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Muzzle doesn't fit river panel liaison

Suit puts Fite, Oklahoma AG at odds

BY ROBERT J. SMITH
ARKANSAS DEMOCRAT-GAZETTE

Ed Fite's cordial, chatty friendships with Arkansas water quality officials go over like a ton of bricks with the Oklahoma attorney general's office.

Fite

It's been that way since 2002, when Oklahoma Attorney General Drew Edmondson first ordered the Oklahoma Scenic Rivers Commission administrator to "stand down" and stop communicating with Northwest Arkansas representatives.

The commission, based in Tahlequah, is a state agency formed in 1977. Its emphasis is to protect the "aesthetic, scenic, historic, archaeological and scientific features of the Illinois River and its tributaries," according to its Web site.

As the commission's administrator, Fite sees no harm in praising his Arkansas neighbors for steps intended to improve water quality. And he thinks it's constructive if he can offer officials in Arkansas advice on water quality issues or help smooth out differences they might have with officials in Oklahoma.

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"The way I was raised by my parents is when someone does something good, you praise them openly," Fite said. "When someone does something terrible, you criticize them in private."

Edmondson

Edmondson, who for years has battled Arkansas cities, businesses and state agencies over water quality issues, believes Fite's dealings with Arkansas officials potentially undercut Oklahoma's position in federal court.

Edmondson filed a federal lawsuit in 2005 against eight companies with poultry operations in Arkansas. The suit accuses the companies of polluting the Illinois River watershed with poultry litter.

So every time Fite presents a Northwest Arkansas city with a certificate of honor from the Scenic Rivers Commission for upgrading a sewer plant, Edmondson and his staff fume.

Equally frowned upon is his regular communication with Arkansas poultry industry representatives he's gotten to know during 23 years directing the commission.

"You don't want someone purporting to speak for the state undercutting your position," Edmondson said in a Sept. 1 interview. "Ed Fite was in conversations that I wasn't privy to. I don't know what was being said, and I simply could not have that.

"When you are in litigation, the attorney general is in charge no matter what other agencies are involved, including the governor."

FITE'S FINE LINE

Fite walks a fine line, he said, when trying to represent the commission while honoring the directives of state leaders. Not only did Edmondson ask him to "stand down" in 2002 when it came to talks with Arkansas officials, but Gov. Brad Henry issued

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a directive to all Oklahoma state agencies in 2005 telling them to be supportive of the state's lawsuit against the poultry companies.

Fite, a state employee hired by the commission, said he's adhered to the wishes of the governor and attorney general, but it's been frustrating.

Recent verbal volleys between Edmondson's office and the Oklahoma Scenic Rivers Commission over the handling of the water-quality dispute with Arkansas reflect the long-running tension between Edmondson, Fite and the commission.

Last month, Scenic Rivers Commission Chairman Bill Blackard discussed bringing a resolution before the commissioners requesting that Edmondson dismiss the lawsuit against the poultry companies.

Blackard, however, dropped the resolution proposal at a meeting on Aug. 29, in part, he said, because he didn't want to put Fite in a difficult position with Edmondson and Henry.

Edmondson didn't speak publicly against the resolution, but said "commissioners who sign on will look rather foolish when we present our evidence at trial."

Edmondson acknowledged that Fite is in a difficult position.

"I think he feels very strongly about the river and protecting it, but there are members of his board, including his chairman, who aren't supportive of this litigation," Edmondson said in the Sept. 1 interview. "And Ed works for the commission, but he also works for Oklahoma."

THE DEPOSITIONS

Conflicts between Fite and Edmondson's office over how Fite interacts with officials in Arkansas are apparent in depositions taken for two lawsuits unrelated to Edmondson's suit against the Arkansas poultry companies.

Marie West sued Edmondson and assistants in his office in 2003 in Oklahoma and federal courts. West worked nine months as an assistant attorney general assigned to the Scenic Rivers Commission, the Oklahoma Conservation Commission and 88 conservation districts.

West provided the *Arkansas Democrat-Gazette* with copies of 10 depositions taken in her cases. Most center on her allegation that her supervisor harassed and intimidated her, but some shed light on Oklahoma's negotiations with Arkansas cities and poultry companies.

West

West was expected to take documents from state agencies without telling the agencies, according to her lawsuits, and was asked to spy on the state agencies she advised.

The attorney general's office distrusted the leaders of the agencies, West said. Edmondson didn't like communication between Oklahoma agencies and Arkansas state agencies about river pollution that didn't include his office, she said.

"I was told to always divide and conquer the state agencies so they don't thwart your power," West said in an Aug. 9 interview in Tulsa. "The agencies trusted me to represent them and look out for their best interests. When I didn't toe the company line, divide and conquer, and do what the attorney general wanted, that's when I [left]."

The attorney general's office denies West's claims. Edmondson said West isn't being truthful.

"We don't spy on agencies," Edmondson said Sept. 1.

DINNER DISCUSSION

West said an example of how the attorney general's office created friction between state agencies played out over dinner at Chelino's restaurant in Oklahoma City in spring 2002.

Kelly Hunter Burch, head of Edmondson's environmental protection unit, told Fite that Oklahoma Water Resources Board Director Duane Smith didn't respect Fite's work and that Fite wasn't well-liked by some employees of the Oklahoma Water Resource Board, West said.

"I remember being deflated, and it went all over me," Fite said. "I gave a lot of credit to things Kelly would tell me back then."

Burch on Friday declined to comment, said Charlie Price, a spokesman for Edmondson's office. Smith also declined to comment.

Fite said he's never asked Smith whether Burch's words were true.

"It doesn't matter whether he said it or didn't say it," Fite said. "The fact is Kelly made me feel terrible that night."

It was later that year, in July or August, that Edmondson asked Fite to "stand down" when it came to his interactions with Arkansas officials, Fite said in a Jan. 20, 2005, deposition for West's lawsuits. Fite immediately was concerned about the request.

"I wasn't trying to be bellicosity toward his decision as the attorney general," Fite said in the deposition. "I was concerned because I had become, through just the years of involvement with the different cities and the principals and the Illinois River basin in particular when I had jurisdiction, as the known person that knew what was going on in the basin, so that's who the folks would come talk to."

Edmondson said he was concerned about Oklahoma having a consistent message with Arkansas poultry companies and the Northwest Arkansas cities that Oklahoma says are polluting the Illinois River.

"At some point, somewhere in there in 2002, we did have a meeting, maybe more than one, to make it very clear that we were in negotiations with the poultry industry and it was important to speak as one voice," Edmondson said in a Sept. 1 interview. "And, that we not have sidebar negotiations with different agencies talking to the different companies."

Fite continued to communicate with Arkansas officials.

He was among the contingent of Oklahoma officials who met in Fayetteville with Arkansas state officials, Northwest Arkansas city officials and Arkansas poultry companies. The

meetings, which lasted two days, started July 31, 2002.

Arkansas leaders pointed out that Fayetteville planned to spend $125 million on sewer system improvements.

Burch, according to Fite's Jan. 20, 2005, deposition, referred to Fayetteville's plan as "a good start." That comment that didn't go over well with Arkansans.

"Some of the Arkansas representatives felt that they were kind of slighted because they felt they were expending a lot of effort," Fite said in his deposition. "And, so, they heard what they wanted to hear and they went back and they started being disgruntled."

Fite, on his own, tried to do damage control. He called Mary Leath, an assistant director with the Arkansas Department of Environmental Quality. He tried to convince Leath that Burch hadn't meant any offense by the comment.

Leath remembers how mad Burch's comment made her, but she didn't specifically remember Fite contacting her afterward.

"It was so lacking in seeing what the real impact of the commitment was of Arkansans," Leath said. "That set the tone even more for us that there was a very unreasonable approach on the Oklahoma side to this whole issue of improving water quality."

HONORING CITIES

Fite, meanwhile, has maintained an involvement with water quality officials in Arkansas.

He attended city council meetings in Siloam Springs, Fayetteville and Springdale, where he recognized the cities for improving discharges from their sewer plants.

At the Fayetteville meeting on Jan. 3, Fite acknowledged that he was "probably the most despised individual in Fayetteville in the 1980s" because of the city's conflict with Oklahoma regarding sewer plant discharges.

In the 1980s, the states battled to the U.S. Supreme Court as Oklahoma challenged Fayetteville's plan to shift part of its sewer plant discharge into the Illinois River. Until then, the discharge went into the White River, which feeds Beaver Lake, Northwest Arkansas' main drinking water supply.

"It's hard to stand before this group and not be embarrassed about years in the past, but we have worked together since 1996," Fite told Fayetteville aldermen in January. "The city of Fayetteville has been nothing but a full partner, fully open, available to discuss our concerns and alternatives that have been suggested."

David Cameron, Siloam Springs city administrator, was grateful when Fite came to thank his city earlier this year for planned upgrades to its sewer plant. In 2005, Fite traveled with Siloam Springs officials to Washington to lobby congressional leaders for money for the sewer plant.

"He's the only reason I would see us being in any type of cordial relationship with Oklahoma," Cameron said. "When I think of Oklahoma, I think of Ed Fite."

Fite's friendliness didn't play well in Oklahoma City, depositions in West's lawsuits show.

Burch was asked during a deposition whether she was "upset" that Fite "continued to have negotiations."

"I don't know if 'upset' is the right word," Burch said in an Aug. 8, 2005, deposition. "It wasn't helpful."

Fite said he shares Edmondson's goal of protecting the state's scenic rivers, but he believes he can resolve differences by communicating with Arkansas officials even though there's an ongoing lawsuit against the poultry companies.

"We're trying to get our arms around a huge problem," Fite said. "If I had all the power in the world in Oklahoma and all the money in the world, if I can't get along with the state of Arkansas, I'll never be able to do my job."

Edmondson disagrees about the usefulness of conversations with people in Arkansas.

"I'm not sure Ed has caused any harm, but that's what we were trying to avoid," Edmondson said. "It's very important that you negotiate from a position of strength."