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## INVESTIGATIVE REPORT CITY OF TENNEY

### I. INTRODUCTION

The mission of the Special Investigations Division is to review allegations of malfeasance, misfeasance, or 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 this Office's attention and, when appropriate, provide specialized auditing techniques, initiate an independent investigation, or refer the matter to appropriate oversight authorities.

The Special Investigations Division of the Office of the State Auditor (hereinafter "OSA") received notification regarding potential wrong-doing by a former Mayor and a former City Clerk of the City of Tenney (hereinafter "City"). Specifically, the OSA reviewed the following issues: (1) whether former Mayor Tara Pasko (hereinafter "Mayor Pasko") and former City Clerk Arthur Pasko (hereinafter "Clerk Pasko")<sup>1</sup> improperly deposited City funds into their personal financial account in March of 1999; and (2) whether improper charges were made to the City's charge account at Farmers Union Oil of Southern Valley (hereinafter "Cenex") in 1998 and 1999. This Investigative Report contains the OSA's findings.

### II. THEFT AND EMBEZZLEMENT OF CITY FUNDS

The OSA determined that a possible theft and/or embezzlement of City funds may have occurred when public funds were retained in Mayor Pasko and Clerk Pasko's personal financial account, and when unauthorized personal charges were made to the City's charge account.

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

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<sup>1</sup> Mayor Pasko and Clerk Pasko are married. Mayor Pasko was elected in December of 1998 and Clerk Pasko was appointed City Clerk in January of 1999. As of February 5, 2001, Mayor Pasko and Clerk Pasko are no longer officials with the City.

the other's consent and with intent to deprive the owner permanently of possession of the property."<sup>2</sup> 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."<sup>3</sup> A person who engages in activity that constitutes theft may be subject to a fine and/or imprisonment.<sup>4</sup>

The definition of embezzlement, as provided in the Minnesota Constitution, is as follows: "[i]f any person converts to his own use in any manner or form, . . . or shall deposit in his own name, or otherwise than in the name of the state of Minnesota; or shall deposit in banks or with any person or persons or exchange for other funds or property, any portion of the funds of the state . . . every such act shall be and constitute an embezzlement . . . and shall be a felony."<sup>5</sup> A person who engages in activity that constitutes embezzlement may be subject to a fine and/or imprisonment.<sup>6</sup>

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<sup>2</sup> Minn. Stat. § 609.52, subd. 2(1) (2000). *See also* Minn. Stat. §§ 609.445 (failure to pay over public funds) and 609.45 (unauthorized compensation) (2000).

<sup>3</sup> Minn. Stat. § 609.52, subd. 2(5)(i) (2000).

<sup>4</sup> Minn Stat. § 609.52, subd. 3(3)(a) (2000) provides that if the value of the property involved in the theft is more than \$500.00 but not more than \$2,500.00, 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(3)(d)(iv) (2000) provides that if the property is public funds of not more than \$500.00, a person may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$10,000, or both.

<sup>5</sup> Minn. Const. Art. XI, § 13 (2000).

<sup>6</sup> Minn. Stat. § 609.54(1) (2000) provides that a person who does an act which constitutes embezzlement of funds valued at \$2,500.00 or less may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000.00, or both. Minn. Stat. § 609.54 (2) (2000) provides that if the value of the funds is more than \$2,500.00, the person may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000.00, or both.

**A. Retention of Public Funds**

On October 4, 1990, the City purchased a certificate of deposit in the amount of \$5,000.00 from Bremer Bank, N.A.<sup>7</sup> By March of 1999, the value of the certificate of deposit had grown to \$7,211.07. On or about March 25, 1999, the certificate of deposit was redeemed.<sup>8</sup> At this time, \$3,711.07 of the \$7,211.07 was used to purchase a second certificate of deposit in the name of the City at Bremer Bank, N.A.<sup>9</sup> The remaining \$3,500.00 was withdrawn and posted to an account at American Federal Bank in Wahpeton, North Dakota on March 25, 1999.<sup>10</sup> The name “Tara Pasko” appears on the back of the \$3,500.00 check in the area typically used to endorse checks, and on the deposit ticket. According to records provided to the OSA by American Federal Bank, the funds were deposited into a savings account registered to Arthur J. Pasko and Tara D. Pasko. Following the \$3,500.00 deposit on March 25, 1999, \$1,737.00 was withdrawn from the account on the same date.<sup>11</sup> The OSA was informed by the City’s current Mayor, Brad Johnson (hereinafter “Mayor Johnson”), that the \$1,737.00 was used for the purchase of a Bobcat tractor for the City.<sup>12</sup> The remaining \$1,763.00 remained in Mayor Pasko and Clerk Pasko’s personal financial account.

Mayor Johnson stated that the City’s Treasurer had asked former Mayor Pasko about the missing funds during a City Council meeting on August 9, 1999. At this meeting, Mayor Pasko allegedly

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<sup>7</sup> The certificate of deposit is numbered 811184.

<sup>8</sup> The bank received an Indemnity Bond signed “Tara Pasko (Mayor)” stating the certificate of deposit had been lost. The signature was notarized by the bank and is dated March 25, 1999. However, the final account statement indicates the account was closed on March 29, 1999.

<sup>9</sup> The Certificate of Deposit is numbered 818478 and is dated March 25, 1999.

<sup>10</sup> Bremer Bank, N.A. disbursed the \$3,500.00 to the City in the form of a bank check identified by the number 5011091058, dated March 26, 1999. It appears that the date on the bank check is in error.

<sup>11</sup> The \$1,737.00 was disbursed by American Federal Bank in the form of a bank check made payable to Lillegard, Inc. The check number was 77817.

<sup>12</sup> The purchase of the Bobcat tractor was discussed during a special meeting of the City Council in April of 1999. The OSA received a copy of the invoice for the Bobcat showing that the \$1,737.00 was due.

acknowledged that the funds were in her personal savings account.<sup>13</sup> An entry in the City's bank statement shows that \$400.00 was deposited into the City's checking account on August 13, 1999. The City's checkbook register indicates that the \$400.00 was deposited by Mayor Pasko. However, as of August 13, 1999, \$1,363.00 in City funds remained unaccounted for.

Mayor Johnson stated that former Mayor Pasko informed the City Council on August 9, 1999, that she had receipts for the \$1,363.00 that remained in her personal financial account. However, according to Mayor Johnson, these receipts were never provided to the City. Instead, former Mayor Pasko returned to the City \$1,363.00 during a City Council meeting on February 5, 2001, after the OSA commenced an investigation into this matter.

## **B. Charges Made to the City's Cenex Charge Account**

Around 1983, the City opened a charge account at Cenex, a gas station and convenience store.<sup>14</sup> This charge account allowed the City to obtain goods or services without first obtaining the requisite number of signatures required by Minnesota statute before paying claims.<sup>15</sup> It was alleged that Mayor Pasko and Clerk Pasko may have used the City's charge account to obtain gasoline for their personal vehicles and other personal items. Cenex provided the OSA with the City's charge account statements for charges made between May of 1998 and January of 2000.<sup>16</sup> The OSA reviewed these charge account statements and discovered several instances where it appears that personal items may have been charged to the City's account. The signed receipts for these items contain the name "Art

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<sup>13</sup> Although this conversation was not recorded in the August 9, 1999 official meeting minutes, a notation in the City's checkbook register indicates that the City's Treasurer asked Mayor Pasko about the missing funds on this date.

<sup>14</sup> The OSA was informed by a Cenex employee that the City charge account was originally opened at a Cenex in Breckenridge, Minnesota. The charge account was subsequently moved to the Cenex located in Fairmont, North Dakota.

<sup>15</sup> Minnesota law requires that all written instruments must be executed by the mayor and clerk, pursuant to authority granted by the Council. Minn. Stat. § 412.201 (2000). There is no specific statutory authority for cities to establish charge accounts. Depending on a city's form of government and how liberally the claims payment statutes are interpreted, however, arguments could be made to support the use of such accounts. *See also* Minn. Stat. § 471.382 (2001) (express authority granted to cities to use credit cards).

<sup>16</sup> The OSA was informed by a Cenex employee that on December 14, 1999, the City requested Cenex to close the charge account.

Pasko” in the signature block. The items charged to the City’s charge account that may have been personal in nature are contained in the following chart:

**CHARGES MADE TO CITY’S CHARGE ACCOUNT**

<b>Item</b>	<b>Date</b>	<b>Amount<sup>17</sup></b>	<b>Name on Receipt</b>
Heater*	11/07/98	\$34.95	Art Pasko
LP Gas Bottles*	11/17/98	\$8.00	Art Pasko
Cigarettes	11/18/98	\$2.24	Art Pasko
LP Gas Bottles*	12/22/98	\$16.00	Art Pasko
LP Gas Bottles*	01/11/99	\$8.00	Art Pasko
Cigarettes	01/23/99	\$3.33	Arthur Pasko
LP Gas Bottles*	01/25/99	\$16.00	Art Pasko
LP Gas Bottles*	02/16/99	\$8.00	Art Pasko
Cigarettes	02/16/99	\$3.33	Art Pasko
Cigarettes	02/17/99	\$3.33	Art Pasko
Cigarettes	02/20/99	\$3.33	Art Pasko
Cigarettes	02/23/99	\$3.33	Art Pasko
LP Gas Bottles*	02/23/99	\$8.00	Art Pasko
Beverage**	03/14/99	\$1.98	Art Pasko
Grocery**	03/15/99	\$0.94	Art Pasko
Cigarettes	03/16/99	\$2.82	Art Pasko
Cigarettes	03/19/99	\$5.64	Art Pasko
Cigarettes	03/26/99	\$2.82	Art Pasko

**Total                    \$132.04**

\* A Cenex employee informed the OSA that the heater and LP Gas Bottles are typically used to heat ice houses during the winter. Mayor Johnson stated, however, that the heater and LP Gas Bottles could have been used by the City to heat/thaw the City’s skid loader, although he stated that this was unlikely because he had provided the City with heaters for that purpose.

\*\* The OSA was unable to determine what type of item was purchased.

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<sup>17</sup> Amount does not include the applicable sales tax.

In addition, a Cenex employee informed the OSA that Mayor Pasko and Clerk Pasko may have pumped gasoline into their personal vehicles and then charged the City's charge account for the purchase.<sup>18</sup> However, the employee was unable to state when or how often this occurred or identify these charges on the City's charge account statements. Mayor Johnson informed the OSA that the City never received reimbursement for either gasoline or any personal items charged to the City's account. Attachment A reflects gasoline charged to the City's Cenex account between May of 1998 and January of 2000.

### **III. CONCLUSION**

Based upon the OSA's review, it appears that a possible theft and/or embezzlement of City funds may have occurred when public funds were retained in Mayor Pasko and Clerk Pasko's personal financial account, and when unauthorized personal charges, in the amount of \$132.04, were made to the City's Cenex charge account. This matter has been referred to the Wilken County Attorney to institute such proceedings as the law and public interest require.

*/s/ Judith H. Dutcher*

Judith H. Dutcher  
State Auditor

Attachment

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<sup>18</sup> The Cenex employee did not witness this activity first-hand but had been told by another employee that it had occurred. The Cenex employee, however, was unable to provide the OSA the name of the person who witnessed this activity.