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The Greenville News

GreenvilleOnline.com

SATURDAY, SEPTEMBER 26, 2009 ■ FINAL EDITION

Ariail to probe ex-Clemson official's removal of records

Attorney says university trying to 'silence' former board secretary

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Solicitor Bob Ariail said Friday he will open an investigation to determine if a former Clemson University board secretary illegally removed university records when he left — and that a letter from the

former official's attorney sparked his decision.

Eugene Troutman, former executive secretary to the university's board of trustees, is suing Clemson over his termination, alleging in a lawsuit that he was fired after speaking out about "excessive" salary increases given to some

DISPUTE

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university administrators.

Troutman's attorney, Joel Collins of Columbia, wrote a letter this week to Ariail, Sheriff Steve Loftis and Greenville County magistrates in which he

said Clemson lawyers have refused to assure Troutman that they wouldn't seek an indictment, arrest warrant or search warrant for his home because of 14 boxes of documents he took with him when he left the university, according to a copy of the letter.

Collins said Friday he hadn't heard from Ariail

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but that he's "not shocked" by the investigation and respects the obligation of law enforcement to investigate.

He said he's confident Troutman's removal of Clemson records was not only legal but explicitly approved by the university's general counsel, in keeping with university policy and common practice for departing employees.

"I know many people who have left Clemson, and every one of them has taken certain things with them," Collins said, including former presidents. He added, "In this case, they are very substantially trying to punish my client and trying to silence him."

In the letter, Collins asked the county officials not to approve any warrants. He said Troutman's documents were legally obtained and "clearly distinguishable" from the recent high-profile case of former Greenville County Councilman Tony Trout, who went to federal prison this week after being convicted on charges of illegally accessing computers.

Ariail said the letter clearly indicates that others have accused Trout-

man of breaking state law governing the removal of public records, and that now he has an obligation to determine if it's true and if Collins' interpretation of the law is incorrect.

"Had I not received that letter, I would not have known anything was going on," Ariail told *The News*.

Clemson spokeswoman Robin Denny said in a statement that Clemson didn't request Ariail's criminal investigation but the university "appreciates the importance" of the issue and that Troutman took documents and electronic data without permission, erased data from his school-issued laptop and concealed his actions for more than a year after he left.

Wife's fear

Lewis Smoak, a Greenville attorney with the Ogletree Deakins law firm who is representing the university, said Clemson and its attorneys had no intention of pursuing Troutman over the removal of records.

Collins said in the letter that Troutman ultimately returned his boxes of documents to avoid a protracted legal battle but was told in a telephone call last week that Clemson could still "proceed in any fashion," giving Troutman and his wife cause for concern.

Collins said Troutman's wife has been "scared to death" over Clemson's invocation of a criminal statute and that he sent the letter to local officials to help put his client at ease. He said Smoak made clear to him in a recent letter that the university would grant no "overarching promise" that it wouldn't use "all options" to get back its property if Troutman is found in possession of something else.

Smoak said there wasn't any reason for Clemson to take any future options off the table, but a decision had been made not to pursue Troutman over the records even though it had asked a judge to sanction him for erasing and withholding files.

Ariail said his first move this week was to pull the federal court file to determine what claims and counterclaims have been made with regard to the records.

He said he's concerned about the removal of physical records as well as potential computer crimes in connection to Troutman's laptop.

If he decides to proceed — which he said is almost unavoidable — Ariail said he would probably ask the State Law Enforcement Division to assist him in the investigation.

Ariail also said he has

heard from county magistrates who are concerned that Collins' letter might constitute "ex parte," or one-sided, communication concerning a case that could end up in one of their courtrooms.

State law prohibits unlawfully removing a public record from the office where it is usually kept, classifying it as a magistrate-level misdemeanor with a maximum \$200 fine, Ariail said, adding that it's unclear if the fine would apply to each record removed.

Magistrate Ed Taylor told the newspaper Friday that after reading Collins' letter and the attachments, he "absolutely" believes it amounts to ex parte communication with a judge.

"I wouldn't hear the case," Taylor said. "I just wouldn't because I consider it ex parte. The lawyer should have known better than that, in my opinion."

Collins declined to comment on the issue, and said the intent of his letter was clear.

14 boxes

The day Troutman left Clemson, he packed 14 banker's boxes full of documents under the supervision of the university's general counsel, Clayton Steadman, the letter said,

adding that none of the documents were original or official but rather "convenience copies" consistent with university policy.

Collins said all of the records were items that any member of the public could have obtained through a request under the state Freedom of Information Act.

Collins also said Troutman "absolutely" followed Clemson's computer policy, which Collins enclosed in his letter to Ariail.

However, Troutman received a letter from Clemson last year demanding the return of all documents and citing a section of state law that includes criminal sanctions, the letter said.

"To our knowledge, no former Clemson University employee other than Mr. Troutman has ever received such a letter as this," Collins said in his letter.

Troutman asked for a protective order, accusing Clemson of "harassment," while Clemson filed a counterclaim accusing Troutman of erasing and withholding files on a Clemson laptop he used, according to Collins' letter and court documents.

Troutman voluntarily returned the materials earlier this year to avoid a lengthy legal battle, and Collins said in his letter he hoped the issue was resolved.

The judge's law clerk

then called Collins last week to see if the request for a protective order was moot, after which Collins said he sought assurance from Clemson's Ogletree lawyers that the university was no longer considering action under state records law.

"We received no such assurances," Collins said in his letter. He asked Ariail to "decline to issue an arrest warrant, seek an indictment or give express or tacit approval of a search warrant." The letter was copied to Loftis and county magistrates.

Such an attempt by Clemson "would be totally unwarranted and could constitute an abuse of process," the letter said.

The letter also said Clemson has made "false accusations" about Troutman over the past two years and asked county officials to give Troutman a chance to respond to any other allegations Clemson might present.

The sheriff said he viewed Troutman's letter as a way of notifying him of the circumstances of the case, and said it's unusual but not unprecedented for lawyers to give him such a heads-up.

Loftis said he doesn't know of any attempts by Clemson to get warrants or an indictment of Troutman.