

**David A. Plymyer
Attorney at Law
Catonsville, Maryland**

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SUBJECT: Office of Inspector General Case No. 25-004

Dear Members of the Baltimore County Council:

After reading the documents obtained by reporters and reading the report of the Inspector General (IG) in Case No. 25-004, this much is obvious: An enormous amount of time and effort was spent by multiple county officials and employees on a relatively simple matter involving a former firefighter with ties to County Executive Johnny Olszewski, Jr., resulting in a payment of \$83,675 to that former firefighter, Philip Tirabassi, for which the IG could find no “clear explanation,” let alone substantial justification.

By “substantial justification,” I mean a reasonable basis in the law and facts for the settlement of Tirabassi’s claim against the county for allegedly failing to notify him of his right to transfer retirement service credit from prior employment with the City of Baltimore to his county pension plan under a state law passed in 1990. The IG is charged by law with identifying “fraud, waste, and abuse” and “ways to promote efficiency, accountability, and integrity” in county government. As used in that context, “abuse” includes payment to someone when there is no substantial justification for that payment, and it requires no proof of improper motive.

The IG concluded that the County Attorney acted within his legal authority by deciding to settle the case and that there was no evidence linking the County Executive to the County Attorney’s decision, but the IG did *not* conclude that the settlement itself was proper in the sense that there was substantial justification for it. I believe that the IG defined the scope of her investigation too narrowly: The County Attorney abused his authority if he approved the settlement without substantial justification, regardless of the lack of any evidence of direct pressure by the County Executive to do so. I say if, because the report does not include the County Attorney’s explanation of the settlement.

In an op-ed in the *Baltimore Brew*, I expressed my opinion that the IG’s report should, at the very least, have included a specific finding that, based on an exhaustive review of the records and interviews with county officials, no substantial justification for the payment could be determined. The point of this letter is not to rehash that argument, but to underscore the fact that decisions by the IG as to what was and was not relevant to her report do *not* relieve the County Council of its role in overseeing the propriety of this kind of financial settlement.

The council passed Bill 116-20 (violated in this particular settlement, as it turned out) for the specific purpose of enabling it to exercise that oversight role. The council also has responsibility for the law governing the process by which settlements like the Tirabassi settlement are approved. Given what the media and IG report revealed about the county’s process, the council should consider changing it.

The IG’s report

A logical step in an investigation to determine whether a decision was improper is to review the basis given for the decision by the decisionmaker. The issue is not that the IG did not look for substantial justification for the settlement by the decisionmaker; it is that she didn’t find any.

In July of this year, in an interview with the *Baltimore Sun*, County Executive Johnny Olszewski, Jr. attributed the decision to settle the Tirabassi claim to the alleged “error” by former Assistant County Attorney Michael Raimondi in sending what Olszewski referred to as an “unauthorized” settlement agreement to Tirabassi’s lawyer in January 2020, and to fears that Tirabassi would sue the county for reneging on the agreement. The IG reported that internal documents indicated, however, that until April 2020 the county had no intention of settling with Tirabassi, based either on his original claim or the threat to sue over the agreement sent by Raimondi.

The county’s position changed in April 2020. County officials offered no reason for the change other than, what else, COVID-19.

“By April 2020, the position of the county had changed such that the county was amenable to a settlement with Tirabassi. The internal emails reviewed provided no clear explanation for this shift. However, interviews conducted by the Office revealed that one of the reasons was the onset of the global COVID-19 pandemic and its effect on county government.” (IG report, p. 9.)

The IG confirmed that the Olszewski administration and Office of Law were intent on using Raimondi’s alleged error as the justification for the settlement:

“In numerous emails reviewed by the Office surrounding this time period [April-May 2020], the administration and [Office of Law] continued to state the reason to settle with Tirabassi would be due to ‘the error by [Raimondi]’ as otherwise, the county believed it had a strong position that Tirabassi had received notice of his opportunity to transfer the city time and simply failed to do so during the required time period.” (IG report, p. 10.)

The county did indeed have a “strong position” that Tirabassi simply filed his claim for pension service credit 27 years too late. The Olszewski administration bent over backwards to be fair to Tirabassi. In April 2019, former County Director of Budget and Finance Keith Dorsey denied Tirabassi’s claim as untimely. Dorsey apologized for how long it took it to resolve the claim. He explained: “A large part of the delay was trying to find a positive result in your favor. However, that is not possible.”

Shortly thereafter, Dorsey retired. He was replaced by Ed Blades, who reviewed Dorsey’s decision at Olszewski’s request. Blades also denied Tirabassi’s request for transfer of service credit in a letter dated September 10, 2019.

It is worth noting that there are sound reasons for the transfer deadline that have to do with the manner in which pension plans are funded. Also, as explained in a memo apparently written by Raimondi, the county lacked the authority to waive or extend the deadline established by state law and there were adverse consequences if it attempted to do so.

In summary, there was no reason to offer Tirabassi a financial settlement of his claim for a transfer of service credit. Nor, based on the facts reported by the IG, was there a reason to offer one because of Raimondi’s alleged error.

What “error” by Raimondi?

Any claim for breach of the “unauthorized” settlement agreement sent by Raimondi would have been unsuccessful if only because of the long-settled body of law holding that a city or county cannot be bound to a contract or other agreement except by an official authorized by law to do so, even in a situation in which an offer to enter a contract was made by an unauthorized official who gave the appearance of possessing such

authority. The county would not have had to rely on that legal doctrine, however, because information reported by the IG eliminated any semblance of a chance Tirabassi had to enforce the agreement.

The IG reported that the email sent by Raimondi transmitting the “unauthorized” agreement to Raimondi’s lawyer contained this disclaimer: ***“I have not yet had an opportunity to run this Agreement by my superiors, so this is subject to their approval as to the wording, sufficiency of form and content.”*** On what basis would Tirabassi claim that Raimondi was making an offer binding on the county? Raimondi didn’t have the authority to bind the county to the agreement and said so to Tirabassi’s lawyer.

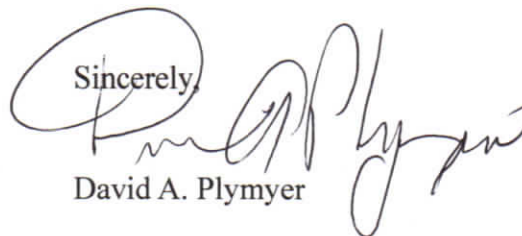
Conclusion

The lack of a “clear explanation” in county records for the shift in the county’s position to one favoring settlement with Tirabassi, ostensibly based on Raimondi’s “error,” was a red flag. Blaming the change in position on COVID-19, as the IG reported officials doing, doesn’t even pass the laugh test. Not exactly what one would expect from an administration that Olszewski described as the most transparent and accountable in county history.

The requirement that there be a “reasonable” basis in law and in fact for a settlement does not mean that every judgment call is an opportunity for second-guessing. It does mean that the decisionmaker must be able to articulate the reasons for the settlement, and the reasons must be consistent with the law and the facts.

The absence of any document analyzing the county’s potential liability and articulating the reasons for settling a case like this, where there appears to be nothing that the county did wrong, is unusual. The IG’s report does not indicate whether the IG asked the County Attorney the most important question: Why did he decide to settle the case despite the county’s strong defense to Tirabassi’s primary claim and Raimondi’s disclaimer of authority to approve the proposed settlement agreement?

The council should insist upon getting an answer to that question. As noted above, the IG is charged by law with identifying ways to promote accountability and integrity within county government. One way is for high-ranking elected and appointed officials to be aware that they may be called upon to explain actions and decisions under oath to the IG, whether those actions or decisions involve the issuance of permits, the approval of private waste transfer stations, crafting a severance package out of unused sick leave, paving of commercial alleys or the settlement of claims.

Sincerely,

David A. Plymyer