

**TRANSPARENCY STATEMENT FROM  
THE FREMONT COUNTY BOARD OF COUNTY COMMISSIONERS**

**REGARDING COUNTY CLERK KATIE BARR AND THE CHECK-CASHING ISSUES  
June 12, 2018**

The Fremont County Commissioners recognize that there is a lot of confusion and misinformation being circulated among the public concerning Fremont County Clerk and Recorder Katie Barr and her office practice of allowing personal checks to be written for cash. The District Attorney has completed the criminal case, but has not released factual information regarding the circumstances. The Public has a right to know the available facts and the County Commissioners acknowledge their duty and responsibility to inform the public of the information known to them. The statements made today are based on the facts known to the Board of Commissioners and any opinions are those of the Board of Commissioners.

**WHAT HAPPENED**

County Clerk Barr allowed a practice in her office permitting employees in the Clerk's office to cash personal checks out of the fees (public funds) collected in the Motor Vehicle Division of her office. Various other county employees were allowed to cash checks under this practice. Under no circumstance did all county employees and officials engage in this practice and many were unaware that the practice was allowed. The only known written evidence referring to this practice was the Clerk's Office "Cashiering Policy" which addressed receipts for personal checks written for cash, and applied only to the Clerk's office staff. The practice in the Clerk's office was a convenience and "benefit" for the employees in the office, including the Clerk herself.

Clerk Barr wrote insufficient funds or "bad" checks under the check-cashing practice. When bad checks were returned, she did not immediately pay back the money. When the bad checks were first discovered in September of 2017, one check for \$2,000 had been unpaid for almost 11 months and another for \$3,220 had been unpaid for almost 4 months. The county bank records indicate that Clerk Barr also engaged in "check-kiting". The cash public funds were removed from the county treasury, circulated through the personal and business accounts of Ms. Barr and her husband to cover personal obligations until private funds became available, at which time the funds were returned to the county bank accounts. By writing checks for cash on a daily basis, she was able to take and use public funds for personal uses, much like an interest-free loan. The available bank records show that no county employee engaged in the "check-kiting" activity or delayed repayment of bad checks for months at a time. No money is missing from the county; all has been repaid.

**HOW IT HAPPENED**

The County has numerous bank accounts, used for general and specific official county purposes. The Motor Vehicle Division in the Clerk's Office had a separate bank account for motor vehicle fees and disbursements. The County Treasurer had official control of the deposits and expenditures, but the County Clerk was allowed to operate the account, including reconciliation of the bank statements each month and collection of insufficient funds checks, without the involvement of the Treasurer. When the bank returned insufficient funds checks to the Treasurer, they were given to the Clerk's office. The Clerk had a formal procedure in place for collection of bad checks written for motor vehicle transactions, but not for collection of checks for cash. Clerk Barr exercised her discretion regarding collection of checks for cash, including her own, allowing her checks to remain unpaid and uncollected for months at a time.

## **HOW IT WAS DISCOVERED**

On Tuesday, September 26, 2017, the Fremont County Attorney and Fremont County Manager received a public records request from KOAA Channel 5 News. KOAA requested copies of checks written for cash in the Office of the Clerk and Recorder, insufficient funds checks, and other related information. Through the process of collecting and reviewing the county bank records for public release to KOAA, the County Attorney and County Manager discovered the existence of the Clerk's bad checks, the Clerk's Office check-cashing practice, and the scope and extent of the practice. The County Attorney notified the District Attorney and the investigation was assigned to the Canon City Police Department.

## **WHAT WAS DONE TO CORRECT THE PROBLEM AND PREVENT FUTURE OCCURRENCES**

1. Upon discovery of the check-cashing practice, the County Attorney demanded that the practice be immediately stopped. Clerk Barr terminated the practice and cashing checks no longer occurs in the Clerk's Office.
2. The County Manager and County Attorney worked with the County Treasurer and Chief Deputy Clerk Gardunio to implement policies to ensure that the Treasurer managed all accounts, including the motor vehicle transaction account of the Clerk's Office.
3. The County Manager created a new fund in the Finance Department to account for all revenues and expenses going through the Clerk's office. All disbursements of the funds collected by the Clerk's office are now processed through the Finance Department, and this account is reconciled on a monthly basis by both the Treasurer's office and the Finance Department.
4. The financial discrepancies were reported to law enforcement for investigation and filing of charges by the District Attorney.
5. The County Manager is implementing a county-wide cash handling policy, however such a policy is not binding on other county elected officials, without their agreement.

## **THE COUNTY CLERK AND RECORDER**

The County Clerk and Recorder is elected by the voters of the county in which she serves. Under Colorado Law, the Clerk and Recorder is responsible for issuing and recording marriage licenses, recording all real estate transactions, issuing liquor licenses, registering voters, and conducting all primary, general and county elections. The Clerk and Recorder's Office also operates the Motor Vehicle Divisions in the State of Colorado for titling vehicles and issuing license plates.

Once elected by the voters, the County Clerk and Recorder takes an oath of office to obey the law. After that, she is solely responsible for the performance of the duties of her elected office, including the manner in which her office operates. The County Clerk and Recorder has deputy clerks and other county employees to assist in the performance of her elected duties. She determines and sets policy to manage her office staff and assigns duties and responsibilities. She is accountable only to the voters and cannot be fired. If she fails to adequately perform her duties, the voters can recall her from office or replace her when her term of office expires by electing another person.

## **THE FREMONT COUNTY ATTORNEY**

The role of the County Attorney (CA) is different than that of the DA. The CA does not investigate or prosecute crimes. The DA does not advise or represent county government officials. Neither instructs the other on how to perform their professional duties.

Upon discovery of the extent of the inappropriate handling of public funds in the Clerk's office, the County Attorney was legally and ethically obligated to 1) Report the conduct to law enforcement (including the DA); 2) Advise the Board of County Commissioners about the Clerk's conduct and assist in informing the public, to the extent allowable by law; 3) Identify and correct any procedures or practices that are problematic and remedy any present and future harm; and 4) Inform and advise Clerk Barr that her actions had created a conflict of interest between the Clerk and the rest of County Government and she may wish to obtain independent legal representation because the CA could not represent or advise Clerk Barr.

The CA fulfilled the legal and ethical responsibilities. The DA's public statements about the CA are based on incomplete information or lack of knowledge about the CA's role and duty to the County. Prior to initiating the CCPD criminal investigation, the CA informed the DA that she would not compromise or violate ethical and legal responsibilities owed to the County, and was required to inform and advise Ms. Barr of the conflict of interest and need for independent legal counsel.

### **THE BOARD OF COUNTY COMMISSIONERS**

The County Commissioners have no legal authority or control over the general management and operation of the office of another elected official. The County Commissioners review and set the budgets of the elected officials, providing funding for them to fulfill the independent duties of elected officials. This includes the Clerk and Recorder, Assessor, Sheriff, Coroner, Treasurer, and the District Attorney (in part). Those elected officials exercise sole authority over the performance of their elected duties and operation of their offices, within the financial limitations set by the County Commissioners.

The Commissioners have no lawful right to pass a policy and thereby compel a County elected official to manage and operate their office in a certain manner, just as the Commissioners could not pass a policy telling the District Attorney how to manage her office. Elected officials are accountable to the public, not the County Commissioners, for their actions.

The DA has authority to hold an Elected Official accountable for ethical and legal misconduct, by bringing and prosecuting appropriate charges against an elected official for criminal and ethical violations. Upon conviction of certain misdemeanor and all felony offenses, an Elected Official may be removed from office by the court, or through other means. To the extent allowable by law, the county officials and employees fully cooperated with the investigation, which was extensive and thorough. The financial records are all-encompassing regarding Clerk Barr. The check kiting and bad check activity is undisputed, fully documented in the financial records, and supported by other evidence gathered in the investigation.

In the opinion of the Board of Commissioners, the County Clerk was not held accountable for ethical and legal misconduct arising out of the performance of her official duties. An Elected Official should not be treated the same way as non-elected county employees. A county employee can be fired for misconduct. The County Clerk can only be "fired" for misconduct if the DA holds her accountable for her actions, or if the voters use the election process to recall or replace her. The Board of Commissioners still holds the opinion that Clerk Barr should resign. The decision of the DA notwithstanding, public trust in the County Clerk has eroded beyond repair and the Clerk's resignation would be a significant and important step toward restoring the trust.

## **STATUTORY REFERENCES FOR REVIEW AND CONSIDERATION**

### **COLLECTION OF FEES BY COUNTY ELECTED OFFICIALS**

Colorado law provides that it is the “duty of county sheriffs, county clerk and recorders, and all county officials to collect all fees of their respective offices and to pay the same to the county treasurer of their respective counties monthly; also to file monthly with the county treasurer an itemized statement of all fees so collected.” (30-1-112, CRS).

Any county officer who fails or refuses to pay over to the county treasurer the fees of her office, as provided in section 30-1-112, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment, and may be removed from office by the court before which the conviction is had. (30-1-117, CRS)

### **PUBLIC TRUST - BREACH OF FIDUCIARY DUTY**

(1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, member of the general assembly, local government official, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust.

The district attorney of the district where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the state or local government. Judicial proceedings pursuant to this section shall be in addition to any criminal action which may be brought against such public officer, member of the general assembly, local government official, or employee.

C.R.S. §24-18-103(1), C.R.S.