



**OHIO JUDICIAL CONFERENCE
FRANKLIN COUNTY**

SPECIAL AUDIT

FOR THE PERIOD JULY 29, 2002 THROUGH MARCH 19, 2005



Mary Taylor, CPA
Auditor of State

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Mary Taylor, CPA

Auditor of State

INDEPENDENT ACCOUNTANTS' REPORT

Mark R. Schweikert, Executive Director
Ohio Judicial Conference
65 S. Front St., 4th Floor
Columbus, Ohio 43215

We conducted a special audit of the Ohio Judicial Conference (OJC) by performing the procedures enumerated in the attached Supplement to the Special Audit Report for the period July 29, 2002 through March 19, 2005, solely to:

- Determine whether Deborah Schierholt, former OJC fiscal specialist, was compensated for actual hours worked, at the appropriate pay rate, and in accordance with relevant OJC policies governing compensation, overtime compensation, and compensated absence accruals and payouts.
- Determine whether payments to Ms. Schierholt for reasons other than compensation, were for a purpose related to the operations of OJC, supported by documentation indicating that goods or services were received, and in accordance with OJC policies regarding the purpose of the payment (i.e. miscellaneous reimbursements, travel, mileage, etc.).

This engagement was conducted in accordance with the Quality Standards for Inspections established by the President's Council on Integrity and Efficiency (January 2005). The procedures and associated findings are detailed in the attached Supplement to the Special Audit Report. A summary of our procedures and significant results is as follows:

1. We examined OJC policies governing employee compensation and relevant documentation related to Ms. Schierholt's compensation as OJC fiscal specialist. Using that information, we calculated the amounts Ms. Schierholt should have been compensated, compared the calculated amounts to the actual amounts compensated and noted any variances.

Significant Results – OJC's policies afford varying benefits based on an employee's position being designated as "exempt"¹ versus "nonexempt". While there was one contradicting document, based on a preponderance of the available documentation and information obtained, we considered Ms. Schierholt's position as fiscal specialist to be an "exempt" position for the purposes of applying OJC policies.

¹ In this context, "exempt" generally means exempt from overtime and other work hour related provisions of the federally enacted Fair Labor Standards Act.

During a portion of her employment, Ms. Schierholt was routinely compensated for the first five hours in excess of 80 during a pay period and received overtime compensation at 1.5 times her hourly pay rate. As an "exempt" employee, OJC's policies did not entitle Ms. Schierholt to either of these benefits. Ms. Schierholt also received an incorrectly calculated one-time pay adjustment in June 2003 intended to account for an approved retroactive compensation increase. Additionally, during a portion of the audit period, Ms. Schierholt's regular and overtime compensation were calculated at an unauthorized rate. For two annual leave time conversions and upon separation from employment, Ms. Schierholt received cash payouts for an incorrect number of compensated absence leave hours or at an incorrect pay rate. As a result, we issued findings for recovery totaling \$13,223 against Ms. Schierholt.

We issued a finding for recovery totaling \$603 against a former employee for an incorrectly calculated compensation increase. We named Ms. Schierholt jointly and severally in the finding for recovery against the employee because she verified information in the state payroll system as correct and completed the payroll certification and authorization forms.

Under Ohio law, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which such illegal expenditure is made is strictly liable for the amount of the expenditure. *Seward v. National Surety Corp.*, 120 Ohio St. 47 (1929); 1980 Op. Att'y Gen. No. 80-074; Ohio Rev. Code Section 9.39; *State, ex. Rel. Village of Linndale v. Masten*, 18 Ohio St. 3d 228 (1985). Public officials controlling public funds or property are secondarily liable for the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen. Public officials will be liable if and to the extent that recovery or restitution is not obtained from the persons who unlawfully obtained such funds or property. 1980 Op. Att'y Gen. No. 80-074.

Based on these court cases, we named Kenneth Rohrs, former OJC executive director, secondarily liable for such illegal expenditures to the extent that recovery or restitution is not obtained from Ms. Schierholt and the former employee for their respective amounts.

We proposed findings for recovery totaling \$2,009 against three other "exempt" employees for incorrectly applied overtime rates and \$817 against one employee for an incorrectly calculated compensation increase. These amounts were repaid under audit.

2. We examined OJC policies governing employee payments other than compensation and relevant supporting documentation related to such payments made to Ms. Schierholt.

Significant Results – We issued a finding for recovery of \$713 against Ms. Schierholt because vouchers or other supporting records were not available to substantiate that reimbursed mileage actually occurred. Based on the court cases identified above, we named Kenneth Rohrs, former OJC executive director, secondarily liable for such illegal expenditures to the extent that recovery or restitution is not obtained from Ms. Schierholt.

We also issued four management recommendations regarding voucher approval, miscellaneous employee reimbursements, records retention and travel approval.

On July 2, 2008, we held an exit conference with representatives of OJC. The attendees were informed that they had an opportunity to formally respond to this special audit report. A response was received on July 17, 2008. The response was evaluated and changes were made to this report as we deemed necessary.

A handwritten signature in black ink that reads "Mary Taylor". The signature is written in a cursive, flowing style.

Mary Taylor, CPA
Auditor of State

May 30, 2008

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Supplement to the Special Audit Report

Background

During the Auditor of State's most recent OJC management review for the three years ended June 30, 2005, 2006, and 2007, the audit team noted three instances occurring in 2005, whereby OJC paid two former employees overtime compensation at one and one-half times the employees' rates rather than straight time, contrary to OJC policy. The Auditor of State reported these three instances in OJC's management letter dated July 9, 2007. At the engagement exit conference on September 11, 2007, OJC Executive Director, Mark Schweikert, indicated that OJC intended to internally investigate the instances noted.

On October 23, 2007, Mr. Schweikert contacted the Auditor of State's office to discuss the results of OJC's internal investigation. OJC noted that one instance appeared to be isolated involving one employee. The other two instances involved a former OJC fiscal specialist, Deborah Schierholt, and it appeared that Ms. Schierholt was compensated contrary to OJC policy. Ms. Schierholt separated her employment from OJC in March 2005. In total, OJC identified approximately \$14,000 in questionable expenditures related to overtime compensation, incorrect pay rates, incorrect compensated absences payouts, and unsupported travel reimbursements.

This information was considered by the Auditor of State's Special Audit Task Force and on November 13, 2007, the Auditor of State initiated a special audit of Ms. Schierholt's compensation, including compensated absences payouts, and payments OJC made to Ms. Schierholt for reasons other than compensation.

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Issue No. 1 – Examination of Former Fiscal Specialist’s Compensation

OBJECTIVE

Determine whether Deborah Schierholt, former fiscal specialist, was compensated for actual hours worked, at the appropriate pay rates, and in accordance with relevant OJC policies governing compensation, overtime compensation, and compensated absence accruals and payouts.

PROCEDURES

We obtained an understanding of Deborah Schierholt’s duties and responsibilities as the OJC fiscal specialist.

We examined relevant OJC policies governing compensation, overtime compensation, and compensated absence accruals and payouts and identified significant and relevant provisions. We examined OJC personnel actions related to Ms. Schierholt and identified Ms. Schierholt’s approved rates of pay.

Using available timesheets we prepared a schedule of the hours claimed by Ms. Schierholt for compensation. We separately identified regular hours and overtime hours claimed, noting any claimed compensated absence usage.

Using Ms. Schierholt’s approved rates of pay and relevant OJC policies we calculated the amount that Ms. Schierholt should have been paid for the hours claimed. We compared the amount Ms. Schierholt should have been paid to the amount she was actually paid and noted any variances.

Using available timesheets we calculated Ms. Schierholt’s compensated absence balances at the time of her separation from OJC. We traced the calculated balances to OJC’s compensated absences report at the time of her separation and noted any variances.

Using Ms. Schierholt’s approved rate of pay and relevant OJC policies we calculated the amount Ms. Schierholt should have been paid for her compensated absences balances upon separation. We compared the amount Ms. Schierholt should have been paid to the amount she was actually paid and noted any variances.

RESULTS

We examined a variety of documents to determine whether Ms. Schierholt was considered an “exempt”² or “nonexempt” employee for the purpose of applying OJC’s internal policies. While OJC’s internal classification description indicated FLSA³ status as “NX”; presumed to be “nonexempt”, a preponderance of the documentation and information examined either identified or inferred that Ms. Schierholt was actually an “exempt” employee. As such, we considered Ms. Schierholt to be an “exempt” employee for the purposes of applying OJC’s internal policies governing compensation, overtime compensation, and compensated absence accruals and payouts.

FINDINGS FOR RECOVERY REPAID UNDER AUDIT

Other OJC Employees – Overtime Compensation

OJC’s Time Management policy, section (F)(3)(b) states in part, “An exempt Conference employee ... shall be compensated for approved overtime at the rate of one hour for each hour of overtime that exceeds five hours in a pay period.”

² Please see footnote no. 1.

³ The federally enacted Fair Labor Standards Act.

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While scanning the payroll disbursement journals, we noted employees other than Ms. Schierholt received overtime compensation at 1.5 times their hourly rate. Further examination of the payroll disbursement journals noted that all employees with recorded overtime compensation were paid at 1.5 times their hourly rate. Based on examination of the job classification for the employees noted, three were not eligible per OJC policy to receive overtime compensation at 1.5 times their hourly rate. The three employees were considered “exempt” employees and should have received overtime compensation at a rate of one hour overtime pay for each hour of eligible overtime.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, we proposed a finding for recovery for public monies illegally expended against Laurence Stone in the amount of \$745; Christina Madriguera in the amount of \$257; and Jeffrey Bendert in the amount of \$1,007. Prior to release of the special audit report each individual repaid the proposed finding for recovery against them and as such we considered these findings for recovery repaid under audit.

Other OJC Employee – Retroactive Pay Increase

As reported below, we noted Ms. Schierholt received an incorrectly calculated one-time pay adjustment in June 2003 intended to account for an approved retroactive compensation increase. Further examination of the payroll disbursement journal for the pay period Ms. Schierholt received the adjustment and employee personnel actions noted that another OJC employee received an incorrectly calculated one-time pay adjustment related to a retroactive compensation increase.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, we proposed a finding for recovery for public monies illegally expended against Jayma Umbstaetter in the amount of \$817. Prior to release of the special audit report Ms. Umbstaetter entered into an agreement with OJC to repay the proposed finding for recovery via payroll deductions and as such we considered this finding for recovery repaid under audit.

FINDINGS FOR RECOVERY

Deborah Schierholt – Overtime and Other Compensation

OJC’s Time Management policy, section (F)(3)(b) states in part, “An exempt Conference employee shall be considered to be working overtime for hours on active pay status in excess of 85 hours per pay period, and shall be compensated for approved overtime at the rate of one hour for each hour of overtime that exceeds five hours in a pay period.”

As reported previously, we considered Ms. Schierholt to be an “exempt” employee for the purpose of applying OJC internal policies.

During her employment at OJC, Ms. Schierholt was routinely compensated for five hours overtime to which she was not entitled and received overtime compensation at 1.5 times her hourly pay rate. Ms. Schierholt also received an incorrectly calculated one-time pay adjustment in June 2003 intended to account for an approved retroactive compensation increase. Additionally, during a portion of the audit period, Ms. Schierholt’s regular and overtime compensation were calculated at an unauthorized rate.

Under Ohio law, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which such illegal expenditure is made is strictly liable for the amount of the expenditure. *Seward v. National Surety Corp.*, 120 Ohio St. 47 (1929); 1980 Op. Att’y Gen. No. 80-074; Ohio Rev. Code Section 9.39; *State, ex. Rel. Village of Linndale v. Masten*, 18 Ohio St. 3d 228 (1985). Public officials controlling public funds or property are secondarily liable for the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen. Public officials will be liable if and to the extent that recovery or restitution is not obtained from the persons who unlawfully obtained such funds or property. 1980 Op. Att’y Gen. No. 80-074.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, a finding for recovery for public monies illegally expended is hereby issued against Deborah Schierholt and Kenneth Rohrs, former OJC executive director, jointly and severally, in the amount of \$11,920 and in favor of the State of Ohio.

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Kenneth Rohrs shall be secondarily liable for such illegal expenditures to the extent that recovery or restitution is not obtained from Deborah Schierholt.

Other OJC Employee – Retroactive Pay Increase

As reported above, we noted Ms. Schierholt received an incorrectly calculated one-time pay adjustment in June 2003 intended to account for an approved retroactive compensation increase. Further examination of the payroll disbursement journal for the pay period Ms. Schierholt received the adjustment and employee personnel actions noted that another OJC employees received an incorrectly calculated one-time pay adjustment related to a retroactive compensation increase. Deborah Schierholt verified information in the state payroll system as correct and completed the payroll certification and authorization forms.

Under Ohio law, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which such illegal expenditure is made is strictly liable for the amount of the expenditure. *Seward v. National Surety Corp.*, 120 Ohio St. 47 (1929); 1980 Op. Att’y Gen. No. 80-074; Ohio Rev. Code Section 9.39; *State, ex. Rel. Village of Linndale v. Masten*, 18 Ohio St. 3d 228 (1985). Public officials controlling public funds or property are secondarily liable for the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen. Public officials will be liable if and to the extent that recovery or restitution is not obtained from the persons who unlawfully obtained such funds or property. 1980 Op. Att’y Gen. No. 80-074.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, a finding for recovery for public monies illegally expended is hereby issued against Diane Pope, Deborah Schierholt, and Kenneth Rohrs, former OJC executive director, jointly and severally, in the amount of \$603, and in favor of the State of Ohio.

Kenneth Rohrs shall be secondarily liable for such illegal expenditures to the extent that recovery or restitution is not obtained from Deborah Schierholt or Diane Pope.

Deborah Schierholt – Compensated Absence Payouts at Separation

OJC’s Time Management policy sections (H), (I)(5) & (I)(6), and (J)(2) governing sick leave, personal leave and vacation leave, respectively, state in part,

- “Upon separation, an employee with more than one year of state service shall be paid for 50 percent of accrued unused sick leave.”
- “Upon separation, an employee shall be entitled to compensation for the unused personal leave balance.” “A full-time employee who separates from the Conference or is no longer a full-time employee during the year shall receive a reduction of personal leave credit of 1.2 hours for each pay period that remains beginning with the first pay period following the date of separation until the pay period preceding the next base pay period.”
- “Upon separation, an employee shall be paid for accrued unused vacation leave not to exceed the number of hours set forth below: Persons employed by the Conference on or after January 1, 1992 with less than five years of state service: 240 hours.”

Using our calculated balances and Ms. Schierholt’s approved hourly rate of pay at the time of her separation from employment, we calculated Ms. Schierholt should have been paid \$2,201 for her unused compensated absences. According to the payroll disbursement journal for the pay period end that included Ms. Schierholt’s final pay, Ms. Schierholt was actually paid \$3,297 for her unused compensated absences.

Additionally, we noted that during annual leave conversions in December 2003 and 2004 Ms. Schierholt received leave conversion cash payouts at incorrect hours and/or pay rates resulting in overcompensation totaling \$207.

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Under Ohio law, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which such illegal expenditure is made is strictly liable for the amount of the expenditure. *Seward v. National Surety Corp.*, 120 Ohio St. 47 (1929); 1980 Op. Att'y Gen. No. 80-074; Ohio Rev. Code Section 9.39; *State, ex. Rel. Village of Linndale v. Masten*, 18 Ohio St. 3d 228 (1985). Public officials controlling public funds or property are secondarily liable for the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen. Public officials will be liable if and to the extent that recovery or restitution is not obtained from the persons who unlawfully obtained such funds or property. 1980 Op. Att'y Gen. No. 80-074.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, a finding for recovery for public monies illegally expended is hereby issued against Deborah Schierholt and Kenneth Rohrs, former OJC executive director, jointly and severally, in the amount of \$1,303 and in favor of the State of Ohio.

Kenneth Rohrs shall be secondarily liable for such illegal expenditures to the extent that recovery or restitution is not obtained from Deborah Schierholt.

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Issue No. 2 – Examination of Other Payments to Former Fiscal Specialist

OBJECTIVE

Determine whether payments to Deborah Schierholt, former OJC fiscal specialist, for reasons other than compensation, were for a purpose related to the operations of OJC, supported by documentation indicating that goods or services were received, and in accordance with OJC policies regarding the purpose of the payment (i.e. miscellaneous reimbursements, travel, mileage, etc.).

PROCEDURES

We examined relevant OJC policies governing payments to OJC employees for reasons other than compensation related matters addressed in Issue No. 1 and identified significant and relevant provisions.

We obtained from OJC a list of payments to Ms. Schierholt for reasons other than her compensation related matters examined in Issue No. 1 and examined supporting documentation for each of the payments identified.

RESULTS

FINDING FOR RECOVERY

Deborah Schierholt – Travel

OJC's Travel policy, section (F)(3) Receipts, states in part, "A Conference agent shall attach to the Travel Expense Report original receipts for all transportation, meals, lodging, registration and miscellaneous expenses. ... Failure to provide receipts or additional forms of requested verification shall cause to disallow a request for reimbursement."

OJC's Travel policy, section (E)(1)(C) Privately owned motor vehicle, states in part, "A Conference agent shall be reimbursed for expenses incurred for travel by a privately owned motor vehicle at the standard business mileage rate designated by the Internal Revenue Service."

While examining supporting documentation for payments made to Ms. Schierholt, we noted that for four of 12 payments totaling \$713 to Ms. Schierholt, OJC was unable to provide vouchers or supporting documentation indicating that reimbursed expenses were actually incurred. All but \$4 of this amount were coded as mileage reimbursements for personal vehicle use.

Under Ohio law, any public official who either authorizes an illegal expenditure of public funds or supervises the accounts of a public office from which such illegal expenditure is made is strictly liable for the amount of the expenditure. *Seward v. National Surety Corp.*, 120 Ohio St. 47 (1929); 1980 Op. Att'y Gen. No. 80-074; Ohio Rev. Code Section 9.39; *State, ex. Rel. Village of Linndale v. Masten*, 18 Ohio St. 3d 228 (1985). Public officials controlling public funds or property are secondarily liable for the loss incurred should such funds or property be fraudulently obtained by another, converted, misappropriated, lost or stolen. Public officials will be liable if and to the extent that recovery or restitution is not obtained from the persons who unlawfully obtained such funds or property. 1980 Op. Att'y Gen. No. 80-074.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, a finding for recovery for public monies illegally expended is hereby issued against Deborah Schierholt and Kenneth Rohrs, former OJC executive director, jointly and severally, in the amount of \$713 in favor of the State of Ohio.

Kenneth Rohrs shall be secondarily liable for such illegal expenditures to the extent that recovery or restitution is not obtained from Deborah Schierholt.

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MANAGEMENT COMMENTS

Approving Vouchers

One of the identified internal controls related to nonpayroll disbursements was that the executive director reviewed vouchers for completeness and accuracy and approved the vouchers as evidenced by his signature on the voucher.

The eight voucher packages available for examination contained only the system printed name of the executive director and no actual signature. Only two of the eight contained the executive director's initials. Without physical evidence beyond the system printed name, management can not be assured and demonstrate that the internal control is in place and operating.

We recommend that upon completing review of the voucher packages, the executive director actually sign the voucher or at a minimum affix his initials next to the system printed name evidencing that the review occurred.

Employee Miscellaneous Reimbursement Policy

While OJC established policies for disbursements to employees for OJC related travel and for disbursements to external vendors, the policies did not address employee reimbursements for miscellaneous expenses incurred on behalf of OJC. During the audit period, two of 12 payments made to Ms. Schierholt were for employee reimbursement of expenses incurred on behalf of OJC.

Lack of such a policy increases the risk of inappropriate payments because employees and management may be unclear regarding reimbursable expenses, required approvals, required documentation, and the process for submitting requests for reimbursements.

It is our understanding that in December 2007 OJC implemented a miscellaneous employee reimbursement policy.

Records Retention

While conducting the special audit, OJC could not provide various documents related to compensation and other payments made to Ms. Schierholt. These documents included several timesheets, payroll warrant journals, vouchers, travel expense reports, customer receipts, and warrant journals.

Without these records, OJC could not completely support certain financial transactions that occurred during the audit period.

We recommend that OJC closely monitor and adhere to its record retention policies for the noted documents in order to support its financial activity and to provide the necessary records for audit purposes.

Reviewing and Approving Travel

None of the five travel expense reports available for examination supporting Ms. Schierholt's travel contained the executive director's signature acknowledging or approving the travel costs. Additionally, in eleven instances the dates of Ms. Schierholt's travel did not coincide with any OJC event or notation on OJC's agency MS Outlook calendar that indicated the travel appeared warranted.

Lack of supervisory approval increases the risk that employees will be reimbursed for costs not actually incurred or for incorrectly claimed amounts.

We recommend that the executive director review the fiscal specialist's travel expense reports for accuracy, completeness and adequate supporting documentation of expenses claimed. The executive director should evidence the review by signature, or at a minimum initials, on the travel expense report. Additionally, the executive director should evaluate the fiscal specialist's travel frequency and destinations to ensure that the claimed costs are related to OJC events and operations.



Mary Taylor, CPA
Auditor of State

OHIO JUDICIAL CONFERENCE

FRANKLIN COUNTY

CLERK'S CERTIFICATION

This is a true and correct copy of the report which is required to be filed in the Office of the Auditor of State pursuant to Section 117.26, Revised Code, and which is filed in Columbus, Ohio.

Susan Babbitt

CLERK OF THE BUREAU

**CERTIFIED
NOVEMBER 13, 2008**