

**STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT OF MICHIGAN
FOR THE COUNTY OF WAYNE**

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff,

UNDER SEAL
Case No. 14-008080-FH
Hon. VONDA R. EVANS

CARLA E. SLEDGE,
STEVEN M. COLLINS,
Defendants.

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OPINION AND ORDER

At a session of said Court held in the City of Detroit, County of Wayne,

State of Michigan on: **NOVEMBER 21, 2018**

PRESENT: **HON. VONDA R. EVANS**

Defendants Steven Collins and Carla Sledge both were employed by Wayne County. Steven Collins was employed as an Assistant Wayne County Corporation Counsel. Carla Sledge was the Chief Financial Officer for Wayne County ("CFO"). They both worked on the Wayne County Consolidated Jail Project from October 2010 until June 2013.

On September 12, 2014, both defendants were charged by an Indictment after the convening of a one man grand jury with the following charges:

COUNT 1: Common Law Offenses - Misconduct in Office (MCL.750.505)

COUNT 2: Common Law Offense - Misconduct in Office (MCL.750.505)

COUNT 3: Public Officer - Willful Neglect of Duty (MCL. 750.478)

COUNT 4: Public Officer - Willful Neglect of Duty (MCL.750.478)

In March 2015 both defendants filed a motion to dismiss the indictments against them. In regard to Defendant Collins, this Court found that as a matter of law, he was not a public official and dismissed Counts 1 & 2 and Counts 3 & 4 were also dismissed because this Court found that Defendant Collins was a public employee and that the willful neglect of duty counts did not apply to him.

In regard to Defendant Sledge this Court found as a matter of law that she was a public officer, and had willfully neglected her duty to honestly and fully inform a legislative body the Wayne County Commission and the Wayne County Building Authority with accurate financial information regarding the costs over runs of the jail.

On appeal, the Michigan Court of Appeals affirmed the order denying Sledge's motion to dismiss and ordering the prosecution to file a bill of particulars. They further affirmed the motion to dismiss the misconduct in office charges against Collins and remanded it for this Court to allow the prosecution to file a bill of particulars to specify what duty he breached regarding the willful neglect of duty charges.

CARLA SLEDGE

The Defendant, Carla Sledge, was employed as the Chief Financial Officer (CFO) for Wayne County. This position was created by the Wayne County Charter through authority conferred by the legislature. In Section 4.331 of the Wayne County Charter, the department of Management and Budget was created and the director of the department is the Chief Financial Officer, it states:

The director of the department of Management and Budget is the Chief Financial Officer. The director shall be appointed by the CEO and serve at the pleasure of the CEO.

The Wayne County Charter, Section 4.332, establishes the powers and duties of the CFO, and it states:

The Department of Management and Budget has powers and duties to: (1) Effectuate the provisions of Article V of this chapter; (2) Implement administrative procedures and practices required by the CFO; and, (3) Supervise and direct activities of the division of the department.

As CFO, she had the power to initiate removal of the director of Assessment and Equalization which was a part of the Department of Management and Budget. This division has powers and duties to assist the County Commission with the equalization of assessment of property subject to the taxation in the County in accordance with the law; and, prepare reports and other

documents required by law and enter into contracts with political subdivisions within the County to provide assessing, tax roll preparation, tax billing or other related services.

This division had the power and duties to: (1) Establish a central purchasing system, and (2) manage and control all purchasing of the County to insure their cost effectiveness and efficiency.

Article V, Section 5.111 of the Wayne County Charter states:

Wayne County shall employ generally accepted principles for account audits and reporting to appropriate local governments as required by law.

The County of Wayne, Code of Ordinance 94-103 requires the CFO to establish and maintain fixed assets and account group consistent with generally accepted principles of accounting.

- (1) Implement administrative procedures and practices required by the CEO.
- (2) Supervise and direct the activities of the the division of the department.

This Court holds that the aforementioned powers and duties of the CFO was a position which was a delegation of the executive authority vested in the CEO of the County of Wayne from the Michigan Constitution to the CFO. It is also an extension of sovereign authority that was exercised for the benefit of the public, as CFO she could perform her duties independently of the CFO and her duties of the CFO were expressly codified by ordinance and statute. Despite this delegation of authority the CEO retained the ability to fire the CFO and her position was a subordinate of the CEO and an extension of the CEO's powers to the CFO.

Defendant Sledge was a public official in her position as CFO in Wayne County.

THE WAYNE COUNTY BUILDING AUTHORITY

The Wayne County Building Authority is a municipal entity which has its own Articles of Incorporation and corporate existence separate from the Wayne County Commission.

The Wayne County Building Authority (herein referred to as the "Building Authority") was established under the provisions of the enabling act, Act 31, Public Acts of Michigan, 1948 (First Extra Session). The Incorporating unit is the Charter County of Wayne, State of Michigan.

The authority to create the Wayne County Building Authority is found in the Constitution of Michigan of 1963, Article VII § 2 which states:

Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law, which shall among other things provide for the election of a charter commission. The law may permit the organization of county government in form different from that set forth in this constitution and shall limit the rate of ad valorem property taxation for county purposes, and restrict the powers of

charter counties to borrow money and contract debts. Each charter county is hereby granted power to levy other taxes for county purposes subject to limitations and prohibitions set forth in this constitution or law. Subject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns.

THE ARTICLES OF INCORPORATION OF THE WAYNE COUNTY BUILDING AUTHORITY

Article III sets forth the purpose of the Authority and states:

This authority is incorporated for the purpose of acquiring, furnishing, equipping, owning, improving, enlarging, operating and maintaining a building or buildings, automobile parking lots or structures, recreational facilities, stadiums, and the necessary site or sites therefor, together with appurtenant properties and facilities necessary or convenient for the effective use thereof, for use for any legitimate purpose of the County, and to accomplish such other purposes as may be provided from time to time in the enabling act.

Article IV sets forth the powers and duties of the Building Authority.

Section 2 gives the Authority the power to enter into contracts to acquire property.

Section 5 gives the Authority the right to issue bonds, to defray all or part of the cost of constructing or acquiring property. The issuance of the bonds had to be adopted by a majority vote of the elected members of the commission of the Authority.

Section 8 states, "The Authority shall possess all the powers necessary to carry out the purposes of its incorporation... the powers herein granted shall be in addition to those granted by any statute or charter."

Section 9 states, "The term of this incorporation and Authority shall be perpetual."

ARTICLE V sets forth the responsibilities, obligations, and selection of the members of the commission.

Section 1 states, "The Authority shall be directed and governed by a governing body of 5 known as the "Commission." Each member shall be appointed by the CEO of the County subject to the approval or rejection by the Wayne County Commission. No member of the County Commission and *any other officer or employee of the County shall be eligible for membership or appointment to the Commission.* They had a 5 year term and could be removed with or without cause at any time by the CEO.

Section 2 requires the Commission to choose a Chairperson, Secretary, and a Treasurer.

Section 3 requires the Commission to adopt and amend by laws.

Section 5 states, "The Chairperson shall preside at meetings of the Commission and may sign and execute all authorized bonds, contracts, checks and other obligation in the name of the Authority."

Section 6 states, "The Secretary shall keep the minutes of all meetings of the Commission, and of all committees, and shall preside at meetings of the Commission in the absence of the Chairpersons."

Section 7 states, "The Treasurer shall have custody of all funds... sign all checks, bonds, promissory notes and other obligations of the Authority when so ordered by the Commission... shall at all reasonable times exhibit his or her books and account to the Commission when requested."

Article VI states, "The CFO shall cause a copy of these Amended and Restated Articles of Incorporation to be published in the Detroit Free Press."

Article VII allows the commissions to make amendments provided that no such amendment shall impair any obligation of the Authority.

BYLAWS of the WAYNE COUNTY BUILDING AUTHORITY

Article I

Section 1 states, "The members shall serve for a term of 5 years."

Section 2 states, "The Commission biennially at its December meeting shall designate members as Chairman, Secretary, and Treasurer."

Article II, MEETINGS

Section 1 states, "All regular meetings held at the registered office of the Wayne County Building Authority."

Section 2 states, "One regular meeting of the Commission will be held during the first week of each month."

Section 3 states, "Special meetings could be called within 24 hours by the Chairman or any three members."

Section 4 states, "Any three members of the commission shall constitute a quorum. A transaction of any business or passage of resolution requires a vote of at least three members."

The Wayne County Building Authority members were selected by the Wayne County Executive and confirmed by the Wayne County Commission. These individuals were selected because of their knowledge and experience in construction, law, banking and other essential and necessary areas. They were: Nathan K. Ford, Chairperson; Former State Legislator Eileen DeHart,

Secretary/Treasurer; Commercial Realtor James G. Saros; Attorney John N. Hindo; and, Investment Banker Michael D. Rowley.

THE WAYNE COUNTY CONSOLIDATED JAIL PROJECT

On November 10, 2010, the Wayne County Building Authority held a special meeting. According to the minutes of this meeting, Michael McGhee of Miller Canfield explained that the Building Authority authorized up to \$300 million in bonds for the purpose of financing the jail project – which could have been issued in one or more series – authorizing the chair, secretary and treasurer with the approval of the CFO and County to “execute certain documents that will be necessary to confirm the final bond terms” (Exhibit A-3, Board Meeting Minutes 11/10/2011, Page 5).

On December 22, 2010, the Building Authority sold \$200 Million in Recovery Economic Development Bonds under the Federal American Recovery and Reinvestment Act (“ARRA”) for the purpose of constructing a new Wayne County Jail facility. The \$200 million was the first installment of the \$300 million that was authorized by the Building Authority. The remainder of the bonds could be utilized if there was a need, which was explained to the Building Authority officers by Valerie Khoury, from the Wayne County Management and Budget Department (Exhibit A-4, Board Meeting Minutes 2/22/2011, Page 6).

Defendant Sledge did not attend any of these meetings.

AECOM

A Building Authority meeting was held where it was decided that AECOM would be selected as the program manager of the project because they specialized in building correctional facilities and had the expertise in that area. However, when Board Member Saros asked about any local companies who had this expertise, because AECOM was based in California, Mr. Collins responded, “I can’t say yes to that question. I do not want to say no because it’s been a few years since I looked...” (Exhibit A-4, Board Meeting Minutes, 2/22/2011, Page 21). In fact, five or six years prior, the County hired Daniel, Mann, Johnson & Mendenhall (“DMJM”), a subsidiary of AECOM, to conduct studies regarding the building of a regional justice center, which included building the jail and a courthouse. AECOM dissolved DMJM and proposed a contract for a program manager to the County (Exhibit A-4, Board Meeting Minutes 2/22/2011, page 13). It was Defendant Collins’ belief that it would be a redundancy of services to contract a separate company for program management. According to Defendant Collins, negotiations began directly with AECOM “not only to do the program management of the new facility, but to take you all the way through complete design” (Exhibit A-4, Board Meeting Minutes, 2/22/2011, Pages 13 & 14). Moreover, by not bidding out the contract the county would save six to seven million dollars [Exhibit A-4, Board Meeting Minutes, 2/22/2011, Page 14].

As program manager, it was recommended that they would do the following:

1. On a monthly basis provide the Building Authority with the contracts that had been let out by AECOM and Ghafari or subcontractors.
2. Show what percentage of those businesses were in Wayne County and show exactly how far we are in spending the dollars (of the bond) and how close they were in construction.

The purpose of this report was to keep the authority informed of this progress (Exhibit A-4, Board Meeting Minutes 2/22/11, Page 22).

OWNER REPESENTATIVE

The owner representative, was hired to be the Building Authority's entity, he had the responsibility of making day-to-day decisions regarding the construction of jail. He was hired by AECOM and was also a part of the team to put together bid documents for the general contractor; once the entity had been recommended, it would be brought back to the Building Authority and to the County for final approval (Exhibit A-4, Board Meeting Minutes 2/22/2011, Page 24).

Subcontractors would not be brought before the Building Authority because it was recommended by Mr. Collins that they did not want "co-employment." Only if a subcontractor was rejected would the issue be brought before them according to Mr. Collins (Exhibit A-4, Board Meeting Minutes 2/22/2011, Page 26).

The owner representative selected for this project was Anthony Parlovecchio, who had been in the construction business for 40 years and had participated in the building of the Macomb County Jail 25 years ago. He was hired by Wayne County as the owner representative for the Guardian Building renovation. [Exhibit A-4, Board Meeting Minutes 2/22/2011, Page 32].

According to Mr. Collins, neither the contract for AECOM or Parlovecchio was bided out. "There is nothing in the jail project that legally requires commission approval... it is the building authority that's responsible for contracting for the construction for the new jail." (Exhibit A-4, Board Meeting Minutes 2/22/2011, Page 21). It was Defendant's Collins belief that a "direct contract with AECOM would save the authority and the County six to seven million dollars versus going out to bid." (Exhibit A-4, Board Meeting Minutes 2/22/2011, Page 14) Parlovecchio agreed to the payment of .75 percent instead of the customary 3 to 5 percent cost of the overall project that others would normally charge. (Exhibit A-4, Board Meeting Minutes 2/22/2011, Page 25).

Board Member Saros was concerned about this selection process and stated, "I'm in the construction business... I think for all of us, a lot of the responsibility for this is falling on this authority so I just want to make sure." (Exhibit A-4, Board Meeting Minutes 2/22/2011, Page 25). There was no current nation-wide search done by the County or the Wayne County Building Authority to get a competitive bid for both positions, the program manager or the owner

representative, to assure that they had selected the most qualified and experienced companies to build the jail. Instead the authority relied upon outdated information from the County to determine the cost and need to build the new jail. AECOM dissolved their subsidiary company that was hired to do the search by the County and used that information to make a bid that could be five to six million dollars less than another company if the job had been bid out. There should have been a bid to determine the actual cost based upon updated information from the County. The owner representative never demonstrated or indicated that he held a comparable position when building the Macomb County Jail 25 years prior, or in the building of the Oakland County Detention Center. He was, however, an owner representative for the County for the Guardian Building and according to him, the project was completed for 11 ½ million dollars under budget. (Exhibit A-4, Board Meeting Minutes 2/22/2011, Page 33). The Guardian Building was a renovation. It was not a new construction of a modern correctional facility. The motivating factor for their hiring without a competitive bid was so that they would save money by performing these jobs. Evidence of building recent correctional facilities was never discussed or demonstrated.

WAYNE COUNTY BUILDING AUTHORITY RESOLUTION #11-003

The Building Authority on April 7, 2011 adopted this resolution, and it states:

WHEREAS, the Authority acknowledges as required under the American Recovery Relief Act. It is essential that the 2010 Jail bonds proceeds be spent in a timely manner; and

WHEREAS, Wayne County previously conducted a national search and selected AECOM as Program Manager for a proposed Regional Justice Center; and

WHEREAS, AECOM has performed numerous studies and research regarding how the County and the Authority can construct, design and program a new jail facility in a manner ... that is lower than its current operational budget for all 3 current facilities.

The defendant Sledge did not attend any of these above-mentioned board meetings.

OVERSIGHT COMMITTEE

A committee known as the Oversight Committee was formed at the County level to assist the Building Authority, to review and advice on decisions of design and procurement for the jail project. This committee made decisions regarding the jail project with the advice of the construction manager and would report them directly to the authority. (Exhibit B-4, Board Meeting Minutes 5/3/12, Page 15)

According to Muddaser Tawakkul, Wayne County Deputy Director of Purchasing (Grand Jury Testimony, Tawakkul, 8/25/2014, Page 15) "there were numerous people, June Lee and Azzam Elder involved in the oversight of the jail; the person leading the oversight of it was Turkia

Mullins.” As early as December 2010, Ms. Mullins in an email to AECOM Representative, Andy Cupples stated “in order to avoid confusion... please take note I am the jail project manager from the County’s side.” Azzam Elder confirmed in an email to the Defendant Sledge that “Turkia is the lead on construction for the jail so run your ideas by her and Tony first.” (Exhibit A-12).

The oversight committee was made up of all Wayne County employees (Exhibit B-4, Board Meeting Minutes 5/3/12, Page 11) “with people from the building division who had (limited) construction background, management and budget, corporation counsel and from the corporate engineering office.” (Exhibit B-4, Board Meeting Minutes 5/3/12, Page 8).

This committee whose job was to advise the Building Authority on construction and building issues had no experience in constructing a jail. According to Board Member Saros, “other than Paula Anderson, who has great abilities, I think that the construction knowledge that the committee has is limited.” (Exhibit B-4, Board Meeting Minutes 5/3/12, Page 12). Moreover, there was no written protocol for when the Building Authority’s meetings would be scheduled, how their agendas were determined, and when they would meet.

DESIGNATED AUTHORITY

On April 7, 2011 the Building Authority met to discuss Resolution #11-008, which would designate authority to Defendant Sledge to use the bond money raised on December 22, 2010 by the Authority to construct the Wayne County Jail.

The following individuals attended this meeting, Chairman Nathan Ford; Mr. John Hindo, Secretary; Ms. Ellen DeHart, Treasurer; Mr. James Saros, and Defendant Collins. The following discussion occurred:

DEFENDANT COLLINS: As you approved the document last fall, ...it indicates that the construction manager and the purchase of real estate will go back to the Wayne County Commission for approval. However, procedurally and legally it is the Wayne County Building Authority who will be executing those documents since you are the owners of the bond issuance. We’re asking for designated authority to the Chief Financial Officer, and if you’ll look at the resolution, it indicates that she’ll be doing and issuing the RFP’s, RFQs, and such regarding the Wayne County Procurement Ordinance. We feel that this is appropriate for these matters. Certainly, you need procurement policy to address matters outside of the jail, but when we are talking about jail matters, we’re going to be seeking guidance through the Wayne County Procurement Policy and using the Wayne County Process for those matters. So, we’re asking you to designate the authority to the CFO under the issuance of the bond so it does become the responsibility of the CFO of Wayne County to ensure that those bonds are spent in a certain manner.

CHAIRMAN FORD: Sure, absolutely. So she's making recommendations obviously to this body, to the Board, Wayne County Building Authority, She has oversight over the RFQ, REP process.

Mr. COLLINS: Yes, absolutely.

MS. DEHART: *If there are any issues that the Commission needs to be apprised of, will they be apprised of it?*

MR. COLLINS: *Yes, we believe in full disclosure, and if there are issues in the RFP, we would look for guidance in the procurement ordinance as far as going to the Commission for those issues that may come up.*

MR. SAROS: *I want to be clear on what goes before the Commission or, excuse me, the Chief Financial Officer.*

MR. COLLINS: *When we finished the RFP, and that's the Request for Proposals, and are ready to issue it we will send a copy to each of the board members, and we at the county we'll issue RFP attaching a contract to it.*

Under the Procurement Ordinance of Wayne County, we create a selection committee to review the RFPs. The recommendation will come back to both this body and to the Wayne County Commission for both bodies to approve the selected vendor.

If we submit a contractor to the Wayne County Commission and they reject such contractor, then we would have to go back and look at the rejection and the notice and we would have to look at the process again. (Exhibit A-2, Board Meetings Minutes, 4/7/2011, Page 6-11)

BIDS

The only bids that were submitted to the Building Authority were the winning bids.

MR. COLLINS: *If you would like to see the proposals that are brought in, we certainly will share that with you, I would let you know that we've obviously done this many times before and it tends to be a very arduous and a very big process. But it'll be your choice, if you decide to look at other proposals.*

MR. HINDO: *Okay. (Exhibit A-2, Board Meetings Minutes, 4/7/2011, Page 12-13)*

Defendants Collins and Sledge had prepared RFPs prior to this project but there was nothing to suggest that they possessed the skill or knowledge to write RFPs for complex projects such as building the Wayne County Jail.

The County of Wayne, Code of Ordinance, Purchasing Ordinance No. 94-103, Section 69-2, states:

The chief financial officer shall not be required to establish and maintain accounts on infrastructure, fixed assets, including roads, bridges, curbs, gutters, sidewalks, drainage systems, lighting systems, and other similar assets which are immovable and of value only to the count. The chief financial officer shall, however, maintain such accounts for all parcels of property which fall outside of the required right-of-way of county roads and utilities.

Purchasing Ordinance 94-103 exempts the chief financial officer, like Defendant Sledge from establishing and maintaining accounts for infrastructures like the Wayne County Jail. These areas are specially excluded by statute from the responsibility of the defendant. Her qualifications to perform complex proposal writing for RFPs or RFQs, or to assess qualified vendors in the area of engineering, architectural, or construction was never discussed at any Building Authority meeting prior to the passage of this proposed resolution. Defendant Sledge had no experience for preparing and evaluating bids to construct infrastructures like the Wayne County Jail Project.

WAYNE COUNTY BUILDING AUTHORITY RESOLUTION #11-008

On August 11, 2011 the Wayne County Building Authority by a quorum voted to passed Resolution #11-008," designating authority to the Wayne County Chief Financial Officer, which states:

WHEREAS, the Wayne County Building Authority (the Authority) is an incorporated authority to pursuant to Public Acts of 1948 (the Act) and,

WHEREAS, the Authority, pursuant section 11 (e), of the Act, (MCLA 123.961 (e) is authorized to use bond proceeds "for the purpose for which the bonds were authorized including any engineering, architectural, legal, and other expenses:" and,

WHEREAS, the Authority, on December 22,2010, sold \$200 Million in Recovery Economic Development Bonds under the Federal American Recovery and Reinvestment Act ("ARRA") for the purpose of constructing a new Wayne County jail facility; and

WHEREAS, pursuant to the ARRA, the Authority has a responsibility to contract for the construction of the new jail facility in an efficient and timely manner, and,

WHEREAS, the Building Authority intends to develop and adopt a Procurement Policy but has not yet done so; and

WHEREAS, the County's Chief Financial Officer ("CFO") is responsible for ensuring that all expenditures of bond proceeds are made in a manner that is consistent with the requirements of state and federal laws, including the ARRA, and

NOW, THEREFORE, BE IT RESOLVED, that the Authority's Board of Commissioners does hereby designate authority to the CFO of Wayne County to issue any and all necessary Requests for Proposals, Invitations for Bids, or Requests for Qualification with respect to the construction of the new jail facility;

BE IT FURTHER RESOLVED, that such authority is provided to the CFO as long as such RFPs, IFBs, and RFQs, are issued pursuant to the standards established in Wayne County's Procurement Ordinance and the guidelines associated with the ARRA.

BE IT FURTHER RESOLVED, that the CFO shall have the authority to create a review committee with respect to the issuance of such RFPs, IFBs, and RFQs, and that any recommendations resulting from such review will be submitted to the Authority's Board of Commissioners for its consideration for approval and execution of any contract.

At a previous board meeting it was discussed that the Defendant Sledge would be making recommendations to the authority to assist in the building of the jail and oversight of the RFP, RIP process, however Resolution #11-008 gave Defendant Sledge unfettered control of the Consolidated Jail Project.

Defendant Sledge was given authority to ensure that all expenditures of the bond money for the jail were made in a manner consistent with the requirements of state, federal law including the ARRA. This resolution allowed Defendant Sledge to issue request for proposals ("RFPs"), request for quotations ("RFQs") and invitation for bids ("IFBs") on the project as long as they met standards established in the Wayne County Procurement Ordinance. There was no written process given to the defendant by the Building Authority to follow when creating and issuing these requests for services. AECOM was only involved in drafting bids for the general contractor. (Exhibit A-4, Board Meeting Minutes 2/22/11 Page 24).

The Building Authority, whose responsibility it was to build the jail, did not have the power to review the subcontractor's identity or qualifications. According to Defendant Collins, "we do not want co-employment." Who the general contractors chose as a subcontractor did not go to the Building Authority. Defendant Collins continued, "We will not be bringing forward any of the general contractor's subcontractors." (Exhibit A-4, Board Meeting Minutes 2/22/11, Page 2). The authority was only notified if there was a problem with the general contractor or AECOM with the subcontractor, then it would come back to the Building Authority. (Exhibit A-4, Board Meeting Minutes 2/22/11, Page 26).

There was no monthly disclosure requirement as discussed between AECOM and GHAFARI incorporated into this resolution that would show what percentage of Wayne County business were hired and how much of the bond money was being spent and how close they were in construction.

The Resolution also gave Defendant Sledge the authority to create a review committee for the issuance of RFPs, IFBs, and RFQs. The Procurement Ordinance of Wayne County was used to create a selection committee to review the RFPs after the Defendants Sledge and Collins drafted them. There was no process established by the Building Authority to select the committee members, to determine when the committee would meet, or the qualifications and experience the members had to have in the area of issuing RFPs for the building of the jail.

EVALUATION COMMITTEE

The evaluation committee was established to review the issuance of RFPs, IFBs, and RFQs. The evaluation committee would read each proposal, evaluate it and score it. This committee was separate from the oversight committee. Their job was to evaluate proposals that were submitted, determine if they were in the best interest of the Building Authority, and to determine if the services added significant value to the process of constructing the jail. According to Muddaser Tawakkul, Defendant Sledge could recommend individuals to sit on the evaluation committee, but Ms. Turkia Mullins lead the oversight of the committee. (Grand Jury Testimony, Tawakkul, 08/25/2014, Pages 15, 16 & 24).

How the members of this committee were selected was unfamiliar to the Mr. Tawakkul, (Grand Jury Testimony, Tawakkul, 8/25/2014, Page 15). Tawakkul stated, "How many members were picked for the Evaluation Committee, It has been – a process that has been established before I ever took over as Wayne County as Deputy Director of Purchasing."

All the members were also Wayne County employees with no construction or limited building experience.

Having the Oversight and Evaluation Committees meet separately was disastrous. These members were unskilled and not knowledgeable in the area of construction to secure qualified applicants to build the jail. Building Authority Board Member Saros, correctly stated, "I think the people on that committee (oversight) are great at what they do...but the construction knowledge on that committee is limited." (Exhibit B-4, Board Meeting Minutes 5/3/12, Page 12). "I don't think people on that committee, again other than Paula Anderson, can discuss a

construction issue with our construction manager at risk and know if that is a great deal or not.” (Exhibit B-4, Board Meeting Minutes 5/3/12, Page 13)

There was no procedure established if an RFP was rejected by either the Building Authority or the Wayne County Commission and on which body would review the rejection and what the recourse would be if a subcontractor was rejected.

Moreover, the Defendants chose the winning bids and only the winning bids were submitted to the Building Authority. The subcontractor’s bids were unknown to the Building Authority and could not be reviewed by them except if there was a dispute with the subcontractors and AECOM or the general contractor and the authority agreed to this plan. According to Board Member Saros, “It is our responsibility as the authority to build this facility, and to make sure that it is done properly.” (Exhibit B-4, Board Meeting Minutes 5/3/12, Pages 12-13)

On September 1, 2011, the Building Authority passed Resolution 11#035 approval of contract with Walbridge-dek Joint Ventures, as Construction Manager at Risk. This was based upon the Owner Representative recommendation to perform all Pre-Construction and Construction services, not to exceed \$220,000,000.

By September 1, 2011 the authority had passed two resolutions totaling \$245,000,000 for the AECOM, fee of \$25,000,000 to be the Program Manager for the project and to Walbridge-dek Joint Ventures as CMAR.

DEFENDANTS FAILURE TO INFORM THE AUTHORITY OF COST OVER RUNS OF THE JAIL

According to the testimony of Andrew Cupples, the principle for AECOM, who sent an email to Defendant Sledge on November 2, 2011. The email indicated that the cost of the project was estimated at \$332 million if the City of Detroit did not participate and \$349 million if the City did. Again this is a preliminary number that will be better finalized when we have the GMP. (People’s Exhibit 110).

Also included on the email were, Anthony Parlovecchio, the owner representative and Mark Moran of Ghafari. As the Owner Representative, he was the Building Authority’s entity for site problems and in this capacity Parlovecchio made sure that the owner’s best interest are served in construction related activities. In this capacity he had access to the Building Authority and never told them about the potential overruns contained in the email.

When AECOM entered into the contract with the Building Authority as program manager, it was recommended that the Building Authority would receive a monthly progress report detailing “what contracts have been let out by either AECOM and Ghafari or subcontractors; what percentage of those subcontracts were Wayne County businesses; how far they were in spending the (bond) dollars; and how close they were in construction.” The purpose of this report was to keep the authority informed monthly of the progress. (Exhibit A-4, Board Meeting Minutes, 2/22/11, Page 22).

AECOM failed to provide this report throughout the duration of the project. This was a duty to the Building Authority that was discussed when the contract was entered. Both the owner representative and the program manager had the responsibility of informing the Defendants of cost over runs to the Building Authority.

COST OF PROJECT NOT TIMELY DISCLOSED

According to the testimony of Eileen DeHart and James Saros , there was never any information provided to the Wayne County Building Authority that the jail project was exceeding its budget until June 2013.

The Building Authority had the responsibility of overseeing the building of the jail. They never required AECOM to file monthly reports with them to see how much money was being spent on the project.

When the owner representative was released, the Building Authority allowed AECOM, the program manager, to approve and sign all invoices for payment (Exhibit B-2, Letter of Understanding 3/16/2012).

The Building Authority approved a resolution by the Evaluation Committee to cancel the RFP for an owner representative because they believed the position was not in the best interest of the Building Authority, and that, such services did not add significant value to the process, despite the fact, that none of the members on the Evaluation Committee or Oversight Committee had extensive knowledge in construction.

The Building Authority's chairperson had the power, pursuant to Article II, Sections 3 & 4 of the Building Authority's By-Laws, to call a special meeting within 24 hours to transact any business or passage of a resolution by at least three members and demand more information from the parties involved and rescinded the resolution early in this project.

CANCELLED MEETINGS

The prosecutors allege that Defendant Sledge had ultimate authority to cancel Building Authority meetings. Article V, Section 6 of the Building Authority's Amended and Restates Articles of Incorporation states:

The Secretary shall keep the minutes of all meetings of the Commission, and of all committees and shall preside at meetings of the Commission in the absence of the Chairperson.

This section requires the Secretary to keep the minutes and implicitly grants the power to set the meetings and agenda of the Building Authority.

The setting of meetings by the Building Authority by the Defendant Sledge was unlawful and exceeded her responsibility and obligations as a CFO and as the Chief Administrator for the Building Authority. Resolution #11-008 does not expressly grant authority or impose a duty for her to set meetings for the Building Authority.

The establishing of meetings and cancelling meetings of the Building Authority by Defendant Sledge was in violation of the Articles of Incorporation for the Wayne County Building Authority and Resolution 11-008, as a matter of law.

THE ARRA

The American Recovery and Reinvestment Act of 2009 ("ARRA") is a federal stimulus package designed to aid state agencies in construction of infrastructures and other facilities. The ARRA demands a high level of transparency and oversight by the state agencies and contractors.

The Wayne County Consolidated Jail Project was funded by selling \$200 million dollars in recovery bonds pursuant to the American Recovery and Reinvestment Act. To achieve transparency in the use of ARRA funds, the ARRA, requires recipients and sub recipients to provide detailed reporting information on a quarterly basis. Failure to timely report information may subject the recipient's to severe fines and penalties. State agencies must be knowledgeable about the stringent compliance requirements attached to the ARRA funds.

A "recipient" is any entity that receives recovery funds directly from the federal government. In our case the Wayne County Building Authority is the recipient. The recipients must submit detailed information to the federal government quarterly (Public Law 111-5, Title XV, §1511). Moreover, for infrastructure investments the local agency must certify certain information the estimated total cost, the amount of covered funds to be use and a description of the investment.

The Building Authority had the responsibility under the ARRA to file quarterly reports with: (1) the total amount of ARRA funds received; (2) the amount of ARRA funds received and were expended; (3) a detailed list of all the projects or activities for which ARRA funds were expended, or obligated including the name of the project or activity; (4) a description of the project or activity, and an evaluation of the completion status of the project or activity; (5) an estimate of the number of jobs created and the number of jobs retained by the project or activity; (6) For infrastructure investment, the purpose, the total cost and rationale of the agency for funding the project with ARRA funds and the name of the person to contact at the agency if there are concerns with the infrastructure investment; and, (7) detailed information on any sub awards or sub grants awarded by the recipient valued above \$25,000.

Although an entity could delegate some reporting requirement to a contractor the entity has the ultimate responsibility for reporting all data required by the ARRA.

In our case, the Building Authority had the legal duty to monitor and document how the ARRA funds were spent, and provide quarterly reports to the federal government and not, the defendants, Sledge or Collins.

Resolution #11-008 states that Defendant Sledge was responsible for ensuring that all expenditures of bond proceeds were made in a manner that is consistent with the requirements of state and federal laws, including the ARRA. It relieved the defendant of any reporting duty required by the ARRA to assure transparency in spending those funds. This reporting of how the ARRA funds have been spent was not ministerial but required by the ARRA.

Although Defendant Sledge could assist the Building Authority in its reporting responsibility, the ultimate legal duty rested with the authority and could not be delegated.

PROCUREMENT

The County of Wayne did not have a procurement policy for Wayne County Consolidated Jail Program for over one year after selling the \$200 Million dollars Recovery Economic Bonds under the ARRA.

In a board meeting to the Building Authority, Defendant Collins stated, “You’re the entity that is procuring, not the County. You don’t have a procurement policy.” [Exhibit A-4, Board Meeting Minutes, 2/22/2011, Page 16]. This was explained to the authority in February 2011, the bonds were sold on December 20, 2010.

Resolution #11-008, passed in April 7, 2011 by the Building Authority stated, “The Building Authority intends to develop and adopt a Procurement Policy but has not yet to do so.”

There were no policies or procedures adopted by the Building Authority after receiving \$200 million to assure that the money spent was done in a manner which demonstrated transparency in the evaluation and selection of qualified vendors. This was crucial to ensure that all the stakeholders would follow the proper procedures and rules and have a clear and consistent understanding of the required regulations. Without these established guidelines consistency in the work procured is greatly undermined.

In 2012, the Wayne County Board of Authority ultimately did establish a Procurement Policy which addressed the manner in which contracts were processed and approved. The following is their procurement policy:

Procurement Policy: Procurement for the Authority will be handled in a manner providing fair opportunity to all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the Authority. The Authority's Chairperson has the vested authority to execute all Authority contracts, subject to the Authority's Board approval where required.

This vague undescriptive statement was included in all of the RFP’s issued for prospective vendors.

This Court finds that as a matter of law, that Resolution #11-008 failed to comply with the mandated reporting requirements of the ARRA, and could not be delegated the defendant. The Procurement policy adopted by the authority was inadequate.

LEGAL ANALYSIS OF CARLA SLEDGE

To be guilty of misconduct in office the actor must first be a "public officer." *People v Perkins*, 468 Mich. 448 (2003).

In order to determine if a position is a public office the following five elements must be established:

- (1) It must be created by the constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature.
- (2) It must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public
- (3) The powers conferred, and the duties discharged, must be defined, directly or impliedly by the legislative authority
- (4) The duties must be performed independently and without control of a superior power other than the law, unless they be those of an inferior or subordinate office, created or authorized by the legislature, and by it placed under the general control of a superior officer or body;
- (5) It must have some permanency and continuity, and not be only temporary or occasional

I. THE POSITION MUST BE CREATED BY THE LEGISLATURE OR BY A MUNICIPALITY OR OTHER BODY THROUGH AUTHORITY CONFERRED BY THE LEGISLATURE

The Wayne County Building Authority is a municipal entity. The authority to create the Wayne County Building Authority is found in the Constitution of Michigan of 1963, Article VII § 2 which states:

Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law, which shall among other things provide for the election of a charter commission. The law may permit the organization of county government in form different from that set forth in this constitution and shall limit the rate of ad valorem property taxation for county purposes, and restrict the powers of charter counties to borrow money and contract debts. Each charter county is hereby granted power to levy other taxes for county purposes subject to limitations and prohibitions set forth in this constitution or law. Subject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns.

Article III of the Amended and Restated Articles of Incorporation of the Building Authority sets forth the purpose, and states:

This authority is incorporated for the purpose of acquiring, furnishing, equipping, owning, improving, enlarging, operations and maintain a building or buildings, automobile parking lots or structures, recreational facilities, stadiums, and the necessary site or sites therefor, together with appurtenant properties and facilities necessary or convenient for the effective use thereof, for use for any legitimate purpose of the County, and to accomplish such other purposes as may be provided from time to time in the enabling act.

Article III, Section 4 of the By-Laws of the Building Authority states:

The Commission (the building authority members) shall have the power to engage and employ a director and such other staff and consultants, subject to appropriations as made by the Wayne County Commissions, as are needed to function as a competent and independent authority.

Section 4 authorizes the Commission (the building authority members) to employ individuals who can assist in their responsibilities as commissioners. The “Chief Administrator” position that the Defendant Sledge was given, pursuant to Resolution #11-008, was not ministerial. In this position, Defendant Sledge had the authority to use federal bond proceeds for engineering, architectural, legal and other expense necessary to build the jail.

She was also given the authority and power to draft and issue “any” and “all” RFPs, IFBs, and RFQs pursuant to the Wayne County Procurement Ordinance and the ARRA.

Article V, Section 1 sets for the obligations and selection of the members, and states:

The Authority shall be directed and governed by a governing body, consisting of five (5) members, known as the “Commission.” Each member of the Commission shall be appointed by the Chief Executive Officer of the County, subject to the approval or rejection by the Wayne County Commission. No member of the County Commission and any other officer or employee of the County shall be eligible for membership or appointment to the Commission.

This grant of authority and power made her a “de facto commissioner” which is precluded by the Articles of Incorporation establishing the Building Authority. This board did not have the right to grant those powers to the defendant.

II. IT MUST POSSESS A DELEGATION OF A PORTION OF THE SOVEREIGN POWER OF GOVERNMENT, TO BE EXERCISED FOR THE BENEFIT OF THE PUBLIC

The Court agrees that had the public would have benefited from the construction of the Wayne County Jail, which the Wayne County Building Authority was responsible to construct.

III. THE POWERS CONFERRED, AND THE DUTIES DISCHARGED, MUST BE DEFINED, DIRECTLY OR IMPLIEDLY BY THE LEGISLATIVE AUTHORITY

The delegations of authority to Defendant Sledge were not defined by the legislative authority. Resolution #11-008 gave the defendant unfettered control of the jail project. She was allowed to spend the bond proceeds for the purpose for which they were authorized.

There were no guidelines established by the Building Authority on how this task was to be accomplished. The Building Authority by statute was established for the following, as stated:

This authority is incorporated for the purpose of acquiring, furnishing, equipping, owning, improving, enlarging, operations and maintain a building or buildings, automobile parking lots or structures, recreational facilities, stadiums, and the necessary site or sites therefor, together with appurtenant properties and facilities necessary or convenient for the effective use thereof, for use for any legitimate purpose of the County, and to accomplish such other purposes as may be provided from time to time in the enabling act.

The defendant in her role as CFO was excluded from maintaining and overseeing any accounts that were associated with infrastructure.

The Code of Ordinances, County of Wayne, Ordinance No. 94-103, Section 69-2, states:

The chief financial officer shall not be required to establish and maintain accounts on infrastructure, fixed assets, including roads, bridges, curbs, gutters, sidewalks, drainage systems, lighting systems, and other similar assets which are immovable and of value only to the count. The chief financial officer shall, however, maintain such accounts for all parcels of property which fall outside of the required right-of-way of county roads and utilities.

Contrary to the representations that Defendant Collins made to the Building Authority, that he and the defendant had “done this many times before” was incorrect. The abovementioned purchasing ordinance precluded the Defendant Sledge from gaining the skill necessary to write,

issue, select proposals, and to assess how a quality bid for the construction of the jail should be chosen.

The Evaluation and Oversight Committees that were authorized in the resolution lacked the experience or knowledge to assist the defendants in bid selection to construct the jail.

These members were unskilled and not knowledgeable in the area of construction to secure qualified applicants to build the jail. Building Authority board member, Mr. Saros, correctly stated, "I think the people on that committee (oversight) are great at what they do... but the construction knowledge on that committee is limited." (Exhibit B-4, Board Meeting Minutes 5/3/12, Page 12) I don't think people on that committee, again other than Paula Anderson, can discuss a construction issue with our construction manager at risk and know if that is a great deal or not." (Exhibit B-4, Board Meeting Minutes 5/3/12, Page 13) at a board meeting held on (Exhibit B-4, Board Meeting Minutes 5/3/12, Page 21)

It was the Evaluation Committee that determined that the Owner Representative was not beneficial to the project and allowed Defendant Sledge to "continue to select necessary professionals in regard to construction, or inspecting architects, or any other necessary professional that might be needed to advise the County and the Oversight Committee. (Exhibit B-4, Board Meeting Minutes 5/3/12, Page 5).

IV. THE DUTIES MUST BE PERFORMED INDEPENDENTLY AND WITHOUT CONTROL OF A SUPERIOR POWER OTHER THAN THE LAW, UNLESS THEY BE THOSE OF AN INFERIOR OR SUBORDINATE OFFICE, CREATED OR AUTHORIZED BY THE LEGISLATURE, AND BY IT PLACED UNDER THE GENERAL CONTROL OF A SUPERIOR OFFICER OR BODY

The authority given to the Defendant Sledge to be responsible for ensuring that the bond proceeds were spent in a manner that was consistent with the requirements of state and federal laws for engineering, architectural, legal and other expenses was expansive. The resolution required that the Defendant establish a committee to review the bid proposals and then submit them to the authority for approval. The committee and or the authority's oversight did not allow the defendant to perform all of the duties granted to her pursuant to resolution 11-008 to be performed independently.

ACCORDING TO RESOLUTION #11-008:

BE IT FURTHER RESOLVED, that the CFO shall have the authority to create a review committee with respect to the issuance of such RFPs, IFBs, and RFQs, and that any recommendations resulting from such review will be submitted to the Authority's Board of Commissioners for its consideration for approval and execution of any contract.

V. IT MUST HAVE SOME PERMANENCY AND CONTINUITY, AND NOT BE ONLY TEMPORARY OR OCCASSIONAL

This was temporary position which would have ended when the jail was built or by the Wayne County Building Authority meeting and voting by a quorum of three individuals to resend the resolution granting the Defendant Sledge her authority her obligations.

Article II, Meetings, of the By-Laws of the Building Authority states:

Special meetings could be called within 24 hours by the Chairman or any 3 members.

Any 3 members of the commission shall constitute a quorum. A transaction of any business or passage of resolution requites a vote of at least 3 members.

Based upon the forgoing analysis this Court finds that the Defendant Sledge was not a public official in her capacity as "Chief Administrator" of the Wayne County Building Authority as a matter of law.

The charge of Misconduct in Office has the following elements: (1) The public officer must have committed an act which is itself wrong (malfeasance) or committed a lawful act in a wrong manner (misfeasance); (2) The public officer must have acted with a corrupt intent, with a sense of depravity, perversion or taint; and, (3) The public officer must have committed the misconduct in the actual exercise of the duties of his office or under color of his office.

The People cite *People v Hardwick*, 258 Mich. App. 238 for the proposition that a public officer's actions constituted malfeasance and misfeasance with corrupt intent despite the fact that the prohibited conduct was not a violation of his statutory duties. The police officer, was acting "under the color of his office" when he obtained advanced copies of an examination for a sergeant's promotional test.

In our case, the Defendant Sledge was employed as the Wayne County Chief Financial Officer, in this capacity her only responsibility to the Wayne County Building Authority was to publish the Wayne County Articles of Incorporation in the print Detroit Free Press and file a copy of them with the County Clerk.

Article VI of the Articles of Incorporation of the Building Authority, states:

The Chief Financial Officer of the County of the incorporation unit shall cause a copy of these Amended and Restated Articles of Incorporation to be published once in the DETROIT PRESS, being a newspaper circulated within the incorporation unity and a copy of these Amended Restated Articles shall be filed with the County Clerk.

The defendant was not an employee or public officer of the Wayne County Building Authority. Her duties as the CFO of Wayne County did not legally obligate her to perform any duty except as stated in Article VI.

The delegation of authority by the Wayne County Building Authority by designating her to be Chief Administrator of the Wayne County Building Authority exceeded the authority of the Wayne County Building Authority. This resolution gave her authority to spend bond money for the purpose for which the bonds were authorized, including any engineering, architectural, legal, and other expenses, draft and issue proposals, create a committee to review the proposed contracts, and be in compliance with federal regulations of the ARRA made her a de facto commissioner and was an illegal delegation of authority.

People v Coutu (On Remand), 235 Mich. App. 695, 706-707. 599 N.W. 2d 556 (1999), quoting *Perkins & Boyce*, at 543 defined corruption in the context of misconduct:

"Corruption in this context means, a "sense of depravity, pervasion, or taint." "Depravity" is defined as "the state of being "depraved" which is defined as "morally corrupt or perverted. "Random House Webster's College Dictionary (1977). "Perversion" is "the act of perverting," and the term "perverted" includes in its definition "misguided; distorted; misinterpreted" and "turned from what is considered right or true. The definition of "taint" includes "a trace of something bad or offensive. Pursuant to the definitions, a corrupt intent can be shown where there is intentional or purposeful misbehavior or wrongful conduct pertaining to the requirements and duties of the office by the public officer."

The People have failed to demonstrate that Defendant Sledge acted with a corrupt intent when she purportedly tried to fulfil her obligations as the Chief Administrator of the Wayne County Building Authority.

When the Wayne County Building Authority issued recovery bonds for \$220 million dollars pursuant to the federal regulations of the ARRA, there was no procurement policy established to allocate the money to qualified contractors or established a reporting policy of how they spent the money to contractors which was required by federal law.

The Building Authority awarded a no bid contract to a firm, AECOM based upon an assessment made by their subsidiary company hired by the County five to six years prior.

The owner representative hired to protect the interest of the County and the Wayne County Building Authority had 25 years in construction but had no experience in building a correctional facility. The owner representative was chosen by the Building Authority primarily because he performs the job at the lowest rate.

All of the aforementioned decisions were made without the Defendant's knowledge or participation at the board meetings.

Resolution #11-008 gave Defendant Sledge unfettered control of spending \$220 million dollars in bond money without ascertaining whether she had experience in the management of infrastructure accounts, which she did not, and by ordinance was specifically excluded from overseeing.

It gave her authority to spend \$220 million in a manner that was consistent with the requirements of state and federal laws for engineering, architectural, legal and other expenses was expansive.

It gave her authority to prepare proposals for construction projects that she had no prior experience in doing. The Oversight Committee and the Evaluation Committee empaneled to assure transparency and compliance with the spending of the federal bond money were all employees of Wayne County who possessed limited construction experience.

At a Building Authority meeting held in May 2012, where Defendant Sledge did not attend, the Evaluation Committee recommended that the jail project did not require an owner's representative. Board Member Saros indicated the following:

So your recommendation then is to we're not replacing the owner's rep, and you're leaving it to the good judgment of Miss Sledge to bring in the professionals as she sees fit, but with no obligation to do so. It is true that everyone on that committee is an employee of Wayne County... and is great at what they do... I think that the construction knowledge on the committee is limited.. It is our responsibility as an authority to build this facility, and that everyone is treated fairly...But I think it is important if this is looked back on to not say that it was strictly county employees that were making these decisions. I think you are putting yourselves in a perilous position at this time. I think we're naïve to not think that that is going to happen. (Exhibit B-4, Board Meeting Minutes 5/3/12, Pages 7-17).

The failure of this project did not involve corrupt intent by Defendant Sledge, but was a culmination of individuals with a good intent, to see the Wayne County Jail built in a timely manner, but who lacked the training and skill to execute their desire. It was, at the most, negligence per se by all interested parties who had the authority and responsibility to construct the Wayne County Consolidated Jail Project and this Court so finds.

For the forgoing reasons this Court finds that the Defendant Sledge was not a public official in her role as the Chief Administrator and that her actions were not a result of malfeasance or misfeasance. There was no corrupt intent and that as a matter of law, this Court is not satisfied that the Bill of Particulars provided by the People has cured the deficiencies in the indictment and HEREBY grant the Defendant Sledge's Motion to dismiss the indictment.

**THE MOTION TO DISMISS THE INDICTMENT AGAINST CARLA SLEDGE IS
HEREBY GRANTED.**

STEVEN COLLINS

Defendants Steven Collins and Carla Sledge both were employed by Wayne County. Steven Collins was employed as an Assistant Wayne County Corporation Counsel. Carla Sledge was the Chief Financial Officer for Wayne County ("CFO"). They both worked on the Wayne County Consolidated Jail Project from October 2010 until June 2013.

On September 12, 2014, both defendants were charged by an Indictment after the convening of a one man grand jury with the following charges:

COUNT 1: Common Law Offenses - Misconduct in Office (MCL.750.505)

COUNT 2: Common Law Offense - Misconduct in Office (MCL.750.505)

COUNT 3: Public Officer - Willful Neglect of Duty (MCL. 750.478)

COUNT 4: Public Officer - Willful Neglect of Duty (MCL.750.478)

In March 2015 both defendants filed a motion to dismiss the indictments against them. In regard to Defendant Collins, this Court found that as a matter of law, he was not a public official and dismissed Counts 1 & 2. Counts 3 & 4 were also dismissed because this Court found that Defendant Collins was a public employee and that the willful neglect of duty counts did not apply to him.

In regard to Defendant Sledge this Court found as a matter of law that she was a public officer, and had willfully neglected her duty to honestly and fully inform a legislative body the Wayne County Commission and the Wayne County Building Authority with accurate financial information regarding the costs over runs of the jail.

This Court allowed the prosecution to file a bill of particulars, with respect to Defendant Sledge as to the sufficiency of the acts alleged in Counts 1 & 2. Counts 3 & 4, the prosecution was also allowed to file a bill of particulars to cure the deficiencies found in these counts.

On appeal, the Michigan Court of Appeals affirmed the order denying Sledge's motion to dismiss and ordering the prosecution to file a bill of particulars. They further affirmed the motion to dismiss the misconduct in office charges against Collins and remanded it for this Court to allow the prosecution to file a bill of particulars to specify what duty he breached regarding the willful neglect of duty charges.

The office of Wayne County Corporation Counsel was not specifically created by the Michigan Legislature or the Michigan Constitution. Michigan Compiled Law 45.515(a) grants a county permission to create the office of corporation counsel by charter, and it states:

The office of corporation counsel, public defender, auditor general, and all other offices, boards, commissions, or departments necessary for the efficient operation of county government. The charter may also provide for the power and authority to establish, by ordinance, other offices, boards, commissions, and departments as may become necessary.

The Wayne County Charter, Article IV, Chapter 3, Part I, Section 4.312 defines the powers and duties of the corporation counsel, and it states:

Except as otherwise provided by law or this Charter, the department shall provide legal services to the CEO, and all County agencies, and represent the County in all civil actions in which the County is a party.

The Department of Corporate Counsel is a discretionary department which was established to “provide legal representation, advice, and counsel to Wayne County, its departments, elected officials, and employees so they can legally fulfill their official duties.” (Wayne County’s Mission Statement for Corporation Counsel). There is no creation of the Department of Corporate Counsel or definition of the powers and their duties by the Michigan Legislature.

Counts 3 and 4 of the indictment against Collins provide:

COUNT 3: PUBLIC OFFICER- WILLFUL NEGLECT OF DUTY

On or between October 2010 up to and including June 2013, did willfully neglect to perform the duty to fully and honestly inform a legislative body, to wit: the Wayne County Commission, a duty enjoined upon him by State law and/or the Wayne County Charter and/or Wayne County Ethics Ordinances, contrary to 750.478

COUNT 4: PUBLIC OFFICER WILLFUL NEGLECT OF DUTY

On or between October 2010 up to and including June, 2013, did willfully neglect to perform the duty to fully and honestly inform a legislative body, to wit: the Wayne County Building Authority, a duty enjoined upon him by State law and/or the Wayne County Charter and/or Wayne County Ethics Ordinances, contrary to 750.478

Thus, the statute provides that to convict a defendant, the prosecution must establish the following:

- (1) That the defendant was a public officer or “any person holding any public trust or employment,
- (2) That the defendant had a duty that is “enjoined by law” and
- (3) That the defendant willfully neglected to perform such duty. MCL 750.478

After filing several Bill of Particulars the People of the State of Michigan claims are twofold. Their claims provide that Defendant Collins failed to inform the Commission and the Building Authority of cost over runs of the jail project, and, that Defendant Collins breached his duty to provide legal advice to the Building Authority by aiding and abetting Carla Sledge by limiting information reaching the Building Authority and controlling the agenda items.

FAILURE TO INFORM THE COMMISSION AND BUILDING AUTHORITY OF COST OVER RUNS OF THE JAIL

The Wayne County Building Authority, a municipal entity with its own Articles of Incorporation and corporate existence apart from the Wayne County Commission sold \$200 million in Recovery Economic Development Bonds under the Federal American Recovery and Reinvestment Act ("ARRA") to construct a new Wayne County jail facility on December 22, 2010.

On February 22, 2011, the Wayne County Building Authority (herein referred as the ("Building Authority")) had a board meeting where the members and Defendant Collins met to discuss the hiring of an Owner Representative and AECOM, as the program manager. It was discussed and agreed that the program manager would provide to the Wayne County Commission and the Building Authority, on a monthly basis, with the contracts that had been let out by them or subcontractors; show what percentage of those contracts were businesses in Wayne County; show exactly how far they were in spending the dollars (of the bond); and, show how close they were in construction. (Exhibit A-4, Board Meeting Minutes 2/22/2011, Page 22).

According to Defendant Collins, he thought that it was "very important to keep the commission informed so a recommendation to the authority is to allow a monthly progress report to go forward to the commission on that kind of activity." (Exhibit A-4, Board Meeting Minutes 2/22/2011, Page 22).

At this meeting, Anthony Parlovecchio was introduced and the board decided to hire him as the Owner Representative. According to Defendant Collins, "the Owner's Representative, the authority's entity who will now be able to make day to day decision... He's able to make decisions on what can and cannot be done." (Exhibit A-4, Board Meeting Minutes 2/22/2011, Page 24)

As early as November 2, 2011, Andrew Cupples, principal for the Jail Project, architecture/program manager sent an email to Defendant Collins and copied Anthony Parlovecchio which stated, "Attached is the budget update... Note that the total without the City is \$332M and with the city is \$349M. Again, this is still a preliminary number that will be finalized when we get the GMP." Mr. Parlovecchio, as the Owner Representative had an affirmative duty to inform the Wayne County Building Authority of this information and failed to do.

Mr. Cupples, in a grand jury testimony, stated, "My recollection when we had oversight meetings and other things which include Carla, Valerie, Steve and a variety of County officials, there was always a discussion of when do we go back to talk about the fact that it's going to be more costly to meet the mission of the project... The County recognized (as early as November 11) that they were going to need to look at increasing the second bond at some point." (Grand Jury Testimony, Cupples, 8/5/2014, Page 75)

The possibility of the project being over budget was discussed at a Building Authority meeting on May 3, 2012, where Andrew Cupples reported that subcontracts would bring the potential total up to \$250 million. (Exhibit B-4, Board Meeting Minutes 5/3/12, Page 47)

The failure of AECOM and the Owner Representative to provide monthly reports to the Building Authority and the Wayne County Commission regarding the progress and expenditures of the project could have alerted them of the potential costs overruns, this was not done, although, AECOM agreed to provide the reports.

The Owner Representative who was copied on the email from Mr. Cupples to Defendant Collins had an affirmative duty to report this to the Building Authority when he received this information, but he did not.

Members of the Oversight Committee and Building Authority members were aware of the potential of the jail project exceeding the \$220 million dollar budget and allowed the project to continue.

The People's Bill of Particulars alleges Defendant Collins had a duty to inform the Building Authority and the Wayne County Commission of the cost overruns of the jail has not been established. The Owner Representative had an affirmative duty to inform the Building Authority and failed to do so, he was the entity's representative. The email by Mr. Cupples was sent in November 2011 and he was fired in December 2011.

According to the evidence presented, various County officials, members of the Oversight Committee and the Building Authority were aware of the potential cost overruns of the jail and did not interrupt or address these issues.

As a matter of law, the Defendant's duty to inform the Wayne County Building Authority and the Commission of the cost over runs has not been established.

**THE DEFENDANT AIDED AND ABETTED CARLA SLEDGE IN THE
DISSEMINATION OF INFORMATION TO THE WAYNE COUNTY AUTHORITY BY
CONTROLLING AND CANCELLING THEIR MEETINGS**

According to Eileen DeHart, the secretary-treasurer and Building Authority member, there were no meetings during the first three years of her membership on the Building Authority. (Grand Jury Testimony, DeHart, 1/13/2014, Page 7).

According to the testimony of Audricka Grandison, she was employed in Management & Budget and for the Building Authority. (Grand Jury Testimony, Grandison, 12/10/13, Page 4).

In this capacity she was responsible for setting the agenda for them in September 2011. Grandison stated in her testimony that, "I'm the holder of the records." She said she would contact the members, and that the content of the agenda came from the following individuals: Steven Collins, June Lee, Robert Newton, Ron Moran (AECOM), and Marianne Daskus. (Grand Jury Testimony, Grandison, 12/10/13, Page 9 & 11).

According to Grandison, a meeting would be cancelled if there aren't any agenda items to be discussed. "They, all get together, the five that you named (Steven Collins, June Lee, Robert Newton, Ron Moran (AECOM) and Marianne Daskus) and they would decide there wasn't a meeting, and Carla would make the last decision." (Grand Jury Testimony, Grandison, 12/10/13, Page 18).

She furthered testified that she could not ever remember a time when the Building Authority members submitted agenda items for their own meetings. (Grand Jury Testimony, Grandison, 12/10/13, Page 21).

The Wayne County Building Authority, as a municipal authority, has its own by-laws, and incorporation status separate from the County. Article 1, Section 1 of the Building Authority's By-Laws states:

The business and property of the Wayne County Building Authority shall be managed and directed by the Commission for the Wayne County Building Authority.

Article II, Meetings, Section 3 of the By-Laws, states:

Special meetings shall be held whenever called by direction of the Chairman or any three members of the commission on twenty-four hours written notice of the time place of meeting or with no notice whatever should all be present and waive notice by consent.

The abovementioned by-laws suggest that it is the Chairman or any member of the Commission who would establish the agenda for their meetings. They were appointed to make decisions about the business and property in Wayne County. The practice of having other Wayne County employees compose the agenda is inconsistent with the spirit and content of the by-laws.

Article V, Section 6 of the By-Laws states:

The secretary shall keep the minutes of all meetings of the Commission, and of all committees thereof, in books provided for that purpose, shall attend to the giving, serving and receiving of all notices or process of or against the Authority, may sign with the Chairperson in the name of the Authority all contracts and bonds authorized by commission and, when so ordered, shall affix the seal of the Authority thereto if a seal has been adopted. The Secretary shall have charge of all book and records, all of which shall at all reasonable times be open to inspection and examination by the Commission or any member thereof, and shall in general perform all the duties incident to the Secretary's office.

The Secretary is selected by the members of the Building Authority.

It is the Secretary that is the holder of the record of the Wayne County Building Authority, it is the responsibility of this person, to give notices of the meetings to other board members, keep minutes, and preside at their meetings in the absence of the Chairperson.

The setting of the agenda, meetings, cancellation and responsibilities is established by the by-laws and cannot be delegated to County employees who are not members of the Building Authority.

This Court finds that the practice of allowing non board members of the Wayne County Authority to establish the agenda, schedule and cancel their meetings was not a delegable duty and its practice violated their by-laws.

The People^{* *} have failed to demonstrate that the canceling of Wayne County Board meetings was done with a corrupt intent and that Defendant Collins aided in abetted Defendant Sledge in canceling these meetings to conceal the cost overruns of the Wayne County Consolidated Jail Project.

The Michigan Supreme Court in *People v. Waterstone*, 296 Mich.App. 121, held that the intent for the misdemeanor statute of Willful Neglect by public officer is the identical to the corrupt intent needed to establish the common law offense of the felony, Misconduct in Office.

"Willful neglect of duty and corrupt nonfeasance are effectively one in the same for our purposes. If a public officer willfully neglects to perform a legal duty, he is engaged in corrupt behavior." *Id.*, Page 436.

There are no facts provided in the Bill of Particulars, which supplements the Indictment and demonstrates that the defendant had a legal duty, expressed or implied, to the Wayne County Building Authority and the Wayne County Commission to provide information regarding the financial status of the Wayne County Consolidated Jail Project; and, that he knowingly and purposely engaged in wrongful conduct to wit: failing to inform the Wayne County Commission and the Building Authority of cost overruns of the jail; and, that the defendant aided and abetted Carla Sledge in the dissemination of information to the Wayne County Authority by controlling and cancelling their meetings.

The Michigan Court of Appeals allowed the People an opportunity to file a Bill of Particulars, this Court finds that as a matter of law the information contained within the Bill of Particulars, failed to cure the defects in the Indictment.

**THE MOTION TO DISMISS THE INDICTMENT AGAISNT STEVEN COLLINS IS
HEREBY GRANTED.**


For the foregoing reasons discussed, the People have failed to cure the deficiencies' in the indictment filed against both defendant's Carla Sledge and Steven Collins.

THE MOTION TO DISMISS THE INDICTMENT AGAINST CARLA SLEDGE AND STEVEN COLLINS ARE HERBY **GRANTED**.

Dated:

NOV 21 2018


Circuit Court Judge

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
BY 
DEPUTY CLERK

Approved, §CAO

Original - Court
1st copy - Prosecutor
2nd copy - Defendant/Juvenile

3rd copy - Defendant/Juvenile attorney
4th copy - Arresting agency

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	ORDER OF ACQUITTAL/DISMISSAL OR REMAND	CASE NO. 14-008080-02-FH
ORI MI-821095J	Court address 1441 St. Antoine - Detroit, MI 48226	Courtroom 802
		Court telephone no. 313-224-5440

Police Report No.

<input checked="" type="checkbox"/> The State of Michigan THE PEOPLE OF <input type="checkbox"/>
--

v

Defendant/Juvenile name, address, and telephone no. Steven M Collins No Known Address		
CTN/TCN	SID	DOB

☐ Juvenile In the matter of _____

Count	CRIME	CHARGE CODE(S) MCL citation/PACC Code
I	COMMON LAW OFFENSES	750.505-C
II	COMMON LAW OFFENSES	750.505-C
III	PUBLIC OFFICERS - WILFUL NEGLECT OF DUTY	750.478

IT IS ORDERED:

- ☒ 1. The case is dismissed on the motion of the court ☐ with ☒ without prejudice.
- ☐ 2. Defendant's/Juvenile's motion for dismissal is granted ☐ with ☐ without prejudice and the case is dismissed.
- ☐ 3. Defendant's/Juvenile's motion for dismissal is granted in part ☐ with ☐ without prejudice and the following charge(s) is/are dismissed: _____

- ☐ 4. Defendant/Juvenile is acquitted on all charge(s) in this case after trial by ☐ judge ☐ jury.
- ☐ 5. Defendant/Juvenile is acquitted after trial by ☐ judge ☐ jury only on the following charge(s): _____

☐ 6. Defendant/Juvenile shall be immediately discharged from confinement in this case.

☒ 7. Bond is canceled and shall be returned after costs are deducted.

☐ 8. Bond/bail is continued on the remaining charge(s).

☐ 9. The case is remanded to the _____ district court for further proceedings for the following reasons:

☐ 10. If item 4 is checked, the arresting agency shall destroy the fingerprints and arrest card according to law.

SEPTEMBER 04, 2015

Date

Judge

Vonda R. Evans

43475

Bar no.

If item 1, 2, or 4 is checked, the clerk of the court shall advise the Michigan State Police Criminal Justice Information Center of the disposition as required under MCL 769.16a.

TO THE DEFENDANT: Your fingerprints and arrest card will be destroyed by the Michigan State Police within 60 days of the date of this order when permitted by MCL 28.243.

Approved: SCAO

Original - Court
1st copy - Prosecutor
2nd copy - Defendant/Juvenile3rd copy - Defendant/Juvenile attorney
4th copy - Arresting agency

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT WAYNE COUNTY	ORDER OF ACQUITTAL/DISMISSAL OR REMAND	CASE NO. 14-008080-02-FH
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ORI MI-821095J Court address 1441 St. Antoine - Detroit, MI 48226 Courtroom 802 Court telephone no. 313-224-5440

Police Report No.

<input checked="" type="checkbox"/> The State of Michigan
THE PEOPLE OF
<input type="checkbox"/>

v

Defendant/Juvenile name, address, and telephone no.
Steven M Collins
No Known Address

CTN/TCN SID DOB

☐ Juvenile In the matter of

Count	CRIME	CHARGE CODE(S) MCL citation/PACC Code
IV	PUBLIC OFFICERS - WILFUL NEGLECT OF DUTY	750.478

IT IS ORDERED:

- ☒ 1. The case is dismissed on the motion of the court ☐ with ☒ without prejudice.
- ☐ 2. Defendant's/Juvenile's motion for dismissal is granted ☐ with ☐ without prejudice and the case is dismissed.
- ☐ 3. Defendant's/Juvenile's motion for dismissal is granted in part ☐ with ☐ without prejudice and the following charge(s) is/are dismissed: _____

- ☐ 4. Defendant/Juvenile is acquitted on all charge(s) in this case after trial by ☐ judge ☐ jury.
- ☐ 5. Defendant/Juvenile is acquitted after trial by ☐ judge ☐ jury only on the following charge(s): _____

☐ 6. Defendant/Juvenile shall be immediately discharged from confinement in this case.☒ 7. Bond is canceled and shall be returned after costs are deducted.☐ 8. Bond/bail is continued on the remaining charge(s).☐ 9. The case is remanded to the _____ district court for further proceedings for the following reasons:☐ 10. If item 4 is checked, the arresting agency shall destroy the fingerprints and arrest card according to law.

SEPTEMBER 04, 2015

Date

Judge

Vonda R. Evans

43475

Bar no.

If item 1, 2, or 4 is checked, the clerk of the court shall advise the Michigan State Police Criminal Justice Information Center of the disposition as required under MCL 769.16a.

TO THE DEFENDANT: Your fingerprints and arrest card will be destroyed by the Michigan State Police within 60 days of the date of this order when permitted by MCL 28.243.

MC 262 (3/09) ORDER OF ACQUITTAL/DISMISSAL OR REMAND

MCL 769.16a, MCR 6.419, MCR 7.101(M)

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARLA SLEDGE,

Defendant-Appellant.

UNPUBLISHED

July 5, 2016

No. 329626

Wayne Circuit Court

LC No. 14-008080-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN COLLINS,

Defendant-Appellant.

No. 329686

Wayne Circuit Court

LC No. 14-008080-FH

Before: METER, P.J., and SHAPIRO and O'BRIEN, JJ.

PER CURIAM.

In these consolidated appeals, defendants were each charged by grand jury indictment with crimes arising out of alleged misconduct in the management of the Wayne County Jail Project. During the pendency of the project, from October 2010 until June 2013, defendant Carla Sledge was the Chief Financial Officer (CFO) for Wayne County and defendant Steven Collins served as an Assistant Wayne County Corporation Counsel. Counts 1 and 2 of the indictment charged defendants with the common law felony offense of misconduct in office, MCL 750.505, and Counts 3 and 4 charged defendants with willful neglect of duty, MCL 750.478. Defendants moved to dismiss their respective indictments. The trial court ruled that the indictment as to Sledge lacked the necessary specificity and directed the prosecution to file a bill of particulars. As to Collins, the trial court concluded that he was not a public officer, and so dismissed the

charges against him. In Docket No. 329626, Sledge appeals by leave granted¹ the trial court's decision in her case, and in Docket No. 329686, the prosecution appeals by right the trial court's decision in Collins' case. For the reasons stated in this opinion, we affirm in Docket No. 329626, and we affirm in part and reverse in part in Docket No. 329686.

I. MISCONDUCT IN OFFICE

Both Sledge and Collins were charged with the common law felony of misconduct in office. As to each, the indictment reads:

Count 1 . . . : Common Law Offenses

on or between October, 2010 up to and including June, 2013, did commit an indictable offense at common law, to wit: Misconduct In Office by having a duty to fully and honestly inform a legislative body, to wit: the **Wayne County Commission**, and did intentionally testify, make statements, advise, communicate, create, and/or prevent, hinder and/or obstruct information to said legislative body, which contained materially false and/or misleading information involving the subject of said reporting duty, to wit: the cost(s) and/or financial status of the Wayne County Consolidated Jail Project; contrary to MCL 750.505. . .

Count 2 . . . : Common Law Offenses

on or between October, 2010 up to and including June, 2013, did commit an indictable offense at common law, to wit: Misconduct In Office by having a duty to fully and honestly inform a legislative body, to wit: the **Wayne County Building Authority**, and did intentionally testify, make statements, advise, communicate, create, and/or prevent, hinder and/or obstruct information to said legislative body, which contained materially false and/or misleading information involving the subject of said reporting duty, to wit: the cost(s) and/or financial status of the Wayne County Consolidated Jail Project; contrary to MCL 750.505. . . [Emphasis in original.]

MCL 750.505 provides that “[a]ny person who shall commit any indictable offense at the common law, for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony[.]” “The offense of misconduct in office was an indictable offense at common law.” *People v Coutu (On Remand)*, 235 Mich App 695, 705; 599 NW2d 556 (1999). The elements of the common-law offense of misconduct in office are:

(1) the person must be a public officer, (2) the conduct must be in the exercise of the duties of the office or done under the color of the office, (3) the acts were

¹ *People v Sledge*, unpublished order of the Court of Appeals, entered January 4, 2016 (Docket No. 329626).

malfeasance or misfeasance, and (4) the acts must be corrupt behavior. [*People v Carlin (On Remand)*, 239 Mich App 49, 64; 607 NW2d 733 (1999) (citing Perkins & Boyce, Criminal Law (3d ed.), pp. 540–545).]

At common law, a public officer could be convicted of misconduct in office “(1) for committing any act which is itself wrongful, malfeasance, (2) for committing a lawful act in a wrongful manner, misfeasance, or (3) for failing to perform any act that the duties of the office require of the officer, nonfeasance.” *People v Perkins*, 468 Mich 448, 456; 662 NW2d 727 (2003). Further, as explained in *People v Milton*, 257 Mich App 467, 471; 668 NW2d 387 (2003):

[C]orruption, as an element of misconduct in office, is used in the sense of depravity, perversion or taint. Pursuant to the definitions [of depravity, perversion, and taint], a corrupt intent can be shown where there is intentional or purposeful misbehavior or wrongful conduct pertaining to the requirements and duties of office by an officer. If the acts alleged against defendants demonstrate a tainted or perverse use of the powers and privileges granted them, or a perversion of the trust placed in them by the people of this state, . . . they are sufficient to sustain a charge of misconduct in office. [Citations and quotation marks omitted; alterations in original.]

A. SLEDGE

The trial court found that with regard to Sledge, Counts 1 and 2 of the indictment:

fail to identify the breach of duty by the defendant Sledge in providing financial information to the Wayne County Commission and/or [the Wayne County Building Authority] WCBA and to show that it was done with a corrupt intent and constitute misfeasance or malfeasance within the common law Misconduct of Office charge. The Indictment [fails] to document the omissions, conduct, and actions by the defendant Sledge that would support the Misconduct in Office.

On appeal, Sledge asserts that the indictment should have been dismissed because she has no specific duty to “fully and honestly inform” the Wayne County Commission or the WCBA. In response, the prosecution argues that a specific duty is not required because misconduct in office can be committed if a defendant was acting under the color of his or her office. We agree that the second element of misconduct in office does not require the prosecution to prove that defendant was exercising a duty specifically enjoined by law. Instead, it is sufficient if the defendant was exercising a duty of his or her office or was acting “under the color of the office.” *Carlin (On Remand)*, 239 Mich App at 64. Thus, we reject Sledge’s argument that the indictment is insufficient as a matter of law because it did not allege the existence of a specific, official duty that she was required by law to perform.

Nevertheless, we agree with the trial court that the indictment was deficient because it failed to identify with specificity what actions Sledge took or did not take that constituted misconduct in office and how those actions or inactions fall within her position’s duties. Rather than dismissing the indictment as to Sledge, however, the trial court granted the prosecution an opportunity to cure the deficiencies by filing a bill of particulars. Sledge argues that allowing a

bill of particulars is not permissible because the indictment was insufficient as a matter of law. We, however, agree with the trial court that the indictment against Sledge can be amended or supplemented with a bill of particulars to cure the deficiency.

MCL 767.76 governs the amendment of indictments. It provides in pertinent part:

. . . The court may at any time before, during or after the trial amend the indictment in respect to any defect, imperfection or omission in form or substance or of any variance with the evidence. If any amendment be made to the substance of the indictment or to cure a variance between the indictment and the proof, the accused shall on his motion be entitled to a discharge of the jury, if a jury has been impaneled and to a reasonable continuance of the cause unless it shall clearly appear from the whole proceedings that he has not been misled or prejudiced by the defect or variance in respect to which the amendment is made or that his rights will be fully protected by proceeding with the trial or by a postponement thereof to a later day with the same or another jury. . . .

“The statute does not authorize the court to permit the changing of the offense nor the making of a new charge by way of amendment. . . . It permits only cure of defects in the statement of the offense which is already sufficiently charged to fairly apprise the accused and the court of its nature.” *People v Sims*, 257 Mich 478, 481; 241 NW 247 (1932). Thus, “[a] new offense may not be added to an [indictment] by a motion to amend.” *People v McGee*, 258 Mich App 683, 688; 672 NW2d 191 (2003).² In addition, MCL 767.75 provides that an indictment shall not be:

quashed, set aside or dismissed for any 1 or more of the following defects: (First) That there is a misjoinder of the parties accused; (Second) That there is a misjoinder of the offenses charged in the indictment, or duplicity therein; (Third) *That any uncertainty exists therein*. . . . If the court be of the opinion that the third defect exists in any indictment, it may order that the indictment be amended to cure such defect. [Emphasis added.]

Finally, MCR 6.112 provides in pertinent part:

(E) **Bill of Particulars.** The court, on motion, may order the prosecutor to provide the defendant a bill of particulars describing the essential facts of the alleged offense.

* * *

(H) **Amendment of Information.** The court before, during, or after trial may permit the prosecutor to amend the [indictment] unless the proposed

² *McGee* dealt with the amendment of an information, not an indictment. However, MCR 6.112(A) provides that the rules and laws that apply to informations also apply to indictments.

amendment would unfairly surprise or prejudice the defendant. . . . [Emphasis in original.]

In this case, it is apparent that the ordered bill of particulars does not allow the prosecution to add a new charge or offense against Sledge. However, it does permit the prosecution to remedy the lack of specificity as to the existing charges. With this limitation, we find no error in the trial court's decision to permit the prosecution to file a bill of particulars. After the prosecution files its bill of particulars, Sledge may again challenge the sufficiency of the indictment³ at which time the trial court will better be able to assess whether the alleged misconduct occurred while Sledge was exercising the duties of her office or acting under the color of her office. Further, the trial court will better be able to assess whether the third element of misconduct in office, corrupt behavior, was alleged with sufficient specificity.

B. COLLINS

The trial court dismissed the misconduct in office charges against Collins after finding that as a matter of law Collins was not a public officer.⁴ The first element of the common law offense of misconduct in office is that the defendant must be a public officer. *Carlin (On Remand)*, 239 Mich App at 64. Because Collins was not a public officer, we affirm.

In *People v Coutu*, 459 Mich 348, 354; 589 NW2d 458 (1999), our Supreme Court identified five elements to assist the courts in determining whether an individual is a public officer. The Court observed that to be considered a public officer, the individual's position must satisfy the following criteria:

(1) It must be created by the Constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature; (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public; (3) the powers conferred, and the duties to be discharged, must be defined, directly or impliedly, by the legislature or through legislative authority; (4) the duties must be performed independently and without control of a superior power other than the law, unless they be those of an inferior or subordinate office, created or authorized by the legislature, and by it

³ Sledge also asserts that Counts 1 and 2 of the indictment should have been dismissed because MCL 750.505 expressly provides that it *does not* apply if the alleged misconduct is punishable under any other Michigan statute. She asserts that to the extent that Counts 1 and 2 sufficiently allege misconduct, the misconduct is punishable under MCL 750.478 (willful neglect of duty) and MCL 750.489 (false statement of public finances). We do not reach this issue because we find that the indictment lacks specificity and that the prosecution must file a bill of particulars to provide greater specificity. However, after the prosecution has filed its bill of particulars, Sledge may raise this argument anew before the trial court.

⁴ The trial court found that unlike Collins, Sledge, in her role as CFO, was a public officer. Sledge did not challenge that finding on appeal, and we see no need to sua sponte address it.

placed under the general control of a superior officer or body; (5) it must have some permanency and continuity, and not be only temporary or occasional. [*Id.* (citation and quotation marks omitted).]

The existence of “[o]ath and bond requirements” may also assist in making this determination. *Id.* at 355.

We also consider MCL 15.181 which provides statutory definitions of the terms “public officer” and “public employee.” MCL 15.181(e) defines a “public officer” as “a person who is *elected or appointed*[⁵] to any of the following:”

(i) An office established by the state constitution of 1963.

(ii) A public office of a city, village, township, or county in this state.

(iii) A department, board, agency, institution, commission, authority, division, council, college, university, school district, intermediate school district, special district, or other public entity of this state or a city, village, township, or county in this state. [Emphasis and footnote added.]

MCL 750.181(d) defines the term “public employee” as “an employee of this state, an employee of a city, village, township, or county of this state, or an employee of a department, board, agency, institution, commission, authority, division, council, college, university, school district, intermediate school district, special district, or other public entity of this state or of a city, village, township, or county in this state, but does not include a person whose employment results from election or appointment.”

In light of the relevant factors and the statutory definitions, we agree with the trial court’s conclusion that Collins was not a public officer. The Department of Corporation Counsel was created in § 4.311 of the Wayne County Charter which provides that “[t]he director of the department is the Corporation Counsel. The director and deputy director shall be attorneys licensed to practice law in Michigan.”⁶ By contrast, the position of assistant corporation council

⁵ Wayne County Ordinances, § 40-3 defines an “appointed official” as “a public servant who is not elected, but rather is appointed by an elected official and holds either a compensated or uncompensated position.”

⁶ Based on the authority of Const 1963, art 7, § 2, “[a]ny county may . . . adopt . . . a county charter in a manner and with powers and limitations to be provided by general law. . . .” In accordance with 1966 PA 293, the Legislature enacted the charter counties act (CCA), MCL 45.501 *et seq.* “Every county adopting a charter under the provisions of [the CCA] shall be a body corporate.” MCL 45.501. “Wayne County adopted a home-rule charter which took effect on January 1, 1983, establishing a county government with a chief executive officer in accordance with the [CCA.]” *Lucas v Wayne Co Election Comm*, 146 Mich App 742, 744; 381 NW2d 806 (1985); see also Wayne County Charter, § 1.112.

is not specifically referenced in the charter. Section 4.312 of the Wayne County Charter states that the Department of Corporation Counsel is to “provide legal services to the CEO, and all County agencies, and represent the County in all civil actions in which the County is a party,” and § 4.313 permits the Wayne County Commission and CEO to “obtain the services of separate legal counsel on a temporary basis.” However, the charter does not establish a permanent office of assistant corporation counsel or define qualifications, powers or duties pertaining to that office other than those that may be defined by the Corporation Counsel. Accordingly, Collins, in his role as assistant corporation counsel, is properly characterized as a public employee and not a public officer. Because he was not a public officer, the trial court did not err in dismissing the misconduct in office charges against him.

II. WILLFUL NEGLECT OF DUTY

We next address whether the trial court erred in denying Sledge’s motion to dismiss the charges of willful neglect of duty and in granting Collins’ motion to dismiss the charges of willful neglect of duty.

Counts 3 and 4 of the indictment against Sledge and Collins provide:

Count 3 . . . : Public Officer – Wilfull [sic] Neglect of Duty

on or between October, 2010 up to and including June, 2013, did willfully neglect to perform the duty to fully and honestly inform a legislative body, to wit: the **Wayne County Commission**, a duty enjoined upon him by State law and/or the Wayne County Charter and/or Wayne County Ethics Ordinances; contrary to MCL 750.478. . . .

Count 4: Public Officer – Wilfull [sic] Neglect of Duty

on or between October, 2010 up to and including June, 2013, did willfully neglect to perform the duty to fully and honestly inform a legislative body, to wit: the **Wayne County Building Authority**, a duty enjoined upon him by State law and/or the Wayne County Charter and/or Wayne County Ethics Ordinances; contrary to MCL 750.478. . . . [Emphasis in original.]

MCL 750.478 provides:

When any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, where no special provision shall have been made for the punishment of such delinquency, constitutes a misdemeanor[.]

Thus, the statute provides that to convict a defendant, the prosecution must establish (1) that the defendant was a public officer or “any person holding any public trust or employment,” (2) that the defendant had a duty that is “enjoined by law,” and (3) that the defendant willfully neglected to perform such duty. MCL 750.478.

In this case, the indictment identifies a very lengthy timeframe and wholly fails to identify what duty defendants allegedly were enjoined by law to perform. Instead, it asserts in general terms that state law, the Wayne County Charter, or the Wayne County Ethics Ordinances enjoined a duty upon defendants to fully and honestly inform the Wayne County Commission and the WCBA. There is nothing in Counts 3 and 4 that identify with any specificity what topics defendants were required to report upon, nor is it clear which portions, if any, of the cited legal authorities established the duty to report.

The trial court rightly found that, with respect to Sledge, the willful neglect of duty charges were deficient and it allowed for the prosecution to cure the defect by filing a bill of particulars. For the same reasons that the bill of particulars was proper with regard to the misconduct in office charges, we also conclude that the order to file a bill of particulars is proper with regard to the willful neglect of duty charges against Sledge.

The trial court, however, found that a bill of particulars would be unable to cure the deficiencies in willful neglect of duty charges against Collins and appeared to conclude that the charges were inapplicable to him because he was a public employee, not a public officer. We disagree. As it is written, the indictment asserts all of the requirements of the charge of willful neglect of duty. That is, it provides that Collins was enjoined by law to perform a duty and that he willfully neglected to perform said duty. What it lacks is specificity. Although the court concluded that Collins' only duty was to provide legal advice to the WCBA, without greater specificity in the indictment, it is impossible to determine whether the duty to provide legal advice was in fact breached. Accordingly, although the charges of willful neglect of duty against Collins are deficient, the prosecution should be allowed the opportunity to cure the defects in a bill of particulars.

III. CONCLUSION

We affirm the trial court's order denying Sledge's motion to dismiss and ordering the prosecution to file a bill of particulars. We also affirm the trial court's order granting Collins' motion to dismiss the misconduct in office charges, but reverse the trial court's dismissal of the charges of willful neglect of duty against Collins, and remand for further proceedings. On remand, the trial court shall allow each defendant the opportunity to challenge the sufficiency of the indictment after the respective bill of particulars has been filed. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Douglas B. Shapiro
/s/ Colleen A. O'Brien

STATE OF MICHIGAN

IN THE THIRD JUDICIAL CIRCUIT COURT FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE MICHIGAN

Plaintiff

Vs

Circuit No. 14-008080-01

Hon. Vonda R. Evans

CARLA SLEDGE

STEVEN M. COLLINS

Defendants,

Robert A. Moran (P46346)
Jennifer Douglas (P72748)
Mark Hindelang (P72770)
James Gonzales (P36359)
Assistant Wayne County Prosecuting Attorney
Frank Murphy Hall of Justice
1441 St. Antoine St. FL 11
Detroit, Michigan 48226
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Harold Gurewitz (P14468)
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(313) 628-4733

James C. Thomas (P23801)
Attorney for the Defendant
12900 Hall Road, Suite 350
Sterling Heights, Michigan 48313
(586) 726-1000

OPINION

The Defendants Steven Collins and Carla Sledge both were employed by Wayne County. Steven Collins was employed as an Assistant Wayne County Corporation Counsel. Carla Sledge was the Chief Financial Officer for Wayne County ("CFO"). They both worked on the Wayne County Consolidated Jail Project from October 2010 until June 2013. The People allege that both defendants, Collins and Sledge had a duty to report to the Wayne County Commission and/or to the Wayne County Building Authority and they were public officers for the purpose of the Misconduct in Office Statute,

On September 12, 2014 both defendant were charged by an Indictment after the convening of a one man grand jury with the following charges:

COUNT 1: Common Law Offenses- Misconduct in Office (MCL.750.505)

COUNT 2: Common Law Offenses- Misconduct in Office (MCL.750.505)

COUNT 3: Public Officer- Willful Neglect of Duty (MCL. 750.478)

COUNT 4: Public Officer- Willful Neglect of Duty (MCL.750.478)

On Monday, March 30, 2015 the Defendant, Steven Collins filed a Motion to Dismiss the Indictment for the following reasons:

Count 1 and II –

a. Count 1 and II should be dismissed because MCL.750.505 is unconstitutionally vague as applied in this case.

b. Count I and II should be dismissed because the alleged conduct charged cannot be charged pursuant to MCL.750.505, Misconduct in Office based upon a theory of malfeasance or misfeasance.

c. Counts I and II should be dismissed because the position of staff attorney and assistant corporation counsel does not constitute a public office as set forth in *People v Coutu*, 459, Mich. 348, (1999).

Count III and IV-

These counts should be dismissed because they fail to satisfy the constitutional, statutory, and court rule requirements for Indictment set forth in *People v Adams*, 389 Mich. At 243-44; MCL.767.45 and MCR. 6.112.

The Defendant, Carla Sledge filed a Motion to Dismiss the Indictment for the following reasons:

Count 1 and 2- COMMON LAW MISCONDUCT IN OFFICE

- a. Count 1 and 2 should be dismissed because they are constitutionally vague as applied in this case because neither identifies in any particulars
 - (1) the office held by Ms. Sledge from which the claimed duty breached arises;
 - (2) the alleged offending statements or omissions;
 - (3) any duty alleged to have been violated other than a general “duty to fully and honestly inform a legislative body; or
 - (4) the actual subject matter of the alleged false or misleading statements made over the 33 month time period of the offenses, other than the “cost and financial status of the Wayne County Consolidated Jail Project.”

Count 3 and 4- PUBLIC OFFICER- WILLFUL NEGLECT OF DUTY

a. Is unconstitutional as applied in this case because the Indictment:

- (1) fails to provide notice of the conduct proscribed, allowing for arbitrary prosecution;
- (2) fails to give notice of a corrupt act;
- (3) fails to provide notice of the public office held by Ms. Sledge;
- (4) fails to allege a duty that arises from the office held by Ms. Sledge

Because of the forgoing deficiencies, the Indictment does not provide Ms. Sledge with the basic requirements of due process: notice that would give a person of ordinary intelligence a reasonable opportunity to know what is prohibited and the essential informant needed to prepare for a defense.

- b. That neither count 3 & 4 identifies the subject matter of what she willfully failed to disclose to either the Wayne County Commission or the Wayne County Building Authority ("WCBA").
- c. That count 3 and 4 must be dismissed because the Indictment fails to allege the essential element of the duty neglected, because the Wayne County Charter and/or Wayne County Ethics Ordinance or any state law or regulation fails to provide for a duty that has been violated by negligent conduct.
- d. That Pursuant to MCL 750.505, an individual cannot be prosecuted for a common law offense if the alleged conduct is expressly subject to prosecution under another Michigan statute.

Both defendants are charged under MCL 750.505 Misconduct in Office which states;

"Any person who shall commit any indictable offense at common law, for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony,"

In *People v Carlin* (On Remand), 239 Mich.App. 49, 607 N.W.2d (1999), the Michigan Court of Appeals stated that the elements of the common-law offense of misconduct in office are:

- (1) the person must be a public officer;
- (2) the conduct must be in the exercise of the duties of the office or done under the color of office;
- (3) the acts were malfeasance or misfeasance;
- And
- (4) the acts must be corrupt;

To be guilty of misconduct in office the action must first be a "public officer": People v Perkins 468 Mich. 448 (2003). People V Coutu 459 Mich.358,589 N.W.2d 458(1999).

In order to determine if a position is a public office the following five elements must be established.

- (1) it must be created by the constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature;
- (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public;
- (3) the powers conferred, and the duties to be discharged, must be defined, directly or impliedly by the legislative authority;
- (4) the duties must be performed independently and without control of a superior power other than the law, unless they are those of an inferior or subordinate office; created or authorized by the legislature, and by it placed under the general control of a superior officer or body;
- (5) it must have some permanency and continuity and not be only temporary or occasional. separately;

The determination of whether the defendant is a public officer and interpretations and applications of statutes are to be decided by the trial judge as a matter of law.

This Court's analysis will apply the applicable law to Defendant Collins and Defendant Sledge separately.

In Coutu, several Oakland County Sheriffs Deputies were charged with Misconduct in Office. The charges were based upon the deputies granting work-release inmates preferential treatment in exchange for gifts and favors.

The Supreme Court reversed the lower courts finding that the Oakland County Sheriff's Deputies were not public officers for the purposes of the misconduct in office statute.

MCL 750.505 is the codification of common law crimes for which no provision has been expressly made by statute. It reads as follows:

"Any person who shall commit any indictable offense at the common law, for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony punishable by imprisonment in the state prison.MCL 750.505"

STEVEN COLLINS

**I. ~~THE POSITION MUST BE CREATED BY CONSTITUTION OR BY THE~~
LEGISLATURE OR CREATED BY A MUNICIPALITY, OR OTHER BODY
THROUGH AUTHORITY CONFERRED BY THE LEGISLATURE**

The Department of Corporation Counsel was first created by the Wayne County Commission through authority conferred by the Michigan Legislature. The Wayne County Office of Corporation Counsel was created by County Charter through authority conferred by the legislature.

The Wayne County Board of Commission created the Department of Corporation Counsel in June 1971. The authority of the County Commission to create the Office of Corporation Counsel was done pursuant to MCL 49.71.; Mich. Const. art VII, sections 2 and 8.

The creation of the Department of Corporation Counsel was codified by the original 1981 Wayne County Charter. The Wayne County Charter, Ch. 3 Sec. 4.311 states:

“The department of Corporation Counsel is hereby created. The director of the department is the Corporation Counsel. The director and deputy director shall be attorney’s licensed to practice law in Michigan.”

The authority to create a County Charter is found in the Michigan Constitution. Mich. Const. Art VII Sec.2. of the Michigan Constitution states:

“Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law...The law may permit the organization of county government in form different from that set forth in this constitution...”

Subject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns.” Mich. Const. Art VII Sec.2.

This Court agrees that by the plain language of the Constitution the county powers were conferred from the legislature to the county to establish the Wayne County Charter which provided for the Wayne County Office of Corporation Counsel.

II. THE POSITION MUST POSSESS A DELEGATION OF A PORTION OF SOVEREIGN POWER OF GOVERNMENT, TO BE EXERCISED FOR THE BENEFIT OF THE PUBLIC

The department of Corporation Counsel was first created by the Wayne County Commission resolution through authority conferred by the legislature.

MCL 49.71 provides:

"The board of supervisors of any county by a majority vote of the members elect may employ an attorney to represent the county in civil matters, whenever the board determines that the prosecuting attorney is unable to properly represent the county." The board of supervisors is commonly known as the board of commissioners.

It was the creation of the department of Corporation Counsel pursuant to the authority granted in MCL 49.71 that was at issue in Wayne Co. Pros. Atty. v Wayne Co. Bd. Of Comm'rs, 44 Mich. App. 144 (1972).

At issue was the County's Commissioners desire to have its own law department separate from the prosecutor's office representing the county in civil matters in which the county was a party. The Commission by a majority vote passed a resolution which found that the Wayne County Prosecutors Office was unable to properly represent the county and created the Wayne County Department of Corporation Counsel. It was created to serve as legal counsel in all civil matters that the county was a party. The resolution also attempted to transfer the personnel from the prosecutor's civil division to the department of Corporation Counsel.

It was the prosecutor's position that the resolution exceeded the scope of MCL 49.71 and that the office of Prosecuting Attorney was created by the Michigan Constitution Article VII section 4 and that its powers and duties were provided by law pursuant to MCL 49.153.

Article VII section 4 of the Michigan Constitution established the office of the prosecuting attorney for each county. A prosecuting attorney is to be elected for a four year term.

The powers and duties are provided by law. MCL 49.153. This statute states that the prosecuting attorney is to:

"Appear for the state or county and prosecute or defend in all the courts of the county, all prosecutions, suits, applications and motions whether civil or criminal, in which the state or county may be an interested party."

The trial court did find invalid the attempt to remove the civil division of the prosecutor's office and its personnel to the Department of Corporation Counsel. The trial court further held that

Commission did not exceed its authority by establishing the Office of Corporation Counsel and it was not limited to an ad hoc basis.

The Michigan Court of Appeals affirmed the trial court and expanded on the trial courts analysis which stated in part:

“In construing the Legislative intention regarding this matter, it must be assumed that the Legislature intended to enable the commission to employ counsel in a way and for a purpose that would best serve the public interest. The Court is satisfied that the intention of an informed Michigan Legislature, ... was that the commissioner’s would be empowered to act upon public business, having available to them legal counsel who could provide steady, continuing, informed legal advice on a broad spectrum of complex legal questions.” Id. at 154.

The creation of the Department of Corporation Counsel was codified by the 1981 Wayne County Charter chapter 3 Sec. 4.311 which states:

“The Department of Corporation Counsel is hereby created. The director of the department is the Corporation Counsel. The director and deputy director shall be attorney’s licensed to practice law in Michigan.”

The authority to create a county charter is found in the Michigan Constitution. Mich. Const. art VII Sec. 2 Article VII, sec. 2 of the Michigan Constitution which states:

“Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law...

The law may permit the organization of county government in forms different from that set forth in this constitution...

Subject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns.” Mich. Const. art VII Sec. 2.

The powers conferred to and the duties to be discharged by the Office of Corporation Counsel are defined by the Wayne County Charter and Wayne County Ordinance 49-1. This authority is given to the county pursuant to Article VII, section 2 of the Michigan Constitution which allows counties to frame, adopt, or amend a county charter with the powers and limitations provided by general law.

Wayne County Ordinance 49-1 states:

(a) Except as otherwise provided in this chapter, the department of corporation counsel shall provide legal services to and is authorized to retain outside legal services on behalf of and in representation of the County of Wayne, the county executive; and all county elected or appointed

official; employees; departments; divisions; officers; agencies; and instrumentalities and their directions, trustees, officers and employees in matters in which he, she or it is involved as a result of an official act or duty of office with prior consent of the Wayne County Commission Counsel, ... in matters in which it is involved as a result of an official act or duty of office.

(b) Except as otherwise provided in this chapter, the Wayne County Commission Counsel shall provide legal services to ... representation of the county commission in matters in which it is involved as a result of an official act or duty of office.

Section 4.312 of the Wayne County Charter sets forth the powers and duties of the department of Corporation Counsel. **4.312 Power and Duties:**

“Except as otherwise provided by law or this Charter, the department shall provide legal services to the CEO, and all county agencies and represent the county in all civil actions in which the County is a party”

The power to bind the County in a contractual matter rests exclusively with the Wayne County Commission and the Wayne County Executive.

Wayne County Charter 3.115(1 -3) states;

Powers and duties of the Commission shall be exercised by ordinances if required by law or this Charter; otherwise they will be exercised by resolution. In addition to other powers and duties prescribed in this Charter, the Commission may:

(3) Approve the making of all contracts by the County.

Complier Comments:

“Subsection 3 was implemented by the Contracting Ordinances (84-143 ...) by which certain routine contacting authority is delegated to the CEO.”

This Court finds as a matter of law, that the position of Assistant Wayne County Corporation Counsel was not conferred a sovereign power to enter contracts. The clear and plain duty imposed upon the Wayne County Department of Corporation Counsel is to provide legal representation to the CEO and other designated county officials on civil matters involving the county. . His legal advice was not directly exercised for the benefit of the public and his duties where not performed independently.

**III. THE POWERS CONFERRED, AND THE DUTIES TO BE DISCHARGED,
MUST BE DEFINED, DIRECTLY, OR IMPLIEDLY, BY THE
LEGISLATURE OR THROUGH LEGISLATIVE AUTHORITY**

The powers conferred to and the duties to be discharged by Wayne County Department of Corporation Council are defined by the Wayne County Charter and Wayne County Ordinance 49-1. This authority is given to the county pursuant to Article VII, section 2 of the Michigan Constitution which allows counties to frame, adopt, or amend a county charter with the powers and limitations provided by general law.

Wayne County Ordinance 49-1 states:

(a) "Except as otherwise provided in this chapter, the department of corporation counsel shall provide legal services to the County of Wayne, the county executive; and all county elected or appointed official; employees; departments; divisions; officers; agencies; and instrumentalities and their directions, trustees, officers and employees in matters in which he, she or it is involved as a result of an official act or duty of office with prior consent of the Wayne County Commission Counsel, ...in matters in which it is involved as a result of an official act or duty of office.

(b) Except as otherwise provided in this chapter, the Wayne County Commission Counsel shall provide legal services to ... representation of the county commission in matters in which it is involved as a result of an official act or duty of office".

Section 4.312 of the Wayne County Charter sets forth the powers and duties of the department of Corporation Counsel. **4.312 Power and Duties:**

"Except as otherwise provided by law or this Charter, the department shall provide legal services to the CEO, and all County agencies and represent the County in all civil actions in which the County is a party".

This Court finds that the powers and duties of the Department of Corporation Counsel are conferred, and the duties to be discharged, are defined, directly or impliedly, by the legislature or through legislative authority.

IV. ~~THE DUTIES OF THE POSITION MUST BE PERFORMED INDEPENDENTLY AND WITHOUT CONTROL OF A SUPERIOR POWER OTHER THAN THE LAW, UNLESS THEY BE THOSE OF AN INFERIOR OR SUBORDINATE OFFICE, CREATED OR AUTHORIZED BY THE LEGISLATURE, AND BY IT PLACED UNDER THE GENERAL CONTROL OF A SUPERIOR BODY~~

The department of Wayne County Corporation Counsel was not specifically created by the Michigan Legislature or the Michigan Constitution. Michigan Compiled Law 45.515(a) grants a county permission to create the office of corporation counsel by charter:

“The office of corporation counsel, public defender, auditor general, and all other offices, boards, commissions or departments necessary for the efficient operation of county government. The charter **may** also provide for the power and authority to establish, by ordinance, other officers, boards, commissions, and departments as may become necessary.”

The Wayne County Charter, 4.312 defines the powers and duties of the Corporation Counsel: “...The department **shall** provide legal services to the CEO, and all County agencies, and represent the county in all civil actions in which the county is a party.”

The Department of Corporate Counsel is a discretionary office which was established to provide legal advice and counsel to benefit Wayne County departments and elected officials, so they can legally fulfill their official duties. **Wayne County Mission Statement for Corporation Counsel.** There is no creation of the Wayne County Office of Corporate Counsel or definition of the powers and their duties by the Michigan Legislature.

By contrast the Michigan Constitution expressly established the office of Sheriff and Prosecuting Attorney. Michigan Constitution Article 7 Sec. 4 states:

“There **shall** be elected for a four- year term in each organized county a sheriff, a county clerk, a county treasurer, a register of deed and a prosecuting attorney, whose duties and powers **shall** be provided by law.”

In *Coutu*, The Court of Appeals found that both the powers and duties of the office of Sheriff exercised by them where expressly established by the Legislature.

MCL 51.75; MSA 5.868 defines the power and duties of the sheriff by the Legislature:

“The sheriff **shall** have the charge and custody of the jails of his county; and of the prisoners in the same; and shall keep them himself, or by his deputy or jailer.”

MCL 51.70; MSA 5.863 is an authorization by the legislature to establish a subordinate and inferior body placed under the general control of the superior body, to wit: the sheriff's office :

"Each sheriff may appoint 1 or more deputy sheriffs at the sheriff's pleasure, and may revoke those appointments at any time."

The office of Prosecuting Attorney is created by the Michigan Constitution Article 7 Sec. 4 states;

" There shall be elected for a four- year terms in each organized county a sheriff, a county clerk, treasurer, register of deeds and a prosecuting attorney, whose duties and powers shall be established by law."

Moreover, the Prosecutor's Office powers and duties are established by the Legislature. MCL 49.153 states:

"Appear for the state or county, and prosecute or defend in all the courts of the county, all prosecutions, suits, applications and motions whether civil or criminal, in which the state or county may be a party or interested."

The Michigan Legislature expressly authorizes the Office of Prosecuting Attorney to hire as many assistant prosecuting attorneys as necessary to fulfil the administration of justice.

MCLA 49.31 Sec. 1 states:

"In each county of the state of Michigan, the board of supervisors of such counties, at their regular annual meeting, may, by resolution authorize the appointment by the prosecuting attorney of said county of as many assistant prosecuting attorneys as said board of supervisors shall deem necessary, and shall in addition authorize the appointment by said prosecuting attorney of such investigating officers, clerks, stenographers and other clericals employs as said board of supervisors shall deem necessary."

In the case at bar, the office, duties, and the ability to hire lawyers to fulfill the duties and obligation to the department of Corporation Counsel are not expressly defined by the Michigan Constitution or by the Michigan Legislature.

V. IT MUST HAVE SOME PERMANENCY AND CONTINUITY, AND NOT BE ONLY TEMPORARY OR OCCASSIONAL

This Court finds that the position of Assistant Wayne County Corporation Counsel was not temporary or occasional.

This Court finds that as a matter of law under the Coutu analysis, defendant Steven Collins is an employee and not a public officer.

CARLA SLEDGE

The Defendant, Carla Sledge was employed as the Chief Financial Officer for Wayne County and worked on the Wayne County Consolidated Jail Project from October 2010 until June 2013.

On September 12, 2014, the defendant was charged by an Indictment after the convening of a one man grand jury with the following charges:

COUNT 1: Common Law Offenses- Misconduct in Office (MCL.750.505)

COUNT 2: Common Law Offenses- Misconduct in Office (MCL.750.505)

COUNT 3: Public Officer- Willful Neglect of Duty (MCL. 750.478)

COUNT 4: Public Officer- Willful Neglect of Duty (MCL.750.478)

MCL 750.505 is the codification of common law crimes for which no provision has been expressly made by statute: It reads as follows;

"Any person who shall commit any indictable offense at the common law, for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony punishable by imprisonment in the state prison.MCL 750.505"

To be guilty of misconduct in office the actor must first be a "public officer". People v Perkins 468 Mich. 448 (2003).

In order to determine if a position is a public office the following five elements must be established.

- (1) it must be created by the constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature;
- (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public;
- (3) the powers conferred, and the duties to be discharged, must be defined, directly or impliedly by the legislative authority;

-
- (4) the duties must be performed independently and without control of a superior power other than the law, unless they be those of an inferior or subordinate office, created or authorized by the legislature, and by it placed under the general control of a superior officer or body;
-
- (5) it must have some permanency and continuity, and not be only temporary or occasional.

**I. IT MUST BE CREATED BY THE CONSTITUTION OR BY THE
LEGISLATURE OR CREATED BY A MUNICIPALITY OR OTHER BODY
THROUGH AUTHORITY CONFERRED BY STATUTE**

The position of Chief Financial Officer was created by County Charter through authority conferred by the legislature... The position of Chief Financial Officer is created by section 4.331 of the Wayne County Charter which states:

"The department of Management and Budget is hereby created. The director of the department is the Chief Financial Officer. The director shall be appointed by the CEO and serves at the pleasure of the CEO".

The authority to create the Wayne County Charter is found in the Michigan Constitution. Michigan Constitution act VII Sec. 2 which states:

"Any County may leave, adopt, amend or repeal a County Charter in a manner and with powers and limitation to be provided by general law.

The law may permit the organization of county government in a form different from that set forth in the constitution...

Subject to law, a County Charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns." Mich. Const. art VII section 2.

Wayne County Charter Article IV Sec. 4.111 establishes the office of the Chief Executive Officer it states:

"The Chief Executive Officer (CEO) is the head of the executive branch of County government."

4.112 Power and Duties

- (a) The executive and administrative power of the County is vested in the CEO. The CEO has power and duty to;
 - (1) Supervise, coordinate, direct and control all county facilities, operations, and functions except as otherwise provided by law or this Charter;

COMPLIERS' COMMENTS:

The Chief Executive Officer (CEO) has very substantial administrative authority over all County departments and operations, and functions except as otherwise provided by law or this Charter.

Section 4.331 of the Wayne County Charter created the department of Management and Budget. The director of the department is the Chief Financial Officer. It states:

"The director of the department Management & Budget is the Chief Financial Officer. The director shall be appointed by the CEO and serve of the pleasure of the CEO.

This court agrees that by the plain language of the Constitution, the powers conferred to a County to establish a County Charter are created by authority conferred by the legislature which provided for the creation of the position of Chief Financial Officer.

**II. IT MUST POSSESS A DELEGATION OF A PORTION OF THE
SOVEREIGN POWER OF GOVERNMENT TO BE EXERCISED FOR THE
BENEFIT OF THE PUBLIC**

Section 4.331 of the Wayne County Charter created the department of Management and Budget. The director of the department is the Chief Financial Officer.

It states that:

"The director of the department Management & Budget is the Chief Financial Officer. The director shall be appointed by the CEO and serve of the pleasure of the CEO. Approval by omission of the appointed is not regard."

Section 4.332 Establish the Powers and Duties of the CFO:

4.332 Powers and Duties

"The department of Management and Budget has powers and duties to:
effectuate the provisions of Article V of this chapter;
implement administrative procedures and practices required by the CFO: and
supervise and direct other activities of the division of the department.

The CFO has the power to initiate removal the director of division's within the department of Management and Budget.

a. Assessment and Equalization

The division of Assessment and Equalization is hereby created with the department of Management and Budget. The director may be removed for cause by the CFO with the approval of the majority of the Commission.

The division has powers and duties to:

Assist the County Commission with the equalization of assessment of property subject to taxation in the County in accordance with law.

Prepare reports and other documents required by law; and

Enter into contracts with political subdivisions within the County to provide assessing, tax roll preparations, tax billing or other related services

(a) The division has powers and duties to:

- (1) Establish a central purchasing system; and
- (2) Manage and control all purchasing of the County to insure their cost effectiveness and efficiency.

The powers of and duties of the CFO to initiate removal of the director of Assessment and Equalizations whose duties require it to assist the county commission with assessments of property subject to taxation; preparing reports required by law; and entering contracts with subdivisions within the County to provide assessing, tax roll preparations, tax billing is an extension of the CEO's powers to the CFO.

Article V Section 5.111 states:

Wayne County shall employ generally accepted principles for account audits, and reporting appropriate to local government as required by law in the conduct of its financial officers.

Ordinance 94.103 requires that the Chief Financial Officer Establish and maintain a fixed Assets Account Group consistent with generally accepted principles of accounting,

- (1) Implement administrative by procedure and practices required by the CEO
- (2) Supervise and direct the activities of the division of the department. The charter and accompanying ordinances require the CFO to establish and implement **accounting** procedures appropriate to local governmental in the conduct of its financial affairs.

This Court holds that the aforementioned powers and duties of the CFO are to carry out the executive powers and duties as a subordinate of the CEO. This position is a delegation of the executive authority vested in the CEO of the County from the Michigan Constitution to the CFO. It is also an extension of sovereign authority. The responsibility of the CFO to oversee Assessment and Equalization department which provides property assessments and taxation services to political subdivisions located in the County are designed to provide a benefit to the public.

Moreover, the CFO oversaw all purchasing and established accepted principles for auditing in the county which are designed to insure cost effective benefits to the public.

This court finds that Defendant Sledge's position of CFO as a matter of law constituted a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public.

**III. THE POWERS CONFERRED, AND THE DUTIES TO BE DISCHARGED
MUST BE DEFINED , DIRECTLY, OR IMPLIEDLY BY THE
LEGISLATURE OR THROUGH LEGISLATIVE AUTHORITY**

The powers conferred to and the duties to be discharged by the Wayne County Chief Financial Officer are defined by the Wayne County Charter and by ordinances.

5.111 Financial Management Principles

"Wayne County shall employ general accepted principles of accounting, auditing, and reporting, appropriate to local government and as required by law, in the conduct of its financial affairs."

Ordinance 94-103 requires that the Chief Financial Officer establish and maintains a Fixed Asset Account Group, consistent with generally accepted principles of accounting.

The CFO is also responsible for keeping a ledger of all payments and encumbrances in Wayne County and to establish procedures for expenditures of funds in which Wayne County is a party to any contract, lease, deed, or other instrument of value.

5.143 Disbursement Procedure

"Expenditure may be made and a contractual obligation incurred only if an unencumbered and allotted appropriation is available. The Chief Financial Officer shall maintain an appropriations and allotments ledger, including a record of encumbrances. The CEO, in accordance with this Charter and as provided by law, shall establish a system of accounts and specify uniform accounting procedures and procedures for the expenditures of funds. Payments shall be made by the Treasurer only if authorized by the Chief Financial Officer and only if the funds are available for the expenditure."

4.334 Purchasing

The CFO has authority over purchasing:

(a) The division of Purchasing is hereby created, in the department of Management and Budget.

(b) The division has powers and duties to:

(1) establish a central purchasing system; and

(2) manage and control all purchasing of the County to insure their cost effectiveness and efficiency.

This Court finds that the powers and duties of the Chief Financial Officer are conferred, and the duties to be discharged, are defined, directly or impliedly, the legislature or through legislative authority.

IV. THE DUTIES OF THE POSITION MUST BE PERFORMED INDEPENDENTLY AND WITHOUT CONTROL OF A SUPERIOR POWER OTHER THAN THE LAW. UNLESS THEY BE THOSE OF AN INFERIOR OR SUBORDINATE OFFICE, CREATED OR AUTHORIZED BY THE LEGISLATURE, AND BY IT PLACE UNDER THE GENERAL CONTROL OF A SUPERIOR BODY

The office of Wayne County Chief Financial Officer was not specifically created by the Michigan Legislature or the Michigan Constitution. However Michigan Compiled Law 45.515(a) grants a County permission to create the office of Chief Financial Officer by Charter:

“The department of corporation counsel, public defender, auditor general, and all other offices, boards. Commissions or departments necessary for the efficient operation of county government. The Charter **may** also provide for the power and authority to establish, by ordinance, other officers, boards, commissions, and departments as may become necessary.”

The position of Chief Financial Officer is created by section 4.331 of the Wayne County Charter which states:

“The department of Management and Budget is hereby created. The director of the department is the Chief Financial Officer. The director shall be appointed by the CEO and serves at the pleasure of the CEO”.

4.332 Powers and Duties:

The department of Management and Budget has powers and duties to:

- (1) effectuate the provisions of Article V of this Chapter;
- (2) implement administrative procedures and practices required by the CEO; and
- (3) supervise and direct the activities of the divisions of the department

The office of Wayne County Chief Financial officer is a discretionary office provided by the Wayne County Charter to implement accepted accounting principles to aid departments within Wayne County and to oversee all purchasing payments for the County. The office and the

powers and duties of this office are not created by the Michigan Legislature expressly. It is however a subordinate office authorized by the legislature.

Article V Section 5.111 specifically vests the CFO with the exclusive authority to establish accounting, auditing, and reporting procedures as required by law, in the conduct of its financial affairs.

Article V Section 5.111 states:

Wayne County shall employ generally accepted principles of accounting, auditing and reporting appropriate to local government as required by law, in the conduct of its financial affairs. .

Ordinance 94.103 requires that the Chief Financial Officer to establish Fixed Assets Account Group consistent with generally accepted principles of accounting,

The charter and accompanying ordinances require the CFO to establish and implement accounting procedures appropriate to local governmental in the conduct of its financial affairs.

The CFO is also responsible for keeping a ledger of all payments and encumbrances in Wayne County and to establish procedures for expenditures of funds in which Wayne County is a party to any contract, lease, deed, or other instrument of value.

The Wayne County Charter future vests the CFO with the responsibility for establishing a central purchasing system.

4.334 Purchasing

Moreover, the CFO has the duty to manage and control all purchasing activities within the County. The CFO pursuant to Article V Section 5.111 of the Charter requires the CFO to set up and establish accounting principles for the County.

The CFO has authority over purchasing.

(a) The division of Purchasing is hereby created, in the department of Management and Budget.

(c) The division has powers and duties to:

- (1) Establish a central purchasing system; and
- (2) Manage and control all purchasing of the County to insure their cost effectiveness and efficiency.

This Court finds that the powers and duties of the Wayne County Chief Financial Officer are performed independently and without control of a superior power with the exception of the removal of the director of Assessment and Equalization which requires a majority of votes from the Wayne County Commission.

V. THE POSITION MUST HAVE SOME PERMANENCY AND CONTINUITY AND NOT BE TEMPORARY OR OCCASIONAL

This Court finds that the office of Wayne County CFO is not temporary or occasional.

Misconduct in Office was an indictable offense at common law. *People v Coutu* (On Remand), 235 Mich. App. 695,705(1999). At common law, Misconduct of Office was defined as "corrupt behavior by an officer in the exercise of the duties of his office or while acting under color of his office" *People v Coutu* 459 Mich. at 354 (quoting *Perkins & Boyce, Criminal Law* (3d ed.), p543.

The charge of Misconduct in Office has the following elements:

- (1) The public officer must have committed an act which is itself wrong(malfeasance) or committed an lawful act in a wrongful manner (misfeasance);
- (2) The public officer must have acted with a corrupt intent, i.e. with a sense of depravity, perversion or taint; and
- (3) The public officer must have committed the misconduct in the actual exercise of the duties of his office or under color of his office.

"A public officer was distinguished from an employee "in the greater importance, dignity and independence of his position." 544.

The People cite, *People v Hardrick*, 258 Mich.App.238 for the proposition that a public officer's actions constituted malfeasance and misfeasance with corrupt intent despite the fact that the prohibited conduct was not a violation of his statutory duties. The police officer, was acting "under the color of his office" when he obtained advanced copies of an examination for a sergeant's promotional test.

In *Hardrick*, The defendant was a Detroit Police Officer who worked at the tenth precinct as a patrol officer. He previously met Isiah McKinnon while he was working as a security guard at the University of Detroit. The defendant then went to the Detroit Police Academy and began working at the Detroit Police Department's Tenth Precinct. When Isaiah McKinnon became the

chief of police the defendant was assigned as his driver. While driving the chief home to his residence, the defendant asked the chief for access to study materials, the chief told him that the study materials were on his sofa in his office. Defendant drove to the office and recovered a folder that was on the sofa. When he got home he opened the folder and discovered that there were test questions. He returned the folder to the chief two days later. He later took the sergeants examination and finished the exam very quickly and he performed very well.

The defendant was charged with "Misconduct in Office" because he obtained advance copies for sergeant's examinations without disclosing that he had reviewed them and as result he performed very well.

The defendant contented that the acts for which he was charged for did not constitute misconduct in office because they did not arise from official duties. Further that when he obtained the study material he was not on duty.

Following a bench trial the defendant was convicted for "Misconduct in Office".

The trial court found that the defendant was a public officer for the purposes of evaluating a charge of misconduct in office.

The defendant, was acting "under the color of the office" when he obtained advance copies of the sergeants promotional examination.

The trial court also found that he had committed an act of malfeasance with corrupt intent.

The court relied upon, *People v Coutu (On Remand)*, 235 Mich.App. 695, 706-707, 599 N.W.2d 556 (1999), quoting *Perkins & Boyce, supra*, at 543, this Court explained:

"Corruption in this context means a "sense of depravity, perversion, or taint." "Depravity" is defined as "the state of being "depraved" and "depraved" is defined as "morally corrupt or perverted." *Randon House Webster's College Dictionary (1997)*. "Perversion" is "the act of perverting," and the term "perverted" includes in its definition "misguided; distorted; misinterpreted" and "turned from what is considered right or true." The definition of "taint" includes "a trace of something bad or offensive. Pursuant to the definitions, a corrupt intent can be shown where there is intention or purposeful misbehavior or wrongful conduct pertaining to the requirements and duties of office by an officer.

The trial court further held that the defendant violated his duties because he had a continuing duty not to possess the test materials in advance of the examination, to immediately report to his superior that he had an advanced copy of the examination and questions, to avoid conduct unbecoming of an officer. The unauthorized possession and his failure to withdraw from the examination after he had the test in advance constituted acts of malfeasance and misfeasance that violated the duties of the defendant. Further that the facts and circumstances did not support that

the possession of the materials was innocent, inadvertent, and because the examination was not promptly returned these actions constituted a "corrupt intent" within the meaning of the "Misconduct in Office" statute.

The defendant, Steven Collins, was deemed to be an employee when this Court applied the analysis in *People v Coutu*, 459 Mich.34 to determine if he was a public officer within the meaning of the common law charge of misconduct in office.

Applying the Hardrick analysis to the defendant, Steven Collins, he had no statutory duty to inform the Wayne County Commission or the Wayne County building Authority with any financial information regarding the Wayne County Consolidated Jail Project. Wayne County Charter, 4.312 expressly states the duty of the Wayne County Corporation Counsel is to provide legal services to the CEO and all county agencies and to represent the County in all civil actions in which it is a party.

Moreover, there is no evidence or facts alleged to suggest that any information provided by defendant Collins or any conduct engaged in by the defendant was done with the intent to mislead those legislative bodies with false or misleading information about the Wayne County Jail Project.

This Court also recognizes that the question of intent is a question of fact properly resolved by the trier of fact. However, there are no facts or allegations alleged in this Indictment to infer that this defendant's actions or conduct was done with any malicious intent.

The defendant, Carla Sledge was deemed to be a public officer when this court applied the *Coutu* analysis to determine if she was a public officer within the meaning of the common law charge of Misconduct in Office.

This Court is not satisfied that the facts alleged in the indictment for Count 1 and 2 demonstrate misfeasance or malfeasance by the defendant, Carla Sledge. Her duty, as CFO, was to implement accepted accounting principles to aid departments within Wayne County and to oversee all purchasing payments for the County. The Indictment fails to document the omissions, conduct, and actions by the defendant Sledge that would support the Misconduct in Office elements.

Even applying the "under the color of the office" analysis in *Hardrick*, to the defendant Sledge the indictment fails to provide how the financial information she may have provided to the Wayne County Commission and/ or WCBA was done with a corrupt intent.

This Court finds that both Count 1 and 2 alleged in the indictment fails to identify the duty or breach of duty by the defendant Collins in providing financial information to the Wayne County

Commission and /or WCBA was done with a corrupt intent and constituted misfeasance or malfeasance within the common law Misconduct of Office charge.

Moreover, the People's argument that the defendant Collins position as an attorney imputed a legal duty to him under the Michigan Rules of Professional Conduct MRPC 2.1 to provide zealous representation and candor to both of his clients, the WCBA and the Wayne County and that his alleged conduct breached that duty does not rise to a duty envisioned by the Misconduct of Law common law crime alleged. In *Coutu*, the Michigan Supreme Court has held that the duty owed by the actor must be one imposed by law when holding that position. At best, the breach of duty imposed by The Michigan Rules of Professional Conduct would expose him to professional misconduct not criminal liability.

The necessary intent needed to distinguish between the common law Misconduct in Office charge for "nonfeasance" which is a felony and the statutory misdemeanor charge of Public Officer – Willful Neglect of Duty was discussed in *People v Waterstone* 296 Mich. App. 121, 818 N.W. 2d 432)

A Wayne County Circuit Court Judge was charged with four counts of felony misconduct in office. It stemmed from the judge's failure to disclose her knowledge about perjured testimony in a criminal prosecution about a confidential informant's status and ex parte communications she had with the Wayne County Assistant Prosecutor, and police officers involved in the case. This allegedly was done so that the confidential informant would not be identified or killed.

The Michigan Attorney General, charged the judge under MCL. 750.505 a felony, which provides for criminal penalties and punishment when a person commits an offense that was indictable at the common law, such as misconduct in office, absent a statutory provision that expressly punishes it under a nonfeasance theory that the judge willfully neglected her legal duty. The Court of Appeals held that there was a specific statute, MCL 750.478, a misdemeanor statute that expressly provides for misconduct in office, Willful Neglect of Duty and affirmed the lower courts quash of those common law felony charges.

The Michigan Court of Appeals held that the elements of corrupt behavior or intent in relationship to MCL.750.505 and willful neglect of duty which is punished by the misdemeanor statute are equivalent.

We find, "that the misdemeanor statute, MCL.750.478 which punishes the willful neglect of duty, and MCL.750.505 corrupt behavior committed through are equivalent and there is no corrupt –behavior distinction between the statutes."

MCL. 750.505 require the element of criminal intent to be established. That requisite intent for this statute is the intent to engage in, "corrupt behavior". Perkins, 468 Mich. at 456. "Corrupt intent" "can be shown where there is intentional or purposeful misbehavior or wrongful conduct pertaining to the duties of the officer". It is corrupt for an officer to purposely violate the duties of his office.

MCL750.478 the misdemeanor statute, requires, "Willful neglect of a duty required by law to be performed by an officer. "Id at Pg.436.

The intent in the misdemeanor statute is identical to the corrupt intent needed to establish misconduct in office under MCL.750.505; therefore there is no pertinent distinction between the statutes in regard to the "intent" element.id. at page 436.

Applying the Waterstone analysis to the defendant Collins, this Court has previously held that under the Coutu factors the defendant is not a public officer as a matter of law and is an employee. The People moreover have failed to identify his express reporting duty to either the Wayne County Commission or the WCBA.

Applying the Waterstone analysis to the defendant Sledge, this Court found that she is a public officer as a matter of law, under the Coutu factors she had a duty as the CFO of disclosure regarding purchasing for the County. However this Court is not satisfied that her conduct, omissions have been identified within the Indictment to show a breach of her duties.

Count 1 and 2 of the Indictment allege that the defendant Steven Collins committed indictable offenses at common law, misconduct in office, between October 2010 and June 2013, by having, and a duty to fully and honestly inform a legislative body (the Wayne County Commission in Count 1 and the WCBA in Count 2). These counts allege that he:

Did intentionally testify, make statements, advice, communicate, create, and /or prevent, hinder and/or obstruct information to said legislative body, which contained materially false and/or misleading information involving the subject of said reporting duty, to wit: the costs and/ or financial status of the Wayne County Consolidated Jail Project.

The Wayne County Building Authority (herein referred to as the WCBA) is created under the provisions of Act 31, Public Acts of Michigan, 1948, (MCL.125.951. Its functions include the acquisition of property for the county. The By-Laws grants the authority to Wayne County Commission to manage the WCBA. The only express duties established are that of the office of chairperson, secretary and treasurer. There is no duty to inform the WCBA or any other responsibilities by the Wayne County Corporation Counsel contained in the Articles of Incorporation or By- Laws governing the WCBA.

The defendant, Steven Collins's position as an Assistant Wayne County Corporation Counsel's Clear and plain duty pursuant to Wayne County Charter Sec. 4.312 is to provide legal representation to the CEO and other designated county officials on civil matters involving the county.

There is no express or implied duty pursuant to the charter for the defendant Collins to provide the Wayne County Commission or the Wayne County Building Authority with any information regarding the financial status of the Wayne County Consolidated Jail project. Nor is there any information provided in the indictment that support that the defendant Collins had a reporting duty to either the Commission or the WCBA on any area involving finances of the county.

Count 3 and 4 of the indictment allege that the defendant Steven Collins committed the misdemeanor crime of Public officer- Willful Neglect of Duty pursuant to MCL 750.478. To establish this charge the prosecution alleges that the defendant Collins willfully neglected his duty to honestly and fully inform a legislative body to wit: Wayne County Commission, a duty enjoined upon him by State law and/or the Wayne County Charter and/or Wayne County Ethics Ordinances.

This Court, found as a matter of law, that the defendant, Steven Collins is not a public officer for the purposes of the Misconduct in Office common Law offense contrary to MCL. 750.505.

In Waterstone, the Michigan Supreme Court, held, that the intent for the misdemeanor statute of Willful Neglect by a Public Officer is the identical to the corrupt intent needed to establish the common law offense of the felony, Misconduct in Office.

"Willful neglect of duty and corrupt nonfeasance are effectively one in the same for our purposes. If a public officer willfully neglects to perform a legal duty, he is engaged in corrupt behavior." id at page 436.

In our case, the defendant Collins was an Assistant Wayne County Corporation Counsel assigned to the Consolidated Jail Project. There are no facts alleged in the indictment that support that the defendant had a duty to the Wayne County Commission. The defendant did not represent the Commission and pursuant to Charter Section 3.120 the Commission has its own independent counsel to provide them with legal services.

There are no facts alleged in the indictment that the defendant provided legal advice to the Wayne County Commission or Wayne County Building Authority with a deliberate forbearance, knowingly and that he purposely misbehaved while engaged in the wrongful conduct to wit:

misrepresenting legal advice to the legislative bodies. The necessary intent needed to prove a violation of this statute.

This Court finds as a matter of law that the defendant Steven Collins was an employee and not a public officer pursuant to MCL.750.478. Moreover that the People have failed to identify any duty owed by the defendant to the Wayne County Commission and the Wayne County Building Authority.

The Michigan Supreme Court has adopted the Weiss test to determine constitutional sufficiency of an information or indictment. *People v Weiss* 276N.Y. 384(1938). The Weiss test fleshes out 1963 Const., art. 1, section 20 which provides that "in every criminal prosecution, the accused shall have the right to be informed of the nature of the accusations" to determine the sufficiency of an indictment, the Weiss test requires that three conditions be met. *Id* at 243. First, the indictment must identify the charge against the defendant so that her conviction or acquittal will bar a subsequent charge for the same offense. Second, the indictment must notify the defendant of the nature and character of the crime with which she is charged so as to enable her to prepare for her defense. Third, the indictment must allow the court to pronounce judgment according to the right of the case. The constitutional notice requirement does not require a perfectly drafted indictment; it requires that a defendant be given notice of the events that formed the basis of the charges she is facing. *Darden*, 230 Mich. App. at 601.

This Court finds that the indictment fails to notify the defendant of the nature and character of the crime with which she is charged to enable her to prepare for her defense.

The facts, omissions and duties are not pled in a manner that would allow either defendant to prepare for their defense.

There are no facts alleged in the indictment that support that the defendant Collins had a reporting duty to either the Commission or the WCBA on any area involving finances of the county.

Because this Court has previously found as a matter of law that the defendant is not a public officer or has a legal duty to Wayne County Building Authority and or the Wayne County Commission a Bill of Particulars cannot cure the defects in this indictment.

FINDING AS TO DEFENDANT STEVEN COLLINS

The Defendant, Steven Collins was employed as an Assistant Wayne County Corporation Counsel. He worked on the Wayne County Consolidated Jail Project from October 2010 until June 2013. The People allege that defendant, Collins had a duty to report to the Wayne County Commission and/or to the Wayne County Building Authority and they was a public officer for the purpose of the Misconduct in Office Statute.

On September 12, 2014 he was charged by an Indictment after the convening of a one man grand jury with the following charges:

- COUNT 1: Common Law Offenses- Misconduct in Office (MCL.750.505)
- COUNT 2: Common Law Offenses- Misconduct in Office (MCL.750.505)
- COUNT 3: Public Officer- Willful Neglect of Duty (MCL. 750.478)
- COUNT 4: Public Officer- Willful Neglect of Duty (MCL.750.478)

The defendant, Steven Collins is charged under MCL 750.505 Misconduct in Office which states:

“Any person, who shall commit any indictable offense at common law, for the Punishment of which no provision is expressly made by any statute of this State, shall be guilty of a felony,”

In *People v Carlin* (On Remand), 239 Mich.App. 49, 607 N.W.2d (1999), the Michigan Court of Appeals stated that the elements of the common-law offense of misconduct in office are:

- (1) the person must be a public officer;
- (2) the conduct must be in the exercise of the duties of the office or done under the color of office;
- (3) the acts were malfeasance or misfeasance;

And

the acts must be corrupt.

To be guilty of misconduct in office the actor must first be a "public officer". *People v Perkins* 468 Mich. 448 (2003).

In Michigan, the leading case to determine if a person is a public officer is *People v Coutu*, 459 Mich.348, 589 N.W.2d 458 (1999). This Court has examined the following five indispensable elements.

In order to determine if a position is a public office the following five elements must be established.

- (1) it must be created by the constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature;
- (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public;
- (3) the powers conferred, and the duties to be discharged, must be defined, directly or impliedly by the legislative authority;
- (4) the duties must be performed independently and without control of a superior power other than the law, unless they be those of an inferior or subordinate office; created or authorized by the legislature, and by it placed under the general control of a superior officer or body;
- (5) It must have some permanency and continuity.

The Court in *Coutu* also held the interpretations and applications of statutes and the determination of whether a defendant is a public officer is a question of law.

This Court finds that as a matter of law, the Defendant, Steven Collins duty in the Wayne County Consolidated Jail Project was to give legal advice to the Wayne County Building Authority and his job as an attorney was not directly exercised for the benefit of the public and his duties were not performed indecently.

Moreover, that his position as a Wayne County Corporation Counsel was not conferred a sovereign power in furtherance of his duties to advise the Wayne County Building Authority in the Wayne County Consolidated Jail Project.

Because the prosecution has failed to establish all indispensable five requirements in *Coutu*, this Court finds that as a matter of law the defendant, Steven Collins was an employee and not a public officer for the Common Law Offenses of Misconduct in Office.

Count 1 and 2 of the indictment allege that the defendant, Steven Collins committed indictable offenses at common law, misconduct in office, between October 2010 and June 2013, by having a duty to fully and honestly inform a legislative body (the Wayne County Commission in Count 1 and the WCBA in Count 2). These counts allege that he:

Did intentionally testify, make statements, advice, communicate, create, and /or prevent, hinder and/or obstruct information to said legislative body, which contained materially false and/or misleading information involving the subject of said reporting duty, to wit: the costs and/ or financial status of the Wayne County Consolidated Jail Project.

The defendant, Steven Collins's position as an Assistant Wayne County Corporation Counsel's clear and plain duty pursuant to Wayne County Charter Sec. 4.312 was to provide legal representation to the CEO and other designated county officials on civil matters involving the county.

There is no express or implied duty pursuant to the charter for the defendant Collins to provide the Wayne County Commission or the Wayne County Building Authority with any information regarding the financial status of the Wayne County Consolidated Jail project. Nor is there any information provided in the indictment that support that the defendant Collins had a reporting duty to either the Commission or the WCBA on any area involving finances of the county.

Count 3 and 4 of the indictment allege that the defendant Steven Collins committed the misdemeanor crime of Public officer- Willful Neglect of Duty pursuant to MCL.750.478. To establish this charge the prosecution alleges that:

"The defendant Collins willfully neglected his duty to honestly and fully inform a legislative body to wit: Wayne County Commission, a duty enjoined upon him by State law and/or the Wayne County Charter and/or Wayne County Ethics Ordinances"

"The defendant Collins did willfully neglect to perform the duty to fully and honestly inform a legislative body, to wit: Wayne County Building Authority a duty enjoined upon him by State law and/or the Wayne County Charter and/or Wayne County Ethics Ordinances"

This Court finds as a matter of law that the defendant Steven Collins was an employee and not a public officer pursuant to MCL.750.478. Moreover that the People have failed to identify any duty owed by the defendant to the Wayne County Commission and the Wayne County Building Authority.

Moreover, applying The Hardwick and Waterstone analysis to the defendant Collins his only duty was to provide legal advice to the Wayne County Building Authority. There are no facts alleged to support that he willfully breached his duty or did any acts with a corrupt intent.

Because the defendant, Steven Collins was not a public officer, as a matter of law, and the People have failed to allege any duty he breached in his office as a Wayne County Corporation Counsel with any "corrupt intent", any amendment to the Indictment could not be cured.

**THE MOTION TO DISMISS THE INDICTMENT AGAINST STEVEN COLLINS IS
HEREBY GRANTED.**

"The department of Management and Budget is hereby created. The director of the department is the Chief Financial Officer. The director shall be appointed by the CEO and serves at the pleasure of the CEO".

Section 4.332 Establishes the Powers and Duties of the CFO:

4.332 Powers and Duties:

"The department of Management and Budget has powers and duties to: effectuate the provisions of Article V of this chapter implement administrative procedures and practices required by the CEO: and supervise and direct other activities of the division of the department.

The charter and accompanying ordinances require the CFO to establish and implement accounting procedures appropriate to local governmental in the conduct of its financial affairs.

This Court finds that the powers and duties of the Wayne County Chief Financial Officer are conferred and the duties to be discharged are defined through legislative authority. Moreover the duties are performed independently and without control of a superior power with the exception of the removal of the director of Assessment and Equalization which requires a majority of votes from the Wayne County Commission.

Additionally the CFO oversaw all purchasing and established accepted principles for auditing in the county to insure cost effective benefits to the public.

This court finds that Defendant Sledge's position as CFO constituted a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public.

Based upon the foregoing analysis this Court finds as a matter of law that the position of Wayne County Chief Financial Officer is a public office under the factors discussed in Coutu for the common law crime of Misconduct in Office.

The misconduct alleged by the public officer must be misconduct in the actual exercise of the duties of his office or misconduct committed under the color of his office. Id at 456.

This Court finds that both Count 1 and 2 alleged in the indictment fail to identify the breach of duty by the defendant Sledge in providing financial information to the Wayne County Commission and /or WCBA and to show that it was done with a corrupt intent and constituted misfeasance or malfeasance within the common law Misconduct of Office charge. The Indictment falls to document the omissions, conduct, and actions by the defendant Sledge that would support the Misconduct in Office.

Count 3 and 4 of the indictment allege that the defendant Carla Sledge committed the ~~misdemeanor crime of Public officer- Willful Neglect of Duty pursuant to MCL 750.478.~~

To establish this charge the prosecution alleges that:

"The defendant Sledge willfully neglected her duty to honestly and fully inform a legislative body to wit: Wayne County Commission, a duty enjoined upon him by State law and/or the Wayne County Charter and/or Wayne County Ethics Ordinances"

"The defendant Sledge willfully neglected her duty to honestly and fully inform a legislative body to wit: the Wayne County Building Authority, a duty enjoined upon her by State law and/or the Wayne County Charter and/or Wayne County Ethics Ordinances"

This Court has found as a matter of law that the position of Chief Financial Officer is a "public office" to be charged pursuant to the common law Misconduct in Office offense.

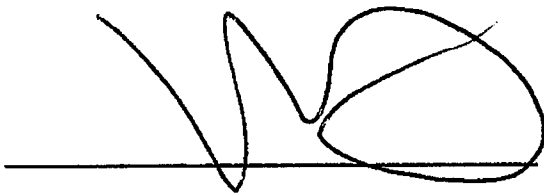
As a public officer responsible for purchasing and other financial responsibilities for Wayne County the defendant, Carla Sledge owed a duty to fully and honestly inform the legislative body, to wit , the Wayne County Commission and Wayne County Building Authority with accurate financial information.

Pursuant to Hardwick and Waterstone, this Court is not satisfied that the prosecution has factually alleged

If a court finds that an indictment contains uncertainty, it may order an amendment of the indictment to cure the defect. MCL 767.76; People v Weathersby, 204 Mich. App. 98, 103 (Ct.App.1994).

Although this Court finds that the indictment is deficient this Court will allow the Prosecutor to cure the deficiencies in the original indictment against defendant Carla Sledge by filling a bill of particulars to provide greater specificity in relation to the present indictment.

THE MOTION TO DISMISS THE INDICTMENT AGAINST CARLA SLEDGE IS HEREBY DENIED.



DATED: SEP 18 2015

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
