



State of North Carolina
General Court of Justice
Twenty-Sixth Prosecutorial District

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MECKLENBURG COUNTY

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January 5, 2023

Mr. Rod Massey
Special Investigations Division, Agent
NC State Bureau of Investigation
3320 Garner Rd
Raleigh, NC 27610

Dear Agent Massey:

On Wednesday, September 7, 2022, I requested the North Carolina State Bureau of Investigation (NC SBI) examine a matter involving James Mitchell, Jr. I initiated this inquiry following numerous public statements from Mr. Mitchell, in which he claimed to possess a 25 percent ownership stake in R.J. Leeper Construction LLC (herein Leeper Construction), a private firm deriving a direct benefit from active contractual relationships with the City of Charlotte. On Tuesday, September 6, 2022, Mr. Mitchell was sworn in as an at-large member of the Charlotte City Council, leaving him subject to N.C.G.S. § 14-234 (a)(1), as a duly elected public officer. If, in fact, Mr. Mitchell was determined, under § 14-234 (a1) (4), to have more than a 10 percent ownership stake in Leeper Construction, an entity that is party to contracts with the City of Charlotte, that condition would be unlawful, given Mr. Mitchell's position on a City Council that approves and oversees the performance of such contracts. Notwithstanding Mr. Mitchell's claims, corporate officers of Leeper Construction offered public statements denying Mr. Mitchell still had an ownership stake in the company. To establish clarity over whether Mr. Mitchell possessed an ownership stake with a contracting party to an extent that would be make him criminally liable, I asked NC SBI to investigate the matter. The investigation was assigned to NC SBI's Special Investigations Unit. That unit reviewed relevant documents and conducted interviews with multiple officers and employees of Leeper Construction, Charlotte City Attorney Patrick Baker, and Mr. Mitchell himself. On December 18, 2022, I received access to the complete SBI file for this investigation and immediately began a review.

Basis/Scope of Investigation

Generally, neither the North Carolina Constitution nor the North Carolina General Statutes grant the District Attorney investigative authority in criminal cases. Typically, it is left to local law enforcement

agencies to investigate possible violations of state criminal law within a jurisdiction. Yet, when local law enforcement may face special difficulty in fulfilling its normal investigative function, it may be incumbent upon the District Attorney to call upon another investigative agency to execute that role, as circumstances demand it. Under N.C.G.S. § 143B-917, a District Attorney may ask for such assistance from the North Carolina State Bureau of Investigation.

Admittedly, District Attorneys do not regularly investigate nor screen the business relationships of elected officials in advance of them taking office. Most state elected and appointed public officials must offer yearly filings of such relationships to the NC State Ethics Commission. Where violations are discovered by the State Ethics Commission, matters can then be referred to the Attorney General for investigation and then to the District Attorney for possible prosecution. Notably, there is not a parallel agency with jurisdiction to investigate such matters involving local municipal and county public officials.

Here, the request for an investigation of the business relationships of a local public officer was prompted principally by the repeated public comments of Mr. Mitchell, citing his 25 percent ownership of Leeper Construction, as he prepared to take office, even after he was confronted with the restrictions enumerated in N.C.G.S. § 14-234. Since application of the criminal statute at issue would involve a potential conflict between the private and public obligations of an elected official with oversight authority for the Charlotte-Mecklenburg Police Department, to avoid even the mere appearance of a conflict of interest, my office assumed the responsibility of determining whether these matters would be investigated further. When I decided an investigation was warranted, without any prejudice as to what might be revealed, I sought the assistance of NC SBI in the performance of this inquiry.

The scope of this review is limited by the prescribed constitutional authority of the District Attorney to consider cases for prosecution under the criminal law. To provide context, this SBI investigation inherently involved some examination of the internal operations and affairs of Leeper Construction and its primary holding company, Bright Hope Capital LLC (herein BH Capital). As is common in any criminal investigation, there are many details which may be noteworthy or of general interest, but the evidence revealed here is strictly limited to those matters that bear on the District Attorney's constitutional obligation to determine the existence of criminal liability within the specific questions under investigation. To that end, this review will not include every detail of the investigation.

This review—and what is summarized here--strictly seeks to consider whether there is available evidence sufficient to prove a violation of criminal law. As with all allegations of criminal violations, the question that must ultimately be determined is whether a prosecuting authority possesses the evidence to prove the guilt of a subject beyond a reasonable doubt in a criminal trial.

Overview of James Mitchell's Relationship with Leeper Construction

While there are certainly matters that are in dispute regarding the nature of Mr. Mitchell's present relationship with Leeper Construction, there are many items that are not in question. There were two relevant agreements that established a distinct business relationship between Mr. Mitchell and Leeper

Construction. First, on December 16, 2020, Mr. Mitchell entered into an agreement to become President of Leeper Construction, LLC. Second, also that month, Mr. Mitchell signed a promissory note (the conditions of which would later be in dispute) for a loan of \$375,000 from BH Capital, the proceeds of which would enable him to secure a 25 percent ownership interest in Bright Hope *Construction* LLC (herein BH Construction), which was formed as the parent company of Leeper Construction after BH Capital purchased Leeper in December 2020. The promissory note described Mr. Mitchell's ownership interest in BH Construction as collateral for the loan. BH Capital, the holder of this promissory note, owned the remaining 75 percent interest of BH Construction.

Mr. Mitchell served as an at-large member of the Charlotte City Council at the time he assumed his ownership interest in BH Construction and Presidency of Leeper Construction. Understanding that the City of Charlotte had two active contractual relationships with Leeper for joint venture construction projects at Charlotte Douglas International Airport, City Attorney Patrick Baker advised Mr. Mitchell that his business arrangement with BH Construction could put him in conflict with N.C.G.S. § 14-234. Mr. Baker suggested to Mr. Mitchell that there were two options that could rectify that conflict: 1) Leeper Construction could commit to avoiding any new contracts with the City while Mr. Mitchell was on the City Council; or 2) Mr. Mitchell could resign from the City Council. On January 10, 2021, ten days after his ownership interest in BH Construction was solidified and three weeks after he had become the President of Leeper Construction, Mr. Mitchell resigned from the Charlotte City Council.

Mr. Mitchell served as President of Leeper Construction for approximately six months, before he was ultimately terminated on July 2, 2021. In the initial months that followed, BH Capital engaged in negotiations with Mr. Mitchell's legal counsel to resolve his ownership interest in BH Construction. In December 2021, BH Capital called their promissory note, according to its stated terms, giving Mr. Mitchell five days to repay the \$375,000, plus interest. Over the next three months, BH Capital took steps to comply with N.C.G.S. § 25-9-620, which would enable the firm to execute foreclosure on the collateral of the promissory note. In the absence of a response from Mr. Mitchell or his counsel, on March 22, 2022, BH Capital sent notice of foreclosure on Mr. Mitchell's 25 percent interest in BH Construction. Upon providing that notice, BH Capital claimed 100 percent ownership interest in BH Construction.

In April 2022, counsel for Mr. Mitchell did ultimately raise legal objections to the BH Capital's claim of foreclosure, questioning the legitimacy of the foreclosure process as "non-judicial." To date, neither Mr. Mitchell nor BH Capital have initiated any civil action in the courts in reference to these matters.

In 2022, Mr. Mitchell filed for election to return to the Charlotte City Council as an at-large member and was ultimately successful in winning his election in July 2022. As he approached his return to office, he was asked by numerous media outlets about his existing relationship to Leeper Construction, and he insisted that he retained the same ownership stake that had led him to resign from the City Council in January 2021. After observing these statements, in advance of Mr. Mitchell being sworn in, City Attorney Baker briefed the entire Council on the matter, reminding them that Mr. Mitchell's ownership claim raised questions of possible noncompliance with N.C.G.S. § 14-234, but also distinguishing this circumstance from what occurred in January 2021. Mr. Baker told Councilmembers that, unlike the

conditions existing when Mr. Mitchell resigned in 2021 when his ownership stake was certain, in 2022, his ownership stake was very much in dispute. Specifically, Mr. Baker stated, “Because this is a criminal statute, to prove a violation of this statute would require the establishment of proof beyond a reasonable doubt that the incoming councilmember does in fact own more than 10 percent of the company...Should a criminal complaint be filed against the incoming councilmember, it would be for the courts to decide the ownership rather than the City Council or City Attorney.”

The decision to raise a criminal complaint, as described by Mr. Baker, in this matter, rests with the District Attorney.

Accounts from Officers and Employees of Bright Hope Construction LLC/Leeper Construction LLC

SBI Investigators met with several present and former employees and officers of Leeper Construction, including those who served as Chief Operating Officer, Chief Financial Officer, and Senior Vice President of Operations. While not every person interviewed from Leeper Construction was familiar with the intricacies of Mr. Mitchell’s ownership arrangement, all acknowledge his ownership stake in the company from January 2021 to early July 2021. Similarly, each of these individuals believed Mr. Mitchell’s ownership stake in Leeper Construction to have ceased by the time he returned to the Charlotte City Council in September 2022. Specifically, officers of Leeper Construction all say that since his termination in July 2021, unlike the other owners of BH Construction, Mr. Mitchell has had no participation in the management of the company, has neither sought nor received financial documents related to the company, and has not paid anything in furtherance of the company’s operations. Additionally, there is no evidence he has received any distribution of profits from the company since his departure in 2021.

Officers and counsel for BH Capital, the holding company for BH Construction, contend their firm rightfully foreclosed on its promissory note to Mr. Mitchell, as it required him to pay back the principal sum of \$375,000 “on demand, but in any event no later than 12/31/2024.” BH Capital believed the language of the note essentially allowed the firm to demand payment at any time, and, in the event of nonpayment upon demand, the firm could “sell, lease, or dispose” of the named collateral for the note, which was identified as Mr. Mitchell’s “member equity in Bright Hope Construction LLC.” Accordingly, BH Capital initiated that process on December 22, 2021, and, pursuant to §25-9-620, the firm executed steps to achieve strict foreclosure and accept Mr. Mitchell’s 25 percent interest in BH Construction in full satisfaction of his indebtedness under the promissory note. The firm argues this was achieved on March 22, 2022, thereby terminating Mr. Mitchell’s ownership interest in BH Construction.

If these representations from the officers of BH Capital and BH Construction are accurate, Mr. Mitchell would not be in violation of § 14-234.

Accounts from Officers and Employees of Bright Hope Construction LLC/Leeper Construction LLC

Mr. Mitchell willingly met with SBI Investigators, in the presence of his counsel from the law firm of Nexsen Pruet on December 8, 2022. He spoke at length about the nature of his business relationship with Leeper Construction, and he reiterated his insistence that he still possessed a 25 percent ownership stake in the company. Mr. Mitchell detailed being offered a Separation Agreement, in which his promissory note would be forgiven, in return for his resignation. Mr. Mitchell recalled he objected to this for two reasons. First, Mr. Mitchell argued he expanded the project portfolio of Leeper Construction considerably during his tenure and that he should be compensated for the value he added to the company in his Separation Agreement. Second, Mr. Mitchell was adamant that he would not tender his resignation, saying, “If you are going to terminate me, then you have to own it. Why would I leave a company that I sacrificed and got off Council (for)? Why would I resign?”

When investigators confronted Mr. Mitchell with the promissory note he signed that is the basis for BH Capital’s denial of his continued ownership claim, Mr. Mitchell explained he believed that the note gave him until December 31, 2024 to pay back the principal sum used to secure his 25 percent stake. Additionally, Mr. Mitchell cited another line from the promissory note that he understood to support his claim that he would never be personally responsible for paying back the loan: “Please note that payment of principle (sic) and interest will be made from profit distributions net of tax from the operations of BH Construction, LLC.” Mr. Mitchell’s counsel questioned the validity of the promissory note more generally, describing its language as “vague.”

Mr. Mitchell and his counsel acknowledge they did not offer an objection to the strict foreclosure proposal offered by BH Capital within the time demanded by § 25-9-620. Mr. Mitchell and his counsel suggested to investigators they were under no obligation to respond within the time frame demanded because the process BH Capital followed to execute foreclosure was “non-judicial.” Consistent with representations in correspondence Mitchell and his counsel sent to BH Capital, they diminished BH Capital’s reliance on the foreclosure process outlined in § 25-9-620 because “a judge did not render a decision as to whether foreclosure was permissible.” They disputed whether BH Capital could be considered a “secured party” in the promissory note and, as such, could be enabled to proceed with foreclosure under § 25-9-620. And yet, to date, Mitchell and his counsel have not contested this foreclosure with the court, as evidenced by this exchange with SBI Investigators:

SBI Investigator: Are you disputing that (foreclosure on Mr. Mitchell’s member equity in BH Construction)?

Mitchell: Oh yes.

Counsel for Mitchell: At some point, we intend to, but, at this point and time, we are letting it stand as it is.

SBI Investigator: Ok. As, it is being foreclosed on...to be revisited at a later date?

Counsel for Mitchell: Potentially.

SBI Investigators asked Mitchell what he intended to do if a court later found that he was still entitled to his 25 percent ownership interest in BH Construction. Mitchell responded that he would attempt to sell enough of his ownership interest to fall below the 10 percent ownership threshold established by N.C.G.S. § 14-234 (a1) (4). In the meantime, Mitchell indicated he would recuse himself from any Council votes on any matter involving Leeper Construction.

Concluding Analysis

Ultimately, the statements of BH Capital, asserting Mr. Mitchell is no longer in possession of an ownership stake in BH Construction/Leeper Construction, are extremely compelling. Mr. Mitchell signed a promissory note with BH Capital, and its plain reading, at least, seems to obligate Mr. Mitchell to pay back his principal sum upon the demand of the lender, even if the note sets a specific due date, in the event an earlier demand had never come. Similarly, the language of § 25-9-620 appears clear, and, the evidence reviewed appears to demonstrate BH Capital has complied with its requirements, sufficient to perfect foreclosure on Mr. Mitchell's ownership interest in BH Construction. Accordingly, it certainly seems Mr. Mitchell enjoyed no control of his ownership interest as of March 2022, well in advance of his return to the Charlotte City Council. Additionally, there is no evidence suggesting Mr. Mitchell performed any active engagement or oversight in the operation of this company since his termination in July 2021. Also, Mr. Mitchell does not appear to have reaped any proceeds from his business relationship with BH Construction since his termination. Accordingly, the most believable evidence here indicates Mr. Mitchell has no present business relationship with Leeper Construction nor BH Construction that is legally inconsistent with his position on the City Council.

It is important to note that this investigation never produced any suspicion of self-dealing, corruption, or any demonstrated intent on behalf of Mr. Mitchell to use his public office for personal gain or profit. He was forthcoming with investigators and answered every question they asked of him. Mr. Mitchell clearly has an alternative position on the status of his ownership interest, but even his counsel has admitted this position has not been asserted in the forum Mr. Mitchell believes to be the ultimate arbiter of such business disputes—a court of law. In the meantime, while they consider further legal action, in reference to the foreclosure of Mr. Mitchell's ownership interest in BH Construction, they are "letting it stand as it is." At this moment, that ownership interest is not with Mr. Mitchell, or—more to the point—the State could not possibly prove his ownership interest to a jury beyond a reasonable doubt.

Indeed, this review of the available evidence leaves no impression that Mr. Mitchell has any ownership stake in Bright Hope Construction. As he has implied, Mr. Mitchell may very well petition a court to make an ultimate determination regarding this ownership stake. Admittedly, it will be a peculiar posture for someone to pursue a civil claim that, if successful, would also serve as dispositive affirmation of a violation of North Carolina criminal law. A review of N.C.G.S. § 14-234 would remind anyone that the law is unchanged since it precipitated Mr. Mitchell's resignation from the City Council in 2021. A similar review may also serve as a reminder that, under N.C.G.S. § 14-234 (a1) (3), recusal from certain Council

votes is not sufficient to insulate a public officer from committing a criminal violation under this statute. But, until a court issues a ruling that supplements or—more accurately—negates the facts considered here, this assessment must acknowledge the overwhelming evidence that Mr. Mitchell does not have an existing ownership stake in Bright Hope Construction, leaving no basis for his prosecution under the criminal law of the State of North Carolina.

Sincerely,

A handwritten signature in black ink that reads "Spencer B. Merriweather III". The signature is written in a cursive style with a distinct "III" at the end.

Spencer B. Merriweather III
District Attorney
Mecklenburg County, North Carolina

Cc: Patrick Baker, City of Charlotte, City Attorney