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Missouri State Auditor

City of Garden City



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Susan Montee, JD, CPA
Missouri State Auditor

YELLOW SHEET

Findings in the audit of the City of Garden City

Aquatic Center	The city did a poor job of planning the financing and construction of the city's aquatic center. Due to ineffective planning by city officials, it appears the aquatic center may not be what the citizens expected and/or what was initially intended, and the center is not self-sufficient. As a result, other city funds have been used to pay the expenses of the center, and the continued revenue shortfall of the center may result in the reduction of other necessary and vital city services. The city borrowed over \$100,000 from the General and Sewer Funds in 2008 to pay some of the project construction costs and certificates of participation principal and interest payments, and it is unclear when or if the funds loaned to the Aquatic Center Account will be paid back.
Water and Sewer Funds Fees	The city did not adequately document its rationale and/or justification for assessing operations and maintenance fees to its utility customers, or for assessing a franchise fee against revenues of the Water and Sewer Funds. In addition, a franchise fee was applied retroactively and it is unclear if applying the fee retroactively is proper.
Budgeting and Financial Reporting	Weaknesses were identified in the city's budgeting and financial reporting. The city does not prepare and adopt annual budgets in accordance with state law. The budgets do not include a budget message, actual receipts and disbursements for the two preceding budget years, or estimated ending available resources. The city's published semiannual financial statements do not fully comply with state law. The statements do not include the indebtedness of the city and a full and detailed account of receipts and disbursements.
Notices and Meetings	The Board's procedures for conducting and documenting meetings need improvement. Open meeting notice agendas routinely used the same statement to indicate the potential for a closed meeting/session, although no closed meeting/session was planned or held. Also, the Board did not document how some issues discussed in closed meetings were allowable under the Sunshine Law.
City Policies and Procedures	Weaknesses were noted in the city's policies and procedures. Retroactive pay increases may represent additional compensation in the form of a bonus and, as such, may be in violation of the state constitution. The city has not established an ordinance for employee compensation or the term of office for the City Clerk, and the compensation of elected officials is not set by ordinance. The method of allocating wage expense among the various city funds is not supported by documentation. The city does not have a formal written agreement with its attorney, and payments made to the attorney are not properly reported to the IRS.

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SUSAN MONTEE, JD, CPA

Missouri State Auditor

To the Honorable Mayor
and
Members of the Board of Aldermen
City of Garden City, Missouri

The State Auditor was petitioned under Section 29.230, RSMo, to audit the City of Garden City. The city engaged Troutt, Beeman & Co., P.C., Certified Public Accountants (CPAs), to audit the city's financial statements for the years ended June 30, 2009 and 2008. To minimize duplication of effort, we reviewed the report and substantiating working papers of the CPA firm for the year ended June 30, 2008, since the year ended June 30, 2009 audit had not been completed. The scope of our audit included, but was not necessarily limited to, the year ended June 30, 2009. The objectives of our audit were to:

1. Obtain an understanding of the petitioners' concerns and perform various procedures to determine their validity and significance.
2. Evaluate the city's internal controls over significant management and financial functions.
3. Evaluate the city's compliance with certain legal provisions.

Our methodology included reviewing minutes of meetings, written policies and procedures, financial records, and other pertinent documents; interviewing various personnel of the city, as well as certain external parties; and testing selected transactions.

We obtained an understanding of internal controls that are significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. However, providing an opinion on the effectiveness of internal controls was not an objective of our audit and accordingly, we do not express such an opinion.

We obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions. However, providing an opinion on compliance with those provisions was not an objective of our audit and accordingly, we do not express such an opinion. Abuse, which refers to behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary given the facts and circumstances, does not necessarily involve noncompliance with legal provisions. Because the determination of abuse is subjective, our audit is not required to provide reasonable assurance of detecting abuse.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

The accompanying Organization and Statistical Information is presented for informational purposes. This information was obtained from the city's management and was not subjected to the procedures applied in our audit of the city.

The accompanying Management Advisory Report presents our findings arising from our audit of the City of Garden City.

An additional report, No. 2009-109, *Seventeenth Judicial Circuit, City of Garden City Municipal Division*, was issued in October 2009.



Susan Montee, JD, CPA
State Auditor

The following auditors participated in the preparation of this report:

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City of Garden City

Management Advisory Report - State Auditor's Findings

1. Aquatic Center

The city did a poor job of planning the financing and construction of the city's aquatic center. As a result, other city funds have been used to pay the expenses of the center, and the continued revenue shortfall of the center may result in the reduction of other necessary and vital city services. According to city personnel, it was the city's intention the aquatic center be self-sufficient and not be subsidized by other city funds.

In November 2005, city residents approved a 1/2-cent park sales tax for the construction and operation of an aquatic center. Certificates of participation (COPS) totaling \$915,000 were issued in August 2006 for the project. Construction started in July 2007, with the aquatic center opening in May 2008. The center operations are accounted for within the city's General Fund.

Ineffective planning

Due to ineffective planning by city officials, it appears the aquatic center may not be what the citizens expected and/or what was initially intended, and the center is not self-sufficient. The facility constructed is not a regulation swimming pool where swimmers can dive or swim laps, but is more a wading pool. In addition, it was necessary to borrow over \$100,000 from the city's General and Sewer Funds in 2008 to pay some of the project construction costs and COPS principal and interest payments.

The city received approximately \$830,000 (COPS proceeds less various issuance costs), for the aquatic center project. However, the construction costs and architect fees totaled almost \$856,000 and \$78,000, respectively. Additionally, park sales tax revenues are not sufficient to pay the annual COPS principal and interest payments. The sales tax revenue decreased to \$40,000 in fiscal year 2009 from approximately \$44,000 in fiscal years 2008 and 2007. However, debt service costs are approximately \$66,000 per year.

Also, revenue from aquatic center operations are significantly less than projected. The actual sale of daily and season pool passes was almost \$50,000 less than projected for the first operating season in 2008. Thus, operating revenues do not fully cover operating expenses, and funding must be supplemented by the General Fund.

The Aquatic Center Account, Schedule of Receipts, Disbursements, and Cash Balances for the 4 years ended June 30, 2009, is presented at the end of this report. As noted, the center's cash balance as of June 30, 2009, was a deficit of over \$50,000.

Loans

It is unclear when or if the funds loaned to the Aquatic Center Account from the General and Sewer Funds will be paid back.



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Management Advisory Report - State Auditor's Findings

In April 2008, the Board authorized a loan of up to \$100,000 from the Sewer Fund to the General Fund to pay aquatic center expenses. Consequently, \$88,000 was transferred to the Aquatic Center Account from the Sewer Fund. In addition, in May 2008, the Board approved a loan of over \$14,000 to the Aquatic Center Account from the General Fund. Both loans are to be fully repaid in 10 years at an interest rate of 4.5 percent annually from the aquatic center revenues. As of June 30, 2009, no principal or interest payments for these loans had been made.

Although short-term, inter-fund borrowing is sometimes necessary to overcome temporary cash flow problems, it is not appropriate as a long-term funding mechanism. In addition, it appears the loan was made from sewer reserve funds and these reserve funds will not be available in the case of an emergency.

Conclusion

In order to reduce and/or eliminate subsidizing the aquatic center with other city funds, the city needs to develop a comprehensive plan to address 1) the financial impact to city funds due to the revenue shortfalls related to the aquatic center operations, and 2) repayment of the loans due to the General and Sewer Funds. By continually monitoring and evaluating the financial condition of the aquatic center, the city can develop a plan with multi-options to address the revenue shortfall and adjust the plan as needed. Options to increase revenues could include investigating a possible fee increase charged for admission or seeking an increase in the city's sales tax. Also, the city should consider reducing disbursements. Such a plan should be presented to the public in order to explain the city's position and to educate the community on any changes to services. Thorough and detailed documentation should be prepared and maintained to support and justify any plan the city implements.

Recommendations

The Board of Aldermen should closely monitor the financial condition of the aquatic center and develop a plan to address the revenue shortfall. Thorough and detailed documentation should be prepared and maintained to support and justify any plan the city implements. The Board should also develop and implement a loan repayment schedule for amounts due to the General and Sewer Funds from the Aquatic Center Account. In addition, the Board should discontinue the practice of making long-term loans.

Auditee's Response

The Board of Aldermen provided the following written response:

The Council will develop a plan to address revenue shortfall and repayment schedules for loans to General and Sewer Funds before May 2010.

2. Water and Sewer Funds Fees

The city did not adequately document its rationale and/or justification for assessing operations and maintenance (O&M) fees to its utility customers, or for assessing a franchise fee against revenues of the Water and Sewer



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Funds. The O&M fees are retained by the Water and Sewer Funds, and the franchise fee is transferred to the General Fund.

O&M fee

In June 2006, the city passed an ordinance authorizing a 4.875 percent O&M fee charged to water and sewer customers, in addition to the customer's monthly water and sewer usage charge. However, the O&M fee was not based on actual administrative costs or other documented rationale. For the year ended June 30, 2009, O&M fees of \$16,059 and \$9,931 were collected for the Water and Sewer Funds, respectively.

The city assesses the O&M fee on monthly usage charges for water and sewer to ". . . defray the costs of operating and maintaining the Systems." The O&M fee should be in direct proportion to the benefits received by the Water and Sewer Funds and documented rationale should be provided to reflect those benefits and associated costs.

Franchise fee

In April 2008, the Board approved a resolution establishing a franchise fee of 4.5 percent to be charged to the water and sewer gross revenues and transferred monthly to the General Fund; however, the Board did not document its justification/rationale for determining the percentage. In addition, this fee was retroactive to July 1, 2007. It is unclear if applying the fee retroactively is proper. For the year ended June 30, 2009, \$28,281 and \$17,525 was transferred to the General Fund from the Water and Sewer Funds, respectively.

The resolution indicated this fee was for services benefiting the water and sewer departments furnished by the city such as clerical help, supervision, and general maintenance of the streets. However, it is unclear what General Fund expenses are to be reimbursed as a significant portion of city employees' salaries, wages, and payroll taxes were already paid from the Water and Sewer Funds. For example, during the year ending June 30, 2009, 43 percent of the city's total salaries, wages, and payroll taxes were paid from the Water and Sewer Funds. Generally, three positions, City Administrator, City Clerk, and Assistant City Clerk, provide services to all city funds. See MAR finding number 5.3 regarding wage expense allocation.

The city needs to develop a methodology/rationale to determine if the franchise fee transfer is reasonable and proper.

Recommendations

The Board of Aldermen develop a methodology for determining the O&M and franchise fees charged. Thorough and detailed documentation of the rationale and calculation of the fees should be maintained and retained. In addition, the Board should consult with its attorney regarding the propriety of applying the franchise fee retroactively.



Auditee's Response

The Board of Aldermen provided the following written response:

Management and Council will review this matter and consult with the city attorney.

3. Budgeting and Financial Reporting

Weaknesses were identified in the city's budgeting and financial reporting. Budgets do not include all information required by state law, and published financial statements do not include sufficient information.

3.1 Budgets

The city does not prepare and adopt annual budgets in accordance with statutory provisions. The budgets do not include a budget message, actual receipts and disbursements for the two preceding budget years, or estimated ending available resources. The budgets only show the current year budgeted receipts, disbursements, and receipts over disbursements.

Section 67.010, RSMo, requires the preparation of an annual budget which should present a complete financial plan for the ensuing budget year and Sections 67.010 to 67.080, RSMo, set specific guidelines for the format, approval, and amendment of the annual budget. A complete budget should include separate receipt and disbursement estimations by fund, as well as the beginning available resources and a reasonable estimate of the ending available resources. The budget should also include a budget message, comparisons of actual receipts and disbursements for the two preceding years, and amounts related to the debt of the city.

A complete and well-planned budget, in addition to meeting statutory requirements, can serve as a useful management tool by establishing specific financial expectations for each area of city operations. It will also assist in setting tax levies and informing the public about city operations and current finances.

3.2 Financial statements

The city's published semiannual financial statements do not fully comply with statutory requirements. The financial statements do not include the indebtedness of the city. In addition, the statements are not a full and detailed account of receipts and disbursements. Instead, the city publishes summary statements of receipts and disbursements and the fund balance of its various funds.

Section 79.160, RSMo, requires the city to prepare and publish ". . . a full and detailed account and statement of the receipts and expenditures and indebtedness of the city . . .", within one month of the end of the period. Complete and detailed financial statements are necessary to keep citizens informed of the financial activity and condition of the city.



Recommendations

The Board of Aldermen:

- 3.1 Prepare annual budgets that contain all information as required by state law.
- 3.2 Ensure the city's published semiannual financial statements present all required financial information required by state law.

Auditee's Response

The Board of Aldermen provided the following written responses:

- 3.1 *A sample copy of a full complete budget has been obtained and will be implemented in 2010.*
- 3.2 *The annual CPA audit will be informed and 2010 will be published as required.*

4. Notices and Meetings

The Board's procedures for conducting and documenting meetings need improvement. Various requirements in Chapter 610 (the Sunshine Law) regarding open and closed meetings were not always followed.

4.1 Closed meeting notices

Open meeting notice agendas routinely used the same statement to indicate the potential for a closed meeting/session, although no closed meeting/session was planned or held. The statement indicated the Board may have a " . . . vote to close part of this meeting pursuant to RSMO 610.021(3) and 610.22"

Section 610.022, RSMo, requires the specific reasons for closing a meeting be announced publicly at an open meeting and entered into the minutes. A statement which includes a potential issue that may be discussed in a closed session appears to circumvent the intent of the law.

4.2 Closed meetings

The Board did not document how some issues discussed in closed meetings were allowable under the Sunshine Law. This included discussions about the aquatic center's finances, future sewer bonds, budget line items, infrastructure, and the franchise fee.

Section 610.021, RSMo, allows matters to be discussed in closed meetings only if they relate to certain specific subjects, including litigation, real estate transactions, and personnel issues. The city needs to ensure only matters specifically authorized by state law are discussed in closed meetings. This law also provides that public governmental bodies shall not discuss other business during the closed meeting that differs from the specific reasons used to justify such meeting, record, or vote.



Recommendations

The Board of Aldermen:

- 4.1 Ensure the open minutes and related agenda state the specific reasons for going into a closed meeting/session.
- 4.2 Ensure the items discussed in closed meetings are allowed by the Sunshine Law.

Auditee's Response

The Board of Aldermen provided the following written responses:

- 4.1 *This issue was explained at the time of audit and has been corrected.*
- 4.2 *This will be watched closely and the city attorney will be consulted if any doubt.*

5. City Policies and Procedures

Weaknesses were noted in the city's policies and procedures. Retroactive pay increases are given, compensation is not set by ordinance, and the allocation of wage expenses is not supported by documentation. Also, there is not a written agreement with the city attorney and a Form 1099 is not completed and submitted to the Internal Revenue Service (IRS) for his services.

5.1 Retroactive pay increases

Retroactive pay increases, approved by the Board, may represent additional compensation in the form of a bonus and, as such, may be in violation of the state constitution. For example, pay increases were given in July 2007 to three employees retroactive three months, in August 2008 to seven employees retroactive one month, and in September 2008 to two employees retroactive one month.

These retroactive payments total almost \$3,500 and represent additional payments for services previously rendered and, as such, may be in violation of Article III, Section 39, of the Missouri Constitution and Attorney General's Opinion No. 72, 1955 to Pray, which prohibit granting extra compensation in the form of bonuses to public officers or servants after services have been rendered.

5.2 Compensation ordinance

The city has not established an ordinance for employee compensation or the term of office for the City Clerk. In addition, the compensation of elected officials is not set by ordinance. Compensation is set by board vote.

Section 79.270, RSMo, provides that city officials and employee salaries be set by ordinance, and Section 79.320, RSMo, requires the City Clerk's duties and term of office be established by ordinance.



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Establishing ordinances to set compensation rates and terms of office, in addition to meeting statutory requirements, documents the approved amounts to be paid and eliminates misunderstandings regarding the amount of pay each city official and employee receives. Also, Section 79.270, RSMo, provides that ". . . the salary of an officer shall not be changed during the time for which he was elected or appointed." Thus, the term of office is significant in determining when pay increases are allowable under state law.

5.3 Wage expense allocation

The method of allocating wage expense among the various city funds is not supported by documentation. Following is the percentage allocation of employee wage expense to various funds:

Position	Fund			
	General	Street	Water	Sewer
City Administrator	0	50	30	20
City Clerk	33	0	33	34
Assistant City Clerk	0	0	50	50
Water and Wastewater Superintendent	0	0	70	30
Maintenance personnel	0	60	30	10

Time sheets show no detail of activities performed by employees. Consequently, the city has no support or reasons for these various allocations.

The funds of the city are established as separate accounting entities to account for specific activities of the city. Reflecting expenses in the proper fund is necessary to accurately determine the results of operations and/or specific activities; thus, enabling the city to establish the level of taxation and/or user fees necessary to meet operating costs. Also, adequate documentation and proper allocation of expenses is useful for both management and planning purposes. Wage expense should be allocated to the various city funds based on actual time or estimated time based on historical data.

5.4 City attorney

The city does not have a formal written agreement with its attorney, and payments made to the attorney are not properly reported to the IRS. For the years ended June 30, 2009 and 2008, the city paid its attorney approximately \$13,800 and \$14,000, respectively. According to city personnel, a Form 1099 was not prepared for these payments because the firm is incorporated.

A formal written agreement, signed by both parties, should specify services to be provided and the manner and amount of compensation to be paid. Written agreements are necessary to ensure all parties are aware of their duties, rights, and responsibilities, and to prevent misunderstandings. Also,



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Section 432.070, RSMo, requires contracts for political subdivisions to be in writing.

Additionally, although the Internal Revenue Code generally does not require a Form 1099 for payments to corporations, there are some exceptions. One exception provides payments to corporations providing legal services must be reported on Form 1099.

Recommendations

The Board of Aldermen:

- 5.1 Refrain from paying employees retroactive pay increases.
- 5.2 Establish the compensation of city officers and employees by ordinance. In addition, the duties and term of office for the City Clerk should be set by ordinance.
- 5.3 Ensure employee wages are properly allocated to various city funds and are supported by adequate documentation.
- 5.4 Enter into a formal written agreement with the City Attorney which defines the services to be provided and compensation to be paid. In addition, the Board should ensure a Form 1099 is prepared and submitted to the IRS for all payments made to an attorney.

Auditee's Response

The Board of Aldermen provided the following written responses:

- 5.1 *Pay increases were to begin on the first day of each fiscal year. At times, management and Council have not been able to review increases until a later date, thus causing this error. It will be corrected immediately.*
- 5.2 *An ordinance will be drafted by the city attorney and presented to the Mayor and Council.*
- 5.3 *Management and Council will review allocation of wages and document changes as necessary.*
- 5.4 *Management and Council will have the city attorney draft a written agreement to present for passage. Also, a 1099 will be sent at calendar year-end.*

City of Garden City

Organization and Statistical Information

The City of Garden City is located in Cass County. The city was formed as a village in August 1885, and incorporated as a fourth-class city in 1897.

Mayor and Board of Aldermen

The city government consists of a mayor and a four-member board of aldermen. The members are elected for 2-year terms. The mayor is elected for a 4-year term, presides over the board of aldermen, and votes only in the case of a tie. The tax collector is also elected for a 4-year term. The Mayor, Board of Aldermen and other officials during the fiscal year ended June 30, 2009, are identified below. The Mayor is paid \$100 per month, board members are paid \$50 per month, and all officials receive \$15 for each special board meeting. The position of tax collector is non-functional, in title only, and the collector is paid \$25 per year.

Name and Title	Dates of Service During the Year Ended June 30, 2009	Compensation Paid for the Year Ended June 30, 2009
Richard Williams, Mayor	July 2008 to June 2009	\$ 1,230
Mark Lopez, Alderman	July 2008 to June 2009	660
Kevin King, Alderman	July 2008 to June 2009	660
Tammy Marten, Alderwoman	July 2008 to June 2009	660
Danny Merrifield, Alderman	July 2008 to June 2009	615

Other Officials

Name and Title	Dates of Service During the Year Ended June 30, 2009	Compensation Paid for the Year Ended June 30, 2009
Dave Larcom, City Administrator (1)	July 2008 to June 2009	\$ 55,830
Randall Jones, City Clerk	July 2008 to June 2009	35,637
Tom Alber, Police Chief	July 2008 to June 2009	39,153
Earsholl Brown, Water/Wastewater Superintendent	July 2008 to June 2009	45,974
Linda Mueller, Collector*	July 2008 to June 2009	25
Chris Benjamin, Municipal Judge (2)	January 2009 to June 2009	2,630
Mike Wager, Municipal Judge (2)	July 2008 to December 2008	2,400
James Thompson, City/Prosecuting Attorney (3)	July 2008 to June 2009	13,814

(1) The City Administrator resigned his position effective August 21, 2009.

(2) The municipal judge was paid \$400 per month. Judge Benjamin also received \$230 to attend training during the year ended June 30, 2009.

(3) Mr. Thompson was paid \$150 and \$125 per hour as city attorney and prosecutor, respectively.

* Elected position

In addition to the officials identified above, the city employed 5 full-time employees and 15 part-time employees on June 30, 2009.

City of Garden City

Aquatic Center Account Activity

City of Garden City Aquatic Center Account Schedule of Receipts, Disbursements, and Cash Balances	Year Ended June 30,			
	2009	2008	2007	2006
Receipts				
Park sales tax	\$ 40,156	44,954	44,468	3,669
Park sales tax interest	31	60	27	0
Interest	0	20	14	0
Donations	2,825	8,066	0	929
Concession proceeds	1,655	432	0	0
Admissions	5,972	2,857	0	0
Season passes	6,660	6,053	0	0
Rental and lessons	1,785	350	0	0
Locker rent	25	0	0	0
Training reimbursement	16	750	0	0
Supplies reimbursement	286	207	0	0
Sale of equipment	0	200	0	0
Election expense refund	0	0	0	188
Miscellaneous	0	34	0	0
Total Receipts	59,411	63,983	44,509	4,786
Disbursements				
Salaries and wages	18,965	6,475	0	0
Payroll taxes	1,258	457	0	0
Professional fees	8,933	6,960	13,550	0
Election expense	0	0	0	1,216
Telephone	192	0	0	0
Postage	100	0	0	0
Printing	18	1,015	0	623
Publishing legal notices	39	365	0	0
Printing notices and ads	0	211	0	0
Materials and supplies, operations	1,128	996	0	0
Office supplies	24	35	0	0
Treatment chemicals	1,303	537	0	0
Concession expense	837	459	0	0
Equipment purchases	3,078	3,702	0	0
Xerox maintenance	153	0	0	0
Aquatic expense	200	1,322	0	0
Rent deposit refund	250	0	0	0
Buildings and grounds maintenance	0	3,594	0	0
Utilities	8,573	3,152	0	0
General insurance	1,390	1,716	0	0
Construction	0	93,334	0	0
Unemployment insurance	213	84	0	0
Training	360	783	0	0
Uniform maintenance expense	131	349	0	0
Dues and permit fees	150	150	0	0
Legal recording	0	0	1,291	0
Bond principal	24,000	23,000	0	0
Bond interest	42,123	42,366	0	0
Bond fiscal agent fees	2,822	2,842	1,600	0
Miscellaneous	43	0	0	0
Total Disbursements	116,283	193,904	16,441	1,839
Total Receipts Over (Under) Disbursements	(56,872)	(129,921)	28,068	2,947
Transfers In:				
Loan from General Fund	0	14,362	0	0
Loan from Sewer Fund	0	88,000	0	0
Total Transfers In	0	102,362	0	0
Total Receipts Over (Under) Disbursements and Transfers	(56,872)	(27,559)	28,068	2,947
Cash, July 1	3,456	31,015	2,947	0
Cash, June 30	\$ (53,416)	3,456	31,015	2,947