

IN THE MATTER OF THE  
CITY OF DAMASCUS OF  
THE STATE OF ARKANSAS  
COMPLIANCE WITH THE  
“ARKANSAS SPEED TRAP LAW”  
(A.C.A. § 12-8-401 *ET SEQ.*)

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DETERMINATION OF THE PROSECUTING ATTORNEY OF THE TWENTIETH  
JUDICIAL DISTRICT REGARDING THE STATUS OF SANCTIONS PREVIOUSLY  
IMPOSED DUE TO A FINDING THAT THE CITY OF DAMASCUS WAS IN VIOLATION OF  
THE “ARKANSAS SPEED TRAP LAW”

BACKGROUND

Since the departure of Cody Hiland as Prosecuting Attorney for the Twentieth Judicial District, questions have been raised regarding the status of sanctions that were previously imposed by this office upon the City of Damascus for its violation of the Arkansas Speed Trap Law as found in Arkansas Code Annotated § 12-8-401 *et seq.* Having been appointed by Governor Asa Hutchinson as Prosecuting Attorney for the Twentieth Judicial District on October 11, 2017, it is my desire to clarify that issue.

In his written opinion dated May 9, 2017, Hiland found the City of Damascus to have specifically violated A.C.A. § 12-8-403(b)(1). Pursuant to A.C.A. § 12-8-404 and the list of sanctions available thereunder, Hiland ordered the City of Damascus to cease patrolling all affected highways within the jurisdictional limits of the city. Hiland further ordered that the sanctions imposed would extend “through the completion of the current prosecutor’s term of office.” It is my intent to determine the current applicability of Hiland’s decision and the accompanying sanctions.

APPLICABILITY OF SANCTIONS PREVIOUSLY IMPOSED

The pivotal issue regarding the status of the sanctions is whether they expired upon Hiland’s resignation from the office of Prosecuting Attorney to serve as United States Attorney. Hiland’s opinion was issued prior to his nomination as United States Attorney and contemplated that the sanctions imposed therein would continue “through the completion of the current prosecutor’s term of office” with no further definition of that period.

Hiland began his most recent term as Prosecuting Attorney on January 1, 2015 with a prescribed length of four years. To attempt to define “the current prosecutor’s term of office” as a period equal to the two years and nine months actually served by Hiland would then necessitate the creation of another “term” equal to the length of my appointment, which is approximately fifteen months. This approach appears to be the less sensible option. My “term” as the appointed Prosecuting Attorney was only created by, and can

only be defined in reference to, the underlying term to which Hiland was elected in November 2014. It is my opinion that “through the completion of the current prosecutor’s term of office” as referenced in Hiland’s opinion most logically includes the period between Hiland’s resignation and December 31, 2018, which is the shared date of expiration for his elected term as well as my appointment by the governor.

This approach is consistent with the language of the Constitution of the State of Arkansas. My appointment as Prosecuting Attorney was made by the governor pursuant to Amendment 29, which states in Section 3 that “[t]he appointee shall serve during the entire unexpired term in the office in which the vacancy occurs[.]” This language supports the proposition that the only “term” in the present situation is the “unexpired” portion of the four-year term to which Hiland was elected.

#### PROCESS OF REVIEW

While determining the meaning of “the current prosecutor’s term of office” is dispositive of the issue, I believe it was incumbent upon me to review certain materials to verify the reasonableness of Hiland’s decision. To fairly evaluate the matter, I have reviewed the file that was previously provided to the Prosecuting Attorney’s office by the Arkansas State Police, the relevant statute, and the written findings that were issued by my predecessor.

In my opinion, Hiland correctly applied the statute in question and reached a reasonable conclusion in regard to the imposition of sanctions. With that in mind, I see no reason to disturb the opinion that was previously issued, especially when it was clearly intended to expire no later than December 31, 2018.

#### DETERMINATION

Having found that the most logical interpretation of Hiland’s reference to the “current prosecutor’s term of office” included the entirety of the four-year term during which he wrote, and, having found that he acted in conformity with the applicable statute, and, having further found that he reached a reasonable result with his imposition of sanctions, it is my determination that the City of Damascus will continue to be barred from patrolling all affected highways within the jurisdictional limits of the city. This sanction will remain in place until December 31, 2018.

I further affirm the continued applicability of all other terms as contained in Hiland’s decision, including the availability of a review of this matter after one year has elapsed from the issuance of the original opinion.



Luke Ferguson  
Prosecuting Attorney  
Twentieth Judicial District

Date: 10-17-17