

TOWN OF KIAWAH ISLAND MUNICIPAL COURT

KIAWAH ISLAND, SOUTH CAROLINA

STATE AUDITOR'S REPORT

JUNE 30, 2011

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State of South Carolina



Office of the State Auditor

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DEPUTY STATE AUDITOR

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INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES

November 10, 2011

The Honorable Nikki R. Haley, Governor
State of South Carolina
Columbia, South Carolina

The Honorable Clifton G. Brown, Municipal Judge
Town of Kiawah Island
Kiawah Island, South Carolina

Mr. H. Kenneth Gunnells, Town Treasurer
Town of Kiawah Island
Kiawah Island, South Carolina

We have performed the procedures described below, which were agreed to by the management of the Town of Kiawah Island and the Town of Kiawah Island Municipal Court, solely to assist you in evaluating the performance of the Town of Kiawah Island Municipal Court for the fiscal year ended June 30, 2011, in the areas addressed. The Town of Kiawah Island and the Town of Kiawah Island Municipal Court are responsible for its financial records, internal controls and compliance with State laws and regulations. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the specified parties in this 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 the associated findings are as follows:

1. **Clerk of Court**

- We gained an understanding of the policies and procedures established by the Clerk of Court to ensure proper accounting for all fines, fees, assessments, surcharges, forfeitures, escheatments, or other monetary penalties.
- We obtained court dockets for the fiscal year ended June 30, 2011 from the Clerk of Court. We randomly selected 25 cases from the court dockets and recalculated the fine, fee, assessment and surcharge calculation to ensure that the fine, fee, assessment or surcharge was properly allocated in accordance with applicable State law. We also determined that the fine, fee, assessment and/or surcharge adhered to State law and to the South Carolina Court Administration fee memoranda.

The Honorable Nikki R. Haley, Governor
and
The Honorable Clifton G. Brown, Municipal Judge
Mr. H. Kenneth Gunnells, Town Treasurer
Town of Kiawah Island
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- We tested recorded court receipt transactions to determine that the receipts were remitted in a timely manner to the Town Treasurer in accordance with State law.

Our findings as a result of these procedures are presented in Adherence to Fine Guidelines, Conviction Surcharge, Installment Fee, Allocation of Payments, and Parking Violations in the Accountant's Comments section of this report.

2. Town Treasurer

- We gained an understanding of the policies and procedures established by the Town to ensure proper accounting for court fines, fees, assessments, surcharges, forfeitures, escheatments, or other monetary penalties.
- We obtained copies of all State Treasurer's Revenue Remittance Forms submitted by the Town for the fiscal year ended June 30, 2011. We agreed the line item amounts reported on the State Treasurer's Revenue Remittance Forms to the monthly court remittance reports and to the State Treasurer's receipts. We also agreed the total revenue due to the State Treasurer to the general ledger.
- We determined if the State Treasurer's Revenue Remittance Forms were submitted in a timely manner to the State Treasurer in accordance with State law.
- We verified that the amounts reported by the Town on its supplemental schedule of fines and assessments for the fiscal year ended June 30, 2010 agreed to the State Treasurer's Revenue Remittance Forms and to the Town's general ledger. We also determined if the supplemental schedule of fines and assessments contained all required elements in accordance with State law.

We found no exceptions as a result of the procedures.

3. Victim Assistance

- We gained an understanding of the policies and procedures established by the Town to ensure proper accounting for victim assistance funds.
- We made inquiries and performed substantive procedures to determine if any funds retained by the Town for victim assistance were accounted for in a separate account.
- We determined if the Town reported victim assistance financial activity on the supplemental schedule of fines and assessments in accordance with State law.
- We inspected the Town's general ledger to determine if the Victim Assistance Fund balance was retained as of July 1 from the previous fiscal year in accordance with State law.

Our finding as a result of these procedures is presented in Accounting for Victim Assistance Funds in the Accountant's Comments section of this report.

The Honorable Nikki R. Haley, Governor
and
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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 June 30, 2011, and, furthermore, we were not engaged to express an opinion on the effectiveness of 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 Governor, Chairman of the House Ways and Means Committee, Chairman of the Senate Finance Committee, Chairman of the House Judiciary Committee, Chairman of the Senate Judiciary Committee, members of the Town of Kiawah Island Town Council, Town of Kiawah Island Municipal Judge, Town of Kiawah Island Clerk of Court, Town of Kiawah Island Treasurer, State Treasurer, State Office of Victim Assistance, and the Chief Justice and is not intended to be and should not be used by anyone other than these specified parties.

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

ACCOUNTANT'S COMMENTS

SECTION A – VIOLATIONS OF STATE LAWS, RULES OR REGULATIONS

Management of the entity is responsible for establishing and maintaining internal controls to ensure compliance with State Laws, Rules or Regulations governing court collections and remittances. The procedures agreed to by the entity require that we plan and perform the engagement to determine whether any violations of State Laws, Rules or Regulations occurred.

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

ADHERENCE TO FINE GUIDELINES

During our test of Municipal Court collections and remittances, we noted the following instances where the fines were assessed above the maximum required by State law:

1. Four individuals who forfeited bond for speeding, 10 mph or less over the speed limit, were each fined \$26.50. The Clerk of Court stated the error in fine assessments was a result of the issuing officer writing the wrong roadside bond on the tickets.
2. Two individuals who pled guilty to speeding, 10 mph or less over the speed limit, were each fined \$50. The Municipal Judge stated that the error in the fine assessments was an oversight.

Section 56-5-1520(G) of the 1976 South Carolina Code of Laws, as amended, states, "A person violating the speed limits established by this section is guilty of a misdemeanor and, upon conviction for a first offense, must be fined or imprisoned as follows: (1) in excess of the above posted limit but not in excess of ten miles an hour by a fine of not less than fifteen dollars nor more than twenty-five dollars."

We recommend the Town implement procedures to ensure that fines levied adhere to the minimum and maximum required by State law.

CONVICTION SURCHARGE

During our test of Municipal Court collections and remittances, we noted six out of twenty-five instances where the Court did not assess and collect the \$25 conviction surcharge.

The Town Treasurer stated this was due to an error in their QS1 court accounting system. He also stated the Town plans to implement the State's CMS court accounting system in the future.

Section 14-1-211(A)(1) of the 1976 South Carolina Code of Laws, as amended, states, “In addition to all other assessments and surcharges...a twenty-five dollar surcharge is imposed on all convictions obtained in magistrates and municipal courts in this State...No portion of the surcharge may be waived, reduced, or suspended.” This section does not apply to misdemeanor traffic offenses or parking violations.

We recommend the Municipal Court implement procedures to ensure the conviction surcharge is assessed and collected in accordance with State law.

INSTALLMENT FEE

During our test of Municipal Court collections and remittances, we noted one out of twenty-five instances where the Court did not assess and collect the three percent installment fee from an individual who paid in installments.

The Clerk of Court stated she was unaware of this requirement.

Section 14-17-725 of the 1976 South Carolina Code of Laws, as amended, 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, magistrate, or municipal court from the defendant...”.

We recommend the Municipal Court implement procedures to ensure the installment fee is charged and collected in accordance with State law.

ALLOCATION OF PAYMENTS

During our test of Municipal Court collections and remittances, we noted one out of twenty-five instances where the Court did not allocate installment payments on a pro rata basis.

The Clerk of Court stated she adheres to the payment allocations generated by the Town’s QS1 court accounting software.

Section 14-1-209 of the 1976 South Carolina Code of Laws, as amended, provides guidance when the fine and assessment are paid in installments. The Court Administration Fee Memorandum dated June 24, 2010, states, “The intent of Section 14-1-209(A) is that each installment payment be allocated on a pro rata basis to each applicable fine, assessment, and surcharge.”

We recommend the Municipal Court implement procedures to ensure that installment payments are allocated in accordance with State law.

PARKING VIOLATIONS

Section II. A. 1. of the South Carolina Court Administration Fee Memorandum dated June 24, 2010, states, “Generally, the revenue generated from criminal fines, penalties, and forfeitures in municipal court is retained by the municipality.”

During our testing of the Town’s State Treasurer’s Revenue Remittance Forms (STRRF), we noted the Town reported and remitted fine revenue from \$25 parking violations on Line K – Law Enforcement Surcharge on the STRRF. Using the Court’s records and the STRRF, we determined for the 36 months ended June 30, 2011 the Town incorrectly remitted \$1,982.52 of fine revenue from parking violations to the State Treasurer.

The Town Treasurer stated this was due to an error in the Town’s court accounting system. The \$25 should have been disbursed as a fine and not as a surcharge.

We recommend the Town implement procedures to ensure fines from parking violations are retained by the municipality in accordance with Court Administration policy. We also recommend the Town deduct the \$1,982.52 from Line K – Municipal Law Enforcement Surcharge on future STRRF and document as such for auditing purposes.

ACCOUNTING FOR VICTIM ASSISTANCE FUNDS

During our test of Municipal Court collections and remittances, we noted the Town did not properly retain the \$25 conviction surcharge for one out of twenty-five cases tested. Also, during our testing of the Town's State Treasurer's Revenue Remittance Forms (STRRF), we noted five instances in which the Town included the conviction surcharge revenue in its remittance to the State Treasurer on Line K – Municipal Law Enforcement Surcharge of the STRRF instead of retaining the revenue. Using the Court's records and STRRF, we determined for the 36 months ended June 30, 2011 the Town incorrectly remitted \$175 of conviction surcharge revenue to the State Treasurer.

The Town Treasurer stated this was due to oversight.

Section 14-1-211(B) of the 1976 South Carolina Code of Laws, as amended, states, "The revenue collected pursuant to subsection (A)(1) must be retained by the jurisdiction which heard or processed the case and paid to the city or county treasurer, for the purpose of providing services for the victims of crime, including those required by law."

We recommend the Town implement procedures to ensure victim assistance revenue is accounted for in accordance with State law. We also recommend the Town deduct the \$175 from Line K – Municipal Law Enforcement Surcharge on future STRRF and document as such for auditing purposes.

TOWN'S RESPONSE



TOWN OF KIAWAH ISLAND

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G. Steven Orban, Mayor

Council Members

Alan L. Burnaford

Charles R. Lipuma

Greg A. VanDerwerker

Fran Wernuth

Town Administrator

Tumiko Rucker

Town's Response

The Town of Kiawah Island appreciates the effort and suggestions of the State of South Carolina's, Office of State Auditor. The auditor the Town worked with was very professional and provided some clarification of the rules as distributed by the South Carolina Court Administration office. Since this is the first audit the Town has had of its court operations, we are glad to have the opportunity to receive this constructive criticism of our operations. To perhaps add further clarification to this report the Town would like to attach the following comments, by section to this report.

Adherence to Fine Guidelines:

The Town of Kiawah Island does not have its own police or sheriff's office. The Town instead contracts with the Charleston County Sheriff's office to provide deputies to patrol the island on their off duty hours from the County. The Town will however make the managing deputy aware of this issue to remedy this issue.

Conviction Surcharge:

The Town concurs with the State Auditors finding; unfortunately the State has required the best approach for record keeping in all cases is to convert to the CMS court accounting systems. As part of this requirement municipal governments can only gain access through the County. The Town has made multiple attempts to gain access to the CMS system. As of this point we do not have a timeframe to implement this system.

The Town will try to manage this issue on its current system, until this is resolved.

Installment Fee:

The Town concurs with this finding and will implement the 3% fee. The Town has a very small amount of installment payers. Due to the infrequent installment payers the Town was unaware of this rule. The Town will work with QS1 to try to set this up.

Allocation of Payments:

The Town's QS1 system allocates the payments to the State assessment, surcharge and then to the fine to insure the State and State entities receive their amounts first. Again, due to the infrequent installment payers, the Town was not aware of this issue. We will work with QS1, if it has the ability to make this change.

Parking Violations:

This again relates to the above section of the Allocation of Payment. The Town will work with its vendor to make these changes, if possible.

Accounting For Victim Assistance Funds:

The Town based on early discussions with the Court Administration Office, this fee was to be remitted back to the State, however it was further determined that the fee was to be kept by the Town in the Victim Assistance Fund and the change was made.

Again thank you for the review of our system, the above changes have been implemented if possible and the Town is waiting its turn to be set up on the CMS court system.

Sincerely,



H. Kenneth Gunnells, Jr.
Town Treasurer

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