ma.us.



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

2018 MAR 16 P 12:15

Please note that all fields are required unless otherwise noted.

CITY CLERK'S OFFICE
SOMERVILLE, MA

Your Contact Information:

First Name: Michael Last Name: Kiely

Address: [REDACTED]

City: [REDACTED] State: [REDACTED] Zip Code: [REDACTED]

Phone Number: [REDACTED] Ext. _____

Email: mkiely@police.somerville.ma.us

Organization or Media Affiliation (if any): _____

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual Organization Media

Public Body that is the subject of this complaint:

City/Town County Regional/District State

Name of Public Body (including city/town, county or region, if applicable): City of Somerville Board of Alderman

Specific person(s), if any, you allege committed the violation: Ald. Ballantyne

Date of alleged violation: February 27, 2018

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

Order
(ID # 18014)
By Ald. Ballantyne
That this Board sponsor Outside Counsel Darren Klein, Esq, to advise this Board with respect to the matter of Michael Kiely and the City of Somerville, Civil Service Commission No. I-18-018, stating that this Board may convene in Executive Session to discuss strategy with respect to potential litigation.

This is not a complaint against the Board of Alderman. Therefore would not justify Executive Session. I filed for an investigative review with the Civil Service Commision. There is no litigation on this item against the Board of Alderman. Going into Executive Session for this, which they did and to discuss " potential litigation" is a second violation of the OML.
Alderman William White is not subject to this complaint, the rest of BOA is.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

public apology and to follow the Open Meeting Laws.

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed:  _____

Date: 3-16-18 _____

For Use By Public Body Date Received by Public Body: 03/16/2018 For Use By AGO Date Received by AGO:

City of Somerville, Massachusetts
Matters of Business of the Board of Aldermen

SPECIAL MEETING AGENDA

February 27, 2018, 7:00 PM
Aldermanic Chambers, City Hall, 93 Highland Avenue

OPENING OF THE MEETING

1. Roll Call Call of the Roll.
 (ID # 18013)

CITATIONS

PUBLIC HEARINGS

ORDERS, ORDINANCES, RESOLUTIONS AND MOTIONS OF MEMBERS

2. Order By Ald. Ballantyne
 (ID # 18014) That this Board sponsor Outside Counsel Darren Klein,
 Esq, to advise this Board with respect to the matter of
 Michael Kiely and the City of Somerville, Civil Service
 Commission No. I-18-018, stating that this Board may
 convene in Executive Session to discuss strategy with
 respect to potential litigation.

3. Order By Ald. Ballantyne
 (ID # 18015) That this Board sponsor Outside Counsel Darren Klein,
 Esq, to advise this Board with respect to the Open
 Meeting Law complaint of Michael Kiely against this
 Board, stating that this Board may convene in Executive
 Session to discuss this complaint and/or to discuss
 strategy with respect to potential litigation.

UNFINISHED BUSINESS

4. Public Michael Kiely submitting an Open Meeting Law
 Communication complaint against this Board.
 205259

REPORTS OF COMMITTEES

COMMUNICATIONS OF THE MAYOR

COMMUNICATIONS OF CITY OFFICERS

NEW BUSINESS

SUPPLEMENTAL ITEMS

LATE ITEMS

ADJOURNMENT

EXHIBIT B

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

Request for Investigation against
the City of Somerville by Petitioner:

- Kiely, Michael

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

Tracking Number: I-18-018

**ORDER TO SHOW CAUSE REGARDING PETITIONER'S REQUEST FOR THE
CIVIL SERVICE COMMISSION TO CONDUCT AN INVESTIGATION UNDER
G.L. c. 31, § 2(a)**

- On February 8, 2018, the Petitioner filed a request for the Civil Service Commission to conduct an investigation into "the police promotional process by the City of Somerville."
- On March 6, 2018 at 9:00 AM at the office of the One Ashburton Place; McCormack Building, Room 503, Boston, MA, the Commission will hold a conference to allow the Petitioner to show why the Commission should conduct an investigation.

Civil Service Commission

/s/Christopher Bowman
Christopher C. Bowman
Chairman

Date: February 9, 2018

Notice sent to: Marra, John M., Esq. (HRD)
Simpson, James W., Jr., Esq.
City of Somerville

MASSACHUSETTS CIVIL SERVICE COMMISSION – REQUEST FOR EQUITABLE RELIEF (NON-BYPASS)

Name of Person Filing Appeal (Appellant):

Michael Kiehy

City, Town or State Agency whose action or inaction you are appealing (Respondent):

Somerville BOARD OF ALDERMAN

Appellant Street or P.O. Box:

[Redacted]

Respondent Street or P.O. Box:

93 Highland Ave.

Appellant City, State, Zip Code:

[Redacted]

Respondent City, State, Zip Code:

Somerville, MA, 02143

Appellant Contact Phone Number:

[Redacted]

Have you ever filed an appeal with the Commission before?

yes

Appellant Email Address:

MKIEHY@police.somerville.ma.us

Brief Statement of the action or inaction that you are appealing (Attach a separate page if needed):

9 PAGES Submitted

RECEIVED IN-HAND
CIVIL SERVICE COMMISSION
FEB 1 05 PM 1 05

REQUIRED NEXT STEPS BY APPELLANT

1. Attach a check or money order in the amount of \$75.00 made payable to: Civil Service Commission.
2. If applicable, attach a copy of the written decision or other correspondence you received from the Respondent.
3. Mail or hand-deliver this appeal form to the Civil Service Commission at One Ashburton Place; Room 503, Boston, MA 02108. (For those appeals received via mail, the postmark date will be used to determine the receipt date with the Commission.)
4. Mail or hand-deliver a copy of this appeal form to the Respondent.

WHAT HAPPENS AFTER THE COMMISSION RECEIVES YOUR APPEAL FORM?

1. Within ten (10) days, you and the Respondent will receive an Acknowledgment Form from the Commission along with a "Notice of Pre-Hearing Conference". The pre-hearing conference is usually held within thirty (30) days from the time the Commission received your appeal.
2. You and the Respondent are required to attend the Pre-Hearing Conference at which time a member of the Commission will provide further details about how your appeal will proceed.

SIGNATURE OF APPELLANT:

M. Kiehy

TODAY'S DATE:

2-8-18

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

MICHAEL KIELY,
Petitioner,

v. Case No.

CITY OF SOMERVILLE
Respondent,

**PETITIONER, MICHAEL KIELY'S REQUEST FOR INVESTIGATION CONCERNING
THE POLICE PROMOTIONAL PROCESS BY THE CITY OF SOMERVILLE**

The Petitioner, Michael Kiely, respectfully requests that the Commission exercise its authority under G.L. c. 31 Section 2(a) to conduct an investigation into the police promotional process utilized by the City of Somerville, specifically, the Board of Alderman promotional review committee. As grounds supporting this request, the Petitioner states as follows:

FACTS:

1. The Petitioner is currently a Sergeant with the City of Somerville Police Department and has held this title since being promoted from patrolman to Sergeant in October 2014.
2. In 2016, the Petitioner, along with others took and passed the Civil Service examination for Lieutenant. A list was established in March 2016 by the Commonwealth's Human Resources Division and has expired as of January 30, 2018.
3. The City of Somerville made several promotions off that 2016 list prior to the Petitioner's candidacy. Those promotions were done by the candidates ranking on the eligible list.
4. The Mayor of Somerville is the appointing authority and the City of Somerville has accepted and adopted civil service law.
5. On December 26, 2017, the Mayor notified the Petitioner and other candidates that he was to be promoted to the rank of Lieutenant. (Exhibit "A")
6. The Petitioner's promotion was supported by Somerville Chief of Police Fallon, its Deputy Chief Trant and by the City of Somerville's Human Resources Panel who had conducted an interview of the Petitioner.
7. As a result of the recommendation of the Chief of Police and Human Resources Officer, the Mayor submitted the Petitioner's name for promotion to the Board of Alderman.
8. Pursuant to a City Ordinance Section 21, the Mayor may appoint police officers subject to confirmation by the Board of Alderman.
9. The City of Somerville Board of Alderman assigns 5 members to the Confirmation of Appointments Committee which is tasked with confirming candidates for promotion. The full Board of Alderman is then asked to vote on the candidate based on the recommendation of the Appointment Committee.
10. In the history of the Confirmation Committee, no candidate has been denied confirmation by the Board of Alderman.
11. The Petitioner has been a member of the Somerville Police Department since 1995. He holds 2 master's degrees and is a veteran of the US Coast Guard. He has received numerous awards and accolades for his service within the Department. He currently is assigned to special operations and is a liaison with the Department of Homeland Security Urban Area Security Initiative.

12. The Petitioner is active in City government and in the last election cycle supported several candidates for Board of Alderman positions who ultimately lost or were replaced by several new members to the Board of Alderman. The Petitioner had volunteered for many board of alderman candidates who were actively running against several members of the Board of Alderman Confirmation Committee.
13. In January 2018, the newly constituted Board of Alderman and by extension, the Confirmation Committee announced that it would be altering the confirmation process for promotional candidates. They requested that the City's Human Resources Division provide the Committee with the personnel files for all candidates for promotion so an "assessment" of their candidacy could be considered. Prior to January 2018, promotional candidates were not subject to the same scrutiny after being vetted by the City's Human Resources Division.
14. The Petitioner was called to appear before the Board of Alderman Confirmation Committee in executive session and over the course of 3 nights, his candidacy was assessed by the Committee. The Committee ultimately voted against confirming the Petitioner's promotion to Lieutenant. The basis given for the decision was 2 prior disciplinary incidents which had occurred early in the Petitioner's career with the Department, some 14 years prior. These incidents, were known to the City in 2014 when the Petitioner was promoted to Sergeant and confirmed by the then Board of Alderman.
15. Upon information and belief, several other candidates for promotion to Police Lieutenant and/or Police Sergeant during the same promotional period and in the past, have had more current disciplinary incidents in their personnel file and in some instances, far more serious infractions yet, they were confirmed by the Board of Alderman.
16. Candidates selected for promotion to Lieutenant off of the same list were not subjected to the same scrutiny and bias by the Board of Alderman.

LEGAL STANDARD:

As the Commission is aware, the fundamental purpose of the civil service system is to "guard against political considerations, favoritism, and bias in governmental employment decisions; when there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy". Cambridge v. Civil Service Commission, 43 Mass.App.Ct. 300, 304 (1997). This Commission has stated "The core mission of Massachusetts civil service law is to enforce "basic merit principles" described in Chapter 31 for "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment" and ensuring that "all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions." G.L.c.31,§1; Duval v. City of Somerville, G-16-082.

The Commission maintains authority under G.L. c. 31, § 2(a) to conduct investigations stating: "To conduct investigations at its discretion or upon the written request of the governor, the executive council, the general court or either of its branches, the administrator, an aggrieved person, or by ten persons registered to vote in the commonwealth." This statute confers significant discretion upon the Commission in terms of what response and to what extent, if at all, an investigation is appropriate. See Boston Police Patrolmen's Association et al v. Civ. Serv. Comm'n, No. 2006-4617, Suffolk Superior Court (2007). See also Erickson v. Civ. Serv. Comm'n & others, No. 2013-00639-D, Suffolk Superior Court (2014).

When dealing with issues relating to staleness relating to past infractions including criminal offenses, the Commission has stated:

"that an indiscriminate automatic bar to appointment for all forms of misconduct, unless expressly embedded in statute, is not consistent with basic merit principles. See Benevento v. Springfield Fire Dep't, 25 MCSR 537 (2012) (rejected fire department permanent bar for a criminal conviction; bypass allowed despite 27 year old felony conviction); Laguerre v. Springfield Fire Dep't, 25 MCSR 549 (2012) (same; stale juvenile offense); Ramirez v. Springfield Police Dep't, 10 MCSR 256 (1997) (upheld bypass but appellant not precluded from proving future rehabilitation); Radley v. Brookline Police Dep't, 10 MCSR 289 (1997) (noting that, in the future, appellant's "redeeming factors must be given added weight" and "past indiscretions should play a lessened role")

The Commission has also cited In Re Hiss, 368 Mass. 447, (1975) which the Court stated "A fundamental precept of our system (particularly our correctional system) is that

men can be rehabilitated. 'Rehabilitation . . . is a 'state of mind' and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved 'reformation and regeneration.' [Citation] Time and experience may mend flaws of character which allowed the immature man to err. The chastening effect of a severe sanction . . . may redirect the energies and reform the values of even the mature miscreant. There is always the potentiality for reform" . . . "[I]t is sufficient that the petitioner adduce substantial proof that he has 'such an appreciation of the distinctions between right and wrong in the conduct of men toward each other as will make him a fit and safe person Mere words of repentance are easily uttered and just as easily forgotten.'" In Re Hiss, 368 Mass. 447, 453-57 (1975) (emphasis added)

The Commission has added further by indicating "No bright lines have been set between when an applicant's history remains an unreasonable risk of present fitness to be appointed to perform the duties of a public safety officer or other civil service job and when intervening circumstances demonstrate rehabilitation that makes such behavior too stale to be used as an indicator of present fitness consistent with basic merit principles of civil service law. See, e.g., Henderson v. Civil Service Comm'n, 54 N.E.2d.3d, 607 (Rule 1:28), rev.den., 476 Mass. 1105 (2016) (bypass upheld, in part, on 14 year old misdemeanor conviction (possession of marijuana); Town of Randolph v. Civil Service Comm'n, 81 Mass.App.Ct. 1123 (Rule 1:28), rev.den., 462 Mass. 1104 (2012) (bypass upheld, in part, on 20 year old abuse prevention order); Boston Police Dep't v. Suppa, 79 Mass.App.Ct. 1121 (2011) (Rule 1:28) (upholding bypass; CWO for felonious misconduct seven years earlier); City of Cambridge v. Civil Service Commission, 43 Mass. 300 (1997), rev.den, 426 Mass. 1102 (1997) (bypass upheld; involvement in 10 year old criminal incident). Compare Finklea v. Boston Police Dep't, 30 MCSR 93 (2017) (14 year old CWO for receiving stolen property (a tire) insufficient, noting BPD's typical use of a "10-year lookback" period; bypass upheld 4-1 on prior driving record); Boyd v. New Bedford Police Dep't, 29 MCSR 471 (2016) (14 year old felony acquittal insufficient; bypass upheld on other grounds); Teixeria v. Department of Correction, 27 MCSR 471 (2014) (bypass overturned; 21 year old CWO); Hartnett v. Town of Ludlow, 25 MCSR 290 (2012) (15-year old misdemeanor insufficient; bypass upheld on other grounds); Kusser v. City of Quincy, 23 MCSR 33 (2010) (22 year old discipline too stale in considering promotion to police lieutenant); Monagle v. City of Medford, 23 MCSR 267 (2010) (stale juvenile criminal records insufficient; bypass justified on other grounds); Conroy v. City of Worcester, 22 MCSR 400 (2019) (3-2 decision overturning bypass; 5 year old driving record); Bulger v. City of Quincy, 22 MCSR 339 (2009) (3-2 decision overturning bypass; 10 year old juvenile driving record); Stanley v. Town of Watertown, 20 MCSR 832 (2007) (3-2 decision overturning bypass; 12 year old OUI charge).

ARGUMENT:

Here, the Petitioner having been selected for promotion by the Chief of Police, vetted by the City's Human Resources Division and with the full support of the Mayor (The Appointing Authority under Civil Service Law) was denied confirmation by the Board Of Alderman who, midstream, decided to alter the confirmation process solely for the purpose of denying the Petitioner's promotional prospects. The Board citing (2) 14-15 year old disciplinary incidents as the rationale behind its decision demonstrated political bias, a pursuit of objectives unrelated to basic merit principles and standards and a process that was not neutrally applied to all candidates. It defies logic and basic merit principles that the Petitioner could be cited for past transgressions as the reason for non-confirmation, when at the same time, other candidates sailed through the promotional process despite also having disciplinary histories and/or other negative instances in their personnel file. There can be no other explanation as to why the Petitioner was singled out for his stale disciplinary history other than political bias, animosity and selective enforcement of a newly instituted promotional review process by the Board of Alderman. The actions of the Board are arbitrary and capricious, violate basic merit principles and are in violation of G.L. c. 31. The Commission should exercise its authority under G.L. c. 31 Section 2(a) and conduct an investigation into the promotional process utilized by the Board of Alderman.

WHEREFORE, the Petitioner respectfully requests that the Commission conduct an investigation pursuant to G.L. c. 31 Section 2(a).

The Petitioner, Michael Kiely, 
By his attorney,

/s/ James W. Simpson, Jr.
James W. Simpson, Jr. BBO#634344
100 Concord Street, Suite 3b

Framingham, MA 01702
(508) 872-0002
jwsimpson11@verizon.net

CERTIFICATE OF SERVICE

I, James W. Simpson, Jr., do certify that on the 8th day of February 2018, I served the foregoing on counsel for the City of Somerville.

/s/ James W. Simpson, Jr.

James W. Simpson, Jr.



CITY OF SOMERVILLE, MASSACHUSETTS
JOSEPH A. CURTATONE
MAYOR

December 26, 2017

Michael Kiely


Re: Promotion to Police Lieutenant
Certification #02944-2 for Two (2) Permanent Full Time Police Lieutenants

Dear Sergeant Kiely:

As appointing authority I am pleased to inform you that you are hereby promoted to Police Lieutenant for the Somerville Police Department.

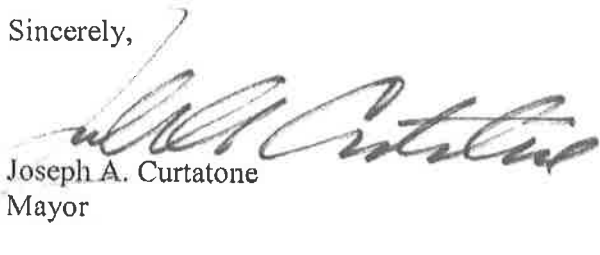
Please be aware that this promotion is subject to confirmation by the City of Somerville Board of Aldermen. Should the Board fail to confirm, this promotion may be rescinded.

Once the appointment is confirmed by the City of Somerville Board of Aldermen, you will be contacted with the date and time for Confirmation of Appointments and the date and time of the swearing in.

Congratulations on your promotion. Thank you for your continued hard work and success with the City of Somerville.

Please feel free to contact Jessica Pavao, HR Generalist/Civil Service Manager, with any questions you may have at 617-625-6600 x3302.

Sincerely,


Joseph A. Curtatone
Mayor





CITY OF SOMERVILLE, MASSACHUSETTS
JOSEPH A. CURTATONE
MAYOR

December 26, 2017

Michael Kennelly


Re: Promotion to Police Lieutenant
Certification #02944-2 for Two (2) Permanent Full Time Police Lieutenants

Dear Sergeant Kennelly:

As appointing authority I am pleased to inform you that you are hereby promoted to Police Lieutenant for the Somerville Police Department.

Please be aware that this promotion is subject to confirmation by the City of Somerville Board of Aldermen. Should the Board fail to confirm, this promotion may be rescinded.

Once the appointment is confirmed by the City of Somerville Board of Aldermen, you will be contacted with the date and time for Confirmation of Appointments and the date and time of the swearing in.

Congratulations on your promotion. Thank you for your continued hard work and success with the City of Somerville.

Please feel free to contact Jessica Pavao, HR Generalist/Civil Service Manager, with any questions you may have at 617-625-6600 x3302.

Sincerely,


Joseph A. Curtatone
Mayor





CITY OF SOMERVILLE, MASSACHUSETTS
JOSEPH A. CURTATONE
MAYOR

December 26, 2017

Sean Sylvester
[REDACTED]

Re: Promotion to Police Sergeant
Certification #02957-2 for Three (3) Permanent Full Time Police Sergeants

Dear Officer Sylvester:

As appointing authority I am pleased to inform you that you are hereby promoted to Police Sergeant for the Somerville Police Department.

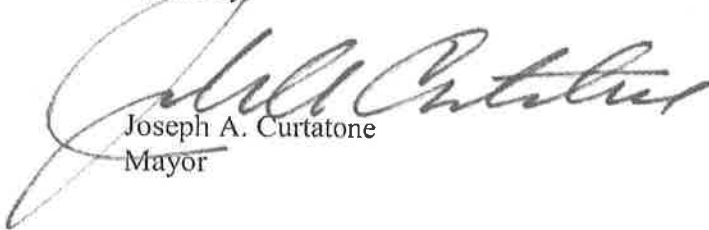
Please be aware that this promotion is subject to confirmation by the City of Somerville Board of Aldermen. Should the Board fail to confirm, this promotion may be rescinded.

Once the appointment is confirmed by the City of Somerville Board of Aldermen, you will be contacted with the date and time for Confirmation of Appointments and the date and time of the swearing in.

Congratulations on your promotion. Thank you for your continued hard work and success with the City of Somerville.

Please feel free to contact Jessica Pavao, HR Generalist/Civil Service Manager, with any questions you may have at 617-625-6600 x3302.

Sincerely,



Joseph A. Curtatone
Mayor



CITY OF SOMERVILLE, MASSACHUSETTS
JOSEPH A. CURTATONE
MAYOR

December 26, 2017

James Slattery

Re: Promotion to Police Sergeant
Certification #02957-2 for Three (3) Permanent Full Time Police Sergeants

Dear Officer Slattery:

As appointing authority I am pleased to inform you that you are hereby promoted to Police Sergeant for the Somerville Police Department.

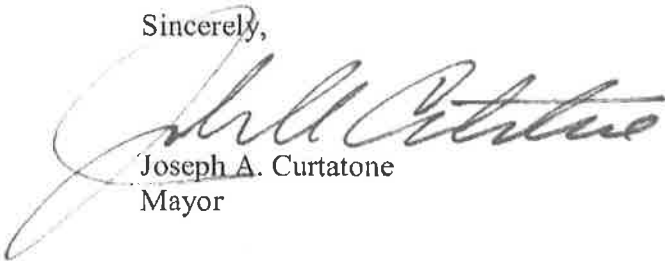
Please be aware that this promotion is subject to confirmation by the City of Somerville Board of Aldermen. Should the Board fail to confirm, this promotion may be rescinded.

Once the appointment is confirmed by the City of Somerville Board of Aldermen, you will be contacted with the date and time for Confirmation of Appointments and the date and time of the swearing in.

Congratulations on your promotion. Thank you for your continued hard work and success with the City of Somerville.

Please feel free to contact Jessica Pavao, HR Generalist/Civil Service Manager, with any questions you may have at 617-625-6600 x3302.

Sincerely,



Joseph A. Curtatone
Mayor





CITY OF SOMERVILLE, MASSACHUSETTS
JOSEPH A. CURTATONE
MAYOR

December 26, 2017

Michael McCarey

Re: Promotion to Police Sergeant
Certification #02957-2 for Three (3) Permanent Full Time Police Sergeants

Dear Officer McCarey:

As appointing authority I am pleased to inform you that you are hereby promoted to Police Sergeant for the Somerville Police Department.

Please be aware that this promotion is subject to confirmation by the City of Somerville Board of Aldermen. Should the Board fail to confirm, this promotion may be rescinded.

Once the appointment is confirmed by the City of Somerville Board of Aldermen, you will be contacted with the date and time for Confirmation of Appointments and the date and time of the swearing in.

Congratulations on your promotion. Thank you for your continued hard work and success with the City of Somerville.

Please feel free to contact Jessica Pavao, HR Generalist/Civil Service Manager, with any questions you may have at 617-625-6600 x3302.

Sincerely,


Joseph A. Curtatone
Mayor



EXHIBIT C

City of Somerville, Massachusetts
Matters of Business of the Board of Aldermen

SPECIAL MEETING AGENDA

February 27, 2018, 7:00 PM
Aldermanic Chambers, City Hall, 93 Highland Avenue

OPENING OF THE MEETING

1. Roll Call Call of the Roll.
 (ID # 18013)

CITATIONS

PUBLIC HEARINGS

ORDERS, ORDINANCES, RESOLUTIONS AND MOTIONS OF MEMBERS

2. Order By Ald. Ballantyne
 (ID # 18014) That this Board sponsor Outside Counsel Darren Klein,
 Esq, to advise this Board with respect to the matter of
 Michael Kiely and the City of Somerville, Civil Service
 Commission No. I-18-018, stating that this Board may
 convene in Executive Session to discuss strategy with
 respect to potential litigation.

3. Order By Ald. Ballantyne
 (ID # 18015) That this Board sponsor Outside Counsel Darren Klein,
 Esq, to advise this Board with respect to the Open
 Meeting Law complaint of Michael Kiely against this
 Board, stating that this Board may convene in Executive
 Session to discuss this complaint and/or to discuss
 strategy with respect to potential litigation.

UNFINISHED BUSINESS

4. Public Michael Kiely submitting an Open Meeting Law
 Communication complaint against this Board.
 205259

REPORTS OF COMMITTEES

COMMUNICATIONS OF THE MAYOR

COMMUNICATIONS OF CITY OFFICERS

NEW BUSINESS

SUPPLEMENTAL ITEMS

LATE ITEMS

ADJOURNMENT