



STATE OF TENNESSEE
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DEPARTMENT OF AUDIT
DIVISION OF MUNICIPAL AUDIT

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September 12, 2011

Honorable Mayor and Members of the
Board of Commissioners
City of South Pittsburg
204 West Third Street
South Pittsburg, TN 37380

Mayor and Members of the Board of Commissioners:

We have concluded our investigative audit of selected records of the City of South Pittsburg. The audit focused on the period July 1, 2009, through May 31, 2011. The investigative audit concentrated on transfers from the city's utility departments¹ to the city's general fund. As a result, the audit was primarily limited to an examination of selected disbursements related to these transfers. However, when warranted this scope was expanded.

Ordinance 491 – Specifications for road repairs

In 1990, the City of South Pittsburg adopted Ordinance 491 which established specifications for road and shoulder repair for cuts made in city streets by public and private utilities. The ordinance required utilities to obtain a permit and pay a fee before excavating city streets, alleys, or public places. In addition, the utilities were required to post a deposit or a surety bond with the city for each excavation. In the event a utility did not adequately repair a street following their excavation, the city would use the deposit or bond to complete the street repair.

In lieu of an individual deposit or bond, the city's utilities were required to make and maintain with the city an annual deposit of \$20,000. The purpose of the annual deposits was the same as the deposit or bond required of other utilities, specifically to "... serve as security for the repair and performance of work necessary to put the public place in as good a condition as it was prior to the excavation..." Following adoption of the ordinance, the utilities posted the \$20,000 deposit.

¹ Marion Natural Gas System and the Board of Water Works and Sewers

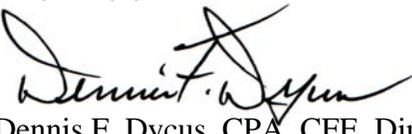
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Illegal transfer of \$744,802 to the city's general fund

In a letter dated December 31, 2009, the mayor stated Ordinance 491 required the city's utilities to "pay" \$20,000 per year to the city for their damages to the streets and calculated that the utilities owed the city \$744,802, which apparently included interest at 6.5 percent, for the years since 1990². In 2010, the city transferred an additional \$20,000 from the utilities to the city's general fund. Since the ordinance required only a deposit that had to be kept at \$20,000, the mayor's demand for payment was for a debt the utilities did not owe, and therefore, constituted an illegal transfer from the city's utilities to the general fund. *Tennessee Code Annotated* prohibits using utilities' revenue as a source of revenue to the city and requires the repayment of any funds "illegally transferred." If the city is unable to repay the funds, it is required to submit to the Comptroller of the Treasury a plan covering a period not to exceed five years in which to repay the funds. In addition, any city official in violation of the statute is subject to ouster under title 8, chapter 47 of the *Tennessee Code Annotated*.

The mayor and members of the board of commissioners should take immediate corrective action to repay these transfers or submit to this office a plan for repaying these transfers. If you have any questions or need additional information, please contact me.

Very truly yours,



Dennis F. Dycus, CPA, CFE, Director
Division of Municipal Audit

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² The city applied \$379,000 of the payment to a capital outlay note owed to the utilities and transferred the remaining \$441,170 from the utilities to the city's general fund.