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INVESTIGATIVE REPORT CITY OF STILLWATER POLICE DEPARTMENT EXPLORER POST 521 FINANCIAL ACCOUNT October 2, 2000

I. INTRODUCTION

On December 1, 1999, the Special Investigations Division of the Office of the State Auditor (hereinafter "OSA") received a letter from the City of Stillwater Police Department (hereinafter "Police Department") pursuant to Minn. Stat. § 609.456. In the letter, the Police Department requested the OSA's assistance in an investigation of disbursements from the Stillwater Police Explorer POST 521 savings account (hereinafter "POST Account") controlled by the Police Department. There appeared to be evidence of theft, embezzlement or unlawful use of public funds from the POST Account by one of the Police Department's employees, who was later identified to the OSA as Patrol Sergeant Davin R. Miller (hereinafter "Patrol Sergeant Miller"). This report contains the result of the OSA's investigation.

The mission of the OSA's Special Investigations Division is to review allegations of malfeasance, misfeasance, and nonfeasance by local government employees or officers. Since the Division is a fact-finding entity and has no prosecutorial powers, its role is to evaluate allegations brought to the OSA's attention and, when appropriate, to provide specialized auditing techniques, initiate an independent investigation, or refer the matter to appropriate oversight authorities.

II. BACKGROUND

Stillwater Police Explorer POST 521 (hereinafter "POST 521") provides persons aged 15-21 the opportunity to explore careers in law enforcement.¹ The Police Department maintained the POST Account at the Stillwater Central Bank to fund youth summer programs and winter activities for the POST 521 scouts.²

¹ The Explorer POST programs are branches of the Boy Scouts of America. As such, the participants are generally referred to as "scouts."

² The POST Account number at Stillwater Central Bank was #28159.

The OSA was informed that in 1986, then Chief of Police, Dave Mawhorter, opened the POST Account using the City of Stillwater (hereinafter "City") Tax Identification Number, #41-60005566.³ The OSA was further informed that when Chief Mawhorter left the Police Department in 1992, Patrol Sergeant Miller was the Advisor to the POST 521 scouts, and he took over handling the POST Account.⁴ At that time, Patrol Sergeant Miller was the only signatory on the POST Account, and the bank statements for the POST Account were mailed directly to him at the Police Department.

The OSA's period of review was from January 1, 1994, the date of the earliest bank records available for the POST Account, to September 30, 1999, when the account was closed. During this period, Patrol Sergeant Miller was the only person with authority over the POST Account, which included the authority to make withdrawals from the POST Account. Patrol Sergeant Miller resigned from the Police Department on February 4, 2000.

Between January 1, 1994, and June 30, 1999, \$19,564.53 was deposited into the POST Account. The OSA identified the following sources for the funds deposited:

- C \$10,403.18 from donations and payments for services performed by the scouts;⁵
- C \$6,216.01 from parents and others;⁶
- C \$65.00 from Patrol Sergeant Miller's personal checking account;
- C \$19.99 in accrued interest; and

³ The OSA is unaware of any authority given to the Police Department to open and maintain an Explorers POST Account using the City's Tax Identification Number. However, the POST Account is now closed.

⁴ Patrol Sergeant Miller had been employed with the Police Department since April 1990. He was promoted to the rank of Patrol Sergeant from the rank of Inspector on September 1, 1999.

⁵ Checks issued to POST 521 as donations or for services were received from the Lake Elmo Jaycees, Stillwater Area Chamber of Commerce, City of Stillwater Chamber of Commerce and checks for valet parking services the scouts performed for the Burnet Senior Classic and the Shrine Circus.

⁶ Moneys were collected from parents of scouts to pay POST 521 membership dues and for expenses for the annual Conferences.

C \$2,860.35 from unidentifiable sources.⁷

The OSA was informed by the Police Department that no City or Police Department monies were contributed to the POST Account.

All withdrawals from the POST Account were in cash. The OSA was unable to determine where a large portion of the moneys from the POST Account were spent.

In September 1999, a Captain in the Police Department became aware of the POST Account and requested that Patrol Sergeant Miller furnish the Police Department with financial records from the account. The Police Department subsequently requested copies of bank records for the POST Account. When the Police Department compared the records from Central Bank with the savings account ledgers received from Patrol Sergeant Miller, it discovered discrepancies in the POST Account. On October 26, 1999, the Police Department closed the POST Account, which had a balance of \$7.33.

On May 8, 2000, the Police Department obtained a search warrant for Patrol Sergeant Miller's personal bank records maintained at Norwest Bank Minnesota, N.A., (hereinafter "Norwest") in Minneapolis, Minnesota.⁸ The search warrant necessitated that Norwest provide copies of all requested documents from accounts #3126413236, #3971636486 and #6126415522.⁹ The Police Department and the OSA could find no evidence of any other accounts maintained for Patrol Sergeant Miller by other financial institutions.

The OSA reviewed Norwest's records of Patrol Sergeant Miller's personal checking account #3126413236 (hereinafter "Personal Checking Account") for the period of January 1994, the earliest date of available bank records for the POST Account, through the time when Sergeant

⁷ Of the remaining amount, \$2,098.10 was deposited in three transactions for which the OSA did not receive any documentation, and the remainder was cash.

⁸ Norwest Bank Minnesota, N.A. has subsequently changed its name to Wells Fargo Bank Minnesota, N.A. All of the transactions reviewed by the OSA took place before the name change; therefore, this report will refer to the bank as "Norwest."

⁹ Account # 3126413236 and account #3971636486 were personal checking accounts, and account # 612641552 was a money market account. Patrol Sergeant Miller had an interest in all three accounts. The OSA did not find any evidence that accounts #3971636486 and #6126415522 were ever used to hold funds withdrawn from the POST Account.

Miller closed his Personal Checking Account in January 1998. The OSA's review of the records from Norwest and the POST Account evidenced the appearance of a loss of funds from the POST Account and the potential misappropriation of funds by Patrol Sergeant Miller.

III. REVIEW OF ACCOUNTS

According 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."¹⁰ It is also a theft if a person acts with intent to exercise only temporary control of the property and the control manifests an indifference to the rights of the owner or the restoration of the property to the owner.¹¹

A. Evidence of Misappropriation

Based upon the OSA's review of the records from the POST Account and Patrol Sergeant Miller's Personal Checking Account, at least \$6,428.71 was withdrawn from the POST Account and may have been misappropriated by Patrol Sergeant Miller between January 1994 and June 30, 1999.¹² The OSA identified the following:

- C Twelve instances where Patrol Sergeant Miller made withdrawals from the POST Account and deposited cash in the exact same amounts into his Personal Checking Account on the same day. The withdrawals from the POST Account totaling \$3,150.00 and the corresponding deposits into Patrol Sergeant Miller's Personal Checking Account on the same day are listed in the chart below.

¹⁰ Minn. Stat. § 609.52, Subd. 2(1) (2000).

¹¹ Minn. Stat. § 609.52, Subd. 2(5)(i) (2000). If the property stolen exceeds \$2,500, a person may be sentenced to imprisonment for not more than ten years or payment of a fine of not more than \$20,000, or both. Minn. Stat. § 609.52, Subd. 3(2) (2000).

¹² Dates used by the OSA to reference bank transactions generally reflect the actual dates of such transactions. Where the actual transaction dates were not available, the OSA used the dates that transactions were posted to accounts.

| <u>Date of Transaction</u> | Cash Withdrawn from | | Cash Deposited |
|-----------------------------------|----------------------------|--------------------------------|-------------------------------|
| | <u>POST Account</u> | <u>Checking Account</u> | into Miller's Personal |
| 5/16/94 | \$ 325.00 | | \$ 325.00 |
| 8/18/94 | 75.00 | | 75.00 |
| 8/22/94 | 275.00 | | 275.00 |
| 10/17/94 | 125.00 | | 125.00 |
| 12/05/94 | 70.00 | | 70.00 |
| 12/16/94 | 30.00 | | 30.00 |
| 7/07/95 | 300.00 | | 300.00 |
| 10/26/95 | 350.00 | | 350.00 |
| 1/18/96 | 500.00 | | 500.00 |
| 4/24/96 | 500.00 | | 500.00 |
| 11/14/96 | 250.00 | | 250.00 |
| 6/18/97 | <u>350.00</u> | | <u>350.00</u> |
| | \$ 3,150.00 | | \$3,150.00 |

There was no documentation that the \$3,150 cash withdrawn from the Post Account and subsequently deposited in Patrol Sergeant Miller's personal checking account was used for POST 521 purposes.

- C Two instances where Patrol Sergeant Miller made withdrawals from the POST Account and deposited a smaller amount of cash on the same day into his Personal Checking Account. These withdrawals from the POST Account totaling \$850.00 and the corresponding deposits into Patrol Sergeant Miller's Personal Checking Account totaling \$820.00 on the same day are listed in the chart below.

| <u>Date of Transaction</u> | Cash Withdrawn from | | Cash Deposited |
|-----------------------------------|----------------------------|--------------------------------|-------------------------------|
| | <u>POST Account</u> | <u>Checking Account</u> | into Miller's Personal |
| 4/18/94 | \$ 450.00 | | \$ 440.00 |
| 8/23/96 | <u>400.00</u> | | <u>380.00</u> |
| | \$ 850.00 | | \$ 820.00 |

There was no documentation that the \$30.00 cash withdrawn from the POST Account, but not deposited in Patrol Sergeant Miller's personal checking account, was used for POST 521 purposes. In addition, there was no documentation that the \$820.00 cash withdrawn

from the POST Account and subsequently deposited in Patrol Sergeant Miller's personal checking account was used for POST 521 purposes.

- C The OSA found three instances where Patrol Sergeant Miller made deposits into the POST Account and received cash back from the teller during the same transaction. The transactions reveal that \$620.00 was removed from the deposits and are evidenced in the chart below:

| <u>Date</u> | <u>Amount of Funds to be Deposited</u> | <u>Amount of "Cash Out" Identified On Ticket</u> | <u>Amount of Actual Deposit</u> |
|-------------|--|--|---------------------------------|
| 4/12/94 | \$ 120.00 | \$ 40.00 | \$ 80.00 |
| 4/20/94 | 800.00 | 80.00 | 720.00 |
| 5/12/94 | 2000.00 | <u>500.00</u> | 1500.00 |
| | | \$ 620.00 | |

There was no documentation that the \$620.00 withheld in cash from the POST Account was used for POST 521 purposes.

- C On December 16, 1997, Patrol Sergeant Miller withdrew \$1,808.71 from the POST Account. The OSA did not find a corresponding deposit into Patrol Sergeant Miller's Personal Checking Account for this amount. The OSA notes, however, that this amount matches the amount of check number 10568, which was written on Patrol Sergeant Miller's Personal Checking Account to a mortgage company and returned for insufficient funds by Norwest on December 5, 1997. The OSA was informed that \$1,808.71 was the amount paid monthly by Patrol Sergeant Miller to a mortgage company. The OSA further notes that the POST Account ledger maintained by Patrol Sergeant Miller referenced that the funds were used as the "Remaining Balance for BP Conference." However, the coordinator of the POST Days Conference at the Breezy Point Resort in Pequot Lakes, Minnesota (hereinafter "Conference") confirmed that no registration prepayments were accepted that far in advance of the Conference. The OSA did not find any evidence that the withdrawal of \$1,808.71 was spent for the benefit of the POST 521 scouts.

The withdrawals from the POST Account listed above total \$6,428.71. It appears the \$6,428.71 may have been misappropriated by Patrol Sergeant Miller.

B. Questionable Transactions

In addition to the transactions identified above, Patrol Sergeant Miller made withdrawals totaling \$3,505.00 from the POST Account between April 21, 1994, and April 22, 1999. The OSA was

unable to determine that the moneys from these additional withdrawals were used for POST 521 purposes. The OSA's review of these transactions noted the following:

- C Patrol Sergeant Miller made two withdrawals from the POST Account of amounts greater than the corresponding Conference records indicate were received on behalf of the POST 521 scouts. These transactions total \$190.00 and are detailed below.

| <u>Date</u> | <u>Transaction 1</u> |
|--------------------|--|
| 3/21/94 | \$ 1294.00 - Withdrawal from POST Account |
| | 4.00 - Paid for cashier's check |
| | <u>1200.00</u> - Cashier's check paid to annual Conference |
| | \$ 90.00 - Amount of money unaccounted for by Patrol Sergeant Miller |

| <u>Date</u> | <u>Transaction 2</u> |
|--------------------|---|
| 4/24/97 | \$ 1140.00 - Withdrawal from POST Account |
| | <u>1040.00</u> - Cash paid to annual Conference |
| | \$ 100.00 - Amount of money unaccounted for by Patrol Sergeant Miller |

The OSA was not able to determine that the \$90.00 remaining from the March 21, 1994 withdrawal and the \$100.00 remaining from the April 24, 1997 withdrawal were used for POST 521 purposes.

- C Patrol Sergeant Miller withdrew \$300.00 from the POST Account on March 26, 1997, and noted the transaction as "Money Order to Post 911 - Remainder of Breezy Pt. Conf. \$\$\$" in the POST Account ledger that he provided to the Police Department. Registration records from the 1997 Conference evidence that POST 521 did not use a money order for any portion of its registration fees.
- C The OSA was not able to confirm from the information provided that Patrol Sergeant Miller used the moneys from several other POST Account withdrawals on behalf of the scouts. The chart below lists these withdrawals made by Patrol Sergeant Miller.

| <u>Date</u> | <u>Amount Withdrawn</u> | <u>Patrol Sergeant Miller's Notations in POST Account Ledger</u> |
|--------------------|--------------------------------|---|
| 3/16/94 | \$ 500.00 | no ledger available |
| 4/03/95 | 85.00 | no ledger available |
| 6/21/96 | 285.00 | "Withdrawl (Rental Car for Arizona Trip)" |
| 10/07/97 | 70.00 | "Withdrawl (Explorer Pizza Night)" |

| <u>Date</u> | <u>Amount Withdrawn</u> | <u>Patrol Sergeant Miller's Notations in POST Account Ledger</u> |
|-------------|-------------------------|--|
| 10/21/97 | 900.00 | "Withdrawl (Payment (1 st Installment on Breezy Pt. Conference Fees)" ¹³ |
| 12/22/97 | 170.00 | "Withdrawl (Re-Charter Fee)" |
| 2/06/98 | 60.00 | "Withdrawl (Pizza Feed-Pizza Hut)" |
| 8/17/98 | 400.00 | "Withdrawl (Radio Purchase)" |
| 4/09/99 | 360.00 | "Withdrawl (Payment for Breezy Pt. Conference)" |
| 4/22/99 | <u>180.00</u> | "Withdrawl (Money Order to Post 911 for funds paid to Post 521-BP Conf.)" ¹⁴ |
| | \$3,015.00 | |

There was no documentation that the \$3,015.00 withdrawn from the POST Account was used for POST 521 purposes.

The total of the questionable transactions listed above is \$3,505.00.

It should also be noted that Patrol Sergeant Miller withdrew \$770.00 from the POST Account on April 21, 1994. Records from the 1994 Conference indicate that POST 521 paid \$770.00 in cash for Conference fees. The OSA notes, however, that on April 25, 1994, one day after the annual Conference ended, Patrol Sergeant Miller deposited \$770.00 into his Personal Checking Account. The OSA was unable to determine that the money withdrawn from the POST Account on April 21, 1994 was paid to the annual Conference.

C. Personal Checks Written by Patrol Sergeant Miller

The OSA reviewed the records from Patrol Sergeant Miller's Personal Checking Account. The OSA determined that, with the exception of two checks, no expenditures appear to have been made on behalf of POST 521. Patrol Sergeant Miller wrote check number 7762, dated March 14, 1995, from his Personal Checking Account for \$65.00 to POST 521. Additionally, Patrol Sergeant Miller wrote check number 10172 from his Personal Checking Account for \$890.00 to POST 911, the

¹³ The Conference coordinator confirmed that no registration prepayments were accepted more than four to six weeks in advance of the April 1998 Conference.

¹⁴ According to the Conference Registration Form for the April 1999 Conference, POST 521 did not pay any registration fees in the form of a money order.

Explorer POST that organized the annual Conferences, collected moneys from all other POST's and paid Breezy Point Resort the total amounts due for each annual Conference.

The OSA was unable to determine the reason that check number 7762 was written to POST 521. Check number 10172, however, matches the amount of money that was withdrawn from the POST Account on March 6, 1997, and subsequently deposited into Patrol Sergeant Miller's Personal Checking Account on March 7, 1997. Check number 10172 was paid by Norwest on March 24, 1997. This resulted in Patrol Sergeant Miller having the use of \$890.00, interest free, for 18 days. The OSA was unable to determine the reason Patrol Sergeant Miller did not withdraw the \$890.00 from the POST Account and convert it to a cashier's check for payment to the 1997 Conference, as he had done with other cash withdrawals in previous years for the moneys used to pay for previous Conferences.

IV. CONCLUSION

The OSA has determined that the next step in this investigation would be to interview Patrol Sergeant Miller regarding the specific findings mentioned in this report. However, to avoid jeopardizing any potential prosecution, the OSA is turning the matter over to the Washington County Attorney's Office to proceed in the manner it deems appropriate.

As always, the OSA remains available to further assist if necessary. If you have any questions, please feel free to contact Director of Special Investigations Lea De Souza Speeter at (651) 297-7107.

Sincerely,

/s/ Judith H. Dutcher

Judith H. Dutcher
State Auditor