



CITY OF BANEERRY

Investigative Report
December 9, 2015

Justin P. Wilson, Comptroller





**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
FINANCIAL AND COMPLIANCE INVESTIGATIONS**

Justin P. Wilson
Comptroller of the Treasury

JAMES K. POLK STATE OFFICE BUILDING, SUITE 1600
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1402
PHONE (615) 401-7907
FAX (615) 741-7667

December 9, 2015

Mayor Clint Hurley
City of Baneberry
521 Harrison Ferry Road
Baneberry, Tennessee 37890

Mayor Hurley:

We performed an investigation in the City of Baneberry at the request of the District Attorney General's Office and the Tennessee Bureau of Investigation for the period July 1, 2013, through May 31, 2015; however, we expanded our scope as necessary. A finding and recommendation, as a result of our investigation, are presented below. This finding and recommendation have been reviewed with current management, the former mayor, and the former road commissioner to provide an opportunity for their response. The city attorney and the former road commissioner's responses have been paraphrased in this report. Other management and the former mayor did not provide responses for inclusion in this report. Also, this finding and recommendation have been reviewed with the district attorney general for the Fourth Judicial District.

The City of Baneberry is located in Jefferson County. The city has three elected city commissioners of which one is the city mayor and one serves as the vice mayor. The city manager is hired by the city commissioners, and he oversees daily operations for the city.

INVESTIGATIVE FINDING

A CITY EMPLOYEE AND A FORMER CITY MAYOR USED CITY-OWNED EQUIPMENT FOR PRIVATE PURPOSES, AND A FORMER CITY MAYOR AND FORMER CITY OFFICIALS ENTERED INTO AN IMPROPER AGREEMENT

We noted the following instances where work was performed on private property using city-owned equipment, and officials entered into improper agreements. These deficiencies exist due to a lack of management oversight.

- A. A city employee used city-owned equipment for grade-work on private property. The city employee advised us that he was told by a former city official who is now deceased to perform this work. The city employee received compensation for this work from the owner of the private property. On

another occasion, the employee used city equipment for bush hogging around a pond located on the private property of another citizen. The employee advised us that he was directed by a former city mayor to perform this work; however, the former city mayor denies he directed the employee to work on private property. The employee received compensation for this work from the owner of the private property. The employee stated that he did not perform the work on private property while on the city's time; however, we are unable to determine the exact times the work on private property was performed.

- B. A former city mayor (the same mayor referred to above) advised us that he used city equipment on his personal property for tree removal. He further advised that he received permission from the current city mayor to use the city's equipment; however, the current city mayor denies he was ever asked by the former mayor to use the equipment. Additionally, the former mayor advised he had an unwritten agreement to use city equipment (bush hog and grader box) for personal use since he had donated several pieces of equipment to the city in the past. Also, the former mayor sold the city a tractor from a business he formerly owned. The city's auditors, McFarland and Gann, PC, published the following finding related to this transaction in the city's June 30, 2004, audit report:

CITY OF BANE BERRY, TENNESSEE
SCHEDULE OF FINDINGS
June 30, 2004

Findings – Compliance Issues

Finding #2004-02 – Tractor Purchase

Criteria:

Title 5, Chapter 2, Section 5 of the municipal code of the City of Baneberry, Tennessee outlines procedures to be followed regarding purchasing. Section 5-202 (General procedures) states that “competitive bids on all supplies, material, equipment, services and contracts for public improvements, except those specified elsewhere in this policy, shall be obtained, whenever practicable, and the purchase or contract awarded to the lowest responsible bidder, provided that any or all bids may be rejected as prescribed by this policy.” Section 5-204 (Conflict of interest) states that “all employees who participate in any phase of the purchasing function are to be free of interest or relationships which are actually or potentially hostile or detrimental to the best interest of Baneberry, and shall not engage in or participate in any commercial transaction involving the city, in which they have a significant interest.” Section 5-205 (Purchasing from employee) states that “it shall be the policy of the city not to purchase any goods or service from any employee or close relative of any employee without prior approval of the city manager.” Section 5-206 (Sealed bid requirements - \$5,000.00 or greater) states that “on all purchases and contracts estimated to be in excess of five thousand dollars (\$5,000.00), except as otherwise provided for in this policy, formal sealed bids shall be required to be submitted at a specified time and place to the purchasing agent. The purchasing agent shall submit the bids for award by the city commission at the next regularly scheduled commission meeting or special-called commission meeting together with the recommendation as to the lowest responsible bidder. Notice inviting bids shall be published once in a newspaper of general circulation in Jefferson County, and at least five days preceding the last day of the bids. The newspaper notice shall contain a general description of the article(s) to be purchased, shall state where the written specifications may be secured, and the time and place for opening bids. In addition to publication in a newspaper, the purchasing agent may take other actions deemed appropriate to notify all prospective bidders of the invitation to bid. This may be accomplished by delivery, verbally, by mail, or posting in a public place.”

Condition:

The City of Baneberry purchased a John Deere tractor in May of 2004 from an entity affiliated with the City’s mayor. The purchase amount was \$15,600. No bids were received on the purchase. However, city council did vote to approve the purchase with the mayor abstaining from the vote.

- C. The former chairman of the road commission (the road commission position is appointed by the mayor) advised that the former mayor had an unwritten gentlemen's agreement that he and his son could use the city's tractor and implements when needed. This tractor had been previously sold by an affiliate of the former mayor to the city. No legal contract or agreement was entered into between the former mayor and the city. Current city commissioners and former city commissioners, except for one former commissioner, were unaware of this arrangement. Section 6-56-112, *Tennessee Code Annotated*, provides that all expenditures of money made by a municipality must be made for a lawful municipal purpose. Therefore, we question the propriety of this arrangement since city equipment should not be used on private property.

RECOMMENDATION

City of Baneberry employees and officials should not use city-owned equipment for private purposes. City commissioners should take steps to determine all costs incurred from the use of the city-owned equipment for the private projects and seek reimbursement.

MANAGEMENT'S RESPONSE – CITY OF BANEERRY ATTORNEY, DOUG DRINNON, ON BEHALF OF THE MAYOR, VICE MAYOR, AND CITY COMMISSIONER

- A. There are no dates identified with respect to the events that are described in Finding A. Regardless, the current members of the Baneberry City Council (hereinafter collectively referred to as the "Current Council") had no knowledge of the events described in Finding A. until said events were brought to their attention several months ago. Moreover, as described in this finding, the city employee who performed some of the described work was allegedly instructed to do so by "a former city official" who is now deceased. Thus, this finding cannot be verified or disputed. The Current Council would also note that the finding indicates there is a dispute of fact between the former city mayor (who is living) and an employee as to whether certain work was directed by the former city mayor. Since these issues were brought to the attention of the Current Council, they have been discussed at a number of public meetings of the Current Council, and to the knowledge of the Current Council, no city-owned equipment has been used to perform work on private property. The Current Council and the city's officials and employees will insure that city-owned equipment is not used on private property. The Current Council has instructed and advised all city employees and officials that city-owned equipment will not be used on private property.
- B. There are no dates identified with respect to the events that are described in Finding B. Regardless, with respect to the allegations in the first three grammatical sentences of Finding B., the Current Council had no knowledge of said events. The current mayor denies that he was ever asked by the former mayor to use city-owned equipment and denies that he provided permission to the former mayor to use the same. The Current Council and the city's officials and employees will insure that city-owned equipment is not used on private property. The Current Council has instructed and advised all city employees and officials that city-owned equipment will not be used on private property. With respect to the allegations in the fourth and fifth grammatical sentences in Finding

B. and the June 30, 2004, finding of the city's auditors, McFarland and Gann, P.C., the Current Council would respond as follows: the events described in these sentences occurred almost 11 and one half years ago, and two members of the Current Council were not members of the 2004 City Council and were not city officials or employees at that time. Moreover, this 2004 finding by the city's auditors was published in a report, which has been public record for over 11 years. To the knowledge of the Current Council, any alleged compliance issues have been remedied and all applicable laws regarding bidding on such items are being followed. The Current Council and all city officials and employees will insure that applicable bidding procedures and laws will be followed in the future.

- C. There are no dates identified with respect to the events that are described in Finding C. Regardless, the Current Council had no knowledge of said events or the "unwritten gentlemen's agreement" described in Finding C. The Current Council and all city officials and employees will insure that city-owned equipment is not used on private property. The Current Council has instructed and advised all city employees and officials that city-owned equipment will not be used on private property.

INVESTIGATOR'S COMMENT TO MR. DRINNON'S RESPONSE

City equipment was used on private property at various times during the scope of our investigation, and based on interviews, as recently as five months ago. In addition, property owners, the city employee who performed the work, and former city officials acknowledged that city equipment had been used on private property, and provided a description of the work that was performed and the location. Therefore, the use of city-owned equipment on private property can be verified. Inconsistent and/or possibly false statements regarding who gave approval for the use of the city equipment on private property do not dispute the fact that city equipment was used on private property. The 2004 finding from the city's auditors provides an example for the "gentlemen's agreement," and a time frame for how long this improper agreement, and the former mayor's use of city equipment, may have been occurring.

MANAGEMENT'S RESPONSE – FORMER ROAD COMMISSIONER, JESS LUNSFORD

City commissioners, planning commissioners, road commissioners, and park and recreation members are unpaid volunteer positions, and we did not have any experience in city government before accepting those positions. We did not know any of the noted actions were in fact illegal; however, once it became known, we stopped the violations.

- A. The city allowed a citizen to build a house on an undeveloped lot, and the owner had to travel a short distance on an undeveloped street to reach his house. This owner improved the street with gravel at his own expense because gravel roads need to be graded periodically. The city owns a small grader so I asked the mayor if a city employee could grade the street for the owner when the employee was working in that area. I advised the mayor that the city allowed the owner to build a house there, and the owner paid the same taxes as everyone else, so the owner was entitled to some help. The mayor agreed, and until the city accepted the street, we would allow the city employee to grade the street if the property owner would pay the city employee

performing the work. This arrangement has been working great up until now. We did not know that we were not supposed to do it.

Also, our employee mowed a short distance around a pond that belongs to the golf course and abuts the property of a private citizen. This mowing took about 10 to 15 minutes to complete. Subsequently, I informed the employee that he could no longer work on any private property with city equipment, and he has not mowed the property since. The employee did not ask the private citizen for payment, and the employee did not perform the work on city time. The tractor used to do the mowing would rent for about \$200 per day so 15 minutes use would not amount to very much money.

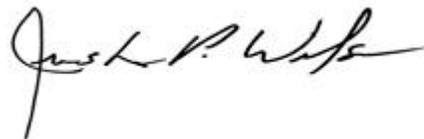
- B. The former mayor used his personal vehicles many times for the city, and the mayor never asked for reimbursement. He donated many pieces of equipment such as a bush hog, a yard box, a drag, a grader, and various other yard tools. The mayor had a gentleman's agreement to use the tractor, and I will attest to that plus it appears to me that he retained part ownership in the tractor. As far as I can tell, he only used the tractor once for two hours to remove a couple of trees from his property.
- C. I did not have anything to do with the gentlemen's agreement. That agreement was between the former mayor and the other two commissioners.

INVESTIGATOR'S COMMENT TO MR. LUNSFORD'S RESPONSE

The undeveloped street referred to above that was being graded by the city was viewed again by investigators on October 27, 2015. The street had a no trespassing sign at the beginning of the street, and a closed private gate less than one-tenth of a mile from the beginning of the street. Therefore, we question the propriety of using city-owned equipment on this street.

If you have any questions concerning the above, please contact this office.

Sincerely,



Justin P. Wilson
Comptroller of the Treasury

JPW/kbh