

TOWN OF ARCADIA



INVESTIGATIVE AUDIT
MARCH 30, 2016

**LOUISIANA LEGISLATIVE AUDITOR
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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

March 30, 2016

**THE HONORABLE EUGENE SMITH, MAYOR
AND MEMBERS OF THE TOWN COUNCIL
TOWN OF ARCADIA**
Arcadia, Louisiana

We have audited certain transactions of the Town of Arcadia. 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 2nd Judicial District of Louisiana and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/aa

TOWNOFARCADIA

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EXECUTIVE SUMMARY

Improper Retirement Contributions

The Town of Arcadia's (Town) former clerk, Ms. Theresa Burris, may have violated state laws by using \$5,961 of Town funds to pay her employee contributions to Municipal Employees Retirement System of Louisiana (MERS) from 2009 to 2014. Ms. Burris also filed reports with MERS that overstated the employee portion of payroll contributions to her retirement account, which also may violate state law.

Missing Credit Card Receipts

The Town could not provide 133 receipts for \$14,538 of credit card purchases, which may violate state law. The Town credit card was used 327 times to make purchases of \$58,160 from December 2013 to September 2015, but Town records contained only 194 itemized receipts totaling \$43,622.

Ratification by Council Did Not Comply with Public Meeting Law

Arcadia's Town Council may have violated state law by performing an official act of ratification that was not (1) advertised in the agenda of a council meeting, (2) added to an agenda during the council meeting, or (3) included in the approved minutes of the council meeting.

BACKGROUND AND METHODOLOGY

The Town of Arcadia (Town) is located in Bienville Parish and has a population of 2,919 (Year 2010 Census). The Town was incorporated under the provisions of the Lawrason Act and has a mayor-council form of government. The Town provides utility services, public safety, streets, sanitation, and general administrative services to residents and businesses.

The Legislative Auditor received several allegations of possible mismanagement of Town funds. We visited the Town to determine the validity of these allegations.

The procedures performed during this audit included:

- (1) interviewing Town employees;
- (2) interviewing other persons as appropriate;
- (3) examining selected documents and records; and
- (4) reviewing applicable state and federal laws and regulations.

FINDINGS AND RECOMMENDATIONS

Improper Retirement Contributions

The Town of Arcadia's (Town) former clerk, Ms. Theresa Burris, may have violated state laws^{1,2,3} by using \$5,961 of Town funds to pay her employee contributions to Municipal Employees Retirement System of Louisiana (MERS) from 2009 to 2014. Ms. Burris also filed reports with MERS that overstated the employee portion of payroll contributions to her retirement account, which also may violate state law.⁴

The Town participates in MERS Plan B in accordance with Louisiana Revised Statutes (R.S.) 11:1731, *et seq.* State law^{1,2} requires all eligible Town employees to become members of MERS and contribute a percentage of their monthly payroll earnings to their MERS Plan B account. That percentage is set by the MERS board for each fiscal year. During our audit period, eligible Town employees were required to contribute 5% of their monthly payroll earnings, while the Town was required to contribute 9.5%^A on behalf of each such employee. Employee contributions were withheld from each paycheck and sent to MERS monthly.

As Town clerk, Ms. Burris was responsible for processing the payroll for the Town's eligible employees, including herself. Ms. Burris also ensured that each employee's contributions were withheld from the employee's paycheck and sent to MERS. She also prepared a monthly report showing the retirement contributions for each employee's portion of retirement and the employer's portion paid by the Town.

The Town's records show Ms. Burris was not withholding the required 5% from her paycheck. In addition, the reports she prepared and sent to MERS improperly overstated her actual payroll contributions to her retirement account. Based on records provided by the Town, Ms. Burris contributed substantially less than 5% annually from 2009 through 2014. The Town's contributions made up the amount she was not withholding from her payroll earnings (\$5,961). The following table demonstrates a history of the source of Ms. Burris' retirement contributions for 2009 to 2014 and the amounts Ms. Burris underpaid and the Town overpaid.

^A MERS employer contribution portion percentage rate was 6.75% when Ms. Burris began her employment with the Town. In July 2011, the employer portion percentage rate raised to 8%. In July 2013, the employer portion percentage rate raised to 8.75%. In July 2014, the employer portion percentage rate raised to its current rate of 9.5%.

Ms. Burris' Payroll Deductions for MERS					
Year	Ms. Burris' Annual Salary	Amount that Should Have Been Withheld from Ms. Burris' Paycheck	Amount Actually Withheld from Ms. Burris' Paycheck	Difference (Paid by the Town)^B	Actual Percentage of Contributions by Ms. Burris (5% is required)
2009	\$22,554	\$1,128	\$180	\$948	1%
2010	32,663	1,633	1,012	621	3
2011	30,815	1,541	606	935	2
2012	32,872	1,643	448	1,195	1
2013	36,553	1,828	686	1,142	2
2014	25,787	1,289	169	1,120	1
Total	\$181,244	\$9,062	\$3,101	\$5,961	2%

Each month, the Town remitted contributions to MERS on behalf of all employees. The Town also submitted a monthly report to MERS, detailing the amount to be applied to each employee's account and identifying the source of the payment (Town or employee). The Town's payroll records confirm that Ms. Burris did not pay the amount reported to MERS from her payroll earnings. We tested an additional three Town employees' payroll deductions and found they were paying the proper amount for their MERS retirement account.

Ms. Burris resigned her position as Town Clerk in August of 2014 and requested and received a \$9,062 refund of her MERS account in October 2014. A resigning employee that is not eligible for retirement is allowed to withdraw the 5% employee share of contributions to their MERS account. However, the employer's share of retirement contributions cannot be withdrawn. According to MERS records, Ms. Burris received a \$9,062 payment on October 20, 2014, for the withdrawal of her retirement account. Because Ms. Burris contributed less than required by state law to her retirement account and used Town funds to make up the difference, she received \$5,961 more than she contributed.

Missing Credit Card Receipts

The Town could not provide 133 receipts for \$14,538 of credit card purchases, which may violate state law.⁵ The Town credit card was used 327 times to make purchases of \$58,160 from December 2013 to September 2015, but Town records contained only 194 itemized receipts totaling \$43,622.

^B Ms. Burris overstated her employee share each month on the *MERS Monthly Report of Earnings and Contributions*. The check she sent to MERS each month fully funded each employee's retirement account. Therefore, Ms. Burris' retirement account was fully funded because in theory the Town's employer share was over the 9.5% percentage rate. The Town funded Ms. Burris's retirement account by \$5,961 which is the difference of her actual payroll contributions and the statutorily required 5% employee share.

The Town's Purchasing Policy requires that each employee responsible for procuring supplies, equipment, or other materials is required to get a receipt at the time of purchase and that receipt should be forwarded to the Town Clerk within one workday. We reviewed credit card purchases and receipts for the period December 2013 to September 2015 and found the Town made 327 purchases totaling \$58,160 during this period but could not provide a receipt for 133 transactions totaling \$14,538, which may violate state law.⁵ The Town provided copies of 29 receipts totaling \$7,567 they requested from vendors after fieldwork was completed. The transactions without receipts included purchases of meals, office supplies, and recurring monthly purchases, such as computer hardware and software support. The Town's employees that made these purchases may have violated state law⁵ regarding record retention by not maintaining records for all credit card purchases.

Ratification by Council Did Not Comply with Public Meeting Law

Arcadia's Town Council may have violated state law^{6,7} by performing an official act of ratification that was not (1) advertised in the agenda of a council meeting, (2) added to an agenda during the council meeting, or (3) included in the approved minutes of the council meeting.

The Bienville Parish (Parish) Chamber of Commerce funded a Veterans Memorial Wall that was placed on the Town property in 1999. The Memorial was later moved to the new Parish Courthouse by the Parish government. Mayor Eugene Smith stated that he took legal action on behalf of the Town against the Parish to get the Memorial moved back to Town property. The Town's attorney, Mr. Robert Moore, drafted a ratification of the Mayor's actions that all five council members signed, as well as Mr. Moore, on December 12, 2013, the day of a scheduled Town Council meeting. However, neither the meeting agenda nor the meeting minutes mention this act of ratification.

According to Mr. Moore, ratification was not required, but it was an approval of the Mayor taking legal action against the Parish government to have the memorial returned to Town property. Mr. Moore stated that there was no legal efficacy for the ratification, and as such, he did not draft it as a resolution. Mr. Moore could not recall if the ratification was discussed and approved during the public meeting or if it was addressed after the council meeting adjourned.

The ratification is an official act of the Town Council and should be disclosed on the meeting agenda to allow the public to participate in the discussion during a public meeting and the discussion should be recorded in the minutes as required by state law.^{6,7}

Recommendations

We recommend the Town of Arcadia:

- (1) seek legal counsel regarding recovery of Town funds;
- (2) verify the accuracy of employees' payroll deductions;
- (3) assign different employees to perform the payroll function and to establish employee deductions;
- (4) update the Town's employee handbook to include a credit card use policy that requires employees to turn in itemized receipts after credit card purchases, or reimburse the Town for the purchase; and
- (5) ensure all official acts by the Town Council adhere to the public meetings law and are included in the agenda and the meeting minutes.

LEGAL PROVISIONS

¹ **Louisiana Revised Statute (La. R.S.) 11:1806** provides that “Each member of Plan B shall contribute an amount equal to a percentage of his monthly earnings from each and every payment of earnings, which contributions shall be credited to the Annuity Savings Fund B, and which percentage shall be set by the board for each fiscal year in a range from five percent to six percent and shall become effective as of the next payroll period reportable on the employee’s W2 for that year.”

² **La. R.S. 11:62 (7)(b)** provides that “Employee contributions to state and statewide public retirement systems shall be paid at the following rates, except as otherwise provided by law: (7) Municipal Employees’ Retirement System of Louisiana. (a) Plan A Not less than 9.25% nor more than 10% as determined by the board of trustees. (b) Plan B Not less than 5% nor more than 6% as determined by the board of trustees.”

³ **La. R.S. 14:67(A)** provides that “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.”

⁴ **La. R.S. 14:133 (A)** provides that “Filing or maintaining false public records A. Filing false public records is the filing or depositing for record in any public office or with any public official, or the maintaining as required by law, regulation, or rule, with knowledge of its falsity, of any of the following: (1) Any forged document. (2) Any wrongfully altered document. (3) Any document containing a false statement or false representation of a material fact.”

⁵ **La. R.S. 44:36** provides that “Preservation of records A. All persons and public bodies having custody or control of any public record, other than conveyance, probate, mortgage, or other permanent records required by existing law to be kept for all time, shall exercise diligence and care in preserving the public record for the period or periods of time specified for such public records in formal records retention schedules developed and approved by the state archivist and director of the division of archives, records management, and history of the Department of State. However, in all instances in which a formal retention schedule has not been executed, such public records shall be preserved and maintained for a period of at least three years from the date on which the public record was made. However, where copies of an original record exist, the original alone shall be kept; when only duplicate copies of a record exist, only one copy of the duplicate copies shall be required to be kept. Where an appropriate form of the microphotographic process has been utilized to record, file, and otherwise preserve such public records with microforms produced in compliance with the provisions of R.S. 44:415, the microforms shall be deemed originals in themselves, as provided by R.S. 44:39(B), and disposition of original documents which have been microphotographically preserved and of duplicates and other copies thereof shall proceed as provided in R.S. 44:411. B. All existing records or records hereafter accumulated by the Department of Revenue may be destroyed after five years from the thirty-first day of December of the year in which the tax to which the records pertain became due; provided that these records shall not be destroyed in any case where there is a contest relative to the payment of taxes or where a claim has been made for a refund or where litigation with reference thereto is pending. C. All existing records or records hereafter accumulated by the various services of the state or its subdivisions which participate in federal programs or receive federal grants may be destroyed after three years from the date on which the records were made in those cases where this provision is not superseded by guidelines for the operative federal program or grant requiring longer retention periods for the records in question; provided that these records shall not be destroyed in any case where litigation with reference thereto is pending, or until the appropriate state or federal audits have been conducted. D. All existing records or records hereafter accumulated by the Department of Public Safety and Corrections, corrections services, pertaining to any adult offender shall be retained and may not be destroyed until after six years from the date the full term sentence imposed upon such offender expires, or six years from the date of death of the offender, whichever occurs first. E. (1) The public records of a prosecuting agency, pertaining to a criminal prosecution that results in a conviction, in a manner other than a plea, shall be retained for a period of three years from the date on which a court of appeal affirms the conviction, the Louisiana Supreme Court

denies writs, or the Louisiana Supreme Court makes its final ruling on the appeal, whichever occurs last. (2) The provisions of this Subsection shall not apply to any records expunged as provided by law. (3) Nothing in this Subsection shall be construed in any manner to affect or alter the provisions of R.S. 44:3 regarding the records of prosecuting agencies. F. All existing records or records hereafter accumulated pursuant to R.S. 42:23 shall be preserved and maintained for a period of at least two years from the date on which the public record was made.”

⁶ **La. R.S. 42:14** provides that “Meetings of public bodies to be open to the public A. Every meeting of any public body shall be open to the public unless closed pursuant to R.S.42:16, 17, or 18. B. Each public body shall be prohibited from utilizing any manner of proxy voting procedure, secret balloting, or any other means to circumvent the intent of this Chapter. C. All votes made by members of a public body shall be viva voce and shall be recorded in the minutes, journal, or other official, written proceedings of the body, which shall be a public document. D. Except school boards, which shall be subject to R.S. 42:15, each public body conducting a meeting which is subject to the notice requirements of R.S. 42:19(A) shall allow a public comment period at any point in the meeting prior to action on an agenda item upon which a vote is to be taken. The governing body may adopt reasonable rules and restrictions regarding such comment period.”

⁷ **La. R.S. 42:19** provides that “Notice of meetings A.(1)(a) All public bodies, except the legislature and its committees and subcommittees, shall give written public notice of their regular meetings, if established by law, resolution, or ordinance, at the beginning of each website, additionally by providing notice via the Internet on the website of the public body for no less than twenty four hours, exclusive of Saturdays, Sundays, and legal holidays, immediately preceding the meeting. The failure to timely post notice via the Internet pursuant to this Subparagraph or the inability of the public to access the public body’s website due to any type of technological failure shall not be a violation of the provisions of this Chapter. (b) Mailing a copy of the notice to any member of the news media who requests notice of such meetings; any such member of the news media shall be given notice of all meetings in the same manner as is given to members of the public body. B. Reasonable public notice of day to day sessions of either house of the legislature, and of all matters pertaining to such meetings, including but not necessarily restricted to the content of notices, quorums for the transaction of business, proxy voting, vivavoce votes, and recordation of votes, shall be governed by the provisions of the Louisiana Constitution, the rules of procedure of the Senate and the House of Representatives, and the Joint Rules applicable to both houses. Reasonable public notice of meetings of legislative committees and subcommittees shall be given in accordance with such rules as are adopted by the respective houses for the purpose calendar year. Such notice shall include the dates, times, and places of such meetings. (b)(i) All public bodies, except the legislature and its committees and subcommittees, shall give written public notice of any regular, special, or rescheduled meeting no later than twenty four hours, exclusive of Saturdays, Sundays, and legal holidays, before the meeting. (ii)(aa) Such notice shall include the agenda, date, time, and place of the meeting. The agenda shall not be changed less than twenty four hours, exclusive of Saturdays, Sundays, and legal holidays, prior to the scheduled time of the meeting. (bb) Each item on the agenda shall be listed separately and described with reasonable specificity. Before the public body may take any action on an item, the presiding officer or his designee shall read aloud the description of the item except as otherwise provided in Sub item (dd) of this Item. (cc) Upon unanimous approval of the members present at a meeting of a public body, the public body may take up a matter not on the agenda. Any such matter shall be identified in the motion to take up the matter not on the agenda with reasonable specificity, including the purpose for the addition to the agenda, and entered into the minutes of the meeting. Prior to any vote on the motion to take up a matter not on the agenda by the public body, there shall be an opportunity for public comment on any such motion in accordance with R.S. 42:14 or 15. The public body shall not use its authority to take up a matter not on the agenda as a subterfuge to defeat the purposes of this Chapter. (dd) If an agenda of a meeting of a governing authority of a parish with a population of two hundred thousand or more according to the latest federal decennial census or municipality with a population of one hundred thousand or more according to the latest federal decennial census contains more than fifty items, the governing authority may take action on items listed on a consent agenda without reading the description of each item aloud. However, before any action is taken on items listed on a consent agenda, the governing authority shall allow a public comment period. Any item listed on a consent agenda may be removed from the consent agenda by an individual member of the governing authority if a person objects to the presence of the item on the consent agenda and provides reasons for individual discussion at the meeting. The name of the person who objects to a consent agenda item and the reasons for the objection shall be included in the minutes of the meeting. (iii) Following the above information there

shall also be attached to the written public notice of the meeting, whether or not such matters will be discussed in an executive session held pursuant to R.S. 42:17(A)(2): (aa) A statement identifying the court, case number, and the parties relative to any pending litigation to be considered at the meeting. (bb) A statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation for which formal written demand has been made that is to be considered at the meeting. (iv) In cases of extraordinary emergency, such notice shall not be required; however, the public body shall give such notice of the meeting as it deems appropriate and circumstances permit. (2) Written public notice given by all public bodies, except the legislature and its committees and subcommittees, shall include, but need not be limited to: (a) Posting a copy of the notice at the principal office of the public body holding the meeting, or if no such office exists, at the building in which the meeting is to be held; or by publication of the notice in an official journal of the public body no less than twenty four hours, exclusive of Saturdays, Sundays, and legal holidays, before the scheduled time of the meeting. If the public body has a website, additionally by providing notice via the Internet on the website of the public body for no less than twenty four hours, exclusive of Saturdays, Sundays, and legal holidays, immediately preceding the meeting. The failure to timely post notice via the Internet pursuant to this Subparagraph or the inability of the public to access the public body's website due to any type of technological failure shall not be a violation of the provisions of this Chapter. (b) Mailing a copy of the notice to any member of the news media who requests notice of such meetings; any such member of the news media shall be given notice of all meetings in the same manner as is given to members of the public body.

B. Reasonable public notice of day to day sessions of either house of the legislature, and of all matters pertaining to such meetings, including but not necessarily restricted to the content of notices, quorums for the transaction of business, proxy voting, vivavoce votes, and recordation of votes, shall be governed by the provisions of the Louisiana Constitution, the rules of procedure of the Senate and the House of Representatives, and the Joint Rules applicable to both houses. Reasonable public notice of meetings of legislative committees and subcommittees shall be given in accordance with such rules as are adopted by the respective houses for the purpose.”

APPENDIX A

Management's Response

Robert A. Moore

Town Attorney
Town of Arcadia, Louisiana

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March 16th, 2016

Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor
P.O. Box 94397
Baton Rouge, LA 70804-9397

**RE: Town of Arcadia
Audit / Managements Response**

Dear Mr. Purpera / staff:

The Town of Arcadia has received and had a chance to review the audit draft investigative report dated March 3rd, 2016, and I write on behalf of my client in response thereto. I would like to address these three (3) items in the order set forth in your letter.

1. **Improper Retirement Contributions**

The former town clerk for the Town of Arcadia, Theresa Burris, was arrested and has entered in guilty plea to a series of thefts from the town over a period of years, which were only discovered by the town, its auditors and the Louisiana Office of Inspector General during 2015. This most recent issue, involving \$5,961 in improper contributions to the Municipal Employees Retirement System of Louisiana, seems to be an additional finding of thefts / misappropriation that occurred during the course of her previous thefts.

To conclude this issue, the town of Arcadia intends to and will pursue all legal and available claims against Mrs. Burris for the return / reimbursement of these amounts, including but not limited to filing of suit against Mrs. Burris if necessary, within the next (30) days.

2. **Missing Credit Card Receipts**

The Town of Arcadia has provided all of the receipts within its immediate possession, and is prepared to seek and obtain any other 3rd party receipts that you request (which it is able to obtain). Unfortunately, in some instances, receipts were not provided back to the town and reconciled with the statements, and this will be done in the future each month. Additionally, while the town did request from many merchants a copy of the receipts, in many instances the merchants either could not or would not provide us with duplicate copies. It is believed that in some instances, these receipts were provided by e-mail to the former clerk, Mrs. Burris, however when her e-mail records were requested by the town that request was denied.

The town has reviewed the transactions at issue by examining its credit card statements, and has determined that none of the transactions are improper uses of town funds, and were for goods or services that were actually received by the town.

In further ensuring that this type of records-retention issue does not occur again, the town management has implemented a new policy requiring all future purchases that are approved be supplemented with the receipt for purchase, and if such receipt is not obtained, the employee making the purchase will have to pay the amount by deduction from their paycheck.

3. **“Act of Ratification” by council non-compliance with Public Meeting Law**

As set forth in your letter, the Ratification document itself carried with it no legal efficacy, and therefore was not an “official act” of the Town of Arcadia. It was intentionally not drafted in the form of any resolution or ordinance, as no additional legal authority was necessary for the mayor of Arcadia to initiate a lawsuit to protect property of the Town of Arcadia.

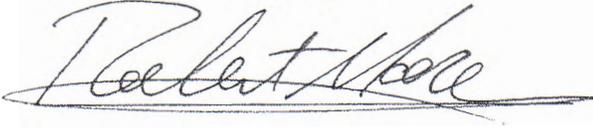
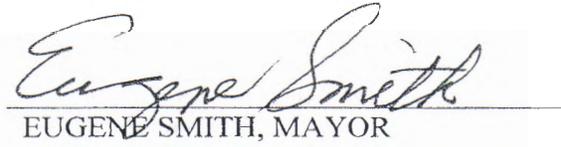
The document in question was prepared in response to a statement made by opposing parties in the referenced litigation (and their associated persons) to the effect that the lawsuit was never “approved by the town counsel”, however such was not required under the Lawrason Act for a suit of this nature. No legal Exception was ever filed in the civil litigation and the issue never arose in Court during the course of the trial.

Nonetheless, the Town of Arcadia acknowledges that it has a duty to support the spirit and meaning of the Open Meetings Law, and as such it will ensure that all matters will be disclosed in its agenda’s and its minutes.

In closing, we appreciate the opportunity to address these issues with you and appreciate the work that you do on behalf of all of the citizens of Louisiana. If there is anything further that you

need from us, please let us know.

With Best Personal Regards,

A handwritten signature in black ink, appearing to read "Robert Moore". The signature is fluid and cursive, with a long horizontal stroke at the end.

EUGENE SMITH, MAYOR

A handwritten signature in black ink, appearing to read "Eugene Smith". The signature is cursive and elegant. Below the signature is a horizontal line, and underneath that line, the text "EUGENE SMITH, MAYOR" is printed in a clean, sans-serif font.