

**CITY OF CLEMSON MUNICIPAL COURT
CLEMSON, SOUTH CAROLINA**

**State Auditor's Report
April 30, 2006**

**CITY OF CLEMSON MUNICIPAL COURT
CLEMSON, SOUTH CAROLINA**

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State of South Carolina



Office of the State Auditor

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October 20, 2006

The Honorable Mark Sanford, Governor
State of South Carolina
Columbia, South Carolina

The Honorable Gail Fox, Clerk of Court
City of Clemson
Clemson, South Carolina

This report resulting from the application of certain agreed-upon procedures to certain accounting records of the City of Clemson Municipal Court for the period May 1, 2005 through April 30, 2006, was issued by Cline Brandt Kochenower & Co., P.A., Certified Public Accountants, under contract with the South Carolina Office of the State Auditor.

If you have any questions regarding this report, please let us know.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard H. Gilbert, Jr.", written in a cursive style.

Richard H. Gilbert, Jr., CPA
Deputy State Auditor

RHGjr/trb

Independent Accountants' Report on Applying Agreed-Upon Procedures

Richard H. Gilbert, Jr., CPA
Deputy State Auditor
Office of the State Auditor
Columbia, South Carolina

We have performed the procedures described below which were agreed to by the South Carolina Office of the State Auditor solely to assist these users in evaluating the performance of the City of Clemson Municipal Court System and to assist the South Carolina Office of the State Auditor in complying with the 2005 - 2006 General Appropriations Act (H. 3716) Section 72.86 for the fiscal year ended June 30, 2006. Gail Fox, Clerk of Court for the City of Clemson is responsible for compliance with the requirements for the Municipal Court reporting and the South Carolina Office of the State Auditor is responsible for compliance with the requirements of the 2005 - 2006 General Appropriations Act (H. 3716) Section 72.86. This engagement to apply agreed-upon procedures was performed in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the specified users of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures and associated findings are as follows:

1. TIMELY REPORTING BY THE CLERK OF COURT

- We researched South Carolina Code of Laws Section 14-25-85 to determine the definition of timely reporting with respect to the Clerk of Court's responsibility for reporting fines, fees and assessments to the Municipal Treasurer.
- We inquired of the South Carolina Judicial Department to determine their requirements for both the manner in which partial pay fines and fees are to be allocated and the timing of the report and remittance submissions by the Clerk and the Treasurer.
- We inquired of the Clerk of Court and Municipal Treasurer to gain an understanding of their policy for ensuring timely reporting and to determine how the treasurer specifically documents timeliness.
- We inspected documentation, including the Clerk of Court Remittance Forms or equivalents for the months of May 1, 2005 through April 30, 2006 to determine if the Clerk of Court submitted the reports in accordance with the law.

We found no exceptions as a result of the procedures.

2. TIMELY ACCURATE RECORDING AND REPORTING BY THE CITY

- We traced each month's reporting by the Clerk of Court to the Municipal Treasurer's Office and to the City's general ledger accounts for the assessments (Sections 14-1-208(A), (B) and (D)) and victim's assistance surcharge (Section 14-1-211) for the period May 1, 2005 to April 30, 2006.
- We compared the amounts reported on the Clerk of Court Remittance Forms or equivalents to the Clerk of Court's software system-generated report summaries for three judgmentally determined test months. We tested the system-generated reports for compliance with various laws including Section 35.11 of the General Appropriations Act for the fiscal year 2005 – 2006 and with South Carolina Judicial Department training instructions and interpretations.
- We judgmentally selected and compared individual fine and assessment amounts recorded in the Clerk of Court's software system-generated detail reports to the Judicial Department guidelines' range for the offense code to see if the fine and assessment were within the minimum and maximum range.

Our findings are reported under "TIMELY RECORDING AND REPORTING BY THE CITY" in the Accountants' Comments section of this report.

3. PROPER VICTIM'S ASSISTANCE FUNDS ACCOUNTING

- We inquired as to the format determined by City council and local policy for record keeping as it relates to fines and assessments in accordance with Section 14-1-206(E)(4).
- We compared the fiscal year-ended June 30, 2005 audited Victims' Rights Fund fund balance with all adjustments to the fund balance shown in the Schedule of Fines, Assessments and Surcharges on page 94 of the audited financial statement and to the beginning fund balance as adjusted in that fund for fiscal year 2005.
- We verified the Victims' Rights Fund reimbursable expenditures were in compliance with Section 14-1-208(E) and Section 14-1-211(B).

Our findings are reported under the "PROPER VICTIM'S ASSISTANCE FUNDS ACCOUNTING" title in the Accountants' Comments section of this report.

4. TIMELY ACCURATE REPORTING TO THE STATE TREASURER INCLUDING REQUIRED FINANCIAL STATEMENT SCHEDULES IN ACCORDANCE WITH SECTION 14-1-208(B) and (E)

- We vouched the amounts reported in the South Carolina State Treasurer's Revenue Remittance Forms to Clerk of Court Remittance Forms or equivalents for the period May 1, 2005 to April 30, 2006.
- We scanned the South Carolina State Treasurer's Revenue Remittance Forms for timely filing in accordance with Section 14-1-208(B).
- We traced amounts recorded in the City of Clemson's financial statement Schedule of Fines, Assessments and Surcharges on page 94 of the year ended June 30, 2005 report related to fines and assessments revenues reporting in accordance with Section 14-1-208(E) to supporting schedules used in the audit to comply with Section 14-1-208(E).
- The traced and agreed amounts in the supporting schedules to the Clerk of Court Remittance Forms or South Carolina State Treasurer's Revenue Remittance Forms.

We found no exceptions as a result of the procedures.

We were not engaged to, and did not conduct an audit the objective of which would be the expression of an opinion on compliance with the collection and distribution of court generated revenue at any level of court for the twelve months ended April 30, 2006 and, furthermore, we were not engaged to express an opinion on the effectiveness of the internal controls over compliance with the laws, rules and regulations described in paragraph one and the procedures of this report. Had we performed additional procedures other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Office of the State Auditor, Chairmen of the House Ways & Means Committee, Senate Finance Committee, House Judiciary Committee, Senate Judiciary Committee, State Treasurer, Office of Victim Assistance and the Governor and is not intended to be and should not be used by anyone other than these specified parties.

July 21, 2006

ACCOUNTANTS' COMMENTS

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**MATERIAL WEAKNESSES AND/OR VIOLATIONS OF STATE LAWS, RULES OR
REGULATIONS**

The procedures agreed to by the agency require that we plan and perform the engagement to obtain reasonable assurance about whether noncompliance with the requirements of State Laws, Rules, or Regulations occurred and whether internal accounting controls over certain transactions were adequate. Management of the entity is responsible for establishing and maintaining internal controls. A material weakness is a condition in which the design or operation of one or more of the specific internal control components does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Therefore, the presence of a material weakness or violation will preclude management from asserting that the entity has effective internal controls.

The conditions described in this section have been identified as material weaknesses or violations of State Laws, Rules, or Regulations.

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TIMELY RECORDING AND REPORTING BY THE CITY

ACCURATE ALLOCATION OF SEATBELT FINES

CONDITION: The City's software allocates the child restraint and the seat belt violations to Law Enforcement surcharges rather than fine revenue.

CRITERIA: South Carolina Code of Laws Section 56-5-6450 and 6540 state that the \$25 is a fine.

CAUSE: The software was programmed to treat the amount as Law Enforcement surcharge rather than fine.

EFFECT: The City is to retain 100% of those violations as fines. The City has over reported State assessments while under reporting fine revenues.

AUDITORS' RECOMMENDATION: The City should have the software modified to correctly allocate the \$25 to fine revenue. The City should determine the extent of the error and make the necessary adjustments to its accounting system to properly distribute the fine in accordance with the law. This would include revising reports submitted to the State Treasurer's Office. These changes should occur as soon as possible. The City's external auditor should issue a separate report opining on the City's determination.

INSTALLMENT PAYMENTS

CONDITION: The City does not assess the 3% collection fee on all fines paid on an installment basis as mandated by law.

CRITERIA: South Carolina Code of Laws Section 14-17-725 states "Where criminal fines, assessments, or restitution payments are paid through installments, a collection cost charge of three percent of the payment also must be collected by the clerk of court"

CAUSE: The purpose of the fee is to help offset the administrative cost to the City. However, the City has elected not to assess the mandated fee.

EFFECT: The City is not complying with Section 14-17-725 by not assessing the 3% collection fee.

AUDITORS' RECOMMENDATION

We recommend the Clerk of Court comply with the law related to installment payments and collect the 3% collection cost.

ADDING ASSESSMENTS AND SURCHARGES

CONDITION: The City charges traffic violators under a local ordinance known as "Failure to Use Due Care". The City does not add an assessment or surcharge to the "Failure to Use Due Care" violations. The three months tested included local ordinance fines totaling \$ 5,424.20 that were not assessed the additional fees.

CRITERIA: South Carolina Code of Laws Sections 14-1-208(A) states that the assessments "...cannot be waived, reduced or suspended " ...and apply to any "...offense tried in municipal court" Temporary Proviso 73.2 in the 2005-2006 General Appropriations Act also established a Law Enforcement Surcharge to be added to "all fines, forfeitures, escheatments, or other monetary penalties imposed in the general sessions court or in magistrates' or municipal court for misdemeanor traffic offenses or for nontraffic violations." South Carolina Code of Laws Sections 14-1-211

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establishes a conviction surcharge that must be "imposed on all convictions obtained in magistrate's and municipal court in this State. The surcharge must not be imposed on convictions for misdemeanor traffic offenses."

CAUSE: The City did not set-up the assessments or surcharges on their local charge "Failure to Use Due Care".

EFFECT: The City is not complying with Sections 14-1-208(A), Temporary Proviso 73.2 and, depending on the charge not being categorized as a misdemeanor traffic violation, 14-1-211.

AUDITORS' RECOMMENDATION

We recommend the Clerk of Court comply with the law by charging assessments and surcharges to the local ordinance violations. The City should have the software modified to correctly assess each fine, including local ordinance violations, according to the assessment percentage in Proviso 35.11 of the General Appropriations Act. The City should ensure that each applicable surcharge is also charged to the fine when it is assessed. The City should test those modifications to ensure that they properly assessed each fine before accepting the modification from the vendor. The City should determine the extent of the error and make the necessary adjustments to its accounting system to properly distribute the fine in accordance with the law. This would include revising reports submitted to the State Treasurer's Office. These changes should occur as soon as possible. The City's external auditor should issue a separate report opining on the City's determination.

CALCULATING ASSESSMENTS ON DUI PULL-OUTS

CONDITION: The City's software does not properly account for the DUI Pull-Out when calculating assessments.

CRITERIA: South Carolina Code of Laws Sections 56-5-2940 and Temporary Proviso 35.11 require that \$100 of each fine imposed for Driving Under the Influence [DUI] and DUI Per Se be forwarded to the State Treasurer and that all fines have 107.5 percent added to that fine as an assessment. The law states that the pull-out is considered a fine for all calculation purposes.

CAUSE: The City's software was treating the pull-out as a surcharge and as a result did not calculate assessments in accordance with the law.

EFFECT: The City under reported assessments and over reported fine revenues. As a result of this error, the City retained money that should have been submitted to the State.

AUDITORS' RECOMMENDATION

We recommend the Clerk of Court comply with the law related to calculating assessments on pull-out fines. The City should have the software modified to correctly assess each fine according to the assessment percentage in Proviso 35.11 of the General Appropriations Act. The City should ensure that each pull-out is included in the fine when it is assessed. The City should test them to ensure that they properly account for the pullouts and surcharges before accepting the modification from the vendor. The City should determine the extent of the error and make the necessary adjustments to its accounting system to properly distribute the fine in accordance with the law. This would include revising reports submitted to the State Treasurer's Office. These changes should occur as soon as possible. The City's external auditor should issue a separate report opining on the City's determination.

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PROPER VICTIM'S ASSISTANCE FUNDS ACCOUNTING

SOFTWARE PROGRAMMING

CONDITION: As a result of the software programming issues discussed above in the "Timely Recording and Reporting by the City" section, the Victim's Assistance revenues were not correctly determined. The Victim's Assistance funding is dependent in part on the assessment amounts. As reported above, the software was incorrectly calculating the assessment amounts.

CRITERIA: South Carolina Code of Laws Sections 14-1-208(B) and (D) and 14-1-211 govern the amounts assessed and surcharged for Victims' Assistance. The monies generated from the assessment are split between the State and Victim's Assistance. The conviction surcharge is entirely allocated to victims' assistance.

CAUSE: The software used to allocate revenue generated from court fines, fees, and assessments was not properly programmed to charge assessments and surcharges to certain municipal violations, incorrectly allocated seatbelt fines to surcharges and did not properly calculate assessments on the recently enacted fine "pullouts".

EFFECT: Since the software based its allocation on incorrect totals, the Victim's Assistance fund revenue is not correctly calculated.

AUDITORS' RECOMMENDATION:

Once the vendor has made the modifications to the software as discussed above, the City should determine the extent of the errors and make the necessary adjustments to its accounting system to properly calculate and distribute revenue to the Victim's Assistance fund. This would include revising reports submitted to the State Treasurer's Office. These changes should occur as soon as possible. The City's external auditor should issue a separate report opining on the City's determination.

VICTIM'S ASSISTANCE EXPENDITURES

CONDITION: The City has been charging the \$1,000 audit fee allowed by Section 14-1-208(E) to the Victim's Assistance funds.

CRITERIA: South Carolina Code of Laws Article 15 of Title 16 defines the type of expenditures authorized for Victim's Assistance funds. Also, Attachment L to the Court Administration Memos contains a list of expenditures recommended by the South Carolina Victims' Assistance Network. The audit fees are not an authorized expenditure for Victim's Assistance monies because they do not directly assist any victims.

CAUSE: Expenditures were erroneously charged to Victim's Assistance rather than seeking reimbursement from the State Treasurer as allowed by Section 14-1-208(E)(3).

EFFECT: Victim's Assistance fund balance is understated based on this error.

AUDITORS' RECOMMENDATION:

We recommend the City request reimbursement from the State Treasurer as allowed by law, and replace the funds in the Victim's Assistance Fund. The law has a 36-month statute of limitations for purposes of reimbursement.



City of Clemson

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October 27, 2006

RICHARD E. COTTON
CITY ADMINISTRATOR

Steven L. Blake, CPA
Cline Brandt Kochenower & Company, P.A.
Post Office Box 848
1225 West Floyd Baker Boulevard
Gaffney, SC 29342

Dear Mr. Blake:

As we discussed on Friday, October 27, 2006, the City of Clemson is preparing a response to the Municipal Court Audit Report prepared by the accounting firm of Cline Brandt Kochenower & Company. A draft of the City's response will be presented to the Governing Body for review and discussion on Monday, November 6, 2006. After review by the Governing Body, the City's comments will be forwarded to the appropriate State Agency.

If further clarification of this matter is required, please contact our office.

Sincerely,

Richard E. Cotton