

**Office of the Controller
Beaver County, Pennsylvania**

Review of Financial Operations, Office of the Sheriff of Beaver County, Pennsylvania

January 1, 2010, through September 30, 2012

- Preliminary Views -

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Introduction:

The Office of the Controller of Beaver County, Pennsylvania, proceeded with the regularly scheduled audit of the Office of the Sheriff of the same county. The Board of County Commissioners had asked for an outside audit of certain personnel scheduling and payroll practices at the Office of the Sheriff and we offered releasing the review of those specific items. We are filing this preliminary memorandum pending completion of the full review. The findings encountered thus far that we find in the best interest of the public to be disclosed follow below.

Summary:

1. *Services are billed at less than the cost of providing them* – A review of invoices to outside third-party entities for security services rendered by sheriff's deputies revealed that such services generated an estimated deficit of \$47,845. Likewise, a review of certain internal invoices for security services provided by sheriff's deputies generated an approximate \$44,315 deficit. These deficits are funded by taxpayers in the form of taxes, fees, or other earnings, which could have been avoided with the exception of a small portion of the intra-county services provided.
2. *Services provided are not billed for* – Certain services are provided by the Sheriff and his deputies to outside, third-party organizations at no charge. Since documentation of these types of services either does not exist or is poorly maintained, determining the exact amount provided may not be possible. As in the case of under-billed services, any potential losses resulting from the provision of these services are absorbed by tax and/or fee revenues, which could otherwise have been used for other purposes. We are proceeding to further research this matter.
3. *Services for outside parties are not permitted* – Services by sheriffs and their deputies to parties outside of county government are apparently not allowed by Pennsylvania statutes. Additionally, the services rendered by the Beaver County Sheriff's deputies are not provided under any type of written agreement. This combination of un-allowed and undocumented activity puts Beaver County at a severely high risk of financial loss and negative legal consequences. In an effort to stop this practice, the County Commissioners ordered the Sheriff to stop providing these services effective August 29, 2012, by means of a letter from Beaver County's Solicitor. The Sheriff has publicly announced and we found other evidence that services to organizations outside of the County's government continued after that date.

Office of the Controller
Review of Financial Operations, Office of the Sheriff of Beaver County, Pennsylvania
January 1, 2010, through September 30, 2012
- Preliminary Views -

Summary (continued):

4. *Compensation of deputies is not paid according to agreements and standards* – Time worked by deputies after regularly scheduled hours is frequently exchanged for scheduled time off at a later date. This practice is known as “comp time”. “Comp time” is expressly not permitted by Beaver County’s own labor policies. “Comp time” is also not considered by the deputies’ current collective bargaining agreement and it is in apparent violation of the federal Fair Labor Standards Act and Pennsylvania statutes dealing with overtime pay. As of September 20, 2012, an estimated \$30,727 is payable in terms of compensation and related taxes and fringe benefits for outstanding “comp time”. Beaver County did not record amounts payable for “comp time” in its financial statements.

5. *Part-time deputies may have to be considered on full-time status* – We found that 13, 19, and 17 part-time deputies exceeded the average maximum number of weekly work hours for part-time deputy status in 2010, 2011, and 2012, respectively. This is according to the collective bargaining agreements between Beaver County and the Beaver County Deputy Sheriff’s Association in effect during that period. This situation could entitle the deputies having worked those hours to full-time status. Converting 17 deputies from part-time to full-time status would cost Beaver County an estimated \$430,786 in increased wage rates, related taxes, and fringe benefits for the 2013 year.

Findings Explained:

1. *Services are billed at less than the cost of providing them:*

We reviewed all invoices provided to us for outside security work during the period under examination. We also reviewed all invoices provided to us for security services at the Beaver County Human Services Building during the same period. When tracing the invoices to the accounting entries we found that all of the 118 invoices we had matched up with corresponding entries in Beaver County’s financial reporting system. Invoices for 17 additional entries in the financial reporting system for outside security work totaling \$25,153 of collected revenues could not be located. We summarized our findings on deficit margins below:

<i>Type of invoice:</i>	<i>Number of invoices:</i>	<i>Calculated Deficit:</i>
Human Services Building	31	\$44,315
Outside entity security	<u>87</u>	<u>\$47,844</u>
Total	118	\$92,159

Office of the Controller
Review of Financial Operations, Office of the Sheriff of Beaver County, Pennsylvania
January 1, 2010, through September 30, 2012
- Preliminary Views -

Findings Explained (continued):

1. Services are billed at less than the cost of providing them (continued):

Outside security services are generally provided by full-time deputies engaged after regular working hours. Security services provided at the Human Services Building are provided by regularly scheduled part-time deputies and they are mostly reimbursed by intergovernmental revenues (typically, 80% or more is reimbursed from state or federal sources).

Income recorded in the County's financial reporting system for which we did not have invoices was not included in the calculation performed. Also, other billed intra-county services provided by Sheriff's deputies, such as transporting delinquent juveniles and posting tax claim notices, were not considered.

2. Services provided are not billed for:

We are in the process of reviewing this matter.

3. Services for outside parties are not permitted:

Per a review of the Pennsylvania Statutes we found the following under Title 16, Chapter I, Article XII(a), § 1210 "Private services, gifts and payments, contracts, prohibited":

(a) No sheriff, deputy sheriff, detective or other county police officer whatsoever, shall perform, directly or indirectly, any official services or official duties for any person, association or corporation, or receive, directly or indirectly, any compensation, gifts or gratuities from any person, association or corporation during the period of his official services. Nothing herein contained shall prohibit such officers from serving writs and other legal process as authorized by law. Any compensation payable to any such officer for official duties and services shall be paid only out of the proper county, or other public funds, to the amount and in the manner prescribed by law. Gifts, donations, and gratuities of any nature whatsoever made by any person, association or corporation to the county or to any official or agent thereof, shall not constitute public funds within the meaning of this section.

(b) No county, or any official or agent thereof, shall accept as a gratuity, gift or donation any arms, ammunition, military supplies, tear gas or equipment, or supplies or articles of a similar character from, nor shall any such gratuity, gift or donation be made by any person, association or corporation.

(c) Any contract or agreement, whatsoever, made in violation of the provisions of this section, shall be utterly void and of no effect, in law or in equity, and is hereby declared to be contrary to public policy.

Office of the Controller
Review of Financial Operations, Office of the Sheriff of Beaver County, Pennsylvania
January 1, 2010, through September 30, 2012
- Preliminary Views -

Findings Explained (continued):

3. Services for outside parties are not permitted (continued):

(d) Notwithstanding any other provision of this section, unless otherwise prohibited by resolution or ordinance of the county, an individual who is employed as a sheriff, deputy sheriff, detective or other county police officer may engage in outside employment, including employment in security, during a period in which the individual is not scheduled to perform nor performing duty as a county employee. The county is not liable for any damage resulting from an act of an individual acting under this subsection.

Further, § 1211 of the same Article states that:

Any sheriff, deputy sheriff or any other county police officer, whatsoever, or any other official of the county or any person, association or corporation, violating any of the provisions of sections 1206, 1209 or 1210 of this act, shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or to undergo imprisonment for not less than ninety days nor more than two years, or both.

Additionally, the Office of the Sheriff admits to providing these types of services without any written contracts in place stipulating terms for them. Based on the statutory language reproduced above, the County Commissioners (through its Solicitor's Office) ordered these services to stop effective as of August 29, 2012, through written communication to the Sheriff. A public statement by the Sheriff defied the order by the County Commissioners. We verified through time and attendance records that outside security services did continue.

4. Compensation of deputies is not paid according to agreements and standards

We interviewed Sheriff's personnel on the practices of time and attendance. We found that for certain activities the time worked by deputies is often not compensated during that pay period, but rather exchanged for time away from future regularly scheduled duty. This practice is internally monitored at the Office of the Sheriff. Despite carrying out this practice in a rather controlled and organized manner, we found it to be against provisions of law at various levels. Requirements of federal and state law, as well as Beaver County's own policy of employment appear to have been violated by this exercise. What follows below is an excerpt from the Fair Labor Standards Act of 1938 (revised in May 2011) dealing with "Compensatory time":

Office of the Controller
Review of Financial Operations, Office of the Sheriff of Beaver County, Pennsylvania
January 1, 2010, through September 30, 2012
- Preliminary Views -

Findings Explained (continued):

4. Compensation of deputies is not paid according to agreements and standards (continued)

(o) Compensatory time

(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only—

(A) pursuant to—

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3). In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

We believe that Beaver County lacks any type of agreement with the Beaver County Deputy Sheriffs Association authorized by the Beaver County Board of Commissioners that would validate the use of “compensatory time” and the practice is not included in the clauses of the collective bargaining agreements with the Beaver County deputies. Further, the Beaver County Commissioners (through Beaver County’s Director of Human Resources and through its Financial Administrator) ratified this understanding by issuing a “Memo” on September 6, 2012, reminding all of Beaver County’s elected officials and department heads that “compensatory time to avoid paying overtime is not to be used and explicitly prohibited” (see Exhibit A). We verified that the practice continued at least through September 20, 2012, at which time the outstanding hours of “compensatory time” amounted to 736.5 at an estimated calculated cost of \$30,727. The cost of this time was not and is not recorded in the financial records of Beaver County. We also verified from internally maintained records that a total of 1,200.5 hours of “compensatory time” were redeemed during the period under examination.

Office of the Controller
Review of Financial Operations, Office of the Sheriff of Beaver County, Pennsylvania
January 1, 2010, through September 30, 2012
- Preliminary Views -

Findings Explained (continued):

5. *Part-time deputies may have to be considered on full-time status:*

A review of payroll records found that the following number of sheriff's deputies worked an average of 33 weekly hours or more:

<i>Year:</i>	<i>Number of deputies:</i>	<i>Average weekly hours worked:</i>	<i>Avg weekly hours for all PT:</i>
2012	17	36.01	28.57
2011	19	35.66	27.89
2010	13	35.95	25.88

The year 2012 average is based on the first 18 pay periods of the year as recorded in Beaver County's payroll system. The averages for years 2011 and 2010 are based on the entire year's records of the County's payroll processing system.

We proceeded to calculate the cost increase that would result if all 17 part-time employees averaging full-time hours of work would switch to full-time status according to collective bargaining agreement provisions. The major differences between part-time and full-time deputies in terms of compensation and fringe benefits are presented next. Full time deputies receive the following as opposed to part-time deputies:

- Approximately \$6 increased hourly wages
- Health care benefits
- Life insurance and other benefits
- Approximately 64 increased hours of yearly vacation

These differences were used in our analysis and computation. Additionally, full-time deputies are scheduled on a 40-hour workweek. We considered that as well in our calculation, but we also credited remaining part-time deputies with the hours taken up by the new full-time deputies. For the entire year 2013 and according to the provisions of the collective bargaining agreement in place for that year, the estimated increased cost amounts to \$430,786.

Additionally, we estimated what a potential retroactive adjustment could mean. While we take no position on the potential retroactivity of salary and benefits for the years 2012 and 2011, the amount of back pay and benefits, if allowed, was calculated by us to be as much as \$511,378 and \$538,612, respectively.

David A. Rossi



Controller