



**JOSEPH D. BROWN**  
**GRAYSON COUNTY CRIMINAL JUSTICE ATTORNEY**

May 16, 2016

Hon. Bill Magers  
GRAYSON COUNTY JUDGE  
100 W. Houston  
Sherman, TX 75090

Re: Complaint regarding Sarah Somers

Dear Judge Magers:

In April of 2016, a citizen contacted this office and filed a complaint alleging that in December of 2012 and March of 2013, Sarah Somers, Emergency Management Coordinator for Grayson County, possibly committed criminal offenses or ethical violations related to the submission of two invoices, which were paid by Grayson County. These invoices were approved by Sarah Somers for payment to be made to a company of which Sarah Somers had a legal interest. This office has investigated the complaint and a report detailing our findings is attached hereto.

As set forth in the attached report, any criminal violation which may have been committed is not prosecutable due to the expiration of the statute of limitations. Our findings do indicate a violation of the Grayson County personnel policy manual was committed.

As no criminal offense may be prosecuted, we are closing our file in this matter. As you serve as supervisor for Ms. Somers' employment, this report is being forwarded to you for administrative purposes.

If you have any questions or concerns, please let me know.

Sincerely,

Joseph D. Brown  
Criminal District Attorney  
Grayson County, Texas

JDB/slw

Enclosure: May 11, 2016 Memorandum from K. Ashmore to J. Brown

**MEMORANDUM**

**TO:** Joe Brown

**FROM:** Kerye Ashmore

**DATE:** May 11, 2016

**RE:** SARAH SOMERS - CONFLICT OF INTEREST. SUBMISSION ON BEHALF OF TEXAS ILLEGAL DUMPING RESOURCE CENTER (HEREIN REFERRED TO AS TIDRC).

**ISSUE:**

In December 2012 and March 2013, Sarah Somers, Grayson County Emergency Manager, submitted two invoices to the Grayson County Auditor, Richey Rivers, for training performed by TIDRC. These invoices totaling \$6,500 were paid. At the time of the training and the submission of these invoices, Sommers was a director of TIDRC. The training was conducted by John Ockels, a director of National Illegal Dumping Resource Center, Inc. (herein referred to as NIDRC). Sarah Somers was also an original incorporator and on the Board of Directors of NIDRC when it was incorporated. Ockels and Sommers maintained a relationship and lived together. The issue is whether the submission of the invoices by Sarah Somers and payment of \$6,500 to TIDRC violated the law or Grayson County Personnel Policy?

**LAW REVIEWED** (All documents attached unless otherwise indicated herein):

- (1) Chapter 171, Local Government Code;
- (2) Chapter 176, Local Government Code;
- (3) 36 Tex. Prac., §18.37 (2d Ed.).

**DOCUMENTS** (All documents attached unless otherwise indicated herein):

A number of documents were reviewed, including, the following:

- (1) The signed contract between TIDRC (John Ockels) and Grayson County (Jeff Schneider, Grayson County Purchasing), with Sarah Somers, who said she printed the contract, designated as the "Official point of contact and designated County Representative with supervisory authority over this contract." This contract is dated November 28, 2012, for training to be done on December 13, 2012. This contract will be referred to as "contract one";
- (2) Unsigned contract between TIDRC and Grayson County for training to be done on January 11, 2013, and February 22-23, 2013. No signed contract could be located by

Jeff Schneider because there was no purchase order number. He indicated he asked Somers for a copy and "she printed one off her computer." Again, Somers was designated to serve as the official point of contact and as the County Representative with supervisory control of the contract. This contract will be herein referred to as "contract two";

- (3) Invoice of November 28, 2012, in the amount of \$2,000, for training to be done on December 13, 2012, pursuant to contract one. This invoice purports to be from TIDRC to Office of Emergency Management, ATTN: Sarah Somers. This invoice was prepared by Somers and submitted by Somers to the Auditor's office for payment. This invoice is herein referred to as "invoice one";
- (4) Invoice dated March 9, 2013, in the amount of \$4,500 for training pursuant to contract two. The invoice designates the training dates as February 7, 2013 and February 22-23, 2013. It appears the February 7<sup>th</sup> date is a mistake and should be training that occurred on January 11, 2013. This invoice is herein referred to as "invoice two";
- (5) Grayson County check dated December 4, 2012 (nine days before the December 13 training) in the amount of \$2,000 for payment pursuant to contract one and invoice one. This check is made payable to TIDRC, endorsed by stamp, and deposited into an account at American Bank for NIDRC. This account is an account of John Ockels;
- (6) Grayson County check dated March 26 and payable to TIDRC in the amount of \$4,500 for payment of services pursuant to contract two and invoice two. Again, this check was endorsed by stamp by TIDRC and deposited into an account operated by John Ockels as NIDRC;
- (7) A Certificate of Formation for a "for profit" corporation - Texas Illegal Dumping Resource Center showing Somers as the Director with 1000 shares of initial common stock with no par value. This corporation was incorporated on June 30, 2011;
- (8) Forfeiture of TIDRC Charter as of February 8, 2013;
- (9) Certificate of Formation of NIDRC of February 13, 2006 with two of the initial directors being John Ockels and Sarah Somers;
- (10) Statement of Change of Address of Registered Agent and office of NIDRC (John Ockels), wherein the address was changed to 545 Marcel in Denison, which is also the address of Somers. This document was filed January 20, 2011;
- (11) Forfeiture of Corporate Charter of NIDRC of January 28, 2011, for failing to pay Franchise Tax. (The Charter of NIDRC was originally forfeited on August 7, 2009 for failure to pay Franchise Tax, but was reinstated in August of 2009 after Ockels filed for reinstatement.);

- (12) Assumed Named Certificate of TIDRC, John Ockels, dated March 3, 2006. Please note that Ockels indicates that TIDRC is a non-profit Texas Corporation;
- (13) Sign in sheets for training on December 13, 2012, January 11, 2013, and February 22-23, 2013;
- (14) Letter from County Clerk to District Attorney Legal Assistant, Sandye Brown, confirming no conflict of interest affidavit was on file by Somers; and,
- (15) Bank records from 2012 - 2013 of NIDRC - John Ockels', American Bank of Texas (records not attached).

**Interviews:**

Jeff Schneider, Grayson County Purchasing.

Richey Rivers, Grayson County Auditor.

Sarah Somers.

**Discussion of Facts:**

Most of the facts in this situation are undisputed. Clearly, Somers and Ockels were on the original Board of Directors of NIDRC when it was incorporated in 2006. Moreover, Somers incorporated TIDRC in 2011. She was the original director in that corporation. Sometime prior to 2011, Ockels and Somers were in a personal relationship that ultimately resulted in them living in the same residence. In her interview, she indicated that she thought that her employees, other law enforcement officers, and government officials needed training, particularly with regard to the enforcement of burn bans and other environmental laws. Therefore, she requested that Ockels perform the training in December 2012 and in 2013. Somers indicated that she prepared the contracts and submitted those to purchasing. Moreover, she created the invoices and submitted them to the Auditor. The checks were made payable to TIDRC, which Somers indicates she turned over to Ockels who deposited them into his bank account at American Bank. The bank records indicate that Ockels operated basically on a cash system probably because of financial problems he had experienced in the past. He would deposit checks and then instead of writing checks on the account, he would get cash withdrawals. It is also unquestioned that Somers never filed an affidavit of conflict of interest. Moreover, neither Richey nor Schneider indicated that they were aware of any connection that Somers may have had with TIDRC or NIDRC at the time that the contracts were signed and the invoices paid.

Somers indicated that she had formed TIDRC in 2011 as a gift to Ockels because NIDRC had not paid its Franchise Tax. So, she wanted him to have a corporation through which he could operate his business and speaking engagements. She indicated that this made him mad, and after that, she never had anything to do with the corporation. She maintains that there are no officers, no stock has been technically issued, and the corporation is now

defunct for failing to pay its Franchise Tax, and the records from the Secretary of State's office confirm that fact.

Somers was unable to explain to me exactly why she prepared the contracts with TIDRC, submitted invoices for TIDRC, and simply turned the checks over to Ockels for him to endorse with a stamp from TIDRC and immediately endorse NIDRC and deposit them into his account. She claims that she received no income from either corporation. However, as I pointed out to her, if someone is living with her in her house, whatever the exact relationship is, it is only reasonable to assume that she is in fact obtaining an economic benefit from at least the sharing of expenses.

Somers was very vague in answering the question of who had known about her association with TIDRC and NIDRC. She indicated that when she first went to work for the County that she had a conversation with then County Judge Drue Bynum, about whether she could remain on "the Boards she was involved in." She was not clear, and was somewhat evasive, about exactly what boards those were. She specifically mentioned the TCOG Board but never came out and specifically said that she told Bynum that she was involved in TIDRC or NIDRC. She claimed this conversation was in some form of an email. Because the limitations period for any criminal violation has expired, as will be set out in this memo, I have not pursued the email.

Somers admits that she did not file a conflict of interest affidavit because she just did not think to do it.

There is no question that John Ockels has previously provided some training to Grayson County, and apparently, has answered questions in the past concerning environmental law, etc. "for free" as Somers put it. There is also no question that Ockels, for a number of years prior to 2012 and since, has spoken throughout Texas concerning the issues that he addressed in his training in 2012 and 2013, and that he is qualified to do so. Sign in sheets indicate to me as does my interview with Somers that the training that the County contracted for actually took place and was attended by those shown in the sign in sheets.

#### **Discussion of the Law:**

Chapter 171 of the Local Government Code requires a "local public official" who has a "substantial interest" in a business entity to submit an affidavit disclosing the interest "before a vote or decision on any matter involving the business entity" and to abstain from further participation if the matter would "have a special economic effect on the business entity" ... A violation of Chapter 171 is a class A misdemeanor with a limitations period of two years.

Chapter 171 of the Local Government Code defines "local public official" as a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority, or district or other local government entity that exercises responsibilities beyond those that are advisory in nature. As noted in 36 Tex. Prac., County and Special District Law, §18.37, the statute "provides no definition of an official as

distinguished from an employee; an 'official' is commonly defined as one who exercises some discretionary sovereign authority largely independent of the control of others."

Moreover, the statute does not make clear whose "vote or decision" a local official is prohibited from participating in. It may not be necessarily limited to a decision by the governing body - City Council or Commissioners Court - but may include any decision - making process by local officials." 36 Tex. Prac., supra. With this rationale, the submission of an invoice through an auditor, who in turn submits the invoice to the Commissioners Court, would be deemed a decision and participation by the person submitting the invoice to the auditor for payment.

Also, the term "substantial interest in a business entity" is defined as a person who owns 10% or more or \$15,000 or more of fair market value of the business entity or the funds received by the person from the business entity exceeds 10% of the person's gross income from the previous year. In light of the attached documents from the Secretary of State showing that Somers was the sole director of TIDRC when incorporated and up until its Charter was forfeited in 2013, I assume that she would qualify as a person having a substantial interest in a business entity.

Chapter 176 of the Local Government Code that was in effect in 2012 requires certain disclosures for doing business with the County when there may be a potential conflict of interest.

Section 176.001(4), states that a "local government officer means: a member of the governing board of a local governing entity; a director, superintendent, administrator, president, or other person designated as the executive officer of the local government entity, or, an employee of the local government entity with respect to whom the local government has, in accordance with Section 176.005, extended the requirement of Section 176.003 and 176.004 of the Local Government Code."

Section 176.005 of the Local Government Code extended the requirements of 176.003 and 176.004 to "any employee of the local government entity who has the authority to approve contracts on behalf of the local governmental entity, including a person designated as a representative of the local government entity for purposes of Chapter 271. The local government entity shall identify each employee made subject to Sections 176.003 and 176.004 under this subsection and shall provide a list of the identified employees on request of any person."

Section 176.005(d) states that it is an exception to the statute that a person files the required conflicts of disclosure statement not later than the seventh business day after the date the person received the notice from the local government entity of the alleged violation since Grayson County has not designated her pursuant to 176.005.

A violation of Chapter 176 is a class C misdemeanor with a limitations period of two years. Moreover, it does not appear that Somers would qualify as a "local government official" as that term is defined in Chapter 176.

On page 25 of the Grayson County Employee Manual under the heading "Actions Constituting Fraud," it is stated: "[t]he terms defalcation, misappropriation, and other fiscal wrongdoings refer to, but are not limited to: ...any dishonest or fraudulent act...profiteering as a result of insider knowledge of County activities...any similar or related inappropriate conduct..." Moreover, on page 27 of the personnel manual under the heading "Moonlighting (Outside Employment)," it is stated that while the County should be the employee's primary employer, the employee is permitted to have other jobs which... "do not pose a conflict of interest, or appear to pose a conflict of interest, to the individual or the County...do not reflect negatively on the County or its public image in any manner...do not interfere with the performance of your County position...are not reporting to a secondary employer who is involved in the exchange, purchase or sale of goods or services to the County...do not involve the use of County resources or time..." This same policy indicates that prior written approval will be obtained from the employees elected official/department head before accepting a second position.

I believe that it is possible that Somers violated Chapter 171 of the Local Government Code. However, the two-year limitations period has run and is expired, so she cannot be prosecuted for any misdemeanor offenses arising from these transactions.

It is my opinion that Somers' actions violated Grayson County's personnel policy, at least with regard to having a conflict of interest or having the appearance of a conflict of interest.

Therefore, I have evaluated the possibility of using the acts of Somers together with the violation of personnel policy to determine if a theft case would be available. However, I do not think that a theft case is appropriate since, unquestionably, the County received the training for which it contracted and paid. Therefore, a theft case is not viable.

Having determined that the two-year limitations period of any applicable criminal offense that might have been committed has expired, I do not see the need for further investigation into this matter through the District Attorney's office.