

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

CITY OF PORTSMOUTH

ETHICS COMMITTEE

IN RE: Complaint Against Esther Kennedy

**AFFIDAVIT OF KATHLEEN CAVALARO**

I, the undersigned, Kathleen Cavalaro of 32 Broad Street, Rochester, New Hampshire, after being duly sworn, hereby affirm and state as follows:

1. I am the Executive Director of the Seacoast Repertory Theatre in Portsmouth, New Hampshire, said Seacoast Repertory Theatre also serving as fiscal agent to the Pop-Up project, which began on or about, June 12, 2020;
2. I have read the Ethics Complaint submitted by Ms. Nancy Pearson against City Counselor, Esther Kennedy, as well as, read the Time-Line submitted by Counselor Esther Kennedy at her recent Ethics Committee Hearing, Wednesday, September 16, 2020;
3. The purpose of my Affidavit herein is to correct what I believe are false references and quoted statements assigned to me by Counselor Esther Kennedy in the Time-Line she filed with the City's Ethic Committee and which was made part of the official record;
4. Accordingly, set forth hereinbelow please find my responses to the references and quoted statements Counsel Kennedy assigned to me in the Time-Line she filed with the City's Ethic Committee and which was made part of the official record:

**JUNE 17<sup>TH</sup>** – Contrary to Counselor Esther Kennedy's timeline, I was clearly identified as a representative of the Seacoast Repertory Theatre and an advocate for the Pop-Up project. The referenced video in her Time Line clearly states that the Seacoast Repertory Theatre would benefit from an outdoor performance space and sales derived from this, **not from city funds**, which had never been discussed as being transferred to the Seacoast Repertory Theatre. Counselor Esther Kennedy knew or should have known this at the time and certainly in no way should have been confused about the arrangement. The expressed purpose of the proposed project was to benefit local retail, restaurant, and arts organizations, of which the Seacoast Repertory Theatre is one.

Additionally, at no point was the potential revenues referred to, identified as city money from the CARES act. Counselor Esther Kennedy never reached out to me for clarification despite my contact information being readily available to her.

At no point was the Pop Up project presented as benefitting just two entities. I was and have always been identified as being a representative of the Seacoast Repertory Theatre, and that all revenues derived therefrom were from event revenues only and not city money. I also clearly articulated that the Seacoast Repertory Theatre would not be the sole beneficiary of the effort.

The interview Counselor Kennedy refers to in her Time-Line can be found at the following URL: <https://www.nbcboston.com/news/coronavirus/nh-parking-garage-to-turn-into-outdoor-marketplace-to-help-struggling-shops-restaurants/2144752/>

**JULY 2<sup>nd</sup>** - While I am not named by Counselor Kennedy directly in her July 2<sup>nd</sup> time line, on or about July 2<sup>nd</sup> I was the sole organizer of the GoFundMe page for Seacoast Repertory Theatre acting as fiscal sponsor for the Pop Up project. Counselor Kennedy has given the wrongful inference that I acted “illegally” by soliciting funds for the pass through arrangement of Seacoast Repertory Theater collecting funds for the Pop Up project, despite Counselor Kennedy by her own admission in her time line by date of June 15<sup>th</sup> stated, “as long as the Seacoast Rep or another non-profit entity serves as a pass through, the arrangement is perfectly legal”.

**JULY 11<sup>th</sup>** - I do not contest that the Pop Up project, through fiscal sponsorship, raised enough money to match the city’s funding challenge of \$50,000. It was not hard considering the community support. For further background, the Pop Up project incorporated as a non-profit on July 2<sup>nd</sup>, and non-profit status is retroactive up to 27 months. Even if it were not retroactive, Seacoast Repertory Theatre was still acting as fiscal sponsor for the Pop Up project. All donations were secure, isolated, and tax-deductible.

With regard to my Facebook quote, “will allow”, that is a future tense verb phrase and is not misleading in any way. “Allows” as Counselor Kennedy suggested in her time-line I used, would be a present tense verb. There is nothing misleading about that. Counselor Kennedy again in my opinion is attempting to distort and/or twist my words in an effort to hurt my reputation before all of the Committee Members and the general public.

Furthermore, as Counselor Kennedy, knew or should have known, the Pop Up project webpage stated the exact safety measures in place regarding the funds, and that they are in fact isolated and secure. Still further, Counselor Kennedy does not contact anyone related to the project to inquire about the handling of funds, though she has contact information for the Pop-Up project individuals by her own admission.

**JULY 20<sup>th</sup>** - During my phone call with Counselor Kennedy, she stated to me that the purpose of her actions were to teach us a lesson. While Counselor Kennedy did offer to turn over the domain name, she did so with conditions. She did not at any time offer the filing fee for same.

The conditions Counselor Kennedy demanded, were for a public apology for alleged illegal actions by me as “organizers” for allegedly misrepresenting the Pop Up project as a legal entity and soliciting donations for same. This is simply not true. At all times we were soliciting donations legally and transparently. Again, by Counselor Kennedy’s own admission, June 15th, “as long as the Seacoast Rep or another non-profit entity serves as a pass through, the arrangement is perfectly legal”.

She also demanded that we draft by-laws according to her requirements, not any requirements of the Portsmouth Task Force or the City Council.

I did advise Counselor Kennedy to seek counsel before terminating the call. I do freely admit that I was upset, angry and not polite, but I did not hang up on Counselor Kennedy.

5. It is my opinion that Counselor Kennedy has wrongfully quoted me and/or created wrongful inferences of me in an attempt to distort and twist the truth so as to prevail against the Ethics Complaint filed against her, and more importantly, she is attempting to tarnish my reputation and character, in a public forum with false allegations, quotations, and inferences and for which I take great exception.

**DATED:** September 21, 2020

  
Kathleen Cavalaro

**STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM**

**Dated:** September 21, 2020

**PERSONALLY APPEARED** the above named, Kathleen Cavalaro, and gave oath that the foregoing subscribed to by her is true and accurate to her best knowledge and belief, Before Me:

  
Jay Nadeau, Esq., Justice of Peace  
Commission Expires: 4/8/2025