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June 27, 2023

Mayor Steven Sherlin
City of Athens
815 N Jackson St
Athens, TN 37303

Vice-Mayor Larry Eaton
City of Athens
815 N Jackson St
Athens, TN 37303

Council Member Dr. Dick Pelley
City of Athens
815 N Jackson St
Athens, TN 37303

Council Member Jordan Curtis
City of Athens
815 N Jackson St
Athens, TN 37303

Council Member Frances Witt McMahan
City of Athens
815 N Jackson St
Athens, TN 37303

Re: Ethics Opinion

To the Council,

At the regular Athens City Council meeting held on June 20, 2023, there was an allegation by a citizen during public comments of an ethical violation. The ethical violation alleged was that

Mayor Steven Sherlin and Vice Mayor Larry Eaton had violated Section 1-508 of the Athens Municipal Code by contacting the McMinn County Library Board regarding a display at the E.G. Fisher Library and in doing so were seeking privileges or exemptions for themselves or others that were not authorized by any legal authority. Contained within that allegation was at least a suggestion that the Tennessee Open Meetings Act had also been violated. Mayor Sherlin asked that I address this allegation as the ethics officer for the City of Athens.

FACTS

There appears to be agreement that the display was in regard to what is known as “Pride Month” and contained books that were written regarding individuals that identified as part of what is commonly referred to today as the “Lesbian, Gay, Bisexual, Transgender, Queer and/or Questioning, Intersex, Asexual, Two-Spirit” group or community. Based upon my understanding of events, there was no contact between any member of the City Council and employees of the E.G. Fisher Library regarding the display.

The E.G. Fisher Library is not a part of the City of Athens government. It is governed by the McMinn County Library Board which is made up of members appointed by the Athens City Council and the McMinn County Commission. It does receive taxpayer dollars from the City of Athens and presumably McMinn County but based upon my review of the library by-laws it appears to operate independently from each. I do not know if any issues were raised by any county officials regarding the display. It is my understanding that all communications regarding concerns about the display by any member of the City Council were directed to the Library Board. At the City Council meeting, Vice Mayor Eaton read excerpts from a book that he stated was in the display. I have not found any indication that there is disagreement that the book Vice Mayor Eaton read from was in fact in the display. That book contained details of sexual acts that were detailed and graphic. From my review, it appears that book is directed at and marketed to minors on the open market, including on Amazon. I address this issue further below.

ANALYSIS

As an initial matter, I cannot find any authority that stands for the proposition that the E.G. Fisher Library has any particular standing, privilege, or right to taxpayer dollars. Whatever funds are approved to go to the library by the City of Athens would go through the same legislative process as any other funds that are disbursed. The law is clear that authorizing, or not, such disbursements rests with the City Council as a whole and must be done in an open meeting. There does not appear to be any indication that the City Council as a body acted nor that there were violations of the Open Meetings Act regarding the display at the library.

Further, there are no privileges or exemptions that the library could bestow upon anyone in this situation nor is there any indication of any privileges or exemptions sought by the Mayor or the Vice-Mayor. The concept of privileges and exemptions are well known and defined in the law. Black’s Law Dictionary defines privileges, and by extension, exemptions, as follows: “That which releases one from the performance of a duty or obligation, or exempts one from a liability which he would otherwise be required to perform, or sustain in common with all other persons.”