

<b>STATE OF ALABAMA,</b>	)	<b>IN THE CIRCUIT COURT OF</b>
	)	<b>GENEVA COUNTY, ALABAMA</b>
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>CRIMINAL DIVISION</b>
	)	
<b>DONNA JONES,</b>	)	
	)	
<b>Defendant.</b>	)	<b>CASE NO. CC-2008-138</b>

**MOTION TO DISMISS**

**COMES NOW** the State of Alabama, by and through its duly authorized District Attorney and moves this Honorable Court to dismiss the above styled case and as grounds therefore states as follows:

The Defendant, Donna Jones was indicted by the Geneva County Grand Jury in March 27, 2008 for an ethics violation for using her position as County Administrator for personal gain. An investigation was initiated by Geneva County Sheriff Greg Ward. The basis of the investigation was the allegations that Jones was being paid for hours not worked and overtime pay for working outside the office. As the investigation proceeded, Ward discovered that Jones was receiving overtime pay during pay periods in which she claimed vacation time, sick leave or comp time. It was Ward's contention that no other employee was able to receive the same benefits. It was further alleged that Jones herself told other County employees that they were not eligible to receive overtime pay during periods where vacation time was used. This was the basis of the ethics violation.

Prior to the presentation of the evidence to the grand jury, Ward and others, including the District Attorney's Office, had conversations with the State Auditors as well as the Attorney General's Office. Both entities stated that what Jones was doing was not proper and that charges could be presented to the Geneva County Grand Jury for their consideration.

Evidence was presented to the Grand Jury during a four hour presentment. Witnesses included Ward, County Commissioners Everett, Shields and Finch, Probate Judge Fred Hamic and other county employees. The case was given to the Grand Jury and an indictment was returned for using an office or position for personal gain (ethics violation). This charge was a class "B" felony.

Jones was immediately terminated by the Probate Judge upon legal advice from the attorney for the County bonding company. The position of County Administrator required her to be bonded. The attorney advised that Jones could not be legally bonded after being indicted for a felony. Jones was arrested and at arraignment entered a plea of not guilty.

Afterwards, the Alabama Department of Public Examiners conducted an voluminous audit that covered Jones pay for a period of three years. The audit revealed several interesting and relevant bits of information. The audit cited in numerous places the County Commission's lack of an internal control system for proper procedures for verifying an employee's timesheet. It was noted by the Examiners that errors were made while totaling the hours worked and posting hours worked and leave taken to the payroll system. This resulted in Jones being overpaid and being paid for hours worked when the employee reported vacation, sick or comp time used. This resulted in an overpayment of **\$288.16**

The Examiners also noted a problem with the system implemented for recording and reporting employee's leave balances. It was noted where errors were made while accruing and posting monthly vacation and sick leave. While tracing leave earned and taken from the timesheets to the leave reports, numerous errors were made that resulted in an employee being overpaid vacation and compensation leave upon separation from county employment. This resulted in an overpayment of **\$712.62**.

One recommendation of the State Examiners was for the County to implement internal control procedures to ensure the recording and reporting of an employee's timesheet and leave balances were accurate. This is particularly significant since the 2005 County Commission State Audit noted similar errors. Jones was responsible for the management and accounting of county funds and the Commission was responsible for her supervision. When faced with notice of the errors, the County responded that **“controls are being put in place to ensure that the Wages Payables and Estimated Liabilities for Compensated Absences are posted correctly.”** Based on the Special Audit conducted in this case, it is obvious the controls recommended in 2005 were never implemented. Harry O. Adkison served as the Probate Judge and County Commission Chairman in 2005.

During the exit conference, the Examiners noted that of the 85 timesheets tested for Jones, four of the timesheets did not have the supervisor's signature (Probate Judge) and eleven of them did not have the overtime approving authority signature on the timesheet (Probate Judge). However, eight of the eleven timesheets that did not have the overtime approving authority's signature on the timesheet did have the supervisor's signature noting he approved the time record and certified it to be true and correct. Harry O. Adkison served as Probate Judge until Fred Hamic assumed office in January 2007. A majority of the time sheets in during this part of the audit were signed by Harry O. Adkison.

The Examiners further noted that while recalculation of the hours on Jones' timesheets for accuracy and preparing the work paper that reflected the information reported on her timesheet, it was noted that there were mathematical errors. Also, while tracing these timesheets to the PR Transaction reports, it was concluded by the Examiners that Jones was paid for hours worked when she had claimed vacation, sick or comp time used. These errors resulted in Jones being overpaid by \$288.16. It was requested that Jones was to repay this amount upon publication of the final audit.

Two of the issues presented at Grand Jury involved Jones working outside the office and claiming overtime and claiming vacation leave on the same day as work. The Examiner's noted in the audit the following information addressing these issues. As to the first issue, the Examiners noted that the Personnel Manual did not address the exact days the County Administrator was to work her 40 hours. The County Commission Chairman did approve her timesheets as reported and therefore, the Examiners accepted the 40 hours worked when between Sunday through Saturday. She was allowed overtime/comp time for all hours worked in excess of 40. It was noted by the Examiners that the County Commission had approved Jones' overtime pay and the Commission knew that she worked outside the office and at odd hours. Commissioners Finch, Minchew and Probate Judge Hamic denied knowing that she worked outside the office.

The issue of overtime and out of office work came to a head in the March 10, 2008 Geneva County Commission meeting. Sheriff Ward asked the Commission if they were saying that it was OK for Jones to work at home when that resulted in her earning overtime. The Examiners said there was no written authority but it had always been accepted. Again, the same Commissioners denied knowledge of her working outside the office. However, at this meeting a motion was made to end all overtime for Jones. Her position of county administrator was changed to a salaried position based on her current hourly rate times 40 hours and she was removed from the classified status to the exempt classified to be effective March 16, 2008 with her consent.

The Examiner's also noted that since the Personnel Manual did not address working and claiming vacation time on the same day, the Examiners allowed the County Administrator to claim hours worked and vacation leave on the same day as long as the County Commission Chairman approved the time worked and the leave taken. The Examiners stated that the Commission was aware that the County Administrator did work on county business at home while on leave. This fact is disputed by the Commission. However, the Examiners allowed the time worked at regular pay and any hours worked over 40/week at 1 1/2 times the regular pay rate. The Examiners claimed this information was in the minutes of the County Commission meetings.

Ward turned several timesheets over to the Examiners that he believed to be in question which were included in the Audit. Ward completed a thorough investigation and sought advice from several State agencies in pursuit of this investigation. Once Ward discovered the discrepancies, he was under a legal duty as Sheriff to investigate the case. The results of that investigation led to the Grand Jury presentment. However, any alleged wrongdoing or mistakes Jones made were excused by the Examiners due to the County Commission approving each and every timesheet presented by Jones without question. It appears the Examiners place blame on the Commission for not having proper internal control involving approval of employee timesheets. As stated before, this was not the first time that improper internal control was found by the State Examiners.

After thorough review of the reports from the State Auditors, it is clear that there are complications with continuing this action resulting from the failure of oversight and lack of internal control. The blame in this case falls upon a system that failed to have proper procedures and controls

in place to prevent this from happening. The Examiners noted that there was no written policy in place addressing overtime and vacation time. The Examiners also noted that since the Commission approved all overtime and timesheets, the Examiners would accept the timesheets.

Another area of contention is that Jones denied similar benefits to other employees when claimed. Part of Jones' job was approval of county employees' timesheets. It is clear that Jones had control over her timesheet and had the opportunity to exploit the system for personal gain. However, she would receive no personal gain by denying these benefits to other employees. Those employees should have consulted a higher authority to ensure the proper procedures were being followed.

The District Attorney's Office has very few days per year to conduct criminal jury trials. It is not in the best interest of justice to take this case to a jury when all timesheets in question were approved by the County Commission and accepted by the State Examiners. A potential trial would only serve to put the County Commission and the system in place at the time on trial. It should be made clear that the District Attorney's Office remains diligent in the pursuit of justice. However, a case of this sort and with these mentioned complications would drain its resources from prosecuting the numerous murderers, sex offenders and drug dealers on our current docket.

There were several Commissioners throughout the past few years who did question the overtime usage by Jones. On March 10, 2008, by unanimous vote of the Commission, the encouragement of Sheriff Ward and with the consent of Jones, she was made a salaried employee, not eligible for overtime pay.

The Grand Jury found probable cause to believe that Jones used her office for personal gain and received benefits others could not based on valid and correct information. However, after review of the 2005 State Audit and the Special Audit, this office moves to dismiss this case upon repayment of the overpayment as figured by the State Examiners.

**DATED** this the 18<sup>th</sup> day of June, 2009.

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Kirke Adams  
District Attorney  
P.O. Box 247  
Geneva, AL 36340  
(334) 684-3697

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he has forwarded a copy of the above motion to the Attorney for the Defendant, Laura A. Wyrosdick, by placing a copy of same in her box in the Geneva Circuit Clerk's Office on this the 18<sup>th</sup> day of June, 2009.

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Kirke Adams