



BRENNA BIRD
ATTORNEY GENERAL

SCOTT D. BROWN
SPECIAL ASSISTANT ATTORNEY GENERAL

IOWA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
STATEWIDE PROSECUTIONS SECTION

1305 E. WALNUT ST.
DES MOINES, IA 50319
P: 515-281-6691 • F: 515-281-8894
Scott.Brown@ag.iowa.gov
www.iowaattorneygeneral.gov

February 26, 2024

Carlyle Dalen
Cerro Gordo County Attorney
Cerro Gordo County Courthouse
220 N Washington Ave
Mason City, IA 50401

RE: Referral – Adam Wedmore – Cerro Gordo County

Dear Carlyle,

Due to a conflict of interest, on Friday, February 16, 2024, you referred an investigation to the Iowa Attorney General's Office Statewide Prosecutions Section requesting a charging decision involving an alleged criminal act committed by Cerro Gordo County Auditor Adam Wedmore. An investigation was conducted by the Cerro Gordo County Sheriff's Office. The undersigned has had an opportunity to review the investigation and consider all other relevant facts.

On January 27, 2024, at approximately 5:30 p.m. Cerro Gordo County Auditor Adam Wedmore entered the Auditor's Office located at the Cerro Gordo County Courthouse. He was with his family and appeared to be carrying several boxes that were later determined to contain 1,000 pieces of mail related to his reelection campaign for auditor. While in the Auditor's Office, Wedmore utilized a Pitney Bowes mail machine to stamp the pieces of campaign mail. Any mail charge associated with the machine would have necessarily been incurred by Cerro Gordo County. The stamped envelopes were subsequently mailed.

On Friday, February 2, 2024, Wedmore sent an email to his finance director stating that he had used the mail machine for non-county purposes and that he intended to reimburse the county for the postage used in the mail machine in the auditor's office. Wedmore's intent is confirmed by a receipt for a replacement ink cartridge purchased by him on the same day. The email sent by Wedmore indicating his intent to pay for the postage and use of the mail machine was shortly after he had been notified that a county supervisor inquired about the use of the mail machine.

On Monday, February 5, 2024, Wedmore provided a check to the auditor's office finance director that was drawn on his election account in the amount of \$650. A note attached to the check indicated that the amount was for a reimbursement payment to Cerro Gordo County for the mail cost, replacement of the ink used to stamp the mail, and any electricity used for the operation of the machine.

In an interview with law enforcement, Wedmore later acknowledged that he should not have used the machine but had always intended to reimburse the county with the amount of the postage. The explanation he provided for his delay in making payment was due to his schedule and absence from the office in the interim period. There was no damage to the machine and no other official use of the machine was interfered with by Wedmore's actions. From the review of the investigation there appears to be no financial or property loss incurred by Cerro Gordo County.

There are two criminal statutes that are potentially applicable to Wedmore's behavior.

1. Theft in the Fourth Degree (the amount being determined by the total amount of the mailing – Iowa Code Section 714.2(4)) requires a taking of the property of another with the intent to permanently deprive the other thereof. In this instance the property taken would be the postage for the mailing made by Wedmore. Essentially, the allegation would be that Wedmore committed theft by stealing \$640 worth of postage from Cerro Gordo County. To prove a theft the State would be required to show that Wedmore never intended to reimburse the amount of the postage used to make his campaign mailing. Our case law characterizes the intent to commit theft as "more than a temporary dispossession of another's property," but taking property "for an extended period of time, or under such circumstances, that its benefit or value is lost; or, the property is disposed of in such a manner or under such circumstances, as to render it unlikely that the owner will recover the property." E.g., *State v. Nelson*, No. 22-1850, 2023 WL 8449565, at *2 (Iowa Ct. App. Dec. 6, 2023) (citing *State v. Berger*, 438 N.W.2d 29, 31 (Iowa Ct. App. 1989)). Since Wedmore paid the full amount of the postage, supplied a replacement ink cartridge, and paid what amounts to a \$10 payment for use of the machine, there is insufficient proof of Wedmore's intent to permanently deprive the county of the cost of the postage or the use of the mail machine. There is no statute providing a criminal sanction for the unauthorized use of a mail machine.

2. Non-felonious Misconduct in Office in violation of Iowa Code Section 721.2(5). As applied, this particular crime requires a person to use property owned by the county for any private purpose and for personal gain to the detriment of Cerro Gordo County. In order for this charge to be proven beyond a reasonable doubt the State would have to prove that Wedmore used the mail machine to the detriment of the county. Detriment is defined as any loss or harm suffered in person or property. The only harm or loss that could reasonably be argued is a financial loss or harm to the

county. Since Wedmore paid the county for the cost of the postage and provided replacement ink for the machine within a short time of using the machine, and did not cause any other loss or harm to the county, this charge can likewise not be proven beyond a reasonable doubt.

For the above stated reasons, the Iowa Attorney General's Office declines to prosecute Adam Wedmore for his conduct on January 27, 2024. There is no reasonable likelihood that a jury would convict Wedmore of theft or non-felonious misconduct in office due to the insufficiency of evidence related to his intent.

The declination of criminal charges does not equate to condoning the behavior of Wedmore. Wedmore exercised poor judgment in utilizing a county owned mail machine intended for official use for other purposes. Although he ultimately paid for the postage, the ink, and the electricity for use of the machine his actions caused the public that he serves to justifiably mistrust his actions. However, not all exercises of bad judgment result in criminal charges. This is one of those occasions.

It is my understanding that Wedmore's actions and behavior have been reported to the ethics commission that oversees Iowa county auditors. The undersigned will forward this letter and, with the Cerro Gordo County Sheriff's permission, the underlying investigative file to the Iowa Auditor of State for any action warranted by that office. If you should need further assistance, please feel free to call or email. At this time this office considers this criminal matter closed with no charges filed.

Sincerely,



Scott D. Brown
Special Assistant Attorney General
Section Chief – Statewide Prosecutions
Iowa Attorney General's Office

SDB:lb

Copy to : Kevin Pals – Cerro Gordo County Sheriff