

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

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

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

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State of South Carolina



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January 4, 2007

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

The Honorable J. Mackey, Clerk of Court
City of Conway
Conway, South Carolina

This report resulting from the application of certain agreed-upon procedures to certain accounting records of the City of Conway 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.
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 Conway 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. The Honorable J. Mackey, Judge and Clerk of Court for the City of Conway 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 to the municipal treasurer in accordance with the law.

Our finding is reported under "TIMELY REPORTING BY THE CLERK OF COURT" in the Accountants' Comments section of this report.

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 ACCURATE 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 14-1-208(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 in 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 finding is reported under "PROPER VICTIM'S ASSISTANCE FUNDS ACCOUNTING" in the Accountants' Comments section of this report.

4. TIMELY ACCURATE REPORTING TO THE STATE TREASURER

- 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's financial statement Schedule of Fines, Assessments and Surcharges for 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).
- We traced and agreed amounts in the supporting schedules to the South Carolina State Treasurer's Revenue Remittance Forms.

Our findings are reported under "TIMELY ACCURATE REPORTING TO THE STATE TREASURER" in the Accountants' Comments section of this report.

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, Chief Justice and the Governor and is not intended to be and should not be used by anyone other than these specified parties.

August 4, 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 REPORTING BY THE CLERK OF COURT

TIMELY FILING

CONDITION: Eleven of the Clerk's monthly transmittals of fine and assessment revenue reports for the period of May 1, 2005 through April 30, 2006 were not timely filed. The July 2005 report was on time, the remaining reports were from one to thirty-three days late.

CRITERIA: South Carolina Code of Laws Section 14-17-750. Section 14-17-750 requires that the Clerk make a full and accurate statement, in writing, to the City Auditor and Treasurer, of all monies collected on account of licenses, fines, penalties and forfeitures during the past month, on the first Wednesday or within ten days thereafter, in each successive month.

CAUSE: The Clerk of Court is also an associate judge and prepares for and holds court as well as reconciles the outstanding bonds and the municipal software reports at month end. According to the Clerk, this substantial workload creates problems with getting the remittance forms in on time.

EFFECT: The Clerk of Court did not submit reports timely as defined by Section 14-17-750.

AUDITORS' RECOMMENDATION: We recommend the Clerk of Court implement procedures to ensure timely submission.

TIMELY ACCURATE RECORDING AND REPORTING BY THE CITY

INSTALLMENT PAYMENTS

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

CRITERIA: South Carolina Code of Laws Section 14 -17 - 725. The Section 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. As a result, 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% as required by law.

ADHERENCE TO JUDICIAL DEPARTMENT FINE GUIDELINES

CONDITION: The Municipal Court Judges were not adhering to the Judicial Department minimum fine guidelines included in legislation. By not assessing the minimum fines as required in the legislation, the City is violating the law.

CRITERIA: Judicial Department Guidelines for Fines – Minimums and Maximums. These guidelines are obtained from the minimum and maximum fines recorded in the respective legislations.

CAUSE: The software was not properly modified to incorporate all recent legislative changes enacted and the system therefore was not up to date. Specifically, the software was not charging the Title 56 Pullout \$100 fine amounts or the \$25 Drug and Law Enforcement Surcharges.

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EFFECT: The City's fines were not set at the minimum amounts set by the respective laws. The City collects these smaller amounts from the violator's and must reallocate according to the law and thus the fine amount that the city keeps is reduced below the minimum.

AUDITORS' RECOMMENDATION

We recommend the City contact the software vendor to modify the software to account for the changes in the law. Once the vendor has made the modification to the software the City should test it to ensure that it properly charges fines between the legislated minimum and maximums before accepting the modification from the vendor. In addition, the City should determine the extent of the error and make the necessary adjustments to its accounting system to properly distribute the fine pullouts and drug surcharges. This would include revising reports made 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.

PROPER VICTIM'S ASSISTANCE FUNDS ACCOUNTING

SOFTWARE PROGRAMMING

CONDITION: As a result of the software programming issues finding discussed below in the "Timely and Accurate Reporting to the State Treasurer" section, the Victim's Assistance revenues are not correct. The Victim's Assistance funding is dependent in part on the assessment amounts. As reported below, the software was incorrectly calculating the assessment amount when it did not take into account the law changes.

CRITERIA: South Carolina Code of Laws Section 14-1-208(B) and (D). The monies generated from the assessment are split between the State and Victim's Assistance.

CAUSE: The software used to allocate revenue generated from court fines, fees, and assessments did not properly account for law enforcement and drug surcharges or the recently enacted fine "pullouts" because the software had not been modified to account for the change in the laws.

EFFECT: Since the software incorrectly allocated revenue to the Victim's Assistance fund, revenue in the fund was overstated

AUDITORS' RECOMMENDATION:

We recommend the City contact the software vendor to modify the software to account for the changes in the law. Once the vendor has made the modifications to the software the City should test them to ensure that they properly account for the pullouts and surcharges before accepting the modification from the vendor. In addition, the City should determine the extent of the errors and make the necessary adjustments to its accounting system to properly distribute revenue to the Victim's Assistance fund. These changes should occur as soon as possible

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TIMELY ACCURATE REPORTING TO THE STATE TREASURER

TIMELY FILING

CONDITION: Eleven State Treasurer's Revenue Remittance Reports for the period of May 1, 2005 through April 30, 2006 were not timely filed. The July 2005 report was on time, the remaining reports were from one to thirty-three days late.

CRITERIA: South Carolina Code of Laws Section 14-17-750 and 14-1-208(B). Section 14-17-750 requires that the Clerk make a full and accurate statement, in writing, to the City Auditor and Treasurer, of all monies collected on account of licenses, fines, penalties and forfeitures during the past month, on the first Wednesday or within ten days thereafter, in each successive month. Section 14-1-208(B) states "The city treasurer must remit ... the assessment revenue to the State Treasurer on a monthly basis by the fifteenth day of each month"

CAUSE: The Clerk of Court did not submit the reports to the City Treasurer timely. As a result the City Treasurer was unable to submit the reports in accordance with the requirements of Section 14-1-208 (B). The City Treasurer did submit the reports within a day or so of receiving them.

EFFECT: The law regarding the timeliness of filing was violated.

AUDITORS' RECOMMENDATION: We recommend the city comply with the timeliness of filing laws.

SOFTWARE PROGRAMMING

1) Title 56 Pullouts and Drug and Law Enforcement Surcharges

CONDITION: The City uses commercially developed software to allocate revenue collected from court fines, fees, and assessments. The Generally Assembly created a law enforcement surcharge during the 2003-2004 legislative session. The surcharge became effective July 1, 2003. The revenue generated from this new surcharge was earmarked for law enforcement and was to be remitted to the State Treasurer's Office. The City did not have the software modified by the vendor to take into account the change in the law. As a result, the pullouts and surcharges were improperly allocated to fine revenues and assessments.

CRITERIA: Section 73.3 of the fiscal year 2003-2004 Appropriation Act states, "(A) In addition ... a twenty-five dollar surcharge is also levied on 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. No portion of the surcharge may be waived, reduced, or suspended." Section 73.3 further states, "The revenue collected pursuant to subsection (A) must be retained by the jurisdiction, which heard or processed the case and paid to the State Treasurer within thirty days after receipt." Section 33.7 of said Appropriation Act also states "(A) In addition ..., during Fiscal Year 2003-04, a one hundred dollar surcharge is also levied on all fines, forfeitures, escheatments, or other monetary penalties imposed in ...municipal court for misdemeanor or felony drug offenses. No portion of the surcharge may be waived, reduced, or suspended. (B) The revenue collected pursuant to subsection (A) must be retained by the jurisdiction that heard or processed the case and paid to the State Treasurer within thirty days after receipt." The General Assembly also enacted Act 176 of 2004. The Act was effective February 18, 2004. It imposed an additional \$100 fine that is to be pulled out and sent to the State for violations of Title 56-1-460.

CAUSE: The software used to allocate revenue generated from court fines, fees, and assessments did not properly account for law enforcement and drug surcharges or the recently enacted fine "pullouts" because the software had not been modified to account for the change in the laws.

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EFFECT: The City retained a portion of the pullouts and surcharges because the software improperly allocated the revenue to areas that did not have a legal right to receive the revenue. In addition the portion of the surcharge that was allocated to the State, may have been distributed to agencies that were not entitled to receive the revenue or allocated to the proper agency but misclassified as another type of revenue.

We have determined that the pullouts and surcharges cannot be waived therefore the pullouts and surcharges have been assessed to the violators and it is a matter of allocating the pullouts and surcharges to the proper accounts. As a result, this will reduce the amount of money allocated to the local fine and state and victim's assistance assessments. The amount involved is potentially substantial, but has not yet been determined. The reallocation will create less fine revenue and assessments than previously reported and a liability for the surcharges and pullouts. The Victim's Assistance fund and the City general fund revenues were overstated as well as the amount of the State Assessments. The surcharges and pullouts were not reported at all.

AUDITORS' RECOMMENDATION

We recommend the City contact the software vendor to modify the software to account for the changes in the law. Once the vendor has made the modifications to the software the City should test them to ensure that they properly account for the pullouts and surcharges before accepting the modification from the vendor. In addition, the City should determine the extent of the errors and make the necessary adjustments to its accounting system to properly distribute the pullouts and drug and law enforcement surcharges. This would include revising reports made 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.

2) Child Restraint and Seat Belt Violations

CONDITION: The city's software allocates the child restraint and the seat belt violation collections between fines and assessments.

CRITERIA: South Carolina Code of Laws Section 56-5-6450 and 6540. These sections require that no surcharges or assessments be assessed on these violations.

CAUSE: The software is not properly allocating these fines.

EFFECT: The city is to retain 100% of those violations as fines. The city has over reported assessments on the State Treasurer's Revenue Remittance Form and has allocated fine monies to Victim's Assistance Funds as well.

AUDITORS' RECOMMENDATION: We recommend the City contact the software vendor to modify the software to account for the seat belt and child restraint fines in accordance with the law. Once the vendor has made the modification to the software the City should test it to ensure that it properly accounts for the fines before accepting the modification from the vendor. In addition, 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 made 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.

REQUIRED SUPPLEMENTARY SCHEDULE OF FINES AND ASSESSMENTS

CONDITION: The City's audited financial statement for the fiscal year ended June 30, 2005 did not include the required supplementary schedule of fines and assessments.

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CRITERIA: South Carolina Code of Laws Section 14-1-208(E). This section states "To ensure that fines and assessments imposed pursuant to this section and Section 14-1-209(A) are properly collected and remitted to the State Treasurer, the annual independent external audit required to be performed for each municipality pursuant to Section 5-7-240 must include a review of the accounting controls over the collection, reporting, and distribution of fines and assessments from the point of collection to the point of distribution and a supplementary schedule detailing all fines and assessments collected at the court level, the amount remitted to the municipal treasurer, and the amount remitted to the State Treasurer.

CAUSE: Neither the City nor their auditors were aware that the schedule was required.

EFFECT: The City did not comply with the law in its published audited financial statement.

AUDITORS' RECOMMENDATION: We recommend the City comply with the law by ensuring that its audited financial statement contains the required schedule. The city should also ensure that the required contents of the schedule are included. The auditor is required to give an "in relation to" opinion on the schedule. The city should inform its auditor to ensure compliance with the law.

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CORRECTIVE ACTION PLAN

Management has elected not to respond.