

MAR 27 2014

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA
IN THE DISTRICT COURT OF THE STATE OF OKLAHOMA

TIM RHODES
COURT CLERK

27

IN THE MATTER OF THE MULTICOUNTY)
GRAND JURY, STATE OF OKLAHOMA)

Case No. SCAD-2012-61
D.C. Case No. GJ-2012-1

MULTICOUNTY GRAND JURY INTERIM REPORT

The Fourteenth Multicounty Grand Jury of Oklahoma received evidence in its session held on March 25, 26, and 27. In this session the grand jury received the testimony of witnesses and numerous exhibits in several different matters. In this session the grand jury returned (0) indictment(s) that was/were delivered to the Presiding Judge in Open Court pursuant to law for disposition as provided by law.

**Cleveland County Commissioner A¹
Allegations and Investigation Findings**

On November 13, 2013, the Oklahoma State Bureau of Investigation provided the Office of the Attorney General of Oklahoma an investigation report regarding allegations against Cleveland County Commissioner A² for Embezzlement of State Property pursuant to *Okla. Stat.*

¹ This portion of the interim report is made pursuant to *Okla. Stat. tit. 22, § 346*, providing as follows:

In addition to any indictments or accusations that may be returned, the grand jury, in their discretion, may make formal written reports as to the condition and operation of any public office or public institution investigated by them. No such report shall charge any public officer, or other person with willful misconduct or malfeasance, nor reflect on the management of any public office as being willful and corrupt misconduct. It being the intent of this section to preserve to every person the right to meet his accusers in a court of competent jurisdiction and be heard, in open court, in his defense.

² This person shall be referred to herein as "Cleveland County Commissioner A" pursuant to *Okla. Stat. tit. 22, § 346*.

tit. 21, §341³, Misappropriations of Public Funds pursuant to *Okla. Stat. tit. 62 §371*⁴, and Interest of Officers in Contracts Prohibited pursuant to *Okla. Stat. tit. 69, §630*⁵

Overview of Evidence Presented

Prior to County Commissioner A being elected into office, the Oklahoma Department of Transportation ("ODOT") began accepting project recommendations from local counties in the inaugural consideration of the County Improvement of Roads and Brides Grant ("CIRB"), which would fund road improvement projects that met certain criteria. The Cleveland County Board of Commissioners ("Board") submitted a project consideration to ODOT requesting funding from the CIRB Grant to be used for grading, drainage, and surfacing beginning at Etowah Road and 48th Ave. SW, .05 miles north and 1.3 miles east of Noble, extending east 6 miles to 120th Ave. SW ("Etowah Road Project"). The projected cost of the Etowah Road Project was estimated at \$6,328,000. The initial approval was for funds to improve a two-mile stretch on Etowah Road

³ *Okla. Stat. tit. 21 §341*, provides in part:

[e]very public officer of the state or any county, . . . , receiving any money or other thing of value on behalf of or for account of this state or any department of the government of this state . . . in which this state or the people thereof, are directly or indirectly interested, who either:

First: Receives, directly or indirectly, any interest, profit or perquisites, arising from the use or loan of public funds in the officer's or person's hands or money to be raised through an agency for state, city, town, district, or county purposes;

* * *

shall, upon conviction, thereof, be deemed guilty of a felony . . . , and, in addition thereto, the person shall be disqualified to hold office in this state

⁴ *Okla. Stat. tit. 62, §371*, provides in part; "[N]o board of county commissioners . . . shall make any contract with any of its members, or in which any of its members shall be directly or indirectly interested. All contracts made in violation of this section shall be wholly void."

⁵ *Okla. Stat. tit. 69, §630*, prohibits a county commissioner from being either directly or indirectly interested in any contract for any improvement of any road.

located in Cleveland County. Sometime after January 2007, after County Commissioner A took office, the project was extended to the cost of \$6,328,000. County Commissioner A owns and resides on a parcel of land located within the boundary of the Etowah Road Project, identified as Parcel 35.

In June 2010, the Board received funding for the Etowah Road Project and began soliciting bids from vendors to act as the Board's agent in obtaining rights-of-way from parcel owners on Etowah Road. One of the major components of the Etowah Road Project was the acquisition of rights-of-way, which affected over 100 parcel owners. Prior to construction, it was first necessary for Cleveland County to take portions of individuals' property in order to complete all of the necessary improvements. The taking of property was done in one of two ways: by compensating land owners for permanent and/or temporary easements, or by condemnation.

On August 9, 2010, the Board, by and through County Commissioner A, entered into a Personal Services Contract with Property Acquisition Services L.L.C. ("PAS") for the purpose of performing property acquisition services for the Etowah Road Project on behalf of the Board. The contract amount to be paid to PAS was \$164,000. The Board, through former Cleveland County Assistant District Attorney David Batton ("Attorney Batton"), who was later terminated, immediately began contacting parcel owners by letter, using Cleveland County letterhead, stating:

Owner(s)⁶

A transportation improvement project has been planned for construction in your area. **This**

⁶ The names of property owners were redacted per *Okla. Stat. tit, 22, § 346*. Certain names hereinafter will be redacted from this report, including from documents quoted herein as indicated by including the redaction in brackets, pursuant to Section 346.

project will require that the Cleveland County Board of Commissioners purchase real property which you may own or have an interest in. Our right-of-way agent will show you the available plans on this project, which will depict the area(s) needed from you The agent presenting this letter will explain the project and its effect upon you and your property, and is making an offer to purchase right-of-way from you in the name of Cleveland County."

* * *

The above offer, contingent upon your ability to convey marketable title, is the amount **CLEVELAND COUNTY** has determined to be the Fair Market Value of the part of your property needed inclusive of damaged (if any) to your remaining property

Your consideration of our purchase offer to buy your property will be appreciated.

Sincerely,

David Batton
Assistant District Attorney

(Emphasis added by Bold).

Each letter included an offer to buy land, which was sent to approximately 85 parcel owners.

On September 13, 2010, the Board, by and through County Commissioner A, entered into a Personal Services Contract with Franklin & Associates, Inc. for the purpose of performing review of appraisal documents at the request of the Board.

On September 17, 2010, PAS met with County Commissioner A, a parcel owner affected by the Etowah Road Project, to discuss his offer letter. The first offer letter from the Cleveland County Board of Commissioners to County Commissioner A for acquisition of his right-of-way was in the amount of \$1,160. County Commissioner A rejected the offer because it did not include the value for loss and/or damages to improvements, shrubs, trees, and fencing. At this time, County Commissioner A discussed donating his land as part of the project, but wanted to wait to sign the easement until after the Cleveland County Commissioner election in November 2010. Negotiations for additional compensation from PAS, agent of the Cleveland County Board of Commissioners, continued through multiple email exchanges between Mitch

Richardson, Project Manager with ODOT ("Project Manager Richardson"), and Jot Hartley co-owner of PAS.

On November 11, 2010, PAS met with County Commissioner A for a second time to discuss a revised offer in the amount of \$7,700 to include fencing and trees not considered in the first offer. County Commissioner A disagreed with the value placed on the trees, and provided estimates from local nurseries.

On December 17, 2010, a PAS representative sent an email to Project Manager Richardson, County Commissioner A, and others, stating the following: "I have attached the REVISED offer for Commissioner [A]. I would like a second set of eye [sic] to review this before I turn it in. Included as an attachment to this email is SUMMARY_STATEMENT_OF_JUST_COMPENSATION[1] Parcel 35.doc."

On December 22, 2010, Project Manager Richardson emailed a representative from PAS and carbon copied County Commissioner A, among others, stating his concerns about the increase in the offer for Etowah Road Parcel 35 from \$1,160 to the newly revised offer of \$18,075. The email states in part:

This email is to address concerns I have with parcel 35. Parcel 35 is owned by Commissioner [A] The original offer was for a permanent easement of 0.1 acre valued at \$10,000 per acre equaling \$1,000 and for a Temp construction easement of 0.04 acre value at \$160 making the total offer \$1,160. This offer did not include any improvement, fence or trees. This offer was given to Commissioner on September 14, 2010. We then revised the offer to \$7,700 to include fence and this was presented to Commissioner [A] on October 4, 2010. The Commissioner did not agree with some of the values placed on the trees and did provided estimates . . . He also requested PAS to wait until after the election to negotiate a settlement. When we look at the new value of the fence and trees the revised offer (**which has not been presented to [Commissioner A]**) has greatly increased to \$18,075.

(Names redacted per Okla. Stat. tit, 22, § 34, and emphasis added by Bold)

Two days later, on December 24, 2010, PAS again met with County Commissioner A to obtain

his signature on the easement conveying the right-of-way to Cleveland County. In that meeting, County Commissioner A stated his estimates were much higher than \$7,700. Based on the estimates presented, the amount exceeded \$10,000 and would now require an appraisal. Two separate appraisals for Parcel 35 were completed at an additional cost of \$2,700. On January 12, 2011, PAS, by and through County Commissioner A and Project Manager Richardson, revised the offer to include the value of the improvements, shrubs, and trees to \$21,050 based on estimates County Commissioner A provided from local nurseries.

On March 2, 2011, a State of Oklahoma warrant for damages to Parcel 35 was issued to County Commissioner A and his wife in the amount of \$19,900. County Commissioner A agreed to donate \$1,150 of his compensation to Cleveland County, Oklahoma. According to the records kept for each parcel affected by the Etowah Road Project, an estimated eighty-five (85) parcel owner claims for acquisition of rights-of-way were submitted by Attorney Batton on behalf of the "Cleveland County Commissioners" to ODOT. There were no discussions at any of the Cleveland County Board of Commissioners' weekly meetings approving or disapproving the claims. Instead, the claims were approved and signed by Attorney Batton at the direction of County Commissioner A. According to testimony of County Commissioner B⁷, all purchase orders and/or claims require Board approval prior to payment, whether it be one at a time, or in a lump sum. County Commissioner B confronted County Commissioner A as to why County Commissioner A was not presenting claims to the Board, and was told by County Commissioner A that Attorney Batton was signing all the claims as an agent for the Board. At no time did any of the Board members take any further action regarding this matter. Furthermore, Attorney Batton was never given authority by the Board to approve and/or sign claims.

⁷ This person shall be referred to herein as "Cleveland County Commissioner B" pursuant to *Okla. Stat. tit. 22, § 346*.

Violations of Law

This Multicounty Grand Jury finds, based on the evidence presented, there is probable cause to show County Commissioner A violated *Okla. Stat. tit. 69*, § 630, Interest of Officers in Contracts⁸ and *Okla. Stat. tit. 21* § 344, Personal Interest of Official in Transaction, both of which are punishable as misdemeanors.⁹ County Commissioner A had a direct interest as a duly elected and qualified County Commissioner in a transaction for the sale of his property to Cleveland County for a road improvement project he initiated, supported and was actively involved in as a Cleveland County Commissioner. However, the violations were reported to the Office of the Attorney General of Oklahoma more than three (3) years after the events occurred,

⁸ *Okla. Stat. tit. 69*, §630 states:

No member of the Department, or any person in the employ of the Department, no county commissioner, county engineer, road superintendent, or any person in their employ, or one holding an appointment under them, shall be either directly or indirectly interested in any contract for the construction or building of any bridge or culvert, or of any improvement of any road or parts of road coming under the provisions of this Code.

⁹ Punishment for violations of *Okla. Stat. tit. 69*, §630 is prescribed at *Okla. Stat. tit. 69*, §635 which states:

Any road, county, or other official charged with duties herein who shall violate any of the terms or provisions of this Article the punishment for which is not prescribed elsewhere in this Code, shall be deemed guilty of a misdemeanor
(b) Upon presentation in court of complaint in legal form, alleging violation of any provision of this Article, any road official charged with the duties herein shall be, at the option of the court, immediately suspended from office pending final judgment, and upon being found guilty shall forfeit his office in addition to any punishment imposed

Okla. Stat. tit. 21, §344 provides as follows:

A. Except as otherwise provided in this section, every public officer, being authorized to sell or lease any property, or make any contract in his or her official capacity, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, is guilty of a misdemeanor.

and therefore the statutes of limitation have expired for prosecution of these misdemeanor violations.¹⁰

Furthermore, although County Commissioner A directly received public funds designated for county purposes, Commissioner A provided estimates for the value of loss and/or damages to improvements, shrubs, trees, and fencing on Parcel 35 supporting the revised offer of \$19,900. Thus, the Multicounty Grand Jury finds the evidence presented was insufficient to show probable cause County Commissioner A made a profit from the receipt of the aforementioned public funds. While the Multicounty Grand Jury does not excuse County Commissioner A's actions with regard to his willingness to accept payment of money set aside for the residents of Cleveland County, we find the evidence presented is not sufficient to show probable cause Commissioner A committed the crime of Embezzlement of State Property pursuant to *Okla. Stat. tit. 21, §341*.

CONCLUSION

Evidence presented to the Grand Jury established County Commissioner A routinely used his position of power to take advantage of the parcel owners affected by the Etowah Road Project and the Board. County Commissioner A postponed discussions with parcel owners who were not in favor of the project until after County Commissioner A was reelected for a second term on November 5, 2010. The explanation provided by Commissioner A as the necessity of waiting until after the election was inconsistent with the evidence. County Commissioner A further testified he relied on the legal advice of Attorney Batton with regard to the administration of the Etowah Road Project. County Commissioner A testified he was advised Attorney Batton had authority to approve the expenditure of county funds and to take action on behalf of the

¹⁰ *Okla. Stat. tit. 22, §152(H)*, provides "In all other cases a prosecution for a public offense must commence within three (3) years after its commission."

Board. County Commissioner A admitted he did not seek Board approval for the purchase of any real property associated with the Etowah Road Project. County Commissioner A also admitted he did not advise the Board regarding the \$19,900 payment he received for loss and/or damages to improvements, shrubs, trees, and fencing on his parcel.

As the Office of the Attorney General of Oklahoma has previously stated: "[W]hen addressing questions with respect to a possible conflict of interest . . . public policy is contravened when a public official places himself in a position which is inconsistent with his public function or which interferes with his unbiased performance of his duties or has a tendency to induce him to violate such duty regardless of whether is [sic] can be shown that the public actually suffered any detriment."¹¹ County Commissioner A willingly and voluntarily placed himself in a position of having to choose between the interest of the Cleveland County residents and his own personal interest, which interfered with his duty to remain unbiased in the performance of his public duty as an elected official, and compromised his duty to serve his constituents.¹²

RECESS OF SESSION TO APRIL

The time allotted to this session did not permit the grand jury to complete its investigation of other matters. The grand jury will recess at this time to its next scheduled session on April 15, 16 and 17, 2014 to permit the summoning of additional witnesses and the gathering of additional physical evidence by the investigators assisting the grand jury, at which

¹¹ See A.G. Opin. 80-212, 356.

¹² See *Youngblood v. Consolidated School District No. 3, Payne County*, 1924 OK 235, 230 P. 910, 911: "[I]t is against public policy for an officer of such board to become personally interested in the allowance or disallowance of such claims; he cannot properly serve two masters, his own personal interest on the one hand, and the interest of the district, of which he is an officer, on the other."

time the grand jury will resume its investigations.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "S. J. Wohl", written in black ink.

FOREMAN

Fourteenth Multicounty Grand Jury of Oklahoma