

FORSYTH COUNTY BOARD OF ETHICS

In re: **Brian Tam**

RESPONSE

Comes now Brian Tam ("Tam") and files this response to the Complaint filed by Gerald Sullivan regarding alleged violations of the Forsyth County Code of Ethics as follows:

First Response

The Complaint has not been filed within six (6) months of the date of the alleged violation. The Complaint hinges upon a certain lease dated April 1, 2005 that was renewed for a period of five (5) years with two (2) consecutive five-year options to renew beginning April 1, 2006. Therefore, the Complaint should be dismissed. Section 2-124 (1).

Second Response

The Complaint alleges, in part, as follows: "that the subject lease is significantly below the market value of the cost to lease and receive services of similar establishments within the City of Cumming and the surrounding area." This statement fails to set forth a foundation for the opinion set forth therein and would be inadmissible in evidence and fails to show affirmatively that the affiant is competent to testify to the matters stated therein. See O.C.G.A. § 24-9-66; 24-9-67.1.

Third Response

A public official must have the ability to affect and influence the public agency in the transaction by reason of the public official's duties or powers. Mr. Tam is a County Commissioner and not a City Councilman; Mr. Tam's duties and powers as a County Commissioner do not provide him with the ability to affect and influence the City of Cumming in the transaction being challenged, i.e. the lease. See 1982 Ga. Op. Atty. Gen. 161; Mayor and Council of City of Macon v. Huff, 60 Ga. 221 (1878); Trainer v. City of Covington, 183 Ga. 759 (1937); Art. I, § II, Para. I, Ga. Const.

Fourth Response

As an answer to the separately numbered paragraphs of the Complaint, Brian Tam provides the following responses:

1. Tam denies the allegations set forth in paragraph 1 of the Complaint because Tam denies that Sullivan is competent to provide an opinion that the subject lease is significantly below the market value of the cost to lease and receive services of similar establishments within the City of Cumming and the surrounding area. Tam denies that Sullivan qualifies as an expert and further denies that Sullivan has sufficient personal knowledge to offer non-expert testimony regarding the market value of the lease. See O.C.G.A. § 24-9-66; 24-9-67.1.

2. Tam lacks knowledge and information sufficient to form a belief regarding the truth of the allegations set forth in paragraph 2 of the Complaint; therefore, Tam can neither admit nor deny such allegations.

3. Tam admits the allegations set forth in paragraphs 3 and 4 of the Complaint.

4. Tam denies the allegations set forth in paragraph 5 of the Complaint.

5. Tam denies the allegations set forth in paragraph 6 of the Complaint as alleged therein and shows that Tam and his wife receive a significant portion of their family income through hard work operating the business known as Tam's Backstage, not from any agreement.

6. Tam denies the allegations set forth in paragraphs 7 and 8 of the Complaint.

7. As a response to the "additional information" submitted on or about May 20, 2010, Tam provides the following responses:

1.

Such allegations should be disregarded because the additional information is not supported by affidavits, is not presented under oath, and does not set forth facts that would be admissible in evidence. Section 2-124(1).

As a response to the separate paragraphs, Tam provides the following responses:

2.

Tam admits the allegations set forth in the first paragraph.

3.

Tam denies that the statement or letter should be accepted as a formal complaint or that any investigation or other action should ensue.

4.

Tam denies the allegations set forth in the third paragraph.

5.

As a response to the fourth paragraph, Tam admits that his wife is the individual who signed the lease of property commonly referenced as “Tam’s Backstage”. Tam admits that the business and his interests have potential benefit to him. Tam admits that the City of Cumming owns the property and is the landlord. Tam denies the remaining allegations set forth in the fourth paragraph.

6.

Tam denies the allegations (to the extent allegations are made) contained within the fifth paragraph.

7.

Tam denies the allegations set forth within the sixth paragraph.

8.

As a response to the seventh paragraph, Tam denies any conflict of interest, but admits that the ordinance provides a remedy when county officials find themselves in situations where conflicts of interest may be present.

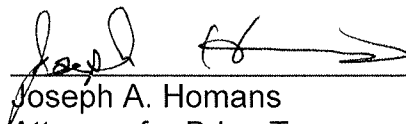
9.

Tam admits that section 14 states as set forth in paragraphs 8 and 9.

10.

Tam denies the allegations set forth in paragraph 10 and 11 and denies that the Board of Ethics should accept the Complaint.

This 4TH day of June, 2010.




Joseph A. Homans
Attorney for Brian Tam
Georgia Bar No. 364647
Fox, Chandler, Homans, Hicks
& McKinnon, LLP
Suite 110
78 Howard Ave. East
P.O. Box 477
Dawsonville, GA 30534
Office: (706) 265-3090
Facsimile: (706) 265-3147
joey@fchhm.com

STATE OF GEORGIA
COUNTY OF FORSYTH

VERIFICATION

Personally appeared before the undersigned officer duly authorized by law to administer oaths, **BRIAN TAM**, who, first being duly sworn, deposes, says and states on oath that the facts contained in the foregoing **RESPONSE** are true and correct.

This 4th day of June, 2010.

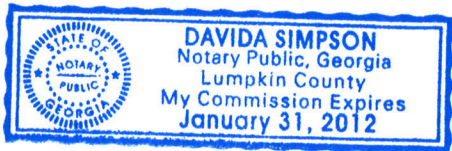


Brian Tam

Sworn to and subscribed before me
this 4th day of June, 2010.



Notary Public
Commission Expires January 31, 2012



Received 6/4/10
CSC