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June 28, 2024

Special Agent Supervisor David Hubbard  
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500 West Robinson Street  
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RE: FDLE Case Number EI-11-0077  
SA Case Number 1724SA07573

Dear Special Agent Supervisor Hubbard:

On May 20, 2024, the Office of the State Attorney for the Eighteenth Judicial Circuit received the materials you submitted regarding allegations that former Brevard County Commissioner Bryan Lober committed criminal offenses while in office, to wit: Grand Theft (F3, Fla. Stat. s. 812.014(2)(c)), Scheme to Defraud (F3, Fla. Stat. s. 817.034(4)(a)3), and Fraudulent Claim of [Tax] Exemption (F3, Fla. Stat. s. 212.085). We have reviewed the materials submitted to our Office and determined that we are unable to file charges in this matter. We now write to memorialize our findings.

**Factual Background:**

In 2018, Bryan Lober was elected to represent the constituents of District 2 of the Brevard County Board of County Commissioners (BCC). In February, 2022, he and his fellow Commissioners were the subject of two public records requests which sought information regarding Commission District spending. On February 22, 2022, the BCC voted to request that the Brevard County Clerk of the Court and Comptroller (Comptroller) conduct an audit of each Commission District's use of county purchasing cards. That audit commenced immediately and resulted in numerous interviews being conducted with BCC and Brevard County staff, inventories of county property maintained at various locations, and a review of financial documents associated with District purchases. As the audit was pending, Mr. Lober resigned, effective April 1, 2022.

In November, 2022, the Comptroller contacted FDLE, which subsequently initiated a criminal investigation into allegations that Mr. Lober had used county funds to purchase personal items, failed to return county property after his resignation, and illegally used the County's tax-exempt certificate to avoid paying sales tax on personal purchases. The FDLE completed their investigation and submitted it to this office on May 20, 2024.

The FDLE investigation revealed that while in office, Mr. Lober's District Office purchased tens of thousands of dollars' worth of items which the Comptroller believes were for illegitimate purposes and unnecessary for District 2's operation. The questioned items were recited on a spreadsheet that was included in your investigation. We note that none of those items bear an obvious indication that they were for personal use. Rather, the vast majority of the items are of a nature that were arguably necessary for a business office's functioning<sup>1</sup> or are technologically related.<sup>2</sup>

Some of the purchased items and a single donation for a constituent's funeral appeared unusual, but your investigation revealed the following critical points of fact:

- None of the county's policies or administrative orders regarding the use of county purchase cards applied to County Commissioners;
- No guidance was provided to County Commissioners regarding the propriety of their District offices' spending via purchasing cards;
- When the nature of District 2's spending was brought to the attention of the Assistant Director of Brevard County's Finance Department and the County Manager, they did not see any issues that raised concerns due to the restrictions on the scope of their review;
- The BCC specifically authorized Mr. Lober to spend \$60,000 of federal CARES Act money on "staff and/or government and/or non-profit tangible goods and/or services" to allow for the use of CARES Act funds to purchase items not only for staff but for governmental entities and non-profits;
- No guidance was provided to Mr. Lober regarding whether the CARES Act money could be spent via county purchase card; and
- Mr. Lober routinely gave items to Brevard County's IT department when he no longer had use of them, many of which were not inventoried or memorialized when returned to the county.

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<sup>1</sup> To wit: shipping labels, envelopes, printer paper, monitor wipes, postage, tape, boxes, call log books, presentation binding device, hand sanitizer, signature stamp, disposable gloves, pens, Post-It Notes, cardstock, an office chair, and chair wheels.

<sup>2</sup> To wit: bracket(s), monitor(s), monitor arm(s), fasteners, power station(s), computer console(s), camera(s), speaker(s), graphics board(s), keyboard(s), a green screen, power cord(s), cable(s), phone mount(s), computer case(s), label printer, digital storage device(s), video editing software, network switch(es), adaptor(s), digital display(s), Wi-Fi access points, router, surveillance camera(s), batteries, tripod(s), scanner, and GPS communication devices ("Bivy" sticks).



**Grand Theft (F3, Fla. Stat. s. 812.014(1), (2)(c)):**

- (1) *A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:*
  - (a) *Deprive the other person of a right to the property or a benefit from the property.[. . .]*
- (2) (c) *It is a grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:*
  1. *Valued at \$750 or more, but less than \$5,000.*
  2. *Valued at \$5,000 or more, but less than \$10,000.*
  3. *Valued at \$10,000 or more, but less than \$20,000.*

Your investigation revealed that of the over \$40,000 worth of items that were purchased by the District 2 office via purchase cards which were scrutinized, approximately \$10,000 of those items were never accounted for during the Comptroller's audit inventories. Theoretically, an individual's failure to return property belonging to another could constitute the crime of Grand Theft if all of the elements of the offense are otherwise met. As it relates to your investigation, however, there is insufficient evidence to charge Mr. Lober with such an offense for several reasons.

First, multiple individuals worked in and had access to the District 2 office during the time the items at issue were received, and all of those individuals would have had access to the items that were not accounted for during the Comptroller's inventories. While I am in no way impugning the reputations of those individuals, or implying that they took the items that remain unaccounted for, that is certainly a viable defense to such a charge and one that the State cannot successfully refute.

Second, the list of items the Comptroller was unable to find during her audit inventories includes many consumable goods, the return of which would not be expected or practicable given their nature. Examples include batteries, postage, labels, tape, pens, gloves, permanent markers, boxes, envelopes, Post-It Flags, monitor wipes, and screws. It is a defense to the crime of theft (predicated upon a person's failure to return another's property) that the property was consumed and, therefore, no longer exists. Such a defense cannot be overcome as it relates to the consumable goods that were not accounted for during the Comptroller's audit inventories.

Third, many of the items the Comptroller was unable to account for were of a nature that they would have lost their value and utility due to the passage of time since their purchase. An item that is lawfully and legally purchased and then used for months or years thereafter, loses its value.<sup>3</sup> Technological items financially depreciate due to evolving obsolescence. Under the theory that a theft occurred at the time certain property was not returned, it is the value and usefulness of the property at the time it is demanded and not returned that controls, not the value of the property at the time it was initially, legitimately acquired.

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<sup>3</sup> Case in point: the \$31.40 set of wheels purchased on July 5, 2021, for the tangerine-colored office chair that Mr. Lober purchased and then later replaced, the complete, new value of which was given to the county upon Mr. Lober's resignation.



Fourth, the viability of this charge depends upon the State's ability to prove that the items which were not accounted for during the Comptroller's audit inventories were actually not returned to the county. It is clear from both the Comptroller's audit and your investigation that Mr. Lober donated numerous items to the county's IT department (including the GPS communication devices, or "Bivy sticks" that Mr. Lober purchased and tested while out of the state), many of which were never inventoried. It is completely plausible, therefore, that items deemed unrecovered following the Comptroller's audit inventories were actually given back to the county.

Fifth, on August 3, 2021, Mr. Lober was specifically given authority by the BCC to spend \$60,000 worth of federal CARES Act money on "staff and/or government and/or non-profit tangible goods and/or services" to allow for the use of CARES Act funds to purchase items not only for staff but for governmental entities and non-profits (August 3, 2021, BCC Meeting).<sup>4</sup> There is no indication that Mr. Lober was informed that CARES Act purchases had to be made in a specific manner (e.g., via purchasing order and not with the county's purchasing card). It is completely plausible, therefore, that every District 2 purchase that was made after August 3, 2021, was done with the intent that CARES Act monies would be used, not county money. Given the broad scope of purchases the county authorized Mr. Lober to make using CARES Act money, we find that every purchase made after August 3, 2021, would constitute "staff and/or government and/or non-profit tangible goods and/or services" and that they would not constitute a taking pursuant to Florida's theft statute.

Sixth, your investigation determined that some identifiable items were actually donated to at least one non-profit organization. Given the broad authority that the BCC gave Mr. Lober in spending the \$60,000 of CARES Act funds, which includes his ability to make purchases for non-profit organizations, there remains a reasonable question as to whether the other items not accounted for during the Comptroller's inventories were donated to non-profit organizations.

Seventh, it is clear that the Comptroller and others in county government questioned the professional use of some of the items Mr. Lober purchased using county purchasing cards while in office. One could, theoretically, view such purchases as a theft of county funds. The issue with this alternative theory, however, is that even amongst members of county administration, there is a difference of opinion as to whether Mr. Lober's purchase card spending was inappropriate. The purchasing policies of the county were such that questions about Commissioner spending appeared to be unlimited unless it was for obvious, prohibited items. None of the purchases identified by the Comptroller or your investigation are of an obvious personal nature. It could be argued that they were all for the professional operation of the District 2 office or technological purchases. What one individual may review in hindsight as a questionable purchase, a grand theft charge does not make.

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<sup>4</sup> We note that "staff and/or government and/or non-profit tangible goods and/or services" would include the Amazon Prime Business membership that Mr. Lober purchased in December, 2021, a service which was used to facilitate qualifying purchases pursuant to the BCC's directive regarding Mr. Lober's CARES Act expenditures.



**Scheme to Defraud (F3, Fla. Stat. s. 817.034(4)(a)3):**

(4) Offenses. –

(a) Any person who engages in a scheme to defraud and obtains property thereby is guilty of organized fraud, punishable as follows: [. . .]

3. If the amount of property obtained has an aggregate value of less than \$20,000, the violator is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

“‘Scheme to defraud’ means a systematic, ongoing course of conduct with intent to defraud one or more persons, or with the intent to obtain property from one or more persons by false or fraudulent pretenses, representations, or promises or willful misrepresentations of a future act.” Fla. Stat. s. 817.034(3)(d)

Whether an individual has committed the crime of Scheme to Defraud turns on whether the individual intended to defraud another person or obtained property from another person by some sort of deceptive practice. There is insufficient evidence to prove that Mr. Lober acted with such intent, especially when it is clear that the BCC gave wide berth to its Commissioners to spend county money and federal CARES Act funds, with very little restrictions.

It is clear that Mr. Lober took advantage of the county’s lack of oversight regarding his District’s spending. The BCC gave him the authority, permission, and means by which he could make each and every purchase that was later questioned by the Comptroller during her audit. As further evidence regarding this point, when Mr. Lober’s purchases were first brought to the attention of county administration, multiple individuals took no issue with his spending due to the restrictive scope of their inquiry.

Therefore, there is insufficient evidence to prove that Mr. Lober defrauded the BCC or the county when he made the purchases under review, or that he engaged in deceptive practices to obtain the property at issue for the same reasons as detailed previously. Mr. Lober was given the legal authority to make the scrutinized purchases; he was given the means by which the purchases could be made; and members of county government took no issue with his expenditures when they were questioned. While Mr. Lober’s spending practices may very well be viewed in hindsight as improper by some, there is insufficient evidence to prove that they were illegal.

**Fraudulent Claim of [Tax] Exemption (F3, Fla. Stat. s. 212.085):**

“When any person shall fraudulently, for the purpose of evading tax, issue to a vendor or to any agent of the state a certificate or statement in writing in which he or she claims exemption from sales tax, such person, in addition to being liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, shall be liable for fine and punishment as provided by law for a conviction of a felony of the third degree, as provided in s. 775.082, s. 775.083, or s. 775.084.”



On March 20, 2021, Commissioner Lober emailed Rockler Companies, Inc. regarding a purchase he was placing on said date. He explained in his email that he intended to use the county's tax-exempt certificate during the transaction, thus eliminating \$124.48 worth of sales tax. Mr. Lober explained in his email that he intended to use his preexisting account to make both personal and professional purchases, and to ensure that the tax-exempt certificate was used on the applicable transactions, he would indicate so in the memo or comments section of said future, business orders. Mr. Lober attached the county's tax-exempt certificate to his March 20, 2021, email and that purchase was processed without sales tax being assessed.

Your investigation revealed that Mr. Lober did not use a county purchasing card or a purchase order to complete this transaction. Rather, Mr. Lober personally paid for the purchase. The March 20, 2021, purchase also appeared on Mr. Lober's campaign finance documents related to his re-election bid for County Commissioner, further indicating that said purchase was not for county purposes.

We agree that there is probable cause to believe that Mr. Lober committed a third-degree felony offense when he offered the county's tax-exempt certificate to Rockler Companies on March 20, 2021, for the purpose of evading sales tax. Unfortunately, our office is unable to file that charge, because as with all third-degree felonies, the government had three (3) years from the offense date (March 20, 2021) within which to bring such a charge. (Florida's Statute of Limitations, Fla. Stat. s. 775.15(1)(b)). While there is a provision that will extend the government's ability to file charges against a public officer for crimes committed while in office, that two-year extension begins to run when the official leaves office, which in Mr. Lober's case, was April 1, 2022. (Fla. Stat. s. 775.15(12)(b)). Under both statute of limitations analyses, the proscribed time within which the government could have brought this charge has passed and we are, therefore, unable to charge Mr. Lober with this crime.

I note that there were two additional purchases that were processed by Rockler Companies using the county's tax-exempt certificate. They were on July 25, 2021, and July 27, 2021, in which a total of \$10.29 worth of sales tax was avoided. Since the crime under review occurs when the tax-exempt certificate is offered or a statement is made claiming exemption from sales tax, it is necessary to determine if Mr. Lober actually indicated to Rockler Companies that these two, additional purchases were tax exempt, as he did for the March 20, 2021 purchase.

The documents provided by Rockler Companies do not show that Mr. Lober requested that these two additional purchases be processed using the tax-exempt certificate, and there is no evidence that he provided the tax-exempt certificate again as part of those two purchases. The State is, therefore, unable to prove that Mr. Lober offered the tax-exempt certificate or made a statement in writing claiming exemption from sales tax during these two additional purchases. As a result, the State cannot file charges against Mr. Lober for Fraudulent Claim of [Tax] Exemption during either of these additional transactions.

Conclusion

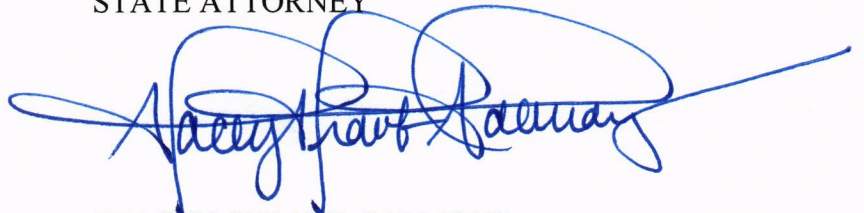
In conclusion, we have determined that although there is probable cause to believe that Bryan Lober committed the third-degree felony offense of Fraudulent Claim of [Tax] Exemption for the March 20, 2021, personal purchase from Rockler Companies, the statute of limitations for prosecuting him for said offense has expired and no further action is warranted.

We have also determined that there is insufficient evidence to prove that Bryan Lober's purchasing activity while a Commissioner for District 2 of the Brevard County Board of County Commissioners constitutes a crime.

We thank you for the time and effort your agency spent compiling the materials provided for our Office's review.

Sincerely,

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