

**STATE OF RHODE ISLAND
BEFORE THE RHODE ISLAND ETHICS COMMISSION**

In re: Gayle Corrigan,
Respondent

Complaint No. 2017-11

INVESTIGATIVE REPORT

I. INTRODUCTION & TRAVEL OF THE CASE

The instant Complaint was filed on December 15, 2017, by William Higgins and names Gayle Corrigan, the East Greenwich Town Manager ("Town Manager"), a municipal appointed position, as the Respondent. The Complaint alleges that the Respondent violated the Code of Ethics by recommending the hiring of her business associate, Linda Dykeman, to the East Greenwich Town Council ("Town Council") at its June 26, 2017 meeting. It is alleged that subsequent to the Town Council's approval, on or about June 30, 2017, the Respondent appointed Ms. Dykeman as the Town's consolidated Finance Director/Business Manager, a position for which the Respondent is the immediate supervisor. The Complaint further alleges that the Respondent subsequently awarded Ms. Dykeman an annual salary of \$127,500, without Town Council approval as required under the East Greenwich Town Charter.

Pursuant to Commission Regulation 1003,¹ on January 9, 2018, the Commission made an initial determination that the Complaint states facts that, if true, are sufficient to constitute a knowing and willful violation of the Code of Ethics and authorized a full investigation. On

¹In May 2018, the Ethics Commission codified the Code of Ethics into the Rhode Island Code of Regulations ("RICR"), a uniform state code containing the rules and regulations of the various Rhode Island agencies. In order to do so, the Ethics Commission reformatted and renumbered the Code of Ethics. As a result, Regulation 1003 now corresponds to Regulation 520-RICR-00-00-3.8 Initial Determination of Complaint.

February 12, 2018, David V. Abbott, Esq. and Timothy K. Baldwin, Esq., entered their appearances for the Respondent. On March 9, 2018, the Respondent filed a Verified Answer. On May 18, 2018, the Respondent filed an Amended Verified Answer. Pursuant to R.I. Gen. Laws § 36-14-12, the Commission extended the time to complete the investigation by sixty (60) days on May 15, 2018, and July 17, 2018, respectively. The investigation concluded on August 28, 2018.

This Investigative Report has been prepared in advance of a hearing on probable cause and details relevant evidence from the investigation for the purpose of the Commission's probable cause determination.

II. SUMMARY

In June 2017, the Respondent, as the Acting Town Manager, recommended that the Town Council approve the appointment of Linda Dykeman to the newly created position of consolidated Finance Director/Business Manager. Said position represented a consolidation of the roles of Town Finance Director and Director of Administration for the School Department within a single municipal position.² The consolidation was part of the implementation of a "One Town" plan to combine various Town and School Department functions to yield efficiencies and cost savings, particularly in light of a projected School Department structural deficit.

Ms. Dykeman's appointment was made pursuant to the Town Charter, which provides that the Town Manager shall appoint the Finance Director, subject to Council approval.

Subsequent to the Council's approval of the One Town plan, which included Ms. Dykeman serving in the new role, the Respondent appointed Ms. Dykeman to the consolidated position,

² The Director of Administration is the senior finance officer for the School Department.

effective July 1, 2017. As Town Manager, the Respondent at all relevant times exercised direct supervisory authority over Ms. Dykeman as the consolidated Finance Director.

The investigation established that, at the time of her appointment, the Respondent had ongoing business associations with Ms. Dykeman. In March 2017, Ms. Dykeman began performing services for the Respondent's management and consulting firm, Management Resource Partners, Inc. ("MRP"). MRP paid Ms. Dykeman for her services as an employee and consultant, including weekly retainer payments that did not cease until April 2018. Further, in March 2017, the Respondent and Ms. Dykeman cofounded Lozen Associates, LLC, a local consulting firm, in which the Respondent continued as a member while directing and supervising Ms. Dykeman in her municipal employ.

By recommending that the Council approve her appointment of Ms. Dykeman to the newly created position and, thereafter, continuously directing and supervising her in the performance of her duties, the Respondent took official actions financially impacting her business associate, in violation of R.I. Gen. Laws § 36-14-S(a) & (d). Detailed results of the investigation are set forth fully below.

III. PROBABLE CAUSE STANDARD

At this stage of the Complaint process, the Commission determines whether probable cause exists to support the allegations of the Complaint. See R.I. Gen. Laws § 36-14-12(c). In making that determination, the Commission must objectively assess whether, under the totality of the circumstances, the facts supported by reasonably trustworthy information are sufficient to cause a reasonable person to believe that the Respondent has violated the Code of Ethics.

The test for probable cause involves an objective assessment in which the examining court determines, under the totality of the circumstances, whether "the facts and circumstances within ... [their] knowledge and of which they had reasonably trustworthy

information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed."

State v. Flores, 996 A.2d 156, 161 (R.I. 2010) (quoting Maryland v. Pringle, 540 U.S. 366,372 n.2 (2003) (quoting Brinegar v. United States, 338 U.S. 160, 175-76 (1949))).

" Probable cause ' does not demand any showing that such a belief be correct or more likely true than false.'" Flores, 996 A.2d at 161 (quoting Texas v. Brown, 460 U.S. 730, 742 (1983)). However, probable cause lies somewhere beyond "bare suspicion." Id. (citing United States v. Prandy-Binett, 995 F.2d 1069, 1070 (D.C. Cir. 1993)).

IV. RESULTS OF INVESTIGATION

In December 2016, the East Greenwich School Department ("School Department") reported a projected structural deficit to the Office of the Auditor General, which resulted in the need to develop a corrective action plan. In March 2017, Town Council President Suzanne McGee Cienki ("President Cienki") offered the School Department the Town's assistance in addressing the deficit and related financial issues. To that end, she contacted Providence Analytics, Inc. ("Providence Analytics"), a consulting firm owned by the Respondent.³

A. Town Council Hires Providence Analytics.

Providence Analytics is a fictitious name under which Management Resource Partners, Inc. ("MRP"), a company founded by the Respondent in 2010, operates. MRP provides business consulting, management, and professional temporary staffing services to municipalities, fire districts, private businesses and nonprofits in Rhode Island and Massachusetts, including services as turn-around specialists. In particular, Providence Analytics is the consulting division

³ Previously, the Respondent served as Deputy Director of RI Housing and as Chief of Staff to the City of Central Falls under its state-appointed receiver. From March 2016 to date, the Respondent has served as District Manager of the Central Coventry Fire District pursuant to its contract with Management Resource Partners, Inc., of which she is the

President.

of MRP, offering business, non-profit and governmental consulting. The Respondent is the sole owner and officer of MRP.

On March 21, 2017, at President Cienki's request, Providence Analytics provided an initial presentation to the Council regarding its services.⁴ Ms. Dykeman, a CPA and Rhode Island Department of Education ("RIDE") certified School Business Manager, gave the presentation and identified the Respondent as the founder of Providence Analytics, for whom she had previously worked in the City of Central Falls during its state receivership.⁵

On March 27, 2017, the Respondent, on behalf of Providence Analytics, submitted a proposal to President Cienki to provide accounting and finance technical support, including organizational and operational review of the accounting, finance, and administrative functions currently in place at the School District. The proposal designated both Respondent and Ms. Dykeman as the consultants to perform services under the proposal, each at an hourly rate of \$150, with a cap of \$5,000 for all services.

On March 27, 2017, the Council unanimously voted to hire Providence Analytics to perform a review and analysis of School Department finances and provide assistance with addressing the School budget and projected deficit.⁶ In April 2017, the Town subsequently issued a Request for Qualifications for said services, given that services in excess of \$5,000 must be put to bid. On April 24, 2017, the Council unanimously awarded the contract to Providence Analytics, the sole bidder.

On May 15, 2017, at a joint meeting of the Council and School Committee, the Respondent gave a presentation, on behalf of Providence Analytics, regarding the independent

⁴ The Respondent was not in attendance.

⁵ The Respondent previously served as the City's Chief of Staff. Ms. Dykeman served as its Finance Director and,

thereafter, Director of Finance for its School District.

⁶ President Cienki and the Respondent executed the contract on March 27, 2017.

budget analysis that she and Ms. Dykeman had prepared regarding School Department finances.⁷ They had identified an emerging FY 2017 structural deficit of 1.2 million dollars and an estimated FY 2018 deficit of 2.5 million dollars. As part of structural solutions required to address the emerging deficit, Providence Analytics recommended considering the Town and the Schools as a whole, with the consolidation of administrative services.

Providence Analytics submitted an invoice to President Cienki, dated May 15, 2017, in the amount of \$15,000, for its review of the School Department budget and associated analysis. President Cienki recommended expanding the scope of their work to also review the Town budget while working strategically to eliminate the School Department's structural deficit and focusing on a corrective action plan. On May 22, 2017, the Council unanimously voted to expand the scope of Providence Analytics' work to include a review and analysis of the Town's finances for a report to the Council.

Prior to the conclusion of Providence Analytics' consulting work for the Town, Ms. Dykeman became a School Department employee. The School Committee hired Ms. Dykeman as the School Department's Director of Administration, effective May 26, 2017.⁸ The position reports to the Superintendent of Schools, Victor Mercurio. At the outset, her at-will employment was part-time, to average ten (10) hours weekly, with annual compensation of \$30,877 to be paid by the School Department.

At the June 5, 2017 Council meeting, the Respondent and Ms. Dykeman provided Providence Analytics' independent review of the Town FY 2018 proposed budget, including that of the School Department. The Respondent introduced the concept of "One Town," which called

⁷The Respondent noted that her colleague, Ms. Dykeman, was in attendance.

⁸ Various ly, both the Town and School Department have referred to the Director of Administration as the School Finance Director. Irresp ective of nomenclature, the position is the senior fiscal officer for the School Department.

for the Town and the Schools to operate as a single department to achieve efficiencies and acknowledge fiscal challenges. The concept offered opportunities for consolidation in the areas of finance, IT, human resources, purchasing, risk management, and benefits. Providence Analytics developed a FY 2018 Revised Budget that level funded the School Department and included consolidation of positions between the Town and Schools. Based upon proposed consolidation of positions, certain School administrative salaries would be paid by the Town, allowing the School Department to spend its allocated funding on students and a new Director of Curriculum position.

On June 9, 2017, Providence Analytics submitted another invoice to the Town, in the amount of \$14,175, for its review of the Town budget and associated analysis.

B. Appointment of Ms. Dykeman as Finance Director.

During its June 19, 2017 Executive Session, the Town Council approved a separation agreement with its then Town Manager, Thomas E. Coyle, III. Immediately thereafter, the Council voted 3-1 to appoint the Respondent as Acting Town Manager. On June 26, 2017, the Respondent formally presented the One Town plan to the Council for its approval. The One Town plan as presented included, among other things, the following: 1) elimination of the Town's existing Finance Director position; 2) creation of a consolidated Finance Director/Business Manager position to be shared between the Town and the School Department; and 3) appointment of Ms. Dykeman to the newly created position.⁹

According to President Cienki, the One Town plan was part of the process for implementing a corrective action plan to address the School Department's structural deficit.

⁹ In an investigative interview, President Cienki explained that RIDE required the School's Director of Administration to possess a School Business Manager certification, which Ms. Dykeman had, but then Town Finance Director Kristen Benoit did not.

Back in 2004, the School Committee had developed an idea for consolidation of finance, IT, and human resource services between the Town and the Schools. Although some payroll and administrative finance functions had been consolidated at that time, full implementation had not occurred. President Cienki explained that Providence Analytics had taken the prior consolidation concept, expanded upon it, and named it One Town. She described One Town as a collaborative concept and process involving the School Committee, the Council, and Providence Analytics.

1. June 26, 2017 Town Council Meeting.

The Executive Session minutes of the June 26, 2017 Town Council meeting reflect that the Respondent, as Acting Town Manager

presented a proposed "One Town" restructuring plan involving elimination of staff positions, including lay-offs of municipal employees and consolidation of department level positions in merged school-town administration roll-out. The rights of employees impacted by said restructuring were discussed and Solicitor D'Agostino identified the legal requirements for separating said employees.

Said minutes additionally reflect that "much discussion was had among the Council members on the recommendations and concerning the implementation on the recommendations of the Acting Town Manager."

The Council voted 3-1 to approve the Respondent's restructuring and reorganization plan for One Town implementation, and the vote was placed under seal until implementation was completed. The minutes do not state which positions or individuals were affected, nor does the Town possess any recording of the subject Executive Session to shed light on the specifics of the presentation and Council vote with respect to Ms. Dykeman's position.¹⁰

¹⁰ Town Clerk Leigh Camey confirmed that the Town does not have audio or video recording of the Executive Session.

On June 30, 2017, the Respondent sent an email to all Town employees announcing implementation of the One Town plan. In same, she announced Ms. Dykeman's new role as the consolidated Finance Director/Business Manager, effective July 1, 2017. The creation of the new position was not publicly announced prior to Ms. Dykeman's appointment, nor was the position posted at any time.

On July 12, 2017, the Town issued a check in the amount of \$40,350 to Providence Analytics in payment of the Respondent and Ms. Dykeman's consulting services and the Respondent's work as Acting Town Manager.

2. Town Charter Provisions & Term Sheet.

Pursuant to the Town Charter, Article XV, § C-91, the Director of Finance shall be appointed by the Town Manager with the approval of the Town Council. Article XIII, § C-85, E provides that the Town Manager shall recommend to the Council a standard pay schedule for each appointive office and position in the Town service, including minimum, intermediate, and maximum rates. The Council has the power to determine the salary of the Town Manager and the compensation of all officers and employees of the Town, except the employees of the School Department, in accordance with Article VIII, § C-67, I.

As set forth in Ms. Dykeman's "Term Sheet for Employment as Director of Finance," which the Respondent executed on July 11, 2017, Ms. Dykeman is an " at-will" employee who also serves as Town Treasurer. As Finance Director, she is subject to removal "at the discretion of the Town Manager with the approval of the Town Council." (Emphasis added). The Term Sheet "may be renewed or extended in the sole discretion of the Town Manager, and upon such additional terms and conditions as the parties may mutually agree to in writing." (Emphasis added). It specifies her annual salary of \$127,500, of which \$31,185.96 is to be paid by School

Department.¹¹ Her separate engagement agreement with the School Department is acknowledged therein and attached as an exhibit thereto.

3. One Town Implementation.

On July 24, 2017, upon the advice of Solicitor David D' Agostino, the Council unanimously voted to remove the "Acting" designation from the Respondent's title as Town Manager.¹² On said date, the Respondent presented the Council with a One Town status report. In same, she outlined a timeline of July 2017 through December 2017 for consolidation of the Finance Director/Business Manager position, Finance Department (including human resource/benefits coordination), IT Department analysis and consolidation plan, and an in-depth spending analysis. Implementation of the consolidation of the IT Department, as well as plans for Facilities/Maintenance and Purchasing consolidation efforts were slated for January 2018 through July 2018. The Respondent reported that the consolidated Finance Director/Business Manager position was a joint appointment of the School Committee (May 26, 2017) and the Council (June 26, 2017). The position reported directly to the Town Manager and had dotted line reporting to the Superintendent, with evaluation conducted by both supervisors. The salary for said position was \$127,500, representing FY 2018 savings of \$133,779, due to the elimination of one (1) FTE. At that time, the Respondent had prepared a draft job description for Ms. Dykeman's position.¹³

¹¹ At the time of Ms. Dykeman's appointment, the expectation was that an average of ten (10) hours weekly would be spent on her Director of Administration duties for the Schools. More recently, the allocation of time has been amended to a 50/50 basis, resulting in changes to each entity's fiscal appropriations. Ms. Dykeman advised that her annual salary is now \$135,000.

¹² The Respondent's Term Sheet was executed on said date, retroactive to July 1, 2017.

¹³ The draft job description under which Ms. Dykeman began her employment states that she works at the administrative direction of the Town Manager with a "dotted line" to the Superintendent, indicating that the position reports to more than one (1) supervisor. A Business Manager Certification from RIDE is a requirement of the position.

Although Ms. Dykeman was serving in the new position as of July 1, 2017, exact details for the position, including finalization of its reporting structure, were not decided until March 2018. During the ensuing time period, the Town and the School Department engaged in protracted discussions of the consolidation plan, both generally and with respect to Ms. Dykeman's specific position. In March 2018, the School Committee and Town finalized the consolidation by execution of a Memorandum of Agreement (MOA).

As set forth in the MOA, executed on March 29, 2018 and effective for FY 2019, the position of School Department Director of Administration was consolidated with the position of Town Finance Director, with the combined position being a direct report to both the Town Manager and Superintendent. The parties agreed that the position's compensation shall be made by the Council and Superintendent, subject to approval by a majority vote of both the Council and School Committee. The cost of compensation, inclusive of fringe benefits, shall be apportioned between the Town and School Department during the Town's budget process.

Pursuant to the MOA, the "at-will" position is answerable only to the Town Manager and Superintendent. The Town Manager and the Superintendent each shall delegate responsibilities to the Finance Director/Director of Administration as he or she deems necessary and appropriate regarding Town and School finances and operations, respectively, without interference from the other. The person holding the consolidated position must at all times hold a Business Manager certification required by RIDE. The Town Manager and Superintendent possess joint-decision making authority and shall work cooperatively with each other with respect to decisions regarding professional credentials, qualifications, hiring, supervision, performance, discipline,

termination, and recommended level of compensation, subject to the understanding that the Town Council sets the level of compensation under the Charter.¹⁴

C. Council President Cienki.

In her interview, President Cienki advised Chief Investigator Steven T. Cross that there was a consensus of the Council that Ms. Dykeman would be good for the consolidated Finance Director position. The Council, and she specifically, had been impressed with Ms. Dykeman's abilities as a consultant with Providence Analytics. President Cienki informed that she reached out to Ms. Dykeman personally and put the "hard sell" on her to become the new consolidated Finance Director. She had numerous discussions with Ms. Dykeman about her becoming the consolidated Finance Director and "twisted her arm a lot." Ms. Dykeman eventually agreed, but it involved a lot of persuasion.

President Cienki stated that, as Council President, she told the Respondent that she wanted Ms. Dykeman as the new Finance Director. She explained that she informed the Respondent that she could bring anyone else that she wanted to the Council, but that she wanted Ms. Dykeman. In response, the Respondent stated that she could understand why she would want Ms. Dykeman. President Cienki confirmed that the Respondent could have brought another person to the Council instead of Ms. Dykeman.¹⁵ However, President Cienki expressed that she was certain that no one would have voted to approve someone else.

Vice President Todd confirmed to Investigator Cross that President Cienki made it clear to him that she wanted Ms. Dykeman as the consolidated Finance Director. Although he could

¹⁴ In May 2018, the Town approved a standard pay schedule for appointive office and positions. It reflected minimum, intermediate, and maximum salary levels for the consolidated Finance Director of \$127,500, \$132,500, and \$137,500, respectively, based upon a RI Municipal Salary Survey dated February 2017.

¹⁵ In interviews conducted with Council Vice President Sean Todd and Council member Mark Schwager, each confirmed to Investigator Cross that, pursuant to the Town Charter, the Town Manager is responsible for appointing the Finance Director, subject to Council approval. If the Council fails to approve the appointment, the Town Manager must bring a new

candidate to the Council for approval.

not recall having any conversations with the Respondent regarding Ms. Dykeman as a candidate for the position, he acknowledged that he could have done so. He described President Cienki as being the impetus behind Ms. Dykeman becoming the consolidated Finance Director and expressed his belief that President Cienki directed the Respondent to recommend Ms. Dykeman to the Council for appointment.

According to President Cienki, at no time did anyone raise the issue of there being a business relationship between the Respondent and Ms. Dykeman.¹⁶ President Cienki did not believe that they were working together at that point in time because Ms. Dykeman was already employed as the School Department's Director of Administration. She assumed that Ms. Dykeman no longer had a business relationship with the Respondent or her company. President Cienki never asked about it nor did she have any conversation with the Respondent about it. Her mistaken understanding was that once Ms. Dykeman became a School Department employee she was no longer a consultant with Providence Analytics.

D. Respondent's Admissions.

In her Verified Answer, the Respondent represents that she drafted a One Town initiative for the Town Council, which included hiring Ms. Dykeman as the Finance Director, as discussed by the Council during its June 26, 2017 Executive Session. She maintains that President Cienki and Vice President Sean Todd instructed her to hire Ms. Dykeman and determined Ms.

Dykeman's compensation and terms of employment.

¹⁶ Similarly, Vice President Todd stated that, at the time, no one raised the issue of it being a problem for the Respondent to recommend the appointment of her business associate, including the Respondent. It was not until later that Council member Schwager voiced his disagreement. Council member Schwager advised that the Respondent did not express concern with recommending that the Council approve appointment of her business associate. Although he questioned the existence of a conflict of interest, it was with respect to the Town hiring its consultants into important municipal

positions, not as to the existence of a business relationship between them.

The Respondent acknowledges that, on September 21, 2017, she testified before the Rhode Island Superior Court in the matter of East Greenwich Firefighters Ass'n v. Corrigan, No. KC-2017-0898, 2017 WL 5501547 (R.I. Super. Ct. Nov. 8, 2017).¹⁷ Under cross-examination, the Respondent testified that she recommended Ms. Dykeman's appointment to the Council, as well as her salary. She further testified that she provided an analysis and plan of restructuring for One Town to the Council, which included the recommendation that Ms. Dykeman be hired. She explained that the Council voted to approve the overall plan at the June 26, 2017 Council meeting.

The Respondent asserts that, pursuant to the Council's direction, as communicated to her by President Cienki, she prepared a job description and salary range for the newly created consolidated Finance Director/Business Manager position. She maintains that President Cienki informed her that Ms. Dykeman's appointment to said position was part of the Town's One Town initiative. She avers that she was instructed to bring Ms. Dykeman's name forward to the Council with a recommendation to hire her, and that the Council determined her salary from the proposed salary range that she recommended.

In her Verified Answer, the Respondent admits to her supervision of Ms. Dykeman as Finance Director. In an investigative deposition conducted by the Prosecution, Ms. Dykeman testified that she reports to, and receives her assignments and duties from, both the Respondent and the Superintendent of Schools. At all times since July 1, 2017, the Respondent has been her immediate supervisor and she serves at the Respondent's pleasure. Ms. Dykeman confirmed that the Respondent approves her requests for vacation, sick leave or other time off. Although Ms.

¹⁷ An excerpted copy of the Respondent's testimony under cross-examination by Elizabeth Wiens, Esq. is attached to her Verified Answer.

Dykeman has not had a formal evaluation in her position, she confirmed that the Respondent evaluates her in her role as consolidated Finance Director.

E. Respondent's Business Associations with Ms. Dykeman.

On her 2017 Financial Disclosure Statement filed with the Commission, Ms. Dykeman listed herself as an employee of MRP/Providence Analytics from April 2017 through December 2017.

Documents produced by MRP reflect that, in March 2017, Ms. Dykeman began providing services to MRP relative to both the Central Coventry Fire District and the Town of East Greenwich. MRP records establish that Ms. Dykeman received \$16,791.22 in W-2 compensation during calendar year 2017, in addition to non-employee compensation of \$10,000.

MRP payroll summary records reflect that, during the period of June 21, 2017 through April 4, 2018, Ms. Dykeman received gross weekly payments of \$305.29. In her Amended Verified Answer, the Respondent states that Ms. Dykeman received weekly stipend payments as a retainer to ensure that she, through MRP, had access to Ms. Dykeman's financial expertise.

Said payments continued from January 3, 2018 through April 4, 2018.¹⁸ MRP records reflect that Ms. Dykeman received gross payments of \$4,274.06 during 2018.

In addition to her receipt of compensation from MRP, Ms. Dykeman and the Respondent were joined together in a Providence, Rhode Island limited corporation that they cofounded shortly before Providence Analytics was hired by the Town. On March 7, 2017, the Respondent, Ms. Dykeman, and Karen Cooper cofounded PEOpeople, LLC.¹⁹ On August 4, 2017, PEOpeople filed Articles of Amendment with the Office of the Secretary of State, changing its

¹⁸ Ms. Dykeman testified that, in addition to her receipt of wages and miscellaneous income from MRP during 2017, she received weekly retainer payments from MRP from approximately June 2017 through March 2018. She represented that her last payment from MRP was in March 2018.

¹⁹ The cofounders had all recently left their positions with the Greater Providence YMCA. The Respondent had served as Chair of the Board of Directors, Ms. Dykeman was the Chief Financial Officer, and Ms. Cooper was the Chief

Development and Marketing Official.

name to Lozen Associates, LLC.²⁰ At all relevant times, the entity has operated as a consulting firm offering services to help small to medium organizations meet the demands of fundraising, marketing, finance, accounting and strategic planning with significant cost savings.²¹

All three (3) members of Lozen Associates had an equal interest in the entity. During 2017, all of its members provided pro bono services to the John Hope Settlement House, but Ms. Cooper was the only member who had other, paying clients. Neither the Respondent nor Ms.

Dykeman received compensation for any work performed for Lozen Associates in 2017.²²

Records produced by Lozen Associates establish that the Respondent and Ms. Dykeman made capital contributions of \$6,000 and \$4,000, respectively, during 2017. Each member suffered a loss of \$1,063 during that same period.

In her Amended Verified Answer, filed on May 18, 2018, the Respondent states that she severed all ties with Lozen Associates in October 2017. Neither Ms. Dykeman nor Ms. Cooper could recall specifically when the Respondent's withdrawal occurred. Lozen Associates was unable to produce an executed Operating Agreement, Bylaws, or any records relating to the Respondent's withdrawal. On February 14, 2018, Lozen Associates removed the Respondent as its designated agent in its filings with the Secretary of State.

F. Town Council Votes to Reaffirm Appointments.

On November 8, 2017, the Superior Court issued a Decision in East Greenwich Firefighters Ass'n v. Corrigan that, among other things, found that the Town Council had committed violations of the Rhode Island Open Meetings Act ("OMA"). In particular, Justice McGuirl held that the Council's votes relative to the Respondent's appointment were in violation

²⁰ The original Articles of Organization were filed on March 7, 2017.

²¹ <https://www.lozenassociates.com/>.

²² Ms. Cooper is the only member who was compensated for her services. Although Ms. Dykeman received reimbursement

for certain expenses incurred, she was not compensated for her services.

of the OMA and, therefore, were rendered null and void. As a result, on November 20, 2017, the Council voted 3-2 to approve the Respondent's appointment as Town Manager, retroactive to June 19, 2017. It also took action to reaffirm and confirm various actions and recommendations that the Respondent had made to the Council.

As set forth in the November 20, 2017 meeting minutes, the Council voted 4-1 to approve the following:

Motion to approve the corrective action plan ("One Town") that was incorporated into the FY2018 Town budget, including the departmental restructuring of existing Finance Director and elimination of said position; elimination of the position of Human Resource Manager; and, elimination of the position of Executive Assistant to the Town Manager retroactively to June 26, 2017. Approval of the creation of shared Finance Director position as contemplated by the corrective action plan and the hiring of Linda Dykeman to said position, effective retroactively to July 1, 2017...

(Emphasis added).

Notwithstanding the lack of detail in the Council's June 26, 2017 meeting minutes, the foregoing evinces that when the Council approved implementation of the Respondent's One Town plan, it approved both 1) the restructuring of the existing Finance Director position into a shared position with the School Department; and 2) Ms. Dykeman's appointment to the new position. Most recently, on June 25, 2018, the Council voted 4-1 to appoint the Respondent as its permanent Town Manager.

V. DISCUSSION

As the Town Manager, the Respondent is a municipal appointed official subject to the Code of Ethics. Section 36-14-4(2). No person subject to the Code of Ethics ("Code") shall have any interest or engage in any business, employment or professional activity that is in substantial conflict with the proper discharge of her duties in the public interest. Section 36-14-

5(a). A person subject to the Code has an interest in substantial conflict with the proper discharge of her duties or employment in the public interest if she has reason to believe or expect that she, any person within her family, any business associate or any business by which she is employed or represents will derive a direct financial gain or suffer a direct financial loss by reason of her official activity. Section 36-14-7(a).

Further, a person subject to the Code shall not use her office for pecuniary gain, other than provided by law, for herself, her family, a business associate, or any business by which she is employed or represents. Section 36-14-5(d). A business associate is defined as "a person joined together with another person to achieve a common financial objective." Section 36-14- 2(3).

Here, the investigation established that, at all relevant times, the Respondent and Ms. Dykeman were business associates under the Code. From the time the Town engaged Providence Analytics as its consultant, in March 2017, to April 2018, MRP compensated Ms. Dykeman on a regular basis. During this period, Ms. Dykeman received remuneration from the Respondent's company as both an employee and a consultant. In particular, Ms. Dykeman received a weekly retainer payment from MRP that continued, while she was the Respondent's municipal subordinate, until April 2018.

Further, the Respondent and Ms. Dykeman cofounded Lozen Associates in March 2017, shortly before Providence Analytics began its consulting work for the Town. Although neither received compensation from Lozen Associates for their services, each made capital contributions to the entity, and suffered losses therefrom, during calendar year 2017. Assuming that the Respondent withdrew from the entity in October 2017, as claimed in her Amended Verified Answer, she nonetheless had a business association with her subordinate from July to October of

2017. Lozen Associates could not produce any record to verify the date of her withdrawal and she remained as the entity's registered agent until February 18, 2018.

Pursuant to the Town Charter, the Town Manager appoints the Finance Director, subject to the Council's approval. Due to her ongoing business associations with Ms. Dykeman, the Respondent's appointment of Ms. Dykeman, and her recommendation to the Council for its approval, constituted an interest in substantial conflict with the discharge of her official duties and responsibilities. Given that the Council lacked authority to make the appointment itself, absent the Respondent's actions Ms. Dykeman would not have been appointed to the position, which carried with it initial remuneration of \$127,500 annually.

Although President Cienki made it clear to the Respondent that she wanted Ms. Dykeman as Finance Director, at no time did the Respondent raise the issue that it would be inappropriate for her to recommend and or appoint Ms. Dykeman because they were business associates. In her interview, President Cienki represented that she was not aware that Ms. Dykeman continued to work for the Respondent's company after the School Committee hired her as Director of Administration in May 2017. President Cienki advised that she told the Respondent that she could bring anyone she wanted to the Council but that she wanted Ms. Dykeman.

As explained by President Cienki, Vice President Todd, and Council member Schwager, the Council is required to approve the Finance Director's appointment, but it is without authority to appoint a Finance Director on its own. The Town Manager must bring a candidate to the Council for approval. Neither Vice President Todd nor Council member Schwager could recall the Respondent raising the issue that she and Ms. Dykeman were business associates at the time of Ms. Dykeman's appointment.

In the face of Council leadership's expression that Ms. Dykeman was desired as the new Finance Director, the Respondent did not protest or articulate any concern regarding the approval and or appointment of her business associate. Nor did the Respondent seek guidance from the Ethics Commission as to the propriety of her official actions. As a result, the Respondent has continued to exercise direct supervision and control over her business associate for a period in excess of nine (9) months, all while Ms. Dykeman continued to receive regular compensation from the Respondent's business, MRP.

Further, it was the Respondent's official actions of formulating and implementing the One Town plan that caused Ms. Dykeman to become the consolidated Finance Director in the first instance. The Respondent's plan included elimination of the existing Finance Director position, creation of the new position, and installment of her business associate in said position. As such, the Respondent used her official position for the financial gain of her business associate.

VI. CONCLUSION

Based upon the above cited facts and discussion, the Prosecution submits that there is probable cause to believe that:


- I) By recommending that the East Greenwich Town Council approve the appointment of her business associate, Linda Dykeman, as the consolidated Town Finance Director, and appointing her to said position, the Respondent violated R.I. Gen. Laws § 36-14-S(a) & (d).

2) By supervising and directing her business associate, Linda Dykeman, in her employment as the consolidated Town Finance Director, the Respondent violated R.I. Gen. Laws § 36-14-S(a).

Dated:

8/28/18

Respectfully Submitted,


Katherine D'Arezzo

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Katherine D'Arezzo, Esq. (Bar No.
Commission Prosecutor