



**Mary Taylor, CPA**  
Auditor of State



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# Mary Taylor, CPA

## Auditor of State

### INDEPENDENT ACCOUNTANTS' REPORT

The Honorable William W. Brayshaw, P.E., P.S.  
Hamilton County Engineer  
700 County Administration Building  
138 East Court Street  
Cincinnati, Ohio 45202-1232

We conducted a special audit of the Hamilton County Engineer's Office (HCEO) by performing the procedures enumerated in the attached Supplement to the Special Audit Report for the period January 1, 2004 through June 18, 2008 (the Period) solely to:

- Determine whether amounts withheld from the contractors' payment requests were deposited into escrow accounts in accordance with contractual provisions and the Ohio Revised Code; and
- Determine whether disbursements from escrow accounts were only issued upon project completion to the identified contractor and for amounts withheld plus interest earned.

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 contracts, escrow agreements, bank statements, deposit slips, and checks issued to determine whether deposits into and disbursements from HCEO's escrow accounts established during the Period were in accordance with contractual provisions and the Ohio Revised Code.

Significant Results – Hamilton County Commissioners entered into 139 contracts on behalf of HCEO of which 39 contracts required an escrow account. HCEO established escrow accounts for 38 of the 39 contracts. HCEO also established four escrow accounts for contracts awarded prior to January 1, 2004. Of the \$1,611,799 disbursed from the 42 escrow accounts, Purchasing Agent Aaron Fairbanks directed the issuance of 16 checks totaling \$30,900 without authorization to an unrelated vendor. In June 2008, Mr. Fairbanks personally purchased a \$1,032 cashier's check and sent it to a contractor as part of the contractor's final payment. We issued a finding for recovery against Mr. Fairbanks for the remaining \$29,868 for public monies illegally expended. On November 21, 2008, Mr. Fairbanks pleaded guilty to a charge of theft in office. Mr. Fairbanks also pleaded guilty to a charge of bribery in connection with matters unrelated to the issues examined in the scope of this special audit. He was sentenced on December 15, 2008 to 180 days in jail and ordered to pay restitution of \$29,868.

Contrary to the Ohio Revised Code, Mr. Fairbanks established 29 of the escrow accounts as checking accounts of which eight incurred service charges totaling \$319. Mr. Fairbanks deducted the service charges from each of the affected contractors' final payment. We issued a finding for recovery against Mr. Fairbanks for \$319 of public monies illegally expended.

We made three noncompliance citations for failing to establish escrow accounts as savings accounts; not entering into a written escrow agreement; and failing to withhold the required eight percent of retainage from the contractors' payments.

We made one management recommendation for HCEO to monitor the establishment, deposits into, withdrawals from, and the closing of contractor escrow accounts.

2. On June 9, 2009, we held an exit conference with the following individuals representing the Hamilton County Engineer's Office:

William W. Brayshaw, Engineer  
Ted Hubbard, Chief Deputy Engineer  
Jim Harper, Assistant County Prosecutor  
Judith L. Sellmeyer, Office Manager

The attendees were informed that they had five business days to respond to this special audit report. A response was received on June 9, 2009. The response was evaluated and changes were made to this report as we deemed necessary.



**Mary Taylor, CPA**  
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April 24, 2009

## Supplement to the Special Audit Report

### Background

During the week of June 9, 2008, a contractor contacted HCEO and stated they had not received their final project payment. Upon examination of the contractor's escrow account, HCEO determined checks were improperly issued to an unrelated company. Based on these results, HCEO contacted the Hamilton County Prosecuting Attorney's Office (HCPAO) for further assistance.

On June 17, 2008, HCEO placed its purchasing agent, Aaron Fairbanks on suspended leave with pay.

On June 18, 2008, HCEO placed Mr. Fairbanks on suspended leave without pay.

On June 18, 2008, the HCPAO notified the Auditor of State (AOS) Cincinnati Regional Office of a potential theft of HCEO escrow funds.

On June 25, 2008, AOS representatives met with HCPAO and HCEO representatives to discuss the alleged theft. As HCEO's escrow agent, Mr. Fairbanks' responsibilities included establishing the escrow accounts, depositing the withheld funds into the escrow accounts, and disbursing funds plus interest earned to the contractor at the project's completion. HCPAO's investigation revealed the unauthorized checks issued from the account were cashed by Mr. Fairbanks at a local convenience store.

In a June 25, 2008 letter, HCEO requested the AOS conduct an audit of HCEO's escrow activity to determine whether other instances of personal use of escrow funds existed.

On July 8, 2008, the AOS initiated a special audit of the escrow accounts maintained by HCEO.

On November 14, 2008, HCEO terminated Mr. Fairbanks' employment.

On November 21, 2008, Mr. Fairbanks pleaded guilty to charges of theft in office and bribery. On December 15, 2008, Mr. Fairbanks was sentenced to serve 180 days in jail and ordered to pay restitution of \$29,868.

## Supplement to the Special Audit Report

### Issue No. 1 – Escrow Accounts

#### PROCEDURES

We examined Hamilton County Commission minutes and identified contracts awarded by the Hamilton County Commissioners on behalf of HCEO during the Period.

For the identified contracts, we examined the contracts and determined whether escrow accounts were required to be established to account for amounts withheld.

For each contract requiring an escrow account, we determined whether such an account was established and whether the funds withheld from contractor payments were deposited into the established accounts.

We examined available documentation supporting escrow account disbursements and determined whether the disbursements were in accordance with contractual provisions and the Ohio Revised Code.

#### RESULTS

When soliciting bids for a county construction project, HCEO included a contractual provision requiring eight percent of the invoice amount submitted be withheld as retainage to ensure the project was completed. When a contractor invoiced 50% of the contract amount, HCEO and the contractor opened a joint escrow bank account. HCEO deposited the retained funds into the escrow account. Once HCEO approved the project's completion, the escrowed funds and interest earned were disbursed to the contractor. Once disbursed, HCEO closed the bank account.

During the Period, the Hamilton County Commissioners awarded 139 contracts on behalf of HCEO. Of those 139 contracts, 39 contracts required the establishment of an escrow account. HCEO also opened three escrow accounts in 2004 and one escrow account in 2005 for contracts awarded prior to January 1, 2004. We examined the activity in all 43 escrow accounts.

When the contractor requested payment for 50% of the contract price, HCEO established and deposited the required retained funds into the escrow account for 42 of the 43 contracts. For the remaining contract, HCEO deposited the retained funds into the contractor's business account instead of an escrow account. We noted the escrowed funds were deposited up to 118 days after the check was issued by the Hamilton County Auditor's Office.

During the Period, Mr. Fairbanks directed disbursements totaling \$1,611,799 from the escrow accounts. In reviewing these payments, we identified 16 checks totaling \$30,900 not issued to the contractor completing the project but instead to an unauthorized local business.

#### FINDING FOR RECOVERY

##### Unauthorized Escrow Disbursements

During our examination, we identified the following in two escrow accounts:

- Thirteen checks totaling \$24,000 were issued to RHT Consulting. Through its investigation, the Hamilton County Prosecutor's Office determined these checks were cashed by Mr. Fairbanks at a local convenience store.
- Three cashier checks totaling \$6,900 were purchased and issued to RHT Consulting using funds withdrawn by Mr. Fairbanks from an escrow account.

Mr. Fairbanks withdrew these funds for personal expenses. On June 11, 2008, Mr. Fairbanks personally purchased a \$1,032 cashier's check and issued it to one of the two contractors for the funds he withdrew from the contractor's escrow account.



## Supplement to the Special Audit Report

Mr. Fairbanks also established eight checking accounts contrary to Ohio Revised Code Section 153.63(A) resulting in HCEO reducing eight contractors' final payment for unauthorized service charges totaling \$319.

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 Aaron Fairbanks for \$30,187, in favor of the Hamilton County Engineer's Office

### NONCOMPLIANCE CITATIONS

#### Escrow Bank Accounts

Ohio Revised Code Section 153.63 (A) states in pertinent part, "(a)ny money which is due from the public owner referred to in section 153.12 of the Revised Code under a contract entered into under this chapter or entered into under other applicable sections of the Revised Code for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decoration of a public improvement shall, on the day it is due, be paid to the contractor or deposited in an escrow account, whichever is applicable, with one or more banks or building and loan associations in the state selected by mutual agreement between the contractor and the public owner. The agreement shall contain the following provisions:

- (1) The money shall be deposited in a savings account or the escrow agent shall promptly invest all of the escrowed principal in obligations selected by the escrow agent, as stipulated in the agreement.
- (2) The escrow agent shall hold the escrowed principal and income until receipt of notice from the public owner and the contractor, or until receipt of an arbitration order or an order of the court of claims specifying the amount of the escrowed principal to be released and the person to whom it is to be released. Upon receipt of the notice or order, the agent shall promptly pay such amount of principal and a proportionate amount of the escrowed income to the person indicated....

The agreement may include other provisions not inconsistent with this section, including, but not limited to granting authority for the escrow agent to commingle the escrowed funds with funds held pursuant to other escrow agreements and limiting the liability of the escrow agent."

Contrary to these requirements, HCEO:

- Deposited escrowed funds into 30 checking accounts, six money market accounts and one certificate of deposit. For the escrowed funds deposited into checking accounts, HCEO reduced eight contractors' final payment for unauthorized service charges totaling \$319.
- Deposited escrowed funds totaling \$69,560 into the business accounts for two contractors and not the required escrow bank account. Upon discovery for one of the two contracts, HCEO transferred the escrowed funds from the contractor's regular business account to a separate escrow account for subsequent disbursement.

We recommend HCEO review relevant Ohio Revised Code sections governing the establishment and closing of escrow accounts and implement procedures to ensure compliance with the identified requirements.

#### Written Escrow Agreements

Part IV, Section G of the Contractor's Bid Package completed by the contractors contained a written escrow agreement. The escrow agreement required the signature of the county administrator and the contractor identifying the agency acting as the escrow agent and the bank the escrowed funds were to be deposited.

During the Period, HCEO did not enter into a written escrow agreement for 38 contracts. In addition, HCEO and the contractor only signed three of the six agreements provided for examination.

We recommend HCEO representatives monitor the establishment of escrow funds and verify a signed agreement is in place prior to the establishment of the fund.

## Supplement to the Special Audit Report

### Retainage Withheld

Ohio Revised Code 153.12(A) states in part, "...Partial payments to the contractor for labor performed under either a unit or lump sum price contract shall be made at the rate of ninety-two per cent of the estimates prepared by the contractor and approved by the architect or engineer. All labor performed after the job is fifty per cent completed shall be paid for at the rate of one hundred per cent of the estimates submitted by the contractor and approved by the architect or engineer."

HCEO did not withhold the required retainage amount from contractor's payments for four projects and did not establish the required escrow accounts for \$12,372 of retainage withheld. Failing to withhold the required retainage reduces the leverage held by HCEO to ensure the project is completed to its satisfaction.

We recommend a HCEO representative review the contractor's requests for payment to verify the calculation of retainage amount is accurate and should verify the amount retained was deposited into an escrow account in accordance with Ohio Rev. Code Section 153.63.

### **MANAGEMENT RECOMMENDATION**

#### Escrow Account Monitoring

For each contract requiring an escrow account, an interdepartmental memo and the related county auditor check was sent to the purchasing agent to establish an escrow account. Once the contract was complete, another interdepartmental memo was sent to the purchasing agent releasing the escrowed funds. HCEO was unable to provide the associated memo documenting the approval to release funds to 22 contractors. We also noted 16 checks totaling \$30,900 were issued to an unrelated vendor and one check for \$7,887 was deposited into another contractor's escrow account.

Failing to monitor escrow account activity to ensure the type of account, the amount deposited, and the amount disbursed were authorized and in accordance with the Ohio Revised Code may result in unauthorized disbursement of public funds.

We recommend HCEO conduct periodic reviews of the escrow account activity to determine whether the account was established in accordance with applicable Ohio Revised Code sections; whether funds to be deposited were in fact deposited into the required account; and whether only authorized disbursements were issued from the account.



**Mary Taylor, CPA**  
Auditor of State

**HAMILTON COUNTY ENGINEERS OFFICE**

**HAMILTON 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  
JUNE 30, 2009**