



COMPTROLLER'S INVESTIGATIVE REPORT

Marion County Highway Department

May 15, 2023

Jason E. Mumpower
Comptroller of the Treasury



DIVISION OF INVESTIGATIONS



JASON E. MUMPOWER
Comptroller

May 15, 2023

Marion County Mayor
and Members of the County Commission
1 Courthouse Square
Jasper, TN 37347

Marion County Officials:

The Office of the Comptroller of the Treasury conducted an investigation of selected records of the Marion County Highway Department, and the results are presented herein.

Copies of this report are being forwarded to Governor Bill Lee, the State Attorney General, the District Attorney General of the 12th Judicial District, certain state legislators, and various other interested parties. A copy of the report is available for public inspection in our Office and may be viewed at <http://www.comptroller.tn.gov/ia/>.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason E. Mumpower", with a long horizontal flourish extending to the right.

Jason E. Mumpower
Comptroller of the Treasury

JEM/MLC

INVESTIGATIVE REPORT

Marion County Highway Department

The Office of the Comptroller of the Treasury investigated allegations of malfeasance related to the Marion County Highway Department. The investigation was limited to selected records for the period from July 1, 2021, through October 31, 2022. The results of the investigation were communicated with the Office of the District Attorney General of the 12th Judicial District.

BACKGROUND



Marion County is located in Middle Tennessee and has a total land area of 512 square miles with approximately 348.41 miles of county roads. The Marion County Highway Department (department) is responsible for maintaining the county's roads and bridges. The department operates

under the direction and control of an elected highway supervisor who serves a four-year term. The former highway supervisor retired in November 2022. An interim supervisor was appointed until a successor was elected by the Marion County Commission in February 2023. The department is subject to the Tennessee County Uniform Highway Law codified in Tenn. Code Ann. §§ 54-7-101 et seq.

RESULTS OF INVESTIGATION

1. THE FORMER HIGHWAY SUPERVISOR AUTHORIZED AN EMPLOYEE TO USE DEPARTMENT EQUIPMENT TO LOAD THE EMPLOYEE'S PERSONAL DUMP TRUCK WITH COUNTY-OWNED DIRT

The former highway supervisor authorized an employee to use department equipment to load the employee's personal dump truck with county-owned dirt. Investigators were told the dirt was from Ellis Cove Road and other projects and brought to the department to be stored. The former highway supervisor alleged the dirt was free for the public to acquire. However, the department was not able to provide documentation of any public advertisement announcing that the dirt was free for the public to take.

Both the former highway supervisor and the employee admitted that the employee used department equipment to load the dirt for the employee's personal benefit. The employee stated that the highway supervisor gave him the dirt, and that he only hauled the dirt on weekends when the department was closed. The employee estimated he hauled 50 loads of dirt during the year and sold the dirt to individuals for amounts between \$50 and \$75 per load. The employee admitted to selling about five to six loads of dirt to a co-worker, and the former

highway supervisor stated that the employee delivered one load of the dirt to the supervisor's residence. The employee stated that he did not report the proceeds from the sale of the dirt as taxable income, nor was the money therefrom turned over to the county as revenue [Refer to Exhibit 1].

Exhibit 1



Gravel and dirt maintained on department property

2. THE FORMER HIGHWAY SUPERVISOR AUTHORIZED A PRIVATE COMPANY'S EMPLOYEE TO USE DEPARTMENT EQUIPMENT TO LOAD DIRT STORED ON DEPARTMENT PROPERTY

The former highway supervisor authorized a construction company's employee to use department equipment to load dirt stored on department property. The former supervisor stated that the department sold a pile of dirt to an individual at auction, but the next day the individual decided he did not want the dirt, and the individual sold the dirt to a construction company. The former supervisor stated whenever the construction company needed the dirt, a construction company employee would come to the department with the company's truck and the employee would load the dirt using the department's equipment. The use of department equipment by the private company's employee created potential civil liabilities to the county.

3. THE FORMER HIGHWAY SUPERVISOR AUTHORIZED THE DIESEL EXHAUST FLUID SYSTEM TO BE ALTERED ON AT LEAST TWO DEPARTMENT TRUCKS

The former highway supervisor authorized a local repair shop to alter the Diesel Exhaust Fluid (DEF) system on at least two department dump trucks [Refer to Exhibits 2 and 3]. Repair shop personnel stated no such permanent alterations were performed; however, the repair shop's employee was on site at the department garage the morning after an interview with the highway supervisor to reverse the alteration. Investigators were told the repair shop achieved

the alterations through software manipulation; however, repair shop personnel did not admit to the alterations.

The DEF system was implemented by vehicle manufacturers to meet EPA emission standards by breaking down harmful emissions in medium and heavy-duty trucks produced after 2010. The Clean Air Act, found in 42 U.S.C. §§ 7401 et seq., prohibits the alteration or tampering of an emissions control device by removing it or making it inoperable. To legally have the system removed would require recertification by the manufacturer and a new emission label and certification issued.

Exhibit 2



Truck 89 DEF system

Exhibit 3



Closeup of DEF system

4. THE FORMER HIGHWAY SUPERVISOR AUTHORIZED WORK ON A PORTION OF A ROAD THAT WAS NOT ON THE APPROVED COUNTY ROAD LIST

The former highway supervisor authorized work on a portion of a road that was not on the approved county road list [Refer to Exhibit 4]. The Marion County Commission's approved road list authorized only .7 miles of Kelly Creek Road to be considered a public road for the department to maintain, even though the total length of Kelly Creek Road within Marion County is approximately 1.9 miles. Several markers appear to have been placed on the road to indicate where the department is to stop working; however, investigators observed department equipment mowing the entire 1.9 miles of Kelly Creek Road and freshly patched potholes along the entire length of the road [Refer to Exhibit 5].

Exhibit 4



Department mower on non-county portion of Kelly Creek Road

Exhibit 5



Filled potholes on non-county portion of Kelly Creek Road

5. THE FORMER HIGHWAY SUPERVISOR HIRED HIS SON IN VIOLATION OF THE COUNTY'S NEPOTISM POLICY

The former highway supervisor hired his son on September 10, 2019, as a truck driver for the department and promoted him to foreman after he worked approximately three years as a truck driver. The former highway supervisor's son worked as foreman until he resigned on January 31, 2023. During the entirety of the son's employment, he was in the direct line of supervision by his father, the former highway supervisor.

Marion County's nepotism policy states:

For purposes of this policy, a "relative" shall include any of the following persons:

Parent, foster parent, parent-in-law, spouse, foster brother, sister, foster sister, grandparent, grandchild, son-in-law, brother, daughter-in-law, sister-in-law, or to any other family member who resides in the same household.

No employee will be hired or otherwise placed within the same direct line of supervision where one relative is responsible for supervising the job performance or work activities of another relative. Employment of family relationships prior to the publication of this policy manual are not affected. Violations occurring as a result of marriage shall be resolved by a transfer within the department or to another department, or resignation or termination as may be necessary to eliminate the violation.

From the date the former highway supervisor's son was hired until he left the department, the department was in violation of Marion County's nepotism policy.

COMPLIANCE DEFICIENCIES

Our investigation revealed deficiencies in compliance, some of which contributed to the above-noted investigative findings. These deficiencies included:

Deficiency 1: Management failed to comply with requirements set forth in the Tennessee Counties Uniform Road Law relating to employee and nonemployee use of county equipment and materials

Management failed to comply with Tenn. Code Ann. § 54-7-202 in the Tennessee Counties Uniform Road Law, which provides that the chief administrative officer shall not authorize or knowingly permit trucks, equipment, or materials to be used for private use or for use of any individual for private purposes. It also provides that any employee of the county road department who uses any truck or road equipment or any material for that employee's personal use, or sells or gives those things away, shall be immediately discharged.

Deficiency 2: Management failed to comply with county policy and federal laws

Management failed to comply with the provisions set forth in the Clean Air Act (CAA), 42 U.S.C. § 7522(a)(3)(b), which prohibits the manufacture, selling, or installation of any device that intentionally circumvents EPA emission standards by bypassing, defeating, or rendering inoperative a required element of the vehicle's emissions control system.

Management failed to comply with the Marion County Personnel Policy relating to nepotism, as outlined in investigative finding 5, above.
