



**Internal Investigation Report
Concerning Allegations of
Misconduct by
Chief of Police
Charles Horner**

Prepared By:

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Office of the City Solicitor
City of Portsmouth, Ohio**

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On July 14, 2008 Timothy A. Shaw and Allen Smith were appointed special investigators for the limited purpose of conducting an administrative investigation into the allegations of misconduct and abuse of power regarding Chief of Police Charles Horner, by the City Solicitor Portsmouth, Ohio, the Honorable Michael L. Jones.

On or about May 23, 2008, Chief of Police, Charles Horner was placed on administrative leave with pay by James D. Kalb, the Honorable Mayor of the City of Portsmouth, Ohio. The decision to place Chief Horner on paid administrative leave was based on allegations of misconduct and abuse of power.

On July 14, 2008, Special Investigators Shaw and Smith met with the City Solicitor and the Mayor to discuss the primary issues concerning the allegations regarding Chief Horner's alleged misconduct in office.

From July 15, 2008 to July 18, 2008, Special Investigators Shaw and Smith interviewed seventeen (17) members of the Portsmouth Police Department. On July 18, 2008, an interview was scheduled with Chief Horner. Shortly after the interview began, the attorneys present on behalf of the Chief requested that the interview be continued until a later date. Counsel for the Chief requested additional time to prepare. This request was granted and a new date of July 29, 2008 was established for that interview. On July 28, 2008, Chief Horner's attorney notified City Solicitor Jones that his client would not be attending the July 29, 2008 interview due to medical reasons and that the Chief would not be available for several weeks. Therefore at the request of the City Solicitor this report is being prepared and submitted to Mayor Kalb.

LEE SCOTT CASE

Mr. Lee Scott was alleged to have made threatening comments regarding Chief Horner. According to interviews conducted during this investigation, Chief Horner was of the opinion that these comments amounted to Intimidation of a Public Official and the Chief wanted Mr. Scott arrested on a felony warrant. Both the City Solicitor's office and County Prosecutor's Office reviewed the preliminary information and the request for an arrest warrant for Mr. Scott was denied.

The reasoning for the denial of this arrest warrant was provided to Chief Horner and it was recommended that Mr. Scott be questioned about these alleged

threats. Chief Horner then instructed police officers to locate Mr. Scott and question him about the threats. Investigators were not able to initially locate Mr. Scott, but were able to locate a vehicle believed to be his. Surveillance was set up to see if Mr. Scott would return to his vehicle. Prior to Mr. Scott arriving at the vehicle and prior to being questioned by investigators about the alleged threats, Chief Horner contacted the K-9 Unit and requested that a search be conducted on Mr. Scott's vehicle. It is important to note that the K-9 Unit arrived near the scene before Mr. Scott returned to the vehicle.

Once Mr. Scott arrived at the vehicle, investigators approached Mr. Scott and conducted an interview regarding the alleged threats he had made toward Chief Horner. Mr. Scott denied making any such threats. It should be noted that while this was interview was taking place, Chief Horner was driving in the immediate area to monitor the situation. After conducting the interview of Mr. Scott, an investigator smelled the odor of marijuana coming from Mr. Scott and asked if he had been smoking marijuana. Mr. Scott responded in the affirmative, and after a brief discussion with investigators, he was advised he was free to leave the area.

Immediately after Mr. Scott left the scene, Chief Horner arrived and wanted to know what was going on and what Mr. Scott had said. Chief Horner summoned the K-9 Unit that was standing by to the scene of Mr. Scott's truck. The investigators and Chief Horner discussed what had transpired and the Chief ordered that the K-9 unit conduct a search of the vehicle. The K-9 Unit conducted a search of Mr. Scott's truck and alerted to the right rear passenger area. Through interviews during this investigation, it was determined that Chief Horner made the following statement to investigators:

"If anyone asks, we will tell them that the dog was called out to search the truck based on the statement made by Lee Scott that he had just smoked marijuana before coming back to town and his past drug history."

This investigation also revealed that Chief Horner then pressured one investigator to obtain a search warrant based on the K-9 alert, the admission of Mr. Scott to smoking marijuana, and according to Chief Horner, Mr. Scott's past history with drugs. After obtaining the search warrant, the investigators returned to the Scott vehicle and at the scene were several citizens, along with the Portsmouth Fire Chief, Portsmouth Arson Investigator and an unidentified ATF agent. Due to the number of citizens at the scene, it was decided to tow the vehicle to a secure area and search it there. However, the officers at the scene were

interviewed as part of this investigation, and no officer felt any threat from the citizens at the scene filming the officers' actions. A search was done of the vehicle and only trace amounts of marijuana were found.

Chief Horner then ordered investigators to maintain a log of all individuals who were at the scene of the Scott vehicle search. In particular, Chief Horner wanted the names and actions of those allegedly associated with local websites and The Shawnee Sentinel. According to police officers interviewed, this is not a normal protocol.

This investigation has revealed that Chief Horner may have violated Section 2921.45 of the Ohio Revised Code as a result of his conduct regarding the Lee Scott vehicle search. Specifically, Chief Horner was the alleged victim of the investigation regarding Lee Scott and the allegations of intimidation against a public official. Chief Horner, acting in his official capacity, participated in the investigation by directing investigators to conduct certain investigative techniques and ordering the K-9 Unit to the area of Mr. Scott's vehicle before the interview had been conducted of Mr. Scott. This demonstrates Chief Horner's predisposition to take some type of police action against Mr. Scott by knowingly depriving Mr. Scott some of his Constitutional rights. Further, Chief Horner's statement to investigators of how they should misrepresent the true facts and circumstances as to why the K-9 Unit was called to the scene that day is of even more significance. Section 2921.45 of the Ohio Revised Code may have also been violated by the actions of Chief Horner ordering that a log be maintained of those affiliated with local websites and the Shawnee Sentinel and denying such individuals access to information, while at the same time granting access to other news media. This appears to be dangerously close to limiting the First Amendment rights of such individuals

The actions of Chief Horner in this one instance alone show his propensity to abuse his power and position as Police Chief.

GENERAL OBSTRUCTION OF JUSTICE

This investigation has substantiated that during the tenure of Chief Horner several instances of misconduct and abuse of power have occurred. Specifically, Chief Horner has ordered a detective not to pursue charges against a suspect in drug paraphernalia case, he has ordered a detective not to file a report in a criminal

investigation involving a personal friend, he has ordered a detective not to collect evidence in an ongoing criminal investigation, and he has ordered detectives to close a case without the benefit of a complete review by the local city and county prosecutor's office.

This investigation has further substantiated that Chief Horner has directly interfered with ongoing criminal investigations through his orders not to prepare criminal reports and collect criminal evidence, by instructing officers to misrepresent the facts and circumstances of the Lee Scott case, and in general, conduct that would be in violation of city policy and procedures of the Portsmouth Police Department if committed by any other member of the department.

Through his orders not to file reports and collect and process evidence, Chief Horner's actions reflect a general obstruction of justice. These actions by Chief Horner have created low morale and frustration within the Portsmouth Police Department.

In one recent criminal case, Chief Horner indicated to detectives that he would recuse himself from an investigation due to his personal friendship with persons who were subjects of the investigation. Nevertheless, Chief Horner actively participated in the investigation, and in the opinion of several officers interviewed, impeded in their ability to conduct a fair investigation. This went as far as officers being instructed not to leave a paper trail and process evidence. In this case, officers felt compelled to document the situation to protect themselves, despite being told by the Chief not to create a paper trail.

Insubordination

At the time of being placed on administrative leave by the Mayor, Chief Horner was notified in writing that he was not to have any contact with members of the police department regarding the investigation. During this time period, Chief Horner attended the June 2008 FOP meeting with several personnel of the police department in attendance.

At this meeting, Chief Horner made an impassioned plea for assistance by the FOP lodge for their support. Several personnel interviewed by the special investigators who were present at the union meeting stated that Chief Horner made disparaging remarks about the Mayor impugning the character of the Mayor.

Further interviews revealed that after his comments the union hall remained silent and several officers stated they felt uncomfortable by Chief Horner's remarks and his presence at the meeting. This conduct was in direct violation of the order of the Mayor.

HOSTILE WORK ENVIROMENT/ ABUSE OF POWER

Personnel of all ranks stated to the special investigators that it was their opinion Chief Horner was driven in his decisions by concerns for the mainstream media and the Shawnee Sentinel, a locally produced newspaper that gave attention to public figures and issues that concerned the community.

An analysis of the statements provided by a significant majority of the personnel interviewed clearly indicate that Chief Horner manages his department through intimidation, reprisals, and creates a hostile work environment for the personnel of the Portsmouth Police Department. Additionally, numerous personnel stated that due to the atmosphere of intimidation and reprisal that existed prior to Chief Horner being placed on administrative leave, coming to work became a task of survival. Numerous personnel stated that their work product had significantly suffered in that it was much safer to do as little as possible in their police work to avoid any initiative that would cause Chief Horner to punish personnel. A few interviewed stated his management style causes officers to delay making decisions that should be routine thereby placing the officer and the public in a much more dangerous situation than necessary.

Chief Horner has created an atmosphere within the police department that makes it difficult for personnel to carry out their duties as professional police officers. Of particular interest to investigators was the fact that this inability to perform duties was stated by personnel of all ranks.

This investigation also substantiated that Chief Horner disciplined an officer for an act that, in the opinion of the special investigators, was not against departmental policy. Furthermore, the Chief discussed the discipline given to the officer with the media prior to informing the officer involved. This caused the officer significant mental anguish which resulted in that officer being hospitalized

for anxiety-related issues. It should be noted that upon appeal the Mayor overturned the discipline ordered by Chief Horner. Statements made by police personnel indicate that Chief Horner's actions have negatively affected the ability of that officer to carry out his specialized duties.

The majority of the personnel interviewed by the special investigators mentioned this particular incident, and stated their concern for their careers if a situation happened to them in a like circumstance.

Therefore, Chief Horner has created a hostile work environment within the police department that makes it very difficult for personnel to carry out their duties as professional police officers.

On a final note, several officers stated they feel they are not receiving the necessary training to perform their duties. Many officers have not received basic self defense training in almost ten years. Additionally, officers are unaware as to how they are performing due to an outdated Policy and Procedure Manual. This manual is ten years old and has not been updated except for a couple of new directives. Furthermore, officers do not routinely receive Performance Plans or Performance Evaluations to determine where they are in the performance of their duties. Through interviews of personnel, it was discovered the only time an evaluation is done is when there is a promotion board coming up.