

MEMORANDUM

TO: Uintah County Attorneys' Office
Jaymon Thomas, Uintah County Attorney
Jonathan A. Stearmer, Chief Deputy County Attorney

FROM: Kunzler, Bean & Adamson, PC
Matthew R. Lewis
Taylor J. Hadfield

RE: FINAL REPORT Uintah County Investigation: Notice of Claim Against
Uintah County and Petition for Removal Filed By Commissioner Brad G.
Horrocks Pursuant to U.C.A. § 77-6-2

DATE: April 19, 2023

INTRODUCTION

We were engaged to represent the Uintah County Attorney's Office to investigate and make findings, to be presented in a report, regarding the allegations in a Petition for Removal filed by Uintah County Commissioner Brad G. Horrocks pursuant to U.C.A. § 77-6-2 (the "Petition for Removal") and a Notice of Claim filed by Uintah County Sheriff Steve Labrum ("Sheriff Labrum") on January 5, 2022 (the "Notice of Claim"), which was purportedly filed on behalf of current and former Sheriff's Office employees.¹

ISSUES FOR INVESTIGATION AND ANALYSIS

During the investigation, the following specific issues were examined:

1. Did County Clerk/Auditor Michael Wilkins ("Mr. Wilkins") engage in conduct justifying removal pursuant to Utah Code Ann. § 77-6-1 for "high crimes,

¹ Sheriff Labrum and Andrew Meinrod filed an amended "Notice of Claim – Class Action" on October 7, 2022, which incorporated "all facts and statements previously filed in Sheriff Labrum's Notice of Claim" and added allegations relating to an alleged failure by the County to "contribute pension benefits on gap hours." The additional facts and claims included in the Amended Notice of Claim are not addressed in this memorandum.

misdemeanors or malfeasance in office”? In evaluating this question, we considered the allegations in the Petition for Removal and other issues uncovered during our investigation. The specific issues considered and investigated included, but were not limited to:

- a. Did Mr. Wilkins knowingly conceal from the County Commission voluntary contributions made by Uintah County to the Utah Retirement System?
- b. Has Mr. Wilkins engaged in unprofessional and harassing conduct that would meet the standard set forth in Utah Code Ann. § 77-6-1?
- c. Did Mr. Wilkins provide false testimony in a criminal proceeding related

to allegations of misconduct that occurred during the performance of his duties as County Clerk/Auditor?

- d. Did Mr. Wilkins engage in other misconduct, such as intentionally releasing a draft audit in violation of GRAMA and/or changing documents without approval of the County Commission, that would meet the standard for removal set forth in Utah Code Ann. § 77-6-1?

2. Considering the allegations in the Notice of Claim and the other issues listed above, does the Statement of Claim assert viable legal theories?

SUMMARY OF CONCLUSIONS

Based on our investigation and as explained more fully below, we believe that the evidence indicates, beyond a reasonable doubt, that Mr. Wilkins has engaged in conduct that meets the standard of “high crimes, misdemeanors and malfeasance in office,” as described in Utah Code Ann. § 77-6-1. First, Mr. Wilkins concealed from County Commissioners voluntary payments by the County to the Utah Retirement System (“URS”) of nearly \$3.4 million and

falsely certified that such amounts had been approved by the County Commission. Mr. Wilkins personally benefitted from these payments in the amount of \$75,987.17. Second, Mr. Wilkins has engaged in a pattern of unprofessional and potentially harassing conduct in his role as County Clerk/Auditor. Third, Mr. Wilkins testified falsely under oath in a criminal proceeding involving allegations directly related to the performance of his duties as County Clerk/Auditor. Fourth, the evidence indicates that Mr. Wilkins voided hundreds of checks totaling at least \$27,299.71 that state law required to be paid to the Utah Office of Unclaimed Property. Fifth, Mr. Wilkins engaged in other malfeasance, such as intentionally releasing a preliminary audit report that was prohibited from public disclosure. While some of these actions may not alone meet the high standard for removal set forth in Utah Code Ann. § 77-6-1, we believe that the totality of Mr. Wilkins' actions meets this standard.

Based on our investigation and legal research set forth below, we conclude that the Notice of Claim does not state a viable legal claim because (1) the Notice of Claim was not filed within the one-year limitations period set forth in the Utah Governmental Immunity Act ("UGIA"), (2) the claim is not otherwise authorized by the UGIA, and (3) potential damages are unduly speculative.

STANDARD OF PROOF

Due to the seriousness of removing an elected public official, removal proceedings "are properly regarded as quasi criminal in nature." *State v. Jones*, 407 P.2d 571, 572 (Utah 1965). Utah Courts have held that the Removal Statute "should be strictly construed against the authority invoking it and liberally in favor of the one against whom it is asserted." The claim for removal must also be proven beyond a reasonable doubt. *See Law v. Smith*, 98 P. 300, 309 (Utah 1908).

Rule 3.4(a) of the Utah Rules of Professional Conduct, which describes “Special Responsibilities of Prosecutors”, provides that the “prosecutor in a criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause.” Although Utah law appears to allow the filing of a claim based on a finding of probable cause, because removal of a public-elected official is of particular concern, we have attempted to employ the standard of proof of “beyond a reasonable doubt” regarding allegations related to the potential removal of the Clerk/Auditor.

Regarding issues raised in the Notice of Claim we have used the preponderance of the evidence standard that applies in most civil cases.

STATEMENT OF FACTS²

I. Utah Retirement System Contributions By Uintah County

1. Uintah County (the “County”) participates in pension plans and retirement savings plans for County employees, which plans are administered by URS.
2. The terms of URS pension and retirement savings plans vary depending on the classification of employee. The County has two primary classifications of employees: Public Safety Employees, which consists of County law enforcement/POST-certified employees, and Local Government Employees, which consists of non-public safety employees.
3. Each year, URS requires a participating county to contribute a mandatory percentage to each class of county employees as part of that county’s participation in URS-funded pension or retirement plans (the “Mandatory Contribution”).

² The Statement of Facts was compiled after interviewing witnesses with direct knowledge of events, reviewing hundreds of pages of documents provided by County employees and URS, and conducting independent research through various public sources.

4. The Mandatory Contribution rates are established each year and published on the URS website. *See, generally, Utah Retirement Systems Contribution Reporting Rates*. For several reasons, including the fact that Public Safety Employees qualify for a pension at an earlier age, the Mandatory Contribution rates for Public Safety Employees are generally higher than the Mandatory Contribution rates for Local Government Employees.

5. The Mandatory Contribution rate often changes from year to year, and the County is responsible for implementing any funding changes into its annual budget. *See* Uintah County Policy 460, Exhibit A; *see also* Utah Code § 17-53-302 (assigning budgeting responsibilities to county executives, including the Commission).

6. URS also allows, but does not require, a participating county to make an optional 401k contribution to supplement employees' retirement savings accounts (the "Optional Contribution").

7. The Optional Contribution is contributed at the sole discretion of the participating county and can be adjusted annually as each participating county sees fit.

8. The County began making an Optional Contribution to the Public Safety Employees and Local Government Employee URS retirement plans in the early 1990's and continued through 2003.³

9. In 2004, the Commission eliminated the Optional Contribution for Public Safety Employees but kept the total contribution for Public Safety Employees and Local Government Employees equal at 19.08%.

10. Since 2004, the County has usually not made any Optional Contribution on behalf of Public Safety Employees but has usually made an Optional Contribution on behalf of Local

³ The Optional Contribution to Public Safety Employees in 2003 was 2.19 percent.

Government Employees. However, because of the higher Mandatory Contribution rates for Public Safety Employees, the total amount contributed to Public Safety Employees' URS plans has been equal to or exceeded the total amount contributed to Local Government Employees' URS plans. *See* Historical URS Contributions and Approval, Exhibit B.

11. For fiscal years 2017-2020, the County made Optional Contributions of at least \$3,395,181.31 on behalf of Local Government Employees.⁴ *See* URS Provided Documentation, Exhibit C.

12. Mr. Wilkins personally benefited from the Optional Contributions by receiving at least \$75,987.17.

II. Mr. Wilkins' Role as County Clerk/Auditor

13. Mr. Wilkins began working in the County Auditor's office in 1987.

14. In 1990, the County combined the positions of County Clerk and County Auditor, at which time Mr. Wilkins was promoted to the position of Chief Deputy Clerk/Auditor.

15. Mr. Wilkins was elected as the County Clerk/Auditor in 2002 and has been re-elected each election since then. He continues to hold the position and is currently a candidate for re-election.

16. Among many other responsibilities, Mr. Wilkins' role as County Clerk/Auditor includes the following duties:⁵

⁴ These contributions were made during the years 2016-2019. Contribution rates are effective on July 1 of each year and are valid until the following year. For example, in 2016, when the County approved the contribution rates for the new fiscal year, those rates were effective from July 1, 2016, through June 30, 2017.

⁵ We note that the responsibilities of the County Clerk/Auditor were significantly altered by the Commission between 2019 and 2020 when disputes arose surrounding the funding of URS retirement plans and other budgetary issues, and Mark Caldwell was hired to as a County Budget Officer. The scope of the County Clerk/Auditor's responsibilities appears to remain a disputed

- A. Preparing agendas and taking minutes for Commission meetings;
- B. Functioning as the chief budget officer of the County;
- C. Working with the Commissioners and County department heads in preparing an annual budget;
- D. Presenting an annual budget to the County Commission for approval;
- E. Acting as the County's authorized URS representative, responsible for annually certifying URS contribution rates for County employees;
- F. Applying County policy and working with other County departments to ensure that County funds are disbursed appropriately;
- G. Responding to GRAMA requests; and,
- H. Hiring, managing, and supervising employees in the Clerk/Auditor's office.

17. Mr. Wilkins is also responsible for ensuring unclaimed property within the County and purview of the Clerk/Auditor's office is properly reported and returned to the State of Utah consistent with state law. *See Utah Code Ann. § 67-4a-401 et seq.*

18. Various offices and departments of Uintah County, including the Clerk Auditor's Office, meet the definition of "holder" under the Utah Revised Uniform Unclaimed Property Act (the "Unclaimed Property Act") and are therefore required to take steps to notify potential owners, prepare reports relating to potentially abandoned property, and to submit payments to the Administrator. These offices include the Uintah County Treasurer's Office, the Clerk/Auditor's Office, and the Uintah County Jail.

issue between the County Commission and Clerk/Auditor's office. This Memorandum does not address the proper scope of the responsibilities of the Clerk/Auditor's office.

19. Under the Unclaimed Property Act, property in the possession of a governmental subdivision is presumed abandoned “one year after the property becomes distributable”. Utah Code Ann. § 67-4a-201(11).

20. Once the property is presumed abandoned, the Unclaimed Property Act requires holders of potential unclaimed property to submit a report and the potential unclaimed property to the Utah Office of Unclaimed Property (the “Administrator”). *See Id.*

21. The report must describe the abandoned property, identify the apparent owner and the commencement date for determining abandonment, certify that the holder has complied with the notice requirements of Utah Code Ann. § 67-4a-501, and provide other potentially relevant information. *Id.* §402(1).

22. The holder, in this case Uintah County, “is responsible: (a) to the administrator for the complete, accurate, and timely reporting of property presumed abandoned; and (b) paying or delivering to the administrator property described in the report.” *Id.* at § 401(3).

23. Because the Clerk/Auditor is an elected official, the person holding that office does not report to any individual within the County and cannot be directly disciplined for inappropriate behavior.

III. Historical Authorization of Optional Retirement Contributions

24. The County is governed by a Commission, which is comprised of three elected commissioners. The Commission is responsible for “set[ting], maintain[ing], and regulat[ing] the budget for the county, including all departments”. *See County Website*. Utah law requires that the Commission adopt the County’s final budget. See Utah Code Ann. § 17-36-15. As part of these responsibilities, the Commission must approve all URS contributions by the County each year. Uintah County Policy 460(8) requires that “[a]nnually the County determines a percentage

it contributes to each employee's account." See Exhibit A. Between 2002 and 2012, it appears that Mr. Wilkins presented the URS rates to the Commission for approval each year with the Mandatory Contribution and Voluntary Contribution amounts separated into different line items. An example is provided below. See also, Exhibit B.

RETURN TO: UTAH RETIREMENT OFFICE
 ATTN: RECORDS AND INFORMATION SERVICES
 PO BOX 1590
 SALT LAKE CITY UT 84110-1590
 PHONE: 366-7765

UNIT NO: [REDACTED] CERTIFICATION OF UNIT RETIREMENT CONTRIBUTION RATES

ATTN: LIZETTE GRIMSHAW
 UINTAH COUNTY
 147 E MAIN ST

VERNAL UT 840782643

PLEASE NOTE RETIREMENT CONTRIBUTION RATE CHANGES EFFECTIVE JULY 1, 2003. PLEASE INDICATE NEW RATES FOR ITEM A AND ITEM B. THESE ARE THE RATES THAT SHOULD APPEAR ON YOUR JULY TRANSMITTAL. PLEASE COMPLETE THE FORMS AND KEEP ONE COPY FOR YOUR FILES AND RETURN ONE COPY TO THE ABOVE ADDRESS BY MAY 15, 2003

***** EACH LINE MUST BE FILLED WITH THE CORRECT FIGURES OR ZEROES *****

	CURRENT CONTRIBUTION RATE	CONTRIB RATE TO BE EFFECTIVE JULY 1, 2003	
11 CONTRIBUTORY LOCAL GOVERNMENTAL			
CONTRIBUTIONS WITHHELD FROM EMPLOYEES	1.50 %	1.50 %	ITEM A
MEMBER CONTRIBUTIONS PAID BY EMPLOYER	4.50 %	4.50 %	ITEM B
TOTAL EMPLOYEE CONTRIBUTIONS	6.00 %	6.00 %	A + B
EMPLOYER FUNDS	4.68 %	5.61 %	
457 EMPLOYER-PAID CONTRIBUTIONS:	0.00 %		
401(K) EMPLOYER-PAID CONTRIBUTIONS:	9.25 %	8.32 %	
EMPLOYEES RECEIVING EMPLOYER PAID 401(K)? ALL _____ SOME <input checked="" type="checkbox"/>			
EXPLAIN POLICY REGARDING 401(K) EMPLOYER CONTRIBUTIONS:	<u>All Base Pay</u>		
<i>Employer's</i>	-----		
43 PUBLIC SAFETY NONCONTRIBUTORY OTHER			
EMPLOYER FUNDS	13.89 %	16.24 %	
457 EMPLOYER-PAID CONTRIBUTIONS:	0.00 %		
401(K) EMPLOYER-PAID CONTRIBUTIONS:	4.54 %	2.19 %	
EMPLOYEES RECEIVING EMPLOYER PAID 401(K)? ALL _____ SOME <input checked="" type="checkbox"/>			
EXPLAIN POLICY REGARDING 401(K) EMPLOYER CONTRIBUTIONS:	<u>All Base Pay</u>		
<i>Employer's</i>	-----		

I CERTIFY THE ABOVE INFORMATION AND RATES ARE CORRECT AND THAT ALL PERSONS INVOLVED IN SUBMITTING REPORTS HAVE BEEN NOTIFIED.

(5-13-03) Michael A. Wilkins elect-Auditor
DATE SIGNATURE TITLE PHONE NO.

COMMENTS: _____

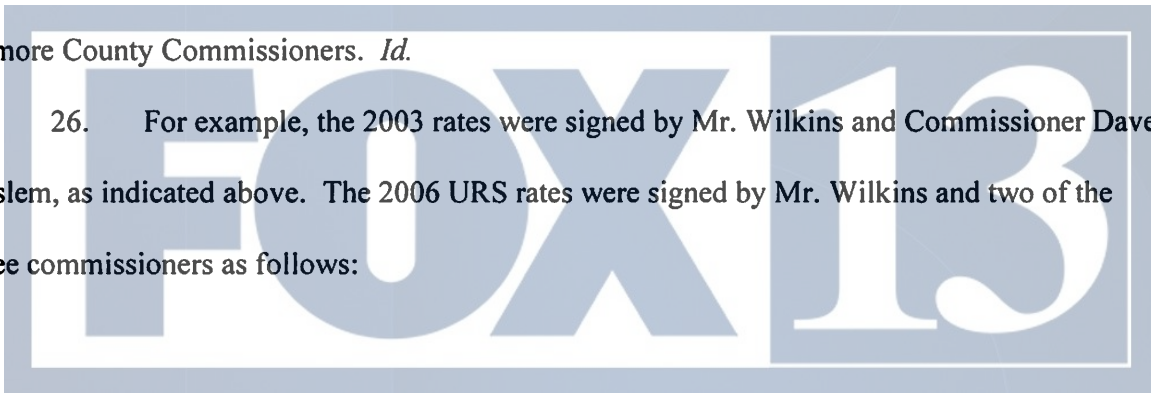
* IF THERE ARE FUNDS/RATES THAT ARE NO LONGER ACTIVE, PLEASE *
* INDICATE AND THESE FUNDS/RATES WILL BE DELETED *

Approved in Uintah County Commission Meeting May 13, 2003


Chairman Dave Haslem

25. During these years, forms summarizing the County's URS funding rates and confirming the Commission's approval of these rates were signed both by Mr. Wilkins and one or more County Commissioners. *Id.*

26. For example, the 2003 rates were signed by Mr. Wilkins and Commissioner Dave Haslem, as indicated above. The 2006 URS rates were signed by Mr. Wilkins and two of the three commissioners as follows:



.....
I certify that the above information and rates are correct and that all persons involved
in submitting reports have been notified.

Signature Monday, M. Wilkins Title Clerk-Auditor

Date 6-5-06 Phone 405-781-5362
.....

Phone: (801)366-7318
(800)753-7318
Fax: (801)366-7759

Approved in Commission Meeting 06-05-06



David Hasler [Signature]

Jin Abegglen _____

Mike McKee Mike McKee

As indicated, the form required the Clerk/Auditor to certify that “the above information and rates are correct and that all persons involved in submitting reports have been notified.” The complete form is part of the documents included in Exhibit B.

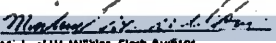
27. The underlying forms presented and signed from 2002 to 2012 were created by URS and provided to the County. *See id.* Mr. Wilkins informed us that he added the signature lines to create a record that the contribution rates had been approved by the Commission.

28. Beginning in 2013, URS apparently stopped sending its form and Mr. Wilkins began creating an internal document showing URS contribution rates. It appears that only Mr. Wilkins signed these documents in his capacity as Clerk/Auditor without obtaining the signature of a Commissioner. An example from 2015 is included below:

Utah County Contribution Rates to Utah Retirement Systems
 (Effective 07/01/2015)

	2014	2015
Fund 11- Tier 1 Contributory Local Government		
Member Contributions, Employee Paid	1.50	1.50
Member Contributions, Employer Paid	4.50	4.50
Employer Paid Retirement Contributions	14.46	14.46
Post-Retired Rate/ Amortization Cost	8.37	8.37
401(k) Employer Contribution	6.35	6.35
	<hr/>	<hr/>
	26.81	26.81
Fund 43- Tier 1 Public Safety Noncontributory		
Employer Paid Retirement Contributions	34.04	34.04
Post-Retired Rate/ Amortization Cost	11.75	11.75
	<hr/>	<hr/>
	34.04	34.04
Fund 111- Tier 2 DB Hybrid Local Government		
Member Contributions, Employee Paid		
Employer Paid Retirement Contributions	16.70	16.70
401(k) Employer Contribution	8.40	8.40
	<hr/>	<hr/>
	25.10	25.10
Fund 122- Tier 2 DB Hybrid Public Safety		
Member Contributions, Employee Paid		
Employer Paid Retirement Contributions	22.55	22.55
401(k) Employer Contribution	2.55	2.55
	<hr/>	<hr/>
	25.10	25.10

Fund 211-DC Only Local Government		
Member Contributions, Employee Paid	8.48	8.48
Employer Paid Retirement Contributions	16.62	16.62
401(k) Employer Contribution		
	<hr/>	<hr/>
	25.10	25.10
Fund 222- Tier 2 DC Public Safety Only		
Member Contributions, Employee Paid		
Employer Paid Retirement Contributions	11.83	11.83
401(k) Employer Contribution	13.27	13.27
	<hr/>	<hr/>
	25.10	25.10


29-Nov-2015
 Michael W. Wilkins, Clerk Auditor Date

29. Mr. Wilkins presented the URS contribution rates reflected in this document to the County Commission at a public meeting and in a similar form for each year from 2013 to 2016. This form did *not* itemize the Optional and Mandatory Contributions on behalf of Local Government Employees. *See id.*

30. Although meeting minutes indicate that the County Commission approved the funding rates from 2013 through 2016, we did not find evidence indicating that the County

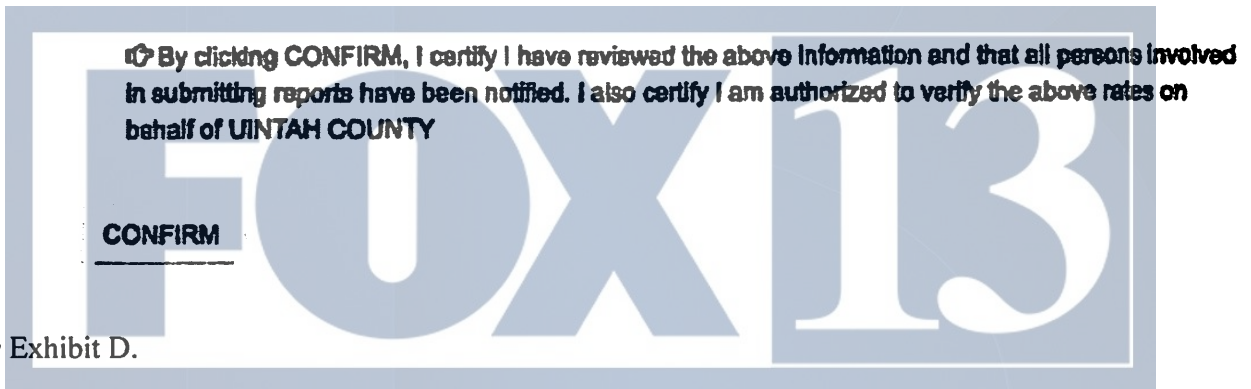
Commission was aware of the Optional Contribution rate for Local Government Employees or voted specifically to approve the Optional Contribution.

31. During interviews with Mr. Wilkins, he indicated that for Fiscal Years 2017-2020, he did not present the URS contribution rates to the County Commission for approval.⁶

32. Mr. Wilkins explained that he did not present the URS contribution rates to the Commission because the rates did not change during these years.

33. Beginning in 2013, URS began using an online certification process, which required a county representative to attest that s/he was “authorized to verify the above rates on behalf of Uintah County.”

34. The certification appeared as a banner online in the following format:



See Exhibit D.

35. The URS-required certification was submitted by Mr. Wilkins on behalf of the County each year from 2013 to 2020. See URS Certification Report, Exhibit D.

⁶ Mr. Wilkins appears to have made the same admission to Weber County investigators. The Memorandum prepared by Scott Parke, Comptroller for Weber County Clerk/Auditor, dated April 13, 2021, indicated that “[s]tarting with the rates effective 7/1/2017, the URS retirement rates were approved directly by the Clerk Auditor without formal approval by the County Commissioners.”

36. For the years 2017-2020, Mr. Wilkins certified to URS that he was “authorized to verify” the URS rates even though those rates had not been presented to or approved by the County Commission. *See Exhibit D.*

37. In late 2019, the Commission hired a budget officer, Mark Caldwell (“Mr. Caldwell”), to assist the Commission in understanding the budget presented by the Clerk/Auditor and preparing the yearly budget. Mr. Wilkins’ role in preparing the annual budget and obtaining approval for URS contribution rates was significantly diminished beginning with Fiscal Year 2021 and through the present date.

38. Beginning with the County budget for Fiscal Year 2021, Mr. Caldwell made the required certification to URS.

IV. Uintah County’s Annual Budgeting Process⁷

39. Each year, beginning in September and October, County department heads begin preparing a proposed budget for the upcoming fiscal year.

40. Budget hearings take place in October and November, wherein each department head meets with Mr. Wilkins, as well as each of the County Commissioners to discuss the proposed budget for the department (the “Budget Hearings”).

41. During the Budget Hearings, County Commissioners can ask questions, probe departmental needs, and push back against requested items within each department’s proposed budget.

42. The Budget Hearings also provide a forum wherein County Commissioners can ask specific questions about line items in each proposed budget prior to final budget approval.

⁷ These facts are based on interviews with several witnesses, who consistently described this process, as well as review of budget documents.

43. The annual budget is often revised based on discussions during Budget Hearings before being presented to the Commission at a public meeting for final approval.

44. Mr. Wilkins presented “Employee Benefits” as one line item during these Budget Hearings. For example, in the preliminary budget for 2020, Fund 11, “Employee Benefits” was broken down as follows:

WINYAH COUNTY GOVERNMENT

Budget Detail Expenditures
for the calendar year 2020

Dept: 4210

Fund 11 MUNICIPAL SERVICES FUND							SHERIFF'S OFFICE	
	Actual 2016	Actual 2017	Actual 2018	Budget 2019	YTD Actual 2019	Requested 2020	% Chg	Approved 2020
Account								
4210-110 PERMANENT EMPLOYEES	1,796,788	1,746,842	1,769,821	1,853,100	1,547,728	1,960,800		1,960,800
4210-125 P/R TAXES	198,438	163,146	165,174	185,900	151,518	196,100		196,100
4210-130 EMPLOYEE BENEFITS	901,435	960,562	1,035,498	1,102,400	980,484	1,176,500		1,176,500
4210-140 UNIFORM ALLOWANCE	29,755	27,257	29,595	36,600	36,384	37,400	102%	37,400
4210-210 SUBSCRIPTIONS & MEMBERSHI	5,082	6,229	5,656	6,500	5,487	6,500	100%	6,500
4210-230 TRAVEL	5,290	1,740	3,107	3,000	2,021	3,000	100%	3,000

45. This line item of the proposed budget each year encompassed several categories of expenses to the County, including (1) insurance; (2) wellness programs; (3) employee assistance programs; (4) disability; (5) employee fund; and (6) total retirement contributions.

46. This line item did not break out or separately identify any Voluntary Contribution made to URS.

47. For years 2017 to 2020, it does not appear that the amount of the County’s Voluntary Contribution to Local Government Employees was discussed in any Budget Hearing or County Commission meeting to approve the budget.

48. None of the Commissioners recalled ever personally having discussions with Mr. Wilkins about the URS Contributions during this time period.

49. Mr. Wilkins asserted that he did not report to the Commission during these years because there had been no change to the URS contribution rates.

50. During several other years, Mr. Wilkins presented the URS contribution rates to the Commission for approval, even though the rates did not change. For example, in 2015, Mr. Wilkins reported to the Commission that the rates were identical to 2014, but still sought approval of the Commission. *See* Exhibit B at pg. 21. Similarly, in 2016, Mr. Wilkins reported to the Commission that the rates were unchanged from the previous year but still obtained Commission approval of the rates. *See* Exhibit B at pg. 22.

51. Mr. Horrocks was elected as a Commissioner in November 2016 and began serving as Commissioner on January 1, 2017.

52. Mr. Horrocks ran on the platform of reducing County spending. Shortly after he took office, Mr. Horrocks publicly criticized Christmas bonuses the County planned to pay to employees, re-affirming his position that County expenses should be reduced.

53. Mr. Wilkins was aware of Mr. Horrocks' campaign promise to reduce County spending, as well as Mr. Horrocks' efforts to cut spending after taking office.

54. The relationship between Mr. Wilkins and the Commissioners began to deteriorate shortly after Mr. Horrocks took office in 2017.

55. Several tense confrontations between Mr. Wilkins and the Commissioners during Commission meetings demonstrate the extent of the strained relationship. Mr. Wilkins became angry and raised his voice on more than one occasion when dealing with Commissioners. *See* Exhibit M (Audio of Mr. Wilkins raising voice and cursing during Commission Meeting).

56. Near the end of 2019, the Commission was working with Mr. Caldwell and Mr. Wilkins to prepare the County's Fiscal Year 2020 Preliminary Budget.

57. As part of the budget process, the Commission and Mr. Caldwell specifically asked Mr. Wilkins to provide detail regarding the specific County expenses included in the preliminary budget's "Employee Benefits" line item.

58. The Commission and Mr. Caldwell went to great lengths to understand this line item. During these discussions, Mr. Wilkins refused to provide specific information regarding the components of the Employee Benefits line item.

59. The Commission sent a formal letter to Mr. Wilkins on December 17, 2019, formally requesting information relating to the Employee Benefits line item. *See* Letter to Mr. Wilkins regarding 2020 Preliminary Budget, Exhibit E. Among other things, the Commission specifically requested that Mr. Wilkins provide an explanation for the Benefit Expenses:

Benefit Expenses

As previously discussed, salary and benefit costs in the 2020 Preliminary Budget increased by \$427,000 and \$741,000, respectively. We would expect benefits to increase as a percentage of the salary increase not as a multiple of the salary increase. Using the salary-to-benefit ratios from the 2019 Budget, we would expect the increase in benefits to be \$143,000 given the salary increase of \$427,000 included in the 2020 Budget. We cannot approve a budget which includes this increase in benefit costs without a complete understanding of the factors causing this escalation of benefit costs. We request you add to each page of the staffing plan a detailed breakdown of the benefit and payroll tax estimates. Also, we request you add a page to the staffing plan for the new Post-Retirement Benefits department with a detail listing of costs by individual included in the department.

60. After a limited response from Mr. Wilkins, the Commission sent a second letter on December 27, 2019, again, requesting information from Mr. Wilkins:

Dear Mr. Wilkins:

In our letter to you dated December 17, 2019 we expressed several concerns related to the Uintah County 2020 Preliminary Budget. We have reviewed the information you have provided regarding those concerns. One item requested in our letter was that you add to each page of the staffing plan a detailed breakdown of the benefit and payroll tax estimates. We have not received this requested information. To assist in this effort, we have prepared detailed benefit and payroll tax staffing estimates. We have included a copy of these detailed estimates with this letter. We request you review these detailed estimates and report to us any errors or concerns you find with these estimate amounts.

Based on the detailed staffing sheets the following changes need to be made to the 2020 Budget:

- Employment Benefits overall increase of \$37,409
- Payroll Taxes overall decrease of \$351,210
- Salary overall decrease of \$10,296

See Supp Letter to Mr. Wilkins re 2020 Preliminary Budget, Exhibit F.

61. Mr. Wilkins did not provide a meaningful response to either letter regarding the employee benefits issue.

62. The final budget for Fiscal Year 2020 was passed without receiving the Employee Benefits information raised by the Commission.

63. The evidence indicates that, for County budgets for Fiscal Years 2017 through 2020, County Commissioners were not aware of the amount of the County's Optional Contribution on behalf of Local Government Employees or that Public Safety Employees were not receiving any Optional Contribution.

64. In the County budget for Fiscal Year 2021, the Commission eliminated Optional Contributions to URS on behalf of Local Government Employees.

V. Uintah County Sheriff's Knowledge of URS Optional Contributions

65. From 2007 through 2016, Sheriffs and others involved in the budgeting process were aware that Public Safety Employees were not receiving an Optional Contribution to their URS plans.

66. Sherriff Labrum was unaware that during Fiscal Years 2018, 2019, and 2020, Public Safety Employees were not receiving any Optional Contribution to their URS plans.

67. Sheriff Labrum indicated that he never discussed URS retirement contributions with Mr. Wilkins, the Commission, or any other party during these years at budget hearings or Commission meetings.

68. During our initial interview with Sheriff Labrum, he indicated that he became aware that the County was not making an Optional Contribution on behalf of Public Safety Employees after working through the 2020 budget with the Commissioners and Mr. Caldwell (which would have taken place in late 2019).

69. The evidence indicates that Sheriff Labrum was aware that Public Safety Employees were not receiving an Optional Contribution in late 2019 or early 2020.

VI. Mr. Wilkins [REDACTED] Clerk/Auditor's Office⁸

70. [REDACTED]

[REDACTED] See [REDACTED]

Complaint, Exhibit G, and [REDACTED] Complaint, Exhibit H.

⁸ Mr. Wilkins' workplace behavior resulted in several formal complaints to the County. The factual findings set forth in this section of the Statement of Facts were reached after careful review of written evidence. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VII. Mr. Wilkins Verbally and Physically Assaulted County Employees

75. Tonya Craven (“Ms. Craven”), the County’s Human Resource Director, alleged that Mr. Wilkins physically and verbally assaulted her in February 2021. *See* T. Craven’s Complaint, Exhibit I.

76. Ms. Craven alleges that Mr. Wilkins stormed into Ms. Craven’s office after he received a letter from the County Commission to confront her about the contents of the letter.

See id.

77. Ms. Craven alleges that Mr. Wilkins began yelling at her, physically contacting her as he cursed. *See id.*

78. Ms. Craven alleges that the event lasted several minutes before Ms. Craven was able to calm Mr. Wilkins down and deescalate the situation. *See id.*

79. Witnesses observed Mr. Wilkins’ harassing and threatening behavior toward Ms. Craven. *See id.*

80. Many other witnesses alleged several other instances in which Mr. Wilkins verbally harassed and demeaned Ms. Craven in front of other County employees and contractors. *Id.*

81. Other witnesses testified that Mr. Wilkins has also verbally harassed other employees of the County, including certain Commissioners. Specifically, witnesses testified that Mr. Wilkins verbally attacked and physically contacted Commissioner Stringer after a disagreement regarding County management.

82. In addition, several other County employees have filed formal and informal complaints against Mr. Wilkins.

83. Another County employee has filed no less than four formal complaints against Mr. Wilkins for harassment. *See* Exhibit J. This employee alleges that, on multiple occasions, Mr. Wilkins has lost his temper and yelled profanities at this County employee. *Id.*

VIII. Mr. Wilkins Was Convicted of Disorderly Conduct in Connection With the Interaction With Ms. Craven and Provided False Testimony, Under Oath, Relating to These Events

84. As a result of his conduct toward Ms. Craven in February 2021 described above, Vernal City filed charges for disorderly conduct against Mr. Wilkins. *See* Justice Court Documents, Exhibit K; Minutes, Sentence, & Jmt re Mr. Wilkins, Exhibit L.

85. On March 3, 2022, Judge Randy B. Birch of the Uintah County Justice Court found Mr. Wilkins guilty of disorderly conduct following a bench trial. *See* Exhibit L.

86. Mr. Wilkins appealed the Uintah County Justice Court's judgment to the Eighth District Court, and the case was assigned to the Honorable Judge Samuel P. Chiara.

87. On August 12, 2022, Judge Chiara conducted a bench trial on the charge against Mr. Wilkins.

88. At this trial, Ms. Craven and Jaben Carter testified on behalf of the prosecution.

See Exhibit L.

89. Mr. Wilkins testified on his own behalf. Wendy Long, LeAnn George, and Dawna Lee also testified on behalf of the defense. *Id.*

90. Among other things, Mr. Wilkins testified, under oath, that the alleged conduct never occurred and that he did not visit Ms. Craven's office on the day in question. *See* Audio of District Court Bench Trial, Exhibit M.

91. Mr. Wilkins also testified that he would never use the foul language described by Ms. Craven and that such phrases as "goddammit" and "bullshit" were not in his vocabulary. *See id.*

92. Specifically, Bryan Sidwell ("Mr. Sidwell"), Mr. Wilkins' attorney and Mr. Wilkins had the following exchange:

Mr. Sidwell:	Is there any day in the history of the world that you ever, that those events occurred?
Mr. Wilkins:	Not that I recall. Swearing and that ... the using of the word that was referred to, is not in my vocabulary.

See Exhibit M.

93. When cross-examined by Vernal City Attorney Michael Harrington ("Mr. Harrington"), Mr. Wilkins reaffirmed his sworn testimony on direct examination that such vulgar language was not in his vocabulary and that he would never use it in any situation.

94. Specifically, Mr. Harrington and Mr. Wilkins had the following exchange:

Mr. Harrington: You said that you would never use the phrase "goddammit" because it's not in your vocabulary?

Mr. Wilkins: That's correct.

Id.

95. Mr. Harrington then played an audio recording of a County Commission meeting wherein Mr. Wilkins could be heard exclaiming profanities in multiple instances, including the term “goddammit.” *See id.*

96. Under questioning from Mr. Harrington, Mr. Wilkins confirmed that it was his voice in the recording. *See id.*

97. At the conclusion of the bench trial, the Court found Mr. Wilkins guilty. *See id.*

98. In connection with his finding of guilt, Judge Chiara explained that he reached this conclusion because:

Mr. Wilkins testified that he would never say goddamn that that was not in his vocabulary. And I believed him. And then I got to hear him say it. In his own words, on audio. Which indicates to me that he is willing to mislead the Court, under oath. And because of that, I have chosen to disregard his testimony entirely.

See id.

IX. Mr. Wilkins Violated GRAMA By Releasing a Draft Audit Report

99. In 2020, the Utah State Auditor’s Office commissioned an independent audit of the County (the “Audit”).

100. Near the conclusion of the Audit, a draft version of findings was circulated to the Commission and County Auditor’s office (“Draft Audit”). *See Draft Audit, Exhibit Q.*

101. The findings in this Draft Audit outlined specific alleged deficiencies of the Commission. *Id.*

102. On August 17, 2021, UBMedia submitted a GRAMA Request to Uintah County seeking all information related to findings of the audit by the State of Utah. *See Email re GRAMA Request, Exhibit R.*

103. On August 18, 2021, just one day after receiving the GRAMA request, Mr. Wilkins forwarded the Draft Audit to UBMedia. *Id.*

104. Mr. Wilkins was aware, or should have been aware, that the Draft Audit was confidential and prohibited by GRAMA from being released publicly.

105. Following the release of the Draft Audit, UBMedia contacted the Commission asking for a response to the findings in the Draft Audit.

106. Upon learning that the Draft Audit had been released, the State Auditor's Office contacted UBMedia and demanded that the Draft Audit be destroyed because it had not yet been finalized.

107. The final audit for Fiscal Year 2020 indicated, in part, that Mr. Wilkins "lacks the requisite skills, knowledge, and expertise necessary to oversee the preparation of the County's financial report in accordance with generally accepted accounting principles." *See* Uintah County Final Audit, Exhibit S.

X. Unclaimed Property Under the Responsibility of the Clerk/Auditor's Office

108. As described above, various offices or departments of Uintah County have obligations under the Unclaimed Property Act. Accordingly, we interviewed Wendi Long, the Uintah County Treasurer ("Ms. Long") and Mr. Wilkins, both of which supervise offices with obligations under the act, to understand Uintah County's obligations and practices in regard to unclaimed property.

109. Both Ms. Long and Mr. Wilkins acknowledged the legal obligation that the County submit potentially abandoned property to the Administrator.

110. Both also stated that their respective offices have complied with the Unclaimed Property Act in all material respects to the best of their knowledge and that they could produce documentation demonstrating compliance.

111. Thereafter, we requested all documentation relating to the County's reports and payments to the Administrator from 2016 to 2022.

112. The Office of the Treasurer requested that we submit a GRAMA request for the documents, which we did.

113. The Office of the Treasurer and the Clerk/Auditor's Office produced documents in response to our GRAMA request. *See Treasurer Auditor GRAMA Production, Exhibit T.*

114. Both offices subsequently affirmed that the produced documents represented all payments from their offices to the Administrator.

115. Documents provided by the Clerk/Auditor's office and Treasurer's office did not evidence a significant number of payments made to Unclaimed Property by the Clerk/Auditor's office, with most representing payments to return excess funds from the annual County tax sale by Ms. Long, payments which had been made by the Treasurer's office until the Clerk/Auditor's office took over the practice.

116. We then conducted several telephone interviews with the various employees from the office of the Administrator.

117. At our request, the Administrator produced a report summarizing payments from the various offices of Uintah County from the years 2016 to 2022. *See Utah Spreadsheet for Unclaimed Property Submissions, Exhibit U.*

118. The payments reflected in the documents produced by the County Treasurer and Clerk/Auditor's Office were found in the state report. Only three checks received by the State of Utah consisted of unclaimed checks submitted by the Clerk-Auditor's Office. *See Comparison Spreadsheet, Exhibit V.*

XI. Mr. Wilkins Oversees and Directs Improper Voiding of Checks

119. Michelle Zilles, a former employee in the Clerk/Auditor's Office with direct knowledge of Mr. Wilkins' practices relating to potentially abandoned property, testified as follows:

120. The County Clerk/Auditor's Office processes and distributes hundreds of checks to County employees, vendors, and other third parties each year. *See* Second Dec. of M. Zilles, Exhibit W at ¶ 3.

121. Each year, dozens of processed checks go unclaimed by employees, vendors, and others. *See* Ex. W at ¶¶ 5-6.

122. When checks went unclaimed, Mr. Wilkins often instructed employees to void checks throughout the year. *See Id.* at ¶¶ 5-7.

123. Some checks were subsequently reissued, but at the direction of Mr. Wilkins most voided checks were *not* reissued. *Id.*

124. Often toward the end of the year, Mr. Wilkins would instruct his accounts receivable employees to void dozens of checks at a time. *Id.*

125. Mr. Wilkins never instructed employees to submit unclaimed checks to Utah's Division of Unclaimed Property. *Id.* at ¶¶ 8-10.

126. Ms. Zilles did not witness or see evidence that Mr. Wilkins submitted unclaimed checks to Unclaimed Property. *Id.* This is supported by the report produced by the Administrator, which showed only three checks from the Clerk-Auditor's Office for unclaimed checks initially issued by the Clerk-Auditor's Office.

127. Mr. Wilkins told one employee that he would never be sending unclaimed checks to the State of Utah, insisting that if the individual didn't want to collect the money, it belonged to the County. *Id.*

128. Between 2014 and 2021, Mr. Wilkins instructed his employees to void at least 291 checks that were never reissued or sent to Unclaimed Property. *Id.* at ¶ 11.

129. The sum of the voided checks between 2014 and 2021 is at least \$27,299.71. *Id.* at ¶ 13.

130. The State of Utah's Unclaimed Property Division confirmed that amounts sent in from Mr. Wilkins as the County Clerk/Auditor were significantly lower than the total of voided checks. *See Ex. V.*

131. In fact, the majority of the money received by Utah's Unclaimed Property was surplus from County tax sales, *not* voided checks from Mr. Wilkins. *Id.*

132. Evidence and testimony suggest that Mr. Wilkins was aware that unclaimed checks were to be sent to Unclaimed Property, yet he refused to do so. *Ex. W* at ¶ 14.

XII. Weber County Investigation

133. In early 2021, the County referred four issues of potential financial wrongdoing by the County Clerk/Auditor to Weber County for investigation, pursuant to Utah Code Ann. § 17-53-103.

134. On May 6, 2021, Weber County issued a letter from Weber County Attorney Christopher Allred, attaching a Memorandum from Scott Parke (the "Parke Memorandum"), Comptroller in the Weber County Clerk/Auditor's Office, summarizing its investigation and findings (the "Weber County Report"), Exhibit X.

135. The Weber County Report set forth the first issue in its investigation, which relates to the issues addressed in this Memorandum, as:

That money was paid to the Utah Retirement System (URS) on behalf of all county employees without the authorization of the County Legislative Body.

See Exhibit T, Parke Memorandum, at 1.⁹

136. Although this description of the issue describes contributions to URS “on behalf of all county employees,” the Parke Memorandum indicates that there was some consideration by Weber County of the optional or “excess contributions” to URS by the County. *Id.*

137. Specifically, at page 2, Mr. Parke states: “I reviewed the County’s Approved Budget for 2017 through 2020 ... and noted that the excess URS contribution rates appeared to be included as part of the calculation of employee benefits.” *Id.* at 2. It does not appear that Weber County investigated whether the Voluntary Contributions were disclosed to County Commissioners so as to provide them a meaningful opportunity to exercise their control over the County’s budget and voluntary expenditures.

138. The Weber County Report ultimately determined that:

Although several issues were raised that could give the appearance of unauthorized payments, I do not believe there is sufficient evidence for me to determine that unauthorized payments have occurred or been ordered. Rather, there seem to have been multiple breakdowns in communication among the various Uintah County offices and officials, without any clear violations of law.

See Exhibit T, Allred Letter at 2. *Id.*

139. Although we disagree with some of Weber County’s factual findings, as explained in this Memorandum, we have not revisited Weber County’s conclusions, as directed by the County Attorney’s Office.

⁹ Section 17-53-103 allows the County to refer a matter for investigation if it appears that a County officer has paid money without authorization. It appears that Weber County’s investigation focused on whether the County’s URS funding had been approved, not whether the Optional Contribution had been disclosed.

ANALYSIS

I. Petition for Removal

A. Utah Law Regarding Removal of Elected Officers

Under Utah law, “the governor and other state and judicial officers [are] liable to impeachment for high crimes and misdemeanors or malfeasance in office.” Utah Code Ann. § 77-5-1. “All officers of any city, county, or other political subdivision of this state not liable to impeachment shall be subject to removal . . . for high crimes and misdemeanors or malfeasance in office.” *Id.* § 77-6-1. “An action for the removal of a [county] officer . . . shall be commenced by presenting a sworn, written accusation to the district court.” *Id.* § 77-6-2. The petition may be initiated by any taxpayer in the county. *Id.* If the petition seeks removal of an official other than the county attorney, statute requires that the petition be provided to the county attorney “who shall investigate and may prosecute the accusation.” *Id.* § 77-6-4(2)(a).

B. Interpreting Utah Code § 77-6-1

1. High Crimes and Misdemeanors

Pursuant to Utah Code Ann. § 77-6-1 (the “Removal Statute”), non-impeachable public officials are subject to removal for “high crimes and misdemeanors or malfeasance in office.”

When interpreting the text of the Removal Statute, the Utah Supreme Court “assumes that there was a reason for using each of those terms and each should be given some meaning,” but given that they are “used together and directed toward the same objective they should be deemed to take character and meaning from each other.” *Jones*, 407 P.2d at 573; *see also Law v. Smith*, 98 P. 300, 308 (Utah 1908) (explaining that malfeasance in office is a lesser offense but just as sufficient grounds for removal as high crimes and misdemeanors).

“High crimes and misdemeanors” include not just serious offenses, but also those “in which there is harm or injury directed against other persons and is thus a violation of the basic

mores of society.” *Jones*, 407 P.2d at 573. This includes “robbery, burglary, larceny, embezzlement or some crime of a character which involves such moral turpitude or is so offensive to accepted standards of honesty or integrity that one guilty of such a crime is unfit for a public trust and should therefore be removed from public office.” *Id.* For misdemeanors, the action “should partake in somewhat of the same character” as a high crime but does not include minor violations of law – such as “jaywalking, improper parking, or spitting on the sidewalk” – or those offenses unrelated to conduct in office. *Id.* at 573–74.

Whether an action by a public official rises to the level of a removable offense depends on “various considerations,” including:

- whether, at the time of the adoption of the Constitution and enactment of the Removal Statute, the offense would have been considered grounds for removal;
- whether the offense “include[s] any imputation or falsification or fraud;” and
- whether the offense “involve[s] any harm or injury directed against any other person” or is a “malum in se . . . inherently and essentially evil or immoral.”

Id. at 574.

2. *Malfesance In Office*

In contrast to high crimes and misdemeanors, “malfesance in office” encompasses acts that do not rise to the level of a crime. The Utah Supreme Court has explained malfesance in office in several ways. For example, the Court applies the term to

a range of conduct that can occur while an officer is acting under color of office, but outside any specified official duty as defined by statute or ordinance that sufficiently relates to the duties of office so as to taint the office itself or establish that a particular officer is unfit to retain the public trust.

Madsen v. Brown, 701 P.2d 1086, 1090 (Utah 1985). Malfesance in office can also mean:

- a. “an intentional act or omission relating to the duties of a public office,”
- b. which amounts to a crime, or which involves a substantial breach of the trust imposed upon the official by the nature of his office, and
- c. “which conduct is of such a character as to offend against the commonly accepted standards of honesty and morality.”

State v. Geurts, 359 P.2d 12, 14 (Utah 1961).¹⁰

Although a felony or other criminal act may be involved, “it is not necessary that an act in order to constitute malfeasance must likewise be a crime.” *Law v. Smith*, 98 P. 300, 308 (Utah 1908). There is also no need to show criminal intent on the part of the defendant. *See id.* at 307-08 (observing that “all the authorities which hold that a criminal intent must underlie the commission of an impeachable offense have . . . no application to statutory or constitutional removals, such as we are now dealing with”).

There are limitations on what constitutes malfeasance in office. The act “must involve conscious wrongdoing” on the part of the defendant and must be more than an act merely “not authorized by law.” *Id.* at 308. In the case of an omission, “[i]t is not the mere failure to make a correct statement, but the refusal or willful neglect to do so, that constitutes the offense.” *Id.* at 311.

¹⁰ Although the court in *Jones* says that “high crimes and misdemeanors” and “malfeasance in office” must necessarily mean different things, they do not identify what that difference is. Later courts seem to define “malfeasance in office” similarly to how the *Jones* court defines “high crimes and misdemeanors.”

3. *The Offense Must Occur While the Official Is “In Office”*

Courts interpret the term “in office” to mean that “the offense must occur while the person is serving in the office from which it is sought to remove him.” *State v. Bowen*, 620 P.2d 72, 74 (Utah 1980). In other words, the act must take place “where an officer exercises official duties or acts under color of office[,] . . . which act is done because he is an officer or because of the opportunity afforded by the fact[.]” *Madsen*, 701 P.2d at 1090 (Utah 1985). Removal is not appropriate “when the alleged wrongful acts or omissions occurred while the officer was acting in his private capacity as opposed to his capacity as a public officer.” *Id.* But removal is still available “where the official was acting in his public capacity outside specifically defined duties of his office.” *Id.* This is a “question to be decided by the trier of fact[.]” *Id.*

C. Commissioner Brad Horrocks’ Petition for Removal

On December 9, 2021, Commissioner Brad Horrocks, a sitting County Commissioner and sworn County taxpayer, filed a Petition for Removal of Uintah County Clerk/Auditor Mike Wilkins (“Petition for Removal”), alleging that Mr. Wilkins committed high crimes and misdemeanors and malfeasance in office. Specifically, the Petition for Removal alleges that Mr. Wilkins “has a history of abusing his position and authority. Mike Wilkins has disregarded County policies and lawful requests from the County Commission. He has bullied county employees, especially women, and he has discriminated against county law enforcement employees and other employees for years. He has tried to hide what he did from the Commission and the public. His actions have made the County liable for money damages from its own employees and he has damaged the reputation of the County.” Petition for Removal at 1.

The Petition for Removal then sets forth the following specific allegations, which are quoted below:

1. Mike Wilkins did not inform the County Commission when he spent over \$2 million of county money for retirement plans which he benefitted from. County Policy 460(8) says the voluntary contributions have to be approved by the County every year. Mike Wilkins gave those contributions to the Commission for approval every year for at least 17 years then he stopped in 2017 but he kept on paying until he was caught in 2021.
2. Mike Wilkins admitted he made contribution decisions to retirement plans on his own even though he signed documents saying all involved parties knew about the decision. He did not talk to anyone about his actions.
3. Mike Wilkins has withheld retirement contributions from County law enforcement employees and other employees without talking to the County Commission or anyone else even though there was money in the budget for his contributions. In a meeting with the Sheriff and the Commission he did not show any record explaining why he did it. Mike Wilkins did make sure he received the full contribution.
4. Mike Wilkins changed documents after they were signed by the County Commission without letting them know. His changes cost employees money with no justification.¹¹

5. Mike Wilkins has verbally assaulted [REDACTED] and other female employees outside his office.
6. Mike Wilkins has physically and verbally assaulted a County Commissioner and the female Human Resources Director in front of witnesses.
7. Just a few weeks ago Mike Wilkins violated the GRAMA by releasing draft documents to the press. The County and State Auditor had to contact the press to tell them those records could not be released. The crime was reported to Vernal City and an investigation has begun.

D. Proof Beyond a Reasonable Doubt Demonstrates That Mr. Wilkins Engaged in Conduct That Meets the Standard for Removal

Based on our investigation and as explained more fully below, evidence beyond a reasonable doubt indicates that Mr. Wilkins engaged in conduct that meets the standard of “high

¹¹ We considered this allegation as part of our investigation but determined that Mr. Wilkins had not changed documents in any way that could rise to the standard set forth in Utah Code Ann. § 77-6-1 and therefor have not included an analysis of this issue in this Memorandum.

crimes, misdemeanors and malfeasance in office,” as described in Utah Code Ann. § 77-6-1.

First, Mr. Wilkins concealed from County Commissioners Optional Contributions to URS by the County of nearly \$3.4 million on behalf of Local Government Employees and falsely certified that such amounts had been approved by the County Commission. As a Local Government Employee himself, Mr. Wilkins personally benefitted from these payments in the amount of \$75,987.17. Second, Mr. Wilkins has engaged in a pattern of unprofessional and potentially harassing conduct in his role as Clerk/Auditor. Third, Mr. Wilkins falsely testified, under oath, in a criminal proceeding involving allegations that occurred in the workplace and that directly relate to the performance of his duties as Clerk/Auditor. Fourth, Mr. Wilkins appears to have engaged in other conduct, such as releasing a draft audit report even though he knew or should have known that such release was prohibited by law.

1. Mr. Wilkins Deliberately Deceived the County Commission, Falsely Certified URS Contribution Rates, and Knowingly Withheld Information Requested By the County

There is no dispute that Mr. Wilkins failed to present the County’s contribution rates to the Commission for fiscal years 2017-2020. SOF ¶¶ 31-32. Mr. Wilkins admitted this to us and also to agents of Weber County. SOF ¶¶ 31-32, 133-139. The Optional Contribution amounts for the County during these years, which could have been altered or eliminated by the Commission, totaled nearly \$3.4 million. Mr. Wilkins contends that his failure was unintentional and resulted from the fact that the County’s overall URS contribution rates did not change during these years.

For the reasons explained below, we do not find Mr. Wilkins’ explanation credible. Rather, we believe that the evidence demonstrates beyond a reasonable doubt that during Fiscal Years 2017-2020, Mr. Wilkins concealed the rates and amounts of the County’s Optional Contributions to the Local Government Employees’ URS plans.

Mr. Wilkins has worked in the County Auditor's office for nearly 35 years and has been the Clerk/Auditor for approximately 20 years. SOF ¶¶ 13-17. As a result, Mr. Wilkins is intimately familiar with the process of obtaining Commission approval of annual County payments to URS. *See* SOF ¶¶ 24-38. From 2003 to 2013, Mr. Wilkins received forms from URS to be filled out with contribution rates and then presented these forms to the Commission for approval. *See* SOF ¶¶ 24-27. During these years, Mr. Wilkins added signature lines for one or more County Commissioners in order to document that the County Commission had approved the County's URS contributions for a given year. *Id.* The addition of one or more signature lines for County Commissioners demonstrates Mr. Wilkins' understanding that County contributions to URS had to be approved by the Commission.

During the period prior to 2013 when Mr. Wilkins submitted hard copy forms to URS containing the County's URS contribution rates, he also signed a certification each year indicating that "the above information and rates are correct and that all persons involved in submitting reports have been notified." SOF ¶ 26. This annual certification reinforced the requirement that the County Commission must approve URS payments by the County.

Prior to 2017, Mr. Wilkins obtained the Commission's approval of the County's URS contribution rates each year, even when those rates did not change from the prior year. SOF ¶¶ 28-34. The credibility of Mr. Wilkins' explanation that the County's URS contribution rates were not presented to the Commission for fiscal years 2017-2020 because they did not change is undermined by Mr. Wilkins's own conduct in prior years in which Mr. Wilkins presented the County's URS contribution rates to the Commission each and every year whether they changed or not. *Id.*

The more credible explanation, which we believe is supported by evidence beyond a reasonable doubt, is that Mr. Wilkins intentionally concealed the County's URS Optional Contribution rates because the Clerk/Auditor stood to benefit personally from the continuation of Optional Contributions to the URS plans of Local Government Employees, Mr. Wilkins believed that the Commission as constituted following the election of Mr. Horrocks would likely terminate any Optional Contributions on behalf of Local Government Employees, and because the relationship between the Commission and Clerk/Auditor had become strained

As discussed above, Mr. Wilkins participated in the URS plan for Local Government Employees. SOF ¶ 12. URS records indicate that he received Optional Contributions of \$75,987.17 during fiscal years 2017-2020. *Id.* We believe this amount is substantial enough to incentivize Mr. Wilkins to conceal the Optional Payments. This is particularly true given that Mr. Wilkins understood that the Commission as constituted following the election of Mr. Horrocks would likely have terminated any Optional Contributions, as it did in Fiscal Year 2021. SOF ¶¶ 51-54. In addition, the relationship between Mr. Wilkins and the Commission became strained after Mr. Horrocks took office in 2017. *Id.* Ultimately the relationship between the Commission or certain Commissioners and Mr. Wilkins resulted in several arguments during Commission meetings. SOF ¶¶ 55-56. All of these factors provide a motive and incentive for Mr. Wilkins to conceal the Optional Contribution from the Commission.

Moreover, there is substantial evidence indicating that Mr. Wilkins' failure to present the Optional Contributions to the Commission was intentional and not inadvertent. As mentioned above, in 2013 URS began requiring a County representative to make an online certification that the County's funding rates had been approved by the authorized individuals (i.e., the County Commission). SOF ¶¶ 33-36. This certification was similar to the certification Mr. Wilkins had

made in prior years but was electronic rather than hard copy. Mr. Wilkins completed the electronic certification, and thereby verified that the funding rates had been approved, on behalf of the County for each year from 2013 through 2020. SOF ¶¶ 33-36. In making this certification, Mr. Wilkins would have been reminded of the requirement that he obtain the Commission's approval of URS Optional Contributions, indicating that the failure to obtain such approvals was intentional. *Id.*

The intentionality of Mr. Wilkins' concealment of Optional Contributions is further demonstrated by the fact that he refused to provide information relating to these payments even after the information was directly requested by the Commission. Near the end of 2019, as the Commission was in the process of preparing the County budget for Fiscal Year 2020, the Commission requested specific information from Mr. Wilkins regarding the components of the employee benefits calculation (which included an Optional Contribution on behalf of Local Government Employees) in the preliminary budget. SOF ¶¶ 56-61. The Commission sent two written letters to Mr. Wilkins requesting such information. Mr. Wilkins refused to provide a substantive response. *Id.*

When asked why he refused to respond to the Commission's requests, Mr. Wilkins stated that collecting such information would have been too difficult. *Id.* However, Mr. Wilkins previously stated when being interviewed that he collected the information contained in the preliminary budget from employee payroll logs. When asked why he could not have used these same logs to respond to the Commission's inquiry, Mr. Wilkins could not provide a credible response.

For these reasons, we believe that the evidence demonstrates beyond a reasonable doubt that Mr. Wilkins intentionally concealed the County's Optional Contribution rates from the

Commission. Mr. Wilkins therefore did not obtain required authorization for URS payments and falsely certified for Fiscal Years 2017-2020 that he had.

Mr. Wilkins' intentional concealment of the County's Optional Contribution rates may constitute a high crime or misdemeanor but certainly constates malfeasance in office and is therefore grounds for removal from office under the Removal Statute. Given the decades Mr. Wilkins has worked in the County Auditor's office and his prior practice from years 2003-2016 of obtaining certification from the Commission, Mr. Wilkins knew that he was required by law to obtain the Commission's approval of Optional Contributions to URS plans for Local Government Employees. Mr. Wilkins also certified each year that he had done so.

As an auditor entrusted to protect the public fisc, Mr. Wilkins should have been particularly scrupulous given that he personally benefitted from Optional Contributions to the Local Government Employee fund. Mr. Wilkins' actions also involve falsification and fraud in his certification of retirement rates to URS when those rates had not been presented to the Commission. Mr. Wilkins' actions are also directly related to his position as Clerk/Auditor and involve a substantial breach of trust. For these reasons, conclude that the evidence demonstrates beyond a reasonable doubt that Mr. Wilkins intentionally concealed the Optional Contributions to URS on behalf of Local Government Employees during Fiscal Years 2017-2020. We believe that Mr. Wilkins engaged in malfeasance in office as that term has been interpreted by controlling Utah case law.

2. *Mr. Wilkins Engaged In a Pattern of Unprofessional, Harassing, and Illegal Behavior*

Over the past decade several employees and colleagues have filed formal complaints regarding Mr. Wilkins' workplace behavior. [REDACTED]

[REDACTED] See SOF ¶¶ 70-83. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] SOF ¶¶ 71-74. Mr. Wilkins has also physically and verbally assaulted other employees of the County. SOF ¶¶ 75-83. This pattern of behavior is unbecoming of an elected official, reflects poorly on the County, and exposes the County to potential liability.

It is unclear whether such actions alone would be enough to meet the removal standard set forth in Utah Code Ann. § 77-6-1. Factors supporting a conclusion that unprofessional and harassing behavior meet the removal standard include the facts that: 1) Mr. Wilkins' behavior directly harmed multiple County employees, 2) the behavior would likely taint the public perception of the office of County Clerk/Auditor, and 3) [REDACTED]

[REDACTED] From a policy perspective, because Mr. Wilkins does not report to anyone and cannot be directly disciplined by a supervisor, removal is the only way to put a stop to his harmful behavior.

That said, removal in Utah has typically been reserved for criminal acts or acts that reflect negatively on the honesty of the officeholder. There has not been an identifiable case in Utah where an official has been removed for actions related to workplace harassment or abuse.

But, given the changing societal attitudes emphasizing accountability for workplace discrimination and harassment, it is possible that a court would view Mr. Wilkins' actions as "taint[ing] the office itself" and, therefore, as grounds for removal. Because it is unclear whether such conduct would meet the removal standard on its own, we have considered it only as part of pattern of misconduct that could constitute a substantial breach of trust and reflect negatively on the County and office of Clerk/Auditor and is therefore relevant to determining whether Mr. Wilkins has engaged in malfeasance in office.

3. *Mr. Wilkins Provided False Testimony, Under Oath, In a Court of Law Regarding a Charge Related to His Conduct While Acting as an Elected Official*

One incident of Mr. Wilkins' unprofessional and potentially harassing behavior in the workplace involved Ms. Craven, the County's Director of Human Resources. This incident led to the filing of criminal charges against Mr. Wilkins by Vernal City for disorderly conduct. SOF ¶¶ 84-85. After being found guilty in justice court, Mr. Wilkins appealed that judgment to the Eighth District Court, where he received a *trial de novo*. SOF ¶ 87.

During that trial Mr. Wilkins provided sworn testimony that is false beyond a reasonable doubt. Among other things, Mr. Wilkins testified, under oath, that the alleged conduct never occurred and that he did not visit Ms. Craven's office on the day in question. SOF ¶¶ 90-91. Mr. Wilkins also testified that he would never use foul language and that such phrases as "goddammit" and "bullshit" were not in his vocabulary. SOF ¶ 92.

Specifically, Bryan Sidwell ("Mr. Sidwell"), Mr. Wilkins' attorney and Mr. Wilkins had the following exchange:

Mr. Sidwell: Is there any day in the history of the world that you ever, that those events occurred?

Mr. Wilkins: Not that I recall. Swearing and that ... the using of the word that was referred to, is not in my vocabulary.

SOF ¶ 93. When cross-examined by the prosecutor, Mr. Wilkins reaffirmed his sworn testimony on direct examination that such vulgar language was not in his vocabulary and that he would never use it in any situation. SOF ¶ 94.

Specifically, Mr. Harrington and Mr. Wilkins had the following exchange:

Mr. Harrington: You said that you would never use the phrase "goddammit" because it's not in your vocabulary?

Mr. Wilkins: That's correct.

SOF ¶ 95. Mr. Harrington then played an audio recording of a County Commission meeting wherein Mr. Wilkins could be heard exclaiming profanities in multiple instances, including the term “goddammit.” SOF ¶ 96. Mr. Wilkins confirmed that it was his voice in the recording. SOF ¶ 96.

At the conclusion of the bench trial, the Court found Mr. Wilkins guilty. SOF ¶ 97. In connection with his finding of guilt, Judge Chiara explained that he reached this conclusion because:

“Mr. Wilkins testified that he would never say goddamn that that was not in his vocabulary. And I believed him. And then I got to hear him say it. In his own words, on audio. Which indicates to me that he is willing to mislead the Court, under oath. And because of that, I have chosen to disregard his testimony entirely.”

SOF ¶ 98.

The Uintah County Sheriff’s Office referred the matter to the Utah Attorney General’s office to be screened for criminal charges. For unknown reasons, the Attorney General’s office declined prosecution. The materials received from the Attorney General’s Office pursuant to a GRAMA request are attached as Exhibit Z.

Despite the declination of charges by the Attorney General’s Office, the facts relating to Mr. Wilkins’ false testimony satisfy the removal standard. Perjury constitutes a “high crime or misdemeanor.” Indeed, Utah Code Ann. § 76-8-502 states that person is guilty of a felony “if in any official proceeding (1) He makes a false statement under oath [or] ... He makes inconsistent material statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by him to be true.” Moreover, any false testimony provided in court, under oath, reflects negatively on Mr. Wilkins’ honesty and morality and the Office of the Clerk/Auditor.

The only real question is whether Mr. Wilkins' false testimony is sufficiently connected to Mr. Wilkins' position as Clerk/Auditor. Although Mr. Wilkins was not testifying in his official capacity as Clerk/Auditor, the events relating to the criminal charges against Mr. Wilkins occurred in the workplace, involved County employees (or former employees), and related directly to his work as Clerk/Auditor. Ms. Craven alleged that Mr. Wilkins confronted her because of a letter that Mr. Wilkins had received from the Commission (a fact confirmed by other witnesses). Although this is a factual issue, we believe that a court would find that such conduct met the standard for being "in office" and therefore satisfy the Removal Statute.

4. *Mr. Wilkins Deliberately Withheld Unclaimed Property in Contravention of his Duties as a Holder of Unclaimed Property*

Over the past decade Mr. Wilkins deliberately and improperly directed staff within his office to void hundreds of checks that went unclaimed by County employees, vendors, and other individuals. SOF ¶¶ 119-132. A portion of Mr. Wilkin's responsibilities as Clerk/Auditor includes complying with the Uniform Unclaimed Property Act. *See* SOF ¶¶ 17-23; Utah Code § 67-4a-401, *et seq.* Mr. Wilkins is considered a "holder" under the Unclaimed Property Act, and he has specific obligations relating to excess funds and unclaimed property in the County each year. SOF ¶¶ 17-23. Dating back to at least 2014, Mr. Wilkins has knowingly voided (and failed to reissue) checks that went unclaimed by County employees, vendors, and other individuals. SOF ¶¶ 111-134. This process by Mr. Wilkins typically occurred on a yearly basis, and evidence strongly suggests this was done because Mr. Wilkins did not believe individuals who failed to claim excess funds were entitled to it. SOF ¶¶ 111-134. In all, at least \$27,299.71 was improperly retained by the County through Mr. Wilkins' actions. SOF ¶ 129. This unclaimed

money should have properly been returned to the State of Utah and potentially claimed by the rightful owner . SOF ¶ 130.

Based on Mr. Wilkins' statements to investigators as well as witness testimony, he understood the requirement under the Unclaimed Property Act to return uncashed checks to the Administrator. However, in hundreds of cases he refused to do so. Standing alone, this conduct may not rise to the level of a "high crime or misdemeanor," but is relevant to the determination when considered with the other factors addressed in this memorandum. yet when viewed in connection with other evidence must be considered as part of this analysis. Although, it is unclear whether Mr. Wilkins simply did not understand his obligations under the Unclaimed Property Act, or whether he simply hoped to improperly fill voids in the County coffers, his conduct was inappropriate and contrary to established Utah statutory requirements.

5. *Mr. Wilkins Knowingly Released a Draft Audit Report In Violation of GRAMA*

In 2020, the Utah State Auditor's Office commissioned an independent audit of the County. SOF ¶ 99. As is normal practice, a draft audit was circulated prior to the final version of the audit being completed. SOF ¶ 100. The Draft Audit included some findings that were critical of the Commission. SOF ¶ 101. Mr. Wilkins improperly released the Draft Audit to UBMedia. SOF ¶¶ 102-1087 Evidence indicates beyond a reasonable doubt that Mr. Wilkins knew that the release of the Draft Audit was improper but released the document because of its negative content about the Commission. *Id.*

Utah law prevents the disclosure of "protected" government records, including "records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released." *See* Utah Code § 63G-2-305(16). As a GRAMA, Mr. Wilkins knew or should have known of the restrictions imposed on a Draft Audit. Mr. Wilkins had been functioning as a

GRAMA Officer for at least two decades and the provision governing the release of protected government records is directly within the scope of his responsibility. The Draft Audit was also watermarked with a “DRAFT” stamp, clearly indicating that it was not for public disclosure.

While Mr. Wilkins’ violation of GRAMA alone may not rise to the level of a “high crime or misdemeanor”, it is still relevant to the issue of removal from office. Mr. Wilkins had access to the Draft Audit only because of the nature of his position as Clerk/Auditor. As Clerk/Auditor, he is expected to maintain the confidentiality of sensitive information. By prematurely releasing the Draft Audit to the media without authorization, Mr. Wilkins violated his duty of confidentiality and substantially breached the trust placed in him by County residents and local officials, which are relevant to determining whether he engaged in malfeasance in office.

II. The Notice of Claim

Sheriff Labrum filed a Notice of Claim with the County on January 5, 2022. The Notice of Claim alleges that POST-certified employees (referred to hereafter as “Public Safety Employees”) are entitled to additional retirement contributions from the County because of misconduct by Mr. Wilkins in his role as the County Clerk/Auditor. The Notice of Claim describes Sheriff Labrum’s independent research into past years’ budgets, as well as his personal review of County policy and discussions with the Commission.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]



[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]



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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONCLUSION

For the reasons stated herein, we believe that the totality of the circumstances and evidence uncovered during our investigation and described herein demonstrate beyond a reasonable doubt that Mr. Wilkins has engaged in “high crimes and misdemeanors or malfeasance in office” so as to warrant removal under the Removal Statute.

[REDACTED]