



PATRICIA AWADA
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 SUPPLEMENTAL INVESTIGATIVE REPORT CITY OF FLORENCE March 5, 2003

I. INTRODUCTION

The Office of the State Auditor (hereinafter "OSA") completed an Investigative Report for the City of Florence (hereinafter "City") dated October 25, 2002, regarding possible misappropriation of City funds by the City's former Clerk/Treasurer, Ms. Diane Wixon. Specifically, the OSA reviewed the time period from January 1, 1999 through December 31, 2001, and determined that \$27,631.19 appears 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.¹ The OSA concluded that the disbursement of these funds appeared to constitute theft and/or false claims.

On November 3, 2002, Lyon County Attorney Richard Maes filed a criminal complaint in district court, charging Ms. Wixon with four counts of theft. On January 8, 2003, County Attorney Maes requested the OSA's assistance in determining whether, from April 1, 1996 through December 31, 1998, Ms. Wixon received City funds in addition to her authorized salary as Clerk/Treasurer.² This Supplemental Investigative Report contains the OSA's findings from the investigation requested by County Attorney Maes.

From the OSA's supplemental investigation, it appears that from April 1, 1996 through December 31, 1998, Ms. Wixon received an additional \$34,147.00 in excess of her authorized salary. Furthermore, the OSA has determined that the City incurred \$725.00 in costs imposed by the City's financial institution due to service charges, insufficient check charges and overdraft charges that appear to be a result of the payments to Ms. Wixon in excess of her authorized salary.

Therefore, the OSA's investigation of the City revealed that between April 1, 1996 and December 31, 2001, a total of \$61,778.19 appears to have been disbursed to Ms. Wixon in excess of her

¹ This three year time period was reviewed due to statute of limitation concerns.

² The OSA was informed that Ms. Wixon was the City's Clerk/Treasurer from April 1, 1996 through December 31, 2001, and was authorized to receive \$100.00 per month from the City for her services as the City's Clerk/Treasurer.

authorized salary. When the \$725.00 in bank charges is added, it appears that the total amount of unauthorized City disbursements was \$62,503.19.³

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.”⁴ 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 restoration of the property to the owner.”⁵ A person who engages in activity that constitutes theft may be subject to a fine and/or imprisonment.⁶

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.⁷ 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.⁸

³ As reported in the OSA’s October 25, 2002 Investigative Report, in 2001, Ms. Wixon appears to have deposited a total of \$7,259.06 into the City’s accounts.

⁴ Minn. Stat. § 609.52, subd. 2(1) (2000).

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

⁶ 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.

⁷ Minn. Stat. § 609.455 (2000).

⁸ 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.

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

As set forth in the OSA's October 25, 2002 Investigative Report, it appears that, from January 1, 1999 through December 31, 2001, Ms. Wixon disbursed \$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. 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>

As part of the supplemental investigation, the OSA contacted the City's financial institution and received copies of cancelled City checks from April 1, 1996 through December 31, 1998.⁹ From the OSA's supplemental review of all payments to Ms. Wixon that cleared the City's financial institution from April 1, 1996 through December 31, 1998, it appears that Ms. Wixon disbursed \$34,147.00 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 C.

<u>Year</u>	<u>Amount in Excess of Authorized Salary</u>
1996	\$ 10,200.00
1997	\$ 10,250.00
1998	\$ <u>13,697.00</u>
Total	<u>\$ 34,147.00</u>

⁹ The OSA was informed by Lyon County Sheriff's Department Sergeant Mark Mather that Ms. Wixon returned some of the City records in her possession. However, Sergeant Mather stated the records were poorly organized and did not appear to be complete. *See also* OSA's October 25, 2002 Investigative Report. Therefore, the OSA reviewed only records received from the City's financial institution.

From the OSA's supplemental investigation, it appears that 70 City checks issued to Ms. Wixon totaling \$37,547.00 cleared the City's financial institution between April 1, 1996 through December 31, 1998.¹⁰ Of that amount, \$34,147.00, from 49 checks, appears to have been issued to Ms. Wixon for amounts in excess of the \$100.00 per month that Ms. Wixon was authorized to receive for her services as the City's Clerk/Treasurer.

B. City Bank Fees Resulting From the Unauthorized Disbursements

The OSA also determined that an additional \$725.00 in costs appears to have been incurred by the City as a result of the additional payments made to Ms. Wixon.¹¹ Specifically, from April 1, 1996 through December 31, 2000, the City was charged bank fees resulting from service charges and insufficient check charges.

The OSA contacted the current City Clerk/Treasurer and was informed that the City's financial institution charges a \$25.00 service fee each month that the City's account balance falls below \$1,500.00. The OSA determined that there were 26 instances in which the City's account balance fell below \$1,500.00 from April 1, 1996 through December 31, 2000, resulting in a cost of \$650.00 incurred by the City due to the unauthorized debits from the City's account.

Furthermore, it appears that the City's financial institution imposes a \$7.50 insufficient check charge. The OSA determined that there were ten instances in which the City was charged \$7.50 from April 1, 1996 through December 31, 2000, which totaled a cost of \$75.00 incurred by the City due to the unauthorized debits from the City's account.

Therefore, it appears that the following bank charges were incurred by the City as a result of the unauthorized payments to Ms. Wixon:

<u>Purpose</u>	<u>Additional Charges</u>
Service charges	\$650.00
Insufficient check charges	<u>75.00</u>
Total	<u>\$ 725.00</u>

¹⁰ One salary payment for March 1996 is included in the authorized amount.

¹¹ This amount does not include the interest the City lost on its accounts.

C. Deposits into City Accounts by Ms. Wixon

As reported in the OSA's October 25, 2002 Investigative Report, Ms. Wixon appears to have deposited a total of \$7,259.06 into the City's accounts in 2001. Because the OSA has not reviewed City deposits for 1996-2000, the OSA is unable to determine whether any additional deposits were made by Ms. Wixon.

III. CONCLUSION

The OSA previously determined that \$27,631.19 appears to have been disbursed to Ms. Wixon in excess of her salary from January 1, 1999 through December 31, 2001.¹² Based upon the OSA's supplemental investigation, it appears that from April 1, 1996 through December 31, 1998, Clerk/Treasurer Wixon received an additional \$34,147.00 of City funds in excess of her monthly salary. In addition, it appears that costs of \$725.00 were incurred by the City as a result of the payments to Ms. Wixon in excess of her authorized salary.

Therefore, it appears that a total of \$62,503.19 in unauthorized disbursements and fees were made from April 1, 1996 through December 31, 2001, as a result of the payments made to Ms. Wixon in excess of the \$100.00 per month that she was authorized to receive for her services as the City's Clerk/Treasurer.

/s/Patricia Awada

Patricia Awada
State Auditor

Attachment

¹² See OSA's October 25, 2002 Investigative Report.