

# Bob Mollette

## 3<sup>rd</sup> Ward Councilman

1705 Franklin Blvd.  
Portsmouth, Ohio 45662

Phone: 740-353-0099  
email: [mollette@mollette.info](mailto:mollette@mollette.info)  
website: [www.mollette.info](http://www.mollette.info)

Correspondence#: 09-001

January 26, 2009

Mark Kuhn, Scioto County Prosecutor  
602 Seventh Street, Room 310  
Portsmouth, Ohio 45662

### **Re: Marting Annex Roof – Expenditure of Public Funds without Legislative Approval**

On January 13, 2009 I informally spoke to you concerning the difficulties in obtaining an answer from certain City elected officials and auditing groups pertaining to a potential improper expenditure for a new roof on the Marting Annex. On January 14, 2008, per your suggestion, I requested a formal response to my April 21, 2008 correspondence (#08-015) from City Auditor Trent Williams. The City Auditor stated it would be forthcoming but at this time no response has been received.

On April 15, 2008, after reading a local newspaper article titled "*Marting annex getting new roof*," it shocked me to discover several City officials intended on spending limited City resources on a new roof for a building the City planned on selling. To my knowledge, this expenditure was not evaluated or approved by City Council. In fact, the newspaper article provides the only public record of the event. The article stated the City has decided to install a new roof on the former Marting's department store annex to make it more marketable; City Council has been trying to sell this building, and so we're putting a brand new roof on it; the annex is not part of the City's plans to develop a City Center housing City offices in the main building; and the money is coming from the Capital Improvement Fund. The lowest bid was \$49,500 but the final price probably will run more than that.

On April 21, 2008 I requested the documentation as to whom and when the City decided to replace the roof of the Annex; the documentation that approved this Capital Improvement Fund expenditure; the documentation to justify spending taxpayer dollars for a roof on a building the City intends to sell; and documents pertaining to any marketing performed for the Marting's Annex to date in letter #08-015. This letter was sent to members of the Advisory Building Committee (ABC) which consists of Jim Kalb (Mayor), Trent Williams (Auditor), Michael Jones (Solicitor), and Michael Mearan (1<sup>st</sup> Ward Councilman). The ABC was formed August 13, 2007 to expedite the process of relocating the Municipal Building and to make recommendations to Council when necessary. Keep in mind on March 18, 2008 I documented my concerns to you in letter #08-009 on the legal obligations of the Advisory Building Committee as they relate to the Ohio Sunshine Laws public records and open meeting laws. The ABC meetings were not open to the public and minutes of the meetings are not accessible to the public.

On May 2, 2008 I requested an investigation and appropriate actions to be taken by the Ohio Auditor of State with correspondence #08-017 because no appropriate documentation was provided to justify or establish the legality for this expenditure. On May 12, 2008 the Auditor of State notified me this concern would be provided to Caudill & Associates for their review as part of the 2007 yearly audit. Caudill & Associates were contracted by the City to perform the annual financial & compliance audits for the three year period which included 2007. On May 22, 2008 the Auditor of State requested Caudill & Associates to send a summary of their findings and their final decision regarding this issue along with other findings during the 2007 audit. On December 22, 2008 the Auditor of State established that Caudill & Associates, even though they had documented and reported a review had been performed,

did not provide the factual information requested; Caudill & Associates reported review of my concerns complete on September 2, 2008; the next City audit is not scheduled until the 2008 yearly audit with results around September 2009. I have documented my concerns in correspondence #08-037 dated December 29, 2008 to Council members, Auditor, and the Solicitor with the lack of a comprehensive audit executed by Caudill & Associates and my concerns for future contracts with Caudill & Associates.

Again, I am perplexed by the complexity of establishing the legality of the Marting Annex roof expenditure. I am requesting your assistance to investigate the following contentions:

1. As a member of the legislative body, I contend the expenditure on the Marting Annex did not receive legislative approval which appears to be in conflict with City Charter Section 53 *Expenditures Only Pursuant to Appropriations*, Section 57 *Money Required to be in Treasury*, and Section 61 *Contracts*.
2. The Mayor responded May 12, 2008 in a letter which included meeting minutes from the February 13, 2006 City Council stating *"Attached is a copy of Council Minutes showing our former Solicitor stating that the City has the right and responsibility to protect its assets. The money used for repairing the roof had been previously appropriated and the project was properly bid. I feel confident that the investment in a new roof will be returned upon sale or use of the building."* A review of the same minutes reflects the Solicitor stating *"that Council would have to authorize any expenditure, including updating the plans on the Marting building."* I contend the legislative body did not evaluate or approve the merits of this expenditure and to date I have not received the information requested April 21, 2008.
3. The record reflects \$50,695.40 was paid to Stevens Construction from Line Item #301.115.5513 on May 21, 2008. The monies used were collected from the property owners from the 2005 Tax Budget which reflected \$465,000 for the *"City Building Renovations Bond Anticipation Note."* Ordinance #30-2004 was passed by Council on May 10, 2004 providing for the *"issuance of \$450,000 Municipal Administration Building Improvement Bond Anticipation Notes by the City of Portsmouth, Ohio, in anticipation of the issuance of bonds."* Section I describes the *"purpose of paying for the costs of renovating, rehabilitating, and equipping a building for use as a municipal administration building, including architectural and design costs, and paying costs related to the above purpose."* I contend the expenditure on the Marting Annex roof is in conflict with the purpose the tax dollars were collected from the property owners.
4. I contend all expenditures associated with this Line Item #301.115.5513 (Building/Renovation) should be audited to confirm expenditures are valid and compliant with the purpose of the issuance of bonds and the taxes collected.
5. I contend the decision to expend public monies on the Marting Annex roof was made behind closed doors in conflict of the Ohio Sunshine Laws by the Advisory Building Committee (ABC). The ABC meetings were not open to the public and no meeting minutes exist. I contend the ABC members acted on several matters in conflict of the Ohio Sunshine Laws and legal significance of these actions should be investigated.
6. I expressed my concerns with the auditing delays in correspondence #08-037 dated December 29, 2008. I am concerned the statutory limitation for legal action for this contract may be affected by the delay of Caudill & Associates' completing the State Auditor's request to evaluate the Marting Annex roof within the 2007 Audit. I am requesting accountability for positive change.

The following associated letters #08-008 (March 7, 2008), #08-009 (March 18, 2008), #08-010 (March 31, 2008), #08-013 (April 17, 2008), #08-015 (April 21, 2008), #08-017 (May 2, 2008), #08-034 (November 11, 2008), #08-037 (December 29, 2008) may be reviewed on my website [www.mollette.info](http://www.mollette.info) under the "Letters" page.

I feel your involvement is needed to obtain a legal opinion on the issue.

If you should have any questions contact me.

Respectfully,



Bob Mollette, 3<sup>rd</sup> Ward Advocate and Representative on City Council

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cc: Jim Kalb, Mayor  
Michael Jones, Solicitor  
Trent Williams, Auditor  
Michael Mearan, 1<sup>st</sup> Ward Councilman  
Honorable Council Members  
Greg Caudill, Caudill & Associates, CPA's, 725 5<sup>th</sup> Street Portsmouth, Ohio 45662  
David Green, Scioto County Auditor, 602 7<sup>th</sup> Street Room 103, Portsmouth, Ohio 45662  
Mary Taylor, CPA, Auditor of State, 88 E. Broad St., 5<sup>th</sup> Floor Columbus, Ohio 43215  
Richard Cordray, Ohio Attorney General, 30 E. Broad St., 17<sup>th</sup> Floor Columbus, Ohio 43215  
Joseph Griffith, *Dagger, Johnson, Miller, Ogilvie & Hampson LLP*  
Jo Ann Aeh, Clerk (Record)