

INVESTIGATIVE AUDIT REPORT

**GALLAWAY POLICE DEPARTMENT
JULY 1, 2005, THROUGH SEPTEMBER 30, 2006**



State of Tennessee



**Comptroller of the Treasury
Department of Audit
Division of Municipal Audit**



STATE OF TENNESSEE

John G. Morgan

C O M P T R O L L E R O F T H E T R E A S U R Y

Comptroller

STATE CAPITOL

NASHVILLE, TENNESSEE 37243-0260

PHONE (615) 741-2501

June 19, 2007

Honorable Mayor and Members of the
Board of Commissioners
City of Gallaway
P. O. Box 168
Gallaway, TN 38026

Ladies and Gentlemen:

Presented herewith is the report on our investigative audit of selected records of the Gallaway Police Department for the period July 1, 2005, through September 30, 2006. However, when the examination warranted, this scope was expanded.

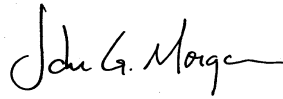
Section 9-2-102, *Tennessee Code Annotated*, requires that the Comptroller of the Treasury prescribe a uniform system of bookkeeping designating the character of books, reports, receipts and records, and the method of keeping same, in all state, county and municipal offices, including utility districts, which handle public funds. This code section also requires that all officials adopt and use the prescribed system. The Comptroller has prescribed a minimum system of recordkeeping for municipalities, which is detailed in the *Internal Control and Compliance Manual for Tennessee Municipalities* combined with Chapters 1-7 of *Governmental Accounting, Auditing, and Financial Reporting*. The purpose of our audit was to determine the extent of the entity's compliance with certain laws and regulations, including those in the above-mentioned manuals.

The findings and recommendations in this report relate to those conditions that we believe warrant your attention. All responses to each of the findings and recommendations are included in the report.

Honorable Mayor and Members of the
Board of Commissioners
City of Gallaway
June 19, 2007

Copies of this report are being forwarded to Governor Phil Bredesen, the State Attorney General, the District Attorney General, certain state legislators, and various other interested parties. A copy is available for public inspection in our office.

Very truly yours,

A handwritten signature in black ink, reading "John G. Morgan". The signature is written in a cursive style with a long horizontal flourish at the end.

John G. Morgan
Comptroller of the Treasury



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DEPARTMENT OF AUDIT
DIVISION OF MUNICIPAL AUDIT**

John G. Morgan
Comptroller of the Treasury

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

June 19, 2007

Mr. John G. Morgan
Comptroller of the Treasury
State Capitol
Nashville, TN 37243-0260

Dear Mr. Morgan:

As part of our ongoing process of examining the records of municipalities, we have completed our investigative audit of selected records of the Gallaway Police Department. This investigative audit focused on the period July 1, 2005, through September 30, 2006. However, when the examination warranted, this scope was expanded.

Section 9-2-102, *Tennessee Code Annotated*, requires that the Comptroller of the Treasury prescribe a uniform system of bookkeeping designating the character of books, reports, receipts and records, and the method of keeping same, in all state, county and municipal offices, including utility districts, which handle public funds. This code section also requires that all officials adopt and use the prescribed system. The Comptroller has prescribed a minimum system of recordkeeping for municipalities, which is detailed in the *Internal Control and Compliance Manual for Tennessee Municipalities* combined with Chapters 1-7 of *Governmental Accounting, Auditing, and Financial Reporting*. The purpose of our audit was to determine the extent of the entity's compliance with certain laws and regulations, including those in the above-mentioned manuals.

Our examination resulted in findings and recommendations related to the following:

1. Possible unauthorized benefit and apparent conflict of interest
2. Excess pay and unreliable payroll records
3. Firearms not adequately accounted for and issued to individuals who were not officers
4. Confiscated weapons used in violation of state statutes
5. Confiscated firearms not disposed of timely

Mr. John G. Morgan
Comptroller of the Treasury
June 19, 2007

6. Proceeds from certain seizures not properly remitted
7. Confiscated drugs not disposed of timely

In addition to our findings and recommendations, we are also providing management's response. If after your review, you have any questions, I will be happy to supply any additional information which you may request.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis F. Dycus", is written over a light gray rectangular background.

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

**INVESTIGATIVE AUDIT OF SELECTED RECORDS OF
THE GALLAWAY POLICE DEPARTMENT
FOR THE PERIOD JULY 1, 2005, THROUGH SEPTEMBER 30, 2006**

FINDINGS AND RECOMMENDATIONS

1. FINDING: Possible unauthorized benefit and apparent conflict of interest

Gallaway police chief, Billy Phillips, may have received a personal benefit from property donated to the city. Auditors found that on December 15, 2005, Chief Phillips sold a handheld radar gun to the City of Gallaway for \$800. Auditors determined that the radar gun had originally been purchased by Scott Thomas, a City of Piperton commissioner. According to Mr. Thomas, he gave the radar gun to the City of Gallaway Police Department in appreciation for their assistance during the early phases of establishing the Piperton Police Department. Receiving a personal benefit for property donated to the city could constitute misappropriation of city property. Chief Phillips insisted to auditors that he had received the radar gun as a personal gift from the City of Piperton commissioner. At a minimum, the sale of the handheld radar gun by the chief to the City of Gallaway may have created a conflict of interest.

Section 12-4-101, *Tennessee Code Annotated*, states:

(a) (1) It is unlawful for any officer, committee member, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend any work or any contract in which any municipal corporation, county, state, development district, utility district, human resource agency, or other political subdivision created by statute shall or may be interested, to be directly interested in any such contract. "Directly interested" means any contract with the official personally or with any business in which the official is the sole proprietor, a partner, or the person having the controlling interest.

RECOMMENDATION:

To provide impartial decisions regarding the municipality's contracts, officials should ensure that unlawful conflicts of interest, as defined by Section 12-4-101, *Tennessee Code Annotated*, are avoided.

MANAGEMENT'S RESPONSE:

Mayor and Members of the Board of Commissioners:

We do not concur with the possible unauthorized benefit. The City of Gallaway has no direct evidence to prove or disprove that the handheld radar unit purchased by an

individual, Scott Thomas, was given to the City of Gallaway or Chief Billy Phillips. Mr. Thomas, nor the City of Piperton, requested a property receipt or letter of acceptance/release for any property such as a handheld radar unit. This may indicate the property may have been given to an individual, not to the City of Gallaway as reported. The report further states that Mr. Thomas purchased the handheld radar unit as an individual and donated to the City of Gallaway. The City of Gallaway cannot determine, based upon the verbal words of Mr. Thomas, which his personal intent would be in purchasing a handheld radar unit and to whom he gave it to.

We concur that any property purchased by the City of Gallaway should have followed any guidelines provided by *Tennessee Code Annotated* in purchasing.

Recorder:

Response is the same as that of the mayor and board of commissioners.

AUDITOR'S CLARIFICATION:

The investigative audit report did not request that the mayor and members of the board of commissioners determine whether the former police chief received an unauthorized benefit. However, from their response, it appears that town officials did attempt such a determination. To assist in that determination, they should consider the following:

- 1) The giver's own words. Mr. Thomas' own statements, which are direct evidence, indicate the intended recipient was the Town of Gallaway.
- 2) The giver's pattern with other similar gifts. Mr. Thomas had purchased several other radar units, which he had donated to the Town of Piperton.
- 3) The nature of the gift. A handheld radar gun is not considered a customary gift of appreciation. A gift of this type would appear to be more suitable for a city rather than an individual. Former police chief Phillips' actions suggest he felt that way as well. He sold the unit to the city within weeks of the presentation.
- 4) Other wages or fees. Former police chief Phillips received an hourly wage, paid through the City of Gallaway, for patrolling in Piperton. However, in addition to that wage, he received a separate additional fee for his assistance in establishing the Piperton Police Department. For the seven-month period October 2005 through April 2006, former police chief Phillips received \$250 a week in addition to his hourly wages, or a total of \$7,000 in compensation in addition to his hourly wage, directly from the Town of Piperton.

2. **FINDING:** **Excess pay and unreliable payroll records**

Our investigative audit revealed that the police chief, Billy Phillips, apparently received \$539 in pay that he was not due. He submitted and was paid for the same hours on two separate time sheets. In addition, on a number of occasions, time sheet records submitted by Chief Phillips indicated he was working in both the City of Gallaway and the City of Piperton at the same time. The City of Gallaway entered into a contract to provide law enforcement services to the City of Piperton. City of Gallaway police officers prepared and submitted to the City of Gallaway recorder separate time sheets for the hours they patrolled in the City of Piperton. Separate payroll checks were issued by the recorder for these extra hours. The police chief did provide a document, signed by the mayor of the City of Gallaway, that, for time-keeping purposes, effectively made him a salaried employee. However, supporting time records created the appearance that the police chief received compensation from two separate governments at the same time for the same hours.

The *Internal Control and Compliance Manual for Tennessee Municipalities*, Title 2, Chapter 3, states, “Time cards or honor system time sheets (approved by department heads) should be maintained for all employees in order to eliminate unauthorized pay...”

RECOMMENDATION:

The mayor or a designated official should review time sheets submitted by all department heads to avoid unauthorized payroll payments and the appearance of unauthorized payroll payments.

MANAGEMENT’S RESPONSE:

Mayor and Members of the Board of Commissioners:

We do not concur. The City of Gallaway did determine that Chief Billy Phillips was an employee of the police department as a supervisor. In his capacity, he was on salary based on a 40-hour work week. He received compensation at an agreed rate per month, no overtime compensation or extra pay during this time period came from the City of Gallaway. Any extra payments received by Chief Phillips would have been in accordance with a “Contract for Services” in which to the City of Piperton and Gallaway agreed to engage so that police protection may be set up for the City of Piperton. Two time sheets submitted were consistent with the pay Chief Phillips received from both the City of Piperton and the City of Gallaway. According to the report, there was an appearance of an unauthorized payment. The mere appearance of an unauthorized payment does not constitute such unauthorized payments.

Recorder:

Response is the same as that of the mayor and board of commissioners.

AUDITOR'S REBUTTAL:

The finding addressed two separate and distinct conditions – 1) an unauthorized payment, and 2) the appearance of unauthorized payments. The mayor and members of the board of commissioners responded only to the second condition.

The first condition involved the duplicate submission by the former police chief of hours worked in Piperton on December 1, 2, 8, and 9, 2006. He claimed, and was paid, for working the same shift, 3:00 p.m. to 10:00 p.m., for these dates on two separate time sheets. Clearly, that represented an unauthorized payment of \$539. The former police chief told auditors that this must have been an error on his part.

The second condition involved the appearance of unauthorized payments. As the board is aware, time records on file with the city indicated that the former police chief was on duty in both Piperton and Gallaway simultaneously. The mayor and board should ensure that inaccurate or misleading city records are corrected.

As further clarification, the former police chief's pay was an hourly rate based on a guaranteed 92 hours per 2-week period, not a 40-hour work week as the board asserted.

We reiterate our finding and recommendation.

3. **FINDING:** Firearms not adequately accounted for and issued to individuals who were not officers

The City of Gallaway police chief failed to maintain a comprehensive, updated inventory of all firearms owned or in the custody of the police department. Auditors and the police chief were unable to locate and account for two handguns that had been purchased by the Gallaway Police Department. In addition, several confiscated firearms had apparently been released without written documentation of that action. Also, weapons purchased by the department were apparently issued to individuals who, at the time of the audit, had no standing as certified, reserve, or auxiliary officers. The *Internal Control and Compliance Manual for Tennessee Municipalities* requires that fixed asset records be maintained. Title 1, Chapter 4, of the manual states:

Municipal officials should ... require that all fixed assets are located, identified (tagged or marked), and recorded using a separate card for each property item or group of similar items, such as chairs, purchased at the same time. The record should be retained at the municipality and should include up-to-date purchase

and disposal information. An annual inventory should be performed and documented.... a record of moveable, high-risk, sensitive property, such as TVs, VCRs, and small office machines, as well as furnishings and works of art, be established and maintained and an annual inventory be performed.

RECOMMENDATION:

To better control and account for high-risk, moveable property such as firearms, the police chief should maintain complete, updated records of those items in department custody. In addition, the police chief should require that at least annually, a physical inventory of the weapons is performed and documented. Finally, to reduce any potential liability, the police chief should only issue weapons to certified, reserve, or auxiliary officers of the City of Gallaway who have completed the required training and who are covered under the town's insurance coverage. Any weapons currently issued to individuals without officer status should be reclaimed immediately, and placed in the department's inventory.

MANAGEMENT'S RESPONSE:

Mayor and Members of the Board of Commissioners:

We concur. The City of Gallaway has adopted an inventory of **ALL** firearms either purchased by the City of Gallaway or confiscated by the City of Gallaway. The missing firearms were immediately placed into NCIC and a report of theft was completed. No firearm shall be issued to any non-member of the police department. The police department has also established evidence procedures, policy, and property control measures.

Recorder:

Response is the same as that of the mayor and board of commissioners.

Police Chief:

Response is the same as that of the mayor and board of commissioners.

4. **FINDING:** **Confiscated weapons used in violation of state statutes**

The police chief failed to obtain the required court order prior to authorizing departmental use of weapons seized as contraband during arrests. Section 39-17-1317(b), *Tennessee Code Annotated*, states, "Any weapon declared contraband shall be sold in a public sale, destroyed, or used for legitimate law enforcement purposes, **at the discretion of the**

court, by written order.” [Emphasis added.] Section 39-17-1317, *Tennessee Code Annotated*, further states:

A weapon that may be evidence in an official proceeding shall be retained or otherwise preserved in accordance with the rules or practices regulating the preservation of evidence. Any such weapon shall be sold, destroyed or retained for legitimate law enforcement purposes not less than sixty (60) days nor more than one hundred eighty (180) days after the last legal proceeding involving the weapon....

(i) No weapon seized by law enforcement officials shall be used for any personal or law enforcement purposes, sold or destroyed except in accordance with this section.

RECOMMENDATION:

The police chief should ensure that confiscated weapons are handled in accordance with state law. These weapons should be disposed of or used by the department only after the required court order has been obtained and within the time specified by state law. Documentation of compliance with state law should be maintained.

MANAGEMENT’S RESPONSE:

Mayor and Members of the Board of Commissioners:

We concur. The City of Gallaway has inventoried **ALL** confiscated firearms. No confiscated firearm will be sold, traded, destroyed, or used without authorization by the court. The court order will be on file at the court and police department for inspection.

Recorder:

Response is the same as that of the mayor and board of commissioners.

Police Chief:

Response is the same as that of the mayor and board of commissioners.

5. **FINDING:** **Confiscated firearms not disposed of timely**

Our audit revealed that the Gallaway Police Department failed to dispose of confiscated firearms in accordance with a written court order in a timely manner. Section 39-17-1317(b), *Tennessee Code Annotated*, states, “Any weapon declared contraband shall be sold in a public sale, destroyed, or used for legitimate law enforcement purposes, at the discretion of the court by written order.”

Section 39-17-1317(h)(1), *Tennessee Code Annotated*, further states:

A weapon that may be evidence in an official proceeding shall be retained or otherwise preserved in accordance with the rules or practices regulating the preservation of evidence. Any such weapon shall be sold, destroyed or retained for legitimate law enforcement purposes not less than sixty (60) days nor more than one hundred eighty (180) days after the last legal proceeding involving the weapon....

(i) No weapon seized by law enforcement officials shall be used for any personal or law enforcement purposes, sold or destroyed except in accordance with this section.

RECOMMENDATION:

The police chief should ensure that procedures and security are sufficient to safeguard inventory and that each item is properly disposed of in accordance with *Tennessee Code Annotated*. In addition, the police chief should ensure that someone independent of the custodial function of contraband weapons reconcile the destruction and retention court orders with the property actually destroyed or retained. Any discrepancies should be reported and investigated.

MANAGEMENT'S RESPONSE:

Mayor and Members of the Board of Commissioners:

We concur. The City of Gallaway will dispose of any confiscated firearms within a timely manner as directed by the court. Any disposal of confiscated firearms will be documented and remain on file with the court and police department.

Recorder:

Response is the same as that of the mayor and board of commissioners.

Police Chief:

Response is the same as that of the mayor and board of commissioners.

6. **FINDING:** **Proceeds from certain seizures not properly remitted**

The City of Gallaway failed to calculate and remit all applicable funds due to the Tennessee Department of Health. Our investigative audit revealed that the Gallaway Police Department seized vehicles in accordance with Section 55-10-403 (driving under

the influence) and Section 55-50-504 (driving on revoked license), *Tennessee Code Annotated*. However, the police department failed to calculate and remit the applicable portion of the proceeds from the sale of these vehicles to the Tennessee Department of Health. Section 40-33-211, *Tennessee Code Annotated*, mandates that the proceeds derived from vehicles forfeited under those statutes are distributed as follows:

- (1) The revenue shall be retained by the entity, either state or local government, which was responsible for the seizure. The revenue shall be used during each fiscal year to compensate the entity for reasonable and direct expenses involved in the confiscation, towing, storage, and sale of the forfeited vehicles. All expenses claimed by the entity shall be subject to audit and review by the comptroller of the treasury for the purpose of determining that expenses claimed by the entity are direct and reasonable;
- (2) Any remaining revenue shall be transmitted to the department of health no later than June 30 of each fiscal year.

RECOMMENDATION:

To comply with state statutes, the police chief should ensure that the reasonable and direct expenses involved in the confiscation, towing, storage, and sale of the forfeited vehicles is documented. No later than June 30 of each year, he must ensure that any revenue generated from those seizures in excess of the reasonable expenses are transmitted to the department of health.

MANAGEMENT'S RESPONSE:

Mayor and Members of the Board of Commissioners:

We concur. All seized vehicles will be disposed of in a timely manner in accordance with *Tennessee Code Annotated*. Any expenses will be documented in the file location of each seized vehicle. Any proceeds that exceed the sale amount of the vehicle will be distributed to the Tennessee Department of Health to comply with Section 40-33-211, *Tennessee Code Annotated*.

Recorder:

Response is the same as that of the mayor and board of commissioners.

Police Chief:

Response is the same as that of the mayor and board of commissioners.

7. **FINDING:** **Confiscated drugs not disposed of timely**

The Gallaway Police Department failed to follow the procedures set forth in state statutes for the disposal of drugs and drug paraphernalia once the related cases were concluded. The police department maintained custody of drugs and drug paraphernalia seized pursuant to Section 53-11-451, *Tennessee Code Annotated*. However, narcotics were neither inventoried annually, nor disposed of in a timely manner. Section 53-11-451, *Tennessee Code Annotated*, sets forth the following procedures relating to the disposal of seized controlled substances and drug paraphernalia which have been held as evidence or exhibits for cases which have been concluded:

(1) The clerk of the court having custody of the property to be disposed of shall, no less than once annually, inventory the same and prepare a list of the property proposed to be destroyed with references to the cases involved and the name of the case, the case number and date when such property was used;

(2) The clerk shall submit the inventory list with a filed petition to the court and shall serve a copy of the petition upon the district attorney general. After determining that the listed property is not needed as evidence in any pending or potential judicial proceeding, the court shall order the property to be destroyed; and

(3) The clerk, or such deputy clerk as the clerk may designate, shall completely destroy each item by cutting, crushing, burning or melting and shall file, together with the petition and order relating to the destroyed property, an affidavit concerning such destruction, showing a description of each item, the method of destruction, the date and place of destruction, and the names and addresses of all witnesses to the destruction.

RECOMMENDATION:

To comply with state statutes and to alleviate the responsibility for safeguarding property not needed as evidence, the police chief should ensure the annual inventory and disposal of applicable seized drugs and drug paraphernalia. Procedures set forth in Section 53-11-451, *Tennessee Code Annotated*, should be followed for the disposal of such property.

MANAGEMENT'S RESPONSE:

Mayor and Members of the Board of Commissioners:

We concur. All drugs or paraphernalia that are in the possession of the Gallaway Police Department will be disposed of properly and by order of the court. We also have put policy and procedures in place to ensure that proper handling of all evidence is followed. Any destruction will be within a timely manner. The destruction petition to the district

attorney general and order from the court will be on file at the district attorney general's office, the court, and the Gallaway Police Department.

Recorder:

Response is the same as that of the mayor and board of commissioners.

Police Chief:

Response is the same as that of the mayor and board of commissioners.