



JUDITH H. DUTCHER
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 INVESTIGATIVE REPORT CITY OF BENA JULY 22, 2002

I. INTRODUCTION

The Office of the State Auditor's (hereinafter "OSA") Audit Practice Division received a resolution dated August 4, 2001, from the City of Bena (hereinafter "City") requesting an audit of the City's financial records for the years ended December 31, 1999 and 2000.¹ The City Council requested that the Audit Practice Division perform the audit because of concerns regarding the City's bookkeeping and accounting practices. The Audit Practice Division completed its audit and released the Audit Report for Years Ended December 31, 1999 and 2000 (hereinafter "Audit Report"), to the City Council and the public on March 11, 2002.²

¹ Minn. Stat. § 6.55 (2000) allows the governing body of any city to pass a resolution asking the state auditor to examine the books, records, accounts and affairs of the city.

² The Audit Practice Division identified various internal control weaknesses and violations of state law which are detailed in the Audit Report. Some of the findings are summarized below:

- A number of bank statements and accounting records of City transactions were not maintained, as required by Minn. Stat. § 15.17, subd. 2;
- Blank checks were signed before they contained a payee, an amount, and had supporting approved claims;
- Cash receipts were not deposited into the City's bank account in a timely manner, as required by Minn. Stat. § 412.141. Many of the cash receipts were not deposited for months at a time and cash receipt books could not be located;
- Certain claims did not have an itemized listing of goods or services provided to the City. Furthermore, none of the claims had signed declarations stating that the claims were just and correct and no part had been previously paid, as required by Minn. Stat. § 412.271; and
- Several payments were delinquent, resulting in the City paying finance charges.

During the audit, the Audit Practice Division determined that City Clerk-Treasurer Nadine Chase (hereinafter “Clerk-Treasurer Chase”) made payments to herself which were not authorized by the City Council as required by Minnesota law.³ This issue was referred to the OSA’s Special Investigations Division for further review.

The mission of the Special Investigations Division is to review allegations of malfeasance, misfeasance, or nonfeasance involving local units of government. Since the OSA 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, to provide specialized auditing techniques, initiate an independent investigation, or refer the matter to appropriate oversight authorities.

In order to initiate a review of the allegations regarding payments to Clerk-Treasurer Chase, the OSA requested and reviewed various City records from January 1999 through June 2001.⁴ The records included: original bank statements, check stubs, cancelled checks, claims lists, claim forms, receipts and City Council meeting minutes. However, there were months where City Council meeting minutes and/or claims lists were missing. In addition, the City was only able to locate and provide the OSA with some of the City’s canceled checks. The OSA obtained copies of the missing canceled checks from the City’s financial institution in Cass Lake, Minnesota.

Based upon information obtained from the records that were available, the OSA prepared a chart (see Attachment A) which reflects City funds disbursed to Clerk-Treasurer Chase from January 1999 through June 2001. From the OSA’s investigation, it appears that 64 checks were issued to “Nadine Chase” or “Nadine L. Chase” totaling \$20,225.10. Of this amount, approximately 45% or \$8,915.72, was either unauthorized by the City Council or otherwise questionable. Clerk-Treasurer Chase’s actions in regard to such payments may constitute theft, false claims, forgery, and/or misconduct of a public officer, as discussed in detail in sections III and IV of this report.

³ See Minn. Stat. § 412.271, subd. 1 (2000).

⁴ The Audit of the City conducted by the Audit Practice Division encompassed years ended December 31, 1999 and 2000. The Special Investigations Division expanded its review to include payments made to Clerk-Treasurer Chase through June 2001. Ms. Chase was the City’s Clerk-Treasurer from March 1999 through June 2001.

II. BACKGROUND

A. Clerk-Treasurer Duties

Ms. Chase was the City's Clerk-Treasurer from March 1999 through June 2001. Minnesota law lists specific duties to be performed by the city clerk and separate duties to be performed by the city treasurer.⁵ According to state law, some of the city clerk's duties include the following activities:

- maintaining a minute book noting all proceedings of the council;
- maintaining an accounting of all city receipts and disbursements;
- acting as the bookkeeper of the city; and
- acting as the city's custodian of records.

As defined by state law, some of the treasurer's duties include the following activities:

- receiving and keeping all moneys belonging to the city;
- accounting for all monies received and disbursed, identifying the source, object, and date of each transaction;
- retaining all vouchers and producing them upon request from the city council; and
- disbursing funds upon the written order of the mayor and clerk which have been audited and allowed by the city council.⁶

As the City's Clerk-Treasurer, Ms. Chase was responsible for all such activities. In addition, the OSA was informed that Clerk-Treasurer Chase was responsible for preparing a monthly claims list. The City's claims list contained the names of each City vendor, the amount owed to each vendor, as well as the amount owed to City employees for wages and the reimbursement of expenses. The City Council generally approved the claims during monthly meetings and Clerk-Treasurer Chase then paid the claims. Although a check for disbursement of city funds is required to be signed by the mayor and clerk after the claim is approved by the city council,⁷ the OSA was informed that City checks were pre-signed. The checks appeared to have been signed by the Mayor, the City Clerk, and the City Council treasurer.⁸

⁵ Minn. Stat. §§ 412.151, subd. 1 and 412.141 (2000).

⁶ Minn. Stat. § 412.271, subd. 1 (2000).

⁷ *Id.*

⁸ The treasurer was the treasurer of the City Council, not the City Treasurer, as Ms. Chase was both the City Clerk and City Treasurer.

According to City Council meeting minutes from March 1999 through August 1999, Clerk-Treasurer Chase was paid a salary of \$300.00 per month. In August 1999, the City Council passed a motion to increase Clerk-Treasurer Chase's monthly salary to \$500.00. Therefore, from September 1999 through October 2000, salary payments were made to Clerk-Treasurer Chase totaling \$500.00 per month.⁹ In November 2000, the City Council passed a motion to pay Clerk-Treasurer Chase \$250.00 per month. Therefore, in November and December 2000, she was paid \$250.00 per month. From January 2001 through April 2001, Clerk-Treasurer Chase was paid \$300.00 per month as salary.¹⁰

III. THEFT, FALSE CLAIMS AND MISCONDUCT

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."¹¹ 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."¹² A person who engages in activity that constitutes theft may be subject to a fine and/or imprisonment.¹³

⁹ Clerk-Treasurer Chase's salary payment for only the month of August 2000 was approved by the City Council at \$250.

¹⁰ Although in November 2000, the City Council passed a motion to pay Clerk-Treasurer Chase \$250 a month, it appears that the City Council may have increased the monthly salary to \$300.00 for February through April 2001. Even though the claims list was missing for January 2001, the OSA considered the entire \$300.00 January payment as salary since the remaining months in 2001 had \$300.00 monthly salary payments.

¹¹ Minn. Stat. § 609.52, subd. 2(1) 2000. *See also* Minn. Stat. § 609.45 (2000), which provides that a public employee who "under color of office or employment intentionally asks, receives or agrees to receive a fee or other compensation in excess of that allowed by law or where no such fee or compensation is allowed, is guilty of a misdemeanor."

¹² Minn. Stat. § 609.52, subd. 2(5)(i) (2000).

¹³ 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 (footnote continued)

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.¹⁴ In addition, a public officer or employee who “makes a return, certificate, official report, or other like document having knowledge it is false in any material respect” is guilty of misconduct.¹⁵ A public officer or employee who engages in activity that constitutes false claims against the government or misconduct may be subject to fine and/or imprisonment.¹⁶

From its review of all 64 payments to Clerk-Treasurer Chase from March 1999 through June 2001, the OSA determined that Clerk-Treasurer Chase disbursed 17 unauthorized payments to herself totaling \$6,372.60.¹⁷ The OSA determined that the payments were unauthorized because they were not included on the claims lists approved by the City Council. A summary of the unauthorized payments by year is set forth below.

(footnote continued) 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.

¹⁴ Minn. Stat. § 609.455 (2000). *See also* Minn. Stat. § 609.465 (2000), which provides that “[w]hoever, with intent to defraud, presents a claim or demand with knowledge that it is false in whole or in part, for audit, allowance or payment to a public officer or body authorized to make such audit, allowance or payment is guilty of an attempt to commit theft of public funds and may be sentenced accordingly.”

¹⁵ Minn. Stat. § 609.43, subd. 4 (2000).

¹⁶ 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. Minnesota law regarding the misconduct of a public officer or employee also provides that a public officer or employee who engages in certain acts for which no other sentence is specifically provided by law may be subject to a fine and/or imprisonment. Minn. Stat. § 609.43 (2000).

¹⁷ *See* Attachment A.

<u>Year</u>	<u>Unauthorized Disbursements</u>
1999	\$2,500.00
2000	\$3,572.60
2001	<u>\$ 300.00</u>
Total	<u>\$6,372.60</u>

More specifically, the OSA determined that the unauthorized payments occurred when Clerk-Treasurer Chase paid herself:

- A. \$6,100.00 in unauthorized wages; and
- B. \$272.60 in unauthorized reimbursements.

Each of these unauthorized disbursement methods is explained in more detail below.

A. Unauthorized Wages

City Council meeting minutes reflect that Clerk-Treasurer Chase was authorized to receive wage payments totaling between \$250.00 and \$500.00 per month during the 28 months that she was City Clerk-Treasurer. During the OSA's review, certain City Council meeting minutes and claims lists were missing. However, according to the Mayor of Bena, Clerk-Treasurer Chase was authorized to receive one wage payment per month. Therefore, the OSA generally identified the first payment of the month to Clerk-Treasurer Chase as an authorized monthly wage payment.

Generally, no disbursements of City funds may be made without first being audited and allowed by the City Council.¹⁸ Salaries and wages previously fixed by the City Council are an exception to this rule.¹⁹ In this case, the OSA determined that certain checks written to Clerk-Treasurer Chase were unauthorized wages and unapproved payments because these checks were issued to her over and above her approved wages. The checks determined to be unauthorized had notations on the memo field of the checks or the check stubs indicating that the checks were issued for "salary", "wages", or "contract." None of these checks/claims were documented as audited or approved by the City Council.

¹⁸ Minn. Stat. §§ 412.271, subd. 1 and 471.38 (2000).

¹⁹ Minn. Stat. §§ 412.271, subd. 1 and 471.38, subd. 2 (2000). *See also* Minn. Stat. § 412.111 (2000) which gives a city council authority to fix the compensation of all officers, employees, and agents when not otherwise prescribed by law.

Clerk-Treasurer Chase was to be paid her wages once a month. However, for the 28 months that Clerk-Treasurer Chase was employed by the City, 41 payments were issued to her identified as wages. Of the 41 payments, the OSA identified 28 payments as authorized wages totaling \$10,850.00. Therefore, it appears that Clerk-Treasurer Chase issued herself 15 additional wage payments from March 1999 through June 2001, resulting in the receipt of at least \$6,100.00 in unauthorized wage payments.²⁰ The following chart depicts the authorized and unauthorized wages.

PAYMENTS INDICATING WAGES

<u>Month of the Year</u>	<u>Date of Check</u>	<u>Check Number</u>	<u>Authorized Amount</u> ²¹	<u>Unauthorized Amount</u>
March	03/15/1999	5597	\$300.00	
April	04/13/1999	5609	\$300.00	
May	05/07/1999	5616	\$300.00	
June	06/08/1999	5632	\$300.00	
July	07/06/1999	5647	\$300.00	
August	08/03/1999	5683	\$300.00	
September	09/07/1999	5692	\$500.00	
	09/07/1999	5701		\$500.00
	09/07/1999	5703		\$500.00
	09/07/1999	5705		\$500.00
October	10/05/1999	5714	\$500.00	
November	11/09/1999	5732	\$500.00	
	11/09/1999	5740		\$500.00
	11/20/1999	5743		\$500.00
December	12/17/1999	5751	\$500.00	
January	01/04/2000	5774	\$500.00	
February	02/08/2000	5789	\$500.00	
March	03/07/2000	5801	\$500.00	
	03/28/2000	5808		\$500.00
April	04/04/2000	5817	\$500.00	

²⁰ The OSA identified a total of 15 payments as unauthorized wages. The reason for the difference of two (41-28=13), is that a portion of check number 5863, which totaled \$300.00, is considered unauthorized (\$100.00) and the remaining portion of the check (\$200.00) is considered authorized. Check number 5983 for \$600.00 included two monthly wage payments in one check.

²¹ Due to missing City records, the OSA was unable to verify whether the City Council authorized check numbers 5647, 5774, 5817, 5862, 5863, 5904, 5917, 5947, 5968, 6003, 6026 and 6042. However, these disbursements are included as part of the "Authorized Amount" column in the chart because Clerk-Treasurer Chase was to be paid once per month.

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<u>Month of the Year</u>	<u>Date of Check</u>	<u>Check Number</u>	<u>Authorized Amount</u>	<u>Unauthorized Amount</u>
April	05/04/2000 ²²	5821		\$500.00
May	05/06/2000 ²³	5822	\$500.00	
	05/09/2000	5852		\$500.00
	05/09/2000	5853		\$500.00
June	06/06/2000	5854 ²⁴		\$500.00
	06/12/2000	5862, 5863 ²⁵	\$500.00	\$100.00
July	07/13/2000	5872	\$500.00	
August	08/15/2000	5893 ²⁶	\$250.00	\$250.00
September	09/12/2000	5904	\$500.00	
October	10/03/2000	5917	\$500.00	
	10/09/2000	5919		\$200.00
November	11/08/2000	5936	\$250.00	
December	12/02/2000	5946		\$250.00
	12/02/2000	5947	\$250.00	

²² Although dated May 4, 2000, this check cleared the City's bank account eight days earlier on April 26, 2000. Therefore, the OSA considered this check to have been disbursed in the month of April of 2000.

²³ The microfiche copy of the check was very difficult to read. Therefore, the OSA used the date the check cleared the City's bank account.

²⁴ Check number 5854 could be considered the first wage payment for June; however, the check stub indicated the check was void. Therefore, the OSA determined check numbers 5862 and 5863 as the June wage payment.

²⁵ Check numbers 5862 and 5863 are both dated June 12, 2000 and total \$600.00. One check was for \$200.00 and the other check was written for \$400.00. The checks are combined in the chart because Clerk-Treasurer Chase was entitled to a \$500.00 wage payment for June 2000. Although the June 2000 City Council meeting minutes are missing, a \$500.00 wage payment was identified on the June claims list as Clerk-Treasurer Chase's salary. The claims list did not contain the additional \$100.00 amount. Therefore, only \$100.00 of the \$600.00 was considered unauthorized.

²⁶ The City Council meeting minutes and claims list reflect that on August 15, 2000, the City Council approved a \$250.00 payment to Clerk-Treasurer Chase for wages. However, the cancelled check and bank statement identify that \$500.00 was actually disbursed to Clerk-Treasurer Chase. The remaining \$250.00 included in check number 5893 was not on the claims list and was not approved by the City Council.

<u>Month of the Year</u>	<u>Date of Check</u>	<u>Check Number</u>	<u>Authorized Amount</u>	<u>Unauthorized Amount</u>
January	01/10/2001	5968	\$300.00	
	01/24/2001	5970		\$300.00
February & March	03/06/2001	5983	\$600.00	
April	04/03/2001	6003	\$300.00	
May	05/05/2001	6026	\$300.00	
June	06/17/2001	6042	\$300.00	
Total			\$10,850.00	\$6,100.00

B. Unauthorized Reimbursement Payments

The City generally reimbursed Clerk-Treasurer Chase for expenses such as mileage, supplies and postage she incurred on behalf of the City from March 1999 through June 2001. The OSA determined that certain checks written to Clerk-Treasurer Chase were unauthorized reimbursement payments. The unauthorized reimbursement payments included specific checks where the memo fields or the check stubs indicated the payments were for reimbursements including mileage, supplies, and postage, but the checks/claims were not audited and allowed by the City Council.

The OSA discovered two instances where it appears that Clerk-Treasurer Chase disbursed City funds totaling \$272.60 to herself for alleged expense reimbursements without City Council approval. Claims for expenses that the City Council authorized should have been included in the monthly claims lists that Clerk-Treasurer Chase presented to the City Council. In both instances, the amounts disbursed to Clerk-Treasurer Chase were not included in the claims lists. The two unauthorized reimbursement payments are itemized as follows:

UNAUTHORIZED REIMBURSEMENT PAYMENTS

Date of Check	Date Check Cleared Bank	Check Number	Unauthorized Amount
03/07/2000	03/09/2000	5802	\$72.60
05/09/2000	05/16/2000	5851	\$200.00

Total **\$272.60**

In addition, the OSA determined that a claim form was only prepared for one of the two reimbursement payments. Minnesota law requires that except for wages, “. . . where a claim for money due on goods or services furnished can be itemized in the ordinary course of business the person claiming payment . . . shall prepare the claim in written items and sign a declaration that the

claim is just and correct and that no part of it has been paid.”²⁷ Despite no evidence of City Council approval, a claim form for the \$72.60 was prepared and contained the signature “Nadine H Chase.” For the remaining \$200.00 expense, no claim form was found in the documents provided to the OSA by the City.²⁸

IV. QUESTIONABLE PAYMENTS

In addition to the unauthorized wages and reimbursements of \$6,372.60, 12 additional checks were issued to Clerk-Treasurer Chase totaling \$2,543.12 which the OSA classified as questionable payments. Seven of the 12 questionable payments included specific checks where the memo field of the check or the check stub did not include any notation as to the purpose of the payments and the payments were not approved by the City Council. During the review, the OSA identified that the claims lists for April 2000, May 2000, December 2000, and January 2001, were missing. Therefore, the OSA was unable to conclude that Clerk-Treasurer Chase was authorized to issue the following payments to herself:

QUESTIONABLE PAYMENTS

Date of Check	Date Check Cleared Bank	Documented Purpose	Check Number	Questionable Amount
04/04/2000	04/10/2000	None	5819	\$500.00
None listed	05/05/2000	None	5823	\$500.00
05/02/2000	05/09/2000	None	5840 ²⁹	\$500.00
12/22/2000	12/27/2000	None	5957	\$150.00
01/29/2001	02/01/2001	None	5971	\$200.00
01/30/2001	02/01/2001	None	5972	\$200.00
01/29/2001	02/01/2001	None	5973	\$350.00

Total **\$2,400.00**

²⁷ Minn. Stat. § 412.271 (2000).

²⁸ The payment for the reimbursement of this expense was one of five disbursements listed as “void” in City records.

²⁹ This check was listed as “void” in City records.

The OSA also identified five checks written to Clerk-Treasurer Chase totaling \$143.12 for reimbursement payments.³⁰ The payments included specific checks where the memo field of the check or the check stub indicated they were for reimbursements including mileage, supplies, postage, and “cleaning center.” However, the monthly claims list was missing for all but one check.³¹ For the check that was included on the claims list, the monthly City Council minutes do not include language that the claims list was approved. Based upon this information, the OSA was unable to determine whether the five expense reimbursement payments were approved by the City Council.

V. FORGERY

Minnesota law provides that a forgery occurs when a person with an intent to injure or defraud and without authority of law “destroys, mutilates, or by alteration, false entry, or omission, falsifies any record, account, or other document relating to a person, corporation, or business, or filed in the office of, or deposited with, any public office or officer.”³²

The OSA discovered five instances where unauthorized payments disbursed to Clerk-Treasurer Chase contained the word “void” on the check stub.³³ However, all five “voided” checks cleared the City’s bank account. In addition, the signature “Nadine Chase” appears in the endorsement area on the back of all five of the checks.

³⁰ The specific checks include the following:

<u>Check Number</u>	<u>Check Date</u>	<u>Check Amount</u>	<u>Documented Purpose</u>
5776	01/04/2000	\$40.00	Cleaning Center
5777	01/04/2000	\$12.00	Mileage
5818	04/04/2000	\$29.50	Mileage
5969	01/10/2001	\$50.80	Expenses
6004	04/03/2001	\$10.82	Reimburse postage

³¹ Check number 6004, dated April 3, 2001, totaling \$10.82 was included on the monthly claims list.

³² Minn. Stat. § 609.63, subd. 1 (6) (2000). A violation of the forgery law could result in the imposition of a fine and/or imprisonment. Minn. Stat. § 609.63, subd. 2 (2000).

³³ All payments identified as “void” are included in the unauthorized or questionable payment portions of the Investigative Report.

The following chart depicts the five instances in which checks were listed as “void” in City records, but cleared the City’s bank account.

CHECKS LISTED AS “VOID” IN CITY RECORDS

Date of Check	Date Check Cleared the Bank	Check Number	Amount
05/02/2000	05/09/2000	5840	\$500.00
05/09/2000	05/16/2000	5851	\$200.00
05/09/2000	05/18/2000	5852	\$500.00
05/09/2000	05/15/2000	5853	\$500.00
06/06/2000	06/08/2000	5854	\$500.00

Total **\$2,200.00**

It appears that because check stubs for these viable checks included notations that they were void, either false entries were made to public records or public records were altered in an attempt to conceal the unauthorized questionable disbursements totaling \$2,200.00.

VI. CONCLUSION

Based upon the OSA’s review, it appears that Clerk-Treasurer Chase deprived the City of at least \$6,372.60 in public funds. In addition, the OSA questions \$2,543.12 of payments made by Clerk-Treasurer Chase to herself. Furthermore, it appears that a forgery may have occurred when false entries were made to public records or public records were altered in an attempt to conceal unauthorized and questionable disbursements. This matter was referred to the Cass County Attorney to initiate such proceedings as the law and public interest require.

/s/ Judith H. Dutcher

Judith H. Dutcher
State Auditor

Attachment