



OFFICE OF THE PROSECUTOR

County of Atlantic

4997 Unami Boulevard
P.O. Box 2002
Mays Landing, NJ 08330

Theodore F. L. Housel
Prosecutor

(609) 909-7800 • Fax: (609) 909-7802

September 9, 2009

John J. Mooney, Chief
Atlantic City Police Department
2715 Atlantic Avenue
Atlantic City, NJ 08401

Re: Atlantic City Fire Department

Dear Chief Mooney:

As you know, this office has conducted an investigation of alleged sexual activities that occurred on or about May 16, 2009, at Fire Station No. 2 in Atlantic City. Contrary to statements in the media, this office became aware of your investigation on July 13th of this year and on July 17th assumed control of the investigation insofar as the allegations may have involved some type of official misconduct. We have devoted a significant amount of investigator hours reviewing this matter, transcribing and reviewing multiple statements taken by your detectives and conducting multiple recorded interviews which were later transcribed. The interviews conducted by your department and this office involved all females present on May 16th and most of the firemen present, and to include other firemen who had relevant information. All pertinent statements have been reviewed as of yesterday.

Although it is generally the policy of this office not to reveal even the existence of an investigation, let alone its results, the press has been informed on multiple occasions by the City Administration that this office was conducting an investigation. Because of that and the public notoriety that this incident has occasioned, contemporaneously with this letter to you the press will be informed of the results of this investigation by copy of this letter.

The focus of this investigation has been to determine what, if any, evidence exists of the commission of criminal acts which may have occurred and whether any such evidence is sufficient to warrant a presentation to the Grand Jury and a prosecution to a petit jury.

The issue before this office is not whether or not the actor or actors in this matter engaged in civilly actionable, morally repugnant, ethically reprehensible and/or administratively prohibited acts. These questions are rightfully left to other forums.

In reviewing this matter, this office is mindful of certain fundamental legal principles under New Jersey law. In New Jersey, unless there is a legally recognized relationship



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John J. Mooney, Chief, ACPD
Re: Atlantic City Fire Department
September 9, 2009
Page 2

between the parties, such as a teacher-student, guardian-ward or guard-prisoner, the age of consent in New Jersey for sexual contact and/or relations is sixteen (16). This applies both to sexual offenses and offenses involving the endangerment of the welfare of a minor; the only exception with respect to sexual activity is the production of pornography, which is rendered illegal if individuals under the age of eighteen (18) are involved. Another principle applicable to this investigation is that although an indictment may be returned upon the presentation of a *prima facie* case to a Grand Jury, the burden of proof in a criminal case is beyond a reasonable doubt, which in New Jersey is defined as evidence from which a person would be "firmly convinced" that a crime was committed and a defendant committed it. It is the policy of this office not to present a matter to the Grand Jury unless we are confident that we can prove the matter beyond a reasonable doubt to the satisfaction of a unanimous jury.

Although referred to in the media as "underage," none of the females involved in this incident were under the age of sixteen (16). Because the evidence does not demonstrate a legally protected relationship between the parties, the question first becomes whether or not there is sufficient evidence to prove that sexual activity occurred which was not consensual in nature.

The evidence upon which this office relied was primarily the multiple interviews of the female participants and female witness, as these constitute the best evidence detailing the occurrence.

A review of that evidence causes this office to conclude that there is insufficient evidence to prove non-consensual activity between the individuals, all of whom had attained the age of consent by May 16, 2009. Because there is no evidence of a legally recognized relationship between the parties and no evidence that anybody under the age of eighteen was involved in the production of pornography, this office concludes that a presentation to the Grand Jury for sexual offenses is not warranted. That is because there is insufficient evidence of force or coercion required by statute.

With respect to the potential for presentation for official misconduct, that relevant statute, N.J.S.A. 2C:30-2, requires the State prove beyond a reasonable doubt that the actor "commits an act relating to his office but constituting an unauthorized exercise of

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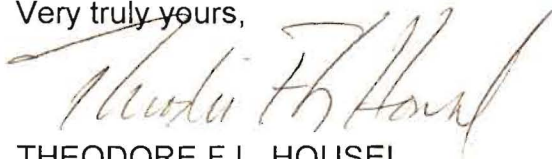
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John J. Mooney, Chief, ACPD
Re: Atlantic City Fire Department
September 9, 2009
Page 3

his official functions.” Because there is insufficient evidence with respect to whether any of the actors were performing an act which was an unauthorized exercise of his official functions, a prosecution under this statute cannot follow. This office does not construe that statute to make criminal consensual sexual activity in a public building by a public employee. If the acts were an exercise of an official function, see, for example, *State v. Parker*, 124 N.J. 628 (1991), or if there had been, as noted above, a legally recognized relationship, *State v. Martin*, 235 N.J. Super. 47 (App. Div. 1989), this investigation would have reached a different result. Therefore this investigation will not be presented and, unless additional evidence comes to light, is concluded.

At this point in time, this office declines to release police reports and statements taken in the matter. As this office assumed control of this investigation and as Chief Law Enforcement Officer in Atlantic County, I am directing that no reports or statements, including audio/video media be released to anyone without my personal approval. I am aware that parties are contemplating civil litigation and direct that you release same upon presentation of a valid subpoena from an appropriate court or a legitimate court order. I reserve the right to release evidence if called upon by a neutral administrative hearing officer.

Very truly yours,



THEODORE F.L. HOUSEL
Atlantic County Prosecutor

TFLH:pak

c: Dennis Brooks, Chief, ACFD
Hon. Lorenzo Langford, Mayor