

A Small Local Government Case Study: Did Mismanagement and Misuse of Resources Equal Fraud, Waste or Abuse?

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Circumstances regarding the accounting, finance, and the oversight of resources in a small, rural government are discussed. The actions of a County Administrator that resulted in a bitter split among the elected governing body and concerned citizens are examined. Differing views of appropriate controls and uses of public resources are considered. A solution offered by the technology revolution is discussed. Previously the rural nature of the County, its small population, and constrained resources presented serious obstacles to best practices in financial and management controls. However, evolution in technology makes appropriate and affordable management systems and internal controls for small entities.

INTRODUCTION

This case concerns a small, county government hereafter identified as County that is not specifically identified because of the possibility of indictment regarding fraud, waste or abuse of governmental resources. This County governs a largely rural area. The County is within a couple hours drive to two governments, one is historic and very early well known: Williamsburg, VA. The other is our nation's largest government, our federal government located in Washington DC. How a local government chooses to identify and market itself generally says something about the values of its citizens and how it wishes to be perceived, citizens and noncitizens alike. On its website this County's most prominent statement is "... located in the beautiful countryside of South Central Virginia a warm friendly welcome for all." The next most prominent statement is identification of the values to which it most aspires: "...family and community are central to our lifestyle. We work together to build and maintain a society where we can raise our families in an area offering an excellent quality of life, plenty to see and do, a wide range of opportunities, and safe friendly neighborhoods."

The County was carved in 1746 out of a larger county that had originally been formed by George II of England. The County makes use of this very early formation in the United States as well as its eventual division, creating 9 other present day counties. It identifies itself as the "Mother of Counties." The last census found 13,146 people living in the County's 443 square miles; some of these people live in one of the several very small towns. The County's rural setting is the basis of many of its citizens' livelihood; agriculture is identified as the primary source of income. Tobacco provides the largest cash crop. The number and variety of possible employers other than agriculture have declined over recent years. The

national and local economic crisis of 2008 is believed to be largely responsible for the accelerated decline in the past two years. At present the two largest non-agricultural employers are the school system and a prison that is part of the state correctional system. A famous musician, in his seventies who was born in one of the small towns is probably the county's most well known son of the last century.

Citizens living in the County enjoy relatively low local taxes: real estate is \$0.33/\$100 and personal property is \$3.60/\$100. A major metropolitan area in the same state has a base real estate rate of \$1.09/\$100 (the base can be increased for several items); a city not in a metropolitan area has a \$0.95/100 rate. Citizens of the County's two incorporated, small towns pay additional taxes: real estate taxes of \$.14/\$100 for one and \$.38/\$100 for the other. Personal property tax rates for these two towns are about a third of the county's rate. The county's cost of living index, December 2009, as identified by *city.data.com* was 80.7, the US average is 100. The US Bureau of Labor Statistics' reported the weekly wage as \$533 with an employment of 2,610 for 2009; this can be analyzed in several ways but certainly places the County in the bottom third of counties of its state in the employment and wage category. In February of 2010, the representative of the county's outside auditor in a formal meeting indicated that the county is in excellent financial state. The auditor highlighted that the County has \$5 million in the bank, low debt per capita, and has recently constructed both new school and courthouse complexes – while maintaining a lower local tax rate than all but one local government in the state.

GOVERNMENT STRUCTURE

Governance is by an elected Board of Supervisors. For these positions, citizens run for election from one of the seven electoral districts. Supervisors' terms are four years. Elections are staggered; every two years about half of the positions are up for reelection. The circumstances of this case came to light during 2009, an election year. This particular County has a custom, an historic pattern, of Supervisors serving for long terms up to and surpassing twenty years. Before the 2009 election there was one Supervisor whose service surpassed twenty years, four with more than ten, and two with more than five years of service. The election of 2009 occurred after the circumstances discussed in this case became public. These circumstances are believed by most, including the current Board of Supervisors, to be responsible for two supervisors with more than ten years of service being turned out of office by the voters and replaced by individuals who had never before been elected Supervisor. These two new individuals joined one returning member and four others who are not up for election until next year.

The County's model of government consists of final authority for all government decisions resting with these elected Supervisors whose jobs are part-time. The day to day business of the county is run by full time employees. The position of executive for the general government is a County Administrator (CA) who reports directly to the Board. The County being a small rural government, the CA manages only about five full time employees. There are other specific, not general, executives. These executives, Treasurer, Commissioner of Revenue, Sheriff, Clerk of the Court and Commonwealth Attorney, are elected positions and are also Constitutional Officers. In this model of government, the Constitutional Officers have significant independence. The CA in reality "administers" only his/her staff, the Constitutional Officers administer their own staff and offices. The Board of Supervisors' only real authority over the constitutional offices is budgetary. Even this budgetary authority is somewhat limited; the state government provides for the constitutional officers' salaries. However, the Board of Supervisors does appropriate, from county resources, all other monies for running of the constitutional offices.

This structure of an elected Board of part-time citizens running the county in concert with the elected quasi-independent constitutional officers and the resulting relationship between all parties underlies this case study. One might suppose that this quasi independence provided to constitutional executives was intended to ensure that the essential services provided are shielded from manipulations, threats, attempts to influence, and intimidation by the part-time Supervisors, the CA, or others. The circumstances discussed in this article may suggest that the constitutional executives are indeed subject to threat or manipulation or they may be viewed as indicating that possibility and thus needs to be guarded against. The circumstances also can be viewed as indicating that a County Administrator is able to get away with

fraud the consequences of which are influenced by the personalities and beliefs of the individual seven members of the Board of Supervisors.

The circumstances that some believe indicate fraud or waste or abuse relate to actions by the assistant county administrator (ACA) that came to light just before the last election. Also under question, and not resolved to date, are the supposed actions or non actions by which the OCA and individual members of the Board responded to the actions of the ACA. All agree that first line authority for the actions rests with the CA. Duties of the CA are specified in the state code. In addition, the CA had an employment contract with language indicating that additional duties may be assigned by the County; i.e. the Board of Supervisors. As a result, this CA's duties had been broadened to include other positions in the county government, including budget director, clerk to the Board, planning director, purchasing agent and zoning administrator. This is one reason that the County was able to have only five full time employees in the general government. In the particular state, a CA fulfilling a variety of functions such as this is not unusual; particularly in small governments such as this one. Yet this responsibility for differing functions and a broad number of duties is relevant to this case study.

Chief Government Executive, the County Administrator (CA)

This CA originally began her relationship with the County as administrative assistant in 1992. She was promoted to the chief general government executive, the CA in 1997. Within a year of this promotion, the CA was presented with a major challenge. Her handling of this challenge won her the admiration and allegiance of several, including the longest serving, members of the Board. She was faced with a decision by the majority of the Board to purchase property for relocation of the county offices. However, the Chair voted nay and the CA shortly ran into a significant road block to fulfilling the Board's wishes. The Chair and the County Attorney refused to proceed with the purchase. This is a difficult situation for a CA as the Chair's duties include signing contracts for the county and usually the Chair is the Board member, with whom the CA works most closely. In this instance, the Chair refused to carry out the decision of his fellow Board members. The CA's willingness to work out a solution and succeed with completing the purchase while contradicting her Chairman is considered one of the more notable acts of her tenure.

Many on the Board and community were impressed that the CA understood that she reports to the Board as a whole, rather than the individual serving as Chair. Of course, the Chair who remained on the Board including during the circumstances of this case may not have agreed. Also notable about the CA is a few months before the circumstances of this case became public, the CA had been recognized as outstanding and was the subject of a prominent feature article by the state's Association of Counties. Within the same year and between the time that the article was published and the facts of this case became public knowledge, the CA's husband lost a battle the couple had been waging with his cancer.

In 2000 the CA hired an Assistant county administrator (ACA) who is responsible for the acts discussed in this case study. Her previous position was an assistant payroll planner at a local department store. Her duties relevant to this case were accounts payable and payroll. She prepared and wrote checks for payroll and insurance. She also wrote checks for items prepared by other departments in the government. After the acts under consideration became public, it was mentioned by some that everyone had been impressed with the relationship between the CA and ACA, like Mother and Daughter. Both women were known to be struggling with husbands' battles against cancer. The ACA was well regarded for being gregarious and sociable as well as a dedicated "soccer mom" while holding down a job and struggling with her husband's cancer. "No one in any way dreamed that she was capable of misuse of her duties," as a current Board member said recently.

THE DISCOVERY

In August of 2009 a county employee from Social Services was killed in a car accident. This accident precipitated the discovery of the ACA's "misuse of duties." The deceased's beneficiary contacted the county to obtain a life insurance claim form for the \$20,000 death benefit. The ACA delayed, claiming

that no forms were on hand. When the beneficiary requested forms, the ACA stated “we will get it but I don’t have it right now.” At about the time of the car wreck, the Treasurer “decided she had had enough” and went to the insurance carrier regarding four to five years worth of outstanding checks from the county to the insurance carrier; these checks were payment for the insurance coverage.

After the circumstances came to light, it was discovered that the Treasurer had been repeatedly asking the ACA about these outstanding checks that dated as far back as 2004. After repeated requests, the Treasurer had begun including the CA and “keeping her in the loop” regarding the outstanding checks. The Treasurer believes she began including the CA in about 2008. During the years of outstanding checks, the outside audit firm did not issue any formal comment as part of their yearly audit report. The Treasurer later stated that on several occasions the ACA promised to set a meeting with the Treasurer, CA, and insurance company representative; each time the ACA would inform the Treasurer that the insurance representative had a last minute conflict and would need to reschedule. The dates offered for rescheduling were often dates that were a conflict for either the Treasurer or the CA.

One evening of a day in which it is believed that the beneficiary had made another request, the ACA phoned the CA and said “you are going to have to fire me.” The ACA put her keys on the desk and as she vacated her office placed several large trash bags into the hall with the intent of carrying them herself to the dumpster. It happened that the Economic Developer was suspicious for reasons that have not been made public. This suspicion caused the Economic Developer to offer to take the bags to the trash for the ACA. In reality the Economic Developer kept the trash in which was found many documents. The documents included many stamped envelopes with properly negotiated checks which had never been mailed to the payees.

Within a short time many checks to the insurance company were found in files and hidden between hanging file separators. The Board of Supervisors did not suspect that the checks to the insurance company between 2004 to 2009 had never been mailed because they had been budgeted, approved, and negotiated. Only the Treasurer and the CA knew there was a problem with outstanding checks. It turned out that there had been a previous death of a county employee, the sheriff. Board members and others thought the beneficiary had received the proper benefit; none was received but this never became known because the deceased’s beneficiary did not know to ask for the death benefit payment.

The 2009 death and beneficiary claim for a county employee led to discovery of the “misuse of duties.” In the process of completing paperwork, notifying the retirement system and insurance carrier major problems were discovered regarding the county’s insurance. It had none! Investigation revealed that the insurance company had terminated the county for nonpayment. Examination revealed other problems with payables and also with receivables. It was discovered that the ACA had not been properly billing businesses for landfill use charges. A Board member had questioned in 2008 why landfill revenues were down 80%. The CA replied that the amount billed was received. Investigation revealed that the ACA’s father had a service station which used the landfill; the father’s business had not been billed nor paid fees for several years. Other businesses were never sent bills for landfill use.

As early as 2004 the assistant began a pattern of abuse regarding the checks to the life insurance carrier for employees of both the County government and the local Social Services. The assistant prepared the checks, had them signed, but never placed the checks in the mail. Thus the assistant continued to requisition a check each month for the premium due to the insurance carrier. Each month checks were issued by Accounts Payable, signed and returned to the assistant for mailing. The checks were not mailed.

Investigation to date has revealed that checks from July 2004 and February, March and April of 2005 were found in file folders and a file drawer. These checks were appropriately drawn and signed but never mailed. The checks in the file drawer had been hidden between hanging folders. This implies intentionality.

Additionally, letters from the insurance carrier were discovered. One was dated June 10, 2005 and was a “Special Late Payment Offer” of 15 days to make payment and avoid cancellation of coverage. A letter dated August 11, 2005 acknowledged receipt of a payment but stated insurance coverage was terminated on April 30, 2005 for non-payment. Another letter dated September 15, 2005 acknowledged receipt of checks totaling \$529 but contained the coverage was terminated as of April 30, 2005 and thus

the \$529 was returned. A letter dated July 31, 2006 reiterated that the policy was terminated and included a refund to the County of \$1,021.20. Both refund checks were discovered in a file folder; they had never been deposited to the County.

During the years of preparing checks and then not mailing them, the assistant continued to have new employees complete the required insurance paperwork. It would seem that employees, the County administrator, the Board of Supervisors and the Constitutional Officers believed the County was adequately insured. Yet investigation in 2009 revealed that when an employee died in April of 2006 his wife was not informed of any death benefit due and no claim was ever made; the wife received nothing. Apparently the wife did not know from any other circumstances that she should receive a benefit. So this incidence occurred with no one, except perhaps the assistant administrator, being aware of the lack of proper procedure.

Investigation also revealed that the Treasurer, a constitutional officer, had been complaining about outstanding checks to both the ACA and the CA for much too long to have been not rectified. In May 2009 the assistant responded to the Treasurer's complaints by voiding 35 checks to the insurance carrier and issuing a replacement check for several thousands of dollars. This was returned to the County.

Refund checks to both the County from companies other than the insurance carrier for the disability benefits were discovered. A check payable to an employee by an insurance company was found; it had never been delivered to that employee. Other items were found in the files in locations where they did not belong. These include personnel records.

Investigation Regarding Insurance Payments

The CA disclosed to the Board of Supervisors that insurance payments had not been made and that the County, in reality, had been uninsured. The Board directed the CA to investigate with the County attorney. It was found that new employees had completed insurance paperwork and that checks had been prepared, signed, and prepared for mailing but never mailed as discussed above. The State Police also did an investigation after the CA and County attorney. After the circumstances became known by the Board and the public the outside auditor completed their yearly work and report. To date, there has been no formal investigation report from any party. Some believe that the amount of investigation that has been done so far shows no embezzlement by the ACA. Without formal investigation reports, it is not settled (in the author's opinion) as to whether the County suffered financial harm. The death benefits due the two beneficiaries was paid by the County general fund and reimbursed by the County's Liability carrier.

Concurrent and Other Problems

During the same time period, 2009, the County was sued by the state's DMV. The DMV appointed a special prosecutor to investigate the County for fraud. About twenty years previously the County entered into an agreement with DMV that was designed to get junk cars removed from the County; many governments and citizens view junk cars as unacceptable eyesores. The agreement called an independent dealer to purchase the junk cars, remove them to a special junk location and then bill the County. The County next bills the DMV and the contract calls for a payment per car that the County allocated to itself and the junk dealer (the junk dealer got about \$25 per car of the \$50 sent by DMV).

The DMV claimed that the County's receipt for these cars of about \$45,000 a year represented far more cars that could be recovered in this rural County. It has been said that the special prosecutor sent by the DMV speculated that the CA got kickbacks for approving the junk dealers' numbers and billings. Some believe this is politically motivated and also believe that the Board was told by the special prosecutor that the suit would go away if the CA resigned. This suit is still pending. Those who believe the DMV suit is politically motivated site the legal suit between the Clerk of the Court – who was the previous CA – and the Board of Supervisors.

CONSEQUENCES TO DATE

The 2009 election resulted in 2 new Supervisors on the Board. At their second meeting, the County administrator who one year previously was recognized as top County administrator in the state was fired on a 4 to 3 vote. She had anticipated this and presented the Board with her severance agreement which provides her with one year's salary, \$105,000, on termination.

It is interesting to note that during 2009 the County was also dealing with a legal dispute between the Board of Supervisors and the Clerk of the Court. Each side sued the other over the issue of whether the Board of Supervisors can deny a constitutional officer the right to allocate monies in his approved budget for a purpose with which the Board members as a majority do not approve. Shortly after the firing of the County administrator by the Board that resulted from the 2009 election, the suit with the Clerk was dropped on the County's part and the Board agreed to pay the Clerk's legal costs of \$15,300. Within the same time period the County Treasurer resigned perhaps as a result of being told by the Chair of the Board of Supervisors to "be quiet. I will get to you next." The Treasurer was replaced by the first deputy Treasurer who will serve until the next general election.

The County hired a consulting firm to help with finding a new County administrator. In the meantime, the Board of Supervisors will go through the budgetary process with an assistant who was promoted to acting County administrator and a new Treasurer. In a government as small as this one it is usual for one person to do many different jobs as was the case with the former County administrator. It is also usual for the remaining small staff to not be trained in any of those duties, particularly budgetary.

The outside audit report for the year of the discovery stated that the 2004 – 2009 outstanding checks to the insurance carrier were not discovered due to materiality. The audit report includes recommendations to prevent a reoccurrence of the circumstances of this case.

DISCUSSION

What harm in what types, and in what degree was suffered and by whom? Certainly, it is agreed that while the Board believed the insurance was in place during the years about 2004 through 2009, the reality was that the County was uninsured due to nonpayment. There is a question as to whether it was legal under the state code for the CA to request a closed session "to discuss actions" on the part of the ACA; i.e. the "misuse of duties." It appears that the monies owed from the various refund checks to the County have all been collected from the payers.

The circumstances of this case came to light fairly recently. To date no charges of fraud, or waste, or abuse of governmental resources has been brought. Several of the Supervisors and some citizens believe that is appropriate. In their viewpoint the system eventually worked appropriately and the County should now move on to the challenge of managing a local government which has lost, inappropriately, a general executive (CA) who held many specific positions including budget director, clerk to the Board, planning director, purchasing agent and zoning administrator. The CA held a long institutional memory of many aspects of the government, all contained within the knowledge of just that one individual. The result represents significant damage to the County and a serious challenge that must be overcome.

Other Supervisors and citizens are unsatisfied that no charges have been brought. These wish to see further investigation regarding fraud, waste, and abuse. They cannot accept that the County government "permitted" the circumstances discussed above to occur and then continue for such a long period. These two very different views of citizens, and their elected representatives, results in an active group of concerned citizens split into two opposing camps.

Perhaps a viewpoint is available that they can agree upon while still maintaining their opinions about the circumstances of this case. That viewpoint is that this occurrence highlights the need for better and more specific accounting and finance procedures. Perhaps many years ago one could claim that a small government could not afford the resources necessary to put such procedures in place. In the year 2010 technology and software availability would seem to offer an avenue to obtain and implement new

procedures that would have highlighted, raised a red flag, years before the circumstances of this case came to light.

Besides improved, corrected accounting and finance systems, the citizen body ought to be able to agree that preventive measures and checkpoints must be put in place within the management, accounting and finance systems. Surely obstacles exist to investigating, designing, and implementing preventative measures. Years ago the rural nature of the County, the limited population and constrained financial resources would have been significant obstacles. Yet in this age of technology it would seem those ought no longer to be an obstacle. Local governments within in the state and across the nation share ideas and processes. Opportunity exists for both the governments and those who would develop governmental accounting and finance systems with a component which addresses management and early warnings as well as preventative measures.