

REPORT OF INVESTIGATION

Correctional Privatization Commission Major Maintenance & Repair Funds



Office of Fiscal Integrity
Division of Accounting and Auditing
Department of Financial Services

**DEPARTMENT OF FINANCIAL SERVICES (DFS)
OFFICE OF FISCAL INTEGRITY (OFI)
REPORT OF INVESTIGATION**

CASE NUMBER: IV20030100002 **DATE:** March 5, 2004

CASE NAME: Correctional Privatization Commission (CPC) – Major Maintenance and Repair (MM & R) Funds

INVESTIGATOR: Tom Wade

OFFICE: Tallahassee

DATE OPENED: January 2, 2003

RECEIVED FROM: Comptroller's referral of 12/23/02 letter from the Police Benevolent Association (PBA) to Office of Fiscal Integrity.

PREDICATE: December 23, 2002 PBA letter to Florida Comptroller requested a formal investigation into CPC MM & R Funds. (Exhibit A)
Specifically, two questions were requested to be resolved:

1. "Did the CPC illegally expend funds from the Major Maintenance and Repair Funds because the Fund is not legal?"
2. "Did the CPC violate the provision of their contracts with the vendors by not following the provisions within the contracts as to how these funds were to be appropriated?"

ISSUE #1: **Finding:** The Fund was not legally authorized by statute or by legislative Appropriation. Because contractors of CPC were required to pay moneys into the Fund, because CPC had legal ownership of moneys in the Fund, and because CPC exercised control over the moneys in the fund; the moneys in the Fund constituted state moneys that are subject to the requirements of Section 215.31, Florida Statutes. This means that the CPC should have had legislative authority for the Fund. Refer to December 11, 2002 Bob Spooner, Chief Bureau of Auditing, letter on this subject. (Exhibit B)

Corrective Action:

The Legislature in Section 27 of the 2003 Appropriation Bill has the following wording: "The Correctional Privatization Commission shall deposit \$1,654,360 from unencumbered funds received for the purpose of repairs and maintenance to the Grants and Donations Trust Fund in the Department Management Services." (Exhibit C)

ISSUE #2

MM & R Funds contract language at 1/2/03 stated – “The contractor shall make and be responsible for all routine and necessary repairs of the facility, and all facility furnishings, fixtures, and equipment as long as the cost associated with any maintenance is \$5,000.00 or less (per item, per occurrence). Routine and necessary repairs shall be defined as any maintenance or repair which has a cost of \$5,000.00 or less (per item, per occurrence).”

Findings: An analysis of CPC MM&R expenditures found the following categories of expenditures that violated the provisions of CPC contracts with vendors.

- Instances of CPC approvals for replacement of multiple components as the result of a single occurrence of a lightening strike. (Exhibit D)
- Approvals for upgrades, modifications, and enhancements for Correctional Facilities. (Exhibit E)
- Temporary loans from MM & R Funds for debt services for Correction Facilities. (Exhibit F)

Current Status:

This issue remains unresolved evidenced by Exhibits G and H.

ADDITIONAL ISSUE:

\$50,000 transfer from the MM & R Funds to CPC Operating Funds. During the course of the investigation it was found that March 12, 2002, Mark Hodges, former CPC Executive Director, instructed \$50,000 of MM & R Funds be paid to the CPC for administrative services. (Exhibit I)

Corrective Action:

Current CPC Executive Director, Alan Duffee, took corrective action with approval of the CPC to return the \$50,000 to MM & R Funds 2/13/2003. (Exhibit J)

NOTE: The CPC is a part of Department of Management Services (DMS) for administrative support purposes. Recommend future matters of this nature be reviewed to determine if the DMS Inspector General should address them.

INVESTIGATOR'S SIGNATURE:

DATE:

OFI BUREAU CHIEF APPROVAL:

DATE:

[Handwritten signature] for Tom Wake
[Handwritten signature]

4/26/04

4-26-4

**Correctional Privatization Commission (CPC)
MM & R Funds**

EXHIBITS

- A. December 23, 2002, letter from the Police Benevolent Association (PBA) to Comptroller Milligan, "Re: Request for an investigation".
- B. December 11, 2002 letter from Robert Spooner, Chief Bureau of Auditing, Department of Banking and Finance, to Alan Duffee, Interim Executive Directive Director CPC.
- C. 2003 Legislative Appropriation language regarding CPC MM & R Funds.
- D. Analysis summarizing instances of CPC approvals of MM & R Funds to be used for replacement of multiple components as the result of a single occurrence of a lighting strike.
- E. Analysis summarizing CPC approvals of MM & R Funds for upgrades, modifications, and enhancements, for correctional facilities.
- F. Analysis summarizing temporary loans from MM & R Funds for debt services for correctional facilities.
- G. October 23, 2003, PBA letter to CPC executive director Alan Duffee regarding MM & R Funds not to be released.
- H. November 6, 2003, CPC letter to PBA agreeing with the October 23, 2003 PBA letter.
- I. March 12, 2002, letter from Mark Hodges, former CPC executive director, instructing that \$50,000 of MM & R Funds be paid to the CPC for administrative services.
- J. Corrective action by Alan Duffee, current CPC executive director, to return the above \$50,000 to MM & R Funds.



FLORIDA POLICE BENEVOLENT ASSOCIATION, INC.

The Voice of Florida's Law Enforcement Officers
Post Office Box 11239 ♦ Tallahassee, Florida 32302

December 23, 2002

VIA HAND DELIVERY

Honorable General Robert Milligan
Florida Comptroller
PL 09 The Capitol
Tallahassee, FL 32399-0350

Re: Request for an investigation

Dear General Milligan:

The Florida Police Benevolent Association believes it has obtained information that shows the Florida Correctional Privatization Commission (CPC) may have illegally paid out hundreds of thousands of dollars from a fund outside the State Treasury.

In a letter dated December 11, 2002, to Alan Duffee, CPC Executive Director, your office responded to an inquiry by Mr. Duffee about the CPC's Major Maintenance and Repair Fund (attached). This fund was set up outside the State Treasury, and your office indicates that these funds "constitute State moneys and are subject to the requirements of Section 215.31, Florida Statutes." Your office also indicates that these funds should have been appropriated as provided by the annual General Appropriations Act or otherwise provided by law.

The PBA believes there are two issues that need to be investigated by the Office of the Comptroller:

- 1) Did the CPC illegally expend funds from the Major Maintenance and Repair funds because the Fund is not legal; and,
- 2) Did the CPC violate the provision of their contracts with the vendors by not following the provisions within the contracts as to how these funds were to be appropriated?

Dir of Invest. [unclear]
[unclear]
RBM
no Dec 02

DEPT. OF BANKING & FINANCE
 OFFICE OF COMPTROLLER
 EXECUTIVE
 02 DEC 23 PM 1:16

DEPT. OF BANKING & FINANCE
 RECEIVED
 FINANCIAL INVESTIGATIONS
 02 DEC 31 PM 2:21

FLORIDA POLICE BENEVOLENT ASSOCIATION BUILDING
 300 East Brevard Street, Tallahassee, Florida 32301-1218
 (850) 222-3329 ♦ 1-800-733-3722 ♦ FAX: (850) 561-0192

Honorable General Robert Milligan

December 23, 2002

Page Two

Therefore, we are requesting a formal investigation into these funds to answer the above two questions. If either is answered in the affirmative, we believe that the Comptroller's Office has the duty to recover hundreds of thousands of dollars on behalf of Florida's taxpayers.

Sincerely,



David Murrell
Executive Director

Attachment

C: Alan Duffee





ROBERT F. MELLIGAN
COMPTROLLER OF FLORIDA

OFFICE OF THE COMPTROLLER
DEPARTMENT OF BANKING AND FINANCE
STATE OF FLORIDA
TALLAHASSEE CORRECTIONAL
32399-0350 PRIVATIZATION

December 11, 2002

Mr. Alan Duffee
Interim Executive Director
Correctional Privatization Commission
Pepper Building, Suite 680
Tallahassee, Florida 32399-0950

Dear Mr. Duffee:

This is in response to your letter dated September 30, concerning the Major Maintenance and Repair Reserve Fund (Fund). In your letter you question the legality of maintaining a Fund outside the State Treasury, and also the disbursement of these funds without a legislative appropriation.

I understand the facts to be as follows. The Fund is a bank account maintained with First Union Bank. First Union Bank also acts as Trustee with regard to the master lease agreement. Contractors operating the facilities are responsible for all routine and necessary repairs of the facility, and all facility furnishings, fixtures, and equipment so long as the cost associated with any maintenance or repair has a cost of \$5,000 or less. Each contractor is required to deposit a specified sum of money each month into the Fund. Requests for reimbursement for maintenance or repair costs in excess of \$5,000 must be submitted to the Executive Director of the Commission. Subject to the receipt of written approval from the Executive Director of the Commission, the costs of such major maintenance or repairs shall be charged to the Fund. The contract provides that the Commission shall be the owner of the Fund, and the contractor shall have no rights, other than as set forth in the contract, in the Fund or in any Fund earnings.

The creation of the Fund and procedures for depositing money into and disbursing money from the Fund was for the protection of the State. It gives the State a certain level of assurance that the facilities will be in good order at the time the State takes possession of the facilities upon termination of the lease. We concur that this procedure protects the State's interest in the facilities.

Mr. Alan Duffee
December 11, 2002
Page Two

Section 215.31, Florida Statutes, provides:
Revenue, including licenses, fees, imposts, or exactions collected or received under the authority of the laws of the state by each and every state official, office, employee, bureau, division, board, commission, institution, agency, or undertaking of the state or the judicial branch shall be promptly deposited in the State Treasury, and immediately credited to the appropriate fund as herein provided, properly accounted for by the Department of Banking and Finance as to source and no money shall be paid from the State Treasury except as appropriated and provided by the annual General Appropriations Act, or as otherwise provided by law.

Because contractors are required to pay moneys into the Fund; the Commission has legal ownership of moneys in the Fund; and the Commission exercises control over these moneys, we are of the opinion the moneys deposited into the Fund constitute State moneys and are subject to the requirements of Section 215.31, Florida Statutes. Therefore, we recommend that the Commission seek specific legislative authority to authorize the procedure currently in place and exempt it from the requirements of Section 215.31, Florida Statutes.

I hope this information is beneficial. If you have any questions, please call me at 410-9363.

Sincerely,



Robert D. Spooner, Chief
Bureau of Auditing

RDS/fe

c: Sandra Sartin
Office of Planning & Budgeting

Ch. 2003-397

LAWS OF FLORIDA

Ch. 2003-397

Department must prepare a detailed operational work plan.

SECTION 23. Funds provided in Specific Appropriations 217 through 419 in the Department of Children and Family Services utilizing unrestricted trust fund cash are limited to the continuation appropriation level and specified additional amounts and purposes contained in the General Appropriations Act. The department is not authorized to use unrestricted trust fund cash beyond these levels or for purposes not specified on the approved listing, and is hereby restricted from doing so.

SECTION 24. The Department of Children and Family Services is authorized to utilize non-operating transfer authority to provide Social Services Block Grant funding to the Department of Juvenile Justice, Agency for Workforce Innovation, and the Department of Health to support the budget provided in the Fiscal Year 2003-2004 General Appropriations Act. No other transfers of Social Services Block Grant funding are authorized.

SECTION 25. The Department of Children and Family Services may transfer up to \$3,500,000 from the department's unrestricted cash to the Grants and Donations Trust Fund in the Justice Administration Commission for the purpose of funding the Dependency Counsel Program.

SECTION 26. The unexpended balance of funds provided to the Department of Children and Family Services in Specific Appropriation 285A of Chapter 2002-394, Laws of Florida, for the implementation of the Statewide Automated Child Welfare Information System HomeSafenet project are hereby reappropriated to the Department of Children and Family Services to enable the Department to retain a System Integrator in Fiscal Year 2003-2004 for the completion of the HomeSafenet project in accordance with recommendations identified in the HomeSafenet Project Strategic Plan dated March 31, 2003 and the approved federal Advance Planning Document for the HomeSafenet project. Funds reappropriated within this section shall not be used to purchase, lease, or otherwise acquire hardware or software products or services without prior approval by the Senate and House Appropriations Committees and the Executive Office of the Governor pursuant to the provisions in Chapter 216, Florida Statutes.

SECTION 27. The Correctional Privatization Commission shall deposit \$1,634,360 from unencumbered funds received for the purpose of repairs and maintenance to the Grants and Donations Trust Fund in the Department of Management Services.

SECTION 28. Funds in this act may be expended for bar dues and for legal education courses for attorneys employed by the State as legal staff.

~~SECTION 29. The unexpended balance of \$12,000,000 from funds provided to the Department of Agriculture in Specific Appropriation 1480A of Chapter 2002-394, Laws of Florida, for the Citrus Canker Free Compensation Program is hereby reverted.~~

SECTION 30. The unexpended balance of funds provided to the State Technology Office in Specific Appropriation 2175A of Chapter 2002-394, Laws of Florida, for Health Insurance Portability and Accountability Act (HIPAA) implementation is hereby reappropriated to the State Technology Office to continue HIPAA implementation activities for Fiscal Year 2003-2004.

SECTION 31. (1) Effective upon this act becoming law, \$100 million in the Florida Preservation 2000 Trust Fund in the Department of Environmental Protection is transferred to the Save Our Everglades Trust Fund in the Department of Environmental Protection as a result of additional funds being made available within the Florida Preservation 2000 Trust Fund from the purchase of surety bonds authorized pursuant to the Division of Bond Finance Twenty-Second Subsequent Resolution adopted by the Governor and Cabinet on February 25, 2003, in order to fund Specific Appropriation 1770 of Chapter 2002-394, Laws of Florida.

(2) Effective upon this act becoming law, the first paragraph of proviso immediately following Specific Appropriation 1770 in Chapter 2002-394, Laws of Florida is repealed.

(3) Effective upon this act becoming law, Specific Appropriation 1785B and the two paragraphs of proviso immediately following it in Chapter 2002-394, Laws of Florida, are repealed.

CORRECTIONAL PRIVATIZATION COMMISSION

INSTANCES OF CPC APPROVALS FOR REPLACEMENT OF MULTIPLE COMPONENTS AS THE RESULT OF A SINGLE OCCURRENCE OF A LIGHTENING STRIKE

INSTITUTION	APPROVAL DATE	TOTAL COST	DEDUCTION	NET APPROVAL	DESCRIPTION
MOORE HAVEN	07/22/02	\$110,421.30	\$5,000.00	\$105,421.30	LIGHTNING STRIKE - EXTERNAL DAMAGE TO MULTIPLE COMPONENTS OF ELECTRONIC SECURITY, HVAC, & FIRE CONTROL
	01/31/01	\$14,482.23	\$5,000.00	\$9,482.23	LIGHTNING STRIKE - DAMAGE TO MULTIPLE COMPONENTS OF ELECTRONIC SECURITY & HVAC SYSTEMS
BAY <i>Liberty</i>	02/15/99	\$12,771.80	\$5,000.00	\$7,771.80	LIGHTNING DAMAGE - 3 CAMERAS, 1 COMPUTER, & MISCELLANEOUS MONITORING EQUIPMENT
	12/03/99 DISAPPROVED	\$11,596.86	\$5,000.00 DEDUCTION	\$0.00	LIGHTNING DAMAGE - 6 CAMERAS & OTHER MISCELLANEOUS MONITORING EQUIPMENT* * THIS WAS PROCESSED CORRECTLY
	07/19/99	\$49,486.00	\$0.00*	\$49,846.00	LIGHTNING DAMAGE - CRASH GATES, LIGHTING, AIR CONDITIONING, GENERATOR, SECURITY SYSTEM, TV, ETC. * \$5,000 DEDUCTION DID NOT APPEAR TO HAVE BEEN DEDUCTED
SOUTH BAY	07/23/02	\$46,158.03	\$5,000.00	\$41,158.03	LIGHTNING DAMAGE - MULTIPLE COMPONENTS OF THE ELECTRONIC SECURITY & HVAC SYSTEMS - SINGLE OCCURRENCE

FEBRUARY 19, 2004

CORRECTIONAL PRIVATIZATION COMMISSION

APPROVALS FOR UPGRADES, MODIFICATIONS, AND ENHANCEMENTS FOR CORRECTIONAL FACILITIES

INSTITUTION	APPROVAL DATE	COST	DESCRIPTION
MOORE HAVEN	11/31/02 8/21/00	\$40,204.64	UPGRADES TO FACILITIES PERIMETER FENCING TO ENHANCE OVERALL SECURITY
BAY	10/17/02	\$69,173.92	MODIFICATION OF ADMINISTRATION AND GATE
SOUTH BAY	03/06/01	\$26,900.00	SECURITY ENHANCEMENTS - FENCING OVER ROOF
	03/06/01	\$40,151.00	SECURITY ENHANCEMENTS - ADDITIONAL MONITORS, CAMERAS, PRINTERS & 2 ADDITIONAL MICROWAVE ZONES

CORRECTIONAL PRIVATIZATION COMMISSION

TEMPORARY LOANS FROM MM&R FUNDS FOR DEBT SERVICES FOR CORRECTION FACILITIES

INSTITUTION	DATE	AMOUNT	DESCRIPTION
BAY	JULY 2002	\$1,000,000.00	LOAN DEBT SERVICE
SOUTH BAY	AUGUST 2002	\$123,465.67	LOAN TO DEBT SERVICE



FLORIDA POLICE BENEVOLENT ASSOCIATION, INC.

The Voice of Florida's Law Enforcement Officers
Post Office Box 11239 ♦ Tallahassee, Florida 32302

October 23, 2003

HAND DELIVERY

Mr. Alan Duffee
Executive Director
Florida Correctional Privatization Commission
Pepper Building
111 West Madison St, Ste 680
Tallahassee, Florida 32399

Dear Mr. Duffee:

Per our recent conversation on Tuesday, October 21st, the Florida PBA is very concerned about the budget amendment for \$550,000 in Major Maintenance and Repair Funds. Our first concern is expending any of these funds **BEFORE** the Office of Fiscal Integrity has completed its investigation into these funds.

Our second issue of concern is whether some of MM&RF requests qualify for reimbursement. While the FPBA believes a number of these requests don't meet the contract provisions for MM&RF reimbursement, it would be in the best interest of the Correctional Privatization Commission and the State to wait for the OFI report to resolve these issues. Once these funds are expended, it would be almost impossible to recover them.

It is our understanding that you have agreed **NOT** to release any of these funds until after the OFI report indicates the requests are legal expenditures under the MM&RF provisions of the CPC contracts. This action on your part greatly relieves our concerns and delays any legal actions the FPBA was considering taking on this issue.

If you have any questions about this request, please call me at the number listed below.

Sincerely,

Ken Kopczynski
Legislative Assistant

Cc: Governor Jeb Bush
Tom Wade, OFI

FLORIDA POLICE BENEVOLENT ASSOCIATION BUILDING
300 East Brevard Street, Tallahassee, Florida 32301-1218
(850) 222-3329 ♦ 1-800-733-3722 ♦ FAX: (850) 561-0192



Correctional Privatization Commi

4050 Esplanade Way • Pepper Building, Suite 680 • Tallahassee, Florida 32399-09
850/921-4034 • Fax 850/922-7394

November 6, 2003

Mr. Ken Kopczynski
Florida Police Benevolent Association Inc.
Box 11239
Tallahassee, FL 32302

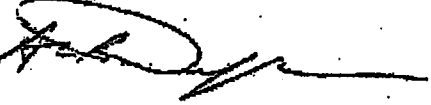
Dear Mr. ~~Kopczynski~~, *Ken*

This letter is to verify our conversation that the commission will not forward any funds from the major maintenance and repair trust fund to the vendors until the matter has been resolved with the Office of the Chief Financial Officer. As you know Mr. Tom Wade has been investigating this issue and has not released his findings on the expenditures of the old fund.

I hope that this letter will show the commitment that the commission is putting forth to ensure accountability on behalf of this administration.

If I can be of any further assistance to you, please let me know.

Sincerely,


Alan B. Duffee
Executive Director
Correctional Privatization Commission

Correctional Privatization Commission

4050 Esplanade Way • Pepper Building, Suite 680 • Tallahassee, Florida 32399-0950
850/921-4034 • Fax 850/922-7594



March 12, 2002

Mr. Kevin Grant
First Union Bank
225 Water Street
3rd Floor
Jacksonville, Florida 32202

Dear Mr. Grant:

Please pay \$50,000.00 to the Correctional Privatization Commission for administrative services from the "Commission Insurance Funds". Please deduct the following amounts from each correctional facilities account:

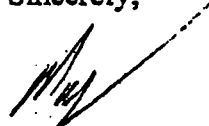
	<u>Account #</u>	<u>Amount</u>
Lake City	4056001034	\$ 2,807.41
Moore Haven	4056001052	12,692.62
Bay	4056001043	15,975.40
South Bay	4056001061	18,524.57
Total		<u>\$50,000.00</u>

Payment should be made to the order of the Correctional Privatization Commission and mailed to:

Mark Hodges
Correctional Privatization Commission
4050 Esplanade Way
Mail Stop - Pepper Building, Suite 680
Tallahassee, Florida 32399-0950

If you need additional information, please contact Sue Norris Herring or me at 850/921-4034.

Sincerely,


Mark Hodges
Executive Director

Joel J. Freedman
CHAIRPERSON

C. Mark Hodges
EXECUTIVE DIRECTOR



"Duffee, Alan"
<DuffeeA@dms.state.fl.us>
l.us>

To: "twade@mail.dbf.state.fl.us" <twade@mail.dbf.state.fl.us>
cc:
Subject: FW:

01/27/2003 10:25 AM

Tom,
Here is a copy of the email I sent to the Commissioners. I recommended that we repay the funds that were transferred. I will update you as to their response. Thanks.

Alan

> -----Original Message-----

> From: Duffee, Alan
> Sent: Monday, January 27, 2003 10:19 AM
> To: Atkinson (E-mail); Bryan. Martinez (E-mail); Lbedard (E-mail);
> RRRi930bob (E-mail); Sblock (E-mail)
> Subject:

>
>
> Commissioners,
>
> I spoke with the CFO's office on Friday. Last March the Executive Director
> and Senior Budget Analyst authorized \$50,000 be transferred from the Major
> Maintenance and Repair Fund to the Commission account to cover a
> "shortfall" in the account. This transfer is now the subject of an
> investigation from the CFO. After talking with the investigator, and
> researching the legality of the transfer, I believe that the investigation
> is going to render that it was an illegal act.
> I am recommending that the commission repay this money to the Major
> Maintenance and Repair Fund. I believe that this is the right thing to do
> and suggest that we do it prior to being told to do so. Even though this
> transfer was done after four of you were appointed to this commission, the
> investigation shows that none of you had any knowledge of the former
> employees actions.

> I am awaiting your response.

>
> Thanks,
> Alan Duffee