

BEFORE THE ARKANSAS ETHICS COMMISSION



**In Re: Terry Ott
Respondent**

Case No. 2016-CO-026

FINAL ORDER

Came for a public hearing on October 21, 2016, the complaint filed in this case against the Respondent, Terry Ott, and based upon due consideration of the testimony and other 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, held the office of Marion County Judge.
3. The Commission is charged with enforcing Ark. Code Ann. § 21-8-304(a) which, at all times relevant to this case, provided, 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 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 March 21, 2016, the Ethics Commission received a complaint against the Respondent in his capacity as Marion County Judge. Briefly restated, the pertinent allegation of that complaint

was as follows:

Judge Ott “paid Marion County Road Department foreman Art Sasser’s personal Trucking Company to haul dirt to the Marion County Fairgrounds instead of [using] the Marion County trucks.”

6. On April 6, 2016, 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 the above-set forth allegation. The letter went on to state that the focus of the investigation with regard to that allegation would be whether or not he violated Ark. Code Ann. § 21-8-304(a).

7. On April 15, 2016, 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 April 25, 2016.

8. On September 6, 2016, the Commission sent the Respondent a letter to notify him that the results of the investigation would be presented to the Commission at its regular monthly meeting on September 16, 2016, for purposes of determining whether or not probable cause existed for the finding of a violation.

9. On September 16, 2016, the Commission considered the results of staff’s investigation and decided 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 his capacity as Marion County Judge in connection with hiring Art Sasser, the Marion County Road Department Foreman, and Art Sasser’s personal business to haul dirt to the Marion County Fairgrounds.

10. On September 16, 2016, staff sent a letter to the Respondent, via first class mail, notifying him of the Commission's decision that probable cause existed for finding that he violated Ark. Code Ann. § 21-8-304(a) in his capacity as Marion County Judge in connection with the hiring of Art Sasser, the Marion County Road Department Foreman, and Art Sasser's personal business to haul dirt to the Marion County Fairgrounds. 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 fine in the amount of \$100. 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 September 23, 2016, the Respondent requested a public hearing before the Commission. At that point, the Commission was no longer bound by the terms of the written Offer of Settlement.

12. On September 29, 2016, the Commission sent the Respondent a letter, via first class mail, confirming receipt of the Respondent's request for a public hearing and giving notice that the public hearing would be held on October 21, 2016. Said letter contained a separate written notice providing the information required in Ark. Code Ann. § 25-15-213.

13. The Respondent appeared with his attorney at the public hearing which was held on October 21, 2016. Said hearing was conducted in accordance with Ark. Code Ann. § 25-15-213.

14. 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 the Respondent spoke about this need and the Respondent stated that he would get the dirt and have the County haul it to save money.

15. 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 Art Sasser'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 Art Sasser, that the trucks belonged to Art Sasser, and that Art Sasser 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.

16. Art Sasser was the Marion County Road Foreman in 2013 and remained so at all times relevant to this case.

17. 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 Art Sasser d/b/a Sasser Bulldozing.

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

19. Art Sasser 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.

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

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

22. During the course of the case, the Respondent offered inconsistent explanations about who had contracted for the delivery of the dirt. The Respondent 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 the 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.

23. The Respondent gave conflicting testimony during the course of this case and lacked credibility as a witness.

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, the Respondent 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 Marion County Judge to enter into this agreement.

28. On September 17, 2013, the Respondent 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 under the Respondent’s control and 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. The paper claim and/or check related to the \$4,500 payment passed through the Respondent's office a total of three (3) times.

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

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

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, Art Sasser 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.

36. Darlene Ott is the Respondent's spouse which is one of the categories of persons included within the scope of Ark. Code Ann. § 21-8-304(a).

37. 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, Art Sasser 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.

38. Alma Smith is the Respondent's sister-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).

39. At all times relevant to this case, the Respondent was an officer of county government within the meaning of Ark. Code Ann. § 14-14-1202.

40. As the County Judge for Marion County, the Respondent is the elected official over the County Road Department and has the power to hire County employees, except those persons employed by other elected officials of the County.

41. At all times relevant to this case, Art Sasser was an employee of county government within the meaning of Ark. Code Ann. § 14-14-1202 and served underneath the Respondent as County Road Foreman with a take-home pay of \$953.22 every two (2) weeks.

42. On October 31, 2013, a check was issued by Darlene Ott, the Respondent's spouse, from the joint bank account of Darlene and Terry Ott, to Art Sasser for \$8,237 for a "farm contract."

43. The Respondent had a substantial financial relationship with Art Sasser which is one of the categories of persons included within the scope of Ark. Code Ann. § 21-8-304(a).

44. 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.

45. The Respondent's agreement with Art Sasser d/b/a Sasser Bulldozing for the delivery of dirt to the Marion County Fairgrounds was prohibited by Ark. Code Ann. § 14-14-1202.

46. The Respondent's agreement with Art Sasser d/b/a Sasser Bulldozing 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).

47. The \$4,500 payment received by Art Sasser d/b/a Sasser Bulldozing constituted a special privilege or exemption within the meaning of Ark. Code Ann. § 21-8-304(a).

48. The \$250 payment received by Darlene Ott, the Respondent's spouse, constituted a special privilege or exemption within the meaning of Ark. Code Ann. § 21-8-304(a).

49. The \$250 payment received by Alma Smith, the Respondent's sister-in-law, constituted a special privilege or exemption within the meaning of Ark. Code Ann. § 21-8-304(a).

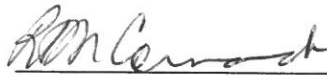
50. The Respondent's actions, as set forth herein, constitute a violation of Ark. Code Ann. § 21-8-304(a) in that the Respondent used his position as County Judge of Marion County to hire Art Sasser d/b/a Sasser Bulldozing in derogation of Ark. Code Ann. § 14-14-1202 to deliver dirt to the County Fairgrounds and to cause Art Sasser d/b/a Sasser Bulldozing to be paid \$4,500 who, in turn, wrote checks in the amount of \$250 each to the Respondent's wife and sister-in-law.

51. With respect to the Respondent's violation of Ark. Code Ann. § 21-8-304(a), the Respondent should be issued a Public Letter of Reprimand and fined \$250. Said fine shall be 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, Terry Ott, shall be issued a Public Letter of Reprimand and is hereby fined \$250 for violating Ark. Code Ann. § 21-8-304(a) by using his position as County Judge of Marion

County to hire Art Sasser d/b/a Sasser Bulldozing in derogation of Ark. Code Ann. § 14-14-1202 to deliver dirt to the County Fairgrounds and to cause Art Sasser d/b/a Sasser Bulldozing to be paid \$4,500 who, in turn, wrote checks in the amount of \$250 each to the Respondent's wife and sister-in-law, and that said fine shall be paid within thirty (30) days from the date of this Order.

IT IS SO ORDERED this 14th day of November, 2016.



ROBERT McCORMACK, Chairman
Arkansas Ethics Commission