

COMMONWEALTH OF KENTUCKY
FRANKLIN DISTRICT COURT
DIVISION I
CASE NO. 06-M-00812

COMMONWEALTH OF KENTUCKY

PLAINTIFF

VS.

GOVERNOR ERNIE FLETCHER

DEFENDANT

AGREED ORDER

The Commonwealth of Kentucky, the Office of the Attorney General, by counsel, and Governor Ernie Fletcher, both in his official and individual capacities, by counsel, having reached an agreement as to the terms of final resolution of this action, and the Court having been otherwise sufficiently advised, it is hereby **CONSIDERED ORDERED AND ADJUDGED**, as follows:

(1) In May 2005, a Special Grand Jury was empanelled to investigate hiring practices within the state merit or classified employee system in the Kentucky Transportation Cabinet. The actions of the Special Grand Jury, of record at *In re Grand Jury Investigation - Kentucky Transportation Cabinet*, 05-CI-00711, Misc. No. 88 (Franklin Circuit Court), have been ongoing since that time.

(2) The Special Grand Jury found probable cause to believe that a number of violations of the merit system law occurred.

(3) The Governor acknowledges that the evidence strongly indicates wrongdoing by his administration with regard to personnel actions within the merit system.

(4) Further, the Governor hereby states that these actions were inappropriate, and that he regrets their occurrence, and accepts responsibility for them as head of the executive branch of state government. This sincere expression of ultimate responsibility, however, is not an admission in any way of any criminal wrongdoing by the Governor nor directly on behalf of the Governor.

(5) The parties recognize that the Attorney General's investigation and prosecution of this matter were necessary and proper exercises of his constitutional duty. The investigation and prosecution have benefited the Commonwealth and ensured that abuses of the state's merit system will be eliminated.

(6) The Attorney General recognizes and acknowledges that any action taken by the current administration with regard to the state's classified system were without malice.

(7) The parties have agreed that they will not seek reconsideration or appellate relief, including an original action for writ of mandamus or prohibition, with regard to the Order of this Court of August 18, 2006.

(8) Both the Governor and the Attorney General wish to provide adversely affected merit employees with a hearing free from any appearance of impropriety, and the Personnel Board (hereinafter, the "Board") is an important and integral part of the protections of the merit system. While the current members of the State Personnel Board have served honorably during their tenure, in order to remove any doubt with regard to a fair tribunal that will administratively review claims within the merit system, and with a joint effort to ensure that all personnel actions are handled with independence and in accord with the law, the four current members of the Personnel Board appointed by the

Governor will, as a condition precedent to this Agreed Order, submit resignation letters contemporaneously with the entry of this Order. See attached. In no way is this action taken in response to any conduct related to their service, which is to be commended. Further, nothing in this Order shall affect or question the validity of any actions of the Board.

Although the parties acknowledge the ultimate power of appointment of the Governor, the Governor requests that the Attorney General submit to him a list of three names for any vacancy created by this action, each listed separate and distinct from each other without repetition, from which the Governor shall make an appointment within thirty (30) days. The Attorney General and the Governor acknowledge that each of the lists should be of sufficient political balance and of persons of sufficient professional experience, and as otherwise provided by law, so as to show respect to the merit system and to the work of the Personnel Board.

(9) The Governor will require that all volunteers acting on behalf of the Executive Branch (Office of the Governor) with access to government resources be subject to the Executive Branch Ethics Code.

(10) Both parties will place no reliance upon the Secretary of the Personnel Cabinet memorandum of May 27, 2005 purporting to validate all merit hires.

(11) The protections of KRS 61.101, *et seq.* are recognized by the parties.

(12) The parties further agree that as of the date of this Agreed Order, any and all matters relating to documentary, electronic, or other such matters sought on behalf of the Special Grand Jury have been delivered to the Special Grand Jury or to the Office of the Attorney General for the completion of its work in the merit investigation, and

nothing further will be sought. The Special Grand Jury is to be commended for its diligent service in reviewing these matters.

(13) Accordingly, no further criminal prosecutions relating to matters on which the Special Grand Jury heard evidence will be sought by the Office of the Attorney General against Governor Fletcher.

(14) In the event that an alleged act of political discrimination within the merit system occurs after the date of entry of this Agreed Order, the administration and all cabinets and agencies thereof will continue to provide necessary assistance to bring the matter to a prompt conclusion, including the production of any and all documents, records, correspondence, electronic communication and any other evidentiary production requested by the Office of the Attorney General, not subject to clearly defined legal precedent of immunity and privilege.

(15) The Office of the Attorney General and the Office of the Governor, in their official capacities, and the Attorney General and the Governor in their personal capacities, mutually release each other from any and all claims arising from this investigation and resulting prosecutions.

(16) All actions taken within the terms of this Agreed Order by and on behalf of Governor Fletcher in his official capacity are made voluntarily and with the advice of the Governor's General Counsel as well as his private counsel, and without regard to the dismissal of this action.

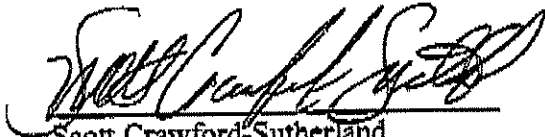
(17) Nothing in this Agreed Order shall be construed in derogation of *Fletcher v. Graham*, 192 S.W.3d 350 (KY. 2006), and the Court of Appeals Order Granting CR 76.36 Relief of July 12, 2006 permitting the filing of the Grand Jury Report.

Pursuant to the terms stated in this Agreed Order, the charges in the indictment now pending in this matter are hereby **DISMISSED** with prejudice. This is a final **ORDER**, the parties having waived rights of appeal.

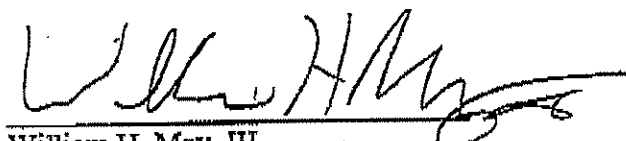
Dated this 24th day of August, 2006

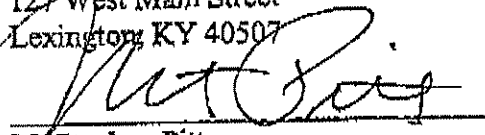

DAVID MELCHER, SPECIAL JUDGE
FRANKLIN DISTRICT COURT, DIVISION I


AGREED TO:
For the Office of the Attorney General:

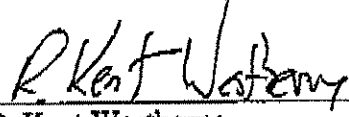

Scott Crawford-Sutherland
Jennifer Black Hans
Samuel J. Floyd, Jr.
Office of the Attorney General
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State Capitol, Room 118
700 Capital Avenue
Frankfort, KY 40601

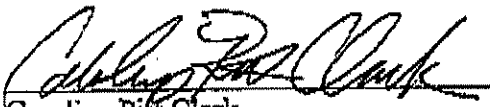
Counsel for Governor Ernie Fletcher, in his Individual Capacity:

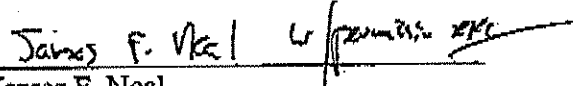

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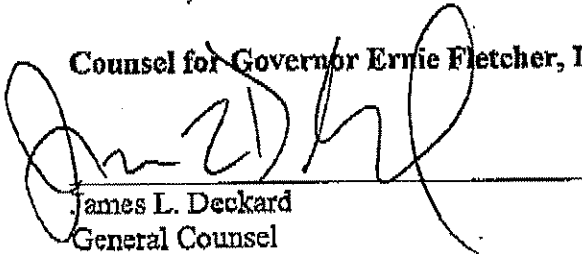

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 Frankfort, Kentucky 40601

Eric Fletcher
Eric Fletcher

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Hon. Ernie Fletcher
Governor of Kentucky
Governor's Mansion
Frankfort, KY 40601

VIA HAND DELIVERY

Dear Governor Fletcher,

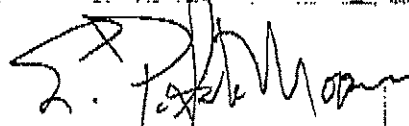
This is to advise you that effective immediately I hereby resign my appointment to serve on the Personnel Board for the Commonwealth of Kentucky.

I appreciate the honor that you allowed me to serve you and the people of the Commonwealth of Kentucky.

If I may be of further service to you, please call upon me.

Best Wishes.

Respectfully,



E. Patrick Moores

EPM/mb
Enclosure

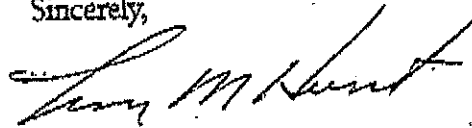
TIMM MARDEN HURST
3001 Brookmonte Lane
Lexington, Kentucky 40515

The Honorable Ernie Fletcher
Governor
Commonwealth of Kentucky
700 Capitol Avenue
Frankfort, KY 40601

Dear Governor Fletcher:

I hereby tender my resignation from the Kentucky Personnel Board effective immediately. I appreciate the opportunity you gave me to serve the Commonwealth.

Sincerely,



Timm M. Hurst

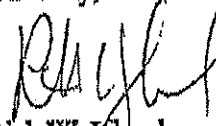
RICK W. IFLAND
4120 Pisgah Pike
Versailles, Kentucky 40383

The Honorable Ernie Fletcher
Governor
Commonwealth of Kentucky
700 Capitol Avenue
Frankfort, KY 40601

Dear Governor Fletcher:

I hereby tender my resignation from the Kentucky Personnel Board effective immediately. I appreciate the opportunity you gave me to serve the Commonwealth.

Sincerely,



Rick W. Ifland

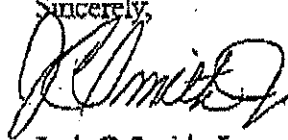
JACK C. SMITH, JR.
2582 Overlake Circle
Lexington, Kentucky 40513

The Honorable Ernie Fletcher
Governor
Commonwealth of Kentucky
700 Capitol Avenue
Frankfort, KY 40601

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Sincerely,



Jack C. Smith, Jr.