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The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

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STATE AUDITOR'S REPORT
COVERING OVERPAYMENTS TO A COURT OFFICER
FOR THE PERIOD JANUARY 18, 1984 TO MAY 11, 1989

The Honorable Charles F. Flaherty
Speaker of the House of Representatives
State House Room 356
Boston, Massachusetts 02106

January 15, 1992

Dear Speaker Flaherty:

At the request of the Office of the Attorney General, we conducted a review covering the salary payments made to a court officer formerly employed by the Office of the Sergeant-at-Arms (SA). Payments were made to the employee after the injury on January 17, 1984, and continued after the employee had used all sick and vacation time accrued to him, until his employment was terminated on May 11, 1989. These conditions occurred prior to your tenure as Speaker and that of the Sergeant-at-Arms.

Our review was performed to determine the amount of such payments to this employee, who authorized them, and if these payments were supported by appropriate documentation. In order to achieve our objectives, we interviewed the current SA and various officers who report to him, as well as the Director of the Division of Personnel and Payroll for the House of Representatives. We also interviewed the General Counsel of the Department of Industrial Accidents

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336.7M3 Director of the Workman's Compensation Section of the Public Employees

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Retirement Administration (PERA). We reviewed documentation maintained by these agencies with respect to time and attendance, salary payments, accident reports, appeal reports, and related files.

Our audit disclosed that the former court officer received approximately \$124,550 in excess of the amount to which he was entitled (see Schedule A). This resulted from the court officer being paid his full salary as sick or vacation leave and the state's contribution for health insurance for a period of about 64 months after his injury (see Schedule B). These payments were made despite the fact that the employee's sick and vacation leave accruals had been exhausted about 17 months after the date of his on-the-job injury.

The results of our review are detailed in the attached audit results and accompanying two schedules.

We express our appreciation to you and the Sergeant-at-Arms for your cooperation and assistance, and also would like to recognize the corrective action taken to improve internal accounting and administrative controls over time and attendance.

Sincerely,



A. JOSEPH DeNUCCI
Auditor of the Commonwealth

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ATTACHMENTAUDIT RESULTS

Our audit disclosed that a former court officer, assigned to the Office of the Sergeant-at-Arms (SA), received approximately \$124,550 in salary and benefits in excess of the amount to which he was entitled. (See Schedule A.)

According to reports, on Tuesday, January 17, 1984, during the performance of his official duties, the court officer was injured when he tripped over a television cable that caused him to fall down on his back on a marble floor. The officer received medical treatment, filed the appropriate injury reports, and immediately went on sick leave.

Subsequently, the Office of the SA filed a workman's compensation claim with the Industrial Accidents Board (IAB) on behalf of the employee. On December 5, 1984 the Public Employee Retirement Administration (PERA) sent a letter to the SA advising that the IAB had approved the workman's compensation claim for this employee. The letter specified that compensation was to be paid at the rate of \$296.66 per week (which represented 2/3 of the employee's \$445 weekly salary) for the period January 18, 1984 to September 8, 1984. Subsequently, a check in the amount of \$9,959.64 for workman's compensation (which equals 168 days at 2/3 salary and equivalent to 112 days at full salary) was received by the SA and was held by that office until February 1990 when it was turned over to the Attorney General's Office at its request.

The employee began to charge sick leave on Wednesday, January 18, 1984 and, based on our review of available evidence, never returned to work. The employee, however, continued to be paid his full salary each week for the next 64 months (see Schedule B). Each year his salary was increased by cost-of-living adjustments provided to all court officers. This continued until his employment was terminated on May 11, 1989 at the direction of the then Speaker of the House of Representatives.

During the period under review, the Office of the SA prepared daily time sheets for each employee. Periodically, this information was posted to an attendance calendar which covered a fiscal year period. Neither the time and attendance sheets nor the attendance calendars were available for the two fiscal years ended June 30, 1984 and June 30, 1985. Attendance calendars were available, however, for the periods of July 1, 1985 to the employee's termination on May 11, 1989. During this latter period, the attendance calendar indicated the employee was on accident leave (i.e., sick leave).

Although attendance records could not be located for the January 1984 to June 30, 1985 period, a three-page document was found in the file that showed the employee's name and a chronological attendance record covering the period of March 1, 1984 to June 1985. This record purportedly reflected the employee's work status for each day within that period by the annotation of sick, holiday, vacation, or "was in" (i.e., that the employee had worked on that specific day). This document showed a total of 348 work days during the period, with 161 shown as sick days, 10 as vacation, 15 as holidays, and 162 as "was in." This list was undated and unsigned and, further, the assistant SA who was in charge of the administrative records during the period disclaimed all knowledge of this record and its presence in the office files.

The authenticity of this document is highly doubtful as it is not consistent with information developed by us during an interview with the assistant chief court officer, who stated that the former court officer never returned to work after his injury. It is also inconsistent with information contained in a letter dated November 27, 1985 that was sent by the assistant SA to the Public Employee Retirement Administration (PERA). This letter stated that the employee was out of work following his accident between January 18, 1984 and September 8, 1984. For the period of March 1, 1984

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through September 8, 1984, the unsigned and undated list shows that the former court officer "was in" on 26 days, with the remaining time charged to sick, vacation, or holiday.

As a result of the conditions that occurred, the employee was allowed to receive full salary compensation for a period of over 47 months more than he was entitled to.

Chapter 152 of the Massachusetts General Laws (MGL) sets forth the provisions regarding workman's compensation. Under Section 34, Total Incapacity Compensation, an employee is entitled to receive weekly compensation equal to 2/3 of his average weekly wage before the injury.

Traditionally, the SA's office has adhered to the vacation, sick, and other leave policies issued in October 1973 by the Director of Personnel and Standardization under the Commissioner of Administration (now the Secretary of the Executive Office of Administration and Finance). This policy manual is entitled "Rules and Regulations Governing Vacation Leave, Sick Leave, Travel Overtime, Military Leave, Court Leave, Other Leave Charges to State Personnel, Accident Prevention." Rule L0.4 of this manual provides that an injured employee may receive salary payments in full up to the extent of his accrued sick and vacation leave, until the period under the workman's compensation law begins. Traditionally, the SA's office has also adhered to those policies of the Comptroller's Office which provide that employees who are injured on the job will not be charged for holidays that fall within the period of such leave (Comptroller's Policy Manual, Section XXVII). However, Chapter 30, Section 20, of the MGL (and Rule L0.4) states that any absence resulting from a work related injury that is in excess of available sick leave or vacation leave credits shall be deemed absent without pay. Therefore, in cases in which an employee uses all of his sick, vacation, and holiday entitlements, no further

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payments are authorized until a workman's compensation decision has been made.

During the audit we determined that the employee had attempted to withdraw amounts to his credit in the State Retirement Fund. This request was rejected by the current SA pending a final determination of this case. As of May 11, 1989 the former employee had contributed approximately \$12,900 to this fund. With interest accrued from the date he was hired by the state, this fund is estimated to now total \$19,000.

Our audit also disclosed that upon termination the employee was not entitled to any payments for vacation or sick time since the employee had at that point used all sick and vacation leave due to him.

On March 30, 1989 the State Board of Retirement rejected the employee's request for accident-disability retirement. In addition, on August 16, 1989 the employee's attorney filed a Notification of Withdrawal of Proceeding form with the Department of Industrial Accidents, which effectively terminated the employee's appeal from decisions by this division.

The current SA has established written procedures to control time and attendance, and has instructed his managers to closely monitor time and attendance and to report to him any indications of abuse. He has also directed his administrative staff that there must be strict adherence to the requirements of the workman's compensation law.

We recommend that:

- a) Action be taken to deposit the workman's compensation check of \$9,959.64 into the General Fund. This represents the 112 days covered by the workman's compensation claim (Schedule B).
- b) Action be taken to transfer all amounts in the State Retirement Fund that have been accumulated to the account of the employee plus accrued interest to the General Fund as a partial offset of the amounts due from him. (Schedule A.)
- c) Action be taken to recover the residual amount due from the employee after the transfer of amounts in his retirement fund plus accrued

interest. The residual amount, exclusive of interest, is estimated to be \$105,550.

- d) Interest be assessed on unauthorized payments made over the several-year period.

Schedule A

OFFICE OF THE SERGEANT-AT-ARMS
ESTIMATED REIMBURSEMENT DUE FROM COURT OFFICER
JUNE 11, 1985 TO MAY 11, 1989

Actual Gross Salaries Paid

June 11, 1985 to December 31, 1985	\$ 13,959 (1)
January 1, 1986 to December 31, 1986	25,621
January 1, 1987 to December 31, 1987 (actual)	26,561
January 1, 1988 to December 31, 1988 (actual)	27,756
January 1, 1989 to May 11, 1989 (actual)	<u>10,750</u>

Total	\$104,647
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Add amounts paid as the state's contribution for the employee's health insurance	<u>19,903</u> (2)
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Excess payment to court officer	\$124,550
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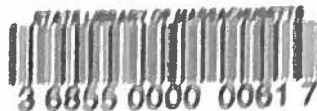
Less estimated amount accumulated in retirement fund	<u>19,000</u>
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Estimated residual amount due	<u>\$105,550</u> (3)
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(1) Employee was entitled to use accumulated sick, vacation, and holiday leave during the period January 18, 1984 to June 10, 1985 (see Schedule B).

(2) Based on actual state share of health insurance paid for the 47-month period of June 11, 1985 to May 11, 1989.

(3) The residual amount does not include any interest covering the period during which the overpayments occurred or any penalties that may be assessed. It also does not consider any federal or state income taxes that may have been paid by the former employee on the gross salaries received.



Schedule B

OFFICE OF THE SERGEANT-AT-ARMS
ESTIMATED VACATION, SICK, AND HOLIDAY LEAVE
ACCURED BY FORMER EMPLOYEE
JANUARY 18, 1984 TO JUNE 10, 1985

		TOTAL DAYS
Days charged as sick or holiday leave between January 18, 1984 and May 4, 1984		74
Balance of leave as of May 4, 1984		
Sick	90	
Vacation	34	124 (1)
Add: days resulting from payback of workman's compensation claim for the period ended September 8, 1984		112
Total days available excluding accruals		236
Add: estimated days which would be accrued over a 226-day period		
Vacation	27	
Holiday	13	
Sick	13	
Personal	3	56
Total leave days available to be used after May 4, 1984		292
Total estimated work days elapsed between January 18, 1984 and June 10, 1985		366 (2)

- (1) Total leave balances as of May 5, 1984 per documents available in the SA's office.
- (2) The employee was paid full salary for the period January 18, 1984 to May 11, 1989, a period of about 64 months. However, the employee was only entitled to remain on paid leave for the estimated 366 work days from January 18, 1984 to June 10, 1985 (includes holidays and represents about 17 months).