

FROM: Melissa Clark, ASA, & Andrew J. Urbanak, ASA

TO: FILE

DATE: July 16, 2020

RE: Rick Singh Governor's Assignment

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This memorandum is written to address the ten criminal counts forwarded by the Florida Department of Law Enforcement against Rick Singh, the Orange County Property Appraiser.

### **Background**

The Florida Department of Law Enforcement (FDLE) began their investigation of allegations against Rick Singh in 2018. We received the Governor's assignment in January 2020. FDLE forwarded thousands of pages of documents and many hours of recorded witness interviews compiled during their investigation. The complaints forwarded to the State Attorney's Office by FDLE were all alleged violations of Section 838.022(1) (a) (2015) of the Florida Statutes (Official Misconduct).

### **Allegations**

The ten counts forwarded by FDLE all related to the altering of Orange County Property Appraiser's (OCPA's) records which were submitted to the Orange County Comptroller's Office (OCCO) during an audit of OCPA which began in July of 2015 and concluded in February of 2016. The audit by OCCO of OCPA focused on p-card transactions by OCPA from January 1, 2013, to July 1, 2015.

Each count investigated by FDLE alleged that official records of OCPA were altered prior to submitting the documents to OCCO for audit review. Many of the Counts involved Singh allegedly directing staff to change the travel documents to reflect that "staff" purchased fuel instead of "Singh". One Count alleges that Singh directed staff to delete the language "attended the Curry Festival" from a travel document prepared by Singh. Another count alleges that Singh directed staff to delete the reference of an Orlando Magic Official from a lunch voucher reimbursement request and simply list it as lunch. Finally, a photograph was taken to justify Singh's attendance at the Curry Festival in Tampa. The photograph is of Singh standing by a reconstructed banner at a park close to Singh's home. The contrived photograph was submitted as a photograph of Rick Singh at the Curry Festival in Tampa. The photograph is believed to have been taken approximately two years after Singh attended the Curry Festival in Tampa.

Investigation revealed that Singh received a monthly travel allowance of \$540 to \$575 as reimbursement for using his personal vehicle for work purposes. At the same time he received this stipend, he was using County/OCPA owned vehicles for work purposes. Modification of the documents to reflect usage by "staff" versus "Singh" could arguably have been done to avoid political criticism or consequences for receiving the monthly stipend while also using a county owned vehicle. Potentially, all of the allegations share the possible motivations of a financial gain and/ or avoidance of political criticisms/consequences.

FDLE learned of the altered documents from former OCPA Communications Director Laverne McGee and former Director of Finance Aisha Hassan in 2018. Hassan and McGee were put on administrative leave from OCPA in June of 2017 after submitting a written complaint to OCPA alleging Title VII Civil Rights violations as well as allegations related to the alteration of documents from the OCCO audit in 2015.

After they were placed on administrative leave OCPA retained attorney Belvin Perry to conduct an independent review of the allegations of McGee and Hassan. Perry conducted multiple interviews as part of his investigation including unsworn interviews of Hassan and McGee, a sworn interview of Singh, and interviews of several other OCPA employees. On April 26, 2018, Perry issued a report containing his findings. Perry found that “there is no evidence to support...the allegation that documents were altered for the purpose of [the] audit, nor is there evidence that support[s] the proposition that any expenditures were made with the knowledge that they were intentionally improper.” Further, regarding Singh’s receipt of a vehicle allowance and his use of OCPA vehicles, Perry found that there was no evidence to support the conclusion that receiving a vehicle allowance and also using OCPA vehicles was improper.

On August 24, 2018, Willis Perry – a former employee of OCPA - filed a federal complaint against Rick Singh personally and in his capacity as Orange County Property Appraiser alleging (1) a violation of the Florida Whistleblower Act, (2) a violation of the Florida Civil Rights Act, (3) Retaliation under the Florida Civil Rights Act, (4) a violation of Title VII, (5) Retaliation under Title VII, and (6) Retaliation under the First Amendment. This complaint was settled between the parties for a monetary agreement out-of-court.

On November 6, 2018, McGee and Hassan filed a federal complaint against Rick Singh in his capacity as Orange County Property Appraiser alleging (1) a violation of the Florida Public Sector Whistleblower Act, (2) Sexual Harassment in violation of Title VII of the Civil Rights Act of 1964 (two separate counts were filed for both McGee and Hassan), (3) Retaliation under Title VII (two separate counts were filed for both McGee and Hassan), (4) Sexual Harassment in Violation of the Florida Civil Rights Act (two separate counts), (5) Retaliation in violation of the Florida Civil Rights Act (two separate counts), and Retaliation in violation of the First Amendment. The complaint is still pending at this time.

On February 11, 2020, Singh, in his capacity as Orange County Property Appraiser, filed a complaint in state court against Hassan and McGee alleging (1) a “Civil Action for Surreptitious Recording in Violation of section 934.03”, (2) Cyberstalking and violation of Florida’s GPS Law, (3) Theft of Agency Records, (4) Invasion of Privacy, and (5) Conspiracy. This complaint is also still pending at this time.

Recently, a criminal complaint was filed by OCPA against both Hassan and McGee. The Orlando Police Department investigated the allegations and completed a charging affidavit with allegations of offenses against public utilities, F.S. 815.061, illegal interception of oral communications, F.S. 943.03, and theft of documents from OCPA (Hassan), F.S. 812.014 which were forwarded to the State Attorney for the 9<sup>th</sup> Judicial Circuit. The State Attorney’s Office for the 9<sup>th</sup> Judicial Circuit declined to prosecute the charges against Hassan and McGee.

### **Materials Reviewed**

The undersigned Assistant State Attorney’s reviewed a litany of documents and interviews provided by FDLE and other documents acquired by the 7<sup>th</sup> Circuit State Attorney’s Office. Among the materials reviewed were documents related to the audit of OCPA by OCCO, the documents alleged in each

count summarized above, documents related to the federal civil suit filed by witnesses Aisha Hassan and Laverne McGee against Rick Singh (Case No. 6:18-cv01909-RBD-TBS), documents related to the federal civil suit filed by witness Willis Perry against Rick Singh (Case no. 6:18-cv-01424-GAP-TBS), documents related to the state civil suit filed by Rick Singh against Aisha Hassan and Laverne McGee (Case No 2020-CA-001576-0), documents related to an independent investigation by attorney Belvin Perry following the termination of Aisha Hassan and Laverne McGee, documents related to a criminal complaint against Laverne McGee and Aisha Hassan in which Rick Singh and OCPA were the alleged victims, and internal documents from OCPA including the Fleet Vehicle Policy, among many others.

The undersigned Assistant State Attorneys reviewed the interviews conducted by FDLE of Aisha Hassan (the former OCPA Director of Finance), Laverne McGee (the former OCPA Director of Communications), Lisa Fuller (OCCO IT Audit Supervisor), Usha Tewari (current OCPA employee), Willis Perry (former OCPA Human Resources Manager), Manish Bhatt (former OCPA COO), Vikaash Maharaj (former OCPA employee), Dr. Ramcharran (friend of Rick Singh), and Melissa Chandler (former OCPA Residential Real Estate Assessment Manager).

Additionally, interviews were conducted of Aisha Hassan, Laverne McGee, Willis Perry, Manish Bhatt, and Vikaash Maharaj in Orlando on March 10, 2020. Two sworn interviews were conducted of Farlen Halikman, a certified public accountant who consulted OCPA during the OCCO audit that began in July of 2015<sup>1</sup>, and Lisa Fuller, the OCCO auditor on June 19, 2020.

Manish Bhatt was employed with the OCPA from 1999-2016. His last position with the OCPA was Chief Operating Officer under Property Appraiser Rick Singh, a position he held from 2014 until he resigned in July of 2016. Bhatt was one of the employees that participated in the OCCO audit in 2015 and was present for staff meetings regarding the p-card purchase transactions that were at the center of the audit and this FLDE investigation. Bhatt indicated that the other staff members present for these meetings were Rick Singh, Aisha Hassan, Laverne McGee, and Willis Perry. In addition to the OCPA staff, the meetings concerning the OCPA audit were also periodically attended by attorney Larry Brown, now deceased, and CPA Farlen Halikman.

According to Bhatt, the purpose of the staff meetings concerning the p-card transactions was to provide more of an explanation for the expenses to the auditors of the OCCO. Bhatt was questioned regarding the p-card transactions for gas purchases in which the language was changed from "Singh filled up the truck" to "staff filled up the truck." Bhatt explained that the rationale for the change was that because the OCPA vehicle in question was used by office staff in addition to Singh, the purchase for gas was to benefit the office and not Singh personally, so the language on the p-card transaction was changed to reflect the staff filled up the truck. When questioned regarding if there were any instructions to the staff on what to do with the original p-card transaction documents, Bhatt indicated he did not recall there being any instruction to the staff on that matter.

Willis Perry was interviewed by FDLE investigators on March 7, 2019, and later by FDLE and the undersigned Assistant State Attorneys on March 10, 2020. Perry was the former HR Manager at OCPA; however, he was terminated from the office in January of 2017. Perry was in the audit meetings along with Hassan, McGee, Bhatt, and Singh. Occasionally attending the meetings were attorney Brown and a

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<sup>1</sup> OCPA waived the Accountant-Client privilege allowing Halikman to be interviewed by FDLE and prosecutors regarding the allegations arising out of the OCCO audit.

CPA. Perry stated that he was on the audit team for about 6-8 weeks before he was removed due to complaints he made about the audit process. Perry described the OCPA strategy regarding the audit as defensive; potentially damaging documents would be edited and documents were intentionally made generic. Perry stated that Singh did not want the audit to make him look bad. The document modification process was a collaboration between Singh and McGee. Perry stated that Singh was the only person that drove his particular OCPA vehicle (white expedition). Additionally Perry described a tenuous work relationship with McGee during his time at OCPA and noted her behavior in his initial complaint of race and wage discrimination.<sup>2</sup> As previously stated, Perry eventually filed a federal civil lawsuit against Rick Singh individually and in his capacity as Orange County Property Appraiser which has since been settled.

Vikaasha Maharaj was employed in the IT department for OCPA under Rick Singh for a one year period. Maharaj's only involvement in this investigation is as a witness to the creation of the Curry Festival photograph. Maharaj testified, in 2015, he was requested to create a fake banner for the past 2013 Curry Festival by Laverne McGee. Maharaj indicated that all instructions pertaining to the creation and manipulation of the banner came from Laverne McGee.

On June 2 and 18, 2020, the undersigned Assistant State Attorneys and FDLE investigators interviewed Farlen Halikman with his attorney Charles Meltz. Halikman is a CPA who is employed with MSL CPAs and Advisors. He was retained by Singh and OCPA to assist with the OCCO audit in 2015. Halikman's primary point of contact with OCPA was Bhatt. The audit focused on p-card transactions and most of the audit process involved pulling documentation and invoices to support transactions. He recalled Singh occasionally being in audit meetings with staff, however he described Singh as not being involved in a hands on way. He could not recall ever being in a meeting that included Singh, Bhatt, Perry, Hassan, and McGee.<sup>3</sup> Halikman described the process by which documents were inspected by OCCO as being normal within the industry. Halikman directed OCPA that if the justification for a particular purchase was unclear, they should supplement it by writing on a sticky or handwritten note to provide additional details. He was not in any meeting where there was discussion about altering original documents. Halikman stated that changing documents would not be appropriate – there can be supplements if needed to further describe a particular transaction but changing the document would not be recommended. Halikman was shown the documents associated with Count II, both the original and altered copies, regarding a fuel purchase of \$74.56. He acknowledged the differences between the two documents and stated that any change should have been done on a sticky note. However, he didn't see a material difference in the explanation since Singh is "office staff". Halikman was also shown documents related to the Curry Festival expenses. He had no independent recollection of the documents, however he did recall that McGee was concerned about Singh's presence at the festival because it could create

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<sup>2</sup> In his formal complaint, dated June 10, 2016, Perry stated as follows regarding McGee:

"The work environment at OCPA is disruptive, dysfunctional, and laden with mistrust, resentment, and anger led mainly by Laverne McGee and upheld by the Orange County Property Appraiser.

McGee has committed numerous improper and unethical acts, made unsubstantiated claims of me stalking and harassing her, exhibited harassing and threatening behavior towards me, sent defamatory emails to my supervisor and the Property Appraiser, blatantly lied about me, made racist overtones/comments and has gotten into arguments with me (and mostly ever other employee in Admin Services). This has established a pattern of conduct sufficiently severe or pervasive to alter the conditions of employment..."

<sup>3</sup> Halikman could not recall ever meeting Willis Perry.

“bad optics” of him going to a festival in Tampa. Unlike McGee, Singh was not concerned about the Curry Festival expenses. Halikman considered expenses such as the festival to fall within a grey area; OCPA policy permitted such an expense but the County Commissioners Office did not. Halikman recalled McGee being the only one to speak with him about the festival picture; he told McGee that the photo was not necessary because the explanation of the expense was already sufficient for the audit. Singh was not present when McGee brought up the photograph.

In Halikman’s second interview he was shown the original gas expense documents which were altered and substituted for the audit. Halikman stated that if the original documents were filed in response to the audit requests there would have been no issue with the fuel purchases by Singh for the OCPA truck. **Halikman stated that there is no statutory or regulatory rule that prohibited Singh from using an OCPA vehicle and filling it with fuel while also collecting a vehicle allowance. Further, Halikman stated that there was nothing in the audit, and nothing in the original or altered documents that rose to the level of criminality.**

Aisha Hassan was interviewed several times by multiple investigators. At the time of the audit in 2015 Hassan was the Director of Finance at OCPA. During the audit she was responsible for pulling original documents from OCPA storage and bringing them to audit meetings at OCPA. These meetings included herself, McGee, Perry, Bhatt, Singh, and occasionally attorney Brown. According to Hassan, Singh directed the staff to remove certain wording on several documents. Hassan indicated that Singh did not want his name attached to certain expenditures; he preferred that the documents attribute the expense to staff. Hassan stated that she was directed by Singh to shred the original documents after alterations had been made; she instead kept the originals. Hassan also indicated that there were deliberate attempts by Singh, to slow the audit process. Hassan informed interviewers that Singh collected a vehicle allowance on a monthly basis but primarily drove an OCPA vehicle. Leading up to the election in 2016, Singh requested that Hassan cease the vehicle allowance payments until after the election, which Hassan did. Regarding the expenses related to the Curry Festival, Hassan was unaware of the photograph until after it was coordinated and taken, however she was present when Singh was discussing his concerns regarding the Curry Festival expenses. Hassan continued to be employed with OCPA until June of 2017 when she was placed on administrative leave and later terminated. As noted multiple times in this memorandum, Hassan and McGee filed a federal civil suit against Singh in his capacity as Orange County Property Appraiser which is still pending. Additionally, she is one subject of a criminal complaint alleging that she, (1) unlawfully removed public records from OCPA, and (2) unlawfully installed a tracking device on certain OCPA vehicles, (3) and continued to use her login credentials to track vehicles after she was placed on administrative leave in June of 2017.

Laverne McGee was employed as the Director of Communications at the OCPA from January of 2015 until she was terminated in June of 2017. McGee is at the center of the allegations in this investigation. Her testimony would be necessary and essential to support allegations of wrongdoing by Rick Singh. Her credibility – or lack thereof – must be considered to evaluate whether or not the allegations can be established beyond a reasonable doubt. Testimony shows McGee was disliked by much of OCPA staff. She has been described as abrasive and difficult to work with. When Hassan, Bhatt, Maharaj, and Perry were questioned regarding the morale within OCPA during Singh’s administration, they uniformly stated that once McGee took on the position as Director of Communication, the morale in the office began to decline. The staff described a toxic work environment and pointed to Lavern McGee as the center of the toxicity. Willis Perry’s lawsuit against the OCPA outlined a number of complaints regarding McGee’s

conduct while she was the Director of Communications, to include sexual harassment, unprofessional conduct, and creating a toxic work environment that resulted in the loss of staff.

Moreover, McGee filed a whistleblower lawsuit against Singh in his capacity as Orange County Property Appraiser, which provides McGee with a personal stake in the outcome of the investigation. That suit is pending. During portions of her interviews, McGee invoked her Fifth Amendment right to remain silent. Portions of her interview were also in conflict with other witnesses such as Halikman and Maharaj; who both described McGee as the orchestrator of the Curry Festival photo – while conversely McGee states it was Singh. Ultimately, it is clear McGee has both personal and financial interests in claims of wrongdoing against Singh.

### **Legal Analysis**

In order to pursue criminal charges against Rick Singh the State must have sufficient evidence to prove beyond a reasonable doubt that a crime was committed and that Rick Singh is the individual that committed the crime.

Florida Statute 838.022 (2015) outlines the crime of official misconduct, which is when a public servant obtains a benefit for any person (or causes harm to another person) with corrupt intent, by either (a) falsifying (or causing another to falsify) any official record or document or (b) concealing, covering up, destroying, mutilating, or altering any official record or official document (or causing another person to perform such an act). The statute defines an official record or official document as only applying to public records.<sup>4</sup> Section 838.014(6) (2015) defines a “public servant” as any “officer or employee of a state, county, municipal or special district agency or entity...” “Corrupt Intent” is defined by subsection (4) as meaning “acting knowingly and dishonestly for a wrongful purpose”. Subsection (1) of the same statute defines “benefit” as a “gain or advantage, or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.”

There is no question that Singh is a “public servant” within the meaning of section 838 of the Florida Statutes. The documents at issue in the ten counts forwarded by FDLE also clearly fall within the statutory definition of public records found in section 119.011(12) (2015).<sup>5</sup>

Counts I through III and V through IX all are similar and will be addressed as a group because each count alleges a modification of a fuel purchase expense. Singh’s name appears in each of the original documents and is removed in the altered version, replaced by “OCPA staff”. There is no question that each of the documents submitted to the OCCO auditors in these counts was altered from the original. According to testimony of McGee, Hassan, and Perry these alterations were done at the direction of Singh.

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<sup>4</sup> The Florida Legislature amended Section 838.022 in 2016, changing the intent element from “corrupt intent” to “knowingly and intentionally”, thereby decreasing the level of intent needed to prove the crime of official misconduct. See Fla. Stat. §838.022 (2016). The offenses occurred prior to the 2016 amendments; hence the 2015 statute is the applicable law.

<sup>5</sup> Section 119.011 (12) “Public records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The inquiry for these counts thus turns to whether there was a benefit to either Rick Singh or any other person by altering documents that ultimately concealed the fact that these fuel expenses were made by Rick Singh specifically. There are two potential benefits to such an act, the first being a financial benefit directly to Singh. Rick Singh as property appraiser was collecting a vehicle allowance for the use of his personal vehicle for official businesses. The Orange County Property Appraiser is a County Officer under the Orange County Charter and is not to be governed by the Orange County Charter (unless specifically set out in the Charter) but instead by Article VIII, Section 1(d) of the Florida Constitution and the laws of the State of Florida. Turning to the Florida Statutes for guidance on vehicle allowances leads to section 112.061, titled "Per diem and travel expenses of public officers, employees, and authorized persons". Subsection (7) (f) states as follows regarding transportation allowances:

(f) The agency head or his or her designee may grant monthly allowances in fixed amounts for use of privately owned automobiles on official business in lieu of the mileage rate provided in paragraph (d). Allowances granted pursuant to this paragraph shall be reasonable, taking into account the customary use of the automobile, the roads customarily traveled, and whether any of the expenses incident to the operation, maintenance, and ownership of the automobile are paid from funds of the agency or other public funds. Such allowance may be changed at any time, and shall be made on the basis of a signed statement of the traveler, filed before the allowance is granted or changed, and at least annually thereafter. The statement shall show the places and distances for an average typical month's travel on official business, and the amount that would be allowed under the approved rate per mile for the travel shown in the statement, if payment had been made pursuant to paragraph (d).

Fla. Stat. § 112.061(7)(f) (2015).<sup>6</sup>

This section clearly allows an agency head discretion to pay monthly fixed vehicle allowances for the use of personal vehicles on official business so long as the allowance is reasonable. However, the section does not prohibit an individual from receiving a vehicle allowance **AND** operating an agency owned vehicle. The applicable Florida Administrative Code provides no further guidance or limitations regarding this subject. Fla. Admin. Code Chapter 69I-42. The OCPA's own vehicle policy is also devoid of any restriction on the use of fleet vehicles when receiving a vehicle allowance. There is no statutory or applicable regulatory rule or policy that prevents Singh from receiving a vehicle allowance for use of his personal vehicle for official business and also using an agency vehicle to conduct official business (thus having the agency pay for fuel and maintenance of the fleet vehicle).

The statutory and regulatory findings discussed above are reinforced by the testimony of CPA Halikman. Halikman saw no material difference between the original documents replacing Singh with office staff since Singh is office staff. Further, in Halikman's second interview, he confirmed that there is no rule or regulation that would prevent or preclude Rick Singh from using an OCPA fleet car while also

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<sup>6</sup> The Orange County Charter has adopted a similar policy in regard to travel allowances, Article II, Section 2-27 (Monthly travel allowance) states that "members of the board of county commissioners may by resolution establish a monthly travel allowance for use of privately owned automobiles on official business in lieu of the mileage rate provided in F.S. § 112.061(7), as authorized by such section. Such amount shall be reasonable, taking into account the customary use of the automobile, the roads customarily traveled, and expenses incident to the ownership of the automobile."

receiving a monthly fixed vehicle allowance for the use of his personal car for official OCPA business. When shown the original documents which were never filed with the OCCO auditor, Halikman stated that had the documents been filed in response to the audit there would not have been an issue with the fuel expenses by Singh.

Halikman's testimony is consistent with that of the OCCO auditor, Lisa Fuller, who handled the 2015 audit of OCPA. Fuller stated that there is no statutory or regulatory law that she is aware of that would prevent Singh from using an OCPA fleet vehicle while also collecting a vehicle allowance.

While Count IV does not relate to a p-card fuel transaction, the analysis is the same. When CPA Halikman was questioned regarding whether Singh paying for a representative from the Orlando Magic's lunch at Tiger Bay would have been a permissible expense for OCPA, Halikman opined that it would. Halikman explained that Singh, in his capacity as the Property Appraiser, would have been permitted to pay for a guest if the purpose of the lunch was for OCPA Business. Halikman further agreed that discussion between Singh and the Magic representative regarding potential future projects with OCPA and the Orlando Magic, would be official OCPA business and therefore a legitimate justification for the expense in Count IV.

The only other arguable benefit to Singh from altering the fuel expense documents and the Tiger Bay lunch document at issue in these counts is to avoid scrutiny for these particular expenses. The audit of OCPA in 2015 was largely media driven, and former employees in the audit meetings indicated that Singh was concerned about his appearance as a result of the audit. As stated above, "benefit" is defined in section 838.022 as a "gain or advantage, or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law." In *State v. Talabisco*, 121 So. 3d 568 (Fla. 4th DCA 2013), the defendant argued to the court on appeal that she never received a "benefit" (as required under the charged offenses of official misconduct, bribery, and unlawful compensation). The Fourth District Court of Appeal held that the statutory definition of "benefit" was broad enough to include the defendant's alleged receipt of election assistance (a campaign poll valued at \$7000.00 and mailers valued at \$19,000.00) in exchange for her voting favorably for a developmental project. The court reasoned that the poll and mailers were to the defendant's "advantage" and that she "[could] not reasonably contend that she did not "gain" from them." *Id.* at 575. *Talabisco* relied on another case in coming to its conclusion, *Bauer v. State*, 609 So. 2d 608 (Fla. 4th DCA 1992). In *Bauer*, the court held that avoidance of punishment is a "benefit" for official misconduct. *Id.* at 611.

Whether the statutory definition of "benefit" could be construed to include "avoiding scrutiny" or political criticism/consequences is tenuous at best. There is no known precedent construing the applicable statute to include this factual scenario under the definition of "benefit." Nearly all cases under this statute involve "benefit" to be an item of monetary value. As stated above, there was nothing prohibiting Singh from collecting a vehicle allowance and also using an OCPA work vehicle. The alterations were concealing something that he could legally do under Florida Law. This is distinguishable from *Bauer*, where a cash management coordinator for West Palm Beach was not authorized to invest through secondary brokers, told not to invest in reverse repurchase options, and was not authorized by statute to authorize a loan transaction, but did so anyway in a series of transactions ultimately leading to a loss of

approximately \$1,000,000.00 and then attempted to conceal the transactions and losses. *Id.* Unlike Singh, the defendant in *Bauer* was concealing actions that he **was prohibited from doing**.

The creation of the photograph which is the basis of Count X, was presumably made to help support the p-card fuel transaction in Count I (the Curry Festival). Singh is in the photograph standing in a park by his house, next to a reconstructed banner. The photo clearly taken over a year after the Curry Festival but is meant to look as if it was taken at the 2013 Curry Festival. The issue is whether the staging rises to a crime. The analysis of this count is twofold - can it be proven beyond a reasonable doubt the purpose for which Singh created the photograph and if so, was that purpose a benefit under the statutory definition.

With regard to proving the purpose for the photograph, McGee, Hassan, and Perry's testimony differs from other witnesses. McGee testified that Singh ordered the photo be created to justify the Curry Festival trip expenditure. Marahaj was interviewed regarding the creation of the Curry Festival banner and the photograph with Singh. Marahaj testified that he received all his instructions regarding the banner and photograph from McGee. He denied ever having any conversations with Singh about the banner or photograph. Halikman recalls the Curry Festival attendance being brought up during an audit meeting he was attending with OCPA staff. Halikman testified, however, that it was Laverne McGee that brought the topic up and expressed concern for the "optics" of Singh attending the festival because it was out of county. Halikman indicated that Singh was not in that meeting, but that McGee was pushing the issue and indicated that OCPA had a photograph that could be submitted to prove that Singh's attendance at the festival was justified. Halikman testified that he told McGee he did not feel that the Curry Festival was an issue for the auditor and the photograph was unnecessary. Halikman testified that he spoke with Singh on a separate occasion regarding the Curry Festival when Singh asked Halikman if he was concerned about it for the audit. Halikman stated that he advised Singh that it was not a concern for the audit and the topic was not discussed further by Singh or Halikman. Again, both the auditor and accountant, as well as statutory law, support the conclusion that this staged photograph did not result in any monetary change in regard to a "benefit."<sup>7</sup> As far as the benefit being "optics", the legal analysis is the same. There is no precedent for defining avoidance of "bad optics" as constituting a benefit under the Official Misconduct statute. Finally, it is unclear to what extent Singh participated in the decision to stage the photograph. This is based on the conflicting testimony of McGee, Hassan, and Perry compared to the other witnesses.

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<sup>7</sup> As stated, the Curry Festival photograph was created to justify the p-card fuel expense from count 1. From expert opinion and statutory law the p-card expense in count 1 was lawful. Rick Singh testified in a sworn statement that he attended in his capacity as the Property Appraiser for Orange County. He indicated he was a judge for the curry cook off as a dignitary from Orange County. Dr. Ramcharran, the founder of the Tampa Curry Festival, also testified that Rick Singh was in attendance at the Curry Festival in 2013 in his capacity as the elected property appraiser for Orange County and served as a judge in the curry cook off. Dr. Ramcharran indicated that Rick Singh was one of many politicians from out of the area in attendance at the Festival. Dr. Ramcharran further testified that Rick Singh was promoting Orange County while in attendance and the hope was that the Festival would be replicated in Orange County, which it later was. During his sworn statement to investigators and the undersigned Assistant State Attorneys, CPA Halikman testified that Rick Singh's attendance at the Tampa Curry Festival would have been for a business purpose since he had been invited as a political dignitary to serve as a judge of the curry cook off. Halikman further explained that because Singh was in attendance as the Property Appraiser for Orange County, the p-card fuel expense (Count I) was a justified expense.

**Conclusion:**

It is clear that OCPA did not follow protocol when it submitted altered documents to the OCCO for purposes of the 2015 audit. Halikman testified that the proper method to clarify or supplement a justification for an expense is not to alter the original document, but rather to attach a “sticky note” or to provide additional documentation with the original expense documentation. The act, however, of submitting altered documents in Counts I-X, did not rise to the level of a crime in this case because there is no evidence of a “benefit” to Rick Singh as a result of those alterations. If the original documents had been submitted they would have passed the audit and none of these documents would have created a financial penalty against Singh. The only other alleged benefit Singh received from these alterations was avoiding scrutiny or political criticism/consequences. There are multiple issues with proceeding under that theory. Legally, it is a stretch that avoiding political criticism/consequences would constitute a violation of the Official Misconduct statute. There is no legal precedent for the theory that avoiding political criticism/consequences under this factual scenario is unlawful.

Even if it does fall under the statute there are conflicts in the testimony regarding whether this was Singh’s intent and the degree to which Singh was involved. McGee, Hassan and Perry made statements that Singh was worried about the appearance of the audit and made these alterations to avoid scrutiny. As discussed, their testimony is in conflict with other, seemingly more reliable witnesses. Their relationships to the office, combined with their current and past litigation creates factual conflicts and motivation to fabricate facts for their benefit.

Based on the testimony, evidence and the applicable laws and regulations there is insufficient evidence to establish criminal activity beyond a reasonable doubt.