

To: Dirk Rohne, County Commissioner.

From: Scott Lee, County Commissioner and Chair of the Board

CC Board of County Commissioners and Commissioners-elect

Date: December 18, 2014

Subject: Notice of Concern Regarding Actions by Commissioner Rohne

Commissioner Rohne,

I am concerned about actions you have taken outside the scope of your authority as Clatsop County Commissioner. Those actions have exposed you to personal financial liability, and potentially exposed the County to financial liability as well.

This letter is to put you on notice that you are personally responsible for the costs you incurred outside the scope of your authority, pursuant to ORS 294.100, that you may be personally liable for violating public meetings laws (see attached Dumdi v. Lane County), and that if you continue to knowingly act outside your authority and get sued, you may lose your indemnification and be personally liable (See ORS 30.285).

First, you took it upon yourself to contact Akin Blitz and sought to initiate a personnel investigation of County Manager Scott Somers and [REDACTED] [REDACTED] Mr. Somers does not answer to you as an individual. He works for the Commissioners as a body. No one of us has the authority to hire lawyers to launch investigations, or to unilaterally start employment investigations. We must decide to take those actions as a body.

To the extent you have concerns about [REDACTED] you should bring those to the attention of the sole employee of the Commissioners, Mr. Somers, during an executive session. Likewise if you have concerns about the performance of Mr. Somers, those should also be raised in a properly noticed executive session. You are obligated to utilize that forum both to protect the privacy rights of the County employee, and because you do not have any authority to take official actions apart from the other Commissioners. Acting as a part of an elected body, namely the Clatsop County Commissioners, is your only source of authority and power. Put simply, you have no power or authority to take employment actions on your own.

But you did act on your own, more than once, jeopardizing your own finances and subjecting Clatsop County to liability.

The first example was when you contacted Akin Blitz, seeking to initiate an investigation of Mr. Somers [REDACTED]. Because there had been no executive session on taking this action, either:

- 1) You did line up the support of other commissioners outside of a properly noticed meeting, or,
- 2) You did not line up the support of other commissioners but claimed that you did.

In the first instance, you violated open meetings law and subjected yourself and other commissioners to liability, exactly as happened with Lane County commissioners in the Dumdi case. In the second instance, you acted on your own outside the scope of your authority, subjecting yourself to personal financial liability as in ORS ORS 294.100.

The second example of you knowingly acting on your own, outside the scope of your authority, is when you took the anonymous letters and provided them to the Daily Astorian. In your email [REDACTED] you actually go so far as to admit that "I did try an "official" channel and after months of dialogue it came to little." Since you were personally unsatisfied with the result of official channels, you took it upon yourself to utilize unofficial channels. You provided your own endorsement of the letters, stating that such a situation has "never happened before in the history of Clatsop County". You added that "the letters were from County employees who risk losing their jobs if they put their name on them."

You cannot claim to be acting personally, as an individual citizen, while you are at the same time cloaking your comments in the authority that comes from being an experienced County Commissioner.

[REDACTED]

This is a very serious breach of your duty to public employees. CIS informed us that two cities have recently lost over \$700,000 when someone did the same thing that you are now doing.

In the first, a police officer was terminated for alleged dishonesty, and the city where he worked provided documents about those allegations to a newspaper in response to a public records request. Because this damaged the officer's ability to find another job, the city owed the officer a name clearing hearing. Because the city did not provide the name clearing hearing, it was liable to the officer for 10 years worth of salary.

The second case is even more like the situation we find ourselves in here. As CIS told me, a high level city employee in Oregon simultaneously served in the National Guard. Anonymous complaints came to the city, alleging that the city employee was getting paid by the city and the National Guard at the same time. The employee was put on paid leave and an investigation

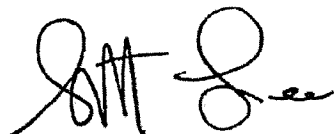
was launched. Months later, the investigation concluded that the public employee had been reimbursed \$10 too much, and the employee was terminated. The employee sued and it cost over \$700,000 to settle the suit against the city. Furthermore, the employee is still continuing with a suit against the investigator and the administrator who decided to terminate him.

Commissioner Rohne, if you have issues with the performance of any employee at the County, you can express all your concerns in a properly noticed executive session. In executive session, you are free to try to convince other commissioners to vote with you to take action. But if the other commissioner are not convinced by your arguments, that is the end of the matter. You do not have the power or authority to take matters into your own hands and hire lawyers to launch investigations.

Pursuant to ORS 294.100 you are hereby on notice that by acting on your own, outside the scope of your authority, you have incurred costs that you are personally liable for and under ORS 30.285 may lose your indemnity against a claim against you by any county employee whose reputation is damaged by your unauthorized actions.

Your same actions may have also violated Clatsop County's, Home Rule Charter, the Board Rules, the Resolution Adopting Ground Rules for Board of Commissioners, and the County Manager's Employment Agreement. Those issued are beyond the scope of this letter but will be addressed by one of the law firms on retainer with the County, Beery Elsner, at our next executive session. I look forward to discussing the above with you at that time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott Lee', with a stylized flourish at the end.

Scott Lee
Chair, Clatsop County Board of Commissioners