



## Internal Investigations, Mediation, Policy Review

To: Anne Small, Director of General Services  
From: Katherine Nuanes  
Date: June 15, 2015  
Subject: Report 1 - Financial Mismanagement of the Police Pension Plan

Report 1 of the Steamboat Springs Police Department investigation, financial mismanagement of the Police Pension Plan, is organized in the following manner:

- Section 1 – Synopsis, Allegation of Employee Misconduct, and the Complaint
- Section 2 – Interviews
- Section 3 – Summary and Conclusion
- Section 4 – Related Reports and Evidence
- Section 5 – Kleiber’s Letter

### **Section 1 – Synopsis, Allegation of Employee Misconduct, and the Complaint**

On March 18, 2015, Dave Kleiber distributed a letter to members of the Steamboat Springs City Council, and various members of the community outlining a number of allegations of wrong doing by Steamboat Springs Chief Joel Rae and Deputy Chief Bob DelValle. The area of Kleiber’s letter dealing with this reported complaint follows:

#### Financial Mismanagement

Joel Rae has been the President of the Police Department’s Pension Committee for a number of years. I was elected to the Pension Committee in 2012. At my first meeting I asked for a written copy of our retirement plan. Joel Rae told me that our retirement plan does not exist in a written form, but he would be happy to tell me the details about it. I responded that I was not interested in his verbal explanation; I wanted to see our plan in writing. Joel again reiterated that it does not exist in a written form, but stated that he would make it a point to advise new employees verbally about the retirement plan.

I then asked Joel what happens to the money from employees’ retirement accounts that leave employment with the City prior to being vested in the plan. He stated that those funds are maintained in an account and are used to “pay to manage the plan”.

I asked where this account is located and how much money is currently in the account. Joel stated that he did not know how much money is in the account and refused to answer where the account is located.

I then asked how much money does it cost annually to “manage the plan”. Again Joel Rae stated that he did not know. I then explained to Joel that this money belonged to everyone in the retirement

plan, and I demanded to know what account it is being held in, how much money is in the account, and how much money it cost to manage the plan. To date, this information has never been revealed to any member enrolled in the retirement plan. Nor has a written retirement plan description been disseminated to the plan members.

The U.S. Department of Labor's, Employee Retirement Income Security Act (ERISA) requires plan managers to provide participants with plan information (known as a Summary Plan Description) including important information about plan features and funding; provides fiduciary responsibilities for those who manage and control plan assets; requires plans to establish a grievance and appeals process for participants to get benefits from their plans; and gives participants the right to sue for benefits and breaches of fiduciary duty.

Joel's need to control every aspect of the retirement plan is in direct violation of ERISA.

Kleiber's entire complaint document is located at Section 5.

On April 2, 2015, Nuanes Consulting was hired to conduct an internal investigation into violations of city and police policy pertaining to a potential hostile work environment, possible violations of police officer and employee conduct policies, violation of the Law Enforcement Code of Ethics, and other violations identified through the investigation. Because the scope of work is large, the investigation is broken down into individual reports to manage and organize information.

The first report addresses Kleiber's concern that the Police Pension Plan, hereafter referred to the Plan, has been mismanaged. The following persons were interviewed; interview summaries are located in Section 2:

- Deb Hinsvark, City Manager
- Dan Lacomis, Attorney for the Plan
- Todd Lang, Investment Advisor for the Plan
- Kim Weber, Finance Director
- Chief Joel Rae, Director of Public Safety

The following documents were reviewed, and are located in Section 4:

- City of Steamboat Springs Police Money Purchase Pension Plan and Trust Agreement, Exhibit 1
- Pension Board Meeting Minutes, Exhibit 2
- Forfeitures used to offset city contribution produced by Wells Fargo, Exhibit 3
- City of Steamboat Springs Financial Statements regarding the police retirement plan, Exhibit 4
- Memo from Anne Small, Director of General Services with budget transfer forms, Exhibit 5
- Correspondence, Exhibit 6

\*The Police Pension Plan will be referred to as the Plan.

## Section 2 – Interviews

Interview: May 13, 2015 in person at 12:45 am at the Community Center (Recorded)

Interviewee: City Manager Deb Hinsvark

Interviewer: Katherine Nuanes

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(The following is an excerpt from Hinsvark's interview.)

Hinsvark said there are different protocols around pension forfeiture accounts. Hinsvark learned the cameras were purchased from the police pension forfeiture account, and felt it was an appropriate use of money. Hinsvark believed the pension forfeiture account is truly city money. I explained when I read the Plan it looked like the pension forfeiture money was a part of the pension trust and could only be used to for the furtherance of the pension trust. Hinsvark said she has not read nor could she locate the Plan documents. Her take on this pension was by past experience with other governmental pensions. She believes the forfeited pension money belongs to the organization funding the Plan. Hinsvark did not okay the spending of the pension forfeiture account for the cameras, and clarified Rae told her that was the account he was using for the cameras. When Rae told her, she thought to herself, she should look at the Plan.

Hinsvark does not attend Plan meetings. She said if she was administering this Plan, she would, for her own protection, have extremely rigid policies around every penny in it. Hinsvark said Rae, as a police chief, probably doesn't know the implications of that, and it was unfortunate. Hinsvark did not know if Rae paid for the cameras directly from the Plan or if he transferred the money from the pension to another account and paid it out of that account.

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Interview: May 26, 2015 at 4:30 pm by phone (Not recorded)

Interviewee: Attorney Dan Lacomis with Berenbaum Weinshienk PC

Interviewer: Katherine Nuanes

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Dan Lacomis is the SSPD Plan attorney who reviews the Money Purchase Pension Plan and the Trust Agreement. He presents amendments and revisions based on IRS rules to the board of trustees. Lacomis revises and insures the Plan document fulfills tax code requirements, and he submits the Plan to the IRS every five years. The IRS approved the Plan the fall of 2014. Lacomis said the SSPD Plan is a standard boiler plate plan used by many police departments.

On May 8, 2014, I explained to Lacomis a total of \$33,675 was transferred from the police pension forfeiture account. The monies were used to purchase cameras for patrol cars and body cameras for police officers.

Lacomis said forfeitures are when officers are not vested. When officers leave the employment of the PD and are not vested, the money the city contributed to their retirement is forfeited and placed into a forfeiture account. This forfeiture account is part of the Plan trust and can be used to pay the Plan's ordinary and necessary administrative expenses. The remaining forfeitures can be used to reduce the employer contribution for the Plan year in which the forfeiture occurs. The rules for forfeiture allocation are found in the Pension Plan Document under Section 3.03. Lacomis said the forfeiture fund can carry over to the next year and does need to be expended each year.

Lacomis referred me to section 12.01 of the Plan, Exclusive Benefit. Lacomis said the City of Steamboat does not have any beneficial interest in any asset of the Trust Fund and no part of any asset in the Trust Fund may ever revert to or be repaid to the employer, either directly or indirectly. Under definition 1.24 the "Trust Fund" means all property of every kind held or acquired by the Trustee under the Plan. So the forfeiture account is part of the trust fund which can only be used to the benefit of the employee. Lacomis stressed Plan assets go into a wrapper type arrangement and it can't come back out unless the Plan was dissolved.

Based on what was explained, Lacomis said the purchase of police equipment is not a permissible expenditure. Lacomis said there is no gray area, purchasing cameras with the forfeiture account violates 401A IRA rules for qualified pension plans. He also thinks this camera purchase is contrary to Colorado State Statute for pension plans for police and fire.

Lacomis said trustees of a Plan are held to a higher standard than plan participants. They have a fiduciary responsibility to do their due diligence regarding the expenditures of the Plan and can be held personally responsible for mismanaging the funds of the Plan. If the trustee has questions about Plan expenditures, they should seek legal advice prior to authorizing the expenditure.

Lacomis said he read Kleiber's letter which is posted on Facebook under Open Letter to the City of Steamboat Springs. He wanted to comment to some of the other issues raised in the letter regarding the Plan.

- The Employee Retirement Income Security Act (ERISA) does not apply to government pension plans so a Plan summary is not mandated.
- Lacomis said any Plan member should be able to get a copy of the Plan document in PDF format.

Lacomis recommended I speak to Todd Lang who is the Plan investor.

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Interview: May 27, 2015 at 9:30 am by phone (Not recorded)

Interviewee: Todd Lang, Financial Advisor

Interviewer: Katherine Nuanes

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I received an email from City Attorney Tony Lettunich who advised Todd Lang, with Lang Investment Group, was interested in talking with me about the claims in Kleiber's letter regarding the Plan. I spoke with Todd Lang who related he is the investment advisor for the SSPD's Plan. The interview was not recorded. Lang has two functions as the investment advisor. The first is to be a consultant to the Plan and its investments, to communicate with the board about investment options, to insure the Plan is competitive, and that Plan costs are inline. His second function is to provide investment education to participants.

Lang tries to make two pension board meetings each year; he thinks the board meets quarterly. The last meeting Lang attended was the third quarter in 2014. He believed board members include: Chief Rae, Deputy Chief DelValle, Captain Jerry Stabile, Sgt. Rich Brown, and Det. Josh Carrell; he also thought there was a representative from the city. Lang related Stabile was secretary and took the minutes.

In regards to educating participants, Lang is available two times a year at the police department for confidential meetings to go over investment strategies, and to show members how to use the different web based tools to access and direct investments. Lang said some participants take advantage of these meetings. New employees are mandated to meet with Lang, who introduces them to their Plan. Lang said participants can access their pension through the Internet. Participants can get in-person help with investment questions through Lang, or by calling the Path Line, another investment advisor option.

Lang remembered Kleiber attending a pension board meeting where he suggested the board look into a defined benefit plan instead of the defined contribution plan. Lang said Rae was open to the suggestion, and asked Lang to look into it. Before Lang did much work with this suggestion, Kleiber resigned from the department. Lang did not follow up on the request.

Lang wanted to address the portion of Kleiber's letter indicating Plan participants don't have access to the Plan. Lang said participants are always invited to attend the board meetings; most participants do not attend. Lang said participants have access to their Plan through a website, and Lang is always available to answer Plan questions either in person or via phone. Lang felt Kleiber's claim had no merit.

When asked how forfeitures funds could be spent, Lang thought the funds could be spent to offset administrative costs to the Plan, to pay for normal operating expenses, and to offset employer costs. Lang said the forfeiture account can grow rather quickly, and he mentions occasionally at board meetings how those funds can be used. Lang said forfeiture funds cannot be used to purchase police equipment. He did not hear at any of the pension board meetings that forfeiture money was going to be used for police equipment. He said he would be "shocked" if the forfeiture money was spent in that manner.

Lang said the forfeiture funds are held at Wells Fargo. Any distributions from the police forfeiture account would need to be done in writing. The request would normally come from Chief Rae with approval by the city. Lang also said there needed to be a vote by the pension board for the distribution of funds from the forfeiture account.

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Interview: May 27, 2015 at 3:40 pm by phone (Not recorded)

Interviewee: Kim Weber, Finance Director

Interviewer: Katherine Nuanes

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(The following is an excerpt from Weber's interview.)

Kim Weber is the City of Steamboat's Finance Director. She sits on the police pension board and has attended three meetings. The first meeting she attended was in November 2012. Other members of the board include or have included: Joel Rae, David Kleiber, Josh Carrell, Jerry Stabile and John McCartin.

Weber said only Rae and Stabile have the authority to pay pension plan invoice expenses. The invoices do not have to be voted on for payment.

On May 5, 2014, \$33,675.00 was removed from the city budget line item accounts to purchase cameras for the police department. Weber explained the money was transferred from the city's accounts budgeted for matching officer pension contributions. Weber said the city budgets money for pension contributions, and contribute to the pension every pay date. Weber related because the pension plan forfeiture account was used to pay down the city's matching contribution, there was going to be a surplus of money remaining in budgeted funds for pension contributions. It was decided to use those surplus funds to pay for police cameras.

A budget transfer form was given to this investigator. Weber explained the following:

- Account 10-25-35-10-400-4225 was a budget line item to pay for police sworn administration personnel pension contributions. There was \$27,694 in the account and \$6,550 was transferred to a small equipment budget line item.
- Account 10-25-35-30-400-4225 was a budget line item to pay for police sworn patrol personnel pension contributions. There was \$102,428 in the account and \$22,850 was transferred to a small equipment budget line item.
- Account 10-25-35-40-400-4225 was a budget line item to pay for police detective personnel pension contributions. There was \$18,888 in the account and \$4,275 was transferred to a small equipment budget line item. (Refer to Section 4, Exhibit 5 C)

Weber stressed the money for the cameras did not come out of the pension forfeiture account but out of city budget lines.

Interview: June 2, 2015 at 1:30 pm at the Community Center (Recorded)

Interviewee: Chief Joel Rae, Second Interview

Interviewer: Katherine Nuanes

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(The following is an excerpt from Rae's interview.)

Chief Joe Rae read and signed a second Garrity advisement; the interview was recorded.

We started the interview by discussing the Plan. Rae said he did not recall Kleiber asking for a copy of the Plan. Rae said there would be no reason to prevent Kleiber from getting a copy from Wells Fargo, or through the City of Steamboat Springs' Finance Department. Rae said the Plan is audited annually, and Dan Lacomis, the Plan attorney, assures the Plan meets government regulations. Rae said details about the Plan, and specifics regarding member's investments, are available electronically. Rae said the Plan document is usually at the pension board meetings so they can refer to it when needed.

Rae does not recall Kleiber asking him about how the Plan forfeitures were spent. Rae said the Plan forfeitures can only be used for the maintenance of the Plan such as attorney fees, or to offset the city's contributions. Rae said he has not mismanaged pension funds. He mentioned in 2014, approximately \$35,000 of the Plan forfeiture funds were used to offset the city's contributions. This meant there was a surplus of funds in the city's budget regarding the accounting lines used for matching police pension contributions. Rae used this surplus of funds to purchase police cameras.

**Additional:**

Exhibit 1 is a copy of the Police Money Purchase Plan and Trust Agreement. The Plan was amended and restated effective January 1, 2014.

Exhibit 2 is a composite exhibit consisting of four pension board meeting minutes. A summary of the pension board meeting dates and notes follow:

- April 4, 2012 - present were: Rae, Stabile, DelValle, McCartin, Carrell, Weber, and Lang. Carrell was voted to fill a vacant board seat. Todd Lang spent the remaining meeting time going over plan updates, and discussing the values of current funds.
- November 29, 2012 - present were: Rae, DelValle, Brown, Stabile, McCartin, Carrell, and Lang. After the minutes were approved for the last meeting, Todd Lang talked about the "fiscal cliff" and how the situation could affect the stock market. A demonstration was given to board members how to use the retirement tool on the Wells Fargo web page. Lang handed out materials on retirement strategies, which were emailed out to all plan participants.
- August, 27, 2013 - present were: Rae, Stabile, McCartin, Kleiber, Weber and Lang. Kleiber and Carrell were seated on the board after a Plan participant election was held on 8/20/2013. Lang spoke on stock performance. Kleiber asked if there were any other

investment options; the answer was “no” - SSPD cannot convert to a Defined Benefit Plan. Kleiber asked about the forfeiture account; Lang and Rae explained that to Kleiber.

- August 5, 2014 - present were: Rae, Weber, Lang, McCartin, Conley. (Conley was the only officer who voiced an interest in the vacant seat on the board created by Kleiber’s resignation from the department.) Lang suggested there be a second board member to release funds to pay for expenses; Stabile was voted to President Pro-Tem to pay expenses. Rae explained, all of the forfeitures that happen when folks leave the Plan before being fully vested, are used for Plan costs of management and attorney’s fees. The next pension board meeting was planned for January 8, 2015; it did not occur.

Exhibit 3 is from Wells Fargo, and shows a total of \$34,644.29 removed from the police pension forfeiture account to pay the city’s contributions to officers’ pensions over the following pay dates: 4/11/2014, 4/24/2014, 5/13/14, 5/23/14, and 6/9/14.

Exhibit 4 is a composite exhibit consisting of several items. First is a transmittal register showing transactions with Wells Fargo from 4/11/2014 through 6/6/2014. Also included in this exhibit are the police retirement plan financial statement for December 31, 2013, and city employee pension plan financial statement for December 31, 2013. (The 2014 statements were not available at the time of this investigation.)

Exhibit 5 A is a memo from Anne Small outlining that on May 8, 2014, a total of \$33,675.00 was transferred from the three police department division retirement accounts to a small equipment account. Exhibit 5 B shows the transfer from the city’s budget accounts for retirement contributions, to a small equipment account. Exhibit 5 C shows the budget transfer form. This shows the city’s budgeted money was never sent to Wells Fargo, and was not a part of the Plan Trust. Exhibit 5 D is proof of the transfer to the small equipment budget account.

Exhibit 6 is correspondence with City Attorney Tony Lettunich who provided me with contact information for Lacomis and Lang.

On May 29, 2015, I spoke with Dan Lacomis by phone. I told him Kim Weber’s explanation of how city funds were transferred out of one account to another without ever doing directly into the Wells Fargo police retirement plan. Due to the police forfeiture plan paying the city’s distribution, there was a surplus in the city’s budget which was used to purchase police equipment. Upon hearing this explanation, Lacomis replied, the way the city used their funds was appropriate and did not violate the Plan.

During my tour of the police department, a pension board with pension information was not located.

## **Section 3 – Summary and Conclusion**

### **Summary**

In Kleiber's letter of complaint, he said he was elected to the police pension board in 2012. The pension minutes show Kleiber was elected to the board on August 20, 2013 and he attended one meeting on August 27, 2013.

In his letter, Kleiber claimed he asked Rae for a copy of the retirement plan, and was told the Plan does not exist in written form. The pension minutes from August 27, does not reflect this request. Rae said he did not recall Kleiber asking for a copy of the pension plan. If a request was made for a copy of the Plan, Rae would refer the plan member to Wells Fargo or to the city's finance department. In Rae's interview, he claimed the pension plan document is usually at the pension board meetings so they can refer to it when needed. Lang said participants have access to their Plan through a website, and Lang is always available to answer Plan questions either in person or via phone. Dan Lacomis thought the Plan was available for any member in PDF format.

Kleiber claimed he asked Rae numerous questions regarding the pension forfeiture account and the cost to manage the plan. In the August 27, 2013, pension minutes, it showed Kleiber asking about the forfeiture account, and Lang and Rae explaining it. Rae does not recall Kleiber asking him about how the pension plan forfeitures were spent. During interviews, Rae and Lang were able to describe the purpose of the police forfeiture account and what expenses can be paid from it.

Kleiber claimed the Employee Retirement Income Security Act (ERISA) requires Plan managers to provide participants with plan information known as a Summary Plan. Dan Lacomis indicated ERISA does not apply to government pension plans, so a Plan summary is not mandated.

Kim Weber clearly described how the money for the police cameras did not come out of the police pension forfeiture account. The funds for the equipment came out of city budget lines that had a surplus of funds due to the police pension forfeiture account paying the city's portion of the police retirement contribution.

### **Conclusion:**

**Unfounded** meaning misconduct did not occur. This conclusion is supported by the following:

- There was no mismanagement of the police pension forfeiture fund as clarified by Kim Weber, the City's Finance Director, and as demonstrated by Wells Fargo's and the city's financial reports.
- ERISA does not apply to government pension plans as disclosed by Dan Lacomis, the Plan's attorney.
- Pension minutes taken by Captain Stabile on August 27, 2013, show Kleiber asking Rae and Lang questions about the pension forfeiture fund; Lang and Rae addressed them.

- Todd Lang is available at SSPD twice a year to answer Plan member questions, and help with investment planning.

Kleiber may have asked additional pension questions of Rae; Rae doesn't recall them. There was nothing more recorded in the pension minutes involving Kleiber's requests. There are no administrative violations regarding ongoing discussions of the Plan between Kleiber and Rae, if they took place.