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CONFIDENTIAL MEMORANDUM

December 9, 2018

Stephen F. Herzog
Bannock County Prosecuting Attorney
624 E Center St # 308
Pocatello, ID 83201

Re: Special Prosecutor Appointment and Review of Charges for Dan Copeland

Steve,

Your office requested that I review, and prosecute if appropriate, a conflict case for potential criminal charges of former Bannock County employee Dan Copeland. After a careful and thorough review of the evidence, I am declining to prosecute at this time.

The investigation in this matter was initially done by Idaho State Police Detective Tom Sellers. When this case was provided to my office around March of 2017, the investigation was not yet complete. However, Det. Sellers had already interviewed several individuals in late 2016 who worked with the County regarding potential misuse of Bannock County equipment, funds, and employees. Det. Sellers then prepared and supplied my office with the details of those interviews. He continued to interview some additional witnesses and a forensic audit was performed and completed on September 26, 2017.

After the investigation was completed in September 2017, my office initially determined that a felony charge of Grand Theft under Idaho Code §§ 18-2403(4)(c) and 18-2407 would be appropriate. Due to the sensitive nature of the case, I requested that Bannock County empanel a Grand Jury so an inditement could be sought against Copeland. Due to scheduling issues with both my office and the Bannock County Prosecutor's Office, the empanelment of the Grand Jury was delayed until late 2018.

In preparation for the presentation of the case to the Grand Jury, ISP Detective Caldera and I met with many of the witnesses in the case who initially talked with Detective Sellers at the end of 2016. Upon the first interviews, it was quickly apparent that some of the primary witnesses would be giving

testimony different from that contained in Det. Seller's reports and upon which I had made my initial decision. Accordingly, I requested that the Grand Jury proceeding be continued for a couple of weeks so that Detective Caldera and I could conduct further interviews with the witnesses to see if the State could still meet its burden. After those interviews, both myself and Detective Caldera were left with serious concerns about whether the State could meet its burden of proof.

I want to assure you that my office takes this matter very seriously and has spent a great deal of time and effort determining whether charges should be filed. I have reviewed the relevant statutes at length and have provided a review of the same herein.

Before reviewing the statutes, it is important to understand that under Idaho State law, the State only has 5 years in which to file a felony crime after the date of its commission.[1] Additionally, if the crime is a misdemeanor, the State only has 1 year in which to file.[2]

I. A REVIEW OF THE BRIBERY AND CORRUPTION STATUES

It is important to note - unless otherwise set forth in the specific statute, any violation of Title 18, Chapter 13 (hereinafter "Chapter 13") is a misdemeanor.[3]

Likewise, a few definitions are critical to this analysis, which are given under 18-1351:

1) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested.
2) "Government" includes the public works department of Bannock County.
3) "Pecuniary Benefit" is any benefit to a public official or member of his household in the form of money, property or commercial interests, the primary significance of which is economic gain.
4) "Public Servant" means any officer or employee of government.

Bribery in Official and Political Matters – I.C. 18-1352

While Chapter 13 prohibits a wide variety of behavior, it begins with a definition of bribery in 18-1352, a felony. That definition is as follows:

> 18-1352. BRIBERY IN OFFICIAL AND POLITICAL MATTERS. A person is guilty of bribery, a felony, if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:
>
> (1) Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter...

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[1] I.C. § 19-402
[2] I.C. § 19-403
[3] I.C. § 18-1360

At first glance, it would seem that this statute would apply to Mr. Copeland. However, after a review of the definitions, giving consideration the clear intent of the statute, and, most importantly, the disclosures made by Bannock County Employees, I do not believe Mr. Copeland should be charged under this statute.

First, "Pecuniary Benefit" is distinguished under 18-1351 from a "Benefit." Under the pecuniary benefit definition, it is a benefit *in the form of* money, property or commercial interest, *the primary significance of which is economic gain.* While one could argue that Copeland did receive economic gain by having County employees doing work for him (in that he would not have to hire someone else), he did not receive a benefit *in the form of* money, property or commercial interest. Other statutes under Chapter 13 govern the receipt of non-pecuniary benefits. One would note, the word "services" is not included in this definition.

Second, even if the court were to determine that the services provided to Dan Copeland were a pecuniary benefit (via cost savings), Chapter 13 provides specifically for this exact conduct under 18-1358(1).

> *18-1358(1). Selling Political Endorsement - "A person commits a misdemeanor if he solicits, receives, [or] agrees to receive . . . any pecuniary benefit as consideration for approval or disapproval of an appointment or advancement in public service. ... Approval includes recommendations, failure to disapprove, or any other manifestation of favor or acquiescence."*

This statute applies directly to what would be alleged in this case – that Copeland leveraged his employees via promises (or denials) of advancement to obtain gain for himself. It is important to note that both this statute and the bribery statute were passed together in 1972. The bribery statute is much broader, whereas this statute defines specific conduct relevant to Copeland's conduct. This creates a concern for the State in that it is clear that they intended this kind of conduct to be a misdemeanor offense, not a felony one.

Third, there are significant evidentiary issues at play regarding 18-1352. Several of the witnesses gave different testimony to me and the ISP detective during our interviews in preparation for the Grand Jury proceeding. The changes in testimony are as follows:

[redacted]

The interview with [redacted] was particularly damaging to the State's case – most of which I would ethically be obligated to share with defense counsel if the case were charged. [redacted] insisted on taking a large portion of the blame for what happened in the Public Works Department. He even went as far as to say he intends to clear things up if the defense attorney asks him questions. This is, of course, problematic when proving the intent portion of this crime. The following are some of the statements made to me and the detective over two recent separate interviews:

- He was the one that brought [redacted] and [redacted] to assist with Dan Copeland, and that it was not Copeland's decision.
- Regarding the work done in 2014, he can "100% guarantee" that the work was done on weekends or on days off. On the other years, he will say that the numbers of hours are incorrect.

- As to the work done in 2015, he guarantees that he deducted the time for vacation. Likewise, he and other employees would shift time, if needed, on their timecards. In other words, if they took some personal time while clocked in, they would simply "punch out" for lunch but keep working.
- It was the practice and well known that employees could take scrap or other items that were no longer needed. For example, if an oil drum was left over, or if there was scrap wood that was otherwise going to the dump, employees were free to take it. Likewise, back then, employees often used the County facilities for personal purposes (bringing their car's in for oil changes, etc.)
- That during the work in 2015, the lumber did not come from the County – he paid for the 2x4s himself and the other wood was [redacted] later confirms this).
- That Copeland would verify with him, "Are you sure it's OK" to his doing favors for Copeland.
- He doesn't believe that Copeland would purposely ask for employees to work on County time.
- He believes that the Detective put stuff in the report that he never said.
- Copeland worked as hard, if not harder, than everyone else, and Copeland was there during the projects, so he is even more certain it was on the weekends.
- That Copeland was very unconcerned about his employees. He worked them non-stop. He would call during the weekends about county projects and the employees worked far beyond what their timecards were saying.
- It was not uncommon for Copeland to ask things of people that normal people wouldn't ask – not just for himself, but in general, Copeland didn't really think about people.
- He did stop by Copelands house on occasion to spend a couple of minutes applying mud. However, this was only when he was in the area for inspections (this was later partially verified by [redacted]. At the time, he felt like if he *was* doing any personal work for Copeland on County time, it was because he was underreported on his time cards for the work he was doing for the County.
- When he first started working for the County, [redacted] told him that to get ahead, he needed to help Copeland out. He followed the advice and was the person who told employees who worked under him that that was how it was. It feels like it was his [redacted] fault. He was the one saying this and bringing people to Copeland's residence to do stuff for Copeland. It was basically employees sucking up to the boss for promotions. He believed that Copeland was not aware.
- He felt like the Detective was not listening to what he was saying when he was originally interviewed. He felt like he was called a liar and forced to say certain things. The detective kept telling him to guess, and that he cannot say that the information he gave was not correct.
- At one point he felt threatened by the detective, a "it's Copeland or you" type of issue.
- He feels like this was the auditing department trying to get rid of Copeland because they were not getting along.

[redacted]

- In regard to the 2009-2010 mosquito abatement equipment and Argo vehicle, that it was Commissioner Hadley who told him to take care of Copeland's mosquito problem.
- It was based on this direction of the County Commissioner that he brought equipment to Copeland and helped him treat for mosquitos.

- The only other time that he assisted Copeland was when he was asked by Copeland to spray Copeland's lawn (with herbicide I believe). He did this on a weekend, and Copeland paid him for the work.

[redacted]

- Helped Copeland one time to help frame the wall in 2014. He did not do it on County time and took sick time to do it.
    - He was with [redacted] doing an inspection in the area as there were a lot of inspections in that area at the time due to a fire. [redacted] asked him he wanted to do it while they were there anyway.
    - Copeland tried to pay him about $100 for his work.

[redacted]

- The atmosphere around Copeland was "don't question me." Copeland didn't require you to do stuff, you just did it. This was simply the atmosphere in general. If you questioned Copeland you paid for it. He was very demanding.

[redacted]

- When he wrote the statement that the County Clerk had him write, he was mad at Copeland because of management differences.
- He and Copeland had a split because he felt like he was being used all the time and over management differences.
    - However, Copeland always paid him to do the stuff. [redacted] himself would not charge Copeland for his hours though. Copeland never required him to do stuff on the weekdays.
- That the politics at the County were terrible. You had to be on one side or the other and you just couldn't do your job.
- The auditor would give greater scrutiny to you if you had worked for Copeland. If you weren't with Copeland, they would help you out.
- Believes this whole case is a clash between Poleki and Copeland and the employees are getting stuck in the middle of it.
- He got burned out because he was sick of the competition between he and [redacted] (for Copeland's favor)

[redacted]

- The majority of [redacted] testimony was unfavorable to Copeland. He stated that work was done on County hours. Likewise, he has a very poor opinion of Copeland. However, the hours he is now reporting are significantly less than those reported in the original reports and relied upon by the forensic accountant.
- He stated that it was [redacted] not Copeland who asked him to do these things. He would ignore Copeland's calls if he tried to call him.
- [redacted] would tell him they were going out on projects, so he would go. He wouldn't have done it for Copeland.
- [redacted] did ask him if he was taking time off during the projects. "You're punching out, right?"

- Copeland tried to pay him $50 on one occasion.

Based on the above statements made by the witnesses, there are a couple of significant issues at play:

1) Copeland did pay for work done on several occasions and offered to pay in other situations (albeit at poor rates). Likewise, he always paid whatever was requested when he was invoiced.
2) [redacted] takes a huge part of the blame, to include the "help Copeland to get ahead" atmosphere and for bringing employees out on jobs. Likewise, he made it clear that he would be more beneficial to the Defense than to the State. I would make it clear, however, that [redacted] was not being antagonistic. He was congenial and was forthright with his answers, but really seemed to want to be understood and to clarify or clear up prior misconceptions (as he saw them). He also felt like he was misrepresented by the detective and that he felt like he had been asked to guess. Finally, he felt like the detective put inaccurate information down regarding a statement. Detective Sellers did not record the interview with [redacted] so this is hard to refute.
3) [redacted] would be testifying against the state, stating that it was he, and not Copeland, who fostered this environment. He was the one, among others, telling the employees that they needed to assist Mr. Copeland in order to get ahead. In fact, he in turn, provided an example to his employees by doing so. The only tangible evidence that would be presented is that Mr. Copeland would occasionally have discussions with employees regarding potential advancement, and then, in close proximity to that discussion, mention things that he needed done for himself. However, given the breadth of the statements above, I do not believe this is sufficient evidence of soliciting.
4) While one could argue that he may have *accepted* a benefit as compensation for his discretion, several of the employees mentioned that this is simply his character. The employees paint Copeland out as being an individual who asks difficult things of people, for personal benefit or not. It seems as though they saw him as being incredibly inconsiderate of others, not as much as though he was trying to bribe them. It was still made clear, however, that the atmosphere was such that in order to get ahead, you had to be on Copeland's good side. Unfortunately, [redacted] is willing to take the fall for that as well.
5) Politics were mentioned time and again by a couple of the employees and they seem to feel like this is a dispute between the clerk's office and Copeland. I'm not saying, by any means, that this is the case. However, it is problematic from a proof perspective and something that I would ethically need to disclose to defense counsel. It is a playground for defense counsel.
6) The employees had been approached about making sure they were doing things on County time. This clearly didn't happen until later, but [redacted] made it sound like he had expected it from the beginning. Likewise, [redacted] made it clear that reviewing the time cards would not be effective as the employees would shift their time around to fill in other time (such as clocking out for lunch, but still working).

COMPENSATION FOR PAST OFFICIAL BEHAVIOR - I.C. § 18-1354 -

Under 18-1354, *a person cannot "solicit, accept, or agree to accept any pecuniary benefit as compensation for having as a public servant . . . exercised discretion in [someone]'s favor. . ."*

Again, this is much more specifically defined conduct than that found in 18-1352 (similar to 18-1358 – Selling Political Endorsement). The difference is granting a promotion based on benefits already

received (as may be the case in Kendall and other people in Copeland's "circle" getting promotions.) Copeland had discretion over which employees received advancement into desirable positions and those who did not, so if he received a pecuniary benefit from such, this statute would apply. However, the statute itself specifically makes this kind of conduct a misdemeanor. Accordingly, it would fall outside of the statute of limitations.

GIFTS TO PUBLIC SERVANTS BY PERSONS SUBJECT TO THEIR JURISDICTION – I.C. § 18-1356(2)

Under 18-1356(2), *"No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the government shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in [the same]."*

One should note that there are exceptions to this crime. The most relevant would be *"gifts or other benefits conferred on account of . . . professional or business relationship independent of the official status of the receiver."* (*See* I.C. 18-1356(5)(b).

Copeland apparently was involved in granting County contracts to businesses. Specifically, there is one contractor with whom a substantial amount of County business was given – Michaelson Construction. The number of contracts given to Michaelson Construction is highly suspicious, especially given Copeland's close personal business ties to them. In fact, Copeland possibly received actual pecuniary benefits from those contracts. First, Copeland received a total of $26,000 for "consulting" work in 2008 from Michaelson Construction. There was little information provided to my office regarding this $26,000. Likewise, Copeland claims that he received $40,000 for a contact list that he sold, pursuant to permission, to Michaelson Construction. He claimed that he received about $15,000 in cash and about $10,000 in equipment rentals, and that Michaelson Construction still owes him $15,000, *but that he is simply forgiving that amount*. However, when Detective Sellers contacted Michaelson Construction, they made it clear that they did not pay Copeland $40,000 and stated that wouldn't have made sense. In fact, looking at their records, Copeland still owes them $4,159.83. The fact that Copeland had Michaelson Construction equipment at his house and is claiming it was in payment for consulting work that Michaelson Construction denies ever happened is concerning. Likewise, the fact that Copeland owed a substantial sum to Michaelson, that was not being collected on, while he was granting work to them is also concerning. Finally, the fact that they had significant past and recent business ties is worrisome.

There is certainly an argument that the benefits Copeland received from Michaelson Construction were related to his official status - especially given the sheer number of contracts awarded and monies owed and previously paid. However, the investigation was unable to uncover any significant proof that the two were related. I do believe a more thorough investigation and review of the contracts, who signed them, what other contractors bid, etc. would be telling - especially if the Michaelson contracts were, in fact, the lowest bids. However, under 18-1356(7), *the statute makes any violation of 18-1356 a misdemeanor.* Therefore, no matter what the dollar amount gained by Copeland or lost by the County was, the conduct would be barred by the statute of limitations. Accordingly, I will not, and did not, dedicate substantial time to further analysis despite having significant concerns about the relationship between Michaelson Construction and Copeland. Of note, if my concerns are valid, the County is likely at risk for damages to the other contractors who were disfavored over Michaelson Construction.

USING A PUBLIC POSITION FOR PERSONAL GAIN - *I.C. § 18-1359*

Under 18-1359, *"No public servant shall:*

> *(a) Without the specific authorization . . . use public funds or property to obtain a pecuniary benefit for himself.*
>
> *(b) Solicit, accept or receive a pecuniary benefit as payment for services, advice, assistance or conduct customarily exercised in the course of his official duties.*
>
> *(c) Use or disclose confidential information gained in the course of or by reason of his official position or activities in any manner with the intent to obtain a pecuniary benefit for himself. . .*
>
> *(d) Be interested in any contract made by him in his official capacity, or by anybody or board of which he is a member, except as provided in section 18-1361, Idaho Code."*

Again, this section is much more specific than the generalized conduct under 18-1352. Even a brief review of the Statute shows that it is highly relevant to this situation. However, this section does not have a specifically prescribed penalty attached. Accordingly, I.C. 18-1360 comes into effect *and makes any of the conduct contained therein a misdemeanor*, no matter the amount of the pecuniary benefit gained.

II. MISUSE OF PUBLIC MONEYS AND GRAND THEFT

In addition to the Bribery and Corruption Statutes, my office reviewed two more protentional crimes, specifically, Misuse of Public Moneys by Public Officers and Employees, under I.C. 18-5701, and Grand Theft, under I.C. 18-2403 & 18-2407.

MISUSE OF PUBLIC MONEYS I.C. § 18-5701

In short, I.C. 18-5701 makes it unlawful for an individual to misuse public monies or public credit cards. The applicable subsection is 18-5701(10), which states:

> *No public employee shall "knowingly use any public moneys . . . to make any purchase, loan, guarantee or advance of moneys for any personal purpose or for any purpose other than for the use or benefit of the governmental entity."*

In other words, this statute is applicable when actual funds are being expended in a "purchase, loan, guarantee or advance of moneys." At first glance, this statute would seem to fit Copeland's conduct. However, the State would have to show a specific "purchase" (or series of purchases) that constituted the unlawful conduct.

First, and most importantly, there is not a lot of county property used by Copeland that falls within the statute of limitations. Most of this conduct happened well beyond the 5-year statute of limitations, even when my office received this case early in 2017. The all of the pumps, mosquito abatement equipment, etc. were used in 2009-2011. Likewise, both [redacted] and [redacted] made it clear that the lumber used in Copeland's home in 2015 was not County property. In fact, the lumber belonged to [redacted] and [redacted] themselves. This leaves us with only the vehicle costs associated with travel in the total amount of $117.72. However, this amount will be mitigated as two of the witnesses stated that many of these trips

were actually done when otherwise on County business. Likewise, I have little to no evidence I could point to that shows Copeland as having meant for the employees to use their vehicles for his benefit.

Second, even if the above difficulties did not exist, it is difficult to say this conduct falls within the statute as written. This statute applies to "public moneys. . . [used] to make any purchase . . . for any personal purpose." While Copeland may have been using equipment purchased by the County (pumps, Argo truck, etc.), the purchase of the same was initially made for the benefit of the County, and then the equipment is being used in a very small part by Copeland. In *State v. Olsen,* the Jefferson County Sheriff was found guilty for paying the cell phone bill for a county cell phone for three years, which his wife used exclusively for her personal use. 161 Idaho 385, 387–88, 386 P.3d 908, 910–11 (2016). The court spent some time discussing the "purchase" that was made – specifically paying each monthly bill for the cell phone bill while his wife had it. *Id.,* 161 Idaho at 391, 386 P.3d at 914. The Sheriff basically paid for a phone approximately 36 times while the phone was being used by his wife and not the County.

In this case, however, I hesitate to draw a correlation to *Olsen*. While it can be argued that the County has purchased this equipment under Copeland, and he then used it for his personal use – thereby falling under the "purchase" language, this would be a stretch of the statute. This equipment was not purchased for Copeland's personal use. Likewise, there has been little evidence provided to my office regarding the *actual* purchase amounts, not just the value of those services.

It is critical to understand that there is no minimum amount of "purchase" defined in I.C. 18-5701. In other words, a purchase in the amount of $.01 is a crime. Therefore, if this argument were to stand, the statute would be overly-broad and the implications vast. Each time an employee took a personal call on a County phone, if they looked at Amazon.com during their lunch-break on a County computer, if they plugged their personal phone into an outlet to charge at work, etc., then they would be committing a crime. More so, if they work in a position "charged with the receipt, safekeeping or disbursement of public moneys," such as an elected official or department head, this conduct would be a felony crime.

As a prosecuting attorney, not only am I tasked with protecting society, but I must also avoid dangerous applications of the law. Just because an argument can be made, does not mean it should be made. Likewise, a prosecuting attorney should not attempt to circumvent a legal requirement through creative application of the code. I do not believe that Copeland's conduct consisted of "purchases" as set forth in I.C. 18-5701 or as intended by the statute. A County is not left without recourse, however. While it is likely that Copeland misused County equipment in violation of the law, that conduct could possibly have been handled under I.C. 18-1359 prior to the date the statute of limitations had run.

Finally, under this statute, a defendant must "knowingly" make the purchase. I won't belabor the point, but the testimony of the County employees, [redacted] especially, would make this much more difficult to prove.

Grand Theft – I.C. §§ 18-2403 & 18-2407

When I originally asked that a Grand Jury be empaneled, this was the statute upon which I was to seek an indictment. Based on the initial investigation, original reports provided to my office by ISP, and the forensic audit completed by Deaton & Company, it appeared that Copeland's conduct fell squarely under the conduct prohibited by 18-2403(5)(c), which states:

"(c) A person commits theft if, having control over the disposition of services of others, to which he is not entitled, he knowingly diverts such services to his own benefit or to the benefit of another not entitled thereto."

Proceeding under this statute would effectively eliminate many of the issues discussed above with the Bribery and Corruption Statutes and the Misuse of Public Funds statute. However, this statute stands and falls on the language "to which he is not entitled." In other words, Copeland could be found guilty if he diverted the services of individuals who were working for the County on County time. In order for this conduct to be a felony, the amount diverted would have to exceed $1000.00.[4]

Initially, the forensic audit and investigation determined that the estimated combined labor cost to the County was: $175.15 in 2010; $147.26 in 2011; $500.20 in 2014; and $2125.70 in 2015, for a combined total of $2,948.31. Even if the court excluded the years from 2009-2011 (outside the 5-year statute of limitations), the aggregated amount would still be well above the $1000.00 threshold the state would have to prove.

However, after the interviews in preparation for the Grand Jury, the witnesses were unwilling or unable to testify to these numbers – even after attempts by myself and Detective Caldera failed to refresh their memory via their written statements and by further discussion with the detective. These changes are as follows:

[redacted] – Claims that almost every bit of work done for Copeland was done on weekends, lunch breaks, or that employees voluntarily took off the time to help (sick, vacation, etc.). He gave numbers *significantly* lower than the numbers in the audit – even after confronting him on prior numbers given to ISP. He will testify that any of those numbers were guesses forced on him by the detective, and estimated numbers roughly half of what is determined in the audit. Unfortunately, he would be my primary witness in this case as he was present for, and in fact initiated, each of the events when Copeland used County employees.

[redacted] – The witness most willing to testify against Copeland's misconduct even stated that the 69.5 hours found in the audit was grossly excessive. His exact answer was that he spent time there on two separate days and would not have worked outside of the workday. Accordingly, 16 hours is more likely. His words exactly were that even 24 hours "seems excessive." Also, his estimated hours regarding the septic tank service he provided were lower than found in the audit.

These significant changes in the hours would have a large impact on the remaining amount and bring it much closer to the $1000.00

In addition to the differences in time spent on projects, I would have to prove that all of this conduct was done knowingly, I planned on proving that based on the fact that the work was done during the week day, that Copeland fostered an environment where you did stuff for him for promotions, there was a pattern of conduct throughout the years, and that it would be ridiculous for Copeland to assume that the employees were simply taking time off (making personal sacrifices) to help Copeland out.

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[4] I.C. § 18-2407(8)

However, based on the changed information given by employees during the most recent round of interviews, I believe it would be very difficult to prove that Copeland knowingly diverted those services. First, and most importantly, I lost my most important witness showing whether the services were provided on County time in the first place. Second, the employees are saying that Copeland was a person who would honestly expect serious sacrifices of others (basically, that he really would have expected them to take time off for him). However, at the risk of sounding facetious, being a jerk is not illegal. Third, the services provided in two of the four years was approved by a County Commissioner – which is very problematic. Fourth, on several occasions Copeland paid employees for their work and offered to pay others - which would indicate that he may have believed them to be taking time off. Fifth, there are indications that the employees were actually told that they should be taking the time off if they were assisting Copeland. Sixth, [redacted] would be testifying that it was he who fostered the "if you want to get ahead, you have help Copeland out" environment. He told new hires this, he believed it himself, and he behaved in that way. [redacted] brought the men out to the jobs, not Copeland, and he also wants to take blame for things. Finally, I would normally use time cards to prove his knowledge, but Copeland was not the one approving time cards for many of the employees. While he did approve *some* timecards, the employees had a habit of shifting time around, so their cards are not an accurate measure of how much time the employees actually spent and/or whether Copeland knew whether they were taking the time off or not.

Finally, it should again be noted that the State must disclose any information to defense counsel that tends to negate the guilt of the accused. The testimony of [redacted] is highly impeachable and unfavorable to the State. Without him, the State has very little testimony that work was done for Copeland on County time – especially that Copeland knew as much. Likewise, where the State would need to prove an amount specific, I do not have credible numbers in regard to how much the employees worked, and I would not be able to prove a specific dollar amount. This become particularly problematic in light of the fact that I have to prove an amount over $1000.

CONCLUSION

Based on the above information, seeking charges for Copeland's conduct is not appropriate at this time. Initially, because of many of the issues above, I was only comfortable with bringing a Grand Theft charge - for which we empaneled the Grand Jury. Unfortunately, significant changes in witness testimony no longer make that possible.

To be clear, I am not convinced Copeland's actions were not in violation of the law.[5] In fact, I have serious concerns, to include Copeland's dealings with Michaelson Construction and his use of County equipment. However, while I am concerned about his business dealings and kickbacks he may have received, I do not have the testimony and/or evidence to prove a violation of the law. Additionally, the statute of limitations plays heavily on this case, in some cases limiting available evidence, and in other

[5] In fact, much his conduct likely created large amounts of liability for the County. He was having County employees work off the clock without pay, his employees would shift time on their timecards to meet certain demands, County resources were used and available to County employees (such as use of the scrap pile or facility oil changes), and he was able to receive significant mosquito abatement services on his out-of-county personal property due to what seems to be a close relationship with a County Commissioner.

instances, limiting the State's ability to charge criminal conduct. Finally, given the recent information provided to my office by County employees, I do not believe that a jury would convict on any of the above statutes.

While it is true that a prosecutor need only prove probable cause to charge a case, I believe it the ethical duty of every prosecutor to only charge those cases in which the prosecutor believes he or she can meet the higher burden of beyond a reasonable doubt. As the evidence stands, that is not this case here.

Please let me know if you have any questions or concerns,

Cody L. Brower
Oneida County Prosecuting Attorney

cc: Detective Horacio Caldera
Idaho State Police