

# **BAY ST. LOUIS: A LIMITED SCOPE PERFORMANCE REVIEW**



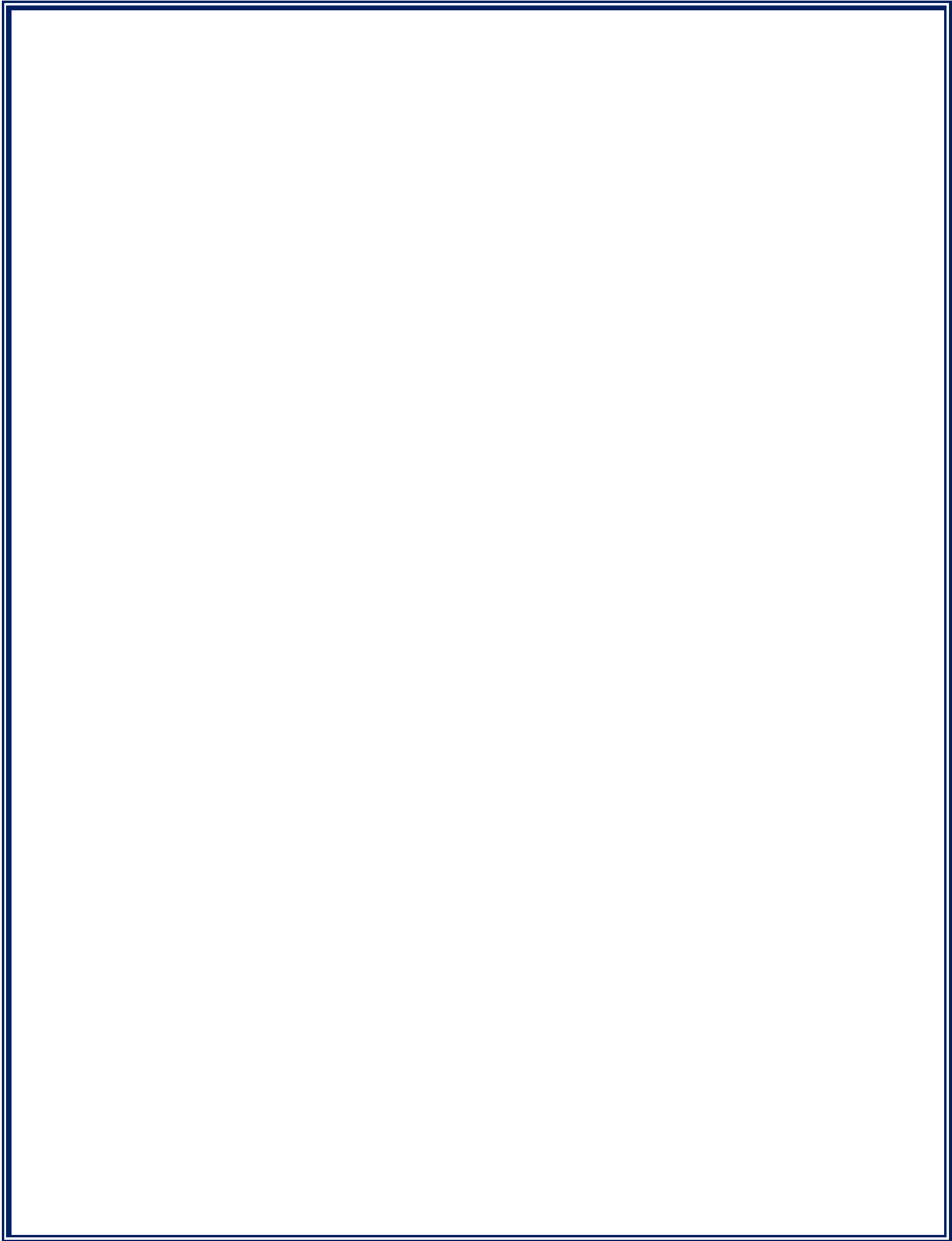
**STACEY E. PICKERING**  
STATE AUDITOR

**A Report from the Office of the State Auditor**

**#144**

**May 2, 2016**

**[www.osa.state.ms.us](http://www.osa.state.ms.us)**





**STATE OF MISSISSIPPI**  
**OFFICE OF THE STATE AUDITOR**  
**STACEY E. PICKERING**  
STATE AUDITOR

June 15, 2016

Mr. Lonnie Falgout, Council President  
City of Bay St. Louis  
PO Box 2550  
Bay St. Louis, MS 39521-2550

Councilman Falgout,

Please accept this report in fulfillment of the MS Office of the State Auditor's limited scope performance review that City Council requested. It has been my pleasure to work with the Mayor and each of the Councilmembers, as well as your and the Mayor's very professional staff throughout this process.

It is my hope that this report will assist Bay St. Louis in moving forward with the positive and constructive changes that I have already seen happening. The Mayor-Council form of government has many unique challenges, of which communication is generally at the top of the list. I urge each of you to consider that communication is profoundly important to solid municipal operations.

This report now includes one addendum at the end, as well as responses from two Council members and the Mayor. I appreciate you holding the report until I received the administration's response. This report is exactly the same as it was when your Council voted to accept the report, with the exception of the addendum I added regarding the Council's minutes.

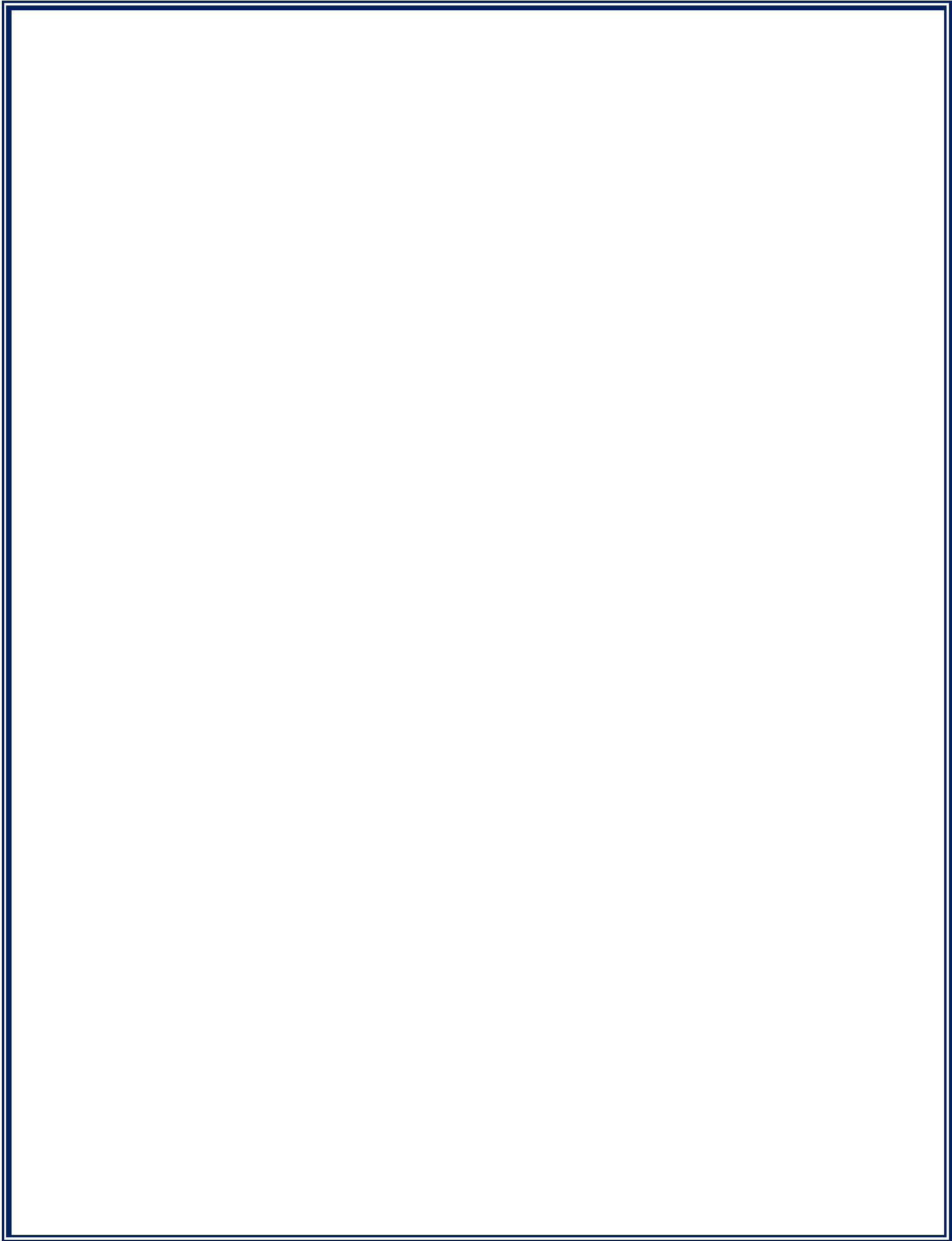
Please let me know if this office can be of service to you in the future.

Sincere and Kind Regards,

Samantha Atkinson  
Director, Performance Audit Division  
Mississippi Office of the State Auditor

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**Office of the State Auditor  
Stacey E. Pickering**

***BAY ST. LOUIS: A LIMITED SCOPE PERFORMANCE REVIEW***

Performance Audit Report #144  
May 2, 2016

**Executive Summary and Introduction**

In September, 2015, the City Council of Bay St. Louis (BSL), Mississippi requested the Office of the State Auditor (OSA) Performance Audit Division to conduct a limited scope performance review to determine why certain audit findings were occurring and to make recommendations to the city to alleviate future audit findings. OSA began the project in January, 2016.

The scope of this project was originally limited to findings from the most recently completed Bay St. Louis FY 2014 financial audit. At the request of the BSL City Council and the administration, a number of other issues were added for review throughout the project. The purpose of this report is to make recommendations for improvement of City operations which may reduce or eliminate audit findings in the future.

At the outset of this report OSA would like to thank the staff and officials who worked with us. The City of Bay St. Louis has some very dedicated, talented, and hard working employees that certainly do not get the recognition for the difficult jobs they do each day. We have been proud to work with such knowledgeable staff. Their efforts have made our work much smoother, and we are grateful for the professionalism that has been shown to our auditors throughout this project.

Over the last several years, Bay St. Louis, which is a Mayor-Council form of government, has experienced increasing budget and operational problems. These problems have been brought to the forefront through the financial audits of the last several years, especially with repeat findings. Through the work conducted as part of this project, OSA finds that many of these issues are a result of:

- poor or no internal controls,
- lack of communication and information sharing,
- lack of written and meaningful policies and procedures in both the executive and legislative branches of the City,

- the Mayor and his staff failing to follow statutes related to municipal government, and
- the Council failing to fully exercise its authority over the Mayor and the administration to compel them to follow certain laws related to budgets and finance.

Although the Mayor-Council form of government is often called the “Strong Mayor” form of government, ultimately the Council maintains the power of the purse strings and is responsible for overseeing the budget. That requires the Council to be informed and also to exercise its constant responsibility to know what is happening financially, even though they are prohibited by state statutes from interfering with the day-to-day operations of the City. The Council has both a statutory right and a need to request information. Such information should come from city officials, and as statute specifies, through the Mayor, including the city attorney, department directors, and the Mayor and it should be provided timely. State statutes and Attorney General’s Opinions are, for the most part, extremely clear about the roles of the legislative branch of government (the Council) and the executive branch of government (Mayor and administration) in a Mayor-Council form of government.

When this performance review first began, OSA auditors observed through communications, meeting discussions, and interviews, some reluctance or inability by the administration to provide Council members with certain financial information that they requested so that they could make informed decisions under the law. Through interviews, observation and document review, OSA believes this may have been due to the Council not completely understanding what type of reports are readily available, or the administration not understanding their responsibility to respond to requests from the Council related to budgetary and financial matters.

The Council is responsible for knowing how much money is in the budget and must approve all expenditures. They are also responsible for managing the budget—they are required



by law to make adjustments as necessary to ensure that the Bay St. Louis does not exceed its budget. In a Mayor-Council form of government though, it is often assumed that once they set the budget, the responsibility of spending then rests solely with the Mayor and administration. However, Council members, by State statute, have a burden of responsibility to ensure that the budget is not overspent and to adjust said budget as necessary. The auditing world has an informal motto, “Trust, but Verify.” This motto is useful as a basis for the responsibilities of the City Council. Even though the Mayor oversees the day-to-day operations of the City, the Council remains legally responsible for ensuring that the City’s operations stay within the set budget parameters.

In order for the Council to stay informed and act according to State and local law, the Mayor must provide accurate and timely financial information to the Council and the City Attorney must give unbiased advice and accurate information to the Council. The City attorney has an obligation to advise the Council and the Mayor, because in a Mayor-Council form of government, the City Attorney represents the entire City, not one group or the other and not any single individual. OSA observed, through listening to Council meeting recordings and reviewing certain written correspondence, that the current City Attorney does not always appear to be as responsive to the Council as he is to the Mayor. It is important for the Attorney in a Mayor-Council form of government to provide sound and accurate advice to all elected officials because by state statute, the City Attorney must represent the entire city.

That having been said, the Mayor-Council form of government has long been considered to be one of the more difficult structures for effective municipal operations in Mississippi. Some portion of that difficulty may be the way certain statutes are written that may create ambiguity—for which the Attorney General and the Courts have added clarification, but some portion may be attributed to the “wall” that is created between the legislative body (Council) and the executive body (Mayor), both of which are elected. In either case, it creates a situation where it is even more important for the executive and the legislative bodies to work openly and honestly with one another in order to be the best stewards of the taxpayers’ money. When that fails, as it has in Bay St. Louis, the budget and operations all suffer, which in turn can result in inefficient use of taxpayer money, budget shortfalls, and poor morale of employees and citizens. At the end of the day, the only purpose the elected public servant has at any level of government is to be a good steward of the taxpayers’ money and to work toward a common goal of effective and efficient governance over programs and operations that provide the taxpayer with the services for which they pay.

In the course of this limited scope performance review, OSA has found that a number of statutes that BSL has failed to follow. This report details those findings as well as potential remedies for these violations. State statutes governing municipal operations exist to protect the taxpayer and provide definitive roles, structure, and expectation to local government leaders. Such statutes are not optional and they are not written as “mere guidance,” with a choice of whether or not to follow them. It is outside the scope of this project to opine on the total quality of all municipal governing statutes; however, OSA always recommends that local government officials follow State and local law in their day-to-day activities, especially those related to the expenditure of taxpayer resources.

OSA has identified several areas where a lack of internal controls over operations and a lack of formalized policies and procedures may have contributed to some of BSL’s current problems. Written policies and procedures are extremely useful in creating a stronger internal control environment. Internal controls are those processes and procedures that aid in minimizing or eliminating the opportunity for financial problems, including fraud, waste, and abuse of public funds.

OSA found that a lack of communication has also contributed to the current problems in the city. City officials need to find a way to communicate with each other. Disagreements will occur, however, failing to respond or failing to be civil in a response will almost always lead to chronic problems as OSA auditors have observed in the course of this project.

Finally, OSA finds that elected officials as well as department heads and other employees, need additional training on current state laws and best practices for efficient operations. There are numerous opportunities for training and OSA finds that many other municipalities are willing to mentor and assist when asked. Further, OSA has a Technical Assistance Division and the Attorney General has an Opinions Division that stand ready to assist the governing bodies of municipalities.

Throughout this report, where OSA has confirmed changes are being implemented, such changes are noted. Where such changes are pending or unconfirmed, OSA has also noted that in the report. OSA finds that it is imperative Bay St. Louis to make long-term and permanent changes to be compliant once again with State and local statutes and ordinances, and to improve the efficiency and effectiveness of their operations.

With a confirmed budget shortfall occurring, Bay St. Louis must improve the efficiency of its operations and that



includes conforming to existing laws. *Finally, OSA recommends that the Council and the Mayor work together to be good stewards of the taxpayers' money.* Absent that working relationship, it is the responsibility of the Mayor and his department heads to provide accurate and timely information to the Council for their budget related decision making and to efficiently and effectively manage the day-to-day operations of the City. The Council has an obligation and responsibility to oversee the budget and ensure that the City adheres to said budget. Part of that obligation may be a last resort option to take whatever legal action is needed in order to ensure that fiscal matters are handled legally and properly in the City.

### ***Purpose, Scope, and Methodology***

The **purpose** of the work undertaken by OSA at the request of the Bay St. Louis City Council was to evaluate the findings of the latest financial (year ending September 30, 2015) and attempt to determine the possible causes of and solutions to these findings. Ultimately, Bay St. Louis Council members expressed a desire to reduce or eliminate the number of findings in future financial audits and permanently improve the operations of the city, while at the same time improving the financial position of the City. Such a project is very different from a financial audit and, as such, is governed by performance, rather than purely financial audit standards.

The **original scope** of this project was limited to the findings in the previous year's financial audit. However, as the project progressed, City officials requested a number of other items be added for review. Many of those items have either been addressed through training sessions or directly during work on the project. Some of those issues are found in this report.

OSA's **methodology** used to complete this project included:

- A review of the FY 2014 financial audit report
- Interviews of the financial audit team
- Reviews of financial audit work papers and prior year financial audits
- Reviews of relevant Mississippi State statutes, Attorney General Opinions, and court cases
- Attempted review of municipal ordinances, policies, and procedures (unfortunately the administration was never able to provide any ordinances, policies, or procedures for OSA auditors to review)
- Interviews with elected officials and employees of Bay St. Louis
- Interviews with other relevant parties

- Reviews of requested documents, Council minutes, Council meeting recordings, and other relevant information
- Analysis of financial and other data and documents, including bank records, internal reports, etc.
- Observations of actual operations and work flow
- Reviews of numerous best practices for a Mayor-Council form of government
- Interviews with and information from other municipalities related by size, location, budget, or type of government

Generally, when conducting a performance review, OSA auditors look at the types of organizational changes that need to take place to improve operations and governance, especially over fiscal affairs. Throughout the project, OSA auditors attempted to provide best practices and updates to officials in a timely manner so that the process of change could begin immediately and government operations could be improved where necessary. In addition to this, OSA conducted several training sessions for BSL officials to ensure that certain basic information was being provided to decision makers.

It is OSA's hope that this project yields positive results and the type of information that will aid City leaders in their efforts to improve City finances and operations. Readers should note though, that because this was not a comprehensive audit or an investigation, no assurance can be made that every instance of laws being violated were found by auditors. The goal of this limited scope performance review was to identify problem areas and offer recommendations for improvement.

Following are assessments of findings in the FY 2014 Bay St. Louis fiscal audit.





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## Compliance with State Laws and Regulations

The annual financial audit includes a section about the City's compliance with State laws and regulations. OSA auditors reviewed these findings and their underlying causes. This section explains each of those areas.

### *Internal Controls*

OSA affirms through its work that the Bay St. Louis FY 2014 financial audit report, which stated that they [auditors] "...identified certain deficiencies in internal control that we consider to be material weaknesses," is correct about deficiencies in internal controls. Although OSA notes that there appear to be positive and constructive changes currently occurring in both the City administration and the Council since this project began, there are still internal control deficiencies and initially, OSA auditors found very few consistent controls. Internal Controls create the standard throughout any organization for how business will be conducted. Strong internal controls are part of a governance environment that helps to minimize the possibility of fraud, waste, and abuse of taxpayer money. A lack of internal controls can create situations where funds are not handled properly and where bad decisions can lead to financial hardships.

The financial audit report also provides that,

*A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. (pages 52, 53)*

Not only is this a correct assessment of what has happened within the administration (although some of those elements are being addressed by the City); it is what describes circumstances that create situations of poor behavior and poor decision making in general. *OSA recommends that the Mayor continue to move forward with creating or updating policies and procedures that create a work environment with strong, traceable, and verifiable internal controls. Additionally, OSA recommends that department heads, including the Clerk of Council, should develop written policies, procedures, and internal control processes that protect not only the City, but the employees and taxpayers as well.* Such written policies should match the operations that conform to law and regulation and which are currently taking place. These do not have to be a "reinvention of the wheel," but can be, in many instances, documentation of the actual processes that take place on a daily or regular basis. Ultimately though, formalizing expectations, operations, and structure within the governance structure should provide stability and standardized operations that can be more easily verified and will result in more compliance with state and local laws. This in turn should result in fewer financial audit findings, shorter (therefore, less costly) auditing times, and overall more efficiency and effectiveness in city operations.

While many of these items are examined in more detail later in this report, some examples of poor internal controls include the lack of organized, codified ordinances in the City, the lack of oversight over cash management, the lack of process and procedure governing invoices and claims dockets, and the lack of procedure to guarantee timely payment of claims. OSA finds that the Council has the authority and responsibility to require the Mayor to implement controls, and further, that they may require the Mayor to report on the status of such controls. OSA also finds that the Mayor has the authority and responsibility to see such internal controls and policies and procedures put in place within the executive branch of the government, even if the Council does not require such financial controls through Council ordinances.

OSA auditors have observed that the Police Department has existing internal controls, policies, and procedures in place that govern their daily operations. Further, OSA notes that the Public Works Department has certain policies and procedures (some informal/unwritten) related to call-outs/responses, as do the Police and Fire Departments. *OSA recommends that the Council direct the Mayor to make the creation and implementation of policies and procedures a priority to improve the fiscal operations of the City.* OSA has observed that with the hiring of a skilled Comptroller, the city has the opportunity to evaluate and fix many of the fiscal related workflow problems it currently has. The current Comptroller has already begun to implement procedures that are providing more accurate and effective financial information to the City Council. *OSA recommends that the administration continue with this flow of information and build on it to create strong internal controls, policies, and procedures.*



## Council Minutes

In a Mayor-Council form of government, there are essentially two “clerks.” There is an administrative City Clerk and there is a legislative Clerk of the Council. Because this form of government creates two clerks, their duties are by State statute, divided. In other forms of government, there is only one clerk and all the functions are included under this position. The Clerk of the Council supports the needs and objectives of the Council. Prior to Council meetings, this position is responsible for ensuring that Council members have all available information prepared with an agenda. During meetings, the Clerk of Council must faithfully record the events of the meeting and later must create, for the Council’s review and approval, the minutes of the meetings. The minutes must also be reviewed by the Mayor, who has the authority to veto almost any action of the Council.

The Council only “speaks” through its minutes. In other words, if something does not appear in the official written record which must be approved by the Council, bound, and made available to the public, and then it did not happen. This is the reason that the accuracy of meeting minutes is so important. The Council has the responsibility to ensure that the minutes of their meetings are accurate, and in Bay St. Louis, it appears that the Attorney and the Mayor also review them. The Mayor has the authority to veto any action items (except for Council rejection of a department head candidate<sup>1</sup>), but the Council can override a veto by a 2/3 vote of the members present.<sup>2</sup> The controlling statute related to Council minutes, §21-15-33, MS Code states:

*The minutes of every municipality must be adopted and approved by a majority of all the members of the governing body of the municipality at the next regular meeting or within thirty (30) days of the meeting thereof, whichever occurs first. Upon such approval, said minutes shall have the legal effect of being valid from and after the date of the meeting. The governing body may by ordinance designate that the minutes be approved by the mayor.*

*It shall not be necessary for each ordinance to be signed so long as it appears on the minutes of the municipality, which minutes shall have been signed by the mayor or a majority of the governing body of the municipality and certified by the municipal clerk.*

In the case of a Mayor-Council form of government, the “municipal clerk” referenced in relation to Council minutes in §21-15-33, MS Code refers to the Clerk of the Council. Additionally, the MS Attorney General and the courts have affirmed that the legal effective date of actions referenced in the law is the meeting date where the original decision was made, not the date that the Council actually approves the minutes. Once the minutes have been approved, any ordinances in the minutes must then be passed to the City Clerk to be advertised, codified, and made a part of the official ordinance books of the city according to State statute.<sup>3</sup>

After meetings, the Clerk of the Council must devote priority time to creating the written minutes for Council approval. Having listened to numerous tapes of meetings, OSA auditors observed that Council meetings are not always as organized as they should be and motions are not always made in a clear and concise manner at the appropriate time. *OSA recommends that the Council have the Clerk of Council repeat any motions before the Council votes, to ensure that the Council and the Clerk have correctly captured motions.* This will also help the Clerk create minutes that accurately reflect Council decisions. If the Attorney is present at meetings, and a motion is made that is ambiguous, or ill-worded, the Attorney, who represents the governing body, should offer to advise them on proper wording prior to a vote, with sufficient accurate explanation that allows the Council to make proper and informed decisions. The Council also has a responsibility to carefully review minutes prior to approval to ensure their accuracy. *OSA recommends that the Council carefully review minutes prior to approval as well; paying special attention to any financial decisions, as well as any decisions that will have a direct impact on citizens and businesses.*

<sup>1</sup> The Mayor may not veto the Council’s non-confirmation of a submitted department head, but rather must then submit a new candidate for the position. Beginning with each new term, a Mayor must, within a reasonable amount of time, submit department head names to the Council for approval. Until such time as that is done, current department heads may be held over. Once a decision is made by the Council, any that are not confirmed by an affirmative vote may no longer hold over in that capacity. ([Mr. Johnny L. DuPree 2013 WL 6780277, \(Miss.A.G.\), November 15, 2013](#))

<sup>2</sup> See §21-8-17(2), MS Code of 1972, Annotated

<sup>3</sup> See 21-13-13, MS Code of 1972, Annotated



*OSA recommends that the Clerk of Council, the Council, and the Mayor (in his role of providing certain information to the Council timely and in approving or vetoing ordinances), work together to ensure that minutes are accurate, contain all required attachments, and are signed/approved within statutory limits, so Council actions can occur timely and permanent ordinances can also be codified properly.*

OSA reviewed minutes from the past two years and listened to numerous meetings in order to compare the minutes to what actually occurred in the Council meetings. Two years ago, minutes were not well constructed as they are today. There have been several examples that OSA found of minutes with mistakes that might need a nunc pro tunc order to correct. This does not mean that the Council can actually change those approved minutes as they are printed, but rather that they can correct them by reference in current meetings. While OSA auditors noted that there are still errors today, the minutes have been improving and we have specifically noticed improvements just since January. OSA has been told, but has not verified, that the Clerk of Council and Deputy Clerk are also working to create policies and procedures that will ensure accurate and timely presentation of minutes.

Throughout this entire process, the Clerk of the Council has the responsibility to provide the most accurate information they are able to obtain, but the Mayor and administration have the responsibility to provide the accurate and timely documents to the Clerk of the Council. OSA auditors have determined listening to Council Meetings, reviewing documentation, and through interviews that the administration has not always provided timely or accurate information to the Clerk of the Council or to the Council itself. One example of this is a 2014 Docket of Claims showing a list of items with one total, a City Clerk certification letter showing a different total, and then evidence from payments showing that the administration paid other claims that were not included on the same Docket of Claims presented to the City Council. At other times, during meetings, the Council would repeatedly ask the Mayor to provide certain information, yet the very next meeting the Council would ask for the same information again, indicating they had still not received it. There were times when the Mayor can be heard saying said information is available at City Hall or that he would get the information to them. However, when information was to be provided to them, but was not, there is generally no communication forthcoming that explains exactly why the information had not been presented—such as a report being unavailable due to software limitations, a report might not yield the information which the Council is seeking, etc. OSA auditors found that a lack of open communication where either or both sides attempt to also interpret and anticipate needs based on their own knowledge is not happening. Such lack of communication is creating barriers and often combative situations between the executive and legislative branch.

### ***Council Responsibility to Oversee the Budget***

It is the duty of the Mayor, Clerk, and administration to properly present all claims not previously paid by the City in the form of a Docket of Claims presented to the Council. Also, it is the responsibility of the City Council to be aware of all claims which should have been paid from previous dockets as well as those coming due in order for them to have a real-time understanding of their fiscal position. During the time frame of the audit, though, the City Council was denied access to bank records, invoices from claimants, and other pertinent financial documents from the administration. In fact, when the Council passed an ordinance requiring the Mayor to provide access to bank records to the Clerk of Council and certain Councilmen, such access was not timely provided. In fact, the Mayor requested the City Attorney to write for an opinion about whether they could even have such access to records, even though the Council is legally responsible for the budget and by law may not approve any expenditure that exceeds budget limits without incurring a penalty. Only after the Attorney General Opinion<sup>4</sup> affirmed the right of the Council to have access to financial records, was such access eventually granted. In this case, the Council exercised none of their authority to take legal action to compel the Mayor and administration to provide needed information. Since OSA auditors began their work, and since the City hired a new Comptroller, OSA has observed that access to certain financial information appears to be improving.

OSA also determined through a review of information requests that the administration has at times failed to respond to legitimate requests for information or has not provided them timely. OSA has been told and has observed that some of these problems with information transmittal are improving. However, OSA auditors confirmed that in 2015 the Council imposed a normal and reasonable requirement that certain information be presented to the Clerk of the Council the Friday before a regularly scheduled meeting. Such requirements are common in local governments throughout Mississippi, and in

<sup>4</sup> Donald J. Rafferty 2015 WL 7293624 (Miss.A.G.), Opinion number 2015-00372, October 23, 2015.



fact, for almost all boards of any sort. The requirement is generally that to have something on the agenda, it must be presented by a date certain ahead of time for board (Council) review. During the course of OSA's work, auditors observed that these deadlines are still not being met. Because the Clerk of the Council must include all attachments to the minutes, they must be present at the meeting and provided to the Council for the Council to make informed votes.

The Council has actually passed an order that detailed the list of items that the Clerk would need to construct Council Packets. The order also included the timeframe to submit said items. In reviewing best practices for local government meeting agendas, the Council order was in line with similar expectations from municipal boards throughout Mississippi.

For any documents called for at the meeting, the Mayor should ensure that such documentation be timely provided to the Clerk of Council, to be attached to the Council Packets and later, if approved by the Council, to the minutes. *OSA recommends that the Council, if voting on a motion that requires additional documentation not previously presented, should make its motion and vote contingent upon receiving said documentation.* This protects the integrity of the Council and adds incentive for the administration or other entity to comply and provide additional documents in a timely manner. If the Council continues to vote on agenda items without sufficient documentation, or without sufficient time to review documentation, then they may be making themselves personally liable for any actions that violate statutes (especially those related to approving expenditures without funds available or outside of the budget) or that result in court actions. Additionally, it is just bad business practice to make a decision about something without having reviewed relevant information. Therefore, *OSA recommends that the Council remove items from the agenda that were not provided in a timely and accurate manner in order to allow the Council to conduct its business more accurately, efficiently, and effectively.*

### ***The Municipal Compliance Questionnaire***

OSA confirms the audit finding from the FY 2014 financial audit. OSA auditors directly observed the problem related to the Mayor and his administrative staff not completing the Compliance questionnaire, as returned the Questionnaire to the Council and them to complete it. The Municipal Compliance Questionnaire that is part of the annual fiscal audit as prescribed by the Office of the State Auditor is primarily a document for the Mayor and administrative staff. In addition to the requirement that it be signed by the Mayor and City Clerk—who must ensure that it is timely and accurately completed—the majority of the questions are administrative, and not legislative, in nature. Therefore, the Municipal Compliance Questionnaire cannot be (and is not) by its nature solely a requirement of the Council, since they are not allowed to interfere in the day-to-day operations of the City. It is absolutely a requirement for the Mayor and his staff who control the day-to-day operations of the City, with some questions that are appropriate for the Council to answer. The Mayor must provide the completed questionnaire to the Council for their approval in October following the end of the fiscal year. It should be accurately completed and timely filed in cooperation between the executive and legislative branches of the City. *OSA recommends that the Mayor and Council adhere to the financial auditor's recommendation. Doing so will result in less wasted time and billing by the financial auditors, and will help facilitate the timely completion of the City's annual audit.*

### ***Municipal Background Checks to Determine Eligibility of Employment and Hiring***

OSA confirms the finding in the FY 2014 financial audit. OSA auditors were unable to determine why the Mayor was not properly conducting background checks to determine eligibility of employment, which resulted in the finding in the 2014 financial audit, however, documents show that it was not being done properly. However, during the performance review OSA auditors verified through interviews and document reviews with the Police Chief and the Human Resources Director it appears that that this issue has been corrected as stated in the financial audit response, and new employees are having background check completed.

OSA auditors still express some concern that the administration's hiring process does not have formal policies and procedures in place to ensure that employment determination actions are done at certain times during the hiring process. In reviewing documentation, it appears that there have been times where payroll may have known about a new hire (who was already working) before the Human Resources had any paperwork on the employee, which can result in improper tax or other withholdings, late insurance premium payments, etc. Further, OSA determined that other local (to BSL) employment related ordinances may also be being ignored, such as drug testing and re-testing. Not following a statute or ordinance can



result in both general liability to the City and personal liability to those who ignore protocols, in the event that something goes wrong. Areas where a municipality may incur such liabilities include, but are not limited to such things as:

- allowing employees with suspended drivers' licenses to drive municipal vehicles,
- treating employees differently related to municipal policies and procedures for hiring, promoting, etc.,
- allowing employees who have failed a drug test to continue working with citizens and the general public,
- failing to conduct required employment checks, and
- placing unqualified or unlicensed employees in positions that require such professional licensing.

*OSA recommends that the administration re-familiarize itself with all local ordinances related to hiring and employment and adhere to them, or modify them as necessary to ensure fair, accurate, and equal treatment for all employees. OSA further recommends that the administration strongly consider putting policies and procedures in place that streamline and standardize the hiring and employment process that also protect the integrity of the process.*

### ***Codified Municipal Ordinances***

OSA auditors confirm the audit finding in the FY 2014 financial audit. Title 21, Chapter 13 of the Mississippi Code of 1972 governs municipal ordinances. State statutes provide municipalities the authority to enact ordinances, but also require that they be available for public inspection and that they be maintained in a permanent file. Once the Clerk of the Council has recorded a copy of the minutes of the Council, any permanent ordinances in those minutes should be transmitted to the City Clerk for advertising and publication. OSA auditors have determined that part of the problem identified by financial auditors related to BSL ordinances is the confusion over which Clerk (City or Council) has the responsibility to handle certain parts of the process. Also, possibly due to this confusion, ordinances were not reviewed regularly and over time became disorganized.

Simply put, in the Mayor-Council form of government, minutes are a function of the legislative body (Council) and permanent ordinances (once approved by the Council) are a function of the executive branch of the municipality (Mayor/City Clerk). As an analogy, the Mayor-Council form of government most closely parallels the federal government where the Congress (legislative) makes laws and the President (executive) is responsible for ensuring the laws are carried out. The codification of ordinances is not the responsibility of the Council or the Clerk of the Council, but instead, it is an administrative responsibility of the Mayor and City Clerk. The Clerk of the Council only oversees Council business. The Council isn't even allowed offices in City Hall, where the municipal ordinances are required to be maintained. Logic and statute show that the administration must take Council orders that are to become permanent ordinances, and continue the process of advertising, recording, and publishing them. Statute clearly states that the municipal (City) clerk shall be responsible for the ordinances. All ordinances of a city must be advertised by the municipal (City) clerk, maintained alphabetically in a permanent record in the (City) clerk's office, and be available for public inspection (at City Hall). During interviews, the Mayor indicated to OSA auditors that the City has initiated a contract with Muni-Code to update and re-index all permanent BSL ordinances. Completing this should remove the financial audit finding in the future. *OSA recommends that the Council ask the Mayor or Deputy Clerk for updates during this process, since they would have had to approve the Muni-Code contract and any related amendments or payments.*

It should be noted that a failure to have a permanent set of ordinances available to the public results in potential problems and even liability to a municipality. If there is no permanent record (courts and the Attorney General have said that there can be various forms defined as "permanent"), then the ordinance may not be enforced. However, if the administration fails to properly maintain such ordinances, or does not process Council orders properly, personal liability may also be incurred.

### ***Municipal Fire Funding Compliance Form***

OSA confirms the financial audit finding and believes that this form will be completed properly and timely in the future based on interviews and review of documentation. However, OSA also believes that the Comptroller or City Clerk should be involved in the financial review of any such forms. *OSA recommends that the City ensure compliance with this in order to aid in the efficient audit of the City.*



## Financial Statement Findings (FY 2014 Financial Audit)

OSA has confirmed the majority of the FY 2014 financial audit findings and has additionally uncovered a number of other relevant related issues. OSA believes that, while many of these problems can be fixed, it will take

- a cooperative and open dialogue between the Mayor/administration and the Council,
- the development and imposition of internal controls, policies, and procedures that will guarantee fewer financial reporting and accounting errors,
- policies and procedures that will streamline workflow and provide appropriate oversight and review of activities,
- a long and short term staffing plan that includes evaluation of training needs and appropriate training, and
- accurate and timely information provided to the Council so they can make informed decisions

Bay St. Louis has experienced frequent turnover in the City Clerk and Comptroller positions in recent years. Currently, and since OSA auditors began their work, the City has not functionally had an experienced and trained City Clerk. The current org chart of the City also shows that the Deputy City Clerk is also the grants administrator. In January, auditors tried to meet with then City Clerk Robert Clark, but he was not available due to a day job outside of the State. Auditors were told he might be available in the evenings, but no meeting was ever able to be scheduled before he resigned. Recently, BSL did hire an experienced Comptroller and auditors have already observed more accurate and timely reporting being provided to the Council in preparation of their meetings. OSA believes that this may be a first step in the right direction to providing better information and financial documents in such a way that the Council can develop a plan, in conjunction with input from the Mayor, to begin cutting and containing costs as well as conforming the City's actions to State budgeting laws. Ultimately, this may aid in improving the City's financial position and allow the Council to do one of its main statutorily mandated jobs of ensuring Bay St. Louis lives within its budget. At the very least, it will reduce the arguments made by the Council that they are not receiving timely or accurate information that they have requested.

### *Purchasing and Payment of Claims*

Through document review, interviews, and observation, OSA auditors affirm the findings in the FY 2014 fiscal year related to purchasing and payments of claims. During the time period reviewed for this limited scope project, OSA found a number of state statutory violations, several of which also have statutory penalties. Despite City administrative corrective actions reported in the FY 2014 fiscal year audit report, OSA auditors observed a serious lack of internal controls over purchasing and payments of claims as well. As the financial auditors noted:

*Proper internal controls over purchasing and accounts payable as well as state law require that payments to vendors should be made in a timely manner. Invoices are to be stamped with the date received and are to be paid in the order in which they are listed on the claims docket as presented to the Council. Once the Council has approved the claims docket, payment should be made within a reasonable time. If a claim is voided for any reason, it should be voided in the general ledger in a timely manner. Invoices should be cancelled once they are paid, by stamping "PAID" on the original invoice to prevent duplication of payment.*

State statutes lay out a clear process that requires municipalities to record bills/invoices as they come in, and then pay them from a Council approved Docket of Claims, in the order that they were received and recorded. Additional statutes require timely payment of claims. OSA auditors found evidence that this had not been occurring. They noted instances where claims were paid months after the Council's approval. OSA observed that the City administration appeared at times to be paying in order of priority instead of order of receipt. OSA auditors confirmed numerous instances of vendor invoices being paid more than 45 days after receipt of the invoice and or goods. MS Code §31-7-305(3) states, in part:

*If a warrant or check, as the case may be, in payment of an invoice is not mailed or otherwise delivered within forty-five (45) days after receipt of the invoice and receipt, inspection and approval of the goods and services, the public body shall be liable to the vendor, in addition to the amount of the invoice, for interest at a rate of one and one-half percent (1- ½ %) per month...The various public bodies shall be responsible for initiating the penalty payments required by this subsection and shall use this subsection as authority to*



*make such payments. Also, at the time of initiating such penalty payment, the public body shall specify in writing an explanation of the delay and shall attach such explanation to the requisition for payment of the penalty or to the file copy of the check issued by the public body, as the case may be.*

OSA auditors determined that there were numerous instances where the City administration was non-compliant with this statute. There was also little to no evidence that the late invoices were brought to the attention of the Council. OSA auditors spoke with the Mayor and suggested some ways to alleviate the problem.

OSA auditors did find in minutes and in reviewing recordings of meetings, that once the Council discovered late vendor payments, they attempted to require the administration to pay the late invoices, but to date, the Council has stopped short of taking legal action to compel the Mayor and administration to properly pay claims. In addition to several other topics covered, OSA conducted a training session in January, 2016 related to preparing and presenting a Docket of Claims to the Council. City officials were provided specific information and examples. OSA auditors have noted a marked improvement of Claims Dockets being presented to the Council; though more work remains to be done. *OSA recommends that formal policies and procedures be created, implemented, and adhered to by the Mayor and administration to ensure that statutory compliance is permanently in place. Further, OSA recommends that the Council review Dockets of Claims ahead of Council meetings and then request appropriate reports afterwards in order to ensure that the only payments or transfers occurring are those that have been approved by the Council.*

Even though the following issues were clear violations of State law (§ 21-39-9) OSA auditors confirmed that not all invoices paid by the administration during the time period of this performance review were

- paid in the order they were received,
- paid in the order they appeared on the Docket of Claims,
- put on the Docket of Claims or even presented to the Council before being paid, or
- paid in full or had accompanying documentation with explanations for the reasons for partial payments.

State statute is clear regarding the recordkeeping and responsibilities of the City Clerk:

### ***Recordkeeping [§ 21-39-5]***

#### ***§ 21-39-5. Recordkeeping***

*The clerk of the municipality shall open and keep a regular set of records, as prescribed by the State Auditor, as the head of the State Department of Audit, or the director thereof, appointed by him, as designated and defined in Title 7, Chapter 7, of the Mississippi Code of 1972, or any office or officers hereafter designated to replace or perform the duties imposed by said chapter, subject always to inspection within office hours by any citizen desiring to inspect the same. Said records shall contain accounts, under headings, corresponding with the several headings of the budget, so that the expenditures under each head may be at once known. Such records shall be paid for out of the general municipal fund, upon the order of the proper municipal authorities. Said clerk shall also mark filed, as of the date of presentation of same, each and every claim against said municipality. He shall number the same in regular consecutive order, shall file and keep the same in like manner, and shall safely preserve the same as records of his office.*

*Each year's records shall be kept separate and begin with a new number each year, and run in regular order.*

*In issuing any warrant under order of the governing authorities of the municipality to pay any one of said claims so numbered and kept, said clerk shall enter the number of the claim in the body of the warrant so that the claim may be easily found, and so that possible duplication may be avoided. The governing authorities of the municipality shall designate on each allowance of a claim against the municipality the fund out of which same shall be paid, and to what account the sums shall be charged in said records. Each allowance shall have the number of the claim noted in the minutes of said governing authorities.*

*For failure to perform any duty herein required, said clerk shall be subject to suit on his bond for any damage which the municipality may sustain by reason of such failure. Such suit, or suits, shall be brought by the city attorney or by any attorney designated and empowered to do so by the proper governing authorities of such municipality.*





OSA discussed these issues with the Mayor, and similar to the assurances provided in the corrective action plan of the FY 2014 financial audit, the Mayor also assured OSA auditors that he is implementing and formalizing new procedures for the intake of invoices. Such procedures should ensure the proper recording and placement of invoices on the City Claims Docket. Further, OSA auditors have observed that since the beginning of this project, the administration has implemented new procedures and formats for creating the Docket of Claims that is presented to the Council. The new format appears to conform to State statute and provides more detailed and accurate information to the Council. Despite current changes, OSA auditors have found what it considers to be serious and repeated violations of State statutes during the timeframe within the scope of this project. Below are explanations of these findings. OSA auditors used a sampling method for document review.<sup>5</sup>

### ***Docket of Claims [§21-39-7]***

#### ***§ 21-39-7. Claims docket, cities over two thousand***

*In all municipalities having a population of more than two thousand (2,000), according to the latest federal census, and in other municipalities where the governing authorities should so elect, it shall be the duty of the clerk of the municipality to keep as a record in his office a record to be styled "Docket of Claims," in which he shall enter all demands, claims and accounts against the municipality presented to him during the month. Said docket shall provide space for the name of the claimant, the number of the claim, the amount of the claim, and on what account. All demands, claims and accounts allowed against the municipality shall be preserved by the clerk as a permanent record, and shall be numbered in such a manner as to relate to the warrants to be issued therefor, and the said warrant issued in payment of such claim shall carry on its face a reference to the number of the claim for which the said warrant is issued in payment. No order for the payment or expenditures of any funds of such municipality in payment of any indebtedness thereof shall be made in municipalities having a claim docket unless such claim is filed as herein provided. However, this provision shall not be applicable to the salaries or other compensation of officers or employees of such municipality where the amount of such salary or other compensation shall have been previously fixed by the governing authorities of the municipality in its approval of the payroll or payrolls on which the same appears, and in case of such allowance, it will be sufficient to enter on the claims docket the total of such payroll, followed by reference to the said payroll upon which such allowance may be found.*

One of the major concerns raised at the beginning of the Bay St. Louis performance review related to the Bay St. Louis administration making payments which were not always included on the Docket of Claims presented by the administration for approval by the City Council. Through interviews, it was learned that the City dates checks for payment for the day on which they are to appear on the administration's Docket of Claims for approval.

In order to determine whether or not all payments were being included on the administration's Docket of Claims OSA used a sampling method for a 6-month period of time between 2014 and 2015. OSA auditors did find some items that were not included on the Docket of Claims during this time period. OSA auditors did correctly exclude approximately 250-300 payroll and payroll related checks (payments to the State, payments for employee benefits such as insurances, taxes, garnishments, etc., and personnel payroll) from the sample, and which, by statute do not have to appear in an itemized fashion on the administration's Docket of Claims, because the payroll totals had been spread on the minutes of the City Council meetings. OSA has not conducted a payroll review as part of this project, although it has been made aware of pay raises that the administration provided to certain employees without Council approval and which were outside of approved budget limits. OSA notes that numerous Attorney General Opinions (including one dated 2006 to the City of Bay St. Louis) confirm that the Mayor may not give pay raises without prior Council approval. *OSA recommends that in the future, the Council make itself more aware of the payroll situation and, as necessary, review payroll to ensure that unauthorized pay raises have not occurred.*

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<sup>5</sup> Using a sampling method in performance audit work allows the auditors to determine the risk of problems based on patterns and trends. OSA auditors did not evaluate 100 percent of all operations, invoices, payments, etc., because this was not an investigation. OSA auditors' work was limited to the sample set and we make no inference about additional statutory violations which may or may not have occurred.



### ***Transfers [§21-39-13]***

#### ***§ 21-39-13. Warrants and checks***

*(1)(a) The clerk of the municipality shall draw all warrants or checks for claims and accounts allowed and approved by the governing authorities. Except as provided in subsections (b) and (c), the warrants or checks shall be signed by the mayor or a majority of the members of the board of aldermen in any municipality operating under a mayor-alderman form of government, and attested by the clerk, and to which there shall be affixed the seal of the municipality...*

While reviewing the sampled material from 2014 through 2015, auditors noted and examined a number of checks made out to “The City of Bay St. Louis.” These checks were listed as monetary transfers to other funds. Such transfers are required by law to be presented to the Council for approval. OSA auditors were unable to find any reference in minutes or in the Claims Dockets to several of them having been approved by the Council. *OSA recommends that the Council review Dockets of Claims ahead of Council meetings and then request appropriate reports afterwards in order to ensure that the only payments or transfers occurring are those that have been approved by the Council.*

### ***Check signatures [§21-39-17]***

At the start of our performance Review, OSA requested bank statements the major accounts 2014 through 2015. While reviewing the canceled checks included in the bank statements for other discrepancies, it was noted that some of the checks were not properly signed. OSA also reviewed checks written on the City Operating Account from 2014 through 2015. During this expanded review, OSA found additional checks which were also not properly signed.

Early in the project, OSA auditors recommended that the Council and the administration work to ensure that all claims be paid in the order that they are received and placed upon the Claims Docket—with the possible exception of emergencies, and that they are paid within that 45-day period after Council approval. OSA believes that the structure in place is better, but it still needs improvement. According to the Mayor, in the last two months new processes have been put into place and, once an invoice is received, it is dated, initialed and sent to Accounts Payable. From there it is recorded in the claims book. From there it is sent to the appropriate department head for verification and approval. Then, the department head is supposed to initial the invoice and send it back to Accounts Payable for presentation on the Docket of Claims. Finally, after it is presented and approved by the Council, the claim is paid. Checks should not be paid or dated for payment before Council approval. OSA finds that there is still a weakness in the process because there is no system to ensure that the department heads are timely reviewing and returning invoices. *OSA recommends that the administration add one more step to this new procedure to close the loop and create a strong internal process flow by requiring Accounts Payable to check all invoices before the Docket of Claims is prepared to make sure they have all been returned to be paid or disputed.*

Also, upon review of several invoices presented to the City for payment, and the payments remitted to the vendors, OSA noted several occasions where the City did not pay the full amount of the invoice, yet OSA observed no evidence of alternate arrangements made for such lesser payments or documentation noting the circumstances for the partial payments. In addition, OSA found no evidence that these payments of less than the amount due were presented to or approved by the Council. OSA auditors personally observed invoices marked as second, third, and at times, final notices.

*In addition to other procedural recommendations, OSA recommends that all payments should be made from original (first) invoices, and that all invoices stamped as "PAID" should include warrant number and payment date once they are paid.* This procedure will help reduce or eliminate duplicate payments. The administration should review the invoices on the Claims Docket before presentation to the Council. This will also help reduce or eliminate errors such as improper or duplicate vendor payments and improper postings to the general ledger.

One example of the detrimental effect of lapsed payments relates to individual employee insurance. OSA auditors saw evidence that insurance companies had presented bills to the City administration, yet the payments were not made timely, which resulted in lapsed insurance premiums. Lapsed personal (medical, dental, vision, etc.) insurance could result in employees being denied coverage or reimbursement, which could in turn result in an additional liability to the City if Bay St. Louis has to pay for the normally eligible procedures that would have been denied due to the City not making timely payments. Another more recent example resulted from missed payments to Fuelman. Due to a failure to timely pay bills,



Police were unable to use Fuelman to fill up their police cars during Mardi Gras because the account had been suspended. While the situation was taken care of, as shown by the previous example, it is not the first time that the problem of late payments resulted in suspended accounts. *OSA recommends that internal controls and policies and procedures be put into place by the administration to alleviate this from happening in the future.* According to the Mayor, since being made aware of certain best practices and statutory requirements related to paying bills, the City has put procedures in place that should minimize or eliminate payments that do not meet statutory payment deadlines. OSA has not verified these new procedures at this time, but will do so at a follow-up review in several months.

When a municipality intentionally does not follow statutes related to timely and orderly payments, those responsible may be held liable, and the City itself can incur additional penalties from vendors who do not receive their payments on time. These penalties can compound over time. *OSA believes it is imperative and strongly recommends that Bay St. Louis put procedures and policies in place to follow statutes related to the Docket of Claims and orderly and timely payments.*

### ***Journal Entries***

OSA has confirmed findings from the FY 2014 financial audit. However, during interviews with the new Comptroller and in reviewing information, OSA believes that by the end of this fiscal year, it is likely that this will not be a problem anymore. The new Comptroller has been working backwards through this issue trying to make sure that also going forward that this is not an issue. While this will take time to confirm and correct such problems, it is important that the Comptroller's review and corrective action work continue.

As the financial auditors noted, journal entries posted to the general ledger accounting software should have adequate supporting documentation that explains the journal entry, and all journal entries should be authorized and approved by management. They saw evidence that numerous journal entries were made to the general ledger, of which many were later voided and re-entered again in-part or in-whole, and some entries were made to reclassify expenditures from one account to another. All of this appears to have been done without maintaining sufficient documentation. Such poor fiscal management can lead to and, in Bay St. Louis' case probably has contributed to, the budget problems and revenue shortages that are being seen today. *OSA recommends that the new Comptroller be allowed to continue her plan and that the Mayor continue to move forward with following the recommendations of the financial auditors as well as in implementing his corrective action plan.*

### ***Bonds***

OSA affirms the financial audit finding from the FY 2014 audit report that the City did not properly enter into two promissory notes because the administration appears to have not brought this before the Council for their approval as statute requires. Therefore, the Council failed to spread the resolution and intent on the Council minutes in accordance with MS Code §17-21-53.

Financial auditors also noted that the City received a line of credit that was used in anticipation of tax revenue; the City did not properly spread this debt instrument on the minutes and did not repay the debt by the required maturity date of March 15, 2014, as required by MS Code §21-33-325.

In fiscal year 2014, the City did not properly levy and collect sufficient taxes to cover bonded debt principal and interest payments, because the administration (Mayor, City Clerk, and Comptroller) failed to properly follow statutory authority for entering into short-term debt financing and presenting this information to the Council. Without proper and correct information, the Council cannot make proper budgetary decisions. The failure by the administration to bring this to the Council may have directly contributed to the Council not levying or collecting sufficient taxes, although OSA recognizes that this might not have been the only contributing factor in the Council's tax increase decisions.

However, due to insufficient tax levies and tax collections, the City did not generate enough revenue for all bonded debt principal and interest payments. The City was also noncompliant with debt covenants because the administration failed to properly segregate and maintain restricted debt monies from the City's utility operating depository account, and the restricted money appears to have been spent for other operating expenses.



Therefore, OSA concludes that the financial auditors were correct in their finding that Bay St. Louis was (and still is) noncompliant because the City had no Council approval to enter into two separate promissory notes. OSA auditors believe that the Council should have the City Attorney determine if a *nunc pro tunc* order is appropriate to ensure that the bond issue complies with all state statutes related to the Mayor Council form of government.

OSA affirms and reiterates the financial auditor's finding that "management seek appropriate counsel and implement policies and procedures to ensure that all debt obligations and agreements that the City enters into are legal and binding and that they are properly executed in accordance with statutory authority enabling the City to acquire the debt." OSA recommends that the administration should always seek approval from the Council so that all debt documents and agreements are properly spread on the minutes. Additionally, OSA recommends that the City always ensure that it is properly accounting for collections to restricted funds (such as the City's Utility Operating account) and then transferring and expending those funds properly according to agreements and statutes.

### ***Budget***

To ensure proper planning, financial integrity, and transparency, the Mayor should submit accurate and realistic budget requests with correct calculations to the Council. In the FY 2014 financial audit report, financial auditors noted \$621,249.62 in spreadsheet errors that were submitted to the Council. Unfortunately, the Council voted on and approved that budget with the errors and miscalculations. A good internal control process would have insured that review measures in both the executive and legislative branches should have reasonably identified such large errors.

These budget requests with miscalculations and other errors, added to somewhat unrealistic expenditure projections (such as under budgeting overtime payments) could create a deficit and cause inaccuracies in financial accounting and reporting. This is one more of the reasons that the City is experiencing a budget shortfall. This can also create a situation where the City is violating §21-35-25, Mississippi Code of 1972, which states that any departmental amendment to an originally adopted budget which exceeds 10% shall be posted within two weeks of the action in a newspaper. OSA recommends that the administrative staff and then the Council carefully review all budget documents and information for errors, inconsistencies, as well as poor projections and estimates prior to making final budget decisions. In addition, OSA recommends that the City act on the recommendations made by the financial auditors in the FY 2014 financial audit report.

### ***Expenditures Such as Unbudgeted and Unapproved Pay Raises***

#### ***§ 21-35-17. Liability for exceeding budget***

*Expenditures made, liabilities incurred, or warrants issued in excess of any of the budget detailed appropriations as originally and finally determined, or as thereafter revised by transfer as provided by this chapter, shall not be a liability of the municipality, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond. The governing authorities shall not approve any claim and the city clerk shall not issue any warrant for any expenditure in excess of said detailed budget appropriations as finally adopted, or as revised under the provisions of this chapter, except upon an order of a court of competent jurisdiction or for an emergency, as provided in this chapter. Any one or more of the governing authorities, or clerk, approving any claim or issuing any warrant in excess of any such budget appropriation, except as above provided, shall forfeit to the municipality twice the amount of such claim or warrant, which shall be recovered in an action against such member, or members, of the governing authorities, or clerk, or all of them, and the several sureties on their official bonds, and it shall be the duty of the governing authorities of such municipality, or the state auditor, as the head of the state department of audit, or the director thereof, appointed by him, or any taxpayer of such municipality, to bring an action therefor through the city attorney, or any attorney designated and empowered so to do by a court of competent jurisdiction.*

#### ***§ 21-35-33. (Budget) Sanctions***

*Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and punished as provided by law, which shall be in addition to any other penalty now or hereafter imposed by law.*



Prior to the completion of this report, a complaint was filed with OSA related to pay raises provided to municipal employees. In a Mayor-Council form of government, pay raises and other budgetary changes must be brought to the Council for approval prior to enactment. Otherwise, such expenditures would not be legal or proper. In addition, municipal officials have a fiduciary and statutory responsibility to stay within their approved budget. Such expenditures, especially when made without Council knowledge or approval can lead to budget shortfalls. *In order to avoid personal liability, OSA auditors recommend that the Mayor follow the direction of the Council and rescind all pay raises that were made in violation of state statute and which were not properly brought before the Council for review and approval. OSA recommends that the City Council should always carefully review claims, payroll, and other items before voting to approve such expenditures, to ensure they are within their statutory budget limits.*

As a caveat, Council members posed a question related to expenditures during the last quarter of their final year of a term to OSA. Below is the statute that governs such expenditures. *OSA recommends that if the City has questions, then the Council should seek the advice of the City Attorney and/or the Office of the Attorney General's Opinions Division.*

**§ 21-35-27. Last year of officials' terms**

*No board of governing authorities of any municipality shall expend from, or contract an obligation, against the budget made and published by it during the last year of the term of office of such governing authorities, between the first day of April and the first day of the following July that is not on a weekend, a sum exceeding one-fourth (  $\frac{1}{4}$  ) of any item of the budget made and published by it, except in cases of emergency provided for in Section 21-35-19. The city clerk of any municipality is hereby prohibited from issuing any warrant contrary to the provisions of this section.*

*The provisions of this section shall not apply to a contract, lease or lease-purchase contract entered into pursuant to Section 31-7-13 or to seasonal purchases or expenditures.*

**Department of Justice Asset Forfeiture Program**

**“General Fund** -*This is the main operating fund of the City. This fund is used to account for all financial resources not accounted for in other funds. All general tax revenues and other receipts that are not restricted by law or contractual agreement to some other fund are accounted for in this fund. General operating expenditures, fixed charges, and capital improvement costs that are not paid through other funds are paid from the general fund.*” (page 23, FY 2014 financial audit report)

This note in the auditor's financial report is important because OSA auditors have determined through document review that the City, on the last day of fiscal year 2011, un-restricted Department of Justice Asset Forfeiture Funds which must not only be restricted, but which are rigidly governed by federal regulations. This decision was not brought to the City Council's attention, and OSA found no evidence that it was brought to the attention of the auditors in subsequent years. Therefore, it appears that for a number of years, the City co-mingled these funds and did not utilize appropriate accounting procedures to track the funds. The Council became aware of the co-mingled funds issue during the last annual financial audit. When the Council requested information and explanations about the problem from the Mayor and staff, they were not provided with the information they requested. A complaint was filed with the Department of Justice, which in turn opened a review, and a final report is currently pending from the Department of Justice.

In OSA's first training session with City officials, Council members, the Mayor, and other staff were provided a summary of rules related to the Department of Justice Asset Forfeiture program and how funds must be accounted for and expended. Going forward, OSA believes it is imperative that the Council ensure that these rules are being followed by the Mayor and Police Chief, who each are required to sign and certify they have correctly accounted for these funds. Further, OSA has noticed a lack of internal controls, as well as a lack of policies and procedures related to financial and purchasing workflow and recordkeeping. For example, in good faith the Police Chief may have requested to spend some of his Asset Forfeiture money, but it appeared as if a lack of internal controls, policies, and procedures in the purchasing and accounts payable areas caused the request to be a generalized expenditure in administrative purchasing records. The purchases could not clearly be followed as asset forfeiture purchases. *OSA auditors recommend that the Council instruct the City administration to create and enact such policies, procedures, and controls that can be verified as part of future financial audits.*



*OSA strongly recommends that if the Council is required to repay funds, that no action be taken until a Department of Justice report is finalized and actually requires funds to be repaid. In addition, OSA recommends that if the City is not debarred from the program, that all future accounting practices should protect these funds and the Council should ensure through proper review that these funds are maintained and expended according to federal guidelines.*

### ***Payroll Recordkeeping and Reporting***

*OSA affirms the findings of the FY 2014 financial audit and recommends that Bay St. Louis follow the recommendations set forth in that report. In addition, while reviewing a sampling of payroll related policies, documents, etc., OSA auditors noticed that when the Public Works Department or any public safety department has “call outs” to locations for service calls, there is a system of documentation and verification in place to ensure that the calls are legitimate and all employees are treated equally for time reporting purposes. In addition, these systems readily capture accurate time and effort information. However, OSA did not find this process in place for the facility rental employees who report call out times, especially on the weekends, and are subsequently paid overtime for such service calls.*

The lack of internal controls in this area results in unequal treatment of employees as well as the potential for fraudulent overtime claims. Whether that has occurred or not was not a determination OSA auditors were able to make. However, *OSA strongly recommends that the administration, under a directive from the Mayor, require all employees who go out on service calls to follow the same types of procedures that would include uniform intake, processing, and routing procedures; maintaining sufficient documentation (with client signatures); and any other relevant information to ensure the accuracy of the encounter.* Such procedures might include not using personal phones to receive the call outs, but rather going through the call center which is already established; utilizing a record keeping system where the employee must get the signature of the person to whom they are responding and then turn that documentation in with time records. Additionally, such callouts should have similar time restrictions for all similar types of employees (public safety vs non public safety might have two sets of procedures however). In this case, whether fraudulent claims are being made is not as relevant as the fact that the current lack of internal controls allow for that possibility with no way to verify whether or not the actions were valid.

Payroll time cards should be properly completed to record actual dates and times worked for all City employees. Paid time-off should be approved and documented by department supervisors for all City employees. Personnel files should contain all required payroll forms and should be updated with personnel changes, such as rate of pay and department information. Amounts remitted to taxing authorities should be remitted in a timely and accurate manner.

OSA has previously mentioned in this report the importance of following a standardized hiring process where certain steps are taken in a certain order. OSA saw evidence that individuals have been hired and have received their first paychecks before any payroll or other forms were on file Human Resource department as required. This can lead to errors in remitting proper taxes, hiring an unqualified individual, etc. *OSA recommends that the Mayor require department heads and other supervisors to document their approval of employees' paid time-off and also require them to enforce accurate reporting of actual time worked on time cards. Further, OSA recommends that the City put internal controls in place that will ensure that information in employee folders is complete, accurate, and up-to-date.*

### ***Fixed Assets Management***

In accordance with the Mississippi Municipal Fixed Assets Management Manual, fixed assets should be maintained in a subsidiary ledger and updated when new fixed assets that meet capitalization thresholds are acquired or when fixed assets are disposed. All disposals should be properly spread on the minutes to include the method of disposition. Additionally, the Office of the State Auditor requires that an asset listing report should be maintained by the municipality that can be readily checked by property personnel or auditors.

OSA did not do any additional work in this area, but instead reviewed the work papers and interviewed the financial auditors about this issue. The Mayor and administration need to take property control seriously and *OSA recommends that internal controls, policies and procedures are enacted that better protect the City's inventory.* This can reduce waste and loss.



## Findings Related to Potential Revenue Loss

Bay St. Louis is currently experiencing budget and cash flow difficulties. OSA has identified a number of reasons that this has been happening:

- Lack of internal controls over fees, fines, and other cash revenue intake,
- Questionable expenditures,
- Failure to follow State statutes governing budgeting and expenditures,
- Errors and mistakes in bookkeeping and recordkeeping,
- Executive/Administrative branch's failure to properly notify Council of budgetary problems, and
- Legislative Council failure to take action (including legal action) to correct problems as they arise,

OSA auditors affirm the FY 2014 financial audit findings related to areas that can lead to various types of revenue loss. This can be purely accidental, it can be poor management and record keeping, or it could be fraudulent. In its limited scope project, utilizing sampling methods, OSA auditors did NOT find any evidence of fraud, but it is important to note that it is the lack of internal controls and poor recordkeeping that can lead to such losses. In addition to properly collecting revenues from fines, fees, licenses, etc., proper financial recordkeeping is paramount to ensuring that the City is accounting for its revenue accurately. Revenue projections based on what should be collected should closely match what is being collected.

Consider poor internal controls to be like an underground water pipe leak. It may not be easy to see, but the result is inefficiency and unnecessary costs and waste. Instead of being able to do more, the "water leak" costs services and opportunities. So, internal controls need to begin with the collection of the revenues and needs to follow the process all the way through the deposits of such revenues. Bay St. Louis does not currently have sufficient internal controls over such cash revenues.

### ***Building Permits***

The City's ordinances require that all new building construction and remodels have a valid building permit, for which a fee is charged. In some cases, if necessary, the permits may need to be renewed once they expire. Municipal building department staff are required to create a file containing accurate and complete documentation to support fees charged, inspections performed, and any other items to ensure compliance with City ordinances. Municipal employees in the building permit department should collect renewal fees in a timely manner and should follow any procedures to ensure that all permittees are treated equally. Financial auditors noted that

*some permit applications were incomplete and not signed by the applicant or by a City official. Some files were missing inspection documentation, certificates of occupancy, and other documents to ensure compliance with City ordinances. In some instances, we noted that the permit software miscalculated permit fees. And in other instances, the permit clerk incorrectly coded permit types which caused the fees to be improperly calculated and assessed.*

The financial auditors noted that the City is expending resources to clean up blighted properties, but is then failing to file documentation through the County's chancery clerk's office to place liens on these properties. Such liens aid the city in recovering the costs associated with their clean-up related expenditures. According to the financial auditor's work papers, the Building Department's current review process was also deficient and lacks proper follow-up to final inspections.

OSA concurs with the financial audit findings and believes the City's permit department is losing revenue due to incorrect assessments and calculations, and not ensuring that all fees are collected for all permits issued. *OSA recommends that in addition to implementing controls over the building permit process, the City also follow the recommendations found in the financial audit report.* OSA auditors noted that the City submitted a corrective action plan for this and several other findings. OSA has only seen limited effort to follow-through with these corrective action plans to date. The Council should consider having the corrective action plan results reviewed or when OSA returns for a 6-month follow-up, having OSA focus on the implementation of recommendations and corrective action plans.



OSA auditors understand that certain building codes were adopted by the City after Katrina. *OSA auditors recommend that the Council and the Mayor review these building code standards and ensure that all staff in the building department, especially those that may certify properties or issue permits for construction and renovations meet the minimum criteria to hold the positions they have.*

### ***Court Fines and Related Assessments***

Court fines and related assessments are another area where Bay St. Louis may be losing revenue. As the financial auditors noted, proper accounting for court fine revenue is required to accurately determine court assessments due to other agencies and to determine the court fines receivable amounts for each court case. The City is required to submit monthly court assessment reports detailing the amount of funds collected that are to be paid to various agencies and the State. OSA has not seen evidence that significant changes to the oversight and controls needed in the court system are in place. Accurate record keeping, record reconciliation, adequate review of files, etc. are all part of the internal controls that *OSA recommends is put in place to ensure that accurate collections and remittances take place. OSA further recommends that the City should follow the recommendations from the FY 2014 financial audit report.*

### ***Rental of City Facilities***

OSA has reviewed documents and affirms the financial audit findings that event rentals did not have complete and executed contracts on file; some were lacking the lessee's and/or facility manager's signature. Deposits were not collected for all events, and in some cases, deposits and payments made to the City did not have time to clear the issuer's bank to ensure that the funds were sufficient and available prior to the event and use of the facilities. It appears that there has been a problem related to different individuals renting the same facilities for similar purposes and who may not have been treated equally in relation to required deposits and cancellations for facility rentals. *OSA recommends that the City follow recommendations from the financial auditors report and complete the implementation of the process described in the corrective action plan. OSA further recommends that the Council instruct the Mayor to implement policies and procedures to ensure that uniform contracts and facility rentals treat all renters equally.*

### ***Business-type Activities--Utility Fund and Harbor Fund***

City employees assigned to the Utility Department should review customer billings for accuracy on a regular basis prior to sending out bills. According to interviews and documentation, by ordinance, nonpayment of a utility bill is supposed to result in services being suspended. Penalties are required to be imposed for late payments, yet Bay St. Louis was not consistently applying such fees. In the past, it appears that the City has not applied such ordinances equally and OSA found no evidence where anything was brought before the Council for exemption either.

Financial auditors also found that utility customer adjustments were made without adequate supporting documentation detailing the reason for the adjustment. Failure to properly collect utility receivables and enforce the City's cut-off procedures creates a decrease in cash collections. Improper or unauthorized adjustments are in violation of the City's policies and can decrease utility revenue as well. Untimely remittance of utility sales tax has caused the City to be assessed late fees. Failure to reconcile the utility operating account including credit card transactions and failure to reconcile the customer deposit bank account can result in inaccurate financial reporting. The City ordinance regarding collection and cut-off for non-compliant utility customers should be strictly followed and enforced for all utility customers. This protects the City from liability from discriminatory practices as well. *OSA recommends that the Council review all utility related ordinances and statutes and determine the best course of action to ensure timely, accurate, and equitable utility payments that treat all customers fairly and ensure proper revenue collections.*

The Harbor Fund had a problem in previous years related to credit card machines that improperly deposited Harbor funds into the General Fund account. In addition, the City collected, but failed to timely remit sales taxes, resulting in unnecessary penalties and revenue loss. This second issue appears to have been resolved.





OSA auditors asked the question of whether the Harbor Fund maintained sufficient amounts of the revenue it collects to be considered self-sustaining. Currently, if a serious financial event occurred the Harbor Fund does not retain enough of its collections to be self-sufficient. *OSA recommends that if it is the intention of the Council for the Harbor to be self-sustaining, then the Council should re-examine the fund transfers that are being taken from the Harbor fund and being used to supplement the City's general operations. Then, the Council needs to make a decision about their actual budget intention and make necessary changes to the budget based on their decisions. OSA also recommends that Bay St. Louis follow the financial auditor's report recommendations from the FY 2014 audit report.*

## **Other Issues and Findings**

### ***Information Technology (IT)***

During the course of this project, OSA auditors met with Omni Technologies and others about the observed lack of security and controls over the existing network. In the course of its initial work, OSA auditors almost immediately determined there is a severe lack of IT security. There are no internal controls related to who has the authority to access servers, the server rooms, and the network itself. After interviewing various people, OSA concludes that the City administration is currently allowing too much open access to the network through individual employee access and multiple companies. The access is not monitored or controlled. There have been instances where other companies have shut off security protocols, which in turn, created a high-risk vulnerability situation. OSA determined that these weaknesses appear to be due to a lack of internal policies and procedures within the City and not due to efforts on the part of Omni Technologies. Weaknesses in the existing system had been previously brought to the administration's attention by Omni Technologies. *OSA strongly recommends that the Council and the Mayor work with Omni Technologies to develop a long-term plan that will protect the integrity of the City's data and operations and will protect it from unauthorized access internally and externally.*

To ensure financial reporting integrity, the City should have adequate physical and virtual firewalls, keycard security, adequate and appropriate physical locations for equipment, virus protection, and sufficient backup systems in place to efficiently operate in a secure environment. Not only did financial auditors see the result of a catastrophic data loss due to lack of information technology security, since OSA has begun this project, OSA has confirmed that due to someone making unauthorized or improper changes to the server and network configurations, City files were compromised and some were permanently lost. Some of these losses were critical and confidential files. OSA reiterates and affirms the financial auditors' recommendations that the City consult with their established and trusted information technology Service Company to implement a complete and comprehensive IT solution to ensure that this situation does not occur in the future.

OSA auditors also observed that the City is not using uniform City sponsored e-mails to conduct its business. There are federal regulations regarding open records, records retention, etc. to which the City should both be aware and adhere. *OSA recommends that the City work with Omni Technologies to ensure that they are in compliance with such State and federal regulations governing e-mails and record retention.*



## Conclusion

Because the City of Bay St. Louis is experiencing a tremendous budget shortfall, OSA auditors believe that working together to develop a long and short-term strategy to turn the City's fiscal problems around should be a major priority. City leaders should also focus on internal controls, policies, and procedures, which will ensure that revenue losses are minimized and good spending habits are enforced.

After conducting the research and evaluation portion of this project, OSA stands by the assessment that:

- poor internal controls,
- lack of communication and information sharing,
- lack of written and meaningful policies and procedures in both the executive and legislative branches of the City,
- the Mayor and his staff failing to follow statutes related to municipal government, and
- the Council failing to fully exercise its authority over the Mayor and the administration to compel them to follow certain laws

are all reasons why the City is facing the problems reported in the FY 2014 financial audit report. The Mayor and the administration must provide accurate and timely information to the Council. The Council must make some very hard budget decisions over the next several months. If the city administration cannot implement the appropriate controls, many of the problems previously identified will continue.

In order to succeed in reducing or eliminating such audit findings and improve the financial position of the City, over the next year, the Council, the Mayor, and the administration will need to make some very hard decisions that may not always be popular. In addition, the City will need to find ways to sustain the changes and cuts that it makes in order for these solutions to be long-term.

While this performance review was not comprehensive, it is the hope of this agency that the information provided in this report is beneficial to your City's continued improvement.



## Appendix A: Addendum Issue: Council Minutes

In light of additional information provided to OSA auditors after the Council accepted the report at their May 24, 2016 meeting, OSA has decided to add some additional commentary about the impact that poorly run Council meetings, Council minutes that are not accurate, and Council minutes that are not timely prepared can have on overall municipal operations.

It is important to understand that without clear and organized instructions from the Council to the Mayor/Administration in a Mayor-Council Form of Government, the likelihood of mistakes and misunderstandings can increase. OSA has documentation showing that for a period of time prior to the current Clerk of Council's tenure, as has been mentioned in the body of this report problems existed with the minutes of the Council:

- minutes sometimes contained errors,
- minutes lacked attachments and exhibits or contained wrong or impartial exhibits,
- minutes were not always completed in a timely manner,
- minutes were not always approved by the Council in a timely manner,
- minutes were not always published properly, and
- ordinances were not always properly stated or codified as required by statute (§§21-13-7 through 21-13-15)

It should be noted that OSA has observed improved processes over the last year or more related to Council meeting minutes. However, OSA recommends that constant review and adherence to strong protocols governing meetings, records, minutes and exhibits continue to be maintained. In an interview with the Mayor, OSA auditors note that beginning around July of 2015, the Council began sending the minutes to the Mayor and City Attorney for review. This additional review, along with personnel changes prior to that time have all helped to improve the overall process.

OSA reiterates the following:

- The Clerk and Deputy Clerk of Council should continue to develop policies and procedures to ensure the effective and accountable recording of Council meeting minutes;
- OSA further recommends that the Counsel refrain from making any motions during public comment time, or at any time that is not part of an agenda item; and
- OSA recommends that the Council have either the Clerk/Deputy Clerk of Council or the City Attorney read back to the Council any motions before a vote is taken and that appropriate discussion time is allowed for clarification purposes.
- Ordinances should be properly stated and timely transmitted to the Administration for codification and implementation.

In the interest of improved communication, the Bay St. Louis Council should consider the impact that their minutes have on the City's operations. If minutes are not clear and do not accurately reflect the wishes of the Council, it is probable that other communication and operational problems will arise.



## **Appendix B: Responses to this Report**



May 23, 2016

Samantha J. Atkinson  
Samantha J. Atkinson  
501 North West Street  
Suite 801, Woolfolk Building  
Jackson, MS 39501

Re: Bond Certificates

Mrs. Atkinson,

I would like to express my findings, concerns and hopeful resolutions to a better Bay Saint Louis resulting from this Review. This Review must not be intercepted by Council, Administration and or general public as a "got you" and or "I told you so" moment. There are many "lessons to be learned", explored and or implemented IMMEDIATELY for the survival of Bay Saint Louis financially, thru its administration, Council and taxpayers as a whole.

"POOR or NO INTERNAL CONTROLS":

I concur with your findings regarding the "findings" of our 2014 FY Audit but it lends itself to where we still are in "waiting" for our 2014/15 to begin after hiring a temporary CPA firm.

\*\*\*\*\*"LACK of COMMUNICATION and INFORMATION SHARING\*\*\*\*\*:  
Concur.....This is, I believe, the biggest and MOST accurate finding in OSA total review! In review of every "chapter or findings" above heading was "not done, should have been done and or could have resolved the finding earlier if supplied."

"MAYOR and STAFF FAILING to FOLLOW STATUTES RELATED to MUNICIPAL GOVERNMENT":

This, to me as a Councilman. should NOT be a concurrence but should be immediately mandated and followed by this Administration through the City Attorney and review and follow up of this total Council. If compliance is NOT being met, the City Attorney SHALL notify this Council for immediate legal compliance.

"COUNCIL FAILING to FULLY EXERCISE ITS AUTHORITY":

Concur..... It's quite obvious from the last three (3) fiscal audits, discovered & pending Department of Justice findings and this across the board spectrum of concerns, that violations of



State Statutes and possible Federal laws from our State Auditor's Office that THIS and FUTURE Council must immediately start "verifying and STOP relying on supplied information" and believe it is so! The basis of where this City's financial and operational hardships are we "received, believed and implemented" from flawed documents, unreliable numbers within our budgets and a belief of controls within our City. This Council needs to DEMAND certifications of personnel within valued departments and a professionalism from all, including this Council!

"SUMMARY OF OTHER ITEMS, CHAPTERS and INFO":

I believe concurrence is not an acceptable term here.

From purchasing, transfers, signatures, IT security, Department of Justice to Bonds information listed herein, this is the TOTAL responsibility and control of the duly elected Mayor of Bay Saint Louis. Under the audit reports, Department of Justice Report and this Review, during my tenure of 2013 to present, this falls under (elected) Les Fillingame, Mayor.

I believe that some information herein warrants in-depth Executive Sessions of Council Members only, separate Mayor/Council Executive Session and possibly "outside Counsel" Executive Session with Council.

I also recommend that some "findings, signatures and other data" listed be forwarded to other enforcement agencies, Mississippi Attorney General and or local District Attorney offices for review and or clarifications that seem questionable.

As one Councilman who did request this Review, I would like to thank you, your staff, Mr. Pickering, Technical Services and all who participated with professionalism in helping to address Bay Saint Louis' needs, shortfalls and guidance in making us a great "A Place Apart"!

Lonnie J. Falgout

Council Member Ward 6

Bay Saint Louis, Mississippi



May 23, 2016

Samantha J. Atkinson  
501 North West Street  
Suite 801, Woolfolk Building  
Jackson, MS 39501

Re: Bond Certificates

Mrs. Atkinson,

After a detailed review of the final report presented by OSA, I would like to express my feelings of the findings, concerns, violations & other issues contained in this report.

- Poor Internal Controls:

I agree with your findings that in too many instances we the city have no policies or procedures in place that would have prevented many of these findings. Unfortunately, even where there are policies, procedures & state laws governing municipal activities some chose to ignore these regulations. Therefore, even with policies, procedures & laws in place to cover all issues there is no benefit to the City unless & until ALL choose to abide by these laws!!!!

- Lack of Communication & Information Sharing:

I agree with this finding. This should be a no brainer in that the records & information is in most cases public record. For an elected official to request & be denied access to this information is ludicrous. Without sufficient & accurate information Council Members are unable to fulfill their responsibilities.

- Lack of Written & Meaningful Policies & Procedures:

Agree. See above.

Without a commitment to follow ALL policies, procedures & laws we have gained nothing.

# BAY SAINT LOUIS

A PLACE APART

- Mayor and Staff Failing to Follow Statues Related to Municipal Gov:  
Again, I totally agree.  
Unless, and until, penalties are imposed for violations of any & all policies, procedures & laws there DOES NOT appear to be any relief in sight. Time after time we have been notified of violations & broken laws but yet they still occur. (See below for more.)
- Council Failing to Fully Exercise its Authority Over the Mayor & Administration to Compel Them to Follow the Laws:  
Again, I totally agree.  
Unfortunately, if this Council had done the job it was elected to do many of these issues would not have happened. This Council was not elected to be a rubber stamp. It was elected to provide a "Check & Balance" of the Administration's activities and the only way for this to happen is to raise questions & challenge questionable information provided by Administration & legal counsel.  
We also failed by not pushing for legal actions when violations were finally brought to our attention!!!
- Summary:  
"I Didn't Know", "It Was a Mistake" or "Someone Else's Fault":  
This has become a Disturbing Pattern that is Happening Time & Time Again!!! Ignorance is NO Excuse!!! This never has been nor will ever be acceptable!!!  
If the Mayor Can Not or Will Not put qualified people in these positions the City, Residents and Taxpayers WILL Continue to Suffer & Pay the Price for his Neglect!!!  
I recommend that this report be submitted to all Federal, State & Local Law Enforcement agencies for their review and any necessary legal actions/sanctions.

I would like to thank Mrs. Sam Atkinson, her staff, Mr. Pickering and other Office of State Auditor staff members who participated in this Review. Hopefully your efforts will result in a Better Bay Saint Louis, "A Place Apart".

Thank you, again, Office of State Auditor.



Michael Favre  
Councilman-at-Large  
Bay Saint Louis, Mississippi



**THE CITY OF BAY ST LOUIS  
LES FILLINGAME, MAYOR**

**ADMINISTRATIVE RESPONSE TO OSA PERFORMANCE AUDIT REPORT #144(May 2, 2016)**

**“Executive Summary and Introduction” (pages 1-3)**

Pg 1. A statement that “over the last several years, Bay St Louis,... has experienced increasing budget and operational problems” is not factual. The city has experienced significant improvement in the budgetary process due to continued operational efficiencies. If operational results are the product of operational routines, it should be obvious to observers that Bay St Louis stands as a success story in Mississippi when compared to other cities of like size. Since the 2010 census, Bay St Louis has been the fastest growing city in the state for three years; and, most recently, the second fastest growing. People are attracted to communities that offer a quality of life that is affordable. Only by being good stewards of taxpayers’ money can the city operate with one of the lower ad valorem rates in the state and utility rates among the lowest in the region.

The insinuation that “the Council failing to fully exercise its authority over the Mayor” is the primary underachievement of the Council’s function during the FY2014 review period is misleading. It will be evidenced throughout this response that flawed and incomplete minutes throughout the year were time and again the root of findings that ultimately reflected of the administration when it should not have.

Pg 2. The report states that “with a confirmed budget shortfall occurring, Bay St Louis must improve the efficiency of its operations.” It would be more correct to say that, as of the day of this report, Bay St Louis is operating with a balanced budget because of the efficiency of its operations. As a note to operational efficiency: The latest two week pay period indicates that 10,050 hours were used for all operations including the harbor. Compare that to a typical payroll in 2005 (prior to Katrina and annexation) where 11,200+/- man-hours were used. That translates into the city using 10-11% less manpower to operate and sustain a city that is now twice as big geographically (with 60+ miles of additional ROW) and custodian of over \$120,000,000.00 of taxpayer capital assets that include a new harbor, community hall, two new firehouses, City Hall complex, splash pad, street light systems, and so on.

**“Purpose, scope and methodology”**

Pg 3. “The purpose of the work undertaken by OSA at the request of the Bay St Louis City Council was to evaluate the findings of the latest financial (year ending September 30, 2015)” should read ... September 30, 2014.

OSA's methodology includes a statement that there was an "attempted review of municipal ordinances, policies and procedures (unfortunately the administration was never able to provide any ordinances, policies or procedures for OSA auditors to review)." The report, in itself, disputes this statement in the "Internal Control" section on page 5 where it indicates that administrative departments (police, fire and public works) provided policies and procedures. It should also be noted that several administrative departments were never solicited to provide policies and procedures for purposes of this review.

### **"Internal Controls"**

Pg 5. The administration acknowledges the benefit of strong internal controls based on comprehensive written policy and procedural standards. With particular attention being paid to fiscal policies and procedures, the administration is in the process of compiling a policy manual that will provide appropriate guidelines and accountability for all administrative departments. Processes governing invoice handling and claim dockets that will guarantee, with oversight, that all claims are paid in the order received and on a timely basis are already in place.

In the review of FY 2014, this report discusses deficiencies in internal controls as being "a correct assessment of what has happened within the administration." However; while understanding this audit was at the direction of councilmen, it must be noted that the report paid little attention to the impact on the governmental process that that lack of legislative internal controls has had. The report suggests that "strong internal controls are part of a governance environment that helps to minimize the possibility of fraud, waste and abuse of taxpayer money." A thorough review of the minutes for FY2014 would logically begin with the minutes of the first meeting of the fiscal year held on Oct 8, 2013. A thorough review of the minutes reveals the following:

- The minutes of this meeting were not signed until 3/10/2015 (17 months after the meeting)
- The minutes were only signed by one councilman and the Clerk of Council
- Attached to the minutes is a docket of claims (\$1,069,826.20) that is not referenced in the minutes
- Authorization to execute a lease agreement for the lease/purchase of a tractor appears in the minutes but the document is not attached in exhibit
- Two loan authorizations to purchase a truck and 5 police cars appear in the minutes with no exhibits
- Approved the minutes of five meetings: July 26,2013; Sept 3, 2013; Sept 17, 2013; Sept 19, 2013 (no such meeting); and Oct 4, 2013 (no such meeting)

The certified actions of the meeting were acquired the next day and retained by administration. A review of the actions reveals four actions that do not appear in the official minutes: approval of a travel request, the docket of claims, ratification of an appointment, and an action authorizing the Mayor to explore obtaining a line of credit for utility operations (failure of auditors to find this action in the minutes led to assumption that it had not been brought to Council's attention). According to state statute, this meeting did not happen due to lack of signatures. The minutes were approved at the Oct 22, 2013 meeting; but, there is no way of knowing if the minutes approved were the same ones currently in the minutes book and signed 17 months later. As stated in the report, "A deficiency in internal controls... does not allow management to prevent, or detect and correct, misstatements on a timely basis. A material weakness... in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected or corrected on a timely basis." This report and the municipal audit made a very passive reference to lack of internal controls at Council level while a review of the entire year reveals other occasions where deficiencies like those of the first meeting exist. In fact, auditors have suggested that some necessary documentation was never made available to the Council by the administration while the administration has found evidence that the proper documents were indeed provided but never attached to the minutes.

Pg 7. The City Council and Councilmen have never been denied access to any information available to the administration. Where the information is available has been the subject of some debate, but access has never been restricted at the source, City Hall. There are times that duplicating and delivering the same information that is readily available for review has been prohibitive from a cost and manpower basis.

The report references an example of "a 2014 docket of claims showing a list of items with one total, a city clerk certification letter showing a different total." This could be a reference to the minutes of 9/18/2013 where minutes show a docket of claims totaling \$328,800.78 and the exhibit attached totals \$313,650.29. The certification letter attached recommends funds are available for the 10/8/2013 docket; and, the same letter was attached to the 10/8/2013 minutes. It is important to note that the minutes of this meeting held on 9/18/2013 were not approved until 3/6/2014 (6 months later) but were signed on 12/17/2013 (three months earlier). The administration holds to the fact that accurate, proper documents were provided on 9/8/2013 but that those documents were not properly recorded as required by MS Code 21-15-33. It should also be noted that during FY2014, the minutes of 33 meetings were recorded in violation of statute.

### **“Council Responsibility to Oversee Budget”**

Pg 7. The report states that “when Council passed an ordinance requiring the Mayor to provide access to bank records to the Clerk of Council and certain councilmen, such access was not timely provided.” The administration would suggest that this statement is inaccurate for several reasons. First, the ordinance was passed on 8/4/2015 and not delivered to the Mayor for review/veto until 9/16/2015. The action was vetoed on 9/30/2015 and not overridden by Council until 11/3/2015. Getting an opinion from the AG was an exercise in due diligence by the administration when faced with an obvious legal question with no local precedence. Furthermore, access to bank records has always been available; but, the question here involved access to bank accounts by internet access that, at the time, would have allowed transactions to be initiated. Since then, internet access has been given with viewing only privileges that creates no security risk. It is important to note that the Clerk of Council has not only been bonded but approved by Council as a signor on all city bank accounts.

The report indicates that “OSA auditors confirmed that in 2015 the council imposed a normal and reasonable requirement that certain information be presented to the Clerk of Council the Friday before a regularly scheduled meeting.” The list of documents was actually adopted at the 10/7/2014 meeting, not in 2015. The Council added a requirement that original invoices be brought to Council chambers by 10:00AM of the Monday prior to meetings at their meeting of 12/8/2015 after refusing to pay dockets on 10/6/2015 and 10/20/2015.

Administration concurs with report recommendation to “remove items from the agenda that were not provided in a timely and accurate manner” and only ask that Council request information for meetings far enough in advance to allow for preparation.

### **“Municipal Background Checks”**

Pg 9. The administration does not concur with the suggestion that hiring policies are not followed. The potential liabilities of hiring are understood by all that are part of the process and further contend that none of the bullet points on page 9 apply to Bay St Louis.

### **“Codified Municipal Ordinances”**

Pg 9. The common practice in Bay St Louis prior to 2015 was for the Clerk of Council to maintain the ordinance book and the book of minutes. The maintenance of the ordinance book became an issue in 2015 when it was discovered that the ordinance book was not being properly kept. It has been decided to have the Municipal Clerk

charged with the task going forward as statute suggests. The process of re-codification has begun. Ordinances that were not properly processed through the minutes are being identified and correctly documented for the record as part of the re-codification process. The administration's commitment to thoroughly review minutes that began in July 2015 will serve to guarantee proper processing of ordinances through the minutes and to the City Clerk for advertising and codification.

#### **FINANCIAL STATEMENT FINDINGS (FY2014 FINANCIAL AUDIT)**

##### **"Purchasing and payment of Claims"**

Pg 10. All deficiencies identified in processing the docket of claims have been corrected. The process that now includes additional assurances that claims will be paid in the order in which they are received was the primary, but not the only, change incorporated. Formalized policies and procedures are being developed and will soon be presented to Council for approval. A comprehensive policy manual that includes all departments of the city will soon be implemented for the first time in the city.

##### **"Transfers"**

Pg 13. The administration now requires that all checks, except payroll, be put on the docket of claims to thereby be included in the public record. This includes dedicated fund transfers into restricted accounts that had been done in the past as budgetary reconciliations. So, as an example, distribution of ad valorem that is received as one check into dedicated accounts will be on the docket of claims.

##### **"Check Signatures" [MS code 21-39-17]**

Pg 13. Check signing is now limited to the Mayor and City Clerk. Prior to 2016, it had been customary practice for other signatures authorized by Council and changed from time to time.

The order of claims process described needs to be clarified to reflect the current methodology in place. Invoices are received in Finance or each department obtains an invoice directly from the vendor. These invoices are then reviewed and signed by the department that procured the goods or services. Once the invoice has been approved at the department level, the invoice is routed to the Mayor's secretary. She stamps the invoice received and logs the invoice into the "Docket Book," assigning a claim number in the book and affixing the claim number to the face of the invoice. These invoices are then routed to accounts payable clerk for presentation on the next available docket. The invoices are entered into the system in claim number order.

## **“Bonds”**

**Pg 14. The administration does not concur with the statement “that the City did not properly enter into two promissory notes because the administration appears to have not brought this before council for their approval.” Refer to discussion in “Internal Control” section of this response and consider an important action that relates to this loan that was taken at the 10/8/2013 meeting authorizing the exploration of a possible line of credit loan that was taken from the minutes. The resolution authorizing the \$500,000.00 was properly prepared and appears in the minutes of the 11/25/2013 meeting. Council authorization to draw the proceeds of the loan appears in the minutes of 11/25/2013, 12/3/2013 and 12/17/2013.**

**The administration does not concur with any of the statements in the report that suggest that “the City did not properly levy and collect sufficient taxes to cover bonded debt principal and interest payments because the administration failed to properly follow statutory authority for entering into short-term debt financing and presenting this information to the Council,” nor does it concur with the assumptions that “the failure by the administration to bring this to the Council may have directly contributed to the Council not levying or collecting sufficient taxes...” The Council’s own record indicates that on:**

- **5/6/14 the Council authorized Government Consultants, Inc and Butler Snow to proceed with getting information about restructuring the 2005 General Obligation Bond**
- **5/20/2014 extended discussion with Steve Pittman of Government Consultants and Lucien Bourgeois with Butler Snow about benefits of bond refinance**
- **6/3/2014 City attorney presented resolutions for Council to consider for restructuring 2005 Bond [it must be noted that the minutes of this meeting were not signed until 8/7/2015 (14 months later) and never certified by Council Clerk]**
- **6/4/2014 Council and City Clerk discussed utility revenues and need for additional to fund debt service. Mayor suggested \$9.81 debt service fee per account to fund a 5 year bond. Council approved by Resolution to issue bonds for \$1,700,000.00 with five year payout. Council gave consensus to set utility rate increases at meeting on July 8, 2014 (minutes were not signed until 12/2/2014).**
- **6/17/2014 City Clerk shared the municipal auditor’s concern about need to adjust utility rates (minutes not signed until 9/4/2014 and never certified by Clerk of Council)**

- 6/26/2014 Motion to add \$9.00 debt service fee to utility accounts failed 3-4 (bond closing at Hancock Bank was earlier that day)
- 7/21/2014 Jason Thomas of Hancock Bank was asked by City Clerk to address the Council and he “told the council members that its recent re-financing of the \$1.6 million bond carried the stipulation that the City pledged full faith and credit for the annual bond payment... full faith and credit means that the City must dedicate money for the annual bond payment... the City can dedicate the funds by either levying ad valorem taxes or dedicating other methods of payment... under the terms of the loan, the City Council members must decide how to pay for the bond and notify the bank by Sept 1, 2014 and then the City Council must take the action to secure the funds by October 1, 2014.” He asked “if the Council members could assure him that the bond payment would be made next year.”
- 9/4/2014 Motion “to increase the utility rates \$13.00 per month for a Debt Service line item” (minutes of this meeting were not approved until 4/21/2015 and not signed until 4/28/2015)
- 4/28/2015 Councilman acknowledged that sinking fund contained \$305,751.47 from first two quarter reconciliations. Motion made “that the \$13.00 collected monthly be put into the Utility Sinking Fund Account by the end of each month”

Note that the record of 4/28/2015 would dispute the statement that “because the administration failed to properly segregate and maintain restricted debt monies from the City’s utility operating depository account... the restricted money appears to have been spent for other operating expenses.”

#### **“Department of Justice Asset Forfeiture Program”**

Pg 16. The Administration and Police Chief have been fully briefed on the program guidelines for spending and reporting expenditures and are committed to keeping the Police Department compliant going forward. The funds received in the future will be deposited into a separate restricted account rather than into the general fund as had been common practice since the inception of the program many years ago. A review of the program by the Department of Justice and a third party auditor will provide guidance relating to how much of program receipts are yet to be spent.

#### **“Information Technology”**

Pg 20. The administration has become more proactive in IT security and oversight. A staff member has been assigned to monitor progress of all security upgrades including conversion to City e-mails. The number of users with secure access to system has been

reduced from 26 to 4 and new password protection protocols have been initiated. Added physical security has been incorporated in and around server rooms. Service company accountability is a priority.

**“Conclusion”**

Pg 21. As already stated in the response to “Executive Summary and Introduction,” the administration does not concur with the conclusion that “Bay St Louis is experiencing a tremendous budget shortfall.” As of the date of this report, the budget is balanced with expectations to finish the fiscal year within budget; and, due to efficiencies experienced in operations, the City has been able to build reserve accounts without sacrificing operational standards. June 7, 2016 cash balance report indicates over \$650,000.00 in operating accounts, \$2,300,000.00 in reserve accounts and \$3,900,000.00 in capital reserve with all totaling over \$6.8 million.

The administration concurs with the fact that communication will have to improve and will continue to explore remedies.



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