

FILED

MAY 16 2023

BEFORE THE ARKANSAS ETHICS COMMISSION

ARKANSAS ETHICS
COMMISSION
BY *[Signature]*

**In Re: Penny Lynn Baskin
Respondent**

Case No. 2022-CO-085

FINAL ORDER

Came for a final adjudication hearing on April 21, 2023, the complaint filed in this case against the Respondent, Penny Lynn Baskin, 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 the State of Arkansas who, at all times relevant to this case, was a Tontitown City Council member or a candidate for Tontitown City Council.

3. The Commission is charged with enforcing Ark. Code Ann. § 21-8-304(a) which provides 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. The Commission is also charged with enforcing Ark. Code Ann. § 21-8-701 which provides, in pertinent part, as follows:

(a) The following persons shall file a written statement of financial interest:

(1) A public official, as defined in § 21-8-402(17);

- (2) A candidate for elective office;

(c)(1)(A) The statement of financial interest for the previous calendar year shall be filed by January 31 of each year, except that a candidate for elective office shall file the statement of financial interest for the previous calendar year on the first Monday following the close of the period to file as a candidate for the elective office, and persons identified in subdivisions (a)(4) and (5) of this section shall file the statement of financial interest within thirty (30) days after appointment or employment.

(B) If a person is included in any category listed in subsection (a) of this section for any part of a calendar year, then such person shall file a statement of financial interest covering that period of time regardless of whether the person has left his or her office or position as of the date that statement of financial interest is due.

5. On September 22, 2022, the Commission received a complaint against the Respondent in her capacity as a Tontitown City Council member and as a candidate for Tontitown City Council. Briefly restated, the essential allegations of the complaint are as follows:

- (a) Ms. Baskin asked that various aspects involving a fence dispute with her neighbor be placed on the agenda of the committee of the whole meeting (September 2022), which is a monthly work session of the Tontitown City Council. This request constituted a member of the City Council seeking a special privilege.
- (b) Ms. Baskin has also repeatedly used her position to call Tontitown Code Enforcement and the Tontitown Police despite no code violations or criminal actions, all intended to harass her neighbor. She has threatened to have the code enforcement officer fired for not finding a violation.
- (c) Ms. Baskin was served with a letter from the City Attorney advising her that the fence dispute was a civil matter between neighbors and not a City matter. The next day after receiving the notice, Ms. Baskin applied for a fence permit to build a solid 6 foot high privacy fence to block her neighbor's 5 foot high brick and steel London style fence which is in the front yard bordering her property. No privacy fences are allowed in front yards, so Ms. Baskin is applying for a variance to place a wood privacy fence blocking her neighbor's \$20,000 fence bordering her property. Ms. Baskin has sought special privileges by requesting that the Planning Board allow her to erect a privacy fence in her front yard which is not permitted.

- (d) Ms. Baskin was appointed to the Tontitown Planning Commission on March 2, 2021, to fill a vacant seat. Ms. Baskin should have filed a Statement of Financial Interest (“SFI”) by January 31, 2022, for her time on the Planning Commission.
- (e) Ms. Baskin was appointed to fill a vacant seat on the Tontitown City Council on November 2, 2021. Ms. Baskin should have filed a SFI by January 31, 2022, for her time on the City Council.
- (f) Ms. Baskin filed for election to the City Council on August 9, 2022. Ms. Baskin was required to file a SFI by August 15, 2022.
- (g) To date, Ms. Baskin has not ever filed a SFI.

6. On October 4, 2022, 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) in her capacity as a Tontitown City Council member by using her position to bring various aspects of her fence dispute before the city council, to use Tontitown Code Enforcement and Tontitown police to harass her neighbor, and to seek a variance to build a 6 foot high privacy fence in her front yard, and/or Ark. Code Ann. § 21-8-701 in her capacity as a Tontitown City Council member and as a candidate for Tontitown City Council by failing to file a SFI in her capacity as a Tontitown City Council member and as a candidate for Tontitown City Council.

7. On October 21, 2022, 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 October 25, 2022.

8. On January 10, 2023, 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 January 20, 2023, for purposes of determining whether or not probable cause existed for the finding of a violation.

9. On January 20, 2023, 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. § 21-8-701 in her capacity as a Tontitown City Council member and as a candidate for Tontitown City Council by failing to timely file a SFI for calendar year 2021, and in her capacity as a candidate for Tontitown City Council by failing to file a SFI for calendar year 2020.

10. The Commission did not find there was sufficient evidence to support a finding of probable cause that the Respondent violated Ark. Code Ann. § 21-8-304(a) in her capacity as a Tontitown City Council member by using her position to bring various aspects of her fence dispute before the city council, to use Tontitown Code Enforcement and Tontitown police to harass her neighbor, or to seek a variance to build a 6 foot high privacy fence in her front yard.

11. On January 25, 2023, the Commission sent the Respondent a letter, via first-class mail, which notified her 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 Caution, the imposition of a two hundred dollar (\$200.00) fine, and the requirement that Respondent file a SFI for calendar year 2020 within thirty (30) days of her acceptance of the Offer of Settlement.

12. Pursuant to the terms of the written Offer of Settlement, the Respondent had ten (10) days to either sign and return the offer or request a public hearing. The written Offer of Settlement went on to state in the event that she did neither of those things, this matter would proceed to a final adjudication hearing.

13. On February 9, 2023, the Commission received the Respondent's letter stating she was unable to agree to the written Offer of Settlement and requesting a final adjudication hearing.

14. On April 11, 2023, staff sent a letter to the Respondent, via first-class mail, notifying her that a final adjudication hearing would be held on April 21, 2023. Said letter contained a separate written notice of final adjudication hearing providing the information required in Ark. Code Ann. § 25-15-208(a)(2).

15. The Respondent appeared with her attorney at the final adjudication hearing which was held during the Commission's confidential session on April 21, 2023. Said hearing was conducted in accordance with Ark. Code Ann. § 25-15-213.

16. At the hearing, the following exhibits were introduced into evidence:

- Exhibit "1" - Probable Cause Report
 - Exhibit "1-A" - Report
 - Exhibit "1-B" - Report Exhibits
 - Exhibit "1-C" - Report Exhibits
- Exhibit "2" - Written Offer of Settlement
- Exhibit "3" - Letter from Respondent requesting a Final Adjudication Hearing
- Exhibit "4" - Letter to Respondent accompanying Notice of Final Adjudication Hearing
- Exhibit "5" - Letter to Complainant giving notice of Final Adjudication Hearing
- Exhibit "6" - Notice of Final Adjudication Hearing
- Exhibit "7" - Respondent's SFI for calendar year 2020
- Exhibit "8" - Respondent's SFI for calendar year 2021
- Exhibit "9" - Respondent's SFI for calendar year 2022
- Respondent's Exhibit "PB1" - SFI for Daniel Montez

- Respondent's Exhibit "PB2" - Michael Washkowiak's SFI for 2022
- Respondent's Exhibit "PB3" - Respondent's FOIA request and Misty Piazza's SFI filed November 16, 2022
- Respondent's Exhibit "PB4" - Paul Colvin's SFIs for 2018 - 2022
- Respondent's Exhibit "PB5" - Amber Ibarra's SFI for 2022
- Respondent's Exhibit "PB6" - Arthur Penzo's SFI for 2021
- Respondent's Exhibit "PB9" - Don Doudna's SFI for 2019
- Respondent's Exhibit "PB10" - Larry Ardemagni's SFI for 2022

17. After being sworn, Leslee Shadrick testified that she has been the administrative assistant for the City of Tontitown since July of 2021. She is the Mayor's direct assistant. Before that, she was also involved in Human Resources ("HR") but the duties are now split into two positions.

18. Prior to the split, she was involved in keeping records filed with the City, but the person in the HR position does that now. Ms. Shadrick knows the Respondent and has knowledge of the SFIs which she filed with the City.

19. The Respondent was having problems with her filings getting produced under the Freedom of Information Act ("FOIA") and she did not want to put her street address on the forms. Ms. Shadrick had sent the Respondent text messages asking when she was going to bring her SFI for 2021 in for filing.

20. The Complainant requested the City produce copies of the Respondent's SFIs in July or August of 2022. She informed him that the Respondent's SFI was not in the file. The Respondent's SFI for 2020 was filed on February 17, 2023. On March 7, 2023, the Respondent came in and changed her telephone number on the form.

21. The Respondent's SFI for 2021 was filed on November 7, 2022. It was due in January of 2022. Since June or July of 2022, filings and HR are done by Luann Jenison.

22. When she started in 2021, Ms. Shadrick put the records in better order but did not check the filings for completeness.

23. After being sworn, Luann Jenison testified that she has been the City Administrator and HR for the City of Tontitown since 2021. She receives citizens and handles planning and paperwork. She assumed HR duties in August of 2021. She is the person who accepts SFIs for filing.

24. Ms. Jenison is familiar with the Respondent and had multiple interactions with her trying to get her SFIs filed.

25. The Respondent called on January 27, 2023, asking for copies of her filings. Ms. Jenison told her the only SFI on file was for 2021 and she sent her a copy by certified mail. It was filed on November 7, 2022.

26. Since that time, SFIs for 2020 and 2022 were filed on February 17, 2023.

27. Ms. Jenison started with the City in December of 2021 and the Respondent was already on the City Council.

28. A citizen had requested copies of her SFIs under the FOIA in September of 2022 and that is when it was discovered they were not on file.

29. SFIs are stored in Ms. Jenison's office under lock and key.

30. Ms. Jenison file stamps any documents she receives and gives the person a copy. She reviews the SFIs to insure they are signed and notarized. She is the one who file stamps them.

31. The Respondent made statements that she was not required to fill out some of the SFIs and so Ms. Jenison sought guidance from the Arkansas Municipal League.

32. The City now has a stamp that says “received.” Since Ms. Jenison took over, she stamp marks everything.

33. The Respondent called and requested copies of her filings, and she sent her a copy of her SFI for 2021 which was the only one on file. They had problems obtaining the Respondent’s SFIs by the time they were due.

34. During Ms. Jenison’s tenure, the SFIs have been kept in her office under lock and key.

35. Ms. Jenison went to work for the City in December of 2021 and took over the HR position in August of 2022.

36. After being sworn, Michael Odette testified that after he submitted a FOIA request for the Respondent’s filings with the City, she stated she was not going to file them because she would have to disclose information about her husband’s finances and she would get divorced before she did so.

37. She also said it would affect her Social Security Disability. She did not have any SFIs on file when he submitted his SFI request. He is aware that she filed all of her SFIs late in 2023.

38. After being sworn, the Respondent testified that the Commission’s Exhibit “7” is a copy of the SFI filed on March 9, 2021. It was notarized on March 9, 2021.

39. It is stamped “received” on February 17, 2023, but she had previously submitted it to Renee Biby on March 9, 2021. She got a copy of it from Ms. Biby at that time.

40. She did not file a SFI for 2020 until March 7, 2021, because that is when she started.

41. The Commission’s Exhibit “8” is a copy of the Respondent’s SFI for calendar year 2021. It reflects that it is a “replacement copy.”

42. The Mayor sided with Mr. Odette in a fence dispute, and they did everything they could to get the Respondent out of office. The Mayor told her that her seat was vacated and that she could not sit on the council any longer.

43. All the accusations made by the Mayor and Mr. Odette have come down to her SFIs for calendar years 2020 and 2021.

44. The Respondent testified Exhibit "PB1" is a copy of the SFI for Daniel Montez filed for his campaign. It is not filed stamped.

45. The Respondent testified Exhibit "PB2" is a copy of Michael Washkowiak's SFI for 2022 he filed for his campaign.

46. The Respondent testified Exhibit "PB3" is her FOIA request and Misty Piazza's SFI filed November 16, 2022, that does not have a file stamp.

47. The Respondent testified Exhibit "PB4" is the SFIs for 2018 - 2022 filed by Paul Colvin. They do not have a Tontitown file stamp on them.

48. The Respondent testified Exhibit "PB5" is Amber Ibarra's SFI for 2022. It has her signature but no notary or file stamp.

49. The Respondent testified Exhibit "PB6" is Arthur Penzo's SFI for 2021 and it has no file stamp, signature, or notary.

50. The Respondent testified Exhibit "PB9" is Don Doudna's SFI for 2019. He did not file one for 2020 for 2021. It is not file stamped by the City.

51. The Respondent testified Exhibit "PB10" is Larry Ardemagni's SFI for 2022 that is not file stamped by the City, and is not signed or notarized.

52. The Respondent testified Tim Burris filed a SFI on August 8, 2022. It does not have a file stamp.

53. The Respondent testified she was not informed about any problems with her SFIs until the issue concerning her Oath of Office was raised.

54. To the best of the Respondent's knowledge, there was not a system for the City to handle SFIs until she came along. It was the Respondent's testimony that she correctly filed her SFIs but multiple people had access to them. She was told multiple people had keys.

55. The Respondent obtained her exhibits from the City of Tontitown.

56. In September of 2022, the Respondent found out that her SFI for 2021 was not on file and so she slid another one under the door. She was hesitant to file SFIs because Mr. Odette was attacking her. She thought until September that the SFIs were already on file.

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

A motion was made by Commissioner Tolbert and seconded by Commissioner Pitts to find the Respondent, in her capacity as a Tontitown City Council member and as a candidate for Tontitown City Council, violated Ark. Code Ann. § 21-8-701 by failing to timely file a SFI for calendar year 2021, and shall be issued a Public Letter of Caution and be fined one hundred dollars (\$100.00).

The foregoing motion passed by a vote of 3-0, with Commissioners Irby and Johnson not voting since they attended the hearing electronically and were not physically present.

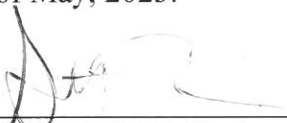
58. The Respondent committed a violation of Ark. Code Ann. § 21-8-701 by failing to timely file a SFI for calendar year 2021 in her capacity as a Tontitown City Council member and as a candidate for Tontitown City Council.

59. With respect to the Respondent's violation of Ark. Code Ann. § 21-8-701, the Commission found that a Public Letter of Caution shall be issued and that a fine of one hundred

dollars (\$100.00) shall be imposed and 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, Penny Lynn Baskin, shall be found to have violated Ark. Code Ann. § 21-8-701 in her capacity as a Tontitown City Council member and as a candidate for Tontitown City Council by failing to timely file a SFI for calendar year 2021; that the Respondent shall be issued a Public Letter of Caution; and that the Respondent shall be fined one hundred dollars (\$100.00), with that amount due and payable within thirty (30) days from the entry of this Order.

IT IS SO ORDERED this 16th day of May, 2023.



SCOTT IRBY, Chairman
Arkansas Ethics Commission