

RESOLUTION 772-10

A RESOLUTION MANDATING THE REPORTING OF ALLEGED CRIMINAL ACTS BY ANY CITY OFFICIAL OR EMPLOYEE TO LAW ENFORCEMENT WHILE AVOIDING REAL OR PERCEIVED CONFLICTS OF INTEREST

WHEREAS, it is in the best interests of the Town of Fowler that any and all allegations of criminal offenses by any public official acting under color of the official's office be investigated by an entity that has no conflict of interest so as to avoid any allegation that such investigations are conducted for the purpose of sensationalism or retaliation or cover up; and

WHEREAS, it is necessary to set forth a policy establishing the proper procedures governing all town officials and employees regarding criminal offenses by any public official acting under color of the official's office.

NOW THEREFORE BE IT RESOLVED BY THE TOWN OF FOWLER BOARD OF TRUSTEES AS FOLLOWS.

1. Each town employee and official has a legal duty to report and shall immediately report any allegations of wrong doing by any town official or employee to the appropriate law enforcement agency as set forth in this resolution.
2. Pursuant to Colorado law, the Fowler Board of Trustees adopted Ordinance Number 638-08 on or about April 14, 2008 establishing the office of Town Administrator.
3. Ordinance Number 638-08(i)(1-3) states as follows:
 - a. "i. The Town Administrator shall be the chief administrative officer of the Town government. The duties and authority of the Town Administrator shall be:
 - i. "1. To enforce the laws, ordinances and policies of the Town and contracts to which the Town is a party;
 - ii. "2. To be responsible to the Mayor and Board of Trustees for the efficient administration of all departments of the Town;
 - iii. "3. To superintend and generally manage all Town departments and their personnel;".
4. Ordinance Number 638-08(i)(12) states as follows:
 - a. "12. To administer and be responsible for all departments and divisions of the Town which are under the direction of the Mayor and Board of Trustees, including, but not limited to, the administration department, public works department, water department, sewer department and the police department. The offices of the Town Attorney and Municipal Judge shall be responsible to the Mayor and Board of Trustees;".

5. Ordinance Number 638-08 removes responsibility for administering the police department from the Mayor and Board of Trustees and transfers this responsibility to the Town Administrator.
6. The Town Administrator is directly responsible to the Mayor and Board of Trustees.
7. Where the Town Administrator administers and has authority over each member of the Fowler Police Department and the Board of Trustees has supervisory authority over the Town Administrator, a conflict of interest exists between each member of the Fowler Police Department and the Town Administrator and between each member of the Fowler Police Department and each member of the Board of Trustees with respect to any act performed or alleged to have been performed by the Town Administrator or any member of the Board of Trustees during the course of that person's work as Town Administrator or as a member of the Board of Trustees.
8. The Otero County Sheriff has concurrent jurisdiction with the Fowler Police Department with respect to criminal investigations in the Town of Fowler.
9. To avoid any real or perceived conflict of interest all town officials and employees, including but not limited to employees working in the Fowler Police Department, who come into knowledge of any alleged or actual criminal act by any member of the Board of Trustees or the Town Administrator during their performance or attempted performance as an official of the town shall immediately report the act to the Otero County Sheriff with a request for investigation of the reported act and any further action deemed appropriate by the Otero County Sheriff.
 - a. Example 1: Police stop a trustee at 2:00 a.m. after the bars closed. Evidence exists that the Trustee was driving under the influence of alcohol. No conflict of interest exists because the Trustee was not acting as a Trustee at 2:00 a.m. while drinking and driving.
 - b. Example 2: Police receive a report that a Trustee took cash while assisting the office staff at the town hall after normal work hours. The trustee was acting as a trustee when the wrongful act occurred and a conflict of interest exists.
10. To avoid any conflict of interest among certified peace officers employed in the Fowler Police Department any criminal act or alleged criminal act by a Fowler certified peace officer other than the police chief shall be reported to the police chief who will then request assistance from the law enforcement agency the Police Chief deems appropriate.
11. To avoid any conflict of interest between a certified peace officer in the position of Fowler Police Chief and other certified peace officers employed by the Town of Fowler any criminal act or alleged criminal act by the certified peace officer employed as the Fowler Police Chief shall be reported to the town administrator who shall immediately request assistance from the Otero County Sheriff or Colorado Bureau of Investigation for investigation and any appropriate action.

12. Reports of criminal acts or alleged criminal acts by all town officials and employees other than the mayor, members of the town of Fowler Board of Trustees or Town Administrator shall be made to the Fowler Police Department.
13. Where any Police Department employee becomes aware of an allegation of a criminal act performed by the Mayor, a member of the Board of Trustees or the Town Administrator, that employee shall immediately report the criminal act or allegation to the Otero County Sheriff and shall request mutual assistance with the Otero County Sheriff assuming responsibility for any investigation and action the Sheriff deems appropriate. The employee shall also immediately notify the Police Chief.
14. In the case where any Police Department employee reports alleged criminal wrong doing by the mayor, any member of the Board of Trustees or the Town Administrator, the Fowler Police Chief or the senior law enforcement official at the time shall report the action to the Board of Trustees in executive session sitting without the person being investigated at its next regular or special meeting as required under Fowler Municipal Code section 2.28.040(D) and the police department and all its employees shall cease any investigation or action in the matter deferring such acts to the Otero County Sheriff. Alternatively, where the investigation must remain confidential, the report shall be made privately and jointly to the Mayor and Mayor Pro-Tem or where one of these officials is under investigation then to the remaining official.
15. This policy serves the ends of justice by providing for proper process of law while avoiding actual or apparent conflicts of interest. Failure to follow this policy by any town employee shall result in disciplinary action up to and including termination.
16. It is intended that this resolution shall be appropriately calendared and re-adopted at each Board of Trustees meeting where Trustees take the oath of office following each municipal election.

ADOPTED AND APPROVED this 11th day of January, 2010 by the Board of Trustees of the Town of Fowler.

Ray Wards, Mayor Town of Fowler

ATTEST:

Town Clerk / Deputy Clerk Town of Fowler