



Louisiana Legislative Auditor
Daryl G. Purpera, CPA, CFE

July 4, 2016

Denham Springs Wastewater Department Loaning Equipment, Personnel to Other Jurisdictions Without Compensation

An investigation into complaints received by the Legislative Auditor's office found that the Denham Springs Wastewater Department regularly loans out its vacuum truck and operator to other jurisdictions without a written agreement, the state auditor said in a report released today.

Investigative auditors found that the vacuum truck and its operator are loaned to other government agencies approximately once per month. Among the jurisdictions that have borrowed the truck are Livingston Parish Sewer District No. 1, Livingston Parish Sewer District No. 2, the Town of Livingston, and the City of Walker.

However, auditors said, the Department does not maintain any records, such as log books, to document the use of the vacuum truck. In addition, the City was unable to produce an intergovernmental agreement or a cooperative endeavor agreement authorizing the work and does not receive reimbursements for the use of the truck or the wages paid to the truck's operator, the Legislative Auditor said.

As a result, the City may have donated public funds, which is forbidden by the Louisiana Constitution.

Auditors also found that, between January 2014 and March 2016, GRC Construction, a company owned by the superintendent of the Wastewater Department, contracted with Livingston Parish Sewer District No. 1 and Livingston Parish Sewer District No. 2 to perform grass-cutting services. During the same period, the superintendent appears to have authorized the loan of the Department's vacuum truck and operator to the sewer districts.

By entering into transactions with the sewer districts in which he had a personal, substantial economic interest, the superintendent may have violated the state's ethics laws, the Legislative Auditor said.

LOUISIANA LEGISLATIVE AUDITOR
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June 29, 2016

The Honorable Gerard Landry, Mayor and City Council
City of Denham Springs
P.O. Box 1629
Denham Springs, Louisiana 70726-3632

Dear Mayor Landry and Council Members:

As you are aware, my Investigative Audit staff visited the City of Denham Springs (City) Wastewater Department to assess the validity of certain complaints. This letter briefly summarizes the results of our work. We stress the importance of addressing these issues and encourage you to consider our recommendations as you work to resolve the following:

Donation of City Equipment and Personnel

During our review of the City's Wastewater Department (Department), we learned that the Department regularly provides its vacuum truck and licensed vehicle operator to other government agencies, including Livingston Parish Sewer District No.1, Livingston Parish Sewer District No. 2, the Town of Livingston, and the City of Walker, to conduct work on areas outside of the City's jurisdiction. Mr. James Clark, Department superintendent, stated that he receives requests from other government agencies to use the vacuum truck and that he sends the vacuum truck and an operator to help the other agencies save money. Mr. Clark stated that other government agencies use the vacuum truck to clear material deposits and "sludge" from construction areas and lift stations.

According to Department personnel, the vacuum truck and operator are loaned to other government agencies approximately once per month. However, we found that the Department does not maintain records, such as log books, to document use of the vacuum truck. In addition, the City was unable to provide us with an intergovernmental agreement or a cooperative endeavor agreement authorizing such work and does not receive reimbursements for the use of the vacuum truck nor the wages paid to the truck's operator.

Louisiana Attorney General Opinion 09-0018 states that, "for an expenditure or transfer of public funds to be permissible under Art. VII, Sec: 14(A), the public entity must have legal authority to make the expenditure and must show... (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value for the expenditure or transfer of public funds." (Note 1) Because there were no intergovernmental or cooperative endeavor agreements between the City and other government agencies to exchange assets, and the City cannot demonstrate the receipt of equivalent value for the equipment and personnel resources provided to other government agencies, Department

personnel may have violated the Louisiana Constitution, (Note 2) which prohibits the donation of public funds.

Ethics – Prohibited Transactions with GRC Construction

Louisiana Revised Statute (La. R.S.) 42:1113(A)(1)(a) provides, in part, that, “[n]o public servant ... or legal entity in which he has a controlling interest shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.” La. R.S. 42:1112(A) further provides, in part, that, “[n]o public servant shall participate in a transaction in which he has a personal substantial economic interest of which he may be aware involving the governmental entity.” Records indicate that from January 2014 through March 2016 GRC Construc[t]ion, a company owned by Mr. Clark, contracted with Livingston Parish Sewer District No. 1 and Livingston Parish Sewer District No. 2 (sewer districts) to perform grass cutting services for both sewer districts. During the same period, Mr. Clark, as Department superintendent, appears to have authorized the donation of City assets to the sewer districts (see previous finding – Donation of City Equipment and Personnel). Because Mr. Clark entered into transactions with the sewer districts in which he had a personal, substantial economic interest, he may have violated the state’s ethics laws. However, whether or not a violation of the state’s ethics laws occurred is limited to the particular set of circumstances. We suggest that the Louisiana Board of Ethics review this information and take appropriate action.

Note (1) See also Attorney General Opinion 16-0022.

Note (2) Louisiana Constitution Article VII, Section 14(A) provides, in part, that except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

Recommendations

We recommend that the City implement written policies and procedures to ensure that all City expenditures comply with the Louisiana Constitution, which prohibits the donation of public funds. These policies and procedures should require the City to properly document and monitor the use of City equipment. We further recommend that the City consult with its legal counsel and the Louisiana Board of Ethics to ensure compliance with the state ethics laws regarding transactions between City employees and government agencies conducting business with the City. The City should also adopt detailed policies and procedures requiring all employees to complete the annual ethics training in accordance with La. R.S. 42:1170. This correspondence represents our findings and recommendations, as well as management’s response. This correspondence is intended primarily for the information and use of management of the City. I trust this information will assist you in the efficient and effective operations of the City. If you have any questions, please contact Greg Clapinski or Jonathan Hodson at 225-339-3800.

Respectfully submitted,
Daryl G. Purpera, CPA, CFE
Legislative Auditor

APPENDIX A

Management's Responses

RESPONSE BY GERARD LANDRY MAYOR

City of Denham Springs
Mayor Gerard Landry

June 7, 2016

Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor
Post Office Box 94397
Baton Rouge, Louisiana 70804-9397

Dear Mr. Purpera:

Thank you for allowing your auditors to come to Denham Springs to conduct an audit of our Wastewater Department and respond to Councilman Davis's question regarding the mayor's salary. The following response addresses the findings contained in your report.

Donation of City Equipment and Personnel

It has been a long-standing tradition in Denham Springs to cooperate with neighboring municipalities and Livingston Parish to achieve mutually-beneficial goals. Recently, this has included loaning our Wastewater Department's vacuum truck to other government agencies, including Livingston Parish Sewer District No. 1, Livingston Parish Sewer District No.2, the Town of Livingston, and the City of Walker.

While mutual benefit for these services has been obtained in the past, it is difficult to ensure that the taxpayers of Denham Springs receive equal value from the governmental agencies with which we cooperate. In an effort to ensure equal benefit, the City of Denham Springs is working with its legal counsel to construct an Ordinance under which FEMA rates and hours spent will be charged to other governmental agencies who wish to utilize the City of Denham Springs' equipment and employees to conduct sewer work. We will work to ensure that all City expenditures comply with the Louisiana Constitution. New policies will be put into place to ensure that the City of Denham Springs is reimbursed for each use by another governmental agency and to ensure that the use of City equipment is properly documented and monitored.

Ethics-Prohibited Transactions with GRC Construction

For a number of years, the City of Denham Springs has required all employees to complete annual training given by the Louisiana Board of Ethics. In addition to making online ethics training available to each employee, 1-2 live training sessions are held at City Hall each year. The City of Denham Springs will ensure that each department within the City has policies in place to ensure its employees attend and complete annual ethics training.

While the cooperation between the City of Denham Springs and other governmental agencies described in the section above is mutually beneficial, the new ordinance and policies described above will prevent gratuitous donations from the City of Denham Springs to other governmental agencies from occurring. Additionally, the City of Denham Springs will request and take action upon any recommendations given by the Louisiana Board of Ethics to ensure compliance with the State ethics laws regarding transactions between City employees and government agencies conducting business within the City.

Conclusion

The City of Denham Springs will take the above described steps to ensure complete compliance with the Louisiana Constitution and laws. We appreciate your recommendations and will work to ensure that each one is implemented in a timely fashion. Thank you for taking the time to work with the City of Denham Springs in order to ensure that the City is the best possible home for its citizens.

Sincerely,
Gerard Landry
Mayor

RESPONSE BY JAMES CLARK WASTEWATER SUPERINTENDENT

City of Denham Springs
Mayor Gerard Landry

June 7, 2016

Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor
Post Office Box 94397
Baton Rouge, Louisiana 70804-9397

Dear Mr. Purpera:

Thank you for allowing your auditors to come to Denham Springs to conduct an audit of our Wastewater Department and respond to Councilman Davis's question regarding the mayor's salary. The following response addresses the findings contained in your report.

Donation of City Equipment and Personnel

It has been a long-standing tradition in Denham Springs to cooperate with neighboring municipalities and Livingston Parish to achieve mutually-beneficial goals. Recently, this has included loaning our Wastewater Department's vacuum truck to other government agencies, including Livingston Parish Sewer District No. 1, Livingston Parish Sewer District No.2, the Town of Livingston, and the City of Walker.

While mutual benefit for these services has been obtained in the past, it is difficult to ensure that the taxpayers of Denham Springs receive equal value from the governmental agencies with which we cooperate. In an effort to ensure equal benefit, the City of Denham Springs is working with its legal counsel to construct an Ordinance under which FEMA rates and hours spent will be charged to other governmental

agencies who wish to utilize the City of Denham Springs' equipment and employees to conduct sewer work. We will work to ensure that all City expenditures comply with the Louisiana Constitution. New policies will be put into place to ensure that the City of Denham Springs is reimbursed for each use by another governmental agency and to ensure that the use of City equipment is properly documented and monitored.

Further, log books will be maintained to reflect the use of City equipment by other entities. While this was not done in the past, City supervisors were responsible for and did ensure that the vehicle was refueled by the agency to which it was loaned prior to its return.

Finally, I did not authorize any equipment to be loaned to other agencies. This was the job and responsibility of Tom Walton, our former Public Works Director. Chevis Ball, who is employed by Livingston Parish, would contact Mr. Walton to request use of the truck. All other requests received by me were approved by Mayor Durbin or Mayor Landry prior to the loaning of the truck.

Ethics-Prohibited Transactions with GRC Construction

For a number of years, the City of Denham Springs has required all employees to complete annual training given by the Louisiana Board of Ethics. In addition to making online ethics training available to each employee, 1-2 live training sessions are held at City Hall each year. The City of Denham Springs will ensure that each department within the City has policies in place to ensure its employees attend and complete annual ethics training.

While the cooperation between the City of Denham Springs and other governmental agencies described in the section above is mutually beneficial, the new ordinance and policies described above will prevent gratuitous donations from the City of Denham Springs to other governmental agencies from occurring. Additionally, the City of Denham Springs will request and take action upon any recommendations given by the Louisiana Board of Ethics to ensure compliance with the State ethics laws regarding transactions between City employees and government agencies conducting business within the City.

It is my understanding that this case will be referred to the Board of Ethics. I did not authorize the use of equipment by any other agency, and therefore do not feel that I violated any ethical rules. However, I will fully cooperate with the investigation of the Board of Ethics and make any changes they recommend.

Conclusion

The City of Denham Springs will take the above described steps to ensure complete compliance with the Louisiana Constitution and laws. We appreciate your recommendations and will work to ensure that each one is implemented in a timely fashion. Thank you for taking the time to work with the City of Denham Springs in order to ensure that the City is the best possible home for its citizens.

Sincerely,
James Clark
Wastewater Superintendent

Research Resources

As part of the June 30, 2016 annual Louisiana Legislative Auditor Report

CITY OF DENHAM SPRINGS
SCHEDULE OF FINDINGS AND RESPONSES
FOR THE YEAR ENDED JUNE 30, 2016

- A. Findings - Internal Control Over Financial Reporting None.
- B. Findings - Compliance and Other Matters

Finding 2016-01 Advance/Loan of Wages Criteria:

Article VII Section 14 of the Louisiana Constitution states that "the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private."

Condition:

Finding 2016-02 Loaning of City Equipment and Personnel

Criteria:

Article VII Section 14 (A) of the Louisiana Constitution states "the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private."

Condition:

During 2016, the Louisiana Legislative Auditor investigated a complaint that the City had loaned out its equipment to other governmental entities. During their review, they determined that the City's Wastewater Department (Department) had loaned out its vacuum truck and licensed vehicle operator to other governmental agencies approximately once per month. The Department did not maintain a log book to document the use of the vacuum truck. Also, there was no intergovernmental agreement or a cooperative endeavor agreement between the agencies authorizing the work and the City did not receive reimbursement or at least equivalent value for the use of the vacuum truck and for the wages of the truck's operator.

Cause:

There were no intergovernmental or cooperative endeavor agreements between the City and other governmental agencies to exchange assets. Also, it appears that the City did not receive reimbursement or at least equivalent value from the other government agencies for the equipment and personnel resources provided.

Effect:

Because there were no intergovernmental or cooperative endeavor agreements between the City and other governmental agencies to exchange assets and the City did not receive reimbursement or at least equivalent value from the other government agencies for the equipment and personnel resources provided, the City may have violated Article VII Section 14(A) which prohibits the donation of public funds.

Recommendation:

We recommend that the City put policies in place to ensure that there is an intergovernmental or cooperative endeavor agreement between the City and other governmental agencies to exchange assets and that the City receives reimbursement or at least equivalent value for the equipment and personnel resources provided.

Management's Response:

The City of Denham Springs owns a sewer vacuum truck for use in the City's wastewater operations. The truck is a costly piece of equipment. From time to time, public agencies within the parish ask to borrow the truck. When the truck is used outside of the City, an operator employed by the City that is skilled in the use of the truck is used to operate the truck.

In 2016, the Louisiana Legislative Auditor's office (LLA) investigated a complaint that the City had loaned its equipment to other governmental entities. It was determined by LLA that the City did not maintain a log book to document the use of the vacuum truck, that there was no intergovernmental in place between the agencies, and that the City did not receive reimbursement for the use of the vacuum truck.

Since the investigation findings have been received by the City, the Wastewater department has begun to log all work performed for outside agencies. They are also tracking anything received from the agencies for the performance of the work and any reciprocal help received from those outside agencies. The City is also working to put a Cooperative Endeavor Agreement in place with each agency.

Finding 2016-03 Prohibited Transactions

Criteria:

Louisiana Revised Statute (La. R.S.) 42:1113(A)(1)(a) provides, in part, "no public servant... or legal entity in which he has a controlling interest shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant." La. R.S.42:1112(A) further provides, in part, that "no public servant shall participate in a transaction in which he has person substantial economic interest of which he may be aware involving the governmental entity".

Condition:

During 2016, the Louisiana Legislative Auditor investigated a complaint that the City had loaned out its equipment to other governmental entities. During their review, they determined that the City's Wastewater Department (Department) had loaned out its vacuum truck and licensed vehicle operator to other governmental agencies approximately once per month. They also determined that the

Department's superintendent had a separate company which had grass cutting contracts with two of the governmental entities that the City's vacuum truck and licensed vehicle operator were loaned to.

Cause:

The Department's superintendent could have authorized the use of City owned resources for the governmental entities with which he had personal contracts for services.

Effect:

If the Department's superintendent authorized the use of City owned resources for the governmental entities with which he had personal contracts for services, he could have benefited personally which would be a violation of state's ethics laws.

Recommendation:

The City currently has ethics policies in place and requires employees to attend annual training. We recommend that the City continue to emphasize its policies and continue to ensure that employees attend annual training. We recommend that the Louisiana Board of Ethics review this information and take appropriate action.

Management's Response:

During the course of the LLAs investigation into the complaint that the City loans its sewer vacuum truck to other public agencies, the LLA determined that the Wastewater superintendent had a separate company which had grass cutting contracts with two of the governmental entities that the City's vacuum truck and licensed operator were loaned to.

As part of the June 30, 2022 annual Louisiana Legislative Auditor Report

Ethics, including (1) the prohibitions as defined in Louisiana Revised Statute (R.S.) 42:1111- 1121, (2) actions to be taken if an ethics violation takes place, (3) system to monitor possible ethics violations, and (4) a requirement that documentation is maintained to demonstrate that all employees and officials were notified of any changes to the entity's ethics policy.

Exception – The City does have written policies and procedures but the written policies do not address item (4).

20. Using the 5 randomly selected employees/officials from procedure #16 under “Payroll and Personnel” above, obtain ethics documentation from management, and:

- a. Observe whether the documentation demonstrates each employee/official completed one hour of ethics training during the fiscal period. – No exceptions.
- b. Observe whether the entity maintains documentation which demonstrates each employee and official were notified of any changes to the entity's ethics policy during the fiscal period, as applicable. – No exceptions.

1.i(4) Ethics - a requirement that documentation is maintained to demonstrate that all employees and officials were notified of any changes to the entity's ethics policy.

Exception - The City does have written policies and procedures but the written policies do not address item (4).

Response - The City will update it's written policies to include how employees are notified of any changes to the entity's ethics policy.

As part of the June 30, 2023 annual Louisiana Legislative Auditor Report

The procedures and associated exceptions related to ethics are as follows:

Written Policies and Procedures

June 30, 2023 : i) Ethics, including (1) the prohibitions as defined in Louisiana Revised Statute (R.S.) 42:1111- 1121, (2) actions to be taken if an ethics violation takes place, (3) system to monitor possible ethics violations, and (4) a requirement that documentation is maintained to demonstrate that all employees and officials were notified of any changes to the entity's ethics policy. Finding – The City does have written policies and procedures but the written policies do not address item (4).

June 30, 2023 ; Ethics 20. Using the 5 randomly selected employees/officials from procedure #16 under “Payroll and Personnel” above, obtain ethics documentation from management, and: a. Observe whether the documentation demonstrates each employee/official completed one hour of ethics training during the fiscal period. – No exceptions noted. b. Observe whether the entity maintains documentation which demonstrates each employee and official were notified of any changes to the entity's ethics policy during the fiscal period, as applicable. – No exceptions noted. 21. Inquire and/or observe whether the agency has appointed an ethics designee as required by R.S. 42:1170. – No exceptions noted.

June 30, 2023 : 1.i{4) Ethics - a requirement that documentation is maintained to demonstrate that all employees and officials were notified of any changes to the entity's ethics policy.

June 30, 2023 : Exception - The City does have written policies and procedures but the written policies do not address item (4). Response - The City will update it's written policies to include how employees are notified of any changes to the entity's ethics policy.

As part of the June 30, 2024 annual Louisiana Legislative Auditor Report

The procedures and associated exceptions related to ethics are as follows:

Written Policies and Procedures

June 30, 2024 : Ethics, including (1) the prohibitions as defined in Louisiana Revised Statute (R.S.) 42:1111- 1121, (2) actions to be taken if an ethics violation takes place, (3) system to monitor possible ethics violations, and (4) a requirement that documentation is maintained to demonstrate that all

employees and officials were notified of any changes to the entity's ethics policy. Finding — The City does have written policies and procedures for Ethics, but the written policies do not address item (4).

June 30, 2024 ; 10) Ethics A. Using the 5 randomly selected employees/officials from Payroll and Personnel procedure #9 A obtain ethics documentation from management, and: i. Observe whether the documentation demonstrates each employee/official completed one hour of ethics training during the calendar year as required by R.S. 42:1170. — No exceptions noted. ii. Observe whether the entity maintains documentation which demonstrates that each employee and official were notified of any changes to the entity's ethics policy during the fiscal period, as applicable. — No exceptions noted. B. Inquire and/or observe whether the agency has appointed an ethics designee as required by R.S. 42:1170. — No exceptions noted.

June 30, 2024 : 1.A(ix) Ethics — a requirement that documentation is maintained to demonstrate that all employees and officials were notified of any changes to the entity's ethics policy.

Finding — The City does have written policies and procedures but the written policies do not address item (4).

Response —The City will update its written policies to include how employees are notified of any changes to the entity's ethics policy.