

SUMMARY REPORT:

**UPPER DARBY SCHOOL DISTRICT'S
PAYMENTS FOR LEGAL SERVICES**

April 2004

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INTRODUCTION AND BACKGROUND

The Department of the Auditor General (the Department) conducts audits of school districts pursuant to its authority and responsibility under the Fiscal Code.¹ In April 2003, news articles appeared that described questionable billings for legal services to Upper Darby School District (UDSD) by its Solicitor. In May 2003, the Department's Office of Special Investigations (OSI) began an investigation. The Solicitor resigned in June 2003.²

The investigation included a review of invoices and payments for services involving UDSD's Solicitor during the period from the 1996-1997 school year through the 2002-2003 school year and interviews of UDSD officials and staff. We interviewed the Solicitor and his secretary. We also interviewed representatives, and reviewed records, of other school districts for which the Solicitor provided legal services, courts and local government offices, and organizations that performed services for UDSD.

On March 2, 2004, the draft summary report findings, conclusions and recommendations were made available to UDSD and to the Solicitor whose billings were the subject of the inquiry to provide an opportunity for a response. We also sought and received responses from the other school districts to the report's findings that related to them. The responses have been incorporated into the final report and are included in a separate section together with our comments. The report contains 19 recommendations, many of which have been drawn from research concerning procurement of legal services by school districts that was conducted by the Department's Office of Chief Counsel.

¹ 72 P.S. § 403.

² Unless otherwise stated, the term "Solicitor" as used in this report refers to this individual and not to any other attorney performing services to the school district. Where necessary within the report, the Solicitor is referred to as the "former Solicitor" to distinguish him from the school district's current solicitor.

EXECUTIVE SUMMARY

Upper Darby School District failed to exercise oversight over payments to its Solicitor for legal services.

Five of six school districts which paid the Solicitor for legal services at various times from 1996 to 2003 failed to issue timely and accurate annual federal tax forms reporting those payments.

The Solicitor failed to disclose school districts other than UDSD as sources of income on his Statements of Financial Interests filed pursuant to the Ethics Act.

RECOMMENDATIONS

In addition to being listed below, each recommendation appears immediately after the findings and conclusions to which it relates.

1. UDSD should ensure that legal written fee agreements or engagement letters state the hourly rate and the identity of the persons whose time is being charged; identify specific charges for specific activities or costs; and contain notice provisions for changes in rates. (Finding No. 1.)
2. UDSD should ensure that its review process for legal services, just as it should be for all other professional services, includes consideration of the quality of the services and the reasonableness of the fees. When retaining new counsel, UDSD should do so through the use of a legal services Request for Purchase (RFP) process. (Finding No. 1.)
3. At UDSD, responsibility for all questions, comments and discussions with counsel regarding bills should rest with one school district official, preferably the business manager or the superintendent. Whoever the official is, he or she should review all monthly attorneys' bills for reasonableness and should not hesitate to raise questions regarding charges. He or she should request reviews of charges to significant projects by the school district officials who worked directly with legal counsel on those projects. (Finding No. 1.)
4. UDSD should require all attorneys performing legal services for it to keep records documenting the justification or basis for charges for costs and expenses for at least three years. (Finding No. 1.)
5. UDSD should discuss and negotiate in advance, with attorneys providing legal services to the school district, the scope of *non-legal administrative* services the attorneys will provide, the hourly rates, incidental costs the school district will pay for such services and costs and the justifications for so doing. (Finding No. 1.)
6. UDSD should consult with its independent auditor to establish an appropriate audit plan to audit charges for legal services and include such an audit in the work of the school

district's independent auditor and require periodic audits of at least a representative number of legal bills by the school district's business office. (Finding No. 1.)

7. UDSD should evaluate the use of retainers to ensure they provide the school district with the means to determine appropriately that the time spent and reasonableness of the fees are fair to both the school district and the attorney. (Finding No. 1.)
8. UDSD should periodically evaluate the extent of the need for copies of legal papers and other documents generated by providers of legal services to the school district and the cost-effectiveness of alternatives such as in-house copying at school district offices or contracting with a vendor. (Finding No. 1.)
9. UDSD should consider an alternative fee method for property tax assessment appeals services and other activities related to assessments. (Finding No. 1.)
10. UDSD should prohibit billing at legal rates for non-legal services provided by law firms in connection with tax assessment hearings, student disciplinary proceedings and other activities, and establish reduced rates for such services. (Finding No. 1.)
11. UDSD should monitor and review all charges for attendance at seminars and training courses by attorneys who provide legal services to the school district. Appropriate written justification describing the school district's need to direct its attorney to attend the seminar or training and the reasonableness of the school district paying for it should be required in all cases. (Finding No. 1.)
12. UDSD should ensure that all services which are charged in legal bills submitted to the school district, but which are not included in written agreements or engagement letters, are properly authorized by appropriate school district officials and documented and specifically prohibit any charges for services that are not so authorized. (Finding No. 1.)
13. UDSD should seek reimbursement of \$41,108 from the Solicitor for payments made for unauthorized charges and overcharges. Final determination of whether the school district has a sufficient basis to institute formal legal action to obtain reimbursement should be made by the school board; the board's decision and the basis for it should be made available to the Department. (Finding No. 1.)³
14. UDSD should conduct its own review and/or audit of the Solicitor's charges to determine if there is a basis for reimbursement for other questionable charges included in this report, as well as any other charges which UDSD finds as a result of its review. (Finding No. 1.)
15. The school districts which failed to comply with Form 1099 filing requirements should review all payments to the Solicitor for services to those school districts and issue accurate Form 1099s. (Finding No. 2.)

³ The specific charges included within this amount are set out as part of the text of the recommendation as it appears on p. 24.

16. The school districts which failed to comply with Form 1099 filing requirements should review all payments to independent contractors, including but not limited to persons providing legal services, to ensure that all payments are properly reported to the IRS. (Finding No. 2.)
17. The school districts which failed to comply with Form 1099 filing requirements should also ensure that the business managers and business office staff are aware of payment reporting requirements for tax purposes and require that a review of compliance with those requirements be part of the school districts' annual independent audits. (Finding No. 2.)
18. UDSD and the other school districts which made payments to the Solicitor for legal services should ensure that attorneys providing legal services to the school districts are aware of the disclosure and filing requirements of the State Ethics Act and that Statements of Financial Interests are filed on a timely basis and maintained at the school district. (Finding No. 3.)
19. The Statements of Financial Interests filed by solicitors and other attorneys should be reviewed at least annually by the school boards of the respective school districts to determine if any of the other sources of income reported by solicitors present a potential conflict of interest. (Finding No. 3.)

FINDINGS

Finding No. 1 – Upper Darby School District failed to exercise oversight over payments to its Solicitor for legal services.

In this finding, we first address the relationship between UDSD and its Solicitor, including the terms, types of services, the amounts paid to the Solicitor, the Solicitor's bills and the number of hours billed.

The attorney who served as UDSD's Solicitor during the period included in our review held that position from 1985 to June 2003. From 1980 to 1985, he was a member of the UDSD school board. During the entire 18-year period he served as Solicitor, UDSD had no written agreement or detailed engagement letter concerning the terms of his services.

The UDSD school board annually approved the hiring of the Solicitor. According to the minutes of the school board meetings, the Solicitor was to be paid \$18,000 annually as a retainer with additional compensation to be provided for work concerning bond issuances, land and buildings and court appearances.⁴ During the period of our review, the Solicitor's hourly rate for services to UDSD not covered under the retainer ranged from \$90 to \$140. Prior to August 2001, this rate was \$90 per hour for solicitor's services and \$95 per hour for litigation and real estate matters. From August 2001 to June 2003, the Solicitor's hourly rate was \$140 per hour for all of his services.

From the 1996-1997 school year through June 2003, UDSD paid the Solicitor approximately \$2.1 million and the Solicitor billed for approximately 17,884 hours at the applicable hourly rate, plus certain costs, and his retainer. The figures, by school year, are shown in Table No. 1.

Table No. 1 – UDSD Payments to the Solicitor and Hours Billed for the 1996-1997 through 2002-2003 School Years

School Year	Total Hours	Total Amount Billed at Hourly Rate	Costs	Retainer	Total
1996-97	1,767.50	\$ 158,918	\$ 639	\$ 18,000	\$ 177,557
1997-98	2,373.58	216,370	6,162	18,000	240,532
1998-99	2,311.71	216,888	11,128	18,000	246,016
1999-00	3,138.85	293,854	15,837	18,000	327,691
2000-01	3,244.62	304,310	22,104	18,000	344,414
2001-02	2,840.71	386,294	17,032	18,000	421,326
2002-03	2,206.55	308,592	16,662	18,000	343,254
TOTAL	17,883.52	\$ 1,885,226	\$ 89,564	\$ 126,000	\$ 2,100,790

⁴ A retainer is a set fee paid to engage the services of an attorney over a period of time, usually a year.

We reviewed all of the Solicitor's invoices submitted to UDSD from July 1, 1996, to June 2003. The Solicitor's hourly rate and annual retainer do not appear to have been inappropriately high based on the charges paid by other school districts. (For comparison purposes, we obtained solicitors' rates from 20 school districts in Delaware County, Montgomery County and Chester County.) It appears that the Solicitor provided certain legal services to UDSD in connection with activities for which, generally, the need would be reasonable and appropriate, including a substantial amount of time for representation of the school district in administrative or court-related matters and hearings related to student truancy, smoking and fighting, as well as expulsion and residency hearings. In addition, the school district was billed for a large number of real estate assessment appeals and related work.

For six (January 1998 through December 2002) of the seven years included in our review, the Solicitor broke his monthly bills down into four separate invoices for each month. The invoices were for:

- General Duties as District Solicitor.
- Real Estate Assessment Appeals.
- Litigation, Court Proceedings, and Administrative Hearings.
- Additional Charges/Costs.

UDSD issued the Solicitor one check each month to cover all of the charges in the invoices that comprised each month's bill. The monthly invoices for services had entries for almost every day during the month, together with a description of the service that was provided and total amount of time for all of the services. On many invoices, the description of the service included more than one task; sometimes as many as five different tasks were noted for a particular period of time. The descriptions of the tasks were general and did not include information such as addresses of site visits, docket numbers of cases worked on or detailed descriptions of research and review entries. The lumping together of tasks made it difficult to determine the exact amount of time and/or associated charges for any individual task.

In addition, it was often difficult to determine the time of day at which the work was done, because the hours were split among three different invoices and there was no indication of whether the work was done in the A.M. or P.M.

On the invoices for Additional Charges/Costs, there was no documentation to back up the costs listed in the bills. Entries for photocopies and faxes had a number multiplied by a price per page; entries for postage had a total for the month. As discussed in detail below, for the most part, there was no supporting documentation for other charges/costs.

The Solicitor billed UDSD an average of 2,554.8 hours for each year of the period of our review. This is the equivalent of 49.1 hours a week, 52 weeks a year. The billings show that the Solicitor charged UDSD for work done on many days not normally considered workdays, i.e., weekends and holidays. According to the bills, the Solicitor worked almost every Saturday (between 39 and 49 Saturdays each year) and many Sundays (26 to 49 each year). He also billed for services performed on many holidays, including New Year's Day, Labor Day, Memorial Day and Thanksgiving. During the review period, bills were submitted for services for at least 319

days each year and, during one year (the 1999-2000 school year) for 349 days. The Solicitor billed UDSD for over 12 hours a day on a total of 186 days during the period under review.

While we cannot say that charging such substantial amounts of time for UDSD business was unreasonable, it is clear that there is no evidence that anyone at UDSD questioned those bills for any reason.

During the review period, the Solicitor also provided legal services for five other school districts in addition to UDSD. As part of our review, we looked at the number of hours the Solicitor billed on a daily basis, including hours billed to UDSD and the other school districts for which the Solicitor performed services. The Solicitor billed the school districts overall for 19 or more hours a day on six occasions during the school years 1998-1999 through 2002-2003, including one day (May 18, 2000) when the total number of hours billed was 23.25. The Solicitor billed all school districts for 12 hours or more a day on 212 separate days during the review period.⁵

During the review period, the annual amount UDSD paid for all legal expenses exceeded the school district's annual budget for that category of expenses. *With the exception of one school year (2000-2001), and the 2002-2003 school year, the year during which the news articles concerning the legal charges appeared and our investigation began, the payments to the Solicitor during each school year, without including payments made by the school district to other attorneys, were greater than UDSD's annual budget for all legal expenses.*⁶ (See Table Nos. 2 and 3.)

Table No. 2 – Payments to the Solicitor as a Percentage of Total Legal Expenses

School Year⁷	Budgeted Legal Expense	Total Paid to Solicitor	Total All Legal Expenses⁸	Solicitor's Percentage of Total Legal Expense
1997-1998	\$ 230,000	\$ 240,532	\$ 302,756	79 percent
1998-1999	\$ 230,000	\$ 246,016	\$ 318,446	77 percent
1999-2000	\$ 300,000	\$ 327,691	\$ 454,259	72 percent
2000-2001	\$ 350,000	\$ 344,414	\$ 513,809	67 percent
2001-2002	\$ 400,000	\$ 421,326	\$ 652,237	65 percent
2002-2003	\$ 600,000	\$ 343,254	\$ 494,126	69 percent

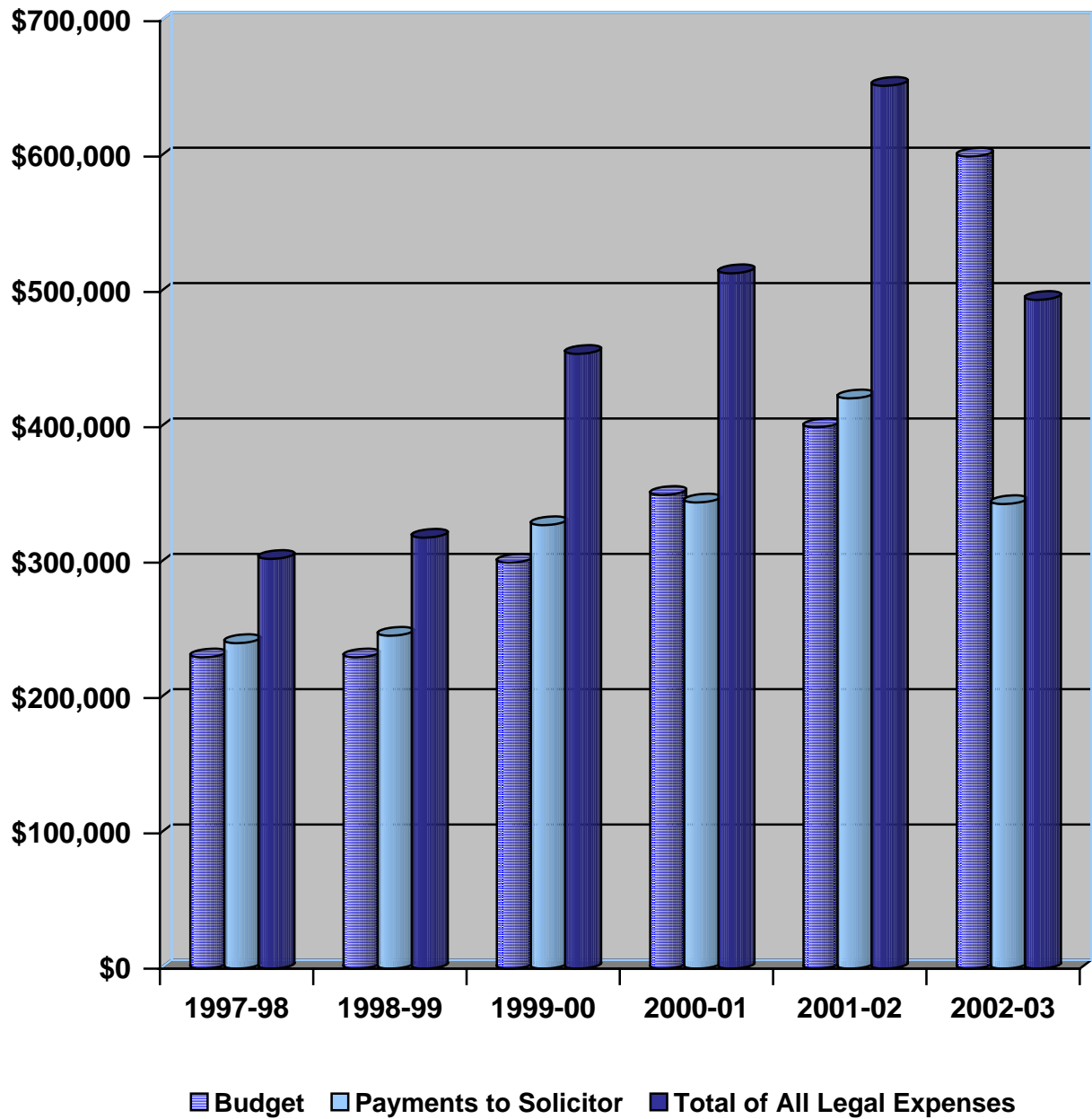
⁵ The Solicitor's payments from other school districts are discussed in more detail in Finding No. 2 of this report.

⁶ We note that the Public School Code prohibits school boards from hiring work to be done, purchasing materials or making contracts "which will cause the sums appropriated to specific purposes in [the school district's] budget to be exceeded." 24 P.S. § 6-609.

⁷ We did not obtain the amount that UDSD budgeted for legal expenses in the 1996-97 school year.

⁸ This figure represents payments to the Solicitor plus payments to one attorney employed by UDSD and payments to various attorneys hired as "special counsel" who served, among other things, as hearing officers at administrative hearings.

Table No. 3 – UDSD Legal Budget by School Year vs. Total Paid to Solicitor vs. Total of All Legal Expenses



The number of hours, including the hours on weekends and holidays and the consistent exceeding of the school district's annual legal budget, should have alerted UDSD officials to the need for closer monitoring of the Solicitor's bills. However, these signals do not appear to have stimulated any effective action on the part of UDSD officials. Based on our review of the Solicitor's bills, school district records, and interviews of UDSD's staff, we concluded that the school district conducted virtually no systematic or detailed review of the Solicitor's bills. In most cases, bills were processed for payment and paid without question or analysis of specific charges or activities.

As stated earlier, it is possible for a solicitor to have worked the hours shown on the bills (except in the instances of the overcharges noted by the media in the disclosures which triggered the investigation). However, in view of the lack of oversight and the absence of a well-defined arrangement with the Solicitor, the number of hours billed, and the charges for those hours, become suspect, particularly in light of our detailed review (to the extent permitted by available records) of several specific categories of billings. As discussed below, that review revealed charges for time devoted to activities which appeared to have been unnecessary or unrelated to the duties of a solicitor.

The payments to the Solicitor included approximately \$158,540 which we considered questionable, based on the type of service, the lack of authorization, the absence of adequate documentation to verify that the services were performed and/or errors resulting in overcharges.

Copying and other administrative costs

The Solicitor billed UDSD for approximately \$88,560 in administrative, overhead or incidental costs.⁹ The specific services included in those categories and the approximate amount for each type of service are shown on Table No. 4.

⁹ The difference between the total in Table No. 1 and the total stated above is because Table No. 1 includes \$1,004 for approved training costs that we did not question.

Table No. 4 – Types of Charges for Costs

Type of Charge	Total Amount
Copies	\$48,248
Faxes	5,812
Mail/Postage	21,152
Fees (filing, constable, praecipes, etc.)	4,141
Registration fees, tuition, seminar fees, etc.	3,225
Cellular phone	969 ¹⁰
Long distance/toll calls	268
Other (film, film developing, books, parking, research, supplies and materials, memberships, lodging, tolls, food, etc.)	4,745
Total	\$88,560

The Solicitor did not provide any documentation to UDSD to support those charges and the school district did not request documentation for the charges, including those for cellular telephone and long distance charges. When OSI interviewed the Solicitor in October 2003, he said that he kept supporting records to document charges for his legal work until he was paid and maintained them for two to three months thereafter. If there were no complaints, they were destroyed. He said that records relating to costs that had tax consequences were retained for a certain period of time for tax purposes relating to the specific years in question. He told OSI that he had no records at the time of the interview and, therefore, did not have records for the charges.

According to the UDSD business manager and the purchasing supervisor, the school district had a verbal agreement to pay the Solicitor for photocopies, faxes and postage. According to the school district officials, the reason for the agreement was that the Solicitor had complained that his hourly rate was too low. The business manager stated that the Solicitor threatened to resign if UDSD did not pay for his expenses. The school board president told OSI that he was unaware that the Solicitor charged the school district for copies, faxes and postage.

The Solicitor told OSI that the school district administrators instructed him to add the costs to his monthly bills. He said that he asked UDSD officials if they wanted to supply him with a copier to eliminate the copying charges, but the school district did not agree to do so.

As Table No. 4 shows, over 50 percent of the charges in this category were for copying. Based on interviews and some records made available to us, it appears that the Solicitor frequently made three or more copies of all documents for school district staff and sent them to individual staff members. Apparently, no one ever questioned whether the large volume of copies was necessary and reasonable or if there were alternatives, such as having the copying done at the school district offices, or by an outside copying service, as needed.

¹⁰ This amount represents net charges for cellular phones. During part of the period under review, UDSD gave the Solicitor a cellular telephone owned by the school district for his use. The Solicitor gave the school district a \$81.95 credit for the use of the telephone on his monthly bills during that time. In November 1999, the Solicitor obtained his own cellular telephone and charged UDSD \$60 per month for phone usage.

It is reasonable for a school district to be charged for costs incurred in connection with a solicitor's representation of the school district. However, a school district should not pay for an attorney's general overhead/administrative costs. Such costs are or should be built into the attorney's hourly rate. Although many of the costs listed in Table No. 4 are generally of the type that can be legitimately charged to a client, a school district should, nevertheless, monitor the costs of special services, such as photocopying. In this case, there was no clear understanding or agreement between UDSD and the Solicitor as to how these expenses should be handled, no monitoring, no consideration of alternatives and no retention of adequate documentation to ensure that passing the costs on to the school district was warranted. For those reasons, we question the costs, particularly UDSD's payment of the portion of the Solicitor's costs related to copying charges.

Property site visits

During the period under review, the Solicitor billed UDSD at least \$506,585 for approximately 4,971 hours related to real estate matters. This represented 28 percent of the total number of hours billed during the period of our review. Included in the real estate work of the Solicitor were property tax assessment appeals.

On at least 45 occasions, the charges included time charged for visits to properties. Most of the work (approximately 84 percent) was done on weekends. According to the Solicitor, the property visits consisted of driving past properties listed for tax assessment appeals. He said that he engaged in this activity to become familiar with the properties so that he could properly present his case as the school district's attorney at hearings before the Delaware County Board of Assessment Appeals. He said he also took photographs of the properties when warranted.

The Solicitor charged UDSD his hourly legal rate for the time spent on the visits. According to the Solicitor's bills, as many as 100 property site visits were conducted in a single day. For example, during September 1998, the Solicitor charged for 29 hours of work over four weekends, including viewing about 409 properties.

The exact amount billed for the property site visits alone could not be determined in all cases because the Solicitor often listed a number of other daily tasks related to assessment appeals in addition to property visits on his bills to UDSD, without specifying how much time was spent on each task. For example, entries on bills included such things as "attendance" at the properties, together with taking photographs "at appropriate properties" and reviews of records such as assessment charges and property transfers. UDSD never asked for more specific detailed information concerning the time spent on each task and never requested an explanation of the reasonableness and necessity of the items included in the charges, and the Solicitor never furnished such information.

The total amount of the Solicitor's charges for work related to his preparation for assessment appeals, including property site visits, was \$21,800. We were able to determine that, of the total, at least \$14,003 was billed to UDSD by the Solicitor for property site visits alone.

Based on information from the Delaware County Board of Assessment Appeals, the key evidence at such hearings consists of written real estate appraisals. According to the Solicitor, during the 1980s, he hired several individuals to conduct property investigations related to assessment appeals and, eventually, began to conduct the investigations himself and present the evidence at hearings. In the early to mid 1990s, the Solicitor began using an appraisal company to obtain preliminary appraisals for use in negotiations and for property valuation purposes and formal appraisals for hearings. UDSD paid the appraiser \$222,118 for approximately 550 property appraisals in addition to the amounts paid to the Solicitor for his property site visits during our review period. Under those circumstances, UDSD's payments for the costs of the Solicitor's personal visits to the sites, his observations and photographs, were questionable.¹¹

Assessment appeals hearings

Another portion of the previously mentioned 4,971 hours charged by the Solicitor for real estate matters was for appearances before the Delaware County Board of Assessment Appeals (the Board) in connection with appeals of property reassessments. The Solicitor's bills identify days spent at hearings, but not specific cases and times. Therefore, the amount of time shown on the Solicitor's bills cannot be verified by checking the cases heard by the Board on those days.

We compared the time and number of cases on invoices for 14 days in the review period with the number of UDSD cases and the total hours the Board was in session on those days.¹² The results of the limited sample disclosed that there were four days for which the Solicitor billed for hours (2.25 or more) over the number of hours the Board was in session. The amount charged for those additional hours was \$1,580. On two of those days the Solicitor's invoices contained numbers of cases substantially larger than the numbers shown in the Board's records (53 and 24, respectively). The Solicitor's bills did not provide an explanation. It is possible that those hours were for time spent working on the cases outside of the presence of the Board. According to the Solicitor's response to the draft report, the additional hours may have been the result of the use of Board panels on some days due to the high volume of cases. According to the school district's current solicitor, UDSD has detailed records of the Solicitor's work at assessment appeals hearings in its files despite the absence of any consideration of them in connection with paying the Solicitor's invoices. Therefore, provided that UDSD has verification for the after-hours charges, we do not recommend that UDSD seek reimbursement for them.

District justices' court matters

In addition to assessment appeals, the Solicitor charged for work related to time spent in district justices' courts on matters related to UDSD students. The Solicitor charged UDSD approximately \$53,883 for 522.5 hours in such proceedings, nearly all of which were in the courts of two district justices. The amount and hours could not be determined exactly because,

¹¹ In the Solicitor's response, he disagreed with nearly all of the questionable items in the report and repeatedly stated that they were authorized and reasonable. We disagree with the Solicitor's assertions for the reasons presented in the narrative under Finding No. 1 and in the Department of the Auditor General's Comments to the Solicitor's response. The Solicitor's response and our comments appear on pp. 30-35.

¹² The sample consisted of 14 days on which the Solicitor's overall attendance at hearings equaled or exceeded eight hours a day and any days on which 100 or more hearings were listed.

as described previously in regard to assessment appeals, other tasks related to the cases were often listed in the bills without specifying how much time was spent on each task. In the Solicitor's bills to UDSD, the total hours and dates are reported, but the cases are not identified. The records of the district justices' offices contain the names and identifying numbers of the cases but do not reflect the time or hours.

The Solicitor submitted summaries and other records concerning district justices' court cases to the UDSD Assistant Superintendent for Instruction and Curriculum. Those records included letters and copies of summaries sent by the Solicitor to as many as eight to 10 UDSD staff members. Based on the representations of the current UDSD solicitor that the records are now available at the school district, and our review of a small number of them, it is reasonable to conclude that, presently, there is adequate documentary support at UDSD that the work was done. However, it does not appear that these records were ever used by UDSD to verify the information presented on the Solicitor's invoices to the school district.

Additionally, based on a December 13, 2002, letter from the Solicitor to the UDSD Assistant Superintendent for Instruction and Curriculum, at least a portion of those records (relating to truancy court) were in the possession of the Solicitor from 1994 to December 2003 and were not maintained at UDSD.

Attendance at training courses and seminars

We found 22 billings for time spent in attendance at 19 training and seminar events in the Solicitor's invoices to UDSD. The total number of hours billed was 124.25 and the total amount was \$13,710. The activities included Continuing Legal Education (CLE) programs offered to enable attorneys to meet educational requirements established by the Pennsylvania Supreme Court as part of the requirements to maintain an annual license to practice law in the Commonwealth. According to UDSD officials, the school district approved the Solicitor's attendance at four of the events. The total number of hours listed for the approved events in the Solicitor's bills was 35. There were 15 seminars that were not approved; seven were for CLE seminars. The Solicitor billed the school district, at his hourly rate, a total of \$9,635 for attendance at 15 programs and seminars (89.25 hours) without authorization or approval by the school district.

There is no record that UDSD approved payment for the Solicitor's attendance at these activities at the hourly rate for which he charged for his services as an attorney. While it may have been reasonable and appropriate for the school district to pay the actual costs of the training, including incidentals such as travel and meals, it is questionable whether it is reasonable for UDSD, without question or discussion, to pay the Solicitor at his hourly attorney's rate, or to pay him at all, for attendance at training programs where he is not performing services as an attorney.

UDSD administrators and the school board president told OSI that they were not aware of the charges for CLE training. The Solicitor told OSI that he always obtained the approval of a school district administrator (i.e., the school board chairman, the superintendent or an assistant superintendent) to attend the programs. The superintendent identified the four programs that had

been approved. We found no record of authorization or approval of the other sessions. Absent special circumstances, the cost of obtaining CLE credits should be considered an overhead expense to be absorbed by the attorney's hourly rate while performing legal services.

Service of papers related to student disenrollment cases

The Solicitor billed UDSD at his hourly rate for services in connection with administrative proceedings conducted by UDSD related to student disenrollment. In the bills the Solicitor submitted for those services, he included time he spent accompanying school district attendance officers and constables to serve papers in connection with the proceedings. The school district paid the Solicitor approximately \$7,426 for those charges. The total number of hours was 74.50.

UDSD attendance officers told OSI that there was no need for the Solicitor to accompany them in connection with those activities. The Solicitor told OSI that he did not provide legal services while participating in those activities. He apparently believed that he was monitoring the attendance officers' performance of their duties, in addition to witnessing the service of papers and serving papers himself. (See the Solicitor's response, p. 32.) The Solicitor told OSI that school district administrators knew what he was doing. UDSD administrators and the school board president told OSI that they were not aware that the Solicitor was charging the school district for such work.

As was the case with the property site viewings discussed previously, charges for these activities were often included, without further specificity, in bills for services related to other work by the Solicitor on student disenrollment matters. Therefore, the actual amount charged for accompanying the attendance officers and the service of papers cannot always be determined. We were able to find that the Solicitor billed UDSD at least \$6,518 for accompanying attendance officers and service of papers.

Services to other organizations billed to UDSD

Upper Darby Educational and Cultural Foundation

In October 1997, the Solicitor filed incorporation papers for the Upper Darby Educational and Cultural Foundation (UDECF) as a non-profit corporation. The purpose of UDECF was to secure resources from individuals, corporations, community organizations, foundations and other entities for distribution in support of programs for UDSD residents and students. UDSD provided \$30,000 to UDECF in the form of a loan in 1998.¹³ Eight of UDECF's board members in 1998 were school board members or staff of UDSD. The UDSD Solicitor was UDECF's legal counsel during 1998. He told OSI that he resigned from the organization in approximately July 1998. According to the Solicitor's bills submitted to UDSD, he charged the school district \$1,734 for legal services related to UDECF.

¹³ According to UDSD officials and records, the money was later repaid to the school district.

Upper Darby Community Partnership

During the 2001-2002 and 2002-2003 school years, the Solicitor charged UDSD approximately \$4,865 for attending meetings of an organization known as the Upper Darby Community Partnership (UDCP), a private community volunteer program established to help troubled teenagers. It became affiliated with UDSD in September 2001. The Solicitor was a UDCP board member and, as such, attended its monthly meetings. According to a UDSD assistant principal who was a board member, UDCP board members are all volunteers. The Solicitor did not attend UDCP meetings as the school district's solicitor or as counsel for UDCP and there is no financial relationship between the school district and UDCP.

UDSD administrators and the school board president told OSI that they were unaware that the Solicitor charged UDSD for services to the two organizations. We found nothing in UDSD's records to suggest that there was authorization or approval for the Solicitor to charge the school district for his activities concerning the two organizations.

Work performed by the Solicitor's secretary

On the bills the Solicitor submitted to UDSD, charges totaling \$5,016 were for work performed by the Solicitor's secretary. The amount of the hourly rate for those charges was an average of about 50 percent of the Solicitor's hourly rate. There is no documentation or other evidence that the school district authorized payment for the secretary's services. The charges for the secretary's services were shown on the Solicitor's bills by including her initials next to time charged and the activity.

The secretary's work, as shown on the Solicitor's bills, consisted of filing documents with courts, attending administrative hearings and legal research. The secretary is a licensed paralegal. The secretary told OSI that her work for which UDSD was billed included attendance at real estate tax assessment hearings in the Solicitor's place when he was unable to attend. She said that, on those occasions, she collected real estate appraisals from property owners. According to the secretary, the Solicitor informed the UDSD school board when she was attending the hearings in his place; when neither she nor the Solicitor could attend, the Solicitor hired another attorney to do so.

While the charges for the secretary's services are questionable because they were not authorized through an initial engagement letter or agreement or otherwise specifically authorized by the school board, the activities were among those generally authorized to be performed by the Solicitor and there is no evidence that the services were not performed. Therefore, we cannot state definitely that UDSD did not receive the benefit of them.

Reviewing the bills of others

The Solicitor charged UDSD at his hourly rate for time spent reviewing bills of other individuals and organizations that provided services to UDSD. These included attorneys hired to serve as special counsel and as hearing officers, court reporters, real estate appraisers and an

investigative firm hired by UDSD to determine the students' residence. These charges totaled \$3,470 for 31.45 hours of review.

We found no record of any agreement or arrangement between the Solicitor and UDSD concerning the Solicitor's services for reviewing those bills or his charges for doing so. The UDSD school board president told OSI that the review of such bills should have been the responsibility of the school district's business manager and the Solicitor should not have been paid for reviewing bills at his legal hourly rate.

Overcharges

During OSI's review of the Solicitor's bills paid by UDSD, we found overcharges totaling \$883.¹⁴ This was in addition to the \$19,361 in overcharges during the 2001-2002 school year reported in the media in 2003 and \$8,910 in overcharges during the 1997-1998 school year found by UDSD during its review of the Solicitor's bills in 2003, after the bills were questioned in media reports. The Solicitor reimbursed UDSD \$31,429.25 in April 2003 for the overcharges reported by the media and uncovered by UDSD.¹⁵

The \$883 in overcharges we found were caused by apparent errors in the Solicitor's hourly billing rate. According to the Solicitor and his secretary, the calculations of charges on the Solicitor's invoices were made by a computer program. They had no explanation of how the errors could have occurred.

Corrective Actions by UDSD Prior to the Investigation

On December 8, 2003, UDSD's current solicitor provided OSI with a letter describing corrective actions taken during the 2002-2003 school year:

In October 2002, the School District hired the law firm of VayWyk & Brennan to handle some of the work previously done by the Solicitor. The firm handled the following types of student involved cases: Anti-violence, Truancy, Tuition Recovery, Tobacco, Expulsion and Disenrollment.

In March 2003, the School District prepared (and later adopted) its 2003-2004 legal services budget and reduced it by one-third from the previous years amount.

After the discovery of the billing errors in the spring of 2003, the UDSD School Board accepted the Solicitor's resignation and

¹⁴ In the draft report, the overcharges included an additional \$423. Upon further review of the school district's records of the Solicitor's bills, a portion of the December 1997 bill that had not been provided to OSI previously was obtained and, as a result, it was determined that there had not been a \$423 overcharge.

¹⁵ The reimbursement included an additional \$3,158 in interest.

received reimbursement for the billing errors from him. The Board also made the following additional changes:

1. After securing competitive proposals, the District retained a new law firm as solicitor with the primary responsibility of advising the School Board, school officials and staff on all matters except:
 - a. Labor law, Labor negotiations with employee units.
 - b. Tax Assessment Appeals
Special Education Litigation.
 - c. Prosecution of cases in the following special courts
 - Anti-violence
 - Truancy
 - Tuition Recovery
 - Tobacco
 - Expulsion/Disenrollment
2. The School District continued its policy of using special counsel other than its Solicitor when appropriate. See Items 1(a), 1(b), and 1(c), above. Appropriateness includes when particular areas of expertise are needed, cost, cost-savings, and potential conflicts of interest. For example the District has realized significant cost savings since it now uses the same solicitor as the Township to handle its Tax Assessment Appeal cases. Also at its December [2003] reorganization meeting the Board voted unanimously to hire a retiring District Justice as the Hearing Officer (in effect the judge) to hear all Expulsion/Disenrollment cases. The Judge will replace the Attorney who currently acts as Hearing Officer.
3. The District required a written fee agreement with each of its attorneys.
4. Prior to its reorganization in December 2003, the District reviewed (and will regularly review) its legal costs to determine whether they are cost-effective, both as a purchased service and in comparison to other similarly situated entities.
5. The District reviews its legal bills before payment by the person/department authorizing the service to effectively manage legal priorities and resources. Bills are required to show charges by matter/case, type of activity and attorney. Bills must provide

sufficient information for review without compromising or waiving the attorney-client privilege.

6. The District regularly reviews the costs charged by its attorneys to insure that they are supported by invoices and/or receipts that provide sufficient information for review. Large costs must be preapproved by the District before they are incurred and reimbursable costs are periodically reviewed to determine if they can be done at less cost by the District.
7. The District has procedures for the board or individual board members, superintendent and other school officials, and other staff to confer with its attorneys.

Conclusions and Recommendations

The total amount of the Solicitor's charges to UDSD discussed above that were questionable (\$158,540) consists of the following:

• Copying	\$ 48,248
• Property site visits	21,800
• Excess hours at assessment appeals' hearings	1,580
• District justices' court matters	53,883
• Unauthorized attendance at seminars and training courses	9,635
• Service of papers	7,426
• Upper Darby Educational and Cultural Foundation	1,734
• Upper Darby Community Partnership	4,865
• Work performed by the Solicitor's secretary	5,016
• Reviewing the bills of others	3,470
• Overcharges	<u>883</u>
Total Questionable Charges	\$158,540

UDSD used the Solicitor's services for a broad range of legal activities during the period of our review. *Other than the overcharges, we found no substantial evidence of charges for services that were not rendered. What is questionable is not whether the Solicitor put in the time, but whether the amount of time and the resulting charges were adequately documented and really necessary to UDSD.*

UDSD has records related to the Solicitor's activities related to assessment appeals and district justices' court matters such as student truancy and other disciplinary cases. As mentioned above (pp. 12-13), we reviewed a small number of those records at the school district's request. Those records were compiled by the Solicitor and provided to UDSD staff to properly administer and track the process of those matters and their results. However, there is no indication that those records were reviewed, referred to or considered in connection with the legal bills submitted by the Solicitor and the school district's payments to him.¹⁶

Overall, UDSD failed to exercise reasonable control or oversight of the charges and payments for the Solicitor's services. Specifically, UDSD:

- Failed to exercise annual oversight of the Solicitor's charges and its payments to him despite the fact that, in most of the school years included in the review, the Solicitor's billings exceeded UDSD's budget for all legal expenses.
- Failed to monitor the Solicitor's monthly bills, did not periodically question or spot check specific charges, and failed to verify whether services were needed or authorized.

¹⁶ This matter is also discussed in UDSD's response to the report and the Department of the Auditor General's Comments (see pp. 38-40 and 41-53).

The Public School Code states that each school board may appoint a solicitor and such assistant Solicitors as it may deem proper “*and shall define their duties and fix their salaries.*”¹⁷ UDSD failed to adequately define the Solicitor’s duties, resulting in an uncontrolled and unmonitored number of hours and charges. In fact, the investigation showed that, at UDSD during the years under review, the Solicitor himself defined his duties and expanded them as he saw fit, with little or no input or direction from the school board or the school district’s administration.

UDSD officials told us that one reason for the failure to monitor the Solicitor’s charges more closely was because his services related to real estate assessment matters, in particular, resulted in substantial financial benefit to the school district due to increased tax payments. However, in making this argument, UDSD officials failed to consider that the school district might have still have obtained those benefits, and, most likely, even greater benefits, if its legal costs had been managed more efficiently. Furthermore, there is no documentation or evidence that UDSD made an effort to find out if other attorneys could have performed the same or better quality work for the school district on better terms for the school district. There is no evidence that the Solicitor was the only attorney in Delaware County and the immediate area who could have provided the service.

The volume of work for which the Solicitor charged UDSD, as demonstrated by the yearly amounts and the number of hours, should have alerted the school board and school district officials to the need for review, closer monitoring and better supervision. Instead, the UDSD administration and the school board ignored those warning signs. Corrective steps were first initiated by UDSD in October 2002 as described in the solicitor’s December 8, 2003, letter.¹⁸ Those actions were appropriate and commendable, but long overdue. These efforts were accelerated in the spring of 2003 after legal billing errors were discovered and reported in the media.

One set of figures demonstrates the extent to which UDSD’s failure to act resulted in greater financial cost to the school district and its taxpayers. In the period after the Solicitor resigned, UDSD’s costs for legal services decreased dramatically as follows: The Solicitor resigned effective June 2003. Table No. 5 (p. 21) shows the decrease by presenting a comparison of the Solicitor’s billings to UDSD for the first quarter of each school year from 1996-1997 to 2002-2003 to the amount UDSD paid for all legal services in the first quarter of the 2003-2004 school year, the first full quarter after the Solicitor’s resignation.

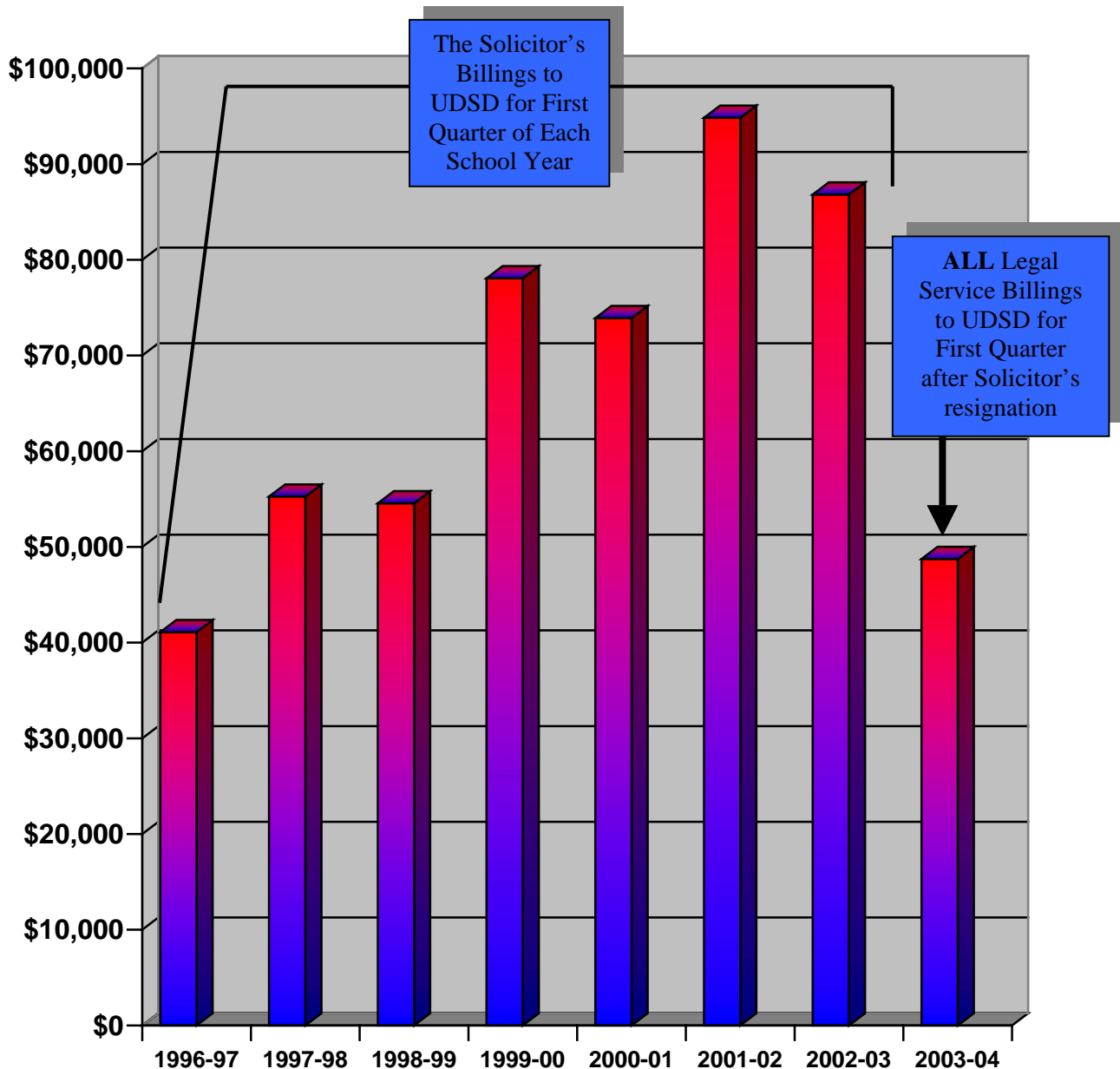
For the period July 1, 2003, to September 21, 2003, approximately one quarter of a school and fiscal year, UDSD spent \$48,735 for all legal services. During the same period in the previous year, UDSD spent \$96,247 for all legal services. (Approximately \$86,000 to the Solicitor and the rest to other attorneys.) The difference was \$47,512, or 49.4 percent less in the quarter after the Solicitor left. By this admittedly rough measure, it can be argued that, if UDSD had been managing the Solicitor’s charges more effectively, it might have saved approximately \$190,000 in legal expenses per year during the reporting period.

¹⁷ 24 P.S. § 4-406.

¹⁸ See pp. 16-18.

As part of UDSD's response to the report, it was argued that it was unfair to compare the first quarters for the two years we used. However, as discussed in the Department of the Auditor General's comments, it appears that there would have been a substantial savings to the school district even if an average amount of the first quarter's payments to the Solicitor for all of the years is used (see pp. 39-40). Furthermore, the school district itself noted both a reduction of budgeted legal expenses and actual legal expenses, partly as a result of the corrective actions it has taken (see p. 16).

Table No. 5 – Comparison of UDSD First Quarter Legal Billings



While we questioned charges totaling \$158,540, we concluded that UDSD should seek to obtain reimbursement for only a portion of that total, i.e., the amount paid (\$41,108) for services that were not authorized or for which UDSD was overcharged (see the itemization on p. 24). *The primary reason why reimbursement can be recommended for only a fraction of the total questionable charges is that, although there was ineffective oversight by UDSD itself, it may have received some benefit for many of the questionable services.*

As the December 8, 2003, letter from UDSD's current solicitor to the Department stated, the school district has, commendably, instituted a number of corrective steps which are positive and encouraging.¹⁹ In addition to hiring another new law firm to perform some work previously done by the Solicitor and obtaining reimbursement from the Solicitor for billing errors, the UDSD school board made changes in its use of special counsel that resulted in reported savings, required written fee agreements with each of its attorneys, instituted regular reviews of legal services based on cost-effectiveness and established new procedures for detailed reviews of legal bills, pre-approvals of large costs and conferences between school district officials/staff and the school district's attorneys. We endorse those steps and reiterate the need for them. The following recommendations are made as additions to, and part of specific procedures in furtherance of, those corrective actions.

In considering the recommendations, it should be noted that we are not suggesting that UDSD, or any other school district, select attorneys only on the basis of the lowest hourly rate. As is the case with all services, the rate is one factor to be considered, but the lowest rate does not always guarantee the best service. The objective must always be cost-effective, quality legal services.

UDSD should:

- Ensure that written legal fee agreements or engagement letters state the hourly rate and the identity of the persons whose time is being charged; identify specific charges for specific activities or costs; and contain notice provisions for changes in rates.
- Ensure that its review process for legal services, just as it should be for all other professional services, includes consideration of the quality of services and the reasonableness of the fees. When retaining new counsel, UDSD should do so through the use of a legal services Request for Purchase (RFP) process.
- Ensure that responsibility for all questions, comments and discussions with counsel regarding bills services rests with one school district official, preferably the business manager or the superintendent. Whoever the official is, he or she should review all monthly attorneys' bills for reasonableness and should not hesitate to raise questions regarding charges. He or she should request reviews of charges to significant projects by the school district officials who worked directly with legal counsel on those projects.

¹⁹ See pp. 16-18.

- Require all attorneys providing legal services for it to keep records documenting the justification or basis for charges for costs and expenses for at least three years.
- Discuss and negotiate in advance, with attorneys providing legal services to the school district, the scope of *non-legal administrative services* the attorneys will provide, the hourly rates, incidental costs the school district will pay for such services and costs and the justifications for so doing.
- Consult with its independent auditor to establish an appropriate audit plan to audit charges for legal services in the work of the school district's independent auditor and require periodic audits of at least a representative number of legal bills by the school district's business office.
- Evaluate the use of retainers to ensure they provide the school district with the means to determine appropriately that the time spent and reasonableness of the fees and are fair to both the school district and the attorney.
- Periodically evaluate the extent of the need for copies of legal papers and other documents generated by providers of legal services to the school district and the cost-effectiveness of alternatives such as in-house copying at school district offices and contracting with a vendor.²⁰
- Consider an alternative fee method for property tax assessment appeals and other activities related to assessments. *From the information obtained in this case, it does not appear that the appearance of a Solicitor, i.e., an attorney, to represent the school district at every proceeding was reasonable and necessary.*
- Prohibit billing at legal rates for non-legal services provided by law firms in connection with tax assessment hearings, student disciplinary proceedings and other activities and establish reduced rates for such services.
- Monitor and review all charges for attendance at seminars and training courses by attorneys who provide legal services to the school district. Appropriate written justification describing the school district's need to direct its attorney to attend the seminar or training and the reasonableness of the school district paying for it, should be required in all cases.²¹
- Ensure that all services which are charged in legal bills submitted to the school district, but which are not included in the attorney's written agreement or detailed engagement letters, are properly authorized by appropriate school district officials and documented, and specifically prohibit any charges for services that are not so authorized.

²⁰ In connection with UDSD's response, it was stated that the school district currently does all copying of legal papers in-house.

²¹ There may be appropriate justification for a government body to pay required professional training costs for attorneys employed on a full-time basis by the entity.

- Seek reimbursement of \$41,108 from the Solicitor for payments made for unauthorized services and overcharges. This amount consists of the following specific payments from the questionable payments discussed in Finding No. 1:

➤ Property site visits (see pp. 11-12)	\$ 14,003
➤ Unauthorized attendance at training courses and seminars (see pp. 13-14)	9,635
➤ Service of papers (see p. 14)	6,518
➤ Services related to Upper Darby Educational and Cultural Foundation(see p. 14)	1,734
➤ Services related to Upper Darby Community Partnership (see p. 15)	4,865
➤ Reviewing the bills of others (see pp. 15-16)	3,470
➤ Overcharges (see p. 16)	883
	<hr/>
	\$41,108

As discussed previously, UDSD's failure to provide regular oversight and the absence of adequate documentation prevents a complete determination of the total amount of the questionable charges that may be subject to a reimbursement claim. Our recommendation is based on (1) lack of authorization for the service, (2) the possibility of unnecessary duplication of service, and (3) the existence of some evidence that the hours were wrongly or incorrectly charged. The final determination of whether the school district has a sufficient basis to institute formal legal action to obtain the above reimbursement should be made by the UDSD school board. The board's decision and the basis for it should be made available to the Department.

- Conduct its own review and/or audit of the Solicitor's charges to determine if there is a basis for reimbursement of other questionable charges included in this report as well as any which UDSD finds as a result of its review.

Finding No. 2 – Five of six school districts which paid the Solicitor for legal services at various times from 1996 to 2003 failed to issue timely and accurate annual federal tax forms reporting those payments.

The Internal Revenue Service (IRS) requires organizations, including school districts, to report payments of attorneys' fees to the IRS by issuing an appropriate miscellaneous income form (known as the IRS 1099 form) annually. As stated previously, during the 1996-1997 through 2002-2003 school years, the Solicitor was paid approximately \$2.1 million by UDSD. In addition, during a portion of that period, the Solicitor also received payments for legal services from five other school districts. Those payments totaled approximately \$77,174.

During our investigation, we requested UDSD to provide us with copies of Form 1099s issued to the Solicitor by UDSD for 1997 to 2002. A comparison of the annual payments shown on the forms with the school district's records of payment disclosed substantial discrepancies. *Approximately \$220,190 paid to the Solicitor was not reported on the Form 1099s that were originally issued by UDSD.* We requested UDSD to review the calculations. As a result, UDSD issued corrected Form 1099s in April and June 2003, for the years 2000, 2001 and 2002. The Form 1099s issued by UDSD for 1997 and 1998, which failed to report \$49,247, have not been corrected. The amounts shown on the original and corrected 1099s and the amounts actually paid to the Solicitor are shown in Table No. 6.

Table No. 6 – UDSD Payments to the Solicitor and Form 1099 Reports

	1997	1998	1999	2000	2001	2002
Total payments to the Solicitor	\$ 221,774	\$ 229,058	\$ 256,151	\$ 331,898	\$ 331,911	\$ 447,384
Original 1099	\$ 189,458	\$ 212,127	\$ 256,151	\$ 283,048	\$ 278,862	\$ 378,340
Difference	(\$ 32,316)	(\$ 16,931)	\$ 0	(\$ 48,850)	(\$ 53,049)	(\$ 69,044)
Corrected 1099	NONE	NONE	NONE	\$ 331,898	\$ 331,911	\$ 447,384
Difference (currently unreported payments)	(\$ 32,316)	(\$ 16,931)	\$ 0	\$ 0	\$ 0	\$ 0

According to UDSD staff members, the failure to report the payments accurately on the Form 1099s was due to mistakes made when adjusting the totals to reflect calendar years rather than fiscal (school) years.

In addition to serving as Solicitor to UDSD, the Solicitor also provided legal services as special counsel to five other school districts at various times during the period covered by our review:

Penn-Delco, Delaware County
Springfield, Delaware County
Southeast Delco, Delaware County
Marple Newtown, Delaware County
Unionville-Chadds Ford, Delaware County/Chester County

The total by calendar year and school district is shown on Table No. 7.

Table No. 7 – Amounts Paid to the Solicitor by Other School Districts

School District	1998	1999	2000	2001	2002	Total
Marple Newtown		\$ 3,700	\$ 8,054	\$ 5,176	\$ 5,035	\$ 21,964
Penn-Delco		4,370	6,657	9,840	7,859	28,726
Southeast Delco		2,171	1,193		1,975	5,339
Springfield	\$ 903	2,608	2,116	574	270	6,471
Unionville-Chadds Ford	716	2,123	8,056	1,784	1,995	14,674
TOTAL	\$ 1,619	\$ 14,972	\$ 26,076	\$ 17,374	\$ 17,134	\$ 77,174

We requested copies of Form 1099s issued by the five school districts related to those payments and received the following responses:

Marple Newtown's staff informed us that it issued Form 1099s for each year, but could only find, and give us copies of the Form 1099s for 2001 and 2002. As part of its response to the draft report (see p. 36), the school district sent us computer-generated copies of the 1099s for each year.

Penn-Delco and Springfield did not issue Form 1099s to the Solicitor.

Southeast Delco issued a Form 1099 for 2002, but not for the other years (1999 and 2000).

Unionville-Chadds Ford issued Form 1099s for each year and provided us with copies. The totals on the forms were reconciled (i.e., equal to) to the amounts paid.

Representatives of Penn-Delco, Southeast Delco and Springfield stated that they were unaware that Form 1099s should be provided to the Solicitor. Additional reasons given for not issuing the forms were:

- The school district was presented with a Taxpayer Identification Number and, therefore, was under the impression that this made the Solicitor exempt from being issued a Form 1099 (Penn-Delco).
- The school district officials believed a corporation, which is not required to be issued a Form 1099, did the legal work. The superintendent stated that he believed the Solicitor

told the school district's business office that he was incorporated, but never provided any documentation (Springfield).

- Omission or oversight (Southeast Delco).

The Solicitor's law practice is not a corporation. Furthermore, according to the IRS, the exemption from reporting payments made to corporations no longer applies to payments for legal services and, therefore, attorneys' fees or gross proceeds must be reported via Form 1099s, even when paid to corporations that provide legal services. The only exceptions to the reporting requirement in this case are Springfield School District for 2001 and 2002 because the total amount paid to the Solicitor by the school district did not exceed \$600 in each of those years.

The Solicitor told OSI that he never told anyone that he was incorporated and did not request any school district to not issue him a Form 1099. According to the Solicitor, Form 1099s are not used in the preparation of his income tax returns; all of his payments from school districts are deposited into an account which is used as the basis for preparation and filing of tax returns by his accountant.

Conclusions and Recommendations

Proper financial management of school districts includes compliance with federal, state and local tax filing requirements for all individuals, vendors and other independent contractors who perform services for, and receive payments from, the school districts. In addition to violating legal requirements, the failure to issue timely and accurate Form 1099s undermines the confidence of residents and taxpayers in a school district's ability and willingness to conduct its business affairs properly.

In the case of UDSD, the failure to report all of the payments to the Solicitor on Form 1099s, when considered together with the large amounts of the payments and the habitual lack of oversight, adds to the overall picture of weak management of its payments to the Solicitor. UDSD eventually took corrective action, but did so after we contacted school district officials and asked them to provide us with their calculations that were used to obtain the figures on the Form 1099s. Even after that, UDSD failed to correct the Form 1099s for 1997 and 1998.

It is recommended that the school districts which failed to comply with Form 1099 filing requirements review all payments to the Solicitor and issue accurate Form 1099s. Additionally, those school districts should review all payments to independent contractors, including but not limited to persons providing legal services, to ensure that all payments are properly reported to the IRS. Those school districts should also ensure that the business managers and business office staff are aware of payment reporting requirements for tax purposes and require that a review of compliance with those requirements be part of the school districts' annual independent audits.

A copy of this report will be sent to the IRS and the Pennsylvania Department of Revenue for review in connection with compliance with reporting, filing and/or payment requirements on the part of the school districts and the Solicitor.

Finding No. 3 – The Solicitor failed to disclose school districts other than UDSD as sources of income on his Statements of Financial Interests filed pursuant to the Ethics Act.

The Public Official and Employee Ethics Act (the Ethics Act) requires that public officials and public employees, including solicitors, shall file an annual Statement of Financial Interests (SFI) for the preceding calendar year with the State Ethics Commission or the agency or body in which the individual is employed.²² The information required to be filed as part of the SFI is the name and address of any direct or indirect source of income totaling \$1,300 or more.

OSI reviewed SFIs filed by the Solicitor with UDSD for 1996 through 2002. The SFIs did not report as sources of income the five school districts for which the Solicitor performed legal services in addition to UDSD. The amount paid by the five school districts, by year, is shown in Table No. 7 (see p. 26). Furthermore, the Solicitor did not file any SFIs with the five school districts.

The Solicitor also did not report rental income from property he owned as a source of income on the SFI submitted to UDSD. On the SFIs, he listed his occupation/profession as attorney, but did not report any source of income other than UDSD.

One of the primary purposes of the Ethics Act disclosure requirement for other sources of income is to reveal potential conflicts of interest. As a result of the Solicitor's failure to disclose to UDSD that he received payments from other school districts, UDSD could not exercise oversight regarding any conflicts of interest that might arise from such representation.

Finally, by failing to submit SFIs to the other five school districts, the Solicitor prevented any of those school districts from being aware of possible conflicts of interest related to the Solicitor's work for any of the other school districts.

Conclusions and Recommendations

UDSD and the other school districts which made payments to the Solicitor for legal services should ensure that attorneys providing legal services are aware of the disclosure and filing requirements of the State Ethics Act and that SFIs are filed on a timely basis and maintained at the school district. Additionally, attorneys' SFIs should be reviewed at least annually by the school boards of the respective school districts to determine if any of the other sources of income reported by solicitors present a potential conflict of interest.

A copy of this report will be sent to the State Ethics Commission for its review of the failure to file SFIs and potential conflict of interest issues.

²² 65 Pa. C.S.A. § 1104. According to the Ethics Act and the regulations of the State Ethics Commission, full and part-time solicitors are required to file SFIs. 65 Pa. C.S.A. § 1104(a); 51 Pa. Code § 15.2(g).

**RESPONSES AND THE DEPARTMENT OF THE
AUDITOR GENERAL'S COMMENTS**

The Solicitor's response

The Solicitor's response is presented below in its entirety.

The Department of the Auditor General's Comments appear after the Solicitor's response.

March 24, 2004

Receipt is acknowledged of the draft copy of the Summary Report of the payments by the Upper Darby School District to me as former District Solicitor. At the request of the Board of School Directors, my resignation was submitted on May 5, 2003 effective on June 10, 2003 with actual services concluding shortly thereafter.

You have indicated that I may submit a written response which will be included in the Final Report. The purpose of this letter is to address certain portions of the Findings which are listed in the draft copy of the Summary Report as Finding No. 1 through Finding No. 3.

Finding No. 1 - Upper Darby School District failed to exercise oversight over payments to its Solicitor for legal services. It is recommended that the Upper Darby School District should seek reimbursement for \$43,111. for payments made for alleged unauthorized services and overcharges.

All items listed were submitted on detailed monthly invoices. The invoices were reviewed by the Business Office and approved by the Board of School Directors. More specific comments regarding the eight categories are as follows:

- a. Property site visits. The property site visits by the Solicitor pertained to the administrative portion of the process of the real estate tax assessment appeals. The appraiser was normally not hired unless the matter was appealed to the Court. There was no duplication of effort or expense to the School District. Approximately

90% of all real estate assessment appeals were resolved at the administrative level without involvement by or the expense of an appraiser. The property site visits resulted in enormous savings to the Upper Darby School District which are generally of a continuing nature. It has been suggested by several respected experts that the failure by an attorney to make a site visit is a disservice to the client which could rise to the level of malpractice.

- b. Excess hours at assessment appeal hearings. The records of the Delaware County Board of Assessment Appeals apparently reflect the dates and times of scheduled hearings. During the 2000 County-wide Reassessment process there were four auxiliary boards created to hear the enormous number of administrative appeals. The auxiliary boards often were scheduled in overlapping shifts. Efforts were made to monitor all administrative hearings. Results of overlapping shifts were recorded and charted to provide uniformity among the four diverse auxiliary boards. These tasks were normally performed at the conclusion of the administrative hearings in the evening so that the information would be readily available for subsequent hearings which often were scheduled on consecutive days with different auxiliary boards. Uniformity of assessments is a valid goal which serves to minimize challenges, potential class actions, and unnecessary expense.
- c. Unauthorized attendance at training courses and seminars. Permission was sought and obtained for every training course and seminar attended. Training courses and seminars were selected based on direct value to the Upper Darby School District and hours attended far exceeded the requirement for mandatory CLE. Attendance saved enormous amounts of money which otherwise would have been expended for less efficient legal research or the employment of outside legal counsel for specialized representation. Examples by which hundreds of thousands of dollars were saved include, but are not necessarily limited to, construction law, assessment litigation, and charter schools. Verbal and/or written reports were submitted following most

courses and copies of written materials offered to the School District.

- d. Service of papers related to student disenrollment cases. The Upper Darby School District was the pioneer in the enforcement of attendance requirements in the Commonwealth. Because of the innovative nature of the work of the District Attendance Office, the process and procedures were under constant review and revision. On every occasion involving service of documents, a District Administrator was aware of the process and the direct involvement of the Solicitor. The involvement of the Solicitor was reflected in letters, memoranda, hearing exhibits, testimony, and transcripts in addition to appearing on monthly invoices.
- e. Upper Darby Educational and Cultural Foundation, Inc. When the Board of School Directors decided to proceed with the formation of the foundation, the Solicitor was queried regarding his ability to provide the necessary legal services as opposed to retaining specialized counsel. The Solicitor was specifically instructed to include charges for legal services for the Upper Darby Educational and Cultural Foundation, Inc. in monthly billing statements to the Upper Darby School District. The Solicitor was told that the funds were considered as "seed money" by the School District to allow the Foundation to commence operations. Any funds obtained were subsequently donated to the Foundation in the form of ticket purchases and advertising.
- f. Upper Darby Community Partnership. The Upper Darby Community Partnership was formed to facilitate alternative dispositions for students taken to Fighting Court and to Truancy Court. The meetings were held during the workday, were chaired by a member of the School Board, and were attended on a regular basis by several District Administrators. The involvement of and attendance by the Solicitor was at the specific direction of the administration and after explanation of the process, value, and need to the School Board.

- g. Reviewing the bills of others. The Solicitor did not request that the bills of others be sent to him. The Solicitor did not instruct other counsel to submit invoices through his office. The Solicitor requested guidance regarding these matters and he was directed by the Business Office to continue past practice as opposed to having bills of others submitted directly because it was believed that he was in the best position to determine the quality and quantity of services that had been performed.
- h. Overcharges. The invoice dated December 3, 1997 has been reviewed and miscalculation has not been found.

Finding No. 2 - Five of six school districts which paid the Solicitor for legal services at various times from 1996 to 2003 failed to issue timely and accurate annual federal tax forms reporting those payments. There are no compliance issues on the part of the Solicitor because all payments received were deposited and reported as gross income to state and federal authorities on a cash basis.

Finding No. 3 - The Solicitor failed to disclose school districts other than UDSD as sources of income on his Statements of Financial Interests filed pursuant to the Ethics Act. Although the Solicitor was required to file annual Statements of Financial Interests, he was an attorney in private practice and not an employee of the School District. As a lawyer, he was neither required nor permitted to reveal information relating to the representation of other clients.

As Solicitor for the Upper Darby School District, I attempted to promptly and professionally handle all tasks presented to me by the School Board and Central Staff. I believe that the legal needs of the Upper Darby School District were always served with total devotion, dispatch, and dignity as my first priority.

The Department of the Auditor's Comments to the Solicitor's Response

Reimbursement

The amount of reimbursement to UDSD recommended in the draft report included \$1,580 for excess hours charged in connection with assessment appeals hearings and \$423 in overcharges. Based on information obtained from UDSD after the draft report was made available to the school district and the Solicitor, those amounts (totaling \$2,003) were dropped from the reimbursement (\$41,108) recommended in the final report. (See pp. 12 and 16.)

Property site visits

The Solicitor's statement that his property site visits pertained to the "administrative portion of the process of the real estate tax assessment appeals," supports our view that it was questionable for the school district to pay him for those visits at his hourly fee rate for legal services. While the vast majority of real estate assessment appeals may have been resolved administratively without the need for an appraiser, there is no evidence that UDSD would have required the services of an appraiser in any significant number of the cases that were settled. Therefore, it cannot be assumed, as the Solicitor asserted, that his site visits saved the school district the cost of an appraiser's services.

In a given specific case, it may be necessary for an attorney to make a site visit on behalf of a client. In this case, the Solicitor made hundreds of such visits routinely, based solely on his decision to do so, resulting in approximately \$14,000 in charges to UDSD without any record that the work was authorized by the school district, that it was necessary or cost-effective.

Assessment appeals hearings

Our report acknowledged that there may have been a basis for the hours charged by the Solicitor for work related to assessment appeal hearings in those cases when the hours charged appeared to exceed the hours the Assessment Board was in session. However, the Solicitor's billings and the available UDSD records did not adequately document the basis for the charges. While we cannot confirm the statements in the Solicitor's letter, information from UDSD indicates that it has records of all of the Solicitor's work at assessment hearings. Therefore, we are not recommending that UDSD seek reimbursement in connection with any of the charges for those services. However, this should not obscure the fact that UDSD failed to monitor and review the Solicitor's charges (see p. 12).

Attendance at training courses and seminars

The Solicitor claims that his attendance at training courses and seminars saved "enormous amounts of money" and "hundreds of thousands of dollars" are unsupported by any records or specific examples. Additionally, there is no record and no evidence to support the Solicitor's claim that approval was sought and obtained for every course. Finally, it is questionable, as a matter of good financial management, whether a school district should pay for

continuing legal education training for an attorney who, as an independent contractor offering legal services is, presumably, qualified to provide them.

Service of papers related to student disenrollment cases

We were given no records or other evidence that UDSD authorized the Solicitor to serve papers related to disenrollment cases. If this service were authorized, it would have been unnecessary and wasteful given the availability of others to perform the duties for substantially less than the Solicitor's hourly rate for legal services and the fact that the service does not have to be performed by an attorney. UDSD never monitored or evaluated the cost-effectiveness of this service.

Services to other organizations

The Solicitor's statements that he was instructed and/or directed to perform legal services for the Foundation and the Partnership are unsupported by any records and are not corroborated by information provided by school district officials. Neither UDSD nor the Solicitor have provided us with any information to identify the school board members or school district officials, present or past, who directed or authorized the Solicitor to perform those services on behalf of UDSD and to bill the school district for them.

Reviewing the bills of others

The main issue in regard to the Solicitor's reviewing the bills of others is that he billed UDSD for conducting the review work at his hourly rate for legal services. No one from UDSD has acknowledged responsibility for authorizing it. If it was authorized, the authorization itself was questionable, unnecessary and wasteful given the fact that the school district had its own business office staff to perform the reviews.

Finding No. 3

The Solicitor's response in regard to Finding No. 3 did not take into account the fact that, while he was an attorney in private practice, he was a sole practitioner and, therefore, may have been required to provide more specific information concerning his services for other school districts. Such services as a general matter, do not appear to be confidential because school districts are public entities. There does not appear to be a basis to consider the identities of other attorneys who perform services for them to be confidential in the absence of special circumstances. In any case, the Solicitor's disclosure responsibilities under the Ethics Act will be determined by the State Ethics Commission which will be sent a copy of the final report, including the Solicitor's response.

Finally, the report does not question the Solicitor's promptness and professionalism in handling tasks or his "devotion, dispatch and dignity." The findings of the report are focused primarily on the failure of UDSD to manage and oversee the payments for and the scope of the Solicitor's services effectively.

Responses of the Other School Districts Which Paid the Solicitor for Legal Services

The responses are summarized below rather than being presented verbatim. Where there are Department of the Auditor General's comments concerning a school district's response, they appear immediately after that response.

Penn-Delco School District

The school district was provided a corporate taxpayer identification number on all invoices from this attorney. The school district "was under the impression" that a 1099 form was to be issued only to individuals, not corporations, who were paid \$600 or more during a calendar year. Accordingly, the school district did not issue 1099s to this attorney. The school district has been made aware of the recent IRS change and will issue retroactive 1099s for all legal fees regardless of corporate status and will do so for all legal fees in the future.

Marple Newtown School District

The school district submitted 1099s for 2001 and 2003 and computer-generated copies of Form 1099s issued to the Solicitor for 1999 and 2002.

Southeast Delco School District

The school district's response stated that it agreed with the finding.

The Department of the Auditor General Comments Concerning Southeast Delco School District's Response

Southeast Delco School District did not provide us with copies of the missing 1099s or newly issued retroactive 1099s. The response also contained no information concerning what corrective action, if any, was being taken by the school district.

Springfield School District

The response stated that the school district believed the Department of the Auditor General's conclusions and recommendations were correct in relation to the issuance of Form 1099s to legal counsel. The school district is in the process of issuing 1099 forms to the Solicitor for 1998, 1999 and 2000 and revising its annual summary and transmittal forms to the IRS. The response also stated that the school district was utilizing computer software to flag vendors subject to Form 1099 requirements to help ensure compliance, the software program and data were analyzed in 2003 to be sure that all legal counsel payments were flagged and 1099s were then issued in accordance with IRS regulations.

The Department of the Auditor General's Comments Concerning Springfield School District's Response.

The corrective steps reported by Springfield School District are commendable.

Unionville-Chadds Ford School District

The school district had no objections to the report's findings, conclusions and recommendations that were made available to it. (Note: as the report indicates, Unionville-Chadds Ford School District issued timely and accurate annual federal tax forms reporting the payments made to the Solicitor to the IRS.)

Response of Upper Darby School District

Via a December 8, 2003, letter from the current solicitor, UDSD provided the Department with a summary of the actions taken relating to charges for legal services during the 2002-2003 school year. The summary of UDSD's corrective steps has been included in the final report (see pp. 16-18). After the draft report was sent to UDSD, the Department had discussions with the current solicitor concerning specific matters related to Finding No. 1. The Department of the Auditor General's comments appear immediately after each specific point presented by the current UDSD solicitor.

Charges for copying

The current solicitor stated that it was the responsibility of the former Solicitor to provide copies of all necessary documents; now UDSD is doing the copying in-house; and the costs, and therefore, the savings, cannot be determined.

The Department of the Auditor General's Comments

The Department has not concluded that UDSD's solicitor should not provide necessary copies or charge UDSD for such services. It has, however, pointed out the need for UDSD to conduct reviews to determine the most cost-effective way to provide needed copies of documents related to legal services, including outside contracting as well as doing the work in-house. There does not appear to have been any effort to do so prior to the disclosures concerning the payments to the former Solicitor.

Property site visits

The current solicitor stated that the property site visits were beneficial to UDSD because they enabled the former Solicitor to determine if property improvements were included in the County's reassessments. He also stated that the hourly rate of the appraiser used by UDSD was higher than the rate charged by the former Solicitor.

The Department of the Auditor General's Comments

UDSD's position is essentially the same as that of the former Solicitor. *However, no records or other evidence have been provided to substantiate whether and how much savings UDSD obtained.* While there may be some value derived from these services, the need for the school district's solicitor to charge an attorney's hourly rate to conduct visual drive-by observations of hundreds of properties to determine whether there have been additions, such as decks, appears to be unreasonable and unjustified. Furthermore, the services were not authorized by UDSD.

District justices' court matters

According to the current solicitor, the UDSD Assistant Superintendent for Instruction and Curriculum was aware that the former Solicitor attended hearings during each month; UDSD received notices of appeal concerning each hearing and the former Solicitor always sent the Assistant Superintendent a letter summarizing the case. OSI investigators were shown copies of such letters. (At that time, the investigators noted that the former Solicitor generally sent copies of each letter to eight to 10 people at UDSD.) According to the current solicitor, the reports can be used to verify that a particular hearing took place on a particular day, thereby showing that UDSD had documentation for the former Solicitor's work at district justices' court hearings. According to the current solicitor, the Assistant Superintendent for Instruction and Curriculum did not previously verify bills for legal services related to work on the district justices' courts, but does so at present.

The Department of the Auditor General's Comments

We agree that based on the information provided by UDSD, the school district has records showing the former Solicitor's work on specific cases in the district justices' courts. However, the information was not used to verify or check the former Solicitor's billings during the time the former Solicitor was providing legal services to UDSD.

Service to other organizations billed to UDSD

The current solicitor stated that UDSD school board members were on the board of the organizations and were aware of the (former) Solicitor's work for the organizations.

The Department of the Auditor General's Comments

The possibility that individual UDSD school board members were aware that the former Solicitor was doing work for the organizations does not necessarily constitute authorization for him to perform the work on behalf of UDSD and to charge UDSD for it. In our view, the payments for those activities were vivid demonstrations of the lack of proper oversight of the former Solicitor's charges by the school district.

Reimbursement

The solicitor also stated that he doubted that UDSD could successfully obtain reimbursement from the former Solicitor in response to our recommendations.²³

The Department of the Auditor General's Comments

The final decision concerning initiating formal action to obtain reimbursement rests with the school board and officials of UDSD, taking into account the best interests of taxpayers and residents. We request that the school district provide the Department with the basis for whatever final decision is made.

²³ The current solicitor also asked for detailed information concerning those items. It will be provided to him.

UDSD's Legal Expenses After the Resignation of the (former) Solicitor

The current solicitor stated that it was unfair to compare the school district's legal expenses for the first quarter of the 2003-2004 school year to the first quarter of the previous school year because legal costs were lower in the 2003-2004 school year for several reasons in addition to the resignation of the former Solicitor, e.g., the number of property tax reassessments was lower.

The Department of the Auditor General's Comments

As the report states (see pp. 20-21), the difference between the two quarters was almost 50 percent lower, a dramatic decrease in legal costs. Furthermore, the figures from the same quarter in all of the years included in our review (the 1996-1997 school year through the 2002-2003 school year) are consistent with the figures for the first quarter of the 2002-2003 school year: The average for the first quarter in all seven of those years was \$69,219 paid to the Solicitor only (we do not have been information for payments to other attorneys for legal services by quarter during those years). The \$69,219 average amount is \$20,484, or 30 percent, more than the amount for all legal services for the first quarter of the school year after the departure of the former Solicitor. If the seven-year average figure is used as the basis to determine the estimated possible savings to UDSD, the amount would be approximately \$82,000 per year, still a substantial savings.

Finally, UDSD's current solicitor reported a 33 percent decrease in the school district's legal costs after the former Solicitor left and after it initiated correction actions, as stated in the December 8, 2003, letter (see p. 16). This reflects an acknowledgement by the school district that with certain oversight and controls in place, it could, and did, realize substantial savings in its legal expenses. We are merely making the same acknowledgement.

On April 21, 2004, the current UDSD solicitor sent a letter to the Department (via telecopier), in response to the draft report and as a follow-up to meetings between the current solicitor and the Department staff on April 7 and 15. The letter contained statements of concerns and issues previously presented by the current solicitor and some new matters. The letter is set out below, followed by the Department's comments and references to comments made previously in the report, where appropriate.

April 21, 2004

RE: Auditor General Draft Summary Report, dated March 2, 2004 of its Investigation of the Upper Darby School District's Payments to its former Solicitor

This firm represents the Upper Darby School District ("School District"). The information in this letter is submitted to you in response to your March 2, 2004 letter to William J. Gaul, Jr. and as a follow-up to my recent meeting with you and my subsequent meeting with two members of your staff and a representative from the School District.

There are three areas of general concern regarding the draft report;

The Department's comments to this portion of the Response appear as Comment No. 1 on p. 50.

- (1) The draft report contains many "recommendations" that you are making to the School District, almost all of which had either already been adopted and/or implemented by the School District months before your investigation began or were adopted and/or implemented by the School District on its own without any input or direction from your office, after your investigation began. These changes by the School District were communicated to you by a letter to your investigator dated December 8, 2003. The draft report does not acknowledge these proactive efforts by the School District.
- (2) We believe that the majority of your written comments and conclusions (especially regarding proposed Finding No. 1) have adequate and available explanations. We have offered to provide additional information and proof to address these concerns, but you have informed us that you will be issuing the report without reviewing this additional information.

- (3) Some of the recommendations contained in the draft report appear to be contrary to law, especially in proposed Finding No. 3.

In this letter we have addressed each of your other comments by keying our responses to the headings set forth in the draft report. We again repeat our offer to provide the additional information that we showed to your staff investigators last week because we believe that many of the conclusions in proposed Finding No. 1 will be changed after your staff has the opportunity to review all available information.

Introduction and Background

The Department's comments to this portion of the Response appears as Comment No. 2 on pp. 50-51.

As indicated in your comments, the Upper Darby School District was audited by the Office of Auditor General for all years at issue in this draft summary report. For these years at issue there were either no findings made by your Department about the former solicitor, or if any findings were made, they did not deal with the former solicitor. Additionally, the School District has been audited by its independent financial auditors in each of its years. And the School District had an independent review of its internal controls for the 2003-2004 school year. All of these audits and/or reviews indicated that the books and records of the School District were in compliance with applicable accounting rules and contained compliant internal controls.

We are aware that your Department devoted a considerable amount of personnel and man hours to the production of this report. However, for the seven years covered by your draft summary report you do not identify which officials you interviewed nor the years in which they held office. Consequently, there is likely to be additional information available from officials that you did not interview and we are willing to provide that information. Additionally, we have asked for but have not been given copies of any of your staffs work papers or notes from their efforts so that we could more specifically reply to this draft report.

Executive Summary

The Department's comments to this portion of the Response appear as Comment No. 3 on p. 51

We do not agree with the conclusion set forth in proposed Finding No. 1. We believe that as far as this School District is concerned the 1099 issues set forth in proposed Finding No. 2 have been resolved. In proposed Finding No. 3 we believe that your "recommendations" are in conflict with the Pennsylvania Rules of Professional Conduct that govern attorneys. Additionally, there are practical impediments to enacting your "recommendations" in proposed Finding No. 3.

Recommendations

The Department's comments to this portion of the Response appear as Comment No. 1 on p. 50 and No. 4 on p. 51.

You set forth on pages 2, 3 and 4 of the draft report (and elsewhere in the report) certain "recommendations", almost all of which have already been adopted and/or implemented by the Upper Darby School District either months before your office began its review or before the investigation yielded the draft report. The School District adopted and implemented these recommendations without any input or direction from your office. The adoption and implementation of these recommendations was communicated to the investigators by letter dated December 8, 2003, a copy of which was again recently provided to your office.

Failing to acknowledge the School District's proactive efforts in enacting these changes gives the false impression that the School District took no action. These new policies and procedures were adopted and implemented by the School District in 2002 and 2003 as a result of a joint effort by the School Board, the School District's management team and the School District's attorneys. Many of these new policies and procedures are based upon previously established policies and practices of other states' Auditor's Offices and Education Departments. We would appreciate having the benefit of any additional policies and practices that your office or department has had used to a positive result.

Proposed Finding No. 1 - Upper Darby School District failed to exercise oversight over payments to its Solicitor for Legal Services

The Department's comments to this portion of the Response appear as Comment No. 5 on pp. 51-52.

We disagree with this conclusion for the following reasons. We have addressed your comments sequentially. You indicated in your introductory comments that Mr. Van Rensler had no written agreement or detailed engagement letter containing the terms of his services during his term as solicitor. However, the draft report sets forth in detail Mr. Van Rensler's hourly rate of charge as well as his areas of responsibility which were set forth on his bills. Mr. Van Rensler worked with almost every member of the School Board, School Administration and staff during the course of his representation of the School District. Each member of the management hierarchy usually received a copy of his work product if the specific matter was within their area of responsibility. Additionally, for all court or administrative hearings and pending litigation matters, Mr. Van Rensler prepared and circulated periodic summary reports which detailed the status of each case. We believe that reviewing all of these materials together with Mr. Van Rensler's bills gave the School District more than adequate information on Mr. Van Rensler's efforts. We agree with your conclusion set forth on page 16 of the draft report that all services charged for by Mr. Van Rensler were rendered.

We believe that the totality of this information (some of which has not yet been reviewed by your office) provides sufficient detail to adequately explain the terms of Mr. Van Rensler's engagement with the School District during the years at issue. You may also be aware that the practice of using engagement letters with clients was not required during the entire eighteen (18) year period that Mr. Van Rensler served as solicitor.

We agree with the following conclusions set forth in the draft report:

- Your office found no substantial evidence that charges were made by Mr. Van Rensler for services that were not rendered (draft report, page 16). Your draft report also contained additional purported overcharges but you have advised us that you will be reducing the amount alleged.
- The Solicitor's hourly rate and annual retainer did not appear to have been inappropriately high based on the charges paid by other school districts (draft report, page 6).

You are critical of several instances (not a common occurrence) where Mr. Van Rensler's bill included several tasks in one time entry. The draft report suggests that every billing entry includes information such as addresses of site visits or docket numbers of cases worked on. While this is generally an acceptable requirement, bullet billing is not acceptable. We do not believe that bullet billing was warranted for many of the matters that were included in Mr. Van Rensler's representation. For example, if Mr. Van Rensler appeared in Court on a day for which there were forty-six (46) cases listed on the docket, it would be unreasonable to expect that each case would be listed on the billing entry. To require that each case be listed would mean that the amount of time spent on the creation of the billing entry would likely exceed the amount of time spent on delivering the legal service of appearing at the hearings. Additionally, we do not think it is crucial that an attorney indicate on his bill whether the work was done in the a.m. or the p.m.

We disagree that no one at the School District questioned or reviewed Mr. Van Rensler's bills. All of Mr. Van Rensler's bills were reviewed by the business office and subjected to the generally accepted audit practice of testing by the business office and as part of the general School District audit. Additionally, his work product and effort were subject to the constant review by the officials and staff with whom he interacted.

You indicate on page 16 of the draft report that some payments to the former solicitor are "questionable." The refusal to review the additional information that we offered and our lack of access to your staffs work papers prevent us from fully addressing these allegations.

The Department's comments to this portion of the Response appear as Comment No. 6 on p. 52.

Copying and other administrative costs

We agree with your conclusion on page 11 that it is reasonable for a School District to be charged for costs in connection with its legal representation. We further agree with your conclusion that the costs that you have listed on page 10 are generally the type of costs that can be legitimately charged by a lawyer to a client. We do not agree with your conclusion that the School District did not monitor its expenses. The expenses were readily apparent to everyone reviewing Mr. Van Rensler's work product. The work product generated by Mr. Van Rensler was also transmitted by his office to the particular school official that he was working with on the matter at hand, as well as the management and School Board member that had oversight responsibility in that area. The purpose of submitting these copies to all relevant parties was to provide a check and balance system for the School District management. In fact copies of most correspondence was sent to the School Board President.

We believe that the charges for costs presented in this seven (7) year time period are reasonable and not of an amount that would yield the conclusion set forth in your report. We do not believe that there is any evidence that having a School District employee or an outside copying service making photocopies would result in a more effective or efficient delivery of this service.

We disagree with your conclusion that these costs were not monitored or that alternatives were not considered. These expenditures were monitored, alternatives were considered and any documentation that we required for this monitoring was submitted to the School District along with Mr. Van Rensler's work product. For example, copies of Sheriff's returns were attached to Complaints to show that cases were being filed. Copies of certified mail or proof of mailing receipts to indicate mail and postage charges were attached to copies of letters written or documents sent. Pictures from purchased film and copies of cases researched were included in files returned to the School District. These files are still available for your offices review. We understand that your investigators did not go through the actual School District files to determine that evidence of these charges were attached to Mr. Van Rensler's work product.

Property site visits

As you and your staff are aware, the County of Delaware went through the first countywide reassessment since World War II in the years 1998 through 2002. Because of the decreased state funding for public education during the seven year period of your review, the School District was completely dependent on the assessed value of local real estate to fund its budget. Consequently, the process of reassessment was enormously important to the financial health of the School District. The review of the initial proposed assessments of all properties within the School District occurred in 1998-1999 and was conducted by Mr. Van Rensler in

The Department's comments to this portion of the Response appear as Comment No. 7 on p. 52.

conjunction with outside appraisers and the School District's business office. Following the County's adoption of the initial reassessment in late 1999, there were many rounds of appeals and hearings in which the School District was required to participate. This countywide reassessment presented a unique but discreet opportunity to insure that all real estate within the School District was adequately and fairly assessed. This reassessment required an enormous commitment of legal resources which were provided by Mr. Van Rensler. Legal tasks included insuring that all real estate properly subject to taxation was included on the assessment rolls. All of this work had to be done in a limited amount of time by a small number of people including Mr. Van Rensler under strict time deadlines. The services of the School District's regular appraiser were not always immediately available since that firm was also doing work for the majority of the other school districts in Delaware County. Additionally, it was often either equal to or cheaper for the property site visits to be conducted by Mr. Van Rensler rather than the appraiser whose fees for a property review would be higher than Mr. Van Rensler's fees. Mr. Van Rensler's visits to properties prior to the appeal hearings resulted in a financial benefit for the School District when he was able to identify omitted or incorrectly under assessed properties. It was indicated to your staff investigators that many of the neighborhoods in Upper Darby Township contain row homes in which one hundred (100) properties can be viewed in less than an hour. Mr. Van Rensler's personal view of the property would be important to enable him to confirm the factual allegations in each assessment appeal as well as provide information for cross-examination at the appeal hearing.

Assessment appeals hearings

We believe, as you suggest, that the likely explanation for your comments is that the former solicitor was preparing for the hearing. As we have informed you, we have an individual file for every tax assessment appeal case and we believe that a review of these files and a review of Mr. Van Rensler's summary reports along with his bills adequately explain these time charges. We agree that you may be unable to resolve your concerns by only looking at Board of Assessment Appeal records. However, looking at all of the records will provide sufficient explanation for these charges. We are still willing to make this information available to you.

District justices' court matters

As set forth above, a review of each file, the summary reports and the bill will provide sufficient support for Mr. Van Rensler's charges. A review of only the bill and a review of the District Justice's office records may not provide sufficient information for your purposes. We met last week with two individuals from your staff who selected a particular date and we were able to identify and substantiate all of the charges set forth on the selected time entry by a review of individual files referenced in the former solicitor's bills as well as the summary reports.

Attendance at training courses and seminars

The Department's comments to this portion of the Response appear as Comment No. 8 on p. 52.

We believe that a formal School Board vote is not required for authorization in this type of matter. We believe that Mr. Van Rensler was properly authorized to attend the listed courses and/or seminars. However, this practice has been discontinued.

Service of papers related to student disenrollment cases

We are unable to fully respond to this comment because we have not had the opportunity to review this section with the former solicitor nor have we had the opportunity to review your work papers. We believe that there are valid legal reasons best determined by a lawyer to accompany attendance officers.

Services to other organizations billed to UDSD

- **Upper Darby Educational and Cultural Foundation**
- **Upper Darby Community Partnership**

The Department's comments to this portion of the Response appears as Comment No. 9 on p. 52.

Both of these organizations provide sufficient financial and educational program benefits to the School District. We do not believe that it was a requirement that the School Board vote to authorize the (former) solicitor to perform legal services on behalf of the School District by aiding in the organizing and structuring of a fundraising foundation and providing guidance as to available student discipline options to an anti-violence community group trying to stop school violence through youth programs.

School District officials serve as volunteer directors and/or officers of each of these entities and were aware of Mr. Van Rensler's efforts. Since this work was for the benefit of the School District and was conducted in conjunction with directors and/or officers of the School District, we do not believe that it should be the subject of your comments.

Work performed by the Solicitor's secretary

We note your comments that the services were performed at reduced rates.

Reviewing the bills of others

The Department's comments to this portion of the Response appear as Comment No. 10 on p. 52.

We cannot comment specifically since we do not have the benefit of your work papers. However, many of these charges were and are allocated between several municipalities as well as the School District and County. We believe that Mr. Van Rensler was performing this cost allocation.

Overcharges

You have informed us that there was an error in the draft report regarding this item and that you will be changing the narrative. We will comment to your revised narrative.

Conclusions and Recommendations

The Department's comments to this portion of the Response appear as Comment No. 11 on p. 52.

We incorporate our general concerns set forth on pages 1 and 2 of this letter in this section rather than restate them here. We do not believe that the conclusions set forth in this section of the draft report are supported by generally accepted auditing methods or techniques. We do not agree that you have provided sufficient legal basis on which the School District can rely to "obtain reimbursement" for the services that you list on page 21 of your draft report.

We are aware that your office has conducted a review of Mr. Van Rensler's legal bills for a seven year period. However, we do not believe that a review of Mr. Van Rensler's work product has been reviewed as part of this audit. Consequently, we do not believe that there is sufficient evidence to support the draft reports assertion that Mr. Van Rensler's legal work was not "necessary."

Proposed Finding No. 2 - *Five of six school districts which paid the Solicitor for legal services at various times from 1996 to 2003 failed to issue timely and accurate annual federal tax forms reporting those payments.*

The Department's comments to this portion of the Response appear as Comment No. 12 on p. 53.

To the extent that this proposed finding applies to the Upper Darby School District, we believe that the oversight was caused by the reconciliation of fiscal year payments with calendar year tax reporting obligations. We have introduced procedures to correct this oversight and will be guided by the requirements of the appropriate taxing authorities.

Proposed Finding No. 3 - *The Solicitor failed to disclose school districts other than UDSD as sources of income on his Statements of Financial Interests filed pursuant to the Ethics Act.*

This proposed finding does not apply to the School District. However, there are recommendations that are set forth in the report that pertain to this proposed finding. Specifically it appears that Rule 1.6 of the Rules of Professional Conduct for attorneys would prohibit an attorney from disclosing the representation of a client to that attorneys other clients. Additionally, we note that your recommendation only applies to public sector clients which would appear not to resolve the potential problem that you raise. Finally, you suggest a review of the ethics form that School Board members are likely not to be able to perform. Is your suggestion that they retain another professional to accomplish this task?

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Conclusion

We again repeat our offer to provide the additional information that we showed to your staff investigators last week because we believe that many of the conclusions in the draft summary report will be changed or eliminated after your staff has the opportunity to review all available information. Additionally, as indicated to your staff investigators last week we would like to review your work papers so that we may comment more specifically on the various elements in the draft report.

Please call me if you have any questions.

Very truly yours,



FRANCIS J. CATANIA

FJC\dml

The Department of the Auditor General's Comment No. 1

The final report states and acknowledges the corrective measures instituted by the school district and the timing of these measures.

We disagree with the current solicitor's statement that UDSD, by adopting those corrective measures, has already adopted or implemented most of our recommendations. For example, UDSD's corrective measures do not address the recommendation concerning the detailed information that should be written in fee agreements or engagement letters (Recommendation No. 1); establishing a specific school district official with responsibility for the review of legal bills (Recommendation No. 2); requiring solicitors to keep copies of records documenting the basis for charges for costs and expenses for three years (Recommendation No. 3); and including audits of legal services charges in the work of the school district's independent auditor (Recommendation No. 6).

The current solicitor's statements in paragraph (2) are based on a misunderstanding of the Department's role and the school district's responsibility for effective financial management. The report contains detailed information concerning the particular activities of the former Solicitor. As the report states, there was no evidence that the school district performed any regular or substantive review of the Solicitor's legal bills, that there was a record that certain services were authorized properly and that there was consideration of the cost benefit of those legal services to the school district prior to the 2002-2003 school year and the media disclosure concerning some of the costs.

We reviewed a sample of the records of legal work that UDSD has and, on that basis, did not recommend that reimbursement is warranted in connection with those specific services. Review of those records at this time would have no bearing on the question of the school district's failure to oversee the former Solicitor's activities effectively.

As stated in more detail below, the report's recommendations are consistent with applicable legal requirements and, in any case, the specific requirements of the Ethics Act are to be determined by the State Ethics Commission.

The Department of the Auditor General's Comment No. 2

The results of prior audits of UDSD by the Department are not relevant to the findings of this report. Those audits did not address payments for legal services or the school district's management of the payments for legal services generally. Future regular audits of UDSD by the Department will include consideration of this report's findings and recommendations and the school district's corrective actions.

We agree with the implication of the current solicitor's statements regarding the role of the school district's independent auditors. The report recommends that UDSD have its independent auditor include reviews of charges for legal services in its audits.

The response questioned why individual school district officials who were interviewed were not named in the report. First, no purpose would be served by naming individuals; second, the current solicitor was present at, or was aware of, virtually all of the Department's interviews of individual school district officials and what was said at those interviews. The response hints that "there is likely to be information available" from officials we did not interview. As the report notes, the school district's records do not identify which officials (board members or administrators) authorized the solicitor's activities in the areas where documentation for such authorization was lacking. No one has identified such individuals or acknowledged responsibility. In any case, such vague authorizations are not consistent with the Public School Code requirements or the public interest.

In several parts of UDSD's response, requests were made for access to the investigators' workpapers to help the school district respond more adequately. UDSD has had the draft report for approximately seven weeks and, in most cases, the material in the workpapers consists of UDSD records and statements of UDSD officials and staff. The purpose of providing UDSD with the draft report was to provide an opportunity to respond to the findings, conclusions and recommendations of the draft report itself, not the data in the Department's case file. Finally, UDSD has not questioned the validity or accuracy of the data. For those reasons, we do not believe access to workpapers is warranted.

The Department of the Auditor General's Comment No. 3

UDSD has not provided the Department with corrected Form 1099s for 1997 and 1998. We disagree, for reasons stated elsewhere (see p. 35), that the recommendations concerning Finding No. 3 are in conflict with the Pennsylvania Rules of Professional conduct.

The Department of the Auditor General's Comment No. 4

We agree that UDSD's new policies and procedures are appropriate steps. Implementation of the report's recommendations would add to the improvements and we look forward to working with UDSD and other school districts to ensure proper financial management of charges for legal services as well as all professional services rendered to school districts.

The Department of the Auditor General's Comment No. 5

The receipt by the school district officials and staff of copies of the Solicitor's work product does not constitute the equivalent of effective financial management and oversight of legal charges. In fact, the volume of copying may have contributed to the costs. There is no evidence that school district officials reviewed the legal costs and/or the work in a systematic and timely way. We found no evidence of the testing by the school district's business office referred to in the response.

The use of detailed engagement letters for solicitors, while not a requirement over the last 18 years, is, and, has been, an established, reasonable and effective part of a school district's system of management control. Unfortunately, no one at UDSD appears to have had a grasp of

the overall scope and/or limits of the Solicitor's duties. UDSD's response ignores, perhaps intentionally, the obvious and dramatic decrease in its legal costs after the Solicitor left and after the school district began to institute changes.

The Department of the Auditor General's Comment No. 6

As is the case in other parts of the UDSD response, the school district is not addressing a major element of the Finding: Submitting voluminous amounts of copies to different offices and individuals at the school district is not the equivalent of management or oversight of expenses and, in some cases, may have contributed to the questionable nature of some of these costs.

The Department of the Auditor General's Comment No. 7

The Department's comments presented on previous pages (pp. 11-13, 34-35, 38-39) apply here as well. We do not question the overall need for legal services related to assessment appeals. However, we do question whether some of the Solicitor's work was non-legal work for which an hourly legal fee was unwarranted. UDSD's response concerning the availability of individual case files regarding assessment appeals and district justices' court matters are significant to show the work was done. But, as noted earlier, those records are not a substitute for timely and systematic oversight of legal charges.

The Department of the Auditor General's Comment No. 8

As stated earlier (pp. 13-14, 34-35 and 39), there is no evidence of the authorization to attend the questioned courses or who gave the authorization. For the reasons presented earlier (pp. 14 and 35), we continue to maintain that the charges for service of papers were unwarranted.

The Department of the Auditor General's Comment No. 9

The statements in the school district's response ignored the fact that there was no authorization and, therefore, the finding stands with the report to the charges.

The Department of the Auditor General's Comment No. 10

No evidence was presented during the investigation that the Solicitor was performing cost allocation while reviewing the bills of others.

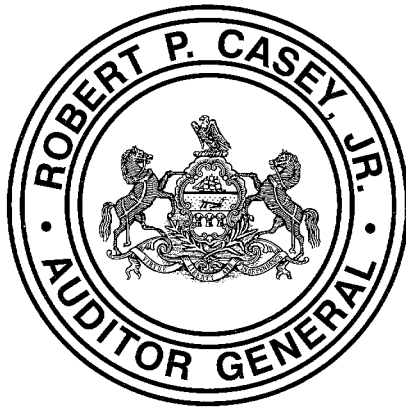
The Department of the Auditor General's Comment No. 11

The statements in the response regarding auditing methods are not applicable. The report is a summary of an investigation, not an audit, and the Department has never represented the inquiry as an audit. The factual basis of the report came from financial records, primarily those of UDSD itself, and interviews. The recommendation relating to reimbursement states that UDSD must determine whether there is a sufficient basis to seek reimbursement from the Solicitor. As noted earlier, we request that UDSD provide the Department with the results of that determination and the basis for it.

The Department of the Auditor General's Comment No. 12

As noted earlier, UDSD has not provided the Department with corrected Form 1099s for 1997 and 1998. That assertion in the response concerning Finding No. 3 is incorrect. UDSD is the school district to which there should have been the most comprehensive disclosure of the Solicitor's other sources of income, for the following reason, among others. If the Solicitor was permitted to review bills of others for services to UDSD, the UDSD school board and administrators should have been aware that the Solicitor had other school districts as sources of his income, particularly if the bills the Solicitor reviewed came from organizations or individuals employed by or having financial relationships with those school districts, such as solicitors.

The UDSD response also raised questions regarding the scope of the Ethics Act's disclosure requirements for solicitors. The questions should be presented to the State Ethics Commission for review.



DISTRIBUTION LIST

This report was distributed initially to the members of the UDSD school board, the superintendent, business manager and current solicitor of UDSD, and the former Solicitor, to officials and school board members of the other school districts referred to in the report, and to the following:

The Honorable Barbara Hafer
State Treasurer

The Honorable Vicki L. Phillips, Ed.D
Secretary of Education
Pennsylvania Department of Education

Connie Huber
Acting Comptroller
Labor, Education and Community Services

John J. Contino, Executive Director
State Ethics Commission

Jeffrey Bowers
Customer Services Coordinator
National School Boards Association

Ann Boyko
School Personnel Services Administrator
Pennsylvania School Boards Association

U.S. Department of Education
Office of Inspector General

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www.auditorgen.state.pa.us

Informational copies of the report have also been sent to the Office of Attorney General, the Delaware County District Attorney's Office, the Internal Revenue Service and the Pennsylvania Department of Revenue.

This report is a matter of public record. Copies of this report are available on the Department of the Auditor General's web site and from the Department's Office of Communications, 318 Finance Building, Harrisburg, Pennsylvania 17120.