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BEFORE THE ARKANSAS ETHICS COMMISSION

ARKANSAS ETHICS
COMMISSION

BY



**In Re: Art Sasser
Respondent**

Case No. 2017-CO-008

FINAL ORDER

Came for a final adjudication hearing on October 20, 2017, the complaint filed in this matter against the Respondent, Art Sasser, and based upon due consideration of the evidence presented at that hearing and the applicable law, the Arkansas Ethics Commission (hereinafter the "Commission") hereby makes the following findings of fact and conclusions of law:

1. The Commission has jurisdiction over this matter pursuant to Ark. Code Ann. § 7-6-218.
2. The Respondent is a citizen of Arkansas. At all times relevant to this case, the Respondent was employed as the Road Department Foreman for Marion County, Arkansas.
3. The Commission is charged with enforcing Ark. Code Ann. § 21-8-304(a) which provides, in pertinent part, as follows:

No public servant shall use or attempt to use his...official position to secure special privileges or exemptions for himself...or his...spouse, child, parents, or other persons standing in the first degree of relationship, or for those with whom he...has a substantial financial relationship that are not available to others except as may be otherwise provided by law.

4. The term “special privileges or exemptions” is defined in § 400(p) of the Commission’s Rules on Conflicts to mean “a particular benefit or advantage unfairly extended beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others.”

5. On March 27, 2017, the Commission received a complaint against the Respondent in his capacity as Road Department Foreman for Marion County. Briefly restated, the two (2) pertinent allegations of that complaint were as follows:

i) Mr. Sasser hauled dirt to the Marion County Fairgrounds with his personal dump trucks, a Marion County check written to “Don’s Hauling” was deposited into his personal checking account, and he then wrote checks in the amount of \$250.00 to County Judge Terry Ott’s wife and sister-in-law; and

ii) Mr. Sasser’s son-in-law has been awarded FEMA contracts in Marion County and used his personal equipment to do the work.

6. On April 6, 2017, the Commission sent the Respondent a letter, via certified mail with a return receipt requested, to notify him that an investigation was being commenced concerning whether or not he violated Ark. Code Ann. § 21-8-304(a) in connection with the allegations set forth above.

7. On April 21, 2017, staff presented the preliminary results of its investigation to the Commission and was instructed to complete the investigation. On May 2, 2017, the Respondent was notified of the Commission’s decision by letter.

8. On September 12, 2017, the Commission sent the Respondent a letter, via first class mail, to notify him that the results of the investigation would be presented to

the Commission at its regular monthly meeting on September 22, 2017, for purposes of determining whether or not probable cause existed for the finding of a violation.

9. On September 22, 2017, the Commission considered the results of staff's investigation and found, by a vote of 5-0, that probable cause existed for finding that the Respondent violated Ark. Code Ann. § 21-8-304(a) in his capacity as Road Foreman for Marion County in connection with: i) hauling dirt to the Marion County Fairgrounds with his personal dump trucks; subsequently, a Marion County check written to "Don's Hauling" was deposited into his personal checking account, and he wrote checks in the amount of \$250.00 to County Judge Terry Ott's wife and sister-in-law; and ii) using his position as Road Foreman to ensure that HD Paving LLC, which is owned by his son-in-law, was paid for work on FEMA contracts that it did not perform.

10. On September 28, 2017, staff sent a letter to the Respondent, via first class mail, notifying him of the Commission's finding of probable cause. In accordance with the Commission's Rules of Practice and Procedure, said letter contained a written Offer of Settlement proposing the issuance of a Public Letter of Reprimand and the imposition of a \$2,000 fine. The Respondent was given ten (10) days to accept the written Offer of Settlement or request a public hearing before the Commission.

11. On October 10, 2017, staff sent a letter to the Respondent, via first class mail, notifying him that the time to accept the written Offer of Settlement had expired and, therefore, a final adjudication hearing would be held on October 20, 2017. Said letter contained a separate written notice of final adjudication hearing providing the information required in Ark. Code Ann. § 25-15-208(a)(2).

12. The Respondent did not appear at the final adjudication hearing which was held on October 20, 2017. Said hearing was conducted in accordance with Ark. Code Ann. § 25-15-213.

13. Upon considering the evidence presented at the hearing, the Commission found, by a vote of 5-0, that the Respondent violated Ark. Code Ann. § 21-8-304(a) by: i) using his position as Road Foreman for Marion County to haul dirt to the County Fairgrounds in exchange for a \$4,5000 payment from Marion County; and ii) using his position as Road Foreman to ensure that HD Paving LLC, which is owned by his son-in-law, was paid for work on FEMA contracts that it did not perform.

14. With respect to said violations, the Commission determined that the Respondent should be issued a Public Letter of Reprimand and fined \$2,000. Said fine is due and payable within thirty (30) days from the entry of this Order.

15. At some point in 2013, it was decided that the Marion County Fairgrounds was in need of dirt. Kenneth Oxford, then president of the Marion County Fair Board, and County Judge Terry Ott spoke about this need and the Judge Ott stated that he would get the dirt and have the County haul it to save money.

16. On or about August 28, 2013, Kenneth Oxford was at the Marion County Fairgrounds and saw a dump truck that had a logo indicating that it belonged to the Respondent's business. The truck was dumping dirt at the fairgrounds. Mr. Oxford approached the driver, Don Klutts, and asked him about the truck, his employment, and who was doing the hauling of the dirt. The driver said he worked for the Respondent, that the trucks belonged to the Respondent, and that the Respondent was doing the dirt

hauling. Likewise, he indicated that the trucks did not belong to the County, that he did not work for the County, and that the County was not doing to the dirt hauling.

17. The Respondent was the Marion County Road Foreman in 2013 and remained so at all times relevant to this case.

18. Although Don Klutts was involved in delivering the dirt to the Marion County Fairgrounds, such involvement was solely in his capacity as an employee of the Respondent d/b/a Sasser Bulldozing.

19. Don Klutts was not acting on behalf of "Don's Hauling and Topsoil" in conjunction with delivering the dirt to the Marion County Fairgrounds.

20. The Respondent had the same three dump trucks listed in his personal property assessment in 2012, 2013, and 2016. Donald Klutts had no dump trucks listed on his personal property assessment for 2013 or 2014.

21. On September 10, 2013, Donald Klutts died at age 53. During 2013, he had been receiving paychecks from the Respondent d/b/a Sasser Bulldozing until the time of his death.

22. The Respondent found out about Donald Klutts' death the day he died.

23. Over time, Judge Ott offered inconsistent explanations about who had contracted for the delivery of the dirt. Judge Ott indicated that the contract for the dirt was made by the Fair Board and related to a federal grant to make the fairgrounds suitable for a disaster relief location in Marion County. However, the paper claim showed that the payment came from County road sales tax money and that neither Fair Board money nor grant money had been used. Kenneth Oxford, then president of the Fair Board, did not contract with anyone, include Donald Klutts, for the delivery of the dirt.

24. The County Fair Board did not contract for delivery of the dirt to the Marion County Fairgrounds and payment for the dirt was not made with County Fair Board funds.

25. The grant coordinator for Marion County did not contract for delivery of the dirt to the Marion County Fairgrounds and payment for the dirt was not made with grant funds.

26. During the Marion County Fair, Judge Ott spoke with Kenneth Oxford and said something to the effect of "Don't worry about the dirt. I've taken care of it."

27. The loads of dirt in question were delivered pursuant to an agreement the Respondent made with Art Sasser d/b/a Sasser Bulldozing and the Respondent used his position as Road Foreman for Marion County to enter into this agreement.

28. On September 17, 2013, Judge Ott had the County issue a check (no. 031392) in the amount of \$4,500 made payable to "Don's Hauling and Topsoil." This check was issued seven (7) days after Don Klutts, the purported owner of "Don's Hauling and Topsoil", had died.

29. Issuance of the \$4,500 check in the name of "Don's Hauling and Topsoil" concealed the true identity of the vendor.

30. The \$4,500 check which the Respondent caused to be issued came out of County Road Department funds which were designated for "repair parts."

31. On its face, the \$4,500 payment appeared to be for goods instead of services, thus dispensing with the issuance of a W-9 which would have linked the payment to a specific social security number or Tax ID number.

32. On September 19, 2013, the \$4,500 check issued by Marion County was deposited into the bank account held by the Respondent d/b/a Sasser Bulldozing having been endorsed as "Don's Hauling and Topsoil."

33. The deposit ticket for the foregoing transaction reflected the name "Sasser Bulldozing."

34. On September 19, 2013, which was the same day the \$4,500 check was deposited into the bank account of Art Sasser d/b/a Sasser Bulldozing, the Respondent wrote and signed check number 4130 on the same account. That check was written in the amount of \$250, made payable to "Darlene Ott" and reflected that it was for "Dirt." Check number 4130 cleared the bank on October 1, 2013.

35. On September 19, 2013, which was the same day the \$4,500 check was deposited into the bank account of Art Sasser d/b/a Sasser Bulldozing, the Respondent wrote and signed check number 4131 on the same account. That check was written in the amount of \$250, made payable to "Alma Smith" and reflected that it was for "Dirt." Check number 4131 cleared the bank on October 15, 2013.

36. At all times relevant to this case, the Respondent was an employee of county government within the meaning of Ark. Code Ann. § 14-14-1202 due to his service as County Road Foreman.

37. Pursuant to Ark. Code Ann. § 14-14-1202, an officer or employee of county government is prohibited from being interested, either directly or indirectly, in any contract or transaction made, authorized, or entered into on behalf of the county or an entity created by the county, or from accepting or receiving any property, money, or other

valuable thing for his or her use or benefit on account of, connected with, or growing out of any contract or transaction of a county.

38. The Respondent's agreement with Marion County for the delivery of dirt to the Marion County Fairgrounds was prohibited by Ark. Code Ann. § 14-14-1202.

39. The Respondent's agreement with Marion County for the delivery of dirt to the Marion County Fairgrounds constituted a special privilege or exemption within the meaning of Ark. Code Ann. § 21-8-304(a).

40. The \$4,500 payment received by the Respondent constituted a special privilege or exemption within the meaning of Ark. Code Ann. § 21-8-304(a).

41. The Respondent's actions, as set forth herein, constitute a violation of Ark. Code Ann. § 21-8-304(a) in that the Respondent used his position as Road Foreman for Marion County to contract with Marion County in derogation of Ark. Code Ann. § 14-14-1202 to deliver dirt to the County Fairgrounds for \$4,500.

42. In 2016, Marion County sought to have several road repair projects, which were partially funded by Federal Emergency Management Agency ("FEMA"), performed on County roads.

43. Marion County hired HD Paving LLC to perform at least two (2) of the projects without letting the projects for bid because the cost each of the two projects was under \$20,000.

44. HD Paving LLC submitted bids on at least four (4) other projects and was awarded every job it bid on.

45. James "Jim" Hutcheson co-owns HD Paving LLC with Dewayne Due. Mr. Hutcheson is the Respondent's son-in-law.

46. On at least two (2) occasions, HD Paving LLC submitted bills to Marion County for “rock hauled” from the Marion County Quarry. One bill was for approximately \$4,500 and another was for approximately \$880.

47. After reviewing the bills, Judge Ott asked the Respondent whether HD Paving LLC or Marion County Road Department trucks being driven by Road Department personnel had actually hauled the rocks. The Respondent told Judge Ott that the bills should be paid.

48. Some time after paying the bills, Judge Ott asked Marion County Road Department personnel and Marion County Quarry personnel about the situation and discovered that there were no rocks hauled to the jobs despite the bills that HD Paving LLC had submitted and that the County paid at the Respondent’s insistence.

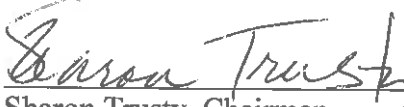
49. James Hutcheson is the Respondent’s son-in-law and stands in the first degree of relationship which is one of the categories of persons included within the scope of Ark. Code Ann. § 21-8-304(a).

50. The payments received by HD Pavement LLC for work that it did not perform constituted a special privilege or exemption within the meaning of Ark. Code Ann. § 21-8-304(a).

51. The Respondent’s actions, as set forth herein, constitute a violation of Ark. Code Ann. § 21-8-304(a) in that the Respondent used his position as Road Foreman to ensure that his son-in-law’s company, HD Paving LLC, was paid for work that it did not perform.

IT IS, THEREFORE, CONSIDERED, DECIDED and ORDERED by the Commission that the Respondent, Art Sasser, shall be issued a Public Letter of Reprimand and is hereby fined \$2,000 for violating Ark. Code Ann. § 21-8-304(a) by: i) using his position as Road Foreman for Marion County to have his business haul dirt to the County Fairgrounds in exchange for a \$4,5000 payment from Marion County; and ii) using his position as Road Foreman to ensure that HD Paving LLC, which is owned by his son-in-law, was paid for work on FEMA contracts that it did not perform and that said fine shall be due within thirty (30) days from the entry of this Order.

IT IS SO ORDERED this 2nd day of November, 2017.



Sharon Trusty, Chairman
Arkansas Ethics Commission