

## Ed Foster

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The definition of official misconduct is as follows: Criminal conduct by a public official, criminal conduct by an administration's member, dereliction of performance in office, [deviation from rectitude](#), [dishonest management](#), failing to uphold a sworn oath of office, failure in office, guilty act while a public official, [illegal act](#), illegality by a public official, improper conduct by a public official, impropriety by a public official, maladministration by a public servant, malfeasance by a public servant, misadministration by a public servant, misconduct by a public official, misdeeds by a public official, misfeasance by a public official, [misgovernment](#), misguidance by a public official, mismanagement by an office holder, misprision by an office holder, nonfeasance by an office holder, offenses while in office, transgressions by an office holder, turpitude by an office holder, [wrongdoing](#), by a public official

**Associated concepts:** unlawful gratuities

This summer I discovered that the part of the Town Code that calls for direct election of the Mayor was not just a part of the code. In 1991 the Town Council put forth a voter initiative that called for the direct election of the Mayor. This was put on the November ballot of that year and passed by a 3 to 1 margin. The Town council certified the vote with council resolution 91-25 and repealed any part of the Town Code that conflicted with the direct election of the Mayor. This left the council with no part of the Town Code that allowed for the appointment of a Mayor.

This type of law is in a whole different category than a law passed by the Town Council.

The Constitution of the State of Arizona provides that the only way this type of law can be changed is by a vote of the people. Article IV, Part 1, Paragraph 6(c) states that the legislative body may not pass any resolution that does not further the purpose of a voter passed initiative. When the Town Council voted to Appoint a Mayor last year it was a legislative action in violation of the constitution because it did not further the purpose of the initiative.

In July I sent my first letter to the council concerning the problems created with the appointment of a Mayor last year. That was followed by more letters that went unanswered until I requested a meeting with Town Manager, Alex Taft, on July 23rd.

The meeting I requested took place on July 27<sup>th</sup>. The coalition met with Alex Taft and Jeff Gilbert and the problems that were created by the illegal appointment of a Mayor were discussed. At this meeting the chief asked what we wanted. We stated that the council ought to acknowledge the mistakes that were made. We also asked that the record be examined for legal problems associated with the participation of Mr. Kelly and Mr Lizarrga in the town's business. We suggested the these two men be re-appointed and sworn in so their continued participation in town business would be legal.

Ms. Taft told us that it would take time to get an opinion from the town attorney. I asked how much time she would need. She informed us that she needed three weeks and we agreed. I informed the chief that if we were not informed I would proceed with criminal complaints against elected officials.

Not only were we not contacted, the legal opinion was declared confidential and the council continued to violate the laws of the Town Code. On October 26<sup>th</sup> I filed the first of the criminal complaints against the council members.

Mr. Davidson was charged with malfeasance in office for his vote on the appointment of a Mayor.

Mr. Huntley was charged with malfeasance in office for his vote on the appointment of a Mayor. He was also charged with a violation of ARS 38-444 receiving a reward for which he was not entitled because he is being paid as Mayor when he is only an 'acting Mayor.'

Mr. Kelly and Mr. Lizarrga were charged with a violation of ARS 38-234 usurpation of office This is knowingly intruding oneself into a public office for which the person was not elected or appointed.

The letters to the council pointed out that since Mr. Busby's appointment to Mayor was a violation of the constitution, that appointment was illegal his appointment was null and void. That means that there was no seat on council to appoint Mr. Kelly to, so his appointment to council was also null and void.

This happened again when Mr. Busby died in office and Mr. Akin was appointed Mayor. Mr. Lizarraga was appointed to the council illegally for the same reasons.

Mr. Huntley was charged after the council meeting of October 27<sup>th</sup>. In that meeting a vice mayor was appointed and Mr. Huntley continued as Acting Mayor. The Town Code provides that the acting Mayor should preside in the absence of the Mayor and the Vice Mayor. He should have taken his seat on council and turned the meeting over to the Vice Mayor who is supposed to preside when the Mayor is absent. Mr. Huntley was charged with a violation of ARS 38-234 at this time.

Ms. Cowell was charged with a violation of ARS 38-444 for putting forth a resolution to continue paying Mr. Huntley as the Mayor. This is a violation of the Town Code that provides for the compensation of elected officials. It was pointed out at the council meeting that the council could have changed the Town Code to allow this but they could not pass a resolution that was in violation of the existing Code.

The council has also appointed another member to the seventh seat on council, a seat reserved for the elected Mayor. They have done this twice in the last week with the resignation of Mr. Davidson. The council in the person of Mr. Huntley just doesn't get it. Mr Huntley wants to be the Mayor and he is going to be Mayor even if it violates the laws of the Town and the State.

Sincerely,

Ed Foster