

Greene County, VA –

## COUNTY ADMINISTRATOR GETS \$5,713.76 LOAN FROM THE COUNTY DURING FINANCIAL HARDSHIP

On April 30<sup>th</sup>, 2015, a Freedom of Information Act request (see Page 5) was filed with the Greene County Administrator's office requesting materials related to a reported monetary loan provided to Mr. John Barkley, the County Administrator, whose employment began in July, 2013. Upon receiving resistance to the FIOA request, a lawsuit was filed on Friday, May 15, 2015. By the end of the day on Monday, May 18<sup>th</sup>, the request was granted and materials began to flow from the County. It took a lawsuit to persuade the Greene County Administrator's office to comply with a lawful FIOA request.

Upon review of the many pages of email communications between Mr. Barkley, Midway Supervisor and former Chairman, Jim Frydl, County Attorney, Ray Clarke, and other County employees; a clearer story about the loan has emerged, leaving many questioning the ethics and leadership of the County officials involved. A possible motivation for the loan has developed from the FIOA material when also considered along with a civil judgment against Mr. Barkley from Loudoun County on behalf of Capital One Bank during the time when the loan from the County was dispersed.

A little less than a year into Mr. Barkley's employment, it was discovered in the spring of 2014 (see 10/24/14 email from Tracy Morris to BoS members on Page 46), during a County-wide financial audit, that Mr. Barkley had failed to enroll in the Virginia Retirement System (VRS), a defined benefit retirement plan for employees in the County. According to Virginia law, Va. Code § 51.1-144(F)(2), Mr. Barkley is required to be enrolled in the program and, according to Va. Code § 51.1-144(F)(3), have deductions from his payroll for his retirement contributions. Technically, Greene County was in violation of these laws, with Mr. Barkley being the County executive responsible for ensuring compliance within his own office. After several months of unexplained delays, Mr. Barkley was finally enrolled in VRS in September, 2014, and began a 5% contribution from his now \$108,000 annual salary. At the same time, the County also properly began its mandated share to the VRS. The issue that still remained at that time was what to do about the past-due portion the County and Barkley owed the VRS.

On October 28, 2014, the Greene County Board of Supervisors voted 4-1 to remit the County's contribution to the VRS for ~\$13,700. This left \$5,713.76, for which Mr. Barkley was responsible. Combined, ~\$19,400 was owed the VRS due to Barkley's willful failure to enroll, and this total amount was allocated by the BoS from the County's funds. Note that NO mention of a loan to Mr. Barkley is recorded in the minutes of this meeting! (see <http://www.gcva.us/dpts/admn/2014October28bosmin.pdf>)

Emails provided by the FIOA request revealed conversations beginning November 4, 2014 between Barkley, Frydl, and Clarke, planning how to remit payment to the VRS for Barkley's delinquent share without harming Mr. Barkley financially (see Pages 36, 37, and 39-42). The documents clearly reveal concern by Frydl and Clarke that the matter be managed

in a way that would avoid a FIOA request. With respect to making the transaction one big payment to VRS, Frydl emailed County attorney Clarke on November 4, 2014, *"I think that was suggested as a way to avoid creating a line item that someone might FOIA"*. Clarke replied the next morning, *"FOIA wasn't the only issue. I THINK the issue revolved around whether this loan was actually an advance on salary (which it actually is), in which case it would be taxable in its entirety upon receipt, which would be a less advantageous method than John just paying it out over the three year period. Hopefully we will resolve it prior to Tuesday."* (see Page 36) Why would Frydl and Clarke try to shield this matter from public view by trying to form a solution that would fly under the FIOA radar?

Mr. Frydl strongly advocated for a plan that would allow Barkley's delinquent share to the VRS to be spread over three years; and provide Barkley with County funds to financially protect him from the impact of the forthcoming deductions from his paycheck. After consulting with the VRS Administrator and attorney, the VRS would only allow Barkley's back-due amount of \$5,713.76 to be repaid over a period of 18 months through payroll deductions, not a lump sum payment as Mr. Frydl wanted (see Pages 31-34).

Prior to the Board of Supervisors' vote on the matter granting Barkley the loan in November, 2014, emails (see Pages 25 and 26) reveal that Mr. Barkley advised County finance staff that a check for the \$5,713.76 loan check be made available to him on November 13, 2014 (since the 10% VRS withholding would start being deducted from his check on the next payroll). Barkley's request was PRIOR to the actual Board of Supervisor's vote the evening of November 12, 2014, indicating that he believed that the LOAN was a done deal. Barkley to Tracy Morris on November 12, 2014, *"make sure that Kim has my check ready for me this Thursday subject to Board approval Wednesday. This part needs to be done now and not wait until 11/25. I need to prepare for the payroll deduction ahead of time."* (see Page 25)

To Ms. Morris' credit, she properly did not comply with the request; Tracy Morris to Mr. Barkley on November 12, 2014, *"I received an email from you last week requesting payment be made per the approval of Jim. When you and I discussed this email, I advised you that I could not process a check prior to having the signed contract and the approval of the Board. If the Board approves the payment to be cut prior to payroll, then I will be happy to have Kim process this for you on Thursday. Please be sure this is discussed at some point tonight."* (see Page 25)

On the evening of November 12, 2014, the Board of Supervisors voted 3--1 (Mr. Deane was not present) to approve a \$19,394.52 VRS reimbursement. (see <http://www.gcva.us/dpts/admn/2012November12bosmin.pdf>, Page 7) Even though it was not publicly stated, since no mention of this was recorded in the meeting minutes, this amount would have included the planned \$5,713.76 loan to Barkley, which would be paid back to the County over three years by three equal payments...interest free. At that time, Barkley was faced with a total of 10% payroll deductions, which included both current and past contributions to the VRS.

During two public sessions on April 28 and May 12, 2015 (see <http://www.gcva.us/dpts/admn/2015April28bosmin.pdf>, Page 4; and <http://www.gcva.us/dpts/admn/2015May12bosmin.pdf>, Page 11), Frydl emphatically stated that Mr. Barkley's failure to enroll in VRS was a staff error that was being corrected. FIOA emails between Barkley and County staff prove that this matter was **NOT** a staff error, and Barkley's lack of VRS participation was done at his own direction (see Pages 62, 76, and 79).

The time between September and December 2014 must have been one of severe personal strain on Mr. Barkley. Not only was the non-enrollment in the VRS discovered, that was also when Capital One Bank finally caught up with Barkley for a \$2,759 civil judgment that occurred in Loudoun County on January 9, 2012. Service of the judgment from Loudoun County to the Greene County Administrator's Office was made in late September, 2014 (see Pages 56 and 57), and the County had no other choice but to comply with a wage garnishment order on Barkley. Acknowledgement of the garnishment was given to Loudoun County at the beginning of December, 2014, and was complete in April, 2015. This entire period was a set of unfortunate financial circumstances for Barkley, and now we know why this \$5,713.76 loan has come under such public scrutiny and outrage.

This whole set of events leaves people searching for more answers to questions, but there are many things that we do know. We know that Mr. Barkley instructed, by his own admission, his own County employee(s) NOT to enroll him into the VRS; the most recent reason given is he believed that he was not required to enroll due to his probationary employment status (see Page 62), which is contrary to the law cited in this document and one of three different reasons he gave for not enrolling. Mr. Barkley was reminded several times to enroll, and each time he directed his staff to NOT enroll him (see Pages 62, 76, and 79). Mr. Barkley is a veteran Public Administrator in the Commonwealth of Virginia, had been enrolled in the VRS from previous employment, and had enrolled many other employees into retirement programs throughout his career.

What we still need to know is the answer to the following questions:

1. Was Mr. Frydl or any other member of the Board of Supervisors aware of the impending \$2,759 civil judgment from Capital One against Mr. Barkley; were they aware that Mr. Barkley was facing a garnishment IN ADDITION to the VRS payback, all during the SAME time period?
2. Once the decision was made to provide a loan to Mr. Barkley, why was this matter kept from open public forum; and why were Mr. Frydl and Mr. Clarke concerned about FIOA?
3. Do Barkley, Frydl, and Clarke understand that the entire circumstance and confluence of the events that have occurred since Barkley's arrival in Greene leaves us questioning their judgment, leadership, and trustworthiness?

It is hard not to conclude that Mr. Frydl and other Greene County officials knew of Barkley's financial woes and chose to help assist him with a loan from the County. Mr. Barkley knew of his own financial and legal troubles PRIOR to his employment with Greene County, since Capital One Bank had been pursuing him since 2011 (see Page 82). Perhaps Mr. Barkley specifically intended not to have his VRS contribution withheld because he knew of the impending Capital One judgment... Mr. Barkley certainly needed the funds to eventually pay his debt to Capital One.

Lastly, the public deserves to know if Mr. Frydl withheld additional information about the Capital One debt and its impact to Mr. Barkley from the other members of the Greene County Board of Supervisors and the County Attorney, in an effort to leverage support for Barkley's civil and VRS debt.

At the very least, the actions described and contained in the FIOA material paints a portrait of utmost incompetence. At the most, it paints a portrait of utter corruption and disregard for the Public Trust. Either way, both are cause for resignations, legal dismissal, or change at the ballot box.

Following is the FIOA material released as a result of the lawsuit filed by Rob Schilling and the Loudoun County civil judgment. Note that the material has been reorganized in reverse chronological order wherever possible, in order to eliminate duplications of emails; and to allow for a better understanding of the sequence of events that occurred over the past few years.