

ORIGINAL

SUPREME COURT OF OHIO

STATE EX REL. GARY D. ZEIGLER,
STARK COUNTY TREASURER.

CASE NO. 10-1570

Relator

vs.

ALEXANDER A. ZUMBAR

Respondent

ORIGINAL ACTION IN *QUO*
WARRANTO

* * * * *

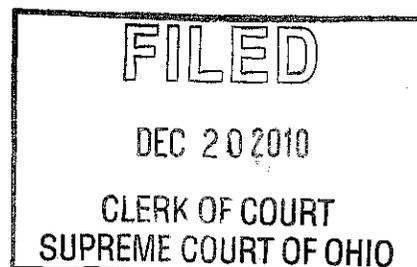
NOTICE OF FILING OF STIPULATED EXHIBITS

Richard D. Panza, Counsel of Record
(No. 0011487)
Matthew W. Nakon (No. 0040497)
Joseph E. Cirigliano, Esq. (No. 0007033)
Wickens, Herzer, Panza, Cook & Batista Co.
35765 Chester Road
Avon, OH 44011-1262
(440) 930-8000 Main
(440) 930-8098 Fax

Attorney for Relator, Gary D. Ziegler

Ross Rhodes (No. 0073106)
Kathleen O. Tatarsky (No. 0017115)
Stark County Prosecutor
110 Central Plaza
Suite 510
Canton, OH 44702-1426
(330) 451-7897 Main
(330) 451-7225 Fax

Attorney for Respondent, Alexander A.
Zumbar



NOW COME Relator Gary D. Zeigler ("Relator") and Alexander A. Zumbar,¹ Stark County Treasurer ("Respondent"), by and through undersigned counsel, and hereby stipulate and agree to the authenticity of the attached exhibits for purposes of this Original Action in *Quo Warranto*. The parties reserve the right to object to these exhibits on grounds, other than authenticity, including, but not limited to objections regarding relevance and admissibility, and to submit additional exhibits in accordance with this Court's rules.

1. Joint Stipulated Exhibit A – July 27, 2010 correspondence from John D. Ferrero, Stark County Prosecuting Attorney to Gary D. Zeigler, Stark County Treasurer;

2. Joint Stipulated Exhibit B – Notice of Special Meeting Set for Monday, August 2, 2010 at 3:00 p.m. in the 3rd Floor Conference Room issued by the Stark County Commissioners;

3. Joint Stipulated Exhibit C – Notice of Special Meeting Set for Friday, August 12, 2010 at 11:00 a.m. in Room 318, issued by Stark County Commissioners;

4. Joint Stipulated Exhibit D – Transcript of proceedings dated August 13, 2010 from Stark County, Ohio Court of Common Pleas, Case No. 2010-CV-2773;

5. Joint Stipulated Exhibit E – Resolution of the Stark County Commissioners adopted August 18, 2010;

¹ Due to the vacancy created by the action of the Stark County Commissioners challenged in this matter, Alexander A. Zumbar was elected to the position of Stark County Treasurer on November 2, 2010 and was subsequently sworn into office. Pursuant to Civ.R. 25(D)(1) the parties acknowledged that Mr. Zumbar is automatically substituted as Respondent in this matter.

6. Joint Stipulated Exhibit F – August 23, 2010 correspondence from Matthew W. Nakon to Board of County Commissioners, c/o Ross A. Rhodes, Esq.

7. Joint Stipulated Exhibit G – Resolution of the Stark County Commissioners adopted August 23, 2010;

8. Joint Stipulated Exhibit H – Judgment Entry dated December 8, 2010 issued by the Court of Appeals for Stark County, Ohio Fifth Appellate District in Case No. 2010CA00244;

9. Joint Stipulated Exhibit I – Election Summary Report of Stark County, Ohio General Election dated November 2, 2010.

10. Joint Stipulated Exhibit J – Complaint in *Stark County Treasurer, et al. v. Vincent J. Frustaci, et al.*, Stark County Court of Common Pleas, Case No. 2010 CV 02773 (“Recoupment Action”).

11. Joint Stipulated Exhibit K – Transcript of August 23, 2010 meeting of the Stark County Commissioners.

12. Joint Stipulated Exhibit L – August 23, 2010 Order of the Court in *Stark County Treasurer, et al. v. Vincent J. Frustaci, et al.*, Stark County Court of Common Pleas, Case No. 2010 CV 02773.

13. Joint Stipulated Exhibit M – Special Audit Report for the period January 1, 2005 through April 13, 2009.

14. Joint Stipulated Exhibit N – July 26, 2010 correspondence from Stark County Auditor Kim R. Perez to Stark County Prosecutor John D. Ferrero.

Copies of all of the above-referenced exhibits (Joint Stipulated Exhibits A – N)

are attached hereto and filed herewith.

Respectfully submitted,

Matthew W. Nakon A.D.

Richard D. Panza (No. 0011487)
E-mail rpanza@wickenslaw.com
Matthew W. Nakon (No. 0040497)
E-mail mnakon@wickenslaw.com
Joseph E. Cirigliano (No. 0007033)
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ATTORNEYS FOR RELATOR,
GARY D. ZIEGLER

Ross Rhodes A.D. (per email consent)

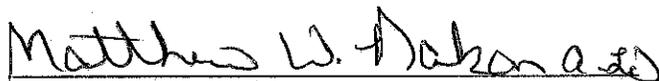
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ATTORNEYS FOR RESPONDENT,
ALEXANDAR A. ZUMBAR

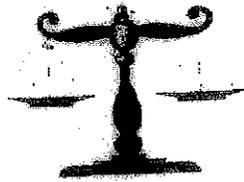
PROOF OF SERVICE

This is to certify that a copy of the foregoing Notice of Filing of Stipulated Exhibits has been sent by ordinary United States mail, postage prepaid, on this 20th day of December, 2010, to:

Ross Rhodes, Esq.
Kathleen O. Tatarsky, Esq.
Stark County Prosecutor
110 Central Plaza
Suite 510
Canton, OH 44702-1426

A handwritten signature in black ink that reads "Matthew W. Nakon" followed by a stylized flourish.

Richard D. Panza
Matthew W. Nakon
Joseph E. Cirigliano



JOHN D. FERRERO
STARK COUNTY PROSECUTING ATTORNEY

Stark County Office Building,
 110 Central Plaza South, Suite 510
 Canton, Ohio 44702
 330-451-7897 • Fax 330-451-7965
 Website: www.prosecutor.co.stark.oh.us

John L. Kurtzman
 Chief Counsel

Kent B. Smith II
 Operations Director

ASSISTANTS:
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 Chief
 Deborah A. Dawson
 Assistant Chief
 David M. Bridensine
 Senior Assistant
 Gerard T. Yost
 Lisa J. Barr
 Amy A. Sabino
 John F. Anthony
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Dennis E. Barr
 Chief
Trial Section:
 Chryssa N. Hartnett
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 Katie W. Chawla

Appellate Section:
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 Kathleen O. Tatarsky
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INVESTIGATOR:
 Michael M. Kakoules

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 Aaron P. Howell
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 Timothy G. Andrews
 Jannita M. Harris

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 Dianne K. Hammer
 Lynda A. Wise

OFFICE MANAGER
 Patty J. Kriepner

July 27, 2010

Gary D. Zeigler
 Stark County Treasurer
 110 Central Plaza South, Suite 250
 Canton, OH 44702

Re: Stark County Treasurer's Office
 Special Audit for the Period January 1, 2005 through April 13, 2009

Dear Treasurer Zeigler:

On June 25, 2010, this office received a certified copy of the above-referenced audit report, filed by the Ohio Auditor of State pursuant to R.C. 117.27 (the "Special Audit Report"). A copy of the Special Audit Report is attached for your reference.

The Special Audit Report particularly details two issues. The Auditor of State determined, first, that the Stark County Treasurer's Office and the Stark County Auditor's Office were not reconciled as of April 13, 2009, in that "we determined \$2,734,560 was deposited into the head cashier's vault, withdrawn, and was not subsequently deposited into a [Stark County Treasurer's Office] bank account." Special Audit Report at 8.

The second issue of the Special Audit Report details the conclusion of the Auditor of State that two checks drawn on public funds in accounts of the Stark County Treasurer's Office were "illegally expended in favor of the Stark County Treasurer's Office" in the total amount of \$230,000. Special Audit Report at 8, 13-14.

As a result of these determinations, the Ohio Auditor of State "issued a finding for recovery against Vince Frustaci, chief deputy treasurer, for \$2,734,560 of public monies collected but unaccounted for and \$230,000 of public monies illegally expended." (Special Audit Report at 3) for a total finding for recovery of \$2,964,560.

I note that the Special Audit Report makes no finding for recovery against the county treasurer personally. I further note that the Special Audit Report does not set forth any malfeasance or gross neglect of duty pursuant to R.C. 117.29. Accordingly, the Special Audit Report does not raise any issue of any blameworthy act on the part of the county treasurer as any proximate cause of the loss of these public funds.

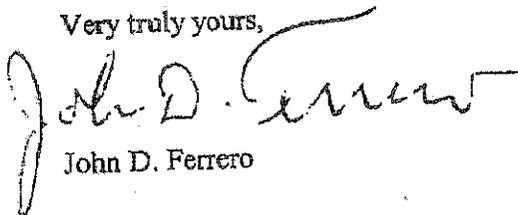
Gary D. Zeigler, Stark County Treasurer
Special Audit Report
July 27, 2010

However, public officials such as a county treasurer are "liable for all public money received or collected by them or by their subordinates under color of office" (R.C. 9.39), and as the duly elected and acting treasurer of Stark County, you are responsible "for the payment of all moneys which come into [your] hands for state, county, township, or other purposes." R.C. 321.02. With respect to acts of deputy treasurers such as Mr. Frustaci, a county treasurer is "liable and accountable for their proceedings and misconduct in office." R.C. 321.04. This liability and accountability is imposed on the county treasurer by law regardless of fault, blame, culpability or even involvement on your part. In particular, a county treasurer's duty to pay over all public monies which come into your hands is not relieved by any intervening acts of others; it is a strict liability. *Seward v. National Surety Co.*, 120 Ohio St. 47, 50, 165 N.E. 537 (1929); see also *State v. Herbert*, 49 Ohio St.2d 88, 96 358 N.E.2d 1090 (1976) ("Over the years, this court has held public officials liable for the loss of public funds, even though illegal or otherwise blameworthy acts on their part were not the proximate cause of the loss of public funds.").

Accordingly, it falls to me pursuant to R.C. §§ 117.28; 309.12; 321.37; and otherwise according to law; to advise you that it appears there will remain after all other sources of repayment have been exhausted a deficit in the amount of not less than \$1.5 million in the accounts of your office, representing moneys which have come into your hands under color of your office as county treasurer, and which have been illegally expended or are unaccounted for. I must further advise you that it is the opinion of this office that a county treasurer is individually and personally liable for any and all such illegally expended or unaccounted for funds.

Please advise this office immediately whether and how you intend to make repayment of the foregoing amounts. If it becomes necessary to institute a civil suit for the amount due pursuant to R.C. 321.37, an additional ten per cent penalty will be due on such amount.

Very truly yours,

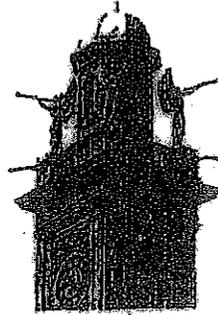


John D. Ferrero

enc.

cc w/ enc.: Dennis Thompson, Esq.

STARK COUNTY COMMISSIONERS



County Office Building
110 Central Plaza South, Suite 240
Canton, Ohio 44702-2202
Phone: (330) 451-7371
Fax: (330) 451-7906

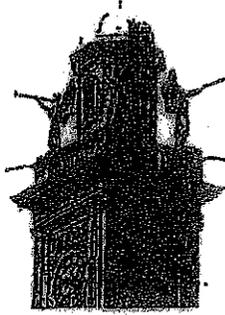
BOARD OF COMMISSIONERS

Todd D. Bosley, President
Dr. Peter Ferguson
Steven M. Meeks

**SPECIAL MEETING SET FOR MONDAY, AUGUST 2, 2010, AT 3 p.m. IN THE
3RD FLOOR CONFERENCE ROOM**

To consider the status of the Treasurer's Office in light of pending action by the Stark County Prosecutor pursuant to ORC 321.37.

STARK COUNTY COMMISSIONERS



County Office Building
110 Central Plaza South, Suite 240
Canton, Ohio 44702-2202
Phone: (330)451-7371
Fax: (330)451-7906

BOARD OF COMMISSIONERS

Todd D. Bosley, President
Dr. Peter Ferguson
Steven M. Meeks

**SPECIAL MEETING SET FOR FRIDAY, AUGUST 12, 2010, AT 11 a.m. IN
ROOM 318**

To consider the status of the Treasurer's Office in light of pending action by the Stark County Prosecutor pursuant to ORC 321.37.

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IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO
CASE NO. 2010-CV-2773

STARK COUNTY)
TREASURER, ex rel.)
JOHN D. FERRERO, et)
al.,)
Plaintiffs,) TRANSCRIPT OF
) PROCEEDINGS
versus)
)
VINCENT FRUSTACI,)
et al.,)
Defendants.)

BE IT REMEMBERED, That upon the
hearing of the above entitled matter in the
Court of Common Pleas, Stark County, Ohio,
before the Honorable H.F. Inderlied, Jr.,
Judge, and commencing on August 13, 2010,
the following proceedings were had:

RUTH C. WEESE, RDR
OFFICIAL COURT REPORTER
STARK COUNTY COURTHOUSE

1 APPEARANCES:

2
3 On Behalf of the State of Ohio:

4
5 Ross Rhodes, Assistant Prosecutor
6 Deborah Dawson, Assistant Prosecutor
7 Stark County Office Building
8 Canton, Ohio 44702
9

10 On Behalf of the Defendant:

11
12 Matthew Nakon, Attorney at Law
13 Amy DeLuca, Attorney at Law
14 Joseph Cirigliano, Attorney at Law
15 35765 Chester Road
16 Avon, Ohio 44011
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(Thereupon, court opened at
11:00 a.m. and the following
proceedings were had.)

THE COURT: Good morning, please
be seated. Let the record reflect that the
case before the Court is a case brought by
the county prosecutors's office on behalf
of the treasurer and on behalf of the Board
of County Commissioners of Stark County,
Ohio, a procedural label for purposes of
bringing before the Court certain claimed
losses by the county as a consequence of
conduct by the elected county treasurer
Gary D. Zeigler who is a Defendant as well
and Vincent J. Frustaci as well as
Continental Casualty Insurance Company and
Hartford Fire Insurance Company on formal
bonds for the treasurer.

Now, those are the named parties
in this litigation. At the present time
and at this hearing not everyone is
represented and not all issues are actually
presented for the Court's consideration.

1 The prosecutor's office and the person of
2 prosecutor John D. Ferrero and assistant
3 prosecutors Deborah Dawson and Ross Rhodes
4 are present on behalf of the Plaintiffs in
5 this case, and on behalf of the Defendant
6 Gary D. Zeigler in this case attorneys
7 Matthew W. Nakon, Amy DeLuca and Joseph
8 Cirigliano.

9 The matter is before this Court
10 originally on a number of issues, some of
11 which relate to a different case, Thomas M.
12 Marcelli represented by Craig T. Conley and
13 assigned to Judge Thomas Curran, that case
14 having been filed July 2nd of 2010.

15 Those matters were motions to
16 consolidate or intervene in this case by
17 Mr. Marcelli. That case has subsequently
18 been dismissed, that is, yesterday as I
19 understand it. And the motions to
20 consolidate and/or intervene have been
21 withdrawn.

22 For that reason, the only pending
23 case at this time is the one to which I
24 just referred. I am Judge
25 H. F. Inderlied, Jr. I am a retired judge

1 from Geauga County. I have been assigned
2 to this case by the chief justice of the
3 Ohio Supreme Court. That is the standard
4 procedure for visiting judges to be
5 assigned to hear cases in particular
6 counties where the sitting judges are not
7 hearing a case.

8 The reason for not hearing the
9 case is that it involves a variety of other
10 public officials in the same county. And
11 this is a common procedure. At this time
12 the remaining items for consideration or
13 the current items for consideration are the
14 motion for relief from judgment or order by
15 the Plaintiffs in this case relative to the
16 order that this Court made, this Court
17 being myself, appointing counsel at public
18 expense for Mr. Zeigler.

19 In the first instance, the Court
20 did, in fact, grant that appointment and
21 make that order. The Court is at liberty
22 to revisit that issue pursuant to the
23 motion for relief from judgment and request
24 for reconsideration upon a grant of such
25 motion and I will do that.

1 I will do that on the basis of
2 briefs submitted on both sides of the issue
3 and I will do that shortly. Shortly
4 doesn't mean today, but it does mean within
5 the next three or four or five days once I
6 have had an opportunity to review the legal
7 positions of the parties. The parties have
8 agreed through counsel that no evidence is
9 required on that issue.

10 In addition, there is pending
11 before the Court a motion for preliminary
12 injunction on behalf of the Defendant Gary
13 Zeigler. This Court previously granted a
14 temporary restraining order good through
15 today for the purpose of maintaining the
16 status quo until such time as the Court is
17 in a position to make certain decisions
18 based either upon evidence presented or
19 upon legal arguments or issues that are
20 briefed and submitted to the Court for its
21 consideration.

22 At this point in time, there is
23 not all of the material necessary for the
24 Court to make such decisions. The parties
25 agree that those decisions can be made on

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the basis of legal arguments and written briefs, but that there is a dispute with regard to whether all of those issues are properly before the Court at the present time.

The Court agrees that those issues are at least technically not all before the Court. In order to get them all before the Court and place me in a position of resolving the specific dispute regarding the preliminary injunction and regarding the constitutionality of Revised Code Section 321.38 which by its terms permits the county commissioners or the board of county commissioners to remove a treasurer from office, I need specific status changes in this case.

In order to accomplish those status changes, the Defendant Gary Zeigler through his counsel will file on Tuesday, or before if they wish, a writ of prohibition and declaratory judgment action to challenge the constitutionality of that statute, a challenge which has already been made, but in a different form and which

1 technically at least may not be in the
2 right form.

3 It is the Court's intention to get
4 it in the right form so that I make a
5 decision that's not challenged on some
6 technicality instead of on the merits of
7 the decision regardless what that decision
8 might be.

9 It is the Court's order that the
10 temporary restraining order in effect until
11 today be continued in effect until
12 August 23rd of 2010. It is the Court's
13 understanding that the commissioners will
14 not in light of my extension of that
15 temporary restraining order hold a hearing
16 or attempt to remove Mr. Zeigler from
17 office prior to that time, although it is
18 my understanding that they will and they
19 are at liberty to provide Mr. Zeigler with
20 a notice of hearing at that time and the
21 contents of any required information that
22 would constitute due process of law for
23 purposes of holding that hearing, there
24 being a 1922 Ohio Supreme Court decision
25 that appears to require due process to be

1 followed.

2 It's the position of the
3 commissioners that if due process is
4 followed, 321.38 of the Revised Code is
5 constitutional. It's the position of Mr.
6 Zeigler that that statute is
7 unconstitutional and that the only way that
8 statute can be made constitutional is if
9 the legislature includes in the statute
10 specific language providing for due process
11 to Mr. Zeigler or to any treasurer, county
12 treasurer, in the State of Ohio.

13 So the within complaint regarding
14 recovery of losses to the county may
15 continue, in fact will continue, and
16 discovery may be ongoing between the
17 parties with regard to the merits of those
18 claims. It is at this point in time,
19 subject to any further temporary
20 restraining order, the position of the
21 Court to decide the issues presented as
22 expeditiously as possible. That means for
23 those of you who don't understand that
24 reference, I will decide this case as soon
25 as I am provided the proper set of

1 circumstances and the legal explanations
2 from each side that enable me to do so.

3 If that's ten days days from now,
4 it will get decided ten days days from now.
5 If it's 30 days from now, then it will be
6 30 days from now. But I will do it as
7 quickly as I can once I have that
8 information.

9 Now, with that understanding,
10 counsel, is there anything for the record
11 that you would want the Court to cover
12 prior to adjourning pending further filings
13 and determinations? On behalf of the
14 defense?

15 MR. NAKON: Matt Nakon, Your
16 Honor.

17 THE COURT: Yes, sir, Mr. Nakon.

18 MR. NAKON: I believe you covered
19 it all in your order, Your Honor.

20 THE COURT: On behalf of the
21 Plaintiffs, Mr. Rhodes?

22 MR. RHODES: Ross Rhodes,
23 assistant prosecutor. No, Your Honor,
24 nothing further.

25 THE COURT: So that those not

1 familiar with the process understand, when
2 that additional action or actions are filed
3 on Tuesday or sooner, it will be the
4 procedure that the administrator, court
5 administrator, will contact the Ohio
6 Supreme Court and request the appointment
7 of a visiting judge and suggest in the
8 process that it be assigned to me so that
9 the two cases or three cases as the case
10 might be are all under one umbrella so that
11 I can make the determination without having
12 to deal with another assigned judge and the
13 consolidation of more than one case into
14 one to get them all in front of one
15 assigned judge. We have just gone through
16 that with regard to this case once. And
17 the intent would be to avoid that process a
18 second time. That's the Plaintiff's
19 understanding as well, Mr. Rhodes?

20 MR. RHODES: Yes, Your Honor.

21 THE COURT: Mr. Nakon and the
22 defense?

23 MR. NAKON: Yes, Your Honor.

24 THE COURT: All right. With that
25 understanding, this hearing is adjourned

1 pending further action. We're in recess.

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3 (Thereupon, court adjourned at
4 11:15 a.m. on August 13, 2010.)
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C-E-R-T-I-F-I-C-A-T-E,

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I, Ruth C. Weese, a Registered Diplomate Reporter and Notary Public in and for the State of Ohio, do hereby certify that I reported in Stenotypy the testimony had; and I do further certify that the foregoing is a true and accurate transcription of said testimony.

Ruth C. Weese

Ruth C. Weese, RDR

Resolution

PAID-010
STARK CO. TREASURER Distribution

Stark County Commissioners

AUG 18 2010

8:25 PM
R. Reiter

Journal
Prosecutor
File

Adopted August 18, 2010

COMMISSIONERS

TODD D. BOSLEY
DR. PETER FERGUSON
STEVEN M. MEERS

Subject

RESOLUTION SETTING A SPECIAL MEETING AND HEARING TO CONSIDER THE STATUS OF THE TREASURER'S OFFICE IN LIGHT OF PENDING ACTION BY THE STARK COUNTY PROSECUTOR PURSUANT TO R.C. 321.37

The Board of County Commissioners of Stark County, Ohio, met in regular session on the 18th day of August, 2010, with the following members present:

Todd Bosley
Peter Ferguson
Steven Meeks

Mr. Meeks moved the adoption of the following resolution:

WHEREAS, on June 25, 2010, the Ohio Auditor of State filed with the Stark County Board of County Commissioners (the "Board") and the Stark County Prosecuting Attorney (the "Prosecutor"), pursuant to R.C. 117.27, a certified copy of the report of the special audit undertaken of the Stark County Treasurer's Office for the Period January 1, 2005 through April 13, 2009 (the "Special Audit Report"); and

WHEREAS, the Special Audit Report includes a finding for recovery against Vince Frustaci and in favor of the Stark County Treasurer's Office in the amount of \$2,734,560 that was deposited into the head cashier's vault, withdrawn, and not subsequently deposited into a Stark County Treasurer's Office bank account; and \$230,000 in public funds that was illegally expended; and

WHEREAS, on July 27, 2010, the Prosecutor served on GARY D. ZEIGLER, Stark County Treasurer, a demand that he state whether and how he intended to make repayment of the foregoing amounts set forth in the Special Audit Report, and advising him that if it became necessary to institute a civil suit pursuant to R.C. 321.37 for the amount due, an additional ten per cent

penalty would be due on such amount; and

WHEREAS, GARY D. ZEIGLER has failed to respond to the
aforementioned demand; and

WHEREAS, on July 28, 2010, at the direction of the Stark County Auditor
and pursuant to R.C. 321.37, the Prosecutor instituted suit in the Court of
Common Pleas against GARY D. ZEIGLER and his sureties, among others, on
the basis that he had failed to make a settlement or to pay over money as
prescribed by law; and

WHEREAS, a copy of the complaint in that action, *State ex rel. Ferrero v.
Frustaci, et al.*, Stark Co. Case No. 2010-CV-02773 (the "Complaint"), has
been filed with the Stark County Board of County Commissioners (the "Board")
for its consideration; and

WHEREAS, on July 31, 2010, GARY D. ZEIGLER was served with a
copy of the Complaint;

Now, therefore, it is hereby

RESOLVED, that, pursuant to R.C. 321.38, a special meeting and hearing
will be held on Monday, August 23, 2010 by the Board, at the County Office
Building, 110 Central Plaza South, in Room 318, at 1:30 p.m., for the
following purposes:

1. To consider the Special Audit Report and the Complaint;
2. To determine whether GARY D. ZEIGLER, Stark County Treasurer,
has failed to make a settlement or to pay over money as prescribed
by law; and
3. To determine whether the Board should remove such Stark County
Treasurer pursuant to R.C. 321.38; and it is further

RESOLVED, that a certified copy of this resolution shall be delivered to
GARY D. ZEIGLER, Stark County Treasurer, together with a true copy of the
Special Audit Report and a true copy of the Complaint; and it is further

RESOLVED, that GARY D. ZEIGLER, Stark County Treasurer is hereby
afforded an opportunity to appear, with or without counsel, and be heard at the

aforesaid special meeting and hearing.

Mr. Ferguson seconded the motion.

Upon roll call the vote was as follows:

Mr. Bosley *yes*

Dr. Ferguson *yes*

Mr. Meeks *yes*

ADOPTED: August 18, 2010.

STATE OF OHIO

)

: ss.:

CERTIFICATE

STARK COUNTY

)

I, Michael Hawke, County Administrator of the Board of Stark County Commissioners, do hereby certify that the foregoing resolution is a true and accurate copy of the same as adopted by the board.

Michael Hawke
COUNTY ADMINISTRATOR

Matthew W. Nakon
Attorney at Law



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August 23, 2010

VIA FACSIMILE (330-451-7225) AND
EMAIL (rarrhodes@co.stark.oh.us)

Board of County Commissioners
c/o Ross A. Rhodes, Esq.
Stark County Prosecutor
110 Central Plaza, Suite 510
Canton, OH 44702-1426

RE: *Stark County Treasurer, ex rel. John D. Ferraro, et al. v. Vincent Frustaci, et al.;*
Stark County Court of Common Pleas; Case No. 2010 CV 02773

Dear Mr. Rhodes:

As you are aware, the undersigned represents Gary D. Zeigler, Stark County Treasurer, with regard to the above-referenced matter. In that regard, my office was provided with a copy of a resolution adopted by the Stark County Commissioners on August 18, 2010, whereby the commissioners scheduled a special meeting to be held on Monday, August 23, 2010 at 1:30 p.m. for the purpose of addressing Stark County Treasurer, Gary D. Zeigler's removal from office. The resolution indicates that the Stark County Commissioners intend to take this action pursuant to the authority they believe is vested in them under R.C. § 321.38.

It remains our position that R.C. § 321.38 is unconstitutional and that no action taken by the Stark County Commissioners to hold a special meeting or otherwise attempt to remedy the due process deficiencies contained in the statute correct the constitutional shortfalls. Moreover, we take the position that four days notice is insufficient time to allow for a proper constitutional hearing. Accordingly, Treasurer Zeigler will not attend the August 23, 2010 special meeting or in any way participate in a process or procedure which is patently unconstitutional.

Very truly yours,

WICKENS, HERZER, PANZA, COOK & BATISTA CO.

By: Matthew W. Nakon
Attorney at Law

MWN/nrs

cc: John Ferrero, Esq.

Resolution

Distribution

Stark County Commissioners

Journal
Prosecutor
File

Adopted August 23, 2010

COMMISSIONERS

TODD D. BOSLEY
DR. PETER FERGUSON
STEVEN M. MECKS

Subject

The Board of County Commissioners of Stark County, Ohio, met in special session on the 23rd day of August, 2010, with the following members present:

Mr. Bosley
Mr. Ferguson
Mr. Meeks

Mr. Bosley moved the adoption of the following resolution:

WHEREAS, on June 25, 2010, the Ohio Auditor of State filed with this Board a certified copy of the report of the special audit undertaken of the Stark County Treasurer's Office for the Period January 1, 2005 through April 13, 2009 (the "Special Audit Report"); and

WHEREAS, the Special Audit Report includes a finding for recovery in favor of the Stark County Treasurer's Office in the amount of \$2,964,560 illegally expended, embezzled or missing and attributed to Vincent Frustaci, former Deputy Treasurer; and

WHEREAS, the Stark County Auditor demanded that Prosecutor John D. Ferrero file a lawsuit against Gary Zeigler and his sureties, pursuant to RC 321.37; and

WHEREAS, Prosecutor John D. Ferrero sent a demand letter to Stark County Treasurer Gary Zeigler, pursuant to RC 117.28; 309.12; 321.37 and otherwise, and stated that it appears that there will remain after all other sources of repayment have been exhausted, a deficit in the amount of \$1,500,000 in the Treasury of Stark County, which monies have come into the Treasurer's hands under color of law, and demanding that Mr. Zeigler advise how he would make repayment; and

WHEREAS, Treasurer Zeigler did not respond to said letter; and

WHEREAS, Stark County Prosecutor John D. Ferrero filed a suit in Stark County Common Pleas Court on July 28, 2010, against Vincent Frustaci, Gary

Zeigler and Mr. Zeigler's sureties seeking recovery of the approximately \$2,900,000 of money pursuant to RC 117.28, 9.39, 309.12, 321.02 and 321.37; and

WHEREAS, on August 18, 2010 this Board passed a resolution setting this meeting/hearing for today, pursuant to RC 321.38; and

WHEREAS, Treasurer Zeigler, by and through his counsel, advised that he would not appear, answer questions, present evidence or otherwise cooperate in this procedure and in fact, did not appear; and

WHEREAS, the evidence presented demonstrated that there is no factual question that \$2,964,560 of money that came into the county treasury, and that said money is missing, and that Treasurer Zeigler failed to make settlement or to pay over money as prescribed by law; and

WHEREAS, the evidence showed that the theft from the Stark County Treasury was not an isolated incident, but occurred over a long period of time during Treasurer Zeigler's tenure; and

WHEREAS, although Treasurer Zeigler committed no crime or malfeasance, his failure to appear and be heard about what procedures he has implemented to restore the public's confidence that their tax dollars are protected in the future;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Stark County Commissioners that, pursuant to RC 321.38, we remove Stark County Treasurer Gary D. Zeigler from the position of Stark County Treasurer, effective immediately.

BE IT FURTHER RESOLVED that the Clerk shall cause a certified copy of this Resolution to be delivered to Gary D. Zeigler by certified mail.

Mr. Meeks seconded the motion.

Upon roll call the vote was as follows:

Mr. Bosley yes

Dr. Ferguson yes

Mr. Meeks yes

ADOPTED; August 23, 2010.

STATE OF OHIO

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STARK COUNTY

: ss.:

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CERTIFICATE

I, Michael Harkle, County Administrator of the Board of Stark County Commissioners, do hereby certify that the foregoing resolution is a true and accurate copy of the same as adopted by the board.


COUNTY ADMINISTRATOR

NANCY S. REINBOLD
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO

10 DEC -8 PM 12:32

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STARK COUNTY TREASURER, ET
AL.

Plaintiffs-Appellees

-vs-

VINCENT FRUSTACI, ET AL.

Defendants-Appellants

Case No. 2010CA00244

JUDGMENT ENTRY

The Court sua sponte stays this case until the Ohio Supreme Court has issued a ruling in the quo warranto action pending before it in Case Number 2010-1570.

CASE STAYED.

IT IS SO ORDERED.


JUDGE


JUDGE

A TRUE COPY TESTE:
NANCY S. REINBOLD, CLERK
By *J.F. ...* Deputy
Date *12/9/10*

4

Election Summary Report
Stark County, Ohio
General Election
November 2, 2010
Summary For Jurisdiction Wide, All Counters, All Races

11/19/10

18:19:11

Registered Voters 267350 - Cards Cast 130341
 48.75%

Num. Report Precinct 364 - Num. Reporting 364
 100.00%

Governor / Lt. Governor

	Total	
Number of Precincts	364	
Precincts Reporting	364	100.0 %
Times Counted	130341/267350	48.8 %
Total Votes	128336	
<hr/>		
John Kasich	REP	63779 49.70%
Ken Matesz	LIB	3609 2.81%
Dennis S. Spisak	GRE	2384 1.86%
Ted Strickland	DEM	58492 45.58%

Attorney General

	Total	
Number of Precincts	364	
Precincts Reporting	364	100.0 %
Times Counted	130341/267350	48.8 %
Total Votes	127269	
<hr/>		
Richard Cordray	DEM	58734 46.15%
Mike DeWine	REP	60613 47.63%
Marc Allan Feldman	LIB	3931 3.09%
Robert M. Owens	CON	3991 3.14%

Auditor of State

	Total	
Number of Precincts	364	
Precincts Reporting	364	100.0 %
Times Counted	130341/267350	48.8 %
Total Votes	124621	
<hr/>		
L. Michael Howard	LIB	7529 6.04%
David Pepper	DEM	54448 43.69%
Dave Yost	REP	62644 50.27%

Secretary of State

	Total
Number of Precincts	364

Precincts Reporting		364	100.0 %
Times Counted	130341/267350		48.8 %
Total Votes		124806	
<hr/>			
Charles R. Earl	LIB	6703	5.37%
Jon Husted	REP	66129	52.99%
M. O'Shaughnessy	DEM	51974	41.64%

Treasurer of State			
		Total	
Number of Precincts		364	
Precincts Reporting		364	100.0 %
Times Counted	130341/267350		48.8 %
Total Votes		125199	
<hr/>			
Kevin L. Boyce	DEM	50725	40.52%
Matthew P. Cantrell	LIB	5944	4.75%
Josh Mandel	REP	68530	54.74%

U.S. Senator			
		Total	
Number of Precincts		364	
Precincts Reporting		364	100.0 %
Times Counted	130341/267350		48.8 %
Total Votes		126884	
<hr/>			
Eric W. Deaton	CON	2195	1.73%
Lee Fisher	DEM	49604	39.09%
Daniel H. LaBotz	SOC	897	0.71%
Rob Portman	REP	72403	57.06%
Michael L. Pryce		1712	1.35%

Rep to Congress			
		Total	
Number of Precincts		364	
Precincts Reporting		364	100.0 %
Times Counted	130341/267350		48.8 %
Total Votes		127857	
<hr/>			
Jeffrey J. Blevins	LIB	7936	6.21%
John A. Boccieri	DEM	58976	46.13%
Jim Renacci	REP	60844	47.59%

State Senator Dist. 29			
		Total	
Number of Precincts		331	
Precincts Reporting		331	100.0 %
Times Counted	119062/242200		49.2 %
Total Votes		115921	

Scott Oelslager	REP	68481	59.08%
Richard D. Reinbold	DEM	47440	40.92%

State Senator Dist. 33

		Total	
Number of Precincts		33	
Precincts Reporting		33	100.0 %
Times Counted		11279/25150	44.8 %
Total Votes		10575	

John K. Fockler, Jr	LIB	528	4.99%
Matt Lewis	REP	5583	52.79%
Joe Schiavoni	DEM	4464	42.21%

State Representative Dist. 50

		Total	
Number of Precincts		116	
Precincts Reporting		116	100.0 %
Times Counted		42628/81490	52.3 %
Total Votes		41257	

Todd D. Bosley	DEM	16288	39.48%
Todd A. Snitchler	REP	24969	60.52%

State Representative Dist. 51

		Total	
Number of Precincts		123	
Precincts Reporting		123	100.0 %
Times Counted		48184/92289	52.2 %
Total Votes		46614	

Andrew Haines	DEM	14355	30.80%
Kirk Schuring	REP	32259	69.20%

State Representative Dist. 52

		Total	
Number of Precincts		102	
Precincts Reporting		102	100.0 %
Times Counted		28250/68421	41.3 %
Total Votes		27234	

Travis Secrest	REP	10107	37.11%
Stephen D. Slesnick	DEM	17127	62.89%

State Representative Dist. 61

		Total	
Number of Precincts		33	

Precincts Reporting		33	100.0 %
Times Counted		11279/25150	44.8 %
Total Votes		10803	
<hr/>			
Michael Foit	REP	5153	47.70%
Mark D. Okey	DEM	5650	52.30%

County Commissioner			
		Total	
Number of Precincts		364	
Precincts Reporting		364	100.0 %
Times Counted		130341/267350	48.8 %
Total Votes		126351	
<hr/>			
Janet Weir Creighton	REP	79757	63.12%
Steven M. Meeks	DEM	46594	36.88%

County Commissioner (Unexpired Term)			
		Total	
Number of Precincts		364	
Precincts Reporting		364	100.0 %
Times Counted		130341/267350	48.8 %
Total Votes		124500	
<hr/>			
Thomas M. Bernabei	DEM	58162	46.72%
Stephen Todd		12285	9.87%
James N. Walters	REP	54053	43.42%

County Auditor			
		Total	
Number of Precincts		364	
Precincts Reporting		364	100.0 %
Times Counted		130341/267350	48.8 %
Total Votes		126051	
<hr/>			
Alan Harold	REP	71443	56.68%
Kim R. Perez	DEM	54608	43.32%

County Treasurer (Unexpired Term)			
		Total	
Number of Precincts		364	
Precincts Reporting		364	100.0 %
Times Counted		130341/267350	48.8 %
Total Votes		123951	
<hr/>			
Kenneth Koher	DEM	56717	45.76%
Alexander A. Zumbar	REP	67234	54.24%

County Engineer (Unexpired Term)

	Total	
Number of Precincts	364	
Precincts Reporting	364	100.0 %
Times Counted	130341/267350	48.8 %
Total Votes	86378	
<hr/>		
Keith A. Bennett	DEM	86378 100.00%

8th District Board of Education

	Total	
Number of Precincts	364	
Precincts Reporting	364	100.0 %
Times Counted	130341/267350	48.8 %
Total Votes	99514	
<hr/>		
Greg Butler	41408	41.61%
Deborah L. Cain	58106	58.39%

Chief Justice Supreme Court 01/01/2011

	Total	
Number of Precincts	364	
Precincts Reporting	364	100.0 %
Times Counted	130341/267350	48.8 %
Total Votes	112605	
<hr/>		
Eric Brown	30175	26.80%
Maureen O'Connor	82430	73.20%

Justice Supreme Court 1/1/11

	Total	
Number of Precincts	364	
Precincts Reporting	364	100.0 %
Times Counted	130341/267350	48.8 %
Total Votes	103074	
<hr/>		
Judith Ann Lanzinger	59553	57.78%
Mary Jane Trapp	43521	42.22%

Justice Supreme Court 1/2/11

	Total	
Number of Precincts	364	
Precincts Reporting	364	100.0 %
Times Counted	130341/267350	48.8 %
Total Votes	91021	
<hr/>		
Paul E. Pfeifer	91021	100.00%

Appeals Court Judge Dist. 5 02/09/11

	Total	
Number of Precincts	364	
Precincts Reporting	364	100.0 %
Times Counted	130341/267350	48.8 %
Total Votes	98291	
<hr/>		
Sheila G. Farmer	98291	100.00%

Appeals Court Judge Dist. 5 02/10/11

	Total	
Number of Precincts	364	
Precincts Reporting	364	100.0 %
Times Counted	130341/267350	48.8 %
Total Votes	109400	
<hr/>		
Kristine W. Beard	21563	19.71%
Julie A. Edwards	75763	69.25%
Robert Brent Vollmer	12074	11.04%

Judge of the Court of Common Pleas (General Division)

	Total	
Number of Precincts	364	
Precincts Reporting	364	100.0 %
Times Counted	130341/267350	48.8 %
Total Votes	97558	
<hr/>		
Lee Sinclair	97558	100.00%

Judge of the Court of Common Pleas (Dom. Relations)

	Total	
Number of Precincts	364	
Precincts Reporting	364	100.0 %
Times Counted	130341/267350	48.8 %
Total Votes	87983	
<hr/>		
Mike Howard	87983	100.00%

1 North Canton Library

	Total	
Number of Precincts	36	
Precincts Reporting	36	100.0 %
Times Counted	12786/22872	55.9 %
Total Votes	12605	
<hr/>		
FOR THE TAX LEVY	7458	59.17%
AGAINST THE TAX LEVY	5147	40.83%

2 Fairless Local Schools

	Total	
Number of Precincts	17	
Precincts Reporting	17	100.0 %
Times Counted	4372/8192	53.4 %
Total Votes	4312	
<hr/>		
FOR THE TAX LEVY	2031	47.10%
AGAINST THE TAX LEVY	2281	52.90%

3 Sandy Valley Local

	Total	
Number of Precincts	10	
Precincts Reporting	10	100.0 %
Times Counted	1894/3767	50.3 %
Total Votes	1866	
<hr/>		
FOR THE TAX LEVY	926	49.62%
AGAINST THE TAX LEVY	940	50.38%

4 North Canton Schools

	Total	
Number of Precincts	36	
Precincts Reporting	36	100.0 %
Times Counted	12786/22872	55.9 %
Total Votes	12619	
<hr/>		
FOR THE TAX LEVY	7164	56.77%
AGAINST THE TAX LEVY	5455	43.23%

5 Marlinton Local Schools

	Total	
Number of Precincts	17	
Precincts Reporting	17	100.0 %
Times Counted	5957/11292	52.8 %
Total Votes	5891	
<hr/>		
FOR THE TAX LEVY	3595	61.03%
AGAINST THE TAX LEVY	2296	38.97%

6 Massillon City Schools

	Total	
Number of Precincts	31	
Precincts Reporting	31	100.0 %
Times Counted	8559/18934	45.2 %
Total Votes	8425	
<hr/>		
FOR THE TAX LEVY	5167	61.33%
AGAINST THE TAX LEVY	3258	38.67%

7 Canton Joint Rec. District

	Total	
Number of Precincts	75	
Precincts Reporting	75	100.0 %
Times Counted	19736/51291	38.5 %
Total Votes	19131	
<hr/>		
FOR THE TAX LEVY	11537	60.31%
AGAINST THE TAX LEVY	7594	39.69%

8 Southeast Local Schools

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	3/3	100.0 %
Total Votes	3	
<hr/>		
FOR THE TAX LEVY	3	100.00%
AGAINST THE TAX LEVY	0	0.00%

9 Village of Brewster Income Tax

	Total	
Number of Precincts	2	
Precincts Reporting	2	100.0 %
Times Counted	774/1524	50.8 %
Total Votes	762	
<hr/>		
FOR THE INCOME TAX	368	48.29%
AGAINST THE INC TAX	394	51.71%

10 Village of Brewster Fire Levy

	Total	
Number of Precincts	2	
Precincts Reporting	2	100.0 %
Times Counted	774/1524	50.8 %
Total Votes	767	
<hr/>		
FOR THE TAX LEVY	463	60.37%
AGAINST THE TAX LEVY	304	39.63%

11 City of North Canton Civic Center

	Total	
Number of Precincts	18	
Precincts Reporting	18	100.0 %
Times Counted	7626/13528	56.4 %
Total Votes	7474	

YES	5101	68.25%
NO	2373	31.75%

12 Village of Hills and Dales, Charter

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	144/216	66.7 %
Total Votes	141	
<hr/>		
YES	122	86.52%
NO	19	13.48%

Village of Hills and Dales, Comm.

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	144/216	66.7 %
Total Votes	1404	
<hr/>		
James Bower	101	7.19%
Barbara Cockroft	76	5.41%
Richard Croasdaile	109	7.76%
Patricia Gramoy	94	6.70%
John Hahn	82	5.84%
Mary Lou Ianni	80	5.70%
Katherine Kettlewell	83	5.91%
Harry MacNealy	95	6.77%
Sheila Markley-Black	106	7.55%
Mark Samolczyk	106	7.55%
Charles Scheurer	103	7.34%
John W. Schnettler	85	6.05%
Robert M. Sweeney	96	6.84%
Marlene Toot	96	6.84%
Jean C. VanNess	92	6.55%

13 Village of Waynesburg, Curr. Exp.

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	303/653	46.4 %
Total Votes	300	
<hr/>		
FOR THE TAX LEVY	164	54.67%
AGAINST THE TAX LEVY	136	45.33%

14 Village of Magnolia, Curr. Exp.

Total

Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	275/466	59.0 %
Total Votes	273	
<hr/>		
FOR THE TAX LEVY	197	72.16%
AGAINST THE TAX LEVY	76	27.84%

15 Local Opt. Alliance 4C, WalMart, Sunday

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	512/1216	42.1 %
Total Votes	499	
<hr/>		
YES	267	53.51%
NO	232	46.49%

16 Local Opt. NC 2-E, BP

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	445/983	45.3 %
Total Votes	425	
<hr/>		
YES	233	54.82%
NO	192	45.18%

17 Local Opt. NC 2-E, BP Sunday

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	445/983	45.3 %
Total Votes	422	
<hr/>		
YES	224	53.08%
NO	198	46.92%

18 Local Opt. NC 2-E, BP, Wine & Mixed

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	445/983	45.3 %
Total Votes	424	
<hr/>		
YES	231	54.48%
NO	193	45.52%

19 Local Opt NC 2-E, BP, Sunday Wine

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	445/983	45.3 %
Total Votes	424	
<hr/>		
YES	224	52.83%
NO	200	47.17%

20 Local Opt. CC 8-A, Bell Store

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	249/623	40.0 %
Total Votes	243	
<hr/>		
YES	157	64.61%
NO	86	35.39%

21 Local Opt. CC 8-A, Bell Stores, Sun

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	249/623	40.0 %
Total Votes	245	
<hr/>		
YES	150	61.22%
NO	95	38.78%

22 Village of East Sparta, Curr. Exp.

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	308/550	56.0 %
Total Votes	303	
<hr/>		
FOR THE TAX LEVY	152	50.17%
AGAINST THE TAX LEVY	151	49.83%

23 Village of Wilmot, Income Tax

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	105/216	48.6 %
Total Votes	104	
<hr/>		
FOR THE INCOME TAX	75	72.12%
AGAINST THE INC TAX	29	27.88%

24 Massillon City Rezoning

	Total	
Number of Precincts	27	
Precincts Reporting	27	100.0 %
Times Counted	9858/21115	46.7 %
Total Votes	9333	
<hr/>		
YES	4373	46.86%
NO	4960	53.14%

25 Local Opt. CC 7-C, Sunday Sales

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	327/827	39.5 %
Total Votes	315	
<hr/>		
YES	201	63.81%
NO	114	36.19%

27 Local Opt. NC 3-D Zepps

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	747/1178	63.4 %
Total Votes	743	
<hr/>		
YES	528	71.06%
NO	215	28.94%

28 Local Opt. NC 3-D Zepps Sunday

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	747/1178	63.4 %
Total Votes	742	
<hr/>		
YES	518	69.81%
NO	224	30.19%

29 Local Opt. NC 3-B BP

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	662/1189	55.7 %
Total Votes	639	

YES	382	59.78%
NO	257	40.22%

30 Local Opt. NC 3-B BP Sunday

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	662/1189	55.7 %
Total Votes	639	
<hr/>		
YES	358	56.03%
NO	281	43.97%

31 Local Opt. NC 3-B BP Wine

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	662/1189	55.7 %
Total Votes	640	
<hr/>		
YES	373	58.28%
NO	267	41.72%

32 Local Opt. NC 3-B Sunday Wine

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	662/1189	55.7 %
Total Votes	636	
<hr/>		
YES	349	54.87%
NO	287	45.13%

33 Lake Twp Road District

	Total	
Number of Precincts	23	
Precincts Reporting	23	100.0 %
Times Counted	10432/19502	53.5 %
Total Votes	10280	
<hr/>		
FOR THE TAX LEVY	6411	62.36%
AGAINST THE TAX LEVY	3869	37.64%

34 Lexington Twp Road Renewal

	Total	
Number of Precincts	5	
Precincts Reporting	5	100.0 %
Times Counted	1801/3673	49.0 %

Total Votes	1779	
FOR THE TAX LEVY	1241	69.76%
AGAINST THE TAX LEVY	538	30.24%

35 Lexington Twp Police

	Total	
Number of Precincts	5	
Precincts Reporting	5	100.0 %
Times Counted	1801/3673	49.0 %
Total Votes	1776	
FOR THE TAX LEVY	1046	58.90%
AGAINST THE TAX LEVY	730	41.10%

36 Pike Twp Fire District

	Total	
Number of Precincts	5	
Precincts Reporting	5	100.0 %
Times Counted	1180/2255	52.3 %
Total Votes	1162	
FOR THE TAX LEVY	778	66.95%
AGAINST THE TAX LEVY	384	33.05%

37 Tuscarawas Twp Fire

	Total	
Number of Precincts	6	
Precincts Reporting	6	100.0 %
Times Counted	2261/4195	53.9 %
Total Votes	2219	
FOR THE TAX LEVY	1607	72.42%
AGAINST THE TAX LEVY	612	27.58%

38 Tuscarawas Twp Road Levy

	Total	
Number of Precincts	6	
Precincts Reporting	6	100.0 %
Times Counted	2261/4195	53.9 %
Total Votes	2223	
FOR THE TAX LEVY	1534	69.01%
AGAINST THE TAX LEVY	689	30.99%

39 Bethlehem Twp Fire District

	Total
Number of Precincts	4

Precincts Reporting	4	100.0 %
Times Counted	1478/2628	56.2 %
Total Votes	1452	
<hr/>		
FOR THE TAX LEVY	1038	71.49%
AGAINST THE TAX LEVY	414	28.51%

40 Bethlehem Twp Road District

	Total	
Number of Precincts	4	
Precincts Reporting	4	100.0 %
Times Counted	1478/2628	56.2 %
Total Votes	1456	
<hr/>		
FOR THE TAX LEVY	912	62.64%
AGAINST THE TAX LEVY	544	37.36%

41 Jackson Twp Electric Aggregation

	Total	
Number of Precincts	40	
Precincts Reporting	40	100.0 %
Times Counted	17055/31646	53.9 %
Total Votes	15875	
<hr/>		
YES	10332	65.08%
NO	5543	34.92%

42 Local Opt. Lake 21

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	610/1023	59.6 %
Total Votes	599	
<hr/>		
YES	432	72.12%
NO	167	27.88%

43 Local Opt. Sugarcreek C

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	417/829	50.3 %
Total Votes	412	
<hr/>		
YES	230	55.83%
NO	182	44.17%

44 Plain Twp Fire District

	Total	
Number of Precincts	36	
Precincts Reporting	36	100.0 %
Times Counted	14569/27344	53.3 %
Total Votes	14269	
<hr/>		
FOR THE TAX LEVY	10073	70.59%
AGAINST THE TAX LEVY	4196	29.41%

45 Nimishillen Twp Road Levy		
	Total	
Number of Precincts	9	
Precincts Reporting	9	100.0 %
Times Counted	3911/6963	56.2 %
Total Votes	3872	
<hr/>		
FOR THE TAX LEVY	1493	38.56%
AGAINST THE TAX LEVY	2379	61.44%

46 Local Opt. Marlboro Twp 3		
	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	513/931	55.1 %
Total Votes	512	
<hr/>		
YES	249	48.63%
NO	263	51.37%

47 Local Opt. Marlboro Twp 3. Sunday		
	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	513/931	55.1 %
Total Votes	511	
<hr/>		
YES	229	44.81%
NO	282	55.19%

48 Marlboro Twp Fire Levy		
	Total	
Number of Precincts	4	
Precincts Reporting	4	100.0 %
Times Counted	1931/3347	57.7 %
Total Votes	1917	
<hr/>		
FOR THE TAX LEVY	1422	74.18%
AGAINST THE TAX LEVY	495	25.82%

49 Local Opt Plain 24. Circle K

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	359/752	47.7 %
Total Votes	352	
<hr/>		
YES	204	57.95%
NO	148	42.05%

50 Local Opt. Plain 24, Circle K, Sunday

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	359/752	47.7 %
Total Votes	352	
<hr/>		
YES	188	53.41%
NO	164	46.59%

52 Local Opt. Jackson 13, WalMart, Sunday

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	343/706	48.6 %
Total Votes	330	
<hr/>		
YES	164	49.70%
NO	166	50.30%

53 Lawrence Twp Fire District

	Total	
Number of Precincts	8	
Precincts Reporting	8	100.0 %
Times Counted	3154/6172	51.1 %
Total Votes	3104	
<hr/>		
FOR THE TAX LEVY	1953	62.92%
AGAINST THE TAX LEVY	1151	37.08%

54 Lawrence Twp Fire District

	Total	
Number of Precincts	8	
Precincts Reporting	8	100.0 %
Times Counted	3154/6172	51.1 %
Total Votes	3082	
<hr/>		
FOR THE TAX LEVY	1662	53.93%
AGAINST THE TAX LEVY	1420	46.07%

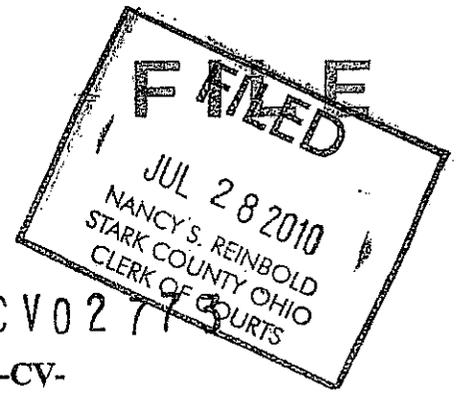
55 Local Opt. Lake C

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	410/755	54.3 %
Total Votes	406	
<hr/>		
YES	147	36.21%
NO	259	63.79%

56 Local Opt. Lake C, Sunday

	Total	
Number of Precincts	1	
Precincts Reporting	1	100.0 %
Times Counted	410/755	54.3 %
Total Votes	407	
<hr/>		
YES	131	32.19%
NO	276	67.81%

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO



2010CV02773

STARK COUNTY TREASURER ex rel.)
JOHN D. FERRERO, STARK COUNTY)
PROSECUTING ATTORNEY,)
110 Central Plaza South, Suite 510)
Canton, OH 44702)

CASE NO. 2010 -CV-

and)

JUDGE BROWN

STATE OF OHIO ex rel. JOHN D.)
FERRERO, STARK COUNTY)
PROSECUTING ATTORNEY,)
110 Central Plaza South, Suite 510)
Canton, OH 44702,)

COMPLAINT

and)

FOR RECOVERY OF AUDIT
FINDING (R.C. 117.28);

STARK COUNTY BOARD OF COUNTY)
COMMISSIONERS,)
110 Central Plaza South, Suite 240)
Canton, OH 44702)

FOR CONVERSION AND
EMBEZZLEMENT;

Plaintiffs,)

FOR RECOVERY OF PUBLIC
MONEY (R.C. 9.39);

v.)

FOR PROTECTION OF PUBLIC
FUNDS (R.C. 309.12); and

VINCENT J. FRUSTACI,)
5346 Schuller Dr. NE)
Canton, OH 44705)

FOR RECOVERY AGAINST
OFFICIAL BOND (R.C. 321.02,
321.37)

and)

GARY D. ZEIGLER,)
110 Central Plaza South, Suite 250)
Canton, OH 44702)

and)

CONTINENTAL CASUALTY COMPANY,)
333 S. Wabash Avenue, 41st Floor)
Chicago, IL 60604)

and)

THE HARTFORD FIRE INSURANCE)
COMPANY,)
P.O. Box 2103)
690 Asylum Avenue)
Hartford, CT 06115)

Defendants.)

Now come Plaintiffs, the Stark County Treasurer, the State of Ohio and the Stark County Board of County Commissioners, by and through counsel, the Stark County Prosecuting Attorney, and for their complaint against Defendants allege as follows:

PARTIES

1. John D. Ferrero is the duly elected and acting Stark County Prosecuting Attorney (the "Prosecutor"), and brings this action:
 - a. in the name of the office of the Stark County Treasurer ("Treasurer"), as the statutory legal counsel to the Treasurer receiving a certified copy of the report of the Auditor of State of Ohio pursuant to R.C. 117.27, which Treasurer is the public office to which public money is stated to be due by reason of having been illegally expended, not accounted for, not collected, or converted or misappropriated, pursuant to R.C. 117.28; and
 - b. in the name of the State of Ohio, to recover for the use of the county all public moneys misapplied or illegally drawn or withheld from the county treasury, and to recover such money as is due the county, pursuant to R.C. 309.12.
2. The Stark County Board of County Commissioners is a body corporate and politic, and a

political subdivision of the State of Ohio, duly constituted pursuant to Chapter 307. of the Revised Code, in which is vested by law all property of the county.

3. Vincent J. Frustaci ("Frustaci") is a former employee of the Treasurer, appointed as a deputy treasurer pursuant to R.C. 321.04, against whom the Ohio Auditor of State has made a finding for recovery pursuant to R.C. 117.28.
4. Gary D. Zeigler ("Zeigler") is and at all relevant times has been the duly elected and acting Stark County Treasurer.
5. The Continental Casualty Company ("Continental") is a company authorized to conduct a surety business in the State of Ohio as surety, and is the surety on the bond of office given by Zeigler pursuant to R.C. 321.02 for Zeigler's term of office commencing in 2001, conditioned for the payment of all moneys which did come into his hands for state, county, township, or other purposes.
6. The Hartford Fire Insurance Company ("Hartford") is a company authorized to conduct a surety business in the State of Ohio as surety, and is the surety on the bond of office given by Zeigler pursuant to R.C. 321.02 for Zeigler's term of office commencing in 2005, conditioned for the payment of all moneys which did come into his hands for state, county, township, or other purposes.

GENERAL ALLEGATIONS

7. On or about June 25, 2010, the Ohio Auditor of State filed with the Prosecutor, as the statutory legal counsel to the Stark County Treasurer, a certified copy of the audit report and findings resulting from the special audit of the Stark County Treasurer's Office for the period January 1, 2005 through April 13, 2009 (the "Special Audit Report"), conducted by the

Auditor of State. A true copy of the Special Audit Report is annexed to this complaint as Exhibit A, and incorporated herein and made a part hereof.

8. From December 31, 2005 to April 13, 2009 \$2,734,560 that should have been deposited into a bank account of the Treasurer was not deposited into any of the Treasurer's bank accounts, as follows (Special Audit Report at 8):

Date	Auditor of State Calculated Vault Balance	Treasurer Reported Vault Balance	Vault Balance Difference
12/31/2005	\$ 832,618	\$ 0	\$ 832,618
12/31/2006	1,193,018	588	1,192,430
12/31/2007	1,858,218	788	1,857,430
12/31/2008	2,734,560	0	2,734,560
4/13/2009	\$2,905,310	\$170,650	\$2,734,560

9. Two unauthorized checks totaling \$230,000 were issued to First Merit Bank and subsequently cashed by Frustaci, and that these unauthorized checks represented public moneys illegally expended in favor of the Stark County Treasurer's Office. Special Audit Report at 8, 13-14.
10. As a result of the foregoing, and pursuant to R.C. 117.28, the Auditor of State issued a finding for recovery against Frustaci for \$2,734,560 of public moneys collected but unaccounted for and \$230,000 of public moneys illegally expended in favor of the Stark County Treasurer's Office.
11. On or about June 25, 2010, the United States Attorney for the Northern District of Ohio filed a criminal information against Vincent J. Frustaci, alleging violations of 18 U.S.C. § 371 (Conspiracy to Commit an Offense or Defraud the United States) and 18 U.S.C. § 666(a)(1) (Theft Concerning Agency Receiving Federal Funds), Case No. 5:10-CR-00268 (the

“Criminal Information”). A true copy of the Criminal Information is annexed to this complaint as Exhibit B, and incorporated herein and made a part hereof.

12. Beginning after January 2003 and continuing through on or about March 31, 2009, Frustaci, being an agent of the Stark County Treasurer’s Office, did embezzle, steal or obtain by fraud or otherwise without authority knowingly convert to the use of himself, \$2,464,989 in total Stark County Treasurer’s Office funds, which were being maintained by and were under the care, custody and control of the Stark County Treasurer’s Office. Criminal Information at ¶17.

13. From in or about January 2003 to March 31, 2009, Frustaci used his high level position and his ready access to the Stark County Treasurer’s Office vault cash to regularly remove varying amounts of U.S. currency from the individual cash deposits provided to him by the Stark County Treasurer’s Office cashiers for deposit into the vault; that Frustaci personally recorded the deposit slips for each deposit; therefore he was able to alter the amount of the deposit to reflect the balance after he converted a portion of the cash to his personal use; that Frustaci kept portions of the stolen cash in his own vault drawer, and kept the remainder in another unassigned vault until the times he removed it from the building in various increments in his pockets and/or in bags; and that Frustaci continued to engage in this practice of removing U.S. currency from the vault on an escalating basis until the time of his suspension and eventual termination on April 1, 2009. Criminal Information at ¶10.

14. On or about November 14, 2008, Frustaci negotiated a check drawn on funds of the Stark County Treasurer’s Office under false pretenses and converted the proceeds to himself, in the amount of \$105,000. Criminal Information at ¶19.

15. On or about November 24, 2008, Frustaci negotiated a check drawn on funds of the Stark County Treasurer's Office under false pretenses and converted to the proceeds to himself, in the amount of \$125,000. Criminal Information at ¶20.
16. The theft by Frustaci from the Stark County Treasurer's office with which he was criminally charged was in the total aggregate amount of \$2,464,989.
17. On June 25, 2010, Frustaci entered a plea of guilty to the Criminal Information. A true copy of the Minutes of Criminal Proceedings for Frustaci's arraignment is annexed to this complaint as Exhibit C, and incorporated herein and made a part hereof.

FIRST CLAIM

(Recovery of Audit Finding, R.C. 117.28 – Public Moneys Collected but Unaccounted For or Illegally Spent - Frustaci)

18. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 17, above, as if set forth fully hereat.
19. By reason of the foregoing, Frustaci is liable to Plaintiffs for \$2,734,560 of public moneys collected but unaccounted for and \$230,000 of public moneys illegally expended, for a total of \$2,964,560 (the "Audited Shortfall").
20. No part of the Audited Shortfall has been repaid despite due demand therefor.

SECOND CLAIM

(Conversion and embezzlement – Frustaci)

21. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 20, above, as if set forth fully hereat.
22. Frustaci wrongfully exercised dominion over the public funds coming into his hands as

aforesaid, converting same to his own use and benefit.

23. By reason of the foregoing, Frustaci is liable to Plaintiffs in conversion and embezzlement in the aggregate amount of \$2,464,989 as set forth in the Criminal Information.

24. By reason of the foregoing, Frustaci is liable to Plaintiffs in conversion and embezzlement in the amount of the Audited Shortfall.

THIRD CLAIM

(Recovery of public moneys received or collected by public official, R.C. 9.39 - Frustaci)

25. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 24, above, as if set forth fully hereat.

26. At all relevant times, Frustaci was a public official within the meaning of R.C. 9.39 and R.C. 117.01(E).

27. Frustaci is liable for all public money received or collected by him or by his subordinates under color of law.

28. The Audited Shortfall was received or collected by Frustaci or by his subordinates under color of law.

29. By reason of the foregoing, Frustaci is liable to Plaintiffs for the Audited Shortfall, no part of which has been paid despite due demand therefor.

FOURTH CLAIM

(Recovery of public moneys received or collected by public official, R.C. 9.39 - Zeigler)

30. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 29, above, as if set forth fully hereat.

31. At all relevant times, Zeigler was a public official within the meaning of R.C. 9.39 and R.C. 117.01(E).

32. Zeigler is liable for all public money received or collected by him or by his subordinates under color of law.

33. The Audited Shortfall was received or collected by Zeigler or by his subordinates under color of law.

34. By reason of the foregoing, Zeigler is liable to Plaintiffs for the Audited Shortfall, no part of which has been paid despite due demand therefor.

FIFTH CLAIM

(Recovery of misapplied or illegally drawn public moneys, R.C. 309.12 - Frustaci)

35. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 34, above, as if set forth fully hereat.

36. The Audited Shortfall consisted entirely of funds of the county or public moneys in the hands of the county treasurer.

37. By reason of the aforesaid actions of Frustaci, the funds of the county and public moneys in the hands of the county treasurer represented by the Audited Shortfall have been misapplied, or illegally drawn or withheld from the county treasury, in that they have been unlawfully converted to the unauthorized and personal use of Frustaci, and all such moneys are now due and owing to the county.

38. Plaintiffs are entitled to recover from Frustaci, for the use of the county, all public moneys so misapplied or illegally drawn or withheld from the county treasury, and to recover the Audited Shortfall as money due the county, no part of which has been paid despite due demand therefor.

SIXTH CLAIM

(Liability for proceedings and misconduct of treasurer's deputy, R.C. 321.04 - Zeigler)

39. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 38, above, as if set forth fully hereat.
40. At all relevant times, Frustaci was a deputy treasurer duly appointed pursuant to R.C. 321.04.
41. At all relevant times, Zeigler was the county treasurer and appointing authority of Frustaci.
42. At all relevant times, Zeigler was and is liable and accountable for the proceedings and misconduct in office of Frustaci.
43. By reason of the aforementioned misconduct of Frustaci, the county and the public treasury of Stark County has suffered a loss in the amount of the Audited Shortfall.
44. Pursuant to R.C. 321.04, Zeigler is liable and accountable to Plaintiffs for the loss occasioned by the aforementioned proceedings and misconduct in office of Frustaci, no part of which has been paid despite due demand therefor.

SEVENTH CLAIM

(Suit on bond of county treasurer 2001-05, R.C. 321.02, 321.37 -- Zeigler and Continental)

45. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 44, above, as if set forth fully hereat.
46. On or about September 4, 2001 Continental, as surety, duly gave and delivered its public official bond, No. 929087711, in the sum of \$250,000 (the "2001 Continental Bond") for Zeigler, as principal, that Zeigler shall faithfully perform such duties as may be imposed on him by law and shall honestly account for all money that may come into his hands in his official capacity during Zeigler's term of office beginning on the 4th day of September, 2001, and ending on the 4th day of September 2005. A true copy of the 2001 Continental Bond is

annexed to this complaint as Exhibit D, and incorporated herein and made a part hereof.

47. By reason of the aforesaid \$2,734,560 of public moneys collected but unaccounted for and \$230,000 of public moneys illegally expended, Zeigler has failed to make a true settlement and failed to pay over money as prescribed by law, and has failed to honestly account for all money that has come into his hands in his official capacity during the term of the 2001 Continental Bond, in an amount exceeding \$250,000, being the approximate amount of \$832,618.

48. Zeigler and Continental are liable to Plaintiffs for the full amount of the 2001 Continental Bond, no part of which has been paid despite due demand therefor.

EIGHTH CLAIM

(Suit on bond of county treasurer 2005-09, R.C. 321.02, 321.37 – Zeigler and Hartford)

49. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 48, above, as if set forth fully hereat.

50. On or about August 26, 2005 Hartford, as surety, duly gave and delivered its public official bond in the sum of \$250,000 (the “2005 Hartford Bond”) for Zeigler, as principal, that Zeigler shall faithfully perform such duties as may be imposed on him by law and shall honestly account for all money that may come into his hands in his official capacity during Zeigler's term of office beginning on the 4th day of September, 2005, and ending on the 4th day of September 2009. A true copy of the 2005 Hartford Bond is annexed to this complaint as Exhibit E, and incorporated herein and made a part hereof.

51. By reason of the aforesaid \$2,734,560 of public moneys collected but unaccounted for and \$230,000 of public moneys illegally expended, Zeigler has failed to make a true settlement

and failed to pay over money as prescribed by law, and has failed to honestly account for all money that has come into his hands in his official capacity during the term of the 2005 Hartford Bond, in an amount exceeding \$250,000, being the approximate amount of \$2,131,942.

52. Zeigler and Hartford are liable to Plaintiffs for the full amount of the 2005 Hartford Bond, no part of which has been paid despite due demand therefor.

WHEREFORE, Plaintiffs demand judgment against Defendants, as follows:

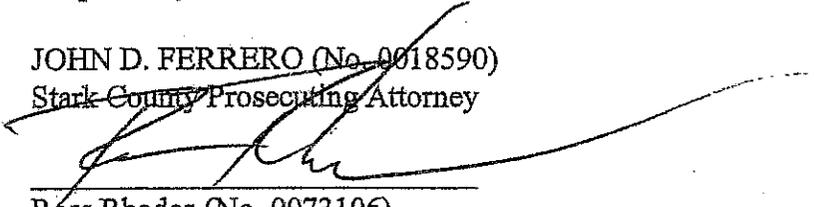
- a. On the First Claim, against Frustaci in the amount of \$2,964,560;
- b. On the Second Claim, against Frustaci in the amount of \$2,964,560;
- c. On the Third Claim, against Frustaci in the amount of \$2,964,560;
- d. On the Fourth Claim, against Zeigler in the amount of \$2,964,560;
- e. On the Fifth Claim, against Frustaci in the amount of \$2,964,560;
- f. On the Sixth Claim, against Zeigler in the amount of \$2,964,560;
- g. On the Seventh Claim, against Zeigler in the amount of \$2,964,560, together with ten per cent penalty on such amount; and jointly and severally against Continental in the amount of \$250,000;
- h. On the Eighth Claim, against Zeigler in the amount of \$2,964,560, together with ten per cent penalty on such amount; and jointly and severally against Hartford in the amount of \$250,000;

and pray that this Court grant Plaintiffs the costs of this action together with such other and further relief as is just.

Respectfully submitted,

~~JOHN D. FERRERO (No. 0018590)
Stark County Prosecuting Attorney~~

By:



Ross Rhodes (No. 0073106)
Assistant Prosecuting Attorney
Chief of the Civil Division
110 Central Plaza South, Suite 510
Canton, OH 44702

Attorney for Plaintiffs

STARK COUNTY COMMISSIONERS
PUBLIC HEARING

RE: STARK COUNTY TREASURER GARY ZEIGLER

ORIGINAL

Public Hearing, taken before me, the undersigned, Shannon L. Newhall, a Registered Professional Reporter and Notary Public in and for the State of Ohio, at the offices of Stark County Commissioners, 110 Central Plaza South, Canton, Ohio, on Monday, the 23rd day of August, 2010, commencing at 1:30 o'clock p.m.

1 **APPEARANCES:**

2

3 On Behalf of the Stark County

4 Prosecutor's Office:

5 Ross A. Rhodes, Attorney at Law

6 Deborah A. Dawson, Attorney at Law

7 Stark County Office Building

8 Suite 510

9 110 Central Plaza South

10 Canton, Ohio 44702

11 330/451-7865

12

13 Board of Commissioners:

14 Todd Bosley, Commissioner

15 Dr. Peter D. Ferguson, Commissioner

16 Steven M. Meeks, Commissioner

17

18 Also Present:

19 Jean Young, County Clerk

20 Michael E. Hanke, County Administrator

21

22

23

24

25

I N D E X

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2		
3		
4	DIRECT EXAMINATION	13
5	DIRECT EXAMINATION	17
6		
7		
8	Exhibit 1	5
9	Exhibit 2	8
10	Exhibit 3	9
11	Exhibit 4	10
12	Exhibit 5	11
13	Exhibit 6	12
14	Exhibit 7	14
15	Exhibit 8	15
16	Exhibit 9	16
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1 **MR. BOSLEY:** Okay. If I could
2 have your attention, please. I'd like to
3 welcome everyone to our special meeting hearing
4 today at 1:30. It is August 23rd, and we, the
5 Board of Commissioners, have convened a special
6 meeting hearing today.

7 And with that, I will turn the
8 hearing over to Ross Rhodes of the prosecutor's
9 office.

10 **MR. RHODES:** Thank you. As the
11 Board is aware, we are here today pursuant to
12 the notice of special meeting and hearing to
13 consider the status of the treasurer's office in
14 light of pending action by the Stark County
15 Prosecutor, pursuant to Revised Code 321.37.

16 The purposes of the meeting today
17 from the resolution are: First, to consider the
18 special audit report and the complaint; the
19 special audit report being the special audit
20 report filed by the Auditor of State of Ohio,
21 the complaint being the complaint filed by our
22 office against Treasurer Zeigler, pursuant to
23 Revised Code 321.37; and three, to determine
24 whether the Board should remove such Stark
25 County Treasurer, pursuant to 321.38.

1 Monday, August 23, 2010 at 1:30 p.m. for the
2 purpose of addressing Stark County Treasurer
3 Gary D. Zeigler's removal from office. The
4 resolution indicates that the Stark County
5 Commissioners intend to take this action
6 pursuant to the authority they believe is vested
7 in them under R.C. 321.38.

8 "It remains our position that Revised
9 Code Section 321.38 is unconstitutional and that
10 no action taken by the Stark County
11 Commissioners to hold a special meeting or
12 otherwise attempt to remedy the due process
13 deficiencies contained in the statute correct
14 the constitutional shortfalls. Moreover, we
15 take the position that four days' notice is
16 insufficient time to allow for a proper
17 constitutional hearing. Accordingly, Treasurer
18 Zeigler will not attend the August 23, 2010
19 special meeting or in any way participate in a
20 process or procedure which is patently
21 unconstitutional.

22 "Very truly yours," the law firm of
23 "Wickens, Herzer, Panza, Cook & Batista," signed
24 by "Matthew W. Nakon, Attorney at Law."

25 This raises two issues: The first

1 being the constitutionality of this proceeding,
2 and the second being sufficiency of notice of
3 this hearing.

4 In this respect, I would draw your
5 attention to the order entered in the Court of
6 Common Pleas, in that action that they referred
7 to, by Judge Inderlied this morning, in which
8 I'll read from the order. "The court finds as
9 follows: R.C. 321.37 and 321.38 satisfy the
10 dictates of Article II, Section 38 of the Ohio
11 Constitution."

12 Two, "The Board's utilization of R.C.
13 321.38 does not invoke the due process clause of
14 the Fourteenth Amendment of the United States
15 Constitution."

16 And three, "The notice of hearing
17 represented by the Board's resolution of August
18 18, 2010 (see Exhibit A attached)" -- and it's
19 attached to the order -- "satisfies the
20 provisions of Revised Code 321.37, .38 and
21 Article II, Section 38 of the Ohio
22 Constitution."

23 So those have been rulings by the
24 court, which I will now ask this order of the
25 court also be marked as an exhibit, Exhibit 2

1 for the hearing.

2 (Thereupon, Exhibit 2 was marked for
3 purposes of identification.)

4 **MR. RHODES:** Pass that along as
5 well.

6 So in the Board's discretion -- it
7 would be within your discretion to continue this
8 hearing on that objection or to proceed with the
9 hearing. So however the Board would like to
10 rule on those objections that have been
11 presented by counsel, whether to continue this
12 hearing to another date or to proceed with the
13 hearing today.

14 **MR. BOSLEY:** Okay. So we want
15 to obtain a motion then from the Board, either
16 way.

17 **MR. MEEKS:** I make a motion to
18 proceed.

19 **MR. FERGUSON:** I second.

20 **MR. BOSLEY:** We have a motion to
21 proceed. All in favor -- let me ask first, is
22 there any further discussion?

23 (No reply.)

24 **MR. BOSLEY:** All in favor, say
25 "aye."

1 **MR. FERGUSON:** Aye.

2 **MR. BOSLEY:** Aye.

3 Motion carries.

4 **MR. RHODES:** Thank you. We
5 have, as counsel to the Board, prepared some
6 evidence that we believe is relevant and
7 necessary to the Board's consideration for the
8 purposes of this stated meeting.

9 We would ask that another exhibit be
10 marked. This would be Exhibit 3. And that is
11 the special audit report of the Auditor of State
12 of Ohio for the period -- "Special Audit" --
13 "Stark County Treasurer's Office, Stark County,
14 Special Audit, for the period January 1, 2005
15 through April 13, 2009."

16 If this could be marked as Exhibit 3.
17 (Thereupon, Exhibit 3 was marked for
18 purposes of identification.)

19 **MR. RHODES:** A certified copy of
20 this special audit report was filed with the
21 commissioners pursuant to statute, and I would
22 advise the Board that it is authorized to take
23 notice of its own proceedings, and so you may --
24 you may deem this admitted and properly served.

25 The next exhibit I would like to have

1 marked as an exhibit is a letter from Stark
2 County Auditor, Kim Perez, dated July 26th,
3 2010, to John D. Ferrero, Stark County
4 Prosecuting Attorney.

5 (Thereupon, Exhibit 4 was marked for
6 purposes of identification.)

7 **MR. RHODES:** The commissioners
8 were copied on this letter from Auditor Perez to
9 Prosecutor Ferrero.

10 For the record, I will just read the
11 salient parts, which is, "Pursuant to Ohio
12 Revised Code Section 321.37," and continues,
13 "I," meaning Kim Perez, Stark County Auditor,
14 "ask in my official capacity as auditor that
15 you," meaning Stark County Prosecuting Attorney,
16 John D. Ferrero, "immediately institute a suit
17 against Stark County Treasurer for his bond
18 sureties and any other means of collecting
19 county funds."

20 And, again, the Board may take notice
21 of its own proceeding in having received a copy
22 of that letter.

23 The next item for the Board's
24 consideration that I'll have marked as
25 Exhibit 5, I believe is a letter from -- dated

1 July 27th, 2010, from John D. Ferrero, Stark
2 County Prosecuting Attorney, to Gary D. Zeigler,
3 Stark County Treasurer.

4 (Thereupon, Exhibit 5 was marked for
5 purposes of identification.)

6 **MR. RHODES:** In this letter,
7 Prosecutor Ferrero demands that Stark County
8 Treasurer, Gary Zeigler, act as follows:

9 "Please advise this office immediately whether
10 and how you intend to make repayment of the
11 foregoing amounts," referring to the amounts set
12 forth in the state special audit.

13 And then stating that "If it becomes
14 necessary to institute a civil suit for the
15 amount due pursuant to Revised Code 321.37, an
16 additional 10 percent penalty will be due on
17 such amount."

18 The letter is accompanied by the
19 affidavit of John D. Ferrero, who is not able to
20 be with us at this moment, stating its
21 validity -- it's verifying the contents and
22 certifying this letter from him to Gary D.
23 Zeigler.

24 The next item for the Board's
25 consideration is the complaint in the action

1 filed in Stark County Court of Common Pleas,
2 Case Number 2010-CV-02773, Stark County
3 Treasurer, et al., ex rel. John D. Ferrero,
4 against Vincent J. Frustaci.

5 I'll have this marked as the next
6 exhibit number, 6.

7 (Thereupon, Exhibit 6 was marked for
8 purposes of identification.)

9 **MR. RHODES:** You'll note that
10 the front page of that bears certification of
11 the Stark County Clerk of Courts. As a
12 certified copy, that is acceptable to be
13 received in evidence.

14 That complaint is the complaint that
15 was filed pursuant to the request of the Stark
16 County Auditor, and includes a cause of action
17 pursuant to Revised Code 321.37.

18 At this time, we would call the
19 Board's own employee, Alyssa Plakas to testify
20 briefly about the resolution and its delivery to
21 Treasurer Zeigler.

22 Alyssa. Thank you.

23 The Board should direct that the
24 witness be sworn in.

25 **MR. BOSLEY:** Please be sworn in.

1

ALYSSA PLAKAS

2 of lawful age, a witness herein, having been
3 first duly sworn, as hereinafter certified, was
4 examined and said as follows:

5

DIRECT EXAMINATION

6

BY MR. RHODES:

7

Q. Would you please state your name and
8 occupation?

8

9 A. Alyssa Plakas, administrative assistant to
10 the commissioners.

10

11 Q. To the Board of Commissioners of Stark
12 County?

12

13 A. Yes.

13

14 Q. And how long have you been in that
15 position?

15

16 A. Eleven months.

16

17 Q. And were you in that position on August
18 18th, 2010?

18

19 A. Yes.

19

20 Q. I'm showing you what has been marked as --
21 excuse me.

21

22 MR. RHODES: I would ask that
23 this be marked as Exhibit 7, I believe, a
24 document, the Resolution of the Stark County
25 Commissioners, dated August 18th, 2010.

22

23

24

25

1 (Thereupon, Exhibit 7 was marked for
2 purposes of identification.)

3 **BY MR. RHODES:**

4 **Q.** Now, I show you a document that's been
5 marked Exhibit 7 in evidence, and ask you if you
6 recognize that.

7 **A.** Yes.

8 **Q.** Did you have occasion to deliver that on
9 August 18th, 2010?

10 **A.** Yes.

11 **Q.** And did you deliver it?

12 **A.** I did.

13 **Q.** Can you state for the record what you did
14 with that document?

15 **A.** I delivered it to Rhoda Cutter, and she
16 time stamped and signed the document when she
17 received it.

18 **Q.** And who is Rhoda Cutter?

19 **A.** She is the head cashier in the treasurer's
20 office.

21 **Q.** In the office of the Treasurer of Stark
22 County?

23 **A.** Uh-huh.

24 **Q.** So you delivered that by hand to the chief
25 cashier, head cashier of the Stark County

1 Treasurer's Office on August 18th, 2010?

2 **A.** Yes, I did.

3 **MR. RHODES:** Okay. Thank you.

4 Thank you. No further questions.

5 I would like next to have marked as
6 an exhibit, a document filed in the Case
7 2010-CV-02773, filed on August 19th, 2010. It's
8 entitled "Defendant/Plaintiff Gary D. Zeigler,
9 Stark County Treasurer, Combined Supplemental
10 Brief in Support of Injunctive Relief and
11 Supplemental Substantive Brief as to the
12 Unconstitutionality of R.C. 321.38."

13 (Thereupon, Exhibit 8 was marked for
14 purposes of identification.)

15 **MR. RHODES:** I pass this along,
16 and I draw the Board's attention to the
17 statement contained herein, which refers to this
18 Board's first and second attempts to set this
19 meeting and attaches those notices to the
20 pleading, and also incorporates, as a third
21 exhibit to this, the notice and resolution that
22 we've referred to as previously marked, setting
23 this meeting and hearing.

24 For the Board's information, this is
25 being provided for your consideration as an

1 acknowledgment on behalf of Mr. Zeigler, through
2 his attorneys, that the notices that this Board
3 gave him, both initially and the second time,
4 and now the third notice of this hearing, were
5 received by him.

6 One more. I'd like to have marked as
7 an exhibit another filing in the case of Stark
8 County Treasurer versus Frustaci, Case Number
9 2010-CV-02773, the affidavit of Gary Zeigler in
10 support of motion for preliminary injunction.
11 This is Exhibit 9.

12 (Thereupon, Exhibit 9 was marked for
13 purposes of identification.)

14 **MR. RHODES:** I'd like to direct
15 the Board's attention to the raised seal on the
16 first page, indicating it was the certified
17 filing in the court.

18 And I would direct the Board's
19 attention to paragraph 8 of this affidavit,
20 sworn affidavit submitted by Gary Zeigler.
21 Paragraph 8 says, "On July 31, 2010, I was
22 served with a copy of a complaint filed by the
23 Stark County Prosecutor asserting various causes
24 of action against me and other named defendants
25 stemming from the illegal actions of Vincent

1 Frustaci."

2 And he also makes further comment on
3 the theft from his office by Vincent Frustaci.

4 I offer that as an indication that
5 Mr. Zeigler was served with the complaint that
6 was filed pursuant to Revised Code Section
7 321.37.

8 Those are the documents that I
9 believe that the Board should consider.

10 And at this time, I would like to ask
11 that the Board call as a witness a
12 representative of the Stark County Auditor's
13 Office, Joe DiRuzza.

14 Can we get a chair up here for our
15 witness?

16 **MR. BOSLEY:** Please be sworn in,
17 Mr. DiRuzza.

18 **JOSEPH DIRUZZA**
19 of lawful age, a witness herein, having been
20 first duly sworn, as hereinafter certified, was
21 examined and said as follows:

22 **MR. BOSLEY:** Thank you.

23 **DIRECT EXAMINATION**

24 **BY MR. RHODES:**

25 **Q.** Would you please state your name?

1 **A.** Joe DiRuzza.

2 **Q.** And your occupation?

3 **A.** Director of Finance for the Stark County
4 Auditor's Office.

5 **Q.** And how long have you held that position?

6 **A.** Since April of 2009.

7 **Q.** What are your responsibilities in that
8 position for the Stark County Auditor?

9 **A.** Well, my office is responsible for the
10 entire payroll of the county, paying all
11 warrants that come through the county, and we do
12 all the financial reporting.

13 **Q.** And do you also interact with the Stark
14 County Treasurer's Office?

15 **A.** Yes, we do.

16 **Q.** Can you explain in what ways you interact
17 with the Stark County Treasurer's Office?

18 **A.** We balance with the treasury on a daily
19 basis now. And if there's any part that we're
20 off, they see it right away, and -- they run
21 reports downstairs in the treasurer's office and
22 they balance them to their bank statements. The
23 reports are run off of our systems from the
24 balances.

25 **Q.** So you receive information from the

1 treasurer's office; is that right?

2 A. Pay-ins, that type of thing.

3 Q. Can you explain what a "pay-in" is?

4 A. Any money that goes into the treasurer's
5 office, they'll do a pay-in for at the
6 treasurer's office. And at that point, it goes
7 into the auditor's system, once we verify them,
8 and they take the money and put it in their
9 vault.

10 Q. So they take money in?

11 A. Uh-huh.

12 Q. They report it to the auditor, and that
13 money goes to the vault of the Stark County
14 Treasurer?

15 A. If it's cash or check, it goes to the
16 vault.

17 Q. And how do they present you, the auditor's
18 office, if you know, with the amount of money
19 that they are holding in the vault?

20 A. Well, it's verified with the pay-in.
21 There's a total on the pay-in. There's various
22 accounts, and there's all kinds of receipt
23 numbers with that pay-in. And --

24 Q. And a pay-in is a document?

25 A. A pay-in is a document. We verify all the

1 accounts, make sure they match the descriptions.

2 Q. And how do you verify the accounts and make
3 sure they match the descriptions?

4 A. They're on the document.

5 Q. Okay. Mr. DiRuzza, I'm going to show you a
6 document that's been marked as Exhibit 3 and ask
7 you if you've seen that document before.

8 A. Yes.

9 Q. Are you familiar with it?

10 A. Yes.

11 Q. What is that document?

12 A. It's the special audit from the Auditor of
13 State.

14 Q. And have you reviewed the special audit of
15 the Auditor of State?

16 A. Yes.

17 Q. And is that a special audit of the Stark
18 County Treasurer's Office?

19 A. Yes.

20 Q. Are you familiar with the conclusions --
21 were there any conclusions in the state audit
22 report?

23 A. Yes.

24 Q. Are you familiar with those conclusions?

25 A. Yes.

1 Q. Can you summarize for us what those
2 conclusions are?

3 A. Money was missing from the Stark County
4 treasury.

5 Q. Money was missing from the Stark County
6 treasury?

7 A. Uh-huh.

8 Q. Does it conclude in what way the money was
9 missing?

10 A. The report says it was taken by an employee
11 from the treasurer's office.

12 Q. And who is that employee, as alleged in
13 that report, in the treasurer's office?

14 A. Vince Frustaci.

15 Q. Have you -- has the -- to your knowledge,
16 has the Stark County Auditor's Office reviewed
17 those findings and -- well, first, have you
18 reviewed those findings?

19 A. Yes.

20 Q. And do you agree with them?

21 A. Yes.

22 Q. Is there money missing from the Stark
23 County treasury?

24 A. Yes.

25 Q. Is the amount of money stated in the

1 report?

2 A. Yes.

3 Q. What's the amount of money that the report
4 states is missing from the Stark County
5 treasury?

6 A. \$2.965 million.

7 Q. \$2.965 million?

8 A. Yes.

9 Q. Over what period of time does it appear
10 that that money was taken?

11 A. It's a period of years, from at least 2003
12 to 2008.

13 Q. Now, during the period 2003 to 2008, did
14 the treasurer present reports to the county
15 auditor purporting to settle accounts in terms
16 of taxes received and amounts owed to the
17 various agencies and departments?

18 A. Yes.

19 Q. And did -- well, based on the report and
20 based on your review of the facts of the amount
21 of money that was, in fact, in the county
22 treasury, were those settlements accurate?

23 A. No.

24 Q. Does the audit report also refer to -- no.
25 Withdrawn.

1 Just for the record, the audit report is
2 for what period of time?

3 A. Actually, it says, "January 1st, 2005
4 through April 13, 2009."

5 Q. All right. So the audit report does not go
6 back -- itself, does not go back to 2003,
7 correct?

8 A. No, it goes to 2005. You're correct.

9 Q. And it finds -- does it make a finding of
10 money that was missing as of January 1, 2005?

11 A. Yes.

12 Q. Okay. And it finds that money was missing
13 from the Stark County treasury as of January 1,
14 2005?

15 A. Yes.

16 Q. And continuing forward? And continuing
17 forward?

18 A. Yes.

19 Q. Thank you. So I ask you, has the Stark
20 County Treasurer failed to make settlement
21 according to law?

22 A. Yes.

23 Q. And has the Stark County Treasurer failed
24 to pay over money according to law?

25 A. Yes.

1 **MR. RHODES:** Thank you. Nothing
2 further of this witness.

3 **MR. BOSLEY:** You're excused.

4 **MR. RHODES:** At this time, we've
5 concluded our presentation to the Board, the
6 evidence that we feel is relevant to the Board's
7 consideration.

8 **MR. BOSLEY:** And at this time --
9 I'm sorry.

10 **MR. RHODES:** If I may summarize
11 for the Board the evidence that we believe is
12 before the Board for its consideration. May I?

13 **MR. BOSLEY:** You may.

14 **MR. RHODES:** We have, over the
15 objection of Stark County Treasurer, shown that
16 a judge of the Court of Common Pleas has
17 determined that the -- has issued an order
18 finding that the notice was a sufficient notice
19 in law of this hearing.

20 We have shown through the certified
21 audit report of the state auditor that money is
22 missing from the Stark County treasury. The
23 representative of the auditor's office has
24 reviewed and agreed with that conclusion; and,
25 therefore, concluded and stated for your

1 consideration that Gary Zeigler, Stark County
2 Treasurer, has failed to make settlement
3 according to law, and has failed to pay over
4 money according to law, this being for the
5 reasons that money was stolen, feloniously taken
6 from the Stark County Treasurer -- treasury; not
7 by Gary Zeigler, but by his chief deputy,
8 Vincent Frustaci.

9 We would advise you that Revised Code
10 321.37 speaks of a failure to make settlement
11 and a failure to pay over money according to
12 law. And on that basis, the auditor or the
13 Board of Commissioners shall cause suit to be
14 instituted against the treasurer and the
15 treasurer's sureties.

16 We have shown that that suit has been
17 instituted, has commenced by the filing of the
18 complaint, which Treasurer Zeigler has
19 acknowledged under oath of receiving.

20 The lawsuit alleges that pursuant to
21 321.37, the treasurer has failed to make
22 settlement and has failed to pay over money
23 according to law; therefore, the first -- the
24 suit has been instituted against Treasurer
25 Zeigler pursuant to that section.

1 The matter for consideration before
2 the Board at this point is whether to exercise
3 the Board's authority, pursuant to 321.38, to
4 remove the county treasurer, if the Board feels
5 that is warranted. It is not required. It is a
6 matter for the Board to consider, whether, in
7 light of all the circumstances, that is the
8 proper course of action.

9 To give you an example, the statute
10 under which the action was filed, 321.37, makes
11 no mention of any size of discrepancy. One
12 dollar would be sufficient to institute suit
13 against the treasurer and his sureties based on
14 that statute.

15 If such a suit were instituted, the
16 Board would have the authority, that is, such
17 that the Board may remove the county treasurer.
18 That would be a matter for the Board's
19 consideration.

20 In the present case, we have evidence
21 of money going missing, allegedly by a criminal
22 act of the chief deputy treasurer, appointed by
23 Gary Zeigler, over the course of seven years,
24 from 2003 to 2008. That's not seven. Whatever
25 it is. A large period of time.

1 **MR. BOSLEY:** I will entertain a
2 motion to enter into -- or to adjourn into
3 deliberations.

4 **MR. MEEKS:** So moved.

5 **MR. FERGUSON:** Second.

6 **MR. BOSLEY:** We have a motion
7 and a second. Any discussion?

8 (No reply.)

9 **MR. BOSLEY:** All in favor, say
10 "aye."

11 **MR. FERGUSON:** Aye.

12 **MR. BOSLEY:** Aye.

13 Motion carries.

14 At this point, we are now in
15 deliberation. We will adjourn.

16 (Thereupon, a recess was taken from
17 2:35 p.m. to 2:45 p.m.)

18 **MR. BOSLEY:** The Board will now
19 end its deliberations. Based on the
20 deliberations, it's necessary that we consult
21 with our attorney. Based on that, it's my
22 recommendation that we enter into executive
23 session. I will therefore entertain a motion.

24 **MR. MEEKS:** I make a motion to
25 adjourn into executive session with the Board's

1 attorney to discuss imminent or pending court
2 action.

3 MR. FERGUSON: Second.

4 MR. BOSLEY: We have a motion
5 and a second. And we will need a roll call
6 vote.

7 MS. YOUNG: Commissioner Meeks?

8 MR. MEEKS: Yes.

9 MS. YOUNG: Commissioner
10 Bosley?

11 MR. BOSLEY: Yes.

12 MS. YOUNG: Commissioner
13 Ferguson?

14 MR. FERGUSON: Yes.

15 MR. BOSLEY: We are now in
16 executive session.

17 (Thereupon, a recess was taken from
18 2:45 p.m. to 3:45 p.m.)

19 MR. BOSLEY: We are now back
20 from executive session. It is approximately
21 3:52 -- I'm sorry, 3:47, according to my watch.

22 Based on our deliberation in
23 executive session, I am prepared to offer the
24 following motion; although lengthy and
25 handwritten, I will do my best to get through it

1 as quickly as possible.

2 The motion is as follows: Whereas,
3 on June 25th, 2010, Ohio Auditor of State filed
4 with this Board a certified copy of the report
5 of special audit undertaken of the Stark County
6 Treasurer's Office for the period of 11/1/05
7 through 4/13/09 -- I'm sorry, 1/1/05 through
8 4/13 of '09.

9 Whereas, the special audit report
10 includes a finding, recovery in favor of Stark
11 County Treasurer's Office in the total amount of
12 \$2,964,560, illegally expended, embezzled or
13 missing and attributed to Vincent Frustaci,
14 former Deputy Treasurer.

15 And whereas, Stark County Auditor
16 demanded that Prosecutor John Ferrero file a
17 lawsuit against Gary Zeigler and his sureties,
18 pursuant to Ohio Revised Code 321.37.

19 And whereas, Prosecutor John Ferrero
20 sent a demand letter to Stark County Treasurer,
21 Gary Zeigler, pursuant to Revised Code, and
22 stated -- 117.28, 309.12, 321.37, and otherwise,
23 that it appears that there will be and remain,
24 after all other sources of payment have been
25 exhausted, a deficit in the amount of \$1.5

1 million in the treasury of Stark County, which
2 monies have come into the treasurer's hands
3 under the color of law, and demanding that
4 Mr. Zeigler advise how he make repayment.

5 And whereas, Mr. Zeigler did not
6 respond to said letter.

7 And whereas, Stark County Prosecutor,
8 John D. Ferrero, filed a suit in Stark County
9 Common Pleas Court on July 28th, 2010, against
10 Vincent Frustaci, Gary Zeigler and Mr. Zeigler's
11 sureties, seeking recovery of approximately
12 \$2.9 million of money pursuant to Ohio Revised
13 Code 117.28, 9.39, 309.12, 321.02, and 321.37.

14 And whereas, on 8/18 of '10, this
15 Board passed a resolution, setting this meeting
16 hearing for today, pursuant to Revised Code
17 321.38.

18 And whereas, Treasurer Gary Zeigler,
19 by and through his counsel, advised that he
20 would not appear to answer questions or present
21 evidence or otherwise cooperate in the
22 procedures, and, in fact, did not appear.

23 And whereas, evidence presented
24 demonstrated that there is no factual question
25 that 2.9 -- I'm sorry, \$2,964,560 of money that

1 came into the county treasury, and that said
2 money is missing, and that Treasurer Zeigler
3 failed to make settlement or to pay over money
4 that is prescribed by law.

5 And whereas, the evidence showed that
6 the theft from the Stark County treasury was not
7 an isolated incident, but occurred over a long
8 period of time during Treasurer Zeigler's
9 tenure.

10 And whereas, although Treasurer
11 Zeigler committed no crime or malfeasance, his
12 failure to appear and be heard about procedures
13 he has implemented to restore the public's
14 confidence that their tax dollars are protected
15 in the future.

16 Now, therefore, be it resolved that
17 the Board of Stark County Commissioners, that
18 pursuant to Ohio Revised Code 321.38, remove the
19 Stark County Treasurer, Gary Zeigler, from his
20 position as Stark County Treasurer effective
21 immediately.

22 That will be the first motion.

23 **MR. MEEKS:** Second.

24 **MR. BOSLEY:** We have a motion
25 and a second. Is there any discussion?

1 (No reply.)

2 MR. BOSLEY: If not, all in
3 favor, say "aye."

4 MR. FERGUSON: Aye.

5 MR. BOSLEY: Aye.

6 MR. MEEKS: Aye.

7 MR. BOSLEY: Motion carries.

8 Secondly, be it further resolved that
9 the clerk shall cause a certified copy of this
10 resolution to be delivered to Gary Zeigler by
11 certified mail.

12 MR. MEEKS: Second.

13 MR. BOSLEY: We have a motion
14 and a second. All in favor, say "aye."

15 MR. FERGUSON: Aye.

16 MR. BOSLEY: Aye.

17 MR. MEEKS: Aye.

18 MR. BOSLEY: I entertain a
19 motion to adjourn the meeting.

20 MS. DAWSON: Not yet.

21 MR. BOSLEY: I'm sorry. We do
22 have one further bit of information. Excuse me.
23 Steve, you have a motion to offer?

24 MR. MEEKS: I do.

25 Whereas, R.C. 321.38 allows a board

1 of county commissioners to temporarily fill the
2 vacancy created by the removal of the county
3 treasurer, pursuant to R.C. 321.38, after
4 institution of a lawsuit, pursuant to R.C.
5 321.37.

6 And whereas, this Board has
7 previously resolved to remove Gary D. Zeigler
8 from the position of Stark County Treasurer for
9 the reasons stated therein.

10 Now, therefore, be it resolved, it
11 hereby resolved that the Stark County Board of
12 Commissioners hereby appoints Jaime L.
13 Albritain, currently a deputy treasurer in the
14 Stark County Treasurer's Office, to fill the
15 vacancy created by the removal of the Stark
16 County Treasurer, who shall give bond in the
17 amount of \$500,000 and take the oath of office
18 prescribed for treasurer.

19 MR. BOSLEY: We have a motion
20 and a second. Is there any discussion?

21 (No reply.)

22 MR. BOSLEY: All in favor, say
23 "aye."

24 MR. FERGUSON: Aye.

25 MR. MEEKS: Aye.

1 MR. BOSLEY: Aye.

2 Motion carries.

3 Is there any more for the good of the
4 order? If not, I'll entertain a motion to
5 adjourn.

6 MR. MEEKS: So moved.

7 MR. BOSLEY: We have a motion.

8 All those in favor, say "aye."

9 MR. FERGUSON: Aye.

10 MR. MEEKS: Aye.

11 MR. BOSLEY: Aye.

12 (Thereupon, the proceedings were
13 concluded at 3:54 o'clock p.m.)

14 - - -

15

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A					
able (1)		advised (1)		appear (4)	9:12,14,20
11:19		31:19		22:9 31:20,22	11:12 20:12,14
above-referen...		affidavit (4)		32:12	20:17,21 22:24
5:21		11:19 16:9,19,20		APPEARANC...	23:1,5 24:21
acceptable (1)		affiliated (1)		2:1	30:5,9
12:12		36:15		appears (1)	auditor (17)
accompanied (1)		affixed (1)		30:23	4:20 9:11 10:2,8
11:18		36:16		appointed (1)	10:13,14 12:16
accounts (4)		aforesaid (1)		26:22	18:8 19:12
19:22 20:1,2		36:10		appoints (1)	20:12,15 22:15
22:15		age (2)		34:12	24:21 25:12
accurate (1)		13:2 17:19		approximately...	27:7 30:3,15
22:22		agencies (1)		27:8 29:20	auditor's (6)
acknowledged...		22:17		31:11	17:12 18:4 19:7
25:19		agree (1)		April (3)	19:17 21:16
acknowledgm...		21:20		9:15 18:6 23:4	24:23
16:1		agreed (1)		Article (2)	August (12)
act (2)		24:24		7:10,21	1:16 4:4 5:24
11:8 26:22		Akron (1)		asserting (1)	6:1,18 7:17
action (12)		36:16		16:23	13:17,25 14:9
4:14 6:5,10 7:6		al (3)		assistant (1)	15:1,7 36:17
11:25 12:16		5:14,15 12:3		13:9	authority (4)
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COURT REPORTERS OF AKRON CANTON AND CLEVELAND

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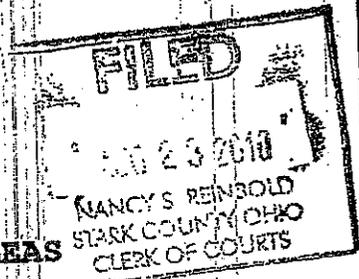
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COURT REPORTERS OF AKRON CANTON AND CLEVELAND

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IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

STARK COUNTY TREASURER, ETC., et al.,	:	CASE NO. 2010 CV 02773 (Cons. w/ 2010 CV 03025)
Plaintiffs	:	JUDGE H. F. INDERLIED, JR. (Ret.) (By Assignment #10 JA 1760 and #10 JA 1890 of the Chief Justice of the Ohio Supreme Court)
-vs-	:	
VINCENT FRUSTACI, et al.,	:	ORDER OF THE COURT
Defendants	:	

This matter comes on for consideration on August 23, 2010, upon Gary D. Ziegler's ("Ziegler") complaint for declaratory judgment and injunction; and his motion for a temporary restraining order and preliminary injunction. Briefs have been filed in support and in opposition. Argument on the motion for a temporary restraining order was had telephonically between the Court and the following counsel: Joseph E. Cirigliano, Esq., Matthew W. Nakon, Esq., Amy L. DeLuca, Esq., and Rich Panza, Esq. on behalf of Ziegler; Deborah Dawson, Esq., Ross Rhodes, Esq., and Amy Sabino, Esq. on behalf of the Stark County Board of County Commissioners (the "Board"); Bradley R. Iams, Esq., on behalf of Vincent Frustaci ("Frustaci"); and Frank R. Ray, Esq. and Sarah Morrison, Esq. on behalf of The County Treasurer's Association of Ohio (Amicus Curiae).

The Court finds as follows:

1. R.C. 321.37 and 321.38 satisfy the dictates of Article II, Section 38, of the Ohio Constitution.
2. The Board's utilization of R.C. 321.38 does not invoke the due process clause of the Fourteenth Amendment of the United States Constitution.

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3. The notice of hearing represented by the Board's resolution of August 18, 2010 (see Exhibit A attached) satisfies the provisions of R.C. 321.37, .38, and Article II, Section 38 of the Ohio Constitution.

4. Ziegler's motions for temporary restraining order and preliminary injunction are not well taken.

ANALYSIS

Constitutionality of R.C. 321.38

Ziegler seeks a declaratory judgment that the statutory provisions for removal of a county treasurer, R.C. 321.37, .38, violate the Ohio Constitution. He also seeks to enjoin the Board from invoking those provisions to hold a planned hearing for the following purposes:

1. To consider the special audit report and the complaint in Case No. 2010 CV 02773.
2. To determine whether Ziegler, the Stark County Treasurer, has failed to make a settlement or to pay over money as prescribed by law; and
3. To determine whether the Board should remove Ziegler pursuant to R.C. 321.38 (see Exhibit A).

Ziegler seeks to halt the process that began on July 31, 2010, when he was served with the complaint in Case No. 2010 CV 02773, and to prevent the related hearing before the Board that is presently scheduled for August 23, 2010. Ziegler claims that Article II, Section 38, of the Ohio Constitution mandates a complaint and hearing procedure

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that is set forth in the enabling legislation, and that since R.C. 321.38 does not specifically contain such a procedure, it is incurably unconstitutional.

The Board claims that the statutory scheme of R.C. 321.37 and 321.38 by itself and coupled with the notice and provision for hearing contained in Exhibit A satisfies the provision of Article II, Section 38, and any underlying due process requirements.

Both Ziegler and the Board have agreed to submit the constitutionality issues on briefs.

Article II, Section 38, provides:

"Laws shall be passed providing for the prompt removal from office, upon complaint and hearing, of all officers, including state officers, judges, and members of the General Assembly, for any misconduct involving moral turpitude or for other cause provided by law, and this method of removal shall be in addition to impeachment or other method of removal authorized by the Constitution."

R.C. 321.37 provides:

"If the county treasurer fails to make a settlement or to pay over money as prescribed by law, the county auditor or board of county commissioners shall cause suit to be instituted against such treasurer and his surety or sureties for the amount due, with ten percent penalty on such amount, which suit shall have precedence over all other civil business."

R.C. 321.38 provides:

"Immediately on the institution of the suit mentioned in Section 321.37 of the Revised Code, the board of county commissioners may remove such county treasurer and appoint some person to fill the vacancy created. The person so appointed shall give bond and take the oath of office prescribed for treasurers."

The Ohio Supreme Court has held that, "our inquiry begins with a fundamental understanding: a statute enacted in Ohio is presumed to be

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constitutional." *State v. Ferguson*, 120 Ohio St.3d 7, 9, 2008-Ohio-4824, paragraph 12, citing *State ex rel. Jackman v. Cuyahoga Cty. Court of Common Pleas* (1967), 9 Ohio St.2d 159, 161. "[E]very reasonable presumption will be made in favor of its validity. Accordingly, any doubt as to constitutionality is resolved in favor of the validity of the statute." *State ex rel. Haylett v. Ohio Bur. of Workers Comp.*, 87 Ohio St.3d 325, 328, 1999-Ohio-134 (citations omitted). Parties seeking to overcome this presumption of validity must show a clear constitutional infirmity beyond a reasonable doubt. *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142, 147.

In *Primes v. Tyler* (1975), 43 Ohio St.2d 195, the Ohio Supreme Court held, *inter alia*:

"If a statute is unconstitutional, it is not law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."

True enough; however, Ziegler's reliance on *State ex rel. Hoel v. Brown* (1922), 105 Ohio St. 479, to establish the unconstitutionality of R.C. 321.38 is misplaced. That case examined a very different statutory scheme than the law in effect today and at issue in this action. The present statutory scheme for removal of a county treasurer for failure to account for public money dates from 1951, when the legislature enacted Revised Statutes sections 1126 and 1127. Examination of the changes made by the legislature obviate the concerns expressed in the *Hoel* case.

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R.S. 2713 (the prior law) provided:

"On examination of the county treasury, if it appears by the report of the examiner or examiners that an embezzlement has been committed by the county treasurer, the county commissioners shall forthwith remove the treasurer from office, and appoint some person to fill the vacancy thereby created. The person so appointed shall give bond, and take the oath of office prescribed for county treasurers."

In *Hoel v. Brown*, the Court first found the prior law deficient because there was no provision for a complaint. The prior law was triggered by "the report of the examiner or examiners" while the present law is triggered by "the institution of the suit mentioned in section 321.37 of the Revised Code." Such "institution" must be accomplished by the filing of a complaint. Accordingly, R.C. 321.38 requires the filing of a complaint as contemplated by Article II, Section 38, of the Ohio Constitution.

In *Hoel v. Brown*, the Court next found the prior law deficient because there was no provision for a hearing. The prior law directed that "the county commissioners shall forthwith remove the treasurer from office" while the present law allows removal only upon institution of suit and provides discretion to the Board. R.C. 321.38 gives the Board permission to remove the treasurer at their discretion once suit has been filed pursuant to R.C. 321.37. Removal is not automatic. The statute implies that the Board must engage in some form of deliberative process. The Board's proceedings are quasi-judicial in nature, not legislative and not ministerial. See *State ex rel. Bowman v. Bd. of Comm'rs of Allen County* (1931), 124 Ohio St. 174, 190. The present statutory scheme permits a hearing and the Board's resolution (Exhibit A) clearly notifies Ziegler of that hearing and its purposes, thereby curing the due process deficiency in the prior law.

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Due Process under the Fourteenth Amendment to the United States Constitution

In order to invoke the Fourteenth Amendment due process analysis, a party must show that he has been deprived of life, liberty, or property. "Property interests are not created by the Constitution, they are created and their dimensions defined by existing rules or understandings that stem from an independent source such as state law. . . ." *Cleveland Bd. of Educ. v. Loudermill* (1985), 470 U.S. 532, 538, quoting *Board of Regents v. Roth* (1972), 408 U.S. 564, 576-578.

Ziegler's argument that any aspect of Ohio law creates a property right on behalf of elected officials was explicitly rejected by the Ohio Supreme Court in *State ex rel. Ohio AFL-CIO v. Voinovich* (1994) 69 Ohio St.3d 225, 239, as follows:

"We hold that relator's due process argument is totally without merit on the authority of our decisions in *State ex rel. Herbert v. Ferguson* (1944), 142 Ohio St. 496, and *State ex rel. Trago v. Evans* (1957), 166 Ohio St. 269. In *Herbert*, we defined "public office" as "a charge or trust conferred by public authority for a public purpose, with independent and continuing duties, involving in their performance the exercise of some portion of the sovereign power." *Id.*, 142 Ohio St. at 501. In *Trago*, we held that "[p]ublic are held neither by grant nor contract, and no person has a vested interest or private right of property in them. *Id.*, quoting, *City of Steubenville v. Cult* (1882), 38 Ohio St. 18, 23."

Where state law does not vest elected officials with an individual right of property in their elected office, the Fourteenth Amendment is not implicated. *Oregon v. Hass* (1975), 420 U.S. 714, 719 (state may impose restrictions, but not as a matter of federal constitutional law).

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Therefore, this Court concludes that Article II, Section 38, of the Ohio Constitution does not create a property right on behalf of elected officials. It merely requires that the legislature pass laws which provide for the prompt removal of elected officials upon complaint and hearing. While this requirement may overlap with Fourteenth Amendment due process requirements of notice and opportunity to be heard, it does not grant Fourteenth Amendment protection.

Injunction

Civil Rule 65 governs the practice of temporary restraining orders and preliminary injunctions. It provides that injunctive relief may be granted if "it clearly appears from the specific facts shown by affidavit or by verified complaint that immediate and irreparable injury, loss or damage will result to the applicant. . . ." Civil Rule 65 (A) (1). A temporary restraining order or preliminary injunction should be granted only in situations in which the plaintiff can demonstrate the following elements:

1. A substantial likelihood of success on the merits;
2. Irreparable injury to the plaintiff if the order is not granted;
3. Lack of substantial harm to the defendants and others if the order is issued; and
4. A public interest will be served by granting the order.

Since the Court finds R.C. 321.37 and 321.38 constitutional, Ziegler's claim for a temporary restraining order and/or a preliminary injunction must fail because there is not a "substantial likelihood" of his success on the merits of his claim that he is entitled to remain in office as the elected Stark County Treasurer.

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DECLARATIONS AND ORDERS

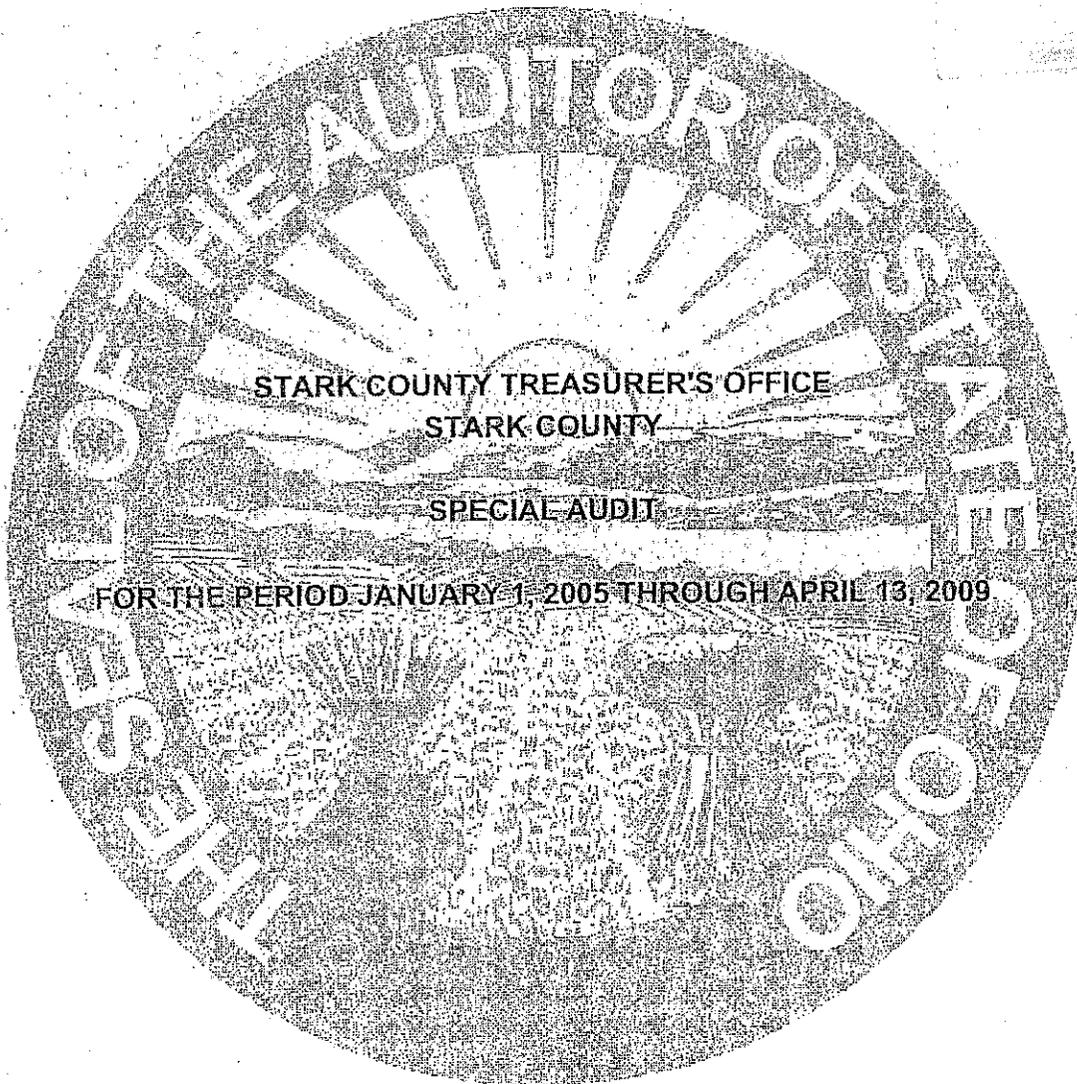
IT IS THEREFORE DECLARED AND ORDERED that:

1. R.C. 321.38 when read *in pari materia* with R.C. 321.37 does not violate Article II, Section 38, of the Ohio Constitution.
2. The due process clause of the Fourteenth Amendment to the United States Constitution is not applicable to the within action.
3. Any due process issue under either the United States or Ohio Constitutions is resolved by the Board's resolution of August 18, 2010.
4. Ziegler's motions for a temporary restraining order and/or preliminary injunction are denied.

Original being sent via mail.

H. F. INDERLIED, JR., JUDGE

cc: John D. Ferraro, Esq., Deborah Dawson, Esq., and
Ross Rhodes, Esq., Stark County Prosecutor's Office
Joseph E. Cirigliano, Esq., Matthew W. Naxon, Esq., and
Amy L. Deluca, Esq.
Dennis R. Thompson, Esq., and Christy B. Bishop, Esq.
Bradley R. Iams, Esq.
Aaron Epstein, Esq., Assistant Ohio Attorney General
Frank A. Ray, Esq.



Mary Taylor, CPA
Auditor of State

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Mary Taylor, CPA

Auditor of State

INDEPENDENT ACCOUNTANTS' REPORT

The Honorable Gary D. Zeigler
Stark County Treasurer
County Administration Building
110 Central Plaza - Suite 250
Canton, Ohio 44702-1410

We conducted a special audit of the Stark County Treasurer's Office (SCTO) by performing the procedures enumerated in the attached Supplement to the Special Audit Report for the period January 1, 2005 through April 13, 2009 (the Period), solely to:

- Examine reconciliations of SCTO's depository activity to the Stark County Auditor's Office (SCAO) adjusted fund balances at each month end during the Period and at April 13, 2009, to determine whether funds received were deposited into SCTO's bank and investment accounts.
- Examine available documentation supporting certain SCTO disbursements for the Period to determine whether the disbursements were for SCTO-related purposes.

This engagement was conducted in accordance with the Quality Standards for Inspections established by the President's Council on Integrity and Efficiency (January 2005). The procedures and associated findings are detailed in the attached Supplement to the Special Audit Report. A summary of our procedures and significant results is as follows:

1. We examined month-end reconciliations, bank statements and other relevant documentation and determined whether the SCTO depository and book balance agreed to the total fund balance maintained by the SCAO for the period January 1, 2005 through April 13, 2009.

Significant Results – In examining these documents and using the reconciled bank balances, we determined the SCTO's depository balance did not agree with its book balance or SCAO's adjusted fund balance due to shortages identified in the head cashier's vault; inaccurate posting of interest/investment income and related service charges/investment expenses; and unauthorized manual checks issued and cashed by a SCTO employee.

We recalculated the head cashier's vault cash balance and determined the vault cash was short \$2,734,560 on April 13, 2009. In Issue No. 2, we noted two unauthorized checks totaling \$230,000 were issued from SCTO's bank accounts. Accordingly, we issued a finding for recovery against Vince Frustaci, chief deputy treasurer, for \$2,734,560 of public monies collected but unaccounted for and \$230,000 of public monies illegally expended.

We made one noncompliance citation for maintaining a vault cash balance in excess of amounts established by SCTO policies.

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Stark County Treasurer's Office
Independent Accountants' Report
Page 2

We made nine management recommendations addressing internal control weaknesses noted in the reconciliation process, vault cash collection process, cash drawer overages/shortages, tracking and recording unclaimed wires, recording interest income earned and fees incurred, and segregating the cash collection and reconciliation processes.

- 2. We examined bank, investment, and trust account statements, wire transfers, canceled checks and other relevant documentation and determined whether certain SCTO disbursements during the Period were for SCTO-related operations.

Significant Results – We examined available documentation supporting 1,285 canceled checks and wire transfers totaling \$1,219,076,533 and 201 deposits into SCTO's First Merit Bank trust accounts and determined these transactions were for SCTO-related operations with the exception of two checks. We determined former Chief Deputy Treasurer Vince Frustaci improperly issued and cashed two checks written to First Merit Bank totaling \$230,000. These funds were not spent for SCTO-related operations.

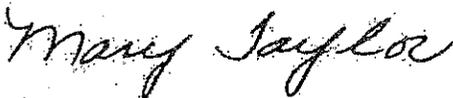
We made one noncompliance citation for SCTO to maintain records supporting daily and month-end reconciliations including the amounts reflected on those documents and disbursements of SCTO funds in accordance with the Commissioner's records retention schedule.

We made one management recommendation for SCTO to develop and implement an operations manual documenting procedures for collecting, depositing, and recording payments received; processing wire transfers, and completing daily and monthly reconciliations.

- 3. On June 14, 2010, we held an exit conference with the following individuals representing the SCTO:

Honorable Gary D. Zeigler, Treasurer
Lem Green, Deputy Treasurer
Honorable John D. Ferrero, Prosecuting Attorney

The attendees were advised they had an opportunity to respond to this special audit report. No response was received.



Mary Taylor, CPA
Auditor of State

February 26, 2010

Supplement to the Special Audit Report

Background

As part of the 2008 Stark County financial audit, Auditor of State (AOS) Canton regional audit staff attempted to confirm Stark County's bank balances. On March 26, 2009, AOS received a bank confirmation from First Merit Bank (FMB) and identified a \$2.955 million difference between the confirmed U.S. Government Agencies investment line item within the investment account and the amount documented on SCTO's December 31, 2008, reconciliation.

While AOS worked to resolve the discrepancy with FMB, SCTO Chief Deputy Treasurer Vince Frustaci contacted the AOS and the bank requesting the AOS and the bank stop their review of the discrepancy until he returned from vacation. Further examination of the confirmation, documentation provided by SCTO, and FMB's assistance led the audit staff to conclude the FMB trust account statement provided to the SCAO by SCTO for the 2008 financial audit had been altered. The FMB trust account statement provided to the SCAO by the SCTO listed a \$2.955 million U.S. Government Agency security not included on the trust account statement obtained directly from FMB.

According to Stark County Treasurer Gary Zeigler, on March 30, 2009, he and Mr. Frustaci met with the FMB trust account manager to discuss the altered trust account statement. Also according to Mr. Zeigler, on the way to FMB Mr. Frustaci admitted he had taken county funds.

On March 31, 2009, AOS representatives met with Mr. Zeigler, the former chief deputy treasurer, the head cashier and the operations manager. During this meeting, Mr. Zeigler stated that Mr. Frustaci had admitted to taking \$100,000 to \$200,000 of county funds.

On April 1, 2009, Mr. Zeigler terminated Mr. Frustaci. On the same date, the AOS initiated a special audit of the SCTO.

Supplement to the Special Audit Report

Issue No. 1 – Auditor-Treasurer Reconciliation

PROCEDURES

We examined SCTO monthly reconciliations, bank statements and other relevant documentation and determined whether SCTO's depository balances, used by the SCTO to reconcile on a monthly basis to SCAO's adjusted fund balance, agreed to bank account balances reported by the identified banks taking into consideration unclaimed wires and other unrecorded transactions.

Using SCAO fund balance and outstanding warrant reports and relevant bank statements, we determined whether SCAO's monthly reconciliations, used to reconcile with SCTO's depository balance, agreed to available supporting documentation.

Using bank and investment statements and SCAO receipt and disbursement ledgers, we determined whether bank account interest earned, investment income/expenses, and bank service charges reflected on SCTO's monthly bank statements were recorded in SCAO's financial records.

We conducted a cash count to establish and identify the amount of currency collected by and maintained in each cashier's cash drawer and individual vault and the currency maintained in SCTO's vault as of April 13, 2009. We also determined whether the amount maintained in the cashiers' drawers and vaults agreed to the actual amount documented as collected by each cashier for April 13, 2009.

Using bank statements, Head Cashier Daily Balance Sheets, the April 13, 2009 cash count results, and SCAO Fund Balance and Outstanding Warrant reports, we determined whether the SCTO and SCAO were reconciled as of April 13, 2009.

Using SCTO Daily Cashier's Balance Sheets, we recalculated SCTO's vault balance during the Period taking into consideration deposits into, and withdrawals from, the vault and determined whether the recalculated balance agreed to SCTO's vault balance.

RESULTS

We examined documentation including but not limited to the month-end Daily Reconciliation Forms, also known as Form 6, monthly pay-in reports, Daily Cashier Sheets documenting cash collected by each cashier, Head Cashier's Daily Balance Sheet for the vault documenting cash maintained in the vault, month-end unclaimed wires, and subpoenaed 49 bank and investment account statements and 28 certificates of deposit supporting 51 SCTO month-end reconciliations.

In examining the records supporting the 51 month-end reconciliations of SCTO's book balances to bank balances, we noted the following exceptions:

- SCTO's depository balance for certain bank account balances recorded on the Form 6 did not reconcile to the actual month-end bank account balance.
- SCTO improperly reported reconciling items totaling \$40,996,012 including but not limited to deposits in transit, returned wire transfers, credit card settlements, and interest earned as unclaimed wires¹. These items should have been reflected and identified separately on SCTO's Form 6 as adjustments to the treasury or depository balance.
- Eight instances totaling \$1,542,588 reflected as deposits from the vault into SCTO's bank account on the Head Cashier's Daily Cashier's Balance Sheet were not actually deposited.
- SCTO was unable to provide documentation supporting 30 reconciling items totaling \$327,357 and was unable to explain the reason for five transactions totaling \$636,796 which were not recorded accurately.
- SCTO prepared and paid-in a \$7,570 wire transfer to the Unclaimed Monies fund that had not been deposited into a SCTO bank account.

¹ Unclaimed wires are wire transfers deposited into an SCTO bank account during the month in which a county department has not prepared a pay-in to record funds received in SCAO's receipt ledgers.

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Based on the above exceptions, we determined SCTO's book balance did not reconcile to the bank and investment statement balances.

Ohio Rev. Code Section 319.15 requires SCAO to prepare a monthly reconciliation of amounts reflected on its ledgers to the balances held within the county treasury including all investment and bank accounts to ensure all county treasury, bank, and investment activity was reflected on SCAO's ledgers. We examined month-end fund balance reports, outstanding check reports, warrant clearing account bank statements, and available documentation supporting other adjustments reflected on SCAO's month-end Auditor to Treasurer Reconciliations prepared during the Period. We also examined the month-end Form 6 provided by SCTO to determine whether the SCAO used the correct amounts when performing its month-end reconciliation. We noted the following exceptions:

- SCAO was unable to provide documentation supporting outstanding Court of Common Pleas warrant amounts reflected on the January through November 2005 month-end reconciliations.
- SCTO issued manual replacement checks for returned Automated Clearing House (ACH) wire transfers and warrants and failed to notify SCAO. As a result, the replacement warrants did not clear through SCTO's automated warrant clearing process and resulted in adjustments to SCAO's month-end reconciliation.
- SCTO only provided SCAO with an adding machine tape to support the dollar amounts of warrants clearing the bank, depository balances, and month-end SCTO adjustments.

We were able to obtain documentation supporting or corroborating evidence from other sources to support the above-identified items on the SCAO reconciliations.

In comparing the interest and investment income earned (interest income) and service charges/investment expenses (service charges) incurred in SCTO's 49 bank and investment accounts and 28 certificates of deposit to interest income earned and service charges posted to SCAO's receipt and expenditure ledgers, we noted the following exceptions:

- SCTO reduced interest income earned by service charges incurred from the same or other bank accounts prior to preparing a pay-in to record interest deposited on SCAO's receipt ledger and service charges incurred on SCAO's disbursement ledger.
- Interest income totaling \$419,734 and service charges totaling \$38,856 reflected in SCTO bank and investment accounts was not recorded on SCAO's receipt or expenditure ledgers.
- SCAO recorded \$258,101 of interest income and \$113 of service charges which were not supported by a subpoenaed bank statement or available supporting documentation maintained by SCAO or SCTO. As such, we could not identify the source of the interest earned or service charges incurred.

Because of the above-identified errors, we were unable to reconcile SCTO's April 13, 2009 depository and book balances with SCAO's adjusted April 13, 2009 fund balance.

On April 13, 2009, the AOS conducted a cash count of funds SCTO held in the county treasury. We counted \$264,171 which consisted of \$170,750 located in the head cashier's vault and \$93,421 located in the individual cashier drawers and vaults. These amounts were supported by pay-ins received during the day plus their previous day's ending balance.

Funds collected by each cashier were maintained in either their individual cashier drawer or assigned vault until they were periodically directed by a supervisor to "sell" a portion of their funds to the head cashier's vault. When sold, the head cashier's vault balance increased by the amount "sold". In accordance with SCTO policy, the head cashier periodically withdrew funds from the vault and deposited them into one of SCTO's bank accounts.

Beginning with the December 2004 Daily Cashier Sheets, we recalculated the vault balance by examining each cashiers' Daily Cashier's Balance Sheet and the head cashier's Daily Cashier's Balance Sheet for the vault to identify sales to, and withdrawals from, the head cashier's vault. We traced withdrawals from the head cashier's vault to a deposit into a SCTO bank account.

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When we compared the AOS' recalculated vault balance to the amount SCTO reported on the head cashier's Daily Cashier's Balance Sheet for the vault, we noted the following discrepancies:

Date	AOS Calculated Vault Balance	SCTO Reported Vault Balance	Vault Balance Difference
12/31/2005	\$832,618	\$0	\$832,618
12/31/2006	\$1,193,018	588	\$1,192,430
12/31/2007	\$1,858,218	788	\$1,857,430
12/31/2008	\$2,734,560	\$0	\$2,734,560
04/13/2009	\$2,905,310	\$170,750	\$2,734,560

We determined an additional \$2,734,560 should have been in the vault during the April 13, 2009 cash count. By examining subpoenaed bank statements, we verified the \$2,734,560 was not deposited into any of SCTO's bank accounts during the Period.

FINDING FOR RECOVERY

County Treasury Shortage

Each cashier maintained a cash drawer to account for funds collected at the counter. When closing out the day's business, the cashier prepared a Daily Cashier's Balance Sheet summarizing the day's collections. At the direction of their supervisor, SCTO cashiers periodically deposited funds from their individual cash drawers into the head cashier's vault. When funds were withdrawn from the head cashier's vault, various SCTO employees prepared a deposit slip and deposited the funds into a SCTO bank account. The Daily Cashier's Balance Sheet did not reflect any sales from the head cashier's vault to the individual cashiers' drawers. Based on documented cashier deposits into the head cashier's vault and deposits from the head cashier's vault into a SCTO-bank account, we determined \$2,734,560 was deposited into the head cashier's vault, withdrawn, and was not subsequently deposited into a SCTO bank account.

As reported in Issue No. 2, we identified two unauthorized checks totaling \$230,000 issued to First Merit Bank and subsequently cashed by Mr. Frustaci. By issuing these checks to First Merit Bank, Mr. Frustaci as signatory was able to cash these checks and receive \$230,000 of SCTO funds in cash.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, we are hereby issuing a finding for recovery against Vince Frustaci for \$2,734,560 of public monies collected but unaccounted for and \$230,000 of public monies illegally expended in favor of the Stark County Treasurer's Office.

NONCOMPLIANCE CITATION

Vault Cash

SCTO's Vault Cash Balance policy effective January 2, 2002 through June 30, 2006, provided the vault would maintain "an average of \$350,000" to allow for the cashing of County warrants and other needs. Section 3 of SCTO's Policy for Cash, Deposits and Checks effective June 30, 2006 through the end of the audit period, stated the head cashier's vault cash balance "will be maintained at One Hundred Fifty Thousand dollars." Contrary to these policies, the head cashier's Daily Cashier's Balance Sheet reported vault balances ranging from \$0 to \$1,365,468 and exceeded the approved amounts at least one day during 44 of the 51 months during the Period.

By not maintaining standard amounts and not depositing excess cash in a timely manner and in accordance with its established policies, SCTO increased its risk of theft and missed the opportunity to earn interest on County funds.

We recommend SCTO contact similarly sized counties to obtain an understanding of those counties' policies and procedures for maintaining and controlling cash in the vault. We recommend the County also review historic cash activity information to establish a suitable level of cash needed on-hand to meet County needs. Once this assessment has been completed, we recommend SCTO revise its internal policy, as appropriate, and actively monitor compliance with the established cash level.

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MANAGEMENT RECOMMENDATIONS

Reconciliation Process

The monthly bank reconciliation process is an important tool to assist management in determining the completeness and accuracy of recorded transactions and verify transactions recorded on SCAO's ledgers reflect actual activity. By reconciling the county treasury to SCAO's accounting system, management is provided with information that can be used to identify and investigate discrepancies between the bank balances and accounting system book balances; to detect errors, irregularities, and inaccurate postings to the accounting system; and to detect unauthorized bank account activity.

During the Period, SCTO completed a daily reconciliation as required by Ohio Rev. Code Section 321.09 and SCAO completed their month-end reconciliation as required by Ohio Rev. Code Section 319.15. However, we determined the month-end reconciliations between the SCTO and SCAO were inaccurate and not reflective of actual SCTO activity. During our examination of these reconciliations, we noted the following:

- Month-end reconciliations reflected balances up to \$3,131,447 higher than the actual reconciled bank balance resulting in SCTO overstating month-end book balances for 28 months.
- Actual bank balances were not used when reconciling SCTO's book balances to adjusted bank balances. Instead, SCTO used the previous month's book balance adjusted for deposits into the account, and for wire transfers or checks clearing the account.
- A month-end bank reconciliation was not performed for all bank and investment accounts to ensure all bank activity was reflected in SCAO's ledgers.
- SCTO's investment book balances reflected certain investments were transferred to the FMB trust accounts in January 2005. However, these transfers did not actually occur until September 1, 2005.
- SCTO's unclaimed wire list included 193 reconciling items totaling \$40,996,012 which should have been separately reported on SCTO's Form 6. These items included but were not limited to deposits in transit, interest income, returned wire transfers, and credit card settlements.

Failure to complete accurate reconciliations increases the risk that errors, theft, and fraud could occur and not be detected in a timely manner.

We recommend SCTO include the following in its reconciliation process to reduce the likelihood of errors and irregularities from occurring in the future:

- Complete month-end reconciliations of each active bank and investment account.
- Complete SCTO's month-end reconciliation of its book balances to the reconciled bank balances to ensure all bank activity is reflected in SCTO's books and was posted to SCAO's ledgers.
- Provide to SCAO on a monthly basis these reconciliations, SCTO's Form 6 including relevant documentation supporting adjustments, and the month-end bank statements for Auditor-Treasurer reconciliation purposes.

Year End Reconciliations

At year end, SCTO provided copies of the December bank statements to the SCAO. These copies were used to calculate the year-end cash balances reflected on the County's financial statements. In comparing SCAO's December bank statement copies for the Period to those obtained by subpoena, we determined the ending balance on three of the year-end bank statement copies provided to SCAO were altered. These alterations inflated the bank account balances to conceal shortages of vault cash and two unauthorized checks issued.

We recommend SCAO consider periodically comparing SCTO's provided month-end reconciliation documentation to original source records maintained by SCTO to ensure the reconciliations are accurate and reflective of actual activity.

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Segregation of Duties

The head cashier was responsible for maintaining the vault cash, depositing vault cash into a SCTO bank account, processing ACH and wire transfers, and preparing the month-end SCTO reconciliations. The same individual also served as a back-up cashier and collected counter payments when needed. No evidence existed that an individual independent of the cash collection process reviewed the month-end reconciliation for accuracy and completeness. The lack of segregation of duties could result in errors or irregularities not being discovered in a timely manner.

We recommend these duties be segregated to ensure that no single individual has control over all phases of the cash collection and reconciliation process. SCTO should appoint an individual independent of the cash collection and reconciliation processes to review the month-end reconciliation and supporting documentation for accuracy, completeness, and unusual activity.

Cash Held in the Head Cashier's Vault

During the Period, cash maintained in the head cashier's vault was counted on a sporadic basis by employees in charge of the vault. Documentation provided to support these counts reflected the total dollar amount counted and was signed by two individuals. Cash counts conducted by those in charge of the funds increases the risk that cash could be misappropriated and go undetected.

We recommend SCTO implement a formalized cash count process requiring the vault to be counted on a regular basis by two individuals independent of the cash collection process. Additionally, we recommend surprise cash counts be conducted. One individual should perform the count of the funds maintained in the vault and the other individual should act as a witness to the count. Once completed, the count results should be documented with the date, time, and amount of cash held in the vault and be signed by both the counter and the witness documenting the count was performed and recorded accurately. Once completed, these counts should be compared to the amounts reflected on SCTO's ledgers and any discrepancies identified should be investigated.

Vault Deposits

The head cashier's vault cash increased when a cashier sold funds collected from their drawer to the vault. Funds from the head cashier's vault were deposited on a periodic basis into a SCTO bank account. At times, only one person was involved in counting the funds and preparing the deposit slip before the funds were transported to the bank for deposit.

Failing to have a second person involved in counting funds to be deposited, preparing the deposit slip, and verifying the deposit was reflected on the month-end bank statement increases the cash deposit's susceptibility to theft or loss. During the Period, eight deposit slips supporting withdrawals from the vault totaling \$1,542,588 were prepared but the funds were not deposited into a SCTO bank account.

We recommend two employees be present when vault cash is counted, the deposit slip is prepared, and when the cash is transported to the bank. In addition, the individual responsible for completing the daily and month-end reconciliations should verify the amounts reflected as deposited on the Daily Cashier's Balance Sheets were actually deposited into a SCTO bank account.

Cashier Drawers

Each cashier was assigned their own individual drawer and vault to hold their daily collections. At the end of the day, the cashier independently counted their drawer and completed their Daily Cashier's Balance Sheet. Cash collected was maintained in the cashier's drawer to be used the next day and was not deposited into either the head cashier's vault or a SCTO bank account.

During our examination, we noted each cashier's drawer remained unlocked throughout the day and was accessible to both SCTO and non-SCTO personnel. In observing the closing of daily activity by the cashiers, no one monitored the cashiers counting their cash drawer and completing the Daily Cashier's Balance Sheet to ensure amounts collected were accurately reflected.

Failing to have a cashier count their drawer and complete their Daily Cashier's Balance Sheet in the presence of another individual increases the likelihood errors or irregularities will go undetected and increases the risk that county funds may be misappropriated.

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When closing out daily activity, we recommend a second person observe and verify the amounts counted by the cashier. This independent individual should also observe the completion of the Daily Cashier's Balance Sheet and verify the accuracy of the information. The independent individual should sign the completed Daily Cashier's Balance Sheet documenting their agreement with the amounts reflected on the sheet. SCTO should consider the benefits of depositing daily cash collections into a SCTO bank account instead of maintaining the funds in the cashiers' drawers or head cashier's vault thereby missing the opportunity to earn interest. In addition, we recommend each cashier secure their drawer when away from their desk and not share their vault combination to reduce susceptibility of its contents to theft.

Cash Drawer Shortage Policy

The Stark County Treasurer's Office Policy on Cash Drawer Shortages and Overages dated January 2007, states, "Shortages will be paid by cashier with appropriate notation on the daily balance sheet by the Head Cashier or Chief Deputy Treasurer." Cash handling policies and procedures should be established to ensure proper controls over cash collections and cash drawers. By taking this approach, SCTO is increasing the likelihood of employee turnover and the risk an overage will be misappropriated.

We recommend SCTO revise the current policy on cash drawer shortages and overages to discontinue the practice of cashiers using personal funds to pay for shortages in their cash drawers and implement the following controls to address shortages and overages which may occur:

- Overages should be recorded as other revenue and shortages should be recorded as other expenditures.
- Management should summarize cashiers' cumulative overages and shortages and use trend information in evaluating employee performance.
- Management should monitor and track daily overages and shortages for each cashier.
- Specify the actions to be taken by management based on the dollar amount and/or frequency of overages and shortages.

Unclaimed Wires

Electronic funds transfers and ACH wire transfers are periodically deposited into the county's operating checking account. SCTO was responsible for notifying the applicable county department the wire transfers were received. Upon notification of the transfer by the distributing agency, the county department completed the required pay-ins to document which fund these wire transfers should be posted to in SCAO's ledgers. Wire transfers were not recorded on SCAO's ledgers until a departmental pay-in was received. During the Period, we noted 97 wire transfers were unclaimed for at least 30 days and 47 wire transfers were unclaimed for at least 60 days. In addition, we identified a \$7,570 wire transfer recorded on the unclaimed wire list which was not reflected as received on a SCTO bank statement.

Failing to accurately reflect unclaimed wire transfers on the reconciliation, claim these wire transfers in a timely manner, and request the funds be accurately posted to the department's budget may result in the department violating the funding source's guidelines and in other county funds being expended for those purposes.

We recommend SCTO implement a policy and notify county departments of the timeframe in which wires received are to be claimed and that after that date the funds will be paid into the Unclaimed Wires fund. When SCTO issues the pay-in to post the unclaimed wires to the Unclaimed Wires fund, SCTO should notify the appropriate department, when possible that the wire was posted to this fund. In addition, an SCTO employee independent of the preparer of the unclaimed wires list should verify each wire transfer identified as unclaimed was deposited into an SCTO bank account and was not included in the daily pay-in report generated from SCAO's financial accounting computer system.

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Interest Income and Service Charges

SCTO earned interest income and incurred service charges each month on 49 bank accounts. Upon receipt of each bank statement, SCTO prepared a pay-in to record interest earned and provided documentation to SCAO to record the disbursement of fees incurred. We determined SCTO did not prepare pay-ins for interest income received in a timely manner, did not record interest earned or fees incurred accurately or at times did not record these items at all.

When comparing interest income and fees reflected on the subpoenaed bank statements to the amounts recorded on SCAO's receipt and disbursement ledgers, we noted the following exceptions:

- As of April 13, 2009, SCTO had not recorded \$419,734 of interest income earned and \$38,856 of fees incurred.
- Interest income earned was reduced by fees incurred for the same or multiple bank accounts prior to being recorded on SCAO's ledgers.
- Fees incurred were reduced by six receipts for interest income earned prior to posting the disbursement on SCAO's ledgers.
- SCAO's receipt ledger interest income line item contained receipts totaling \$258,101 which were not supported by interest earned per subpoenaed bank statements.
- SCTO commingled interest income and service charges for several bank and investment accounts when posting interest income and related fees preventing the identification of its origin.
- The pay-in descriptions did not accurately reflect the source of the interest income earned.
- Interest receipts and service charges were not posted timely.
- SCTO incorrectly posted adjusting entries for interest income earned and fees received. As a result, SCTO was required to make several adjustments to correct their mistakes.

This situation resulted in inaccurate cash reconciliations and erroneous reporting of earnings on investments, fees, and fund balances. In addition, we were unable to determine the origin of certain receipts and fees thereby preventing AOS from determining whether interest earned and fees incurred per the subpoenaed bank and investment statements were recorded on SCAO's ledgers.

We recommend SCTO prepare a separate pay-in for interest earned and separate documentation for fees incurred upon receipt of the month-end bank statement and provide the documentation to the SCAO in a timely manner to record the activity accurately in SCAO's ledgers.

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Issue No. 2 – Certain SCTO Disbursements

PROCEDURES

We examined canceled checks, bank statements, and relevant supporting documentation and determined whether certain disbursements from SCTO's FMB operating account were for SCTO-related purposes.

We examined canceled checks, bank statements, and documentation supporting wire transfers to determine whether disbursements from the regional banking accounts were deposited into another SCTO bank account or were for SCTO-related purposes.

We examined documentation supporting trust account additions and deletions from FMB trust accounts and determined whether the additions consisted of SCTO funds disbursed from another SCTO bank account and whether disbursed funds were deposited into another SCTO bank account or issued for an SCTO-related purpose.

RESULTS

During the Period, SCTO maintained its operating checking account at FMB. SCTO used this bank account to deposit wire transfers received from state and federal agencies, deposit monies collected from taxpayers and local businesses, and to fund warrants issued by SCAO. SCTO also used this account to issue manual checks to replace returned SCAO ACH wire transfers because the destination bank account was closed.

We examined available documentation supporting 51 SCTO-issued checks totaling \$268,975 and 54 SCTO-initiated wire transfers totaling \$621,240,996. We determined the disbursements were for SCTO-related purposes with the exception of two checks issued and cashed by Vincent Frustaci for purposes unrelated to SCTO operations. These two unauthorized checks are included in the Finding for Recovery reported in Issue No. 1.

SCTO maintained 10 bank accounts located at local banks to collect property tax payments. SCTO referred to these accounts as regional banking accounts. SCTO maintained 26 other bank accounts at various local banks and investment firms to earn interest. Periodically, SCTO transferred funds collected from these accounts using a wire transfer, cashier check, or check. We examined 903 disbursements totaling \$508,678,963 from the 36 accounts and determined the disbursements were deposited into another SCTO bank account or were used to purchase an investment on behalf of SCTO.

SCTO maintained two trust accounts at FMB during the Period. The first trust account was established to hold certificates of deposit and money market accounts. The second trust account was established to hold government-backed securities purchased by SCTO at the direction of their investment advisor. SCTO made 201 deposits totaling \$116,422,890 to the two trust accounts using funds from other SCTO bank accounts. SCTO made 277 disbursements from the trust accounts totaling \$88,887,599 to purchase additional investments, pay investment advisory and trust fees, and to distribute interest earned to SCTO's operating checking account. We examined documentation supporting the additions to, and disbursements from, the two trust accounts and determined the transactions were for SCTO-related purposes.

NONCOMPLIANCE CITATION

Maintaining Supporting Records

Ohio Rev. Code Section 149.351(A) in part, states "(a)ll records are the property of the public office concerned and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under the rules adopted by the records commissions provided for under sections 149.38 to 149.42 of the Revised Code or under the records programs established by the boards of trustees of state supported institutions of higher education under section 149.33 of the Revised Code."

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SCTO was unable to provide the following records during our examination:

- Documentation supporting the purpose and authorization of 25 trust account disbursements, totaling \$42,704,048 for the purchase of another investment or a disbursement to SCTO's operating checking account.
- Written directives documenting the purpose for, and authorizing, the transfer of funds from one bank account to another for 72 wire transfers.
- Documentation supporting three days of Daily Cashier Balance Sheets which identify the vault cash balance and individual cashier balances.

By not retaining documentation, the County cannot ensure that actions taken are in accordance with management's objectives and intentions and the County increases its risk of errors and unauthorized transactions.

We recommend the SCTO maintain records to support deposit and disbursement of county funds and document when investments are purchased and sold in accordance with the Commissioner-approved records retention schedule.

MANAGEMENT RECOMMENDATION

Operational Policies and Procedures

SCTO did not maintain written policies and procedures for collecting payments, closing out daily cash collections, performing daily and monthly reconciliations of its books to bank balances and the SCAO's fund balances; issuing checks, wire transfers, and ACH transfers of County funds; voiding manual checks, SCAO warrants, and returned ACH wire transfers; and documenting authorizations required for investment purchases, sales, and wire transfers of funds between SCTO bank accounts.

Without written policies and procedures, employees may interpret standard practices incorrectly resulting in inaccurate, inconsistent, and undesirable results.

We recommend SCTO develop an operations manual addressing the following areas:

- Procedures for counting a cashier's drawer at the end of business, completing the Daily Cashier's Balance Sheet, and selling funds to the vault.
- Procedures for performing and reviewing daily and monthly reconciliations to ensure SCTO's book balances agree to the reconciled bank and investment account balances and SCAO's month-end fund balances. Each of the terms and entries on the daily and monthly reconciliations should be specifically defined to reduce confusion when completing daily or monthly reconciliations. This will also enable other SCTO personnel to complete the daily or monthly reconciliation when the head cashier or fiscal officer is absent.
- Procedures and guidelines for transferring funds between SCTO bank accounts including required authorizations to initiate, approve, and review transactions to ensure they were processed correctly and in accordance with management's objectives and intentions.
- Procedures for re-issuing payments for returned ACH wire transfers, voiding SCTO-issued manual checks, and stopping payment on SCTO-issued manual checks, ACH wire transfers, and SCAO warrants to ensure all disbursements issued are recorded on SCAO's ledgers and no disbursements to non-SCTO bank accounts are made by the SCTO.



Mary Taylor, CPA
Auditor of State

STARK COUNTY TREASURER'S OFFICE

STARK COUNTY

CLERK'S CERTIFICATION

This is a true and correct copy of the report which is required to be filed in the Office of the Auditor of State pursuant to Section 117.26, Revised Code, and which is filed in Columbus, Ohio.

Susan Babbitt

CLERK OF THE BUREAU

CERTIFIED
JUNE 25, 2010

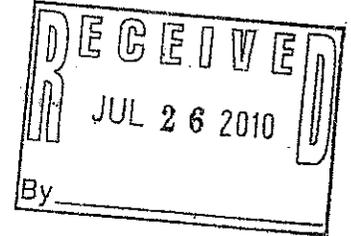
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July 26, 2010



The Honorable John D. Ferrero
Stark County Prosecuting Attorney
110 Central Plaza South, Suite 510
Canton, OH 44702

Dear Prosecutor Ferrero:

Pursuant to Ohio Revised Code Section 321.37 in regards to the current circumstances surrounding the Stark County Treasurer's Office, it is my understanding that there needs to be a direct request from either the Auditor or Commissioner's to institute a suit. Therefore, I ask in my official capacity as Auditor that you immediately institute a suit against the Stark County Treasurer for his bond sureties and any other means of collecting County funds.

Being very concerned about the County's budget problems and as members of the County's Budget Commission, it is imperative that we have a true reflection of the County's financial outlook to certify funds. Without clarification, uncertainty will exist that will cause a continued erosion of confidence with the general public in our government. Consequently, I ask on behalf of the people of Stark County that immediate action be taken and the funds be recovered as soon as possible.

I thank you in advance for your prompt attention and cooperation in this matter. If you have any questions or concerns about this matter, please don't hesitate to contact me.

Sincerely,

Kim R. Perez

Cc: County Commissioner's