

Department of Safety

**Collection of Payments from Defendants
in Lieu of Court Fines and
Establishment of an Unauthorized Tennessee
Highway Patrol Equipment Account in
Unicoi County**

September 2000

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STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY

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John G. Morgan
Comptroller

September 5, 2000

The Honorable Don Sundquist, Governor
and

Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

and

The Honorable Mike Greene, Commissioner
Department of Safety
1150 Foster Avenue
Nashville, Tennessee 37249-1000

and

Mr. Gary Myers, Executive Director
Tennessee Wildlife Resources Agency
Ellington Agricultural Center
P.O. Box 40747
Nashville, Tennessee 37204-0747

Ladies and Gentlemen:

Transmitted herewith is a special report on the review of the collection of payments from defendants in lieu of court fines and the establishment of an unauthorized Tennessee Highway Patrol (THP) equipment account in Unicoi County. On July 13, 1999, the Honorable Joe Crumley, District Attorney General, First Judicial District, notified this office of an unauthorized account maintained by the City Recorder of Erwin, Tennessee, to benefit Department of Safety highway patrol personnel in that area. The city recorder maintained the money received on behalf of the highway patrol in a designated account within the city's general fund. This designated bookkeeping account was initially identified in the city's general fund ledger as the "DUI Enforcement Fund" and was later changed to "Due to Tennessee Highway Patrol." Hereinafter, the account will be referred to as the THP account (meaning money was collected by the Erwin City Recorder, deposited in the city's general fund, and specifically earmarked for use by the highway patrol).

According to General Crumley, the main source of revenue for this account was derived from payments made by defendants appearing in the Unicoi County General Sessions Court relative to citations written by highway patrol officers assigned to Unicoi County. General Crumley referred to these payments as "donations." In fact, the only apparent reason the defendants made these payments was to avoid paying court-imposed fines. In this report, these payments will be identified as what they were: payments made in lieu of court fines. He said that the collected money was then used to purchase video cameras that mount inside patrol vehicles and other items. General Crumley requested that our office review the matter in collaboration with the Tennessee Bureau of Investigation.

State auditors determined the local sheriff's department, the local police department, and Tennessee Wildlife Resources Agency (TWRA) officers assigned to Unicoi County also requested and used items purchased through the THP account. Therefore, the Division of State Audit reviewed the matter in collaboration with internal audit staff of the Department of Safety and the TWRA, internal affairs investigators with the Department of Safety, and Tennessee Bureau of Investigation staff.

According to Mr. David Crockett, the District Attorney General at the time the THP account was established, he approved the establishment of the account to enhance the efforts of local law enforcement agencies. Mr. Crockett stated that he was not aware of any state statute prohibiting the practice but that in retrospect, he probably should have researched the matter before authorizing the establishment of the account. He acknowledged that he did not consult the District Attorneys General Conference, the Department of Safety, the Department of Finance and Administration, or the Comptroller's Office for guidance before initiating the practice.

The General Sessions Judge in Unicoi County, Honorable David Shults, stated that approximately six to seven years ago he attended a meeting with Mr. Kent Garland, then an assistant district attorney; Mr. Ralph Marlowe, then the highway patrol sergeant responsible for operations in Unicoi County; and representatives of the local police department and local sheriff's department to discuss establishing the THP account. He confirmed that he agreed to dismiss minor traffic violations with compliance (such as presentation of a valid driver's license, proof of tag renewal, or other relevant document) and a \$25 payment to the THP account and to accept plea agreements (arranged by the district attorney's office or a highway patrol officer) that included these payments to the THP account. In a November 8, 1999, telephone discussion, Judge Shults stated that he did not realize the practice was inappropriate or violated any state law or standard of conduct.

The review focused on two major issues: 1) determining the nature and extent of any impropriety relating to the establishment and use of the THP account; and 2) determining the propriety of resolving law enforcement citations through court-directed payments in lieu of court-imposed fines.

Tennessee Code Annotated, Section 9-4-301, prohibits officers and employees of state government who collect or receive state funds from depositing such funds into any account other than the account of the state treasurer or an appropriate departmental account if authorized by Section 9-4-302. The Unicoi County THP account (and three similar accounts discovered during the review as being established in other First Judicial District counties) was not authorized pursuant to Section 9-4-302. Thus, based on presently available information, the Unicoi County general sessions judge, the First Judicial District attorney general at the time, the Erwin city recorder, and highway patrol officials in the district acted outside the scope of their authority to establish the account, collect revenue for deposit into the account, and make purchases through the account. Furthermore, these purchases were not made through the Department of Safety's authorized purchasing procedures, were not included in the department's inventory listing, and were not properly tagged as state equipment, when applicable. At the time these purchases were made, state purchasing procedures required all equipment items costing \$1,000 or more to be tagged as state property. Therefore, highway patrol officials in Unicoi County violated state purchasing policies and procedures, circumvented central office fiscal controls, and failed to properly safeguard state assets.

According to City of Erwin "Year-to-Date Account Analysis" reports for the period July 1994 (when the City of Erwin began keeping accounting records for the THP account) through August 9, 1999 (the last payment through the THP account before activity was halted by the Department of Safety), 1,461 deposits totaling \$112,607.14 represented court-directed payments in resolution of minor traffic violations and payments arranged through plea agreements in resolution of more serious violations (driving under the influence of alcohol, reckless driving, and possession of illegal drugs.) These reports list the name of the person paying money to the account or "THP" (for consolidated deposits) and the amount of each deposit. Individually listed payments to the THP account ranged from \$5 to \$1,700. Other deposits into the THP account consisted of reimbursements for personal purchases totaling \$75.47 and a transfer from the Washington County THP account totaling \$3,200. The total amount deposited into the account was \$115,882.61.

The review of THP account records also determined that expenditures totaling \$110,732.96 were made through the THP account. The account records listed the remaining balance at August 9, 1999, as \$5,535.15 (\$385.50 more than the difference between total deposits and total expenditures). Officials responsible for this improper practice could not explain the reason for this difference. On April 10, 2000, the remaining balance of \$5,535.15 was remitted to the state's general fund. Excluding purchases related to consumable items, building materials, and services, \$88,573.61 was expended for equipment items. These equipment items included cameras, camcorders, mobile recording systems, law enforcement equipment items (guns, handcuffs, flashlights, utility belts and accessories, boots, rain gear, sunglasses), computer hardware, computer software, fax machines, copiers, phones, cassette recorders, and office items (staplers, tape dispensers, bookcases, desk organizers, wastebaskets, coffee makers, and a vacuum cleaner).

The consumable items purchased included coffee, coffee filters, sugar, creamer, soft drinks, and office supplies. The building materials purchased related to the renovation of office space provided to the highway patrol by the City of Erwin. The services purchased included paging, office cleaning, phone, and electric. The majority of expenditures through the account related to items requested and used by highway patrol officers in Unicoi County. The remaining expenditures related to items requested and used by the law enforcement agencies mentioned above. The highway patrol sergeant in Unicoi County approved all expenditures from the account.

Equipment items totaling \$11,056.45 (12.5%) could not be located during an inventory conducted by the auditors in September 1999. Most of the purchased equipment items related to official law enforcement job responsibilities. None of these expenditures were proper. However, the review disclosed 11 purchases totaling \$1,675.82 that were of a particularly questionable nature. These purchases consisted of unauthorized repair work on a THP vehicle (\$591.42), two separate instances in which THP vehicles were washed and waxed (\$105 total), an advertisement for the highway patrol in a local softball program (\$34), a Christmas floral arrangement for the individual who collected the court-directed payments as a favor to the court (\$75), a potted plant (\$48.50), four plaques containing the highway patrol logo (\$99.60), two separate purchases for picture framing materials and labor (\$228.36 total), one "Action Hourly Train Clock" (\$59.95), and a vacuum cleaner (\$433.99).

Department of Safety internal auditors conducted a similar review in April 1993 after being notified that Mr. Ralph Marlowe, then a Tennessee Highway Patrol sergeant in Unicoi County and currently the Unicoi County sheriff, had obtained and cashed three checks totaling \$6,390 from the Unicoi County Trustee. According to the review, these checks were converted to money orders to purchase a video camera system to be used by highway patrol officers in Unicoi County. The internal auditors determined that Sergeant Marlowe had not followed proper procedures in processing these checks and acquiring the video camera system. At that time, payments in lieu of fines were collected by the county clerk's office, deposited by the county trustee's office in a county revenue account, and expended through checks written by the county executive's office. However, the 1993 review did not address the establishment of the unauthorized account.

Following the department's review in 1993, the department's fiscal director sent a memorandum to all section heads and district captains that stated that whenever gifts or donated funds are given to the Department of Safety, such funds must be forwarded immediately to the Cashiers' Section of the Department of Safety. The memorandum, dated May 26, 1993, further stated that under no circumstance may an individual accept such payments and spend such funds without adhering to the above mentioned guidelines. The memorandum did not specifically address the mischaracterization of payments in lieu of court-imposed fines as "donations" or the

impropriety of accepting such payments by department staff. Additionally, the memorandum did not specifically address the impropriety of opening and maintaining an unauthorized account.

The action taken by Department of Safety officials in May 1993 to communicate to the eight district captains the impropriety of not remitting funds to the department and inappropriately purchasing items outside department guidelines, failed to stop the practice in Unicoi County and three other Fifth District counties. One of the reasons for this failure was that the department's fiscal officers and internal audit staff did not follow-up on the review and ensure that the memorandum was properly communicated. State auditors confirmed that similar accounts were established in Johnson County, Carter County, and Washington County. The highway patrol captain responsible for Fifth District highway patrol operations at the time, Mr. Gaines Ferguson (retired), stated that he did not remember receiving the May 26, 1993, memorandum. Whether Fifth District highway patrol officials disregarded the May 1993 memorandum or never received it, highway patrol leadership responsible for operations in the four counties from the sergeant to captain levels lacked sound judgement in condoning the practice. After becoming aware of the THP account in Unicoi County, Captain Ferguson should have taken immediate action to determine that the operation of the account complied with department procedures and state law. In addition, the individuals responsible for the account did not seek advice from the department's fiscal director. This lack of inquiry was likely because they knew that such an unauthorized account would not be condoned.

Opinion Number U91-80, issued by the Office of the State Attorney General on May 29, 1991, addresses the propriety of resolving law enforcement citations through court-directed payments in lieu of court-imposed fines. According to that Opinion, a general sessions judge does not have authority to order a defendant to make a contribution of money to a designated entity. Furthermore, based on a review of the Code of Judicial Conduct, a judge who directs a defendant to make a contribution to a designated entity may be in violation of the ethical standards for Tennessee's judges.

The Court of the Judiciary is the body that determines whether a judge has violated these standards. The code is designed to provide guidance to judges and to provide structure for regulating conduct through disciplinary agencies, not to impose civil or criminal liability (Preamble to Rule 10, Rules of the Supreme Court). The Court of the Judiciary determines whether disciplinary action is appropriate, and the degree of discipline it will impose, through a reasonable and reasoned application of the code. On May 23, 2000, we presented our findings to the Court of the Judiciary General Counsel.

On June 20, 2000, the Office of the State Attorney General issued Opinion Number 00-114, addressing whether a city judge has jurisdiction to dispose of criminal charges in exchange for voluntary contributions. This opinion is consistent with the related opinion issued nine years earlier. According to this opinion, the Tennessee Code Annotated, Section 6-21-502(a) does not extend to a city judge the power to collect a voluntary contribution of any kind in exchange for dismissal of a pending charge and such activity would be beyond the statutory authority and jurisdiction of a city court judge and illegal.

The activities described above diverted city, county, and state fine and court cost revenue to the unauthorized THP account. Fines and court costs associated with the types of violations discussed above (non-moving and moving traffic violations, driving under the influence, and possession of an illegal drug) are divided among the city, county, and state according to the type of offense. The loss of revenue to city, county, and state entities as a result of accepting these payments is not easily calculated because the general sessions judges have the discretion to order payment of the fine or dismiss the citation with no assessed fine. Moreover, the judge's discretion extends to setting the amount of a fine, within specified statutory limits. Unless each offender who made a payment to the THP account in lieu of paying fines and court costs is brought into court to properly settle his or her citation without the payment option, we cannot determine the amount of lost revenue to the state. It should be noted that the rule of Double Jeopardy would prevent reassessment of the violations.

As stated above, our review of account documentation disclosed that 1,461 deposits to the THP account represented court-directed payments in resolution of minor traffic violations and payments arranged through plea agreements in resolution of more serious violations (driving under the influence, reckless driving, and possession of illegal drugs). However, if each of these citations would have resulted in a judgment requiring the payment of a fine totaling \$110 (the amount designated for minor traffic violations), the amount of loss to county and state entities is estimated to be \$160,710 (1,461 x \$110).

According to Captain Gerald Allen, Director of Internal Affairs, Department of Safety, department management is considering appropriate disciplinary action against the highway patrol officers involved with the establishment and use of the Unicoi County THP account. However, he stated that the THP sergeant responsible for operations in Unicoi County, Mr. Craig Masters, was on extended sick leave and that disciplinary action would not be taken until he returned to work. Captain Allen further stated that two of the highway patrol officers in Unicoi County had resigned their positions with the department effective January 12, 2000, and February 5, 2000, after they accepted job offers elsewhere.

Investigators referred this matter to the Office of the District Attorney General, First Judicial District, in December 1999. According to a March 18, 2000, press release issued by the Office of the District Attorney General, First Judicial District, General Crumley decided not to pursue criminal prosecution against anyone associated with the matter because of a lack of criminal intent and the perpetuation of the the practice by former district attorney general.

September 5, 2000
Page Seven

On August 24, 1999, the Division of State Audit also received information from a Unicoi County resident regarding the collection of THP account payments by CCS/MidSouth Court Services (hereinafter referred to as MidSouth). MidSouth is a private for-profit organization that provides defensive driving instruction and probation monitoring services. The review of this matter determined that staff of MidSouth assisted in the collection of payments in lieu of court fines as a favor to the court without compensation. We did not find that MidSouth staff acted improperly. However, the review also noted deficiencies in the Department of Safety's process for approving driving schools. These deficiencies are unrelated to the improper collection and expenditure practice discussed above.

Details of the review of these issues, including the involvement of TWRA personnel, and recommendations to correct deficiencies are detailed in the report.

Sincerely,

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

John G. Morgan
Comptroller of the Treasury

JGM/trs

CC: Ms. Cornelia A. Clark, Administrative Director
Administrative Office of the Courts

Mr. James W. Kirby, Executive Director
District Attorneys General Conference

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Special Report

Department of Safety

Collection of Payments from Defendants in Lieu of Court Fines and

Establishment of an Unauthorized Tennessee Highway Patrol

Equipment Account in Unicoi County

September 2000

REVIEW OBJECTIVES

The objectives of the review were to determine the nature and extent of any impropriety relating to the establishment and use of the Tennessee Highway Patrol (THP) account; to conduct an inventory to determine possession and use of items purchased through the THP account; to determine the propriety of resolving law enforcement citations through court-directed payments in lieu of court-imposed fines; to determine management's knowledge of the establishment and operation of the THP account and actions taken; to provide our findings to management of the Department of Safety and the Tennessee Wildlife Resources Agency; and to report our findings to the Office of the State Attorney General, the Office of the District Attorney General, First Judicial District, the Administrative Office of the Courts, and the Tennessee District Attorneys General Conference.

RESULTS OF THE REVIEW

On July 13, 1999, the Honorable Joe Crumley, District Attorney General, First Judicial District, notified this office of an unauthorized account maintained by the City Recorder of Erwin, Tennessee, to benefit Department of Safety highway patrol personnel in that area. The city recorder maintained the money received on behalf of the highway patrol in a designated account within the city's general fund. This designated bookkeeping account was initially identified in the city's general fund ledger as the "DUI Enforcement Fund" and was later changed to "Due to Tennessee Highway Patrol." Hereinafter, the account will be referred to as the THP account (meaning money was collected by the Erwin City Recorder, deposited in the city's general fund, and specifically earmarked for use by the highway patrol). The THP account was first established with county officials in 1992 and was transferred to the City of Erwin in 1994.

According to General Crumley, the main source of revenue for this account was derived from payments made by defendants appearing in the Unicoi County General Sessions Court relative to citations written by highway patrol officers assigned to Unicoi County. General Crumley referred to these payments as "donations." In fact, the only apparent reason the defendants made these payments was to avoid paying court-imposed fines. In this report, these payments will be identified as what they were: payments made in lieu of court fines. He said that the collected money was then used to purchase video cameras that mount inside patrol vehicles and other items. General Crumley requested that our office review the matter in collaboration with the Tennessee Bureau of Investigation.

The auditors determined that besides the involvement of Tennessee Highway Patrol officers, the local sheriff's department, the local police department, and Tennessee Wildlife Resources Agency (TWRA) officers assigned to Unicoi County also requested and used items purchased through the THP account. Therefore, the Division of State Audit reviewed the matter in collaboration with internal audit staff of the Department of Safety and the TWRA, internal affairs investigators with the Department of Safety, and Tennessee Bureau of Investigation staff.

According to Mr. David Crockett, then District Attorney General, he approved the establishment of the THP account to enhance the efforts of local law enforcement agencies. Mr. Crockett stated that he was not aware of any state statute prohibiting the practice but that in retrospect, he probably should have researched the matter before authorizing the establishment of the account. He acknowledged that he did not consult the District Attorneys General Conference, the Department of Safety, the Department of Finance and Administration, or the Comptroller's Office for guidance before initiating the practice.

The General Sessions Judge in Unicoi County, Honorable David Shults, stated that approximately six to seven years ago he attended a meeting with Mr. Kent Garland, then an assistant district attorney; Mr. Ralph Marlowe, then the highway patrol sergeant responsible for operations in Unicoi County; and representatives of the local police department and local sheriff's department to discuss establishing the THP account. He confirmed that he agreed to dismiss minor traffic violations with compliance (such as presentation of a valid driver's license, proof of tag renewal, or other relevant document) and a \$25 payment to the THP account and to accept plea agreements (arranged by the district attorney's office or a highway patrol officer) that included these payments to the THP account. Judge Shults stated that he did not realize the practice was inappropriate or violated any state law or standard of conduct.

A summary of our findings is presented below.

- The Unicoi County THP account (and three similar accounts discovered during the review as being established in other First Judicial District counties) was not authorized pursuant to *Tennessee Code Annotated* Section 9-4-302. Thus, based on presently available information, the Unicoi County general sessions judge, the First Judicial District attorney general at the time, the Erwin city recorder, and highway patrol officials in the district acted outside the scope of their authority to establish the account, collect revenue for deposit into the account, and make purchases through the account.
- Highway patrol officials in Unicoi County violated state purchasing policies and procedures, circumvented central office fiscal controls, and failed to properly safeguard state assets. The purchases were not made through the Department of Safety's authorized purchasing procedures, were not included in the department's inventory listing, and were not properly tagged as state equipment, when applicable.
- According to City of Erwin "Year-to-Date Account Analysis" reports for the period July 1994 (when the City of Erwin began keeping accounting records for the THP account) through August 9, 1999 (the last payment through the THP account before activity was halted by the Department of Safety), 1,461 deposits totaling \$112,607.14 represented court-directed payments in resolution of minor traffic violations and payments arranged through plea agreements in resolution of more serious violations (driving under the influence of alcohol, reckless driving, and possession of illegal drugs.)
- The review of THP account records also determined that expenditures totaling \$110,732.96 were made through the THP account. \$88,573.61 was expended for equipment items. Equipment totaling \$11,056.45 could not be located during an inventory conducted by auditors in September 1999. Expenditures totaling \$1,675.82 were of a particularly questionable nature.

The activities described above diverted city, county, and state fine and court cost revenue to the unauthorized THP account. Fines and court costs associated with the types of violations discussed above (non-moving and moving traffic violations, driving under the influence, and possession of an illegal drug) are divided among the city, county, and state according to the type of offense. The loss of revenue to city, county, and state entities as a result of accepting these payments is estimated to be \$160,710.

Opinion Number U91-80, issued by the Office of the State Attorney General on May 29, 1991, addresses the propriety of resolving law enforcement citations through court-directed payments in lieu of court-imposed fines. According to that Opinion, a general sessions judge does not have authority to order a defendant to make a contribution of money to a designated entity. Furthermore, based on a review of the Code of Judicial Conduct, a judge who directs a defendant to make a contribution to a designated entity may be in violation of the ethical standards for Tennessee's judges.

Department of Safety officials headquartered in Nashville had previously conducted a similar review in April 1993. A review by the department's internal audit at that time, revealed that Mr. Ralph Marlowe, then a Tennessee Highway Patrol Sergeant in Unicoi County and currently the Unicoi County Sheriff, had acquired equipment through funds from the Unicoi County Trustee. The 1993 review did not address the establishment of the unauthorized account. The department's fiscal director, Mr. Bill Hedge, sent out a memorandum notifying section heads and district captains that such funds should be forwarded to the department's cashier. However, the efforts of the fiscal director and internal audit fell short in ensuring that the improprieties of such activity were appropriately communicated. Furthermore, the THP district captain, at the time, did not receive the memorandum or failed to comply with its stated guidelines.

According to Captain Gerald Allen, Director of Internal Affairs, Department of Safety, department management is considering appropriate disciplinary action against the highway patrol officers involved with the establishment and use of the Unicoi County THP account. However, he stated that the THP sergeant responsible for operations in Unicoi County, Mr. Craig Masters, was on extended sick leave and that disciplinary action would not be taken until he returned to work. Captain Allen further stated that two of the highway patrol officers in Unicoi County had resigned their positions with the department effective January 12, 2000, and February 5, 2000, after they accepted job offers elsewhere.

This matter was referred to the Office of the District Attorney General, First Judicial District, in December 1999. According to a March 18, 2000, press release issued by the Office of the District Attorney General, First Judicial District, General Crumley decided not to pursue criminal prosecution against anyone associated with the matter because of a lack of criminal intent and the perpetuation of the practice by the former district attorney general.

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Department of Safety
Collection of Payments from Defendants in Lieu of Court Fines and
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Equipment Account in Unicoi County
September 2000

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
Origin of Review	1
Objectives of the Review	2
Scope of the Review	2
DETAILS OF THE REVIEW	3
I. THE THP ACCOUNT	3
Origin	3
Review of Similar Activity in 1993	4
Revenue Sources	5
Accounting	7
Purchases	8
Knowledge of the THP Account	12
Independent Audit of the City of Erwin	17
Discovery of Other Unauthorized Equipment Accounts	17
Unauthorized Accounts Prohibited	20
Action Taken by Management	21
II. IMPROPER RESOLUTION OF THP CITATIONS	22
Review of Account Payments	22
Court Proceedings	22
Roadside Solicitations	24
The Diversion of City, County, and State Funds	24

TABLE OF CONTENTS (CONT.)

	<u>Page</u>
Propriety of Resolving Law Enforcement Citations Through Court-Directed Payments	25
Referral of the Matter	26
III. REVIEW OF THE UNICOI COUNTY DRIVING SCHOOL	26
Interview With Mr. Reve McDavid, Owner of MidSouth	26
Interview With Lieutenant Billy Mason, Department of Safety Education Supervisor	28
<u>RECOMMENDATIONS</u>	29
Exhibit A	31
Exhibit B	32
Exhibit C	33
Exhibit D	34
Exhibit E	35
Exhibit F	36
Exhibit G	38
Exhibit H	39
Exhibit I	40
Exhibit J	41

**Department of Safety
Collection of Payments from Defendants in Lieu of Court Fines and
Establishment of an Unauthorized Tennessee Highway Patrol
Equipment Account in Unicoi County
August 2000**

INTRODUCTION

ORIGIN OF THE REVIEW

On July 13, 1999, the Honorable Joe Crumley, District Attorney General, First Judicial District, notified this office of an unauthorized account maintained by the City Recorder of Erwin, Tennessee, to benefit Department of Safety highway patrol personnel in that area. The city recorder maintained the money received on behalf of the highway patrol in a designated account within the city's general fund. This designated bookkeeping account was initially identified in the city's general fund ledger as the "DUI Enforcement Fund" and was later changed to "Due to Tennessee Highway Patrol." Hereinafter, the account will be referred to as the THP account (meaning money was collected by the Erwin City Recorder, deposited in the city's general fund, and specifically earmarked for use by the highway patrol).

According to General Crumley, the main source of revenue for this account was derived from payments made by defendants appearing in the Unicoi County General Sessions Court relative to citations written by highway patrol officers assigned to Unicoi County. General Crumley referred to these payments as "donations." In fact, the only apparent reason the defendants made these payments was to avoid paying court-imposed fines. In this report, these payments will be identified as what they were: payments made in lieu of court fines. He said that the collected money was then used to purchase video cameras that mount inside patrol vehicles and other items. General Crumley requested that our office review the matter in collaboration with the Tennessee Bureau of Investigation.

During our review, it was determined that the local sheriff's department, the local police department, and Tennessee Wildlife Resources Agency staff assigned to Unicoi County also requested and used items purchased through the THP account. Therefore, our office reviewed the matter in collaboration with internal audit staff of the Department of Safety and the Tennessee Wildlife Resources Agency, internal affairs investigators with the Department of Safety, and Tennessee Bureau of Investigation staff.

OBJECTIVES OF THE REVIEW

The objectives of the review were

- to determine the nature and extent of any impropriety relating to the establishment and use of the THP account;
- to conduct an inventory to determine possession and use of items purchased through the THP account;
- to determine the propriety of resolving law enforcement citations through court-directed payments in lieu of court-imposed fines;
- to determine management's knowledge of the establishment and operation of the THP account and actions taken;
- to provide our findings to management of the Department of Safety and the Tennessee Wildlife Resources Agency; and
- to report our findings to the Office of the State Attorney General, the Office of the District Attorney General, First Judicial District, the Administrative Office of the Courts, and the Tennessee District Attorneys General Conference.

SCOPE OF THE REVIEW

The review included interviews with relevant current and former staff of the Department of Safety, including highway patrol central office officials in Nashville, Fifth District highway patrol officials in Fall Branch, and highway patrol officers assigned to Unicoi County. Interviews were also conducted with staff of the Tennessee Wildlife Resources Agency (TWRA), including current and former TWRA officers assigned to Unicoi County, and management officials in Morristown and Nashville. Furthermore, interviews were conducted with current and former staff of the Office of the District Attorney General, First Judicial District; officials with Erwin City government and Unicoi County government; and the Unicoi County general sessions judge.

We reviewed City of Erwin "Year-to-Date Account Analysis" reports for the period July 1994 (when the City of Erwin began keeping accounting records for the THP account) through August 9, 1999 (the last payment through the THP account before activity was halted by Department of Safety officials). On September 14, 1999, we conducted a physical inventory of equipment items purchased through the THP account.

Investigators also reviewed in-car videotapes of highway patrol officers assigned to Unicoi County to determine if the officers improperly solicited payments to the THP account during roadside stops.

DETAILS OF THE REVIEW

As detailed below, our review focused on two major issues: 1) determining the nature and extent of any impropriety relating to the establishment and use of the THP account; and 2) determining the propriety of resolving law enforcement citations through court-directed payments in lieu of court-imposed fines.

I. THE THP ACCOUNT

Origin

In a November 2, 1999, interview, Mr. David Crockett, former District Attorney General, First Judicial District, stated that sometime in 1991 or 1992 he and one of his assistants, Mr. Kent Garland, attended a District Attorneys General Conference seminar somewhere in Tennessee. He said that a speaker from Texas addressed the establishment of video equipment accounts to enhance the efforts of local law enforcement. According to Mr. Crockett, Mr. Garland expressed a desire to coordinate with local law enforcement agencies and general sessions judges in the First Judicial District counties he represented (Johnson County and Unicoi County) to establish such accounts. Mr. Crockett stated that he gave his approval for Mr. Garland to pursue establishing the accounts.

Mr. Crockett said that it was his original understanding the accounts would be used to purchase video cameras for local law enforcement vehicles but that he was aware that the Unicoi County THP account evolved into a means of purchasing other equipment items. He stated that he did not approve purchases and that he did not know the nature of all the purchases made through the account. However, Mr. Crockett said that as long as the purchases related to law enforcement enhancement, he would not have considered the purchases to be inappropriate.

In an October 6, 1999, interview conducted by investigators, Mr. Garland confirmed the same explanation provided by Mr. Crockett concerning the establishment of the equipment account. Mr. Garland added that while the video equipment account concept was discussed with all assistant district attorneys representing the First Judicial District without dissent, some assistants did not pursue establishing the accounts in counties that they represented.

In an October 5, 1999, interview conducted by investigators, the General Sessions Judge in Unicoi County, Honorable David Shults, stated that approximately six to seven years ago he attended a meeting with Mr. Garland; Mr. Ralph Marlowe, then the highway patrol sergeant responsible for operations in Unicoi County; and representatives of the local police department and the local sheriff's department to discuss establishing the THP account. He confirmed that he agreed to dismiss minor traffic violations with compliance (such as presentation of a valid driver's license, proof of tag renewal, or other relevant document) and a \$25 payment to the THP

account. He further acknowledged agreeing to accept plea agreements (arranged by the district attorney's office or a highway patrol officer) that included payments to the THP account.

As stated above, although those associated with the practice used the term "donation" to characterize the nature of the payments, the only apparent reason the defendants made these payments was to avoid paying court-imposed fines. In this report, these payments will be identified as what they were: payments made in lieu of court fines.

Mr. Crockett stated that he was not aware of any state law prohibiting the establishment of such an account and that he was not aware of any state law or Rules of Professional Conduct that prohibited a general sessions judge from directing such payments. He stated that he never thought the practice might be considered inappropriate. Mr. Crockett acknowledged that he did not consult the District Attorneys General Conference, Department of Safety, Department of Finance and Administration, or the Comptroller's Office for guidance before initiating the practice but stated that in retrospect he probably should have researched the law before authorizing the establishment of the accounts. Furthermore, during a November 8, 1999, telephone discussion, Judge Shults stated that he did not realize the practice was inappropriate or violated any state law or standard of conduct. During a July 12, 1999, interview conducted by investigators, Judge Shults stated that he remembered hearing about General Crumley questioning the practice shortly after becoming district attorney general, but that he did not hear of any opposition to the practice.

During our review of the THP account established in Unicoi County, we discovered similar accounts established in three other First Judicial District counties (Johnson County, Carter County, and Washington County). These equipment accounts are also addressed in this report.

Review of Similar Activity in 1993

In April 1993, the Division of State Audit was notified that Mr. Ralph Marlowe, then a Tennessee Highway Patrol sergeant in Unicoi County and currently the Unicoi County sheriff, had obtained and cashed three checks totaling \$6,390 the Unicoi County Trustee. According to a 1993 review conducted by the Department of Safety's Director of Internal Audit, Mr. Bernard Pickney, these proceeds were then converted to money orders by Mr. Marlowe to purchase a video camera system to be used by the highway patrol office in Unicoi County. The department's review determined that Sergeant Marlowe had not followed proper procedures in processing these checks and acquiring the video camera system. At that time, payments in lieu of fines were collected by the County Clerk's Office, deposited by county trustee's office in a county revenue account, and expended through checks written by the county executive's office. However, the 1993 review did not address the establishment of unauthorized account.

A May 26, 1993, memorandum from Mr. Bill Hedge, the department's fiscal director, to all section heads and district captains stated that whenever gifts or donated funds are given to the Department of Safety, such funds must be forwarded immediately to the Cashiers' Section of the Department of Safety. (See Exhibit A.) The memorandum further stated that under no

circumstance may an individual accept such payments and spend such funds without adhering to the guidelines mentioned above. The memorandum did not specifically address the mischaracterization of payments in lieu of court-imposed fines as “donations” or the impropriety of accepting such payments by department staff.

In our October 5, 1999, interview, Sheriff Marlowe stated that he remembered meeting with Mr. Pickney about the activity but that he was never told the practice was inappropriate or to discontinue the practice. He stated that he thought the nature of Mr. Pickney’s review related to the conversion of checks to money orders in order to purchase the video camera system, not the establishment of a locally controlled equipment account. Sheriff Marlowe stated that he never received a copy of the May 26, 1993, memorandum communicating the prohibition of the practice. Furthermore, he said that his supervisor at the time, Fifth District Captain Gaines Ferguson, never communicated to him that the account violated state law and department policy or that the use of the account was improper.

In an October 25, 1999, interview conducted by investigators, Captain Ferguson (retired) stated that he did not remember receiving the May 26, 1993, memorandum, being informed that the account was improper, or being instructed to close the account. He acknowledged that he was aware of the equipment account established in Unicoi County but stated that it was his understanding that all payments were sent to department officials in Nashville. He stated that if he had known the account was exclusively controlled and operated by highway patrol staff under his command, he would have immediately stopped the practice and closed the account.

The action taken by Department of Safety officials in May 1993 to communicate to the eight district captains the impropriety of not remitting funds to the department and inappropriately purchasing items outside department guidelines failed to stop the practice in Unicoi County and other Fifth District counties. As noted above, during our review of the THP account established in Unicoi County, we discovered that similar accounts were established in Johnson County, Carter County, and Washington County. Whether Fifth District highway patrol officials disregarded the May 1993 memorandum or never received the memorandum, highway patrol leadership responsible for operations in the four counties from the sergeant to captain levels lacked sound judgement in condoning the practice. After becoming aware of the THP account in Unicoi County, Captain Ferguson should have taken immediate action to confirm that the operation of the account complied with department procedures and state law. In addition, the individuals responsible for the account did not seek the advice of the department’s fiscal director. This lack of inquiry was likely because they knew that such an unauthorized account would not be condoned.

Revenue Sources

Mr. Garland stated to investigators that revenue was generated for the equipment account through court-directed payments for minor traffic violations and as part of court-approved plea agreements negotiated by the district attorney’s office for more serious offenses (driving under the influence and possession of illegal drugs).

According to Mr. Garland, there had to be some question of impairment or weakness in the case (no breath or blood alcohol test taken or a question concerning an officer's actions in relation to stop, frisk, or search procedures) before he would consider amending charges with a plea agreement. He said that in those cases he would tell the defendants that he would amend the charges but that he expected them to make a payment to the THP account as part of the plea agreement. Mr. Garland stated that a representative of the district attorney's office was typically not present in general sessions court on Fridays because that day was set aside to resolve minor traffic citations. He stated that on those days highway patrol officers negotiated plea agreements for minor traffic violations resulting in payments to the account.

A review of general sessions court cases by investigators disclosed that plea agreements resulted in payments to the THP account ranging from \$25 to \$1,700. Documentation noted that 23 plea agreements were entered with defendants paying \$500 or more to the account. (See Exhibit C.) Based on information developed by investigators, an assistant district attorney negotiated all six plea agreements of \$1,000 or greater.

In an October 5, 1999, interview conducted by investigators, Honorable David Shults, the General Sessions Judge in Unicoi County, confirmed that he dismissed minor traffic violations with compliance (such as presentation of a valid driver's license, proof of tag renewal, or other relevant document) and a \$25 payment to the THP account. The designated fine for minor traffic citations issued in Unicoi County was \$110. He further stated that he accepted plea agreements (arranged by the district attorney's office or a highway patrol officer) that included payments to the equipment account. Judge Shults said that he approved the plea agreements because all parties involved (the prosecution and defense) had negotiated the agreements and felt satisfied with the proposed resolution.

Our review of City of Erwin "Year-to-Date Account Analysis" reports for the period July 1994 (when the City of Erwin began keeping accounting records for the THP account) through August 9, 1999 (the last payment through the THP account before activity was halted by the Department of Safety), disclosed that 1,461 deposits totaling \$112,607.14 represented court-directed payments in resolution of minor traffic violations and payments arranged as part of plea agreements in resolution of more serious violations (driving under the influence, reckless driving, and possession of illegal drugs). (See Exhibit B.) These reports list the name of the person paying money to the account or "THP" (for consolidated deposits) and the amount of each deposit. Individually listed payments to the THP account ranged from \$5 to \$1,700. Other deposits into the THP account consisted of reimbursements for personal purchases totaling \$75.47 and a transfer from the Washington County THP account totaling \$3,200. The total amount of deposits into the account was \$115,882.61.

As stated above, these deposits were actually made to the City of Erwin general fund and specifically earmarked for use by the Unicoi County highway patrol office. The nature and extent of court-directed payments for minor traffic violations and payments arranged as part of plea agreements are discussed in Section 2 of this report.

Accounting

In our October 5, 1999, interview, Sheriff Ralph Marlowe, the Tennessee Highway Patrol sergeant in Unicoi County at the time the THP account was established, stated that when the account was established sometime in 1992, the Unicoi county clerk maintained the accounting records. At that time, payments were collected by the county clerk's office, deposited by the county trustee's office in a county revenue account, and expended through checks written by the county executive's office. He stated that sometime in 1993, the accounting function was transferred from the county to the city (the Erwin city recorder's office) because the county placed any money remaining in the account at the end of the fiscal year into the county's general fund. Thus, any funds remaining in the account at fiscal year end were absorbed by the county (in the general fund) and no longer available to the highway patrol. He stated that sometime in 1993, he discussed this problem with the City of Erwin Chief of Police, Mr. Jim Hicks, who informed him that the city maintained a similar account (called the DUI fund) and that highway patrol funds generated through payments in lieu of court fines could be placed in a city account without reverting money to the city's general fund at the end of the fiscal year. Sheriff Marlowe stated that he then coordinated with the Erwin City Recorder, Ms. Doris Hensley, to have the THP account moved from the county to the city.

Sheriff Marlowe stated that the review of the account conducted by department officials in April 1993 did not influence his decision to transfer the accounting function from the county to the city in July 1994. He stated that his decision to transfer the accounting function from the county to the city was based on the flexibility of the city recorder's office in allowing unused funds to be available to the highway patrol office across fiscal years. Although it served to give the appearance that the account had been closed and the use of such an account had been discontinued, the collection and use of payments in lieu of court fines continued. The accounting function for the account was merely transferred from a county entity to a city entity. It should be noted that according to account analysis reports provided by officials with the Unicoi County Executive's Office, the county maintained the accounting function for this THP account during the period November 30, 1991, through June 30, 1994. These reports list collected money totaling \$31,579 and expenditures totaling \$7,565. According to Ms. Linda Clowers, the Assistant to the Unicoi County Executive, the remaining money totaling \$24,014 reverted to the county's general fund account.

In our October 12, 1999, interview, Ms. Doris Hensley, Erwin City Recorder, stated that sometime in 1993, the district attorney general at the time, Mr. Crockett, and his assistant, Mr. Garland, requested her to maintain the accounting records for the THP account. She stated that she expressed apprehension about maintaining accounting records for a state account and told Mr. Crockett that she would need written authorization before she could comply with his request. According to Ms. Hensley, Mr. Crockett assured her that he had researched the matter, that similar accounts were being utilized throughout the nation, that the practice had been described in detail at a National District Attorneys General Conference, and that it would be appropriate for her to provide accounting services relative to the account. Ms. Hensley stated that based on Mr. Crockett's verbal assurance of the propriety of the account, she agreed to maintain the accounting records. The first entry in city-maintained accounting records relative to the THP account occurred on July 1, 1994.

Regarding moving the accounting function for the THP account from the county to the city sometime in 1993, Mr. Crockett stated in our November 2, 1999, interview that he did not have a specific memory of being involved with the change. When informed that Ms. Hensley had stated that he had requested her to take over accounting responsibilities and assured her of the account's appropriateness, Mr. Crockett again stated that he did not have a specific memory of discussing the account with Ms. Hensley but that he had no reason to doubt her representation.

Ms. Hensley explained the accounting process as follows: 1) a THP officer or other court representative would collect the payments in the court room and issue a receipt to the person making the payment; 2) a THP officer would bring the receipt book and collected money to the city recorder's office; 3) a representative of the city recorder's office would count the money and issue a receipt to the THP officer; 4) the money would then be deposited into the city's general fund earmarked "due to THP." Ms. Hensley stated that on rare occasions her office would collect money from an individual directly and issue a receipt. She further stated that sometimes money was mailed directly to her office or to the county clerk's office. She stated that in those instances, she would write a receipt and mail it to the individual.

Ms. Hensley said that she did not control the spending of the money, only the accounting function, through the city's detailed accounting records. She said that the highway patrol sergeant approved purchases and that other than ensuring that purchase requests were filled and documentation to support the purchases was obtained, she did not scrutinize the nature of the purchases. Purchases were made with a City of Erwin check signed by Ms. Hensley and the City of Erwin mayor.

Based on interviews, the THP sergeant assigned to Unicoi County was responsible for approving all purchases through the account, including purchases made for other local law enforcement agencies. According to the THP sergeant responsible for operations in Unicoi County, Mr. Craig Masters, and the former THP sergeant assigned to Unicoi County, Mr. Ralph Marlowe, this approval process involved a discussion with the City of Erwin Chief of Police, Mr. Jim Hicks, concerning the need for the requested item. They further stated that Chief Hicks was responsible for tracking collected revenue and expended funds. Chief Hicks confirmed that he tracked collected revenue and expended funds and that the Unicoi County highway patrol sergeant approved all purchases through the account.

Purchases

According to City of Erwin "Year-to-Date Account Analysis" reports for the period July 1994 (when the City of Erwin began keeping accounting records for the THP account) through August 9, 1999 (the last payment through the THP account before activity was halted by the Department of Safety), expenditures totaling \$110,732.96 were made through the THP account. Generally, sales taxes were not paid for the purchased items. The account records listed the remaining balance at August 9, 1999, as \$5,535.15 (\$385.50 more than the difference between total deposits and total expenditures). Officials responsible for this improper practice could not explain the reason for this difference. On April 10, 2000, the remaining balance of \$5,535.15

was remitted to the state's general fund. Excluding purchases related to consumable items, building materials, and services, \$88,573.61 was expended for equipment items. These equipment items included cameras, camcorders, mobile recording systems, law enforcement equipment items (guns, handcuffs, flashlights, utility belts and accessories, boots, rain gear, sunglasses), computer hardware, computer software, fax machines, copiers, phones, cassette recorders, and office items (staplers, tape dispensers, bookcases, desk organizers, wastebaskets, coffee makers, and a vacuum cleaner).

The consumable items purchased included coffee, coffee filters, sugar, creamer, soft drinks, and office supplies. The building materials purchased related to the renovation of office space provided to the highway patrol by the City of Erwin. The services purchased included paging, office cleaning, phone, and electric.

Equipment items totaling \$11,056.45 (12.5%) could not be located during an inventory conducted by the auditors in September 1999. Most of the purchased equipment items related to official law enforcement job responsibilities. None of the expenditures were proper. However, the review disclosed 11 purchases totaling \$1,675.82 that were of a particular questionable nature.

Items That Could Not Be Located

On September 14, 1999, we conducted a physical inventory, in collaboration with Department of Safety internal audit and internal affairs staff and Tennessee Wildlife Resources Agency internal audit staff, to determine the possession and use of the items purchased through the THP account during the period July 1994 through August 9, 1999. The cost of these items totaled \$88,573.51. Of this amount, we could not locate items totaling \$11,056.45 (12.5%). These equipment items included nine cameras (\$1,259.91), one mobile video system (\$4,497.54), one camcorder (\$679.97), one printer (\$299), a used computer (\$1,000), a radio scanner (\$349.99), and other accessory items (\$2,970.04), such as wireless microphones, a utility belt, and a seat organizer. (See Exhibit D.)

According to Sergeant Craig Masters, the highway patrol sergeant who replaced former Sergeant Ralph Marlowe in 1998 as the officer responsible for operations in Unicoi County, the scanner stopped working properly and was thrown out, the used computer was traded in for a new computer, and the mobile video system was either traded for a newer system or donated to another highway patrol unit. We could only locate one computer invoice that noted a discount: a June 30, 1997, invoice totaling \$4,905.25 from Computarama in Johnson City, Tennessee, listed a \$319.75 discount. We attempted to determine the nature of this discount, but we could not because the computer company was no longer in business and, thus, the records were not available for our review. Absent further information, we could not determine if this discount related to the trade-in discussed above. The mobile video system was purchased in 1995. We were unable to identify another highway patrol unit that received the system or locate any invoice that documented a trade-in. Sergeant Masters could not provide an explanation regarding the other missing items totaling \$3,949.01.

Sergeant Masters stated that at the time of the purchases, he was not aware of state purchasing policies and procedures and did not realize that locally maintaining and spending

money collected in lieu of court-imposed fines was inappropriate. He stated that purchases were made through the THP account to expedite the procurement process, to obtain needed items that had typically been denied by the department because of limited funds available under the substation's state budget, and to, in essence, save the state money by not expending allotted funds. Thus, he explained that it seemed to him that the account allowed the Unicoi THP office to purchase needed equipment items with no negative effect. Sergeant Masters stated that he verbally communicated to his staff that the equipment items purchased through the account were not private property and belonged to the highway patrol office in Unicoi County. However, he acknowledged that he did not keep a written record of the items or their location, did not submit the items to be inventoried by the department, and did not consider putting state tags on applicable equipment items.

Since purchases were not made through the department's purchasing procedures, were not included in the department's inventory listing, and were not properly tagged as state equipment, when applicable (at the time these purchases were made, state purchasing procedures required all equipment items costing \$1,000 or more to be tagged as state property), highway patrol officials violated state purchasing policies and procedures, circumvented central office fiscal controls, and failed to properly safeguard state assets. The THP sergeant's attitude that "the ends justify the means," accompanied by his inability to recognize these negative consequences, is of particular concern. All levels of highway patrol management should be aware of and follow state purchasing policies and procedures. His intentional circumvention of proper purchasing procedures is inconsistent with sound internal control procedures and undermined the level of trust placed with him by the department.

Purchases of a Particularly Questionable Nature

Our review disclosed 11 purchases that were of a particularly questionable nature. These purchases included repair work on a THP vehicle (\$591.42), two separate instances in which THP vehicles were professionally washed and waxed at Family Car Care (\$105 total), an advertisement for the highway patrol placed in a local softball program (\$34), a Christmas floral arrangement for the individual who collected the court-directed payments as a favor to the court (\$75), a potted plant (\$48.50), four plaques containing the highway patrol logo (\$99.60), two separate purchases for picture framing materials and labor (\$228.36 total), one "Action Hourly Train Clock" (\$59.95), and a vacuum cleaner (\$433.99). (See Exhibit E.) We also determined that an individual was paid \$1,625 to clean the highway patrol headquarters in Unicoi County during the period April 1997 through June 1999. We found no payment for cleaning prior to April 1997 or after June 1999. According to Sergeant Masters, the vacuum cleaner had been purchased for the individual's use while cleaning the highway patrol office.

According to Sergeant Masters, during a routine inspection of highway patrol vehicles, it was noted that one of the vehicles had sustained damage to the rear bumper. Sergeant Masters stated that he decided to pay for the bumper repair through the THP account to save the state money (meaning money collected in lieu of court fines was used for the repair instead of money budgeted by the department). Erwin Paint and Body Shop did the repair work. Department of Safety General Orders (Number 523) require damage to highway patrol vehicles to be reported in writing to the district captain. Sergeant Masters acknowledged that he was aware of the

reporting requirement at the time he decided to pay for the bumper repair through the THP account and that he was aware that by not reporting the incident he was violating Department of Safety General Orders. Thus, he intentionally violated department policies and procedures. Sergeant Masters stated that he did not report the incident because the damage was caused inadvertently by a highway patrol officer attempting to cross a median, the damage was minimal, and that money was available (through the equipment account) to repair the damage.

He stated that the Christmas floral arrangement was given to acknowledge Ms. Stephanie Varnes, an employee of CCS/MidSouth Court Services (a private for-profit organization that provides defensive driving instruction and probation monitoring services for Unicoi County). According to Sergeant Masters, Ms. Varnes collected court-ordered probation fees and defensive driving instruction fees in the courtroom as part of her job responsibilities with MidSouth and also collected court-directed payments in lieu of fines in the courtroom as a favor to the court. Sergeant Masters stated that the potted plant was given to Lieutenant Bill Hampton, a fellow officer who was ill.

He stated that the advertisement placed in the softball program was an effort to be involved with the community and develop a positive community relationship. We were unable to locate a copy of the softball program. Thus, we could not determine the exact nature of the advertisement. Sergeant Masters said that the vehicles that were professionally washed and waxed had gotten unusually dirty during the winter months and that he approved the expenditure to promote pride within the highway patrol unit in Unicoi County.

According to Sergeant Masters, the framing materials, plaques, and clock were purchased as office décor. During our interview with Sheriff Marlowe, Unicoi County Sheriff, we noticed that two professionally framed THP pictures, two THP plaques, and the “Action Hourly Train Clock” were located in his county office. Sheriff Marlowe stated that when he became sheriff in 1998 he requested the use of these items as reminders of his tenure with the highway patrol. He stated that the pictures were purchased by him with personal funds but acknowledged that their framing was paid for through the THP account. He stated that he did not consider the items personal property but Unicoi County highway patrol items on loan to him. Sergeant Masters stated that he did not remember seeing the items in the Unicoi County highway patrol office when he became the highway patrol sergeant responsible for operations in the area (after Mr. Marlowe was elected Unicoi County sheriff in 1998). However, one of the highway patrol officers assigned to Unicoi County at the time, Mr. Jim Jackson, confirmed that Sheriff Marlowe verbally requested use of the items from him to decorate his (Sheriff Marlowe’s) county office. Sheriff Marlowe said that he would return the items to the highway patrol office if directed by Department of Safety officials.

According to Sergeant Masters, and confirmed by THP account payment records, Ms. Tammy Edwards, the person hired to clean the Unicoi County highway patrol headquarters, purchased the vacuum cleaner for \$433.99 and was reimbursed for its cost, which included sales tax. She stated that Sheriff Marlowe, THP sergeant in Unicoi County at the time, approved the purchase. Sergeant Masters told us that Ms. Edwards cleaned the office once a month and typically kept the vacuum cleaner with her.

In an October 5, 1999, interview conducted by investigators, Ms. Edwards stated that after she purchased the vacuum cleaner, either Sergeant Marlowe or Sergeant Masters told her that she could leave the vacuum cleaner in the office or keep it with her. She stated that she left the vacuum cleaner at the office on some occasions and kept the vacuum cleaner at her home on other occasions. She stated that she did not perform cleaning services for any other organization or individual, but she acknowledged using the vacuum cleaner for personal use at her residence. During a physical inventory conducted by the auditors in September 1999, the vacuum cleaner was located in the highway patrol office.

Most of the purchases were made with vendors that had established a sales account with the City of Erwin. Therefore, a sales-tax exemption was applied to those purchases. Although the sales-tax exemption was applied to some of the questionable purchases, a Department of Revenue official stated that the vendor, in these cases, would have had no reason to question the transactions and that any resulting violation in sales-tax revenue collections would be immaterial in this case. With a sales-tax exemption already established, it does not appear that the highway patrol personnel involved in making the purchases misrepresented that the questionable items were for business purposes to avoid sales tax.

Violation of Department of Safety General Orders

According to the review conducted by the internal affairs section of the Department of Safety, the highway patrol officers in Unicoi County violated several departmental policies and procedures (called General Orders). These violations included the following: 1) violation of a regulation or policy, abuse of authority, conduct unbecoming an employee in state service, and soliciting or collecting payments while on duty (General Order 216-2); 2) improper collection and deposit of state funds (General Order 202); 3) failure to complete an incident report concerning a vehicle accident (General Order 523); 4) improper solicitation and acceptance of a gift, favor, gratuity, present, or fee (General Order 263); and 5) failure to properly maintain an accurate inventory of property, properly issue state tags to equipment items, and properly surplus property (General Order 700).

Knowledge of the THP Account

Department of Safety

During interviews, all four highway patrol officers in Unicoi County acknowledged payments in lieu of court fines were collected and deposited in the City of Erwin general fund specifically earmarked for their use locally to purchase supplies and equipment items. They stated that Lieutenant Bill Hampton, and the district captain at the time, Captain Gaines Ferguson (now retired), were aware of the account and approved of the manner in which the account was operated.

In an October 12, 1999, interview, Lieutenant Hampton acknowledged knowing about the THP account and obtaining a camera for official use through the account. He stated that his direct supervisor, Captain Ferguson, was also aware of the account and approved of its establishment and use. In an October 25, 1999, interview conducted by investigators, Captain

Ferguson acknowledged that he was aware of the account but stated that it was his understanding that all the payments were sent by city officials to the central office fiscal staff in Nashville and were appropriately deposited. Captain Ferguson stated to investigators that he spoke with Mr. Joey Gallaher, Department of Safety Fiscal Director 1 in Nashville, about the payments and requested him to contact the Unicoi county clerk's office about the proper procedure to deposit the money.

In a January 12, 2000, telephone interview, Mr. Gallaher confirmed that the department had implemented an appropriate accounting method to deposit truly donated funds into a deferred revenue account (meaning the funds would be deposited into the state treasury and specifically earmarked for the purposes indicated by the donor). However, he stated that he did not recall speaking with Mr. Ferguson or any representative of Unicoi County or the City of Erwin about the THP account established in Unicoi County or about the nature of the funds in question.

During the period May 1, 1998, through November 22, 1998, a Johnson City resident, Mr. Keith Bartley, complained to various Department of Safety officials concerning a citation written by a Unicoi County highway patrol officer in April 1998 and a \$25 payment the general sessions judge directed he pay to the THP account. Mr. Bartley provided investigators copies of different letters he said that he mailed to the Department of Safety Commissioner, Mr. Mike Greene, and the Department of Safety Director of Internal Affairs, Mr. Richard Pope. (See Exhibit F.) He also told investigators that he had communicated his complaint by telephone and e-mail to Captain Mark Fagan, then a lieutenant with the THP colonel's office.

During interviews with Commissioner Greene and the highest ranking highway patrol official responsible for operations statewide, Colonel Jerry Scott, they both stated that they did not recall receiving any information concerning the THP account in Unicoi County prior to the initiation of the review by General Crumley in July 1999. Our review of correspondence logs maintained by Commissioner Greene's administrative assistant showed that Mr. Bartley's letter was not logged in by the commissioner's office. It is unclear whether Mr. Bartley's letter to Commissioner Greene was not logged due to a clerical error; was rerouted to another section of the department before being sent to the commissioner's office; was mailed by Mr. Bartley but either ignored or never received by the department; or was never mailed by Mr. Bartley.

Also, in our January 6, 2000, interview, Captain Fagan stated that Colonel Scott was on extended leave during the telephone conversations and e-mail correspondence with Mr. Bartley and that he never informed Colonel Scott about the complaint. Captain Fagan acknowledged that he had received the complaint and that he had referred the complainant to Mr. Pope in the office of internal affairs (regarding the propriety of the citation) and to General Crumley with the office of the district attorney general, First Judicial District (regarding the propriety of the payment process). Captain Fagan stated that he was unaware of the prohibition against locally maintaining and using payments made in lieu of court fines, but stated that he considered his referral of the matter to the office of the district attorney general to be an appropriate resolution to the complaint.

In a January 6, 2000, interview, Mr. Pope stated that he received a letter from Mr. Bartley sometime in early December 1998 and responded to Mr. Bartley by letter on December 8, 1998. (See Exhibit G.) His letter stated that the THP account had been discontinued by the court system in Carter County and was being reviewed by the office of the district attorney general in Unicoi County. Mr. Pope stated that he obtained this information from Captain Ferguson by letter but that he was unable to locate that letter to him. He further stated that after obtaining the letter of complaint, he immediately discussed the propriety of such accounts with Mr. Roger Hutto, Department of Safety General Counsel; and Mr. Bill Hedge, Department of Safety Fiscal Director. However, Mr. Pope stated that he did not believe he specifically mentioned that the account was allegedly established in Unicoi County, and after Mr. Hutto and Mr. Hedge told him that deferred revenue accounts were established for certain highway patrol substations, he did not pursue the matter further. Mr. Hutto and Mr. Hedge stated that they did not remember speaking with Mr. Pope about the matter until the review was initiated in July 1999.

As stated above, Mr. Hedge, the department's fiscal director, communicated to all section heads and district captains in a May 26, 1993, memorandum that whenever gifts or donated funds are given to the Department of Safety, such funds must be forwarded immediately to the Cashiers' Section of the Department of Safety. The memorandum further stated that under no circumstance may an individual accept such payments and spend such funds without adhering to the above mentioned guidelines.

Whether Fifth District highway patrol officials disregarded this May 1993 memorandum or never received the memorandum, highway patrol leadership responsible for operations in the four counties from the sergeant to captain levels lacked sound judgement in condoning the practice. Furthermore, the failure by department officials in Nashville to monitor corrective action and to ensure the use of the improper accounts had been discontinued allowed this improper collection and expenditure practice to continue without scrutiny and without any fiscal controls.

Tennessee Wildlife Resources Agency

In a November 9, 1999, interview, Mr. Tim Sain, a former TWRA officer in Unicoi County and the current TWRA Boating Investigator, stated that the TWRA first began participating in the THP account on March 30, 1995, when an assistant district attorney general, Ms. Lisa Rice, arranged plea agreements with three individuals charged by the agency with wildlife violations. According to Mr. Sain, as a result of the plea agreements, \$700 was donated to the agency. In a March 31, 1995, memorandum to then Sergeant Marlowe, Mr. Sain stated that TWRA had two methods of accepting money (payments to the "Non-Game Fund" and payments to the "Wildlife Restitution Fund"). (See Exhibit H.) Unlike the payments in question, which are in lieu of appropriate fines, these payments are truly donated funds used by the agency to support and protect non-game and rare wildlife. He stated in the memorandum that both methods required that the money be sent to Nashville and could not be used for law enforcement. The memorandum further requested Mr. Marlowe to allow the TWRA to participate in the THP account in order to purchase equipment. In this way, he could circumvent the two official methods of receiving contributions so he could retain control over the funds. Mr. Sain told us that he then telephoned his direct supervisor, Mr. Glen Johnson, stationed in

Morristown, Tennessee, to ensure that participating in the THP account was appropriate. He said that Mr. Johnson informed him a few days later that the agency's participation in the account could continue.

In a November 1, 1999, interview, Mr. Johnson stated that Mr. Sain had assured him that the practice had been approved by the district attorney general and the general sessions judge and that no payments would be accepted in lieu of applicable fines and court costs. He stated that he then telephoned Mr. Robert Ripley, his direct supervisor and TWRA Region 4 Manager in Morristown, Tennessee; the TWRA Chief of Law Enforcement, Mr. Bob Harmon, stationed in Nashville, Tennessee; and the TWRA General Counsel, Mr. Brooks Garland, stationed in Nashville, Tennessee, to seek guidance concerning the propriety of the practice. Mr. Johnson said that he could not recall whether the communication consisted of one conference call in which all three individuals participated or three calls to each specific individual. He stated that all three individuals expressed apprehension about the practice but that none of them said TWRA could not participate in the account. Mr. Johnson stated that he could not recall who ultimately made the decision to approve TWRA's participation in the THP account but that the general feeling of the three individuals was that if the district attorney general and the general sessions judge approved the practice, then the agency could participate. However, this issue was not presented to the agency's fiscal director or internal auditor.

Mr. Ripley confirmed Mr. Johnson's account of the matter and stated that he instructed Mr. Johnson to contact Mr. Harmon and Mr. Garland to obtain their guidance and approval. He also stated that at the time he became aware of the practice, he telephoned Mr. Ron Fox, TWRA Director of Field Operations in Nashville, Tennessee, to inform him of the matter.

In a November 9, 1999, interview, Mr. Fox said that shortly after the TWRA office in Unicoi County began participating in the THP account, he became aware of the practice and discussed the matter with Mr. Garland and Mr. Harmon. He stated that he did not have a specific memory of discussing the account with Mr. Ripley but that it was possible that Mr. Ripley called him to discuss the account and that the telephone conversation prompted him to discuss the matter with Mr. Garland and Mr. Harmon. Mr. Fox said that his memory was that Mr. Harmon did not like the idea (because payments might be accepted in lieu of prosecution) but that Mr. Garland told him that as long as the district attorney and the general sessions judge approved the practice, TWRA's participation in the account would be appropriate. He stated that he could not specifically recall how the decision to participate in the THP account was communicated to the regional office. Mr. Fox told us that in retrospect, he should have made more of a concerted effort to determine the nature and function of the account at the time it was brought to his attention.

Mr. Garland stated that it would not have been unusual for him to say that practices approved by the district attorney general and the general sessions judge were appropriate but that he did not specifically recall discussing the THP account with anyone. In a January 11, 2000, telephone interview, Mr. Harmon (now retired) stated that when he spoke with Mr. Johnson in early 1995, he (Mr. Harmon) told him that participation in the THP account was at the very least ethically inappropriate and that TWRA officers should not be allowed to participate in the

practice. Mr. Harmon's opposition to the establishment of the account was stated to us much more emphatically than the "apprehension" represented by Mr. Johnson.

Based on Mr. Sain's March 31, 1995, memorandum to Mr. Marlowe, Mr. Sain was aware that receiving and depositing payments in lieu of court fines to a locally controlled account was out of compliance with agency policies and procedures in effect at the time. According to TWRA regional staff, they were unaware of *Tennessee Code Annotated*, Section 9-4-301, prohibiting the deposit of funds into such an account. However, regional staff stated that they contacted management officials in Nashville (without consulting with the agency's fiscal director or internal auditor) to obtain appropriate guidance concerning the matter because of the unusual nature of the payment process. Based on presently available information, this inappropriate practice was allowed to continue because 1) regional staff were unaware, and thus failed to enforce appropriate procedures concerning the deposit of state funds; 2) regional staff relied on the tacit or verbal consent of management officials in Nashville without obtaining written documentation to support their understanding that the practice was condoned and approved; 3) regional staff disregarded the TWRA Chief of Law Enforcement's opposition to participation in the practice; and 4) management officials in Nashville failed to obtain a clear understanding of the practice proposed by regional staff, failed to immediately stop TWRA's involvement in the practice, and failed to immediately notify the agency's fiscal director and the Division of State Audit about the highway patrol's establishment of the account.

Office of the District Attorney General, First Judicial District

During interviews, Sergeant Masters of the highway patrol office in Unicoi County, Erwin Chief of Police Hicks, and Unicoi County Sheriff Marlowe all stated that sometime in early 1999 they met with General Crumley, newly elected District Attorney General for the First Judicial District, and informed him of the nature and operation of the THP account. They stated that General Crumley told them that he would not prohibit the practice unless someone complained.

General Crumley stated that although he had heard about court-directed payments being made to THP accounts in the First Judicial District while he was an assistant district attorney, he did not have specific knowledge of such an account until he became the district attorney general in September 1998. According to General Crumley, on September 28, 1998, one of his assistants mentioned in casual conversation that he had settled a case in Unicoi County for a \$500 "donation" to the THP account. General Crumley stated that he immediately wrote a letter to the state attorney general requesting an opinion on the practice and instructed all of his assistants to stop the practice until he could determine the propriety of settling cases through the acceptance of payments in lieu of court fines. General Crumley stated that his biggest concern was the appearance that an individual could "buy justice." General Crumley provided us a copy of his September 28, 1998, letter to State Attorney General John Walkup requesting an opinion of the practice. The letter stated that General Crumley had suspended the further acceptance of the payments pending General Walkup's opinion.

In a February 2, 1999, letter, the newly elected State Attorney General, Paul Summers, responded to General Crumley's September 28, 1998, request for an opinion of the practice. The

letter cited Opinion Number U91-80 and stated that “it is the opinion of this Office that the General Sessions Courts have no authority to require a defendant to make ‘payments’ of the type described in your letter in connection with the disposition of criminal charges.” According to General Crumley, since he had already instructed his staff to suspend further acceptance of payments in lieu of court-imposed fines, he took no further action concerning the matter until his office received a complaint in July 1999. The propriety of resolving law enforcement citations through court-directed payments is discussed in Section 2 of this report.

According to General Crumley, in January or February 1999, he met with Chief Hicks, Sheriff Marlowe, and Sergeant Masters at the Unicoi County THP office. He stated that the purpose of the meeting was to address a complaint about an unrelated matter. General Crumley stated that he did not have a specific memory of discussing the THP account during that meeting. When informed that Chief Hicks, Sheriff Marlowe, and Sergeant Masters all stated that the THP account was discussed during the meeting and that General Crumley told them that he would allow the account to continue until a complaint was received, General Crumley stated that the officers may have misunderstood his comments. General Crumley again stated that he had no specific memory of discussing the THP account with the officers but stated that the account may have been mentioned and that he may have stated, “I don’t want to hear about the account” (meaning that he did not approve of the establishment of the account and did not want to hear about its continuance). He stated that the officers could have taken such a comment to mean the account could continue as long as he did not receive any complaints.

According to General Crumley, the first direct information he received regarding resolving traffic citations through payments to an equipment account was in July 1999. He stated that his office received a complaint from a citizen who had been directed to make a payment to the account in order to have a traffic citation dismissed. General Crumley stated that in response to the complaint, he requested the Tennessee Bureau of Investigation to review the matter, and he also informed the Comptroller’s Office of the situation.

Independent Audit of the City of Erwin

Since 1995, the City of Erwin has been audited annually by Rodefer Moss and Company. It appears that any funds designated for the THP in the city’s general fund were shown as “Due to other governmental units” on the fiscal year-end balance sheets. No issues were raised regarding the THP funds during the audits.

Discovery of Other Unauthorized Equipment Accounts

Carter County

The Carter County “Tennessee Highway Patrol Equipment Fund” was established after a December 4, 1992, memorandum to Mr. Truman Clark, Carter County Executive, from Mr. Ken

Baldwin, Assistant District Attorney, First Judicial District; and Carter County General Sessions Judge Richard Z. Gray. The memorandum stated that “when, in their prosecutorial discretion, the Attorney General’s Office determines to nolle pros (meaning not to prosecute a matter) a non-moving traffic offense upon the defendant’s rectifying the violation, and the defendant’s payment of a ‘T.H.P. Equipment Fund’ fee, it is hereby agreed between the State of Tennessee and County of Carter that any funds collected by and through the Tennessee Highway Patrol, resulting from certain non-moving violations, shall be divided between the Tennessee Highway Patrol and Carter County with a separate account earmarked for the ‘Tennessee Highway Patrol Equipment Fund.’ ” The memorandum further stated that the general sessions judge would accept the case disposition and the Carter County executive’s office would collect the revenues generated from the practice. Mr. Baldwin had no authority to establish this account on behalf of the state.

According to a listing of account revenue and expenditures provided to our office by the Carter County Bookkeeper, Ms. Judy Johnson, revenue collected from the inception of the account in December 1992 through June 2000 totaled \$59,964.66. This listing disclosed that the Carter County highway patrol office expended \$29,879.22 and the Carter County sheriff’s department expended \$30,085.44. As of June 30, 2000, all funds collected had been expended. Ms. Johnson stated that sometime in September 1998, the assistant district attorney general assigned to Carter County stopped requesting payments to the equipment account pursuant to direction from General Crumley.

According to Ms. Johnson and confirmed by invoices, these purchases were for mobile video cameras and installation, computers, and office supplies. We did not conduct a physical inventory of purchases made through the Carter County THP account. However, the department’s internal audit staff should conduct such an inventory to determine the availability and use of the items.

Johnson County

In our November 10, 1999, telephone interview, Ms. Peggy Horn, Director of Accounts and Budget, Johnson County, Tennessee, stated that a law enforcement equipment account was established several years ago. Ms. Horn could not provide specific information about the establishment of the account, but as discussed in Section I of this report, Mr. Kent Garland, the Assistant District Attorney responsible for establishing the Unicoi County THP account, also had responsibilities in Johnson County. Ms. Horn stated that revenue for the account was generated through the circuit court clerk’s office as a result of court-directed payments relative to citations written by the county sheriff’s department and the Tennessee Highway Patrol. She stated that revenue from these two sources was commingled and not earmarked for specific use by each organization.

According to Ms. Horn and confirmed by account documentation she provided to us, in December 1996, the county sheriff’s department spent \$9,400 from the account to purchase five mobile video cameras. Ms. Horn said that while revenue was generated for the account from payments relative to highway patrol written citations, the highway patrol officers in the county did not spend any of the funds. She stated that the only funds expended from the account related

to the December 1996 purchase made by the county sheriff's department. According to account records, \$25,133.16 remains in the equipment account.

According to Ms. Carolyn Hawkins, Johnson County Circuit Court Clerk, all account activity was halted in September 1998. She stated that the remaining funds in the equipment account will be transferred to the county's and state's general funds pending approval by the county's budget committee. She stated that District Attorney General Crumley contacted the Johnson County General Sessions Judge, Judge William Hawkins, sometime in September 1998 and expressed concern over the account. In our November 15, 1999, interview, Judge Hawkins stated that he took office in September 1997. He stated that he did not approve of the payment process but was reluctant to change the established court procedures. He acknowledged reducing or dismissing traffic citations with compliance and a payment to the equipment account. He stated that sometime in September 1998 General Crumley informed him of concerns regarding the account and he immediately stopped the practice.

Washington County

In our October 12, 1999, interview, Lieutenant Bill Hampton, Tennessee Highway Patrol Lieutenant for the Fifth District in Fall Branch, Tennessee, stated that in March 1995 the Mothers Against Drunk Drivers organization (MADD) donated \$3,500 to the Washington County Highway Patrol office to purchase a mobile video camera. According to Lieutenant Hampton, he personally accepted the payment and contacted his supervisor, then Fifth District Captain, Mr. Gaines Ferguson, to inquire about the appropriate manner in which to deposit the funds. He stated that Captain Ferguson told him to establish a bank account in Washington County. In an October 25, 1999, interview conducted by investigators, Captain Ferguson stated that Lieutenant Hampton suggested depositing the \$3,500 into a local bank account and told him that procedures had been established allowing the practice. He stated that Lieutenant Hampton told him that if the funds were sent to the Nashville Central Office, it would not be used to benefit highway patrol officers in Washington County. Captain Ferguson stated that he did not question Lieutenant Hampton's representations and agreed to the establishment of local bank account to deposit the funds.

Lieutenant Hampton stated that he then established a Washington County Highway Patrol non-interest-bearing checking account at Heritage Federal Bank (later changed to First American National Bank) and deposited the funds. He said that he and the Washington County Highway Patrol Sergeant, Mr. Richard Hurley, were designated as signatories on the account. Lieutenant Hampton stated that sometime in August 1995, \$3,200 was transferred from the Washington County bank account to the Unicoi County THP account and that the video camera was purchased for the Washington County Highway Patrol through the Unicoi County THP account. He stated that the remaining \$300 was used for installation and maintenance of the video camera and to purchase a weight scale (\$23.50) to be used in traffic accident investigations.

Our review of the account statements disclosed the \$3,500 deposit was made on March 15, 1995, and the \$3,200 transfer was made on August 21, 1995. The review of receipts and bank statements confirmed Lieutenant Hampton's description of the purchases. Lieutenant

Hampton provided the receipts for the video tapes purchased with the remaining \$60.13 from the account.

According to Lieutenant Hampton, all account activity was halted by the Fifth District Captain, Don Bradley, effective July 22, 1999.

Even though the MADD donation to the Washington County highway patrol office was not a payment in lieu of court fines, Sergeant Hurley and Lieutenant Hampton violated *Tennessee Code Annotated*, Section 9-4-301, by establishing an unauthorized bank account to locally deposit and spend collected money instead of properly depositing the money through the department's fiscal office with the state treasurer.

Unauthorized Accounts Prohibited

According to *Tennessee Code Annotated*, Section 9-4-301, "(a) It is the duty of every department, institution, office and agency of the state and every officer and employee of state government, including the state treasurer, collecting or receiving state funds, to deposit them immediately into the treasury or to the account of the state treasurer in a bank designated as a state depository or to the appropriate departmental account if authorized by Section 9-4-302." *Tennessee Code Annotated*, Section 9-4-302, states, "(b) Whenever the satisfactory conduct of the state's business clearly demands it, and not otherwise, the commissioner of finance and administration, with the approval of the governor and the state treasurer, may authorize establishment of an account in the name of a state department or agency in a state depository." The section further states, "(f) the commissioner of finance and administration shall promptly notify the comptroller of the treasury of any accounts established pursuant to this section."

The THP accounts established in the First Judicial District were not approved pursuant to the sections cited above. The accounts were not authorized by the Commissioner of the Department of Finance and Administration, the Governor, or the State Treasurer. Nor were the accounts communicated to the Office of the Comptroller of the Treasury. Thus, based on presently available information, the Unicoi County general sessions judge, the First Judicial District attorney general at the time, the Erwin city recorder, and highway patrol officials in the district acted outside the scope of their authority to establish the account, collect revenue for deposit into the account, and make purchases through the account. Furthermore, since purchases were not made through the department's purchasing procedures, not included in the department's inventory listing, and not properly tagged as state equipment, when applicable (at the time these purchases were made, state purchasing procedures required all equipment items costing \$1,000 or more to be tagged as state property), department staff violated state purchasing policies and procedures, circumvented the fiscal controls in effect by management in Nashville, and failed to properly safeguard state assets.

Not only was this arrangement a violation of state law relative to proper collection and deposit of state funds, but as noted below, such a practice also seriously damages the dignity and respect of the court system, creates situations in which funds and related assets are lost or

unaccounted for, and perpetuates the attitude that rules and laws can be violated based on personally perceived needs.

Action Taken by Management

Department of Safety

In a July 22, 1999, memorandum to the highway patrol officers assigned to Unicoi County, Captain Bradley, Fifth District Captain, instructed the officers not to accept or expend any more funds through the THP account. (See Exhibit I.) The memorandum further stated that all citations issued must be adjudicated by the court system. On September 28, 1999, the same memorandum was sent to the highway patrol officers in Carter and Johnson Counties. According to Captain Bradley, the highway patrol sergeant responsible for operations in Washington County personally delivered the July 22, 1999, memorandum to the Unicoi County officers and complied with the instructions relative to the Washington County THP account.

On August 15, 1999, department management revised General Order 202 (The Collection and Accounting of Money) to specifically state that all funds received for or in the name of the department or any of its divisions, sections, or districts shall be deposited in an account established by the state treasurer. The Order states that no funds shall be deposited in or entrusted to any other account except in situations involving the collection of evidence and that all deposits shall be made in compliance with established state policy.

According to Captain Gerald Allen, Director of Internal Affairs, Department of Safety, department management is considering appropriate disciplinary action against the highway patrol officers involved with the establishment and use of the Unicoi County THP account. However, he stated that Sergeant Masters was on extended sick leave and that disciplinary action would not be taken until he returned to work. Captain Allen further stated that two of the highway patrol officers in Unicoi County had resigned their positions with the department effective January 12, 2000, and February 5, 2000, after they accepted job offers elsewhere.

TWRA

According to Mr. Fox, TWRA Assistant Director for Field Operations, sometime in July 1999, he received a telephone call from either the TBI or Division of State Audit regarding a review of the matter. Mr. Fox stated that he then requested the Region 4 Manager, Mr. Ripley, to conduct a review of the nature and extent of the involvement of TWRA Region 4 (which includes Unicoi County) with the THP account. Mr. Fox stated that through interviews with Region 4 staff, it was his understanding that the City of Erwin donated the equipment to TWRA with the stipulation that the equipment be used only by TWRA officers assigned to the area. He stated that following the internal review (in August 1999), he immediately contacted all regional managers and law enforcement supervisors by telephone and instructed them not to participate in such accounts because of the appearance of impropriety.

II. IMPROPER RESOLUTION OF THP CITATIONS

Review of Account Payments

As stated above, our review of City of Erwin “Year-to-Date Account Analysis” reports for the period July 1994 through August 9, 1999, disclosed that 1,461 deposits totaling \$112,607.14 represented court-directed payments in resolution of minor traffic violations and payments arranged through plea agreements in resolution of more serious violations. These reports list the name of the person paying money to the account or “THP” (for consolidated deposits) and the amount of each deposit. Individually listed payments to the THP account ranged from \$5 to \$1,700. The average deposit was \$77.08.

Because of the large number of deposits, we did not review court documents to determine the specific nature of each violation. However, Erwin city officials and highway patrol personnel in Unicoi County acknowledged the primary source of revenue for the account consisted of such payments. Our review of account records disclosed that an individual’s name or “THP” was recorded for each deposit. Since some of the payments were consolidated into one deposit (as indicated by the “THP” designation), we could not determine the exact number of individuals who paid money to the THP account based on the “Year-to-Date Account Analysis” reports alone. Because of the large number of deposits and the amount of time that had expired between the first deposit (July 1994) to the last deposit (August 1999), we did not analyze receipts written for the payments to determine the exact number of individuals who paid money to the THP account.

Court Proceedings

Court-Directed Payments for Minor Traffic Violations

According to interviews with the highway patrol officers in Unicoi County and confirmed by Mr. Garland, representatives of the district attorney’s office were typically not present in general sessions court on Fridays because that day was set aside to resolve minor traffic citations. The highway patrol officers stated that before any cases were heard on Friday, General Sessions Judge Shults would announce three options available to the offenders: 1) plead guilty and pay the fine and court costs; 2) plead innocent and have their case tried in court; or 3) show compliance with the citation, make a \$25 payment to the THP account, and have the citation dismissed. The latter option allowed a defendant to make a payment significantly less than the amount of the fine (ranging from \$110 to \$155) and avoid a blemished driving record.

In a July 12, 1999, interview conducted by investigators, Judge Shults confirmed that he presented the three options listed above to defendants charged with minor traffic violations. He stated that he never had anyone refuse to make the payment. Judge Shults said that if the defendant had refused to pay money to the THP account, he could have ordered the defendant to pay the fine or he could have simply dismissed the case. According to Judge Shults, if the THP account did not exist, he would have probably dismissed the citation upon proof of compliance

(such as presentation of a valid driver's license, proof of tag renewal, or other relevant documents).

If minor traffic violations would have typically been dismissed upon proof of compliance without the existence of this payment option, as stated by Judge Shults, it would appear unnecessary for individuals to contribute any money as part of their case resolution. Judge Shults stated that the added option of collecting revenue through court-directed payments (for minor traffic violations) and court-approved payments (arranged by a district attorney general representative or a highway patrol officer for more serious offenses) provided additional funds to local law enforcement agencies to buy needed mobile video cameras. However, based on presently available information (as discussed below), the sources of these additional funds were at the improper expense of area citizens because no legal authority for the practice exists.

Regardless of how the officials involved in this situation might care to characterize the improper practices, citizens facing a judge do not have the benefit of knowing the ramifications of not making a payment in lieu of court fines and that they really are free to decline to make a "contribution" without adverse consequences. At least in the minds of citizens affected by this practice (as noted in the letter of complaint written by one citizen, see Exhibit F), the perception of highway patrol officers issuing padded tickets, running speed traps, and participating in unfair ticketing practices is raised as a result of such improper practices.

Payments Arranged Through Plea Agreements

Judge Shults stated that he had allowed reductions in drug cases, driving under the influence cases, and other more serious driving violations based on plea agreements that included a payment to the fund. Judge Shults said that he approved plea agreements containing a provision to pay money to the THP account because the arrangement was acceptable to both the prosecutor (the highway patrol officer or the district attorney's office representative) and the defense.

As stated above, Mr. Garland said that there had to be some question of impairment or weakness in the case (no breath or blood alcohol test taken or a question concerning an officer's actions in relation to stop, frisk, or search procedures) before he would consider amending charges with a plea agreement. He said that in those cases he would tell the defendant that he would amend the charges but that he expected a payment to the THP account as part of the plea agreement.

Our interviews with the highway patrol officers in Unicoi County confirmed that they negotiated plea agreements for minor traffic violations, driving under the influence violations, and possession of illegal drug violations on days in which a representative of the district attorney's office was not present in the courtroom. According to Mr. Garland, it was his understanding that highway patrol officers only negotiated traffic citation cases without consulting the district attorney's office. He stated that he was unaware of the officers negotiating DUI and possession of illegal drug cases without discussing the cases with the district attorney's office. However, Mr. Garland said that if a discussion had occurred between his office and the officers, the outcome of negotiating their own cases would probably have been the same. He

stated, “If the troopers were doing it (negotiating their own cases), it may not have been with our express approval, but probably with tacit consent.”

A review of general sessions court cases by investigators disclosed that plea agreements resulted in payments to the THP account ranging from \$25 to \$1,700. Documentation noted 23 plea agreements were entered with defendants paying \$500 or more to the account. (See Exhibit C.) Based on information developed by the investigators, an assistant district attorney negotiated all six agreements of \$1,000 or more.

Interviews conducted by the investigators with several of the defendants who paid \$500 or more to the account disclosed that most were represented by a defense attorney who negotiated the plea agreement for them. Those who were not represented by a defense attorney said they approached the officer with the idea of making a payment to the account. No one said that the officer approached them with the idea of making a payment to the account, and no one stated they felt forced by the officer to make the payment.

Roadside Solicitations

A review conducted by investigators of in-car videotapes showing the activity of the Unicoi County highway patrol officers did not show any roadside solicitations for the THP account. Investigators reviewed in-car videotapes of two of the four highway patrol officers assigned to Unicoi County. One of the officers did not have an in-car video system installed in his vehicle and another officer did not use the audio option for his recordings. The review determined that the two other officers told violators that the judge had been reducing the fine to \$25 upon compliance with the citation. The terms “payment” or “contribution” were not mentioned on the videotapes. Three of the four highway patrol officers assigned to Unicoi County acknowledged that in instances in which out-of-town motorists were issued minor traffic citations, they advised the violator to mail \$25 and proof of compliance to the city recorder’s office to resolve the matter.

The Diversion of City, County, and State Funds

The activities described above diverted city, county, and state fine and court-cost revenue to the unauthorized THP account. Fines and court costs associated with the types of violations discussed above (non-moving and moving traffic violations, driving under the influence, and possession of an illegal drug) are divided among the city, county, and state according to the type of offense. For example, in Unicoi County, a traffic citation for improper passing carries a fine of \$110. Proceeds from the collection of this fine are remitted to the county clerk (\$27), the county litigation account (\$34.50), the state litigation account (\$28.50), the Department of Safety (\$5), and the Department of Revenue (\$15). Thus, the state receives \$48.50 and the county receives \$61.50 from this imposed fine. By dismissing an improper passing traffic citation for a \$25 payment to the THP account, state and county designated revenue was not received. Similarly, citations written by city police officers for certain offenses (such as driving under the influence and public intoxication) would result in a diversion of fees due to the city (\$15 for each issuance).

The loss of revenue to city, county, and state entities as a result of accepting these payments is not easily calculated because the general sessions judges have the discretion to order payment of the fine or dismiss the citation with no assessed fine. Moreover, the judge's discretion extends to setting the amount of a fine, within specified statutory limits. Unless each offender who made a payment to the THP account in lieu of paying fines and court costs is brought into court to properly settle his or her citation without the payment option, we cannot determine the amount of lost revenue to the state. It should be noted that the rule of Double Jeopardy would prevent reassessment of the violations.

As stated above, our review of account documentation disclosed that 1,461 deposits to the THP account represented court-directed payments in resolution of minor traffic violations and payments arranged through plea agreements in resolution of more serious violations (driving under the influence, reckless driving, and possession of illegal drugs). However, if each of these citations would have resulted in a judgment requiring the payment of a fine totaling \$110 (the amount designated for minor traffic violations), the amount of loss to county and state entities is estimated to be \$160,710 (1,461 x \$110).

Propriety of Resolving Law Enforcement Citations Through Court-Directed Payments

In a February 2, 1999, letter, the newly elected State Attorney General, Paul Summers, responded to General Crumley's September 28, 1998, request for an opinion regarding the propriety of court imposed payments to an equipment account to resolve traffic citations. The letter cited Opinion Number U91-80 and stated that "it is the opinion of this Office that the General Sessions Courts have no authority to require a defendant to make 'payments' of the type described in your letter in connection with the disposition of criminal charges." This matter had already been addressed by the Office of the State Attorney General eight years earlier.

Opinion Number U91-80, issued by the Office of the State Attorney General on May 29, 1991, addresses the propriety of resolving law enforcement citations through court-directed payments. According to the Opinion, a general sessions judge has no authority to order a defendant to make a contribution of money to a designated entity. The Opinion states that the Criminal Sentencing Reform Act of 1989 (*Tennessee Code Annotated*, Section 40-35-101) does not confer upon a general sessions judge the power to order a contribution to a designated group. The Opinion further states that the power to authorize charitable payments belongs with the county's legislative body rather than the general sessions judge.

Based on presently available information, a judge that requests a defendant to make a contribution to a designated entity may be in violation of the code of ethical standards for Tennessee's judges as stated in the Rules of the Supreme Court.

The Court of the Judiciary is the body that determines whether a judge has violated the code. The code is designed to provide guidance to judges and to provide structure for regulating conduct through disciplinary agencies, not to impose civil or criminal liability (Preamble to Rule 10, Rules of the Supreme Court). The Court of the Judiciary determines whether disciplinary

action is appropriate and the degree of discipline it will impose, through a reasonable and reasoned application of the code. Discipline depends upon such factors as the seriousness of the transgression, whether there is a pattern of improper behavior, and the effect of the improper activity on others or the judicial system.

On May 23, 2000, we submitted our findings to the Court of the Judiciary General Counsel.

On June 20, 2000, the Office of the State Attorney General issued Opinion Number 00-114, addressing whether a city judge has jurisdiction to dispose of criminal charges in exchange for voluntary contributions. This opinion is consistent with the related opinion issued nine years earlier. According to this opinion, the Tennessee Code Annotated, Section 6-21-502(a) does not extend to a city judge the power to collect a voluntary contribution of any kind in exchange for dismissal of a pending charge and such activity would be beyond the statutory authority and jurisdiction of a city court judge and illegal.

Referral of the Matter

Investigators referred this matter to the Office of the District Attorney General, First Judicial District, in December 1999. According to a March 18, 2000, press release issued by the Office of the District Attorney General, First Judicial District, General Crumley decided not to pursue criminal prosecution against anyone associated with the matter because of a lack of criminal intent and the perpetuation of the practice by the former district attorney general.

III. REVIEW OF THE UNICOI COUNTY DRIVING SCHOOL

On August 24, 1999 (approximately 6 weeks after we initiated our review of the THP account), we also received information from a Unicoi County resident regarding payments he and others had made to the THP account and to CCS/MidSouth Court Services (hereinafter referred to as MidSouth). MidSouth is a private for-profit organization that provides defensive driving instruction and probation monitoring services for individuals referred by the courts. The resident explained that he and two of his friends had either made payments to the THP account, paid defensive driving school fees, or paid probation service fees during the past year. He stated that all payments and fees were paid to the same organization (MidSouth) and that in light of local newspaper articles questioning the propriety of the THP account, he considered it unusual that a private organization was collecting the payments.

Interview With Mr. Reve McDavid, Owner of MidSouth

Organization and Function of MidSouth

In an October 7, 1999, interview, Mr. Reve McDavid, owner of MidSouth, stated that his organization is comprised of three different companies. He explained that 1) the driving school was established as a for-profit company to provide driving school instruction as ordered by the

court; 2) the county probation service was established as a for-profit company to provide probation monitoring services as ordered by the court; and 3) the comprehensive community services program was established as a nonprofit organization to provide various community based counseling services. Mr. McDavid stated that fees for driving school instruction and probation services were set by the state, collected by his staff in the courtroom, and retained entirely by MidSouth. He said that once compliance with the driving school or probation order was met, MidSouth informed the court for appropriate resolution of the matter.

Collection of Payments to the THP Equipment Fund

Mr. McDavid stated that prior to July 1999, he was unaware that his staff, Ms. Stephanie Varner and Ms. Lisa Byrd, were collecting money other than MidSouth driving school and probation service fees. He said that sometime in July 1999 Ms. Varner told him that she and Ms. Byrd had been collecting money for the THP equipment fund as a favor to the court at the request of the Unicoi County general sessions judge. He explained that his understanding of the practice was that Ms. Varner and Ms. Byrd collected court-directed payments in lieu of fines in the courtroom, wrote receipts for the money, and provided the money to a THP officer for deposit with the city recorder's office. Mr. McDavid said that once he became aware of the practice, he directed his staff to stop collecting other court-directed payments and only collect fees associated with services provided by MidSouth.

Approval of the Driving School by the Department of Safety

Mr. McDavid told us that the Department of Safety approved his driving school, and the American Automobile Association (AAA) certified the school's curriculum. He provided us a copy of a September 29, 1998, letter from Department of Safety Commissioner Mike Greene confirming that the driving school application submitted by MidSouth was evaluated by Lt. Don Green, Department of Safety Chief Hearing Officer, approved by the department for driving school instruction, and met the criteria of *Tennessee Code Annotated*, Section 55-10-301. (See Exhibit J.) This section requires that a driving school 1) be approved by the department of safety, and 2) if fees are assessed, be conducted by a nonprofit organization.

Mr. McDavid acknowledged that the driving school assessed a \$50 per attendee fee and operated for profit, contrary to the requirements of *Tennessee Code Annotated*, Section 55-10-301. However, he stated that he was not aware of the requirement. He said that the application he received from the department, completed, and later submitted to the department for approval did not request information relative to the organizational structure of the company. He further stated that the department approved his application. Mr. McDavid said that he would structure his driving school as a nonprofit organization if required by the Department of Safety but questioned why the department had not made this requirement known during his application process.

Interview With Lieutenant Billy Mason, Department of Safety Education Supervisor

During our October 27, 1999, interview, Lieutenant Billy Mason, Department of Safety Education Supervisor, stated that MidSouth had not been approved to conduct driving school instruction prescribed by *Tennessee Code Annotated*, Section 55-10-301. Lieutenant Mason explained that the Department of Safety coordinates three different driving safety programs : 1) a general education class taught by department staff to high schools, truck driving schools, and other organizations as requested; 2) a defensive driving class taught by department-approved driving schools to individuals ordered by the department as part of the reduction of excessive points on their driving records; and 3) a driving safety class taught by department-approved driving schools to individuals ordered by a county or municipal judge (pursuant to *Tennessee Code Annotated*, Section 55-10-301) as part of the resolution of a traffic citation. Thus, the department approves private driving schools to provide driving instruction in two situations: 1) department-ordered and 2) court-ordered pursuant to *Tennessee Code Annotated*, Section 55-10-301. Lieutenant Mason stated that he approves all court-ordered driving safety programs and that Lieutenant Don Green, Department of Safety Chief Hearing Officer, approves all department-ordered defensive driving classes.

According to Lieutenant Mason, the September 29, 1998, approval letter sent to MidSouth confirming that the driving school application submitted by the organization was evaluated by Lt. Green, approved by the department for driving school instruction, and met the criteria of *Tennessee Code Annotated*, Section 55-10-301, was a mistake. He stated that while Lieutenant Green could and apparently did approve MidSouth to conduct department-ordered defensive driving school instruction, the *Tennessee Code Annotated* citation (55-10-301) did not relate to the driving school program administered by Lieutenant Green which must have been included in error. Lieutenant Mason stated that he had no record of ever approving MidSouth to conduct court-ordered driving safety classes and never received a request for program approval from the county. Lieutenant Green acknowledged that the citation of *Tennessee Code Annotated*, Section 55-10-301, was included in all approval letters sent by his office in error.

Lieutenant Mason stated that when a judge, law enforcement official, county official, or municipal official requests approval to conduct the court-ordered driving safety class prescribed by *Tennessee Code Annotated*, Section 55-10-301, he relies on the requesting official to ensure that the driving program complies with the law. He stated that he simply approves the request by sending the requesting entity an approval letter. Lieutenant Mason said that he does not verify that the county/municipality authoritative body approved the program and that he does not inform the requesting entity that driving instruction fees can only be charged under the program by a nonprofit organization.

Thus, driving schools teaching individuals ordered by the court to attend as part of the resolution of traffic citations throughout the state could be operating in violation of *Tennessee Code Annotated*, Section 55-10-301, because of the 1) improper citation by Lieutenant Green of *Tennessee Code Annotated*, Section 55-10-301, in the approval letter for the department-ordered defensive driving school programs; 2) Lieutenant Mason's failure to ensure proper approval by the county/municipality authoritative body for the court-ordered driving safety programs; and 3)

Lieutenant Mason's failure to inform entities requesting approval to conduct the court-ordered driving safety program that instruction fees can only be charged by a nonprofit organization.

RECOMMENDATIONS

Our review of the matters discussed above resulted in the following recommendations:

1. Management of the Department of Safety and the Tennessee Wildlife Resources Agency should continue to monitor the implementation of corrective actions to ensure that unauthorized accounts are not established by the various sections and divisions of the department/agency in violation of state law, state purchasing policies and procedures, and sound internal control structure. All unauthorized accounts should be immediately closed and any funds remaining in the accounts should be appropriately deposited through the state treasury. The discovery of other unauthorized accounts should be immediately communicated to the Comptroller of the Treasury.
2. Management of the Department of Safety and the Tennessee Wildlife Resources Agency should ensure that all purchases are made in compliance with state purchasing policies and procedures and are appropriately included in inventory listings and tagged as state equipment, when applicable. At the time these purchases were made, state purchasing procedures required all equipment items costing \$1,000 or more to be tagged as state property. Current state purchasing policies and procedures require all equipment items costing \$5,000 or more to be tagged as state property. The Department of Safety and the Tennessee Wildlife Resources Agency should also comply with the Department of General Services' surplus property procedures for the appropriate disposal of unusable equipment items.
3. Management of the Department of Safety and the Tennessee Wildlife Resources Agency should consider collecting all equipment items purchased through the unauthorized accounts (including items currently maintained in the county sheriff's office) and allocate the items based on authorized need or dispose of the items through surplus property. All applicable items should be appropriately inventoried and tagged as state property.
4. Management of the Department of Safety and the Tennessee Wildlife Resources Agency should consider appropriate disciplinary action relative to employees who were involved in the establishment and use the unauthorized accounts.
5. The Administrative Office of the Courts should formally communicate to all general sessions judges throughout the state the prohibition against establishing unauthorized state accounts and allowing individuals cited with law violations to make payments in lieu of court-imposed fines in the resolution of such citations.

6. The Court of the Judiciary should consider appropriate disciplinary action against the general sessions judges who participated in the practice.
7. The Executive Director of the District Attorneys General Conference should formally communicate to all 30 district attorneys general throughout the state the prohibition against establishing unauthorized state accounts and allowing individuals cited with law violations to make payments in lieu of court-imposed fines in the resolution of such citations.
8. The Department of Safety should develop policies and procedures to ensure driving school programs prescribed by *Tennessee Code Annotated*, Section 55-10-301, are appropriately approved by the department. These procedures should include 1) an application process requiring the requesting entity to provide driving course curriculum information and other relevant information, 2) a document for the county or city authority to sign signifying approval of the course, and 3) a requirement that driving schools provide documentation to the department of nonprofit status (if fees are to be assessed).



STATE OF TENNESSEE
DEPARTMENT OF SAFETY
1150 FOSTER AVENUE
NASHVILLE, TENNESSEE 37249-1000

MEMORANDUM

TO: All Section Heads and District Captains
FROM: Bill Hedge, Fiscal Director *Bill Hedge*
DATE: May 26, 1993
SUBJECT: Procedures for Acceptances of Gifts, Donations,
etc. to the State

T.C.A. 12-1-101 states that the "governor is authorized to accept, on behalf of the State, gifts, property, upon such terms and conditions and for such uses and purposes agreed upon by the grantor or donor thereof and the governor." Whenever gifts or donated funds are given to the Department of Safety, such funds must be forwarded immediately to the Cashiers' Section of the Department of Safety, 1150 Foster Avenue, Nashville, TN 37210 along with a memorandum stating the source of such donation, and any correspondence from the donor. Such donation of gift will be acknowledged with written correspondence by the Commissioner or his designated representative. Such funds will be deposited to the appropriate state treasury account by the Cashiers' Office. In accordance with the stipulations of the gift or donation, the Procurement Section of the Department of Safety will take appropriate steps to procure such goods or services according to guidelines of the State Division of Purchasing and/or any other applicable state guideline or law. Under no circumstances may an individual accept such donation and expend such funds without adhering to the above mentioned guidelines.

If you have any questions on this matter, feel free to contact me.

BH:jb

c: Commissioner Robert Lawson
Deputy Commissioner Fred Phillips

EXHIBIT B

SUMMARY OF DEPOSITS INTO THE UNICOI COUNTY THP ACCOUNT
THROUGH COURT-DIRECTED PAYMENTS FOR MINOR TRAFFIC VIOLATIONS
AND COURT-APPROVED PAYMENTS ARRANGED THROUGH PLEA AGREEMENTS

PERIOD	NUMBER OF DEPOSITS (1)	SMALLEST DEPOSIT	LARGEST DEPOSIT	AVERAGE DEPOSIT	TOTAL DEPOSITS
07/01/94 through 06/30/95	324	\$5.00	\$1,700.00 (2)	\$55.19	\$17,882.00
07/01/95 through 06/30/96	403	\$5.00	\$1,150.00 (2)	\$52.58	\$21,191.64
07/01/96 through 06/30/97	561	\$5.00	\$1,000.00 (2)	\$47.77	\$26,797.00
07/01/97 through 06/30/98	90	\$10.00	\$1,975.00 (3)	\$254.39	\$22,895.00
07/01/98 through 06/30/99	77	\$10.00	\$2,350.00 (4)	\$293.98	\$22,636.50
07/01/99 through 07/23/99	6	\$35.00	\$470.00 (5)	\$200.83	\$1,205.00
TOTALS	1,461			\$77.08	\$112,607.14

NOTES:

- (1) Based on presently available information, these deposits represent court-directed payments in resolution of minor traffic violations and court-approved payments arranged through plea agreements in resolution of more serious violations (driving under the influence of alcohol, reckless driving, and possession of illegal drugs). Because of the large number of deposits, we did not review court documents to determine the specific nature of each violation. However, Erwin City officials and highway patrol personnel in Unicoi County acknowledged the primary revenue source for the account consisted of such payments. Our review of account records maintained by the Erwin City Recorder, Ms. Doris Hensley, disclosed that an individual's name or "THP" was recorded for each deposit. Since some of the payments were consolidated into one deposit (as indicated by the "THP" designation), we could not determine the exact number of individuals who paid money to the THP account.
- (2) This deposit represents a payment made by one person.
- (3) This deposit represents payments made by more than one person. The largest payment included in this deposit by one person totaled \$500.
- (4) This deposit represents payments made by more than one person. The largest payment included in this deposit by one person totaled \$100.
- (5) This deposit represents payments made by more than one person. The largest payment included in this deposit by one person totaled \$50.

SOURCE:

City of Erwin "Year-to-Date Account Analysis" reports for the period July 1994 through August 1999.

EXHIBIT C

SUMMARY OF PAYMENTS OVER \$500 MADE BY DEFENDANTS THROUGH COURT-APPROVED PLEA AGREEMENTS

#	DATE	ORIGINAL CHARGE	AMENDED CHARGE	SENTENCE	AMOUNT OF PAYMENT
				Dismissed on compliance.	\$500.00
1	03/06/95	Violation of restricted driver's license	Not Listed	Not listed.	\$500.00
2	03/14/95	Not listed	Not Listed	Dismissed on compliance.	\$500.00
3	06/22/95	1) Expired license, 2) registration violation	Not listed	\$250 fine on guilty plea. 11 mos. 29 days all suspended but 30 days at 100%. Probation for 11 mos. 29 days effective upon release.	\$1,700.00
4	06/30/95	Possession of schedule 1 drugs for resale	Simple Possession of Schedule 1	\$600 fine and costs, 1 mos. 29 days all suspended but 50 days can receive 28 days in-patient credit if treatment completed.	\$500.00
5	03/20/96	1) DUI-2nd offense, 2) driving on revoked-2nd offense, 3) child endangerment, 4) registration law violation	No reduction noted	Probation to Crossroads.	\$700.00
6	03/25/96	1) DU, 2) child restraint violation, 3) seatbelt violation	Unclear on Judgment.	Donation only.	\$500.00
7	04/30/96	1) DU-4th offense, 2) Implied consent violation	Dismissed	\$350 fine and cost on a guilty plea to DUI-1st offense. 11 mos. 29 days all suspended but for 48 hours. Probation to CCS. Note: \$1,000 to THP fund is "in lieu of violation of probation."	\$1,200.00
8	05/24/96	1) DU-2nd offense, 2) restricted license violation	1) DUI-1st offense; 2) No reduction noted	Suspended. 1 year probation. 40 hours of community service.	\$1,000.00
9	09/10/96	1) Resisting arrest, 2) felony evading arrest, of drug paraphernalia.	No reduction noted	Guilty to misdemeanor-Evading police. All time suspended.	\$500.00
10	09/24/96	Eluding police	No reduction noted	\$25 fine and costs on a guilty plea.	\$500.00
11	05/15/97	1) Hunting w/o license, 2) unauthorized use of motor vehicle,	Unauthorized use vehicle	Driving privileges suspended for 1 year. \$350 fine on guilty plea. 11 mos. 29 days suspended but 48 hours. Probation to CCS. DUI school.	\$1,000.00
12	08/01/97	DUI-3rd offense	DUI-1st offense	Disposition not noted	\$500.00
13	02/13/98	Driving 78 mph in a 40 mph zone	Driving 49 mph in a 40 mph zone	Fined \$50 and costs. 11 mos. 29 days all suspended. Probation to CCS.	\$500.00
14	06/19/98	Possession of less than 1/2 ounce of marijuana	No reduction noted	Fined \$50 and costs. 11 mos. 29 days all suspended. Probation to CCS.	\$500.00
15	06/19/98	Possession of less than 1/2 ounce of marijuana	No reduction noted	Fined \$50 and costs 11 mos. 29 days all suspended but time served. Probation to CCS.	\$600.00
16	06/19/98	Possession of schedule IV substance	No reduction noted	Driving privileges suspended for 3 years. \$1,100 fine on guilty plea. 11 mos. 29 days all suspended but 120 days. Probation to CCS.	\$500.00
17	09/25/98	DU-10th offense	DUI-5th offense	Not Listed.	\$500.00
18	02/03/99	Not listed	Not listed	Attend defensive driving school.	\$1,000.00
19	04/23/99	Driving 90 mph in a 55 mph zone	Driving 62 mph in a 55 mph zone	Reduced to 74 mph in 65 mph zone. \$500 to THP Camera Fund.	\$500.00
20	Not legible	Unclear on traffic docket.	74 mph in a 65 mph zone	Disposition is unclear on the Judgment.	\$225.00
21	Not legible	Driving 65 mph in a 30 mph zone	No reduction noted	6 mos. probation.	\$500.00
22	Not legible	1) Possession of schedule IV drug for resale, 2) DUI	Simple Possession (DUI not indicated)	1) \$250 fine. 11 mos. 29 days all suspended on payment of fines and costs. Probation to CCS. 2) \$50 fine. 6 mos. suspended.	\$1,150.00
23	Not legible	1) Possession of schedule IV for resale, 2) possession of firearm on a Wildlife Management Area	1) Simple possession, 2) No reduction noted		
					\$16,776.00

Source: From summary of investigators' review of court documents.

EXHIBIT D

SUMMARY OF PURCHASED ITEMS THAT COULD NOT BE LOCATED
DURING OUR SEPTEMBER 14, 1999, INVENTORY

#	DATE OF PURCHASE	VENDOR	PURCHASE DESCRIPTION	PURCHASE AMOUNT	LOSS AMOUNT	EXPLANATION
			Bus lights	\$548.96 (1)	\$548.96	
1	02/02/95	Bluf City	1 Alphacam 212 (4048-0595/4050-0595)	\$4,497.54 (1)	\$4,497.54	Broken/Thrown away
2	05/26/95	Alpha Controls	1 3 Deck Vertical Stacking System	\$98.99 (3)	\$99.99	
3	01/09/96	Galls, Inc.	1 Holster, Fanny pack	\$37.99 (1)	\$37.99	
4	01/09/96	Galls, Inc.	1 Handcuff Case	\$27.99 (1)	\$27.99	
5	01/09/96	Galls, Inc.	Sharp View Cam VLE33 with bag and 2-hour battery	\$679.97 (1)	\$679.97	
6	02/13/96	Rex TV & Appliance	15 Microphone, AZDEN EK503	\$300.00 (2)	\$200.00	Located 5 of 15
7	04/11/96	Kustom Signals, Inc.	3 Pouch Mic-Transmitter	\$75.00 (1)	\$75.00	
8	04/11/96	Kustom Signals, Inc.	0 Camera Strap	\$3.00 (1)	\$0.00	
9	04/22/96	Abe's of Maine	0 Camera, Ricoh RZ-770 35-70 Zoom	\$1,399.90 (2)	\$1,259.91	Located 1 of 10
10	04/22/96	Abe's of Maine	0 Camera Case	\$299.90 (2)	\$239.82	Located 2 of 10
11	04/22/96	Abe's of Maine	0 Camera Case	\$29.99 (1)	\$29.99	
12	04/22/96	Abe's of Maine	1 Camera Case	\$103.82 (3)	\$103.82	No longer used/Gave away
13	04/22/96	Kustom Signals, Inc.	4 Pouch Mic-transmitter	\$29.97 (1)	\$29.97	
14	11/26/96	Galls, Inc.	3 Signal Unit Bracket	\$33.81 (1)	\$33.81	
15	11/26/96	Galls, Inc.	1 Red Kap Coveralls	\$449.97 (2)	\$149.99	Located 2 of 3
16	11/26/96	Galls, Inc.	3 6 Lamp Signal Master Head	\$89.97 (2)	\$29.99	Located 2 of 3
17	11/26/96	Galls, Inc.	3 Signal Master Mount	\$28.16 (1)	\$28.16	
18	11/26/96	Galls, Inc.	1 Red Kap Coveralls	\$404.97 (1)	\$404.97	
19	11/26/96	Galls, Inc.	3 6 Lamp Signal Master	\$22.99 (1)	\$22.99	
20	01/14/97	Galls, Inc.	1 Patrolman Glove - MD	\$79.99 (1)	\$79.99	
21	01/14/97	Galls, Inc.	1 Waterproof Magnum 8 medium	\$13.99 (3)	\$13.99	Lost
22	01/14/97	Galls, Inc.	1 Double Leather Glove Carrier	\$1,000.00 (3)	\$1,000.00	Traded/No documentation
23	02/11/97	Merle Wilson's Garage	1 Packard Ball Computer, Monitor, Printer, Table	\$79.00 (1)	\$79.00	
24	07/29/97	Caere Corporation	1 Omniform 2.01 WIN 3.1/WIN 95	\$129.00 (1)	\$129.00	
25	07/29/97	Caere Corporation	1 Omnipage Pro 7.0 WIN 95 CD	\$3.98 (1)	\$3.98	
26	08/26/97	Galls, Inc.	2 Rubber Switch Covers	\$32.99 (3)	\$32.99	Broken/Thrown Away
27	09/22/97	Sam's Club	1 6' Table	\$140.00 (1)	\$140.00	
28	11/10/97	Alpha Controls	10 Transmitters	\$19.99 (1)	\$19.99	
29	12/12/97	Office Max	1 Swingarr Desk L	\$349.99 (3)	\$349.99	Broken/Thrown Away
30	12/29/97	A-1 Telecom	1 9000XLT Scanner, Base, 500CH/25MHZ	\$4.95 (3)	\$4.95	Broken/Thrown Away
31	12/29/97	A-1 Telecom	1 Radar Power Cord	\$34.99 (1)	\$34.99	
32	12/31/97	Rex TV & Appliance	1 "Radio" or "Bag"	\$200.00 (1)	\$200.00	
33	02/06/98	Alpha Controls	10 Azden Right Angle Microphone	\$79.99 (1)	\$79.99	
34	02/06/98	Radio Shack	Flat PH w/led spk	\$299.00 (1)	\$299.00	
35	03/23/98	CDW Computer Centers, Inc.	1 Printer, SYQuest SX Jet	\$2.69 (1)	\$2.69	
36	11/09/98	Galls, Inc.	1 Badge	\$22.99 (1)	\$22.99	
37	11/23/98	Galls, Inc.	1 Ultra Duty Belt	\$150.00 (2)	\$30.00	Located 4 of 5
38	12/11/98	Nahoney's	5 51-M 9X20 DLX Stuff Sack	\$23.99 (1)	\$23.99	
39	03/08/99	Galls, Inc.	1 Double Mag Stacked Case	\$7.96 (1)	\$7.96	
40	03/08/99	Galls, Inc.	4 Rubber Switch Covers			
TOTALS				\$11,836.38	\$11,056.45	

34

NOTES

- 1 The item could not be located. Unicol County Highway patrol officers could not explain the disposition of this item.
- 2 While some of the items could be located, some items could not be located.
- 3 The item was either lost, destroyed, or no longer needed and given away.

EXHIBIT E

SUMMARY OF PARTICULARLY QUESTIONABLE PURCHASES

#	CHECK DATE	VENDOR	PURCHASE DESCRIPTION	PURCHASE AMOUNT
1	02/11/97	Dry Creek Woodworking	Glass, Matting, Labor	\$125.21
2	11/10/97	Happy Hours Clocks	1 Action Hourly Train Clock	\$59.95
3	12/12/97	Patrick Tanner	4 Plaques	\$99.60
4	12/19/97	Dry Creek Woodworking	2 Framing Materials and Labor	\$103.15
5	12/23/97	Shari's Florist	Christmas Arrangement for Stephanie Varnes	\$75.00
6	08/12/98	Tammy Edwards	1 Vacuum cleaner from Sears	\$433.99
7	11/23/98	Family Car Care	2 Wash and Wax THP cars	\$70.00
8	12/16/98	Plant Place & Florist	Potted Plant for Lieutenant Hampton	\$48.50
9	01/11/99	Family Car Care	Car Wash - Trooper Boone	\$35.00
10	04/12/99	Lady Devil's Diamond Club	Advertising in Softball Program	\$34.00
11	06/28/99	Erwin Paint and Body	Repair to THP vehicle # 5567	\$591.42
			TOTAL	\$1,675.82

35

Source: City of Erwin "Year-to-Date Account Analysis" reports for the period July 1994 through August 1999.

August 21, 1998

Mr. Mike Greene
Commissioner
Tennessee Department of Safety
1150 Foster Ave.
Nashville, TN 37210

Dear Mr. Greene:

If you would be so kind as to read my attached letter of complaint dated 6 July, 1998, and then the response I received from Captain Ferguson dated 29 July, I am sure you will come to the same conclusion I have about my complaint. It is my opinion that Captain Ferguson missed the point entirely about my concerns of the ticketing practices of the THP in Unicoi County.

Whether intentional or unintentional, I received a padded ticket in Unicoi County that is raising ethical questions. Contrary to Captain Ferguson's response, there is an ethics question here. Furthermore, had his investigating officer contacted me or the court, he would have had a more thorough report showing I "did" pay \$25.00 into the THP equipment fund to take off the additional 5MPII that should never have been on my ticket in the first place.

Mr. Greene, red flags went up all over the place on this ticket from the start, including the comments about snow, wet pavement, and the discretionary authority used in writing me a registration warning ticket. These issues have added fuel to my request for a review of THP ticketing practices. Whether the outcome is good...bad...or indifferent, a thorough review is warranted, particularly when reading the Captain's response.

I stand by the reasonable request for answers to the questions asked of the THP 5th District and ask your help in ensuring I receive an adequate response. Until I am satisfied the THP is not running a speed trap at the Flag Pond exit, and that it is taking steps to prevent ticketing practices like I endured, I will continue to press forward...through the legislature if necessary for answers. You know as well as I do that perception is reality, and my perception is the THP is performing outside what is reasonable enforcement, and needs additional work in the ethics arena.

Sincerely:


Keith Bartley

Attach:

November 22, 1998

Tennessee Department of Safety
Internal Affairs Division
1150 Foster Ave.
Nashville, TN 37249

Attached you will find correspondence related to a complaint I filed with the THP concerning a traffic citation I received over 8 months ago. The kinds of responses I have received from the THP tell me that you do not have a fair and adequate review process for complaints.

Bottom Line...I am requesting a complete review of the ticketing practices of the THP in Unicoi County as outlined in my 6 July letter to Capt Ferguson. I have strong suspicions that the THP has been running a speed trap and padding tickets on US 23 in Unicoi County near the Flag Pond exit, and I need an impartial review to confirm or alleviate these suspicions. There were other red flags related to my ticket which are also spelled out in my letters to Commissioner Greene and Capt Ferguson, particularly the paying into a court sponsored THP equipment fund to take the "for sure" added 5MPH off my ticket. This alone is very troubling, with ethical and civil liberty implications.

Nobody wants this issue to be over with more than me; however, I will not stand down until I am convinced the Dept. of Safety is not just going to brush off, or bury this public trust issue.

Sincerely:


Keith Bartley

Attach:

Copy of citation
July 6, 1998 letter
July 29, 1998 letter
August 21, 1998 letter
Flag Pond Exit graphic



STATE OF TENNESSEE
DEPARTMENT OF SAFETY
1150 FOSTER AVENUE
NASHVILLE, TENNESSEE 37249-1000

December 8, 1998

Mr. Keith Bartley
P. O. Box 5285
Johnson City, TN 37601

Dear Mr. Bartley:

In response to your letter to Captain Gaines Ferguson, dated July 6, 1998, requesting an investigation into the issuance of radar citations by the Tennessee Highway Patrol operating on US Highway 23 near the Flag Pond Exit has been addressed.

Captain Ferguson has given instructions to all Tennessee Highway Patrol personnel to operate radar detection in the highest posted speed limit only, on US Highway 23.

The Tennessee Highway Patrol Equipment Fund procedure has been discontinued by the court system of Carter County, Tennessee, and this procedure is being reviewed by the District Attorney's Office in Unicoi County at this time, however, you will be informed as soon as a decision is made in this matter.

The posted speed zones located on US Highway 23 and the Flag Pond Exit were established by the Tennessee Department of Transportation as safe speeds for vehicles entering and exiting the feed ramps at the Flag Pond Exit and are not being used as a "speed trap" by the Tennessee Highway Patrol.

If you need further clarification as to the posted limits, contact the Tennessee Department of Transportation in Johnson City, Tennessee, at 412/82-0651.

The Tennessee Highway Patrol Training Center conducts a five (5) hour block of instruction to all attending Tennessee Highway Patrol cadets on Ethics and this topic is also covered in our General Order Manual, which is issued to all commissioned personnel of the Tennessee Department of Safety.

While it is regrettable that you were issued a citation, it is, however, a matter of responsibility of the Tennessee Highway Patrol to enforce the traffic laws of our state to the best of their ability.

Please be assured that we are always striving to enforce the law fairly and impartially and to provide the very best service to all persons traveling in our state.

If I or my staff can be of further assistance, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard M. Pope".

Richard M. Pope, Director
Internal Affairs Division

RMP:fw

cc: Commissioner Mike Greene

TO: Sgt. Ralph Marlowe, Tennessee Highway Patrol
FROM: Tim Sain, Unicoi County Wildlife Officer
SUBJECT: Money Donated to the THP DUI Fund
DATE: March 31, 1995

In Unicoi County General Sessions Court held on March 30, 1995, I secured \$700.00 to be donated to the THP DUI Fund. This money will be donated by Jim Speropolus (\$250.00), Rick Vasvary (\$250.00), and Dale Yokley, Jr. (\$200.00). All money received was from the result of pre-trial diversion on drug charges.

Since, we (TWRA) have no account set up to accept money from this type of case, I talked with Trooper Jim Jackson to see if we could put this contribution into the THP DUI Fund. Trooper Jackson agreed and even thought that out of the kindness of his Sargent's heart that we may even be able to get some of this money back to purchase needed equipment in order to perform our job in a more professional manner.

I understand that your DUI Fund is set up through the City of Erwin and is watched over by the Chief of Police. If we could strike an agreement between all three agencies I know Victor and I would not need all money donated thru TWRA and would like to give a substantial amount to City, County, and THP.

For your information TWRA accepts money from defendants in two ways: 1) Contribution to the Non-Game Fund, which goes to Nashville and is not used for law enforcement. 2) Contribution to the Wildlife Restitution Fund, which goes to Nashville and is not used for law enforcement.



Don Sundquist
Governor

Tennessee Highway Patrol
Fifth District
P.O. Box 186
Fall Branch, Tennessee 37656
(423) 348-6144

Exhibit 1



Michael C. Gree
Commissioner

MEMORANDUM

TO: LIEUTENANT BILL HAMPTON *B.H. - RA 7-22-99 4:45 PM*
 SERGEANT CRAIG MASTERS *C.M. - RA 7-22-99 7:00 PM*
 TROOPER TIM BARNETT *T.B. - RA 7-24-99 7:45 AM*
 TROOPER TOMMY BOONE *T.B. - RA 7-22-99 7:50 PM*
 TROOPER JIM JACKSON *J.J. - RA 7-22-99 8:15 PM*

FROM: CAPTAIN DON BRADLEY *DB*
 5TH DISTRICT/FALL BRANCH, TN

DATE: JULY 22, 1999

SUBJECT: Tennessee Highway Patrol Equipment Fund

1. Effective immediately you are not to accept or allow any more monies into the Tennessee Highway Patrol Equipment Fund.
2. All Tennessee Highway Patrol Equipment Fund Receipt Books are to be turned into the Tennessee Highway Patrol Headquarters - Fall Branch Office, immediately.
3. All citations issued must be adjudicated by the Court System.
4. DO NOT allow any more expenditures from the Tennessee Highway Patrol Equipment Fund.

THIS IS EFFECTIVE IMMEDIATELY.

DB/jh



DON SUNDBQUIST
GOVERNOR

TENNESSEE
DEPARTMENT OF SAFETY
1150 FOSTER AVENUE
NASHVILLE 37249-1000

MICHAEL C. GREENE
COMMISSIONER

September 29, 1998

Midsouth Court Services
321 W Walnut Street
Johnson City TN 37604

RE: Defensive Driving Course

Dear Mr. Moore:

Your request for approval for referrals by the Department of Safety to your eight hour defensive driving course has been received and evaluated by Lt. Don Green, Chief Hearing Officer. He has found that you are certified to teach the course by the American Automobile Association (AAA) and that your program meets the criteria of T.C.A. 55-10-301.

Your program is therefore approved for referrals by the Department of Safety. The Department retains the right to monitor your program at any time in order to ensure that minimum standards are being met.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Greene".

Mike Greene
Commissioner

cc: Lt. Don Green
MG/DG/PH