

**FILED**

AUG 01 2019

**BEFORE THE ARKANSAS ETHICS COMMISSION**

ARKANSAS ETHICS  
COMMISSION

BY \_\_\_\_\_



**Case No. 2019-CO-007**

**In Re: Earnestine McDaniel  
Respondent**

**FINAL ORDER**

Came for a final adjudication hearing on July 19, 2019, the complaint filed in this case against the Respondent, Earnestine McDaniel, and based upon due consideration of both 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 the State of Arkansas who, at all times relevant to this case, was the Mayor of Fifty Six, Arkansas.

3. The Commission is charged with enforcing Ark. Code Ann. § 21-8-304 which provides, in pertinent part, as follows:

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

4. On February 6, 2019, the Commission received a complaint against the Respondent in her capacity as Mayor of Fifty Six, Arkansas. Briefly restated, the pertinent allegations of that complaint were as follows:

(a) The Respondent allowed the City Secretary's husband to use the City Water Department's truck for personal use.

(b) The Respondent used the City Water Department's truck for her own personal use.

5. On February 8, 2019, the Commission sent the Respondent a letter, via certified mail with a return receipt requested, to notify her that an investigation was being commenced concerning the allegations set forth above. The letter went on to state that the focus of the investigation with regard to those allegations would be whether or not she violated Ark. Code Ann. § 21-8-304(a).

6. On February 15, 2019, staff presented the preliminary results of its investigation to the Commission at its regular monthly meeting and was instructed to complete the investigation. The Respondent was notified of the Commission's decision by letter dated February 25, 2019.

7. On June 11, 2019, the Commission sent the Respondent a letter, via first-class mail, to notify her that the results of the investigation would be presented to the Commission at its regular monthly meeting on June 21, 2019, for purposes of determining whether or not probable cause existed for the finding of a violation.

8. On June 21, 2019, the Commission considered the results of staff's investigation and decided by a vote of 3-0, with Commissioners Eastwood and Klein not present, that probable cause existed for finding that the Respondent violated Ark. Code Ann. § 21-8-304(a) in her capacity as Mayor of Fifty Six, Arkansas, by engaging in personal use of the City vehicle.

9. On June 25, 2019, the Commission sent a letter to the Respondent, via first-class mail, notifying her of the Commission's decision that probable cause existed for finding that the

Respondent violated Ark. Code Ann. § 21-8-304(a) in her capacity as Mayor of Fifty Six, Arkansas.

10. With respect to the allegation that the Respondent had allowed the City Secretary's husband to use the City Water Department's truck for personal use, probable cause was not found because that individual did not fall within one of the categories of persons enumerated in Ark Code Ann. § 21-8-304(a).

11. In accordance with the Commission's Rules of Practice and Procedure, the June 25, 2019, letter contained a written Offer of Settlement with the proposed outcome being the issuance of a Public Letter of Caution.

12. On July 9, 2019, the Commission sent the Respondent a letter, via first-class mail, confirming that the Respondent had verbally notified the Commission that she was declining the written Offer of Settlement. Said letter contained a separate written notice of final adjudication hearing providing the information required in Ark. Code Ann. § 25-15-208(a)(2).

13. The Respondent appeared at the final adjudication hearing which was held during confidential session at the Commission meeting held on July 19, 2019. Said hearing was conducted in accordance with Ark. Code Ann. § 25-15-213.

14. At the final adjudication hearing, the Commission was informed that Megan Freeman had recanted her May 7, 2019 sworn statement concerning the Respondent's use of the City vehicle.

15. The only evidence presented at the final adjudication hearing that the Respondent had used the City vehicle for her own personal use was the Respondent's own testimony that, while in Mountain View on City business, she had picked up her grandchild from daycare in the vehicle on two (2) separate occasions.

16. The Respondent introduced aerial photographs showing that the daycare was located on the route she was traveling on City business and that stopping briefly at the daycare had not caused her to deviate from that route.

17. The Commission found that, on the facts presented, the Respondent using the City vehicle to pick up her grandchild from daycare was purely “incidental” to a public purpose and, therefore, did not constitute a “special privilege or exemption” within the meaning of Ark. Code Ann. § 21-8-304(a).

18. At the conclusion of the final adjudication hearing, the Commission conducted its deliberations and then returned to public session. When it returned to public session, the Commission voted on the following matter:

A motion was made by Commissioner Hampton and seconded by Commissioner Klein to find that the Respondent did not violate Ark. Code Ann. § 21-8-304(a) because her use of the City vehicle to pick up her grandchild from daycare was purely “incidental” to a public purpose and that the case should, therefore, be dismissed. The motion passed by a vote of 3-0, with Commissioners Younger and Eastwood not present.

**IT IS, THEREFORE, CONSIDERED, DECIDED and ORDERED** by the Commission that the Respondent, Earnestine McDaniel, shall be found not to have violated Ark. Code Ann. § 21-8-304(a) in her capacity as Mayor of Fifty Six, Arkansas, and that the case is hereby dismissed.

**IT IS SO ORDERED** this 1st day of August, 2019.



TONY JUNEAU, Chairman  
Arkansas Ethics Commission