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COUNTY OF ERIE

DAVID J. SHENK
COMPTROLLER

November 8, 2012

Legislator Timothy Hogues, Chairman
Public Safety Committee
Erie County Legislature
95 Franklin Street
Buffalo, New York 14202

Dear Honorable Members:

As discussed on November 1, 2012 during the Public Safety Committee meeting my office is providing further clarification on our position as well as the additional information requested.

Commissary and Telephone Expenditures

We agree that there is no clear guidance on the spending of revenues derived from commissions on inmate telephone calls. Our decision to apply the same restrictions that apply to commissary revenues to telephone funds was based on the following:

Past Practices. Audits of the Commissary Account were released by the Comptroller's Office in August 1992 (Holding Center) and September 1992 (Correctional Facility) under Comptroller Alfreda Slominski and June 1994 (Correctional Facility), November 1994 (Holding Center), October 1998 (Holding Center), and November 1998 (Correctional Facility) under Comptroller Nancy Naples. Each of these audits listed "Telephone Commissions" as an Other Income item on the Commissary Fund's Statement of Income and Changes in Fund Balances for the years audited. Sheriff Thomas Higgins, Superintendant Frederick Netzel (Correctional Facility), and Sheriff Patrick Gallivan all treated telephone commissions derived from inmate telephone calls as a revenue source of the commissary, and thus applied the same spending restrictions to these funds. There have been no regulation changes that specify that spending of telephone commissions are not subject to spending restrictions.

July 2007 Comptroller's Office Audit. The Erie County Comptroller's Office conducted an Audit and Review of Operations of the Erie County Correctional Facility for the year

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ended December 31, 2005. This audit, as in prior audits, included the telephone commissions in the Commissary fund, and the same spending restrictions were applied for the commissary and telephone funds (as they were combined in one account). Sheriff Howard did not object to the auditors reviewing the purchases from the telephone commissions using the restriction that purchases must be used for inmate rehabilitation and welfare.

Further, it was brought up several times that this audit conducted under Comptroller Mark Poloncarz recommended that the commissary profits and the telephone revenues be segregated into separate accounts. That recommendation was not made in this audit.

New York State Correctional Facilities. As of April 1, 2008 New York State Department of Corrections and Community Supervision (NYSDOCCS) facilities are no longer allowed to collect telephone commissions on inmate telephone calls [22 CRR-NY § 623 (3)]. Beginning in 1987 (two years after NYSDOCCS began receiving telephone commissions) until the telephone commissions were discontinued, the Governor of the State of New York and the New York State Legislature required that all commissions be placed in and dispensed from a Family Benefit Fund. The funds from this account were used for AIDS pharmaceuticals, staff training, and related programs; operations and maintenance of phone equipment; basic cable television service; free bus service that transported visitors from the New York City area to correctional facilities upstate; The Family Reunion Program (allowed relatives to spend a two-day period with inmates inside the secure perimeter of sixteen facilities; nursery and family development programs for inmates that were mothers; and medical parole programs. A 2002 Audit of the Department of Correctional Services Administration of Contract X160575 with MCI Worldcom for the Inmate Call Home Program Report 2002-R-1 conducted under New York State Comptroller Alan Hevesi states:

> *The Department was required to deposit all Program revenue in a designated State account. ... Further, all expenditures from this account should related to certain authorized purposes that are intended to benefit the inmates at the correctional facilities.*

The restrictions imposed on the spending of telephone commissions from NYSDOCCS facilities by the Governor and Legislature required the spending to benefit inmate welfare.

General Fund. There are not any Erie County Policies, COC Opinions, or State Regulations that state that the Sheriff is entitled to spend these funds with no restrictions. In reviewing the treatment of telephone commissions by other counties we found that a number of counties require the telephone funds to be budgeted for and treated as part of the county's general fund. There are no regulations or opinions that give the Sheriff the right to spend these funds at his discretion.

Other New York State Counties. Still other counties require the Sheriff to deposit the telephone commissions into a reserve account. The Sheriff must then seek Legislative approval to transfer funds from this reserve account for all expenditures.

Commissary Rent

Monthly the commissary pays Erie County rent for the commissary, which includes a rental space for the physical space the commissary occupies at the Correctional Facility, as well as the salary and fringe benefit expenses for the percentage of time employees work in the commissary. Sheriff Howard stated that his office no longer pays the commissary rent, that such a rent is not allowable per the New York State Commission of Corrections (COC), and that his office should be reimbursed by the County for all commissary rent previously paid by the Commissary Fund. Sheriff Howard's allegation is incorrect. New York Minimum Standards 9 CRR-NY § 7016.1 authorize the Sheriff to establish a commissary for sale of goods to inmates, and states that *"... the prices of any items offered for sale shall be fixed by the sheriff, or other official in charge, to the extent that the commissary operation will be self-supporting and will provide a modest return above costs."* In June 1995 the COC rendered an opinion that local Sheriff's throughout the state were authorized to charge salaries and other operational costs to the commissary. Further, the monthly commissary rent was paid throughout the entire review period, and is also current through October 2012.

The Commissary Fund is not due a refund from the County as the Commissary Rent is appropriate.

Attached are the statement of expenditures for both the Commissary and Telephone Accounts listed separately as requested.

Please feel free to contact me with any questions at 858-6400.

Sincerely,

David J. Shenk
Erie County Comptroller

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Commissary Account Expenditures

	Acceptable	Questionable	Unacceptable	Total
Commissary Items for Resale	**$1,269,548.96**	**$0.00**	**$0.00**	**$1,269,548.96**
Commissary Rent	$196,837.44	$0.00	$0.00	$196,837.44
Commissary Supplies	**$6,721.00**	**$0.00**	**$0.00**	**$6,721.00**
Counterfeit Money Deposited	$5.00	$0.00	$0.00	$5.00
Housing Unit Equipment & Furniture	**$2,379.00**	**$0.00**	**$0.00**	**$2,379.00**
Inmate Benefits: Clothing & Footwear	$0.00	$0.00	$0.00	$0.00
Items for Indigent Inmates	**$0.00**	**$0.00**	**$0.00**	**$0.00**
Items Given to Inmates	$0.00	$0.00	$0.00	$0.00
Inmate Benefits: Newspapers	**$7,710.64**	**$0.00**	**$0.00**	**$7,710.64**
Inmate Programs: Items for Inmate Pay Bags	$6,827.40	$0.00	$0.00	$6,827.40
Law Library Supplies	**$103.80**	**$0.00**	**$0.00**	**$103.80**
Trustee Pay	$5,813.50	$0.00	$0.00	$5,813.50
Maintenance & Repairs	**$561.00**	**$0.00**	**$0.00**	**$561.00**
Postage Meter Rental & Supplies	$0.00	$0.00	$0.00	$0.00
Total	**$1,496,507.74**	**$0.00**	**$0.00**	**$1,496,507.74**
% of Total Purchases	**100.00%**	**0.00%**	**0.00%**	

Telephone Account Expenditures

	Acceptable	Questionable	Unacceptable	Total
Bank Fees	**$51.00**	**$0.00**	**$0.00**	**$51.00**
Checks for Inmate Trust Account	$38.00	$0.00	$0.00	$38.00
Housing Unit Equipment & Furniture	**$20,022.03**	**$0.00**	**$0.00**	**$20,022.03**
Inmate Benefits: Clothing & Footwear	$3,262.40	$0.00	$0.00	$3,262.40
Items for Indigent Inmates	**$3,430.59**	**$0.00**	**$0.00**	**$3,430.59**
Items Given to Inmates	$156.25	$0.00	$0.00	$156.25
Mail & Property Bags, & Storage Boxes	**$49,951.72**	**$0.00**	**$0.00**	**$49,951.72**
Newspapers	$11,649.20	$0.00	$0.00	$11,649.20
Inmate Programs: Inmate Barber Shop	**$1,972.74**	**$0.00**	**$0.00**	**$1,972.74**
Items for Inmate Pay Bag	$13,564.67	$0.00	$0.00	$13,564.67
Law Library Supplies	**$5,694.73**	**$0.00**	**$0.00**	**$5,694.73**
Religious Services	$13,784.94	$0.00	$0.00	$13,784.94
SAC Supplies	**$653.15**	**$0.00**	**$0.00**	**$653.15**
Sheriff's Garage	$4,164.00	$0.00	$0.00	$4,164.00
Trustee Pay	**$10,606.00**	**$0.00**	**$0.00**	**$10,606.00**
Jail Management Computer System	$0.00	$87,512.00	$0.00	$87,512.00
K-9 Dogs, Training, & Vehicles	**$86,995.00**	**$0.00**	**$21,000.00**	**$107,995.00**
Maintenance & Repairs	$1,439.45	$0.00	$0.00	$1,439.45
Office Furniture	**$0.00**	**$131,285.81**	**$6,655.76**	**$137,941.57**
Patrol Vehicle Emergency Lighting	$0.00	$54,479.56	$0.00	$54,479.56
Patrol Vehicles	**$0.00**	**$0.00**	**$271,707.38**	**$271,707.38**
Prisoner Transport Vehicles	$490,082.28	$0.00	$0.00	$490,082.28
Security: Equipment & Tools	**$14,888.64**	**$432.39**	**$0.00**	**$15,321.03**
Security: Guardsman Clock Repairs & Tapes	$0.00	$5,474.39	$0.00	$5,474.39
Inmate IDs	**$0.00**	**$13,850.80**	**$0.00**	**$13,850.80**
Log Books	$0.00	$12,923.76	$0.00	$12,923.76
Sensor Wire Electric Fence	**$0.00**	**$162,700.00**	**$0.00**	**$162,700.00**
Telephone Account Voided Check	$205.63	$0.00	$0.00	$205.63
Washing Machine & Dryer Purchases	**$9,202.97**	**$0.00**	**$0.00**	**$9,202.97**
Washing Machine & Dryer Repairs	$4,904.92	$0.00	$0.00	$4,904.92
Total	**$746,720.31**	**$468,658.71**	**$299,363.14**	**$1,514,742.16**
% of Total Purchases	**49.30%**	**30.94%**	**19.76%**	