



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)

INVESTIGATIVE REPORT LE SUEUR COUNTY

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

The Special Investigations Division of the Office of State Auditor (hereinafter "OSA") conducted an investigation regarding a potential theft of county funds in Le Sueur County (hereinafter "County"). As described in this Report, between January 1, 1998 and April 10, 2001, Le Sueur County Auditor Terry Overn (hereinafter "Auditor Overn") appears to have retained \$1,050.00 in tax certification payments.

In the course of its investigation, the OSA also identified internal control weaknesses in the County Auditor's Office, including the Motor Vehicle Division. Those matters are discussed in a June 6, 2001 letter that the OSA sent to the Le Sueur County Board of Commissioners.

I. THE COUNTY AUDITOR'S OFFICE

The county auditor is an elected official governed by Minnesota Statutes, Chapter 384.¹ The county auditor is required to charge and collect fees as prescribed by law.² All such fees collected must be paid to the county in the manner and at the times prescribed by the county board, but not less often than once each month.³ A county auditor is prohibited

¹ See Minn. Stat. § 384.01 (2000). Prior to entering upon the duties of office, each county auditor must give a bond to the state conditioned for the faithful discharge of the duties of office. Minn. Stat. § 384.02 (2000).

² Minn. Stat. § 384.151, subd. 5 (2000).

³ *Id.*

from retaining any additional compensation, per diem or other emolument for services as county auditor.⁴

The Motor Vehicle Division in Le Sueur County is a part of the Auditor's Office, under the supervision of Auditor Overn.⁵ The Division handles driver license applications, motor vehicle registrations, boat and trailer registrations, and game and fish licenses. At the end of each business day, the Motor Vehicle Division takes its cash register drawer, containing checks and cash received during the day, to the Auditor's Office's vault.⁶ At the beginning of the next business day, the drawer is retrieved and the Motor Vehicle Division balances the amount in the drawer to the cash register record reflecting the total amount of the previous business day's transactions.⁷

Checks collected by the Motor Vehicle Division should be made out to the County Treasurer. Those checks are not endorsed by the Motor Vehicle Division (or the Auditor's Office). Checks made out to someone other than the County Treasurer are hand-endorsed by the Motor Vehicle Division during the balancing process on the next business day. Once the amount contained in the register drawer balances with the register tapes, the checks and cash are taken to the Auditor's Office for receipting.

When the Auditor's Office receives the money from the Motor Vehicle Division, the Auditor's Office recounts the cash and checks, prepares receipts, and delivers the money and the receipts to the Treasurer's Office. The Treasurer's Office then recounts the money and endorses each check received with a stamp that reads:

For Deposit Only
Motor Vehicle
Le Sueur County
Joseph M. Boettcher, Treasurer⁸

⁴ *Id.*

⁵ The Motor Vehicle Division is also referred to as the "license center" or "license bureau."

⁶ In addition to interviewing County employees, the OSA observed the balancing procedures used for the Motor Vehicle Division deposits.

⁷ The Division reconciles the total amount only, without separately reconciling cash and check amounts.

⁸ Thus, checks made out to someone other than the Treasurer's Office will have two endorsements: a hand endorsement by the (*footnote continued*)

The total amount of the Motor Vehicle deposit is then entered into the County's records.⁹ All checks received by the County are then microfilmed by the Treasurer's Office.

The Auditor's Office receives a variety of other payments, including payments for delinquent taxes, ditch special assessments, map sales, tax searches, tax certifications, and liquor, dog, peddler and auctioneer licenses. The payments may be in cash or by check; in person or by mail. When checks are received by the Auditor's Office, a receipt is issued by the Auditor's Office. Each receipt and check is then delivered to the Treasurer's Office. If the check is made out to the Auditor's Office, employees in the Auditor's Office hand endorse the check before it is delivered to the Treasurer's Office. If the check is received in the mail, it is first given to the person in the Auditor's Office who is primarily responsible for the subject area. Before it is receipted, the check is hand-endorsed (if the check is not made out to the Treasurer's Office), and delivered to the Treasurer's Office.

II. TAX CERTIFICATION PAYMENTS

The county auditor must, upon request, prepare a statement setting forth the total market value of property within a school district or city.¹⁰ The statement prepared by the county auditor is referred to as a "Certificate as to Taxes and Taxable Property" or "tax certification."¹¹ From January 1, 1998 through April 1, 2001, the Le Sueur County

(footnote 8 continued) Motor Vehicle Division and the "For Deposit Only" stamp endorsement by the Treasurer's Office. Checks that are made out to the Treasurer's Office, which comprise the majority of the checks received by the Motor Vehicle Division, will only have the Treasurer's Office's "For Deposit Only" stamped endorsement.

⁹ Individual checks and cash contained in the Motor Vehicle deposit are not separately receipted or entered into the County's records.

¹⁰ Minn. Stat. § 475.53, subd. 3 and 4 (2000). Minnesota law sets limits on the amount of debt that a city or school district may incur, such as a percentage of the market value of taxable property in the city or school district, thus necessitating these statements. See Minn. Stat. § 475.53, subd. 1 (2000).

¹¹ Entities that assist cities and school districts in financial matters ask county auditors to complete tax certifications.

Auditor charged \$50.00 for each tax certification.¹² According to Auditor Office employees, checks received in the Auditor's Office for tax certifications are usually received in the mail and are given to Auditor Overn for processing.

A. February 8, 2001 Check

A check dated February 8, 2001, made out to "Le Sueur County Auditor" for \$150.00 from Springsted, Public Finance Advisors (hereinafter "Springsted"), was sent to the Auditor's Office for tax certifications prepared for three school districts. It came to the attention of the OSA that the check may have been improperly exchanged for cash.

In a letter to the County Board of Commissioners dated April 4, 2001, the OSA requested information regarding the handling of the \$150.00 Springsted check. Thereafter, as evidenced by Le Sueur County receipt dated April 6, 2001, Auditor Overn deposited \$150.00 in cash with the County Treasurer.¹³

On April 9, 2001, Auditor Overn called the OSA and said that he wanted to talk to the OSA. During this telephone conversation, Auditor Overn admitted that sometime between February 8 and February 14, 2001, he exchanged the check for cash while in the Auditor's Office.¹⁴ Auditor Overn told the OSA that the \$150.00 check was cashed from the Motor Vehicle deposit, that no one else was involved in the transaction, and that the cash was maintained in his office. Auditor Overn told the OSA that the money was going to be used for a party for his staff.¹⁵

After interviewing County staff, reviewing County records and obtaining a copy of the \$150.00 Springsted check, the OSA determined that the \$150.00 check was exchanged

¹² Effective April 2, 2001, the cost for each certificate was raised by Auditor Overn to \$100.00.

¹³ Although the receipt is dated April 6, 2001 (Friday), the County received \$150.00 in cash from Auditor Overn on Monday, April 9, 2001.

¹⁴ In a letter dated April 9, 2001, Auditor Overn provided the OSA with a written response to the OSA's April 4, 2001 letter to the County which confirmed this oral statement.

¹⁵ Expending funds on a party for County staff is in violation of Minnesota's public purpose doctrine. See, e.g., Op. Atty. Gen. 59a-22 (November 23, 1966).

for cash from the Motor Vehicle Division's February 9, 2001 daily sales.¹⁶ Three County employees recall when the \$150.00 check appeared in the Motor Vehicle deposit because the check, made out to "Le Sueur County Auditor," had not been endorsed before it was delivered to the Treasurer's Office. Two Auditor employees would not endorse the check on behalf of the Auditor's Office because they believed that the check should not have been in the Motor Vehicle deposit.¹⁷ As a result, the daily microfilming of the Motor Vehicle deposit by the Treasurer's Office had to wait until the next day when Auditor Overn endorsed the check.¹⁸ The check was then included in the Motor Vehicle Division's February 9, 2001 receipts.

B. Two Additional Checks

On April 11, 2001, Auditor Overn unexpectedly arrived at the OSA's St. Paul office. At that time, Auditor Overn told the OSA that he had exchanged for cash two other Springsted checks, each for \$50.00 (for a total of \$100.00), in approximately December 1999 or January 2000. Auditor Overn told the OSA that he placed the \$100.00 in an orange box.¹⁹ According to Auditor Overn, he discovered in either March or April of 2000 that the money had disappeared. Auditor Overn told the OSA that no one, except his Chief Deputy Auditor, was informed that the money was missing. Auditor Overn told the OSA that what he had done was wrong and that he believed that the OSA should turn this matter over to a county attorney.

¹⁶ Because the check was exchanged for cash, the total amount of the Motor Vehicle deposit balanced with the total amount reflected on the cash register tape.

¹⁷ Employees in the Auditor's Office told the OSA that they hand-endorse checks received by the Auditor's Office that are made out to the Auditor or the Auditor's Office.

¹⁸ The check was received in the Treasurer's Office on Monday, February 12, 2001, as part of the Motor Vehicle Division's February 9, 2001 (Friday) receipts. The check was microfilmed and deposited with the bank on Tuesday, February 13, 2001.

¹⁹ The orange box was maintained in the vault. The OSA was first made aware of the existence of the orange box during this investigation. It is the OSA's understanding that the orange box is no longer being used.

C. OSA Review of Additional Checks

The OSA requested and received copies of checks made out to the Le Sueur County Auditor from January 1, 1998 through April 17, 2001, from three companies which used the Le Sueur County Auditor's services for tax certifications. The three companies are: 1) Springsted; 2) Miller, Johnson and Kuehn²⁰; and 3) Ehlers & Associates, Inc. The checks were compared with the County's general ledger and the County Auditor's receipt book.²¹ The results of this review are contained in Attachment 1.

From January 1998 through March 2001, \$2,225.00 in checks had been sent by the three companies to the Le Sueur County Auditor for tax certifications. Of the \$2,225.00, \$1,050.00 in tax certification checks (20 checks) written to the County Auditor were not receipted in the County Auditor's Office or entered in the County's general ledger system as tax certification collections. Of the \$2,225.00, only \$1,175.00 appears to have been receipted by the County Auditor's Office and entered into the County's general ledger system. The \$1,175.00 includes the \$150.00 that was turned over to the County Treasurer after the commencement of the OSA's investigation.

The OSA has reviewed copies of the \$1,050.00 in tax certification checks (20 checks) that were not receipted by the Auditor's Office or entered into the County's general ledger.

²⁰ Juran & Moody is a division of Miller, Johnson & Kuehn, Inc., which is currently known as Miller Johnson Steichen Kinnard, Inc. Miller, Johnson & Kuehn did not provide the OSA with a copy of check number 043623, so the OSA obtained a copy of the check from the County Treasurer's Office.

²¹ The OSA reviewed a printout from the County Integrated Financial System Receipts Ledger for January 1998 through December 1999. The OSA reviewed an electronic copy of the County Integrated Financial System Receipts Ledger for the year 2000, and for January through February 9, 2001. These ledgers reflect money receipted in the Auditor's Office and deposited with the Treasurer's Office.

All but one of those checks were endorsed as part of the Motor Vehicle Division's deposits.²² According to Auditor Office employees, checks in the Motor Vehicle Division's deposits should not include checks for tax certifications.

Conclusion

This matter has been referred to the Sibley County Attorney to institute such civil and criminal proceedings as the law and the protection of the public interests shall require.

Attachment

²² Nineteen of the twenty checks are endorsed with the stamp "For Deposit Only, Motor Vehicle, Le Sueur County, Joseph M. Boettcher, Treasurer" which is used by the Treasurer's Office for all checks contained in the Motor Vehicle deposit. In addition, the nineteen checks are also endorsed with a stamp that reads:

TERRY OVERN
County Auditor
Le Sueur County
Le Center MN 56057

Auditor Office employees told the OSA that the "TERRY OVERN, County Auditor" stamp is normally used in the Auditor's Office as a return address stamp, and is not normally used to endorse checks. Instead, Auditor Office employees told the OSA that they hand-endorse (not using a stamp) checks received by the Auditor's Office that are made out to the Auditor or the Auditor's Office. One of the nineteen checks also appears to be hand-endorsed by Auditor Overn.

ATTACHMENT 1

**Tax Certification Checks
Payable to Le Sueur County Auditor**

Date of Check	Check Number	Payor	Amount	County Receipt Number	Date of County Receipt	Amount Not Received
01/08/1998	041408	Miller, Johnson & Kuehn	\$50.00			\$50.00
01/20/1998	041746	Miller, Johnson & Kuehn	\$50.00			\$50.00
*?/?/?/98	043623	Miller, Johnson & Kuehn	\$50.00	22617	04/21/1998	
05/15/1998	044082	Miller, Johnson & Kuehn	\$50.00			\$50.00
06/09/1998	044755	Miller, Johnson & Kuehn	\$50.00	22953	06/10/1998	
07/09/1998	56409	Springsted	\$50.00			\$50.00
07/13/1998	045276	Miller, Johnson & Kuehn	\$50.00			\$50.00
07/16/1998	56462	Springsted	\$50.00			\$50.00
07/29/1998	61761	Ehlers & Assoc.	\$50.00			\$50.00
09/18/1998	046268	Miller, Johnson & Kuehn	\$100.00			\$100.00
10/08/1998	57522	Springsted	\$50.00			\$50.00
11/13/1998	047236	Miller, Johnson & Kuehn	\$50.00			\$50.00
01/21/1999	048143	Miller, Johnson & Kuehn	\$50.00			\$50.00
04/30/1999	049758	Miller, Johnson & Kuehn	\$50.00			\$50.00
05/11/1999	049833	Miller, Johnson & Kuehn	\$50.00			\$50.00
05/20/1999	59114	Springsted	\$50.00	1029	05/24/1999	
05/28/1999	050194	Miller, Johnson & Kuehn	\$50.00			\$50.00
06/15/1999	063685	Ehlers & Assoc.	\$50.00	1262	06/23/1999	
07/12/1999	050924	Miller, Johnson & Kuehn	\$50.00			\$50.00
08/20/1999	051647	Miller, Johnson & Kuehn	\$50.00			\$50.00
09/17/1999	052038	Miller, Johnson & Kuehn	\$50.00			\$50.00
10/29/1999	052750	Miller, Johnson & Kuehn	\$100.00	2228	11/02/1999	
10/29/1999	60208	Springsted	\$50.00	2227	11/02/1999	
03/02/2000	61085	Springsted	\$50.00			\$50.00
03/09/2000	61124	Springsted	\$50.00			\$50.00
03/09/2000	054664	Miller, Johnson & Kuehn	\$50.00			\$50.00
03/16/2000	61169	Springsted	\$50.00	3193	03/21/2000	
04/14/2000	055137	Miller, Johnson & Kuehn	\$100.00	3394	04/17/2000	
05/26/2000	055925	Miller, Johnson & Kuehn	**\$25.00	3747	05/31/2000	
07/06/2000	61887	Springsted	\$50.00	4049	07/10/2000	
10/05/2000	62435	Springsted	\$50.00	4764	10/10/2000	
10/26/2000	058321	Miller, Johnson & Kuehn	\$100.00	4906	10/30/2000	
10/26/2000	62540	Springsted	\$50.00	4904	10/30/2000	
10/31/2000	058394	Miller, Johnson & Kuehn	\$50.00	4942	11/03/2000	
11/09/2000	62638	Springsted	\$100.00	5013	11/13/2000	
12/21/2000	62868	Springsted	\$50.00	5326	12/29/2000	
02/08/2001	63191	Springsted	\$150.00	6019	04/06/2001	
02/27/2001	163945	Miller Johnson Steichen Kinnard	\$50.00	5762	03/02/2001	
			Total			\$1,050.00

Bold reflects payments for which no corresponding deposit was located in the County's ledger or the County Auditor's Receipt book.

* Date of check not legible.

** Check for "Certificate of taxes - Mtg."