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IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA
GRAND JURY, SPRING TERM 2011

IN RE: Salter Advertising Right-Of-Way Tree Removal

IN THE NAME OF AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

This matter came before Your Grand Jury for its review under the instructions given us that we have the power to investigate public offices and public officers to determine if they are operating according to law and are competent or lax in the performance of their duties. Your Grand Jury has reviewed the actions of the Florida Department of Transportation (FDOT) as it relates to issuing of permits to Salter Advertising, a billboard company, for the purpose of clearing viewing zones on state right-of-way for their billboards. Secondly, we reviewed the involvement of former State Representative and now State Senator Greg Evers in the issuing of the permits for Salter Advertising. Details of the Presentment are summarized below.

FACTUAL SUMMARY

The Florida Department of Law Enforcement reviewed a complaint that permits were issued to Salter Advertising in violation of State Law and FDOT Rules. The applicable permit requirements are governed by Florida Statute 479.106 and FDOT Rule 14-40. When the owner of an outdoor advertising sign needs to cut down or remove vegetation on the State right-of-way, they must apply to FDOT for a permit. Pursuant to FDOT Rule 14-40.030, the permit application must include a "vegetation management plan" and a mitigation

appraisal completed by a certified arborist or landscape architect. The "vegetation management plan" explains the details related to the project. The mitigation appraisal is a calculation of fees payable to the state for the vegetation which the applicant wants to cut, trim or remove. The mitigation appraisal is calculated by a formula set forth by FDOT which is based on the size and species of the vegetation. The applicant is responsible for having an appraisal completed and attached to the related application and vegetation management plan. If the vegetation management plan and/or the mitigation appraisal are not attached to the permit application, it should be considered incomplete and returned to the applicant.

In addition, if the applicant wants to create a new viewing zone for a new sign, he must surrender two "nonconforming" sign permits. State statute and FDOT defines a new sign as being any sign permitted on or after July 1, 1996.

In early 2009, Salter Advertising applied for over 110 vegetation management permits for approximately 60 different sites. Although none of these applications included vegetation management plans or mitigation appraisals as required by law, all of the permits were issued by the FDOT District 3 Office. As a result, Salter Advertising cut down more than 2000 trees on the State right-of-way and the State of Florida failed to collect the estimated one to four million dollars in mitigation fees which Salter should have been charged to mitigate these projects. In addition, Salter was not required to surrender any nonconforming signs.

The Florida Department of Law Enforcement Investigator interviewed numerous individuals including: State Senator Greg Evers; former FDOT Secretary Stephanie Kopelousos; FDOT Assistant Secretary Kevin Thibault; FDOT District 3 Director of Right-Of-Way John Garner; FDOT District 3 Operations Director James Rodgers; FDOT District 3 Engineer David Wilks; FDOT District 3 Permit Manager James Lundsford; Salter Advertising General Manager David McCurdy; FDOT District 3 Employee Steven Hunt; FDOT District 3 Secretary Larry Kelley; and Jay Eubanks of Jay Eubanks Tree Service of Mobile, Alabama.

State Senator Greg Evers and FDOT District 3 Operations Director James Rodgers declined our invitation to appear before Your Grand Jury and answer questions about this matter at our first session. At that time Your Grand Jurors decided to issue subpoenas to compel the attendance of these at our next session. As such, these witnesses along with several others did testify in this matter.

Your Grand Jurors find that Salter General Manager David McCurdy contacted the FDOT District 3 office about clearing the viewing zones on State right-of-way for Salter billboards. McCurdy was advised of what was required. We find that the FDOT staff at District 3 was well aware of the Florida Statutes and FDOT Rules (Exhibits 1 & 2) and that the permitting process is clear and not complicated. However, rather than submitting applications which complied with the requirements as advised by the FDOT staff, McCurdy contacted then State Representative Greg Evers for some "help with the permit process."

Representative Evers was on the Transportation Committee in the Florida House of Representatives which means he had a great deal of control over the FDOT budget. After receiving a call from McCurdy, Evers asked then FDOT Secretary Kopelousos to look into this matter. Representative Evers later advised FDLE Agent Brett Lyceff that this was just a routine constituent request. Your Grand Jurors learned from testimony that Senator Evers and Salter General Manager David McCurdy were high school classmates. Further, Senator Evers' wife who is an attorney was consulted by Salter Advertising about representing the company on some legal matters during the general timeframe of this permitting issue.

It appears from e-mail documentation and testimony that Senator Evers was actively advocating on behalf of Salter Advertising regarding these permits. After Evers made contact with Kopelousos, she delegated the matter to Assistant FDOT Secretary Kevin Thibault.

Following several telephone calls and e-mails between FDOT District 3 Director James Rodgers and FDOT Secretary Kevin Thibault; Rodgers contacted FDOT District Engineer David Wilks, who usually signs off for FDOT District 3 permits, and told him to issue the permits to Salter Advertising. Whether Rodgers was told to do this by Thibault or someone else is not clear. Although Rodgers has suffered a lapse of memory on this point, it is clear that he did order Wilks to issue the permits in flagrant violation of the law. There is some evidence Rodgers may have ordered the law to be circumvented simply because he did not agree with it. He wrongfully believed that his position as FDOT District 3

Director afforded him the authority to alter the law at his whim. As a result, Salter Advertising was given 110 illegal permits, and the State of Florida lost an estimated one to four million dollars. What is also abundantly clear is that neither Rodgers nor any other employee at FDOT was sanctioned in *any way* once this wrongdoing came to light.

FINDINGS

Whereby, Your Grand Jurors find as follows:

1. Your Grand Jurors conclude that Senator Evers was used by Salter Advertising to secure permits by circumventing the law.
2. Evidence reflects that Salter knew the law, chose not to comply, and misrepresented to Senator Evers the FDOT's response to their inquiries.
3. Over 2000 trees were cut down on FDOT Right-Of-Way by a company out of Alabama (Jay Eubanks Tree Service) and for the benefit of a private business (Salter Advertising). Eubanks Tree Service was paid \$260,000 to take down and dispose of the trees.
4. FDOT failed to collect between \$1,000,000 and \$4,000,000 in mitigation fees due to the State of Florida and Salter used an out of state contractor; thus, losing additional resources for the State of Florida.
5. Salter did not surrender any nonconforming signs. As required by law, Salter should have been required to remove 56 nonconforming signs.
6. FDOT District 3 staffer Wilks knew the law and the FDOT Rules but was instructed to circumvent it. Yet the only measure taken by FDOT to address

this issue once it came to light in the press was to offer training to Wilks and his staff on the law and FDOT Rules.

7. Neither James Rodgers, nor any other FDOT employee, was disciplined as a result of this debacle. To the contrary, James Rodgers was allowed to remain in his position for eighteen additional months through mid-year 2011 and he retired with full benefits.

RECOMMENDATION

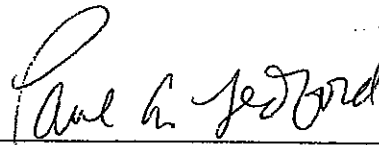
If the FDOT had simply followed the Law and its own Rules, this would not have happened. As the Law and the FDOT Rules have a valid purpose for public good, Your Grand Jury recommends and expects all of us, including elected and appointed government officials, to follow the laws and rules whether we agree with them or not.

Your Grand Jurors urge Salter to at least surrender the 56 non-conforming signs according to the law.

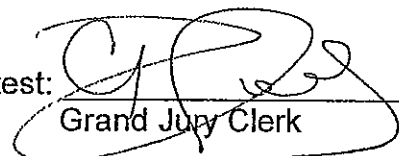
Your Grand Jurors urge Salter to compensate the State of Florida in mitigation for the loss of 2000 trees.

The FDOT should take swift action when a lack of integrity is identified among senior managers in that agency.

RESPECTFULLY SUBMITTED this the 5th day of January, 2012.



PAUL A. LEDFORD
Foreperson

Attest: 
Grand Jury Clerk