

STATE OF LOUISIANA LEGISLATIVE AUDITOR

Ascension Parish Clerk of Court
Donaldsonville, Louisiana

February 27, 1998



Investigative Audit

*Daniel G. Kyle, Ph.D., CPA, CFE
Legislative Auditor*

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Under the provisions of state law, this report is a public document. A copy of this report has been submitted to the Governor, to the Attorney General, and to other public officials as required by state law. A copy of this report has been made available for public inspection at the Baton Rouge office of the Legislative Auditor and at the office of the parish clerk of court.

In compliance with the Americans With Disabilities Act, if you need special assistance relative to this report, or any report of the Legislative Auditor, please contact Skip Irwin, Director of Administrative Services, at 504/339-3800.

Ascension Parish Clerk of Court

February 27, 1998



**Investigative Audit
Office of the Legislative Auditor
State of Louisiana**

**Daniel G. Kyle, Ph.D., CPA, CFE
Legislative Auditor**

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DANIEL G. KYLE, PH.D., CPA, CFE
LEGISLATIVE AUDITOR

OFFICE OF
LEGISLATIVE AUDITOR
STATE OF LOUISIANA
BATON ROUGE, LOUISIANA 70804-9397

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TELEPHONE: (504) 339-3800
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February 27, 1998

HONORABLE KERMIT HART BOURQUE
ASCENSION PARISH CLERK OF COURT
Donaldsonville, Louisiana

Transmitted herewith is our investigative report on the Ascension Parish Clerk of Court. Our examination was conducted in accordance with Title 24 of the Louisiana Revised Statutes and was performed to determine the propriety of certain allegations received by this office.

This report presents our finding and recommendation, as well as your response. Copies of this report have been delivered to the Honorable Anthony G. Falterman, District Attorney for the Twenty-Third Judicial District of Louisiana, and others as required by state law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel G. Kyle".

Daniel G. Kyle, CPA, CFE
Legislative Auditor

AFB/ss

[ASC-CC]

Executive Summary

Investigative Audit Report Ascension Parish Clerk of Court

The following summarizes the finding and recommendation that resulted from this investigation. Detailed information relating to the finding and recommendation may be found at the page number indicated. Management's response may be found at Attachment I.

Employee Wages Improperly Docked

(Page 1)

Finding:

During the period of January 1995 through September 1997, employees who were placed on leave without pay (LWOP) were paid their full wages and then required to reimburse the clerk's office for hours they were on LWOP. Our examination noted that a total of \$1,578 was returned to the clerk's office and placed in a petty cash fund along with vending machine receipts. The petty cash fund was used for employee meals, gifts, parties, and other small office expenditures. Assessing a fine on or deducting employee's wages, commingling these wages with vending revenues, and using the funds for non-public purposes may be in violation of Louisiana laws.

Recommendation:

The District Attorney for the Twenty-Third Judicial District of Louisiana should review this information and take appropriate action.

Management's Response:

All public funds placed in the petty cash fund were used for public purposes only and not for private purposes. Though the clerk endorsed employee checks, this was done as a matter of accommodation; there was no intent to violate any statute. In addition, upon the recommendation of the auditors, the clerk's office immediately changed the procedures governing the petty cash account. The clerk's office now has two separate petty cash accounts, one for the receipts from the vending machines and another for incidental office expenses.

Background and Methodology

The Legislative Auditor received information regarding possible improper transactions of the Ascension Parish Clerk of Court. This information indicated that fines were assessed against employees' wages and the funds returned to the clerk. Our investigation was conducted to determine the propriety of this allegation and other matters that came to our attention.

Our procedures consisted of (1) interviewing employees and officials of the clerk of court's office; (2) interviewing other persons as appropriate; (3) examining selected documents and records of the clerk of court; (4) making inquiries and performing tests to the extent we considered necessary to achieve our purpose; and (5) reviewing applicable Louisiana laws.

The results of our investigation is the finding and recommendation presented herein.

Finding and Recommendation

EMPLOYEE WAGES IMPROPERLY DOCKED

During the period of January 1995 through September 1997, employees who were placed on leave without pay (LWOP) were paid their full wages and then required to reimburse the clerk's office for hours they were on LWOP. Our examination noted that a total of \$1,578 was returned to the clerk's office and placed in a petty cash fund along with vending machine receipts. The petty cash fund was used for employee meals, gifts, parties, and other small office expenditures. Assessing a fine on or deducting employee's wages, commingling these wages with vending revenues, and using the funds for non-public purposes may be in violation of Louisiana laws.

To deter excessive employee tardiness, Ascension Parish Clerk of Court Kermit Hart Bourque implemented a policy effective December 1, 1994, which provided that any employee late for work more than five times during one month would be docked one day's pay. The wording of the policy was revised on February 1, 1996, to provide that on the sixth occurrence of tardiness during a month, employees would be placed on one day of leave without pay. On July 1, 1996, the policy was again revised to reduce from six to three, the number of days before docking the employee's pay. The clerk's office also docks employees' pay for other situations where they have been placed on leave without pay or suspension. Though the policy provides for the employee's pay to be docked (i.e., the employee's gross pay reduced), in practice the employee receives full pay, negotiates the check, and is required to reimburse the clerk's office for the imposed reduction in salary.

During the period of January 1995 through September 1997, employees of the clerk's office were docked \$1,578 because of excessive tardiness, leave without pay, or suspensions. The employees reimbursed the clerk's office with cash. By paying the employees their full salary and later requiring them to refund a portion to the clerk's office in this manner, employees' gross wages for retirement and tax reporting purposes may have been overstated.

Two employees of the clerk's office informed us that, though they were docked a day's wages, they were not given the time off. In addition, Mr. Bourque signed two employees' names and secondarily endorsed their paychecks, the checks were negotiated, and the employees were paid in cash, less the amount docked. Both employees told us that they did not sign or authorize anyone to negotiate their paychecks.

Ms. Margaret Martin, Chief Deputy Clerk, stated that an employee whose wages were docked because of excessive tardiness, leave without pay, or suspension was required to cash his paycheck and reimburse the office for the time docked. She told us that the reason the employee's gross pay was not reduced was because it is time consuming to have the computer payroll software perform the individual calculations. In addition, she stated that she did not want to affect the employee's contribution to the retirement system by deducting the docked amount from gross wages. Ms. Martin stated that she collected the cash reimbursements and gave the money to Mr. James Regira, Records Department Supervisor, to put in the office petty cash fund.

Mr. Regira confirmed that he received docked wages from Ms. Martin. A schedule of petty cash deposits and withdrawals maintained by Mr. Regira indicates that \$252 in docked wages was placed in the petty cash fund between December 1996 and September 1997. According to Mr. Regira, he discarded the petty cash records for the period before December 1996. Therefore, the clerk's office had no documentation to support that the remaining \$1,326 of docked wages was placed in the petty cash fund.

The petty cash fund receives proceeds from several sources including the employee wage reimbursements mentioned above and non-public donations from soft-drink machines and a pay telephone. Between December 11, 1996, and November 7, 1997, \$2,510 was placed in the petty cash fund. As stated previously, \$252 of this amount was derived from employee wage reimbursements, \$1,880 came from soft-drink profits, and the remaining from miscellaneous sources. During this same time, \$1,715 from the fund was used to purchase employee meals and gifts and to pay for employee parties and other small office expenditures. Ordinarily non-public funds generated by employees of the clerk's office may be used for these type expenditures. However, when commingled with the reimbursed wages, additional responsibility applies.

The Attorney General opined (A.G. 79-1194) that flower and gift funds are permissible if funded from a non-public source. The opinion finds no objection to the use of profits from vending machines, operated without public funds, for such purposes. However, a later opinion of the Attorney General (A.G. 91-421) further clarifies this issue and provides that, though a flower and gift fund is permissible, there may be no commingling of this fund with the general fund monies of a public entity. To do so may give rise to a violation of Article VII, Section 14 of the Louisiana Constitution.

These actions indicate that one or more of the following provisions of Louisiana law may have been violated:

- Louisiana Revised Statute 23:635, "Assessment of Fines Against Employees Unlawful," provides that no person, acting either for himself or as agent or otherwise, shall assess any fines against his employees or deduct any sum as fines from their wages.

- Article VII, Section 14 of the Louisiana Constitution provides in part, that 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. Because the clerk's office has commingled general fund money budgeted for employee salaries with its non-public vending revenues, the use of the petty cash fund for non-public purposes may be in violation of this provision of the Louisiana Constitution.

Upon discussing this issue with Mr. Bourque, he implemented a new practice that provides for the reduction of an employee's gross compensation when placed on leave without pay. This allows an employee's wages to be docked without the employee receiving full pay and reimbursing the clerk's office for imposed penalties.

The District Attorney for the Twenty-Third Judicial District of Louisiana should review this information and take appropriate action.

Attachment I

Management's Response

RECEIVED
LEGISLATIVE AUDITOR

98 FEB 16 AM 10:06

Kermit Hart Bourque
Clerk of Court
Ascension Parish
P O Box 192

Donaldsonville, La. 70346

February 13, 1998

TO: Mr. Michael LaCour
Office of the Legislative Auditor
P O Box 94397
Baton Rouge, La. 70804-9397

RE: Response to Finding and Recommendation

As discussed on the phone this morning, even though Mr. Bourque's response was faxed to your office today, he wishes to have the original filed in your office as well. Therefore, we are enclosing the original.



Margaret M. Martin
Chief Dy. Clerk

KERMIT A. "HART" BOURQUE

CLERK OF COURT AND RECORDER AND NOTARY PUBLIC

ASCENSION PARISH

TELEPHONE 473-9866

DONALDSONVILLE, LA. 70346

February 12, 1998

Daniel G. Kyle, PH.D., CPA, CFE
Legislative Auditor
State of Louisiana
P O Box 94397
Baton Rouge, La. 70804-9397

Dear Dr. Kyle:

We would like to thank you for the professional manner in which the auditors from your office conducted themselves during their audit investigation of my office.

The purpose of this response is to make certain that the record clearly shows that the office of the Clerk of Court has made every effort to assure all concerned that no public funds have been misused or misappropriated by this office.

We would like to address four issues in this response.

The first is the matter of the \$1326 of docked wages referred to on Page 2, Paragraph 2 of your Finding and Recommendation. We would like to assure the Legislative Auditor's Office that the records indicating how those funds were expended were destroyed in good faith. Since that time, however, the officers in charge of that accounting procedure, with the assistance of Postlethwaite & Netterville, the Clerk of Court's CPA's, have been able to make the following determination:

For the period January, 1995 to December, 1996, we have been able to positively identify expenditures from the Petty Cash account for public expenditures amounting to at least the sum of \$1,400. We have details which clearly show that public property purchased with these funds exists as inventory in our office.

The point made here is that all public funds for which the Clerk's Office had no documentation at the time the audit report was made have now been identified as having been expended for public purposes only and not for private purposes. We attach hereto an inventory list which shows the items which remain in our office which were purchased with these funds.

KERMIT A. "HART" BOURQUE

CLERK OF COURT AND RECORDER AND NOTARY PUBLIC

ASCENSION PARISH

TELEPHONE 473-9866

DONALDSONVILLE, LA. 70346

Page 2

Dr. Daniel G. Kyle

Also, we have been able to document an additional \$310.00 which was expended from this Petty Cash Fund and used for travel expense by our office employees for attendance at educational seminars during 1995 and 1996.

Every nickel of public monies received by the Clerk's Office was used for public expenses such as miscellaneous supplies and equipment for the Clerk's Office, again, as listed on the attached inventory list.

The second issue we would like to address is the item of R.S.23:635 which is referred to in the last paragraph on Page 2 of your Finding and Recommendation Report. While this statute does not appear applicable to the facts of this case, nevertheless we make the following response:

As Clerk of Court, I initiated the policy at issue with respect to the docking of employees who had a history of tardiness and absenteeism. My purpose for implementing this policy was not for the purpose of punishment per se, but more of an effort to shore up the morale of the other 85% of employees who were not late.

In reading the policy, I am sure that the auditors noted that the policy did not recommend any sanctions in the event the employee did not agree with the docking. It did not say that they would be fired if they did not comply with the docking. I have never threatened any employee with dismissal or a sanction for that policy.

If any employee would have continued in the practice of tardiness then that employee may have been dismissed, not because of the docking procedure but because of the excessive tardiness. Therefore, in my view, it was not a fine as envisioned in R.S. 23:635. Further, the tardiness could be viewed as that employee taking something of value from my office - duty and morale.

Our records reflect that the rate of tardiness since implementation of this policy has decreased from 25% to 1% and morale has improved.

KERMIT A. "HART" BOURQUE

CLERK OF COURT AND RECORDER AND NOTARY PUBLIC

ASCENSION PARISH

TELEPHONE 473-9866

DONALDSONVILLE, LA. 70346

Page 3
Dr. Daniel G. Kyle

Thirdly, Page 1, Paragraph 4 refers to the endorsement of two employees paychecks. These checks were endorsed by me and the funds disbursed to the appropriate employees, after funds were deducted for the amount which was owed the Clerk's Office due to those employees being docked. This was done as a matter of accommodation. There was no intent on my part to violate any statute. At the time this transaction took place, the employees made no objection to my action or to the method of how this was handled. The checks were never out of my possession.

All of the funds received by cashing the checks were accounted for, and the appropriate amount delivered directly to one of the employees involved and to the mother of the other employee at her request. The funds deducted from the checks for docking were placed in the Petty Cash Fund and properly documented at that time.

We would like to add that we have already changed our practice of having employees reimburse us for leave without pay when excessive tardiness occurs. The leave without pay is calculated in their paycheck and the employee's paycheck reflects this leave without pay.

The fourth issue concerns Article 7, Section 14 of the Constitution.

The records of the Petty Cash account clearly show that at all times when the monies in that account were expended for such things as employee Christmas party, gifts, meals and other items, there were sufficient amounts of non-public funds existing in that account to cover these expenditures. These funds resulted from the receipts from vending machines which are clearly identifiable as private funds.

Therefore, at no time were public monies ever used for private functions, unless the function of co-mingling is extended to the point where total disregard is made of the fact that a main ledger was kept of the Petty Cash account clearly identifying that those portions of the account that were derived from public funds were expended for public use and that those portions of the account which were derived from private funds were expended for private use.

KERMIT A. "HART" BOURQUE

CLERK OF COURT AND RECORDER AND NOTARY PUBLIC

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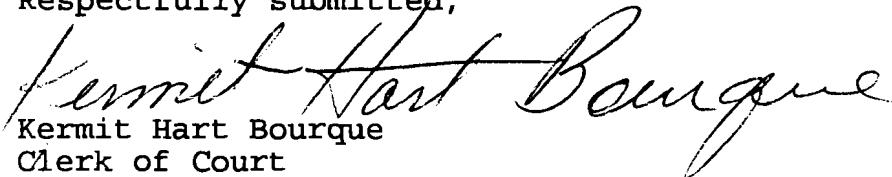
Page 4

Dr. Daniel G. Kyle

We would like to add that we immediately adopted the recommendations made by the Legislative Auditors during their audit that the procedures governing the Petty Cash account be changed. The Clerk's Office now has two separate Petty Cash accounts. The receipts from the vending machines are placed into the non-public account, and a Petty Cash account for incidental office expenditures has been set up in a manner approved by our CPA firm and by the Legislative Auditor's Office.

In closing, I wish the record to reflect that I have served as an elected official as the Clerk of Court for Ascension Parish since 1964. During that time, millions of dollars have been collected and expended by my office. At no time during these 33 years has there been any audit report which reflected that there were funds misused, misappropriated, stolen or unaccounted for. No audit report has ever cited my office for any violation of any law.

Respectfully submitted,



Kermit Hart Bourque
Clerk of Court
Ascension Parish

INVENTORY
OF
ITEMS PURCHASED WITH PETTY CASH FUNDS
1/1/95 TO 12/11/96

Electric Heaters Purchased from Wal-Mart-5 x 22.95 x 1.08	123.93
Electric Fans Purchased from Wal-Mart-4 x 19.95 x 1.08	86.19
Extension Surge Protectors Purchased from Wal-Mart and Ace 18 x 7.96 x 1.08	154.75
Small File Cabinets Purchased from Wal-Mart 4 x 19.95 x 1.08	86.19
Telephone Cords Purchased from Wal-Mart 28 x 4.50 x 1.08	136.08
Computer Tools Purchased from SSI Crimp, 2 splicers, adapters	120.00
Adding Machine Tapes - Wal-Mart 36 x 2.28 x 1.08	88.65
Batteries	50.00
Miscellaneous Office Supplies - Nails, nuts, bolts, electrical tape, wire, connectors, screw driver, hammer, pliers, letter openers, threshold cable covers, extension cords, etc.	100.00
Bridge tickets for employees to travel to court in Gonzales - purchased quarterly 4 x 12.50	50.00
Stamps for Gonzales Office 3 rolls x 32.00	96.00
	<hr/>
	\$1,091.79
Total travel expense listed separately	310.00
	<hr/>
	\$1,401.79

Travel expense paid from Jan. 95 through Dec. 96
(Receipts no longer available)

1/31/96	-Trip to office of Computer Consultant Vince Ambrosia-	
	Gas money given to David Usey	20.00
	Money for Meals, Jimmie, David Cynthia and Margaret	50.00
2/9/96	9:00 a.m. Trip to St. Tammany Parish Clerk of Court to review computer equipment	
	1:00 p.m. Trip to office of Computer Consultant Garland Galatus in New Orleans - Gas money given to D.Usey (Lunch pd by Galatus firm	20.00
4/16/96	Trip to Hammond to review computer software; Margaret, David and Jimmie Gas money given to David	20.00
5/15/96	Trip to Lafourche Parish Clerk of Court to review computer software Alice, Cynthia, David, Jimmie and Margaret -Gas money given to Alice	20.00
Attendance at Clerks of Court Institute		
Feb. 5-9, 1995		
	Entire Session Chandra and Mary 4 days - \$10.00 day for travel	40.00
	One day only 2/5/95 Dodi and Shelia 1 day gas money	10.00
	One day only 2/6/95 Bridget- gas money fr Gonz Mel - gas money fr Gonzales	5.00 5.00
	One day Alice, Concetta and Margaret	10.00
	one day only 2/7/95	5.00
Feb. 11/15, 1996		
	Entire session - 4 days Shelia and Betty P. \$10/day	40.00
Aug. 18-22/96 Entire session - 4 days		
	Shelia and Betty P. \$10/day	40.00
	One day only Tues 8/20/96 Alice	10.00
	Tuesday from Gonz. - Dolores	5.00
	Wednesday only 8/21/96 Bridget and Margaret -	<u>10.00</u>
Total amount paid for travel for seminars and computer software reviews from Jan. 95 thru August, 1996		\$310.00