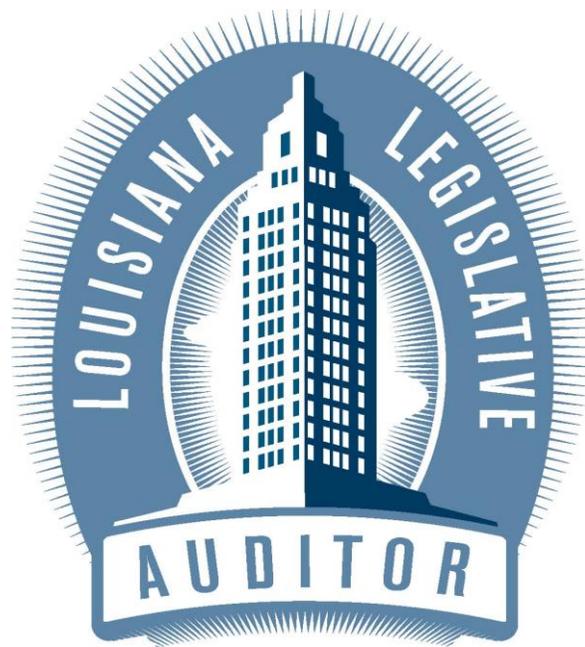


DISTRICT ATTORNEY FOR THE 14TH JUDICIAL DISTRICT



INVESTIGATIVE AUDIT
ISSUED FEBRUARY 25, 2021

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

February 25, 2021

THE HONORABLE JOHN DEROSIER
DISTRICT ATTORNEY FOR THE
14TH JUDICIAL DISTRICT (RETIRED)
Lake Charles, Louisiana

We are providing this report for your information and use. This investigative audit was performed in accordance with Louisiana Revised Statutes 24:513, *et seq.* to determine the validity of complaints we received.

We conducted our audit of the District Attorney for the 14th Judicial District after receiving complaints the district attorney's office had improperly donated funds it received from the buyout of community service hours to a nonprofit corporation.

Records showed former District Attorney John DeRosier transferred \$556,598 to the District Attorney's Community Assistance Foundation between October 2015 and November 2019. The foundation is a Louisiana nonprofit corporation formed by Mr. DeRosier for charitable and other exempt purposes and was administered by district attorney employees.

We found that, between October 2015 and November 2019, the district attorney allowed pretrial diversion participants and defendants on court-ordered misdemeanor probation to buy out community service hours by purchasing gift cards or money orders and delivering them to the district attorney's office. The gift cards and money orders were then transferred to the foundation, and the funds were used to buy items for annual toy drives, make donations to other charitable organizations, and provide aid to people affected by natural disasters.

In addition, we found that, between October 2015 and December 2019, some employees in the district attorney's office performed foundation activities during work hours. One employee also told us she performed campaign activities for Mr. DeRosier during work hours.

We found as well that on October 5, 2016, the foundation issued two checks totaling \$2,815 to The Hobo Hotel, Inc. to pay for items Mr. DeRosier won at an auction during a fundraiser for the organization, including a security camera system that was installed at Mr. DeRosier's home. Because the foundation's funds came from the district attorney's office, Mr. DeRosier may have used public funds for his personal benefit.

The Honorable John DeRosier,
District Attorney for the
14th Judicial District (RETIRED)
February 25, 2021
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Our examination found, too, that Mr. DeRosier allowed individuals on court-ordered misdemeanor probation to buy out court-ordered community service hours. According to the Louisiana Code of Criminal Procedure, only the court may modify, change, or discharge the conditions of probation.

Mr. DeRosier also failed to disclose his position as a foundation officer and board member on his 2015, 2016, and 2017 annual financial disclosure statements. State ethics laws require certain elected officials to file annual financial statements and disclose their association with any nonprofit organization for which they are a director or officer.

The district attorney's office operated pretrial diversion and misdemeanor probation programs that generated funds through the buyout of community service hours. Since the community service obligations were either mandated by the 14th Judicial District Court or imposed by the district attorney's office as a condition of its PTD program, we believe the money generated from the buyout of community service hours should be considered public funds. However, the funds were not recorded as revenues on the district attorney's office financial statements for fiscal years 2015, 2016, 2017, and 2018. As a result, those financial statements may have been materially misstated.

The procedures we performed primarily consisted of making inquiries and examining selected financial records and other documents and do not constitute an examination or review in accordance with generally accepted auditing or attestation standards. Consequently, we provide no opinion, attestation, or other form of assurance with respect to the information upon which our work was based.

The accompanying report presents our findings and recommendations as well as management's response. This is a public report. Copies of this report have been delivered to the District Attorney for the 14th Judicial District of Louisiana, the Louisiana Board of Ethics, and others as required by law.

Respectfully submitted,



Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/aa

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EXECUTIVE SUMMARY

District Attorney Transferred Funds Received by His Office to a Nonprofit Corporation

Records show the District Attorney for the 14th Judicial District (district attorney) transferred \$556,598 to the District Attorney's Community Assistance Foundation (Foundation) between October 2015 and November 2019. The Foundation is a Louisiana nonprofit corporation formed by District Attorney John DeRosier for charitable and other exempt purposes that was administered by district attorney employees. During the roughly four-year period, the district attorney allowed pretrial diversion (PTD) participants and defendants on court-ordered misdemeanor probation to buyout community service hours by purchasing gift cards or money orders and delivering them to the district attorney's office. The district attorney then transferred the gift cards and money orders to the Foundation. The Foundation used the funds for annual toy drives, to make donations to other charitable organizations chosen by Mr. DeRosier, and to provide assistance to persons affected by natural disasters. By transferring funds received by his office to a nonprofit corporation, Mr. DeRosier may have violated the Louisiana Constitution and state law.

Certain District Attorney Employees Performed Foundation and Campaign Activities During Work Hours

From October 2015 to December 2019, some district attorney employees performed Foundation activities during work hours. In addition, one employee told us she performed campaign activities for Mr. DeRosier during work hours. By using public funds and resources to perform activities for the Foundation and Mr. DeRosier's campaign during work hours, district attorney staff may have violated the Louisiana Constitution and state law.

Funds Used for Personal Benefit

On October 5, 2016, the Foundation issued two checks, totaling \$2,815, to The Hobo Hotel, Inc. (Hobo Hotel) to pay for items Mr. DeRosier won at auction during a Hobo Hotel fundraiser, including a security camera system that was installed at Mr. DeRosier's home. Because the Foundation used funds received from the district attorney's office, Mr. DeRosier may have used public funds for his personal benefit. If he used public funds for his personal benefit, Mr. DeRosier may have violated state law.

District Attorney Improperly Modified Court-Ordered Conditions of Misdemeanor Probation by Allowing Defendants to Buyout Community Service Hours

Mr. DeRosier allowed participants on court-ordered misdemeanor probation to buyout court-ordered community service hours. According to the Louisiana Code of Criminal Procedure, only the court may modify, change, or discharge the conditions of probation. As such, the district attorney does not appear to have the authority to unilaterally modify, change, or discharge any conditions of probation. By allowing defendants to buyout a portion, or all, of

their court-ordered community service, Mr. DeRosier appears to have improperly modified, changed, or discharged their conditions of probation in possible violation of the state law.

District Attorney Failed to Disclose Relationship with the Foundation

Mr. DeRosier failed to disclose his position as a Foundation officer and board member on his 2015, 2016, and 2017 annual financial disclosure statements. State ethics laws require certain elected officials to file annual financial statements and disclose their association with any nonprofit organization for which they are a director or officer. By failing to do so, Mr. DeRosier may have violated state law.

Failure to Properly Account for Community Service Buyouts May Have Resulted in Materially Misstated Financial Statements

The district attorney's office operated PTD and misdemeanor probation programs that generated funds through the buyout of community service hours. Since community service obligations were either mandated by the 14th Judicial District Court or imposed by the district attorney's office as a condition of its PTD program, we believe funds generated from the buyout of community service hours were public funds. However, by not recording those funds as revenues on the financial statements, the district attorney's financial statements for the years ended December 31, 2015; December 31, 2016; December 31, 2017; and December 31, 2018; may have been materially misstated.

BACKGROUND AND METHODOLOGY

Article V, Section 26 of the Louisiana Constitution of 1974 provides that the district attorney has charge of every state criminal prosecution in his district, is the representative of the state before the grand jury in the district, and is the legal advisor to the grand jury. The district attorney also performs other duties, as provided by law, and is elected by the qualified electors of the judicial district for a term of six years. The 14th Judicial District is a single-parish judicial district comprised of Calcasieu Parish. John DeRosier was elected District Attorney for the 14th Judicial District in 2005 and re-elected in 2008 and 2014.

Pretrial Diversion

Pursuant to their constitutional authority,¹ all Louisiana district attorneys offer some form of pretrial diversion (also known as a pretrial intervention).^A Although there is no standardized definition of pretrial diversion (PTD), in general terms, it is an alternative to prosecution which diverts certain offenders from the traditional criminal justice process into a program of supervision and services overseen by a district attorney. PTD typically occurs before an offender is charged and may be used to divert any offense within the district attorney's jurisdiction. If a person chooses to enroll in a PTD program, state law² authorizes the district attorney to collect a "reasonable fee" from program recipients.

Attorney General (A.G.) Opinion No. 93-481^B addressed a district attorney's ability to charge a fee to participants in a pretrial intervention program. The A.G. concluded that:

"... [I]t is permissible for a district attorney's office to charge a fee to participants in a pretrial intervention program. However, the fee charged should be for expenses incurred for participation in the program and for administrative costs. Any additional fees charged would be payments for the dismissal of prosecutions. This would be a violation of La. R.S. 42:1116³ ..."

The District Attorney for the 14th Judicial District (district attorney) operates a PTD program through which the district attorney may defer prosecution of a defendant subject to the

^A Louisiana does not have a statutorily-created general pretrial diversion (PTD) program. However, multiple state laws apply to general PTDs, including Louisiana Revised Statute (La. R.S.) 16:17(E) (allows district attorneys to "assess and collect a reasonable fee from participants in pretrial diversion or pretrial intervention programs to support and maintain victims assistance and/or diversionary programs"); and La. R.S. 15:242, which relates to pretrial diversion for driving while intoxicated. In addition, Louisiana law expressly authorizes district attorneys to create special pretrial diversion programs. See, for example, La. R.S. 15:243, which allows district attorneys to create and administer diversion programs for defendants charged with sexual activity offenses involving nonminors.

^B The A.G. released *Opinion No. 93-481* on August 31, 1993. During the 1995 Regular Session, the Louisiana Legislature passed Act No. 1170, which enacted La. R.S. 16:17. La. R.S. 16:17(E) authorizes the district attorney to "assess and collect a reasonable fee from participants in pretrial diversion or pretrial intervention programs to support and maintain victims assistance and/or diversionary programs." As a result, it appears that PTD funds may be used to support and maintain victims assistance and/or diversionary programs, but may not be used for purposes that fall outside of La. R.S. 16:17(E).

defendant meeting and/or fulfilling certain conditions. The district attorney's PTD program may require participants to pay a monthly fee, attend a corrective training course, provide community service, pay restitution, and enroll in an educational institution or G.E.D. program or actively seek or maintain employment. In addition, participants may need help in other problem areas and may be required to undergo substance abuse and psychological assessments. Participants are typically required to attend meetings and keep appointments that are mutually agreed upon with the program coordinator. A subsequent arrest or violation of program rules may result in the participant's case being returned to the appropriate section of the district attorney's office for immediate prosecution. If a PTD program participant satisfactorily completes the conditions of the program, the corresponding criminal charges against the defendant will be dropped.

Misdemeanor Probation

The Louisiana Code of Criminal Procedure⁴ provides that when a defendant is convicted of a misdemeanor, the court may suspend the sentence imposed and place the defendant on supervised or unsupervised probation, upon such conditions as the court may fix. Defendants placed on supervised probation in Calcasieu Parish are assigned a probation officer with the District Attorney's Misdemeanor Probation office to monitor the defendant's case monthly during the probation period. Typically, a judge will sentence a person who commits a misdemeanor crime to one or more of the following [depending on the crime(s)]: hours of community service, random drug and alcohol screenings, attendance at a church of the defendant's choice, defensive driving, work toward acquiring their high school equivalency diploma, and/or a fine. Defendants on misdemeanor probation must pay a monthly supervision fee (unless the court finds the defendant is unable to pay) and report to the defendant's probation officer as directed for the duration of their probation.

If the defendant fails to comply with the conditions of probation, the defendant may be arrested and returned to court for further court proceedings (e.g., modification of probation conditions, ordered to serve the original sentence, etc.).

Buyout of Community Service Requirements for PTD and Misdemeanor Probation

District Attorney John DeRosier told us he permitted PTD participants and defendants on misdemeanor probation to buyout some or all of their community service hours by purchasing toys beginning in 2006. Mr. DeRosier and his staff distributed the toys to local children through an event called the "District Attorney's Sleigh of Toys" around Christmastime. Mr. DeRosier told us that it later became difficult for the district attorney's office to store toys, so he allowed community service obligations to be bought out with gift cards or toys. Toys and gift cards could be exchanged at a rate of \$8 for every hour of community service.

In October 2015, Mr. DeRosier incorporated the District Attorney's Community Assistance Foundation (Foundation), a Louisiana nonprofit corporation domiciled in Calcasieu Parish. According to its articles of incorporation, the Foundation was organized to receive, administer, and distribute funds or other property exclusively for charitable, religious, literary, educational, scientific, or other exempt purposes. PTD participants and defendants on misdemeanor probation were allowed to buyout community service hours by "donating" a gift

card or money order to the Foundation. The Foundation used the gift cards and money orders to make donations to other charitable organizations, purchase toys for the District Attorney's Sleigh of Toys, and fund relief programs following natural disasters.

In October and November 2019, a series of local and national newspaper articles questioned the practice of allowing PTD participants and defendants on misdemeanor probation to buyout their community service hours by donating funds to the Foundation. On November 4, 2019, after a discussion with the Judges of the 14th Judicial District Court, Mr. DeRosier prepared a memo to his misdemeanor probation officers, advising them that "Any defendant on Misdemeanor Probation who desires to change or modify any terms of Misdemeanor Probation will be required to present such request to the court for its consideration. Only after response from the court will this office take any action to modify any term or condition of Misdemeanor Probation." On November 18, 2019, the 14th Judicial District Court issued a letter to Mr. DeRosier indicating the "Court has discussed the matter and agreed not to allow gift cards to be substituted to any degree for our court-ordered community service." Mr. DeRosier told us he also stopped allowing PTD participants to buyout community service in January 2020.

We initiated this audit after receiving complaints that the district's attorney's office improperly donated funds it received from the buyout of community service hours to a nonprofit corporation. The procedures performed during this audit included:

- (1) interviewing district attorney employees;
- (2) interviewing other persons, as appropriate;
- (3) examining selected district attorney documents and records;
- (4) gathering and examining external parties' documents and records; and
- (5) reviewing applicable state laws and regulations.

FINDINGS AND RECOMMENDATIONS

District Attorney Transferred Funds Received by His Office to a Nonprofit Corporation

Records show the District Attorney for the 14th Judicial District (district attorney) transferred \$556,598 to the District Attorney’s Community Assistance Foundation (Foundation) between October 2015 and November 2019. The Foundation is a Louisiana nonprofit corporation formed by District Attorney John DeRosier for charitable and other exempt purposes that was administered by district attorney employees. During the roughly four-year period, the district attorney allowed pretrial diversion (PTD) participants and defendants on court-ordered misdemeanor probation to buyout community service hours by purchasing gift cards or money orders and delivering them to the district attorney’s office. The district attorney then transferred the gift cards and money orders to the Foundation. The Foundation used the funds for annual toy drives, to make donations to other charitable organizations chosen by Mr. DeRosier, and to provide assistance to persons affected by natural disasters. By transferring funds received by his office to a nonprofit corporation, Mr. DeRosier may have violated the Louisiana Constitution⁵ and state law.⁶

The district attorney operates a PTD program through which alleged offenders may have their prosecutions deferred – and subsequently dismissed – by meeting and/or fulfilling certain conditions. The district attorney also monitors defendants placed on court-ordered probation for misdemeanor offenses (misdemeanor probation). In many cases, participants in PTD and defendants on misdemeanor probation are required to perform community service. For PTD participants, community service is a condition imposed by the district attorney, while community service for defendants on misdemeanor probation is a condition ordered by a district judge.

Buyout of Community Service Hours

Mr. DeRosier told us that his predecessor had a Christmas toy program and that he started his own Christmas toy program – the District Attorney’s Sleigh of Toys – after he was elected in November 2005. Mr. DeRosier initially allowed PTD participants and defendants on misdemeanor probation to purchase toys to satisfy part of their community service obligations and bring them to the district attorney’s office throughout the year. Mr. DeRosier and his staff distributed the toys to local children around Christmas each year. According to Mr. DeRosier, he later began accepting gift cards as payment for community service buyouts in lieu of toys, which, he said, solved logistical issues, such as where to store the toys during the year. Mr. DeRosier stated that, as a general rule, participants could buyout half of their community service hours by purchasing gift cards at a rate of \$8 per community service hour. Mr. DeRosier told us that the District Attorney’s Sleigh of Toys was part of the district attorney’s office and could not exist without the buyout of community service hours.

Gift cards purchased to buyout community service hours were received in the district attorney's office by PTD and misdemeanor probation department staff. The receptionists for these departments:

- prepared triplicate receipts (one copy was provided to the payor, one copy was placed in the payor's file, and one copy remained in a receipt book);
- posted a note in the activity sheet of the district attorney's case management system, Karpel;
- posted the value of the gift cards received to the spreadsheets used to track payments received from PTD participants and defendants on misdemeanor probation; and
- placed the gift card in a box in the appropriate receptionist's desk.

Toys were stored at the district attorney's office and gift cards were maintained in locked drawers in both the misdemeanor probation and PTD offices. District attorney employees informed us that they inventoried gift cards prior to purchasing toys for the District Attorney's Sleigh of Toys program. Those employees told us they used gift cards to purchase toys during office hours from September to December each year, and they and Mr. DeRosier distributed the toys in early December.

District Attorney's Community Assistance Foundation

Mr. DeRosier told us he requested the district attorney office's external auditor, Langley, Williams, and Co., LLC (Langley Williams), to "audit" the gift cards in August 2015, because a district attorney employee accused another district attorney employee of misusing gift cards. Langley Williams' records show it documented the process for accepting gift cards, inventoried the gift cards on hand, and made recommendations on how to account for the gift cards. Records provided by Langley Williams further show the district attorney's office had \$221,615 in gift cards on hand; Langley Williams also found significant deficiencies in the manner in which gift cards were received, recorded, reconciled, and maintained. Mr. DeRosier told us he asked Mr. Langley for advice and Mr. Langley told him to remove the gift cards from downstairs, count the gift cards, keep the gift cards with the chief administrative officer, track the gift cards periodically, create a 501(c), and get organized. Mr. DeRosier told us he then transferred custody of the gift cards from the PTD and misdemeanor probation departments to his Chief Administrative Officer, Russell Haman.

Louisiana Secretary of State (SoS) records show that Mr. DeRosier was the incorporator of the District Attorney's Community Assistance Foundation (Foundation), a Louisiana nonprofit corporation domiciled in Calcasieu Parish, on October 21, 2015. Mr. DeRosier was listed as the Foundation's president, initial director and registered agent, and the Foundation's corporate address was the same as the district attorney's office. According to its articles of incorporation, the Foundation was organized to receive, administer, and distribute funds or other property exclusively for charitable, religious, literary, educational, scientific, or other exempt purposes. Records show that Mr. DeRosier paid \$1,056 from his district attorney campaign

account to register the Foundation with the SoS and apply for tax exempt status with the Internal Revenue Service (IRS). The Foundation's Application for Recognition of Exemption, signed by Mr. DeRosier, indicated that the Foundation was affiliated with a governmental unit and further explained that the district attorney was the Foundation's president and incorporator. As district attorney, the application said that he was in a position to identify those in need and assist them.

Funds Transferred to the Foundation

Between August 2015 and October 2015, when the Foundation was formed, the district attorney's gift cards on hand increased \$2,574 from \$221,615 to \$224,189. Records show that the Foundation received gift cards totaling \$224,189 from the district attorney's office after its formation.

In February 2016, a checking account was opened in the Foundation's name that allowed PTD participants and defendants on misdemeanor probation to buyout community service hours using money orders in addition to gift cards. District attorney employees received gift cards and money orders and issued receipts (either handwritten receipts from the district attorney's receipt books or computer-generated receipts from the district attorney's case management system, Karpel). Receipts issued from Karpel identified the payments with the code "Transfer to DACAF." Because money orders often did not include a payee, district attorney employees stamped "DA Community Assistance Foundation" as the payee. It does not appear that any receipts were issued in the name of the Foundation. Payments were then remitted to Mr. DeRosier's executive assistant, Linda Boudreaux, who recorded amounts received on a spreadsheet, deposited money orders into the Foundation bank account, prepared documentation for disbursements, prepared and signed checks, inventoried gift cards, and maintained the Foundation's financial records.

During our audit, we reviewed the Foundation's financial records Ms. Boudreaux maintained. According to those records, the district attorney's office received \$332,409 in gift cards and money orders from community service buyouts from November 2015 to December 2019. This is in addition to the \$224,189 in gift cards on hand when the Foundation was formed (indicating at least \$556,598 flowed from the district attorney's office to the Foundation during this time). Because the gift cards and money orders were generated from the buyout of community service obligations, it is our opinion that they were public funds that should have been retained by the district attorney's office and used to support the district attorney's operations in accordance with state law. The gift cards and money orders collected by the district attorney's office for the buyout of community service hours and transferred to the Foundation are summarized in the table below.

	2015	2016	2017	2018	2019	Total
Deposits to Foundation Bank Account		\$101,673	\$84,203	\$55,032	\$39,133	\$280,041
Gift Cards Taken in Per Foundation		43,048	5,830	1,856	1,634	52,368
Gift Cards per Langley Williams Count	\$221,615					221,615
Additional Gift Cards Taken In per Foundation Tax Records	2,574					2,574
Total	\$224,189	\$144,721	\$90,033	\$56,888	\$40,767	\$556,598

We found most gift cards and proceeds from money orders were: (1) donated to other nonprofit organizations, (2) used to purchase toys for the District Attorney’s Sleigh of Toys program, or (3) used to assist persons affected by natural disasters. According to Foundation and district attorney records, nonprofit organizations requested Foundation funds from Mr. DeRosier or his employees, including Ms. Boudreaux and Chief Administrative Officer Russell Haman. Ms. Boudreaux presented the requests to Mr. DeRosier, who would authorize the donation and determine its amount.^c Ms. Boudreaux completed a Request for Assistance form to be signed and approved by the Foundation president (which was Mr. DeRosier from October 21, 2015 until sometime between October 2017 and May 2018; Mr. Haman from the date he succeeded Mr. DeRosier to October 5, 2019; and Mike Terranova from November 2019 to present). Once approved, Ms. Boudreaux completed a Donation Receipt Form to document the receiving organization’s nonprofit status and receipt of funds/gift cards. The uses of funds by the Foundation are summarized in the table below.

	Charitable Organizations	Christmas Program	Disaster Relief	Operations	Total
2015	\$17,744.00	\$9,588.00			\$27,332.00
2016	73,550.91	32,994.27	\$45,275.73	\$2,318.36	154,139.27
2017	48,311.13	37,102.25	42,833.63	3,908.36	132,155.37
2018	67,865.56	13,970.03	3,020.00	10,323.54	95,179.13
2019	62,656.04	23,009.27		6,226.36	91,891.67
	\$270,127.64	\$116,663.82	\$91,129.36	\$22,776.62	\$500,697.44

In addition, we compared the Foundation’s disbursements to Mr. DeRosier’s campaign expenses and found that Mr. DeRosier directed Foundation funds to several nonprofit organizations that previously received donations from his campaign. It appears that after the Foundation was formed and began making donations, Mr. DeRosier’s campaign stopped donating to some organizations and continued donating to others.

For example, in 2014 and 2015, Mr. DeRosier’s campaign donated \$250 and \$650, respectively, to the Lake Charles Walk Like MADD event. According to Mothers Against Drunk Drivers (MADD), Walk Like MADD is a community-based activity that provides people personally impacted by drunk driving, and their network of supporters and friends, the opportunity to take steps to stop drunk driving in their community and nationwide. Mr. DeRosier’s campaign reports do not include any donations to MADD after 2015. However, the Foundation’s records show it donated a total of \$2,076 to the Lake Charles Walk Like MADD

^c According to the Foundation’s annual report filed with the Louisiana Secretary of State on November 2, 2017, Mr. DeRosier was the President of the Foundation for the year ending October 21, 2017. The Foundation’s Form 990 tax return, filed on May 30, 2018, did not list Mr. DeRosier as a Foundation officer or board member. Mr. DeRosier told us he approved donations until September 2019. He also told us that, in February 2020, he was not letting the Foundation do anything due to the controversy. During the course of our audit, we identified instances where it appeared Mr. DeRosier approved donations when he was not a Foundation officer or board member. For example, we obtained a pledge form from the McNeese Foundation which shows Mr. DeRosier pledged \$1,500 on the Foundation’s behalf to fund football coaches’ salaries on July 17, 2018. Foundation records show a Request for Assistance form was signed by Russell Haman as Foundation president and a check was issued by the Foundation that same day.

event from 2016 to 2019. Likewise, Mr. DeRosier's campaign donated \$1,000 to the Maplewood Lions Club for a Thanksgiving lunch in November 2014. Between November 19, 2015 and November 15, 2019, the Foundation donated \$7,663 to the Maplewood Lions Club for Thanksgiving meals.

From 2011 to 2014, Mr. DeRosier's campaign paid \$2,100 to Our Lady Queen of Heaven School (OLQHS), primarily for sponsorships. Mr. DeRosier's campaign did not pay any money to OLQHS in 2015 or in the years that followed for sponsorships; however, from 2016 to 2019, the Foundation donated \$4,500 to OLQHS for sponsorships. In other instances, the Foundation and Mr. DeRosier's campaign provided funds to organizations in the same year(s). For instance, Mr. DeRosier's campaign donated \$6,650 to the McNeese State University Foundation^D from 2009 to 2018, while the Foundation donated \$7,450 to the McNeese State University Foundation from 2016 to 2019.

Mr. DeRosier told us he formed the Foundation to facilitate his Christmas toy program, make donations to nonprofit organizations, and assist in disaster relief. Mr. DeRosier further told us that before the Foundation existed, he believed all donations belonged to the donor until delivered to the ultimate recipient. Then after the Foundation was formed, he believed that all funds used to buyout community service belonged to the Foundation, not the donor, even the gift cards his office collected in previous years. Mr. DeRosier contends that money orders and gift cards paid to buyout community service were not public funds and never belonged to the district attorney's office, even though they were in the district attorney's possession. Mr. DeRosier explained that his office merely facilitated the use of gift cards rather than received them, and that gift cards were a "pass-through" of funds.^E However, Langley Williams invoiced the district attorney's office \$16,805 to count the gift cards on hand in August 2015, the same gift cards he told us were not public funds. Mr. DeRosier told us that he approved the district attorney's office paying for the gift card count because misdemeanor probation and PTD are district attorney programs.

Mr. DeRosier further told us that, in his opinion, funds paid to buyout community service belonged to the Foundation and that the Foundation was totally separate from the district attorney's office. However, as was mentioned previously, the Foundation's Application for Recognition of Exemption, signed by Mr. DeRosier, indicated that the Foundation was affiliated with a governmental unit and further explained that the district attorney was the Foundation's president and incorporator. Moreover, Mr. DeRosier also told us that he resigned from the Foundation to separate the Foundation from the district attorney's office and that he decided to separate the Foundation and the district attorney around the time of the third news article (November 2019).

To us, it appears that the funds at issue are, and were, public funds. To illustrate, the district attorney's office operated the PTD and misdemeanor probation programs that generated

^D Mr. DeRosier's campaign donated to the McNeese State University Foundation each year from 2009 to 2018 in amounts ranging from \$50 to \$1,600.

^E The district attorney's financial statements for the years ending December 31, 2015 through December 31, 2018, do not document community service buyout payments as a pass-through of funds. Funds collected on behalf of third parties, such as restitution funds, are accounted for with an agency fund.

funds through the buyout of community service hours. Because community service obligations were either mandated by the 14th Judicial District Court (for defendants on misdemeanor probation) or imposed directly by the district attorney's office as a condition of its PTD program, and payments to buyout those required community service hours were received by the district attorney, the funds generated from the buyout of community service hours were, in our opinion, public funds and should have been treated as such. If public funds were used to purchase toys, make donations to nonprofit organizations, and assist in disaster relief – all noble causes that fall outside of a district attorney's authority – Mr. DeRosier may have violated the Louisiana Constitution⁵ and state law.⁶

Recommendations

We recommend that the district attorney seek legal advice as to the appropriate actions to be taken regarding the recovery of funds transferred to the Foundation. We further recommend that the district attorney's office require that all public funds collected be adequately documented, accurately recorded, and deposited daily.

Certain District Attorney Employees Performed Foundation and Campaign Activities During Work Hours

From October 2015 to December 2019, some district attorney employees performed Foundation activities during work hours. In addition, one employee told us she performed campaign activities for Mr. DeRosier during work hours. By using public funds and resources to perform activities for the Foundation and Mr. DeRosier's campaign during work hours, district attorney staff may have violated the Louisiana Constitution⁵ and state law.^{6,7}

SoS records show that Mr. DeRosier incorporated the Foundation on October 21, 2015. Mr. DeRosier was listed as incorporator, registered agent, and initial director, and the Foundation's corporate address was the same as the district attorney's office. According to its articles of incorporation, the Foundation was organized to receive, administer, and distribute funds or other property exclusively for charitable, religious, literary, educational, scientific, or other exempt purpose. IRS records show that the Foundation is a tax exempt, nonprofit organization that has no employees. Tax records also show that the district attorney and several current and former district attorney employees, including Mr. Haman; former Assistant District Attorney Carla Sigler; and PTD and Misdemeanor Probation Supervisor Barbara Adam; served as Foundation board members.

We interviewed several district attorney employees and reviewed Foundation and district attorney records, email correspondence, summary time sheets, and other records. Based on our review, we found that the majority of the employees of the PTD and misdemeanor probation departments performed some Foundation activities during work hours. In addition, we identified several other employees who appear to have used district attorney resources to operate the Foundation during district attorney work hours, including:

- Linda Boudreaux, Executive Secretary to Mr. DeRosier
- Russell Haman, former Chief Administrative Officer
- Patsy Dugas, Public Information Officer
- Carla Sigler, former Assistant District Attorney

During our audit, we found district attorney employees operated the Foundation and maintained its records. Several of the Foundation's business records, such as deposit slips, shopping receipts, and emails, were time and date-stamped, showing they were processed by district attorney employees during regular work hours. Ms. Boudreaux, who maintained the Foundation's financial records and processed a majority of the financial transactions, told us she typically performed Foundation activities during regular work hours. Ms. Boudreaux also told us she thought that the Foundation was part of the district attorney's office for more than two years after the Foundation was formed.

District attorney employees also performed activities for the District Attorney's Sleigh of Toys, including counting gift cards, coordinating donations with local entities, creating shopping lists, shopping, and organizing and distributing toys. The toy program was overseen by Ms. Adam and/or Ms. Dugas, both of whom told us that district attorney employees (including themselves) performed toy-related activities during regular working hours. According to Ms. Adam, employees from the PTD and Misdemeanor Probation departments worked on the toy drive during district attorney office hours from September to December each year.

Ms. Dugas said she was in charge of purchasing toys from 2017 through 2019. She also said that she and other district attorney employees purchased toys during work hours in 2017, but took leave to purchase toys in 2018. Ms. Dugas stated that only she and Ms. Boudreaux purchased toys in 2019, and she either purchased toys on the weekends or took leave. Ms. Dugas stated that prior to 2019, in the months leading up to Christmas, she would spend 15% to 20% of her work hours shopping for toys. Ms. Dugas further stated she thought that the Foundation was part of the district attorney's office until they began receiving public records requests and newspaper coverage in October or November 2019. She said this is when Mr. DeRosier advised her that staff could not work on the toy program during work hours, and that the toy program should be kept separate from the district attorney's office.

In addition to performing Foundation activities during work hours, Ms. Boudreaux told us that she also performed work for Mr. DeRosier's campaign during work hours. Ms. Boudreaux said she maintained Mr. DeRosier's campaign records, scheduled campaign events, and collected and deposited campaign contributions. Ms. Boudreaux told us that Mr. DeRosier approved of her performing Foundation and campaign activities during work hours.

Mr. DeRosier told us that some of his employees worked for the Foundation during work hours. Mr. DeRosier stated that he is responsible for the employees, and they did what he asked them to do. Regarding Ms. Boudreaux, Mr. DeRosier told us "everything she did I told her to do." By using public funds and resources to operate the Foundation and perform campaign

activities during work hours, Mr. DeRosier and certain employees may have violated the Louisiana Constitution⁵ and state law.^{6,7}

Recommendations

We recommend that management develop and implement written policies and procedures to ensure that district attorney employees comply with the Louisiana Constitution and state laws prohibiting the use of public resources for unauthorized and private activities. District attorney employees should be required to sign an annual certification indicating they have read and agree to abide by these policies and procedures.

Funds Used for Personal Benefit

On October 5, 2016, the Foundation issued two checks, totaling \$2,815, to The Hobo Hotel, Inc. (Hobo Hotel) to pay for items Mr. DeRosier won at auction during a Hobo Hotel fundraiser, including a security camera system that was installed at Mr. DeRosier's home. Because the Foundation used funds received from the district attorney's office, Mr. DeRosier may have used public funds for his personal benefit. If he used public funds for his personal benefit, Mr. DeRosier may have violated state law.^{6,7,8}

According to its website, the Hobo Hotel is a nonprofit, no-kill shelter for cats and kittens located in Lake Charles, Louisiana. Records show that the Foundation issued two checks, totaling \$2,815, to the Hobo Hotel on October 5, 2016. These checks were signed by Mr. DeRosier's executive assistant, Linda Boudreaux, and Chief Administrative Officer Russell Haman. Foundation documentation supporting these checks included a request for assistance form that was approved by Mr. DeRosier on October 5, 2016, and a donation receipt showing that a representative from the Hobo Hotel received checks in the amount of \$1,615 and \$1,200.

During our audit, we reviewed Ms. Boudreaux's district attorney email account and located emails showing that the Foundation issued checks to Hobo Hotel on October 5, 2016, to pay for items Mr. DeRosier won at the Hobo Hotel's auction the week before. To illustrate, a Hobo Hotel representative emailed a statement to Ms. Boudreaux at 10:41 a.m. on October 5, 2016, for the items Mr. DeRosier purchased at the auction. These items totaled \$1,615, and included the following:

- \$1,450 – Smile for the Cameras (home security camera system);
- \$50 – “Live, Laugh, Love” wall hanging;
- \$50 – Bottle of red, bottle of white;
- \$50 – Wall sconces (set of two); and
- \$15 – Abaca lime green bracelet.

After receipt of the statement, Ms. Boudreaux's (LB) email exchange with the Hobo Hotel representative (HH) included the following:

- LB to HH 10:51 a.m. – Perfect. Can you get me your IRS letter that shows you're a 501c3 and tax ID#? Also, if someone can bring the items to our office, I'll give them the check.
- LB to HH 11:01 a.m. – Sorry, but because we issue checks from the "D.A.'s Community Assistance Foundation" account, we need someone to sign for it.
- HH to LB 11:02 a.m. – John and Leigh took their items home with them the night of the auction. Attached is our 501 letter and the donation letter from [Vendor 1] for the camera system. Thanks!
- LB to HH 11:30 a.m. – John said he only got one certificate for [Vendor 2] and purchased two dinners. Also, he needs to pick up the camera system from [Vendor 1]?
- HH to LB 11:42 a.m. – Oops – I did not realize he had the [Vendor 2] dinner also. It was a dinner for 10. John got one dinner for 10, and someone else got the other one. He can just call [Vendor 1] to arrange for the camera system – it includes installation along with the equipment. Attached is a revised statement that includes the [Vendor 2] dinner. Trying to get someone lined up to pick up the check.

Hobo Hotel's representative provided Ms. Boudreaux with an updated statement that included the initial items, totaling \$1,615, and an additional \$1,200 for the dinner for 10 guests from Vendor 2. It appears that Ms. Boudreaux then completed a request for assistance form, which Mr. DeRosier signed and approved, and issued two checks, totaling \$2,815, to the Hobo Hotel. The request for assistance form indicates that the expenditure was a "fundraiser donation."

Mr. DeRosier acknowledged to us the items purchased at the auction should not have been paid for with Foundation funds. Mr. DeRosier said he may have received the camera system, probably used the restaurant gift certificate, and probably gave the other items away as gifts from his campaign. We observed what appeared to be security cameras at Mr. DeRosier's residence and verified with Vendor 1 that the cameras donated to Hobo Hotel were installed at Mr. DeRosier's residence. After we brought the transactions to Mr. DeRosier's attention, he reimbursed the Foundation \$2,815 in August 2020.

Because the Foundation received funds from the district attorney's office, Mr. DeRosier may have used public funds for his personal benefit. Moreover, the Foundation's Articles of Incorporation prohibits members, directors, or officers of the corporation from receiving any benefit from the net earnings of the corporation.^F By using funds in the Foundation's possession

^F Article VII of the Foundation's articles of incorporation provides, "No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its Members, Directors, or Officers, but the Corporation shall be

for his personal benefit, Mr. DeRosier may have violated the Foundation's Articles of Incorporation and state law.^{6,7,8}

Recommendations

We recommend that management seek reimbursement for all personal expenditures incurred and adopt detailed purchasing policies and procedures to ensure that all public funds are spent in accordance with state law in the future. These policies should clearly identify allowable expenses, approval procedures, payment methods, and documentation requirements.

District Attorney Improperly Modified Court-Ordered Conditions of Misdemeanor Probation by Allowing Defendants to Buyout Community Service Hours

Mr. DeRosier allowed participants on court-ordered misdemeanor probation to buyout court-ordered community service hours. According to the Louisiana Code of Criminal Procedure, only the court may modify, change, or discharge the conditions of probation. As such, the district attorney does not appear to have the authority to unilaterally modify, change, or discharge any conditions of probation. By allowing defendants to buyout a portion, or all, of their court-ordered community service, Mr. DeRosier appears to have improperly modified, changed, or discharged their conditions of probation in possible violation of the state law.^{4,9}

Misdemeanor Probation

The Louisiana Code of Criminal Procedure provides that when a defendant has been convicted of a misdemeanor, the court may suspend the sentence imposed, and place the defendant on supervised or unsupervised probation, upon such conditions as the court may fix. Defendants placed on supervised probation in Calcasieu Parish are assigned to a probation officer with the District Attorney's Misdemeanor Probation Department. Probation officers monitor the defendants' cases monthly during the terms of probation. Judges typically sentence convicted misdemeanor defendants to one or more of the following, depending on their crimes: hours of community service, random drug and alcohol screenings, attendance at a church of the defendants' choice, defensive driving, work toward acquiring their high school equivalency diploma, and/or a fine. According to the Code of Criminal Procedure, only the court may modify, change, or discharge the conditions of probation. All defendants on misdemeanor probation must pay a monthly supervision fee (unless the court finds the defendant is unable to pay) and report to the defendant's probation officer as directed for the duration of their probation. If a defendant fails to comply with the probation conditions, a warrant may be issued for the defendant's arrest and the defendant's probation may be modified or revoked.

authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set for in these Articles of Incorporation.”

Buyout of Court-Ordered Community Service Requirements

Beginning in or about 2006, District Attorney John DeRosier permitted defendants on misdemeanor probation to buyout a portion – or in some cases we observed, all – of their community service hours. According to flyers provided by the district attorney’s office from 2016 to 2019, defendants on misdemeanor probation were given the option of working community service hours or submitting funds and/or gift cards to the Foundation at the rate of \$8 per community service hour. The flyers from 2016 and 2017 did not specify how many community service hours could be purchased; however, the flyers from 2018 and 2019 provided defendants with the option of working all of their community service hours or working half of their community service hours and buying out the remaining half.

Mr. DeRosier told us that since the district attorney was selected to monitor misdemeanor probation for the 14th Judicial District Court and the district attorney controls all prosecutions until complete, he has the right to modify misdemeanor probation. According to Mr. DeRosier, his office allowed all defendants to buyout up to 50 percent of their community service hours. Several current and former district attorney employees told us that between 80 and 90 percent of defendants (PTD and misdemeanor probation) bought out a portion of their community service obligations.

According to state law, a person on probation for a first offense DWI may be required to perform 32 hours of community service in lieu of jail time, half of which must consist of participation in a litter abatement or collection program. We analyzed data from the district attorney’s case management system to determine whether defendants on misdemeanor probation for DWI offenses were allowed to buyout all court-ordered community service hours. We found 352 misdemeanor probation DWI cases from 2015 through 2019 that required 32 hours of community service, 33 (9%) of which were allowed to buyout all of that community service time using a gift card or money order. Listed below are five examples of DWI defendants (based on their payment dates) who were allowed to buyout all community service hours, including one who did so in 2019, when the district attorney’s policy was to allow defendants to only buyout half of their community service hours:

- June 6, 2016 – 32 hours purchased for \$256
- August 17, 2016 – 32 hours purchased for \$256
- September 21, 2016 – 32 hours purchased for \$256
- February 26, 2017 – 32 hours purchased for \$257
- August 21, 2019 – 32 hours purchased for \$256

According to the Code of Criminal Procedure, only the court may modify, change, or discharge probation conditions. As such, it appears the district attorney does not have the authority to modify, change, or discharge court-ordered probation conditions. By allowing defendants to buyout a portion, or all, of their court-ordered community service, Mr. DeRosier

appears to have improperly modified, changed, or discharged their conditions of probation in possible violation of state law.^{4,9}

Recommendations

We recommend that management implement detailed written policies and procedures to ensure that defendants on misdemeanor probation are supervised in accordance with the conditions of their court-ordered probation. These policies and procedures should strictly prohibit the modification or alteration of the conditions of all defendants' probation without the court's permission.

District Attorney Failed to Disclose Relationship with the Foundation

Mr. DeRosier failed to disclose his position as a Foundation officer and board member on his 2015, 2016, and 2017 annual financial disclosure statements. State ethics laws require certain elected officials to file annual financial statements and disclose their association with any nonprofit organization for which they are a director or officer. By failing to do so, Mr. DeRosier may have violated state law.^{10,11,12}

Louisiana Revised Statute (La. R.S.) 42:1124.2(A)(2) provides that each person holding a public office who represents a voting district having a population of five thousand or more persons shall annually file a financial statement with the Louisiana Board of Ethics (Board of Ethics). In addition, La. R.S. 42:1124.2(C)(4)(b) provides that the annual financial statement shall include the name, address, brief description of, and nature of association with a nonprofit organization in which the individual or spouse is a director or officer.

SoS records show that Mr. DeRosier incorporated the Foundation, a Louisiana nonprofit corporation domiciled in Calcasieu Parish, on October 21, 2015. The Foundation's initial filing with the SoS listed Mr. DeRosier as its incorporator and initial director. Annual reports filed with the SoS in September 2016 and November 2017 also listed Mr. DeRosier as the Foundation's president. Although the Foundation's annual report filed in October 2018, listed Russell Haman as the Foundation's president, it does not appear that any records were filed to remove Mr. DeRosier as a director or officer of the Foundation. As such, Mr. DeRosier was required to disclose his association with the Foundation on his annual Personal Financial Disclosure Statements in 2015, 2016, and 2017. We reviewed the Personal Financial Disclosure Statements that Mr. DeRosier filed with the Board of Ethics from 2015 to 2017 and found no mention of his role with the Foundation. By failing to disclose his position with the Foundation on his annual Personal Financial Disclosure Statements, Mr. DeRosier may have violated state law.^{10,11,12}

Recommendations

We recommend that management implement policies and procedures to ensure all employees comply with state ethics laws.

Failure to Properly Account for Community Service Buyouts May Have Resulted in Materially Misstated Financial Statements

The district attorney's office operated PTD and misdemeanor probation programs that generated funds through the buyout of community service hours. Since community service obligations were either mandated by the 14th Judicial District Court or imposed by the district attorney's office as a condition of its PTD program, we believe funds generated from the buyout of community service hours were public funds. However, by not recording those funds as revenues on the financial statements, the district attorney's financial statements for the years ended December 31, 2015; December 31, 2016; December 31, 2017; and December 31, 2018; may have been materially misstated.

After Mr. DeRosier incorporated the Foundation in October 2015, the district attorney's office transferred \$224,189 in gift cards to the Foundation; these gift cards were received by the district attorney's office from the buyout of community service hours days, weeks, months and, in some cases, years before the Foundation was formed. State audit law requires any quasi-public entity who receives between \$75,000 and \$200,000 in revenues in one fiscal year to have an annual compilation of its financial statements.¹³ In addition, any quasi-public entity that receives \$200,000 or more in revenues and other sources in any one fiscal year, but less than \$500,000, must have an annual review of its financial statements.¹⁴ Records show that although the Foundation began receiving funds in 2015, the Foundation failed to comply with the Louisiana audit law and submit annual reviews or compilations to the Louisiana Legislative Auditor (LLA) until April 2020.

In November 2017, the district attorney's auditor, Langley Williams, had discussions with the LLA about the Foundation's reporting requirements. According to Langley Williams' audit partner, Daphne Berken, Mr. DeRosier informed her on or around November 7, 2017, that he had cleared the use of the Foundation to receive and disburse gift cards with Louisiana Legislative Auditor Daryl Purpera. Documentation provided by Ms. Berken shows that she contacted the LLA on November 13, 2017, and spoke with an LLA attorney who informed her that the LLA attorney knew nothing about the LLA giving the district attorney permission to use a nonprofit organization for a diversion program. The LLA attorney suggested the arrangement may violate Article VII, Section 14 of the Louisiana Constitution, which prohibits the donation of public funds, and recommended that Mr. DeRosier obtain an Attorney General opinion on the matter.

Two weeks later, Ms. Berken was contacted by the LLA's Director of Local Government Services, who emailed her information regarding the Foundation's reporting requirements under the state audit law. In December 2017, Langley Williams began preparing a review of the Foundation's 2016 financial statements; however, the review was never submitted to the LLA.

On December 5, 2019, Ms. Berken submitted paperwork to the LLA to register the Foundation as a quasi-public agency subject to the Louisiana audit law. The form she submitted states that the Foundation was affiliated with the district attorney's office, provided the amount of public funds received, and described the public funds received as the "14th JDC allows up to 50% of the required community service hours to be replaced by donations to the program or

donations to other 501c (3) entities equal to \$8/per hour of community service.” In April 2020, Langley Williams submitted the Foundation’s compilation reports to the LLA for the years ended December 31, 2016; December 31, 2017; and December 31, 2018.

The payments to buyout community service hours, in our opinion, appear to have been public funds generated from the district attorney’s Misdemeanor Probation and PTD programs. Those programs were accounted for as components of the general fund in the district attorney’s audited financial statements. As such, the payments to buyout community service hours (and corresponding disbursements) should have been accounted for in the district attorney’s audited financial statements from 2015 to 2018. These payments were not reflected in the district attorney’s financial statements in any way. We reviewed the work papers for the district attorney’s audits and found that the payments to buyout community service hours exceeded the level required to be material to the financial statements. It appears that the district attorney’s financial statements may have been materially misstated from 2015 to 2018.

Recommendations

We recommend that management consult with its auditor regarding the reliability of the district attorney’s financial statements for the years ended December 31, 2015; December 31, 2016; December 31, 2017; and December 31, 2018; and determine if those financial statements need to be restated. We further recommend that management implement detailed written policies and procedures to ensure that all public funds received are properly recorded.

LEGAL PROVISIONS

¹ **Louisiana Constitution Article V, Section 26** states, “(A) Election; Qualifications; Assistants. In each judicial district a district attorney shall be elected for a term of six years. He shall have been admitted to the practice of law in the state for at least five years prior to his election and shall have resided in the district for the two years preceding election. A district attorney may select assistants as authorized by law, and other personnel. (B) Powers. Except as otherwise provided by this constitution, a district attorney, or his designated assistant, shall have charge of every criminal prosecution by the state in his district, be the representative of the state before the grand jury in his district, and be the legal advisor to the grand jury. He shall perform other duties provided by law. (C) Prohibition. No district attorney or assistant district attorney shall appear, plead, or in any way defend or assist in defending any criminal prosecution or charge. A violation of this Paragraph shall be cause for removal.”

² **Louisiana Revised Statute (La. R.S.) 16:17(E)** states, “The district attorney may assess and collect a reasonable fee from participants in pretrial diversion or pretrial intervention programs to support and maintain victims assistance and/or diversionary programs.”

³ **La. R.S. 42:1116(A)** states, “No public servant shall use the authority of his office or position, directly or indirectly, in a manner intended to compel or coerce any person or other public servant to provide himself, any other public servant, or other person with anything of economic value. This Subsection shall not be construed to limit that authority authorized by law, statute, ordinance, or legislative rule in carrying out official duties.”

⁴ **La. Code Crim. Proc. Art. 894(A)(1) Suspension and deferral of sentence; probation in misdemeanor cases**, states, “Notwithstanding any other provision of this Article to the contrary, when a defendant has been convicted of a misdemeanor, except criminal neglect of family, or stalking, the court may suspend the imposition or the execution of the whole or any part of the sentence imposed, provided suspension is not prohibited by law, and place the defendant on unsupervised probation or probation supervised by a probation office, agency, or officer designated by the court, other than the division of probation and parole of the Department of Public Safety and Corrections, upon such conditions as the court may fix. Such suspension of sentence and probation shall be for a period of two years or such shorter period as the court may specify.”

⁵ **Louisiana Constitution Article VII, Section 14(A)** states, “Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.”

⁶ **La. R.S. 42:1461(A)** states, “Officials, whether elected or appointed and whether compensated or not, and employees of any “public entity,” which, for purposes of this section shall mean and include any department, division, office, board, agency, commission, or other organizational unit of any of the three branches of state government or of any parish, municipality, school board or district, court of limited jurisdiction, or any other political subdivision or district, or the office of any sheriff, district attorney, coroner, or clerk of court, by the act of accepting such office or employment assume a personal obligation not to misappropriate, misapply, convert, misuse, or otherwise wrongfully take any funds, property or other thing of value belonging to or under the custody or control of the public entity in which they hold office or are employed.”

⁷ **La. R.S. 14:134(A)** states, “Malfeasance in office is committed when any public officer or public employee shall: (1) intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; (2) intentionally perform any such duty in an unlawful manner; or (3) knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him or to perform any such duty in an unlawful manner.”

⁸ **La. R.S. 14:67(A)** states, “Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential.”

⁹ **La R.S. 14.98(A)(1)** states, in part, “Except as modified by the provisions of Paragraphs (2) and (3) of this Subsection, on a conviction of a first offense violation of R.S. 14:98, the offender shall be fined not less than three hundred dollars nor more than one thousand dollars, and shall be imprisoned for not less than ten days nor more than six months. Imposition or execution of sentence under this Paragraph shall not be suspended unless the offender is placed on probation with the minimum conditions that he complete all of the following: (a) Serve forty-eight hours in jail, which shall not be suspended, or in lieu thereof, perform no less than thirty-two hours of court-approved community service activities, at least half of which shall consist of participation in a litter abatement or collection program.”

¹⁰ **La. R.S. 42:1124.2(A)** states, in part, “Each of the following, except a person who is required to file a financial statement pursuant to R.S. 42:1124, shall annually file a financial statement as provided in this Section: (1) Each member of the state legislature. (2) Each person holding a public office who represents a voting district having a population of five thousand or more persons....”

¹¹ **La R.S. 42:1124.2(C)(4)(b)** states, in part, “The financial statement required by this Section shall be filed on a form prescribed by the Board of Ethics and shall include the following information: The name, address, brief description of, and nature of association with a nonprofit organization in which the individual or spouse is a director or officer.”

¹² **La R.S. 42:1124.1** states, “A(1) Whoever fails to file a financial statement required by this Part, except for statements required by R.S. 42:1124, 1124.2, 1124.2.1, and 1124.3, or knowingly and willfully fails to timely file any such statement, or knowingly and willfully fails to disclose or to accurately disclose any information required by this Part shall be assessed a civil penalty pursuant to R.S. 42:1157 for each day until such statement or the required accurate information is filed. (2) The amount of such penalty shall be one hundred dollars per day for statements required by R.S. 42:1114. B. Whoever knowingly and willfully files a false report required by this Part, except for statements required by R.S. 42:1124, 1124.2, 1124.2.1, or 1124.3, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one thousand dollars nor more than ten thousand dollars or imprisoned in parish prison for not more than six months, or both. Any prosecution under this Subsection shall be tried before a jury of six persons, all of whom must concur to render a verdict. C. “Knowingly and willfully” for purposes of this Section means conduct which could have been avoided through the exercise of due diligence.”

¹³ **La. R.S. 24:513(J)(1)(c)(ii)** states, “Notwithstanding the provisions of R.S. 24:514, any local auditee that receives more than seventy-five thousand dollars in revenues and other sources in any one fiscal year, but less than two hundred thousand dollars, shall cause to be conducted an annual compilation of its financial statements, with or without footnotes, in accordance with the Louisiana Governmental Audit Guide. However, the legislative auditor, at his discretion, may require such local auditee to have an audit of its books and accounts.”

¹⁴ **La. R.S. 24:513(J)(1)(c)(iii)** states, “Any local auditee that receives two hundred thousand dollars or more in revenues and other sources in any one fiscal year, but less than five hundred thousand dollars, shall cause to be conducted an annual review of its financial statements to be accompanied by an attestation report in accordance with the Louisiana Governmental Audit Guide. However, the legislative auditor, at his discretion, may require said local auditee to have an audit of its books and accounts.”

APPENDIX A

Management's Response

O'DOWD LAW FIRM
Attorneys at Law

February 12, 2021

Via email: dpurpera@lla.la.gov

Mr. Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor
P. O. Box 94397
Baton Rouge, LA 70804-9397

RE: Calcasieu Parish District Attorney's Office

Dear Mr. Purpera:

This audit started in January of 2020; however, as early as 2015 the Calcasieu Parish District Attorney contacted you, as Legislative Auditor, when he recognized that the Calcasieu Parish District Attorney's office collected approximately \$191,000.00 in gift cards. In this 2015 telephone call, the Calcasieu Parish District Attorney discussed the propriety of forming a charitable 501(c)(3) for disposition of the gift cards in hand and expected receipts. You expressed no reservations or concerns. This program continued into 2019 without any suggestion by anyone that it might be improper.

Although there are other minor issues presented by the Legislative Auditor's report, the preeminent issue can be stated:

Given that the Calcasieu Parish District Attorney's office executes pretrial diversion programs that historically accepted participant's community service labor in lieu of criminal prosecution, did the Calcasieu Parish District Attorney's office violate the constitution or any statutes by allowing participants to provide gift cards and money orders earmarked and used for charities qualifying as 501(c)(3) organizations as a substitution [this being the term used by the Judges of the 14th Judicial District Court while the Legislative Auditor uses the phrase buyout] for community service labor?

There is neither a constitutional article, statute nor jurisprudence that expressly prohibits this program. On the contrary, there are numerous Attorney General opinions indicating this program is proper. However, the Legislative Auditor disagrees with and chooses not to follow these prior opinions. Instead, without any citations to opinions in line with the Legislative Auditor office's opinions, it makes allegations toward the Calcasieu Parish District Attorney's office.

The program was a huge success and continued for years providing hundreds of thousands of dollars to 501(c)(3) and other charities as a result of substituting gift cards and money orders for liter abatement and other such community services. With one small exception resulting from human error and which was corrected immediately upon its recognition, no one associated with

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the Calcasieu Parish District Attorney's office received money from this substitution. The earmarked gift cards and money orders were transferred to appropriate recipients.

Again, the Calcasieu Parish District Attorney's office ran this program, after conversing with you, as the Legislative Auditor, in 2015 until late in 2019 without any questions from any source. It appears that after fifteen plus years of service to his community with little to no public consternation but with a possible reelection looming in the near future, without any legal basis to support their supposition, some undisclosed person(s) reported to the press a concern that the program was improper. This unsubstantiated allegation morphed into concerns that the Calcasieu Parish District Attorney's office was using its influence over participants to influence them to giving gift cards and money orders where no obligation was previously due. This supposition is supported by neither law nor fact. In the absence of gift cards and money orders, the participants still owed an obligation to the community. Before the gift cards and money orders, the participants paid this obligation with their labor. With the substitution program, the Calcasieu Parish District Attorney's office allowed participant's owing community service to choose, at their absolute discretion, whether to pay their obligation with labor or gift cards or money orders. The Calcasieu Parish District Attorney's office did not illicit new obligations, instead it used an ingenuous idea to monetize the already existing obligation usually paid with labor by substituting gift cards and money orders all to the advantage of the community.

There are numerous flaws, innuendos and efforts to sully the Calcasieu Parish District Attorney's office in the report but picking up every spec is not a prudent use of this paper. For example, the report spends time mentioning "fees." No one has ever suggested that the labor used to pay the participants obligation for community service constituted "fees." The substituted gift cards or money orders are no more "fees" than the labor they replaced. This discussion of fees is irrelevant and clearly an attempt to prejudice an ill-informed reader. Further, the report insists on using the phrase "buyout." However, as the Legislative Auditor's office is well aware the Judges of the 14th Judicial District Court met and advised the Calcasieu Parish District Attorney's office, in writing, to cease allowing substitutions. The Judges did not use the term buyouts. Again, this report chooses the word buyout to prejudice ill-informed readers. Participants could perform labor or substitute gift cards or money orders; you can call this substitution what you will. Additionally, this report uses the term "transferred" funds to imply the Calcasieu Parish District Attorney's office came into ownership, control or rights to the gift cards and money orders. The gift cards and money orders were earmarked for charity. They were no more the property of the Calcasieu Parish District Attorney's office than a check being processed by a bank. The bank does not take over ownership, control or gain rights. The bank is a holder that passes the funds to the designated recipient.¹ Likewise, this report suggests there were donations made. There were no donations. When someone hands you a package to deliver to another, earmarks it for another, and you deliver that package, no donation took place, just a delivery. There are many other flaws, innuendo and efforts to sully the Calcasieu Parish District Attorney's office in the report but simply not worthy of study here.

¹ This is not a legal analysis of the banking process. Instead this is intended purely for illustrative purposes.

Although the law expressly provides that your office may seek an Attorney General's opinion, you chose not to do so. This is likely because, as stated earlier, you disagree with some or all of the Attorney General's opinions that are listed below, along with other supporting jurisprudence, that supports the Calcasieu Parish District Attorney's position:

- *State ex rel. Guste v. Nicholls College Foundation*, 564 So.2d 682 (1990)
- La. Atty. Gen. Op. No. 10-0292 (June 8, 2011)
- La. Atty. Gen. Op. No. 09-1056 (December 1, 2009)
- La. Atty. Gen. Op. No. 11-0189 (May 11, 2012); La. Atty. Gen. Op. No. 11-0189(A) (September 11, 2012)
- *Prop. Ins. Ass'n of Louisiana v. Theriot*, 2009-1152 (La. 3/16/10); 31 So. 3d 1012
- La. Atty. Gen. Op. No. 16-0176 (Dec. 13, 2016)
- La. Atty. Gen. Op. No. 09-0055 (Oct. 9, 2009)
- La. Atty. Gen. Op. No. 12-0223 (Jan. 9, 2013)

In order to reaffirm the propriety of this program the Calcasieu Parish District Attorney's office sought an Attorney General Opinion that has not yet been rendered. Many of your recommendations rely on the requested Attorney General's opinion. However, the Calcasieu Parish District Attorney provides a brief response to the recommendations in your report.

Recommendation one

(i) The Calcasieu Parish District Attorney's office seek legal advice as to the appropriate actions to be taken regarding the recovery of funds transferred to the District Attorney's Community Assistance Foundation (*the Foundation*) and (ii) The Calcasieu Parish District Attorney's office require all public funds collected be adequately documented, accurately recorded, and deposited daily.

Response

(i) Because the funds were earmarked for charity, they were not public funds and could not be donated by the Calcasieu Parish District Attorney's office, it would not have a cause of action to pursue the Foundation. Further, because, as the report notes, it appears that all funds were properly passed on by the Foundation to qualified 501(c)(3) organizations leaving the Foundation without much in the way of residuary funds, pursuit of such funds would be a vain and useless act. For these reasons, the Calcasieu Parish District Attorney's office does not believe recommendation one is legally well founded, and it does not believe it to be a proper use of resources. Should a court or other authoritative source suggest that the earmarked gift cards or money orders were public funds, the Calcasieu Parish District Attorney's office would reconsider this recommendation.

(ii) The Calcasieu Parish District Attorney's office has in place proper safeguards and directives that assure that all public funds collected are properly documented, accurately recorded and deposited regularly.

Recommendation two

the Calcasieu Parish District Attorney's office develop and implement written policies and procedures to ensure that the Calcasieu Parish District Attorney's office employees comply with state law that prohibits the use of public resources for private activities including having the employees sign annually a certificate that they understand and will abide by state laws.

Response

The Calcasieu Parish District Attorney's office has in place proper safeguards and directives that assure employees comply with state law that prohibits the use of public resources for private activities.

Recommendation three

(i) The Calcasieu Parish District Attorney's office seek reimbursement for personal expenditures of Foundation funds and (ii) The Calcasieu Parish District Attorney's office require all public funds collected be adequately documented, accurately recorded, and deposited daily.

Response

(i) The Calcasieu Parish District Attorney's office does not have standing to seek reimbursement of expenditures of Foundation funds. Further, you have been provided evidence that the errant expenditure has been repaid.

(ii) The Calcasieu Parish District Attorney's office has in place proper safeguards and directives that assure that all public funds collected are properly documented, accurately recorded and deposited regularly.

Recommendation four

(i) The Calcasieu Parish District Attorney's office discontinue allowing participants on misdemeanor probation to substitute gift cards and money orders for labor as part of the community service and (ii) The Calcasieu Parish District Attorney's office institute programs to assure that employees abide by law in implementing court-ordered probation.

Response

(i) In 2019, prior to being instructed by the Judges of the 14th Judicial District Court to cease substitutions, the Calcasieu Parish District Attorney's office discontinued this program.

(ii) Because the law does not specify what forms of community service are allowed the former Calcasieu Parish District Attorney allowed the substitution of gift cards and money orders for labor as a form of community service. This program was discontinued. The Calcasieu Parish District Attorney's office has no intention of reinstating the former program.

Further, other than what is suggested in the Legislative Auditor's report, the Calcasieu Parish District Attorney's office is not aware of any examples where employees failed to abide by the state law. The Calcasieu Parish District Attorney's office has in place proper safeguards and directives that will assure employees abide by the state law.

Recommendation five

The Calcasieu Parish District Attorney's office implement programs to assure all employees comply with state ethics laws.

Response

The Calcasieu Parish District Attorney's office has in place proper safeguards and directives that will assure employees abide by the state ethics laws.

Recommendation six

(i) The Calcasieu Parish District Attorney's office consult with an auditor to assure that financial statements beginning for the year ended 2015 forward are accurate and (ii) The Calcasieu Parish District Attorney's office require all public funds collected be adequately documented, accurately recorded, and deposited daily.

Response

The Calcasieu Parish District Attorney's office auditors advised the financial statements for the years mentioned were accurate and continue to attest to this fact. However, they continue to seek information and input to determine if their work should be revised. The Calcasieu Parish District Attorney's office will cooperate with and rely upon its auditors as it has over the years in question.

Sincerely,

A handwritten signature in blue ink, appearing to read 'TIMOTHY O'DOWD', is written over a light blue horizontal line.

TIMOTHY O'DOWD, as legal counsel for
The Calcasieu Parish District Attorney's Office

TOD:kwI

cc: Mr. John F. DeRosier
Mr. Stephen Dwight
Mr. Roger Harris (rharris@lla.la.gov)
Ms. Jenifer Schaye (JSchaye@LLA.La.gov)

APPENDIX B

Langley Williams's Response



LONG LAW FIRM

BATON ROUGE • WASHINGTON, DC

February 12, 2021

Via E-Mail and U.S. Mail

Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor
Office of Louisiana Legislative Auditor
1600 North Third Street
Baton Rouge, Louisiana 70804-9397
DPurpera@LLA.La.gov

RE: Louisiana Legislative Auditor's Investigative Audit Report
District Attorney for the 14th Judicial District Court
Written Response of Langley, Williams & Company

Dear Mr. Purpera,

On behalf Langley, Williams & Company ("LWC"), thank you for affording LWC the opportunity to review and provide a formal response to the Investigative Audit Report on the District Attorney for the 14th Judicial District Court ("Report") of the Louisiana Legislative Auditor ("LLA") dated February 4, 2021. LWC's response will be limited in scope and focus primarily on addressing certain findings and recommendations pertaining to it in the Report.

FINDINGS, RECOMMENDATIONS AND RESPONSES

I. District Attorney Donated Funds Received by His Office to a Non-Profit Corporation.¹

District Attorney's Community Assistance Foundation

Finding #1: (page 5, first paragraph under heading referenced above, first sentence)

"Mr. DeRosier told us he requested the district attorney's external auditor, Langley, Williams, and Co., LLC (Langley Williams), to 'audit' the gift cards in August 2015, because a district attorney employee accused another district attorney employee of misusing gift cards."

¹ For ease of reference, headings used by the LLA in its Report are copied herein to indicate where the findings and/or recommendations being addressed are contained in the Report.

Response:

LWC did not perform an “audit” of the gift cards in August 2015. LWC was contacted by the District Attorney’s Office, 14th Judicial District Court, Louisiana (“DA’s office”), and specifically, by the Chief Administrative Officer, Russell Haman, for assistance in recommending internal control policies for the gift cards collected from individuals or defendants participating in the pretrial diversion program or on misdemeanor probation who opted to substitute a donation to charity in lieu of performing community service hours/labor.² LWC believes that, like many people, Mr. DeRosier does not fully understand the nature of an audit. LWC conducted a detailed “Study of Internal Control” of the gift cards in August 2015. It was not an audit.

Finding #2: (page 5, under same heading, first paragraph, second to last sentence)

“Mr. DeRosier told us he asked Mr. Langley for advice and Mr. Langley told him to remove the gift cards from downstairs, count the gift cards, keep the gift cards with the chief administrative officer, track the gift cards periodically, create a 501(c), and get organized.”

Response:

Lester Langley, individually, did not participate in the “Study of Internal Control” of the gift cards performed by LWC in August 2015 and did not give Mr. DeRosier any specific recommendations about the handling of the gift cards as a result of the study. All recommendations were relayed to the DA’s office, through the Chief Administrative Officer, Russell Haman, by a member of LWC, Jessie Lott. Mr. Langley did not recommend that Mr. DeRosier create a 501(c)(3) non-profit corporation. Mr. DeRosier told Mr. Langley that he would be forming a 501(c)(3) non-profit corporation and had spoken with the Legislative Auditor about the gift cards.

In October 2015, approximately two months after the “Study of Internal Control” was conducted, the District Attorney’s Community Assistance Foundation (“Foundation”) was formed as a 501(c)(3) non-profit corporation by Mr. DeRosier and the gift cards were passed on to the Foundation.³

² It is LWC’s understanding that community service performed in the traditional way included providing work hours or labor to charitable organizations in the community and the donations, in the form of toys, gift cards and money orders, merely substituted value for value. That is, in lieu of providing labor to the community or performing community service hours, the individuals or defendants participating in the pretrial diversion program or on misdemeanor probation were offered the option of providing toys, gift cards and/or money orders to the Foundation or other charities. Thus, participants/defendants were given options: they could provide value to the community in the form of service hours/labor or in the form of gift cards for charity. The option selected was entirely up to the individual participants/defendants.

³ See Report, p. 16.

II. Failure to Properly Account for Community Service Buyouts May Have Resulted in Materially Misstated Financial Statements.

Finding #3: (page 16, fourth full paragraph, second sentence)

“The form she submitted states that the Foundation was affiliated with the district attorney’s office, provided the amount of public funds received, and described the public funds received as the ‘14th JDC allows up to 50% of the required community service hours to be replaced by donations to the program or donations to other 501c(3) entities equal to \$8/per hour of community service.’”

Response:

On the paperwork submitted to register the Foundation as a quasi-public entity with the LLA, Daphne Berken simply disclosed the amount and source of the Foundation’s revenues or resources as required.⁴ She included this information in the only lines provided where the revenues/resources could be disclosed on the LLA’s form. It was not Ms. Berken’s intent to identify or classify the toys, gift cards or money orders⁵ provided for charity by private individuals or defendants participating in the pretrial diversion program or on misdemeanor probation, in lieu of community service hours/labor, as “public funds” on the paperwork/form required to register the Foundation as a quasi-public entity with the LLA. Moreover, as the LLA is aware, “the receipt or expenditure of public funds is not requisite for being a quasi-public entity under La. R.S. 24:513” and subject to Louisiana audit law. (See AG Op. No. 11-0189A).

LWC and Ms. Berken do not believe they have the legal expertise to determine whether toys, gift cards or money orders donated by private individuals/defendants participating in the pretrial diversion program or on misdemeanor probation, at their option and in lieu of or as a substitute for providing labor to the community or performing community service, are or are not public funds under Louisiana law. They never considered or concluded that the toys, gift cards or money orders collected from participants/defendants for charity, in lieu of community service hours/labor, may have been public funds under Louisiana law. LWC and Ms. Berken still do not (and cannot) know whether the toys, gift cards and/or money orders received from participants/defendants, opting to substitute a donation to charity in lieu of providing labor to the

⁴ See Report, p. 15 and n. 13.

⁵ LWC’s understanding is that originally, community service hours could be only replaced by donating toys earmarked for charitable use, i.e., for needy children in Calcasieu Parish at Christmastime. When storage for the toys became overly burdensome, donations in the form of gift cards began being accepted as an alternative as it solved logistical issues created by the toys such as running out of space to store them during the year. After the Foundation opened a checking account sometime in 2016, gifts in the form of money orders were also accepted in addition to gift cards. The gift cards and money orders were used to purchase toys for needy children at Christmastime or were donated to other non-profit charitable organizations or to aid in disaster relief. The value provided to the community in the form of toys and charitable assistance acted as substitutes for the value provided in the form of community service hours/labor. See Report, pp. 4-7.

community or performing community service, should legally be classified as “public funds” without a court ruling or Attorney General opinion.

As the LLA is aware, the DA’s office is seeking an Attorney General opinion (“AG Opinion”) from the Attorney General of the State of Louisiana, Jeff Landry, regarding the legal issues raised by the LLA in its Report. As the Chief Legal Officer of the State, the Attorney General is authorized to provide legal advice to, and to render written opinions on matters relating to state law upon written request of, a district attorney. The DA’s office submitted its written request, on January 8, 2021, asking for the AG Opinion to address the following:

- 1) Whether gift cards and/or money orders received by the Foundation from private individuals/defendants participating in the pretrial diversion program or on misdemeanor probation in lieu of community service hours/labor earmarked for charitable use were or became public funds?
- 2) Whether transmitting gift cards received by the DA’s office from private individuals/defendants participating in the pretrial diversion program or on misdemeanor probation in lieu of community service hours/labor earmarked for charitable use to the Foundation constituted a donation or transfer of public funds by the DA’s office?
- 3) If the gift cards are deemed public funds, does the decision by the private individuals/defendants participating in the pretrial diversion program or on misdemeanor probation to earmark them for use other than by the state, as set forth on the DA’s Sleigh of Toys program flyers, satisfy the exceptions set forth in La. Const. Art. VII, Sec. 9?

As the legal classification of these toys, gift cards, and money orders is far from clear, it is LWC’s position that an AG Opinion is needed to determine if it is proper to classify them as “public funds” under Louisiana law.

Recommendations

Recommendation #1: (page 17, last full paragraph, first sentence)

“We recommend that management consult with its auditor regarding the reliability of the district attorney’s financial statements for the years ended December 31, 2015; December 31, 2016; December 31, 2017; and December 31, 2018; and determine if those financial statements need to be restated.”

Response:

This Recommendation stems from the LLA’s belief the gift cards (and money orders) provided by private individuals/defendants participating in the pretrial diversion program or on misdemeanor probation in lieu of community service hours constitute public funds under

Louisiana law.⁶ As discussed above, the legal classification of the gift cards and money orders collected from participants/defendants, opting to substitute a donation to charity in lieu of providing labor to the community or performing community service, as “public funds” is in dispute and a request for an AG Opinion on this very issue is currently pending. In light of this, LWC intends to consult with management, the LLA and any other necessary party(ies) and assess whether there are any timely, appropriate and/or necessary steps to be taken pursuant to and in accordance with applicable auditing standards and procedures *before* the AG Opinion addressing the proper legal classification of the toys, gift cards and/or money orders donated, in lieu of community service hours/labor, by private individuals/defendants participating in the pretrial diversion program or on misdemeanor probation, is rendered. The potential implications of the AG Opinion, the time elapsed since the issuance of the 2015-2018 audited financial statements, and the likelihood there are any persons currently relying on the 2015-2018 audited financials, will likely be among the factors considered. Further assessment may be needed after the AG Opinion requested by the DA’s office is rendered to determine whether and to what extent any actions or additional steps should be taken pursuant to and in accordance with applicable auditing standards and procedures in connection with that opinion.

Thank you again for affording LWC an opportunity to review and to provide a written response to this Report. LWC appreciates the professionalism exhibited and the assistance provided by you and your staff over the course of this matter and welcomes the opportunity to continue working with the LLA as needed. Should you have any questions or need any additional information, please do not hesitate to contact me.

Very truly yours,

LONG LAW FIRM, L.L.P.



S. Brooke Barnett-Bernal

cc: Roger W. Harris, J.D., CCEP, CFI, Assistant Legislative Auditor
and Director of Investigative Audit (by e-mail)
Jenifer Schaye, CFE, General Counsel (by e-mail)

⁶ See Report, pp. 15-16.