



COMPTROLLER'S INVESTIGATIVE REPORT

Polk County Circuit Court Clerk

September 12, 2023

Jason E. Mumpower
Comptroller of the Treasury



DIVISION OF INVESTIGATIONS



JASON E. MUMPOWER
Comptroller

September 12, 2023

Polk County Board of Mayor
and Commissioners
6239 US-411
Benton, TN 37307

Polk County Officials:

The Office of the Comptroller of the Treasury conducted an investigation of selected records of the Polk County Circuit Court Clerk, and the results are presented herein.

Copies of this report are being forwarded to Governor Bill Lee, the State Attorney General, the District Attorney General of the 5th Judicial District, certain state legislators, and various other interested parties. A copy of the report is available for public inspection in our Office and may be viewed at <http://www.comptroller.tn.gov/ia/>.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason E. Mumpower", with a long horizontal flourish extending to the right.

Jason E. Mumpower
Comptroller of the Treasury

JEM/MLC

INVESTIGATIVE REPORT

Polk County Circuit Court Clerk

The Office of the Comptroller of the Treasury, in conjunction with the Tennessee Bureau of Investigation, investigated allegations of malfeasance related to the Polk County Circuit Court Clerk. The investigation was limited to selected records for the period January 1, 2018, through April 1, 2022. The results of the investigation were communicated with the Office of the District Attorney General of the 5th Judicial District.

BACKGROUND



The Polk County Circuit Court Clerk (clerk) is responsible for maintaining records and performing administrative duties for three courts: circuit, general sessions, and juvenile. This includes the expungement of records pursuant to court orders. Expungement is a court-ordered process, which removes and destroys public records related to criminal proceedings against individual defendants, pursuant to *Tennessee Code Annotated*, Section 40-32-101. The clerk is responsible for processing

the orders of the court by filing, maintaining, removing, or destroying the appropriate records according to law.

RESULTS OF INVESTIGATION

1. EMPLOYEES RECEIVED WAGES AND COUNTY-PAID BENEFITS TOTALING AT LEAST \$123,065.66 FOR TIME NOT WORKED

Employees received at least \$123,065.66 in wages and county-paid benefits for time not worked. The clerk allowed multiple employees to submit timesheets claiming 40 hours per week; however, the clerk gave employees one day off each week. The day off was not reflected on employee timesheets for the period reviewed.

Prior to January 2022, the clerk allowed employees to have one day off per week. Furthermore, the clerk closed the office for one hour per day for lunch each workday. Despite this time away from the office, seven employees improperly reported 40 hours per week on their timesheets, which were approved and signed by the clerk before submitting to the county executive's office for payment. At the direction of the clerk, employees of the clerk's office only regularly worked 28 hours per week. **(Refer to calculation below).**

40 hours (reported hours) – 8 hours (one day off) – 4 hours (lunch off clock) = 28 hours

According to Polk County's Personnel Policy, a full-time employee is described as any person who has been hired into a regular position that requires a normal workweek of at least 32 hours and any additional time required to fulfill the duties of the position held. Full-time employment status is required for the accrual of annual leave, sick leave, compensatory time, and an option for insurance coverage by the county. Furthermore, no part-time employees were listed on the letters of agreement between the clerk's office and the Polk County Commission. **(Refer to Exhibit 1.)**

Exhibit 1

POLK COUNTY GOVERNMENT PAYROLL REPORT									
Name: [REDACTED]			SSN: [REDACTED]			Position: Deputy Clerk			
Dates: 5/3/21 through 5/14/21			DOB: [REDACTED]			Emp. Date: 7/20/2020			
	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Total	Overtime
Date	3-May	4-May	5-May	6-May	7-May				
Hours	8	8	8	8	8			40	
Date	10-May	11-May	12-May	13-May	14-May				
Hours	8	8	8	8	8			40	
Holiday								Total Hours	Total Overtime
0								80	0
Vacation Time Taken:									
Vacation Day Pay:									
Comments: <div style="text-align: center;"> RECEIVED MAY 17 2021 BY: [REDACTED] </div>								Comp Balance: <hr/> Comp Earned: <hr/> Comp Used: <hr/> Ending Balance: <hr/>	
[REDACTED] Employee Signature					[REDACTED] Supervisor Signature				

Timesheet improperly reporting 40 hours worked per week with no compensatory time earned or used during May 2021

A. At the direction of the clerk, employees were paid for 2,852 hours not worked totaling at least \$27,024.44.

At the direction of the clerk, employees were paid for 2,852 hours not worked totaling at least \$27,024.44. Timesheets for seven full-time employees reflected 40 hours worked each week; however, the office was only open for 35 hours a week prior to January 2022. Furthermore, many employees only worked four days each week, totaling approximately 28 hours per week, yet their timesheets falsely reported 40 hours and were signed by the employee and later approved and signed by the clerk. (Refer to Exhibit 2.)

Exhibit 2

Overpaid Hours	Rate / Hour	Time Period	Amount
72.0	\$ 8.80	November 14, 2021 - April 1, 2022	\$ 633.60
516.0	\$ 8.80	July 20, 2020 - August 13, 2021	\$ 4,540.80
196.0	\$ 9.28	January 1, 2020 - October 1, 2020	\$ 1,818.88
472.0	\$ 9.76	October 1, 2020 - September 30, 2021	\$ 4,606.72
48.0	\$ 10.25	September 30, 2021 - November 24, 2021	\$ 492.00
120.0	\$ 9.28	January 1, 2020 - October 1, 2020	\$ 1,113.60
360.0	\$ 9.76	October 1, 2020 - September 30, 2021	\$ 3,513.60
84.0	\$ 10.25	September 30, 2021 - February 11, 2022	\$ 861.00
156.0	\$ 9.28	January 1, 2020 - October 1, 2020	\$ 1,447.68
468.0	\$ 9.76	October 1, 2020 - September 30, 2021	\$ 4,567.68
132.0	\$ 10.25	September 30, 2021 - April 1, 2022	\$ 1,353.00
192.0	\$ 8.80	August 23, 2021 - February 25, 2022	\$ 1,689.60
36.0	\$ 10.73	June 15, 2020 - July 10, 2020	\$ 386.28
Total			\$ 27,024.44

Chart reflecting the number of unearned and overpaid hours multiplied by each employees' hourly rate, totaling the \$27,024.44 referenced above. Please note the employee's names are omitted.

B. At the direction of the clerk, employees were paid for 192 hours of unsupported compensatory time totaling at least \$1,943.51.

At the direction of the clerk, employees were paid for 192 hours of unsupported compensatory time totaling at least \$1,943.51. According to Polk County's personnel policy, overtime is defined as time worked in excess of 40 hours per workweek. The county's personnel policy allows for employees who work overtime to accept compensatory time in lieu of overtime pay. Employees can be paid for all accrued compensatory time at the discretion of the county. Since employees were regularly working 28 hours per week, the accrual of compensatory time is unlikely and questionable. Additionally, a review of employee timesheets revealed that employees never reported compensatory time earned or taken on their weekly timesheets as

required by the county's personnel policy. Employees maintained their own compensatory time balances and did not report those balances on their timesheets that were submitted to the county executive's office for payment.

Multiple employees received improper payment for insufficient compensatory time balances. As stated above, compensatory time accrual was not reported to the county executive's office until the employee notified the county executive's office of their end of employment along with a request to be paid for the employee's entire current compensatory time balance. The requests reported specific dates with the amounts of time allegedly accrued. In multiple instances, the dates on those requests conflict with hours reportedly worked on the employees' timesheets.

For example, in one instance, an employee reportedly accrued two hours of compensatory time on August 2, 2021. However, the employee's timesheet reported sick leave taken on August 2, 2021. In another instance, an employee reportedly accrued four hours of compensatory time on July 23, 2020. However, the employee's timesheet reported vacation leave for the entire workweek.

Although these requests were not supported by records reported to the county executive's office, almost all were paid because the amounts "seemed reasonable". In one example, an employee submitted a request to be paid for 142.65 compensatory hours. When the employee was denied the request, an amended request totaling 51.75 compensatory hours was submitted by the employee. The discrepancy between the amounts reported in the two requests total 90.9 hours. The request for 51.75 compensatory hours was later paid by the county.

C. At the direction of the clerk, employees accrued 112.5 hours of annual leave and used 35 hours of annual leave totaling at least \$358.75 to which they were not entitled.

At the direction of the clerk, employees accrued 112.5 hours of annual leave to which they were not entitled. Furthermore, employees used 35 hours of the annual leave totaling at least \$358.75 to which they were not entitled. As previously mentioned, employees were regularly working only 28 hours per workweek, which is four hours under the minimum 32 hours that is required to be considered full-time by the county. According to Polk County's personnel policy, only employees who are classified as full-time shall accumulate annual leave. Therefore, the clerk allowed employees to receive this full-time benefit without meeting the full-time requirement. The unused accrued hours remain improperly credited and attributed to the employees.

D. At the direction of the clerk, employees accrued 82.5 hours of sick leave and used 34 hours of sick leave totaling at least \$347.05 to which they were not entitled.

At the direction of the clerk, employees accrued 82.5 hours of sick leave to which they were not entitled. Furthermore, four employees used 34 hours of the sick leave totaling at least \$347.05, to which they were not entitled. As previously mentioned, employees

were regularly working only 28 hours per workweek, which is four hours under the minimum 32 hours that is required to be considered full-time. According to Polk County’s personnel policy, only employees who are classified as full-time shall accumulate sick leave. Therefore, the clerk allowed her employees to receive this full-time benefit without meeting the full-time requirement. The unused accrued hours remain improperly credited and attributed to the employees.

E. At the direction of the clerk, employees received county paid benefits totaling at least \$93,391.91 to which they were not entitled.

Based on payroll records, seven employees received county paid benefits totaling at least \$93,391.91 to which they were not entitled. As previously mentioned, the employees were regularly working only 28 hours per workweek, which is four hours under the minimum 32 hours that is required to be considered full-time. Since county-provided insurance coverage was only offered to full-time employees, those who were regularly working only 28 hours per workweek should not have received this benefit.

Summary of Benefits Received but Not Earned	
<u>Benefit</u>	<u>Amount</u>
A. Time Not Worked	\$ 27,024.44
B. Unsupported Comp Time	\$ 1,943.51
C. Annual Leave Taken	\$ 358.75
D. Sick Leave Taken	\$ 347.05
E. Insurance Provided	\$ 93,391.91
Total	<u>\$ 123,065.66</u>

2. AN EMPLOYEE OF THE CLERK’S OFFICE WAS IMPROPERLY CREDITED WITH 48 HOURS OF COMPENSATORY TIME ON HER OFFICIAL DATE OF HIRE.

An employee of the clerk’s office was improperly credited with 48 hours of compensatory time on her official date of hire. Due to funding, the clerk was advised to delay the hiring of a replacement employee until the current employee completed their final two weeks of employment. Although advised against it, the clerk allowed the replacement employee to train in the office during the final two weeks of the current employee’s time in the office. The replacement employee trained in the office for six days prior to being hired. Due to funding, the replacement employee was improperly given 48 hours of compensatory time on November 15, 2021, her official date of hire. **(Refer to Exhibit 3.)**

Exhibit 3

POLK COUNTY GOVERNMENT PAYROLL REPORT											
Name	[REDACTED]			SSN	[REDACTED]			Position	Deputy Clerk		
Dates	11/15/21 through 11/26/21			DOB	[REDACTED]			Emp. Date	11/15/2021		
	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Total	Overtime		
Date											
Hours											
Date	15-Nov	16-Nov	17-Nov	18-Nov	19-Nov			40			
Hours	8	8	8	8	8						
Date	22-Nov	23-Nov	24-Nov	25-Nov	26-Nov			40			
Hours	8	8	8	8	8						
Holiday	Sick Days							Total Hours	Total Overtime		
								80	0		
Vacation Time Taken											
Vacation Day Pay											
Comments: Earned Comp: 11-2 - 3 hrs 11-3 - 3hrs 11-4 - 3hrs 11-4 - 3hrs 11-10 - 3hrs 11-12 - 3hrs used comp. 11-13 - 3hrs 11-14 - 3hrs										Comp Balance:	
										Comp earned:	48
										Comp used:	36 hrs
										Comp Balance:	32 hrs
[REDACTED]					[REDACTED]						
Employee Signature					Supervisor Signature						

The replacement employee's first timesheet, for the period November 15, 2021, through November 26, 2021, listing 48 hours of compensatory time accrued over the 2-week time period

Based on the replacement employee's starting rate of pay, the value of the 48 compensatory hours improperly accrued on her official date of hire totaled \$422.40.

3. EMPLOYEES RECEIVED 108.92 UNEARNED SERVICE CREDITS WITH THE TENNESSEE CONSOLIDATED RETIREMENT SYSTEM BY IMPROPERLY REPORTING THEIR EMPLOYMENT STATUS AS FULL-TIME

Employees received 108.92 unearned service credits with the Tennessee Consolidated Retirement System (TCRS) by improperly reporting their employment status as full-time. TCRS is a plan established by the Tennessee General Assembly offering retirement, survivor, and disability benefits for public employees (state employees, teachers, local government, and higher education employees) and their beneficiaries. The Polk County Circuit Court Clerk's Office is a participant in the TCRS.

According to the TCRS Employer Manual, service credits are reported monthly, with a maximum of 12 service credits per year for full-time employees. Service credits are a factor in the defined benefit formula, which determines the retirement benefit due the member. As previously mentioned, the employees were regularly working only 28 hours per workweek, which is four hours under the minimum 32 hours that is required to be considered full-time; therefore, these employees were not entitled to receive full-time service credits with the TCRS. These unearned service credits are a factor which, overstates their retirement readiness and benefit to be received.

Summary of TCRS Monthly Service Credits Improperly Received by Employees	
Employee 1	26.13
Employee 2	7.73
Employee 3	8.00
Employee 4	27.00
Employee 5	13.06
Employee 6	4.00
Employee 7	23.00
Total Service Credits	108.92

Partial service credits are accrued when actual pay differs from regular pay. For instance, if the regular pay was \$2,000 per month but the employee was actually paid \$1,500, the employee would receive 0.75 months of TCRS service credit. This finding has been reported to the TCRS.

4. A SIGNATURE STAMP BELONGING TO THE POLK COUNTY GENERAL SESSIONS JUDGE WAS IMPROPERLY USED WITHOUT THE JUDGE'S KNOWLEDGE OR APPROVAL

A signature stamp belonging to the Polk County General Sessions Judge (judge) was improperly used without the judge's knowledge or approval. On June 16, 2021, two expungement orders were completed for a defendant with two criminal charges. Due to the classification of the charges, the orders for expungement should have been signed and completed by a Judge of the Polk County Circuit Court. The clerk's "FILED" stamp was then placed over the judge's stamped signature, although there were other locations on the form where the "FILED" stamp could have been used. The judge's stamp was maintained within the clerk's office, along with other various stamps. **(Refer to Exhibit 4.)**

Exhibit 4



Box containing various stamps used by members of the clerk's office.

Since the signature stamp belonging to the judge was accessible to all members of the office, investigators were unable to determine who improperly stamped the judge's signature on the two expungement orders in question. *Tennessee Code Annotated* does not provide authority for the use of a signature stamp. Also, internal controls over the use of a signature stamp are inherently weak. Management should discontinue the use of any signature stamps.

INTERNAL CONTROL AND COMPLIANCE DEFICIENCIES

Our investigation revealed the following deficiencies in internal controls and compliance, some of which contributed to employees receiving unearned wages and benefits and the improper use of a judge's signature stamp.

Deficiency 1: The clerk allowed employees to report and maintain inaccurate compensatory time balances, which sometimes exceeded the maximum amount allowed to be accrued

The Polk County Circuit Court Clerk allowed employees to report and maintain inaccurate compensatory time balances. Compensatory balances were not reported to the county executive's office. Due to the insufficient records, investigators were unable to determine the accuracy of compensatory time accrual. Compensatory time accrual and use records should be timely and accurately reported to the county executive's office.

According to the *Code of Federal Regulations*, Title 29 § 553.50 of the Fair Labor Standards Act, for each employee subject to the compensatory time and compensatory time off provisions of section 7(o) of the Act, a public agency which is a State, a political subdivision of a State or an

interstate governmental agency shall maintain and preserve records containing the basic information and data required by § 516.2 of this title and, in addition:

- (a) The number of hours of compensatory time earned pursuant to section 7(o) each workweek, or other applicable work period, by each employee at the rate of one and one-half hour for each overtime hour worked.
- (b) The number of hours of such compensatory time used each workweek, or other applicable work period, by each employee.

Deficiency 2: A signature stamp belonging to the judge was not properly secured

Members of the clerk's office had access to a signature stamp belonging to the judge. The signature stamp was maintained within the clerk's office alongside multiple other stamps. Due to the accessibility of the judge's signature stamp, investigators were unable to determine who improperly stamped the signature on expungement orders. *Tennessee Code Annotated* does not provide authority for the use of a signature stamp. Also, internal controls over the use of a signature stamp are inherently weak. Failure to maintain proper controls of signature stamps increases the risk of unauthorized, erroneous, or intentional signatures on various legal documents and pleadings including those required for expungement of criminal records. Management should immediately discontinue the use of any signature stamps.
