

**MINUTES**  
**BERRYVILLE TOWN COUNCIL**  
**Berryville-Clarke County Government Center**  
**Regular Meeting**  
**December 10, 2019**  
**7:30 p.m.**

**Town Council:** Present--Patricia Dickinson, Mayor; Harry Lee Arnold, Jr., Recorder; Donna Marie McDonald; Diane Harrison; Erecka Gibson; Kara Rodriguez

**Staff:** Present--Keith Dalton, Town Manager; Greg Jacobs, Assistant Town Manager/Treasurer; Christy Dunkle, Assistant Town Manager/Planner; Paul Culp, Town Clerk; Chief Neal White, Berryville Police Department

**Press:** Mickey Powell, The Winchester Star

**1. Call to Order**

Mayor Dickinson called the meeting to order at 7:30 p.m. She announced the presence in the audience of the Boy Scout troop from Burnt Factory United Methodist Church in Stephenson.

**2. Pledge of Allegiance**

A member of the Scout troop led the pledge.

**3. Approval of Agenda**

Mayor Dickinson asked if there were any amendments or revisions to the agenda. Recorder Arnold said he wished to amend the agenda for discussion of a Code of Conduct violation and possible related action in his report.

**Council member McDonald moved to approve the amended agenda, seconded by Council member Harrison. The motion passed unanimously by voice vote.**

**4. Public Hearing**

No public hearing was scheduled.

**5. Discussion of Public Hearing Items**

There being no public hearing, no discussion occurred.

## **6. Citizens' Forum**

Town resident Richard Blick addressed the meeting. He said he has resided in Berryville for nearly 22 years and is a concealed-weapons permit holder whose Second Amendment rights were threatened by lawmakers in Richmond. He said the new gun laws being discussed by the legislature were being promulgated with irresponsible haste. He said 60 other localities in Virginia are standing up for Second Amendment rights, and requested an immediate resolution protecting those rights. He said Council's oath of office bound it to protect the citizenry regardless of personal beliefs.

## **7. Presentations/Awards/Recognitions**

There were no presentations, awards, or recognitions.

## **8. Consent Agenda**

Mayor Dickinson invited a motion to approve the consent agenda comprising the minutes of the November 12 regular meeting of Council, the November 13 Council work session, and the November 25 meetings of the Community Development and Public Safety Committees.

**Council member Rodriguez moved that the Council of the Town of Berryville approve the consent agenda as amended. Council member Gibson seconded the motion.**

**Roll call vote as follows:**

**McDonald: Aye**

**Harrison: Aye**

**Gibson: Aye**

**Rodriguez: Aye**

**Arnold: Aye**

**Dickinson: Aye**

**The motion passed.**

## **9. Unfinished Business**

### **Fiscal 2021 Budget Goals**

Mr. Dalton said Council had met in a work session on November 13 to be briefed on FY2020 budget goals and to discuss FY2021 goals. He said he had provided in the agenda packet a concise description of those goals and that adoption of them in the present meeting would provide staff with guidance for the drafting of the FY2021 budget. Mr. Dalton said he understood the majority of Council to be inclined to approve the following goals:

1) In partnership with Clarke County, complete work necessary to create Annexation Area C (or expand Annexation Area B) in order to facilitate the expansion of the Clarke County Business Park; Town and County staff would work together to provide cost estimates. 2) Complete a compensation study; and 3) Provide funds necessary to begin work on Town Run / stormwater control projects as identified by the Town's engineer in preliminary engineering reports (PER).

Mr. Dalton referred Council to his report specifying financial considerations for each goal. He said two preliminary engineering reports had been completed to date, with two others being funded in the current fiscal year, for the Town Run and Virginia Avenue. He noted that Council wished to see the Town Run PER first in deciding how to proceed with projects.

Regarding the compensation study, Mayor Dickinson said Council had thought an internal study preferable because of the cost of hiring a consultant, but said she had contacted multiple institutions of higher education about the feasibility of students performing such a study as a research project under faculty guidance and had received positive responses. She asked that the Town bear this option in mind as a means of obtaining an independent view and conserving staff time.

Mr. Dalton said no cost estimate is available yet for goal number one and that the situation is similar for number three. He said borrowing will be necessary for the former. Council member Harrison asked whether Council would be allocating funds annually without naming specific projects, and Mr. Dalton said this would be a sound course of action.

Referencing annexation and the Business Park, Council member McDonald said a citizen had expressed concern about the inconvenience of a connector road running into Smallwood Lane. Mr. Dalton said he and Ms. Dunkle would be meeting with a concerned citizen next week and that concerns were understandable.

Council member McDonald said many homeowners in her neighborhood behind Fellowship Square and Shenandoah Crossing had expressed concern about stormwater being diverted in a manner that would cause problems for them. She said water must go to the Town Run and not onto those properties. Mr. Dalton and Ms. Dunkle said the Berryville Area Development Authority and the Planning Commission are reviewing construction projects in that vicinity. Mr. Dalton explained the process of developing and approving plans, and invited residents with concerns to ask Ms. Dunkle to see the plans. Ms. Dunkle said that best engineering practices are used, including those mandated by the Commonwealth. She noted that 2018 was an anomaly in terms of increased rainfall amounts and that it is not possible to engineer for all eventualities. Mr. Dalton said construction is the most difficult phase, when temporary measures are in place, and that Ms. Dunkle will keep a close eye on sedimentation and erosion control matters.

Council member McDonald spoke about problems that can arise during construction, especially with blasting, and recommended that homeowners be proactive about asking questions. Ms. Dunkle described regulations, standards, and preventive measures. Council member McDonald expressed

concern about a particular stormwater pipe breaking, and about cable lines. Mr. Dalton said staff would advise the developer of her concerns.

Council member Gibson said that although a fixed asset inventory is not included in the list of three goals, staff would develop policies and procedures for one as time permits.

**Council member Rodriguez moved that the Council of the Town of Berryville approve the following as their Fiscal Year 2021 Budget Goals:**

- 1) In partnership with Clarke County, complete work necessary to create Annexation Area C or expand Annexation Area B in order to facilitate the expansion of the Clarke County Business Park,**
- 2) Complete a compensation study, and**
- 3) Provide funds necessary to begin work on Town Run / stormwater control projects as identified by the Town's engineer in preliminary engineering reports.**

**Roll call vote as follows:**

**McDonald: Aye**  
**Harrison: Aye**  
**Gibson: Aye**  
**Rodriguez: Aye**  
**Arnold: Aye**  
**Dickinson: Aye**

**The motion passed.**

## **10. New Business**

### **2020 Meeting Schedule**

Mr. Dalton directed Council's attention to a draft calendar he had provided in the agenda packet. He explained that staff would be implementing a new agenda-creation platform in January and that he would like to schedule committee meetings in a manner that would facilitate prompt preparation of draft agendas and allow Council sufficient time to comment on them. He said Council had discussed having committee meetings only every other month and that he understood the intent to be that standing committees should meet six times annually. He said the draft calendar accordingly reduced the number of meetings and arranged for June, July, August, and December to be open.

The resultant discussion established that meetings could be arranged or canceled on an as-needed basis. There was a discussion of when particular committees should meet and whether to have work

sessions on certain dates. Mr. Dalton said the Public Safety Committee must deal promptly with the revision of Chapter 8 of the Town Code because the Town's contract for refuse collection expires on June 30 and staff must prepare an invitation for bid. Council member McDonald said that as chair of the committee she intends to provide firmer direction.

There was further discussion of when particular upcoming meetings would occur.

Council member Gibson suggested that newly elected members of Council would benefit from meeting in July immediately following their election. She suggested having a July meeting every other year. Mr. Dalton said the schedule was flexible enough to accommodate such a need.

The consensus of Council was that the proposed calendar should go into effect.

## **11. Council Member Reports**

Council member McDonald having expressed misgivings about always being the first member to give her report, Mayor Dickinson inverted the usual order.

### **Ward 4:**

Council member Rodriguez had nothing to report from her ward. She thanked County Supervisor Barbara Byrd for her many years of service to the community.

### **Ward 3**

Council member Gibson had nothing to report.

### **Ward 2**

Council member Harrison had nothing to report from her ward. As the Town's liaison with Barns of Rose Hill, she noted that Michael Hobert is the new chairman and that a new budget is in place. She said volunteers are always welcome.

### **Ward 1**

Council member McDonald said her ward has been very active. She said most residents find the proposed water and sewer rate adjustments acceptable but that many of them will have questions about administrative charges.

## **Recorder**

Recorder Arnold thanked everyone who volunteered to assist with the Christmas parade, and especially praised the efforts of Donna Peake. He noted that the Christmas tree-lighting had attracted a record crowd, and thanked Berryville Main Street for its role.

### **Discussion of Possible Code of Conduct Violation and Possible Action**

Recorder Arnold read from an email (attached) from Mayor Dickinson, dated October 11, 2017, in which she suggested that he might be in violation of the Conflict of Interests Act and that he seek a legal opinion. He said he had received on April 6, 2018 an invitation to a candidates' forum at Mary Hardesty House on April 15, where he was asked a question about his alleged conflict of interest and replied that he had secured from the Commonwealth's Attorney an opinion that no conflict existed. Recorder Arnold read an email (attached) from the mayor, dated April 20, in which she said she had read the Commonwealth's Attorney's opinion and learned that Recorder Arnold did have a conflict of interest. Her email stated that a group of Berryville citizens, independently of the Commonwealth's Attorney's opinion, had sought an opinion from a local attorney who advised them via email (attached) that a conflict of interest did exist. Recorder Arnold provided Council with a spreadsheet generated by the local attorney and containing figures which Recorder Arnold said were in error.

Recorder Arnold directed Council's attention to a passage in the mayor's email in which she said she did not intend to make the matter public before the election but that she would place it before Council if he were reelected, or consider it closed if he were not reelected.

Recorder Arnold said that Mayor Dickinson, after receiving the determination of the Commonwealth's Attorney that no conflict of interest existed, had continued to promote the idea that he had such a conflict but had not submitted any such concerns to Council for an inquiry.

Recorder Arnold said that on April 28, just prior to the May 8 election, The Winchester Star had published a commentary by Bonnie Echols referencing his alleged conflict of interest and contrasting this with his opponent, her husband Alton Echols.

Recorder Arnold said that on December 21, 2018 an investigator from the State Police had met with an attorney representing a group of citizens.

Recorder Arnold read a memorandum (attached), dated January 26, 2018, in which Council had informed Mayor Dickinson that she had violated the Code of Conduct by making negative public comments on the performance of Chief White, directing Town staff and investigating citizen complaints outside proper channels with the Town manager, and expending excessive staff time and effort on fiscal matters Council regarded as being of minimal importance during budget preparation and amid other projects of significant dimensions.

Recorder Arnold said he had provided Council with copies of Mayor Dickinson's emails of October 11, 2017 and April 20, 2018. He said she had provided to the public and an association of citizens inaccurate information of an accusatory and defamatory nature without any investigation by Council occurring, and that she had threatened him via her aforementioned statement concerning the conditions under which she would make public his alleged conflict of interest.

Recorder Arnold asked for a motion finding the mayor in violation of the Code of Conduct.

**Council member Harrison moved that the Council of the Town of Berryville find that Patricia Dickinson, Mayor, clearly violated the Code of Conduct as unanimously established by the Council. Council member McDonald seconded the motion.**

Council did not have any questions. Mayor Dickinson said clarity of understanding would have been enhanced by Recorder Arnold providing documents in advance of the meeting. She said she had written the emails under discussion and that she had expressed to Council her concerns about the contract between the Town and Recorder Arnold's business. She said the opinion of the Commonwealth's Attorney clearly states that a conflict of interest exists and that this was the basis for her concern. She said had not been aware of Recorder Arnold's contract with the Town until she attended the forum at Mary Hardesty House, and that she did not know whether the citizens who shared their concerns with her had been aware of it before that time. Mayor Dickinson said she had contacted the County and had been told that there was a contract Recorder Arnold had secured via a public bidding process. She said it had then appeared to her that the arrangements were appropriate, and that she had explained this to the concerned citizens. She said she had then dropped the matter and taken no further action after learning of the contract and had no longer been concerned. She said she probably ought to have sent another email but did not think to do so. She said the contract did constitute a conflict of interest but that it does not violate the Conflict of Interests Act.

Mayor Dickinson said any member of Council should take appropriate action on any matter that could damage Council's reputation and that she had done this.

Recorder Arnold said he did not recall the matter ever being brought before Council. He said much of what occurred had been after the point at which Mayor Dickinson said her concerns had been laid to rest, that she had been in contact with the local attorney and members of the public about the matter after that point. He said she could have rectified matters but had chosen not to do so, with the result that charges were filed.

Mayor Dickinson said she was not aware that charges would be brought and reiterated that she had taken no further action after learning that the contract was in place.

Recorder Arnold said he was disappointed and that no member of Council should be subjected to such an experience. Council member Gibson concurred.

Council member McDonald questioned the appropriateness of the mayor's objection to Recorder Arnold not providing documents in advance of the meeting. She said the mayor had acted similarly on many occasions and had created confusion by doing so.

Recorder Arnold told Mayor Dickinson she had had in her possession the memorandum of January 26, 2018 and her own emails, and that it was she who had forwarded the attorney's documents to him.

Mayor Dickinson said she had tried to resolve the matter outside the public purview and that she had been surprised when charges were filed. Recorder Arnold said he had been shocked.

Council member Gibson said the matter could have been handled differently, especially the mayor's pre-election email, which indicated a lack of good faith. She said the controversy under discussion could have been averted if Recorder Arnold had been given the opportunity to answer questions from other Council members. She said free discussion should be possible on the Town Council and that the handling of this matter was disappointing.

Recorder Arnold said the wording of the mayor's pre-election email constituted a threat and that this was unnecessary and against the Code of Conduct. He said the matter could have been discussed in Council.

Recorder Arnold said the mayor sometimes refuses to sign checks if she questions the propriety of a transaction but that she had signed checks and other payments to his business on numerous occasions. Mayor Dickinson stated that she does not sign the credit card payments. Recorder Arnold noted that she authorizes fund transfers to make such payments.

**Roll call vote as follows:**

**McDonald: Aye**

**Harrison: Aye**

**Gibson: Aye**

**Rodriguez: Aye**

**Arnold: Aye**

**Dickinson: Abstain**

**The motion passed.**

**Mayor**

Mayor Dickinson had nothing to report.

## **12. Staff Reports**

### **Public Works**

Nothing was added to the written report submitted to the Council. Recorder Arnold thanked the Public Works department for its efforts on the Christmas tree and park.

### **Public Utilities**

Nothing was added to the written report submitted to the Council.

### **Police Department**

Chief White had nothing to add to his written report.

### **Community Development**

Ms. Dunkle provided a request for Council to set bonds for public improvements and erosion and sediment controls for the Fellowship Square property currently being reviewed by the Planning Commission. She said the estimates were \$3,514,323 for public improvements and \$94,679 for erosion and sediment control.

**Council member Harrison moved that the Council of the Town of Berryville approve the Public Improvements and Erosion and Sediment Control bonds as presented, including 25 percent contingencies for both, as follows:**

<b>Public Improvements:</b>	<b>\$3,514,323.00</b>
<b>Erosion and Sediment Control</b>	<b>\$94,679.00</b>

**Council member Gibson seconded the motion.**

**Roll call vote as follows:**

**McDonald: Aye**

**Harrison: Aye**

**Gibson: Aye**

**Rodriguez: Aye**

**Arnold: Aye**

**Dickinson: Aye**

**The motion passed.**

## **Administration/Finance**

Mr. Jacobs added nothing to the report submitted in the agenda packet and the additional report provided to Council at the meeting.

### **Town Manager**

Mr. Dalton had nothing further to report.

## **13. Committee Updates**

### **Budget and Finance**

Ms. Gibson said the committee would meet for a budget work session on February 3. She ascertained from Mr. Jacobs that she would be able to participate in the upcoming budget software training to be provided to staff.

### **Community Development**

Council member Rodriguez thanked the other committee members for allowing her to participate in the November meeting by telephone because of a child-care emergency. She said the committee had finished its recommendations for the economic development memorandum of understanding with the County and would polish them before presenting them to Council. She said the committee would next meet on January 27 to discuss the request for proposal for the branding and marketing study.

Mr. Dalton explained that when inspecting the Rixey Moore playground he had discovered an error in the proposed alignment of the new equipment Council had purchased. He said the Town would incur some extra cost for reinstalling the spring riders outside the expanded fall zone required by the new equipment. He said it also had been necessary to exclude one of the new items intended for installation.

### **Personnel, Appointments, and Policy**

Recorder Arnold said a committee meeting had been scheduled for December 16 but that the planned addition of a deputy town manager was not yet ready as an agenda item. He said the committee needs to consider the reappointment of Ron Huff to the Clarke County Parks and Recreation Advisory Board and of Ms. Dunkle to the Clarke County Economic Development Advisory Committee. He said the committee could discuss the reappointments on the 16<sup>th</sup> and that it also was possible for Council to act in the present meeting.

Council member Rodriguez asked about the status of the deputy town manager position. Mr. Dalton said he had been working on an organization chart, job descriptions for the new position and for

current positions that would be affected by the restructuring, and an advertisement for the position. He said more time would be desirable. Recorder Arnold said he would prefer not to rush the matter.

Mayor Dickinson said she would prefer that the appointments be discussed when they can be treated as an agenda item to be placed before the public. The committee agreed to meet next in January rather than on December 16. The committee members agreed to handle the appointments at the next regular meeting of Council.

### **Public Safety**

Council member McDonald said the committee had met in October to discuss garbage and refuse, which she described as a complex issue. She said she hoped the upcoming February 3 work session would result in Council taking action neither too soon nor too late. She recommended against moving too quickly, as winter and budget season and elections are all coming up. She said there are no pressing problems at present and that her preference as chair was to move slowly and allow Mr. Dalton ample discretion.

Council member McDonald said she was confused about what constitutes a member of a committee. She said her understanding was that committee members should attend all meetings of those committees and not just meetings treating topics of particular interest. Mayor Dickinson said she assumed the reference was to her remaining on the Public Safety Committee in order to follow through on trash-collection matters already in progress. Council member McDonald said this was correct. The mayor said she would attend all meetings of the committee.

### **Streets and Utilities**

Council member Harrison said the committee had not met in November but that the new test lights had been deployed downtown. She urged everyone to observe the different types of lighting being tried. Mr. Dalton asked whether he was correct in his recollection that the committee had expressed interest in receiving public input via the Town website. Council member Harrison said this was correct and Mr. Dalton said staff would pursue this.

Council member Gibson recommended using Polco as a citizen engagement survey tool and described its operation. She said it is free and that the Town already has an account. Mr. Dalton said he would look into it.

Council member Harrison said the committee is waiting for a Town Run scope before scheduling its next meeting. She and the mayor and Mr. Dalton agreed on a February meeting.

Council member McDonald asked whether lighting would be standardized throughout the Town. There was a discussion of different lighting types and the wider applicability of the study outside the immediate downtown area. Council member McDonald said the Town must have the same standard

for everyone. Mr. Dalton said this is the case but Council possibly could deviate as needed, though this likely would involve additional costs.

#### **Other**

Council member Gibson provided further information on Polco.

#### **14. Closed Session**

There was no closed session.

#### **15. Adjourn**

Mayor Dickinson requested a motion to adjourn.

**Council member Rodriguez moved to adjourn, seconded by Council member Gibson. The motion passed by consensus at 9:11 p.m.**

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Harry Lee Arnold, Jr., Recorder

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Paul Culp, Town Clerk

Jay Arnold

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**From:** Patricia Dickinson (Mayor) <mayordickinson@berryvilleva.gov>  
**Sent:** Wednesday, October 11, 2017 3:42 PM  
**To:** Jay Arnold (Council)  
**Subject:** Conflict of Interest Act (COIA)

**Importance:** High  
**Sensitivity:** Confidential

Jay, at the VML Mayors Institute I attended a work session on the Conflict of Interest Act (COIA). Based on what I learned at the conference I am concerned that, given your on-going business relationship with the town, you might be in violation of this Act. I suggest you seek a legal opinion on the matter.

Thanks, Pat

Patricia Dickinson  
Mayor, Berryville Virginia  
101 Chalmers Court, Suite A  
Berryville, VA 22611  
540 955 1099  
[www.berryvilleva.gov](http://www.berryvilleva.gov)

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**Jay Arnold**

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**From:** Patricia Dickinson (Mayor) <mayordickinson@berryvilleva.gov>  
**Sent:** Friday, April 20, 2018 5:10 PM  
**To:** Jay Arnold (Council)  
**Attachments:** 4.6.18 Ltr to WIMC re HLA COIA Violations (no exhibits).pdf; Exhibit 3 - Summary of CC Payments to Berryville Auto Parts FY 2017 .pdf

**Importance:** High  
**Sensitivity:** Confidential

Jay,

At the Candidate Forum at Mary Hardesty House last week, I heard you say that you had received an opinion from the Commonwealth's Attorney confirming that you do not have a conflict of interest.

I was unaware that the Commonwealth's Attorney had rendered an opinion so I contacted her office and requested a copy of the opinion. In reading the opinion, issued last November, I learned that the Commonwealth's Attorney found that you do have a conflict of interest. She advised that, in order for you to not be in violation of the COIA, you must limit the total dollar value of all transactions between Berryville Auto Parts and the town of Berryville to less than \$5,000 per year, and, that no single transaction be more than \$500.

Just prior to receiving the Commonwealth's Attorney's opinion, a member of a group of Berryville citizens informed me that they had sought out a local attorney's legal opinion about the same issue. I was provided a copy of the legal opinion. The local attorney, without prior knowledge of the Commonwealth Attorney's opinion, analyzed the situation and also concluded that you have a conflict of interest. He also found that you have violated the COIA because the total value of all transactions in 2017 between you and the town was over \$8,000. He also noted that there were several transactions greater than \$500, including a \$1,899 transaction in December. I was able to secure an electronic version of the local attorney's opinion with one of the additional exhibits, which I have attached for your convenience.

It is not my intention to make this matter public prior to the election. However, if you are reelected, then I will bring the matter to Town Council. If you are not reelected then I would consider the matter closed.

If you would like to discuss these issues further, please call me. My cell phone number is 540-686-2928.

Thank you, Pat

Patricia Dickinson  
Mayor, Berryville Virginia  
101 Chalmers Court, Suite A  
Berryville, VA 22611  
540 955 1099  
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THE LAW OFFICES OF  
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VIA HAND-DELIVERY AND E-MAIL

April 6, 2018

*Re:* Legal Opinion Concerning Whether "Jay" Harold Arnold, Recorder for Berryville Town Council Is In Violation of the Virginia State and Local Government Conflict of Interests Act

To Whom It May Concern:

I am Timothy Johnson, an attorney in Berryville, Virginia, and I have been retained by an association of citizens from the Town of Berryville to provide a legal opinion as to whether the current Recorder for the Town of Berryville Town Council has violated the Virginia State and Local Government Conflict of Interests Act ("COIA"), and if re-elected to such position, and without modifying his current circumstances, would continue to violate COIA.

*Background of COIA Issue.*

Mr. Arnold is a lifelong resident of Berryville who has devoted much of his time to local public service including serving as a volunteer at the John H. Enders Volunteer Fire and Rescue Company for more than forty years. He has been a member of the Berryville Town Council since 2006, and has recently served a four-year term of office as the Town Council's Recorder. Mr. Arnold also owns and operates Berryville Auto Parts, Inc., located at 111 W. Main St. in Berryville. (See Exhibit 1 for a copy of Mr. Arnold's statement of economic interests required pursuant to Va. Code § 2.2-3115.)

Town of Berryville personnel, especially the Police Department's staff, routinely use Berryville Auto Parts for vehicle repairs, diagnostic services, and part replacements. (See Exhibit 2 for a compilation of publicly-accessible Berryville Town Council meeting minutes' sections reflecting town government staff's credit card usage. Payments to Berryville Auto Parts are highlighted by yellow outline boxes.) Upon information and belief, there is a policy in place requiring staff to preference goods and services from local businesses, but there are no formal policies requiring town government staff to purchase goods or services from Berryville Auto Parts over any other local mechanic or automotive parts store.

For Fiscal Year 2017, Berryville Auto Parts was paid \$9,373.24 (including two occasions where money was credited back) from government-issued staff credit cards that are paid for by the Town of Berryville. (See Exhibit 3 for a spreadsheet summarizing monies paid to Berryville Auto Parts from Exhibit 2.)

On March 13, 2018, a concerned citizen of Berryville contacted the Virginia Conflict of Interest and Ethics Advisory Council ("VCIEAC") requesting an informal opinion as to whether Mr. Arnold's position as a Town Council member while owning and operating his business, Berryville Auto Parts, Inc. as it receives payments from town government personnel constitutes a

violation of COIA. (See Exhibit 4 for a redacted version of the e-mail communications between a citizen of Berryville and the counsel for the Virginia Conflict of Interest and Ethics Council.) VCIEAC counsel opined that based on the factual scenario the citizen presented, that Mr. Arnold appeared to maintain a “personal interest in the contract with the [town] council” per the COIA definitions. She further cited common permissible exemptions used that permit such “personal interests,” but was unable to opine if there was an actual violation due to insufficient information.

*Relevant Portions of the Virginia State and Local Government Conflict of Interests Act.*

The Virginia State and Local Government Conflict of Interests Act (Va. Code § 2.2-3100 *et seq.*) was passed to ensure that the “judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests.” Va. Code § 2.2-3100. The law is to be “liberally construed to accomplish its purpose.” *Id.*

COIA defines an “officer” as “any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office.” Va. Code § 2.2-3101.

COIA defines “governmental agency” as any “component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties.” *Id.*

COIA defines a “contract” as:

“any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency that involves the payment of money appropriated by the General Assembly or a political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof.”

*Id.*

COIA further defines a “personal interest” as:

“a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership of a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed \$5,000 annually . . .”

*Id.*

COIA further defines “personal interest in a contract” as “a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is party to the contract.” *Id.*

COIA provides that “[n]o person elected or appointed as a member of the governing body of a county, city, or town shall have a personal interest in (i) any contract with his governing body, or (ii) any contract with any governmental agency that is a component part of his local government and which is subject to the ultimate control of the governing body of which he is a member . . .” Va. Code § 2.2-3107.

Exceptions for “personal interest in contract” situations involving local government officials are provided for in Va. Code § 2.2-3107 and § 2.2-3110.

Most civil and criminal remedies for violations of COIA trigger once an officer has knowledge that his conduct violates COIA, but continues engaging in that same conduct. *See generally* Va. Code §§ 2.2-3120 through 3122; § 2.2-3124.

*COIA's Application to Mr. Arnold's Situation as Town Recorder.*

The Town of Berryville is unquestionably, a legally recognized local government, and its town council is the legislative component of that government. (*See* Exhibit 5 for a copy of Berryville's Town Charter, last amended in 1994.) As such, the town council of Berryville constitutes a “governmental agency” under COIA.

Mr. Arnold is the Recorder of the Town of Berryville Town Council, which is an elected official position. Exhibit 5, § 3.1; § 3.8. As such, Mr. Arnold is an “officer” under COIA.

Per COIA's definition of “personal interest,” Mr. Arnold maintains a personal interest in Berryville Auto Parts, Inc. as an owner and employee of the business. Exhibit 1.

Each time that a Town of Berryville staff member paid Berryville Auto Parts with a government-issued credit card, that transaction constitutes a “contract” under COIA since the monies paid were appropriated from the Town of Berryville budget, as well as each staff member was acting in their official capacities as Town of Berryville employees. *See also* Exhibit 4 for VCIEAC counsel's opinion that “money paid by the town to the town recorder's auto shop for services provided by the shop qualifies as a contract under [COIA].”

Since Mr. Arnold maintains a personal interest in Berryville Auto Parts as an owner and employee, he also maintains personal interests in each contract that Berryville Auto Parts engages in with Berryville government staff. Va. Code § 2.2-3107 prohibits Mr. Arnold from having personal interests in contracts between himself (or his businesses) and the Town of Berryville.

My office has reviewed Va. Code §§ 2.2-3107 and 2.2-3110 for possible exceptions that permit Mr. Arnold to maintain personal interests in contracts with the Town of Berryville and have reviewed two apparently applicable provisions.

Personal interests in contracts are permissible between: (1) the government of a town with a population of less than 10,000; (2) and an officer of that town government; (3) when the total of such contracts between the government and the officer of that government, or a business controlled by him does not exceed \$5,000 per year; (4) and that the officer filed an economic disclosure statement pursuant to § 2.2-3115. *See* Va. Code § 2.2-3110(A)(3).

The Town of Berryville's population is within the threshold for the first element of the exception (per U.S. Census 2010, it maintained a population of 4,185 people), and it has already been established that Mr. Arnold is an officer of the Town of Berryville. Upon information and belief, Mr. Arnold has also complied with requirements to file his economic disclosure statements in prior years.

However, upon review of the Town of Berryville monthly credit card statements, in 2017 alone, town staff paid Berryville Auto Parts a total of \$9,373.24 across more than seventy contracts. Since the payments total more than \$5,000, it appears that the excess payments may be in violation of COIA.

Another notable exception is for contracts for the purchase of goods or services that do not exceed \$500. *See* Va. Code § 2.2-3110(A)(7).

Upon review of those same documents mentioned, six contracts exceeded \$500.00 (totaling \$5,162.11). Those contracts appear to be in violation of COIA.

Unlike in corporate law, COIA does not permit the remainder of a disinterested governmental agency body from "waiving" an officer's interest in a contract to permit an otherwise prohibited personal interest in a contract. The Office of the Attorney General has previously opined that in the case of a private charter school relying on laws to relieve it from adhering to "state regulations," that:

"[t]he provisions of the State and Local Government Conflict of Interests Act are not "regulations" within the ordinary meaning of the term. It is reasonable to conclude that the Board of Education has the power to exempt public charter schools from the requirements of its own regulations, but nothing in the public charter school laws suggests that the Board may waive the requirements of state law, let alone state laws unrelated to the Board's authority."

Office of Attorney General Op. No. 03-041.

My office is unaware of any other law that would relieve Mr. Arnold of his personal interests in the contract that would take precedence over COIA. COIA expressly laid out applicable exemptions within its chapter, and maintains a scope inclusive of both state and local government officers. Further, the Virginia Conflict of Interest and Ethics Advisory Council has opined that:

"... an impermissible personal interest in a contract under either the General Assembly Conflicts of Interests Act or the State and Local Government Conflict of Interests Act does not become permissible merely because the contract fits into one of the exceptions or limitations provided for in the Virginia Public Procurement Act. In order for such a contract to be permissible, it must meet one of the exceptions that are specifically listed in the appropriate conflict act."

VCIEAC Formal Advisory Opinion 2017-F-002.

*Legal Conclusions.*

Based upon the information presented, attached exhibits, and legal sources reviewed, I opine as to the following legal conclusions:

1. Mr. Harold "Jay" Arnold is an officer of the Town of Berryville, which is a governmental agency, as those terms are defined under the Virginia State and Local Government Conflict of Interests Act.
2. Per the definitions of the Virginia State and Local Government Conflict of Interests Act, by owning and/or being an employee of Berryville Auto Parts, Inc., Mr. Arnold has a personal interest in any contract where Berryville Auto Parts, Inc. exchanges money for goods or services with Town of Berryville staff members whom are paying for those goods or services with monies appropriated from the Town of Berryville.
3. In fiscal year 2017, Mr. Arnold appears to have violated the Virginia State and Local Government Conflict of Interests Act, on six specific occasions by permitting Berryville Auto Parts, Inc. to engage in contracts with the Town of Berryville with each contract's value exceeding \$500.00.
4. In fiscal year 2017, Mr. Arnold appears to have violated the Virginia State and Local Government Conflict of Interests Act by permitting Berryville Auto Parts, Inc. to engage in contracts with the Town of Berryville totaling \$9,373.24 of contract value, exceeding the permissible amount of \$5,000, by \$4,373.24.
5. If Mr. Arnold were re-elected to Town Council as its Recorder, to ensure compliance with the Virginia State and Local Government Conflict of Interests Act, he would need to impose restrictions on Berryville Auto Parts, Inc. while engaging in contracts with the Town of Berryville by limiting contracts to no more than \$500.00, and capping the total of contract values to \$5,000.00.

This opinion is based upon my office's review of the information provided, and the legal sources reviewed. If new information is presented that impacts the factual circumstances or applicability of the laws reviewed, I would be more than happy to review that information, and if necessary, revise my legal opinion accordingly. If you have any questions or requests for additional information that may help you understand this legal opinion, please do not hesitate to contact me.

Truly yours,

/ s /

Timothy R. Johnson

**Payments to Berryville Auto Parts from Town Personnel in FY 2017**

*Statement*

January	Payment
5-Jan	\$9.99
6-Jan	\$74.65
6-Jan	\$77.87
12-Jan	\$48.99
12-Jan	\$192.26
13-Jan	\$97.98
16-Jan	\$1,053.52
17-Jan	\$63.63

February	Payment
8-Feb	\$36.00
20-Feb	\$7.64

*Statement*

March	Payment
2-Mar	\$185.15
22-Mar	\$9.72
23-Mar	\$103.21
24-Mar	\$25.98
27-Mar	\$29.67
27-Mar	\$14.39
27-Mar	-\$14.39

*veh repair  
veh Rep*

April	Payment
6-Apr	\$41.02
26-Apr	\$605.46
26-Apr	\$22.00
26-Apr	\$7.59

*Statement*

May	Payment
1-May	\$7.44
4-May	\$322.87
8-May	\$9.99
8-May	\$92.23
29-May	\$465.97

*Statement*

*Statement*

June	Payment
1-Jun	\$143.10
1-Jun	-\$465.97
2-Jun	\$4.39
19-Jun	\$15.20
19-Jun	\$362.31
20-Jun	\$32.62
22-Jun	\$1.57
22-Jun	\$12.00
26-Jun	\$35.90

*veh*

July	Payment
5-Jul	\$82.99
12-Jul	\$16.00
21-Jul	\$14.56
24-Jul	\$24.20
24-Jul	\$67.45
26-Jul	\$4.04
31-Jul	\$8.56
31-Jul	\$5.21

August	Payment
9-Aug	\$55.95
16-Aug	\$54.97
21-Aug	\$13.68
21-Aug	\$37.37
23-Aug	\$679.97
28-Aug	\$4.62
31-Aug	\$5.98

September	Payment
11-Sep	\$19.39
14-Sep	\$5.96
21-Sep	\$34.99
21-Sep	\$223.47
25-Sep	\$5.96

October	Payment
2-Oct	\$20.89
9-Oct	\$38.68
9-Oct	\$2.99
13-Oct	\$53.69
30-Oct	\$6.57

November	Payment
1-Nov	\$2.81
6-Nov	\$27.92
6-Nov	\$20.11
6-Nov	\$19.70
10-Nov	\$8.63
13-Nov	\$923.98
13-Nov	\$9.67

December	Payment
1-Dec	\$250.41
1-Dec	\$70.69
1-Dec	\$3.91
4-Dec	\$34.07
8-Dec	\$12.89
21-Dec	\$1,899.18

*Statement*

**Total Amount Paid Including Amounts Under \$500.00**

\$8,504.06

**Total Amount Paid Excluding Amounts Under \$500.00**

\$5,162.11

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## MEMORANDUM

January 26, 2018

Patricia Dickinson, Mayor  
Town of Berryville  
413 Montgomery Court  
Berryville, Virginia 22611

Dear Pat,

As you will recall over the last several months at work sessions and council meetings the council has expressed concerns over the continued number of projects and tasks being asked of staff and the use of time and resources. In the last several weeks we have watched the number of emails that request information and the handling of citizen concerns and the lack of support of staff. Each council member on their own accord has reviewed this information. Based on this information you have clearly violated the Town of Berryville Code of Conduct as unanimously established by council. Specifically:

**1. "Respect of council members, citizens, staff and employees ....."**

Your accusations of Police Department Officers of inaccurate information to citizens regarding your contact information. Statement to citizens of "your disappointment with response from Police Chief White"

**2. "Direction of Town Staff for a meeting with Chief White"**

Clearly states that any action must go through the Town Manager.

**3. "Forwarding of any citizen complaints to the Town Manager"**

In the matter of refuse disposal, the whole matter should have been handled by the Town Manager and staff. You continued to try to investigate and draw conclusion for several days when the bigger concern was a police matter with neighbor against neighbor. Typically, a citizen will most always complain when they do not get the answer that supports their complaint.

**4. "Concerns about employees or staff to the Town Manager"**

Your attempt to investigate the Police Officer that handled this call and what was said, here again is a police matter that they were handling. Your request for information and to setup a meeting with Police Chief White without inclusion of the Town Manager. Whereas you should have taken your concerns to the Town Manager then if necessary a meeting could be held seeking additional information and clarification.

The continued request to gain information about the Josephine Street incident. This is strictly a police investigation and not a Town Council issue. Often Mr. Dalton attempts to keep us informed of these incidents although it is not required of him to do so. We receive limited information due to the ongoing Police investigation, the Police Department is not able to provide us with specific information. Regardless of what rumors may be going around we are in a position that we cannot provide any information or clarification related to any active criminal investigation.

All councilors are certainly aware that we wish to help the citizens as best as we can to provide a response to their inquiries, however; sometimes we are limited in the amount of information we have or are allowed, to provide them. As you are aware the Town and Council are always under a microscope and subject to litigation on most anything. That is why it is important we handle all citizen concerns in the same manner by forwarding all concerns to the Town Manager to handle. This way each incident is documented, and the proper response is made and recorded for any future actions that may be necessary and the whole council is notified of any future incidents that may arise that council would have to deal with. Often, we as councilors want to provide answers when in fact it may not be accurate and then becomes confusing when Council says one thing and Staff has to say something else. If we have the same person handling all these things it provides continuity. It is imperative that we support our staff.

Regarding FIOA requests, as you know we are required to have designated staff that have been provided training to meet very strict guidelines and time lines. We are required to respond, however providing improper information or comments subjects the Town to possible litigation. In the case of Mr. Poe, you submitted this as a FIOA request and Chief White responded to this inquiry as a FIOA request. This was not a request for a copy of a document that was available, but rather a series of questions and inquiry as to the operations and procedures of the Police Department. Many of the questions that were submitted involved the active investigation of the incident and would not be available for citizens to see or receive a response. Chief White made the proper response in this matter.

As you know town staff is busy working on all aspects of the budget and are on a tight deadline. They are working on three leases, the home owner's association trash collection project, day to day operations as well as assisting the Council as our needs arise. All of this at the direction of council. Recently you had requested information about PCard charges of 62 cents for several months. As we have seen the emails going through we are concerned that this has involved at least three different staff working several days to reproduce information, purchase orders etc. to justify these minimum charges. This was not a good use of resources.

The Town of Berryville is governed under the Council-Manager form of Government. Most of the Council is supportive of Mr. Dalton and his day to day operations of the Town and to all the staff and departments. This Council including the Mayor and Town Recorder should not find themselves in a position, of managing day to day operations as we have very capable staff if we allow them to perform their duties. If the entire council feels that the Town Manager is not operating in a manner that we feel would be beneficial to the Town, then the Council should meet and provide additional directions and responsibilities.

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We hope you understand our position and that this gives you the opportunity to re-evaluate your actions and the way we operate as a Town and the Council. This Council is always available to offer and provide guidance whenever necessary to assist you.

Sincerely,



Harry Lee "Jay" Arnold Jr.  
Town Recorder



Donna McDonald  
Councilor Ward 1



Allen Kitselman  
Councilor Ward 2



Erecka Gibson  
Councilor Ward 3



Dave Tollett  
Councilor Ward 4