

**INVESTIGATIVE AUDIT REPORT OF  
SELECTED RECORDS OF THE CITY OF LEBANON  
FOR THE PERIOD JULY 1, 2000, THROUGH MARCH 31, 2002**

**LEGAL ISSUE**

1. **ISSUE:**       **Apparent personal purchases on city purchasing cards paid for by city**

Our investigative audit, performed in conjunction with an investigation by the Lebanon Police Department, revealed that during the period July 1, 1999, through May 31, 2002, the former city purchasing agent, Johnny Crudup, made numerous purchases totaling more than \$40,000, with city purchasing cards, for which we could not determine that the city received any benefit. Of this amount, purchases totaling \$27,760, appeared to be for Mr. Crudup's personal benefit. Many of these purchases were related to photography and publishing. Refer to Exhibits 1-5c for examples. Based on information obtained by auditors, Mr. Crudup apparently operated a publishing and photography business. All the credit card charges were paid by the city. These apparent personal purchases at city expense were allowed to occur and remained undetected during a period of almost two years because of the lack of control addressed in Finding 3.

**DISPOSITION:**

On June 14, 2002, city officials became aware of two of the apparently personal purchases Johnny Crudup charged to city credit cards. City officials allowed Johnny Crudup to resign after he agreed that "full reimbursement" in the amount of \$602 was to be deducted from his final pay. Subsequently, through an investigation conducted by the Division of Municipal Audit and the Lebanon Police Department, city personnel were made aware that the amount of unauthorized personal purchases charged to the city by Johnny Crudup greatly exceeded the amount disclosed at the date of his resignation.

This matter was referred to the local district attorney general. On October 14, 2002, Mr. Crudup was indicted by the Wilson County Grand Jury on two counts of theft over \$1,000, and two counts of theft over \$10,000.

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## FINDINGS AND RECOMMENDATIONS

1. **FINDING: Failure to fully cooperate with audit**

During the course of the audit, Mayor Don Fox and other city representatives took action to attempt to limit the auditors' access to certain public records. According to instructions from the city's attorney, auditors were required to request in writing, subject to her approval, any records or information they desired to examine. City representatives also attempted to restrict access of the Comptroller's representatives to city employees, access requested for the purpose of obtaining information from the employees related to city records and actions. After members of the Comptroller's staff repeatedly requested access to all of the books and records of the City of Lebanon which were necessary to perform the audit and provided the city with the legal basis, including an Attorney General's Opinion, authorizing such access, Mayor Fox finally allowed unrestricted access to most of the city's records. However, his action resulted in significant delays in completing the audit and a significant increase in audit time and cost.

Nevertheless, Mayor Fox continued to refuse to provide the home addresses of certain city employees, impeding the ability of those employees to confidentially communicate with audit staff members. Faced with the unprecedented possibility of having to issue a subpoena to require a city official to provide access to city records, along with the accompanying added expense and delays, representatives of the Comptroller's Office continued to attempt to resolve this issue. Through their efforts and the efforts of the outside counsel hired by the City of Lebanon, along with the voluntary cooperation of all members of the Lebanon Police and Public Safety Department, the Comptroller's Office obtained the requested information.

When management attempts to obstruct access to records and personnel, they hinder the auditors' ability to identify fraud, waste, and abuse by public officials in the use of public funds. Section 8-4-109(2), *Tennessee Code Annotated*, states:

The comptroller of the treasury is hereby authorized to audit any books and records of any governmental entity created under and by virtue of the statutes of the state of Tennessee which handles public funds when such audit is deemed necessary or appropriate by the comptroller of the treasury. **The comptroller of the treasury shall have the full cooperation of officials of the governmental entity in the performance of such audit or audits.** (Emphasis added.)

Section 10-7-508(a), *Tennessee Code Annotated*, states:

[T]he comptroller of the treasury or the comptroller's designated representative for purposes of audit, shall be accorded access to and may examine and receive any public records or writings, whether or not they are subject to public inspection.

According to state law, portions of which are cited above, during the course of an audit of a public entity conducted by the Comptroller of the Treasury, that entity shall provide to the Comptroller's representatives access to all records the entity maintains, including access to those records which may be confidential, such as the names and addresses of undercover law enforcement officers employed by that entity.

**RECOMMENDATION:**

To comply with state law and ensure a thorough, complete, and unhindered audit, city officials should fully cooperate with the Comptroller of the Treasury.

**MANAGEMENT'S RESPONSE:**

**Mayor:**

The City of Lebanon does not concur.

The City of Lebanon provided *all* information that the Comptroller of the Treasury requested except for the home address and telephone number of law enforcement officers. The issue of law enforcement officer's home address and telephone number was resolved by negotiation between legal representatives of the City of Lebanon and the Comptroller of the Treasury. However, the City of Lebanon still adheres to its policy to oppose the release of home addresses and telephone numbers for law enforcement officers to preserve the safety of undercover officers and their families. In addition, the City of Lebanon was prepared to go to court to defend its opinion on this issue that was avoided by legal negotiations.

The City of Lebanon required that all requests for information by the Comptroller of the Treasury be made to the commissioner of finance. The City of Lebanon's charter designates the commissioner of finance as the custodian of all public records for the city. The commissioner of finance did challenge the Comptroller of the Treasury on the time needed to prepare certain records and reports. The city observed that delays were caused by the on and off process of auditing by the state, problems with the manner and methods of requests for records and further delays were caused by the lengthy criminal investigation of the former purchasing agent.

The City of Lebanon did not restrict the Comptroller of the Treasury's access to any city employee during the course of this investigative audit. Mayor Don Fox did not refuse the Comptroller of the Treasury access to *any* public record of the City of Lebanon. During

the exit conference, the director of the Division of Municipal Audit for the Comptroller of the Treasury stated that his office was not denied access to any financial records of the City of Lebanon.

During the audit process, the auditors of the Comptroller of the Treasury told the City of Lebanon's accounting manager that the City of Lebanon staff had been the friendliest and most respectful that they had encountered during their audit work.

**Members of the Board of Aldermen:**

City council members do not understand the reason for the apparent communication problems which reportedly exist between the Comptroller and the city management. The Comptroller is charged by law with the responsibility of performing the subject audit. Based upon information obtained, it appears the officials at the Comptroller's Office did encounter undue resistance from some city employees. As a direct result, council understands the audit expense was substantially increased. We understand the citizens of Lebanon will most likely be required to pay a substantial audit fee as a result of those communication problems. Council requests the mayor and city employees to work with the Comptroller to resolve the issues presented without further discord or expense.

This issue is of major concern to the members of the city council. The administration denies this failure to cooperate and offers no legitimate rationale or logic as to their apparent reasoning for limiting access to public records, impeding the audit process, failure to respond to requests, or their obstructing the auditor's ability to investigate potential areas of abuse and/or mismanagement. The members of the city council in no way condone the actions of the administration. Given the strict control the administration maintains over all city department heads, it could suggest that these requests and actions were not only known, but directed by the administration. The city council is committed to abide by the city charter and any and all state and federal laws and regulations. Actions reportedly encountered by the state auditors will be closely monitored in the future.

**AUDITOR'S REBUTTAL TO THE MAYOR'S RESPONSE:**

**We reiterate our finding that Mayor Fox and other city representatives attempted in various ways to control auditors' access to public records and personnel, hindering our division's ability to perform its audit function in an independent manner. These attempts resulted in significant delays in completing the audit, increasing audit time and cost. The letters included at the end of this report as Exhibits 6, 7, and 8 illustrate city officials' uncooperative attitude, failure to provide city records requested by auditors, and their attempts to prevent certain audit procedures from being performed.**

2. **FINDING: Court cost not authorized by state law**

Included in the court costs charged by the City of Lebanon was a fee of \$30 for the Juvenile Criminal Prevention Fund. City officials cited Lebanon City Ordinance 98-1748 as the authority for this charge. Ordinance 98-1748 authorized the \$10 docket fee established by a prior ordinance to be raised to \$40, and authorized the \$30 increase “to be paid to the Juvenile Criminal Prevention Fund to be applied toward the debt service on the Family Center.” According to city officials, no part of the family center has been used to hold city court or to confine prisoners or juvenile offenders, and no money from the Juvenile Criminal Prevention Fund has been used to pay expenses which are allowable court costs. Since the fee increase was designated for the Juvenile Criminal Prevention Fund, city accounting personnel report the following:

Collections		<u>\$ 593,818.82</u>
Expenditures		
Character Counts Program	\$ 331.03	
Halloween in the Park	6,350.93	
Turnaround Scholarship	1,276.92	
Mayor’s Youth Advisory Council	<u>1,352.82</u>	<u>\$ 9,311.70</u>

Since the \$30 Juvenile Criminal Prevention Fund fee has been collected as a court cost, but has not been used to pay costs incurred by the city to operate its court system, the charge is not authorized by state law.

Regarding such court costs, Section 16-17-105, *Tennessee Code Annotated*, states, “Reasonable costs shall be set by ordinance of the governing body . . . but in no event shall such costs exceed the costs assessed in the general sessions courts in the state of Tennessee.” General sessions court cost examples are outlined in Section 8-21-401, *Tennessee Code Annotated*. The city should not charge fees for court costs unless such fees are part of an authorized litigation tax as described in Section 67-4-602, *Tennessee Code Annotated*, or the fees are used to pay costs incurred in the operation of a city court system as limited by the statutes cited above.

**RECOMMENDATION:**

To comply with state statutes, the city should not charge fees for court costs unless such fees are part of an authorized litigation tax or the fees are used to pay the actual cost of operation of city court. Further, the city should reimburse the Juvenile Criminal Prevention Fund for the expenditures listed above and should seek legal counsel for the appropriate disposition of these funds and any outstanding legal liabilities.

**MANAGEMENT'S RESPONSE:**

**Mayor:**

The City of Lebanon does not concur.

The City of Lebanon collected the Juvenile Crime Prevention Fine from 1998 through 2003 in compliance with an ordinance drafted by the former city attorney and adopted unanimously by the city council. The City of Lebanon collected \$620,000 during this period and spent \$9,300.

In compliance with an opinion on this issue by the State of Tennessee Attorney General and per instruction from City of Lebanon attorneys, the City of Lebanon is currently not collecting the \$30 fee for the Juvenile Crime Prevention Fund. A new ordinance will be proposed making the \$30 fee a police officer's court cost fee. All funds will go to the general fund to pay for police overtime court costs. The City of Lebanon will transfer the \$9,300 to the Juvenile Crime Prevention Fund from the General Fund cash reserves. The balance of the Juvenile Crime Prevention Fund will be transferred to the General Fund and will be used to pay for police officers' overtime court cost.

Former city attorney William Farmer drafted the ordinance that created the Juvenile Crime Prevention Fee that was enacted by the city council. It replaced a previous ordinance that referred to the fee as a police officer's court cost fee.

**Members of the Board of Aldermen:**

City council believes that if the subject court costs expenditures had involved juvenile offender activities, the problem would have possibly been minimized. Although the council authorized the court costs collection, the use and method of expenditures is the responsibility of the mayor and city management. Council requests that independent legal counsel be employed as suggested by the Comptroller to advise the city concerning the legality of this issue, and what should be done about the subject court costs. Immediate action should be taken to address this finding. The city council has requested that the funds previously collected under this ordinance be held in a separate account until such time as the city council has a clear understanding of its allowable usage. The present ordinance will be revised to clarify the purpose for collection of these funds.

The city council plans to request the city attorney to obtain outside legal counsel to determine proper resolution of this matter.

**AUDITOR’S REBUTTAL TO THE MAYOR’S RESPONSE:**

**Although the response states nonoccurrence, the substance of the response indicates that the city is complying by currently not collecting the fee and planning to propose a new ordinance changing the Juvenile Criminal Prevention Fund fee to a police officer’s court cost fee. We reiterate our finding that the city should not charge fees for court costs unless such fees are part of an authorized litigation tax as described in state statutes or the fees are used to pay actual costs incurred in the operation of a city court system as limited by state statutes.**

3. **FINDING: Lack of control over purchasing card use**

Since early 1999, at least 40 city employees were issued city credit cards, known as purchasing cards, to pay for purchases for the city. Each card had a single transaction dollar limit of up to \$1,500, as well as a 30-day credit limit. In addition, each cardholder was to be the sole user of that card and was restricted to certain types of purchases depending on his or her duties. Use for “travel lodging and meals” was prohibited by the city’s purchasing card regulations. Each credit cardholder received a statement of charges monthly and was responsible for signing the statement, obtaining a supervisor’s signature signifying approval of the charges, if applicable, and submitting the statement, along with supporting documentation for each charge, through the purchasing department to the city’s accounting department. The City of Lebanon “Procurement (Purchasing) Card Administrative Regulations” outlined requirements and restrictions as part of the card program, including the directive that the card “is to be used for City purchases ONLY.” Our examination revealed, however, that cards were frequently used by employees other than the ones to whom they were issued. In one instance, after their supervisor’s death, employees continued to use a card which had been issued to their supervisor. In addition, supporting documentation was missing in many instances, some card holders did not sign their statements, documentation of supervisory approval was not obtained in several applicable instances, and cards were frequently used for travel lodging and meal purchases.

In addition, it appeared that most of the cards were issued to department heads or persons considered supervisors. Two cards, “General Fund” and “Spirit of Christmas,” were issued in the name of accounts and were apparently intended to be used by various employees. There was no documentation to indicate that charges by users of cards issued in the name of supervisors and accounts were reviewed or approved by anyone. Therefore, the city failed to maintain control over credit card use through a review of purchases for compliance with its own minimum card regulations and the imposition of penalties for noncompliance. As a result of the lack of control, the employee’s action addressed in the Legal Issue was allowed to occur and continue without detection for

over 2½ years. In addition, the purchasing card program appeared to lack regulations addressing the use of the cards to make the types of purchases which resulted in the apparently excessive spending identified in Finding 5.

**RECOMMENDATION:**

To help ensure that any system added to the city's purchasing procedures results in purchases that further the municipality's purpose, officials should establish and require compliance with adequate regulations and take appropriate steps when noncompliance occurs.

**MANAGEMENT'S RESPONSE:**

**Mayor:**

The City of Lebanon does not concur.

The City of Lebanon suspended the purchasing card program in April of 2002. The program had been in existence for three years. This decision was made after a review of the existing purchasing card program implemented by the former commissioner of finance and the former purchasing agent was found to lack sufficient checks and balances. The most serious of these was the manager of the purchasing card program was also a purchasing cardholder. In addition, the procedures for documenting purchasing card transactions did not require approval by the supervisors of cardholders.

The program was reinstated in April of 2003 with stronger internal controls. The number of cards issued was reduced to 10. The current program manager does not have a purchasing card. All purchasing card transactions have to be fully documented in a timely basis and must be signed by the cardholder and the supervising department head.

The City of Lebanon's accounting firm conducts a study of the city's internal control procedures on an annual basis as part of the annual audit. The Comptroller of the Treasury, Division of Municipal Audit, receives, reviews, and approves this document each year.

**Members of the Board of Aldermen:**

The administration of the purchasing card use is a function of the daily city management. Council understands procedures were in place for proper usage of the purchasing cards but were not followed by city employees. Council will request the mayor and other city managers to take immediate steps to ensure better daily management of city money and property. Also, please see the response to Legal Issue 1. (Refer to Exhibit 12.)

**Commissioner of Finance and Revenue :**

Response is the same as that of the mayor.

**AUDITOR'S REBUTTAL TO THE RESPONSES OF THE MAYOR AND THE COMMISSIONER OF FINANCE AND REVENUE:**

The mayor and the commissioner of finance and revenue state that they do not concur. However, they then indicate agreement by stating that "the existing purchasing card program. . . was found to lack sufficient checks and balances," and the program "was reinstated with stronger internal controls." We reiterate our finding and recommendation.

4. **FINDING:** Inadequate purchasing policy

The "Purchasing Guide for the City of Lebanon," describes the use of purchase requisitions and purchase orders and addresses an upper limit of \$2,500 for "expedited purchases" when discussing emergency purchases. However, the guide does not specify the dollar amount, above which purchase orders are required for regular purchases. Title 2, Chapter 1, Section 3, of the *Internal Control and Compliance Manual for Tennessee Municipalities* states that the municipality's purchasing policy should "require the use of prenumbered purchase orders for purchases over a predetermined amount."

**RECOMMENDATION:**

To help ensure that proposed purchases are authorized and that there are sufficient funds available in the account to be charged, officials should determine a purchase amount at or above which prenumbered purchase orders are required, and that requirement should be clearly stated in the city's purchasing policy.

**MANAGEMENT'S RESPONSE:**

**Mayor:**

The City of Lebanon does not concur.

As noted in the City of Lebanon's purchasing guide adopted February 25, 1995, the city has a policy of requiring purchase orders for all purchases of goods except for those purchased by petty cash or purchasing card. The city's purchasing department uses prenumbered purchase orders. This does not affect goods purchased by purchasing card for fieldwork. Goods under \$50 may also be purchased using petty cash if the item is needed immediately.

The Comptroller of the Treasury was mistaken in their interpretation of the expedited purchase procedure vs. normal purchasing procedures.

**Members of the Board of Aldermen:**

Council members are not trained in audit procedures. Furthermore, council depends on the mayor and administration to follow general accounting principles and standards. In addition, the City of Lebanon employs an independent accounting firm to perform financial audits each year. Since the State Comptroller’s Office has concerns about the present purchasing policy, council requests the mayor take immediate steps to obtain an independent outside review of city purchasing procedures. Council requests immediate action by the mayor and staff to ensure that city purchasing meets acceptable legal standards. Also, the council plans to evaluate the effectiveness of the accounting procedures. Furthermore, the city council plans to review all policies and procedures relating to the purchasing function and make any revisions deemed necessary.

**AUDITOR’S REBUTTAL TO THE MAYOR’S RESPONSE:**

Although the “Purchasing Guide for the City of Lebanon” makes numerous statements about purchase requisitions and orders, it does not require purchase orders for all purchases or state a purchase dollar amount, at or above which such orders are required. We reiterate our finding that the city’s purchasing policy is inadequate in this regard and that it should be amended to clearly state that purchase orders are required for all purchases or that they are required only for purchases at or above a specified amount.

5. **FINDING:** Lack of policies resulted in apparently excessive city expenditures for meals and refreshments and phone charges

Our examination of a selected part of the city’s disbursement records revealed that during the audited period the city paid **at least** the following:

<b>Category</b>	<b>Amount</b>
Restaurant meals and/or food items for departmental staff meetings; department and citywide employee gatherings including holiday dinners and retirement receptions; events to honor employees for their “years of service;” and employee committee meetings	\$22,682.78
Food and restaurant meals for city commissions and boards	8,742.30
Restaurant meals paid for employees/others apparently discussing city “business”	3,658.33
Food for events for retired city employees	<u>1,768.01</u>
Total for food and meals	<u>\$36,851.42</u>
Cellular phone charges in excess of allowed “plan minutes”	<u>\$ 1,504.79</u>
Flowers, fruit baskets, and funeral-related purchases	<u>\$ 1,262.72</u>

The city appears to have no policies and procedures specifically addressing the appropriateness of the categories above or the spending level in those categories to ensure that all expenditures of taxpayer funds are for costs necessary to the purposes for which municipal government exists.

**RECOMMENDATION:**

To help ensure that all city expenditures are for a valid municipal purpose, city officials should consider establishing policies to limit city expenditures for the item categories listed above. In addition, city officials should consider reviewing the city's practice of paying business meals because, as addressed in Finding 11, these appear to be fringe benefits which must be included in the employee's taxable income.

**MANAGEMENT'S RESPONSE:**

**Mayor:**

Providing meals and refreshments for council work sessions, commission meetings and retirees' dinners are a valid use for City of Lebanon resources because they show the appreciation for commission volunteers and council members in giving up their lunch hour or dinner time with their families to do City of Lebanon business. Providing meals for retirees' dinners shows the city's appreciation for long-time employees, many of whom worked for the city in excess of 30 years.

The vast majority of expenditure for meals is for citywide employee events and holiday meals:

Annual Fish Fry  
Thanksgiving Dinner  
Christmas Dinner

Since the expenditures for meals are budgeted in detail for citywide employee events and in the departmental travel and entertainment budget for each department, it is clear that this type of expenditure has been approved with passage of the city budget.

The City of Lebanon also opposes Comptroller of the Treasury's use of the term *apparently excessive* in describing the city's expenditure for employee meals and refreshment. It is vague, ambiguous and is a term of subjective opinion.

The City of Lebanon periodically reviews cell phone plans as the usage indicates. The small amount of cellular phone charges in excess of allowed plan minutes is immaterial in amount and therefore warrants no response.

**Members of the Board of Aldermen:**

According to the Comptroller, the City of Lebanon has incurred questionable expenditures as noted. Since no city money can be spent except for an authorized

municipal use, council requests immediate action to be taken to review all of the noted expenditures against present city policy. Those types of expenditures which are not an authorized municipal use by a written policy must cease immediately. If certain expenditure items are deemed to be suitable for a legitimate municipal use, the council requests the mayor and staff to present proper written procedures for consideration by the city council. If better communications had existed between the city staff and the Comptroller, council believes the issues presented could be resolved with the assistance of the Comptroller. Until these questions are resolved, all such questionable expenditures should immediately cease. The city council plans to request the administration to draft policies and procedures for such usage and require documentation to support each expenditure.

**AUDITOR'S REBUTTAL TO THE MAYOR'S RESPONSE:**

**This finding addresses the lack of a policy related to the expenditures mentioned. Without policies to identify the specific types of allowable expenditures and to require documentation substantiating why an expenditure belongs in an allowable category, spending is uncontrolled. Formulating specific written policies requires officials to address the necessity of each type of expenditure and to determine the appropriate spending level for each allowable expenditure category. Such scrutiny helps fulfill the board's responsibility to ensure that taxpayers' funds are used only for valid municipal purposes. We reiterate our finding and recommendation.**

6. **FINDING: Excessive travel expenses paid for some employees, and travel-related expenses paid for spouses of officials**

Our audit revealed that travel-related expenses totaling more than \$1,300 for spouses and guests of officials and employees, including airfare, a shuttle fee, convention registration fees, and banquet fees, were paid with municipal funds. In addition, the city expended at least \$1,262 for excessive mileage and other inappropriate travel expense reimbursements. Of this total, the city reimbursed the former commissioner of finance and revenue \$962.62 for additional expenses related to his delaying his scheduled return at the end of a Boston convention. No adequate justification for the city's assumption of these costs was provided. In addition, the city purchased an airline ticket costing \$467.75 for the mayor's spouse on April 4, 2001. However, the mayor did not reimburse the city for this amount until April 26, 2002, more than one year after the city's expenditure and two days after we began audit fieldwork. Section 6-56-112, *Tennessee Code Annotated*, states, "All expenditures of money made by a municipality must be made for a lawful municipal purpose." The Attorney General has issued Opinion Number 90-12, which states, "It is the opinion of this Office that the expenditure of municipal funds to pay the travel expenses for spouses of city officials and employees does not appear to further a valid municipal purpose."

**RECOMMENDATION :**

The mayor and members of the board of aldermen should establish and adhere to policies and procedures to ensure that the city does not pay excessive travel costs. City officials should prohibit the use of city credit cards or city funds to pay the expenses of spouses or guests, regardless of whether the expenses will be reimbursed.

**MANAGEMENT'S RESPONSE:**

**Mayor:**

The City of Lebanon does not concur.

The City of Lebanon currently does not pay and has not paid for spousal travel or entertainment since the adoption of the city's travel policy.

The purchase of an airline ticket for the mayor's spouse on April 4, 2001, was part of a natural gas purchasing trip including the mayor, gas manager, and their guests. The tickets were originally charged to the gas manager's personal credit card. The mayor did not reimburse the gas manager because he failed to notify the mayor about the portion of cost of the ticket for the mayor's spouse. The mayor was eventually reminded about the transaction, at which time he tried to reimburse the gas manager. The gas manager then informed the mayor that the City of Lebanon had reimbursed him for the mayor and his spouse's tickets. The mayor then reimbursed the City of Lebanon for the cost of his spouse's ticket. It is important to note that as a result of the mayor's and gas manager's trip, the City of Lebanon negotiated gas purchase contracts that saved the utility users of Lebanon \$1.5 million in utility charges.

The City of Lebanon also opposes Comptroller of the Treasury's use of the term excessive in describing the city's expenditure for travel expenditures. It is vague, ambiguous and subjective. In addition, it does not take into account the high growth rate in commerce in the City of Lebanon, which will require a higher rate of travel than other communities that the Comptroller of the Treasury may be considering when it uses the comparative term excessive.

**Members of the Board of Aldermen:**

Council members are not trained auditors. All questionable travel expenses should cease immediately. If city staff needs outside assistance in reviewing and improving present city procedures, the council should receive such a request. City travel expenses must conform to state and federal law. Furthermore, the city council in no way condones the payment for travel or any such expenses for the spouse of an employee, regardless of who that employee might be. According to the mayor's response, he was unaware the city, not he, had paid for the trip taken by his spouse. Furthermore, the administration's response claimed it was not the mayor's responsibility to remember to reimburse the city for said travel, instead requiring the gas manager to remind him. Fundamentals of general

management standards hold that no senior manager should need to be reminded about his or her obligations to organization policy or state law. Council has difficulty understanding why this went on for one year and was not remembered or corrected until two days after the state audit began. The city council plans to review the city's travel policies and procedures and will make any changes necessary to comply with state law. The council requests a copy of the referenced *TCA* section relating to this finding.

**Commissioner of Finance and Revenue:**

Response is the same as that of the mayor.

**AUDITOR'S REBUTTAL TO THE RESPONSES OF THE MAYOR AND COMMISSIONER OF FINANCE AND REVENUE:**

The mayor and the commissioner of finance and revenue failed to respond to the spousal travel purchase cited in the finding. Although the transaction described in their response was also inappropriate, the finding cited the April 4, 2001, purchase of a ticket from Southwest Airlines for the mayor's wife, which was charged to a city credit card issued to the mayor. The credit card charges were paid by the city, but as noted, the mayor did not reimburse the city until a year later. We reiterate our finding and recommendation that city funds should not be used to pay the expenses of spouses or guests, regardless of whether the expenses will be reimbursed. We also reiterate our recommendation that the mayor and members of the board of aldermen should establish and adhere to policies and procedures to ensure that the city does not pay excessive travel costs.

7. **FINDING:** Expenditures for a nonmunicipal purpose

The city paid at least \$ 6,168.51 for items including, but not limited to, employee gifts, awards for performing regular employment duties in an exemplary manner, birthday lunches, golf tournament fees, admission to benefit events, lunches for employees and officials at community and charity organization meetings, and conference sight-seeing tours. These purchases did not appear necessary to carry out the purposes for which the municipality exists. Section 6-56-112, *Tennessee Code Annotated*, states, "All expenditures of money made by a municipality must be made for a lawful municipal purpose."

**RECOMMENDATION:**

To comply with state statutes, city officials should ensure that all expenditures of city funds are for a valid municipal purpose.

**MANAGEMENT’S RESPONSE:**

**Mayor:**

The City of Lebanon does not concur.

The City of Lebanon provides incentives and service awards for city employees to boost morale and encourage a more efficient work force. Golf tournament fees are for charitable organization fundraisers such as Habitat for Humanity, Rotary, AARP, and local high school booster clubs, Cumberland University, etc. The \$6,100 in this category provides for a better work environment and city participation with civic groups that make Lebanon a better community. The City of Lebanon believes these expenditures are for a lawful municipal purpose, since these types of employee appreciation and service award programs are universally accepted in both government and the corporate world.

The City of Lebanon considers the inclusion of this finding to be a subjective charge in a document that should have maintained a higher level of objectivity.

**Members of the Board of Aldermen:**

All questionable and/or illegal expenditures noted in the audit should cease immediately. The council requests the mayor and staff to immediately review city policy and establish clear legal procedures to ensure that no future improper expenditures are made. Incentive and service awards for employees may be appropriate, but only if a proper city policy has been established and approved by the city council. The council plans to request the administration to draft a policy and procedure for defining what usage will be allowed, how to apply, and establish a defined and consistent single point of approval. City council will request that funds be expended only after this matter has been reviewed and approved by the city council. The council requests the *TCA* section(s) relating to this finding be provided to us.

**Commissioner of Finance and Revenue :**

Response is the same as that of the mayor.

**AUDITOR’S REBUTTAL TO THE RESPONSES OF THE MAYOR AND COMMISSIONER OF FINANCE AND REVENUE:**

**We reiterate that the expenditures referred to in this finding do not appear necessary to carry out the purpose for which the municipality exists. The mayor and members of the board of alderman have a responsibility to ensure that taxpayers’ funds are conserved. Therefore, we also reiterate our recommendation that all expenditures be for a lawful municipal purpose.**

8. **FINDING: Inadequate documentation for disbursements**

The municipality's files did not include adequate supporting documentation for at least \$37,538.58 of credit and purchasing card charges and individual check disbursements during the period of our audit. For many disbursements, the files contained no documentation or contained only summarized statements or credit card slips with only the purchase total, copies of invoices, or altered invoices. Many expenditures for travel expenses were not supported by travel claims detailing the travel. The *Internal Control and Compliance Manual for Tennessee Municipalities*, Title 2, Chapter 2, Section 4, states:

All disbursements, regardless of the accounting procedures, must be supported by invoices, cash tickets or other adequate supporting documentation. (Statements are NOT adequate supporting documentation.)

Section 2 of the city's travel policy states that travel must be recorded on a standard form which "must show movement and detail of expenses day to day."

**RECOMMENDATION:**

To help ensure that each disbursement was for a valid municipal purpose, officials should require that adequate supporting documents, including detailed reports of all travel which results in the disbursement of public funds, are received and maintained in the municipality's files in accordance with the *Internal Control and Compliance Manual for Tennessee Municipalities*.

**MANAGEMENT'S RESPONSE:**

**Mayor:**

The City of Lebanon does not concur.

Most of the \$38,000 of missing documentation of disbursements in this category relate to Legal Issue 1. The former purchasing agent was indicted on four counts of theft. The City of Lebanon has tightened controls on the use of purchasing cards that require greater documentation and control.

The City of Lebanon does correctly document the vast majority of disbursements. It is possible that a small number of transactions have missing invoices or signatures. But when compared with the number of invoices processed (est. 20,000 per year) or the total city budget of \$35,000,000, the amount of undocumented transactions is quite small.

The City of Lebanon's accounting firm conducts a study of the city's internal control procedures on an annual basis as part of the annual audit. The Comptroller of the

Treasury, Division of Municipal Audit, receives, reviews, and approves this document each year.

**Members of the Board of Aldermen:**

Adequate documents should occur for all transactions no matter the monetary size. To condone inadequate documentation is poor management of city money and property. Council requests the mayor and staff to take immediate steps to correct the basis for this finding.

**Commissioner of Finance and Revenue:**

Response is the same as that of the mayor.

**AUDITOR'S REBUTTAL TO THE RESPONSES OF THE MAYOR AND COMMISSIONER OF FINANCE AND REVENUE:**

Most of the instances of inadequate documentation cited in this finding were not related to the Legal Issue in this report. The number of transactions which were inadequately documented was significant in relation to the number of transactions for which we requested documentation. We reiterate our finding and recommendation.

9. **FINDING:** Sales tax paid on purchases

Our examination of selected disbursement records revealed that during the fiscal year ended June 30, 2001, the city paid purchasing card charges which included at least \$2,715.75 of sales tax from which the municipality is exempt. In addition, we observed that this practice continued during the fiscal year ended June 30, 2002. Section 67-6-329, *Tennessee Code Annotated*, exempts from sales tax all sales made to any municipality within the state.

**RECOMMENDATION:**

To avoid the unnecessary expenditure of public funds, city personnel should not pay sales tax on city purchases.

**MANAGEMENT'S RESPONSE:**

**Mayor:**

The City of Lebanon does not concur.

The finding that the City of Lebanon paid \$2,700 in state sales tax is an immaterial amount and warrants no response. However, it should be noted that the Tennessee Department of Revenue requires collection of sales tax on all cash purchases.

**Members of the Board of Aldermen:**

Council believes the loss of any taxpayers' money is a material loss. Council is concerned that the mayor's response from the city management takes a cavalier attitude about the improper payment of \$2,715.75 of sales tax. Council requests the mayor to immediately correct the problem of this finding and to request the state to refund the \$2,715.75 of sales tax paid.

**Commissioner of Finance and Revenue:**

Response is the same as that of the mayor.

**AUDITOR'S REBUTTAL TO THE RESPONSES OF THE MAYOR AND COMMISSIONER OF FINANCE AND REVENUE:**

**An unnecessary expenditure of \$2,700 is significant. More importantly, the failure of the mayor and the finance commissioner to acknowledge and correct this deficiency would allow this waste to continue. The Department of Revenue does not require collection of sales tax on cash purchases for an organization unless the employee is personally making the purchase and intends to be reimbursed. Information from the Taxpayer Services Division of the Department of Revenue states that in order to be tax exempt, "the billing for goods purchased or services rendered must be billed directly to the exempt organization and payment must be made by an organizational check, credit card or cash." The expenditures cited in the finding were made using city credit cards. We reiterate our finding and recommendation.**

10. **FINDING: Failure to document bidding applicable purchase, and failure to document reason purchases not bid constituted emergencies**

There was no documentation in the city's files that a bid was requested for the purpose of curbing at the baseball field at the park. The curbing purchase, totaling \$8,827.50, was listed on two invoices a month apart, giving the appearance that the project cost was split to avoid the requirement for bids. Article XII, Section 3, of the city's charter states, "[A]ll purchases of equipment or materials in excess of Five Thousand Dollars (\$5,000.00), shall be let to the lowest and best bidder upon sealed bids. . . ." In addition, in several instances, the city did not bid purchases because they were declared an "emergency" by city officials. However, the officials did not document the nature of the emergency. "The Purchasing Guide For the City of Lebanon," page 15, states, "Give the Purchasing

Department a complete requisition with a description of the emergency (Memo Format) and approval by the department head or superintendent.” It should be noted that in the absence of the required documentation, these purchases did not appear to be actual emergencies.

**RECOMMENDATION:**

City officials should adequately plan to ensure that total project costs are compiled and bid if required by the city’s charter. In addition, city officials should ensure that all purchases not bid because of emergencies are in fact, emergency purchases. For all emergency purchases, officials should submit and maintain on file complete documentation of the emergency as required by the city’s charter.

**MANAGEMENT’S RESPONSE:**

**Mayor:**

The City of Lebanon does not concur.

A requisition requesting curbing for the new community baseball field was submitted for 1,600 feet. We requested quotes and received only one response. This phase of the project was completed. One month later, phase two of the project was designed and to be constructed with replacement of some existing curbs to be replaced at the Lebanon Girls Softball Association fields. We again requested quotes and again received only one response. With these projects, the paperwork was completed and turned in for payment. To save taxpayers’ money, one check was cut for both projects.

The City of Lebanon does document all emergency purchases form. These forms are filed with the purchasing department’s copy of the completed purchase order. The Comptroller of the Treasury auditors failed to ask for the location of emergency purchase documentation, which is readily available. This may have caused the auditors’ confusion.

**Members of the Board of Aldermen:**

Council members are not trained in audit procedures. However, the finding indicates possible problems with the city bidding procedures presently being used. Council requests the mayor and all staff members to follow proper bidding requirements according to the city charter and to maintain adequate documentation. Any attempt by city employees to circumvent proper bidding procedures should be stopped. Convenience is not an excuse to avoid proper procedures. City employees should be made aware that the council requires all employees to follow the proper law and procedures. The city council plans to review all policies and procedures relating to the purchasing and procurement area. Council will make any changes deemed necessary.

**Commissioner of Finance and Revenue:**

Response is the same as that of the mayor.

**AUDITOR'S REBUTTAL TO THE RESPONSES OF THE MAYOR AND COMMISSIONER OF FINANCE AND REVENUE:**

As noted by the mayor and commissioner of finance and revenue, curbing for the baseball field was one project performed in two phases. As a result, documentation that bids were obtained is required by the city's charter.

In regard to emergency purchases, "The Purchasing Guide For the City of Lebanon," cited above, further states on page 16, "The. . . invoices and material receiving report confirming the purchase must be attached to the emergency requisition form." We reviewed the documentation for the emergency purchases mentioned in this finding. The documentation we reviewed was found in the city's disbursement files. The disbursement files should contain the invoices as well as any additional supporting documentation for all purchases. The Guide cited above states that the emergency requisition form should be attached to the applicable invoice. For the disbursements mentioned in the finding, no explanation of the emergency was attached to the invoice, nor was the examiner referred to another location for this information.

We reiterate our finding and recommendation.

11. **FINDING:** Fringe benefits not included in compensation

Our audit revealed that the city reimbursed employees for meals while the employees were out of the city on business, but not away overnight. As noted in Finding 5, the city in many instances also paid the cost for employees for lunch meetings in the city. In addition, the city allowed the mayor and other city employees to use nonspecialized vehicles for commuting. However, the city did not add the value of these meals or the value of the personal use of city vehicles to the compensation reported to the Internal Revenue Service (IRS) for those employees so benefited. IRS Regulation § 1.61-21 requires the value of most fringe benefits offered to employees to be included in the employee's income. Such meals, with two exclusions not applicable here, appear to be considered fringe benefits. In the same way, although the value of the commuting use of some city take-home vehicles, such as equipped and marked police vehicles, appears exempt from taxation, use of regular cars and trucks, whether marked with the city logo or not, appears to also be considered fringe benefits.

**RECOMMENDATION:**

To comply with the requirements of the Internal Revenue Service, the city should include the value of all applicable fringe benefits in each employee's income. The IRS should be consulted for guidance in this matter.

**MANAGEMENT'S RESPONSE:**

**Mayor:**

The City of Lebanon does not concur.

The City of Lebanon's vehicle take-home policy is contained in resolution 95-957. The city believes this policy does not constitute fringe benefits that should be reported to the IRS.

The city also believes that working lunches do not meet the IRS's criteria for reportable fringe benefits. Refer to the IRS's description of De Minimis Fringe Benefits.

**Members of the Board of Aldermen:**

Council members are not trained in IRS law; however, council is deeply concerned that the subject finding should be immediately resolved. If independent outside tax consultation is required, the city staff should seek independent advice. Council understands that any failure to follow IRS fringe benefit law could result in liability to the city or the employee. If the State Comptroller with its vast experience, has raised the benefits question, council believes it is foolish to ignore the finding. Therefore, council requests the city staff obtain an independent written opinion concerning this question and supply the opinion to all members of the council. If a problem exists, immediate steps should be taken to resolve the fringe benefit issue and to follow the IRS law. Furthermore, the referenced resolution was adopted in 1995, which in and of itself, begs for review. The resolution does reference possible individual tax liability on the part of the mayor and certain other department heads. The city council plans to request the commissioner of finance to obtain a ruling from the IRS as to the tax liability relating to imputed income for these specific positions. The council does request copy(s) of all related IRS codes relating to this finding. Upon receiving the tax information and outside advice, the city council will review and revise the referenced resolution as is appropriate.

**Commissioner of Finance and Revenue:**

Response is the same as that of the mayor.

**AUDITOR’S REBUTTAL TO THE RESPONSES OF THE MAYOR AND COMMISSIONER OF FINANCE AND REVENUE:**

The City of Lebanon’s vehicle take-home policy contained in Resolution 95-957 allows certain city vehicles to be taken home by certain employees for the “advantage of the city,” and because certain employees are “on call or on duty theoretically 24 hours a day and subject to call out.” The policy prohibits personal use of these vehicles at any time or place except by the Mayor, Commissioner of Public Works, City Engineer, Chief and Assistant Chief of Police and Fire Chief.” (This finding does not address qualified nonpersonal-use vehicles such as clearly marked police and fire vehicles or trucks and other vehicles specially-equipped according to IRS rules.) The quoted sentence continues, “however, said personal use shall be reported pursuant to the requirements of the Internal Revenue Service.” For employees and officials other than the mayor, public works commissioner and city engineer, this policy does nothing to establish that the personal commuting use of regular city vehicles is excluded from the income of the employee or official taking the vehicle home. At most, the policy may fulfill one of the requirements to use the IRS “commuting rule” to determine the value to be placed in the employee’s income. The IRS information we reviewed indicates that it does not appear to matter whether the mayor, public works commissioner and city engineer actually used the vehicle for commuting or other personal use. The fact that these persons are expressly authorized to use the vehicles for personal use makes use of the vehicle a taxable fringe benefit. The value of the personal use must be computed by a method acceptable to the IRS and reported as income as clearly stated in the resolution cited in the response. We reiterate the applicable portion of our finding and recommendation.

The meal expenditures addressed in this finding, do not appear to qualify as *de minimis*. We reiterate the applicable portion of our finding and recommendation.

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# **INDEX TO EXHIBITS**

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## INDEX TO EXHIBITS

- Exhibits 1 – 5c      Apparent personal purchases charged by Johnny Crudup on his city purchasing card and paid for by the City of Lebanon
- Exhibit 6            Letter from Peggy Williams, Lebanon City Attorney, to Dennis Dycus, Director of the Division of Municipal Audit
- Exhibit 7            Letter from Peggy Williams, Lebanon City Attorney, to former Governor Don Sundquist
- Exhibit 8            Letter from Don Fox, Mayor of Lebanon, to John Morgan, Comptroller of the Treasury
- Exhibit 9            Cover letter of the response of Lebanon’s Mayor Don Fox and Commissioner of Finance and Revenue Hal Bittinger to the findings in this report
- Exhibit 10           Cover letter of the response of the members of the Lebanon Board of Aldermen to the findings in this report
- Exhibit 11           Response of Lebanon’s Mayor Don Fox and Commissioner of Finance and Revenue Hal Bittinger to the Legal Issue in this report
- Exhibit 12           Response of the members of the Lebanon Board of Aldermen to the Legal Issue in this report

**City of Lebanon**  
PURCHASING CARD VOUCHER FORM

Date: Tuesday, June 20, 2000

Dept: Purchasing

Acct. #: 110-<sup>41620</sup>~~41590~~-310

Amt. Charged: \$522.75

Purpose: Misc. Ofc. Supplies

Receipt: Yes  No

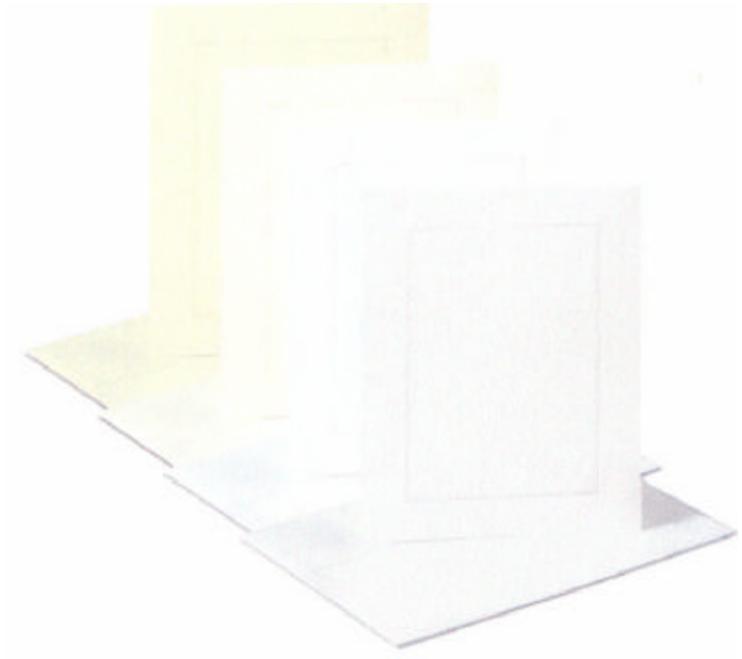
Charged by: JC

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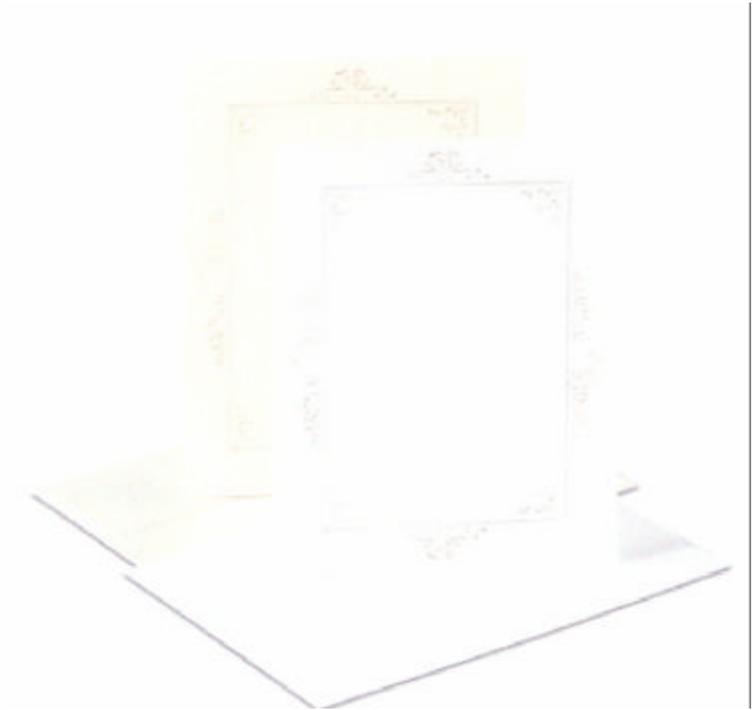
Approved by: JQ Crudup

---

# ACTUAL PURCHASE



**“Dignity” Invitations**



**“Elegance” Invitations**

CITY OF LEBANON  
PURCHASING CARD VOUCHER

DATE: 4/26/01

DEPARTMENT: Warehouse

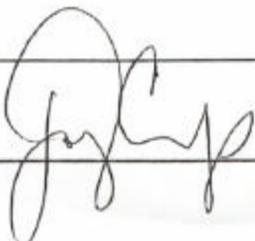
ACCOUNT NUMBER: 110-41620-949

AMOUNT BILLED: 656.10

PURPOSE: Warehouse Store Room  
Special racks for storage  
of paper products with a shelving  
light kit with adjustable  
light direction

RECEIPT ATTACHED: YES  NO

RECEIVED BY: \_\_\_\_\_

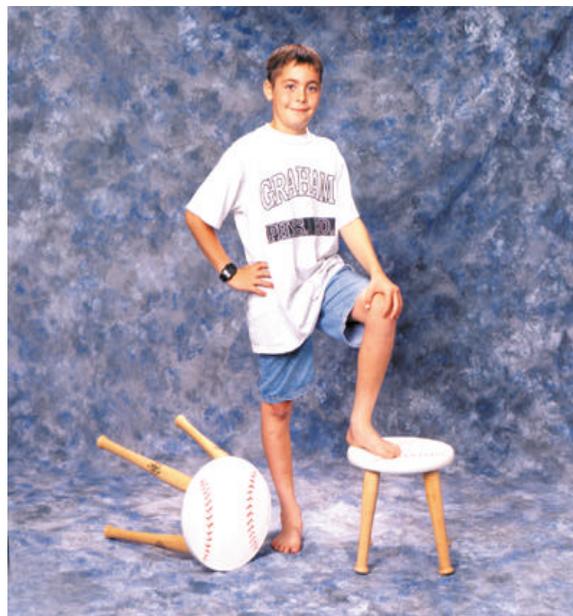
APPROVED BY: 

VOIDED COPY

## ACTUAL PURCHASE



**Photography Lighting Kit**



**Photography Backdrops**

Record of Credit Card Use (COL Form 1)							1. Closing Date of Statement
<b>INSTRUCTIONS:</b>							9/27/2001
Use this form to document City Credit Card Use. Reconcile the information on this form with your monthly billing statement, sign and date the form, and submit it with the billing statement to the approving official, and to Purchasing.							
2. Name of Cardholder							Johnny Crudup
3. Department							Purchasing/Warehouse
4. Date Purchased	5. Vendor Name	6. Description of Purchase	7. Unit #	8. G/L Acct. #	9. Amt. Billed		
8/28/2001	Cingular	Cell Phone		110-41620-245	\$21.88		
8/29/2001	OfficeMax	Ofc Supplies		110-41590-310	\$249.52		
9/6/2001	OfficeMax	Awards Plaque		110-14100	\$38.97		
9/6/2001	Emerald Supply	Jantioral Supplies		110-41620-320	\$202.00		
9/10/2001	OfficeMax	Ofc Supplies		110-41590-310	\$53.24		
9/10/2001	Domino's	Party		110-41590-230	\$42.00		
9/10/2001	Ponderosa	Party		110-41590-230	\$59.98		
9/20/2001	PaperDirect	Misc Ofc/Paper Supplies		110-41590-310	\$341.71		
9/24/2001	Wal-mart	100 ct binders		110-14100	\$96.08		
9/24/2001	OfficeMax	Ofc Supplies		110-41590-310	\$103.28		
9/27/2001	Cingular	Cell Phone		110-41620-245	\$21.88		
					Total	\$1,230.54	
10. Remarks:							
11. Signature of Cardholder (sign in ink)						12. Date:	
						10/31/01	
13. Signature of Approving Official						14. Date:	
Distribution:							

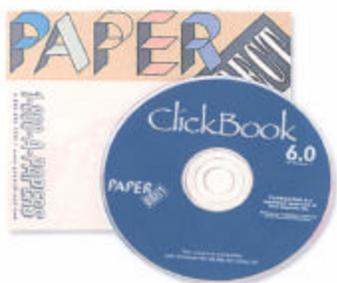
## ACTUAL PURCHASE



**Rayon Cord Tassels**



**Make-A-Booklet Covers**



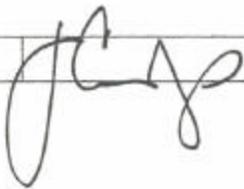
**ClickBook Software for preparing booklets**

### City of Lebanon PURCHASING CARD VOUCHER FORM

Date:	4/29/02
Dept:	Purchasing
Acct. #:	110-41590-320
Amt. Charged:	\$359.95
Purpose:	
	\$160.95
	\$199.39
	\$360.34

Receipt:      Yes            No     

Charged by: \_\_\_\_\_

Approved by: 

Form Name:      Purchasing Card Voucher

## ACTUAL PURCHASE



**Starry Nights Backdrop**



**40" Classic Column**



**Mirrored Plexiglas**

## City of Lebanon

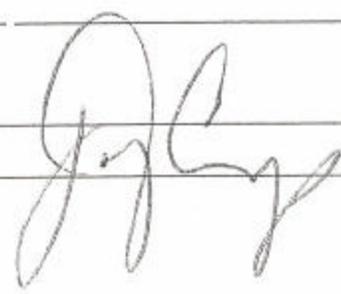
### PURCHASING CARD VOUCHER FORM

Date:	3/12/02
Dept:	General Fund
Acct. #:	110-17100
Amt. Charged:	419.64
Purpose:	Paper

Receipt:      Yes            No     

Charged by: \_\_\_\_\_

Approved by: \_\_\_\_\_



Form Name:      Purchasing Card Voucher

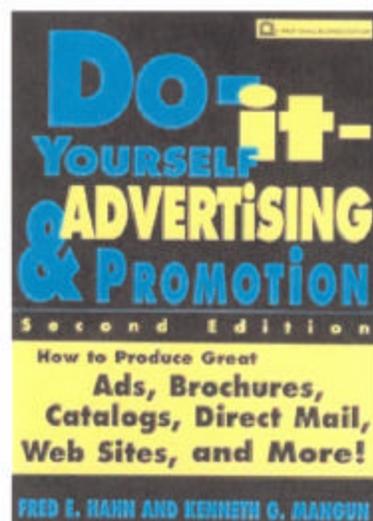
## ACTUAL PURCHASE



**“You Are Appreciated” Candy Bar Wrappers**

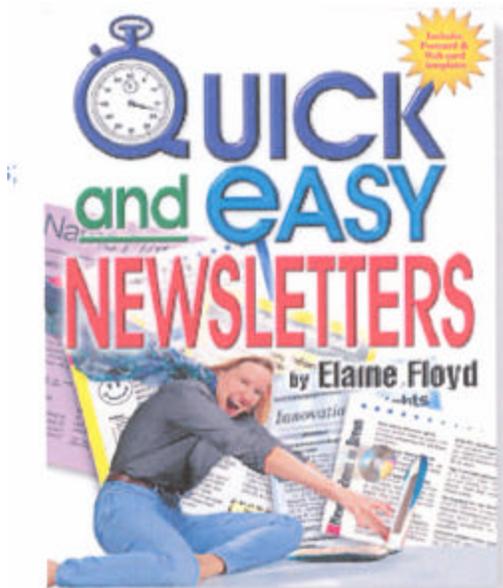


**“Thank You” Candy Bar Wrappers**



**Do-It-Yourself Advertising & Promotion Book**

## ACTUAL PURCHASE



*Quick and Easy Newsletters Book*



**"Star Student" Seals**

# ACTUAL PURCHASE



**Rayon Tassels**



**Unprinted Bookmarks**



**CITY OF LEBANON**  
**Office of City Attorney**

200 Castle Heights Avenue North

Lebanon, TN 37087

(615) 443-8610

August 15, 2002

RECEIVED

\*02 AUG 21 AM 9 53

COMPTROLLER'S OFFICE  
DIVISION OF  
MUNICIPAL AUDIT

Mr. Dennis Dycus  
Director, Division of  
Municipal Audit  
Office of State Comptroller  
Suite 1600  
James K. Polk State Office Building  
Nashville, Tennessee 37243-0271

Re: Request of Elaine Swyers for list of all current city employees  
With their mailing addresses

Dear Mr. Dycus:

Attached you will find a copy of a fax that was sent to our City, requesting the above captioned information. As you can see, it was not put on your department's official letterhead, is not addressed to a particular person, and there is no reason or explanation given for the request. It is the City's policy not to release the names of individual city employees, including Police or Fire Department employees, or their home addresses to anyone. Such requests are considered an invasion of privacy and a potential safety hazard. We particularly will not release such information, even to the State, when we receive such request in this format and are not informed of the reason for the request. I can only assume that the reason has something to do with the audit your department has been conducting, but since you informed me that your office was not conducting a criminal investigation, I cannot see the need for your auditor to have this information.

The City of Lebanon has cooperated with the State auditors up to this point; even though I advised you that, with the exception of one employee who the city discovered, through its own audit, misused his city credit card, and has since been discharged, the request your office received from certain persons to conduct the State audit were politically inspired. As to the one employee that the City discovered misused his city credit card for personal purchases, our in house investigation has continued and the matter will go before the Grand Jury in September and we expect an indictment to be returned. We certainly have not attempted to hide any records or withhold any information from your office, and I respectfully request that you return this same courtesy to the City of Lebanon.

Dennis Dycus  
August 16, 2002  
Page 2

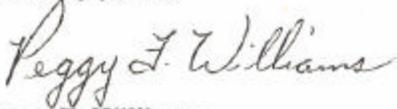
All requests for records or information, such as that made by Ms. Swyers, must be in writing (not fax or e-mail), on your Department letterhead, addressed to Hal Bittinger, Lebanon Commissioner of Finance and Revenue at 200 Castle Heights Ave. N. Lebanon, Tennessee 37087, and the letter must state the purpose, including how such information will be used by the State, for the requested information. The request must be signed by you.

Therefore, I am instructing the Commissioner of Finance and Revenue not to provide the information requested by Ms. Swyers until he has received a request as described in the foregoing paragraph. In the future, please make all requests for information in this manner.

For your further information, I am including a copy of recent "Snews" web pages that are being published on the internet for all to see. The Editor is being provided the libelous materials by the informants who contacted your office and requested that you conduct a State audit. Frankly, the city is tired of this harassment and intends to see that it stops. We are in communication with an outside attorney to pursue this matter further.

If you would like to discuss this matter further with me, I may be reached at 443-8610, Monday through Friday between 8:30 A.M. and 4:30 P.M.

Sincerely yours,



Peggy F. Williams  
City Attorney

PFW/s

Cc: Don W. Fox, Mayor  
Hal Bittinger, Commissioner  
Bob Rochelle, Senator  
Stratton Bone, Representative



**CITY OF LEBANON**  
**Office of City Attorney**

200 Castle Heights Avenue North  
Lebanon, TN 37087  
(615) 443-8610

August 22, 2002

The Honorable Don Sundquist  
Governor, State of Tennessee  
State Capitol Building  
Nashville, Tennessee 37243-0001

Re: State Audit of City of Lebanon

Dear Don:

It is with regret that I find it necessary to write to you regarding the above captioned matter; however, things have progressed to a point that as the City Attorney I feel you should be made aware of a situation that may ultimately prove an embarrassment to the state because it will entangle the Comptroller's office in our city's local politics.

The Comptroller's office has been involved in conducting an audit of the City of Lebanon's use of city issued credit cards. Two or three disgruntled persons who were not appointed to a particular public office for which they were not qualified, or were discharged because they could not perform the duties of their office due to chronic alcoholism, or could not exert their influence on the administration to achieve their own self-serving political ambitions, initiated the audit. These persons have publicly sworn to "get even", and they have resorted to libel, slander, political maneuvering and every underhanded tactic known to politics. This is not an unusual situation in local politics; however, it is unusual for the State of Tennessee to allow itself to get involved in such matters, and it certainly is hazardous to the state administration.

The following individuals have involved the Comptroller's Office, Division of Municipal Audit, in their political fight against Lebanon's Mayor, Don W. Fox: Arah Preston, a Lebanon City Council member who wanted to be appointed Fire Chief but was not qualified by training or experience for such a position; Arah's sister, Betty Edwards; Jerry McPeak, the former Commissioner of Finance and Revenue for the city, who was discharged for being a chronic alcoholic who reported to work drunk; Kathy Warmath a "so-called" Republican, who is not in good standing with the Wilson County Republican Women's organization because of her stances on the Council and her opposition to the City Mayor, and whose personal

Honorable Don Sundquist  
August 22, 2002  
Page 2

political ambitions stand in the way of her best judgment for good city government; Pat Bryant, the wife of a local doctor (a devout Democrat) who opposes the Mayor of Lebanon because the Lebanon Planning Commission refused to spot zone certain property owned by her husband; the local Sheriff of Wilson County who opposes the city administration, particularly the Commissioner of Public Safety; Bobby Jewell and his son, Lanny Jewell. Mayor Fox defeated Bobby Jewel in the race for Mayor nine years ago and both Jewels have been political antagonist ever since. Chris Corley, a local chiropractor who ran for Mayor in last year's election and was soundly defeated by Mayor Fox, but has declared that he will probably run against Fox again in four years.

These persons have collaborated to establish and publish on the internet a yellow journalism web page that has libeled the City of Lebanon, Mayor Don W. Fox, Commissioner of Finance and Revenue Hal Bittinger, Commissioner of Public Safety Billy Weeks, City Attorney Peggy Williams, and many more city officials, as well as Dennis Dycus, Director of Municipal Audit for the State of Tennessee, State Attorney General Paul Summers, Governor Don Sundquist, Local District Attorney Tommy Thompson, and others. This is the very lowest form of political harassment. The libelous statements are always published on the internet anonymously; however, it is pretty obvious who submits such trash to the publisher, E. G. Chandler. Mr. Chandler suffered an electrical shock a few years ago that has left him a brain damaged individual who has been duped into conspiring with these persons.

The City of Lebanon and those libeled individuals have come to the conclusion that enough is enough, and they are in contact with a former United States Attorney, Ernest Williams of Franklin, Tennessee, to represent them in a legal action if necessary, to put a stop to this. If suit is filed, it may very well result in joining certain persons in the Comptroller's office as defendants, and they will be issued subpoenas to testify regarding the persons who instigated the state's municipal audit to harass the City of Lebanon. This could prove very embarrassing to them and to the state. I have been assured by Mr. Dycus that the state is not conducting a criminal investigation against the city, and that he is aware that the state's audit was instigated by political malcontents. However, if it becomes necessary for the city to take legal action to put a stop to this form of harassment, you can be assured it will make front-page headlines.

Don, you know where I stand. We are old acquaintances and friends from our campaign days with Bill Brock. I hope you also know that I am only interested in good government, no matter which political party is in office, and I would not intentionally involve you or the state in anything that would cause embarrassment.

Honorable Don Sundquist  
August 22, 2002  
Page 3

Neither is this letter intended as a threat of a lawsuit against the state; however, I felt that you should be made aware of the reason for the state's involvement and the possible duplicity of some of its auditors and administrative personnel in this matter. I hope it will cause you to look into this situation and if what I have been told and led to believe is true, put a stop to the state's involvement in a political conspiracy.

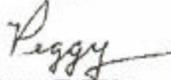
The City of Lebanon has fully cooperated with the state's auditors up to this point. We have provided them with all of the financial records they have requested; however, now the state auditors are requesting information about city employees, such as their home addresses and telephone numbers and other personal information that is not material to the city's financial records or the audit. They are requesting copies of city ordinances creating the Department of Public Safety and the position of Commissioner of Public Safety, and certain other departments of city government and administrative positions; all because the conspirators have alleged on their libelous web page that there is no authority for the creation of the departments or the positions and therefore the Commissioner of Public Safety is being illegally paid by the city and performs no services or duties for the city. This is hogwash! The state's action in this regard is pure meddling in city business that has nothing to do with an audit. It is an attempt by the persons named in this letter to question the authority of the Mayor to combine two or more departments of city government, or to create new departments of city government when necessary, as he is authorized and empowered to do in the Lebanon Municipal Charter. The auditors should look at our Charter rather than conspire with the city's political malcontents. Furthermore, such requests by the state auditors are being faxed to individual city employees who are asked to provide the information without the knowledge of the Commissioner of Finance and Revenue, and with no explanation for the request or for the need or intended use of the information. Requests are not in writing on State Department of Municipal Audit letterhead; nor are they signed by Mr. Dycus and addressed to our Commissioner of Finance and Revenue as we have previously requested. For these reasons, I have advised our employees not to respond to any request or provide any information until the request is properly submitted and received by the Commissioner of Finance and Revenue, and he can verify the need for it with the State Comptroller or the Director of the Division of Municipal Audit.

I look forward to your prompt response and I trust you will look into this matter immediately.

Honorable Don Sundquist  
August 22, 2002  
Page 4

Please give Martha my best regards and I know the two of you are looking forward to a life of peace and tranquility after your years of public service.

Sincerely,



Peggy F. Williams  
City Attorney

PFW/hs

Xc: Don W. Fox, Mayor  
Hal Bittinger, Commissioner



Don W. Fox  
Mayor

## CITY OF LEBANON

*Office of the Mayor*

200 Castle Heights Avenue North, Suite 100

Lebanon, TN 37087

E-mail: foxd@lebanontn.org

615-443-2839

Fax 443-2851

September 12, 2002

Mr. John G. Morgan  
Comptroller of the Treasury  
State of Tennessee  
State Capitol 1<sup>st</sup> Floor  
Nashville, TN 37243-0260

Mr. Morgan:

I was reluctant to bother you with a matter that I felt would take care of itself, but that obviously was the wrong approach. Approximately five months ago, members of Dennis Dycus' staff came to Lebanon and secretly interviewed the City's Ex-Commissioner of Finance and Councilwoman Arah Preston at a local school building. The Ex-Commissioner of Finance (according to Ms. Preston) was intoxicated as he has been for approximately two years and was terminated for this reason. Arah Preston is a very bitter person who lost her bid to unseat me in last year's election, was rejected in her attempt to take her deceased husband's position as Lebanon Fire Chief by myself and Commissioner Billy Weeks, and has vowed on several occasions to "take me down" and get Commissioner Weeks fired.

Since and during that interview, the City of Lebanon, the independent auditing firm, and city officials are insulted by the complete absence of professionalism and courtesy by the municipal auditing staff. Neither the Commissioner of Finance, the Canter accounting firm nor I have received any notification at all by your office or staff.

We are all bewildered by your staff's involvement with the lower elements of this community and would like to meet with you personally to defuse the situation. Since we have absolutely nothing to hide and are proud of our continuous upgrading by Moody's of New York and financially sound fiscal management, the City has blindly cooperated 100 percent with your staff during the past five months. However, the most recent request for information is both duplication and questionable. We feel that this audit has turned into a witch hunt.

I am proud of our community and do not wish for embarrassment to the State or anyone else. Please let me know as soon as possible when we can meet to return this witch hunt to the professional level. I have enclosed past correspondence, which indicates that this matter is out of control by both governmental entities.

Sincerely,

Don W. Fox  
Mayor

DWF/daj



Don W. Fox  
Mayor

# CITY OF LEBANON

## Office of the Mayor

200 Castle Heights Avenue North  
Suite 100

Lebanon, TN 37087

E-Mail: donfox@lebanon-tn.com

RECEIVED

2003 JUN 10 AM 9:44

COMPTROLLER'S OFFICE

DIVISION OF

MUNICIPAL AFFAIRS

615-443-2839

Fax: 443-2851

June 16, 2003

Mr. Dennis F. Dycus, Director  
State of TN Division of Municipal Audit  
505 Deaderick St., Suite 1600  
James K. Polk State Office Building  
Nashville, TN 37243-0271

Dear Mr. Dycus:

Enclosed please find the responses to the draft copy of your findings, as prepared by the City of Lebanon's Commissioner of Finance and Revenue, Mr. Hal Bittinger and agreed to by Mayor Don Fox.

Because the "confidential" draft comments by the TN Division of Municipal Audit has been highly publicized in both the *Lebanon Democrat* and on local cable television, and measures were not taken by the Tennessee Division of Municipal Audit to keep the preliminary draft report confidential, we are obligated to be very direct and address the public's concerns in our response. Let us state firmly that the City of Lebanon has nothing to hide. Our staff is professional, and our policies well established. We welcome any scrutiny by the State of Tennessee, and appreciate constructive criticism and suggestions for improvements. In fact, as the State Comptroller's Office is well aware, our city is audited annually by independent auditors, and that information is then reviewed and approved by the State Comptroller's Office.

This audit was conducted as a result of allegations brought to the State of Tennessee by political opponents of the Mayor and a terminated City employee. We understand that the State Comptroller has a responsibility to follow up on allegations of this nature. However, before launching into a 15 month-long investigation of the City of Lebanon, a preliminary investigation of the circumstances of those bringing charges would have allowed the auditors more objectivity. From the beginning, the entire tone of this audit had political overtones. The Mayor was not given the courtesy of a telephone call or letter of notification from the State Comptroller's staff until the audit was already well underway.

Page Two, Mr. Dennis Dycus

Of the 11 findings listed in the draft report, several are frivolous in nature, based on the thousands of transactions required to conduct daily city business and the \$35,000,000 annual budget. Several findings are related to theft by a former employee in which criminal charges were brought, and in which the City of Lebanon is cooperating with the District Attorney's Office and their investigation.

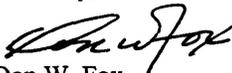
We object to language used in the draft such as "apparently excessive" which is very subjective in nature and inappropriate. As our response reflects, some of the findings are a lack of understanding on the part of the audit staff, in some cases because the audit staff based their findings on documents referred to as "policies" that are NOT our written policies, when written policies are in fact available. In another finding, audit staff cited a lack of documentation when the documents in question are readily available, but were not requested.

We question why the State's draft report repeatedly refers to Mayor Fox as having refused to cooperate or provide records. The Mayor is not the "keeper of records." He did not refuse to provide any financial records. As is plainly stated in the Charter of the City of Lebanon, the Commissioner of Finance and Revenue, not the Mayor, is the custodian for city records. Proper procedure dictates that all requests go to the Commissioner of Finance and Revenue. As we have addressed in the enclosed response, ALL records were made available to the State auditors and access to all employees was provided. The ONLY point of disagreement was the request for the City of Lebanon to provide HOME addresses and HOME telephone numbers of police officers. We believe that TCA 10-7-504 supports our policy to preserve this confidentiality for the protection of our police officers who work undercover, and our legal representatives concurred with that assessment. (Our police officers have published, direct telephone numbers and all were available to audit staff.)

In summary, we feel it is appropriate to request a formal review of the policies and procedures of the Division of Municipal Audits, and in particular, an analysis of procedures used in the audit of the City of Lebanon. The very nature of a "state audit" gives a false impression to the public of wrong-doing. We maintain that City of Lebanon operations and finances are well-managed, and the City of Lebanon financial condition is very sound, as is supported by the attached documents from Moody's, Morgan Keegan and the Independent Auditor's Reports. It is unfortunate that unfounded allegations launched this costly waste of time and effort on the part of the State of Tennessee Audit Division and the City of Lebanon employees.

It is our desire to cooperate with the State Comptroller and to finalize this in the form of a public document. If we can assist further in accomplishing this, please advise.

Sincerely,

  
Don W. Fox  
Mayor

  
Hal D. Bittinger,  
Commissioner of Finance and Revenue

**CITY OF LEBANON  
CITY COUNCIL  
200 Castle Heights Ave. North  
Lebanon, TN 37087**

June 27, 2003

**SENT BY U.S. MAIL AND FACSIMILE**

Mr. Dennis F. Dycus, CPA, CFE, Director  
State of Tennessee - Division of Municipal Audit  
505 Deaderick St., Suite 1600  
James K. Polk State Office Bldg.  
Nashville, TN 37243-0271

**Re: City of Lebanon, Tennessee**

Dear Mr. Dycus:

Enclosed below are the responses to the draft of your audit findings, as submitted by the Lebanon Councilpersons who have signed this response. Please accept this written report as a compilation of comments from each of the Councilpersons who have signed this document. As a result of the method of formation, there may be some redundancy since we have simply compiled the individual Member's responses. The attached compiled comments were reviewed by the Council Members and those who have signed this document concur with this response. Each Council Member is, of course, free to submit an independent response.

First, the undersigned Members of the Lebanon City Council express our individual thanks to you and your staff in allowing the Council additional time in which to respond. Also, we thank you for the courtesy extended during our personal discussions.

Second, please be advised the undersigned Members of the Lebanon City Council do not agree with the terms and tone of the June 16, 2003 letter sent to you from Mayor Don Fox and Commissioner Hal Bittinger. We fully realize the role our State Comptroller's Office is required to perform under state law. We regret the apparent unfounded attack on you and your office. Furthermore, we do not concur in the specific responses presented to you by the Mayor and Commissioner of Finance.

In preparing the following separate response from Members of the City Council, the undersigned Council Members are at a distinct disadvantage. We do not have staff to assist us. Nevertheless, the undersigned Council Members believe it is our responsibility as public officials to answer your findings as best we can. Therefore, we have chosen to submit the compiled responses stated below.

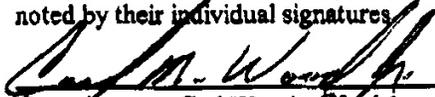
Page Two  
Director Dennis F. Dycus  
June 27, 2003

Without legal or accounting staff to assist the City Council, we find ourselves with the need to work toward solving the problems noted in the audit, but with limited information to use. Therefore, if the Comptroller in its final report, will list the involved federal and state law it will be helpful to us.

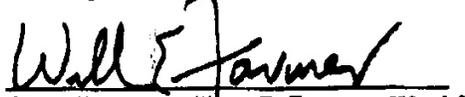
Again, thank you for performing your job. With your assistance, we plan to address the reported issues in a productive and proper manner which is in the best interest of the citizens we represent.

Please advise if we can be of further assistance in responding. Please find our compiled responses as follows:

Submitted for consideration by and on behalf of the following Council Members, as noted by their individual signatures.

  
Councilperson Carl Wood - Ward 1

  
Councilperson Annette Stafford - Ward 2

  
Councilperson William E. Farmer - Ward 3

  
Councilperson Joe Hayes - Ward 4

  
Councilperson Jim Mills - Ward 5

  
Councilperson Kathy Warmath - Ward 6

**RESPONSE OF THE MAYOR AND THE COMMISSIONER OF FINANCE AND  
REVENUE TO STATE AUDIT LEGAL ISSUE**

Legal Issue 1: Apparent personal purchases of city purchasing cards paid for by the city

The City of Lebanon became aware of the illegal use of credit card purchases by former purchasing agent Johnny Crudup in late March 2002. The newly appointed Commissioner of Finance turned this information over to the police department for investigation. He also informed the City's accounting firm and had them conduct an audit of credit card transactions and recommend changes in the purchasing card program. The Comptroller of the Treasury auditors were informed of the situation shortly after they started field audit work at the City of Lebanon and were given a copy of the audit performed by the City's accounting firm. The City also arranged an interview for the Comptroller of the Treasury with the City's police detective Tommy Maggart who conducted the criminal investigation. The Commissioner of Finance suspended the purchasing card program in May 2002.

The City of Lebanon accounting firm conducts a study of the City's internal control procedures on an annual basis as part of the annual audit. The Comptroller of the Treasury Division of Municipal Audit receives, reviews and approves this document each year.

The comment in the audit that the City allowed this theft to occur because of a lack of proper internal control is an opinion of the Comptroller of the Treasury and the city of Lebanon objects to this allegation. Internal controls are indeed an important part of establishing an effective accounting system, but they are not a guaranty against theft by a dishonest employee.

**RESPONSE OF CITY COUNCIL MEMBERS TO STATE AUDIT**

**LEGAL ISSUE**

**Legal Issue No. 1: Apparent personal purchases of city purchasing cards paid for by the city.**

Council Response: Prevention of theft and/or illegal use of property or monies is a management function which is the responsibility of the Mayor and the Administration leaders. City Council members will request a future review of internal control procedures to assure the subject activity does not occur again.

Furthermore, the Council was unaware of the credit card program until the theft was ultimately discovered. Given the length of time spanned by the theft it would suggest there are questions about management oversight and accountability of the Administration. The City Council plans to review all such programs, policies, and procedures to ensure adequate controls and oversight are defined.