

## Why are we issuing this alert?

From 2014 through 2023, we issued 32 financial investigation reports that included misuse of public monies charges associated with about \$3.8 million of Arizona public money losses. This alert outlines how certain instances of misuse of public monies occurred and what actions management can take to deter and detect it.

## What is misuse of public monies?

When we say someone has been indicted for misuse of public monies, that person has been charged with a violation of Arizona Revised Statutes (A.R.S.) §35-301, duties and liabilities of a custodian of public monies, a class 4 felony. For example, this person may be an officer or employee of a public entity who improperly manages public monies entrusted to them. Unlike other criminal violations such as fraudulent schemes or forgery, a guilty finding under the misuse of public monies statute does not require a person to either receive a personal benefit or have an intent to deprive or defraud anyone.<sup>1</sup>

### Misuse of public monies with no personal benefit—

Over the course of 7 months, a career and technical education district (CTED) superintendent prepared 3 false CTED purchase requisitions when she complied with an Arizona Department of Education CTE programs of study director's instruction to deposit in her personal business checking account \$7,500 of federal grant monies the director had awarded to the CTED. These monies were commingled with the superintendent's

business monies and spent for the director's benefit. Although the monies were not spent for the superintendent's benefit, the superintendent did not have the authority to deposit the public monies into her personal business account and disperse those public monies for improper purposes. Ultimately, both the superintendent and director were indicted on misuse of public monies charges. Because existing CTED controls lacked proper separation of duties or oversight, the superintendent was able to prepare purchase requisitions, submit invoices, and approve purchase orders that generated warrants payable to her personal business, enabling her to misuse public monies undetected.<sup>2</sup>

### Did you know?

A public officer or employee who misuses public monies can be found guilty of A.R.S. §35-301, a class 4 felony, even if they did not receive any benefit themselves.

## Can misuse of public monies also be theft?

Yes. In fact, of the 32 financial investigation reports we issued from 2014 through 2023 that included misuse of public monies, 31 also included allegations of theft, which, as a matter of course, included improper use of those public monies.<sup>3</sup>

**Misuse of public monies with personal benefit—**For almost 2 years, a school district office specialist embezzled \$7,417 when she admittedly "borrowed" the monies by issuing herself unauthorized district checks. She concealed her actions by not following district procedures. In particular, she failed to perform or provide for review checking account reconciliations and failed to obtain the second authorized signature on over half the checks, signing the majority herself. Additionally, the district failed to separate accounting responsibilities, allowing the office specialist to record and make deposits, have access to district check stock, prepare and sign district checks, and ostensibly reconcile checking account statements to district records, enabling her to take and misuse public monies undetected.<sup>4</sup>

<sup>1</sup> Arizona Revised Statutes §§13-2310 and 13-2002.

<sup>2</sup> See Arizona Auditor General, *Arizona Department of Education and Valley Academy for Career and Technical Education—Criminal Indictment—Misuse of Public Monies and Fraudulent Schemes*, Report 21-405.

<sup>3</sup> A.R.S. §13-1802 Theft; theft of property or services with a value of \$25,000 or more is a class 2 felony.

<sup>4</sup> See Arizona Auditor General, *Hyder Elementary School District—Criminal Indictment—Theft, Misuse of Public Monies, Fraudulent Schemes, and Forgery*, Report 23-401.

## What about borrowing or loaning public monies?

In the case described above, the office specialist made restitution to the district and resigned after the district discovered she took public monies. Taking a generous view, this might support her claim that she had “borrowed” the money. Is this, then, still misuse of public monies? As stated in A.R.S. §35-301, loaning public money violates the custodian’s duty of safekeeping public monies. Further, as illustrated in the graphic, this knowledge does not entail understanding that the loan was unlawful; the statute only requires knowing that the act was a loan of public monies. In this instance, the office specialist was indicted for misuse of public monies.

## How does this happen?

Public officials with oversight authority have a responsibility to prudently manage money entrusted to them and ensure that sufficient internal controls are designed and implemented to protect those monies. As seen in the examples above, internal controls were either inadequate or adherence to adequate internal controls was not enforced. Moreover, while theft and misuse of public monies are frequently intertwined, misuse of public monies is particularly pernicious in its effect of eroding public trust in public officials and institutions. The recommendations below can help public officials and management uphold proper stewardship principles of public monies and help prevent fraud, waste, and abuse.

### A.R.S. §13-105 (10)(b). Definition

**“Knowingly”** means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that the person’s conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

## Recommendations

- Provide ongoing training to all employees to impart the importance of properly managing public monies and include what does and does not constitute misuse of public monies.<sup>5</sup> This is especially important given that an employee may otherwise not know certain acts, like loans, are unlawful.
- Establish strong internal controls, including (1) proper separation of duties, (2) use of authorizations, (3) physical safeguards, (4) job rotations, and (5) mandatory vacations.
- Review the results of entity internal and external reviews and audits such as compliance questionnaire results completed by the school district’s independent audit firm to identify internal control deficiencies and establish corrective actions to ensure appropriate internal controls are known and followed.
- Ensure internal auditors, or the equivalent, have adequate resources and authority to operate effectively and without undue influence from entity officials.
- Conduct unannounced examinations of existing internal control procedures to detect potential misuse by employees or officials in positions of authority, ensure separation of duties, and prevent internal control overrides. These examinations should be independently supervised by a governing authority, such as a school district governing board or county board of supervisors.
- Conduct trainings that reinforce the governing authority’s support for, and insistence on, adherence to strong internal control procedures.
- Assess management’s “tone at the top” by periodically surveying employees to determine their evaluation of management’s attitude toward internal controls and ethics, making organizational or code of conduct changes as needed to ensure a strong ethical culture.
- Establish an effective mechanism for employees to report potential wrongdoing anonymously and/or confidentially without fear of reprisal.
- Hire ethical employees by performing criminal background and credit checks and training managers and human resources employees to conduct thorough and careful interviews.

<sup>5</sup> This alert addresses the first 2 of 10 misuse of public monies violations described in A.R.S. §35-301.