COMMONWEALTH OF PENNSYLVANIA

A SPECIAL INVESTIGATION OF LUZERNE COUNTY COMMUNITY COLLEGE, LUZERNE COUNTY

Cafeteria Fund

January 2011

JACK WAGNER, AUDITOR GENERAL

PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL

COUNCIL 84 AFSCME UNION LABEL

January 13, 2011

Mr. Thomas P. Leary
President
Luzerne County Community College
1333 South Prospect Street
Nanticoke, Pennsylvania 18634-3899

Dear Mr. Leary:

On March 28, 2008, the Department of the Auditor General ("Department") received a written request from the Luzerne County District Attorney Jacqueline Musto Carroll to assist the Luzerne County Detective's Office, the Pennsylvania State Police, and the Nanticoke Police Department with an ongoing investigation into an alleged embezzlement of cafeteria funds from the Luzerne County Community College ("LCCC") cafeteria. It was alleged in the letter that there were missing cash deposits from the LCCC cafeteria totaling $50,000 per year and dating back to 2002. Upon receipt of this letter, the Department assigned the matter to its Office of Special Investigations ("OSI.")

OSI joined the investigation on April 7, 2008. OSI was specifically asked to ascertain the total dollar amount of missing cash deposits from the LCCC cafeteria based on interviews of witnesses and analysis of available records. This report contains the results of our investigation.

During the course of this investigation, we found the following:

- On 79 separate occasions between August 6, 2004, and November 28, 2006, Luzerne County Community College Associate Dean Peter Paul Moses, who was one of the persons entrusted with transporting daily deposits of the cash receipts of the college cafeteria to the college's business office, misappropriated cash receipts of the college cafeteria totaling in excess of $104,000 by failing to deliver the daily cash receipts to the college's business office and converting said cash to his own use.
- Mr. Moses appears to have violated provisions of the Public Official and Employees Ethics Act relating to conflicts of interest and failure to file Statements of Financial Interests.

OSI also addressed an allegation that vendor commission checks received by LCCC were being embezzled. OSI found no instances in which vendor commission checks were embezzled. However, we have made recommendations to help the college maintain better control over these revenues.

We acknowledge that LCCC terminated Mr. Moses on September 24, 2008, following his arrest on September 18, 2008, on charges of theft of funds from the LCCC cafeteria.

On July 16, 2010, after a jury trial in the Court of Common Pleas of Luzerne County, Moses was found guilty of theft by unlawful taking and theft by failure to make required disposition of funds received with respect to $17,524.66 worth of cafeteria deposits stolen on 13 separate occasions pursuant to a single scheme or course of conduct and guilty of two counts of receiving stolen property with respect to the two stolen laptop computers.

On August 26, 2010, Mr. Moses was sentenced to serve 4 to 23 months in the Luzerne County Prison and ordered to pay restitution of $19,122.66 to LCCC. The restitution order includes the repayment of $17,524.66 in missing cash deposits plus $1,598 representing the value of the two stolen laptop computers. Moses has indicated that he will appeal.

However, we determined that the total amount of money Moses stole from the LCCC cafeteria fund is at least $104,000. This amount was determined by assigning a weighted average dollar amount to 66 additional instances of stolen cash deposits that were not included in the criminal charges, totaling an additional $87,120.

Furthermore, we acknowledge that LCCC has already made a number of changes to the internal controls and safeguards relating to the cafeteria. Nonetheless, we urge LCCC to implement all of the recommendations made in this report. The Department of the Auditor General will follow up at the appropriate time to determine whether our recommendations have been implemented.

We are also forwarding copies of this report to the Pennsylvania Office of Attorney General, the District Attorney of Luzerne County, and the State Ethics Commission for their review and whatever further action they may deem appropriate.

We would also like to thank the Luzerne County District Attorney's Office, the Pennsylvania State Police, and the Nanticoke Police Department for the professionalism they displayed and the assistance they provided while working together on this investigation.

This report is a public document and its distribution is not limited. Additional copies may be obtained through the Department's website, *www.auditorgen.state.pa.us*.

Sincerely,

/S/

JACK WAGNER
Auditor General

TABLE OF CONTENTS

Executive Summary 1

Background and Introduction 4

Findings and Recommendations:

Finding I: On 79 separate occasions between August 6, 2004, and November 28, 2006, Luzerne County Community College Associate Dean Peter Paul Moses, who was one of the persons entrusted with transporting daily deposits of the cash receipts of the college cafeteria to the college's business office, misappropriated cash receipts of the college cafeteria totaling in excess of $104,000 by failing to deliver the daily cash receipts to the college's business office and converting said cash to his own use..7

Conclusions and Recommendations 17

Finding II: LCCC's Associate Dean Peter Paul Moses appears to have violated provisions of the Public Official and Employees Ethics Act relating to conflicts of interest and failure to file Statements of Financial Interests. 19

Conclusions and Recommendations 21

Additional Comments: 23

Luzerne County Community College's Response to Draft Report 25

Department of the Auditor General's Comments on Luzerne County Community College's Response to Draft Report 33

Distribution List 35

EXECUTIVE SUMMARY

FINDINGS	RECOMMENDATIONS
<u>FINDING I</u>: On 79 separate occasions between August 6, 2004, and November 28, 2006, Luzerne County Community College Associate Dean Peter Paul Moses, who was one of the persons entrusted with transporting daily deposits of the cash receipts of the college cafeteria to the college's business office, misappropriated cash receipts of the college cafeteria totaling in excess of $104,000 by failing to deliver the daily cash receipts to the college's business office and converting said cash to his own use.	We recommend that Luzerne County Community College officials: • Pursue all available legal actions against Moses, and against any assets in which he may have an interest, to recover the restitution ordered by the court in the criminal action, as well as all additional money that he embezzled from the Cafeteria Fund that was not included in the criminal action. • Increase the frequency in which external and internal audits are conducted of all accounts that deal in cash payments, including but not limited to the Cafeteria Fund; • Conduct a detailed daily reconciliation of the cafeteria sales receipts and the cash deposit amount received by the business office; • Conduct monthly detailed reconciliations of the Cafeteria Fund bank account; • Conduct an annual review of the policies and procedures regarding the Cafeteria Fund that were implemented in January 2007, and make adjustments to these policies and procedures as needed; • Separate the responsibility for preparing the deposit from the responsibility for transporting the deposit to the business office. Cafeteria management personnel should prepare the cafeteria cash deposit and a designated representative from the business office should pick-up the cash deposit from the cafeteria at the end of each day. Furthermore, the cafeteria personnel operating the cash registers

	during the business day should not be the same personnel preparing the deposit. This separation of duties will promote good internal control of cash received by the LCCC cafeteria; • Implement a deposit pick-up and receipt log that will be signed by both the business office representative picking-up the cash deposit and the cafeteria employee who prepared the cash deposit. At a minimum, this log should contain the amount of the cash deposit, date and time of pick-up, and signatures of both employees; and • Implement appropriate data and information technology safeguards over cash sales and receipts data presently stored in the memory chips of the cafeteria cash registers to ensure that data is not manipulated and/or deleted.
FINDING II: LCCC's Associate Dean Peter Paul Moses appears to have violated provisions of the Public Official and Employees Ethics Act relating to conflicts of interest and failure to file Statements of Financial Interests.	We recommend that LCCC officials: • Institute measures to ensure that all provisions of the Ethics Act are strictly adhered to by employees and officials of LCCC; and • Ensure that all outstanding Statements of Financial Interest are filed for all LCCC officials and employees who are required to file them.
ADDITIONAL COMMENTS: It was brought to the attention of OSI during the investigation that the LCCC cafeteria's vendor commission checks were possibly embezzled from the college. OSI reviewed this	We recommend that LCCC officials: • Review all commission checks received from vendors to ensure they are accurate. • Establish an accounting system, policies

allegation and determined that all vendor commission checks received by the cafeteria were properly endorsed and correctly deposited in the cafeteria fund bank account.	and procedures governing this accounting system, to ensure all vendor checks received are properly receipted, deposited, recorded, and posted to its ledger and summaries. • Periodically contact vendors to ensure the accuracy of both the college's records of commission checks received and the vendor's records of commission checks sent. • Perform periodic reconciliations of its bank statements to ensure that all commission checks received were deposited and properly recorded on its ledger and receipts summary.

BACKGROUND AND INTRODUCTION

On March 28, 2008, the Department of the Auditor General ("Department") received a written request from Luzerne County District Attorney Jacqueline Musto Carroll ("District Attorney"), requesting assistance with an ongoing investigation into suspected thefts from the Luzerne County Community College ("LCCC" or "college") cafeteria fund. The District Attorney indicated that we would be assisting the Luzerne County Detective's Office, the Pennsylvania State Police, and the Nanticoke Police Department in the investigation. By letter dated April 7, 2008, the Department responded to the District Attorney's request by indicating that the matter had been assigned to the Department's Office of Special Investigations ("OSI").

Community colleges in Pennsylvania were established in accordance with The Community College Act of 1963.[1] The Pennsylvania Department of Education ("PDE") describes its role in the administration and funding of community colleges as follows:

> [PDE] has the responsibility for certain critical aspects of community colleges which, through the enabling legislation, gave the State Board [of Education] the power to adopt policies, rules and regulations to provide for the establishment, operation and maintenance of community colleges.
>
> A major portion of the Commonwealth's responsibility toward community colleges in this regard is funding. Although community colleges are funded through a combination of Commonwealth, local, and student contributions the Commonwealth portion is often the largest piece.[2]

LCCC was founded in 1966 under the sponsorship of the Luzerne County Board of Commissioners and is guided by a fifteen-member Board of Trustees. LCCC's main campus is located on a 167-acre tract of land in the City of Nanticoke, Luzerne County, with 11 satellite campuses located throughout Northeastern Pennsylvania. LCCC offers a multitude of liberal arts and technology programs to prospective students. LCCC is accredited by the Commission on Higher Education, Middle States Association of Colleges and Schools, based in Philadelphia. LCCC provided credit and noncredit courses to approximately 16,000 students during the 2007-08 academic year.[3]

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[1] The Community College Act (Act 1963-484, P.L. 1132) was repealed and its subject matter transferred to the Act of March 10, 1949, P.L. 30, No. 14, art. XIX-A, as amended, 24 P.S. § 19-1901-A et seq. (Public School Code of 1949) by Act of July 1, 1985, P.L. 103, No. 31, Section 1.

[2] Pennsylvania Department of Education website: *www.portal.state.pa.us/portal/server.pt/community/postsecondary___higher_education/7236*, accessed on October 12, 2010.

[3] Luzerne County Community College website: *www.luzerne.edu/about/facts.jsp*, accessed on October 12, 2010.

When OSI was contacted in March 2008, the Luzerne County Detective's Office, the Pennsylvania State Police, and the Nanticoke Police Department had already targeted a suspect in the thefts from the LCCC cafeteria fund. The suspect was Peter Paul Moses ("Moses"), the Associate Dean of the Cafeteria, Security, Maintenance, and the Educational Conference Center. However, the amount of money missing from the LCCC Cafeteria Fund had not been determined, and OSI was asked to determine how much money had been stolen.

To conduct this investigation, OSI gathered and analyzed all available financial data and records from the LCCC business office and, with the assistance of law enforcement officers, interviewed several college employees who were familiar with the day-to-day operations of the LCCC cafeteria.

As a result of this analysis, OSI was able to determine that, between November 14, 2005 and November 28, 2006, there were 13 instances in which Moses received the daily deposit and was tasked with transporting the deposit to the business office. With respect to these 13 instances, records were available to show that precisely $17,524.66 was never delivered to the business office.[4]

Furthermore, OSI was able to determine that there were 66 additional instances between August 6, 2004 and September 6, 2006, in which daily cash deposits that Moses received were missing. However, records to establish the exact amount of cash missing were not available because the desktop computer on which such records were kept disappeared from the cafeteria office to which Moses had sole access.[5] By a process of extrapolation[6], OSI estimates that the amount of money missing in these 66 additional instances was $87,120. We determined that the total amount of money missing from the LCCC cafeteria fund is at least $104,000 as indicated in Finding I.

Based on the results of the investigation, Moses was formally charged on September 18, 2008, with felony theft by unlawful taking and/or theft by failure to make required disposition of funds received with respect to 13 instances of theft of cafeteria daily receipts committed pursuant to a single scheme or course of conduct and totaling $17,524.66.[7]

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[4] These 13 instances became the basis for the criminal charges that were lodged against Moses by the Luzerne County Detectives on September 18, 2008.

[5] Moses was the only college employee issued a key to the office in the cafeteria in which the computer was kept. The only other key to the office was in the custody of the LCCC security office.

[6] LCCC's Director of Finance and Accounting, in conjunction with OSI, determined that cafeteria cash deposits average $1,320 during the school year. We also determined that 66 additional cafeteria cash deposits were not made. Through this process we were able to extrapolate that at least an additional $87, 120 in cash was missing from the cafeteria fund. Multiply 66 times $1,320 (average daily cash deposit during the school year) equals $87,120.

[7] Moses was also charged with two counts of misdemeanor theft by unlawful taking and/or theft by receiving stolen property with respect to the theft of two laptop computers owned by LCCC. OSI played no role in investigating the theft of the laptop computers. This portion of the investigation was conducted by the Nanticoke Police Department, the Pennsylvania State Police, and the Luzerne County Detective's office.

OSI also determined that Moses appears to have violated provisions of the Public Official and Employees Ethics Act relating to conflicts of interest and failure to file Statements of Financial Interests.[8]

On July 16, 2010, after a jury trial in the Court of Common Pleas of Luzerne County, Moses was found guilty of theft by unlawful taking and theft by failure to make required disposition of funds received with respect to the $17,524.66 worth of cafeteria deposits and guilty of two counts of receiving stolen property with respect to the two stolen laptop computers.

On August 26, 2010, Moses was sentenced to serve 4 to 23 months in the Luzerne County Prison and ordered to pay restitution of $19,122.66 to LCCC. The restitution order includes the repayment of $17,524.66 in missing cash deposits plus $1,598 representing the value of the two stolen laptop computers.

LCCC was provided with a draft copy of this report for its review and comment, and its response is included at the end of this report followed by the Department's comments on the response.

[8] OSI also investigated an allegation that certain vendor commission checks received by LCCC had been embezzled. However, as explained in the Additional Comments section of this report, we found no instances in which vendor commission checks were improperly endorsed or incorrectly deposited.

FINDINGS AND RECOMMENDATIONS

<u>FINDING I</u>: On 79 separate occasions between August 6, 2004, and November 28, 2006, Luzerne County Community College Associate Dean Peter Paul Moses, who was one of the persons entrusted with transporting daily deposits of the cash receipts of the college cafeteria to the college's business office, misappropriated cash receipts of the college cafeteria totaling in excess of $104,000 by failing to deliver the daily cash receipts to the college's business office and converting said cash to his own use.

The OSI investigation of the alleged theft of cash from the LCCC cafeteria consisted of an analysis of several sets of the college's bookkeeping records obtained from the business office and a calendar log obtained from an LCCC cafeteria employee, followed by interviews of several LCCC employees employed during the period in which cafeteria deposits went missing.

LCCC Employee Interviews:

The interviews summarized herein were primarily conducted by OSI and provided a basis for understanding the day-to-day operations of the LCCC cafeteria. We note that all interviews of LCCC personnel were conducted in the presence of law enforcement officers assisting in the investigation. Through these interviews, we were able to obtain an understanding of how cafeteria deposits were created and transported, which LCCC staff members handled cash, and the basis for tracking the person tasked with transporting cash from the cafeteria to the business office.

On April 14, 2008, OSI interviewed LCCC's Director of Finance and Accounting who, in response to questions, provided the following information:

- He has been employed in this capacity at LCCC since April 2006.
- The LCCC cafeteria has the ability to operate three cash register machines during operating hours.
- Unless the cafeteria is busy, only one cash register is used.
- The LCCC cafeteria averages $1,200 to $1,600 in sales per day.
- The LCCC cafeteria does not accept personal checks for purchases, only cash.
- The cafeteria daily deposit consists of cash for food purchases (from students, faculty, etc.) and commission checks from vendors.
- The checks received from vendors relate to commissions that LCCC receives on the sale of the vendors' products.

- Because the cafeteria operates separately as its own entity in the college's financial reporting structure, it is possible for the cafeteria deposit to include a check payment from another LCCC affiliated entity for a fundraising event or party catered by the cafeteria.
- His responsibilities at LCCC relating to the cafeteria account are to record the daily cafeteria deposit, create the journal entry for this daily deposit, and then post this journal entry to the general ledger.
- At the end of the day, the cafeteria deposit is prepared by the Cafeteria Manager or Assistant Manager.
- The cash and checks are placed in a sealed envelope and an 8½-by-11-inch sheet of paper is attached to the sealed envelope.
- The 8½-by-11-inch sheet of paper contains a summary of the deposit and the day's receipts attached.
- The deposit is often prepared in the cafeteria. Once the cafeteria deposit is prepared, it is transported from that location (the location in which it was prepared) to his office.
- The Cafeteria Chef Manager, the Cafeteria Assistant Chef Manager, or Moses would bring the deposit to his office.
- Moses was not responsible for preparing the deposit.
- Once the deposit is transported to his office, it is received by him or one of the two secretaries in the office, and then the daily deposit is immediately placed in the business office safe.
- The deposits are picked up every two to three days by an armored car service.
- Approximately one or two weeks after the commencement of his employment at LCCC [in April 2006], he noticed that daily cash deposits were not being received by his office.
- He would receive a daily cafeteria cash deposit, including the cash register tape which included a date and time on it, but the next deposit he would receive was two days later and the cash register tape attached to this deposit would be missing one full day's worth of receipts.
- In late April or early May of 2006, the decision was made by LCCC officials and its Certified Public Accounting firm to obtain from the computer in which the information was stored all of the cash register back-up data from the cafeteria's inception in 1998 to date.
- As soon as this decision was made, he and other college officials went to download the data from the computer, but the computer was gone.
- He presumes the computer was stolen, because it would support his suspicion that daily deposits were being stolen.
- The computer that backed-up all of the cafeteria cash register data was housed in an office that was occupied solely by Moses.
- To his knowledge, Moses was the only college official who had a key to that office.
- The LCCC Information Technology Department confirmed that the computer was no longer connected to the college's computer server and that it was no longer receiving the transmission of the cash register receipt back-up data.

- The Cafeteria Chef Manager had been suspicious long before the Director of Finance and Accounting became employed at the college that cafeteria daily deposits were not being made.
- The Cafeteria Chef Manager started keeping a daily calendar journal of who was tasked with transporting the deposits to the business office.
- Following the discovery of the calendar log, the criminal investigation commenced, and the college implemented stricter policies and procedures for handling the cafeteria funds and deposits.
- The LCCC Board of Directors formally adopted a new cafeteria funds policy and procedure at a meeting in January 2007.

On May 1, 2008, OSI interviewed LCCC's Cafeteria Chef Manager who, in response to questions, provided the following information:

- He has been employed as the Cafeteria Chef Manager at LCCC for the past 10 years.
- He started keeping a calendar log of who was tasked with making deposits, because he started noticing deposits were not going to the business office, and the business office was calling him with questions about where the deposits were.
- He started the calendar log around the month of September 2005.
- No one told him to keep the calendar log. It was his own idea.
- No one asked him to record daily deposit amounts. He recorded them on the calendar when he remembered the amount or remembered to do so.
- The other handwriting on the calendar log was that of the Cafeteria Assistant Chef Manager.
- The Cafeteria Assistant Chef Manager maintained the calendar log entries in his absence.
- He kept the calendar log in an office desk drawer, which was not locked.
- On one occasion, he received a telephone call from the business office about a missing deposit.
    - Following this telephone call, he reviewed the calendar log and learned that Moses was noted on the calendar as being the person tasked with taking the missing deposit to the business office.
    - He asked Moses about the deposit, and Moses stated that he handed two deposits to one person in the business office and a third deposit to a different person.
    - The business office questioned its employees and determined that one employee did receive two deposits from Moses on the day in question, but the other person to whom Moses claimed he handed the third deposit never received any deposit from Moses on the day in question.
    - The issue was resolved when Moses subsequently, a few days later, brought the missing third deposit to the business office.
- In April 2006, he held an informal meeting with Moses (his boss) and the LCCC Director of Finance and Accounting to discuss missing deposits, at which time the calendar log was discussed.

- When he stated that the days that the deposits were missing were the same days that Moses was tasked with taking the deposits to the business office, Moses said nothing.
- A notation on the calendar for October 27, 2005, that reads "coke [Coca-Cola] [$]9800" indicates a deposit of commission checks.
- A notation on the calendar for October 27, 2005, that reads "catering [$]9445" indicates an LCCC department paid the cafeteria for food services that day.
- A notation of "payment on accts" also means that an LCCC department made a payment on an outstanding balance for catering services provided.
- A notation of "charge" on the calendar indicates a credit for accounts receivable.
- In the past, it would not be uncommon to combine several days of cafeteria sales receipts into one deposit.
- The college has discontinued the practice of combining several days of sales receipts into one deposit.
- Moses had an office in Building #14, and this office is where the computer was maintained that backed-up daily receipts for cash register sales in the cafeteria.
- This computer is currently missing.
- He never prepared a deposit that combined cash from cafeteria sales and commission checks received.
- When Moses (or his secretary) received commission checks, the checks would be forwarded to him for processing.
- He always prepared separate deposits for cash and checks received.
- He and the Assistant Chef Manager were the only people who ever prepared a cafeteria deposit.
- At the beginning and end of the day, each of the cafeteria's three registers has a $250 balance used for providing change during operations.
- At the beginning and the end of each day, the cafeteria also has a change bank with a balance of $250.
- This totals $1,000 in cash-on-hand each day that is used for daily operations.
- The college usually uses one register per day unless it gets busy.
- The other two cash registers and the change bank are kept in the cafeteria safe until needed.
- In January 2008, the LCCC Dean of Human Resources and Administration instructed him to change the combination on the cafeteria safe, after an incident in December 2007, in which Moses was caught stealing $1,200 and then paying the money back.
- The cafeteria is in Building #14, and the business office is located in Building #5, on two opposite sides of the college campus.
- He received approximately 10 different calls from the business office about missing cafeteria deposits.
- Shortly before he started maintaining the calendar log of daily deposits, he asked Moses about the missing deposits and Moses told him not to worry and they would show up or he left them in his car or coat pocket.

- Deposits were usually made the next day after they were prepared unless Moses came to the cafeteria and offered to take them to the business office.
- He never questioned Moses about why he wanted to take the deposits because Moses is his boss.
- If he prepared a deposit and Moses did not request to take it to the business office, he would store it in the safe until the next day.
- Currently, deposits are taken to the business office every day, no exceptions, and the person taking the deposit is escorted by campus security personnel.

On May 1, 2008, OSI interviewed LCCC's Cafeteria Assistant Chef Manager who, in response to questions, provided the following information:

- She has been employed as the Cafeteria Assistant Chef Manager at LCCC for the past 10 years.
- She sometimes made entries on the calendar log if her boss, the Cafeteria Chef Manager, was off.
- She prepared only cash deposits, not commission check deposits, and in these cases was tasked with taking the deposits to the business office.
- At first, nobody other than she and the Cafeteria Chef Manager knew about the calendar log that tracked who was tasked with making cafeteria cash deposits. Later on, someone in Building #5 (location of the business office) knew about calendar log.
- The dollar amounts for daily cash deposits were logged on the calendar, so that if the business office called to say a deposit was not received, the cafeteria could say what the cash deposit amount should have been.
- She did not know why cash deposit amounts were not listed on the calendar every day a deposit was created.
- She and the Cafeteria Chef Manager decided to start keeping a calendar log of who made cafeteria deposits, because the business office was calling and stating the deposits were not received, and they did this to keep track of who was tasked with taking the deposits to the business office.
- She thought the calendar log was a good idea because she was concerned that deposits kept turning up missing or were never being made.
- Once the calendar log was created, she always knew that on days deposits were never made, Moses was the person who was tasked with taking the deposit to the business office.
- She never suspected anyone other than Moses of taking the deposits.
- She recalled an incident that occurred with Moses and the cafeteria safe as follows:
    - On one occasion Peter Moses came into the kitchen around 10:00 a.m. and requested that she take a walk around the cafeteria and make sure the cafeteria did not need any additional supplies or material.
    - She knew, and Moses knew, that the cafeteria did not need supplies, and it was her opinion that Moses made this request to remove her from the area of the safe.
    - The Cafeteria Chef Manager was off this day in question.

- Another cafeteria worker observed Moses at the cafeteria safe, and then Moses left abruptly.
- When she went to check the safe, after Moses left the cafeteria, the cash deposit was missing that she knew was in the safe from the day before.
- She called Moses, got his voice-mail, and later found out that the cash deposit was never made.
- The other cafeteria worker did not observe Moses taking the deposit, only that he was at the safe in the kitchen office.
- Moses obstructed the cafeteria worker's view of the safe with his physical positioning.

Upon completion of these interviews, OSI was provided with various sets of the LCCC cafeteria's financial records and a copy of the actual calendar log maintained by the Cafeteria Chef Manager. These documents were provided by various sources, including the Director of Finance and Accounting, the Cafeteria Chef Manager, the Pennsylvania State Police, and the Nanticoke Police Department. The list of records reviewed by OSI during our analysis is as follows:

- Photocopy of actual calendar log of LCCC cafeteria deposits, period covered September 22, 2005, through April 18, 2007, obtained on April 14, 2008.
- LCCC Cafeteria Cash Receipts Summaries for the period July 1, 2004, through June 30, 2005, July 1, 2005, through June 30, 2006, and July 1, 2006, through June 30, 2007, obtained on April 14, 2008.
- Bank statements for the LCCC Cafeteria fund for the fiscal years July 1, 2004, through June 30, 2005, July 1, 2005, through June 30, 2006, and July 1, 2006, through June 30, 2007, obtained on April 18, 2008.
- LCCC Cafeteria, Income from Operations report for the period July 1, 1999, through December 31, 2007, obtained on April 14, 2008.

The Cafeteria Cash Receipts Summaries were an integral part of the analysis, because (1) they confirmed that the missing daily deposits were neither received nor posted by the business office, and (2) they could be cross-referenced to the deposit information entered by the Cafeteria Chef Manager and the Assistant Chef Manager on the calendar log. These features ultimately allowed OSI to determine, with respect to the 13 instances included in the criminal charges, the exact dollar amount of missing cash deposits and the LCCC employee tasked with making the cafeteria deposit.

LCCC Cafeteria Fund Analysis Summary:

The results of OSI's investigation and analysis are as follows:[9]

- The time period analyzed was July 1, 2004, the beginning date of the Cafeteria Cash Receipts Summaries, to April 18, 2007, the date of the last handwritten entry on the calendar log.
- The Income from Operations reports for the LCCC cafeteria indicated the following:
  - Cafeteria sales for the period July 1, 2007 to December 31, 2007 were $135,117 and a net loss from operations of $10,664 was reported.
  - Cafeteria sales for the period July 1, 2006 to June 30, 2007 were $245,306 and a net loss from operations of $8,572 was reported.
  - Cafeteria sales for the period July 1, 2005 to June 30, 2006 were $187,082 and a net loss from operations of $46,925 was reported.
- The calendar log maintained by the Cafeteria Chef Manager covered the period September 22, 2005, through April 18, 2007, a span of 574 calendar days.
- The calendar log noted days or periods of time employees were on vacation, days the cafeteria closed early or closed for the entire day, and the reason for the closing, as well as special circumstances under which the cafeteria operated.
- The calendar log in most instances identified the amount of the cafeteria daily deposit and which college employee was tasked making the daily deposit. OSI determined that in some instances (particularly the earlier dates) no notation was made as to which employee was tasked with making the deposit or the dollar amount of a deposit.
- OSI also determined that the calendar log in some instances showed that several cafeteria cash sales deposits, covering periods of more than one day, were combined into one total deposit.
- A total of 317 daily deposits were noted on the calendar log from September 22, 2005, through April 18, 2007, with the person tasked with making the deposit as follows:
  - Moses was tasked with making 99 of the 317 daily deposits.
  - The Cafeteria Chef Manager was tasked with making 185 of the 317 daily deposits.
  - The Cafeteria Assistant Chef Manager was tasked with making 5 of the 317 daily deposits.
  - Several other LCCC employees were tasked with making the remaining 28 of 317 daily deposits. These are categorized as "miscellaneous" because those deposits occurred infrequently or this duty was outside of the scope of the employees' normal responsibilities.
- There were 208 instances in which the cafeteria cash sales deposit amount was noted on the calendar log.

[9] This information was set forth in a written report, including as attachments all documents used by OSI in formulating its conclusions, that was forwarded on May 22, 2008, to the Luzerne County District Attorney's Office, the Pennsylvania State Police, and the Nanticoke Police Department.

- In 202 of the 208 instances, OSI was able to cross-reference, without discrepancy, the dollar amount noted on the calendar log to the Cafeteria Cash Receipts Summary provided by LCCC.
  - OSI found six instances in which the calendar log cash deposit amount differed from the amount posted to the Cafeteria Cash Receipts Summary. However, the dollar amount of the difference was considered by OSI to be de minimis in all six instances.
  - In one of the six instances, the discrepancy was explained by the fact that the dollar amount of the deposit listed on the calendar was a combined deposit that included catering funds received.
- OSI found 13 instances in which a cash deposit dollar amount was noted on the calendar log but the Cafeteria Cash Receipts Summary showed that no deposit was received by the business office.
- The total dollar amount involved in these 13 instances was $17,524.66.
- In all 13 instances, Moses was noted on the calendar log as being tasked with transporting the cash deposit to the LCCC business office.
- OSI found no instances of any other LCCC employee who was tasked with making a cafeteria cash sales deposit in which the deposit was not received and recorded on the Cafeteria Cash Receipts Summary.

Table 1 indicates the date, dollar amounts, and LCCC employee indicated on the calendar log as being tasked with making the 13 cafeteria cash deposits that were never received by the LCCC business office.

Table 1
Calendar Log and Cash Receipts Summary Discrepancies

Instance Number	Date of Deposit	Amount of Deposit Recorded on Calendar Log	Employee Making Deposit as Recorded on Calendar Log
1	Monday, November 14, 2005	$ 1,400.18	Moses
2	Monday, November 21, 2005	1,221.16	Moses
3	Thursday, December 1, 2005	1,054.00	Moses
4	Tuesday, January 17, 2006	1,635.69	Moses
5	Friday, February 10, 2006	1,158.39	Moses
6	Monday February 27, 2006	1,415.35	Moses
7	Wednesday, April 19,2006	1,317.20	Moses
8	Tuesday, September 5, 2006	1,645.79	Moses
9	Wednesday, October 11, 2006	1,686.00	Moses
10	Monday, October 23, 2006	1,411.37	Moses
11	Thursday, November 2, 2006	1,407.31	Moses
12	Thursday, November 9, 2006	1,066.44	Moses
13	Tuesday, November 28, 2006	1,105.78	Moses
	Total:	**$17,524.66**	

In addition to the 13 instances listed in Table 1, OSI found 40 other instances between August 6, 2004, and September 20,, 2005, in which no cash deposit was recorded on LCCC's Cafeteria Cash Receipts Summary. However, these instances occurred prior to the time period covered by the calendar log, and, as previously stated, the desktop computer that stored the back-up information for cafeteria deposits during this time period was reported to law enforcement as missing/stolen, so there is no record of the amount of the cash receipts for these 40 additional instances.

OSI also found 26 additional instances between September 29, 2005, and September 6, 2006, which was within the time period covered by the calendar log, in which Moses was tasked with making the deposit but no deposit was received by the business office or posted to the Cafeteria Cash Receipts Summary. However, in these 26 instances, no notation of the amount of the daily deposit was entered on the calendar log.[10] Even though the deposits went missing while in Moses' possession, law enforcement officials decided not to charge Moses criminally with these 26 instances because no record of the exact dollar amount for these deposits could be found. The only two sources of the exact dollar amount (other than the handwritten entries on the calendar log) were the back-up computer and the cash register tapes. Both were kept in the office to which Moses had the only key, and both were later missing.

In an interview of the LCCC Director of Finance and Accounting conducted by the Nanticoke Police Department on February 27, 2008 (before OSI became involved in the investigation), the LCCC Director of Finance and Accounting, in response to questions, provided the following information:

- He was hired in April 2006.
- Soon after, on April 19, 2006, he discovered that a cash deposit of cafeteria funds was not made to his office for April 18 and 19, 2006.
- He immediately reported the matter to his supervisor, the Associate Dean of Finance.
- The Associate Dean of Finance then called a meeting with Director of Finance and Accounting, the Cafeteria Chef Manager, and Moses.
- This meeting was held in the cafeteria during the month of April 2006.
- During this meeting, the Cafeteria Chef Manager informed the Director of Finance and Accounting that all of the cafeteria cash registers transmit backup documentation of sales and register receipts to a desktop computer located in an office room, which Moses customarily used as a smoking room.
- The Director of Finance and Accounting then went to that location to access that data, but discovered that the computer was missing.
- He stated: "When I went to that office there were only two cords left of that computer."

We further note that this computer has never been found.

[10] The Cafeteria Chef Manager and the Assistant Cafeteria Chef Manager did not believe that it was critical to always enter the dollar amount of the daily deposit on the calendar log, because a record of the amount was readily available on the back-up computer or the cash register tapes. They failed to anticipate that the back-up computer and the cash register tapes would turn up missing.

Because the back-up computer is missing and all physical receipts, cash register tapes, and deposit tickets are also missing, there are no existing records -- other than the calendar log – to establish the precise amount of cash that was embezzled from the LCCC cafeteria fund during fiscal years 2004-05, 2005-06, and 2006-07. However, it is possible to make a reasonably accurate estimate the amount of money stolen by a process of extrapolation.

The Director of Finance and Accounting first determined that the instances of missing deposits occurred during the months of peak attendance at LCCC. Therefore, he calculated the average daily receipts only for the months of peak attendance (eliminating summer and winter vacation periods) to arrive at a weighted average of $1,320 per day.[11] By this method, the money stolen in the 66 additional instances is estimated to be $87,120.

In a follow-up interview on October 14, 2008, the Director of Finance and Accounting, in response to questions, provided the following information:

- Following the April 19, 2006, discovery that the computer containing cafeteria sales and receipts information was missing, he initiated talks with the cash register vendor to install "memory" directly into each cash register. This would then allow the LCCC cafeteria to maintain back-up sales and receipt information.
- The memory was installed on December 4, 2006. Following this installation, there were no instances of missing cafeteria cash deposits until December 4, 2007.
- On December 4, 2007, Moses was tasked with making a cafeteria cash deposit in the amount of $1,228, which was initially not received by the LCCC business office.
- He and the Associate Dean of Finance confronted Moses about the missing deposit.
- When Moses was confronted, he admitted that he had not made the deposit, and he eventually returned the money to LCCC.
- On February 21, 2008, he personally made the deposit of $1,222, the amount returned by Moses.

Attempts to interview Moses about the additional instances of missing cash deposits and about the criminal charges pending against him were unsuccessful because his attorney refused to allow an interview of his client.

The criminal complaint filed against Moses on September 18, 2008, charged him with theft by failure to make required disposition of funds received and/or theft by unlawful taking with respect to 13 separate instances of theft of cafeteria deposits committed pursuant to a single scheme or course of conduct and totaling $17,524.66, and two counts of receiving stolen property with respect to two stolen laptop computers.

[11] OSI concurs with the methodology used by the Director of Finance and Accounting for determining a weighted average dollar amount for cafeteria cash receipts.

On July 16, 2010, after a jury trial in the Court of Common Pleas of Luzerne County, Moses was found guilty of theft by unlawful taking and theft by failure to make required disposition of funds received with respect to the $17,524.66 worth of cafeteria deposits and guilty of two counts of receiving stolen property with respect to the two stolen laptop computers. These two laptop computers were the property of LCCC and entrusted to Moses as an employee of the college. Accordingly, Moses was found guilty of the charge related to receiving stolen property.

On August 26, 2010, Moses was sentenced to serve 4 to 23 months in the Luzerne County Prison and ordered to pay restitution of $19,122.66 to LCCC. The restitution order includes the repayment of $17,524.66 in missing cash deposits plus $1,598 representing the value of the two stolen laptop computers. Moses has indicated that he will appeal.

Conclusions and Recommendations:

Based on interviews of LCCC employees and an analysis of LCCC financial records, OSI determined that on 13 separate occasions between November 14, 2005 and November 28, 2006, at least $17,524.66 of daily cafeteria cash sales deposits were never received by the LCCC business office. OSI also determined that, according to a calendar log maintained by the Cafeteria Chef Manager, in all 13 instances, Moses was the person tasked with taking the deposit to the business office on those days. OSI also found that Moses admitted to other college officials that he had not made a cafeteria cash deposit on December 4, 2007, in the amount of $1,228, which amount he later reimbursed to LCCC in February 2007. Based on the facts discovered in the investigation, we find that Moses embezzled the sum of $17,524.66 in LCCC cafeteria sales receipts on those 13 occasions, a finding that was confirmed beyond a reasonable doubt by a Luzerne County jury in its verdict in the criminal case based on the OSI investigation.

We further conclude that between August 6, 2004, and September 6, 2006, Moses embezzled additional funds on 66 additional occasions not charged in the criminal case in the estimated amount of $87,120. While no records could be found to establish the exact amount stolen, due to the disappearance of a desktop computer from an office to which Moses had the only key, it was possible to extrapolate a reasonably accurate estimate of the amount of money Moses embezzled from the average daily receipts for the relevant time periods.

We recommend that Luzerne County Community College officials:

- Pursue all available legal actions against Moses, and against any assets in which he may have an interest, to recover the restitution ordered by the court in the criminal action, as well as all additional money that he embezzled from the Cafeteria Fund that was not included in the criminal action.
- Increase the frequency in which external and internal audits are conducted of all accounts that deal in cash payments, including but not limited to the Cafeteria Fund;

- Conduct a detailed daily reconciliation of the cafeteria sales receipts and the cash deposit amount received by the business office;
- Conduct monthly detailed reconciliations of the Cafeteria Fund bank account;
- Conduct an annual review of the policies and procedures regarding the Cafeteria Fund that were implemented in January 2007, and make adjustments to these policies and procedures as needed;
- Separate the responsibility for preparing the deposit from the responsibility for transporting the deposit to the business office. Cafeteria management personnel should prepare the cafeteria cash deposit and a designated representative from the business office should pick-up the cash deposit from the cafeteria at the end of each day. Furthermore, the cafeteria personnel operating the cash registers during the business day should not be the same personnel preparing the deposit. This separation of duties will promote good internal control of cash received by the LCCC cafeteria;
- Implement a deposit pick-up and receipt log that will be signed by both the business office representative picking-up the cash deposit and the cafeteria employee who prepared the cash deposit. At a minimum, this log should contain the amount of the cash deposit, date and time of pick-up, and signatures of both employees; and
- Implement appropriate data and information technology safeguards over cash sales and receipts data presently stored in the memory chips of the cafeteria cash registers to ensure that data is not manipulated and/or deleted.

Copies of this report are being forwarded to the District Attorney of Luzerne County for her review and whatever further action she may deem appropriate.

<u>FINDING II</u>: LCCC's Associate Dean Peter Paul Moses appears to have violated provisions of the Public Official and Employees Ethics Act relating to conflicts of interest and failure to file Statements of Financial Interests.

In an interview dated October 14, 2008, OSI requested copies of the Statements of Financial Interest forms ("SFIs") required to be filed by Moses pursuant to the Pennsylvania Public Official and Employee Ethics Act ("Ethics Act").[12] The Director of Finance and Accounting provided the following information in response to this request:

- Moses was asked to complete and submit the SFIs for calendar years 2006 and 2007.
- LCCC President Thomas P. Leary's secretary sent an e-mail to all college officials required to complete SFIs, and Moses was included as an intended recipient of this e-mail. The e-mail, a copy of which OSI has obtained, is dated January 17, 2008, and stated that completed SFIs were required to be returned to the President's office no later than Friday, April 25, 2008.
- The President's secretary mailed the form to Moses for both the 2006 and 2007 calendar years, but Moses never returned the completed SFIs back to her.
- Prior to calendar year 2006, he did not believe that any college officials completed SFIs, because no file was produced when he asked the President's secretary for that information.

Moses should have filed SFIs in accordance with the Ethics Act for the calendar years 2006 and 2007. It also appears that Moses should have filed SFIs for calendar years prior to 2006. Those prior years would include all calendar years in which his position at LCCC would be classified as a "public employee"[13] under the Ethics Act. Moses' failure to file SFIs indicates that he appears to have violated Section 1104(a) of the Ethics Act regarding the filing of SFIs. Section 1104(a) provides as follows:

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[12] Act of October 15, 1998, P.L. 729, No. 93, as amended, 65 Pa. C.S. §§ 1101 *et seq*.

[13] "Public employee" is defined in § 1102 of the Ethics Act as follows:

> "Public employee." Any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a nonministerial nature with regard to:
>
> (1) contracting or procurement;
> (2) administering or monitoring grants or subsidies;
> (3) planning or zoning;
> (4) inspecting, licensing, regulating or auditing any person; or
> (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.
>
> The term shall not include individuals who are employed by this Commonwealth or any political subdivision thereof in teaching as distinguished from administrative duties.

§ **1104. Statement of financial interests required to be filed**

> **(a) Public official or public employee.--**Each public official of the Commonwealth shall file a statement of financial interests for the preceding calendar year with the commission no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Each public employee and public official of the Commonwealth shall file a statement of financial interests for the preceding calendar year with the department, agency, body or bureau in which he is employed or to which he is appointed or elected no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Any other public employee or public official shall file a statement of financial interests with the governing authority of the political subdivision by which he is employed or within which he is appointed or elected no later than May 1 of each year that he holds such a position and of the year after he leaves such a position. Persons who are full-time or part-time solicitors for political subdivisions are required to file under this section.

The Ethics Act calls for stiff penalties for failing to file SFIs. If determined by the Pennsylvania State Ethics Commission to be in violation of Section 1104(a) of the Ethics Act, Moses could receive the following penalties under Section 1109(b) and (f)[14]:

§ 1109. Penalties

* * *

> **(b) Financial interests statement violation.—**Any person who violates the provisions of section 1103(d) through (j), 1104 (relating to statement of financial interests required to be filed) or 1105(a) (relating to statement of financial interests) commits a misdemeanor and shall, upon conviction, be sentenced to pay a fine of not more than $1,000 or to imprisonment for not more than one year, or both.

* * *

> **(f) Civil penalty.--**In addition to any other civil remedy or criminal penalty provided for in this chapter, the commission may, after notice has been served in accordance with section 1107(5) (relating to powers and duties of commission) and upon a majority vote of its members, levy a civil penalty upon any person subject to this chapter who fails to file a statement of financial interests in a timely manner or who files a deficient statement of financial interests, at a rate of not more than $25 for each day such statement remains delinquent or deficient. The maximum penalty payable under this paragraph is $250.

Furthermore, Moses was in a position of authority at LCCC. Moses used his position and influence at LCCC, specifically within cafeteria operations, to obtain possession of cash deposits from his subordinates. This influence by Moses allowed him to commandeer cafeteria cash deposits from the cafeteria staff, unchallenged, when he had no discernable reason to transport the deposit to the LCCC business office other than

[14] 65 Pa. C.S. § 1109(b), (f).

to obtain a personal benefit for himself. Moses has since been charged and convicted of embezzling 13 of those cash deposits.

The Ethics Act provides as follows:

§1103. Restricted activities

> **(a) Conflict of interest. –** No public official or public employee shall engage in conduct that constitutes a conflict of interest.[15]

A "conflict of interest" is defined by the Ethics Act as follows:

§ 1102. Definitions

* * *

> "Conflict" or "conflict of interest." Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated. [16]

If the Pennsylvania State Ethics Commission determines that Moses used his position and influence to obtain cafeteria deposits from subordinates for the purpose of stealing the monies, these elements would support violations of the aforementioned provisions of the Ethics Act.

<u>Conclusions and Recommendations</u>:

Moses appears to have violated provisions of the Ethics Act by his failure to file SFIs for calendar years 2007, 2006, and prior years. He also used the authority of his office or employment to obtain a pecuniary benefit for himself, in that he used his influence over his subordinates to obtain cafeteria cash deposits that he then converted to his own use.

We recommend that LCCC officials:

- Institute measures to ensure that all provisions of the Ethics Act are strictly adhered to by employees and officials of LCCC; and
- Ensure that all outstanding Statements of Financial Interest are filed for all LCCC officials and employees who are required to file them.

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[15] 65 Pa.C.S. § 1103(a).
[16] 65 Pa.C.S. § 1102.

We are forwarding copies of this report to the Pennsylvania Office of Attorney General, the District Attorney of Luzerne County, and the Pennsylvania State Ethics Commission for their review and whatever further action they may deem appropriate.

ADDITIONAL COMMENTS

It was brought to the attention of OSI during the investigation that the LCCC cafeteria's vendor commission checks were possibly embezzled from the college. OSI reviewed this allegation and determined that all vendor commission checks received by the cafeteria were properly endorsed and correctly deposited in the cafeteria fund bank account.

OSI determined that the LCCC cafeteria received commission checks from three different vendors. Vendors paid commissions to LCCC based on a percentage of sales of their products not only in the cafeteria, but also at various vending machines located throughout LCCC's campus locations. OSI reviewed all commission checks paid to the LCCC cafeteria for the period, July 1, 2004 through June 30, 2007. In some cases, commission checks received from vendors totaled more than $20,000. OSI requested and subsequently received copies of over 700 cancelled checks in order to verify and review deposit, bank account, and endorsement information.

OSI conducted an analysis of the cancelled checks and did not find any irregularities or discrepancies with the endorsement, bank account, or deposit information. All endorsements read as follows using what appeared to be an endorsement stamp:

> Pay to the order of [Bank], [account number], For deposit only,
> Luzerne County Community College, Cafeteria Fund, [account number]

However, OSI did find instances where commission checks were received by the LCCC cafeteria and properly deposited in its bank account, but the commission check amounts were not posted to the general ledger. This would explain why the LCCC Finance Department initially found discrepancies between the college's internal records, specifically its general ledger and "Actual Activity Listing," after comparing it to commission check information sent by the vendors. The "Actual Activity Listing" of vendor commission checks is an internally created accounting document showing journal entries prepared by college. Furthermore, OSI determined that vendors did not keep adequate records of commission checks paid to LCCC, which caused LCCC to use inaccurate information when conducting its own analysis. This made the process of analyzing commission check payments more cumbersome for OSI, and this also contributed to the discrepancies originally noted in the LCCC Finance Department's review of the general ledger, Actual Activity Listing, and commission checks receipts summaries.

Conclusions and Recommendations:

OSI did not find any instances in which vendor commission checks received by LCCC were not properly endorsed and deposited into its cafeteria fund bank account. OSI did find instances where vendors did not keep adequate records of checks sent to LCCC and instances where the college did not post vendor commission checks to its general ledger. Nevertheless, we recommend that LCCC:

- Review all commission checks received from vendors to ensure they are accurate.
- Establish an accounting system, policies and procedures governing this accounting system, to ensure all vendor checks received are properly receipted, deposited, recorded, and posted to its ledger and summaries.
- Periodically contact vendors to ensure the accuracy of both the college's records of commission checks received and the vendor's records of commission checks sent.
- Perform periodic reconciliations of its bank statements to ensure that all commission checks received were deposited and properly recorded on its ledger and receipts summary.

RESPONSE OF LUZERNE COUNTY COMMUNITY COLLEGE TO DRAFT REPORT

The letter from Joseph E. Kluger, Esquire, Solicitor of Luzerne County Community College, has been scanned in its entirety beginning on the following page.

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AUDITOR GENERAL'S DEPARTMENT
RECEIVED
NOV 19 2010
OFFICE OF SPECIAL INVESTIGATIONS

November 17, 2010
via fax (717) 705-0887 and first class mail

Jeffrey H. Gribb, Director
Commonwealth of Pennsylvania
Department of Auditor General
Office of Special Investigation
327 Finance Building
Harrisburg, PA 17120-0018

Re: Luzerne County Community College - Auditor General Draft Report of Special Investigation; Our File No. 07013-413

Dear Director Gribb:

As the solicitor of Luzerne County Community College (the "College"), I acknowledge receipt of the draft report of your special investigation of the College, and I ask that this letter serve as the College's response to the Auditor General's recommendations, as well as correction of a few factual errors in the Auditor General's initial findings.

There were fifteen specific recommendations made by the Auditor General. The first two (2) recommendations dealing with PSERS will be discussed at the end of this letter. The College responds to the remaining thirteen (13) specific recommendations regarding audit matters as follows:

1. Increase the frequency in which external and internal audits are conducted of all accounts that deal in cash payments, including but not limited to the Cafeteria Fund.

Since April of 2006 the College has maintained a detailed spreadsheet of the daily Cafeteria Deposits/Receipts as referenced in the OIS Report. The Cafeteria's Cash Register Machines were upgraded on August 25, 2010. The new system allows complete access to data for any period of time. Currently all of the Cafeteria data is reconciled weekly. As recommended by OIS, the College will begin to prepare Monthly Financial Statements for all

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College Auxiliary Enterprises (including the cafeteria), which will be internally reviewed and analyzed for propriety by the College's Finance Department. Quarterly reviews will be done by the Finance staff and the College's Business Consultants. In addition, the College will be implementing a policy for all College Auxiliary Enterprises for cash deposits.

2. Conduct a detailed daily reconciliation of the cafeteria sales receipts and the cash deposit amount received by the business office.

Daily reconciliations of the sale receipts and cash deposits were implemented by the College's Accounting Department in the Spring of 2006, and continue to date.

3. Conduct monthly detailed reconciliations of the Cafeteria Fund bank account.

Monthly bank reconciliations have been and continue to be performed by the Accounting Department as outlined in the College's Bank Reconciliation Procedure Manual.

4. Conduct an annual review of the policies and procedures regarding the Cafeteria Fund that were implemented in January 2007, and make adjustments to these policies and procedures as needed.

The policies and procedures referenced above were approved March 15, 2007 by the Finance Committee of the Board, and on April 10, 2007 by the Board of Trustees. Attached to this response is the College's "Cafeteria Cash Deposit Policy and Procedures." The document has been reviewed and it was determined that no adjustments are necessary at this time, although the policies and procedures will be reviewed on an annual basis to ensure compliance, and ensure if any modifications are appropriate.

5. Separate the responsibility for preparing the deposit from the responsibility for transporting the deposit to the business office. Cafeteria management personnel should prepare the cafeteria cash deposit and a designated representative from the business office should pick-up the cash deposit from the cafeteria at the end of each day. Furthermore, the cafeteria personnel operating the cash registers during the business day should not be the same personnel preparing the deposit. This separation of duties will promote good internal control of cash received by the LCCC cafeteria.

The current procedure that is followed is outlined in the policies and procedures referenced above approved on April 10, 2007 by the Board of Trustees meeting. Items No. 4 and No. 5 address the process that is currently in place. The Cafeteria staff member is escorted by Security to the Accounting Office. Cafeteria staff operate the register while Cafeteria management personnel prepare the deposits.

6. Implement a deposit pick-up and receipt log that will be signed by both the business office representative picking – up the cash deposit and the cafeteria employee who prepared the cash deposit. At a minimum, this log should contain the amount of the cash deposit, date and time of pick-up, and signatures of both employees.

As noted above Cafeteria staff is escorted to the Accounting Office by College Security. A two (2) part "Payment Receipt Voucher" is signed by Cafeteria Management (Delivery) and by Accounting Department personnel (Receipt/Recipient). A copy of the daily receipt is retained by both groups.

7. Implement appropriate data and information technology safeguards over cash sales and receipts data presently stored in the memory chips of the cafeteria cash registers to ensure that data is not manipulated and/or deleted.

In 2006 the memory chips of the Cafeteria cash registers were reprogrammed which provided weekly reports of each register. On August 25, 2010 the Cafeteria cash register system was upgraded. The new equipment/system is an internet based web reporting system that allows reports to be run as requested and for specific time periods.

8. Institute measures to ensure that all provisions of the Ethics Act are strictly adhered to by employees and officials of LCCC.

The College has in place certain policies and procedures intended to not only comply with the Ethics Act, but indeed contain, in some cases, more stringent safeguards than what Section 1103 of the Ethics Act requires. By way of example only, the College has a purchasing policy, an anti-nepotism policy and a conflict of interest policy; copies of which can be provided to you upon your request.

9. Ensure that all outstanding Statements of Financial Interest are filed for all LCCC officials and employees who are required to file them.

Under the Ethics Act, "public officials" include the College's Board of Trustees and its solicitor, and the College currently requires each Trustee as well as its solicitor to file annually a Statement of Financial Interest. The College recognizes that the Ethics Act prohibits a Trustee from continuing to serve on behalf of the College unless he or she has filed a Statement of Financial interests, but will remind the Trustees of this requirement each year. "Public employee" under Section 1104 of the Ethics Act is defined as any individual employed by the Commonwealth or a political subdivision who is responsible for taking or recommending official action of a non-ministerial nature with regard to (1) contracting or procurement; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person. The College intends to implement promptly a policy to ensure that all "public employees" as defined in the Act file a Statement of Financial Interest on an annual basis. Pursuant to the Act, the College will make all filed Statements of Financial Interests available for public inspection and copying during regular office hours, and copying facilities will be made available at a charge not to exceed actual cost.

10. Review all commission checks received from vendors to ensure they are accurate.

Commission checks are received by the Cafeteria Manager and a separate deposit is prepared for the commission checks. Currently the Cafeteria receives commission checks from two machine vendors. The vendors have been notified to provide a more detailed report or statement of account with each check.

11. Establish an accounting system, policies and procedures governing this accounting system, to ensure all vendor checks received are properly receipted, deposited, recorded and posted to its ledger and summaries.

Currently accounting practices and procedures are in place to deposit and record the payments to the ledger. The College intends to formalize the current process into a written policy (Vendor Commission Check Policy) by January 31, 2011.

12. Periodically contact vendors to ensure the accuracy of both the College's records of commission checks received and the vendor's records of commission checks sent.

As noted above the College intends to develop and implement a written policy, as recommended by OIS, by January 31, 2011.

13. Perform periodic reconciliations of its bank statements to ensure that all commission checks received were deposited and properly recorded on its ledger and receipts summary.

Monthly bank reconciliations are done by the Accounting Department. The College intends to develop a written policy as recommended that will include that vendor records will be compared to commissions recorded on the College's general ledger by January 31, 2011.

The findings of fact appear comprehensive, and we point out for clarification purposes only nine (9) small errors which you may wish to consider and incorporate into your final report, as follows:

1. On several pages of the report, April 18, 2007 is mentioned as the last date that deposits were allegedly embezzled from the cafeteria Cash Account. The last deposit taken, prior to the December 4, 2007 deposit (which was repaid), was actually November 28, 2006. The deposit from April 18, 2007 was received by the College's Accounting Office.

2. On Page 7 there is a reference to the College's ability to operate three cash registers. Actually there are two registers physically located in the Cafeteria, with a third register located in a Café one floor below the Cafeteria. The Café has, however, been closed for a number of years.

3. On Page 8 there is a reference to a statement that the Director of Finance and Accounting presumed the computer in Peter Moses' office in Building 14 was stolen. The Director of Finance and Accounting is concerned that there is an inference that he knew or believed the computer was stolen, when he only intended to infer that the computer was not in Mr. Moses' office.

4. Page 10 references a statement that the computer used to back up cafeteria sales information was located in Mr. Moses' office in Building 5, but it was actually located in Building 14.

5. On Page 13 there is a bullet note under Fund Analysis Summary which provides, "The calendar log in <u>most</u> <u>instances</u> identified the amount of the cafeteria daily deposit." For clarification purposes, there were only thirteen days of calendar entries.

6. Also on Page 13, there is a statement that says, "There were 208 instances in which the cafeteria cash sales deposit amount was noted on the calendar log," and then further provides that in 202 instances, OSI was able to cross reference, without discrepancy, the dollar amount to the Cafeteria Cash Receipts Summary. Again, for clarification purposes, there were only thirteen days of calendar entries.

7. On Page 16, the Director of Finance and Accounting is noted as saying he and the Associate Dean of Finance confronted Mr. Moses about the missing deposit of December 4, 2007. The Director of Finance and Accounting does not recall providing this statement, nor does he recall confronting Moses about the missing deposit of December 4, 2007.

8. On Page 19, issues related to Statements of Financial Interest are attributed to the Director of Finance and Accounting. The Director of Finance and Accounting has no recollection of discussing Statements of Financial Interest with the OSI.

9. On Page 22, the last paragraph states, "However, OSI did find instances where commission checks were received by the LCCC cafeteria and properly deposited in its bank account, but the commission check amounts were not posted to the general ledger." The College does not recall being provided with information evidencing that commission checks were deposited into the cafeteria account.

In the meantime, you have suggested that the College contact the Public School Employees' Retirement System ("PSERS") to advise of Mr. Moses' conviction of theft by failure to make required disposition of funds in the amount of $17,524.66. I note that Mr. Moses has filed an appeal, and thus while the crime appears to be one committed by a public employee through his position or when his public employment placed him in a position to commit a crime, a conviction only seems to occur upon entry of a judgment of sentencing, and not when a jury returns a verdict. *See*, In re Larsen, 655 A.2d 239 (Pa.Cmwlth.1994). Further, my research of the law indicates that forfeitures are prospective only and that benefits due are to be paid to an employee before a final conviction is rendered, which may mean that Act 140 sanctions may not yet be available.

Most importantly, however, the Director of Human Resources at the College has advised that Mr. Moses has not participated in PSERS, but rather was a member of TIAA-CREF. My initial research indicates that since Mr. Moses participated in a private retirement plan containing a non-assignment clause, 42 Pa.C.S.A. §8124(b)(1)(vii) exempts it, and subsection (b)(2) expressly excludes it from the Public Employee Pension Forfeiture Act.

The College recognizes that the Auditor General's office, as well as the College itself, provided law enforcement authorities with information pertaining to the $104,000 of missing funds, and that Mr. Moses was only prosecuted for the theft of $17,524.66, and two College computers based upon the decision of law enforcement officials. Notwithstanding the prosecution of only a portion of the funds missing, the College has authorized me to file a civil claim against Mr. Moses, and we anticipate the complaint will be filed shortly seeking repayment of the full $104,000.00.

I have also recommended that the College contact the District Attorney's office after the report becomes finalized to amend any Victim Impact Statement the College may have previously issued so as to reflect the full amount of money missing.

The College takes very seriously the Auditor General's report, including its findings and recommendations, and the College believes that, starting in 2006, and continuing through the present, the College has adopted and continues to adopt policies and procedures to safeguard College assets, and welcomes any further response or follow up audit as you deem appropriate.

In the interm, should you have any questions, Thomas P. Leary, President of the College, and I both make ourselves available to you and your office.

Sincerely,

Joseph E. Kluger

JEK:mz
pc: Thomas P. Leary, President (via email only)

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THE DEPARTMENT OF THE AUDITOR GENERAL'S COMMENTS ON THE RESPONSE OF LUZERNE COUNTY COMMUNITY COLLEGE TO DRAFT REPORT

We commend the College for the measures it has already taken and the measures that it intends to take to comply with the recommendations set forth in this report. By doing so, the likelihood of being victimized in the future will be considerably reduced.

We appreciate being advised by the College that Moses is apparently not a member of the Public School Employees' Retirement System ("PSERS"). We had made a recommendation in the draft report to contact PSERS to explore the possibility that assets might be found there from which to obtain a recovery of the money stolen from the College. Obviously, if Moses is not a member of PSERS, that possibility does not exist, so we have deleted that recommendation from this final report. However, we are satisfied that the College intends to pursue all legal means to recover the stolen funds from him and from any assets in which he has an interest, and we commend the College for its diligence in so doing.

We have also reviewed the suggested "nine (9) small errors" that are listed on pages 5 and 6 of the College's response, and our comments thereon appear below. However, only two of these suggested errors (items 1 and 4) necessitated any changes to the report. The changes made and an explanation for the changes appears in the numbered items below. However, we did not deem it necessary to make any corrections to the report with respect to the rest of the suggested errors for the reasons stated below:

1. The time frame analyzed in the investigation was the period beginning July 1, 2004 (the first day of the 2004-05 fiscal year), and ending April 18, 2007 (the date of the last handwritten entry on the calendar log). We acknowledge that the last date on which cafeteria money was actually stolen by Moses was November 28, 2006, and we have revised the report to more precisely indicate the date of the first theft and the date of the last theft in each pertinent time frame.
2. The fact in question may be in error, but it is information provided by a witness in an interview. Furthermore, the suggested correction would not materially affect the findings of the report.
3. The report accurately reflects information provided by a witness in an interview. Furthermore, the suggested correction would not materially affect the findings of the report.
4. We acknowledge that the actual location of the computer that was used to back up cafeteria sales information was located in Building 14 and not in Building 5 as was indicated on page 10 of the draft report. The error in the Building number has been corrected in this final version of the report.
5. We disagree with the suggested error. There were 317 instances in which the name of the person tasked with making the deposit was recorded on the

calendar log, and in 208 of those instances, the amount of the deposit was also recorded.

6. Same as #5.
7. The report accurately reflects information provided by a witness in an interview. Furthermore, the suggested correction would not materially affect the findings of the report.
8. The report accurately reflects information provided by a witness in an interview. Furthermore, the suggested correction would not materially affect the findings of the report.
9. Information regarding the posting of vendor commission checks was provided to the College's Director of Financing and Accounting following the completion of OSI's analysis of the issue.

We sincerely appreciate the College's cooperation throughout the investigation and its thorough and thoughtful response to the draft report. The Department of the Auditor General will follow up at the appropriate time to determine whether all of our recommendations have been implemented.

DISTRIBUTION LIST

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