

extended to a person beyond the common advantages of others or the unjustified release of a person from a duty or obligation required of others.”

5. On October 19, 2015, the Commission received a complaint against the Respondent in her capacity as Recorder/Treasurer of Diamond City. Briefly restated, the essential allegations of the complaint were as follows:

- (a) In connection with a claim for “Permanent Partial Disability” benefits, the Respondent “overstated her earnings to the insurance company.” It is noted that attached to the complaint was a letter to the Respondent from the Municipal League Workers’ Compensation Trust dated June 19, 2015, which referenced “Claim No. 68237 D/A: 1-11-12.” Therein, the Respondent was advised that she “received an overpayment in the amount of \$6,534.00.”
- (b) In connection with a Legislative Joint Auditing Committee Financial and Compliance Report for December 31, 2011 and 2012, noncompliance information included the following, in pertinent part:
 - (i) The Respondent “issued a check to herself for \$364.98 with description of ‘employee deductions not paid’, however, the city had paid \$208.56 to AFLAC for these deductions. The \$364.98 was reported as a reduction of income on the W-2, however, the amounts were refunded to [the Respondent].”
 - (ii) The Respondent “charged \$2,350 to the City credit card for gasoline purchases for her personal vehicle during the period January 1, 2011 through May 31, 2013. Although [the Respondent] told auditors she used the vehicle for business purposes, City policy allows only for mileage reimbursement for documented business travel which [the Respondent] did not provide.”
- (c) In connection with a Legislative Joint Auditing Committee Financial and Compliance Report for December 31, 2014, noncompliance information included the following, in pertinent part:
 - (i) An amount of “\$869 more than withheld from [the Respondent’s] salary was paid to annuity and life insurance

companies on her behalf during the period January 1, 2011 through December 31, 2014.”

- (ii) An amount of “\$180 more than was authorized was paid to [the Respondent] for car allowance during 2014. [The Respondent] reimbursed the City \$180 on December 29, 2014.”
 - (iii) An amount of “\$42 in personal items was charged to the City’s credit card in 2014 and charges paid for with city funds.”
 - (iv) An amount of “\$645 was used to purchase a computer, printer, computer mouse, and USB drive as a ‘package’ on January 6, 2014 for [the Respondent] to perform City duties at home. Subsequently, the printer was assigned to a City employee and [the Respondent] retained the computer and reimbursed the City \$490 during the period February 13, 2014 through July 2, 2014.”
- (d) In connection with a letter to Prosecuting Attorney David L. Ethredge dated February 18, 2015, the following issues described as “misuse of city funds” were set forth, in pertinent part:
- (i) The “purchase of canna lily plant (\$16.98) and citrus trees (\$24.98) on June 6, 2014 for personal use from Lowe’s in Hollister, Missouri using the Diamond City credit card (as noted the last four digits of 4042 of the city VISA credit card)[.]”
 - (ii) The “purchase of a[n] 18k Lighthouse Ring for \$81.52 for personal use from Walmart using the Diamond City credit card (VISA No. 4042)[.]”
 - (iii) The “payment of \$1,125 of city funds since 2011 to a personal Thrivent Investment Management mutual fund, a personal benefit that cannot be traced back to any authorization or approval by the city or a benefit that is offered to no other employee of the city[.]”
 - (iv) The “overpayment of a \$60 a month gas stipend to [the Respondent] resulting in a demand for her to repay the city \$180.00, which repayment was done by [the Respondent] on December 29, 2014 following the demand for reimbursement by the Mayor[.]”

- (v) The “reimbursement by [the Respondent] of \$2,558 to Diamond City following audit finding that she improperly charged \$2,350 for gasoline charges for her personal vehicle to the city credit card from January 1, 2012 to May 31, 2013[.]”
- (vi) The “reimbursement by [the Respondent] of \$208 to Diamond City for paying herself for payroll withholdings previously remitted to AFLAC on her behalf by the city[.]”
- (vii) The “purchase of purple laptop computer and accessories for \$594.33 for personal use from the Harrison Wal-Mart Supercenter #2 on January 6, 2014 using the city credit card (VISA No. 4042).”
- (e) In connection with unauthorized payroll adjustments, the Respondent “gave herself unapproved pay increases....”
- (f) In connection with unauthorized payroll deductions, “annuity savings was overfunded for [the Respondent’s] account by \$869 for the period 1/1/2011 – 12/31/2014[.]”
- (g) The Respondent “overpaid herself \$280 stipend allowance in 2014.”
- (h) During 2011, 2012 and 2013, the Respondent’s salary was increased although she was “not eligible to receive the raise [in question] unless specified by the City Council.”

6. On November 10, 2015, 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 essential allegations of the complaint. The letter went on to state that the focus of the investigation would be whether or not her conduct, as alleged in the complaint, violated Ark. Code Ann. § 21-8-304(a).

7. On November 20, 2015, staff presented the preliminary results of its investigation to the Commission and was instructed to complete the investigation. The Respondent was notified of the Commission's decision by letter dated January 12, 2016.

8. On February 9, 2016, the Commission sent the Respondent a letter to notify her that the results of the investigation would be presented to the Commission at its regular monthly meeting on February 19, 2016, for purposes of determining whether or not probable cause existed for the finding of a violation. In addition, the letter notified the Respondent that, during the course of the investigation, evidence of other potential violations had been discovered and that the scope of the investigation was expanded to include the issue of whether or not the Respondent violated Ark. Code Ann. § 21-8-304(a) in connection with purchases the Respondent made using a Diamond City credit card in Fayetteville, Arkansas during September 2012 and a reimbursement check she received from Diamond City on September 24, 2012.

9. On February 19, 2016, the Commission considered the results of staff's investigation and determined, by a vote of 3-0, with Commissioners Trusty and Juneau not present, that probable cause existed for finding that the Respondent violated Ark. Code Ann. § 21-8-304(a) in connection with the AFLAC deductions described in allegations 5(b)(i) and 5(d)(vi); the payments to Thrivent described in allegations 5(c)(i), 5(d)(iii) and (f); the overpayment of the vehicle allowance described in allegations 5(c)(ii), 5(d)(iv), and 5(g); the credit card charge for the purchase of a ring described in allegation d(ii); and in connection with purchases the Respondent made using a Diamond City credit card in Fayetteville, Arkansas, during September 2012, and the reimbursement check she received from Diamond City on September 24, 2012. The finding of probable

cause was supported by evidence gathered during the course of the investigation which reflected the following:

(a) In connection with the AFLAC deductions described in allegations 5(b)(i) and 5(d)(vi), the Respondent issued a check to herself for \$364.98. In her sworn statement, the Respondent said that she had been paying premiums for insurance coverage to AFLAC through payroll deductions, but that those deductions stopped being paid when the AFLAC coverage was cancelled. She said that there were unpaid premiums sitting in the payroll system for several months and that she was advised by a QuickBooks consultant to write a check to herself for the premiums. The Respondent stated that she spoke with then-Mayor Shari Marshall and had her countersign the check. In a sworn statement, Ms. Marshall said that the QuickBooks consultant was brought in to help the Respondent with the program and that the consultant was not an accountant. Ms. Marshall said that it was possible that she countersigned the check, but did not specifically remember doing so. There was no evidence presented that the repayment of premiums was specifically approved by the City Council.

(b) In connection with the payments to Thrivent described in allegations 5(c)(i), 5(d)(iii) and (f), the Division of Legislative Audit Financial and Compliance Report dated December 31, 2014, listed a finding that \$869 more than withheld from the Respondent's salary was paid to annuity and life insurance companies on her behalf from the first day of 2011 through the end of 2014. In a letter sent to 14th Judicial District Prosecuting Attorney David L. Etheredge, Diamond City's attorney, Mr. Justin Eichmann, stated that the amount paid to the Thrivent account was \$1,125. In the Respondent's sworn statement, she said that she took the overage from premiums which

were to be paid to her Woodmen of the World account and applied them to a Thrivent account. There was no evidence presented that the practice of taking any of the retirement contributions and diverting an overage to another vendor was approved by the City Council or the Mayor.

(c) In connection with the overpayment of the vehicle allowance described in allegations 5(c)(ii), 5(d)(iv), and 5(g), Diamond City authorized a \$60 per month vehicle stipend after the Division of Legislative Audit Financial and Compliance Report finding concerning gasoline purchases with the Diamond City credit card. It appeared that on some occasions in 2014, the Respondent paid herself more than the \$60 allowance. In her sworn statement, the Respondent said that QuickBooks would automatically repopulate the allowance into her paycheck for the pay period in which the allowance was not supposed to be paid. She said that she sometimes did not catch it before sending her paycheck to the printer. The Respondent stated that she discovered the issue and informed Ms. Marshall. The Respondent said that she repaid Diamond City \$180 for the overpayment and denied that anyone demanded that she repay Diamond City. A memo dated December 17, 2014, from Ms. Marshall to the Respondent, which was attached to the complaint, asked the Respondent to repay \$180 that she had overpaid herself in stipends. Ms. Marshall stated that the overpayments were discovered by the complainant.

(d) In connection with the credit card charge for the purchase of a ring described in allegation d(ii), the Respondent purchased a ring from Walmart's website along with a two-year service plan in 2013 with a total cost of \$81.52. In her sworn statement, the Respondent described cancelling the purchase of the ring; however, Diamond City's 2013 annual summary showed transactions that matched the time and

amount of the purchase which were paid by Diamond City. There was no documentation presented that showed that the transaction was cancelled.

(e) In connection with the purchases the Respondent made using a Diamond City credit card in Fayetteville, Arkansas during September 2012, and the reimbursement check she received from Diamond City on September 24, 2012, copies of a statement from Diamond City's credit card company showed transactions made during September of 2012 along with a copy of a check payable to the Respondent that noted it was for mileage. In her sworn statement, the Respondent stated that she made the purchases at Fayetteville restaurants described in the statement. She said that Diamond City allowed her a \$25 per day meal allowance while at a training event. The Respondent stated that the mileage check covered her mileage from Diamond City to Fayetteville and back, which was approximately 190 miles. Staff noted that if the check covered only the mileage for the round trip, the Respondent reimbursed herself at a rate of \$1.30 per mile.

10. On February 26, 2016, the Commission sent the Respondent a letter, via first class mail, notifying her of the Commission's finding of probable cause with respect to the issue of whether or not she violated Ark. Code Ann. § 21-8-304(a) by using her position as Recorder/Treasurer to secure special privileges or exemptions for herself in connection with the aforementioned AFLAC deductions, payments to Thrivent, overpayment of the vehicle allowance, credit card charge for the purchase of a ring, purchases made using a Diamond City credit card in Fayetteville, Arkansas during September 2012, and a reimbursement check from Diamond City which the Respondent received on September 24, 2012. 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 Warning and the imposition of a \$200 fine. The Respondent was given ten (10) days to either accept the written Offer of Settlement or request a public hearing before the Commission.

11. By letter dated March 7, 2016, the Respondent's attorney, Jerry Patterson, notified the Commission that the Respondent was requesting that the matter be set for a public hearing. At that point, the Commission was no longer bound by the terms of the Offer of Settlement.

12. On April 5, 2016, the Commission sent the Respondent a letter, via first class mail, confirming receipt of the Respondent's request for a public hearing. In addition, that letter gave notice that a public hearing would be held on April 15, 2016. Said letter contained a separate written notice providing the information required in Ark. Code Ann. § 25-15-208(a)(2).

13. The Respondent appeared with her attorney at the public hearing which was held on April 15, 2016. Said hearing was conducted in accordance with Ark. Code Ann. § 25-15-213.

14. Testimony and other evidence presented at the public hearing reflected that the Respondent violated Ark. Code Ann. § 21-8-304(a) by using her position as Recorder/Treasurer of Diamond City to secure an overpayment of a \$60 per month gas stipend to which she was not duly entitled and which resulted in a demand for the Respondent to repay Diamond City the amount of \$180.

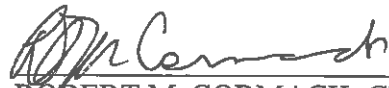
15. Based upon the facts and the law, the Commission found, by a vote of 5-0, that the Respondent violated Ark. Code Ann. § 21-8-304(a) by using her position as

Recorder/Treasurer of Diamond City to secure an overpayment of a \$60 per month gas stipend to which she was not duly entitled.

16. With respect to the Respondent's violation of Ark. Code Ann. § 21-8-304(a), the Commission determined that the Respondent should be issued a Public Letter of Caution and fined \$50. Said fine is due and payable within thirty (30) days from the entry of this Order.

IT IS, THEREFORE, CONSIDERED, DECIDED and ORDERED by the Commission that the Respondent, Cheryl Guthrie, shall be issued a Public Letter of Caution and fined \$50 for violating Ark. Code Ann. § 21-8-304(a), in her capacity as Recorder/Treasurer of Diamond City, by using her position to secure an overpayment of a \$60 per month gas stipend to which she was not duly entitled.

IT IS SO ORDERED this 25th day of April, 2016.



ROBERT McCORMACK, Chairman
Arkansas Ethics Commission