

The City of Portsmouth

"Where the Ohio and Scioto Meet"

Department of Finance

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M. Trent Williams
City Auditor

TO: HONORABLE HOWARD BAUGHMAN, PRESIDENT
HONORABLE MEMBERS OF PORTSMOUTH CITY COUNCIL

FROM: M. TRENT WILLIAMS, PORTSMOUTH CITY AUDITOR

DATE: MAY 19, 2006

RE: COUNCIL LETTER #06-31 - POLICE SPECIAL ACCOUNT

COPY: DAVID W. KUHN, CITY SOLICITOR
JAMES. D. KALB, MAYOR
CHARLES HORNER, CHIEF OF POLICE
RICHARD SKETEL, CHIEF DEPUTY AUDITOR OF STATE, ATHENS REG.

For City Council's information in response to Council Letter #31 regarding Law Enforcement Trust Fund and Mandatory Fine Fund.

As stated in the Council Letter attachment "Law Enforcement Trust Fund and Mandatory Fine Fund", on November 28, 1989, Portsmouth City Council did pass Ordinance #1989-110 establishing the Law Enforcement Trust Fund as well as the Mandatory Fine Fund. **Both of which are funds maintained by the City Auditor and booked as part of the annual financial report of the City. This ordinance did not establish an "off the books" checking account to be maintained by the Chief of Police.**

The MAS Bulletin dated July 13, 1990 did provide that no money shall be allocated to a county sheriff, prosecuting attorney, or municipal police department unless a written internal control policy is adopted for the use of the moneys received from the fund. This makes reference to the moneys received from the Law Enforcement Trust Fund - **a fund maintained by and disbursements made by the City Auditor.** This is the only bulletin included referencing use of funds by a municipal police department. All others and statutes reference county agencies; sheriff and prosecuting attorney.

No doubt a bank account was established that was used to make deposits and withdrawals, but the question would then be, **by what authority (code section, MAS bulletin, legal opinion or court case) was the account established? An account that is not booked on the annual financial report of the City and not subject to audit until 2005. Ordinance 1989-110 certainly did not establish this account.**

The next few paragraphs and pages of the Council Letter attachment make multiple references to the following elected officials "at the county level", "the prosecuting

attorney”, “the sheriff” and “the county commissioners”. Quite clearly, the Chief of Police is not the same as any of these county officers and is also quite clearly not an elected official. In another pertinent document, a letter from then county prosecutor, Lynn Grimshaw, the prosecutor writes that expenditures from such funds are discretionary with the “**officeholder**”, as long as the exercise of such discretion is responsible (*sic*) and within the limitations set by the statute.

In a letter dated January 6, 1992 from then Mayor Franklin Gerlach to Council, two funds were requested to be established to separate revenue from the General Operation Fund. The funds established were the Law Enforcement Trust Fund and Mandatory Fine Fund, **funds then and now maintained by the City Auditor. This separation is accomplished by the separate accounting funds, not by separate bank accounts held outside the city treasury.**

On July 29, 1992, the Ohio State Attorney General rendered a decision to the Auditor of State and Butler County Prosecutor that these funds may be deposited into interest-bearing accounts and that no statute requires a **county prosecutor** or **county sheriff** to make deposit into the **county treasury**. The opinion did not reference a **municipal police chief** being exempted from depositing those funds into a **city treasury**.

On October 26, 1992, then Portsmouth City Solicitor Richard T. Schisler forwarded a decision to then Portsmouth City Auditor Pat Jenkins. His opinion states:

“I interpret these changes in the law as meaning that it was the intention of the legislature that the normal appropriation procedures are not necessary and that these funds are available to the Chief to be used at his discretion. It is my understanding that the two existing funds to which the law applies are the Law Enforcement Trust Fund and the Mandatory Fine Fund. Funds deposited in these accounts by the Chief may be withdrawn, as stated, by him, simply by his submitting a voucher directly to you. (the City Auditor) No other office need be nor should be involved in this. **Applying simple logic here, why would a voucher directly to the City Auditor even be necessary if the Chief of Police is the one holding the checkbook?** By directing a voucher to the City Auditor, the Solicitor’s opinion implies that the City Auditor would be the one disbursing the funds to the requestor; otherwise there would be no need for a request to the Auditor.

Ordinance #1997-198 transferred and appropriated, as received, the balances of the two funds (**funds maintained by the City Auditor**) for use only by the Police department and for more efficient immediate use for necessary obligations. The appropriations are not the issue. Appropriations can continue as received, if allowable within other applicable sections of budgetary law, or projected and included within the beginning of year annual appropriations ordinance. The issue is not how appropriations are made; it is the holding of the account **outside the city treasury** and **not being booked** (this practice alone provides for an understatement of city assets) **on the finances of the city**. The use of the funds will continue to be at the discretion of the Chief of Police for necessary obligations per the applicable sections of the Ohio Revised Code, Charter and Ordinances

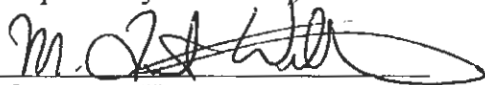
of the City of Portsmouth and the policy established by the Chief of Police concerning the appropriate use of these funds.

At my request, the "special account" was to be reviewed in the FY 2005 audit and no findings were reported to me as a result. (To my knowledge, this was the first time the account had ever been reviewed as part of the annual audit.) However, earlier this year (in March) I received a phone call from Athens Region Office Chief Deputy Auditor Richard Sketel questioning me about the account. Mr. Sketel and Deputy Auditor Chuck Barga have had numerous phone conversations with me regarding this account over the last few months. Police Chief Chuck Horner has also had phone conversations with the Athens region as well as written correspondence. The result of these several exchanges has been that the office of the Auditor of State, **after review by the State Auditor's legal department** is that which is included in my letter of instruction dated May 8, 2006 to Chief Horner directing that **the account be deposited in the City Treasury and that the outside account be closed.** This will not preclude the Chief from having the same discretion as to the use of these funds. It will merely change the process in which those funds are receipted and disbursed. However, as some expenditures will be sensitive in nature, those type of expenses will be handled as to protect the specifics of the expenditure so as not to compromise any ongoing law enforcement operations and procedures. Those activities will remain at the Chief's discretion.

In summary, there is a compelling argument in attempting to maintain the status quo regarding the "special account". However, just because "it's always been done that way" is not sufficient reason to continue that practice. Additionally, there is no law, case or legal opinion that permits this "off the books, out of the treasury" account. I would agree that on the surface, it would make sense that if a county sheriff is permitted the latitude of an "off the books" account, then the city police chief should be afforded the same latitude. However, those laws that may grant that latitude are only inclusive of county "officeholders" and do not grant that same authority to a chief of police. This I believe was the main reason for the directive from the State Auditor. In any event, the balance of the account is to be submitted to my office, placed appropriately in the respective already established Law Enforcement Trust Fund and Mandatory Fine Fund with the "special account" to be closed.

Finally, further supporting this directive, Section 42 of the Charter of the City of Portsmouth reads, "He (the City Auditor) shall also be the City Treasurer, and have charge of the administration of the financial affairs of the City, **including the keeping and supervision of all accounts, the custody and disbursements of City funds.**" With regard to Council Letter #31, City Council should adopt alternative number "4" and reject the request for legislation. Please do not hesitate to contact me should you have any questions or concerns or require any additional information regarding this matter.

Respectfully submitted,



M. TRENT WILLIAMS, AUDITOR