

LEGISLATIVE AUDITOR  
STATE OF LOUISIANA



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CITY OF MONROE

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COMPLIANCE AUDIT  
ISSUED FEBRUARY 16, 2005

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February 16, 2005

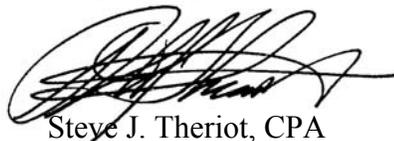
**HONORABLE JAMES E. MAYO, MAYOR,  
AND MEMBERS OF THE CITY COUNCIL  
CITY OF MONROE**  
Monroe, Louisiana

We have audited certain transactions of the Prosecuting Division of the City of Monroe Legal Department (City Prosecutor) in accordance with Title 24 of the Louisiana Revised Statutes. Our audit was performed to determine if forfeited bonds were enforced and collected as required.

Our audit consisted primarily of inquiries and the examination of selected City Prosecutor records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*; therefore, we are not offering an opinion on the City of Monroe's financial statements or system of internal control, nor assurance as to compliance with laws and regulations.

The accompanying report presents our findings and recommendations as well as management's response. Copies of this report have been delivered to the Mayor and Council members of the City of Monroe and others as required by state law.

Respectfully submitted,



Steve J. Theriot, CPA  
Legislative Auditor

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## Declining Revenues

The City of Monroe (City) is obligated to provide for the general operating expenses incurred by the Monroe City Court (Court), the City Marshal's Office (City Marshal), and the Prosecuting Division of the City of Monroe Legal Department (City Prosecutor). City resources are appropriated annually from the City's general operating account for such expenses including salaries and wages, fringe benefits, repairs and maintenance, leases and rentals, supplies, telecommunications, and utilities. In addition, the City pays for all other expenses incurred by the City Prosecutor. The City funds these mandatory expenditures largely through property taxes, the undedicated portion of general sales taxes, the sale of licenses and permits, the collection of franchise fees and criminal fines assessed by the Court, and revenue generated by rental of City property.

The City's general operating account benefits from revenue generated by the Court and the City Prosecutor. Although the Court is entitled to retain court costs, the City's general operating account receives all fines associated with violations of City ordinances. In addition, any surplus created in the Court's operation and expense fund in excess of \$90,000 at the end of the fiscal year should be remitted to the City.<sup>1</sup> A portion of the Court's operation and expense fund revenue is generated through the collection of forfeited surety bonds. These funds are used to fund temporary employee salaries, travel reimbursements, supplemental and capital inventory purchases, membership dues, and law library updates/subscriptions. The judges may use these funds to pay general operating expenses to help defray the City's costs.

The City Prosecutor is responsible for prosecuting violations of city ordinances and enforcing/collecting forfeited surety bonds. All revenue generated by the City Prosecutor is forwarded to the City's accounting division and controlled by the City Attorney.

Another beneficiary of funds generated by the Court and the City Prosecutor is the City Marshal, the executive officer of the Court. These funds, which are the City Marshal's only sources of income, are deposited into the City Marshal's General Fund account. Funds in this account are used to fund operating expenses, such as supplies, uniforms, and supplemental salaries, not paid by the City.

## Enforcement of Forfeited Bonds

The City Prosecutor is required by Louisiana law<sup>2</sup> to collect all forfeited bonds taken to secure the appearance of any person before the Court. For a forfeited surety bond to be collectible, a

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<sup>1</sup> **Monroe City Code 11-2** provides, in part, that any surplus, as hereinafter defined, created in such fund in excess of and beyond the needs for which the fund is created shall be paid by the judges into the general fund of the city. The term surplus or excess funds as used herein is defined as the April 30 operation and expense fund balance computed on the modified accrual basis of accounting in excess of ninety thousand dollars (\$90,000).

<sup>2</sup> **Louisiana Revised Statute 15:85** provides, in part, that all bonds taken to secure the appearance of any person before any court executed in the state of Louisiana shall be forfeited and collected. Following the defendant's failure to appear, the court shall sign a written judgment of bond forfeiture and the clerk of court shall promptly mail notice of the signing. Failure to mail proper notice within sixty days after the defendant's failure to appear shall release the sureties of any and all obligations under the bond. No judgment of bond forfeiture shall be enforced or collected until six months and ten days after the mailing of proper notice.

judgment declaring the forfeiture of the bond must be issued by the Court. In addition, the Clerk of Court (Clerk) must send notice of the signed judgment via certified mail within 60 days after the defendant’s failure to appear, or the forfeited bond is rendered uncollectible. Although the Clerk is legally responsible for sending notices of signed judgments, the City Prosecutor is ultimately responsible for collecting forfeited bonds.

The City Prosecutor’s office does not have sufficient controls to ensure that notices are mailed on all judgments ordered or controls to ensure that proper collection efforts are pursued. Based on information provided by the City Attorney’s office, during the period September 2002 through May 2004, the Court issued 2,474 judgments for the forfeiture of appearance bonds totaling \$1,939,372. However, not all of these judgments remained outstanding. Once a judgment is ordered for the forfeiture of a bond, several conditions may reverse the forfeited status of the bond. If the defendant is arrested before collection, forfeiture of the appearance bond is deemed satisfied upon obtaining custody of the defendant. The judgment may also be recalled or set aside by the Court if the defendant voluntarily appears before a judge. Based on information provided by the City Attorney’s office, as of May 2004, a total of \$1,380,480 of the \$1,939,372 in forfeited appearance bonds had been reversed because of defendant arrests, judgment set asides, and judgment recalls. In addition, as stated above, judgments may become uncollectible if the surety is not properly notified. Of the remaining \$558,892, a total of \$163,278 is uncollectible because the former Clerk of Court, Ms. Carol Powell-Lexing, failed to mail proper notice to the named sureties within the required 60-day period.

During the period January 2, 2003 through July 22, 2003, the City Prosecutor collected \$70,845 on 162 appearance bonds that had been forfeited as early as March 2002. The City Prosecutor failed to collect appearance bond forfeitures again until September 2004, when the City began mailing demand letters to surety companies whose clients’ bonds had been forfeited. As of October 20, 2004, a total of 108 demand letters had been mailed and City officials had not yet initiated collection proceedings on expired demands. As a result of the 108 letters, the City Prosecutor collected \$13,500 on 30 forfeited bonds. The remaining \$311,269 is left outstanding.

Forfeitures	\$1,939,372
Recalled/arrested/set aside	<u>(1,380,480)</u>
Possible collections	558,892
Notification not properly made	(163,278)
Collections (\$70,845 + \$13,500)	<u>(84,345)</u>
Remaining outstanding	<u><u>\$311,269</u></u>

Louisiana Revised Statute 57:571.11(L)(3) provides that city and municipal courts throughout the state of Louisiana, the prosecuting attorney, the law enforcement agency responsible for

executing orders of the court, and the indigent defender board (IDB) of the court where judgment was rendered shall each be paid 25% of all collected forfeited bonds when the prosecuting attorney collects on a judgment of bond forfeiture.<sup>3</sup> Had the former Clerk ensured proper notification and the City Prosecutor timely collected forfeited bonds, the Court, the City Prosecutor, the City Marshal, and the IDB would each have had the right to receive \$139,723.<sup>4</sup> However, the former Clerk of Court did not ensure proper notification and the City Prosecutor only collected \$84,345 of the total \$395,614 collectible. The Court, the City Prosecutor, the City Marshal, and the IDB will each receive \$21,086 when these funds are disbursed.

### Lack of Controls Over Traffic Tickets

The City Prosecutor is responsible for processing traffic violations that occur within the Monroe city limits. Prosecuting traffic tickets contributes revenue to the City through assessed fines and revenue to the Court and the City Marshal through imposed court costs. According to the Monroe Municipal Code,<sup>5</sup> all fines assessed by the city court for violations of city ordinances should be remitted to the City. Louisiana law<sup>6</sup> provides that in all criminal matters, the city judge may assess up to \$30 in court costs to be used for the operational expenses of the Court or for the payment of clerical fees or other similar expenditures as approved by the judges. In addition, the judge may assess \$20 as additional court costs to be used to defray operational expenses of the marshal.<sup>7</sup> The Court assesses both of these charges to all criminal cases.

After the tickets are issued by the Monroe Police Department (MPD), the City Prosecutor's office takes physical custody of the tickets and assumes responsibility for them until final disposition. However, the City Prosecutor's office does not have sufficient controls to ensure that all traffic tickets written by the MPD are entered into the Court system and are properly adjudicated, collected, deposited, and recorded. In addition, no safeguards exist to allow for the proactive monitoring of missing or voided tickets. Because of the lack of controls surrounding traffic tickets, the potential loss of revenue for the City, Court, and City Marshal from assessed fines and court costs is increased and the dollar amount cannot be determined.

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<sup>3</sup> **Louisiana Revised Statute 15:571.11** provides, in part, that in all city and municipal courts where the prosecuting attorney collects on a judgment of bond forfeiture, the proceeds shall be distributed as follows: (a) Twenty-five percent of all funds collected by the prosecuting attorney shall be paid to the general operating account of the prosecuting attorney; (b) Twenty-five percent of all funds collected shall be paid to the judicial court fund; (c) Twenty-five percent of all funds collected shall be paid to the law enforcement agency; and (d) Twenty-five percent of all funds collected shall be paid to the Indigent Defenders Program.

<sup>4</sup> This number is 25% of the sum of the collectible bonds (\$395,614) and the amount lost because of improper notification (\$163,278).

<sup>5</sup> **Monroe Municipal Code Section 11-1** provides, in part, that all fines, forfeitures, penalties and costs assessed by the city court for violations of this Code or other city ordinances shall be collected by the clerk of the city court or the marshal, as designated by the city judge, and all such funds so collected, excluding costs, shall be paid to the city treasure by the person collecting same immediately upon receipt thereof, and such personal shall take a receipt therefore.

<sup>6</sup> **Louisiana Revised Statute 13:1899(A)** provides, in part, that in all criminal matters, including traffic violation cases, the judge may assess costs of court in an amount not to exceed thirty dollars. Except as otherwise provided by law, the proceeds derived from these costs shall be deposited in a special account which shall be subject to audit, and used for the operational expenses of the court or for the payment of clerical fees or other similar expenditures as may be approved by the judge.

<sup>7</sup> **Louisiana Revised Statute 13:1899(C)** provides, in part, that in all criminal matters, the city judge shall assess the sum of fifteen dollars as additional costs of court, the proceeds of which shall be deposited in a special account which shall be in the name of and under the control of the marshal or constable of the court, shall subject to audit, and shall be used to defray operational expenses of the office of marshal or constable of the court, all as may be useful and necessary for the proper conduct of the marshal's or constable's office, for maintenance and improvement of jail facilities, or for purchase of law enforcement equipment, and all as may be approved by the marshal or constable.



The Monroe City Attorney should exercise greater supervision over the City Prosecutor and the enforcement of forfeited surety bonds. The City Attorney should also adopt written policies and procedures to provide the City Prosecutor with a clear understanding of the responsibilities and authority associated with collecting forfeited bonds to include the following:

- Reference to Louisiana Revised Statute 15:85, which governs the forfeiture, procedure, notice, enforcement and collection of commercial surety bonds
- A description of the responsibilities of the City Prosecutor as they relate to the enforcement of forfeited surety bonds
- A description of the legal remedies set forth by the City of Monroe to be pursued upon the refusal of bonding agencies to provide payment on forfeited bonds

In addition, the City Prosecutor should:

- Vigorously pursue collecting all outstanding forfeited surety bonds
- Monitor the Clerk of Court's office to ensure that notice of judgment is mailed on all forfeited surety bonds within the legally prescribed time frame
- Implement written policies and procedures governing the handling and processing of all traffic tickets in which the procedures should include a system for recording and tracking all traffic tickets issued through the adjudication process and subsequent collection and deposit.



Monroe is located in Ouachita Parish in northeast Louisiana and has a population of 53,107. The City of Monroe Legal Department is lead by the City Attorney, who is the chief legal advisor to the Mayor, City Council and all departments, offices and agencies of the City. The Legal Department is comprised of the Civil Division and the Prosecuting Division. The Prosecuting Division is composed of two assistant city attorneys and a clerical staff of approximately eight employees. This division is responsible for prosecuting criminal misdemeanor violations of the City of Monroe Code in the Monroe City Court and related matters, including bond forfeiture. The Prosecuting Division handles all appeals relating to City Court prosecutions in state and federal courts. In addition to criminal prosecutions, this division prosecutes civil violations of the Monroe City Code, including matters such as building, safety, and zoning code violations.

The legislative auditor received allegations of possible improprieties relating to the prosecution of DWI arrests made by the Monroe Police Department. In addition, the auditor received allegations regarding possible improprieties relating to the enforcement and collection of forfeited bonds. The procedures performed during this audit consisted of the following:

- (1) interviewing employees of the Prosecuting Division and Monroe City Court;
- (2) examining selected records of the Prosecuting Division and the City Court;
- (3) performing observations and analytical tests; and
- (4) reviewing applicable Louisiana laws.



## Management's Response

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## OFFICE OF THE MAYOR

JAMES E. MAYO  
MAYOR

January 27, 2005

318-329-2310  
POST OFFICE BOX 123  
MONROE, LOUISIANA 71210

Mr. Steve J. Theriot, CPA  
Office of Legislative Auditor  
State of Louisiana  
P. O. Box 94397  
Baton Rouge LA 70804-9397

Re: Prosecuting Division of the City of Monroe Legal Department

Dear Mr. Theriot:

In response to the referenced report, we offer the following comments and responses:

### **Bond Forfeitures:<sup>1</sup>**

The Monroe City Attorney is preparing written policies and procedures relative to the collection of forfeited bonds to provide for oversight, review and monitoring of the process by the City Attorney and to provide for the consistent, expedient and vigorous enforcement of forfeited surety bonds by the City Prosecuting Division.

This policy will include references to La. R.S. 15:85 which govern the forfeiture, procedure, notice provisions, enforcement and collection of commercial surety bonds in criminal cases. This policy will also describe and delineate the duties and responsibilities of the City Prosecutor and his staff relative to the forfeiture, procedures and collection of commercial surety bonds, including the legal remedies and procedures to be followed upon failure of bonding agencies to provide payment on forfeited bonds.

In addition, this policy will provide for written reports to the City Attorney each month, to include the following:

- The number of bond forfeiture cases pending at the beginning of the previous month and the status of each case (i.e., date notice sent, date of 6 month expiration, stage of collection process, etc)
- A list of the bond forfeiture cases completed during the previous month, including the case number, name of defendant and name of surety, date, amount of the forfeiture and other identifying data.

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<sup>1</sup> Since October 20, 2004, an additional \$21,850 has been collected on 26 forfeited bonds.

- A list of the bond forfeiture cases instituted during the previous month, including the case number, name of defendant and name of surety, date, amount of the forfeiture and other identifying data.
- The total dollar amount collected from bond forfeiture cases in the previous month.
- The amount disbursed to each of the entities receiving the proceeds of bond forfeiture cases during the previous month.
- The status of all forfeiture cases that are in the final stage of the collection process (i.e., ready for action through the Commissioner of Insurance and/or execution of judgment through judicial proceedings).

We are also preparing a computer spreadsheet program to replace the manual ledger system for monitoring and tracking bond forfeitures. Although we have no direct supervision and control over the Clerk of Court, the program will provide for recordation of the date that the notice of judgment was sent so that Prosecuting Staff can monitor the sending of the notices and remind the Clerk in the event a notice is not sent within the proper time frame. We are currently discussing with the Monroe City Court, a procedure whereby the City Prosecutor will receive a copy of the notice of judgment that is required to be sent by the Clerk of Court on all forfeited surety bonds.

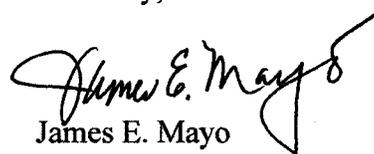
**Traffic Tickets:**

We are working on a written policy and procedure, with standards and guidelines, for the handling and processing of traffic tickets through the adjudication process. This policy will include a system for tracking each ticket through the process. Monthly reports on traffic tickets shall be submitted to the City Attorney for review and monitoring.

The collection and deposit of fines is handled by the City Court. We are currently discussing with the Monroe City Court, a procedure whereby the City Attorney and the City Prosecutor will receive a listing of the payment of all fines, which could then be incorporated into the tracking system.

Thank you and your staff for your assistance in providing for the efficient and effective operation of the Prosecuting Division of the City of Monroe.

Sincerely,

  
James E. Mayo  
Mayor