

TOWN OF INDEPENDENCE



INVESTIGATIVE AUDIT
ISSUED MAY 14, 2014

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

May 14, 2014

**THE HONORABLE FRANK EDWARDS,
CHIEF OF POLICE
TOWN OF INDEPENDENCE
POLICE DEPARTMENT**
Independence, Louisiana

We have audited certain transactions of the Town of Independence Police Department and the Independence Police-Reserve Division. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the validity 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 21st Judicial District of Louisiana, the Louisiana Ethics Board, and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/ch

TOWN OF INDEPENDENCE 2014

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EXECUTIVE SUMMARY

Possible Conflict of Interest for Town of Independence Police Chief

Town of Independence (Town) Police Chief Frank Edwards (Chief Edwards) and Town police officers created a non-profit corporation that used off-duty Town police officers and Town assets to provide private security details to local businesses. Income from the private security details was paid to the non-profit corporation, but was not subject to Town oversight. Because Chief Edwards, in his capacity as Town police chief, had authority to employ police department assets for private security details and income from these private security details was not subject to oversight by the Town, this arrangement may represent a conflict of interest.

Private Security Details May Violate the Code of Governmental Ethics

Town police officers may have violated the Code of Governmental Ethics by receiving wages from local businesses to perform private security details. The Code of Governmental Ethics provides an exception for commissioned law enforcement officers to provide traffic control or security services for a private employer when the services are in accordance with the policy of the Town, the policy was published in the Town journal, and the policy provides for appropriate charges for the use of public vehicles. However, since the Town's Police Department did not have a policy and there were no charges paid to the Town for the use of its assets, this exception does not apply.

Private Security Details Not Disclosed to Workers' Compensation Insurer

The Town purchases workers' compensation insurance for its employees, including police officers, through Risk Management Inc. (RMI), a wholly owned subsidiary of the Louisiana Municipal Association (LMA). However, from August 2010 through April 2014, the Town did not disclose the private security detail activity and payroll to RMI. According to RMI management, had the private security detail payroll been included in the Town's payroll sent to RMI, the Town's workers' compensation premium would have increased to provide workers' compensation insurance for the Town police officers while performing the private security details.

Private Security Details Performed Outside Town Limits

Town assets (vehicles, fuel, and equipment) were used in private security details outside the jurisdiction of the Town, which may represent an improper donation and violate the state constitution and state law.

BACKGROUND AND METHODOLOGY

The Town of Independence (Town) is located in Tangipahoa Parish, has a population of 1,665 (Year 2010 Census), was incorporated under the provisions of the Lawrason Act, and has a mayor-board of alderman form of government. The Town provides utility, public safety (police and fire), streets, and general administrative services.

The Town's annual audit for the year ended June 30, 2013, reported the Town's police officers were using Town vehicles to perform security details for a private entity and the Town was not reimbursed for use of the Town vehicles. The Louisiana Legislative Auditor (LLA) initiated an audit of the Town to determine whether this arrangement complied with state law. The procedures performed during this audit included:

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

FINDINGS AND RECOMMENDATIONS

Possible Conflict of Interest for Town of Independence Police Chief

Town of Independence (Town) Police Chief Frank Edwards (Chief Edwards) and Town police officers created a non-profit corporation that used off-duty Town police officers and Town assets to provide private security details to local businesses. Income from the private security details was paid to the non-profit corporation, but was not subject to Town oversight. Because Chief Edwards, in his capacity as Town police chief, had authority to employ police department assets for private security details and income from these private security details was not subject to oversight by the Town, this arrangement may represent a conflict of interest.

The Independence Police-Reserve Division (Reserve Division) was incorporated on June 9, 2010. Louisiana Secretary of State records show that Chief Edwards is the registered agent and Town police officers are the corporate officers. According to Chief Edwards, the purpose of the Reserve Division was to raise funds and purchase equipment for the Town police department. This purpose was later expanded to include supporting the local community through community activities (e.g., bicycle purchases for elementary school children).

The Reserve Division's articles of incorporation, however, do not provide exclusively for purchases of equipment for the Town police department or support for the local community. The articles of incorporation merely state that the corporate purpose is "Engaging in any lawful activity..." and include no provision restricting the use of corporate funds. In addition, although Louisiana Secretary of State records show the Reserve Division is a non-profit organization, the Reserve Division had not sought tax-exempt status from the Internal Revenue Service prior to the initiation of this audit.

The Reserve Division provides private security details to local businesses,^A but does not have any written contracts to document the agreements. Town police officers^B work these private security details during off-duty hours wearing police department uniforms and using police department vehicles, fuel, and equipment. Chief Edwards stated that the Reserve Division does not reimburse the Town for use of Town assets employed in the private security details. Town Police Department Captain Chris Chappell schedules officers for the private security details. He also negotiates the hourly rate charged for officers working the private security details with local businesses.

^A At the time our audit was initiated, the Reserve Division provided private security details to two local businesses. However, according to Chief Edwards, both businesses ended their agreements to purchase private security details by April 2014.

^B Both active and reserve officers work the private security details. Reserve officers are volunteers who, although commissioned, receive no salary from the police department but are allowed to work on the security details and were paid by the Reserve Division.

The Reserve Division charges an hourly rate per officer for the private security details. The businesses contracting for private security details paid this hourly rate to the Reserve Division, which, in turn, paid the individual police officers. Reserve Division business records show officers were paid a uniform rate of \$16 per hour as of December 31, 2013.^C This rate is generally \$4 to \$9 per hour less than the rate paid by businesses using the Reserve Division for private security details.

Chief Edwards stated that Reserve Division operations are funded through this \$4 to \$9 per hour difference. He added that Reserve Division operations are also funded through fundraising activities performed by Town police officers in their off-time. Reserve Division business records show that \$140,219 was deposited into the two Reserve Division checking accounts from July 6, 2010 to January 30, 2014. According to Chief Edwards, Reserve Division transactions were not recorded in standard accounting records such as expense and revenue ledgers. Town Police Department Sergeant Terri Breaux stated that she recorded checks drawn on Reserve Department accounts in a check register, but performed no other accounting work.

Our review shows \$116,537 of the deposits to the Reserve Division account can be traced to checks from businesses paying for private security details. However, the remaining \$23,682 (\$140,219 - \$116,537) does not have any documentation to indicate the source of the revenue. As of January 31, 2014, the balance of the two Reserve Division checking accounts was \$20,573. According to Mayor Michael Ragusa, no Town funds were used to support Reserve Division operations.

During our review, we determined the Reserve Division had no written policies or procedures, formal board meetings, board meeting minutes, budgets, or written contracts. Also, bank reconciliations were not performed and expenses were not always properly documented with receipts and invoices. We also identified four checks to Chief Edwards totaling \$895 from a Reserve Division checking account. The memo line on the checks indicates they were reimbursements to Chief Edwards; however, the checks were not supported with receipts or invoices. The non-labor costs of the private security details (vehicles, fuel, and personal equipment) were not tracked and the Town was not reimbursed these costs. The Reserve Division was not authorized or prohibited by a Town ordinance and according to Mayor Ragusa, there was no cooperative endeavor agreement between the Town and the Reserve Division.

Since the Town's audit report indicated improper use of public assets, the Town's attorney addressed the manner in which private security details are operated. In a letter to the Town dated December 10, 2013, he recommended that funding from the private security details "flow through the usual and customary funding procedures employed by the Town, as these accounts and procedures are transparent and regularly audited & reported to the public." He also provided written examples of procedures for private security details from area law enforcement agencies. These policies provide for personnel authorization requirement, work detail procedures, disciplinary procedures, and staffing levels.

^C Chief Edwards stated a uniform rate was paid the officers on the private security details to prevent fighting over higher paid details.

According to Chief Edwards, he has implemented some reforms since the audit finding, but these reforms were based on his own determination of what needed to be done and were not based on recommendations of the Town attorney. Chief Edwards stated he is (1) drafting a set of written procedures for private security details, (2) requiring businesses to pay officers directly, and (3) getting quotes for workers' compensation policies to see if it is practical for the Reserve Division to obtain workers' compensation coverage for the officers working the private security details.

Since Chief Edwards has the authority to employ Town assets for private security details while the income generated by these assets remains wholly outside the oversight of the Town, providing private security details using Town assets through the Reserve Division appears to have created a conflict of interest. In addition, the lack of proper Town oversight and not being subject to the annual audit of the Town's operations contributed significantly to the control weaknesses and issues described in this finding.

Private Security Details May Violate the Code of Governmental Ethics

Town police officers may have violated the Code of Governmental Ethics¹ by receiving wages from local businesses to perform private security details. The Code of Governmental Ethics² provides an exception for commissioned law enforcement officers to provide traffic control or security services for a private employer when the services are in accordance with the policy of the Town, the policy was published in the Town journal, and the policy provides for appropriate charges for the use of public vehicles.² However, since the Town's Police Department did not have a policy and there were no charges paid to the Town for the use of its assets, this exception does not apply.

From August 2010 to January 2014, 43 Town police officers used Town assets to work private security details for local businesses through the Reserve Division and received wages from the Reserve Division. However, according to Chief Edwards, the Town's Police Department did not have a policy during this period and the Reserve Division did not reimburse the Town for the use of its assets.

The Code of Governmental Ethics¹ prohibits public servants (Town police officers) from receiving anything of economic value (wages for private security details) for any service devoted substantially to the responsibilities, programs, or operations of the agency of the public servant. However, the Code of Governmental Ethics² provides for an exception when commissioned law enforcement officers perform traffic control or security services for a private employer when the officer's public employer has a policy, publishes the policy in the official journal, and provides for appropriate charges for the use of public vehicles.

Since the Town Police Department does not meet the conditions in the Code of Governmental Ethics² for an exception, the Town's police officers may have violated the Code of Governmental Ethics¹ by receiving wages from the Reserve Division for their work performing private security services.

Private Security Details Not Disclosed to Workers' Compensation Insurer

The Town purchases workers' compensation insurance for its employees, including police officers, through Risk Management Inc. (RMI), a wholly owned subsidiary of the Louisiana Municipal Association (LMA). However, from August 2010 through April 2014, the Town did not disclose the private security detail activity and payroll to RMI. According to RMI management, had the private security detail payroll been included in the Town's payroll sent to RMI, the Town's workers' compensation premium would have increased to provide workers' compensation insurance for the Town police officers while performing the private security details.

Louisiana Revised Statute (La. R.S.) 23:1034.1 states, "Any law enforcement officer employed by any municipality, who, while on or off duty, and outside his jurisdiction, but within the State of Louisiana, performs any law enforcement action and is injured shall be entitled to provisions for compensation as provided herein and shall be paid such worker's compensation benefits by the municipality by which he is employed." The Town purchases workers' compensation insurance^D for its employees from RMI and pays a monthly premium based on the Town's total payroll. However, the Town did not include the payroll from the Reserve Division for the private security details in the payroll data sent to RMI. According to Town Clerk Arlene Hall, the Town did not include this data because it did not have access to Reserve Division records, including the payroll records for the private security details.

Because the Town's payroll data did not include the private security detail payroll from the Reserve Division, the workers' compensation premiums paid by the Town to RMI did not cover the cost of providing coverage to the private security details. Chief Edwards stated that the Reserve Division did not purchase a separate worker's compensation policy during this period. According to RMI, they intended to amend the Town's worker's compensation policy to exclude coverage for the private security details because they (RMI) were not provided the payroll necessary to calculate the premiums for these details. However, RMI was informed by Chief Edwards on March 28, 2014, that private security details were no longer being assigned and therefore, RMI did not amend the Town's workers' compensation policy. RMI intends to recover the cost of workers' compensation premiums not paid by the Town for the private security details the Reserve Division conducted in the past.

Private Security Details Performed Outside Town Limits

Town assets (vehicles, fuel, and equipment) were used in private security details outside the jurisdiction of the Town, which may represent an improper donation and violate the state constitution and state law.³

The Reserve Division conducted private security details for a bank in the Town of Loranger that included vehicle escorts of cash deliveries (once every two weeks) to an automatic

^D The Town also purchases liability insurance for Town employees, including police officers, from RMI. However, because of the manner in which the liability premiums are calculated, the inclusion of the private security detail payrolls would likely not have changed the liability premium for the Town.

teller machine, which is approximately seven miles away. The Reserve Division also provided private security details for a pipeline company at a site outside the Town limits.

Because Town assets (vehicles, fuel, and equipment) were used in private security details outside the jurisdiction of the Town and because the Town has no legal authority to use Town assets outside its jurisdiction, the use of Town assets for these private security details may violate the state constitution and state law.³

In opinion 84-125, the Louisiana Attorney General opined that “A police department may contract with a private organization for purposes of providing security in return for reimbursement of salaries and expenses for the police officers involved as long as such activity is within the territorial bounds of the municipality.”

In opinion 09-0018, the Louisiana Attorney General opined that “for an expenditure or transfer of public funds to be permissible under Art. VII, Sec;14(A), the public entity must have the legal authority to make the expenditure and must show: (i) a public purpose for the expenditure or transfer that comports with the governmental purpose the public entity has legal authority to pursue; (ii) that the expenditure or transfer, taken as a whole, does not appear to be gratuitous; and (iii) that the public entity has a demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer of public funds.”

Recommendations

The Town should:

- (1) draft and approve a Town ordinance specifically authorizing the performance of private security details before resuming details;
- (2) develop written procedures governing the operation of private security details that have been reviewed and approved by the Town Board of Alderman;
- (3) discontinue the practice of using a non-profit corporation to manage private security details and create a Town bank account for the receipt and disbursement of income from the private security details to ensure proper control and greater transparency and accountability;
- (4) begin charging an appropriate fee for use of Town assets in private security details, income from which should be included in the Town’s budget;
- (5) require written contracts between the Town and any local business requesting private security details;
- (6) estimate the value of police department assets (e.g., vehicles, fuel, personal equipment) used in the provision of private security details and have the Reserve Division reimburse the Town these costs;

- (7) reimburse the RMI the cost of workers' compensation premiums not paid because private security detail payroll was not reported to RMI; and
- (8) prohibit private security details from performing any work outside the jurisdiction of the Independence Police Department.

LEGAL PROVISIONS

¹ **Louisiana Revised Statute (La. R.S.) 42:1111 (C)(1)** provides, in part, that “Payments for nonpublic service. (1) No public servant shall receive anything of economic value for any service, the subject matter of which: (a) Is devoted substantially to the responsibilities, programs, or operations of the agency of the public servant and in which the public servant has participated...”

² **La. R.S.42:1123(15)** provides an exception to the Louisiana Ethics Code for “The use by a duly commissioned law enforcement officer of a publicly owned law enforcement vehicle in connection with the private employment of such law enforcement officer in providing traffic control or security services for a private employer when such use is approved by an in accordance with the policy of the law enforcement officer’s public employer, which policy shall be published in the official journal of the parish prior to becoming effective and shall provide for appropriate charges for the use of public vehicles for private employment.”

³ **Louisiana Constitution Article VII, Section 14(A)** provides, in part, that “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.”

La. R.S. 42:1461(A) provides, in part, that “Officials, whether elected or appointed and whether compensated or not, and employees of any "public entity", which, for purposes of this Section shall mean and include any department, division, office, board, agency, commission, or other organizational unit of any of the three branches of state government or of any parish, municipality, school board or district, court of limited jurisdiction, or other political subdivision or district, or the office of any sheriff, district attorney, coroner, or clerk of court, by the act of accepting such office or employment assume a personal obligation not to misappropriate, misapply, convert, misuse, or otherwise wrongfully take any funds, property, or other thing of value belonging to or under the custody or control of the public entity in which they hold office or are employed.”

APPENDIX A

Management's Response

Independence Police – Reserve Division

Independence, LA

May 8, 2014

Subject. Response to a draft of the Legislative Auditor’s investigative audit report on the Town of Independence [Police Department]

Independence Police Vision Statement

To provide the people of Independence with a professional Police Department that:

- consists of courteous, competent and committed police officers;
- enforces laws safely, fairly and consistently ;
- works diligently to promote good citizenship, discourage illegal activity and apprehend law breakers;
- provides an environment of safety and security in our homes, at work and on our streets;
- obtains maximum benefit from entrusted resources; and
- continuously strives for improvement.

Background. The Independence Police - Reserve Division, IPD(R), is a private, state chartered, non-profit corporation formed in 2010 and modeled after volunteer fire department organizations. Membership is limited to commissioned officers, paid and unpaid, of the Independence Police Department. The intent was to form a volunteer organization for the support of the Police Department as a whole, its officers as individuals, and the community in general. The following excerpts were taken directly from the organization’s bylaws.

From Article II:

1. The purpose of IPD(R) is to operate as a charitable organization that assists the Independence Police Department (IPD) by providing for the safety and welfare of its officers and the people of the Town of Independence.
2. Primarily, the IPD(R) will assist IPD by providing manpower in support of the IPD mission, and by raising funds for equipment, training, operations and the overall well-being of both regular and reserve officers.

From Article III:

Objective 2. To promote Community Policing and mutual goodwill between the people of Independence and their police officers.

Discussion.

- The funding level of the Police Department is directly related to the services that can be provided to, and therefore the safety of, the people of Independence.
- The need for additional funding to support the Police Department mission is evident to even the casual observer.
- One part of providing for the welfare of police officers is providing fair and adequate financial compensation. Currently, Independence police officers receive an average of \$10.92 per hour from the Town. Five of six officers' pay from the Town of Independence would qualify a family of three for food stamps. Even including state supplemental pay of \$500/month, these five officers' total pay would qualify a family of four for food stamps. Making matters worse, the Town does not provide health insurance; does not allow officers to earn overtime; does not offer retirement; does not provide take-home vehicles; and requires officers to purchase their individual equipment. Officers' attempts to help themselves through part-time employment are hampered by their rotating duty schedules.
- The safety and well-being of the Town's citizens and police officers depend on the officers' levels of training and on the quantity and quality of the Department's equipment.
- Community policing is a proven strategy for improving and maintaining mutually positive relationships between citizens and their police officers, but receives no funding from the Town.

Recap. Police officers are underpaid and need additional income; officers and citizens benefit from quality police equipment and training; both citizens and the Police Department benefit from additional manpower; and community policing works but is not funded.

Summary. The IPD(R), as a private, charitable organization, has at least partially addressed each of these needs at no additional cost to the people of Independence. To date, funds for operating the organization have been self generated, primarily from police officers working off-duty details. This win-win arrangement allowed police officers to earn much needed personal income (of at least \$16.00 per hour) for after hours work and the IPD(R) received funds to spend toward meeting the needs addressed above.

General accounting.	Income and expenses by category, June of 2010 - December of 2013.
145,940.71	total income
-104,522.83	wages paid to off-duty detail officers
-8,592.00	equipment purchases
-90.36	training expenses
-8,968.52	operations and consumables
-3,959.85	community policing
-5,308.56	officer well-being
14,498.59	fund balance

Bottom Line. The IPD(R) has nothing to hide. It has operated in keeping with its By-laws and State Charter. No money is missing, no money has been misspent, and no money has been misappropriated.

The Future. The process of gaining designation as a federally recognized 501(c)(3) non-profit, charitable organization is arduous, but our application is well on its way. This organization remains committed to “providing for the safety and welfare of its officers and the people of the Town of Independence”.

Respectfully submitted,


 Frank Edwards
 Registered Agent