

Franklin Police Merit Commission

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FINDINGS

The Franklin Police Merit Commission, (hereinafter referred to as the "Commission") after having heard summary presentations and evidence on the board's ability and legal standing to proceed with the hearing wherein the Chief of Police has requested this Commission terminate the employment of Officer Bryan Burton hereby finds as follows:

1. On the 2nd day of March 2010, this commission accepted and approved a formal written agreement (hereinafter referred to as the "Agreement") regarding the discipline of Officer Bryan Burton. This Agreement was duly negotiated by parties who had authority to enter into a binding settlement. Former Chief Stan Lynn and his counsel Jim Austen executed the Agreement on behalf of the petitioning party and Officer Burton and his counsel Mr. George Hoffman executed the agreement on behalf of the responding party.
2. In point of fact, Former Chief Stan Lynn testified during the February 8, 2011 hearing that his intent was the agreement would resolve all pending matters before the board relating to known, admitted, and alleged conduct by Officer Burton.
3. Moreover, Officer Burton, by way of his counsel Mr. Hoffman, indicated his intent in signing the Agreement was to resolve all pending matters before the Commission relating to known admitted and alleged conduct by him.
4. The Commission was presented and asked to approve the Agreement with the understanding that all known pending matters be they admitted or simply alleged, would be resolved. Nevertheless, this Commission never considered, nor would Indiana Law or common sense allow, the charges and agreed resolution to remain "private." Furthermore, while the Commission did consider this a "global resolution" of all known pending disciplinary matters regarding Officer Burton, at no time did the Commission believe it possessed the authority limit a criminal investigation, whether by an independent agency such as the Indiana State Police or by a Prosecuting Attorney. All matters that are public record have been provided to the public throughout these proceedings.
5. During the February 8, 2011 hearing, Chief Timothy O'Sullivan (Deputy Chief at the time of the hearing) testified that he was not satisfied with the manner in which Officer Burton's discipline was handled. Deputy Chief Tennell (then Detective Tennell) also expressed his dissatisfaction with the outcome going so far as to question the same with counsel for the

commission.

6. Eventually the case was referred to the Indiana State Police and formal criminal charges were filed on or about December 23, 2010.

7. On February 8, 2011, following a lengthy evidentiary presentation, the Commission suspended (or continued the previous unpaid suspension of) Officer Burton until the criminal charges filed against him are resolved based upon the Commission's belief that Officer Burton is unable to meaningfully perform the duties required of a Franklin Police Officer with charges pending. The fact that Officer Burton faces criminal charges is a distinct and separate reason from the original allegations which resulted in the 45 day suspension. Whether or not being charged with criminal conduct is just cause for termination, the Commission found that such charges qualified as ample and just reason for an indefinite suspension.

9. The Commission finds that both parties to the Agreement, that is the Franklin Police Department by its former Chief Stan Lynn, and Officer Burton had every reason to rely on the Agreement and understood it to be binding.

10. The fact that Chief O'Sullivan and/or Deputy Chief Tennell would have taken a different path and sought immediate termination for Officer Burton is unpersuasive and inconsequential. Former Chief Lynn had the sole and absolute authority to decide what charges to present to the commission. Regardless of any outside forces influencing his decision, be they the Department, the Mayor, the press or the public, Chief Lynn made his decision. Because of their lack of authority, neither Chief O'Sullivan nor Deputy Chief Tennell were in a position to make an ultimate determination of what charges to present the Commission then, and they are now unable to recharge the same offenses for which a resolution was already negotiated, presented, and approved.

11. *Collateral estoppel "applies where a particular issue is adjudicated and then put in issue in a subsequent suit on a different cause of action between the same parties or their privies." McClanahan v. Remington Freight Lines, Inc., 517 N.E.2d 390, 394 (Ind. 1988).* In the present case, all of the known alleged misdeeds of Officer Burton were contained in the internal investigation file. None of the allegations filed on February 8, 2011 come to the board as new and dissimilar information justifying separate and distinct charges. This distinction is critical, for if the Department were to discover evidence that Officer Burton engaged in wrongdoing beyond that known at the time of the original filing, the doctrine of *collateral estoppel* certainly would not apply. Such is not the case, however, and therefore, as a matter of law, the Department is *estopped* from bringing new charges.

12. Finally, this commission must ponder the "integrity of its decision" when deciding whether to consider the new charges. Generally, all parties have an interest in finality when entering into an agreement. Certainly this Commission has an interest in expecting its rulings to be final, subject to permissible appeal. Fundamental due process requires nothing less. If the Commission's decision to accept the agreed "global resolution" is subject to rehearing almost a year later, brought forth by a former deputy who did not agree with his superior, any officer facing reprimand in the future has no guarantee that a decision of this Commission is final. Such action would be, by definition, arbitrary and capricious. The Commission declines to take any

such action.

The Commission, in rendering this decision, does so without hindsight. Whether the Commission would have made the same decision if presented with all 16 charges last year; whether the board would have acted differently if the Chief had made a different recommendation or no recommendation at all; whether the board would have acted differently if the outside influences affecting the Chief's filing were not present; all of these are merely speculative and the board declines to participate in an exercise in hindsight and "what ifs." Rather, this Commission is compelled to use foresight and understand that while the entire process may not be perfect, all parties being able to rely on the commission's ruling is paramount.

Therefore, the Commission rules that the Franklin Police Department is precluded from taking further action on those disciplinary allegations contained in Chief O'Sullivan's letter of February 8, 2011. The board hereby vacates Chief O'Sullivan's suspension and bars the Department from seeking further disciplinary action on all matters known and referenced in the *Departmental and Internal Investigation* completed on or about March 2010. Nevertheless, the Commission's suspension of February 8, 2011 remains in full force and effect. This suspension will continue until such time as Officer Burton's criminal charges have been resolved and the Commission has made additional findings regarding his continued employment.

APPROVED UNANIMOUSLY THIS 1st Day of March, 2011.

James Denk, President
Franklin Police Merit Commission