



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

John G. Morgan
Comptroller of the Treasury

SUITE 1600
JAMES K. POLK STATE OFFICE BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-0271
PHONE (615) 401-7871
FAX (615) 741-1551

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

January 24, 2005

Honorable Mayor and Members of the
Board of Commissioners
City of Murfreesboro
P. O. Box 1139
Murfreesboro, TN 37133-1139

Ladies and Gentlemen:

We have completed our investigative audit of selected records of the City of Murfreesboro. This audit focused solely on selected real estate purchases by the city. Our audit revealed the following:

1. **Apparent indirect conflict of interest not publicly acknowledged**

On June 7, 2002, the City of Murfreesboro purchased a large tract of land for \$3.675 million. The land was purchased for the disposal of sewer effluent. Durham Realty and Auction served as facilitator for the sale. The settlement statement for the purchase indicated that Durham Realty and Auction received \$220,500 for brokering the transaction. Durham Realty and Auction was owned and operated by Tim Durham, a member of the Murfreesboro Water and Sewer Board. In an interview with auditors, Joe Kirchner, Director of the Murfreesboro Water and Sewer Department, stated that Mr. Durham approached him with the information that the property was available for purchase. The property had previously been identified in a land effluent disposal study as being suitable for that purpose.

A contract outlining the obligations of both the seller and purchaser required approval by the water and sewer board prior to purchase of the tract of land. When the water and sewer board voted on the purchase of the property, Mr. Durham abstained from voting on the issue, which passed unanimously. Because his company served as facilitator, rather than broker, it appears that Mr. Durham

Honorable Mayor and Members of the
Board of Commissioners
City of Murfreesboro
January 24, 2005
Page 2

had an indirect conflict of interest in this matter. However, we saw no documentation in board meeting minutes that Mr. Durham publicly acknowledged this conflict of interest and, during a meeting with auditors, city officials stated that Mr. Durham failed to publicly acknowledge his conflict of interest in this transaction.

Section 12-4-101(b), *Tennessee Code Annotated*, states:

It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be indirectly interested in any such contract unless the officer publicly acknowledges such officer's interest. "Indirectly interested" means any contract in which the officer is interested but not directly so, but includes contracts where the officer is directly interested but is the sole supplier of goods or services in a municipality or county.

To provide for impartial decisions regarding the city's contracts, officials should ensure that any indirect conflicts of interest are publicly acknowledged and documented in the city's records in accordance with Section 12-4-101(b), *Tennessee Code Annotated*. As suggested by the Office of the Attorney General, a public officer should avoid any conflict between personal interest and public duty.

2. **Inadequate system for purchase of property**

To facilitate development of the Medical Center Parkway, the City of Murfreesboro purchased numerous tracts of land. Our review of these property transactions revealed that the city apparently had no standard practice or routine procedures regarding the timing of property acquisitions.

During June 2000, at least six properties located on West Lokey were purchased by the city for development of the Medical Center Parkway. On October 26, 2000, a local developer purchased a parcel of property adjacent to those properties for \$155,000. Eleven months later, on September 27, 2001, the City of Murfreesboro

Honorable Mayor and Members of the
Board of Commissioners
City of Murfreesboro
January 24, 2005
Page 3

purchased the property from the developer for \$308,000. Discussion with city officials, including the city engineer and the city manager, revealed that, until recently, the city had no official land acquisition policy. These city officials could not adequately explain the timing of the city's purchase of this property. The city's failure to provide for adequate land acquisition procedures may have resulted in additional cost to the city of \$153,000 and has raised questions about the propriety of the transaction.

To ensure the city receives the best possible price and avoid any appearance of impropriety, city officials should implement a land acquisition policy that will identify properties needed for city projects in a timely manner and provide for the acquisition of such properties at the most opportune time.

This matter has been referred to the local district attorney general.

If you have any questions concerning this matter, please contact me.

Sincerely,

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

DFD/RAD