

IN THE SUPERIOR COURT OF WALTON COUNTY  
STATE OF GEORGIA

SOCIAL CIRCLE MAYOR HAL DALLY AND  
COUNCIL MEMBERS ANGELA PORTER,  
TRAYSA PRICE AND DAVID KEENER,  
Plaintiffs

v. CIVIL ACTION FILE NO. 2013 CA \_\_\_\_\_

JOSEPH STEVEN SHELTON,  
Defendant

**COMPLAINT FOR SUSPENSION OR REMOVAL FOR VIOLATION OF OATH OF  
OFFICE AND FALSIFICATION OF RECORDS, AND REQUEST FOR RESTITUTION**

Come now the above named MAYOR AND COUNCIL MEMBERS OF THE CITY OF SOCIAL CIRCLE, individually and representing the Citizens, and state their Complaint as follows:

1. Defendant is a resident of Walton County, Georgia, located at 366 Richmond Drive, Social Circle 30025, subject to the jurisdiction of this Court. Defendant may be served with Summons and this Complaint at said address. Venue of this action lies in Walton County.
2. Defendant is a Social Circle council member, having been elected in November, 2011.
3. Defendant signed an oath of office on January, 2012. A true and correct copy thereof is attached hereto as exhibit A.
4. From approximately 1986 through August, September or October 2009, Defendant served as Fire Chief of the City of Social Circle Fire Department.
5. In approximately August of 2006 his responsibilities increased to include the entire Department of Public Safety, as Interim Director.
6. In that capacity Defendant did perform the functions of both Fire Chief and Police Chief.
7. In August of 2007 Defendant transitioned from Interim Director to Director.
8. Defendant did continue to perform the functions of Fire Chief, plus Police Chief.
9. During February 2012, the City Attorney and Plaintiff Mayor Hal Dally first became aware that Defendant may have committed certain financial fraud, involving public money.
10. The Georgia Bureau of Investigation asked for a forensic accounting of the fraud.
11. Soon thereafter the City Attorney retained Cash Accounting & Consulting, CPA of Athens,

Georgia to perform said forensic accounting of the fraudulent takings of public money.

12. Cash Accounting & Consulting began its involvement in late February, 2012 and began reviewing voluminous records relating to the fraudulent scheme of taking of public money from 2005 through 2010.

13. In mid April, 2012 Cash Accounting & Consulting presented to the City Attorney its report “For the period December 1, 2005 through November 30, 2010”. Excerpts thereof appear below.

14. The Report advises as follows, page references in brackets, bold print added for emphasis:

15. “The Social Circle Fire Department and its management are responsible for the compliance with City policy and other reporting requirements. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.” [introductory page].

16. The Report certifies: “We have performed the procedures enumerated in Exhibit A,…” Exhibit A included the following:

“EXECUTIVE SUMMARY

Based on a recent review of documents submitted to the Georgia Firefighters Pension Fund (GFPF) from the City of Social Circle Fire Department (SCFD), the staff of GFPF noted **irregularities in the information confirmed on affidavits submitted from SCFD** related to creditable service for GFPF members. For purposes of a more thorough review, GFPF staff requested supporting documentation from the City of Social Circle (the City) including payroll records, training logs, and incidents reports for multiple years. GFPF staff recompiled training numbers from training logs and compared these to numbers submitted on affidavits from the SCFD to the GFPF.” [page 2].

17. “Procedure 1 Obtain summaries of training session attendance and incident participation and determine whether the volunteer firefighters who are GFPF members have met the attendance requirement of at least 50% of total in aggregate of all drills and meetings held by the SCFD and at least 50% participation in all calls (incidents) for the calendar year.

Results As a result of applying this procedure, it is determined that certain volunteer firefighters did not meet the attendance requirements and that the **information is misrepresented on the affidavit.**” [page 2].

18. “Procedure 2 Obtain payroll summaries for each six-month period beginning December 1, 2005 and ending on November 30, 2010 and determine whether amounts paid to SCFD staff accurately account for attendance at training sessions and participation in calls or incidents.

Results As a result of applying this procedure, the six-month payroll reports for the periods reviewed have been determined to contain **unauthorized payments to on-duty staff members and misrepresentations of training session attendance and participation in calls or incidents, resulting in overpayments for certain staff members during the periods under observation.**” [page 2].

19. “An annual **affidavit is signed and filed by the SCFD chief** each year for each member of the GFPP confirming the member’s participation in at least 50% of total training sessions and suppression incidents.

Payroll reports are prepared weekly and each six months to present to the City Clerk for pay. The weekly reports document pay for salaried and hourly staff and are compiled and presented for pay. Each six months covering periods December through May and June through November represent pay periods where off-duty and volunteer firefighters are paid **\$10 per training session and \$15 per suppression incident participation.**” [page 3].

20. “In preparation for applying the agreed-upon procedures, it was necessary to review several source documents. **Due care was taken to ensure a proper chain of custody so that all documents reviewed during the application of the agreed-upon procedures were properly preserved and safeguarded from public access.** Personnel involved in insuring a proper chain of custody include Public Safety Staff Scott Ford and John Keiser, City of Social Circle; City Clerk Susan Roper, City of Social Circle; and Director of Member Services David Luther, GFPP. The source documents reviewed included:

City of Social Circle Personnel Policies and Procedures.

Social Circle Department of Public Safety Standard Operating Procedures.

Georgia Firefighters Standards and Training Council Rules and Regulations.

Georgia Firefighters Pension Fund Rules and Regulations.

Training logs and records from Social Circle Fire Department from 2005 to present.

Incident reports from Social Circle Fire Department for years 2005 to present.

Bi-annual payroll reports from Social Circle Fire Department for years 2005 to present.

Annual **affidavits signed by Social Circle Fire Chief** and submitted to GFPP.

Payroll records for the City of Social Circle Fire Department from 2005 to present.” [page 3].

21. “In determining creditable service for members of the GFPP, the **chief of the SCFD provides an affidavit** to the GFPP that members have participated in at least 50% of the suppression calls or incidents for the year.” [page 4].

22. “While reviewing the incident report totals, it should be noted that total **suppression incidents declined significantly in 2010 while EMS and other incidents increased significantly when compared to the prior years**” [page 4].

23. Defendant left the employ of the City in **late 2009**.

24. The Report continues as follows:

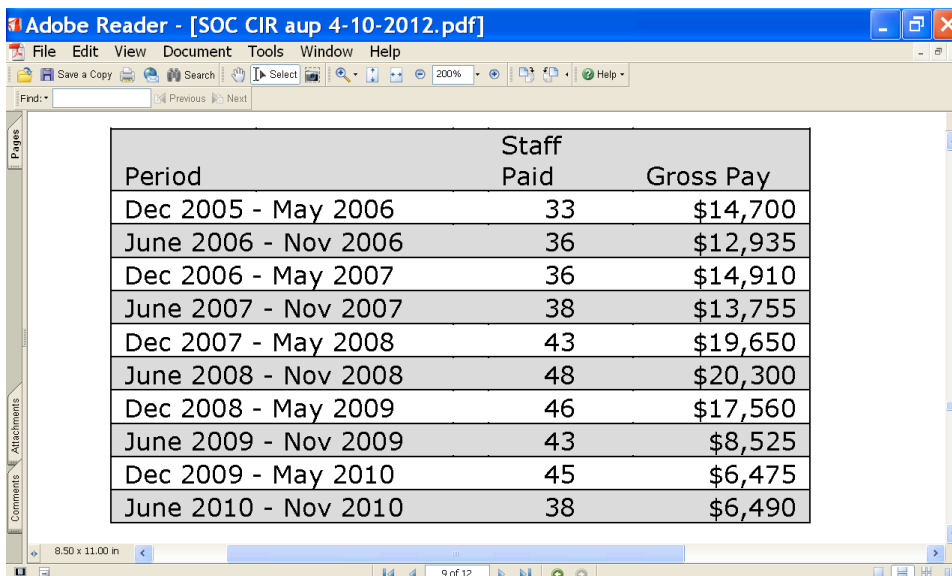
“A brief comparison of statistics from the SCFD to national data and a cursory analysis of incident reports from the SCFD as noted above suggest that **irregularities are present in incident reports from the SCFD.**” [page 5].

25. “In determining creditable service for members of the GPPF, **the chief of the SCFD provides an affidavit** to the GPPF that members have participated in at least 50% of the department wide training sessions for the year.” [page 6].

26. “**For purposes of verifying the accuracy of information represented in the affidavits** presented to the GPPF regarding creditable service, the following information for each GPPF member and compared to requirements for creditable service to determine if, in fact, the service requirements had been met. This analysis reveals **wide variances between actual data and the amounts needed for creditable service.**” [page 6].

27. “Volunteers are eligible to be paid **\$10 for each training session attended and \$15 for each suppression incident** in which they participated. For each of the staff members noted above, the total sessions and incidents for which they are paid were compared to the actual numbers attended. This analysis revealed **inaccuracies in amounts paid.**”[page 7].

28. “The total payments per the six-month reports and the number of staff members paid on each report are summarized as follows:



The screenshot shows a PDF document titled "SOC CIR aup 4-10-2012.pdf" in Adobe Reader. The document contains a table with three columns: "Period", "Staff Paid", and "Gross Pay". The table lists data for six-month intervals from December 2005 to November 2010. The total number of staff paid over the entire period is 438, and the total gross pay is \$147,490.

Period	Staff Paid	Gross Pay
Dec 2005 - May 2006	33	\$14,700
June 2006 - Nov 2006	36	\$12,935
Dec 2006 - May 2007	36	\$14,910
June 2007 - Nov 2007	38	\$13,755
Dec 2007 - May 2008	43	\$19,650
June 2008 - Nov 2008	48	\$20,300
Dec 2008 - May 2009	46	\$17,560
June 2009 - Nov 2009	43	\$8,525
Dec 2009 - May 2010	45	\$6,475
June 2010 - Nov 2010	38	\$6,490

[pages 7-8].

29. “We obtained the training records and incident reports for May and November of each year and compiled the attendance for purposes of comparing with compilations performed by the GFPP staff. We then recalculated amounts paid per year to observe if any unauthorized amounts were paid or if there were other overpayments. The results of these tests are as follows:”[page 8].

For Year 2006	Per Testing	Actual Pay	Over (Under)
Gattis	285.00	355.00	70.00
Harrison	1,165.00	1,675.00	510.00
Hupp	795.00	940.00	145.00
McCaleb	-	-	-
McCullough	2,015.00	2,510.00	495.00
Mitchell	675.00	710.00	35.00
Morgan	890.00	1,795.00	905.00
Patterson	1,545.00	2,180.00	635.00
Shelton	-	1,890.00	1,890.00
Swilley	10.00	-	(10.00)
Zara	670.00	860.00	190.00
<b>TOTAL</b>	<b>8,050.00</b>	<b>12,915.00</b>	<b>4,865.00</b>

For Year 2007	Per Testing	Actual Pay	Over (Under)
Gattis	205.00	185.00	(20.00)
Harrison	725.00	1,030.00	305.00
Hupp	865.00	1,240.00	375.00
McCaleb	945.00	895.00	(50.00)
McCullough	1,870.00	2,430.00	560.00
Mitchell	670.00	925.00	255.00
Morgan	830.00	1,770.00	940.00
Patterson	1,180.00	1,655.00	475.00
Shelton	-	1,835.00	1,835.00
Swilley	915.00	1,260.00	345.00
Zara	625.00	905.00	280.00
<b>TOTAL</b>	<b>8,830.00</b>	<b>14,130.00</b>	<b>5,300.00</b>

Adobe Reader - [SOC CIR aup 4-10-2012.pdf]

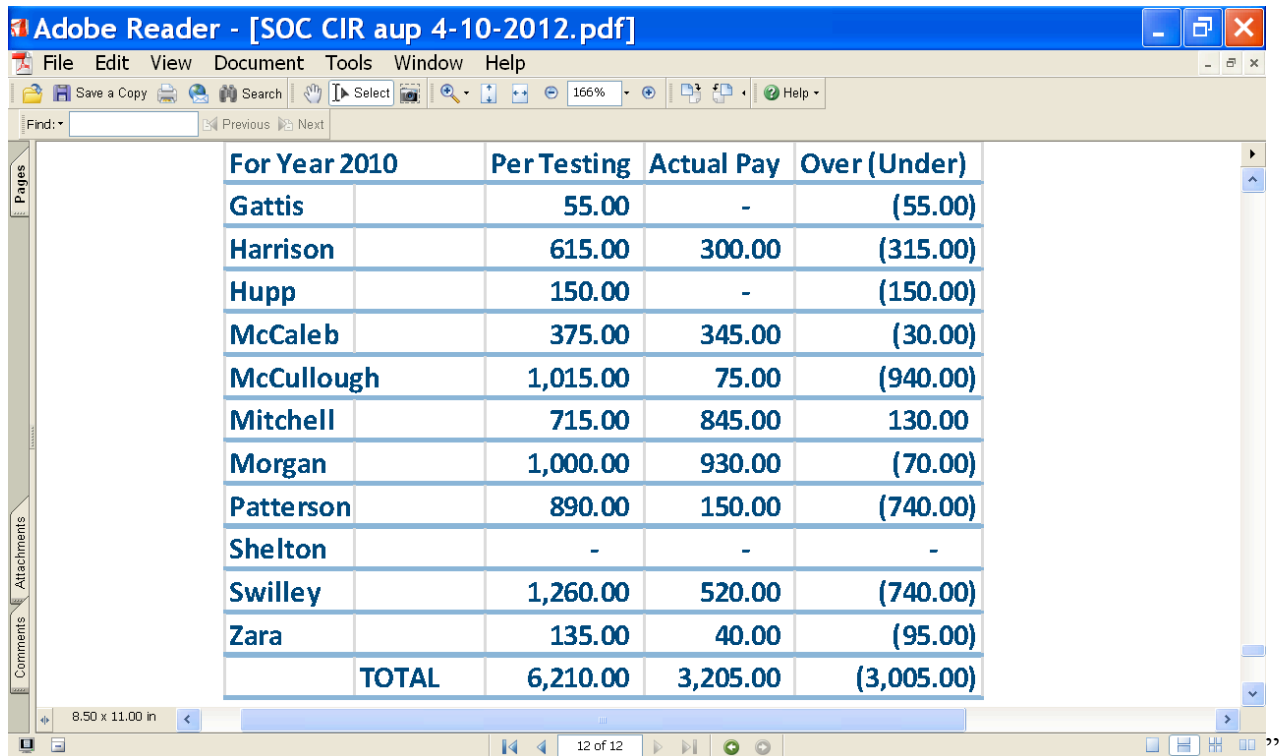
For Year 2008	Per Testing	Actual Pay	Over (Under)
Gattis	165.00	165.00	-
Harrison	1,000.00	1,370.00	370.00
Hupp	730.00	885.00	155.00
McCaleb	2,450.00	2,780.00	330.00
McCullough	2,345.00	2,855.00	510.00
Mitchell	900.00	870.00	(30.00)
Morgan	1,885.00	2,385.00	500.00
Patterson	1,185.00	1,565.00	380.00
Shelton	-	1,665.00	1,665.00
Swilley	2,355.00	3,025.00	670.00
Zara	890.00	1,025.00	135.00
<b>TOTAL</b>	<b>13,905.00</b>	<b>18,590.00</b>	<b>4,685.00</b>

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For Year 2009	Per Testing	Actual Pay	Over (Under)
Gattis	25.00	45.00	20.00
Harrison	1,360.00	830.00	(530.00)
Hupp	1,120.00	575.00	(545.00)
McCaleb	2,020.00	1,990.00	(30.00)
McCullough	2,495.00	1,620.00	(875.00)
Mitchell	775.00	995.00	220.00
Morgan	-	1,215.00	1,215.00
Patterson	1,170.00	365.00	(805.00)
Shelton	-	540.00	540.00
Swilley	2,115.00	1,875.00	(240.00)
Zara	865.00	330.00	(535.00)
<b>TOTAL</b>	<b>11,945.00</b>	<b>10,380.00</b>	<b>(1,565.00)</b>

30. Defendant left the City's employ in late 2009.

31. Comparative data for 2010 follows:



	For Year 2010	Per Testing	Actual Pay	Over (Under)
Gattis		55.00	-	(55.00)
Harrison		615.00	300.00	(315.00)
Hupp		150.00	-	(150.00)
McCaleb		375.00	345.00	(30.00)
McCullough		1,015.00	75.00	(940.00)
Mitchell		715.00	845.00	130.00
Morgan		1,000.00	930.00	(70.00)
Patterson		890.00	150.00	(740.00)
Shelton		-	-	-
Swilley		1,260.00	520.00	(740.00)
Zara		135.00	40.00	(95.00)
	<b>TOTAL</b>	<b>6,210.00</b>	<b>3,205.00</b>	<b>(3,005.00)</b>

[page 11].

32. The total sums of public money unaccounted for, which Defendant has failed to turn over after opportunity to do so, is as follows: for the year 2006, \$1,890, plus for the year 2007, \$1,835, plus for the year 2008, \$1,665, plus for the year 2009, \$540.

33. The total of these amounts is \$5,930.

34. Even assuming \$15 per false entry, not \$10 per false entry, **this equates to no less than 395 felony false swearing events, just for those four years**, not including the prior 20 years Defendant was Chief, from approximately 1986 to December, 2005.

35. The Report then states as follows:

“This data suggests that **reporting changes took place as leadership changes occurred** within the SCFD. Additionally, it is noted that the determination of off-duty versus on-duty for each of these compilations is based on the information contained in the incident reports from the SCFD.”[page 11].

36. Plaintiffs, the Mayor and Council Members of the City of Social Circle, are bound to the citizens by their oaths to uphold the City Charter, duly passed in 2005, which states in part as follows:

37. “SECTION 5.15. Removal of officers.

(a) The mayor, council members, or appointed officers provided for in this charter **shall be removed from office for any one or more of the causes provided in Title 45 of the O.C.G.A., or such other applicable laws** as are or may hereafter be enacted...

(b) Removal of a mayor or council member pursuant to subsection (a) of this section **shall be accomplished by an order of the Superior Court of Walton County following a hearing on a complaint seeking such removal** brought by any resident of the City of Social Circle.”

38. The applicable Georgia Code sections are as set forth below, bold print is used for emphasis:

39. **45-2-1. Persons ineligible; de facto officers**

The following persons are ineligible to hold any civil office; and the existence of any of the following facts **shall be a sufficient reason for vacating any office held by such person**; but the acts of such person, while holding a commission, shall be valid as the acts of an officer de facto, namely:

(2) **All holders or receivers of public money of this state or any county thereof who have refused or failed when called upon after reasonable opportunity to account for and pay over the same to the proper officer;**

(8) All persons who are **constitutionally disqualified for any cause**. All officers are eligible for reelection and reappointment and to hold other offices, unless expressly declared to the contrary by the Constitution or laws of Georgia.

40. **45-3-1. Additional oath of public officers**

Every public officer shall:... (3) **Swear that he or she is not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof;**

41. **§ 45-3-10.1. Municipal officers and peace officers required to take oaths; filing of oaths**

(a) Code Sections 45-3-1 to 45-3-10 shall apply to all municipal corporations and to all peace officers of this state or any political subdivision or authority thereof.

42. **§ 45-3-11. Loyalty oath; of whom required**

All persons who are **employed by and are on the payroll** of the state and are the recipients of wages, per diem, or salary of the state or its departments and agencies, with the exception of pages employed by the General Assembly, and all counties and **cities**, school districts, and local educational systems throughout the entire state, are required to take an oath that **they will support**



**the Constitution of the United States and the Constitution of Georgia**, and that they are not members of the Communist Party.

43. **§ 45-3-12. Applicability of law to elected officials**

The loyalty oath required by Code Section 45-3-11, this Code section, and Code Sections 45-3-13 to 45-3-15 shall apply to all elected officers of this state, including the Governor, constitutional officers, **elected officials of any political subdivision** of the government of Georgia, and local school board officials.

44. **§ 45-3-15. Violation of oath**

If any person required to do so by Code Sections 45-3-11 to 45-3-14 and this Code section executes a loyalty oath and **subsequently it is proved** that said individual **has violated the oath**, then the governing authority **shall institute proceedings in the proper court** against such person for **false swearing**.

45. **§ 45-3-16. Article declared applicable to official oaths of all officers**

This article **shall apply to the oaths of office of all public officers of this state** unless the contrary is expressly provided.

46. **16-10-8. False official certificates or writings**

An officer or employee of the state **or any political subdivision thereof or other person authorized by law to make or give a certificate or other writing who knowingly makes and delivers such a certificate or writing containing any statement which he knows to be false** shall, upon conviction thereof, be punished by imprisonment for **not less than one nor more than five years**.

47. **16-10-20. False statements and writings; concealment of facts**

A person who **knowingly and willfully falsifies**, conceals, or covers up by any trick, scheme, or device a material fact; **makes a false, fictitious, or fraudulent statement or representation**; or **makes or uses any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry**, in any matter within the jurisdiction of **any department or agency** of state government or of the government of any county, **city**, or other political subdivision of this state shall, upon conviction thereof, be punished by a fine of not more than \$1,000.00 or by **imprisonment for not less than one nor more than five years**, or both.

48. **16-10-1. Violation of oath by public officer**

Any public officer who **willfully and intentionally violates the terms of his oath** as prescribed by law shall, upon conviction thereof, be punished by imprisonment for **not less than one nor more than five years**.

49. **16-10-71. False swearing**

(a) A person **to whom a lawful oath or affirmation has been administered** or who **executes a document knowing that it purports to be an acknowledgment of a lawful oath or affirmation** commits the offense of **false swearing when**, in **any matter or thing** other than a judicial proceeding, he **knowingly and willfully makes a false statement**.

(b) A person convicted of the offense of false swearing shall be punished by a fine of not more than \$1,000.00 or by **imprisonment for not less than one nor more than five years**, or both.

50. **45-11-1. Stealing, altering, etc., of public documents**

(a) If any public officer or other person shall steal, embezzle, alter, corrupt, withdraw, **falsify**, or avoid any record, process, charter, gift, grant, conveyance, or contract; or shall knowingly and willfully take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture; or shall forge, deface, or **falsify any document or instrument** recorded or any registry, acknowledgment, or certificate; or shall alter, deface, or **falsify any minutes, document, book, or any proceeding** whatever of or belonging to any public office within this state; **or if any person shall cause or procure any of these offenses to be committed, or to be in any manner concerned therein, he shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment and labor in the penitentiary for not less than two years nor more than ten years**.

(f) As used in this Code section, the term:

(1) “Records, books, documents, or other office property” means, but is not limited to, all books, plates, pictures, photographs, films, engravings, paintings, drawings, maps, newspapers, magazines, pamphlets, broadsides, personal papers, **organization records, documents, letters, public records, microforms, sound recordings, audiovisual materials in any format, magnetic or other tapes, electronic data processing records, artifacts, or other documentary, written, or printed material, regardless of physical form or characteristics, belonging to, on loan to, or otherwise in the custody of any public office;**

(2) **“Public office” means any office held, used, or controlled for public purposes by any department, agency, board, or branch of state, county, or municipal government** without reference to the ownership of the building or of the realty on which it is situated. Such term includes any archives, library, or records storage area maintained by such governments;

(3) **“Avoid” means to annul, cancel, make void, destroy the efficacy of, or destroy without authority any record, book, document, or other office property;**

(4) **“Public officer or employee” means any officer or employee having custody of or responsibility for any records, books, documents, or other office property referred to in this Code section.**

51. The total sum of Defendant’s ill-gotten fraudulent gains, due to his **395 plus events of felony false swearing**, is \$5,930.

52. This constitutes public money unaccounted for which Defendant has failed to relinquish to its lawful owner.

53. Inasmuch as the amount of Defendant’s indebtedness is liquidated, Defendant is additionally obligated to pay prejudgment interest from the dates due (between 2006 and 2009) at the rate of one and one-half (1.5%) per cent per month, 18% per annum, see following interest calculations.

54. Interest for the year 2006,  $\$1,890 \times (.18 \times 7 \text{ years}) = \$2,381.40$ , plus for the year 2007,  $\$1,835 \times (.18 \times 6 \text{ years}) = \$1,981.80$ , plus for the year 2008,  $\$1,665 \times (.18 \times 5 \text{ years}) = \$1,498.50$ , plus for the year 2009,  $\$540 \times (.18 \times 4 \text{ years}) = \$388.80$ .

55. Accrued interest totals no less than \$6,250.50. Adding this to the underlying obligation of \$5,930 = **\$12,180.50 of unaccounted for public moneys, with interest, owed by Defendant.**

56. Defendant has refused to pay the indebtedness when due, after demand has been made therefor by presentation of this Complaint to Defendant before filing such.

57. Such refusal to pay by Defendant has caused the unnecessary trouble and expense of paying legal counsel to investigate, prepare, file and prosecute this action.

58. Such expenses are a sum anticipated to exceed \$10,000, plus no less than \$4,801.25 for said counsel’s subcontracted forensic accounting services.

59. Plaintiffs and the especially the taxpayers are entitled to recovery of said attorney’s fees and litigation costs as provided by law.

WHEREFORE, Plaintiffs demand Removal or Suspension of Defendant after an evidentiary Hearing, Judgment against Defendant for full restitution for the principal sum of \$5,930, plus

accrued interest of no less than \$6,250.50 (at the rate of one and one-half percent (1.5%) per month), totaling \$12,180.50, plus its attorney's fees of no less than \$14,801.25, plus the \$250+ costs of this action, altogether totaling no less than \$27,231.75, plus accruing interest.

Lambert, Reitman and Abney, LLC

By: \_\_\_\_\_

M. Joseph Reitman, Jr.

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