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Town of Marion
Marion, Louisiana

May 23, 1998



Investigative Audit

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

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Town of Marion

May 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. KYLS, PH.D., CPA, CFE
LEGISLATIVE AUDITOR

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May 27, 1998

HONORABLE KENNETH W. FRANKLIN, MAYOR,
AND MEMBERS OF THE BOARD OF ALDERMEN
TOWN OF MARRION
Marion, Louisiana

Transmitted herewith is our investigative report on the Town of Marion. 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 findings and recommendations. Copies of this report have been delivered to the Honorable Robert W. Levy, District Attorney for the Third Judicial District of Louisiana, and others as required by state law.

Respectfully submitted,

Daniel G. Kyla, CPA, CFE
Legislative Auditor

ATTEST:

200000

Executive Summary

Investigative Audit Report Town of Marion

The following summarizes the finding and recommendation as well as management's response 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.

Former Town Clerk Paid Himself Excess Salary and Took Cash She Was Not Entitled to Receive

(Page 1)

Finding: From January 1994 through February 1998, Ms. Gail Durbin, former town clerk, paid herself \$57,828 more than her authorized salary. Ms. Durbin signed the mayor's name on many of the checks without his knowledge. In addition, Ms. Durbin took at least \$2,785 from the town's cash collections that she was not entitled to receive. The town is unable to account for \$21,078 cash collected during this period.

Recommendation: We recommend that the town provide this information to its insurance carrier and legal counsel and seek recovery of the missing funds. In addition, we recommend that the town implement procedures to ensure that:

- (1) receipts are prepared for all collections;
- (2) collections are deposited intact and in a timely manner;
- (3) checks and bank statements are reviewed periodically by the mayor and board of aldermen;
- (4) receipts are periodically reconciled to the deposits recorded by the bank and such reconciliations are reviewed by the mayor or board of aldermen; and
- (5) surety bonds are consistent with the risks incurred by the town.

This information has been provided to the District Attorney for the Third Judicial District of Louisiana and legal action has been initiated.

Management's Response: The mayor and board of aldermen of the Town of Marion have taken the following steps:

1. Receipts will be prepared for all collections.
 2. All collections will be deposited in a timely manner.
 3. The mayor and the board of aldermen will review checks and bank statements.
 4. Receipts and deposits will be reconciled and reviewed by the mayor and the board of aldermen.
 5. Surety bonds will be reviewed to determine if changes are necessary.
-

Background and Methodology

On February 23, 1998, the Town of Marion discovered that its former town clerk made checks payable to himself without authorization. This examination was performed to obtain additional information and determine the extent of any excessive payments made.

Our procedures consisted of (1) interviewing employees and officials of the town; (2) interviewing other persons as appropriate; (3) examining selected documents and records of the town; (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 herein.

Finding and Recommendation

FORMER TOWN CLERK PAID HERSELF EXCESS SALARY AND TOOK CASH SHE WAS NOT ENTITLED TO RECEIVE

From January 1994 through February 1998, Ms. Gail Darbin, former town clerk, paid herself \$57,828 more than her authorized salary. Ms. Darbin signed the mayor's name on many of the checks without his knowledge. In addition, Ms. Darbin took at least \$2,765 from the town's cash collections that she was not entitled to receive. The town is unable to account for \$21,076 cash collected during this period.

The Town of Marice employed Ms. Darbin as town clerk on December 1, 1996. Ms. Darbin was responsible for the town's accounting functions including payroll, collections, deposits, and bookkeeping. Ms. Darbin's salary was authorized annually by the town's board of aldermen and ranged from \$15,900 in 1994 to \$17,912 in 1998. However, from January 1994 through February 1998, Ms. Darbin paid herself \$57,828 more than her authorized salary. In addition, only \$41,290 of this excess was reported as income on Ms. Darbin's IRS W-2 forms. On April 8, 1998, Ms. Darbin informed representatives of the Legislative Auditor's Office that she frequently signed the mayor's name on checks that she was not entitled to receive.

Ms. Darbin also took cash that she was not entitled to receive. As a practice, town employees prepare a receipt when payments are received for sales or franchise taxes, fines, court costs, occupational licenses, and water and sewer charges. From January 1994 through February 1998, these receipts indicate that the town collected \$1,256,832. However, only \$1,235,756 was deposited into the town's bank accounts. In addition, we found that some deposits included checks for which receipts were not prepared. Therefore, at least \$21,076 in cash collections was not deposited and is unaccounted for. Ms. Darbin informed us that she took cash that she was not entitled to receive from the town's cash drawer. Ms. Darbin specifically identified cash receipts totaling \$2,765 that she took for her personal use.

On February 27, 1998, Ms. Darbin provided a statement to a representative of the District Attorney's Office, Third Judicial District of Louisiana, that she signed the mayor's name to seven checks payable to herself totaling \$2,137. In addition, Mayor Kenneth Franklin identified 43 checks drawn on the town's general fund and 130 water/sewer fund checks that were payable to Ms. Darbin that, though they contained what appeared to be his signature, were not signed by him. Ms. Darbin was arrested on charges of felony theft and forgery and resigned her employment effective February 27, 1998.

By signing the mayor's name, negotiating checks made payable to herself, and taking cash from the town's collections, Ms. Durbin may have violated one or more of the following state laws:

- R.S. 14:67, "Theft"
- R.S. 14:72, "Forgery"
- R.S. 14:134, "Malfeasance in Office"
- R.S. 42:1461, "Obligation Not to Misappropriate"

The town maintained a surety bond with a \$17,000 cumulative limit that may apply to a portion of the missing funds. We recommend that the town provide this information to its insurance carrier and legal counsel and seek recovery of the missing funds. In addition, we recommend that the town implement procedures to ensure that:

- (1) receipts are prepared for all collections;
- (2) collections are deposited intact and in a timely manner;
- (3) checks and bank statements are reviewed periodically by the mayor and board of aldermen;
- (4) receipts are periodically reconciled to the deposits recorded by the bank and such reconciliations are reviewed by the mayor or board of aldermen; and
- (5) surety bonds are consistent with the risks incurred by the town.

This information has been provided to the District Attorney for the Third Judicial District of Louisiana and legal action has been initiated.

Attachment I

Management's Response

Town of Marion

P. O. Box 218
Marion, LA 71250

Telephone: (518) 282-4715

Fax: (518) 268-4117

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May 15, 1998

Office of Legislative Affairs

Attn: Daniel G. Kyle

Post Office Box 94397

Baton Rouge, LA 70804-9397

Dear Mr. Kyle:

The Mayor and Board of Aldermen of the Town of Marion would like to inform you that we accept the preliminary audit report that was presented to us on May 13, 1998.

We would also like to inform you that the following steps have been taken per your recommendations:

1. All collections will have receipts written for them.
2. All collections are and will be deposited in a timely manner.
3. Checks and bank statements will be reviewed monthly by the Mayor and Board of Aldermen.
4. Receipts and deposits will be reconciled and reviewed by the Mayor and Board of Aldermen.
5. Our safety bonds will be reviewed to see if there needs to be changes made.

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May 18, 1968

Most of these signs are being followed now. Those that are not, will begin immediately.

Yours truly,



Kenneth W. Franklin
Mayor



George Fitch
Alderman



Ralph Hootley
Alderman



Charles McKinstry
Alderman



Johnny H. Sisk
Alderman



Johnny H. Griffin
Alderman

Attachment II
Legal Provisions

Legal Provisions

The following legal citations are referred to in the Finding and Recommendation section of this report:

R.S. 14:67 provides that 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.

R.S. 14:72 provides that forgery is the false making or altering, with intent to defraud, of any signature to, or any part of, any writing purporting to have legal efficacy.

R.S. 14:134 provides, in part, that 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.

R.S. 42:1461(A) provides that officials, whether elected or appointed, by the act of accepting such office assume a personal obligation not to misappropriate, misapply, convert, misuse, or otherwise wrongfully take any funds, property or other thing of value belonging to the public entity in which they hold office.