

FILED

BEFORE THE ARKANSAS ETHICS COMMISSION

SEP 29 2010

ARKANSAS ETHICS
COMMISSION

BY _____

**In Re: Donald F. West
Respondent**

Case No. 2010-CO-016

FINAL ORDER

Came for a public hearing on September 17, 2010, the complaint filed in this matter against the Respondent, Donald F. West, 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:

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. At all times relevant to this case, the Respondent held the office of Mayor of Diamond City, Arkansas.
3. The Commission is charged with enforcing Ark. Code Ann. § 21-8-304(a)

which provides, in pertinent part, as follows:

No public official...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 May 17, 2010, the Commission received a complaint against the Respondent in his capacity as Mayor of Diamond City, Arkansas concerning personal use of city labor and equipment. The essential allegation of the complaint was that the Respondent violated Ark. Code Ann. § 21-8-304 by using his position as mayor to use city labor and equipment for personal gain and to obtain the support of certain citizens and business owners.

6. On May 20, 2010, 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 allegation of the complaint. The letter went on to state that the focus of the investigation would be whether or not his actions violated Ark. Code Ann. § 21-8-304.

7. On June 18, 2010, staff presented the preliminary results of its investigation to the Commission and was instructed to complete the investigation. On that same date, staff sent a letter to the Respondent, via first class mail, to notify him of the Commission's decision.

8. On June 24, 2010, staff sent the Respondent a letter, via first class mail and certified mail with a return receipt requested, to notify him that the results of the investigation would be presented to the Commission at its regular monthly meeting on July 16, 2010, for purposes of determining whether or not probable cause existed for the finding of a violation.

9. On July 16, 2010, the Commission considered the results of staff's investigation and determined, by a vote of 4-0, that probable cause existed for finding that the Respondent violated Ark. Code Ann. § 21-8-304(a) in connection with the personal use of city labor and equipment. This finding was based upon evidence that he

used city labor and equipment to have a tree stump removed from an apartment complex which he owned.

10. On July 19, 2010, the Commission sent the Respondent a letter, via first class mail, notifying him of the finding of probable cause. In accordance with the Commission's Rules of Practice and Procedure, said letter contained a written Offer of Settlement. The Respondent was given ten (10) days to accept the written Offer of Settlement or request a public hearing before the Commission.

11. On July 22, 2010, staff received a letter from the Respondent rejecting the written Offer of Settlement and requesting a public hearing. On August 27, 2010, the Respondent was sent a letter, via first class mail, notifying him that a public hearing would be held on September 17, 2010. Said letter contained a separate written notice providing the information required in Ark. Code Ann. § 25-15-208(a)(2).

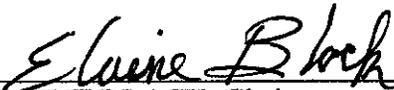
12. The public hearing was commenced on September 17, 2010, and was conducted in accordance with Ark. Code Ann. § 25-15-213.

13. Upon consideration of the testimony and evidence presented at the public hearing, the Commission found, by a vote of 3-2, with Commissioners Black and Johnson dissenting, that the Respondent violated Ark. Code Ann. § 21-8-304(a) by using city labor and equipment to have a tree stump removed from real property which he owned.

14. 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 Warning and fined \$250. 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, Donald F. West, shall be issued a Public Letter of Warning and is hereby fined \$250 for violating Ark. Code Ann. § 21-8-304(a) by using city labor and equipment to have a tree stump removed from real property which the Respondent owned.

IT IS SO ORDERED this 29th day of Sept., 2010.



ELAINE BLACK, Chairman
Arkansas Ethics Commission