

MINUTES, LIMESTONE COUNTY COMMISSION, FEBRUARY 4, 2019

The Limestone County Commission met in a regular meeting today, at 10:00 a.m. at the Clinton Street Courthouse Annex, 100 South Clinton Street, Athens, Alabama.

Present: Daryl Sammet, Steve Turner, Jason Black, and Ben Harrison. Absent: None. Collin Daly, Chairman presided.

The meeting began with the Pledge of Allegiance.

MOTION was made by Jason Black and seconded by Steve Turner to approve the minutes of January 22 & 30, 2019.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Jason Black, aye; Steve Turner, aye; Daryl Sammet, aye; and Ben Harrison, aye. Motion carries unanimously.

MOTION was made by Steve Turner and seconded by Daryl Sammet to approve the following claims

1/18/19	Check # 51981 – 52036	\$ 452,707.56
1/22/19	Check # 52037 – 52038	\$ 10,334.85
1/25/19	Check # 52039 – 52109	\$ 671,530.28
1/25/19	Check # 52110	\$ 347.25
1/31/19	Check # 52111 – 52186	<u>\$1,013,833.53</u>
	TOTAL	\$2,148,753.47

with detailed claims of the above being on file for review upon request to the County Administrator.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Steve Turner, aye; Daryl Sammet, aye; Jason Black, aye; Ben Harrison, aye. Motion carries unanimously.

MOTION was made by Daryl Sammet and seconded by Ben Harrison to authorize the Chairman to execute the following resolution supporting an additional driver license examiner.

**RESOLUTION
LIMESTONE COUNTY COMMISSION**

WHEREAS, Limestone County has an immediate need for an additional Driver License Examiner; and

WHEREAS, the Limestone County Commission is willing to provide space for an additional driver license examiner.

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BE IT RESOLVED by the Limestone County Commission that it does hereby give to the Alabama Law Enforcement Agency its support for an additional Driver License Examiner for Limestone County.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to Chief Deena L. Pregno, Alabama Law Enforcement Agency, Driver License Division.

ADOPTED on this 4th day of February 2019.

ATTEST:

Pam Ball, Administrator

Collin Daly, Chairman

The Chairman asked if there was any discussion. Commissioner Sammet said the resolution is to simply show the state the commission supports the addition of a driver license examiner. The Administrator called the roll. Daryl Sammet, aye; Ben Harrison, aye; Steve Turner, aye; and Jason Black, aye. Motion carries unanimously.

MOTION was made by Jason Black and seconded by Steve Turner to authorize the Chairman to execute the following Resolution and Department of Labor Agreement.

RESOLUTION

WHEREAS, the Limestone County Commission is the governing body of Limestone County, Alabama; and,

WHEREAS, pursuant to Alabama Act No. 80-292, deputies and employees employed in the Limestone County Sheriff's Department are defined as an "Employee" for the purposes of being paid wages and compensation under the personnel rules and regulations of the Limestone County Commission; and,

WHEREAS, an investigation was commence by the United States Department of Labor through its Wage and Hour Division; and,

WHEREAS, the Department of Labor contends certain deputies and employees in the Limestone County Sheriff's Department are entitled to back wages, namely overtime compensation, from the month of May 2016 through April 2018 for having worked the annual Sheriff's Rodeo without compensation as such participation did not meet the regulatory definition of "volunteer" and, in the case of certain patrol deputies, the Department of Labor contends such deputies were not paid for returning to work after their regular shift time to swear out necessary warrants for arrests made during shifts; and,

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WHEREAS, the Department of Labor, through its Wage and Hour Division, has offered to resolve, settle, and compromise the said findings and alleged violations by allowing back wages to be paid to the affected employees for the time period of May 1, 2016 through April 30, 2018, without any interest, liquidated damages, or civil money penalties thereon; and,

WHEREAS, the Limestone County Commission would otherwise dispute the position of the Department of Labor and its Wage and Hour Division and contend there were no such violations or intentions to violate the rules and regulations regarding the payment of compensation to the deputies and employees, but the Limestone County Commission has determined and concluded that the potential costs and expenses of litigation, the uncertainty of a final determination on the application of the rules and regulations of the Department of Labor and its Wage and Hour Division to these circumstances, and the interest of reaching a compromise for the benefit of any affected deputies and employees, justify accepting a compromise at this time and entering into an agreement thereon with the Department of Labor; and,

WHEREAS, upon motion having been made by Commissioner Jason Black, and seconded by Commissioner Steve Turner, with discussion had thereon and a vote having been taken, upon which vote the said motion carried by a vote of 4 to 0;

THEREFORE, BE IT RESOLVED, by the Limestone County Commission, that the Chairman of the Limestone County Commission be and is hereby authorized, consistent with the provisions of Alabama Act No. 80-292 and other such authority by law to act as a representative of the County and Sheriff's Department for the purposes of the matters resolved herein, to execute an agreement with the United States Department of Labor resolving, settling, and compromising the foregoing issues regarding back wages to be paid certain deputies and other employees in the Limestone County Sheriff's Department, a copy of which agreement in substantially the form to be entered is attached hereto, and to execute any and all such documents necessary or required to complete the any performance of the County in regard to same; and,

BE IT FURTHER RESOLVED, that those back wages calculated by the Department of Labor through its Wage and Hour Division for all affected employees from May 1, 2016 through April 30, 2018, shall be paid pursuant to the terms of the agreement entered with the Department of Labor and the regulations and instructions for making such payment and reporting same of the Department of Labor, subject to all appropriate withholdings, and with such wages being paid as a matter of payroll of the Limestone County Commission as is other compensation regularly paid to deputies and employees employed in the Limestone County Sheriff's Department pursuant to the local act; and,

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WHEREAS, BE IT FURTHER RESOLVED, that the Chairman of the Limestone County Commission and its Administrator shall be authorized to execute any and all documents and instruments, or to direct the execution of any and all documents and instruments, that may be necessary to further and complete the agreement and matters herein resolved, up to and including, all documents and instruments that may be related to the payment of the back wages.

The authority granted herein shall be in force and effect immediately upon adoption and passage of this Resolution.

ADOPTED AND APPROVED this 4th day of February, 2019.

Collin Daly, Chairman
Limestone County Commission

ATTEST:

Pam Ball, County Administrator
Limestone County Commission

U. S. DEPARTMENT OF LABOR

AGREEMENT

This agreement (“Agreement”) is entered into by and between the Wage and Hour Division, United States Department of Labor (“WHD”), and the Limestone County Sheriff’s Department through their undersigned representative, Collin Daly, chairman of the Limestone County Commission, the governing body of Limestone County, Alabama (in conjunction with Alabama Act No. 80-292 and for the purposes of this Agreement, hereinafter “the Employer”). WHD has conducted an investigation of the employment practices of the Employer’s business, which has its main place of business at 101 West Elm Street, Athens, Alabama 35614, and has alleged that certain of the employment practices investigated violate the Fair Labor Standards Act of 1938, as amended, 29 USC 201 *et seq.* (“the Act”).

I. NARRATIVE AND VIOLATIONS FOUND

WHD conducted an investigation under the Act of the Employer’s establishment at 101 West Elm Street, Athens, Alabama 35614 (Case ID 1845802). The investigation covered the period from May 1, 2016 to April 30, 2018. As a result of the investigation, WHD determined that the Employer violated Sections 207 and 211 of the Act and owed 126 employees \$49,968.52 in overtime back wages when:

- a) The Employer failed to pay employees for hours worked between May 1, 2016 to April 30, 2018 that were designated as volunteer hours for work at the annual Sheriff’s Rodeo that was found to be inconsistent with the definition of volunteer under 29 CFR 553.101.

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- b) The Employer failed to pay Sheriff Deputies on the second and third shifts for off the clock hours to swear to a warrant at the Limestone County Courthouse, which was not open during their regular shift time.

As a result of these violations, WHD found the Employer owed 126 employees \$49,968.52 in unpaid wages. Additional liquidated damages were not computed in this investigation. Despite a violation involving the Limestone County Sheriff's Department in December 2000, no additional civil money penalties have been assessed for repeated violations of the FLSA. This Agreement is entered into in order to resolve the findings of WHD's investigation and to obtain the Employer's assurance of future compliance with the Act. The parties enter this Agreement with the understanding that the Secretary of Labor ("Secretary") has the authority to seek back wages, liquidated damages, and civil money penalties under 29 U.S.C. 216(c) and (e) of the Act to address the alleged violations at issue in this matter. However, for purposes of this compromise settlement and the parties' compliance herewith, the Secretary has agreed to resolve this claim only for the amount shown in the calculation of employer's liability for back wages as described below.

I. COVERAGE

The Employer acknowledges that it is a covered enterprise under Section 203(s)(1)(C) of the Act and that the provisions of the Act apply to the Employer, including all its branches, and that Mr. Collin Daly, as chairman of the Limestone County Commission, is the employer's representative for purposes of signing this Agreement.

II. CURRENT AND FUTURE COMPLIANCE

The Employer represents that its employment practices are currently in compliance with all applicable provisions of the Act as interpreted by the Secretary. If the representation is determined to be false and the Employer is found in violation of the Act additional back wages and liquidated damages may be owed. The Employer further agrees that it will continue to comply with all applicable provisions of the Act as interpreted by the Secretary of Labor in the future, and particularly that:

- (a) The Employer will pay the minimum wage in accordance with Section 206 of the Act (minimum wage). The Employer will pay nonexempt employees at least the Federal minimum wage, currently \$7.25 per hour, for travel time spent between worksites. The Employer will maintain compliance with future statutory changes including increases in the Federal minimum wage.;
- (b) The Employer will pay all non-exempt employees an hourly wage of at least the Federal minimum wage and time and one-half of their regular rate for all hours worked over 40 in a workweek in accordance with Section 207 of the Act (maximum hours), the Employer acknowledges that he may pay police and/or fire employees overtime according to the provisions allowed in Section 207(K) of the Act, furthermore, the Employer, as a public agency, acknowledges that he may pay overtime in the form of compensatory time at time and one-half their hours worked in lieu of cash wages in accordance with Section 207(O) of the Act;
- (c) The Employer will not classify any worker performing work for the company as an independent contractor unless in good faith believes such worker is a bona fide independent contractor and does not meet the FLSA definition of employee;

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- (d) The Employer will pay all employees for all hours worked by check or direct deposit with a pay stub identifying all deductions;
- (e) The Employer will accurately record all hours worked, as reported by its employees, in accordance with Section 211 of the Act (Collection of Data), 29 CFR 516 (Records to be kept by the Employer), and 29 CFR 531 (Wage payments under the Fair Labor Standards Act of 1938). The Employer will retain an accurate record of hours worked on a daily, as well as, a weekly basis for all nonexempt employees. The Employer will maintain a record of all time and payroll records for employment for a period of no less than three years; and
- (f) The Employer will not reclassify any *bona fide* employee as a volunteer the duties do not meet the requirements found in 29 CFR 553.101
- (g) The Employer agrees that it may be subject to Civil Money Penalties for any future violation(s) and an equal amount of Liquidated Damages involving any future violation(s).

III. PAYMENT OF BACK WAGES

The Employer agrees that it will pay the back wages found due and provided proof of payment in the form of WH-58s to the Birmingham District Office.

IV. ANTI-KICKBACK

The Employer shall not, under any circumstances, solicit or accept any amount that was accepted by a person owed back wages under this Agreement and then subsequently returned to the Employer, or that was refused by such person. Any such amount shall be immediately paid to WHD for deposit as above, and the Employer shall have no further obligations with respect to such returned monies.

The Employer agrees to make employees aware of these prohibitions that are outlined in the above paragraph by:

- a) The Employer will provide employees receiving back wages with a copy of Fact Sheet # 77A: Prohibiting Retaliation Under the Fair Labor Standards Act (FLSA) (Attached) in their primary language with the pay stub distributing their back wages. and
- b) The employer will post in locations visible to all employees the FLSA posters at its establishment.

V. ANTI-RETALITATION

The Employer will not discriminate against or discharge any employee for participating in any proceeding or asserting any rights guaranteed to such employee under the Act, including such employee's right to proper payment under the Act in accordance with Section 215(a)(3) of the Act.

VI. SECRETARY NOT FILING ACTION

In consideration for the Employer's representations in Section III above, and its agreement to comply with all of the provisions of this Agreement, the Secretary agrees to refrain from instituting any legal action against the Employer alleging violations of the Act disclosed by the aforesaid investigation for the period May 1, 2016 to April 30, 2018.

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VII. EMPLOYER CAN REQUIRE WAIVER BY EMPLOYEES

The Employer may require, in the Receipt of Back Wages (WH-58 Form), which is included as Exhibit B, a separate written waiver from any employee listed in Exhibit A, which makes clear that by accepting the back wage amounts set forth in Exhibit A (WH-56 Form), the employee waives any rights he or she might have to seek additional back wages on account of those violations as alleged during the period covered by this Agreement. Any employee who declines to accept the amounts set forth in Exhibit A does not waive such rights. Nevertheless, payments shall be made to the “Wage and Hour Division – Labor” in the amount set forth for that individual, as provided in section IV above.

VIII. EMPLOYER’S WAIVER

In the event that the Employer fails to comply with the terms and conditions set forth in this Agreement, the Secretary may, at his option, initiate such enforcement action as he deems appropriate, including but not limited to the institution of legal action seeking enforcement of this Agreement, or legal action pursuant to Sections 216(c), (e), and/or 217 of the Act against the Employer, regarding any of the violations alleged in connection with the investigation set forth above and the Employer agrees that this Agreement or a copy thereof may be introduced as evidence of the terms agreed to herein in any legal proceeding instituted by the Secretary, and that this Agreement shall be binding upon the parties in any such litigation.

In the event the Secretary initiates such legal action pursuant to Sections 216(c), (e), and/or 217 of the Act, the Employer agrees to waive any and all defenses based upon the passage of time since the date of signing this Agreement (or, if earlier, the earliest operative date for any pending waiver), including but not limited to the statute of limitations set forth at Section 6 of the Portal-to-Portal Act of 1947, 29 U.S.C. 255, in connection with the alleged violations discovered during WHD’s investigation, and that this Agreement constitutes the sole evidence required to prove such waiver.

IX. U.S. DISTRICT COURT

Any action commenced for the purpose of enforcing this Agreement shall be filed in United States District Court for Alabama.

X. EMPLOYER ENTITLED TO CREDIT FOR MONEY ALREADY PAID

In the event that the Secretary commences any action against the Employer pursuant to Section IV, the Employer shall be entitled to credits against appropriate liabilities for amounts already paid pursuant to this Agreement.

XI. WHD’S NON-WAIVER AND PRESERVATION OF 216(b) RIGHTS

WHD may investigate compliance with this Agreement and take appropriate action to enforce its terms. By entering into this Agreement, WHD does not waive its right to conduct future investigations under the Act and to take appropriate enforcement action, including assessment of civil money penalties and/or referral of the matter for litigation, with respect to any violations disclosed by such investigations.

The parties agree that this Agreement is deemed to cover the investigation periods defined above. The parties further agree that this Agreement will not in any way affect, determine, or prejudice any legal rights of any employees or former employees of the Employer not listed in the Summary of Unpaid Wages to file any action against the Employer under Section 216(b) of the Act, or likewise for any current or former employee listed in the Summary of Unpaid Wages, or for the Secretary of Labor, to file any action against the Employer under Sections 216(b), 216(c) and 217 of the Act for any violations alleged to have occurred outside of the investigative period.

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XII. NOT BINDING ON OTHER GOVERNMENT AGENCIES

The parties understand that nothing in this Agreement is binding on any governmental agency other than the United States Department of Labor.

XIV. EACH PARTY BEARS OWN FEES

Each party agrees to bear his or its own attorney's fees, costs and other expenses incurred by such party to date in connection with any stage of the above-referenced proceeding including, but not limited to, attorney's fees, costs and other expenses which may be available under the Equal Access to Justice Act, as amended.

The undersigned expressly acknowledge and represent that they are authorized to execute this Agreement on behalf of the parties represented.

Dated _____

Dated _____

Limestone County Sheriff's Dept.

Wage Hour Administrator
U.S. Department of Labor

Collin Daly
Chairman of the County Commission
Limestone County, Alabama
310 W. Washington Street
Athens, Alabama 35611

Kenneth Stripling
District Director
U.S. Department of Labor, Wage and Hour
950 22nd Street North, Suite 605
Birmingham, Alabama 35203

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Jason Black, aye; Steve Turner, aye; Daryl Sammet, aye; and Ben Harrison, aye. Motion carries unanimously.

MOTION was made by Jason Black and seconded by Ben Harrison to reappoint Ty Smith to the Limestone County Water & Sewer Authority Board, with term ending February 28, 2025.

The Chairman asked if there was any discussion. Commissioner Black thanked Ty for agreeing to serve another six years. He said he was appreciative of the extensive job he puts forth. Commissioner Harrison commended Ty for being consistent and basing his decisions on facts. The Administrator called the roll. Jason Black, aye; Ben Harrison, aye; Daryl Sammet, aye; and Steve Turner, aye. Motion carries unanimously.

MOTION was made by Ben Harrison and seconded by Jason Black to hire John Richard Musa as a Part-time Litter Patrol Driver in District 4.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Ben Harrison, aye; Jason Black, aye; Daryl Sammet, aye; and Steve Turner, aye. Motion carries unanimously.

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MOTION was made by Daryl Sammet and seconded by Steve Turner to approve the following subdivision:

Name	S/D Type	Approval Type	Lots	District	Location
South Road Subdivision	Minor	Preliminary & Final	3	1	Approx. ¼ mile east of Sharp Road

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Daryl Sammet, aye; Steve Turner, aye; Jason Black, aye; and Ben Harrison, aye. Motion carries unanimously.

MOTION was made by Ben Harrison and seconded by Jason Black to approve the annual bingo permit for V.F.W. Post 4765.

The Chairman asked if there was any discussion. There was no discussion. The Administrator called the roll. Ben Harrison, aye; Jason Black, aye; Daryl Sammet, aye; and Steve Turner, aye. Motion carries unanimously.

Commissioner Turner reported the Limestone County Water & Sewer Authority's contractor is wrapping up their work on the East Limestone Road turn-lane project. He announced the four-way stops for Newby Road and Gray Road have been installed. He said the signs have a built-in radar and would flash for one minute when activated by a vehicle.

Commissioner Black gave an update on the Old Highway 20 bridge replacement project. He reported that contractors should be on site Wednesday to begin relocating utilities and announced a preconstruction meeting scheduled for February 11th. His district is doing a lot of patching. The roads are coming apart because of the wet and cold conditions. He requested to be notified if you have a location that is bad or dangerous.

Commissioner Harrison echoed Commissioner Black. He stated some of the potholes can get bad overnight. His district is patching potholes, installing tiles, and preparing some roads for the paving season. They have identified several drainage issues from the recent flooding.

Chairman Daly thanked everyone for attending. He thanked the commissioners for their hard work in preparing for the recently predicted inclement weather.

Recessed at 10:11 a.m. until 10:00 a.m. on Wednesday, February 13, 2019, at the Washington Street Courthouse Annex, 310 West Washington Street, Athens, Alabama.