LAW AND PUBLIC SAFETY COMMITTEE

Christopher Smitherman, Chair
Amy Murray, Vice-Chair
Jeff Pastor, Member

Tuesday
January 21, 2020
8:30 A.M.
Council Chambers
Room 300

Rebecca Ross
Clerk to the Committee

Peter Stackpole, Law
Lt. Elena Comeaux, CPD

PRESENTATIONS

Responses to Vice Mayor Smitherman’s Questions
Peter Stackpole, Law Department

Fire Department Female Uniforms
Chief Anson Turley, CFD
Chief Roy Winston, CFD

Downtown Bar Shootings
Lt. Col. Paul Neudigate, CPD

CPD Victims’ Advocate Report
Karen Rumsey, CPD Victims’ Advocate

6225 Lisbon Avenue
Kevin Cooley, Excel Development
Terri Gossard, Pleasant Ridge Community Council

Animal Task Force
Jim Tomaszewski, Chair

AGENDA

1-202000009
PG 3
REPORT, dated 01/08/2020, submitted by Patrick A. Duhaney, City Manager, regarding the feasibility of purchasing and installing an intercom system for City Hall and any other City-owned buildings. (REFERENCE DOC#201901671)

2-202000016
PG 5
COMMUNICATION, submitted by Vice Mayor Smitherman from John Rawski, Ohio Ethics Commission, regarding Open Meetings Violation Lawsuit.
(See Doc # 201900530)

3-202000023
PG 10
COMMUNICATION, submitted by Councilmember Mann from Marsha White regarding reducing speed limit on Harrison Avenue in Westwood.

4-201900530
PG 13
MOTION, submitted by Vice Mayor Smitherman, WE MOVE that the Councilmembers be responsible for paying their $176,000.00 legal bill and penalties after admitting to violating Ohio Open Meeting Law on March 7, 2019.
(See Doc # 202000016)

5-202000072
PG 14
COMMUNICATION, submitted by Vice Mayor Smitherman regarding a letter from the Ohio Ethics Commission to the Mayor of the Village of Beloit, Eric Augustein. (SEE DOC # 201900530)
6-202000073
PG 19
COMMUNICATION, submitted by Vice Mayor Smitherman regarding Ohio Appellate/Trial Decisions. (SEE DOC # 201900530)

7-202000075
PG 24
MOTION, submitted by Councilmember Pastor, WE MOVE that the City Administration study the findings of the report and issue recommendations that address: 1. Chief Isaac's statement: "We need to look at the reasons why in predominantly African American communities there (is) more police contact," and 2. The findings of the report that found once pulled over, African Americans made up 75% of all Cincinnati stop arrests. 3. The understaffing of the Citizen Complaint authority and the cost associated with fully funding it. (SEE DOC # 202000076)

8-202000076
PG 25
REPORT, submitted by Councilmember Pastor, regarding the Eye on Ohio report titled: Investigation: Blacks, black neighborhoods most likely to be traffic stop targets in Ohio's 3 biggest cities. (SEE DOC # 202000075)
To: Mayor and Members of City Council
From: Patrick Duhaney, City Manager
Subject: Feasibility of purchasing and installing an intercom system for City Hall and any other City-owned buildings.

REFERENCE DOCUMENT #201901671

On July 18, 2019 the following item was referred for a report:

MOTION, submitted by Councilmember Mann, WE MOVE that the City administration produce a report on the cost and feasibility of purchasing and installing an intercom system for City Hall and any other City-owned buildings that might need it in the event of an active shooter situation.

The following report details mass notification options for consideration.

CURRENT SYSTEM
City Hall, Centennial II, and larger city facilities such as those operated by Metropolitan Sewer District (MSD), Waterworks and the Health Department, currently have intercom functions integrated within the fire alarm systems. To activate, a user physically faces the alarm panel and either presses a pre-set announcement or switches on a push to talk handheld microphone to make an announcement.

Currently, majority of Cincinnati Fire stations also have intercom systems; however, Police Districts and Police Training facilities do not because officers are equipped with dispatch radios. All other City buildings under two stories, with less than 20 occupants, are typically secured from non-employee access but do not have fire alarm intercom options.

COST OF PURCHASING AND INSTALLING A NEW INTERCOM SYSTEM FOR CITY HALL
Estimates for a new intercom system with adequate output for City Hall, considering the complexities of cabling through a historic building and the number of speakers needed to cover all floors, could cost upwards of $300K.

OPTIONS
Due to the cost and physical barriers of installing a new intercom system in City Hall and the location and visibility concerns of the current fire alarm intercom systems, the Administration is exploring the following options for mass notification.

I. Rave Alert & Rave Panic Buttons
Rave Alert is an emergency mass notification system that uses SMS text messaging as its primary communication channel to warn people to the risk of danger, like the America's Missing: Broadcast Emergency Response (Amber) alert system. It also can send recorded audio messages and e-mail notifications. Rave Panic is an app for wireless phones and tablet that, when activated, notifies all recipients in a specified geographic area or building of an emergency event and sends critical response.
data to 9-1-1 dispatchers and first responders, giving Fire and Police tools to coordinate a faster and more effective response.

Although the internal function for Rave alert is fully operational for all City Employee's; currently, only the Emergency Communications Center and Health are utilizing the tool. The City Manager's Office (CMO) has met with the City's Enterprise Technology Solutions (ETS) team, Fire and Police, to address barriers for deployment. For both Rave Alert and Rave Panic to be fully operational, ETS needs all employee contact information updated within the City's Comprehensive Human Resources Integration System (CHRIS). This is extremely crucial for alerts to be sent and received effectively. CMO and ETS intends to work with Central Human Resources (HR) and Department HR Liaisons to ensure that all employee contact and work facility information is updated into CHRIS accurately. CMO and ETS anticipates testing for Rave Alert and Rave Panic will be conducted by mid-February 2020.

For the public Facing Rave Alert system, the URLs “Cincyalert.com” and “Cincyalert.org” are now ready for citizens to register for Cincy Alert’s and to link their Smart911 account to their profile. A press release detailing more information on Cincy Alert is expected for release within the next few weeks.

II. Landline Ring Groups
A landline ring group option can also serve as a low-cost City Hall mass notification tool, whereby a person from another phone in the building can dial 4 digits and broadcast a message that comes across the speaker of those phones grouped to the four-digit extension. However, the functionality is limited to only 32 phones per grouping and broadcasts only work if the phone is not in use. Although the Administration does not recommend this as a sole option for mass notification, deployment of 32 red emergency broadcast phones strategically placed around City Hall along with Rave Alert could serve as an added security measure.

SUMMARY
Currently City Hall has an intercom system integrated into the Fire Alarm system. Activation requires a user to stand before the Alarm panel, visible from the lobby. A new intercom system, although feasible, costs approximately $300K. Therefore, the Administration intends to utilize Rave Alert and Rave Panic as a solution for mass notification. The Landline Ring Group is also being considered but only as a supplemental resource, paired with Rave Alert/Rave Panic.
April 19, 2019

Roshani de Soyza Hardin
Chief Counsel
Office of the City Solicitor
801 Plum Street, Suite 214
Cincinnati, Ohio 45202-1985

Dear Ms. Hardin:

On April 15, 2019, the Ohio Ethics Commission received your letter requesting an advisory opinion. You asked a question on behalf of the Vice Mayor of the City of Cincinnati (city).

Key Facts

Your request letter and its enclosures explain:

Open Meetings Violation Lawsuit

• A private citizen filed a lawsuit alleging that five of the nine members of city council (five council members) had violated the Ohio Open Meetings Act by discussing and deciding matters pertaining to city business through group text messages, e-mails, and a conference call outside of a public meeting.

• Initially, the city solicitor’s office represented the five council members.

• Subsequently, city council appropriated $150,000 for two law firms to serve as special counsel. One firm would represent the council members in their official capacities and another firm would represent the city.

• Before the city solicitor’s office resumed representing the five council members, the combined costs for the legal services that the two law firms and an outside technical vendor had provided totaled approximately $75,000.

Settlement Agreement

• The claims in the lawsuit were resolved in a settlement agreement between the parties.
The five council members admitted violating the Open Meetings Act and the judge overseeing the settlement directed the city to pay the following penalties:

- $1,000 as a statutory forfeiture pursuant to R.C. 121.22.
- $10,000 as a statutory forfeiture pursuant to R.C. 149.351, because one council member had deleted his text messages.
- Attorney fees totaling $90,000 pursuant to R.C. 121.22 and R.C. 149.351.

City’s Financial Obligations

- The city’s total expenses for outside legal services and the penalties specified in the settlement agreement were $176,000.
- The vice mayor submitted a motion to city council stating that city taxpayers should not be responsible for these expenses and that the five council members should pay the $176,000. The motion is non-binding, but the vice mayor intends to introduce an ordinance if the motion passes.

Question and Brief Answer

You have asked if the five council members are prohibited from voting on the motion and related procedural motions that arise under the city council’s parliamentary process.

As explained below, the five council members are prohibited from voting, participating in discussions or deliberations, or otherwise using their authority or influence, formally or informally, in matters regarding the motion, a resulting ordinance, and any related procedural motions that arise under the city council’s parliamentary process that affect the motion’s passage, tabling, or non-passage.

R.C. 102.03(D) and (E)—Conflict of Interest Restrictions

City council members are subject to R.C. 102.03(D) and (E), which read:

(D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person’s duties.
No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

R.C. 102.03(D) prohibits public officials from using the authority or influence of their public positions to secure a thing of value for themselves or any other person or entity. By contrast, R.C. 102.03(E) does not require that public officials use the authority or influence of their public positions to secure a thing of value. Rather, R.C. 102.03(E) prohibits a public officials from merely soliciting or accepting an improper thing of value. The application of the Ethics Laws is dependent upon the facts and circumstances of each individual situation.

The term "anything of value" is defined to include money and every other thing of value. The beneficial or detrimental economic impact that results from a public agency's legislative decision is a thing of value. Any action or decision of city council affecting the lawsuit and the payment of its resulting costs would directly affect the financial interests of the five city council members.

Conflicts of Interest in Legal Matters

The Ethics Commission has addressed how the Conflict of Interest provisions of the Ethics Law restrict the actions of public officials with an interest in legal interests pending before their own public agency.

Precedent—Advisory Opinion No. 90-013

In Advisory Opinion Number 90-013, the Ethics Commission addressed the issue of a port authority board member who had filed a lawsuit against the city that had created the port authority seeking to quiet title to a piece of city property that it leased to the port authority.

The board member's lawsuit was dismissed; afterwards, the city and port authority considered filing a lawsuit against the board member and other similarly situated landowners to quiet title to the same piece of property. The Commission determined that the board member was not prohibited from continuing to serve on the port authority's board even though the board member had been the plaintiff in a lawsuit involving the city property and could potentially become a defendant in a lawsuit brought by the city and port authority involving the same property.

However, the Commission also determined that a port authority decision to pursue the lawsuit would definitely and directly affect the board member's private financial interests. The Commission explained that this definite and direct benefit or detriment to the board member's financial interests would impair his objectivity and independence of judgment with regard to his duties as a port authority board member. The Commission also recognized that the board member would be able to use his board position to influence the other board members to decide matters involving the lawsuit in his favor.
Accordingly, the Commission determined that the board member was prohibited from voting, participating in discussions or deliberations of the port authority, or otherwise using the authority inherent in his official position, formally or informally, with regard to either a potential or pending lawsuit.

The conclusions in Advisory Opinion No. 90-013 are included as if restated here, but this opinion will more fully discuss the portions that are most relevant to your question. A copy of that opinion has been enclosed for your reference.

**Precedent—Informal Opinion 2003-INF-0910-2**

In Informal Opinion 2003-INF-0910-2, the Ethics Commission addressed the issue of a member of the Hamilton County (County) Board of Commissioners (Board), Todd Portune, who had filed a taxpayer’s action against the Cincinnati Bengals, the NFL and its member teams seeking damages arising out of the County’s involvement in the construction and lease of the Paul Brown Stadium. Mr. Portune filed his taxpayer action after the Board declined to pass a resolution for the County to seek damages from the same parties and after the County Prosecutor declined to pursue the claims. The County Board subsequently considered appointing special counsel to evaluate the claims that Mr. Portune had made in his taxpayer’s action.

The Ethics Commission recognized that because Mr. Portune would recover his costs, including reasonable attorney fees, only if the court determined that the County was entitled to the relief that he sought in his taxpayer’s lawsuit, the County Board’s decision to appoint special counsel would definitely and directly affect his private financial interests.

Accordingly, the Commission determined that Mr. Portune was prohibited from voting, participating in discussions or deliberations of the County Board with respect to its decision to appoint special counsel and any future motions related to the claims.

The conclusions in Informal Opinion 2003-INF-0910-2 are included as if restated here, but this opinion will more fully discuss the portions that are most relevant to your question. A copy of that opinion has been enclosed for your reference.

**Application of Precedent**

The private financial interests of the five council members would be definitely and directly affected by either the passage or non-passage of the vice mayor’s motion and its resulting ordinance. A decision of city council that the five council members, rather than the city, should pay the $176,000 would result in a definite and direct financial detriment for the five council members. Moreover, a decision of the city council that the city, rather than the five council members, should pay the $176,000 also would result in a definite and direct financial benefit for the five council members.
Accordingly, the five council members are prohibited from voting, participating in discussions or deliberations, or otherwise using their authority or influence, formally or informally, in matters regarding the motion, a resulting ordinance, and any related procedural motions that arise under the city council’s parliamentary process that affect either the motion’s passage, tabling, or non-passage.

This opinion represents the views of the undersigned, based on the facts presented and the precedent of the Commission. It is limited to questions arising under Chapter 102. and Sections 2921.42 and 2921.43 of the Revised Code, and does not purport to interpret other laws or rules. Please contact this office again if you have any other questions or if you wish to request reconsideration of this opinion under OAC 102-3-07.

Sincerely,

John Rawski
Staff Advisory Attorney

Enclosure: Advisory Opinion Number 90-013
Informal Opinion 2003-INF-0910-2

The Ohio Ethics Commission Advisory Opinions referenced in this opinion are available on the Commission’s Web site: www.ethics.ohio.gov.

1 City Ordinances 290-2018 and 291-2018.
2 Ohio Ethics Commission Advisory Opinions No. 89-008 and 90-008.
7 R.C. 1.03 and R.C. 102.01(G).
9 See R.C. 102.08 (when the Ethics Commission renders an advisory opinion relating to a special set of circumstances, the person to whom the opinion was directed or who was similarly situated may reasonably rely upon the opinion and shall be immune from criminal prosecutions, civil suits, or actions for removal from his public office or employment for a violation of the Ethics Laws based on facts and circumstances covered by the opinion, if the opinion states there is no violation of the Ethics Laws).
Hi Brenda,

Councilmember Mann would like to add the below correspondence to the Council Calendar.

Thank you,

Hillary Kenkel | Community Affairs Advisor
ph. (513) 352-4611
Office of Councilmember David Mann
Cincinnati City Hall
801 Plum Street, Suite 349 | Cincinnati, OH 45202

From: Marsha White <mwhite@eastersealsc.org>
Sent: Friday, January 3, 2020 11:21 AM
To: #COUNCIL <#COUNCIL@cincinnati-oh.gov>
Subject: [External Email] Regulation:

To Who This May Concern:

I just assisted a young lady who is 4 months pregnant that was involved in a pretty serious car accident on Harrison Avenue in Westwood. The other lady involved in the accident was pregnant as well. I believe that both will be okay. As I was assisting these people, quite a few of the neighbors were stating that car accidents happen quite regularly on this street. I know this as a fact as I was also involved in a car accident awhile ago, due to a drunk driver that swerved over into my lane. (Since there are no lane dividers this seems very easy to do, especially if someone is impaired or distracted).

As you are aware, a young lady was hit and killed on this street, and countless others have been hit by reckless drivers.

The reason for my email is to inquire if the speed limit on this street can be lowered to 25 miles per hour? With the winding curves, and seemingly non-regulation, individuals navigate this street at very high velocities of speed. I can't say that there isn't any police presence, but there appears to be very little to none, and I travel on this street everyday.

A higher visibility of police presence/regulation would help as well.
Just would like to keep everyone safe, especially the countless amount of children, and the disabled who navigate this street everyday.

Sincerely,

Marsha White

Financial and Housing Instructor

Easterseals

2901 Gilbert Avenue. Cincinnati, Ohio 45206

P (513) 281-2316 *3705

mwhite@eastersealsgc.org

"The test of our progress is not whether
we add more to the abundance of those
who have much; it is whether we provide
enough for those who have too little."

-Franklin Roosevelt-1937

“We will succeed as we bind our citizens not by the bond of money or profit alone, but by the ties of neighborly concern and good will.”

-Theodore Berry

A single twig breaks, but the bundle of twigs is strong.

-Tecumseh

"The quality of life will improve for all, both black and white, when housing is integrated, both racially and economically."

-Alexander Polikoff
"I want to be remembered as someone who used herself and anything she could touch to work for justice and freedom...I want to be remembered as one who tried." A motto she lived by until her death.

-Dorothy Height-Social Rights Activist

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City of Cincinnati

Christopher E. C. Smitherman
Cincinnati Vice Mayor

March 26, 2019

MOTION

WE MOVE that the Councilmembers be responsible for paying their $176,000.00 legal bill and penalties after admitting to violating Ohio Open Meeting Law on March 7, 2019.

Vice Mayor Christopher Smitherman

Statement

On March 7, 2019, the members of the Cincinnati City Council self-proclaimed “Gang of 5” – Councilmembers P.G. Sittenfeld, Chris Seelbach, Wendell Young, Tamaya Dennard, and Greg Landsman – appeared in front of Judge Robert Ruehlman and admitted to violating Ohio Open Meeting Law. These violations resulted from group text messages, conference calls, and emails held between the “Gang of 5” where public business was discussed and decided upon outside of the public domain.

The settlement and cost of outside attorneys in this case requires the taxpayers of Cincinnati to pay $176,000.00 in legal expenses and penalties that resulted from the “Gang of 5” Open Meeting Law violations. The taxpayers of Cincinnati should not be responsible for this bill.

COMMITTEES
Chair: Law & Public Safety • Committees: Budget & Finance • Economic Growth & Zoning • Neighborhoods
January 30, 2006

The Honorable Eric Augustein  
Mayor, Village of Beloit  
Box 276  
Beloit, Ohio 44609

Dear Mayor Augustein:

In a letter received by the Ohio Ethics Commission on October 21, 2005, you requested an advisory opinion regarding the restrictions imposed by the Ethics Law on several members of council for the Village of Beloit who have various ties to the village fire department. You indicated that four of the six members of council for the village have ties to the fire department. You asked whether the two remaining members of council have the authority to decide matters before council pertaining to the fire department.

Facts

In your letter to the Ethics Commission, you explained that the council for the Village of Beloit is composed of six members. You stated that one council member has a spouse, brother-in-law, and grandchildren who serve in positions with the village fire department. You also stated that two other council members are firefighters and one other council member is a firefighter and an EMS lieutenant for the fire department. In a telephone conversation with Commission staff, you explained that these council members are not paid for the services they provide to the fire department.

You asked whether the other two council members may act on behalf of council involving adoption of an employee handbook, disciplinary actions of fire personnel, pay raises or reductions in pay, purchases of equipment, and so forth. You indicated that you have reviewed Ohio Ethics Commission Advisory Opinion No. 2001-01, but you stated that the advisory opinion does not address your question.
Ohio Ethics Commission Advisory Opinions

Your questions involve persons other than yourself. The purpose of an Ethics Commission advisory opinion is to provide guidance upon which a public official or employee can rely before he or she engages in an action that may be prohibited by the Ethics law. The Commission can render an advisory opinion only in response to a hypothetical question or a question that involves the prospective conduct of the person who requests the opinion. Ohio Ethics Commission Advisory Opinions No. 75-037 and 94-002.

While the Commission cannot render an advisory opinion in response to your question, the Commission can provide you with general information about the Law.

Overview of Restrictions

As explained more fully below, R.C. 102.03(D) and (E) would prohibit members of a municipal council who are uncompensated volunteer firefighters, and members of a municipal council whose family members are volunteer firefighters, from participating in matters that would have a definite and direct impact on individual officers and employees of the volunteer fire department. These matters would include disciplinary actions pertaining to particular officers and employees and pay raises and reductions in pay for particular officers and employees. R.C. 102.03(D) and (E) would not prohibit the council members from participating in budgetary matters or other matters that affect the fire department as a whole.

Council Members Serving in Unpaid Volunteer Positions

In Advisory Opinion No. 91-002, the Ethics Commission concluded that R.C. 2921.42(A)(4) and 102.03(E) do not prohibit a city council member from serving as an unpaid volunteer paramedic with the fire department of the city, provided he receives no definite and direct personal pecuniary benefit from such service. See also Ohio Ethics Commission Advisory Opinion No. 2000-05 (a paid township volunteer firefighter is an employee of the township). Municipal council members would not be prohibited from serving in unpaid volunteer positions for the fire department, so long as they receive no definite and direct personal benefit for the service. However, as stated below, R.C. 102.03(D) and (E) place restrictions on the council members’ ability to participate in matters affecting the fire department.

Restrictions on Council Members with Respect to Volunteer Fire Departments

R.C. 102.03(D) and (E) are applicable to the situation you have described. R.C. 102.03(D) and (E) provide the following:
(D) No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

(E) No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person's duties.

A member of village council is subject to the prohibitions imposed by R.C. 102.03(D) and (E). See R.C. 102.01(B) and (C). See also Adv. Op. No. 96-001.

"Anything of value" is defined, in R.C. 1.03, to include money, goods, chattels, promissory notes, warrants, checks, rights in action, real estate, and every other thing of value. The Ethics Commission has stated that a definite and direct pecuniary benefit or detriment is considered to be a thing of value under R.C. 102.03(D). See Adv. Ops. No. 88-004 and 89-005.

In Advisory Opinion No. 91-002, the Commission concluded that anything of value that resulted from council decisions that affect the fire department and its personnel was of such a character as to manifest a substantial and improper influence upon a council member who also served as a volunteer paramedic with respect to the performance of his duties. Therefore, in Advisory Opinion No. 91-002, the Commission concluded that the council member was prohibited from voting on matters that affect the fire department and its personnel. The Ethics Commission has also stated that R.C. 102.03(D) and (E) prohibit a public official from participating in matters before his public agency that have a definite and direct impact on the interests of an individual with whom the public official has a close familial or financial connection.

In Advisory Opinion No. 2001-01, the Ethics Commission clarified the extent of the prohibition regarding voting on matters that "affect the fire department and its personnel." In particular, the Ethics Commission stated that, where a council member serves as a volunteer firefighter, and receives no compensation for his service, any benefit or detriment that the fire department as a whole would receive as the result of a council decision is not of such a character as to manifest a substantial and improper influence upon the council member with respect to the performance of his duties as a council member. When a decision is made regarding the fire department as a whole, without any particular definite and direct benefit to the council member, any other volunteer, or any employee or official of the fire department, there is no "thing of value" provided to any of those parties. The "thing of value" precluded by R.C. 102.03(D), such as an appropriation, goes to the city fire department as a whole, rather than to any individual connected with the department. Therefore, this thing of value is not of such a character, in that instance, to manifest a substantial and improper influence upon a council member who is also a
volunteer firefighter. This same reasoning applies where a council member has a family member who serves with the fire department.

R.C. 102.03(D) and (E), therefore, do not prohibit a municipal council member who serves in unpaid positions with the fire department, or a municipal council member whose family members serve in positions with the volunteer fire department, from participating in decisions that affect the interests of the fire department as a whole. For example, a municipal council member is not prohibited from participating in decisions about the appropriations and equipment for, and the budget of, the fire department. The fact that the money to pay the salaries of fire department officials and employees would be included within the budget and appropriations for the fire department does not constitute a definite and direct benefit to those officials and employees, such that the council members would be prohibited from participating in those matters. Also, a municipal council member would not be prohibited from participating in matters involving an employee handbook assuming the handbook is applicable to all officials and employees of the volunteer fire department.

However, the Commission has also stated that a council member who serves as an uncompensated volunteer firefighter is prohibited from participating in matters before city council that affect the interests of the personnel of the fire department. Adv. Ops. No. 91-002 and 2001-01. The Commission reasoned that anything of value that the department personnel would receive as the outcome of a vote before city council is of such a character as to manifest a substantial and improper influence upon the council member, who is a member of the fire department personnel, with respect to the performance of his duties as a council member. Adv. Op. No. 91-002.

Therefore, R.C. 102.03(D) and (E) would prohibit a municipal council member who serves in a position with the fire department, or who has a family member who serves in a position with the fire department, from voting, discussing, deliberating, or taking any other action on matters that affect the individual interests of any member of the municipal fire department personnel. See also R.C. 2921.42(A)(1) (a public official is prohibited from using his or her public position to secure authorization of a public contract, or any contract related benefits such as raises and promotions, for a family member).

For example, a municipal council member with either of these relationships with the fire department would be prohibited from discussing, deliberating about, or otherwise participating in decisions before council affecting the employment, compensation, or benefits for the fire chief or other fire personnel. These would include matters such as changes in compensation or benefits determined by individual working conditions, the assignment of duties, evaluations, and actions involving promotions, discipline, lay-offs, and termination. A municipal council member who is an uncompensated volunteer firefighter, or whose family members are uncompensated volunteer firefighters, are not prohibited from participating in matters that affect all fire department personnel, uniformly and without unique or special benefit to any particular fire official or employee. See Adv. Op. No. 92-012 and 2001-01.
The Honorable Eric Augustein  
January 30, 2006  
Page 5

**Authority of a Minority of Council Members to Act on Behalf of the Council**

Your final question is whether two board members can act on behalf of a six-member board where the other board members are prohibited from participating in a certain matter. This question is not addressed by the Ethics Law and related statutes. Therefore, the Ethics Commission does not have the statutory authority to render an opinion to you which answers this question. Your question should be directed to the village solicitor, who may wish to review two court cases that discuss the issue you have raised: *Gitlin v. Berea* (Feb. 15, 1990), 8th Dist. No. 58062 and *State ex rel. DiCarlo v. Clermont Cty. Bd. of Elections*, Clermont App. No. CA2003-09-077, 2003-Ohio-5716.

I hope this information is helpful to you. This letter is limited to questions arising under Chapter 102., and Sections 2921.42 and 2921.43, of the Revised Code and does not purport to interpret other laws or rules. The letter does not reach any conclusions as to the specific facts in the situation that you have set forth.

Please do not hesitate to contact this Office if you need further information.

Sincerely,


Jennifer A. Hardin  
Chief Advisory Attorney
Federal Decisions
continued from previous page

The Sixth Circuit Court of Appeals rejected the city's analysis. Since reasonable people could conclude that Currie was in fact acting within the scope of his employment, it was not unreasonable for the trial court to put the question to the jury of whether the city was liable under respondent superior for the officer's actions.

Mrs. Stallworth was awarded damages of $40,000, less $699.65 for collateral benefits received, plus $11,238.33 as prejudgment interest.

The city challenged the interest award, but the appellate court concluded that prejudgment interest is allowed for a tort claim under R.C. 1343.03(C) where the party being charged has displayed a lack of good faith in settlement negotiations. The court found evidence of that lack of good faith here in the fact that even while the city was disclaiming responsibility for Officer Currie's actions on the ground that he acted beyond his authority, it was simultaneously persisting in the criminal prosecution of Mrs. Stallworth for the same incident.

As a final note, the appellate court ruled that Mr. Stallworth's lost consortium claim under state law could not properly be entertained on the basis of pendence jurisdiction, since such treatment was not authorized by either 28 U.S.C. §1343 or 42 U.S.C. §1983. His federal claims were dismissed before the trial began.

Ohio Appellate/Trial Decisions

REPORTED APPELLATE DECISIONS

BRIEFLY NOTED

Harrison v. Judge

CITATION: 49 Ohio App.3d 125 (Summit 1989)

SUMMARY: Under home rule powers granted by Ohio Const. art. XVIII, §7 and anticipated by R.C. 3709.05, a city may create a health district differing in structure from that set forth in R.C. 3709.05, provided the board is established and maintained under the authority of the city's charter. The charter provision relating to the board concerns a matter with no extra-territorial effect and is not an exercise of police power. Instead, it is enacted under the power of local self-government.

Grange Mut. Casualty Co. v. City of Columbus

CITATION: 49 Ohio App.3d 60 (Franklin 1989)

SUMMARY: R.C. 2744.05(B) does not violate the equal protection, due process, and due compensation clauses of the Ohio and United States Constitutions. The state has a rational basis for distinguishing between government tortfeasors and other tortfeasors with respect to the collateral source rule and the concomitant right to subrogation. The state has a legitimate interest in limiting the fiscal impact on political subdivisions by allowing tort claims to be made against them only to the extent that a collateral source of payment does not exist by barring subrogation claims with respect to collateral source payments. Where injury to a party occurred after the enactment of R.C. 2744.05, the injured party's insurer did not have an existing property or contract right which was taken away by the statute.

UNREPORTED APPELLATE DECISIONS

BRIEFLY NOTED

Gitlin v. City of Berea

CITATION: No. 59062 (6th Dist. Ct. App., Cuyahoga, 2-15-90)

SUMMARY: Members of a city planning commission who are absent from discussion on a resolution are not treated as abstaining on a vote. Instead, members who are disqualified due to interest create vacancies on the commission in matters in which they are disqualified. Only a majority of the qualified members is needed to pass a resolution.

Village of Holland v. Yoder


SUMMARY: A village council abuses its discretion when it makes an excess appropriation of private property for a street relocation, but the excess appropriation is not for public purposes or justified under either the remnant or protective theories of appropriation. Further, an ordinance which merely states that excess appropriation is for the purposes of relocating a street but fails to give any reason for appropriating more property than was actually needed for the relocated road fails the specificity requirements of Ohio Const. art. 18, §10 and R.C. 163.05(C).

City of Pikesville v. Hirschauer

CITATION: No. C-863 (8th Dist. Ct. App., Cuyahoga, 7-20-80)

SUMMARY: State court appropriation order for State property for a service center site's wastewater treatment plant is not an abuse of discretion where the property owners fail to rebut the prima facie evidence of necessity created by the city council's resolution of intent enactment. A taxpayer is precluded, on res judicata grounds, from bringing suit contesting the expenditure of funds for the land appropriation since the taking was already contested by the property owners.

Garage Cleveland, Inc. v. City of Cleveland

CITATION: No. 57630 (6th Dist. Ct. App., Cuyahoga, 2-1-90)

SUMMARY: A trial court does not abuse its discretion in deciding that a city did not unreasonably delay its tenant's performance of a lease, which required the tenant to build and operate a
COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA
NO. 58062

CHRISTINE GITLIN, ET AL.

Plaintiff-Appellants

-VS-

CITY OF BEREA, ET AL.

Defendant-Appellees

ACCELERATED DOCKET

JOURNAL ENTRY

and

OPINION

PER CURIAM

DATE OF ANNOUNCEMENT OF DECISION: RECEIVED

FEBRUARY 15, 1990

CHARACTER OF PROCEEDING:

FEB 26 90

SUPREME COURT OF OHIO LAW LIBRARY

JUDGMENT:

DATE OF JOURNALIZATION:

APPEARANCES:

FOR PLAINTIFF-APPELLANTS

Alan Belkin
Shapiro, Turoff, Gisser & Belkin
1200 Standard Building
Cleveland, Ohio 44113

Civil appeal from the
Court of Common Pleas - Case
No. 163,242

Affirmed.

FOR DEFENDANT-APPELLEES:

James N. Walters III
Director of Law
City of Berea
P.O. Box 297
Berea, Ohio 44017

Michael T. Gavin and
Eli Manos,
Mansour, Gavin,
Gerlack & Manos Co.,
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55 Public Square - 2150
Cleveland, Ohio 44113
PER CURIAM: The Berea Municipal Planning Commission ("the commission") approved a resolution for a conditional use to developers for a two-family planned unit development on a parcel of land owned by St. Mary's Catholic Church. Abutting property owners ("the owners") challenged the commission action appealing to the common pleas court. The owners now challenge an order of that court which affirms the commission action. In their sole assignment of error the owners claim the commission resolution was invalid because it was adopted by less than the Charter mandated majority of all the members.

It is generally held that the legal effect of a refusal to vote by a member of a municipal legislative body is an acquiescence in the action of the voting majority. Babyak v. Alten (1958), 101 Ohio App. 191. But see Davis v. Willoughby (1962), 173 Ohio St. 338. We note that unlike the abstaining council member in Babyak, however, the commission members were not present for discussion on or prior to the resolution. Babyak is, therefore, inapplicable.

Generally where a member of a legislative body is disqualified due to interest, the disqualification is treated as a vacancy because the member is not qualified to act. See Hannan v. City of Coppell (Texas App. 1979), 583 S.W. 2d 817; City of Alamo Heights v. Gerety (Texas App. 1954), 264 S.W. 2d 778. We note that the Berea Charter contains no provision treating a vacancy otherwise. Cf. State, ex rel. Corrigan v. Tuchope (1975), 41 Ohio St. 2d 57. Further, when an office is treated as
vacant, the number of members is reduced accordingly. *State, ex rel. Atty. Gen.* v. *Orr* (1899), 61 Ohio St. 384.

It being conceded that five of the eleven commission members were disqualified, it follows that they ceased to be members of the commission for matters on which they were disqualified. Thus, the commission consisted of only six members qualified to act. See *State, ex rel. Atty. Gen.* v. *Orr*, supra. See, also, *Hannon*, supra; *Gerety*, supra. Four being a majority of six, the resolution passed by the necessary margin.

Further, upon review of the record, we find no error in the judgment of the trial court holding that the order of the commission was supported by reliable, probative, and substantial evidence. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 18.

The owners assignment of error fails.

Judgment affirmed.
It is ordered that appellees recover of appellants their costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

*(Thomas J. Parrino, retired judge of the Eighth District Court of Appeals, sitting by assignment.)*

N.B. This entry is made pursuant to the third sentence of Rule 22(D), Ohio Rules of Appellate Procedure. This is an announcement of decision (see Rule 26). Ten (10) days from the date hereof this document will be stamped to indicate journalization, at which time it will become the judgment and order of the court and time period for review will begin to run.
December 27, 2019

Whereas, reporters from the nonprofit newsroom Eye on Ohio, The Cincinnati Enquirer and researchers from Stanford University’s Big Local News program examined police stops to assess how the three largest communities in Ohio use public safety resources and to identify potential bias in policing; and,

Whereas, the report found police in Cincinnati made 120% more total stops per resident in predominantly black areas; therefore,

WE MOVE that the City Administration study the findings of the report and issue recommendations that address:

1. Chief Isaac’s statement: “We need to look at the reasons why in predominantly African American communities there (is) more police contact,” and
2. The findings of the report that found once pulled over, African Americans made up 75% of all Cincinnati stop arrests.
3. The understaffing of the Citizen Complaint authority and the cost associated with fully funding it.

Councilmember Jeff Pastor
CIVIL RIGHTS

Investigation: Blacks, black neighborhoods most likely to be traffic stop targets in Ohio's 3 biggest cities

By Max Londberg and Lucia Walinchus | December 18, 2019

Jermiah Miller looks in his rearview mirror on Tuesday, Oct. 8, 2019, in his Nissan Maxima SR at his residence in Colerain.

Investigation: Blacks, black neighborhoods most likely to be traffic stop targets in Ohio's 3 biggest cities

By Max Londberg and Lucia Walinchus

Video by Michael Nyerges

https://eyeonohio.com/investigation-blacks-black-neighborhoods-most-likely-to-be-traffic-stop-targets-in-ohios-3-biggest-cities/
Reporters from the nonprofit newsroom Eye on Ohio, The Cincinnati Enquirer and researchers from Stanford University's Big Local News program examined police stops to assess how the three largest communities in Ohio use public safety resources and to identify potential bias in policing.

Followed in a public park and forced to leave. Cuffed and questioned for whistling while waiting for a bus. Pulled over for spending too much time at a gas station.

Some black drivers and pedestrians in Cincinnati say they've been unfairly stopped and questioned by police.

"It seems to be if you are a minority, you're a target and you're automatically doing something wrong," said Michelle Cameron, a black resident who lives in the Cincinnati neighborhood of Westwood.

Cameron's perception isn't rare for blacks in Ohio's three largest cities. An analysis of hundreds of thousands of police stops confirms a racial disparity does exist across the state. Certain police actions, such as pulling over a driver or issuing a ticket, are more likely to occur in predominantly black neighborhoods than in white ones.

And black drivers are also much more likely to be pulled over than whites, according to a review of 315,281 stops from 2009-2017 in Cincinnati, 128,157 in Columbus from 2012 through 2016, and 47,079 in Cleveland in 2016 and 2017.

But the analysis also found that some disparities were likely the result of police practices versus outright discrimination.

Reporters compared police stops in census block groups that were at least 75% white and compared them to ones that were at least 75% African American. Highway stops were not included. Here are key findings:

- In Cincinnati, police made 120% more total stops per resident in predominantly black areas.
- In Columbus, police made 84% more total stops per resident in neighborhoods that were at least 75% black.
- Cleveland issued 26% more tickets per resident in predominantly black areas.
- Once ticketed or stopped, police arrested blacks at a much higher rate than whites. Blacks made up 75% of all Cincinnati stop arrests, 70% of all Cleveland arrests during ticketed stops and 59% of traffic stop arrests in Columbus.

- Police pulled over African Americans at about the same high rate in a time-controlled sample of stops made either in daylight or darkness. This suggests they pull over drivers regardless of race. But more stops in minority neighborhoods suggests the location of patrols may be a factor in the racial disparities.

![Black and white areas policed differently](image)

Cincinnati Police Chief Eliot Isaac said the findings concern him.

“We need to look at the reasons why in predominantly African American communities there (is) more police contact,” he said.

Isaac does not believe widespread bias exists in the department. But that’s not to say an officer never engaged in biased activity, he added.

He pointed to social conditions such as poverty as factors that bring police to certain communities.

“If we address our poverty issues in this city,” Isaac said, “you will see these disparities disappear.”

The racial makeup of police stops on highways was closer to the overall proportion of the population, suggesting that blacks and whites commit traffic offenses at the same rate.
In 2016, the population of Cincinnati was 49% non-Hispanic white, 43% black, and the rest Hispanic, Asian, mixed, or unknown. Yet black people made up 57% of traffic stops between 2012 and 2017, both on foot and by vehicle, the data analysis shows. Whites made up 41% of stops.

Considering the racial makeup of Cincinnati, blacks were stopped at a 58% higher rate than whites.

And once stopped, 19% of black drivers pulled over are arrested, compared to 9% of whites.

Blacks made up 75% of all arrests, compared to 24% for whites.

“This type of disparity is what must be explained, and so far the city has failed to do so,” said Al Gerhardstein of the racial disparity in Cincinnati.

The Cincinnati civil rights lawyer helped write the Collaborative Agreement. The landmark pact was created nearly two decades ago in part to improve police-community relations after unrest and a riot in 2001. It has been praised as a national model, though some say the agreement, which exists today by mutual consent, is neglected in some respects.

And the Cincinnati Police Department has been criticized in the past for failing to adequately track possible police bias.

Dan Hils, president of the union representing Cincinnati police, said by email that past examinations have "confirmed that our officers do not use race as the basis for our stops.”

"Our people are deployed so that they can provide service where it is needed most," Hils added.

Interactive Map

Columbus Police Vehicle Stops Per Person, Percentage African American
Today, the department does not maintain formal policy that guides decisions about where to deploy officers, according to Lt. Steve Saunders, a police spokesman.

Isaac said there is no reason for such a policy.

"We have guidelines and there are best practices that we may model," he said, adding the department uses recommendations from the International Association of Chiefs of Police.

More than half of all sworn Cincinnati officers, about 575, are regularly on patrol to enforce traffic violations, though they have other duties as well. Areas in the city with more violent crime and more calls for service are generally more likely to see a higher police presence, Saunders added.

Cincinnati police have implemented an implicit bias training program for all law enforcement personnel. The program is expected to be completed by April, according to a city spokesman.
What the analysis doesn't prove

A higher percentage of blacks stopped doesn't necessarily mean that police targeted African Americans, though, based on the data analysis.

One theory [https://www.columbian.com/news/local/mu-professor-uses-veil-of-darkness-method-to-distinguish-racial/article_1ad6b608-a0b3-11e8-a80e-7b9068f0e6d.html] has it that if widespread racial profiling exists in a city, black drivers will be stopped more often in daylight than in darkness, when it is harder for police to see drivers. That's not occurring, though, in Ohio's three largest cities, based on the data analysis.

Reporters analyzed street stops between 5:16 p.m. and 9:41 p.m. (excluding twilight) over several years in Cincinnati. The stops occurred in either daylight or darkness because of the changing seasons and daylight savings time.

In darkness, when it would be harder to see the race of a driver, white drivers were approximately 33.1% of stops, black drivers 64.7%, and others 2.2%.

In daylight, rates were nearly the same. Whites were still pulled over at a lower rate. Of those stopped, 33.5% were white, 64.7% were black, and 1.8% were Asian, mixed, or unknown.
For highway stops though, the opposite occurred: whites were pulled over at a rate higher than their city population. In that same time period, in both daylight and darkness, about 68% of those stopped were non-Hispanic whites, about 27% were black, and the rest Asians, Hispanic, or unknown.

In other words, when it may be difficult to tell the race of drivers (because they are whizzing past on the freeway), police stopped many more white drivers than black ones. For neighborhood stops though, the data shows police consistently pulled over more black drivers, even if they probably couldn’t see them, possibly because they were more likely to already be in African American neighborhoods.

The daylight-darkness findings assume people drive the same way at all times, though, which a 2019 study (https://beeenomics.uchicago.edu/research/working-paper/endogenous-driving-behavior-veil-darkness-tests-racial-profiling) suggested might not be the case. This analysis also doesn’t account for the racial makeup of people driving into and out of the city.

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**Cop complaints made by blacks rarely sustained**

Yet some black drivers in the city believe they have been profiled.

Drivers like Michelle Cameron, the black Westwood resident out driving one evening in 2017 in Price Hill.
The 40-year-old Cameron had some time before her shift as a security guard at a downtown office building, so she pulled into Mount Echo Park, hoping to take in the view and complete some paperwork.

A Cincinnati police officer ruined any chance for a quiet moment, Cameron said, pulling up beside her and asking her to leave because the park had closed.

But Cameron knew the park was actually open and that she hadn’t done anything wrong (she wasn’t ticketed). Even so, she felt she had no choice but to drive away.

She reported the officer to the Citizen Complaint Authority, an agency that investigates accusations against police. Five months passed before the officer was questioned. The agency is currently short-staffed.

Findings by the agency are voted on by a board of seven citizens. The city manager signs off on conclusions.

The Citizen Complaint Authority reviewed Cameron’s stop, finding the officer had broken department policy by not turning on her body camera. But discrimination, harassment and improper stop allegations were not sustained due to a lack of “sufficient evidence.”

A not sustained ruling indicates the agency couldn’t prove an allegation one way or the other.

“Something should have happened to that (officer),” Cameron said. “I tried to expose wrong.”

The cop in Cameron’s case told an agency investigator that there are “frequent heroin users in the park,” but no cause for suspicion of Cameron or her vehicle is mentioned in a record of the complaint.

Cameron felt racially profiled, she said. She is hesitant to drive at night now, fearful she may be humiliated again.

“I felt defeated,” she said. “I felt violated. ... I felt low.”

Reporters obtained 70 stop-related complaints submitted to the Citizen Complaint Authority from 2015 through May of 2019. Older cases exist, but a city spokesman said some full complaint investigation reports have likely been disposed of as part of regular record maintenance.

None of the 14 formal allegations of discrimination contained in the cases, including Cameron’s, was upheld by the agency. Investigators found nine such accusations were “not sustained,” meaning they could not determine whether discrimination occurred. Five allegations were deemed unfounded.

Three out of four complaints were filed by black people.

Data available through the city’s website provides case outcomes since 2014, showing discrimination charges are rarely sustained by the Citizen Complaint Authority.


The agency received 149 stop-related complaints and 84 discrimination complaints in more than five years, according to an analysis of the city data. Some cases contain more than one complaint.

Of the more than 225 complaints, just one stop complaint and three discrimination complaints were validated.

The actual number of instances of perceived discrimination is likely higher, based on a review of the 70 cases obtained by reporters.

For example, in a 2017 complaint, a black man said he felt profiled, and the claim was recorded on an officer’s body camera. The man had parked and was walking when officers handcuffed him under suspicion of drug possession. The man later accused an officer of telling him, “You the big man around here? We’re going to get to know you,” according to the complaint.
The authority didn’t consider discrimination in the case despite mentioning the man’s comment about feeling profiled in its report.

And in a case last year, an officer claimed he heard a black woman whistle while investigating a prostitution complaint in the West End. The officer handcuffed the woman. The authority didn’t consider discrimination in the case. It determined her alleged whistling constituted enough reasonable suspicion to clear the officer of wrongdoing.

The woman, 45 years old at the time, was waiting for a bus to go babysit her granddaughter, according to the complaint report.


Fear of the ‘gateway’ stop

Cincinnati officers’ conduct has raised concerns from the Citizen Complaint Authority in some cases but rarely sustained charges of wrongdoing.

In 2015, a black driver and his passengers were stopped and ordered out of their vehicle by officers working an off-duty detail. One officer later told the agency that he’d smelled marijuana. No drugs were recovered.

The officer also said later that the stop was initiated because the vehicle had been parked too long at a gas station and had a cracked windshield, according to a record of the complaint. The occupants had been “just sitting” for about 10 minutes at the station, the officer said, according to the complaint report.

Both officers involved were cleared of wrongdoing.

In 2017, an officer thought he smelled marijuana through an open vehicle window occupied by a black man.

After the man entered a nearby house, the officer yelled for him to come out, telling him he was under arrest. More officers arrived, and a woman and her minor son were forced from the house as officers searched it. Nothing was found. The agency determined the search violated Cincinnati police policies, according to the case record.

The man was charged with obstructing official business and fined $310 but wasn’t charged with a drug-related offense, according to court records.

About a year earlier, in a complaint report regarding a different case, the agency wrote that increasingly, Cincinnati officers “believed” they saw or smelled marijuana and thus conducted a vehicle search. The agency recommended Cincinnati police review the issue to determine if more training or new policy would help decrease unsuccessful searches.

Kim Neal, the director of the Citizen Complaint Authority, said that after the agency raised the issue with Cincinnati police, similar incidents decreased.

An independent review team assessing the city’s effort toward bias-free policing suggested tracking arrests by officers ultimately declined for prosecution.

When asked about whether the suggestion had been implemented, a city official said by email that the implementation phase didn’t begin until February of this year. The final report by the review team was submitted in January of 2018.

“(The independent review) recommendations are multi-faceted and cannot be addressed all at once,” wrote Jason Cooper, who heads criminal justice initiatives within the Cincinnati city manager’s office.
Cooper added that experts and community leaders are helping to guide the creation of a broad strategy for data collection and analysis for the "ongoing evaluation of progress towards bias-free policing." Recommendations from the independent review are being considered.

A plan will be shared with an oversight group in February.

Gregory Levy (Photo Credit: Max Londberg / The Cincinnati Enquirer)

Gregory Levy said he views stops as a "gateway," a means for police to investigate whether a person has committed a crime — mainly drug crimes.

In January, he tried to stroll across a street near the Hamilton County Courthouse. As he crossed Court Street at Main, an officer hailed him, demanding he stop, Levy said.

The officer asked if he'd noticed the "don't walk" signal flashing as he stepped into the crosswalk, Levy said.

He said he hadn't.

"(There are) no cars coming. I got the music in, walking across the street," Levy said. "It was some petty stuff."
He was charged with a crosswalk violation, an offense that was ultimately dismissed, according to court records.

And in March 2017, Levy was driving along Central Parkway with a friend, both “jigging to the music” in his Mercury Cougar. A Cincinnati officer pulled him over. The officer asked if any drugs were in his car, Levy said.

Levy was ticketed for a loud muffler and driving with a suspended license, suspended because he’d fallen behind on child support, according to court records.

The loud muffler charge was dismissed, but he was fined $260 on the other charge.

“Black people get targeted because they (police) are looking to find drugs all the time,” Levy said. “It’s like we’re trapped.”

**In Columbus: ‘I’m a magnet for the police’**

Robert Jackson said the same day as his release from prison, in mid-September, he was at the downtown Columbus Greyhound station when he saw two men arguing. He thought he should leave before police arrived. As he walked away, an officer stopped and questioned him, he said.

“He automatically assumed it was us,” Jackson said, referring to himself and several other black men who had also left the scene.

Jackson felt profiled, but his case did not appear in the Columbus stop data, which didn’t include pedestrian stops.

“I was incredulous,” Jackson said. “Like, wow, I haven’t even been out of prison an hour and here I am encountering the police. I was telling my daughter’s mother yesterday: I’m a magnet for the police.”

In Columbus, a similar racial disparity as in Cincinnati emerged in the police stop data.

Reporters looked at vehicular police stops from 2012 to 2016. In 2016, the population was 28% black, 58% non-Hispanic white, and the rest Asian, Hispanic, or unknown.

Yet blacks made up a much higher share of those pulled over, compared to the population. Police pulled over blacks 44% of the time, whites 48% of the time, and 8% for others.

Considering the racial makeup of Columbus, blacks were stopped at an 89.8% higher rate than whites.

Between 5:08 and 9:06 p.m. in Columbus, (excluding twilight) street stops for blacks were 48% in the darkness, and the same rate in daylight. Non-Hispanic whites made up 45% of darkness stops, and 47% of those stopped in the day. (Asians, Hispanics, and mixed made up 7% in darkness, and 5% during the day.)

On the highways, during that same time period, non-Hispanic whites ranged between 57% of those stopped in darkness, to 61% in daylight. During that same time period, Blacks were pulled over at roughly the same rate, from 34% in darkness, 33% in daylight. (Other races made up the remaining 6-to-8%.)

Again, police made more stops altogether in black neighborhoods compared to white ones. In Columbus, police made 84% more total stops per person in areas that were at least 75% black.

Columbus’ Police Spokesman, and Diversity Inclusion Liaison Sgt. James Fuqua, said the force tries to allocate officers by where they get a lot of calls on a particular day. There are no particular rules governing which areas officers are required to be in, and no guidelines on how to provide equal coverage.

“We always encourage people to reach out to their community liaison if there’s an issue,” he said.

Reporters later shared the results of their analysis with the police force and asked if they would make any changes. Fuqua said Police Chief Thomas Quinlan, who had served as interim police chief from April 2019 until being named permanently on Tuesday, has plans to shift resources.

In Columbus, blacks were arrested more often as well. About 5.5% of blacks pulled over were arrested, compared to just 2.9% of whites.

Blacks were also searched at a much higher rate in Columbus. Of blacks pulled over, police searched 9.6% in Columbus. In contrast, only 4.8% of non-Hispanic whites were searched. Hispanics had the highest search rate, at 13.7%, although they are a very small slice of the Columbus population overall.

However, police arrested suspects after searching them at about the same rate, 61% for blacks and 60% for whites.

Altogether in Columbus, of all those arrested, 59% were black, compared to 34% white. Those searched were 60% black, and 33% were white.

(Cincinnati data did not include if a search was conducted for any stop. And though requested, none of the cities provided data on whether contraband was actually found.)

Former Columbus Police Chief Kim Jacobs disagreed with the idea that some areas of the city are overpoliced.

“That’s not how we look at calls for service,” she said. “We’re not looking at the race of the victim or suspect.”

Jacobs said instead of putting officers in different locations, a better solution would be better training for officers, so they know how to respond appropriately in a situation. She said officers don’t take the severity of a particular crime into account, they simply respond to all calls.

**More tickets, more arrests for Cleveland blacks**

In Cleveland, reporters looked at 47,079 traffic tickets in 2016 and 2017 and saw a similar pattern to Columbus and Cincinnati.

According to Census estimates, in 2017 Cleveland’s population was 40% white, 50% black, 2% Asian, and the remaining 8% Native American, Pacific Islander, multiple races or unknown. Yet blacks made up 59% of the traffic tickets given out by police. Whites comprised 36% of those ticketed.

Considering the racial makeup of Cleveland, blacks received traffic tickets at a 31.1% higher rate than whites.

Reporters looked at traffic tickets issued between 4:58 p.m. and 9:05 p.m. (excluding twilight) and noted if each stop happened in daylight or darkness, because of the changing seasons and daylight savings time.

When looking just at highway stops, police ticketed white drivers 59% of the time in darkness, and 56% of the time in daylight, compared to 37% of blacks stopped at night, and 38% during the day. (Others made up 4% at night, and 6% the day respectively.)

When looking at neighborhood stops in that same timeframe, though, the opposite happened: Black drivers made up 59% of stops in darkness and 60% of those stopped during the day. Whites made up 36% of stops in darkness, and 35% of stops during the day. (Asians, Native Americans, and others made up 4% at night, and 5% during the day.)

In other words, when police couldn’t see drivers whizzing past them, on a highway, they consistently pulled over a high number of white drivers. On surface streets, they consistently pulled over more black drivers, whether they could see them or not.
Again, the answer could lie in the initial placement of officers. Cleveland issued 26% more tickets per person in neighborhoods that were at least 75% black.

In addition to being ticketed at a higher rate, blacks were more likely to be arrested as well. Nine percent of all blacks pulled over are arrested, whereas only six percent of all whites pulled over are arrested. Altogether, blacks made up 70% of all traffic ticket recipients who were also arrested. Whites represented 28%, and the remaining 2% were Asian, Arab or unknown.

When initially asked about the placement of officers, Cleveland’s Detective David Gallagher said officers are deployed strategically throughout the five neighborhood districts and within specialized units based on personnel analytics and crime analysis. He also said their deployment and staffing plans are constantly reviewed and updated.

Reporters later shared the results of their analysis with the police force and asked if they will make any changes. Sgt. Jennifer Caiccia said police staffing levels are based on need, populations and the crime rate.

“The department already implemented training across the board in implicit bias,” she said.

*The Plain Dealer of Cleveland contributed to this story.*