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TIMOTHY B. HOWARD
SHERIFF

MARK N. WIPPERMAN
UNDERSHERIFF

SHERIFF OF ERIE COUNTY

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October 19, 2012

Hon. David J. Shenk
Erie County Comptroller
Erie County Office Building <Room 1100>
95 Franklin Street
Buffalo, New York 14202-3972

Dear Comptroller Shenk,

This letter is being sent pursuant to your request that the Sheriff's Office respond to your October 2012 "Review of the Sheriff's Office Commissary fund and follow-up of the 2007 operations audit – January 1, 2011 through May 31, 2012." I have attached the following response on behalf of Sheriff Timothy B. Howard.

I did find a few inaccuracies in the review and some other factual information and updates that were not mentioned but are relevant to the report. We respectfully disagree that 25.84% of the commissary or telephone fund purchases were "questionable" or "unacceptable." We believe the accurate number based on the attached response will show that less than (<) 5% of the purchases are "questionable."

I would like to thank you and your staff for taking the time to review our commissary and telephone programs and for making several recommendations. The Sheriff's Office is always willing to work with the Comptroller's Office and Budget and Management to ensure our financial operations are in the best interest of the Erie County taxpayers and follow any applicable laws.

In closing, I would like to mention that your staff was very professional and courteous during their audit. We welcome any future audits that you feel are necessary to protect the integrity of our commissary and telephone accounts.

Sincerely,

Mark N. Wipperman
Undersheriff

cc: Erie County Sheriff Timothy B. Howard
Hon. Mark C. Poloncarz, Erie County Executive
Honorable Members – Erie County Legislature
Robert W. Keating, Director, Budget & Management
Erie County Fiscal Stability Board

ECSO RESPONSE TO SUMMARY OF FINDINGS:

1) INMATE GRIEVANCE CRITISIM

In my review of the Comptroller's report, it was determined that there were some minor inaccuracies regarding the inmate grievance program. Specifically, the Commission of Correction allows twenty-four (24) hours for a grievance to be resolved informally. Once the twenty-four (24) hours has expired, or the inmate indicates that he does not accept the informal resolution offered, it is forwarded to the Grievance Coordinator, and assigned a number. The Grievance Coordinator then has five (5) business days to review the grievance and render a decision. The report notes that the Grievance Coordinator only assigns a number after the grievance has been accepted for processing, *which is not the case*. All grievances that are not informally resolved *are assigned a number regardless of the decision on the merits* of the grievance. Furthermore, the report indicates that the Grievance Coordinator has "five additional days to review the investigation report and interview documentation regarding the grievance before rendering a decision." *This is not the case*.

It should be noted that the grievance programs at both facilities are routinely audited by the Commission of Correction, and have been found to be in compliance with the provisions of Part 7032 of the Minimum Standards. Any time a grievance is found to have been untimely processed, the responsible supervisor (or Grievance Coordinator when applicable) is held accountable.

We agree that, at times, the grievance log books are not completely filled out. The high volume of grievances that are received at both facilities make the task of logging and tracking grievances quite labor intensive. To that end, as part of the implementation of the *new* Commissary system, the housing unit kiosks will have the ability for inmates to file and electronically submit grievances. This will increase the accuracy of the tracking of same, as it will become an automatic part of the process, rather than something that must be documented manually after the fact.

Again, considering the high volume of grievances that are submitted and processed, it is my opinion, and that of the Commission of Correction, that the program is sound, and appropriately monitored. That being said, and as mentioned above, the Erie County Sheriff's Office is in the process of implementing a means for inmates to file grievances electronically, which will allow for a more error-proof means of documenting and tracking them.

2) SHERIFF'S OFFICE COMMISSARY

In August 2012, Sheriff Timothy B. Howard negotiated a new multi-year contract with Keefe Commissary Network to provide commissary services at the Erie County Holding Center and

Erie County Correctional Facility. Keefe has invested approximately **$500,000** in technological upgrades, kiosks, computers and high-speed wiring at the Holding Center and Correctional Facility *at no cost to the taxpayer.*

HIGHLIGHTS:

(A) All pricing of commissary items *stayed the same or went down for the inmates*

(B) Inmates now have over **300** choices of commissary items – upgraded from **80**

(C) **New** kiosks in every inmate housing unit

(D) **New** electronic grievance filing and processing on kiosks

(E) Best debit card release program in the industry

(F) Expanded Healthy Section – healthier items for inmates to purchase

(G) Keefe maintains 24 hour order and delivery program

3) SHERIFF'S OFFICE INMATE PHONE SERVICE

In August 2012, Sheriff Timothy B. Howard negotiated a new multi-year contract with ICS Solutions to provide inmate phone service. Sheriff Howard secured a $700,000 contract signing bonus while lowering the rate an inmate or their family will pay to communicate with each other.

This was great news for Erie County taxpayers.

It must be noted that Niagara County Sheriff James R. Voutour also signed a new inmate phone contract in 2012. The Niagara County Sheriff's Office received a **$40,000** signing bonus compared to the Erie County Sheriff's Office **$700,000** bonus. Niagara County gets 58% of the pay phone gross compared to Erie County's 60+%.

HIGHLIGHTS:

(A) The new contract reduces the calling rates for inmates, families and friends

(B) ICS will install a brand new phone system with state of the art models on all housing unit

(C) More calling account options for inmates to reach family and friends <vice-versa>

(D) Free training to all personnel

(E) Voice biometrics installed to prevent inmates from getting false/bogus charges

(F) New inmate voice mail system so family members can leave messages

4) UNACCEPTABLE PURCHASES - $299,363.14

RESPONSE/JUSTICIATION FOR **$6,655.76 = office furniture**:

(A) Comptroller Shenk indicated in his report that this furniture purchase was "not attributable to inmate rehabilitation and welfare."

(B) The Sheriff's Office disagrees and feels this section of the report should be modified. This purchase was made to facilitate improvements in inmate welfare and rehabilitation.

(C) The Sheriff's Office was asked by the former County Executive and his staff in the Fall of 2010 to relocate our Executive Offices, Administrative operations and a portion of our Jail Management Offices out of 10 and 40 Delaware Avenue over to the vacant Ticor Building.

(D) This move was being done so the existing space at 10 and 40 Delaware Avenue could **be converted into an expanded jail health and mental health triage center.**

(E) Sheriff Timothy B. Howard agreed to this relocation and transfer – stating it was the right thing to do. However, the County offered no financial assistance with this relocation. We were on our own.

(F) Sheriff Howard and his staff had *numerous* meetings with the former County Executive's space utilization team and architects to expedite this move.

(G) Once Sheriff Howard 'signed off' on the final architectural plans for the new Sheriff's Ticor Headquarters, we began to facilitate the move.

(H) The furniture was a one-time purchase to get us up and operating at our new Ticor Headquarters. We did not want to disrupt or delay our inmate population from receiving their expanded health and mental health triage center.

(I) County Executive Mark Poloncarz subsequently advised us that the Ticor move proposed by the former administration was a paper move only – there was never any money to get Ticor "office ready."

(J) The furniture could not be returned as too much time had lapsed – again – at no fault to the Sheriff's Office. It was then used to replace outdated Sheriff's Office furniture – much of which was former military/county surplus.

CLOSING STATEMENT:

This one-time telephone money purchase was directly related to inmate health and welfare. The Comptroller's report should be amended based on the aforementioned.

The Sheriff's Office welcomes the opportunity to work with Budget and Management in the future if a similar request to transfer operations is made.

RESPONSE/JUSTIFICATION FOR **$21,000 = K9 Dogs, training & vehicles.**

(A) One of the leading problems *for any* correctional institution in the United States is to deter and prevent the introduction of contraband, drugs and dangerous instruments into the facility. The Erie County Sheriff's Office fights this daily battle at the both the Erie County Holding Center and Erie County Correctional Facility.

(B) One of the best tools to combat the aforementioned problem is the use of trained "passive" K9 dogs. <Passive = non-aggressive dogs that "sit down" immediately when they "sniff out" suspected drugs, paraphernalia or other dangerous contraband.>

(C) The highest percentage of smuggling attempts to introduce drugs or contraband into our facilities result from inmate visitation. <Friends/family attempt to pass illegal packages to the confined inmates.> We are mandated to provide visitation by the NYSCOC.

(D) To keep our inmates safe and deter the trafficking of contraband and drugs into our facilities, several K9 dogs were purchased. Some replaced former Jail Management and Road Patrol K9s that were officially retired because of age and/or health issues.

(E) Part of the expense of maintaining K9 detection dogs is training, vehicles and equipment.

(F) *All Sheriff's Office K9 dogs <police services included>* will respond and work inside the facilities when needed. Their work is critical to keep our inmates safe and deter contraband, drugs and weapons from entering our facilities.

CLOSING STATEMENT:

The Sheriff's Office K9 program has a direct impact on inmate safety and welfare. We believe the money that is allocated toward K9 training, vehicles and equipment is a great investment in keeping our inmates safe and free from contraband, drugs and other dangerous instruments. The telephone account is the number one reason why our K9 program continues to exist.

It should be noted that the Sheriff's Office will consult and seek appropriate guidance on any future purchases in this area when there is a possibility of using General Fund appropriations in lieu of phone or commissary funds. Much of this will depend on our 2013 allowances and future budgets. **Requesting the $21,000 is moved to the "ACCEPTABLE" column.**

RESPONSE/JUSTIFICATION FOR **$271,707.38 = Patrol Vehicles**

A very important fact was overlooked in this portion of the review. Erie County Sheriff's Office Patrol Vehicles transport inmates 24/7/365 – to courts, hospitals, clinics and other venues. To place a handcuffed inmate – sometimes secured by a waist-chain and leg shackles – in the rear of a patrol vehicle that averages 150,000 miles – and - enclosed with a security wall – is placing an inmate into a very dangerous environment. To call these new vehicle purchases "unacceptable" is disingenuous – they absolutely have a direct impact on the welfare and safety of inmates. **Requesting the $271,707.38 is moved to the "ACCEPTABLE" column.**

OTHER FACTS:

May 2011 = the former County Executive informed the Sheriff's Office that would be part of a $2.6 million dollar efficiency grant awarded by the Erie County Fiscal Stability Authority.

Based on this promise, the Sheriff's Office did not request any "new vehicle" funding in their 2012 budget request. We anticipated using grant money to purchase a new fleet of cars.

The Sheriff's Office has not purchased new patrol vehicles in over two (2) years. The patrol fleet currently is averaging **over 150,000 miles** and some vehicles are being operated with over 200,000 miles. The vehicles are unsafe and in bad condition.

(A) Ford Motor discontinued production of the Crown Victoria police interceptor.

(B) The Sheriff's Office did bid and subsequently purchased six (6) Tahoe's for the Jail Management Division.

(C) January 2012 = County Executive Mark Poloncarz informed the Sheriff's Office that the promised efficiency grant was not approved and no grant money would be awarded.

(D) The Sheriff's Office has been working diligently since receiving the news from CE Poloncarz to locate funding to replace a fleet of unsafe vehicles currently being operated by the men and women of the Sheriff's Office patrol services division.

(E) An emergency decision was made to detail four (4) of the new Tahoe's that arrived to patrol services to help somewhat with the vehicle crisis.

CLOSING STATEMENT:

The Sheriff's Office is finally in the process of purchasing and equipping new vehicles for the patrol services division. We hope the Comptroller, Legislature and other members of Erie County government support our action and emergency decision that was made to provide a few safe vehicles to our deputies and inmates that are secured in the rear of these vehicles.

5) QUESTIONABLE PURCHASES - $481,413.39 / NO BUDGET MONEY AVAILABLE

RESPONSE/JUSTIFICATION FOR:

(A) Sensor Wire Electric Fence - $162,700 = this was a project that was needed to ensure inmate safety at the Correctional Facility and was turned down in capital budget requests. The Sheriff's Office had no other option but to use telephone money. *<deters inmates from getting severely injured by the security razor wire.>*

(B) Log Books - $12,923.76 = logs books are used on every housing unit in the Holding Center and Correctional Facility. They are a very important tool that records/documents inmates' health, welfare and rehabilitation needs & requests.

(C) Inmate IDs - $13,850.80 = identification bracelets are a great investment for all inmates to ensure they are not delayed in facility movement, medical call, court appearances, etc. The County has never provided us with proper revenue to purchase them.

(D) Guardsman Clock Repairs and Tapes - $5,474.39 = this was a one-time expenditure that the Sheriff's Office had to make to ensure compliance to New York State mandated security checks for those inmates on the housing units and detoxification dorms. It is worth noting that the Sheriff's Office had discontinued the "Guardsman Clocks" and went to a more modern and efficient service. The County would not provide funding.

(E) Office Furniture - $131,285.81 = this was a one-time replacement project for the Erie County Correctional Facility which <like item "a"> was repeatedly denied as a capital improvement. This expenditure was launched after a pattern of complaints from inmates and personnel getting injured from the existing furniture that was in place, much that was 25+ years old. A decrease in complaints + lawsuits has since been noted.

(F) Jail Management Computer System - $87,512.00 = these are payments to "Syscon Justice Systems" to keep our Jail Management Computerized system operational. This is the ***exact*** system which was recommended by prior County Executive and DISS administrations. The County has never provided necessary funding.

(G) Equipment and Tools - $432.39 = the Sheriff's Office made an emergency purchase of several "cut down" knives to be used in incidents of attempted inmate suicide – the existing knives were dull and had to be replaced immediately.

(H) Postage Meter - $10,757.88 = this money used to mail inmate letters.

(I) Office Supplies and Equipment - $1,996.80 = this money used to purchase paper for inmates.

CLOSING STATEMENT:

The Sheriff's Office believes that based on the above justifications and the lack of any other revenue source being provided, these items deserve to be placed into the "ACCEPTABLE" category. They all have a direct impact on inmate safety, welfare or rehabilitation. The Sheriff's Office is opened to meeting with Budget and Management to target new funding sources for all of the above.

6) MEDICAL SERVICE COSTS HAVE INCREASED DRAMATICALLY SINCE 2008

SHERIFF'S OFFICE RESPONSE/JUSTIFICATION:

(A) The Erie County Department of Health has provided medical services at both the Erie County Holding Center and Erie County Correctional Facility for several years. The Health Department has complete control over all medical and pharmaceutical expenditures.

(B) The Sheriff's Office was ultimately responsible for paying all of the medical services and pharmaceutical bills.

(C) Sheriff Howard and his staff did request that the budget line dealing with medical services be transferred out of the Sheriff's Budget and be given to the Health Department since they provide the services and have total control of all expenditures.

(D) The Health Department has recently taken over the budget line as described above.

(E) The Sheriff's Office has suggested ways to cut medical service and pharmaceutical costs (i.e. = needless ambulance and emergency room transports, alternative pharmaceutical practices/purchases) that would save taxpayers a lot of money.

CLOSING STATEMENT:

The relationship and communication between the Sheriff's Office and the Health Department has improved. We believe the medical service and pharmaceutical cost issue will be appropriately handled by the Health Department.

The Sheriff's Office will immediately address the $44,560 overpayment to the Health Department that was noted on page 12 of Comptroller Shenk's report.

7) INCREASED LABOR COSTS

It should be noted that the Sheriff's Office has taken a proactive approach in collective bargaining negotiations and has attended all sessions working closely with labor relations in an

attempt to reach a new agreement that will address several labor issues including the Teamster RN and Medical Aides.

8) COMMISSARY PURCHASES VS TELEPHONE FUND PURCHSES

The Erie County Sheriff's Office operates two separate accounts – (1) Commissary Profits and (2) Telephone Revenue. Money spent from both accounts is done in accordance to rules/laws listed in the New York Codes, Rules and Regulations <NYCRR> and/or the New York State Commission of Correction. <NYSCOC>

Comptroller Shenk's report did not accurately separate what purchases were paid for by commissary funds or what purchases were paid for by telephone funds. We feel that this is a mistake because the NYCRR and the New York State Commission of Correction have separate and distinct rules, regulations and guidelines on how commissary and telephone money can be spent.

We recommend that the Comptroller's Office consult with the New York State Commission of Correction to ascertain their policies and guidelines in relation to Commissary and Telephone Fund purchases.

9) COMMISSARY RENT REIMBURSEMENT

Comptroller Shenk's report stated that the commissary rent reimbursement is understated by $4,920 per month. The Sheriff's Office recommends that the Comptroller's Office consult with the New York State Commission of Correction regarding commissary rent.

10) PATROL VEHICLE EMERGENCY LIGHTING - $54,479.56

The Sheriff's Office has taken steps to ensure this one-time "questionable" purchase is properly done in the future.

FINAL STATEMENT

Unfortunately, the Sheriff's Office has been a target of vicious rumors and false allegations regarding the commissary and telephone accounts by some members of the Erie County Community Corrections Board. Hopefully, Comptroller Shenk's report and our response will prevent future rumors and false allegations as both accounts are lawfully maintained and benefit the safety, health, welfare and rehabilitative needs of the inmates. Lastly, it should be noted that the Sheriff's Office has annually requested and been denied budget increases or capital budget money to fund many of these projects mentioned in this report. <END>

TIMOTHY B. HOWARD
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MARK N. WIPPERMAN
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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 9. EXECUTIVE DEPARTMENT

SUBTITLE AA. STATE COMMISSION OF CORRECTION

CHAPTER I. MINIMUM STANDARDS AND REGULATIONS FOR MANAGEMENT OF COUNTY JAILS AND PENITENTIARIES

SUBCHAPTER A. MINIMUM STANDARDS AND REGULATIONS

PART 7016. COMMISSARY AND INMATE ACCOUNTS

Current through July 15, 2012

* Section 7016.1.* Commissary.

(a) **In the discretion of the sheriff** or chief administrative officer, a commissary may be established, maintained and operated for the purpose of making available, for sale to prisoners, items deemed proper by such officials and consistent with the health and welfare of the prisoners and the security and general operation of the facility concerned.

(b) The prices of any items offered for sale **shall be fixed by the sheriff**, or official in charge, to the extent that the commissary operation will be self-supporting and will provide a modest return above costs.

(c) Profits resulting from commissary sales *shall be deposited in a separate bank account* and shall be utilized only for purposes of prisoner welfare and rehabilitation.

(d) Commissary accounts shall be maintained in a manner which will fully substantiate all purchases, sales and expenditures, and definite arrangements shall be made for periodic audit of the commissary accounts by the office of county auditor, county treasurer or other county officer in a similar capacity.

(e) Nothing in this section shall be construed as exempting commissary operations in a county jail or a county penitentiary from compliance with the provisions of any applicable county or State statute, resolution, rule, regulation, etc.

END OF DOCUMENT