



STATE OF MINNESOTA
OFFICE OF THE STATE AUDITOR

SUITE 500
525 PARK STREET
SAINT PAUL, MN 55103-2139

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

PATRICIA ANDERSON
STATE AUDITOR

LAC QUI PARLE COUNTY
RECORDER'S OFFICE – July 5, 2006

The State Auditor's Office reviewed certain transactions in the Lac Qui Parle County Recorder's Office as part of our audit of Lac Qui Parle County ("County") for the year ending December 31, 2005. We found evidence that \$4,445.00 in fees received by the County Recorder's Office, during the time period January 1, 2003 through June 5, 2006, was never deposited with the County Treasurer.

In compliance with Minn. Stat. § 6.48, we are filing this report with the County Attorney to institute such proceedings as the law and the protection of the public interests require.¹

Background

On July 13, 2005, the State Auditor's Office received a call from County Sheriff Graylen Carlson. Sheriff Carlson informed us that he would be investigating the loss of \$340 from the County Recorder's Office. He mentioned that an employee had offered to repay the funds, and the same employee had repaid approximately \$200 a year earlier.

Ms. Janine Bornhorst is the County Recorder.² It is our understanding that she has been on leave from the County Recorder position since February 6, 2006. Ms. Deb Olson, the Deputy County Recorder, has been in charge of the County Recorder's Office in Ms. Bornhorst's absence.³

In a letter dated July 19, 2005, Ms. Bornhorst notified the State Auditor's Office that she had discovered certain fees received by the County Recorder's Office had not been deposited with the County Treasurer.⁴ Her letter stated the following:

¹ See Minn. Stat. § 6.48. This report may result in litigation. As a result, data supporting the conclusions of this report are protected nonpublic data or confidential data on individuals until the litigation has been completed or is no longer being actively pursued. See Minn. Stat. § 6.715, subd. 2. The State Auditor's Office is able to share supporting data with appropriate law enforcement agencies. See Minn. Stat. § 6.715, subd. 3.

² Ms. Bornhorst informed us that she has been with the County Recorder's Office since 1993.

³ It is our understanding that Ms. Olson has been with the County Recorder's Office for about 16 years.

⁴ Minn. Stat. § 609.456, subd. 1, requires a county employee or officer who discovers evidence of theft, embezzlement, or unlawful use of public funds or property, to report promptly, in writing, a detailed

- Ms. Bornhorst deposits funds received in the Recorder's Office with the County Treasurer.
- On July 11, 2005, while Deputy Recorder Deb Olson was on a vacation, Ms. Bornhorst discovered that 17 filings, called UCC Financing Statements, from June and July 2005, had been filed with the Minnesota Secretary of State's Office, but the fees for those filings had not been recorded in the records maintained by the County Recorder's Office.⁵
- Ms. Bornhorst called Ms. Olson who told Ms. Bornhorst that there had been no UCC filings in July; however, Ms. Bornhorst determined that there had been six UCC filings in July and eleven UCC filings in June.
- Ms. Olson called Ms. Bornhorst later the same day and informed Ms. Bornhorst that:
 - Ms. Olson had a "stash cash" box at home;
 - Ms. Olson would bring Ms. Bornhorst the money to cover the fees for the missing UCC filings;
 - Ms. Olson did not want the County to get in trouble; and
 - Ms. Olson did not want to go to jail.
- The following day, July 12, 2005, Ms. Olson brought in \$300 cash, and told Ms. Bornhorst that she did not remember doing any UCC filings.

Ms. Bornhorst informed us that she called a County Commissioner, who contacted the County Attorney and the County Sheriff.

The County hired Certified Public Accountant David L. Meulebroeck to complete an agreed-upon procedures engagement concerning the allegations of missing funds, and to review the procedures used by the County Recorder's Office. Mr. Meulebroeck reported his findings to County Board Chair Harold Solem and County Sheriff Graylen Carlson in a letter dated August 2, 2005 ("Meulebroeck Report").⁶ The Meulebroeck Report included a finding that, for the period May 2, 2005 to July 15, 2005, there were 16 UCC filings recorded with the Secretary of State's Office that were not entered in the County Recorder's cashbook.⁷ The Meulebroeck Report concluded that "it is not possible to determine the exact amount of any missing funds" within the County Recorder's Office,

description of the alleged incident(s) to the State Auditor. Data that could reasonably be used to determine the identity of an individual supplying data pursuant to Minn. Stat. § 609.456 are private. See Minn. Stat. § 6.715, subd. 2. Ms. Bornhorst has granted this Office permission to release her identity.

⁵ The charge for each UCC filing was \$20. (17 filings X \$20/filing = \$340)

⁶ Mr. Meulebroeck is with Meulebroeck, Taubert & Co., PLLP.

⁷ According to the Meulebroeck Report, a listing of UCC filings from the period May 2, 2005 to July 15, 2005 was compared to the Cashbook and to the Numeric Register maintained at the County Recorder's Office. The agreed-upon procedures engagement examined the County Recorder's Office as of July 18, 2005.

and the Report made several recommendations for the handling of cash transactions in the County Recorder's Office.⁸

Ms. Bornhorst notified the State Auditor's Office on September 8, 2005 that the County Attorney declined prosecution in this matter. In a check dated September 16, 2005, the County refunded Ms. Olson's \$300.⁹

On February 27, 2006, the State Auditor's Office met with County Auditor Stan Bjorgan, Sheriff Graylen Carlson, and the current Board Chair Todd Patzer as part of the County's annual audit for the year ending December 31, 2005. The Board Chair told us that, following the Meulebroeck Report, the County Attorney decided not to charge anyone. Chair Patzer asked us to expand our County audit for the year ending December 31, 2005, to determine if additional funds were missing from the County Recorder's Office. We agreed to take a closer look at the collections activity in the County Recorder's Office.

County Recorder's Handling of Secretary of State Filings

The County Recorder's Office receives documents that the County Recorder's Office files online with the Minnesota Secretary of State's Office.¹⁰ Those documents include Uniform Commercial Code ("UCC") Financing Statements, and Central Notification System ("CNS") Effective Financing Statements, as well as UCC and CNS related lien notices, continuations, terminations, and searches.¹¹ The County Recorder's Office charged a fee of \$20 for UCC filings and searches.¹² Our review of the CNS Register revealed that the fee charged by the County Recorder's Office for CNS Filings was \$15 until October 2004, and then either \$20 or \$25.¹³

⁸ The Meulebroeck Report concluded:

"Based upon our inquiries of recorder's office personnel and the procedures and findings listed above it is not possible to determine the exact amount of any missing funds within this office. The pre-numbered cash receipt would be an initial source document to be able to trace all activity from initial receipt in the office to deposit with the treasurer's office. The recorder's office has made a choice to not use receipts which basically voids the internal control of the office. Without a receipt system, it is not possible to verify that 100% of the activity of the office is being recorded in the cash book and eventually in the treasurer's office." See Meulebroeck Report at page 3.

⁹ In a May 8, 2006 telephone conversation, the County Attorney confirmed that prosecution had been declined, and the \$300 had been returned to Ms. Olson.

¹⁰ A variety of other documents are also filed with the County Recorder's Office for a fee. See, e.g., Minn. Stat. § 357.18. Our review was limited to the UCC and CNS filings.

¹¹ More information about the Secretary of State's Online UCC Filing System is available on the Secretary of State's website: www.sos.state.mn.us. CNS filings are made pursuant to Minn. Stat. § 336A.04.

¹² See, e.g., Minn. Stat. §§ 277.20, subd. 8 (searches), and 336.9-525 (UCC filings and searches). Our review of the Cashbook and Numerical Register confirmed that the County Recorder charged a \$20 fee during January 1, 2003 through June 5, 2006 for UCC filings (including termination, continuation, amendment, and assignment filings) and UCC searches.

¹³ See Minn. Stat. § 336A.04, subd. 3 (fees established); see also Minnesota Secretary of State Fee Change Notice for CNS Filings for farm products effective July 1, 2005 (fees for CNS effective financing statements, lien notices, continuations and terminations changed to \$20 per filing).

We met with Ms. Bornhorst on March 15, 2006, and on May 10, 2006.¹⁴ Ms. Bornhorst explained that some UCC filings came to the Recorder's Office by mail, and others were brought in person. She explained that a UCC document was first logged into the County Recorder's Numerical Register and Fee Book Financing Statements ("Numerical Register"), which assigned the document a number; and the fee for the transaction was then entered into the County Recorder's General Account Ledger ("Cashbook"), using the newly assigned number. Ms. Bornhorst said the original UCC document was kept on file in the Recorder's Office, and a copy was sent to the customer. Ms. Bornhorst said the UCC filings should be done within 24 hours of receipt.

Ms. Bornhorst explained that CNS documents were recorded in a separate C.N.S. Numerical Register ("CNS Register"), and fees related to the CNS filings were not recorded in the Cashbook.¹⁵ When CNS documents were recorded in the CNS Register, Ms. Bornhorst said a "post-it" note was placed in the Cashbook so the CNS fee was recorded on a weekly Statement of Fees summarizing all fees collected by the County Recorder's Office, and deposited with the County Treasurer.¹⁶

Ms. Bornhorst explained that Ms. Olson generally handled the UCC and CNS filings and searches performed by the Recorder's Office. Ms. Julie Wollschlager, who worked in the County Recorder's Office on a part-time basis, confirmed that Ms. Olson handled most of the UCC and CNS filings.¹⁷ Ms. Bornhorst said the UCC computer was located at Ms. Olson's desk.¹⁸

Ms. Bornhorst said a user name and password were required to operate the Secretary of State's UCC system, and the user name and password must match to log-in on the system.¹⁹ She said she does not know Ms. Olson's password, and Ms. Olson does not know her password. However, she recalled there were some instances when Ms. Olson's password had expired, and Ms. Olson was unable to change her password. Ms. Bornhorst said that she gave Ms. Olson her password in those instances. In contrast, Ms. Olson told

¹⁴ Ms. Bornhorst called the State Auditor's Office in March 2006, and said she wanted to discuss things we should examine during our audit. Ms. Bornhorst was on leave at the time of these meetings.

¹⁵ At the May 10, 2006 meeting, we reviewed our preliminary list of unrecorded transactions with Ms. Bornhorst, and learned about the CNS Register. Our preliminary review had included some CNS documents that, based upon the information provided by Ms. Bornhorst, and our review of the CNS Register, we were able to remove from our unrecorded transactions list. When we had previously asked Ms. Olson about the unrecorded CNS transactions, she did not mention the CNS Register to us.

¹⁶ Our review of the Cashbook disclosed that fees for CNS filings were included in the Cashbook beginning in December 2005.

¹⁷ The UCC/CNS listings we received from the Secretary of State's Office also showed that Ms. Olson's code of "olsder37" was the most common "entry user" for UCC and CNS filings with the Secretary of State's Office.

¹⁸ Ms. Wollschlager confirmed that when UCC filings came in the mail, they were placed on Ms. Olson's desk for processing.

¹⁹ See also Minnesota Secretary of State, Uniform Commercial Code Division, UCC Online User Guide, pages 4-7, available on the Secretary of State's website: www.sos.state.mn.us.

us that she and Ms. Bornhorst knew each other's passwords. Ms. Olson said that until recently, she kept her password written on a piece of paper on the side of her computer.

Ms. Bornhorst said that all of the cash and checks received by the County Recorder's Office were maintained in the same cash box. She said that most of the cash received by the County Recorder's Office resulted from fees charged in connection with the recording of "vital" records; most of the fees for UCC/CNS transactions were paid by check. Ms. Bornhorst explained that, on a weekly basis, she prepared a Statement of Fees, and deposited the County Recorder Office's receipts with the Treasurer's Office.²⁰ She said she reconciled the receipts before making the deposits by comparing the total amount reflected in the Cashbook with the actual receipts (cash and checks), and she would resolve any discrepancies prior to making the deposits. Ms. Bornhorst explained that while preparing these deposits, she compared the Numerical Register with the Cashbook as a "double check" for the UCC filings; she did not reconcile the receipts with the Secretary of State's records or the number of filings.

At the March 15, 2006 meeting, Ms. Bornhorst presented us with copies of documents she had received from the Secretary of State, copies of the Recorder's Cashbook, copies of checks with "UCC" in the memo line, and copies of the original financing statements that covered the period February 2005 through July 2005. She showed us that there were no entries in the Cashbook for several UCC filings, and the original UCC documents were not in the County Recorder's files. However, according to the documents Ms. Bornhorst received from the Secretary of State's Office, Ms. Olson had recorded these filings with the Secretary of State's Office. Ms. Bornhorst explained that the \$20 fees for the unrecorded filings had not been accounted for in the deposits made with the County Treasurer. Ms. Bornhorst stated that Ms. Olson was responsible for the missing funds.

State Auditor Review of Documents

From the County Recorder's Office, we obtained and reviewed the following documents:

- General Account Ledger ("Cashbook") from January 2, 2003 through June 5, 2006. This ledger was used by the County Recorder's Office to record funds received by the County Recorder's Office. This document had entries for the date the funds were received, the name of the person from whom the funds were received, a description of the transaction, and the amount received, itemized by type of transaction.²¹ Until October 2005, the entries were handwritten.

²⁰ Ms. Bornhorst informed us that, a while ago, she began turning in receipts to the County Treasurer on a weekly basis. Our review of deposits disclosed that Ms. Bornhorst deposited funds from the Recorder's Office every one to two weeks.

²¹ The County Recorder's Office started using a receipt book in September 2005. During our review, we noted that receipts were not written for all transactions.

- Numerical Register and Fee Book Financing Statements (“Numerical Register”) from December 26, 2002 through June 5, 2006. This ledger was used by the County Recorder’s Office to record transactions involving UCC Financing Statement filings made by the County Recorder’s Office with the Secretary of State.²² This document had pre-printed numbers on the left, with corresponding handwritten entries for the date of the transaction, the name of the debtor, the type of transaction, and the fee for the transaction.²³ Funds received for transactions recorded in the Numerical Register were also to be recorded in the Cashbook.
- C.N.S. Numerical Register (“CNS Register”) from September 27, 2002 through June 5, 2006.²⁴ This ledger was used by the County Recorder’s Office to record CNS Effective Financing Statement filings made by the County Recorder’s Office with the Secretary of State. This document had handwritten entries for the document number, date of filing, kind of instrument (e.g., filing, continuation, termination), fee, surcharge, and debtor’s name.²⁵
- Statement of Fees from December 23, 2002 through January 31, 2006.²⁶ The County Recorder prepared this document. It certified the fees collected each week by the County Recorder’s Office, and deposited with the County Treasurer.²⁷

We requested from the Secretary of State a listing of all UCC-related filing and search activity from the County Recorder’s Office for the time period January 1, 2003 through June 5, 2006.²⁸ The Secretary of State’s Office provided us with three different listings for the County Recorder’s Office:

²² It includes UCC terminations, continuations, amendments, and assignments; it does not include searches of Secretary of State records performed by the County Recorder’s Office, or CNS Effective Financing Statement filings.

²³ County Treasurer Cindy Heinrich and Ms. Wollschlager both identified Ms. Olson’s and Ms. Bornhorst’s handwriting for us. It appears that most of the handwritten entries in the Numerical Register are in Ms. Olson’s handwriting.

²⁴ We did not learn about the existence of this ledger until we talked to Ms. Bornhorst on May 10, 2006.

²⁵ According to the County Treasurer and Ms. Wollschlager, the handwritten entries in the CNS Register are in Ms. Olson’s handwriting.

²⁶ We obtained a copy of the Statement of Fees from the County Treasurer.

²⁷ The fees are broken down into the following categories: equipment fund; recording fees; chattel fees; marriage licenses; birth and death certificates; passport fees; miscellaneous revenue; photocopies; real estate surcharge; ERER surcharge; UCC surcharge; CNS surcharge; marriage surcharge; visitation surcharge; MN ENABL surcharge; children’s surcharge; birth and death surcharge; well disclosure surcharge; and assurance fees. The surcharges and assurance fees are deposited in the County’s State Agency Fund.

²⁸ We originally requested the listings for 2003 through 2005. Based upon the results of that review, we obtained and reviewed the additional 2006 listing.

- One listing included all of the **original filings** of UCC Financing Statements, and CNS Effective Financing Statements ("CNS") with the Secretary of State.²⁹ The listing included: the entry user ("olsder37" for Ms. Olson or "borjar37" for Ms. Bornhorst); the filing number, date and time, and type; the party type (debtor or secured party); and the party names.
- One listing contained the UCC **searches** (UCC-11) that were ordered of the Secretary of State's records. The listing included: the entry user; the order date; the requestor; and the entity searched.
- One listing included **amendments, terminations, continuations and assignments** filed with the Secretary of State. The listing included: the entry user; the original and amendment filing numbers; the filing date and time; and the amendment type (e.g., amendment, termination, continuation).

We performed the following procedures:

- For the **original UCC filings**, we traced the filings on the Secretary of State's listing to the Numerical Register and to the Cashbook. Any filings that we could not find on the Numerical Register were marked as missing. We observed that filings missing on the Numerical Register were also missing from the Cashbook.
- For the UCC **searches**, we traced the searches listed on the Secretary of State's listing to the Cashbook. Any searches that we could not find in the Cashbook were marked as missing. In some instances, we had to compare the number of searches reflected in the Secretary of State's listing on a particular day, with the number of searches reflected in the Cashbook, because the Cashbook did not consistently identify the entity searched. In those instances, the difference between the number of searches reflected in the Secretary of State's records and the number of searches reflected in the Cashbook was noted as missing.
- For the **amendments/terminations/continuations/assignments**, we traced from the Secretary of State's listing to the Numerical Register. Because the Secretary of State's listing did not contain the name of the debtor, just the original filing number, we traced the type of filing on a particular day. If we could not find that type of filing in the Numerical Register, we considered the filing to be missing. On a number of occasions, if we could not match the Secretary of State's listing to the Numerical Register, we had Ms. Olson look up who the debtor was on the amendment/continuation/termination filing. In some cases, we found that the filings were incorrectly labeled in the numerical register.

²⁹ The listing also contained some additional liens, such as federal tax liens and statutory agricultural liens.

- For the **CNS filings**, we traced the CNS documents from the CNS Register to the Secretary of State listings, and to the Statement of Fee reports. Using the Cashbook, we then traced the dollar amount of UCC filings and searches, and the CNS amount, to the totals reflected on the Statement of Fees.
- For July 2005 through February 2006, we compared the receipts documented in the Cashbook and in the CNS Register, with the Statement of Fees that accompanied the deposits Ms. Bornhorst made with the County Treasurer. We found that the receipts recorded in the Cashbook agreed with the amounts deposited with the County Treasurer.³⁰

We found evidence that **\$4,445.00** in fees for UCC and CNS transactions, during the time period January 1, 2003 through June 5, 2006, were not recorded in the County Recorder's records.³¹ Because the UCC transactions were not recorded in the County Recorder's records, fees collected for those transactions were not reported to the County Treasurer.³² Specifically, the following table shows the amounts we determined were not recorded in the Cashbook, Numerical Register, and/or CNS Register, and therefore were not reported to the County Treasurer:

Type of Filing (Fee per Document)	2003	2004	2005	2006 ³³	Total	Total Fees
Ag Lien (\$20)	1	-	-	-	1	\$ 20.00
Continuation (\$20)	7	3	2	7	19	\$ 380.00
CNS Continuation (\$15)	1	1	-	-	2	\$ 30.00
CNS Effective Financing Statements (\$15/\$20)	2	1	-	3	6	\$ 105.00 ³⁴
Financing Statements (\$20)	10	15	16	4	45	\$ 900.00
Termination (\$20)	13	4	20	-	37	\$ 740.00
CNS Termination (\$15/\$20)	-	2	-	1	3	\$ 50.00 ³⁵
Amendments (\$20)	-	4	-	1	5	\$ 100.00
Searches (\$20)	33	33	36	3	105	\$ 2,100.00
Transmitting Utility (\$20) ³⁶	-	1	-	-	1	\$ 20.00
Total	67	64	74	19	224	\$4,445.00

³⁰ For 2005, we also traced the fees collected each month according to the Statement of Fees reports, to the amounts actually remitted to the State each month by the County Auditor. During our review, we noted that the June 2005 collections were paid twice to the State.

³¹ We also included fees for one CNS document that was recorded in the CNS Register on June 9, 2003, but did not tie out to the Statement of Fees. As a result, fees for that transaction were not remitted to the County Treasurer.

³² Dawson Credit Union paid the fees for many of the unrecorded transactions. We reviewed payments Dawson Credit Union made to the County Recorder's Office for the time period January 10, 2003 – June 7, 2006.

³³ Time period includes January 1, 2006 through June 5, 2006.

³⁴ The fee for CNS filings was calculated at \$20/document in 2006, and \$15/document in 2003 and 2004.

³⁵ The fee for CNS termination filings was calculated at \$20/document in 2006, and \$15/document in 2004.

³⁶ The transaction labeled "transmitting utility" is questionable because Ms. Bornhorst was not able to identify the transaction. Therefore, we were unable to confirm that a fee was charged for this transaction.

Because these transactions were not recorded in the Numerical Register or the Cashbook, Ms. Bornhorst's comparison of the Numerical Register with the Cashbook, when preparing deposits for the County Treasurer, would not have disclosed the unrecorded transactions.³⁷

Ms. Olson's user name was reflected on the Secretary of State's listings for all 224 of the missing transactions, except for the following 38 transactions that reflected Ms. Bornhorst's user name:

- One UCC amendment on May 28, 2004;
- All of the transactions between the time period December 9, 2004 through January 31, 2005 (a total of 36 transactions);
- One UCC filing on January 6, 2006.

During the time period December 9, 2004 through January 31, 2005, Ms. Bornhorst's user name was used for **all** County Recorder UCC/CNS transactions with the Secretary of State, according to the Secretary of State's listings, except for two transactions on December 9, 2004 at 9:28 and 9:38.³⁸ Hence, our review supports Ms. Bornhorst's recollection that there was a period of time where Ms. Olson's password had expired, and Ms. Olson used Ms. Bornhorst's password.

We also found that the unrecorded documents stopped during the time period between Ms. Bornhorst's reported discovery of the missing fees, and the County Attorney's decision not to file charges. Only eight of the 74 transactions that were missing in 2005 occurred after July 11, 2005, when Ms. Bornhorst reported that she first discovered the unrecorded transactions. All eight of those transactions occurred after September 8, 2005, when Ms. Bornhorst reported to us that the County Attorney had declined prosecution. All eight of those transactions occurred after September 16, 2005, when the \$300 was repaid to Ms. Olson. Specifically, these eight missing transactions were on September 29, November 23, November 29 (two transactions), December 1 (two transactions), and December 15, 2005 (two transactions).

Finally, we found nine unrecorded transactions took place after Ms. Bornhorst went on leave in 2006. These nine missing transactions were on February 16, March 13, March 23 (two transactions), March 27, April 11 (two transactions), April 26, and June 5, 2006.

³⁷ Similarly, a review of the original UCC documents filed in the County Recorder's Office would not have disclosed the missing funds where the original UCC documents were not maintained by the County Recorder's Office. We understand that the County Treasurer is currently reconciling the funds in the County Recorder's Office with the Cashbook on a daily basis. However, this comparison will not disclose transactions that are not recorded in the Cashbook.

³⁸ The 9:28 and 9:38 transactions on December 9, 2004 reflected Ms. Olson's user name. All remaining transactions on December 9, 2005 reflected times later than 9:38, and Ms. Bornhorst's user name.

Conclusion

We found evidence that \$4,445.00 in fees received by the County Recorder's Office, during the time period January 1, 2003 through June 5, 2006, was never deposited with the County Treasurer. In compliance with Minn. Stat. § 6.48, we are filing this report with the County Attorney to institute such proceedings as the law and the protection of the public interests require.

We will work with the County to implement additional controls in the County Recorder's Office.

/s/Pat Anderson

Patricia Anderson
State Auditor