



**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF KERN**

CIVIC CENTER JUSTICE BUILDING
1215 TRUXTUN AVENUE
BAKERSFIELD, CALIFORNIA 93301
(661) 868-2340, FAX: (661) 868-2700

ANDREA S. KOHLER
ASSISTANT DISTRICT ATTORNEY

CYNTHIA J. ZIMMER
DISTRICT ATTORNEY

JOSEPH A. KINZEL
ASSISTANT DISTRICT ATTORNEY

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MEDIA ADVISORY

CONTACT:
DA Cynthia Zimmer
(661) 868-2716

FOR IMMEDIATE RELEASE
Approved by JAK
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Re: Charges Filed After Fair Board Investigation

BAKERSFIELD – District Attorney Cynthia Zimmer announced today, August 18, 2021, that her office has filed criminal charges against William Joseph Hebert, the former Maintenance Supervisor for the 15th District Agriculture Association. (15th District). Mr. Hebert has been charged with three counts of felony grand theft. The charges are the product of an extensive investigation conducted by the District Attorney’s Public Integrity Unit after allegations of potential criminal misconduct were revealed in a State Audit.

The charges relate to Herbert’s alleged involvement in obtaining scrap material from the 15th District, arranging for the material to be turned in to recycling facilities either personally or through others, and not returning the proceeds of the recycled material to the 15th District. A total of 47,290 pounds of material was recycled between July of 2017 and June of 2019.

In August of 2019, the Auditor of the State of California issued report I2019-4, titled “Gross Mismanagement Led to the Misuse of State Resources and Multiple Violations of State Laws.” The report did not identify the 15th District Agriculture Association as the subject of this report. However, it was later learned and widely reported that the 15th District was the subject the report.

The results of the audit suggested there may be criminal responsibility by some actors involved, so the Kern County District Attorney independently sought to investigate potential criminal wrongdoing. The State Auditor provided some information to the Kern County District Attorney’s Office after the DA’s office agreed to a confidentiality agreement. The information provided by the Auditor was limited in scope and did not include specific evidentiary details that supported the Auditor’s findings, including who was interviewed or what was said to the Auditor. Despite the District Attorney’s request for additional information, the State Auditor declined to provide more specific details, asserting that details of the investigation were exempt from disclosure under the California Whistleblower Protection Act, (Government Code Section 8547, et seq). Additionally, members of the Fair Board were prohibited from telling the District Attorney’s office what they said to the State Auditor. As a result, the District

Attorney's Office was required to investigate this matter effectively 'from scratch' to determine if there were any criminal violations by anyone associated with the 15th District.

Regarding the Board Members' dinners that the audit found exceeded the State reimbursement rate, the District Attorney's Office found no criminal violation. The investigation determined that the Board Members believed they could budget a set amount for meals while travelling on the 15th District business, and that this belief may have been grounded in advice the Board had received from a Deputy Attorney General tasked with advising the Board on such matters. The attorney responsible for the purported advice has since retired and was unable to rule out that he may have provided guidance similar to what was described by the Board.

KCDA's investigation determined that the Board Members were advised that meal reimbursements were set at a certain rate and that their meals had exceeded this rate. Upon being notified of the issue regarding meal reimbursements, Board Members paid back the 15th District the excess amount. For a criminal charge to be filed, the District Attorney must have evidence of a lack of permission to take as well as the specific intent to permanently deprive the 15th District of the money spent on the meals. In this case, due to improper budgetary practices and potentially incorrect legal advice provided by the State, there was insufficient evidence to prove beyond a reasonable doubt that any Board Member had the specific intent to take without permission and permanently deprive the 15th District of funds, as required for a criminal charge.

The State Audit included allegations of mismanaged funds and practices in which criminal charges will not be brought. This includes the misuse of state time by employees allegedly conducting personal side jobs while being paid by the 15th District. Charges are not being brought on this primarily because the State Auditor's Office declined to provide KCDA with the evidence to support the allegations. State Audit investigators conducted surveillance where they observed issues related to side jobs being performed while being paid by the 15th District. The State Auditor declined to provide the surveillance evidence to the District Attorney's Office, citing protections under the Whistleblower Protection Act. Independent evidence obtained by the Kern County District Attorney's Office came from employees who had participated in these side jobs, making them potential accomplices to the conduct. Because existing law requires that criminal charges be founded upon evidence independent of accomplice testimony, charges may not be successfully filed on this issue.

The State Audit also mentioned instances where the 15th District's credit card was used without supporting receipts, purchases exceeding \$100 without preapproved purchase orders, and that late fees and interest were incurred because the credit card bills were not paid on time. In reviewing the records and interviewing the Fair Board Members, the Kern County District Attorney's Office concluded there may have been mismanagement in accounting procedures and processes. However, this did not rise to the level of a criminal violations as we did not find a specific intent to defraud the 15th District.

The Audit also mentions the 15th District paid for excessive and illegal out-of-state travel expenses. This included instances where the 15th District paid with a credit card where state policy required the 15th District to pay for the expenses up front and then request reimbursement. Additionally, the 15th District members traveled between 2016 and 2018, to Nevada, Wyoming, and Kentucky without seeking approval from either CDFA's agency secretary or the Governor's office, as state law requires. Pre-approval is required because these states enacted a law after June 26, 2015, that voids or repeals existing state or local protections against discrimination. The Kern County District Attorney's Office concluded that none of the above-mentioned policy or accounting mismanagements met the burden for criminal prosecution.

Regarding the investigation, District Attorney Cynthia Zimmer stated:

“It was disappointing to learn that the State Auditor had indications of potential criminal wrongdoing, investigated them, but declined to share complete evidence with the District Attorney’s Office. Even so, our Public Integrity investigators conducted a thorough investigation into areas highlighted in the audit. Where evidence of criminal misconduct was identified, appropriate charges have been filed. The Kern County fair is an integral part of our community, and the results of the audit and these charges should serve as a reminder of all involved to take management of the 15th District’s funds seriously, and thus protect the future of the Kern County Fair for future generations.”