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MEMORANDUM

TO: **SUSSEX COUNTY COUNCIL**

The Honorable Michael H. Vincent
The Honorable Samuel R. Wilson, Jr.
The Honorable George B. Cole
The Honorable Irwin G. Burton, III
The Honorable Robert B. Arlett

FROM: **COUNTY ATTORNEY**

J. Everett Moore, Jr.

RE: **SUSSEX COUNTY COUNCIL ORDINANCE INTRODUCED ON OCTOBER 31, 2017 RE: LABOR UNIONS**

DATE: **JANUARY 5, 2018**

Background and Issue

At the October 31, 2017 Council meeting, Sussex County Councilmember Robert Arlett introduced an Ordinance, commonly referred to as the "Right to Work Ordinance,"[1]

[1] The reference to the Ordinance "Right to Work" was a source of debate and contention at the public hearing since the name implies that the employees may be denied the "right to work" in its absence. Since the title of the ordinance is lengthy, the "Right to Work" name is used herein for the sake of convenience only and does not imply a position on whether the name is a misnomer, as many citizens alleged at the hearing. Generally, RTW legislation prohibits union security agreements. Union security agreements may require all employees to join the union as a condition of employment. However, the U.S. Supreme Court in a 1988 case ruled that even under union security agreements, all employees have a choice to opt out of full union membership and pay a portion of the dues for the union benefits provided. *See Communication Workers of America v. Beck*, 487 U.S. 735 (1988). *See* Footnote 18 for additional explanation of union security agreements.

which prohibits employers[2] in Sussex County from requiring their employees to join or pay dues to a labor organization as a condition of employment. This Ordinance was drafted by an outside organization and without the assistance of my office. County Council conducted a public hearing on January 2, 2018 ("Public Hearing"). This memorandum is to provide my legal opinion with regard to this Ordinance.

Analysis

I. HOME RULE AUTHORITY

A. The County lacks the authority under the Home Rule statute, 9 Del. C.§7001 to enact this Ordinance.

The State Code grants the County powers under what is commonly known as the "Home Rule" statute. The Home Rule statute in 9 *Del. C.* §7001 states the following:

> "The government of Sussex County, as established by this chapter, shall assume and have all powers which, under the Constitution of the State, it would be competent for the General Assembly to grant by specific enumeration, and which are not denied by statute; including, but not limited to, any powers conferred prior to the effective date of this act by the General Assembly upon Sussex County, or upon the Levy Court of Sussex County, or upon the Levy Court Commissioners of Sussex County, or upon the officers or employees of Sussex County, or upon counties generally, or upon Levy Court Commissioners generally, or upon County Councils generally. This grant of power includes the power to fix the tax rate upon the assessed valuation of all real property in Sussex County subject to assessment by the County. This grant of power does not include the power to enact private or civil law concerning civil relationships, except as incident to the exercise of an expressly granted power and does not include the power to define and provide for the punishment of felonies." [emphasis added][3]

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[2] The Ordinance defines "employer" in accordance with the National Labor Relations Act. Employer is defined in the NLRA as "any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act [45 U.S.C. § 151 et seq.], as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization."[emphasis added] 29 *U.S.C.* §152. Thus, this Ordinance excludes the State of Delaware and Sussex County from "employer."

[3] 9 *Del. C.* §7001.

Home Rule authority permits the County any power that the General Assembly is competent to grant, excluding any powers denied by statute, but it does not include the power "to enact private or civil law concerning civil relationships except as incident to the exercise of an expressly granted power" (herein referred to as "Private Law Exception"). The "Right to Work" prohibitions in the proposed Ordinance (Sections 117-3 and 117-5) disallow union security agreements for private employers. Union security agreements may require an employee to join a union within a certain timeframe after hiring;[4] but under current law, all employees may opt out of full union membership and instead pay a portion of the union fees for the services that the union provides.[5] Since this Ordinance proposes to regulate contracts between employees, employers, and unions, this Private Law Exception is the critical language in determining whether the County has been granted the authority by the Home Rule statute to enact the RTW Ordinance.

Delaware state courts have not directly addressed whether the passage of Right to Work legislation or any other type of County legislation impacting the employment contractual relationship is consistent with the County's Home Rule authority. However, the Home Rule authority and this Private Law Exception have been examined in other contexts. In the 1976 case of *Weldin Farms, Inc. v. Glassman*, the Court of Chancery found that the Private Law Exception in the context of a drainage issue between two landowners foreclosed New Castle County from creating a private law action that would override Delaware judicial precedent.[6] The Court reviewed the express grant of authority from the State to regulate drainage in subdivisions and found that this express grant of power for drainage regulation did permit the Court to override the case law, since the county ordinance "must comport with the existing law of the State."[7] The Court further stated that "[t]here is nothing to indicate that in doing so the County may alter civil relationships between landowners that would otherwise exist at law."[8] New Castle County and Sussex County have identical language in the cited portions of the Home Rule statute. The Delaware Supreme Court affirmed the Chancery Court's decision and noted agreement "with the Vice Chancellor's decision that insofar as the County regulation conflicts with the existing common law of the State it is ineffective and cannot provide a defense against an injunction based on those common law principles."[9] Thus, these cases reiterate that the County cannot foreclose an existing private action under its Home Rule authority, as the County lacks the power to create a private law action under the Home Rule statute.

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[4] *See* National Labor Relations Act, §8(a)(3). Agreements requiring that employees are hired and retained from union membership as a condition of employment ("closed shop agreements") are already prohibited by federal law.

[5] *See Communication Workers of America v. Beck*, 487 U.S. 735 (1988).

[6] 359 A.2d 669 (Del. Ch. 1976).

[7] *Id.* at 679.

[8] *Id.*

[9] *Weldin Farms, Inc. v. Glassman*, 414 A.2d 500, 506 (Del. Supr. 1980).

A more recent 2002 Delaware decision, *NVF, Inc. v. Garrett Snuff Mills*, considered whether a county ordinance could create private cause of action under negligence *per se*[10] and cited favorably the Supreme Court's *Weldin Farms* case.[11] This case concerned alterations made to a property in violation of New Castle County drainage ordinances, which caused damages to adjacent private property. The plaintiff argued the defendant's violation of the County's drainage code as a basis for a negligence *per se* claim. Citing to *Weldin*, the Court found that the violation of the County's drainage code did not form a basis for *negligence per se*, because "[i]f the County cannot foreclose a private cause of action, it also cannot create one." [emphasis added]. Thus, the court again affirmed the Private Law Exception by declining to allow a county ordinance to serve as a basis for a civil right of action to sue.

Without question, this RTW Ordinance, if adopted, creates the basis for a private civil action between citizens for any violations of this Ordinance, and with Delaware cases expressly stating that the County may not create a private cause of action, it is my opinion that under current Delaware law, a court will find that the Private Law Exception to the County's Home Rule authority prohibits the County from enacting this Ordinance.[12]

B. The RTW Ordinance proponents' analysis is without merit.

Prior to the Public Hearing, two attorneys submitted documents in support of the RTW Ordinance. Mr. Ted Kittila, the attorney for the Caesar Rodney Institute, submitted a legal analysis in support of the Ordinance. Mr. Thomas Neuberger submitted a "Position Paper" which emphasizes several points from Mr. Kittila's opinion but does not offer a separate legal analysis. Therefore, the points herein will address Mr. Kittila's substantive arguments.

First, Mr. Kittila gives some historical background to the Home Rule statute and then embarks on an analysis of Delaware cases, in which he concludes that the 1982 Delaware Supreme Court case of *Workman v. Hickman* is the most closely aligned with the Home Rule statute issues with the RTW Ordinance.[13] The *Workman v. Hickman* case concerned county council district reapportionment and examined whether Sussex County may adopt a reapportionment ordinance under the Home Rule statute. The Supreme Court

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[10] Negligence *per se* is generally defined as conduct that automatically constitutes negligence.

[11] 2002 WL 130536 (Del. Super. Jan. 30, 2002).

[12] In the *New Mexicans for Free Enterprise* case discussed herein, the Court noted that the city administrator's authority to punish violators with a misdemeanor did not convert the ordinance into a public law or alter the basic nature of the ordinance which would set and enforce a contract term between private parties, i.e., create a private cause of action. 126 P.3d 1149, 1160 (N.M. Ct. App. 2005). The same principle applies here, as the Ordinance includes both private actions and County enforcement, but the Ordinance would still be considered a private or civil law concerning civil relationships subject to those limitations in the Home Rule Statute.

[13] 450 A.2d 388 (Del. 1982).

pointed to prior statutory delegations of the council reapportionment authority and noted that the language of the Home Rule statute grants any powers that it would be competent for the General Assembly to grant, including powers conferred prior to the effective date of the Home Rule statute. The Court upheld the reapportionment ordinance, noting several factors: 1) the County's reapportionment authority is confirmed by the explicit grant in the initial statute; 2) the County has a constitutional requirement, which was established long before the Home Rule statute, to reapportion districts as a normal incident and regular duty of the county government; and 3) the Court applied a liberal construction of the general grant of power under the Home Rule statute in light of these other factors.

As Mr. Michael Fanning, a retired labor attorney, pointed out in his testimony at the Council Public Hearing, none of these factors in *Workman* mention the Private Law Exception. The proponents' reliance on this decision clearly misses the mark, since the focal concern is whether the RTW legislation may run afoul of the Private Law Exception. In *Workman*, the Private Law Exception is not examined or discussed at all, and it is certainly not part of the basis for the Court's decision. The decisions in *Weldin Farms* specifically discuss the appropriate interpretation of the Private Law Exception and are the controlling precedent. Mr. Kittila also essentially disregards the *NVF Co. v. Garrett Snuff Mills Inc.* case cited above, which is a recent affirmation of the Delaware courts' interpretation of the Private Law Exception. I disagree that *Workman*, a case that does not address the Private Law Exception at all, carries greater influence over a court's interpretation of the Private Law Exception language in the context of RTW legislation.

The final portion of Mr. Kittila's submission delves into decisions in other states and primarily relies upon a New Mexico case, *New Mexicans for Free Enterprise v. The City of Santa Fe.*[14] Santa Fe passed a City law which gave City employees a higher minimum wage than the state or federal minimum wages in effect. Upon a challenge, the City pointed to its Home Rule statute as the basis for its authority. The Private Law Exception had the same language that Delaware has adopted for its municipalities, as the City was not granted the "power to enact private or civil laws governing civil relationships except as incident to the exercise of an independent municipal power." The Court found that the minimum wage ordinance fell under the Private Law Exception, since it established legal duties between private businesses and their private employees and established a new cause of action. Despite this, the Court then determined that the statute granting the municipalities the power to regulate general welfare as the "independent municipal power" necessary to meet the exception, thereby upholding the ordinance's validity.

Mr. Kittila's letter offers a summary of this case but fails to take into account the differences with this Ordinance. First, New Mexico's language for the Private Law Exception is different than the language for Sussex County, which excludes the "power to enact private or civil laws governing civil relationships except as incident to the exercise of an expressly granted power." New Mexico's relevant phrase is "an independent municipal power," and the impact of this difference was not addressed. Second, the Court cited to another New Mexico state statute which explicitly grants municipalities generic

[14] 138 N.M. 785 (N.M. Ct. App. 2005).

police and general welfare powers and cited to cases that held wages are part of those statutory general welfare powers. Mr. Kittila did not point to any parallels in Delaware law that would subject this RTW Ordinance to the same analysis. Third, the Court in this case took another step in its reasoning that Mr. Kittila does not address: the Court asked whether the nature of the City's minimum wage ordinance would cause serious concerns with uniformity. The Court acknowledged that Private Law Exception's purpose is to avoid non-uniformity with respect to civil laws, citing various references that pointed to the legal "havoc" and chaos" that would ensue from a patchwork of civil laws.[15] As explained below, the NLRA was enacted for the very purpose of uniformity in private labor laws and by allowing individual counties and municipalities to enact RTW laws, the result would be an innumerable patchwork of differences in the laws across the country. The County's RTW Ordinance is unlikely to withstand the uniformity requirement in the *Santa Fe* case.

Finally, at various points in the Council process for this Ordinance, there have been repeated references to a case in Kentucky known as the *United Automobile, Aerospace and Agricultural Implement Workers of America Local 3047, et. al. v. Hardin County, Kentucky.* [16] This case has been cited as authorizing counties to proceed with enacting RTW legislation. That is patently false. The Hardin County ordinance did not cite to a Home Rule statute for its authority, and Home Rule analysis had no part in that decision. In fact, Hardin County is considered a fiscal court, which is granted a list of powers from the State of Kentucky. The power to regulate commerce for the protection and convenience of the public was one of those listed powers, and the Ordinance was enacted on that basis. Again, to be perfectly clear, Hardin County is not a Home Rule county, and the Hardin County case has absolutely no bearing on the analysis of the County's Home Rule statute and its authority thereunder.

II. PREEMPTION BY THE NATIONAL LABOR REVIEW ACT

A. The National Labor Relations Act also likely preempts the County's right to enact Right to Work legislation.

This Ordinance may also be challenged under the National Labor Relations Act ("NLRA").[17] The NLRA is a federal law that regulates private sector employment. The NLRA permits, under certain conditions, a union and a private employer to make an agreement, called a union-security agreement, that requires employees to become union members as a condition of employment; however, every employee has the option to decline full membership and instead pay a portion of the union dues (referred to as "agency fees") to the union in order to retain their jobs.[18] The NLRA has an exception to

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[15] *Id.* at 797.
[16] 842 F.3d 407 (Sixth Cir. 2016).
[17] 29 *U.S.C.* §§ 151-169.
[18] See "Basic Guide to the National Labor Relations Act" published by the National Labor Board of Relations,

this authority for union security agreements for "States;" specifically, the NLRA states that the Act shall not be construed as "authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." In other words, the States are clearly permitted to enact RTW legislation that prohibits union-security agreements, but only recently have local entities made a concerted effort to challenge the assertion that the term "States" includes local entities, thereby permitting political subdivisions of the State to enact a RTW ordinance under the NLRA. This question of interpretation of a federal statute is an issue for the federal courts, and there is no existing authority in the Third Circuit Court or the United States Supreme Court that permits this reading of "State" to include the political subdivisions of the State.

Only five courts have directly addressed the central question here: does the NLRA preempt a RTW ordinance passed by a political subdivision of a State? Of those five cases, only one has found that the local RTW ordinance was valid. In fact, according to a Harvard Journal on Legislation article[19] published this past summer, the only court in the last fifty years to affirm a local entity's right to enact RTW legislation under the NLRA exemption is the Sixth Circuit case, *United Automobile, Aerospace and Agricultural Implement Workers of America Local 3047, et. al. v. Hardin County, Kentucky*.[20] On October 2, 2017, the Supreme Court denied the petition to hear the appeal of the Sixth Circuit case. Thus, the Sixth Circuit case stands as the valid law in the states that it covers (Kentucky, Michigan, Ohio, and Tennessee), and the case may influence, but will not control, any decision by the Third Circuit or the United States Supreme Court. The counties under the Sixth Circuit jurisdiction may enact Right to Work legislation, unless the United States Supreme Court takes up the Right to Work issue and overrules the Sixth Circuit. Thus, this issue in Delaware remains unaddressed, and with only one Circuit

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1997.https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-3024/basicguide.pdf ("Union Security. The Act permits, under certain conditions, a union and an employer to make an agreement, called a union-security agreement, that requires employees to make certain payments to the union in order to retain their jobs. A union-security agreement cannot require that applicants for employment be members of the union in order to be hired, and such an agreement cannot require employees to join or maintain membership in the union in order to retain their jobs. Under a union-security agreement, individuals choosing to be dues-paying nonmembers may be required, as may employees who actually join the union, to pay full initiation fees and dues within a certain period of time (a "grace period") after the collective-bargaining contract takes effect or after a new employee is hired. However, the most that can be required of nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes is that they pay their share of the union's costs relating to representational activities (such as collective bargaining, contract administration, and grievance adjustment).") [emphasis added].

[19] *See* Ariana Levinson, Alyssa Hare, and Travis Fiechter, *Federal Preemption of Local Right-to-Work Ordinances*, HARVARD JOURNAL ON LEGISLATION, Vol. 54, 401, 421 (Summer 2017).

[20] 842 F.3d 407 (Sixth Cir. 2016).

Court upholding a local RTW ordinance and a second federal district court more recently declining to follow this single precedent, it is likely that a court will invalidate the County's proposed Ordinance due to the federal preemption issue.

The Ordinance proponents have repeatedly referenced the Sixth Circuit case, but at this point in time, it is the only decision that supports their contention that this Ordinance is valid under the NLRA. Since the decision of the Sixth Circuit in November 2016, another court has taken up the issue. This time, the U.S. District Court for the Northern District of Illinois, considered whether the Village of Lincolnshire's RTW ordinance was preempted and came to the opposite conclusion as the *Hardin County* case.[21] This case is currently on appeal to the Seventh Circuit Court of Appeals, so a decision likely will be made this year.

In the *Village of Lincolnshire* case, the Court considered the same precedent as the Hardin County case, but respectfully disagreed with the Sixth Circuit's conclusion.[22] The Court first noted that the overall purpose of the NLRA was to "displace state regulation of industrial relations," with the sole exception being the provision that allows "States" to prohibit union security agreements.[23] The Court interpreted the *Wisconsin Public Intervenor v. Mortier* case to state that when a federal statute preempts the field but provides an exception for regulation by the state, that exception should be interpreted narrowly to authorize only this narrow set of regulation, as opposed to interpreting the exception as restricting the state regulation that falls outside of the exception.[24] Also particularly persuasive to the Court was the effect of the ordinance on uniformity, which would result in a "crazy-quilt of regulations within various states."[25] After distinguishing the *Mortier* and *Ours Garage* case, on which the Sixth Circuit heavily relies, the Court lastly addressed the crux of its disagreement with the Sixth Circuit's *Hardin County* case. The dispositive question of the Hardin County case was whether Congress had indicated a purpose to preempt state authority to delegate power to its political subdivisions, but *Village of Lincolnshire* court concluded that the appropriate dispositive question is whether Congress intended to preempt the field of union security agreements. Because the Court found that this preemption was Congress's purpose, the exception for the "States" must be read narrowly to exclude political subdivisions, which then invalidated the RTW provisions in the Village of Lincolnshire ordinance.

Thus, the *Hardin County* case is not the last word regarding whether this Ordinance would be preempted by the NLRA, and there is sound reasoning (which I find persuasive) upon which other courts have relied to reach a different outcome than the Sixth Circuit.

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[21] *INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 399, AFL–CIO v. Village of Lincolnshire*, 228 F. Supp. 3d 824 (U.S. Dist. N.D. Ill. ED. Jan. 7, 2017).
[22] *Village of Lincolnshire*, 228 F. Supp. 3d at 838.
[23] *Id.* at 835.
[24] *Id.*
[25] *Id.* (citation omitted).

Therefore, I do not believe the Ordinance is likely to survive a challenge under the federal issue of NLRA preemption.[26]

B. *Proponents of the Ordinance provided no specific legal analysis of the federal preemption issue.*

The written submissions from the attorneys in support of the Ordinance make absolutely no mention or analysis of this other major legal hurdle that this Ordinance must overcome. Verbal testimony regarding the Taft Hartley Act (also known as the Labor Management Relation Act) and the NLRA preemption was given by Ms. Patricia Fry and Mr. Tom Jones, which addressed several of the points above. It is undisputed that the Sixth Circuit upheld the Hardin County ordinance, but the Sixth Circuit decision is not binding on the Third Circuit, which is the controlling jurisdiction for Sussex County's Ordinance.

III. DELAWARE MUNICIPALITIES' HOME RULE AUTHORITY

At the Public Hearing, it was mentioned that the City of Seaford recently passed RTW legislation under the Home Rule authority in its municipal charter. The County's municipalities are subject to Chapter 22 of *Delaware Code*. The State Code permits the municipalities with a population of at 1,000 people to enact Home Rule authority into their charters, subject again to the limitation on the power "to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power." 22 *Del. C.* §802. Instead, the County's Home Rule statute excludes the power to enact private or civil law regarding civil relationships except incident to "an expressly granted power." The language is similar, but it is not the same, and those differences will likely affect any comparative analysis. Note that the NLRA preemption will be of equal concern to a municipal ordinance.

IV. OTHER LABOR UNION ISSUES IN THE ORDINANCE

The Ordinance also includes regulations regarding the payment deductions for union dues (also known as the "dues checkoff" provision) in proposed Section 117-4 and regulations regarding the acts of union intimidation or coercion of employees or their families in proposed Section 117-6. Neither set of regulations directly relate to the RTW provision in the Ordinance and are separate and distinct matters. Although the Ordinance proposes to regulate these other matters, the proponents of the Ordinance did not articulate any reasons for these additional regulations on labor unions. It is especially troubling that these aspects were not discussed when the Labor Management Relations Act ("LMRA")

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[26] Several other courts have decided that a local RTW law is preempted by NLRA, including an Illinois federal district court, a New Mexico federal district court, and before the Sixth Circuit decision overruled it, even the highest state court in Kentucky. *See* Levinson, Harvard J. on Legislation, at 420-24.

already addresses payroll deductions[27] and the NLRA addresses acts of coercion.[28] In fact, the Sixth Circuit's *Hardin County* case overturned the dues check off provision in the Hardin County Ordinance due to its preemption by the LMRA. The *Village of Lincolnshire* case also held that the dues checkoff provision in that ordinance was invalid.[29] Yet these Ordinance provisions in Sections 117-4 and 117-6 have been essentially ignored.

Sussex County Council should be aware of and should address these additional union issues, but there is no testimony or evidence in the record upon which Council can make a decision on these aspects. Even if my opinion is disregarded with respect to the RTW portion of the Ordinance, I urge Council to consider amendment of the Ordinance to remove the provisions that do not directly address RTW. The Ordinance proponents failed to address these regulations in any respect, including the validity, reasoning, implementation, and anticipated costs of such private labor regulation and enforcement.

Conclusion

After a review of the existing Delaware cases interpreting the County's Home Rule authority and the Private Law Exception, it is my opinion that a Delaware court is unlikely to uphold this Ordinance in its current form. In addition, as discussed above, the Ordinance may be preempted by the NLRA. If either or both legal hurdles are not met, the Ordinance will be invalidated.

Furthermore, a corollary amendment to the budget may be introduced to provide the funds to the County to perform the functions and duties assigned to the County pursuant to this Ordinance. Councilmembers indicated that no cost analysis had been performed at this point. This fiscal issue is a Council policy question, but it is noted herein from a legal perspective since the adoption of an Ordinance without requisite funding for implementation may cause the County to violate its own laws and further expand the potential liability with the Ordinance.

Finally, at the Public Hearing and in prior testimony, several have mentioned that certain organizations have offered funding and/or pro bono legal services to defend any potential challenges to this Ordinance. If, despite this legal opinion, Council decides to pass this Ordinance, I strongly recommend that Council submit the question of whether such funds or services may be accepted to the State Public Integrity Commission. All Councilmembers are subject to the State's Code of Conduct, which states the following:

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[27] 29 U.S.C §186(c)(4).

[28] Section 8(b)(1)(A) of the NLRA makes it unlawful for a labor organization or its agents "to restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act, provided that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." National Labor Relations Board's materials state that unions may not use violence or threats of violence against employees. See https://www.nlrb.gov/rights-we-protect/whats-law/unions/coercion-employees-section-8b1a.

[29] 228 F. Supp. 3d 824, 839-40 (U.S. Dist. N.D. Ill. ED. Jan. 7, 2017).

"(b) .... No state employee, state officer or honorary state official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:

(1) Impairment of independence of judgment in the exercise of official duties;

(2) An undertaking to give preferential treatment to any person;

(3) The making of a governmental decision outside official channels; or

(4) Any adverse effect on the confidence of the public in the integrity of the government of the State. ..."[30]

Thus, it is recommended that a Public Integrity Commission opinion is received prior to the acceptance of any funds or legal services from the organizations which have offered those items.

Please do not hesitate to contact me with any questions. Thank you.

[30] 29 *Del. C.* §5806(b).