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# Augusta commissioners settle with former deputy coroner for \$200,000 in labor-related, whistleblower lawsuit

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Augusta commissioners have agreed to pay former deputy coroner Johnny McDonald \$200,000 in a suit McDonald filed last year under the Georgia Whistleblower Act and Fair Labor Standards Act.

McDonald alleged he'd been retaliated against after reporting former coroner Grover Tuten's theft of money and property from the dead, and was owed overtime pay since 2010, when Tuten and then-Chief Deputy Coroner Mark Bowen forced him to sign an agreement stating he was an assistant director, exempt from overtime pay, or be fired.

Tuten resigned last year and is awaiting sentencing in U.S. District Court after pleading guilty May 27 to using the bank card of a dead person in his care. He also faces a 13-count indictment in Richmond County Superior Court on eight counts of theft of cash, vehicles and other property from the dead, and five counts of violating his oath of office.

On Wednesday, General Counsel Andrew MacKenzie said McDonald had agreed to the terms of the settlement offer, which acknowledges no liability but resolves all claims McDonald made against the city, the coroner's office and Bowen, whom Probate Judge Harry James named last year to serve the remainder of Tuten's term.

The commission approved the settlement 9-0 after a hastily called Tuesday executive session for which Mayor Hardie Davis said there was an urgent need.

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MacKenzie said he advised commissioners to approve the settlement, arrived at through pre-discovery mediation, to avoid costly litigation and potentially paying McDonald's attorney fees if the FLSA violations were proven and deemed willful.

A career law enforcement officer in Columbia and Richmond counties, McDonald's suit claimed he informed the FBI of Tuten's illegal conduct in July 2013, an act which angered Bowen, who refused to cooperate.

"Instead, Bowen began to retaliate against Mr. McDonald as soon as he became acting coroner and had full authority over Mr. McDonald," the suit stated.

Then-Chief Acting Deputy Coroner Kenneth Boose told McDonald he should cease complaining to authorities about the coroner's office, including the overtime claim, so Boose and Bowen could advance their careers, it continued.

Bowen said he hadn't read McDonald's complaint but had "cooperated 100 percent" in the FBI investigation. He referred all other questions to attorneys MacKenzie or outside counsel Jim Ellington, who he said handled all details of the case.

McDonald's suit also claimed he was billed by the city law office \$1,438.80 for an open records request related to his claims, including his desire for overtime pay. Despite delivering a check for the amount, the request was never fulfilled, it said.

McDonald, who went on medical leave last year, also alleged he was stopped by security at Augusta Municipal Building and told he couldn't enter the building without an escort.

When McDonald was later ordered to surrender his badge and submit to a fitness-for-duty exam, Marshal Steve Smith told McDonald's wife that city attorney Jody Smitherman had alleged McDonald had threatened her with a gun in a recorded phone conversation. Later, Smith told McDonald that Smitherman had recanted the allegation, the suit said.

McDonald's suit said he had repeatedly complained at all levels of the government about his eligibility for overtime pay, and it demanded unpaid overtime, liquidated damages, three years of front pay and benefits and any lost retirement income as well as compensatory damages to be determined by a jury.

Augusta commissioners reached Wednesday knew little about the case besides what MacKenzie informed them of it in the closed session. Commissioner Bill Lockett said the case demonstrates the need for the city Human Resources office to have a working relationship with departments such as the coroner's office that are led by elected officials.

