



JUDITH H. DUTCHER
STATE AUDITOR

STATE OF MINNESOTA OFFICE OF THE STATE AUDITOR

SUITE 400
525 PARK STREET
SAINT PAUL, MN 55103-2139

(651) 296-2551 (Voice)
(651) 296-4755 (Fax)
stateauditor@osa.state.mn.us (E-mail)
1-800-627-3529 (Relay Service)

PUBLIC RELEASE OF INVESTIGATIVE REPORT CITY OF FLORENCE OCTOBER 25, 2002

I. INTRODUCTION

The Office of the State Auditor (hereinafter "OSA") received a notification dated September 9, 2002, in compliance with Minn. Stat. § 609.456, informing the OSA that the City of Florence's (hereinafter "City") former Clerk/Treasurer, Ms. Diane Wixon, may have misappropriated up to \$13,000 in City funds from December 14, 1998 through January 10, 2000. The OSA initiated an investigation into the matter.

The City informed the OSA that Ms. Wixon was the City's Clerk/Treasurer from April 1, 1996 through December 31, 2001. The City's current Clerk/Treasurer informed the OSA that Ms. Wixon was authorized to receive \$100.00 per month from the City for her services as the City's Clerk/Treasurer, as well as reimbursement for minor purchases that she made for the City.¹ The OSA was informed that, "[a]lthough repeatedly asked to do so, Diane Wixon has refused to turn over to the City the City records from 1996 through 2001."

During the course of its investigation, the OSA requested and reviewed various City records dating from April 1, 1996 through September 30, 2002.² The records reviewed by the OSA included copies

¹ The City's current Clerk/Treasurer was also a member of the City Council from 1994 through December 1999. He explained that examples of minor purchases for which the Clerk/Treasurer would be reimbursed might include office supplies such as paper, stamps and garbage bags.

² The City was only able to locate and provide the OSA with some of the City's financial documents. The OSA obtained additional financial documents from the City's financial institution.

of: City bank statements from April 1, 1996 through September 30, 2002;³ City check stubs for 2001;⁴ cancelled City checks for 1999 through 2001;⁵ and City Council meeting minutes for 2001.⁶

From the OSA's investigation, it appears that 75 City checks issued to Ms. Wixon totaling \$31,231.19 cleared the City's financial institution between January 1, 1999 and December 31, 2001. Of that amount, 39 checks totaling \$27,631.19 appear to have been issued to Ms. Wixon in excess of the \$100.00 per month that Ms. Wixon was authorized to receive for her services as the City's Clerk/Treasurer. The disbursement of these funds appears to constitute theft and/or false claims.

II. THEFT AND/OR FALSE CLAIMS

Pursuant to Minnesota law, a theft has occurred when a person "intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property."⁷ Theft also occurs when a person acts with intent to exercise only temporary control of another's property and "the control exercised manifests an indifference to the rights of the owner or the

³ The OSA received copies of City bank statements for 2002 from the City. The OSA received copies of City bank statements for 1999, 2000 and 2001 from Mr. David L. Meulebroeck, a CPA with Meulebroeck, Taubert & Co., PLLP, who had been hired by the City to prepare the City's 2001 financial statements. The OSA received copies of City bank statements from April 1996 through 1998 from the City's financial institution.

⁴ The OSA received the City's 2001 check stubs from Mr. Meulebroeck.

⁵ The OSA received copies of cancelled City checks for 1999 and 2000 from the City's financial institution. The OSA received copies of cancelled City checks for 2001 from Mr. Meulebroeck.

⁶ The OSA received copies of the City's 2001 City Council meeting minutes from the City. Many of the meeting minutes are hand-written. None of the meeting minutes individually identify claims presented to and approved by the City Council, although the OSA was provided with individual disbursement listings for March, May, June and July 2001.

⁷ Minn. Stat. § 609.52, subd. 2(1) (2000).

restoration of the property to the owner.”⁸ A person who engages in activity that constitutes theft may be subject to a fine and/or imprisonment.⁹

Minnesota law prohibits a public officer or employee from allowing or paying any claim made upon a governmental unit which the public officer or employee knows is false or fraudulent in whole or in part.¹⁰ A public officer or employee who engages in activity that constitutes false claims against the government may be subject to a fine and/or imprisonment.¹¹

A. City Payments to Ms. Wixon in Excess of Authorized Salary

From the OSA’s review of all payments to Ms. Wixon that cleared the City’s financial institution from January 1, 1999 through December 31, 2001, it appears that Ms. Wixon disbursed at least \$27,631.19 in payments to herself in excess of the \$100.00 per month that she was authorized to receive for her services as the City’s Clerk/Treasurer. *See* Attachment A. A summary of those payments by year is set forth below:

<u>Year</u>	<u>Amount in Excess of Authorized Salary</u>
1999	\$ 14,624.00
2000	\$ 13,007.19
2001	\$ <u>0.00</u>
Total	<u>\$ 27,631.19</u>

⁸ Minn. Stat. § 609.52, subd. 2(5)(i) (2000).

⁹ Minn. Stat. § 609.52, subd. 3(3)(a) and (d)(iv) (2000) provide that if the value of the property involved in the theft is more than \$500 but not more than \$2,500, or public funds of not more than \$500, a person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both. Minn. Stat. § 609.52, subd. 3(2) (2000) provides that if the value of the property is more than \$2,500, the person may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

¹⁰ Minn. Stat. § 609.455 (2000).

¹¹ Minn. Stat. § 609.455 (2000) provides that a public officer or employee who knowingly pays a false claim made upon a governmental unit may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

B. Deposits from Ms. Wixon into City Accounts

During its review, the OSA also found that Ms. Wixon appears to have deposited \$7,259.06 into the City's accounts.¹² *See* Attachment B. In particular, certificate of deposit No. 15336 (hereinafter "CD No. 15336") was purchased for the City on December 27, 2001 in the amount of \$6,959.06. The OSA was informed that the funds for the purchase of CD No. 15336 came from money order No. 33764, purchased on November 19, 2001. The money order was made out to the City, with Ms. Wixon as the remitter.

In addition, the OSA reviewed deposit detail for a deposit to the City's checking account made on April 9, 2001. The deposit detail reveals that three \$100.00 City checks issued to Ms. Wixon, which appear to be checks for her salary, were actually redeposited into the City's checking account rather than negotiated by Ms. Wixon. The three checks are City check Nos. 2952, 2962 and 2972, dated January 8, 2001, February 12, 2001, and March 12, 2001, respectively.¹³

III. QUESTIONABLE TRANSACTIONS

All of the City checks written to Ms. Wixon between January 1, 1999 and December 31, 2001, and reviewed by the OSA, appear to contain the signatures of the Mayor, a City Council member, and the Clerk/Treasurer.¹⁴ The City's current Clerk/Treasurer indicated that an individual whose signatures appear to be on various City checks issued to Ms. Wixon stated that some of those signatures are not his.¹⁵ The OSA was also informed that the City at times pre-signed checks.

In addition, a review of the City's bank statements from April 1, 1996 through December 31, 1998 reveals disbursements that appear similar to some of the disbursements to Ms. Wixon from

¹² The OSA was unable to determine whether the deposits made by Ms. Wixon were payment by Ms. Wixon for City services such as water or garbage.

¹³ In addition, the OSA observed a \$96.00 deposit into the City's checking account from "Wixon" on December 10, 2001. The financial institution's deposit detail would need to be reviewed to determine whether the deposit was from Ms. Wixon.

¹⁴ The OSA has not reviewed copies of the three checks that had not cleared the City's checking account as of September 30, 2002.

¹⁵ *See* Minn. Stat. §§ 609.625, subd. 1(6) and (7) (2000) (aggravated forgery) and 609.631, subd. 2 (2000) (check forgery).

January 1, 1999 through December 31, 2001 that were in excess of her authorized salary. For example, from the City's bank statements, the OSA found 24 checks in the amount of \$900.00, for a total of \$21,600.00, that cleared the City's account between April 1, 1996 and December 31, 1998.¹⁶

The OSA also observed that two of the City's certificates of deposit, totaling \$20,670.84, were transferred into the City's checking account during the period of time that Ms. Wixon was the City's Clerk/Treasurer.¹⁷ Without City Council meeting minutes, the OSA is unable to determine if the City Council was aware of these transactions.

IV. FAILURE TO RETURN CITY DOCUMENTS TO CITY

The City did not have many of the City's financial documents. The OSA has been informed by the City that Ms. Wixon has refused to turn City records over to the City despite repeatedly being asked to do so.

Minnesota law provides that "[a]ll officers and agencies of . . . cities . . . shall make and preserve all records necessary to a full and accurate knowledge of their official activities."¹⁸ It is the duty of the agency and its chief administrative officer to carefully protect and preserve government records from deterioration, mutilation, loss, or destruction.¹⁹

¹⁶ Copies of all City checks that cleared the City's account from April 1, 1996 through December 31, 1998 would need to be obtained from the City's financial institution to determine how many City checks were disbursed to Ms. Wixon during that time period.

¹⁷ City CD No. 8383 was purchased by the City on October 29, 1993. The funds from CD No. 8383 (\$9,452.49) were transferred to the City's checking account on October 29, 1996. City CD No. 8384 was purchased by the City on October 29, 1993. The funds from CD No. 8384 (\$11,218.35) were transferred to the City's checking account on October 29, 1999.

¹⁸ Minn. Stat. § 15.17, subd. 1 (2000).

¹⁹ Minn. Stat. § 15.17, subd 2 (2000). Minnesota law also provides that "[w]hoever intentionally and without lawful right thereto, exercises a function of a public office or, having held such office and the right thereto having ceased, refuses to surrender the office or its seal, books, papers, or other incidents to a successor or other authority entitled thereto may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both." Minn. Stat. § 609.44 (2000).

V. CONCLUSION

Based upon the OSA's review, it appears that from January 1, 1999 through December 31, 2001, Clerk/Treasurer Wixon received \$27,631.19 of City funds in excess of the \$100.00 per month that she was authorized to receive for her services as the City's Clerk/Treasurer. In addition, it appears that additional checks may have been disbursed to Ms. Wixon between April 1, 1996 and December 31, 1998. This matter has been referred to the Lyon County Attorney to initiate such proceedings as the law and public interest require. The OSA remains available to assist the Lyon County Attorney.

/s/ Judith H. Dutcher

Judith H. Dutcher
State Auditor

Attachments