



## CITY OF SOMERVILLE, MASSACHUSETTS LAW DEPARTMENT

May 22, 2014

Honorable Board of Aldermen  
City Hall  
City of Somerville  
93 Highland Avenue  
Somerville, MA 02143

Re: Fossil Fuel Divestment

Dear Honorable Board members:

In further response to the questions relative to the fossil fuel divestment, you have asked for additional clarification as to whether individual members of the Board of Aldermen may advocate in their official capacity publicly, or in their individual capacity as members of the Somerville Retirement Board, for divestment from fossil fuels.

For the reasons already stated in the opinion letter dated March 12, 2014, in my opinion, individual members of the Board of Alderman may not advocate in their official capacities publicly for divestment. That opinion provides that, according to David Wilson, "no official action by the Board or its members may be taken."

General Laws Chapter 268A, s 19 generally prohibits municipal employees, including elected officials, from participating in matters in which they have a financial interest. Massachusetts General Laws c. 268A, s.1(j) defines "participate" as follows: "participate in agency action or in a particular under the statute."<sup>1</sup>

You have also asked whether individual members of the Board of Aldermen may advocate in their private capacity for divestment from fossil fuels.

In my opinion, individual members may lawfully do so in their private capacity and represent their personal points of view. I recommend that it is clearly established that they are acting on their

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<sup>1</sup> Previous commission decisions have discussed and addressed the issue of whether conduct rose to the level of personal and substantial. A public employee who discusses and makes recommendations on the merits of a matter will be deemed to have participated personally and substantially. See, e.g. EC-COI-89-2 (discussion of merits of a particular matter); 87-19 (participation includes any discussion, recommendation, vote, investigation) 85-75 (participation includes reviewing and making recommendations to others); 79-74 (participation found where employee discussed with decision-makers factors that were central considerations of the final evaluation of a contract even if employee did not participate in selection, final review, approval and execution of the contract).

Honorable Board of Aldermen

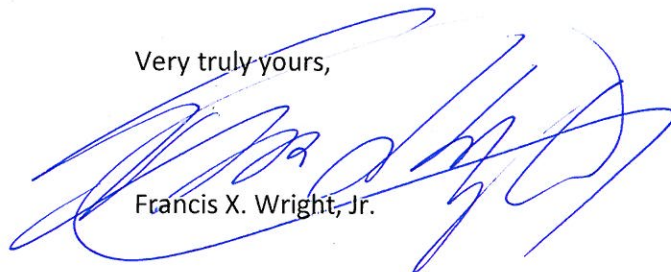
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own behalf, including 1) stating in all written correspondence that they are acting on their own behalf and in their personal capacity, rather than their official role, 2) not using city stationery, resources or supplies to convey their point of view, 3) sitting in the audience before speaking at a hearing or public meeting, rather than sitting with other officials or staff members and 4) making a public declaration, to be included in the minutes of any meeting, that they are acting on their own behalf and in their personal capacities rather than their official role.<sup>2</sup>

Please contact me with any additional questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Francis X. Wright, Jr.", written over a large, stylized blue scribble.

Francis X. Wright, Jr.

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<sup>2</sup> See State Ethics Commission Advisory No. 88-01.