

# OFFICE OF THE CITY AUDITOR

## **SPECIAL AUDIT OF THE ACCOUNTS AND TRANSACTIONS OF FORMER CITY ATTORNEY, MADELEINE JOHNSON**



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September 23, 2005

## Memorandum



CITY OF DALLAS

September 23, 2005

Honorable Mayor and Members of the City Council  
City of Dallas

We have performed a special audit of the accounts and transactions of the former City Attorney, Madeleine Johnson. The objectives of our audit were to ensure that the former City Attorney was not in debt to the City, that she was removed as an authorized agent of the City of Dallas and that the accounts and transactions were controlled and accounted for properly.

We determined that the City overpaid the former City Attorney a net amount of \$16,124.94. The overpayment resulted from mistakes in computing sick leave pay and reimbursement of pension contributions.

We shared the results of the special audit with Madeleine Johnson. Ms. Johnson responded by issuing a memorandum specifying the details of her repayment. We have attached her memorandum at the end of our report.

The Chief Financial Officer needs to recover the overpayment and improve the final payment process. These issues are addressed in the Opportunities for Improvement section of this report.

We appreciate the cooperation shown by staff during our audit.

Paul T. Garner

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Assistant City Auditor

c: Mary K. Suhm, City Manager

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**SPECIAL AUDIT OF THE ACCOUNTS AND TRANSACTIONS OF THE  
FORMER CITY ATTORNEY, MADELEINE JOHNSON**

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**CONTENTS**

	<b>PAGE</b>
INTRODUCTION	1
Authorization	1
Scope and Methodology	1
Overall Conclusion	1
Background	2
OPPORTUNITIES FOR IMPROVEMENT	3

## **Authorization**

We have conducted a special audit of the account and transactions of the former City Attorney, Madeleine Johnson. This audit is required by Chapter IX, Section 3, of the Dallas City Charter.

## **Scope and Methodology**

We performed our audit in accordance with generally accepted government auditing standards and included tests of the records and other audit procedures that we considered necessary in the circumstances. Our audit covered June 7, 1999 through April 30, 2005, although we examined certain events and transactions occurring before and after that period.

The objectives of our audit were to ensure that:

- The former City Attorney was not in debt to the City.
- The accounts of the former City officer were reviewed and City assets are controlled and accounted for properly.
- All transactions between the City and other entities approved by the former City officer were controlled and accounted for properly.
- The former City officer was removed as an authorized agent of the City of Dallas.

To achieve our audit objective we reviewed:

- Applicable Ordinances, Contract/Agreements and check list items.
- Payroll documents.
- The removal of the former City Attorney as an authorized agent for the City of Dallas.
- The removal of the former City Attorney's authorized access to City records, files and facilities and her email account.

In addition we interviewed staff and consulted outside counsel regarding the tax treatment of certain salary issues.

## **Overall Conclusion**

As a result of our inquiries and analysis, we conclude that:

- The City overpaid the former City Attorney for 184 hours of sick leave and pension contributions previously reimbursed. In addition, the City did not reimburse the former City Attorney for pension contributions made on her final pay period and her lump sum vacation. These conditions resulted in a net overpayment of \$16,124.94.
- The accounts of the former City Attorney were reviewed and City assets are controlled and accounted for properly.

## **INTRODUCTION**

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- All transactions between the City and other entities approved by the former City Attorney were controlled and accounted for properly.

The Opportunities for Improvement section of this report addresses these areas in more detail.

### **Background**

The City Charter created the Legal Department and the appointment of the City Attorney to serve for a period of two years. Duties include:

- Investigate, settle, and recommend disposition of all claims against the city that are alleged to have resulted from any act or omission of an officer, servant, or employee of the city.
- Prosecute all cases brought before the municipal court.
- Apprise the City Council, City Manager and department personnel of new or proposed legislation affecting the City.

Former City Attorney Madeline B. Johnson was appointed as the City Attorney effective June 7, 1999. She resigned effective April 1, 2005.

At the time of her resignation the former city attorney had 536 hours of accumulated sick leave and 152.2 hours of unused vacation leave.

Special Audit of the Accounts and Transactions of the Former City Attorney, Madeleine Johnson

## OPPORTUNITIES FOR IMPROVEMENT

We identified certain policies, procedures, and practices that can be improved. Our audit was not designed or intended to be a detailed study of every relevant system, procedure, and transaction. Accordingly, the opportunities for improvement presented in this report may not be comprehensive of the areas where improvements may be needed.

### 1. The Former City Attorney was over paid

A. The City overpaid the former City Attorney for 184 hours of sick leave. We observed that Ms Johnson's final pay was calculated using 720 hours of sick leave and 152.2 hours of vacation leave. Ms Johnson was paid for 720 hours of sick leave even though her balance was 536 hours. Payroll misinterpreted the provision in her contract that stated she would receive a lump sum payment of all accumulated sick leave, up to 720 hours, remaining to her credit. The net effect of the sick leave overpayment was \$12,955.15. Due to Internal Revenue rules and the fact that this overpayment occurred in the current year, the net overpayment is due. The City will recover the Medicare and income taxes paid by adjusting current year tax payments.

Hours Overpaid	Rate <sup>1</sup>	Gross	Medicare Withheld	ERF Pension Withheld	Income Taxes Withheld	Net Overpayment
184	\$95.73	\$17,614.08	255.41	N/A	\$4,403.52	<b>\$12,955.15</b>

B. Additionally, the Office of Financial Services (OFS) discovered the City erroneously forwarded a refund from the Employee Retirement Fund (ERF) to the former City Attorney. According to Ms. Johnson's employment contract, the City shall provide direct payments as reimbursement of the employee contributions made by Ms. Johnson into the ERF. The refund was for excess contributions made by Ms. Johnson. Since the City previously paid Ms. Johnson for contributions made by her to the ERF, any refund of excess amounts should have gone to the City. Due to Internal Revenue Tax rules and the fact that the overpayment occurred in the prior year (2004), the gross amount less Medicare payments is due. The City will recover the Medicare taxes paid by adjusting current year Medicare payments. However tax rules do not allow income taxes paid on prior year wages to be adjusted currently. The gross amount less the Medicare tax is **\$3,922.73**.

(A) ERF Refund Gross Amount	(B) Medicare Withheld	Income <sup>2</sup> Taxes Withheld	(A) – (B) Amount Subject to Repayment
\$3,980.47	57.74	\$1,180.74	<b>\$3,922.73</b>

C. Finally, OFS realized that ERF contributions made by Ms. Johnson for the last pay period of her employment (\$149.34) and the lump sum vacation payment

<sup>1</sup> Actual Rate is \$95.7287 per hour; the \$95.73 figure is shown for presentation.

<sup>2</sup> Internal Revenue Tax rules do not allow taxes on prior year wages to be adjusted currently.

Special Audit of the Accounts and Transactions of the Former City Attorney, Madeleine Johnson

## OPPORTUNITIES FOR IMPROVEMENT

(\$947.04) had not been reimbursed. These amounts totaled \$1,096.38. Due to Internal Revenue rules and the fact that these reimbursements were for this current year the net of **\$752.94** is due to Ms. Johnson.

Description	Gross	Medicare	ERF Pension	Income Taxes	Net
ERF contributions due reimbursement	\$1,096.38	\$15.90	\$71.26	\$256.28	\$752.94

**The effect of the sick leave overpayment, ERF Refund, and ERF reimbursements is as follows:**

Description	Amount
Add Sick Leave Overpayment	\$12,955.15
Add ERF Refund Overpayment	\$3,922.73
Subtract ERF contributions not reimbursed	<b>\$752.94</b>
<b>Net Overpayment</b>	<b>\$16,124.94</b>

**We recommend** that the Chief Financial Officer recover the overpayment and ensure that payouts are based on actual leave accruals and in accordance with City policies and procedures.

Note: We shared these results with Madeleine Johnson. Ms. Johnson responded by issuing a memorandum specifying the details of her repayment. We have attached her memorandum at the end of our report.

### **2. The cost consideration related to the reappointment of the City Attorney was not accurate.**

On October 24, 2001 the City Council passed a resolution reappointing Ms. Johnson and amending her contract to allow a lump sum payment on all accumulated sick leave up to 720 hours remaining to her credit upon her termination. The resolution stated no cost consideration would result from this action. Ms. Johnson terminated with less than 6 years of City service.

This contract term contradicted City Personnel Rule Section 34-22 which allows for a lump sum payment of sick leave of up to 720 hours remaining to the employees' credit, upon retirement of **20** years of service.

Ms. Johnson did not meet these provisions for lump sum payment of sick leave. The cost for her lump sum payout of 536 sick leave hours amounted to \$51,310.

**We recommend** that the City Manager ensure that resolutions note accurate cost considerations and that the City Attorney ensure that employment contracts are in compliance with established City Personnel rules.