

June 7, 2000

The Honorable Janet Napolitano
Office of the Attorney General

Governing Board
Fort Mojave Mesa Fire District

At the request of the Office of the Attorney General, we have conducted a limited investigation of the alleged conflict of interest and misuse of public monies during the period May 1994 through February 2000 at the Fort Mojave Mesa Fire District. The purpose of our investigation was to determine whether there was a conflict of interest and the amount of money misused during that period, if any, and whether the District's internal controls over cash receipts and disbursements were adequate to prevent their misappropriation.

Our limited investigation consisted primarily of inquiries and examining selected records and documents. Therefore, our investigation was substantially less in scope than an audit conducted in accordance with generally accepted auditing standards. Accordingly, we do not express an opinion on the adequacy of the financial records or the internal controls of the Fort Mojave Mesa Fire District. We also do not ensure that all matters involving the District's internal controls that might be material weaknesses under standards established by the American Institute of Certified Public Accountants or other conditions that may require correction or improvement have been disclosed.

The findings and recommendations resulting from our limited investigation are set forth below.

Background

The Fort Mojave Mesa Fire District was established in 1969 as a Special Taxing District within Mohave County pursuant to Arizona Revised Statutes Title 48, Chapter 5. It serves a 64-square mile area with approximately 40 full- and part-time employees, and is governed by five elected board members. The District is funded primarily with property taxes collected by the Mohave County Treasurer's Office. It also receives fees for ambulance services to individuals as well as income from an intergovernmental agreement with the Fort Mojave Indian Tribe for fire protection and emergency medical services. Total revenues for fiscal year 1998-99 were \$2,164,634.

Summary

Our investigation revealed that from May 1994 through February 2000, certain actions of the Fort Mojave Mesa Fire District Chief constituted misconduct. In fact, he may have violated laws governing the administration of public monies, including those that restrict conflicts of interest, prohibit the misuse of public money, and prohibit giving or accepting unauthorized benefits (emoluments). The Fire Chief also repeatedly used District resources for his own benefit. In addition, the Fire Chief and other District officials failed to perform their duty to prudently manage District affairs. Finally, the Administrative Assistant to the Fire Chief received extra benefits and may have violated laws that prohibit falsifying public records. See the Appendix for a list of specific Arizona Revised Statutes that relate to our findings.

Our investigative process was unduly hampered by a lack of responsiveness from certain District employees and one District vendor. The District failed to provide numerous items we requested. These included standard documents such as ledgers, receipts, invoices, and support for payroll deductions. Further, toward the end of our investigation, the Fire Chief and his wife, who had been a District vendor, declined to meet with us; consequently, we were unable to discuss certain issues with them.

The Fire Chief's Actions Constituted Misconduct

The Fire Chief authorized or allowed activities from which he improperly profited. He may have also violated statutes that restrict conflicts of interest and the use of public money. In addition, the Fire Chief caused the District to make an unnecessary expenditure of public monies for Social Security taxes in arrears. Finally, by using public money to pay for a supplementary insurance policy, he also accepted unauthorized benefits (emoluments).

The Fire Chief's actions created a conflict of interest

The Fire Chief used his position to create opportunities for his personal benefit. He allowed his wife, an insurance agent, exclusive access to District personnel. He also failed to acknowledge his proprietary interest with another governmental entity, despite this entity's ongoing business with the District.

The Fire Chief personally benefited from the District's purchase of universal life insurance policies

In 1995, the Fire Chief created or allowed conditions that caused the District to pay premiums on life insurance policies valued over \$500,000. His wife was the only

insurance agent who presented certain employees the opportunity to purchase these policies. Consequently, any and all commissions earned by his wife on the sale of these policies unjustly enriched the Fire Chief.

Internal Revenue Service publication 963 states that Social Security taxes must be withheld, matched by the employer, and paid for any employee not participating in a qualified state retirement system. Until 1995, the District did this for certain employees whose only retirement benefit was Social Security. In 1995, the Fire Chief inappropriately caused or allowed the withholdings, matching, and payments to be stopped. At the same time, he reportedly told these employees they could participate in another retirement program and required them to attend a meeting held at the main fire station to hear the details. Employees stated that during the meeting, the Fire Chief's wife, an insurance agent, told them the District would pay the premiums of universal life insurance policies she was selling. Universal life insurance policies can provide retirement benefits as they allow for the owner to accumulate cash value on a tax-deferred basis.

The employees' choices were restricted. They reported that the Fire Chief's wife was the only insurance representative at the meeting; they were not offered an opportunity to review any policies other than those the Fire Chief's wife was selling; and they were not given the option of remaining with Social Security or enrolling in another retirement plan, such as the Arizona State Retirement System. Many employees stated that the Fire Chief basically offered the universal life insurance policies as a "take it or leave it" proposition.

The Fire Chief failed to provide this group of employees with a qualified federal or state retirement program and unduly restricted competition. As a result, he personally benefited from commissions his wife earned on the sale of these policies, which the District paid for with public monies.

Eventually, the District was required to pay the Internal Revenue Service for the Social Security taxes. (See page 4.)

The Fire Chief personally benefited from the District's purchase of a health insurance policy

For the 1994-95 fiscal year, the same insurance agent sold the District an employee health insurance policy valued at about \$86,000.

The Fire Chief did not evaluate policies from any other insurance agents, and the transaction occurred just months before the agent's marriage to the Fire Chief. In fact, the transaction occurred while they were sharing a household and expenses.

The Fire Chief affirmed that a conflict existed and he benefited financially from the circumstances. However, he made no attempt to obtain health insurance price quotations from his wife's competitors until the following fiscal year.

The Fire Chief failed to declare his conflict with a District intergovernmental agreement

The District has a ten-year agreement with the Fort Mojave Indian Tribe for fire protection and emergency medical service that specifically identified the Tribe's resort casino, a wholly-owned subsidiary. The Fire Chief signed this agreement and has been substantially involved in its implementation.

As individuals, the Fire Chief and his wife also conducted business with the subsidiary. Financial records from 1998 and 1999 indicate that the Fire Chief and his wife received a personal benefit of at least \$14,000 from their private business venture with the resort casino. In addition, the Fire Chief admitted to having personally received in-kind gratuities from the resort casino.

Arizona Statutes require public officials to disclose this sort of financial interest in their agency's official records and refrain from participating in matters associated with their agency's contracts. The Fire Chief failed to comply with those requirements.

The Fire Chief's actions also caused unnecessary expenditures of public monies

In 1995, the Fire Chief improperly caused or allowed the District to stop withholding, matching, and paying Social Security taxes for certain District employees. These employees were offered universal life insurance policies, paid by the District, as alternative retirement benefits. (See page 3.)

The District's fiscal year 1997-98 Independent Auditor's Report on Internal Control Structure Based on an Audit of Basic Financial Statements Performed in Accordance with Government Auditing Standards reported that the District should withhold Social Security taxes on employees not participating in a qualified state retirement system and file amended returns.

Consequently, the District resumed withholding, matching, and paying Social Security taxes in 1998. The District also filed amended returns for calendar years 1995, 1996, and 1997, and paid the IRS approximately \$55,000 in back taxes. This amount included both the employer and employee portions of the tax, but did not include any potential interest and penalties that may be assessed.

Because of the Fire Chief's actions, the District unnecessarily paid the employee portion of the Social Security taxes for these three years and may be subject to additional penalties and interest after the IRS reviews the amended returns. In addition, the district paid the premiums for universal life insurance policies for these employees for at least three years. The District failed to provide us with sufficient records to determine whether it stopped paying the insurance premiums in 1998 when it resumed paying the Social

Security taxes. However, the records we obtained indicated that the District paid the premiums for at least one employee until April 1999. (See pages 7 and 8.)

The Fire Chief misused public monies for his own benefit

From October 1997 through November 1999, the Fire Chief spent over \$4,500 of public money on unauthorized health and dental insurance policies for a member of his family.

These policies were supplementary to the Fire Chief's traditional family health and dental insurance that covers dependents and were reportedly paid without the consent or knowledge of Board members. In fact, Board minutes related to the Fire Chief's hiring lack all indications that the District was to provide any family health insurance, much less extra policies for individuals outside of the usual family coverage.

Moreover, the District's merit policy prohibits the District from paying for any health insurance premiums other than the employee's. The Fire Chief provided a written statement that he was hired, without a contract, under the District's merit policy.

Accordingly, the Fire Chief's expenditure of \$4,500 of public monies for supplemental health and dental insurance policies for an individual apart from his family coverage was an unlawful use of those monies.

The Fire Chief Also Misused Other District Resources

On several occasions, the Fire Chief used District resources, including personnel, fire equipment, and vehicles, for his personal benefit.

Article IX, Section 7 of the Arizona Constitution and Arizona Attorney General Opinion I85-051 allow public officials a private benefit only under special circumstances. First, the private benefits must be incidental to providing a public service. Next, the cost of that private benefit should be less than the cost of providing the public service; at most, it may exceed the cost of the public service by only a very small amount. The Fire Chief did not meet this test. His private benefit is not connected to providing a public service.

- ◆ On numerous occasions from 1996 through 1998, the Fire Chief used the District-issued cellular phone for personal calls. Many were long-distance calls placed while he was on annual leave and traveling outside of Arizona.
- ◆ In 1995, 1996, and 1997, while on annual leave, the Fire Chief used the District-issued vehicle to drive to the Phoenix area with family members. Further, the Fire Chief misrepresented at least two fuel purchases made when the vehicle was used for his vacation. He claimed the travel pertained to District business.

- ◆ In 1998, the Fire Chief personally used the District vehicle to travel to Nevada to sell fireworks, a family business activity.
- ◆ Numerous employees stated that from 1996 through 1998, they were often directed to deliver food, drinks, condiments, tables, and chairs to the Fire Chief during special events at a local resort casino to be used for his personal business activities. Employees, while on duty, used District pick-up trucks and fire engines to bring these items to the Fire Chief, and on at least one occasion, transported some of his family members and friends to a special event.
- ◆ In 1996, the Fire Chief purportedly commanded a firefighter to leave his station and provide musical entertainment services at a personal event the Fire Chief was holding. The Fire Chief's action left the District's citizens vulnerable because no one was made available to fill the firefighter's shift. In addition, the Fire Chief did not reimburse the District the cost of the firefighter's salary for that duration.

District policy requires all personnel and equipment to be used in such a manner as to benefit its citizens. No personnel or equipment may be loaned for an individual's profit. Further, all equipment loans are to be recorded on an equipment loan sheet. Nevertheless, the District was unable to provide documentation that any of the uses of District personnel and equipment described were within that policy.

The Fire Chief Failed to Fulfill Certain Responsibilities and Violated District Policies

The Fire Chief often failed to perform principal duties and responsibilities associated with District operations and violated certain District policies. Instances of such nonfeasance are described below.

The Fire Chief failed to implement adequate controls over petty cash

The District's audit reports for fiscal years 1996-97, 1997-98, and 1998-99 all included recommendations for improving internal controls over petty cash transactions. The limited documentation available for our review of petty cash indicated that the Fire Chief failed to follow District policies concerning the use of petty cash. For example, employees received cash in amounts greater than the \$25 limit and for purchases that required authorization on an Expenditure Request form. Specifically, the Fire Chief took \$100 cash for a District trip to Phoenix and did not provide receipts. Another \$40 payment, supposedly for a retirement party, was not signed for and no receipts were provided. Other improper payments were made for such things as cake, ice cream, pizza, and even payroll.

The District did not adequately document an accident

District policy requires an Incident Review Committee to investigate and examine reports regarding all accidents with District vehicles. Further, the employee involved in the accident is responsible for obtaining at least three damage estimates. However, the District was unable to provide such documentation for a 1995 accident that occurred when the Fire Chief's brother, who was not a District employee, was driving a District vehicle. The District paid the automobile dealership over \$700 for repairs.

The Fire Chief improperly permitted some employees to discontinue professional certification

District policy requires all exemptions from Emergency Medical Technician (EMT) certification to be approved by the elected officials. However, the Fire Chief permitted at least two employees to discontinue their EMT certification without the Board's knowledge or approval. Moreover, one of these employees is responsible for assuming command at fire and emergency calls when necessary.

The Fire Chief obligated the District to guarantee payment of employees' cellular phone charges

In 1997, without the Board's specific knowledge or consent, the Fire Chief entered into a contract with a private business that unlawfully obligated the District to pay for the personal cellular phone charges of individual District employees in the event of their default. In 1998, the District paid this private business over \$800 for the personal cellular phone bill of a former employee. In order to recover this money, the District had to retain an attorney and pursue the matter in the court system. Although the former employee eventually paid the District for the cellular phone bill and a majority of the attorney fees, the Fire Chief used public resources for a non-public purpose. Further, Arizona statutes prohibit the loaning of public money.

The Administrative Assistant to the Fire Chief Received Extra Benefits and Falsified District Records

The administrative assistant received extra benefits

The District paid the premiums for universal life insurance policies for certain District employees. (See pages 2 and 3.) In 1995, for all but one employee, the District contributed approximately 7 percent of the employee's salary for the policy premiums. However, for the administrative assistant to the Fire Chief, the District paid

approximately 23 percent of her salary as policy premiums. The District continued to contribute a higher percentage towards the administrative assistant's policy until April 1999.

***The administrative assistant
falsified District records***

In June 1999 and August 1999, the Fire Chief's administrative assistant acted with misconduct by knowingly and without lawful authority creating false financial records of the District's public business.

Although included in our June 1999 request for District records, the District never provided legitimate petty cash ledgers. Instead, the Fire Chief's administrative assistant provided approximately three years, the time period requested, of recreated petty cash ledgers without asserting that the records were in fact counterfeit. These petty cash ledgers were false, mathematically inaccurate, and excluded numerous transactions. The Fire Chief's administrative assistant also later admitted to creating at least one false petty cash reimbursement form.

As a result of this deception and not receiving authentic petty cash ledgers, our investigation was limited and we were unable to determine the propriety of petty cash expenditures.

**District Officials Failed to Perform
Certain Fundamental Duties**

Current and former members of the Fire District Board failed to perform fundamental duties required to conduct District business. The Board failed to adequately document Board actions and proceedings and failed to establish a written employment contract for the Fire Chief.

***The Board failed to adequately document
public meetings and proceedings***

- ◆ The District was unable to provide specific Board meeting minutes.
- ◆ The Board may have held two unlawful executive sessions in 1996. The agendas posted to notify the public of executive sessions stated the purposes were to discuss personnel matters. However, the meeting minutes do not reflect that personnel matters were discussed. The minutes either indicated that the Board discussed legal issues or did not state what was discussed. Further, all legal issues must be discussed with an attorney, yet the minutes did not identify if an attorney was present. In fact, the Board voted to retain an attorney one week after these meetings.

- ◆ Although required to provide employees with notice that certain discussions of their employment status may be discussed at a public, rather than executive session meeting, the District did not provide documentation to verify that such notification occurred.
- ◆ Required components of meeting minutes, such as meeting place, description of legal actions proposed, members proposing motions, and time adjourned were frequently omitted or were inadequate.

The Board failed to adequately document an internal investigation

Certain former Board members reportedly conducted an internal investigation which resulted in an employee being placed on administrative leave; however, neither Board meeting minutes nor the employee's personnel file contained a written report or reprimand.

The Board failed to execute a written employment contract with the Fire Chief

The Board did not establish a written employment contract with the Fire Chief when he was hired. They also failed to clarify his duties and terms of employment during subsequent performance evaluations. The Arizona Fire District Association Handbook strongly recommends that fire districts execute a contract with the fire chief. The handbook details the terms the written contract should cover, and provides a sample employment contract.

The Board failed to actively oversee District business

In March 2000, the Board contracted with a private firm to evaluate the administration and operation of the Fire District. The resulting report stated that the District's fiscal management and budget process is ineffective and does not encourage accountability. Board members did not review expenditures nor did they approve debts that were determined to be uncollectible. Further, District policies and procedures were not always congruent with the merit policy.

Recommendations

The Fort Mojave Mesa Fire District, as a governmental entity, is responsible to the citizens of Mohave County for the prudent use of public money and resources. District management should attempt to obtain monies inappropriately spent. Further, to help ensure proper control over public monies and judicious use of its resources, District management should implement and enforce policies and procedures that aid the District in efficiently carrying out its statutory duties. These policies and procedures should ensure compliance with the Arizona laws governing public entities. Specifically, District management should be cognizant of conflict-of-interest and open meeting laws, as well as statutes regarding the handling of public money and records. Management should also ensure the salary and benefits of all officers and employees do not exceed what is provided by law. District officers should ensure they appropriately conduct public business by reviewing and revising current policies to effect a consistent and a proactive management philosophy.

The Arizona Fire District Association Handbook states in part that a Fire District must conduct its affairs with uncompromising honesty and integrity. People at every level should be expected to adhere to the highest standards of business ethics, and to understand that anything less is unacceptable. District management should commit the Fire District to operating according to the standards published in this handbook.

This letter is intended for the information of the Fort Mojave Mesa Fire District. However, this letter is a matter of public record and its distribution is not limited.

We have reviewed this letter with the Fire District Board members; but should you have any further questions concerning its contents, please let us know.

Debbie Davenport
Auditor General

Appendix

Conflict of Interest

A.R.S. §38-503 (A) states, “A public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.”

A.R.S. §38-504 (C) states, “A public officer or employee shall not use or attempt to use the officer’s or employee’s official position to secure any valuable thing or valuable benefit for the officer or employee that would not ordinarily accrue to the officer or employee in the performance of the officer’s or employee’s official duties if the thing or benefit is of such character as to manifest a substantial and improper influence on the officer or employee with respect to the officer’s or employee’s duties.”

Misuse of Public Money

A.R.S. §35-301 states, “A public officer or other person, including justices of the peace and constables, charged with the receipt, safekeeping, transfer or disbursement of public money is guilty of a class 4 felony who: 1. Without authority of law, appropriates it, or any portion thereof, to his own use, or to the use of another.”

Excess Emolument (benefit)

A.R.S. §38-601 states, “State or county officers, employees, . . . shall receive the salary provided by law, and shall not, under any pretext, receive any salary or emolument in excess of the salary so provided.”

Altering Public Records

A.R.S. §38-421 states, “An officer having custody of any record, map or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who steals, or knowingly and without lawful authority destroys, mutilates, defaces, alters, falsifies, removes or secretes the whole or any part thereof, or who permits any other person so to do, is guilty of a class 4 felony.”

A.R.S. §35-301 states, “A public officer or other person, including justices of the peace and constables, charged with the receipt, safekeeping, transfer or disbursement of public money is guilty of a class 4 felony who: 5. Knowingly keeps a false account, or makes a false entry or erasure in an account of, or relating to it.”