

# TOWN OF MARINGOUIN



INVESTIGATIVE AUDIT  
JANUARY 28, 2015

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LOUISIANA LEGISLATIVE AUDITOR  
DARYL G. PURPERA, CPA, CFE

January 28, 2015

**THE HONORABLE DEMI VORISE, MAYOR  
AND MEMBERS OF THE BOARD OF ALDERMEN**  
Maringouin, Louisiana

We have audited certain transactions of the Town of Maringouin. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the credibility of allegations we received.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*.

The accompanying report presents our findings and recommendations, as well as management's response. This is a public report. Copies of this report have been delivered to the District Attorney for the 18<sup>th</sup> Judicial District of Louisiana and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE  
Legislative Auditor

DGP/aa

MPD 2014



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## EXECUTIVE SUMMARY

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### **Public Funds Used for Non-Public Purposes**

From March 7, 2012 to March 14, 2014, Maringouin (Town) Police Chief John Simien and Officer Daniel Dorsey extended their hotel stays while attending out-of-town training conferences for purposes that did not benefit the public (i.e., non-public purposes). These non-public expenditures of public funds totaled \$1,291. By using public funds for non-public purposes, Chief Simien and Officer Dorsey may have violated state laws.

### **Supplemental Payments to Police Officers and Police Chief**

From January 1, 2007 to December 31, 2013, Town officials authorized supplemental payments totaling \$116,807 to Chief Simien and the three full-time police officers, but failed to include these payments when calculating the officers' state and federal income tax deductions, Medicaid deductions, and retirement contributions. In addition, Chief Simien received \$31,000 of the \$116,807 in supplemental payments that he was not eligible to receive. By failing to include the supplemental payments when calculating the officer's payroll, and authorizing ineligible supplemental payments to Chief Simien, the mayor and Chief Simien may have violated the Louisiana Constitution and state law.

### **Improper Disposition of Traffic Citations**

From March 2012 through July 2014, the police department issued a total of 291 moving violation citations, of which Magistrate Sarah Harris-Wallace appears to have improperly reduced 124 (43%) to non-moving violations. In addition, the police department clerk reduced moving violations with little or no management oversight.

### **Faulty Purchasing Process**

On December 16, 2013, the Maringouin Police Department purchased weapons and supplies totaling \$1,710, which the mayor refused to pay until December 11, 2014.





## BACKGROUND AND METHODOLOGY

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The Town of Maringouin (Town) is located in Iberville Parish and has a population of 1,098 (Year 2010 Census). The town was incorporated under the provisions of the Lawrason Act, which allows for police protection and other necessary public services. The Maringouin Police Department consists of an elected police chief, three full-time police officers, and one part-time police officer. The police chief has “general responsibility for law enforcement in the municipality” and is charged with enforcing applicable ordinances, state laws, and performing other duties required of him by state law and/or ordinance.

The Louisiana Legislative Auditor received complaints concerning certain operations within the police department. This audit was initiated to determine the validity of the complaints. The procedures performed during this audit included:

- (1) interviewing police department personnel;
- (2) interviewing other persons as appropriate;
- (3) examining selected police department and Town documents and records;
- (4) gathering and examining external parties’ documents and records; and
- (5) reviewing applicable state laws and regulations.



## FINDINGS AND RECOMMENDATIONS

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### Public Funds Used for Non-Public Purposes

**From March 7, 2012 to March 14, 2014, Maringouin Police Chief John Simien and Officer Daniel Dorsey extended their hotel stays while attending out-of-town training conferences for purposes that did not benefit the public (i.e., non-public purposes). These non-public expenditures of public funds totaled \$1,291. By using public funds for non-public purposes, Chief Simien and Officer Dorsey may have violated state laws.<sup>1,2</sup>**

Travel expenses incurred by Maringouin Police Department personnel are governed by the Town of Maringouin's (Town) travel expense policy. The policy provides that employees who travel in the course and scope of their employment be paid for actual travel expenses incurred on a reimbursement basis. According to police department travel records, from March 7, 2012 to March 14, 2014, Chief Simien and Officer Dorsey extended their hotel stays for non-public purposes while attending the Louisiana Association of Chiefs of Police (LACP) training conferences. In these instances, the Town pre-paid the cost of the hotel and conferences, thereby avoiding the reimbursement process. These non-public hotel stays were both before and after the conferences at a cost of \$1,291 in public funds as outlined below:

- *Marksville* - The conference started at 8 a.m. on March 7, 2012, and ended at 12 p.m. on March 8, 2012. Town records indicate that Chief Simien and Officer Dorsey arrived on March 6th, the day before the conference, and stayed through March 9th, the day after the conference. Travel time to Marksville is approximately 90 minutes. Since the conference ended at 12 p.m. on March 8th, it appears that Chief Simien and Officer Dorsey would have had sufficient time to return home but chose to stay an additional night, incurring a total of \$218 in hotel expenses that served no public purpose.
- *Baton Rouge* - The conference started at 8 a.m. on October 18, 2012, and ended at 2 p.m. on October 19, 2012. Town records indicate that Chief Simien arrived on October 17th, the day before the conference, and stayed through October 20th, the day after the conference. Since the conference ended at 2 p.m. on October 19th, and because the travel time from the Town's limits to Baton Rouge is approximately 35 minutes, it appears that Chief Simien incurred hotel expenses for an additional night (October 19th) totaling \$108 that served no public purpose.
- *Marksville* - The conference started at 8 a.m. on March 20, 2013, and ended at 12 p.m. on March 21, 2013. Town records indicate that Chief Simien and Officer Dorsey arrived on March 19th, the day before the conference, and stayed through March 22nd, the day after the conference. As was stated above, travel time to Marksville is approximately 90 minutes. Since the conference ended at 12 p.m. on March 21st, it appears that Chief Simien and Officer Dorsey would have had sufficient time to return home, but chose to stay an additional night, incurring a total of \$220 in hotel expenses that served no public purpose.

- *Lafayette* - The conference started at 5 p.m. on July 9, 2013, and ended at 3 p.m. on July 12, 2013. Town records indicate that Chief Simien and Officer Dorsey arrived on July 8th, the day before the conference, and stayed through July 13th, the day after the conference. Since the conference started at 5 p.m. on July 9th and ended at 3 p.m. on July 12th, and because the travel time to Lafayette is approximately 45 minutes, it appears that Chief Simien and Officer Dorsey incurred additional hotel expenses for two nights (July 8th and 13th) totaling \$381 that served no public purpose.
- *Baton Rouge* - The conference started at 8 a.m. on October 17, 2013, and ended at 12:15 p.m. on October 18, 2013. Town records indicate that Chief Simien arrived on October 16th, the day before the conference, and stayed through October 19th, the day after the conference. Since the conference ended at 12:15 p.m. on October 18th, and, again, because the travel time from the Town's limits to Baton Rouge is approximately 35 minutes, it appears that Chief Simien and Officer Dorsey incurred hotel expenses for an additional night (October 18th) totaling \$192 that served no public purpose.
- *Marksville* - The conference started at 7 a.m. on March 12, 2014, and ended at 12:15 p.m. on March 13, 2014. Town records indicate that Chief Simien and Officer Dorsey arrived on March 11th, the day before the conference, and stayed through March 14th, the day after the conference. As was stated previously, travel time to Marksville is approximately 90 minutes. Since the conference ended at 12:15 p.m. on March 13th, it appears that Chief Simien and Officer Dorsey would have had sufficient time to return home but chose to stay an additional night, incurring a total of \$172 in hotel expenses that served no public purpose.

According to Officer Dorsey, he and Chief Simien would normally arrive at the conferences early and would stay past the conference end dates. Chief Simien confirmed that he and Officer Dorsey arrived at least a day before the conference and would stay a day after the conference before returning to town. When asked about the public benefit to staying extra days before and after the conferences, Chief Simien stated that the extra days were of no benefit to the Town. By using public funds for non-public purposes, Chief Simien and Office Dorsey may have violated state laws.<sup>1,2</sup>

In addition to using public funds for non-public purposes, we noted that the hotel invoices from the Marksville conferences attended in March 2013 and March 2014 indicated "paid outs" of \$179.02 and \$100, respectively. According to the Senior Rooms Controller for Paragon Casino and Resort, "paid outs" are cash payments given to a hotel guest to refund prepayments made by the Town. In the instant case, she stated that the refunds were not issued by check to the Town. When asked if he or Officer Dorsey ever received cash refunds from the Paragon Casino and Resort, Chief Simien stated he would be the one to receive the refunds, not Officer Dorsey; however, he said that he never received any cash back from the hotel.

### Supplemental Payments to Police Officers and Police Chief

From January 1, 2007 to December 31, 2013, Town officials authorized supplemental payments totaling \$116,807 to Chief Simien and the three full-time police officers, but failed to include these payments when calculating the officers' state and federal income tax deductions, Medicaid deductions, and retirement contributions. In addition, Chief Simien received \$31,000 of the \$116,807 in supplemental payments that he was not eligible to receive. By failing to include the supplemental payments when calculating the officer's payroll, and authorizing ineligible supplemental payments to Chief Simien, the Mayor and Chief Simien may have violated the Louisiana Constitution<sup>3</sup> and state law.<sup>6</sup>

According to Louisiana Revised Statute (La. R.S.) 33:2218.2(A)(1),<sup>4</sup> "In addition to the compensation now paid by any municipality in this Subpart... to any police officer... employed by any municipality... which employs one or more police officers who devotes his full working time to law enforcement, and for those hired after March 31, 1986, who have completed and passed a council-certified training program as provided in R.S. 40:2405,<sup>5</sup> shall be paid by the state extra compensation in the amount of five hundred dollars per month for each full-time municipal...law enforcement officer who has completed or who hereafter completes one year of service." In addition, according to La. R.S. 33:2218.4(C) and (D),<sup>6</sup> the mayor and chief of police or other municipal officer of the municipalities employing the police officers entitled to additional compensation from the state, are charged with ensuring that the correct amounts of payroll taxes, other deductions, and retirement contributions are withheld from the officers' payroll and transmitted, in accordance with law, to the proper agencies.

The Louisiana Department of Public Safety and Corrections (DPS) provided the Town, on a monthly basis, warrants that consist of a list of police officers who receive supplemental pay. The warrants were then approved by Chief Simien, certified by Mayor John Overton, and returned to DPS. Following receipt of the authorized warrants, DPS made supplemental payments to the police officers listed on the warrants.

#### *The Mayor and Police Chief Failed to Calculate Payroll Withholdings*

From January 1, 2007 to December 31, 2013, DPS made supplemental payments totaling \$116,807 to Chief Simien and the three full-time police officers. Our examination of Town records indicates that Chief Simien approved the supplemental payments to himself and three other officers, and Mayor Overton certified the payments. We noted that these payments were not included in the officers' payroll calculations nor were there appropriate withholdings from their pay. The table below illustrates a summary of the supplemental payments to Chief Simien and police officers that were not reported as wages for purposes of state and federal withholdings by year:

Summary of Supplemental Payments								
Name	2007	2008	2009	2010	2011	2012	2013	Total
Police Chief John Simien (not P.O.S.T. Certified)	\$4,350	\$5,100	\$5,550	\$6,000	\$6,000	\$4,000		\$31,000
Officer Daniel Dorsey						5,967	\$6,000	11,967
Officer Milton Jones	2,550	12,890	5,550	6,000	3,000			29,990
Officer Burnett Greivous	2,550	11,750	5,550	6,000	6,000	6,000	6,000	43,850
<b>Total</b>	<b>\$9,450</b>	<b>\$29,740</b>	<b>\$16,650</b>	<b>\$18,000</b>	<b>\$15,000</b>	<b>\$15,967</b>	<b>\$12,000</b>	<b>\$116,807</b>

Because appropriate withholdings were not transmitted to the state and federal governments and other agencies, Mayor Overton and Chief Simien may have violated state<sup>6</sup> and federal laws.<sup>7</sup>

#### *Ineligible Supplemental Payments to Chief Simien*

From January 2007 to July 2012, Chief Simien received \$31,000 in supplemental pay benefits (65 payments); however, records indicate that he is not POST certified and, therefore, is ineligible to receive these payments. POST (Peace Officer Standards and Training) was established by Act 397 of 1976, to develop training standards for peace officers in the state of Louisiana and is governed by a 12-member POST Council. To be eligible for supplemental pay benefits, state law<sup>5</sup> requires municipal police officers to be POST-certified. In addition, it prohibits any person who fails to comply with this requirement from exercising the authority of a peace officer; however, such officer may perform administrative duties. Further, to receive supplemental benefits, DPS requires all applicants hired after January 1, 1986, to provide a copy of the employee's POST certificate as proof of eligibility.

During our examination of Chief Simien's application for supplemental pay benefits to DPS dated April 2007, Chief Simien indicated that he was POST certified. However, the certification status request form submitted with his application indicated that he had not attended a basic academy training course as required by state law to receive supplement benefits. In September 2012, DPS determined that Chief Simien was ineligible for supplement pay and terminated his benefits. On October 10, 2012, Chief Simien filed an appeal with the Municipal Police Officers Supplemental Pay Board (Board) to have the payments reinstated. In September 2013, the Board reviewed Chief Simien's case and confirmed that he had not been POST certified during the 65-month period that he received supplemental payments and denied his appeal for benefits. Neither the Board nor Town officials have required Chief Simien to repay the supplemental benefits that he was not entitled to receive.

According to Chief Simien, in February 2007, he received a letter from the Louisiana Commission on Law Enforcement that led him to believe he was grandfathered in and exempted from POST certification requirements. Chief Simien stated that, based on this information, he assumed he was eligible for supplement benefits. Katie Ryland, director of DPS Disaster Recovery and Administrative Compliance stated that, though it took place before her employment with DPS, there apparently was an error made between Chief Simien and DPS, which allowed him to receive supplemental payments that he was not eligible to receive. She stated that in a case where a police officer received ineligible supplemental payments, DPS will bill the town for the re-payment amount. She indicated that as of August 19, 2014, their records do not reflect any billing to the Town for ineligible supplemental payments to Chief Simien.

Because supplemental benefits are monies appropriated from the treasury of the state, the use of these funds to pay ineligible benefits appears to be a donation in violation of the Louisiana Constitution.<sup>3</sup>

### Improper Disposition of Traffic Citations

**From March 2012 through July 2014, the Police Department issued a total of 291 moving violation citations, of which Magistrate Sharah Harris-Wallace appears to have improperly reduced 124 (43%) to non-moving violations. In addition, the police department clerk reduced moving violations with little or no management oversight.**

#### *Reduced Traffic Violations by Magistrate*

La. R.S. 33:441(B)(1)<sup>8</sup> allows the Board of Aldermen (Board) to appoint one or more court magistrates to serve at the pleasure of the mayor, if the mayor requests such an appointment. The Board also may use its discretion in choosing an attorney who will serve in the place of the mayor or at the mayor's convenience. In April 2011, the Board appointed, and Mayor Overton approved, Town Attorney Sharah Harris-Wallace to serve as Town Magistrate. Under this appointment, Ms. Harris-Wallace exercises the power and authority of the mayor over court.

Court records show that from January 2012 through July 2013, Ms. Harris-Wallace reduced 53 moving citation violations to non-moving violations and allowed the offender to pay a \$38 cost-of-court fee. In August 2013, in her position as magistrate, Ms. Harris-Wallace enacted court rules (standing order) of practice and procedure for mayor's court. According to the rules,

*“Any person charged with speeding where the rate of speed is not in excess of twenty miles per hour over the speed limit and that person asks for consideration in connection with the penalty for the offense and that person has not been charged with speeding within the Town within the last three years, then the standard consideration will be:*

- (1) charge of speeding is reduced to a non-moving violation, being ‘improper equipment;’*
- (2) person is ordered to pay court cost only with the understanding that they will be ordered to pay the full amount of fines and fees for any subsequent speeding offense that they either plead to or are found guilty.”*

From August 2013 through July 2014, after implementing Ms. Harris-Wallace's standing order, 71 moving violations were reduced to non-moving violations and the offender charged the cost-of-court fee. Court dockets indicate that many of these citations were reduced before trial and without the acceptance of a plea in open court. According to Ms. Harris-Wallace, because she serves as the Town's magistrate and Board attorney, she has both judicial and prosecutorial power. Ms. Harris-Wallace indicated that under her prosecutorial power, she has the authority to dismiss a citation or to reduce a moving traffic violation to a non-moving violation and require that the offender pay a cost-of-court fee. Although Town records indicate that Ms. Harris-Wallace was appointed Town attorney and magistrate, we found no records indicating that Ms. Harris-Wallace was appointed Town Prosecutor.

Despite Ms. Harris-Wallace's position that she is operating within her authority, the following four items listed below contradict her position:

- (1) *Attorney General Opinion 06-0075* states that "Absent express written authority in the ordinance... 'the presiding officer' of the mayor's court (i.e. the mayor or other duly appointed magistrate) may not reduce a moving violation (i.e. a speeding citation) to a non-moving violation (i.e. driving without a valid inspection sticker) or any other charge.... A judge does not have the power to unilaterally amend criminal charges. Furthermore, absent an express, written directive to the contrary contained within the ordinances..., the prosecuting attorney is the only person who may amend a criminal charge. Such discretion is given to the prosecuting attorney in La. Code Crim. Part 61..."
- (2) *Attorney General Opinion 78-1421* addresses a town's magistrate also serving as prosecutor, which states in part, "...it is fundamental law that such an attorney could not serve as the prosecutor for the municipality in the Mayor's Court....there is no prohibition under state law against an attorney serving at the same time as Town Attorney and Magistrate of the Mayor's Court, provided another attorney serves as prosecutor in the court."
- (3) *La. R.S. 32:398.2 (B)*<sup>9</sup> states that the magistrate, as presiding officer of the Mayor's Court, is authorized to dispose of the traffic citation only by trial in the court of proper jurisdiction.
- (4) *La. R.S. 33:441 (B) (2)*<sup>10</sup> states that the board of aldermen, in its discretion may, upon request of the mayor, appoint one or more attorneys who shall be designated as prosecutor.

Based on the above four items, it appears that Ms. Harris-Wallace did not have authority to concurrently be the Town's magistrate and prosecutor, nor did she have the authority to dismiss a citation or to reduce a moving traffic violation to a non-moving violation and require that the offender pay a cost-of-court fee outside of open court; therefore, Ms. Harris-Wallace may be in violation of state laws.<sup>9,10</sup> In addition, because the Mayor did not request, and the Board did not appoint, a Town prosecutor, the Mayor and Board may also be in violation of state law.<sup>10</sup>

We estimated that had the 124 moving violations not been reduced to non-moving violations and the fines/court cost for the moving violations were collected, the Town may have generated approximately \$11,793 in revenue that would have been shared with other statutorily-required authorities. On August 13, 2014, after meeting with representatives of the Louisiana Legislative Auditor, Ms. Harris-Wallace rescinded her standing order. It should be noted that prior audits of the Town conducted by the Louisiana Legislative Auditor in 2009 and Postlethwaite & Nettleville for Fiscal Years 2012, and 2013, included similar findings as indicated below:



- *March 2009* - Improper disposition of citations (not all citations were disposed of by trial or acceptance of a plea in open court - R.S. 32:398.2.B)
- *Fiscal Year 2012* - Town does not have adequate accounting for the numerical sequence of traffic tickets, nor does the Town properly document the disposition of tickets by trial or the acceptance of plea in open court
- *Fiscal Year 2013* - Traffic violations were not reported to the Louisiana Department of Public Safety, as are required by law

#### *Reduced Traffic Violations by Clerk*

Carolyn Marino, police department clerk, stated that part of her duties include attending magistrate court and keeping court dockets. She stated that police officers submit their traffic citations to her on a monthly basis and that she processes the court docket as soon as she receives the citations. According to Ms. Marino, prior to Ms. Harris-Wallace's standing order, she called or faxed documents to Ms. Harris-Wallace for approval to reduce a moving traffic violation to a non-moving violation. Ms. Marino stated she created a letter that she signed and sent to offenders once Ms. Harris-Wallace gave approval to reduce moving violations to non-moving violations.

Ms. Marino further stated that, after the standing order was implemented, she no longer called Ms. Harris-Wallace for approval and began to reduce moving violations to non-moving violations according to the standing order. She stated that once she reduced a moving violation the citation does not appear on the court's docket, and Ms. Harris-Wallace would not have any knowledge of the citation. Ms. Marino indicated that 20% to 25% of the citations written are reduced to the offender paying the cost-of-court fees. Ms. Marino appears to have had little or no management oversight regarding the collection of and accounting for traffic citations.

#### **Faulty Purchasing Process**

**On December 16, 2013, the Maringouin Police Department purchased weapons and supplies totaling \$1,710, which the Mayor refused to pay until December 11, 2014.**

Town records indicate that on December 16, 2013, Chief Simien requested and received a purchase order for two rifles, sights, and ammunition from Cabela's retail store. According to Cabela's records, on December 19, 2013, the store invoiced the Maringouin Police Department \$1,710, with payment due January 18, 2014. After the invoice became delinquent, Cabela's contacted the mayor for payment. According to Mayor Overton, the funds used to make the purchase were not in the police department's budget. The mayor stated that when Cabela's contacted him regarding the outstanding invoice, he informed Cabela's that he would not pay the invoice because Chief Simien was not authorized to make the purchase. According to Mayor Overton, such a purchase would have required his and the Board's approval.

Town ordinance, Article A, Section 2.9 requires that expenditures of Town funds, which exceed \$50, are made with a purchase order approved by the mayor. Further, the ordinance

requires that expenditures exceeding \$500 also require prior approval of a majority of the Board of Aldermen (Board). However, the Attorney General has opined that under La. R.S. 33:423, an elected chief of police has the inherent power and authority to supervise and control his office, equipment and personnel on a day-to-day basis, and has relied upon *Doyle v. City of Harahan*, 610 So. 2d 272 (La. App 5 Cir 1992) for the conclusion that once the mayor and aldermen “have budgeted and appropriated money” for the police department, the authority to allocate the expenditure of these funds rests with the elected chief of police.

The Town’s utility clerk, Yolanda Crump, stated that she and her assistant have always issued purchase orders or purchase numbers to Chief Simien and other Town personnel. Ms. Crump stated that, to her knowledge, the Town has no documented procedures for how to process and manage purchase orders. According to Chief Simien, the purchase was within his budget and that since serving as police chief he has never spent more than was budgeted and appropriated to his office. Chief Simien confirmed that Mayor Overton refused to pay the Cabela’s invoice.

Our examination of Town records indicates that, in many cases, Town practice allows for purchases to be made before submission or approval of purchase orders. For example, the Town allows its Maintenance Department to make routine purchases before submitting purchase orders for approval. In addition, the Town has no written policy or procedures distinguishing who or what departments are allowed to make purchases without proper approval. According to the police department’s approved budget, there is a line item for “Supplies,” which could include purchases for weapons and related supplies. This line item had a year-ending balance of \$2,770. Based on the Attorney General’s Opinion and the police department’s year-ending balance of \$2,770, it appears that Chief Simien was within his authority to purchase the weapons and supplies, and therefore, Mayor Overton has an obligation to pay the Cabela’s invoice. On December 11, 2014, the Town wrote a check payable to Cabela’s for the invoice amount.

## Recommendations

We recommend the Town of Maringouin (Town):

- (1) require that travel expenses include original receipts, invoices, and other supporting documentation;
- (2) review all travel expenses to ensure that all refunds are received by the Town;
- (3) implement detailed policies and procedures to ensure that only eligible police officers, as defined by state law, are submitted to the Louisiana Department of Public Safety for supplemental pay benefits;
- (4) consult with legal counsel concerning monies paid to employees without proper withholdings and concerning possible reimbursement of ineligible supplemental benefits to Chief Simien;
- (5) develop written policies/procedures for processing traffic citations, including accounting for numerical sequence of all citations and the final disposition of those citations on at least a monthly basis;
- (6) ensure that all traffic citations are presented and disposed of in open court or by a duly-appointed Town prosecutor. In addition, documentation of the reason(s) for dismissing/reducing tickets and the authorization of such action should be documented;
- (7) ensure that all traffic violations are properly reported to the Louisiana Department of Public Safety as required by state law;
- (8) seek a legal opinion concerning the ordinance governing Town expenditures;
- (9) establish written and legally consistent policy and procedures for the purchase order process; and
- (10) satisfy its debt to Cabela's.



## LEGAL PROVISIONS

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<sup>1</sup> **Louisiana Revised Statute (La. R.S.) 14:67(A)** states, “Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential.”

<sup>2</sup> **La. R.S. 14:134(A)** states, “Malfeasance in office is committed when any public officer or public employee shall: (1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; (2) Intentionally perform any such duty in an unlawful manner; or (3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.”

<sup>3</sup> **Louisiana Constitution Article VII, Section 14(A)** states, in part, “Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.”

<sup>4</sup> **La. R.S. 33:2218.2 A.(1)** states, “In addition to the compensation now paid by any municipality included in this Subpart or by the Chitimacha Tribe of Louisiana, the Coushatta Tribe of Louisiana, or the Tunica-Biloxi Tribe of Louisiana, hereinafter referred to as “tribe” or “tribal”, to any police officer, every police officer employed by any municipality or tribe which employs one or more police officers who devotes his full working time to law enforcement, and for those hired after March 31, 1986, who have completed and passed a council-certified training program as provided in R.S. 40:2405, shall be paid by the state extra compensation in the amount of five hundred dollars per month for each full-time municipal or tribal law enforcement officer who has completed or who hereafter completes one year of service.”

<sup>5</sup> **La. R.S. 40:2405 A.(1)** states, “Notwithstanding any other provision of law to the contrary, any person who begins employment as a peace officer in Louisiana subsequent to January 1, 1986, must successfully complete a certified training program approved by the council and successfully pass a council-approved comprehensive examination within one calendar year from the date of initial employment. Any person who fails to comply with this requirement shall be prohibited from exercising the authority of a peace officer; however, such persons shall not be prohibited from performing administrative duties.”

<sup>6</sup> **La. R.S. 33:2218.4 (C)** states, “The mayor and chief of police or other municipal officer of the municipalities employing the police officers entitled to additional compensation from the state under the provisions of this Subpart, who is charged with the responsibility of preparing the payrolls for such police officers, shall include the additional compensation paid by the state to such police officers in the calculation and deduction from the pay of such officers the sums required by state or federal law to be withheld by an employer, such as federal income tax and social security tax or contributions to state or local retirement systems. Any officials so charged with withholding sums from the pay of the police officers shall be further charged with the responsibility of transmitting the sums so withheld in accordance with the law or laws requiring the withholding. **(D)** The additional compensation paid by the state to municipal police officers as herein provided shall be included in the calculation and computation of the total wages paid to the municipal police officer in the determination of employer contributions to any retirement system or pension fund of which the police officer may be a member as well as in the determination of retirement eligibility and benefits which may accrue to the police officer under any retirement system or pension fund, as well as in the determination of any other employee benefits, sick leave, or disability pay to which the police officer might be entitled with the exception of workers’ compensation benefits pursuant to R.S. 23:1021 et seq.”

<sup>7</sup> **26 U.S.C. §6672 (a)** General rule. “Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not

accounted for and paid over. No penalty shall be imposed under section 6653 or part II of subchapter A of chapter 68 for any offense to which this section is applicable.”

<sup>8</sup> **La. R.S. 33:441 (B) (1)** states, “Notwithstanding any other provision of law to the contrary, the board of aldermen in its discretion may, upon request of the mayor, appoint one or more attorneys who shall be designated as court magistrate and who shall serve at the pleasure of the mayor and may from time to time be designated by the mayor to serve in his stead as the presiding official over the mayor’s court. Whenever a magistrate is so designated by the mayor to preside over the mayor’s court, he shall exercise the powers and authority of the mayor over said court. The board of aldermen shall fix and pay the salary of each magistrate, if any are appointed.”

<sup>9</sup> **La. R.S. 32:398.2 (B)** states, “Upon the deposit of the original citation or a copy of the traffic citation with a court having jurisdiction over the alleged offense or with the traffic violations bureau as set forth herein, the original citation or copy of such traffic citation shall be disposed of only by trial in the court of proper jurisdiction or any other official action by a judge of the court, including forfeiture of the bail, or by the deposit of sufficient bail with the traffic violations bureau or payment of a fine to said bureau by the person to whom such traffic citation has been issued. However, a citation or its copy alleging a violation of R.S. 32:80(A) shall be disposed of only by trial or acceptance of a plea in open court.”

<sup>10</sup> **La. R.S. 33:441 (B) (2)** states, “Notwithstanding any other provision of law to the contrary, the board of aldermen in its discretion may, upon request of the mayor, appoint one or more attorneys who shall be designated as prosecutor and who shall serve at the pleasure of the mayor. The board of aldermen shall fix and pay the salary of each prosecutor, if any are appointed.”

## APPENDIX A

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### Management's Responses





## **Maringouin**

### Responses to Louisiana Legislative Auditors (LLA)

#### **1. Travel**

a. I recommend that LLA turn over corrective action to the current administration of the town since I am no longer the elected Mayor which includes collection of any reimbursement deemed due from these employees / town officials.

b. I recommend that the LLA turn this matter over to the District Attorney for further review and action.

#### **2. Supplement Pay**

a. Since the town was not made aware of when the officers began receiving income from supplemental pay, the town was unaware and not in a position to begin payroll withholdings. The officers elected to allow these funds to be mailed to their personal mailing addresses.

b. Although, I as Mayor signed the applications for the officers to receive supplemental pay. I was never made aware that they were receiving the funds. As a result, no payroll withholdings was made.

c. I recommend that LLA turn over corrective action to the current administration since I am no longer the elected Mayor.

d. The town was unaware of Chief Simmiens ineligibility to receive supplemental pay. I recommend that this matter be turned over to the District Attorney.

#### **3. Traffic**

a. The Town Council appointed a magistrate to administrator Mayor's court and with the same administrative duties as the Mayor.

b. The town is unaware of traffic violation dismissals made by the police clerk or any other police staff.

c. I recommend that LLA turn over corrective action to the current administration since I am no longer the elected Mayor.

d. I recommend that the LLA turn this matter over to the District Attorney for further review and action.

#### **4. Purchase of Police Weapons**

a. The Town Council approved payment of police weapons by resolution and the debt was paid in December 2014.

*John Thwaites*  
*1/26/2015*



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January 12, 2015

Mr. Daryl G. Purpera, CPA, CFE  
Louisiana Legislative Auditor  
Post Office Box 94397  
Baton Rouge, Louisiana 70804-9397

Re: the section of your draft audit report on the Town of Maringouin that concerns me  
(a copy along with a cover letter signed by Roger W. Harris which was received in my  
office on January 12, 2015)

Dear Mr. Pupera:

It is with overwhelming humility that I tender this correspondence to you pertaining to the above referenced matter. In so doing, I remind you of a portion of page 4 of The Mayor's Court Handbook, 2013 edition which provides: **The many problems of interpretation should be kept in mind as we attempt to piece together the elements of a properly functioning mayor's court.** Thus, in "applying common sense" and the "spirit" of the Code, I submit that a reasonable person would understand that a court of law regardless to whether it is appellate, district, city or **municipal**, would be such that both sides of a matter that appears in court would call for some measure of handling by the proper authority. In the municipality of Maringouin, a matter tried in Mayor's court, comes before the Magistrate who was appointed by the board of aldermen to preside. The Magistrate, who is vested with the same powers as the Mayor would have if he had presided over court himself, hears both sides of a matter tried before her, acting "in the spirit of the Code" with prosecutorial authority which **not only says that the Mayor has judicial authority but also says he has prosecutorial authority. It limits the authority of the presiding Mayor or Magistrate only where a prosecutor is specifically appointed but clearly gives the Mayor or Magistrate the authority to maintain prosecutorial powers.** See page 14 made reference to in paragraph one and paragraph 4 of this correspondence, *Infra*.

By virtue of The 2013 Edition of the Mayor's Court Handbook prepared for the Louisiana Municipal Association at page 24 and La R.S.33:441, I was appointed by the board of aldermen of the Town of Maringouin to preside over Mayor's Court. That same Handbook at page 14, referenced the delegation of preparation of the court docket and collecting citation payments among other things to the Chief of Police which I trust and believe they handled properly.

Though the Mayor's Court Handbook and/or the Louisiana Law(which supercedes the Town Ordinance(s)), discusses Prosecutorial appointments, it also references for example and at page 14 of that same Handbook, "the presiding officer of mayor's court is entitled to judicial immunity

for his official acts as the **presiding officer as a judge and to prosecutorial immunity for his official acts**. At page 13, it references La R.S.33:441 in detail.

A measure of persuasive authority which is, also, cited in the Mayor's Court Handbook at page 14 provides in pertinent part that: The 3<sup>rd</sup> Circuit Court of Appeal, in affirming the dismissal of a civil action against the mayor of a mayor's court who convicted the defendant which judgment was reversed in district court, stated that **R.S.33:441 "ENTRUSTS THE MAYOR WITH BOTH JUDICIAL AND PROSECUTORIAL POWERS.. .THE MAYOR DOES NOT HAVE TO APPOINT A SEPARATE PROSECUTOR BUT MAY TRY THE CASE HIMSELF."** **CITING ATTORNEY GENERAL OPINION 93-541**. Thus, the Magistrate (who held the same authority and powers vested in the Mayor once appointed by the board of aldermen) was authorized to try the cases that came before her herself.

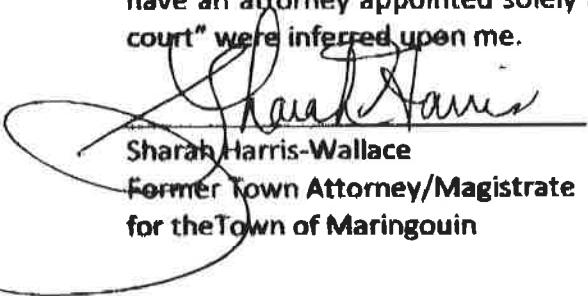
Traffic tickets were numerous relatively speaking. Many people contacted me prior to court regarding what the majority of them referred to as "getting help with a ticket". Although, I may have received information regarding a ticket and even indicated my probable disposition to Ms. Carolyn who often faxed copies of tickets to me or tendered them to me in open court, I thought that those tickets were still placed on the docket for actual handling in open court and notice to the person(s) who received the ticket of my position in that regard. Among the notices that I give in open court **before I proceed with every court docket at every court session** are as follows: I first recite the words written under "Sample Opening Statement: at page 63 of The Mayor's Court Handbook 2013 Edition all the way to the end of page 64 of that same Handbook. Then I issue the following statements: **"FOR TRAFFIC VIOLATIONS, WHERE THE DEFENDANT HAS FAILED TO APPEAR IN COURT AND ANSWER: IT IS ORDERED THAT NOTICE OF THE DEFENDANT'S FAILURE TO APPEAR IN TRAFFIC COURT BE FORWARDED TO THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS. FOR ANY MISDEMEANOR INFRACTIONS WHERE THE PERSON HAS FAILED TO APPEAR, IT IS ORDER THAT A BENCH WARRANT ISSUE."**

The standing order, was in fact, implemented by me as a measure of law which basically echoed my intentions of administering the law fairly across the board and as such was administered to all it applied to equally. My standing order, though I still believe was valid, was rescinded because I felt the fact that it was of debatable issue, should be dismissed. I, also, believe that the Mayor and Board of Aldermen were of the same consensus as I was which is why they did not appoint a Town Prosecutor as they believed that prosecutorial powers were an integral part of the judicial powers of the Magistrate and they were, therefore, not required to appoint a separate prosecutor. **A Magistrate in a Municipal court who may choose not to appoint a separate prosecutor resultingly has the implied authority to maintain prosecutorial powers vested in her by virtue of the position itself as no court of law is without prosecutorial powers whether or not a separate prosecutor has been appointed. Having the IMPLIED PROSECUTORIAL POWERS NEVER TRANSFERRED TO A SEPARATE PROSECUTOR AS NO SEPARATE PROSECUTOR WAS EVER APPOINTED, THE MAYOR OR IN THIS INSTANCE THE MAGISTRATE HAS THE AUTHORITY TO REDUCE A MOVING TRAFFIC VIOLATION TO A NON MOVING VIOLATION. Alternatively, even if the Magistrate did not have the authority to dismiss or reduce a ticket (which I submit that she did), the exercise of judicial power which is secondary to prosecutorial**

powers to dismiss or reduce a traffic violation, was one which was forever in operable effect as the Magistrate Court for the Town of Maringouin did not have a separate prosecutor. (See page 15 of the 2013 Edition of the Mayor's Court Handbook).

In keeping with common sense, the "spirit of the Code" and substantial justice and fair play, it would be grossly unfair under these set of circumstances to hold that the Magistrate has committed improper disposition of traffic citations by serving as prosecutor as the mere nature of the position itself mandates that absent the appointment of another attorney to serve as prosecutor separately from the position of Magistrate, the Magistrate has the implied authority to serve as prosecutor not in conflict with Town Attorney and Magistrate but in keeping with the position itself absent an appointment and such should not be considered unauthorized or in violation of state law when it is the very law itself that encompasses such interpretations and/or misinterpretations.

Finally, I would like to take this time to evidence my sincere gratitude for having the opportunity to serve as Town Attorney and Magistrate of Mayor's Court for the Town of Maringouin for the past twelve years. I would, also, like to thank you and all of your assistants for bringing this matter to the attention of all involved. I must adamantly say that any prior notice of my actions being allegedly inappropriate were obviously misunderstood by me as I would not continue to take such measures if I clearly understood that I was **noticed** previously that they were inappropriate and that **they were in fact** inappropriate. Dismissing the standing order was done not because I agreed with representatives of the Louisiana Legislative Auditor but because I believed that in the event that your interpretation was correct, the order would already be rescinded and handling the traffic citations did not mandate a standing order. We still did not have an attorney appointed solely as prosecutor thus any "prosecutorial actions conducted in court" were inferred upon me.



Sarah Harris-Wallace  
Former Town Attorney/Magistrate  
for the Town of Maringouin