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DISTRICT ATTORNEY
NORTHEASTERN JUDICIAL CIRCUIT
HALL COUNTY / DAWSON COUNTY**

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Tom Oliver
Chairman, Hall County Commission

Dear Chairman Oliver:

Earlier this year, attorney Ashley Bell approached me as District Attorney advising that he had been retained by two former employees of Hall County who had allegations of impropriety within a Hall County government agency. However, no details were provided on that initial contact as to who the allegations were being made against, who was making the allegations, nor what the general nor exact nature of the allegations were. Later, Mr. Bell advised me that former employees of the Hall County Board of Tax Assessors, James Cantrell and Lyman Martin, were those who had retained him.

On a date later, Mr. Bell delivered to me a package of documents which he stated supported the allegations and asked for an investigation. On the same day, prior to any opportunity for my office or any other agency to actually investigate the matter, Mr. Bell, without any notice to my office, held a news conference at his office with James Cantrell and Lyman Martin, providing to the press an overview of the nature of the allegations.

Subsequently, I met with Mr. Bell, Mr. Cantrell and Mr. Lyman Martin in the District Attorney's office. The nature of the charges was explained to me at that point and some supporting documentation was supplied. I thereafter met with Tax Assessors Emory Martin and Terrell Gaines at their request as they desired to respond to the allegations.

After these two meetings, I referred the matter to the Georgia Bureau of Investigation to complete an investigation. I have received the report of the GBI. The investigation resulted in no criminal warrants being sought by the Georgia Bureau of Investigation.

The primary allegation was that Tax Assessor Emory Martin had stolen in excess of \$60,000.00 over a period of several years from the Hall County government by overcharging the government for work not completed, the claim being that Emory Martin was being paid for days that he did not work. In my meeting with Emory Martin and Terrell Gaines along with investigator Maurice Gregory of my office, Martin claimed that he and other Board members were allowed to charge \$100.00 for each occasion on which they met with any taxpayer on any issue related to the work of the Board. In order to accomplish being paid in this way he would check on time sheet

forms a day for each time he met with a taxpayer on official business. If those meetings were all in the same day, because of his understanding that a full payment of \$100.00 was allowed for each time an Assessor came in the office to do official business, he'd check off a day for each such taxpayer meeting or each time of coming in to the office on official business. The number of days checked reflected the number of times such official business was conducted, he said.

The complainant James Cantrell, while employed by the Board as a Chief Appraiser, knew of this method of payment for several years, and in fact signed off on or had seen and was aware of many of the time sheets presented for payment in this fashion. He claimed that he did nothing to report this method of payment as an impropriety out of fear of being dismissed from his job. Therefore, rather than reporting what he regarded as a criminal violation, he arguably chose to actually aid in the alleged fraud by allowing it to continue unchecked and unreported. In fact, the investigation revealed that during this time frame he wrote at least one letter praising Emory Martin for his work as Tax Assessor, recommending that the Hall County Commission reappoint Emory Martin to the Board, despite his knowledge of the alleged improprieties of Emory Martin.

The investigation revealed that the Hall County Tax Assessor Board at the time of the allegations at least, was a three member, independent board in which the members were "treated like" elected officials, but that they were appointed by the Hall County Commission, and are county civil service employees. The Hall County Board of Commissioners sets the budget for the Tax Assessor's office but the Tax Assessor Board has been left free, essentially, to its own policies and procedures. The employees of the Board report directly to the Board, including Chief Appraisers James Cantrell and Lyman Martin, the primary complainants.

The apparent method of pay, per former County Administrator Jim Shuler, was that the Tax Assessors were to receive \$100.00 per diem. Per the county attorney the \$100.00 rate, however, was reportedly not established by Commission action, but rather by memo from James Cantrell as Chief Appraiser to the finance officer of the county, raising a former per diem of \$75.00 to \$100.00 in 1997. (James Cantrell contends that there was Commission action on this matter.)

The Tax Assessors Board and its employees were paid through the county payroll. There has been no allegation that the actual budget for the Board was ever exceeded.

In that the Tax Assessor's Board was to a large extent allowed to set its own policies, with no apparent oversight from the Commission or the County Administrator, apparently a practice had developed over many years of Tax Assessors not being paid simply on a per diem basis, but rather on a per event basis - that is, if an Assessor met with a tax payer on a day and met with another tax payer on the same day, for example, the Assessor, particularly Emory Martin, would "charge" for two \$100.00 payments by checking two different days. This method of payment went essentially unchallenged over a period of several years and was known at least to the primary complainant James Cantrell. No one, even long time employees of the Board, like complainants James Cantrell

and Lyman Martin, brought the alleged impropriety to the attention of either the County Administrator nor any of the Commissioners nor any investigative or prosecution agency. (James Cantrell, after his 2005 retirement, made a complaint about the alleged illegal activity to Doug Aiken of the Hall County Taxpayer's Association but never to any government official until the present complaint was made in 2008.)

The practice of paying Assessors for events rather than per diem for official meetings with a quorum extended at least back to the early 1980's. Per the investigation, a change in that policy was made to a per diem system in the early 1980's, but in practice, the per event payments by and large continued. The practice may have been contrary to policy, but it was a policy that essentially was left to the discretion of the tax assessors themselves, without any real oversight into its propriety. In fact, in order apparently to match the practice, the policy itself was changed in 2005 by the Board to reflect the actual practice of the Tax Assessors.

In any consideration by this office into whether to seek a criminal charge against any individual, the responsibility of the District Attorney is not just to determine whether there exists probable cause to pursue criminal charges, but rather to determine whether a jury of twelve would likely find beyond a reasonable doubt that an individual charged was guilty beyond a reasonable doubt of criminal behavior. In this case, I have determined that the likelihood of a jury finding Tax Assessor Emory Martin, the Assessor against whom the primary complaint was made, guilty of a criminal offense, regardless of whether an indictment could be procured, is not good. Therefore, I have decided to not pursue a criminal charge by indictment or otherwise.

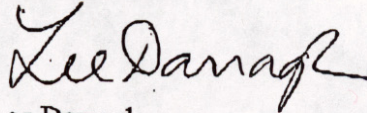
The changes in payment policy essentially being left to the whim of the Assessors themselves, the lack of oversight or appropriate auditing of the pay of Assessors, tacit approval by inaction in the reporting of alleged improprieties, significant legal contentions that would be raised particularly as related to the statute of limitations for much of the activity, the lack of available evidence to disprove the contention of Emory Martin that he was never paid for work not performed and other factors likely to be explored in a trial, lead to my conclusion that a crime or criminal intent (a necessary element of any crime), is highly unlikely to be susceptible to proof beyond a reasonable doubt. I further note that despite the extensive investigation of the Georgia Bureau of Investigation, an agency empowered to bring charges at their discretion, also had chosen not to pursue any warrants in this case, nor has that agency recommended a prosecution.

This is not to say that Tax Assessor Emory Martin is in any way "cleared" by this letter. Determining that a criminal charge would not reasonably lead to a conviction is not to say that the actions of Emory Martin as revealed by the investigation were not of highly questionable ethics and an abuse of his authority. In some ways the determination of whether to bring criminal charges could have been decided differently. However, to use taxpayer resources for a trial in which a conviction is so highly unlikely would be an unnecessary waste of those resources.

I am of the understanding that as the complaints of Mr. James Cantrell and Mr. Lyman Martin were finally brought to the attention of the Hall County Commission, significant changes

have been made in the structure of the Board of Tax Assessors and in the way that Tax Assessors are to be paid in the future: at a set reasonable and minimal monthly rate. I applaud their actions, because that will lead to greater certainty and a restoration of the public trust in the operation of the Tax Assessor's office. I urge the Commissioners to establish a method of oversight to ensure that any form of compensation for the Tax Assessors or any reimbursable expenditure to which any Tax Assessors may be entitled be subject to full and appropriately frequent external audits so that the taxpayers are protected from potential fraud, and that such questions don't arise in the future.

Respectfully,



Lee Darragh

LD/er

c: Bill Blalock ✓
County Attorney