



## COMPTROLLER'S INVESTIGATIVE REPORT

# Overton County Board of Education

*February 25, 2020*

**Justin P. Wilson**  
*Comptroller of the Treasury*



**DIVISION OF INVESTIGATIONS**



JUSTIN P. WILSON  
*Comptroller*

JASON E. MUMPOWER  
*Deputy Comptroller*

February 25, 2020

Overton County Executive and  
and County Commissioners  
317 University Street, Suite 1  
Livingston, TN 38570

and

Overton County Director of Schools  
and School Board Members  
302 Zachary Street  
Livingston, TN 38570

Ladies and Gentlemen:

The Office of the Comptroller of the Treasury conducted an investigation of selected records of the Overton County Board of Education, and the results are presented herein.

Copies of this report are being forwarded to Governor Bill Lee, the State Attorney General, the District Attorney General of the 13<sup>th</sup> Judicial District, certain state legislators, and various other interested parties. A copy is available for public inspection in our office and may be viewed at <http://www.comptroller.tn.gov/ia/>.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin P. Wilson".

Justin P. Wilson  
Comptroller of the Treasury

JPW/MLC

# INVESTIGATIVE REPORT

## Overton County Board of Education

The Office of the Comptroller of the Treasury investigated allegations of malfeasance related to the removal of topsoil from Overton County government owned property located next to the Rickman Elementary School. This investigation was limited to selected records for the period September 1, 2018 through March 31, 2019. The results of the investigation were communicated with the Office of the District Attorney General of the 13<sup>th</sup> Judicial District.

### BACKGROUND



Rickman Elementary School (Rickman) is located in Rickman, Tennessee, and is one of five elementary schools operated by the Overton County Board of Education. On September 10, 2018 the county voted to transfer an adjoining tract of land which it owned to the Board of Education for expansion of Rickman's parking lot. That transfer was completed with the recording of the deed on December 11, 2018. During the interim between approval of the transfer and conveyance of title, a member of the Board of Education who owns and operates a landscaping business, removed and sold topsoil from the tract without authorization. **Refer to Exhibit 1.**

### RESULTS OF INVESTIGATION

- **A MEMBER OF THE OVERTON COUNTY BOARD OF EDUCATION REMOVED TOPSOIL FROM COUNTY-OWNED PROPERTY WITHOUT AUTHORIZATION**

A member of the Board of Education, who also operates a landscaping business, removed topsoil from property owned by Overton County approximately two months before the Board of Education obtained ownership of the property. His removal of the topsoil was not

**Exhibit 1** approved by Overton County or the Board of Education. Furthermore, he had the topsoil hauled to at least three individuals for whom he was performing landscape work.



*Additional Parking Lot Area*

Investigators reviewed the County Commission minutes, Board of Education minutes, county trustee receipts and other expenditures, and established a timeline for the work, the amount of revenue collected by the board member, and the expenditures for the removal of the topsoil. Investigators also interviewed two of the three individuals who purchased the topsoil.

The timeline as developed by investigators indicated that on September 10, 2018, the Overton County Commission approved a transfer of a tract of property located next to Rickman Elementary School to the Board of Education. During September and October, and before the transfer of the deed on December 11, 2018, a member of the Board of Education began removing and selling topsoil from that property. Therefore, the school board

member was removing topsoil from property the Board of Education did not own. The school board member sold the topsoil to three individuals for whom the school board member was performing private landscape work. Investigators determined that the school board member sold twenty-seven loads of topsoil for a total of \$8,100 less \$1,700 for the costs of delivering the topsoil. On December 11, 2018, the Board of Education retroactively approved the sale of the topsoil for \$300 per load plus a hauling charge of \$60 to \$70 depending on delivery location. Between December 18, 2018 and December 23, 2018, the three individuals who purchased the topsoil wrote checks to the Board of Education for the topsoil. The \$8,100 in revenue was properly remitted to the county trustee on January 8, 2019 and included in the school board's budget. On January 24, 2019, the Board of Education paid a vendor the delivery bill of \$1,700.

The table below summarizes the timeline related to the parking lot.

**Exhibit 2**

Timeline
<b>September 10, 2018:</b> The County Commission approved transferring the property.
<b>September 2018:</b> Topsoil was being sold by the school board member through word of mouth.
<b>October 2018:</b> Topsoil was being removed from the property by the school board member.
<b>December 11, 2018:</b> The Board of Education recorded the property deed.
<b>December 11, 2018:</b> The Board of Education approved the price of the topsoil.
<b>December 18, 2018 - December 23, 2018:</b> Three individuals paid for topsoil by check.
<b>January 8, 2019:</b> Revenue receipted for sale of the topsoil.
<b>January 24, 2019:</b> One check was written by the Board of Education to pay for hauling the topsoil.

The table below summarizes the revenue, expenditures, and profit from the sale of the topsoil.

**Exhibit 3**

Revenues, Expenditures, and Profit	Number	Value
Loads of topsoil sold at \$300 per load	27	\$ 8,100.00
Less \$60 per load delivered in Rickman area	19	(1,140.00)
Less \$70 per load delivered in Cookeville area	8	(560.00)
Net profit		<u>\$ 6,400.00</u>

School board officials should ensure that only work approved by the Board of Education is performed on its behalf and only on property owned by the Board.

**INTERNAL CONTROL AND COMPLIANCE DEFICIENCIES**

The investigation revealed deficiencies in internal control and compliance, some of which contributed to the investigative findings in this report. These deficiencies included:

**Deficiency 1: A school board member engaged in self-dealing by taking topsoil that was owned by the district and used it in the conduct of a landscaping business that he owned.**

School board members owe a fiduciary duty to their districts to act in the best interests of the school system in connection with the sale of property owned by the system, See *e.g.* Tenn. Code Ann. § 49-2-203(b)(10). As a fiduciary, a school board member should avoid self-dealing or acting in their own best interest rather than the district's. A school board member engaged in self-dealing and violated that duty when he took the topsoil from the tract of land that the county was transferring to the school system and used it in the conduct of his personal business activities. In taking such action without the Board's prior knowledge and consent and without providing full

disclosure of all of the facts related to the use of the topsoil, including all facts concerning the financial or economic benefits that the school board member derived from the sale, there is no way to determine if selling the topsoil for use by the school board member and for the financial benefit of a business owned by the school board member was indeed in the school system's best interest.

**Deficiency 2: A school board member violated Tenn. Code Ann. § 12-4-104 when he took and used topsoil that belonged to the school district in the conduct of personal business.**

Tennessee Code Annotated § 12-4-104 prohibits a school board member from participating in school system business transactions with entities in which that member has a controlling interest. The school board member violated that statute by voting to sell topsoil that was owned by the school system for use by a landscaping company that he owned.

**Deficiency 3: The Board violated Tenn. Code Ann. § 49-6-2007 by disposing of the topsoil without first seeking competitive bids.**

Tennessee Code Annotated § 49-6-2007 states that if a local school board wishes to sell a school system's surplus personal property, it must do so after advertisement and by competitive bids if the value of such property exceeds \$500. The purpose of the statute is to enable the school system to obtain a fair price for its surplus personal property and to avoid self-dealing. The topsoil became personal property when the school board member severed it from the real property with the intent to sell and transport it to other locations. Its fair market value exceeded \$500 and the board could only dispose of such property after advertising and publicly soliciting and obtaining competitive bids. The board did not use competitive bids to sell the topsoil but instead approved a sale price after it had been removed from its property. Because of the Board's failure to comply with the statute, there is no way to determine if the school system received a fair price for the topsoil. Moreover, the failure to do so, coupled with any personal benefits that one of the school board members derived from the transaction has at a minimum created an appearance of improper self-dealing with respect to the matter.

School officials indicated that they have corrected or intend to correct these deficiencies.

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