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Missouri State Auditor

City of St. Louis
Office of Public
Administrator

January 2010
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Office of the
Missouri State Auditor
Susan Montee, JD, CPA

January 2010

The following findings were included in our audit report on the City of St. Louis, Office of Public Administrator.

It appears the Public Administrator's salary and his employees' benefits have not been established in accordance with state law. Although the Public Administrator requested to be paid on a salary basis, the city has not complied with his request. In addition, the Public Administrator requested his employees be considered city employees and offered city benefits; however, currently, the Public Administrator pays his employees salaries and benefits from Public Administrator fees.

The Public Administrator did not file a statement of assets annually, resulting in inadequate bond coverage. The Public Administrator indicated a statement of assets had not been filed since September 2006, when it was requested by the Probate Judge. At our request, the Public Administrator filed a statement of assets on September 30, 2009. As a result of the statement of assets, the Probate Court required the Public Administrator to increase bond amounts for 59 wards and estates.

The Public Administrator did not ensure adequate collateral securities were pledged by depositary banks for two cases. As of September 30, 2009, the Public Administrator had maintained funds in one ward's bank account totaling approximately \$1.5 million since August 10, 2009, when the ward was assigned to the Public Administrator, and in another estate bank account totaling approximately \$540,000 since April 13, 2009, when investments were sold to prepare for the final distribution of the ward's monies.

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YELLOW SHEET

CITY OF ST. LOUIS
OFFICE OF PUBLIC ADMINISTRATOR

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STATE AUDITOR'S REPORT



SUSAN MONTEE, JD, CPA
Missouri State Auditor

Honorable Gerard A. Nester
Public Administrator
City of St. Louis, Missouri

The State Auditor was petitioned under Section 29.230, RSMo, to audit the City of St. Louis. We have conducted an audit of the City of St. Louis Office of Public Administrator. The scope of our audit included, but was not necessarily limited to, the year ended December 31, 2008. 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. Determine if the office has adequate internal controls over significant management and financial functions.
3. Determine if the office has complied with certain legal provisions.

Our methodology included reviewing written policies and procedures, financial records, and other pertinent documents; interviewing various personnel of the office, 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 contract or 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 History and Organization is presented for informational purposes. This information was obtained from the office's management and was not subjected to the procedures applied in our audit of the office.

The accompanying Management Advisory Report presents our findings arising from our audit of the City of St. Louis Office of Public Administrator.

Additional audits of various officials and departments of the City of St. Louis fulfilling our obligations under Section 29.230, RSMo, are still in process, and any additional findings and recommendations will be included in subsequent reports.



Susan Montee, JD, CPA
State Auditor

The following auditors participated in the preparation of this report:

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|---------------------|-------------------------------|
| Director of Audits: | Alice M. Fast, CPA, CIA, CGFM |
| Audit Manager: | Debra S. Lewis, CPA |
| In-Charge Auditor: | Julie Vollmer, CPA |
| Audit Staff: | M. M. Williams |

MANAGEMENT ADVISORY REPORT -
STATE AUDITOR'S FINDINGS

CITY OF ST. LOUIS
OFFICE OF PUBLIC ADMINISTRATOR
MANAGEMENT ADVISORY REPORT -
STATE AUDITOR'S FINDINGS

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| 1. Public Administrator's Salary and Employee Benefits |
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It appears the Public Administrator's salary and his employees' benefits have not been established in accordance with state law.

- A. Although the Public Administrator has requested to be paid on a salary basis, the city has not complied with his request. Section 473.742, RSMo, allows the Public Administrator in the City of St. Louis to make a determination within 30 days after taking office whether to receive a salary or fees. Currently, public administrator fees are paid to the Public Administrator, who uses them to pay salaries and expenses of his office. However, if the Public Administrator elects to receive a salary, the public administrator fees charged to the cases would be required to be turned over to the city treasury, and the city would pay all salaries and benefits.

After the Public Administrator was elected in November 2000, for the term starting in January 2001, he sent a letter to the prior Mayor and members of the Board of Estimate and Apportionment, dated December 14, 2000, electing to receive a salary. The Public Administrator received a letter from the prior Mayor, dated January 22, 2001, indicating the city believed it would be in violation of the Missouri Constitution if this change were made.

The Public Administrator sent another letter to the City Register and members of the Board of Estimate and Apportionment, dated January 27, 2009, after his recent re-election, again requesting to receive a salary. The Public Administrator indicated he has not received a written response to this letter. The Public Administrator has also been working with the Board of Aldermen to pass a city ordinance regarding the Public Administrator's compensation. Section 473.742, RSMo, states the Public Administrator shall receive not less than \$65,000 in salary; and the proposed ordinance sets the salary at a pay grade of IE which is approximately \$88,000. For the year ended December 2008, the Public Administrator estimated he received \$260,000 in fees, and spent \$242,000 for salaries and \$18,000 for other expenses; however, the Public Administrator did not provide us with records to document these amounts, and he is not required to account to the city for the fees received and spent. The budget prepared by the Public Administrator for the city estimated fees of \$260,700 would be turned over to the city and salaries of \$409,735 and other expenses of \$24,935 would be paid for by the city. The Public Administrator indicated additional staff were needed to fully meet the demands of his office.

- B. Employees of the Public Administrator's office are not considered city employees and do not receive city benefits (retirement, health insurance, life insurance, employee accidental death and dismemberment insurance, dental, vision, and a 457 plan) as required by state law. The Public Administrator has requested that his employees be considered city employees and receive city benefits; however, currently, the Public Administrator pays employee salaries and benefits from Public Administrator fees. Section 473.775, RSMo, requires full-time staff of the Public Administrator's office in the City of St. Louis be considered as employees of the city for purposes of hiring, retirement, benefits, and other laws applicable to the City of St. Louis. The Public Administrator indicated he contacted the city to receive benefits for his employees in 2000; however, the city denied his request. The Public Administrator contracts for employee health insurance and contributes to their Simplified Employee Pension-Individual Retirement Accounts (SEP IRAs).

These situations should be discussed with the City Counselor's office and appropriate actions should be taken and clearly documented to ensure compliance with state law.

WE RECOMMEND the Public Administrator continue to work with the city to ensure his salary and employee benefits are handled in accordance with state law.

AUDITEE'S RESPONSE

The Public Administrator provided the following written response:

The Public Administrator agrees with your findings on this issue. I have in the past and will continue to offer my understanding of the office and knowledge of its function to the City of St. Louis government in order to comply with State law regarding the payment of salaries, benefits and staffing of the Office. On October 28, 2009, I sent yet another version of a Bill that would address the issues in your Finding #1 to the Board of Aldermen. I believe this version corrects earlier perceived deficiencies in previous versions of the Board Bill.

When the Board of Aldermen is ready to take up the matter, I will make myself available for testimony before its committees as needed.

2.

Bond Coverage

The Public Administrator did not file a statement of assets annually, resulting in inadequate bond coverage. The Probate Court reviews bond coverage for individual cases and the Public Administrator's blanket bond coverage when a statement of assets is filed. The Public Administrator indicated a statement of assets had not been filed since September 2006, when it was requested by the Probate Judge.

At our request, the Public Administrator filed a statement of assets on September 30, 2009. As a result of the statement of assets, the Probate Court required the Public Administrator to increase bond amounts for 59 wards and estates.

Section 473.730, RSMo, states it is the Probate Court's duty "to require the public administrator to make a statement annually, under oath, of the amount of property in the public administrator's hands or under the public administrator's control as such administrator, for the purpose of ascertaining the amount of bond necessary to secure such property" Failure to properly bond all persons with access to assets exposes the wards to an unnecessary risk of loss.

WE RECOMMEND the Public Administrator work with the Probate Court to ensure a statement of assets is filed annually as required by state law. The Public Administrator should also obtain adequate bond coverage for all wards and estates.

AUDITEE'S RESPONSE

The Public Administrator provided the following written response:

Your Report notes that I filed a statement of assets as of September 30, 2009. The initial review indicated that an additional bond of one million dollars would be needed to secure the assets held by this office. Rather than file a single additional blanket bond (whose premium would then have to be apportioned to the various estates), my office is filing additional bonds in each estate for which inadequate security is now held. This process should conclude in December, 2009, and all assets shall be adequately funded thereafter.

3.

Collateral Securities

The Public Administrator did not ensure adequate collateral securities were pledged by depository banks for two cases. The Public Administrator's office indicated monies are deposited in different banks in order to obtain adequate Federal Deposit Insurance Corporation (FDIC) coverage; however, we noted the following concerns:

- The Public Administrator has maintained funds in one ward's bank account totaling approximately \$1.5 million since August 10, 2009, when the ward was assigned to the Public Administrator. As of September 30, 2009, the Public Administrator's office had not ensured collateral securities were pledged to cover the monies in excess of the FDIC coverage (\$250,000) for this ward.
- The Public Administrator maintained funds in an estate bank account totaling approximately \$540,000 since April 13, 2009, when investments were sold to prepare for the final distribution of the ward's monies, as shown on the final settlement filed with the Probate Court on April 24, 2009. As of September 30, 2009, the Public Administrator's office had not distributed these monies or ensured collateral securities were pledged to cover the monies in excess of FDIC

coverage. The Public Administrator indicated he was waiting for the judge's approval to make the final distribution.

Section 110.020, RSMo, provides the value of securities pledged shall at all times be not less than 100 percent of the actual amount on deposit less the amount insured by the FDIC. Inadequate collateral securities leave funds unsecured and subject to loss in the event of a bank failure.

WE RECOMMEND the Public Administrator ensure adequate collateral securities are pledged for all funds on deposit in excess of FDIC coverage.

AUDITEE'S RESPONSE

The Public Administrator provided the following written response:

While no written procedures exist, we do monitor accounts so as not to exceed the Federal Deposit Insurance Corporation insured amount on bank deposits. The two examples cited in your Report are cases in which we made exceptions under certain circumstances.

In the first case, money was collected from a decedent's bank deposit account in which the decedent maintained a single account valued at one and half million dollars. This money was collected by me as administrator of the estate and transferred to another account in the name of the estate and registered under the estate's taxpayer identification number. In time, and, unfortunately, after your auditors concluded their review of my office, we moved substantially all of the assets from that bank account to a bank deposit system known as Certificate of Deposit Account Registry Service (CDARS) in which a single contact bank places the money in several other banks in order to maintain balances under the FDIC insured amount. We then receive a single statement setting forth the various deposits and depository banks in which they are held. These assets continue to be held under the CDARS account to this day.

In the second case, a final settlement on a decedent estate was filed and, in preparation for making distribution of the assets, various investments were sold and the proceeds transferred into one single account. Unfortunately, the process for obtaining an Order of Distribution from the Court has taken considerably longer than anticipated. We continue to expect an Order of Distribution any day so that these funds may be distributed. I note that the large deposit is held at U.S. Bank, a national bank that has weathered the recent financial crisis well. In the future, we will distribute large balances among several banks or through a CDARS program until an Order of Distribution is entered.

HISTORY AND ORGANIZATION

CITY OF ST. LOUIS
OFFICE OF PUBLIC ADMINISTRATOR
HISTORY AND ORGANIZATION

The Public Administrator is the ex-officio public guardian and conservator in and for the City of St. Louis. Gerard A. Nester was first appointed Public Administrator in October 1998 and elected Public Administrator in November 2000. He was re-elected to his current 4-year term in November 2008.

The Public Administrator acts on behalf of the citizens of the City of St. Louis before the Probate Division of the Twenty-Second Judicial Circuit. At September 30, 2009, the Public Administrator had 556 wards and estates, of which approximately 190 had monies. Bank accounts, stocks, bonds, and annuities held in trust for wards and estates administered by the Public Administrator at September 30, 2009, totaled approximately \$12.8 million.

The Public Administrator takes charge of the assets of city residents who die without family or a last will and testament. In this capacity, the Public Administrator begins a Probate proceeding for those assets, pays the claims of any creditor of the deceased, and distributes any remaining assets to surviving relatives, if any, or to the state's Unclaimed Property Section.

The Probate Division also appoints the Public Administrator to act as Guardian for some mentally ill or developmentally disabled adults whom the Probate Division has determined are unable to meet their essential needs for food, shelter, and clothing. In this capacity, the Public Administrator is called upon to consent to the admission of the wards to nursing homes and residential care facilities and to see they receive proper medical, psychiatric, and therapeutic care.

Public Administrator fees are charged to the estates and wards and paid to the Public Administrator. These fees are used to pay salaries and expenses of the office. Since the fees are personally retained by the Public Administrator, we did not audit or review expenses paid from the Public Administrator fees. The City of St. Louis provides office space for the Office of the Public Administrator in the Civil Courts Building.

At December 31, 2008, the Office of Public Administrator paid for three full-time employees and one part-time employee. In addition, the office has two part-time employees who are paid by a not-for-profit entity through a grant.