



LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

April 9, 2014

Honorable Rodney Arbuckle, Sheriff
DeSoto Parish
205 Franklin Street
Mansfield, Louisiana 71052

Dear Sheriff Arbuckle:

As you are aware, my Investigative Audit Services staff visited the DeSoto Parish Sheriff's Office (DPSO) to assess certain financial matters of the DPSO. My staff completed their assessment and subsequently provided you with their findings and recommendations. This letter briefly summarizes the results of our work. We stress the importance of addressing these issues and encourage you to consider our recommendations as you work to resolve the following:

Criminal Background Checks

Louisiana Revised Statute (La. R.S.) 40:1300.52(A)(1) requires employers to obtain criminal background checks prior to making an offer to employ or contract with a non-licensed person or any licensed ambulance personnel to provide healthcare services. Background checks are run through the Louisiana State Police (State Police) Internet Background Check System database. Employers can request a background check directly through State Police or an authorized agent^A approved by State Police. Authorized agents can obtain background checks directly through State Police or through a local law enforcement agency (e.g., a sheriff's office) with access to the State Police database. Although La. R.S. 40:1300.52(B)(2) requires the employer or authorized agent to pay a fee of \$26 to State Police for each background check, State Police did not charge the fee when authorized agents obtained background checks through local law enforcement agencies. It should be noted that as of July 1, 2013, State Police began billing authorized agents the \$26 fee for background checks as required.

Several authorized agents used the DPSO to run the background checks required by state law during our audit period. DeSoto Parish Sheriff Rodney Arbuckle informed us that his office started running background checks for authorized agents approximately 10 years ago and currently charges \$3 per background check. According to Sheriff Arbuckle, two DPSO employees are assigned to run the background checks and that they run between 200 and 300 each day. From April 2012 through February 2013, State Police records indicate that local law enforcement agencies ran 91,074 background checks, 65,174 (72%) of which were run by DPSO.

^A La. R.S. 40:1300.51(1) provides, in part, that "Authorized agency" means a private entity authorized by the office of state police to conduct the criminal history checks provided for in this Part.

Ethics - Prohibited Transactions with Lagniappe and Castillo

From April 2012 through February 2013, the DPSO ran 41,574 background checks for Lagniappe and Castillo Research and Investigations, LLC (Lagniappe and Castillo), a company 50% owned by former DPSO Chief Investigator Robert Davidson. Because Mr. Davidson was a DPSO employee during the period in which the DPSO ran background checks for his company (Lagniappe and Castillo), Mr. Davidson may have violated the state's ethics laws.

Mr. Davidson was employed by the DPSO from 1980 until he retired in May 2013. Mr. Davidson is also the registered agent and a 50% owner of Lagniappe and Castillo. Lagniappe and Castillo is a Louisiana limited liability company registered with the Louisiana Secretary of State by Mr. Davidson and Allan Castillo in December 2004, and is an authorized agent approved by State Police to run background checks. From April 1, 2012 to February 28, 2013, while Mr. Davidson was employed by the DPSO, the DPSO ran 41,574 background checks for Lagniappe and Castillo. The DPSO charged Lagniappe and Castillo \$3 to run each background check. This was the same rate that the DPSO charged other authorized agents to run background checks. According to Mr. Castillo, Lagniappe and Castillo charged its customers \$12 per background check.

La. R.S. 42:1113(A)(1)(a) provides, in part, that “[n]o public servant ... or legal entity in which he has a controlling interest shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.” La. R.S. 42:1112(A) further provides, in part, that “[n]o public servant shall participate in a transaction in which he has a personal substantial economic interest of which he may be aware involving the governmental entity.” During the audit period, Mr. Davidson’s company paid DPSO more than \$124,000 for information that we understand his company sold to private clients for nearly a half a million dollars. Because Mr. Davidson entered into transactions with the DPSO in which he had a personal, substantial economic interest, he may have violated the state’s ethics laws. However, whether or not a violation of the state’s ethics laws occurred is limited to the particular set of circumstances. We suggest that the Louisiana Board of Ethics review this information and take appropriate action.

In Sheriff Arbuckle’s response to this finding, he contends that his former chief investigator’s ownership in Lagniappe and Castillo was not a “controlling interest” in the entity. La. R.S. 42:1102(8) provides, in part, that a “[c]ontrolling interest” means “any ownership in any legal entity ... which exceeds twenty-five percent of that legal entity.” In addition, La. R.S. 42:1112(B)(5) prohibits public servants from participating in transactions involving the governmental entity with any legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent and who by reason thereof is in a position to affect directly the economic interests of such public servant. Thus, former DPSO Chief Investigator Robert Davidson’s fifty percent interest in Lagniappe and Castillo was a controlling interest which may have prohibited Lagniappe and Castillo from entering into transactions with the DPSO.

Ethics - DPSO Employees Received Payments from Lagniappe and Castillo

From January 2011 through May 2013, three DPSO employees received payments totaling \$1,947 from Lagniappe and Castillo for running background checks at the DPSO, a relationship that may violate the state's ethics law. Although these employees' regular job functions included running background checks for the DPSO, state law prohibits them from also being paid by a non-public source for performing the same service.

During our audit, Sheriff Arbuckle informed us that the employees whose jobs include running background checks for the DPSO, also worked on weekends/holidays running background checks for Lagniappe and Castillo. He stated that he approved this on the condition that Lagniappe and Castillo pay these employees directly. According to records provided by Lagniappe and Castillo, from January 2011 through May 2013, three DPSO employees were paid a total of \$1,947 by Lagniappe and Castillo to run background checks at the DPSO on weekends and/or holidays. However, La. R.S. 42:1111(C)(1)(a) prohibits public servants from receiving anything of economic value for any service from a nonpublic source that is similar to the work being done for the public employer. Since these three employees' jobs were to run background checks for the DPSO, this relationship may have violated the state's ethics law.

In Sheriff Arbuckle's response to this finding, he states "that it is lawful for off-duty deputies to be paid by non-public sources for performing services similar to their on-duty jobs" and cites instances. The instant case differs from the instances cited by Sheriff Arbuckle in that, here, the deputies were performing the same – not similar – services that they were paid to perform in their on-duty jobs. During an 11-month period, the deputies performed 65,174 background checks (41,574 for Lagniappe and Castillo), the vast majority of which appear to have been performed during on-duty hours.

We recommend that the DPSO consult with legal counsel and the Louisiana Board of Ethics on the legality of these relationships. The DPSO should also adopt detailed ethics policies and procedures, including requiring all employees to complete the annual ethics training in accordance with La. R.S. 42:1170 and prohibiting employees from contracting with the DPSO. A copy of this letter has been forwarded to the Louisiana Board of Ethics. If you have any questions about our assessment, please call Greg Clapinski or Andrew LeJeune at 225-339-3800.

Sincerely,



Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/ch

APPENDIX A

Management's Response

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October 28, 2013

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RE: Response by DeSoto Parish Sheriff to Draft Investigative Audit Report

Dear Mr. Purpera:

On behalf of DeSoto Parish Sheriff, Rodney Arbuckle, please find enclosed a Response to the draft investigative audit report transmitted to the Sheriff by Mr. Roger Harris, via correspondence of October 10, 2013. If you have any questions or require anything further, please do not hesitate to contact me. Thank you for your assistance and cooperation in this matter.

Yours very truly,



James R. Sterritt

JRS/ayw
Enclosure

cc: Roger W. Harris, J.D.
Sheriff Rodney Arbuckle

**RESPONSE BY DESOTO PARISH SHERIFF RODNEY ARBUCKLE
TO FINDINGS OF THE DRAFT INVESTIGATIVE AUDIT REPORT**

FINDING I:

From April 2012 through February 2013, the DPSO ran 41,574 background checks for Lagniappe & Castillo, a company 50% owned by former DPSO chief investigator Robert Davidson. Because Mr. Davidson was a DPSO employee during the period in which the DPSO ran background checks for his company, Mr. Davidson may have violated the state's ethics laws.

RESPONSE:

DeSoto Parish Sheriff Arbuckle respectfully submits that under the circumstances no one involved understood there to be an ethical violation or that there was a potential for a violation. Further, Mr. Davidson has retired and is no longer employed by the DPSO. Accordingly, the relationship in question and the potential for a conflict have terminated.

To violate La. R.S. 42:1113 A(1)(a), a public servant must have a "controlling interest" in a legal entity that enters into a transaction with the agency of the public servant. Lagniappe & Castillo ("L&C") was properly approved by the La. State Police as an authorized agent to obtain criminal background checks. Pursuant to that approval, it appeared that L&C met all requirements, laws, rules or regulations governing receipt and use of criminal history information in accordance with all applicable laws. Mr. Davidson did have a 50% interest in L&C. However, since Davidson did not have a majority interest (i.e., more than ½), it did not appear that he had a "controlling interest" as that term was generally understood by the public, the Sheriff, and his CPA that does the Sheriff's Office yearly audit.

Also, to violate La. R.S. 42:1112(A), a public servant must "participate" in a transaction. Deputy Davidson worked in the criminal investigation division of the Sheriff's Office. The background checks were performed by personnel in the civil administrative division. The criminal investigation division is both physically and functionally separate and apart from the civil administrative division. Davidson had no control, influence, or presence in the civil administrative division. Davidson did not personally take part in performing the background checks. Thus, he did not "participate" as defined by the Code of Ethics in a manner that would implicate the referenced ethical standard. See: La. R.S. 42:1102(15).

As noted above, the employment relationship between DPSO and Davidson has terminated. Further, the DPSO has taken steps to prevent the occurrence of such a situation in the future.

FINDING II:

From January 2011 through May 2013, three DPSO employees received payments totaling \$1,947 from Lagniappe and Castillo for running background checks at the DPSO, a relationship that may violate the state's ethics law. Although these employees' regular job function is to run background checks for the DPSO, state law prohibits them from also being paid by a non-public source for performing the same service.

RESPONSE:

Sheriff Arbuckle respectfully submits that state law does not prohibit the DPSO deputies from being paid by a non-public source for their off-duty work which occurred on holidays or weekends. The prohibition suggested by Finding II would, in an unprecedented manner, adversely affect nearly every law enforcement agency throughout the state and the officers who have off-duty jobs.

Louisiana law has consistently recognized that it is lawful for off-duty deputies to be paid by non-public sources for performing services similar to their on-duty jobs.

In *State v. Berry*, 391 So.2d 406 (La. 1980), an off-duty sheriff's deputy was working as a security guard at a bank when he responded to an attempted bank robbery. The Louisiana Supreme Court found there was "nothing unlawful" about a deputy sheriff being paid for performing law enforcement functions for a private entity "during his normal off-duty time." *Id.*, at 413. According to the Court, *if* the deputy had been *on-duty*, then he "could not require the bank to pay him for answering a robbery call, a duty he is already required to perform by his very employment as a deputy sheriff." *Id.* But, since he was working as "a security guard during his normal off-duty time," he was performing "a duty or job which he was not already required to perform." *Id.* Thus, the whole arrangement was "quite legal." *Id.*

The Louisiana Attorney General has found that it is legal for off-duty officers to be paid directly by private entities for performing law enforcement functions *and* to utilize an officer's "agency equipment while such work is being performed." See La. Atty. Gen. Op. No. 96-486. According to the Attorney General, such arrangements are not only lawful under the Louisiana Constitution, but also enhance the interests of law enforcement and the general public by having "off-duty officers available" with the "added benefit ... being at no cost" to the public. "Furthermore ... the practice provides a service to the local community as well as to the employing party, in that the participating law enforcement officers are then 'on-call' [and immediately available] if a greater community need arises." *Id.* See also, La. Atty. Gen. Op. No. 94-470: "An additional benefit to the public" is that it "fosters a positive image of law enforcement personnel and encourages a harmonious relationship between [law enforcement personnel] and the public." *Id.*

The Louisiana Revised Statutes expressly recognize the on-duty versus off-duty distinction for deputies performing law enforcement functions. Under La. R.S. 15:254, an on-duty deputy is not entitled to be paid a witness fee for testifying in court. However, under La. R.S. 15:255(A)(1), a deputy is entitled to be paid a witness fee when he is off duty (i.e., when "he is not required to report to work or perform the duties of his office"). Pursuant to La. R.S. 14:140(A)(3), "a deputy sheriff may ... perform services of a law enforcement nature for any person, partnership, company, or corporation," if he does so "while not on official duty." According to La. R.S. 42:1123(15) an off-duty law enforcement officer may use "a publicly owned law enforcement vehicle in connection with [his] private employment."

The Louisiana Ethics Board has found there is no violation of the Code of Ethics by off-duty law enforcement officers being paid by non-public sources for performing services similar to their on-duty jobs.

In Ethics Advisory Opinions No. 80-30 and No. 80-30A, the Louisiana Ethics Board specifically addressed off-duty law enforcement officers providing security and pre-employment screening services to private businesses, under La. R.S. 42:1111(C)(1)(a). The Code of Ethics does not prevent an off-duty officer from performing part-time security or screening work for a private employer when the off-duty officer (or his agency) is not "responsible for rendering the very service" for which the officer seeks part-time work. *See*: Opinion No. 80-30. Also, providing pre-employment screening services to private businesses is not a service "traditionally rendered by law enforcement agencies" and does not generally form "a part of the 'responsibilities, programs or operations' of [a] police department." *See*: Opinion No. 80-30A. Thus, such off-duty services "are authorized by Section 1111C(1)(a) of the Code" of Ethics. *Id.*

In Ethics Advisory Opinion No. 99-624, the Louisiana Ethics Board approved the practice of public servants (firefighters/EMTs) working off-duty for a private employer. The Board noted that La. R.S. 42:1111C(1)(a) "generally" prohibits a public servant from being paid for services "substantially similar" to his public employment. However, the Board found that a public employee may be hired to perform such services by a private employer "as long as those services are actually provided during off-duty hours." *See also*, Ethics Advisory Opinion No. 2000-282: A public servant may, "during [her] off-duty hours," provide compensated computer services that are similar to her public employment to someone other than her public employer.

The DPSO deputies were off-duty when they performed the identified background checks for Lagniappe and Castillo. The deputies were working on holidays or weekends. Their job duties did not require them to perform the background checks during their normal off-duty time. During normal duty hours, the primary function of the three deputies is not limited to performing background checks. While on-duty, the deputies are stationed at the front desk of the Sheriff's Office. They are among the first in the Sheriff's Office to interact with the general public. When people call or come to the Sheriff's Office to pay taxes, fines or tickets, or post bonds, or report problems, they are met and helped by these deputies. These deputies answer the phones, assist with service of process, and generally take care of everything and everyone as they initially come to the Sheriff's Office. The deputies were not hired by the Sheriff to just run background checks. Their regular job functions are not limited to nor defined by the running of background checks. They are a multi-tasking front-line. The deputy position was here before the particular type of background check was necessary and would exist regardless of it.

Further, performing background checks of potential health care employees is not a service traditionally rendered by a Sheriff's Office. This particular type of background check is primarily a function of the Louisiana State Police and Bureau of Criminal Identification and Information. *See*: La. R.S. 40:1300.51, *et seq*; R.S. 55:201, *et seq*. Although a Sheriff's Office is allowed to conduct a "screening function," performing these checks is not a primary duty or responsibility of a Louisiana Sheriff. La. R.S. 15:587(D)

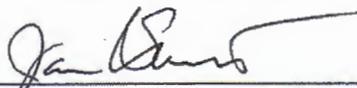
The referenced background checks were done during normal off-duty hours. They are not a traditional or primary duty, operation, or function of the Sheriff's Office. The arrangement appears to all be "quite legal," and not in violation of any provision of the Ethics Code. *State v. Berry*, supra.; La. R.S. 42:1101, et seq.

RESPONSE TO RECOMMENDATIONS:

Pursuant to the Legislative Auditor's Recommendations, the DPSO is in the process of reviewing its policies, procedures, and training regarding ethics for DPSO employees. All DPSO employees are currently receiving the ethics training required by the state.

Respectfully submitted,

COOK, YANCEY, KING & GALLOWAY
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