

INVESTIGATIVE AUDIT REPORT

TOWN OF MONTEAGLE
JULY 1, 2005, THROUGH OCTOBER 31, 2006



State of Tennessee



**Comptroller of the Treasury
Department of Audit
Division of Municipal Audit**



STATE OF TENNESSEE

C O M P T R O L L E R O F T H E T R E A S U R Y

John G. Morgan

Comptroller

STATE CAPITOL

NASHVILLE, TENNESSEE 37243-0260

PHONE (615) 741-2501

May 13, 2008

Honorable Mayor and Members of the
Board of Aldermen
Town of Monteagle
P. O. Box 127
Monteagle, TN 37356

Gentlemen:

Presented herewith is the report on our investigative audit of selected records of the Town of Monteagle, for the period July 1, 2005, through October 31, 2006. However, when the examination warranted, this scope was expanded.

Section 9-2-102, *Tennessee Code Annotated*, requires that the Comptroller of the Treasury prescribe a uniform system of bookkeeping designating the character of books, reports, receipts and records, and the method of keeping same, in all state, county and municipal offices, including utility districts, which handle public funds. This code section also requires that all officials adopt and use the prescribed system. The Comptroller has prescribed a minimum system of recordkeeping for municipalities, which is detailed in the *Internal Control and Compliance Manual for Tennessee Municipalities* combined with Chapters 1-7 of *Governmental Accounting, Auditing, and Financial Reporting*. The purpose of our audit was to determine the extent of the entity's compliance with certain laws and regulations, including those in the above-mentioned manuals.

The findings and recommendations in this report relate to those conditions that we believe warrant your attention.

Honorable Mayor and Members of the
Board of Aldermen
Town of Montevalle
May 13, 2008

Copies of this report are being forwarded to Governor Phil Bredesen, the State Attorney General, the District Attorney General, certain state legislators, and various other interested parties. A copy is available for public inspection in our office.

Very truly yours,

A handwritten signature in black ink that reads "John G. Morgan". The signature is written in a cursive style with a long horizontal flourish at the end.

John G. Morgan
Comptroller of the Treasury



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DEPARTMENT OF AUDIT
DIVISION OF MUNICIPAL AUDIT

John G. Morgan
Comptroller of the Treasury

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Dennis F. Dycus, CPA, CFE, Director
Division of Municipal Audit

May 13, 2008

Mr. John G. Morgan
Comptroller of the Treasury
State Capitol
Nashville, TN 37243-0260

Dear Mr. Morgan:

As part of our ongoing process of examining the records of municipalities, we have completed our investigative audit of selected records of the Town of Monteagle. This investigative audit focused on the period July 1, 2005, through October 31, 2006. However, when the examination warranted, this scope was expanded.

Section 9-2-102, *Tennessee Code Annotated*, requires that the Comptroller of the Treasury prescribe a uniform system of bookkeeping designating the character of books, reports, receipts and records, and the method of keeping same, in all state, county and municipal offices, including utility districts, which handle public funds. This code section also requires that all officials adopt and use the prescribed system. The Comptroller has prescribed a minimum system of recordkeeping for municipalities, which is detailed in the *Internal Control and Compliance Manual for Tennessee Municipalities* combined with Chapters 1-7 of *Governmental Accounting, Auditing, and Financial Reporting*. The purpose of our audit was to determine the extent of the entity's compliance with certain laws and regulations, including those in the above-mentioned manuals.

Our examination resulted in findings and recommendations related to the following:

1. Town officials failed to recover inappropriate reimbursement of court costs and restitution paid to town employee
2. Apparently conflicting provisions in vacation leave policy
3. Apparently unclear provisions in sick leave policy
4. Failure to document necessity and approval of vacation leave accrual in excess of amount allowed by town policy

Mr. John G. Morgan
Comptroller of the Treasury
May 13, 2008

5. Inadequate leave records
6. Failure to retain adequate supporting documentation
7. No enforced town-wide policy for over-plan cell phone charges
8. Inadequate control over fixed assets and other property

If after your review, you have any questions, I will be happy to supply any additional information which you may request.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis F. Dycus". The signature is fluid and cursive, with a large, stylized initial "D" and "F".

Dennis F. Dycus, CPA, CFE, Director
Division of Municipal Audit

**INVESTIGATIVE AUDIT OF SELECTED RECORDS
OF THE TOWN OF MONTEAGLE
FOR THE PERIOD JULY 1, 2005, THROUGH OCTOBER 31, 2006**

BACKGROUND INFORMATION – FINDING 1

On July 15, 1997, this office issued a report setting forth the results of a special purpose examination of the Town of Monteagle. The report included a legal issue which stated that \$27,428 of recorded utility collections was not deposited into a town bank account, and that the recorder was responsible for collecting payments, recording collections in town records, preparing collections for bank deposit, and delivering deposits to the bank. The examination concluded that an employee of the Town of Monteagle was responsible for taking the missing money. The employee was ordered to pay, and in fact did pay, a stated amount of restitution to the town. However, the Town of Monteagle issued town check No. 10536, dated January 29, 2003, in the amount of \$14,875.50, to the employee. The purpose of this payment according to the January 28, 2003, minutes was "... reimbursement of the expenses involved in [that] case in the amount of \$14,875.50 as there are not charges against [that employee]." According to documentation apparently presented to board members, the employee requested and received reimbursement of not only fees incurred from consulting with legal counsel and the certified public accountant hired as an expert, but also for the \$1,250 restitution payment that was ordered and \$425.50 additional costs. These minutes of the mayor and members of the board of aldermen indicated that the board approved this request made by the employee for payment by a vote of 4-1, with the mayor voting no. On August 26, 2003, this office issued a letter to the mayor and board of aldermen regarding this payment. The letter stated that the payment was considered an improper use of town funds, and urged the board to seek legal advice regarding recovery of this money from the employee.

FINDINGS AND RECOMMENDATIONS

1. **FINDING:** Town officials failed to recover inappropriate reimbursement of court costs and restitution paid to town employee

During the current audit, we obtained a copy of a letter dated November 6, 2003, from William C. Killian, town attorney, to J. Michael Taylor, District Attorney General. (Refer to exhibit.) As noted in the letter, Mr. Killian defended the town's action, stating that

1. The town thinks that its actions are completely legal under the Tennessee Constitution ... provided the employee is not found guilty of any criminal conduct.... 3. I agree with you that the court costs and restitution amounts cannot be reimbursed by the Town. The Town acknowledges this and will take steps to recover this money.

The town has no documentation that the employee repaid any amounts, including the amount reimbursed for restitution and related costs. Section 6-56-112, *Tennessee Code Annotated*, requires that “All expenditures of money made by a municipality must be made for a lawful municipal purpose.” It should be noted that Mr. Killian stated in Item 2 that “... our records and testimony would show that any missing utility monies came from a time period when the present administration, including the recorder, was not in office or in custody of the Town’s records.” The legal issue setting forth the missing \$27,428 covered the period July 1, 1996, through March 31, 1997, which was the period AFTER the employee in question had returned to work. We have no documentation that the town attorney contacted the Division of Municipal Audit to obtain the factual documentation supporting the legal issue or to determine the employee’s role in the collection process.

RECOMMENDATION:

To ensure that all town money is used only for a valid municipal purpose, we recommend the town “take steps to recover this money” as promised by the town attorney.

2. **FINDING: Apparently conflicting provisions in vacation leave policy**

The town’s personnel policy related to vacation leave contains apparently conflicting provisions. The personnel policy provided to state auditors by town hall staff states that “This policy shall cover all administrative officers, which shall include salaried personnel, as well as all full-time hourly employees of the Town of Monteagle.” The policy sets forth vacation leave that can be earned by employees and discusses uses of that leave. However, page 3 of the policy states, “Hourly employees are paid for hours worked. Hours over 40 in one pay period will be paid at one and a half times regular hourly pay rate. Salaried employees are paid a week’s salary regardless of attendance.” The assistant recorder stated that the town recorder interpreted this provision to mean that salaried employees are not required to use leave for time off. Town employees verified that the town recorder was out of the office for over three months due to a serious illness. However, town payroll records indicated that the recorder received regular payroll payments and did not use any leave.

RECOMMENDATION:

To ensure that all employees receive only the authorized benefits, we recommend that town officials determine leave benefits intended to be granted to employees and ensure that the policy clearly states the intended benefits.

3. FINDING: Apparently unclear provisions in sick leave policy

The town's sick leave policy contains an apparently unclear provision related to use of sick leave and maximum accumulation. The Town of Monteagle Personnel Policy related to sick leave states:

It is not the intent of the sick leave policy to provide paid days off to be used as additional vacation days or for personal reasons. The purpose of sick leave is to provide employees who experience an extended medical emergency, either personally or in the family, or a death in the family, with some amount of financial security during the time they must be away from work. An employee may miss up to two successive days of work without a doctor's excuse. After two days the employee will not be paid for any of the time off unless he/she has an excuse signed by a doctor (original signature required.) ... Sick leave may only be used for illness of the employee, spouse, child, parent, or grandparent.... The maximum number of sick leave days an employee may accumulate is 30. Sick leave must be taken as pay for time off and cannot be paid as a lump sum when employment is terminated.

The policy appears to require a doctor's excuse in order for employees to be paid for consecutive sick leave in excess of two days, and appears to limit the maximum number of paid sick days at any given time to the amount accrued by that employee up to the maximum of 30 days.

However, we obtained from the town attorney, William Killian, a faxed copy of a letter written by Mr. Killian to the mayor and members of the board of aldermen regarding the town's personnel policy. This letter states, "I see nothing in the sick leave provisions that limits sick leave number of days, as long as the doctor's excuse is valid. The employee receives pay for the time off as a result of the sickness." In a follow-up phone conversation, Mr. Killian stated that it was his interpretation that if an employee had a doctor's excuse, then they could be paid for an unlimited amount of time off for illness, regardless of the amount of leave accumulated by that employee. Mr. Killian went on to state that he did not believe that employees had to charge time off to sick leave if they obtained a valid doctor's excuse. In addition, Mr. Killian stated that the 30-day limitation set forth in the policy applied only to earned sick leave to be taken without a doctor's excuse. During the conversation, Mr. Killian expressed concern that the town was

possibly considering not paying Joyce Sturtevant, town recorder, who had been out of work for an extended period of time due to an illness.

RECOMMENDATION:

To ensure that all employees receive only the authorized benefits, we recommend that town officials determine sick leave benefits intended to be granted employees, and consult with the town attorney to ensure that the policy explicitly states the intended benefits. The policy should be consistently applied to all employees.

4. **FINDING: Failure to document necessity and approval of vacation leave accrual in excess of amount allowed by town policy**

Although the maximum amount of vacation leave allowed by town policy (except under specific circumstances) is four weeks or 160 hours, our examination of leave records indicated at least three employees had in excess of this amount. Town records showed that as of April 2007, the town recorder had 320 hours of accrued leave. (It should be noted that this leave was accrued prior to the recorder's extended absence due to a serious illness.) Leave records indicated the other two employees had 168 hours and 170 hours, respectively. The town had no documentation to indicate the unusual circumstances that necessitated the additional accrual or documented approval of the excess accrual. According to the leave policy,

The maximum amount of vacation an employee may accrue is four weeks.... However, in cases of unusual circumstances, to be determined by the department supervisor, where an employee cannot take his/her vacation due to situations beyond the employee's control, such as scheduling problems, absence of another employee from that department, etc., the employee will be granted additional time to schedule vacation leave or be paid for the vacation time accrued. Employees must take their vacation as leave, and do not have the option to work and be paid additional wages for the vacation except at the town's request.

RECOMMENDATION:

To ensure that all employees receive only the authorized benefits, we recommend that town officials ensure that adequate documentation setting forth the unusual circumstances necessitating excess accrued leave and the related approval of such leave is required and retained by designated employees in town files.

5. **FINDING: Inadequate leave records**

Town officials failed to ensure complete and accurate leave records were maintained by some employees. As noted previously, the leave policy clearly states that the policy applied to both salaried and hourly employees. However, the town recorder and other employees told auditors that salaried employees did not receive sick leave. Therefore, sick leave records were not maintained by salaried employees.

The *Internal Control and Compliance Manual for Tennessee Municipalities*, Title 2, Chapter 3, Section 5, states:

Municipal officials should ensure that ... a cumulative employee leave record is maintained for each employee. The record should clearly show all leave of any type earned and taken for each pay period, all paid and unpaid absences, and the current leave balance.

RECOMMENDATION:

To ensure that all employees receive only the authorized benefits and that the personnel policy is consistently applied to all employees, town officials should ensure that detailed leave records are maintained for all employees.

6. **FINDING: Failure to retain adequate supporting documentation**

The municipality's files did not include adequate supporting documentation for each disbursement. For many disbursements including mileage reimbursements to the mayor, the files contained no documentation. Also, for numerous disbursements, including food and meal purchases and reimbursements, documentation was not sufficient to determine that the town received the benefit of the disbursement. The *Internal Control and Compliance Manual for Tennessee Municipalities*, Title 2, Chapter 2, Section 4, states:

Municipal officials should ensure ... that supporting documentation is filed alphabetically by vendor or by date paid.... 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 3 requires that the related documentation accompany checks presented for approval and signing. 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 document that each disbursement is for a valid municipal purpose, officials should ensure that adequate supporting documents are maintained in the municipality's files in accordance with the *Internal Control and Compliance Manual for Tennessee Municipalities*. The recorder should ensure that adequate documentation, including the municipal purpose served, if applicable, is obtained prior to authorizing any disbursement. Before signing a check, authorized individuals should review adequate supporting documentation to determine that the disbursement is appropriate and that the charge has not previously been paid. Under no circumstances should town employees be directed to perform work for the private gain of any private person or group, including town officials.

7. **FINDING:** No enforced town-wide policy for over-plan cell phone charges

Town officials failed to establish and enforce a policy regarding use of employer-provided cell phones by town officials and employees. Our examination revealed that from July 2005 through June 2006, the town paid over \$11,800 for cell phone charges **in excess** of the contracted plan for employee-issued town phones. Cell phone records indicated numerous instances of apparent personal use by the mayor and some employees as well as charges for downloads of music and special ring tones. Also, the town paid the expenses of two cell phones for the mayor in addition to paying for a separate home phone line at the mayor's residence. The mayor indicated that one of the cell phones was a hands-free model installed in his work truck, while the other was a mobile phone he carried with him. The mayor told state auditors that he had recently turned in one of the phones.

The *Internal Control and Compliance Manual for Tennessee Municipalities*, Title 1, Chapter 1, Section 1, states:

Municipal officials should ensure that a policies and procedures manual is part of the written record system of the municipality. The municipality's manual should incorporate or reference all the policies and procedures required in this manual and should include any additional policies and procedures specific to the municipality. All policies and procedures should be in strict compliance with federal, state and local laws.

RECOMMENDATION:

To help ensure that all town disbursements are for a lawful, municipal purpose, and to ensure that needed phone service can be effectively evaluated, town officials should develop a written cell phone policy for all employees addressing personal use, over-plan use, replacement responsibility for lost equipment, and identifying all charges which

require reimbursement. Town officials should require a designated employee to periodically review cell phone invoices to determine compliance with the written policy and to document the results of the review.

8. **FINDING: Inadequate control over fixed assets and other property**

Officials did not require adequate internal control over the municipality's fixed assets and high-risk, moveable property. A review of minutes of council meetings revealed that the disappearance of town property was discussed in several instances.

The investigative audit revealed that the recorder failed to maintain complete, updated records of such items, and many of these items were not permanently marked to indicate the municipality's ownership. In addition, the municipality's files did not include documentation of an annual physical inventory of fixed assets. Generally accepted accounting principles and the *Internal Control and Compliance Manual for Tennessee Municipalities* require that fixed asset records be maintained. Title 1, Chapter 4, Section 2 and 3, of the manual states:

Municipal officials should ... require that all fixed assets are located, identified (tagged or marked), and recorded using a separate card for each property item or group of similar items, such as chairs, purchased at the same time. The record should be retained at the municipality and should include up-to-date purchase and disposal information. An annual inventory should be performed and documented ... a record of moveable, high-risk, sensitive property, such as TVs, VCRs, and small office machines, as well as furnishings and works of art, be established and maintained and an annual inventory be performed.

RECOMMENDATION:

To better control and account for individual fixed assets and high-risk, moveable property, the recorder should maintain complete, updated records of those items in accordance with the *Internal Control and Compliance Manual for Tennessee Municipalities*. Officials should require that each of the items is permanently marked or tagged to indicate the municipality's ownership. Also, officials should require that an annual physical inventory of the fixed assets and of the high-risk, moveable property is performed and documented. In addition, to help protect the town's assets, officials should ensure that adequate insurance coverage is maintained at all times and that copies of current policies are on file in the town's offices.

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EXHIBIT

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WILLIAM C. (BILL) KILLIAN
ATTORNEY AND COUNSELOR-AT-LAW
CERTIFIED CIVIL AND CRIMINAL TRIAL SPECIALIST*

Number One Oak Avenue
Jasper, Tennessee 37347

Phone (423) 942-5801
FAX (423) 942-5816

November 6, 2003

J. Michael Taylor
District Attorney General
Rhea County Courthouse Annex
375 Church Street, Suite 300
Dayton, TN 37321-1238

RE: Town of Monteagle and Reimbursement of Attorney's Fees for City Employees

Dear Mike:

Thank you for taking the time to meet with me on behalf of the Town of Monteagle. Pursuant to our discussion of the legal and factual issues involved, I have prepared the following synopsis of the Town's position:

1. The Town thinks that its actions are completely legal under the Tennessee Constitution statutes and case law, to reimburse a Town employee for legal expenses and attorney's fees incurred as a result of criminal charges brought due to that employee's position with the Town, provided the employee is not found guilty of any criminal conduct. The Board of Mayor and Aldermen apply this policy to any and all employees of the Town, much like a legal insurance policy. My reading of the cases allowing other employee benefits, would justify this program.

2. Admittedly, the Town was the alleged victim in this case. However, our records and testimony would show that any missing utility monies came from a time period when the present administration, including the recorder, was not in office or in custody of the Town's records. There were many losses, discrepancies, and unaccounted for funds from the previous administration during this time period. A complete audit, of the previous administration, by the Comptroller's office, would reveal these problems.

3. I agree with you that the court costs and restitution amounts cannot be reimbursed by the Town. The Town acknowledges this and will take steps to recover this money.

4. The Town leaders never intended to take any action that would be improper or illegal. Previous precedent and a consistent policy, where the employee is not convicted, seem to justify this action.

I have, frankly, changed my legal opinion on this matter, after reading the cases. I am convinced that the reimbursement of legal fees in this manner, by the Town, is a proper expenditure of public funds for a public purpose.

You indicated that you would further review this matter and give me your decision as soon as possible. As I explained, should it be necessary, the Town would gladly file a joint petition for a declaratory judgment, along with your office, in the Circuit or Chancery Court, in order to clarify this matter.

Thank you for your cooperation. I look forward to hearing from you.

Very sincerely yours,



WILLIAM C. (BILL) KILLIAN

WCK:tsg

Cc: Mayor Charles Rollins
Mr. Raymond Releford
Mr. Dan Sargent
Ms. Becky Byers
Ms. Anna Zeman