

DISTRICT ATTORNEY FOR THE
TWENTY-SIXTH JUDICIAL DISTRICT



INVESTIGATIVE AUDIT
ISSUED APRIL 24, 2013

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

April 24, 2013

**THE HONORABLE J. SCHUYLER MARVIN
DISTRICT ATTORNEY OF THE TWENTY-SIXTH
JUDICIAL DISTRICT**

Benton, Louisiana

We have audited certain transactions of the District Attorney of the Twenty-Sixth Judicial District in accordance with Title 24 of the Louisiana Revised Statutes to determine the propriety of certain financial transactions.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*.

The accompanying report presents our findings and recommendations as well as management's response. This is a public report. Copies of this report have been delivered to the Louisiana Board of Ethics and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/ch

26TH JD 2013

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BACKGROUND AND METHODOLOGY

Article V, Section 26 of the Louisiana Constitution of 1974, provides that the District Attorney has charge of every state criminal prosecution in his district, is the representative of the state before the grand jury in the district, and is the legal advisor to the grand jury. The District Attorney also performs other duties as provided by law and is elected by the qualified electors of the judicial district for a term of six years. The Twenty-Sixth Judicial District encompasses the parishes of Bossier and Webster.

The Legislative Auditor received allegations of noncompliance with state law governing the disposal of drug-forfeiture vehicles.

The procedures performed during this audit consisted of:

- (1) interviewing employees of the District Attorney's Office and other persons as appropriate;
- (2) examining selected documents and records of the District Attorney's Office; and
- (3) reviewing applicable state laws and regulations.

FINDINGS AND RECOMMENDATIONS

Improper Business Relationship

The Chief Investigator for the District Attorney's Office for the Twenty-Sixth Judicial District Court (DA's Office), Frank Mondello, may have violated state law¹ by storing drug-forfeiture vehicles in the custody of the DA's office with a company he leases property to. State law¹ prohibits public servants from participating in a transaction in which he has a personal substantial economic interest² of which he may be reasonably expected to know involving the governmental entity.

The DA's Office operates a drug-forfeiture program through which seized vehicles in the custody of the DA's Office are stored and subsequently sold at auction. Frank Mondello is the DA's Office employee who manages the storage and auction program for drug-forfeiture vehicles.

Business records for the DA's Office show a payment to a vendor, Mike's Auto Sales, totaling \$750 on March 5, 2012. This payment was for storage fees on seized vehicles stored prior to auction. Also, Bossier Parish Clerk of Court records indicate Mr. Mondello owns the land and improvements at Mike's Auto Sales. Therefore, Mr. Mondello may have violated state law¹ which prohibits public servants from participating in transactions involving the governmental entity when the public servant has a personal substantial economic interest.²

Mr. Mondello confirmed to us (auditors) that he leased the property to Mike's Auto Sales at the time the DA's Office paid Mike's Auto Sales for vehicle storage. Since he has a personal substantial economic interest in Mike's Auto Sales and manages the storage and auction program for drug-forfeiture vehicles, the payment to Mike's Auto Sales by the DA's Office may be improper.

Mr. Mondello stated that the DA's Office has used Mike's Auto Sales to store vehicles since approximately 2004, but did not begin paying storage fees until 2012. According to Mr. Mondello, once it was brought to his attention that this arrangement may not be proper, payments were stopped to Mike's Auto Sales for storing seized vehicles (for the DA's Office). However, since Mr. Mondello had a personal substantial economic interest in Mike's Auto Sales at the time the DA's Office paid for vehicle storage, Mr. Mondello may have violated state law.¹

Auction Sales of Drug-Forfeiture Vehicles

From at least 2010 to 2012, the DA's Office used an auction service company that auctioned drug-forfeiture vehicles only to automobile dealers. The DA's Office uses several auction companies in Bossier and Webster parishes to dispose of drug-forfeiture vehicles; however, we determined that one of these auction companies held "dealer-only" auctions that were not open to the general public. Although the Louisiana Attorney General recently opined that this auction practice is allowable under state law,³ best practices dictate that the DA's Office

use auction companies that notify and allow the general public to openly participate in the bidding/auction process to ensure that the highest prices are received for forfeited vehicles.

Recommendations

We recommend that the DA's Office:

- (1) implement ethics training for staff to ensure they are knowledgeable about applicable ethical rules and prohibitions; and
- (2) consider selling the drug-forfeiture vehicles at public auctions that include not only dealers, but also the general public.

LEGAL PROVISIONS

¹ **Louisiana Revised Statute (R.S.) 42§1112 (B)(2)** provides, in part, “No public servant, except as provided in R.S. 42:1120, shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any of the following persons has a substantial economic interest. (2) Any person in which he has a substantial economic interest of which he may reasonably be expected to know.”

² **R.S. 42:1102 (21)** states, in part, “Substantial economic interest” means an economic interest which is of greater benefit to the public servant or other person than to a general class or group of persons...”

³ **Louisiana Attorney General Opinion 12-0243** states, in part, “The district attorney’s office is authorized pursuant to La. R.S. 40:2616(A) to dispose of seized motor vehicles at dealer-only auctions as long as the auctioneer accepts the highest or most favorable bid for the property auctioned.”

APPENDIX A

Management's Response

J. SCHUYLER MARVIN
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April 18, 2013

Eric S. Sloan, CPA
Louisiana Legislative Auditor
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Mr. Sloan,

Thank you for the opportunity to respond to the findings and recommendations resulting from your investigative audit report dated April 8, 2013. Also, thank you for incorporating our responses to those findings and recommendations into your report.

We have addressed your findings and recommendations by inserting our comments in "BLUE" as part of your report, as you will see in the attached document

This letter and our responses to your report are respectfully submitted on behalf of The Honorable John "Schuyler" Marvin, District Attorney for the Twenty-Sixth Judicial District

Sincerely,

Angela L. Lawrence, CPA
Financial Officer
26th Judicial District Attorney

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Improper Business Relationship

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Mr. Mondello stated that the DA's Office has used Mike's Auto Sales to store vehicles since approximately 2004, but did not begin paying storage fees until 2012. According to Mr. Mondello, once it was brought to his attention that this arrangement may not be proper, payments were stopped to Mike's Auto Sales for storing seized vehicles (for the DA's Office). However, since Mr. Mondello had a personal substantial economic interest in Mike's Auto Sales at the time the DA's Office paid for vehicle storage, Mr. Mondello may have violated state law.¹

RESPONSE:

While awaiting adjudication of seized vehicles, and up until the time that an auction is available, it is necessary to store seized vehicles in a secure location to prevent deterioration and/or vandalism. As

noted in the above narrative, the DA's office stored vehicles at Mike's Auto Sales from 2004 through 2012 -- a period of eight (8) years. During this period of time approximately 300 vehicles were seized. The cost of storing vehicles at any available public storage would have been disproportionate to the value of most vehicles. In the matter at hand, the operator of Mike's Auto Sales only began to charge the DA's office after eight (8) years of storing the vehicles free of charge. The total sum paid was *de minimus* at best.

In our opinion, there is not a violation of state law in this instance. Frank Mondello does not own nor operate "Mike's Auto Sales;" he owns no interest in the business, and at no time did he receive any additional benefit over and above the monthly rent he received on the land prior to the storage of the vehicles during the storage of the vehicles, and after the storage of the vehicles. Pursuant to his lease, Mondello was paid rent for his property whether a vehicle was stored there or not.

However, to satisfy any further issue in this regard, the DA's Office has discontinued the use of Mike's Auto Sales to store vehicles. Unfortunately, as it will be necessary to store vehicles at public storage facilities in the future, the economic benefit to the public is greatly reduced as a result of this recommended change.

PRELIMINARY DRAFT Report/Statements are subject to further review and revision. They are the results of preliminary observations and judgments. As such, they are not for publication and are considered confidential information.

Auction Sales of Drug Forfeiture Vehicles

From at least 2010 to 2012, the DA's Office used an auction service company that auctioned drug-forfeiture vehicles to only automobile dealers. The DA's Office uses several auction companies in Bossier and Webster Parishes to dispose of drug-forfeiture vehicles; however, we determined that one of these auction companies held "dealer-only" auctions that were not open to the general public. Although the Louisiana Attorney General recently opined that this auction practice is allowable under state law,³ best practices dictate that the DA's Office use auction companies that notify and allow the general public to openly participate in the bidding/auction process to ensure that the highest prices are received for forfeited vehicles.

RESPONSE:

This audit by the State Legislative Auditor followed a public records request from the owner of a competing auction company; he was displeased when he learned that the DA's office was selling vehicles at a competitor's auctioneering business. In response to his public records request, the entire records of the DA's office related to the sale of all seized vehicles were produced, circumventing the use of resources from criminal prosecutions. It was on the heels of this request that the State Legislative Auditor was summoned, apparently by either the owner of the auction company, or a local politician, to discredit the DA's office concerning the seizure, storage, and sale of the vehicles.

This audit then began producing the same or similar records that once again substantiated the compliance with Louisiana State law regarding the seizure and sale of the vehicles. It is important to note that all of the vehicles were seized and sold pursuant to lawful court orders, and that *all* sums received were accounted for and disbursed pursuant to Louisiana Law. No agency that received resources from the seizure and sale of vehicles has complained.

Seized vehicles that are used in the conduct of criminal activity are typically not new, nor in very good condition. Further, during the search for drugs, vehicles are often partially dismantled to search for hidden compartments in the vehicles. Next, somehow the vehicles must be stored until a sale occurs, and then must be transported to the site of the auction. All of this requires government resources. The DA's office used Greater Shreveport Bossier Auction Company, an auction company licensed by the State of Louisiana to conduct some of its sales after considering the following:

- (1) Frequency of sale: The sales occurred on an almost weekly basis, thus reducing storage cost and risk of having the vehicles vandalized, as sometimes occurred, when sales are conducted on a less frequent basis.
- (2) Commission: The commission rate at Greater Shreveport Bossier Auction Company is substantially lower than at Lawler Auction Company; Lawler has charged fees up to 20% of the sale.
- (3) Transportation: Lawler Auction requires that the vehicles be towed to its facility, over 20 miles from the Bossier Parish Courthouse at the expense to the DA's Office. Greater Shreveport Bossier Auction Company provides free pick-up of the vehicles on site.

As noted in the original report, Louisiana law permits the sale of vehicles at dealer auctions. The law clearly states that the "district attorney shall authorize a public sale or *an auction sale conducted by a licensed auctioneer without appraisal*. . . LSA-R.S. 40:2626(A)

Despite the clear wording of the statute, to clarify any issue following the audit, the District Attorney with the recommendation of the State Legislative Auditor, obtained an opinion from the Attorney General that supports the legality of these sales.

Further, when considering the above facts "best practices" are the sale of the vehicles at a weekly auction, avoiding additional depreciation and deterioration of the vehicles as well as storage costs, at substantially lower commissions, and at no transportation cost.

Recommendations

We recommend that the DA's Office:

- (1) implement ethics training for staff to ensure they are knowledgeable about applicable ethical rules and prohibitions; and

RESPONSE: All of our employees are required to, and have complied with all State mandated ethics training annually. Documentation of completion of these courses is maintained in the respective employee files.

- (2) consider selling the drug forfeiture vehicles at public auctions that include not only dealers, but also the general public.

RESPONSE: We will continue to make prudent financial decisions regarding the selling of drug forfeiture vehicles. We would note that a bill has been pre-filed in this legislative session by State Senator Robert Adley which would amend the law and require the future sale of all vehicles to be conducted at a public auction –i.e. Lawler Auction Company, which would result in less frequently conducted sales, higher commissions, transportation cost, and therefore less money to the arresting agencies involved in these sales.

1 **Louisiana Revised Statute (R.S.) 42§1112 (B)(2)** provides, in part, "No public servant, except as provided in R.S. 42:1120, shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any of the following persons has a substantial economic interest..(2) Any person in which he has a substantial economic interest of which he may reasonably be expected to know."

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