



A C WHARTON, JR. - Mayor
GEORGE M. LITTLE - Chief Administrative Officer
EXECUTIVE DIVISION
Internal Audit Service Center
LEON PATTMAN, CIA, CISA, CRMA, CMFO
City Auditor

November 19, 2014

Mr. Dwan Gilliom, Director
Public Works Division
City of Memphis
125 N. Main, Suite 608
Memphis, Tennessee 38103

Director Gilliom:

Internal Audit received a whistleblower report via email on October 27, 2014 alleging abuse of City equipment and an inappropriate property tax exemption for commercial property located at 1249 Fairfax Street. We have completed our special investigation. Below, you will find each specific allegation, our conclusion for the allegation, any violation of regulatory guidelines, control deficiencies, and recommendations for corrective action, if warranted.

1) ALLEGATION:

The whistleblower reported that the property owner of 1249 Fairfax Street (member and/or owner of LAD Properties) stated that the City was taking over the project of digging up trees and hauling off tree limbs and stumps because the City needed the broken concrete located on the property. Additionally, the whistleblower reported that the City would also demolish a concrete shop building for the property owner. The allegation also stated that the whistleblower physically observed City equipment (2 excavators, a Caterpillar D-6 Dozer, and a dump truck) on the property on October 27, 2014 grading the property and gathering and hauling off debris.

CONCLUSION:

Allegation substantiated. City employees improperly engaged in unauthorized acceptance of a donation of broken concrete (approximately 700 tons or more) for use on an ongoing City sewer project. The use of City equipment and labor to demolish the structure was an "abuse" of City resources and a violation of Memphis and Shelby County 2012 Building Code, Local Amendments regarding demolition. Additionally, the Heavy Equipment Supervisor's and Manager's action gave the appearance of a "quid pro

quo” transaction without proper authorization. Lastly, we found no evidence of fraud in this matter.

SUMMARY OF INVESTIGATION:

Auditors received the whistleblower report on October 27, 2014 at 11:13 p.m. The very next day, auditors and investigators from the Police Inspectional Service Bureau (ISB) visited the location to assess the veracity of the allegations. We found City equipment on the property which included an excavator, dozer, dump trucks, and grease truck. ISB detectives questioned the owner and others onsite. Based on our investigation, the property owner contacted the City Heavy Equipment Department to donate the broken concrete (referred to as rip rap) to the City. The department’s supervisor and manager knew the City could save money estimated at \$27 per ton because they were working on a major sewer project and their stock piles were nearing depletion. The property owner visited the heavy equipment office on October 27, 2014 and signed a “Right of Entry Permit” for City employees to remove concrete, block building, and dirt. Thereafter, on October 27, 2014, City employees entered the property and proceeded to haul the “rip rap” and dirt. During the course of obtaining the concrete, the excavator operator “demolished” the structure on the property. Additionally, a City employee used the dozer to push the concrete into piles and smooth the surface (possibly grading) reportedly for the dump trucks to pass safely. We did note that a private vendor was onsite cutting trees and removing the wood. We found no indication that tree limbs and stumps and other debris had been hauled off the property by City dump trucks. Auditors visited the sewer site and confirmed the existence of concrete at the locations. We did not observe any other debris (tree limbs and stumps) at the sewer project location. Lastly, we found no evidence that City dump trucks transported anything to any other locations such as solid waste landfills.

Auditors noted the following violation and control deficiency:

- (a) Violation – Memphis Shelby County 2012 Building Code, Local Amendments, Section 117 – “Contractors License For Demolition” which reads:

“117.1 Required.—Except as hereinafter provided, it shall be unlawful for a person, firm or corporation to wreck, demolish, or raze any building or structure within Shelby County, unless such person, firm or corporation has been issued a Demolition Contractor License by the Building Official.”

There was no demolition license issued by the Shelby County Building Official for the property located at 1249 Fairfax Street. Therefore, the City employees involved in the approval and actual demolition of the structure violated the Code. The collective actions of the employees involved in the

approval and actual demolition constitutes an abuse of City resources (equipment and labor).

- (b) Control Deficiency – there were no procedures in place for employees to properly obtain City Council approval to accept and appropriate for use of a donation. There was no approved Council resolution to accept any donation. Auditors found that management was unaware of the practice of the heavy equipment department accepting donations (especially the broken concrete and dirt).

RECOMMENDATION:

Public Works management should develop and implement procedures for supervisory and staff employees to follow when accepting a donation. The procedures should specifically require management notification and Council approval before any City resource acts on the donation offer. Management should work with the City Attorney's Office to develop a legal document that places into writing the donor's unconditional gift to the City. Management should ensure that there is no "quid pro quo" expectation in any acceptance of a donation. Additionally, management should train and counsel employees on the acceptable use of City equipment and labor.

2) ALLEGATION:

The whistleblower reported that the property (1249 Fairfax Street) owner's father had worked out a deal with the City Mayor for the property located at 1249 Fairfax to get an exemption on taxes.

CONCLUSION:

Allegation unfounded. The City property tax records did not show any tax exemption for the property located at 1249 Fairfax Street. The property had outstanding taxes, interest, and penalties due in the amount of \$15, 259.60 which included delinquent taxes for 2012 and 2013.

We presented management with the draft report dated November 13, 2014. We requested that you provide a written response to our office with an action plan on how and when the control deficiency will be addressed by November 20, 2014. Additionally, to provide readers with management's views and perspective on our findings and recommendations, we included management's written response to the draft report in full text in the appendix of this report.

Our special investigation may not necessarily disclose all weaknesses related to internal controls. Additionally, the procedures performed during this investigation do not constitute an audit under Government Auditing Standards.

Internal Audit takes each allegation of fraud, waste, and abuse seriously. We appreciate the concerned citizen that reported this matter to our office and the Public Works management and staff for their cooperation.

Sincerely,



Debbie Banks, CFE, CICA, CMFO
Project Manager

APPROVED:



Leon Pattman, CIA, CISA, CRMA, CMFO
City Auditor

c: AC Wharton, Jr., Mayor
George M. Little, Chief Administrative Officer
Herman Morris, Jr., City Attorney
Brian Collins, Director, Finance Division
Toney Armstrong, Director, Police Services Division

APPENDIX:

Response from Director of Public Works

City of Memphis



Division of Public Works

Inter-Office Memorandum

To: Leon Pattman, City Auditor

From: Dwan Gilliom, Director *WJG 11/18/14*

Date: November 17, 2014

Re: Public Works Response to Whistleblower Report dated November 13, 2014

Public Works has reviewed the findings detailed in the whistleblower report concerning activities performed by Heavy Equipment Services at 1249 Fairfax. Public Works Management is in complete agreement with these findings and conclusions as provided in the report. Consequently Public Works will begin immediately implementing the City Audit identified recommendations so as to prevent any future reoccurrences, ensure proper oversight and accountability for these operations. Public Works detailed action plan:

1. Staff has contacted the City Attorney's office to develop a legal document for use when accepting donations to the City. This action will be completed in 30 days.
2. A detailed set of procedures is being created which will be used by appropriate staff to ensure proper notification and approval prior to any actions regarding a donation offer. This action will be completed in 10 days.
3. Management personnel will be trained and counseled on the proper use of City resources. This action will be completed in 5 days.

Furthermore, Public Works Management will be issuing administrative charges for any Heavy Equipment Services supervisory personnel involved in this matter for violations of the City of Memphis Personnel Manual Policy and Procedures as well as the identified violations contained in the Audit report.

Public Works would like to thank the City Auditor's office for its responsiveness and professionalism in the handling of this investigation.

c: Robert Knecht, Deputy Director
Carolyn Benson, Administrator Drain Maintenance & Heavy Equipment Services

