

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT  
OF HINDS COUNTY, MISSISSIPPI

**FILED**  
MAY 20 2014  
EDDIE JEAN CARR, CHANCERY CLERK  
BY [Signature] D.C.

THE STATE OF MISSISSIPPI, EX REL. JIM HOOD,  
ATTORNEY GENERAL, AND STACEY E. PICKERING,  
STATE AUDITOR, FOR THE USE AND BENEFIT OF  
THE TAXPAYERS OF CITY OF SOUTHAVEN  
MISSISSIPPI; CITY OF SOUTHAVEN, MISSISSIPPI

PLAINTIFFS

VS.

CAUSE NO. G-2012-1239 T/1

CHARLES GREG DAVIS and TRAVELERS  
CASUALTY & SURETY COMPANY OF AMERICA

DEFENDANTS

**OPINION OF THE COURT**

BEFORE THIS COURT is Plaintiffs' Complaint seeking a monetary judgment in the amount of \$73,915.27, representing alleged inappropriate reimbursement of certain business expenses paid from the City of Southaven, Mississippi (hereinafter "City") to Defendant Charles Greg Davis (hereinafter "Davis"), Mayor of the City of Southaven from 2009 to 2011. This Court has reviewed all relevant filings and argument, as well as all relevant case and statutory law, and has held trial on this matter for multiple days, receiving testimony of numerous witnesses. After careful consideration of all of the foregoing, this Court finds as follows, to-wit:.

**FACTS**

Defendant Charles Greg Davis served as the Mayor of the City of Southaven, Mississippi from July 1997 until July 2013. In March 2011, the State Auditor received a

complaint from an Alderman for the City of Southaven regarding certain expenses for which Davis had received reimbursement from the City. Specifically, the complaint alleged that Davis had been reimbursed for a trip with his wife to Scottsdale, Arizona, to receive marriage counseling services at a facility named Psychological Counseling Services ("PCS"). The State Auditor immediately commenced an investigation into the matter. During the course of the initial investigation, Karen Swain, ("Swain"), a Special Agent in the Investigative Division of the State Auditor's Office, determined that the City of Southaven had paid multiple invoices to the credit card company Capital One, for a card in Davis' name. Upon further inquiry, Swain was informed that Davis did not submit any supporting documentation to the City Clerk with his monthly invoices. Swain then met with Davis and requested that he provide credit card statements and receipts for expenditures to support the invoices submitted from July 2010 forward. In response, Davis provided no receipts; however, he did provide credit card statements from which he redacted all personal expenditures. Upon receipt of the personal credit card statements, Swain attempted to reconcile the credit card expenditures with Davis' invoices to the City. There were significant discrepancies between the statements and corresponding invoices.

On May 3, 2011, Davis received a letter requesting receipts for all expenses charged to his personal Capital One credit card and his BancorpSouth City credit card since July 2009. In addition, the letter asked Davis to provide "a business explanation, including the date of the event, why the event occurred, who was there, and the purpose of the expenditure." In response, Davis provided an excel spreadsheet containing an itemized listing of every transaction on his Capital One card with a brief description of the expense. However, the explanations given by Davis did not contain enough information for the

investigator to determine whether the reimbursements were for proper business expenses. Davis asserted that he did not have any receipts because he was not required to keep them or turn them in with his invoices. He further explained that he had provided as much information as possible, given that the expenditures had occurred some time in the past. Investigators met again with Davis to discuss specific travel and expenditures.

Subsequently, Swain obtained from the City Clerk all of the invoices that Davis had submitted requesting payment to his Capital One credit card from July 2009 through April 2011, as well as the records of payment. Swain also received un-redacted copies of Davis' Capital One statements. Based upon the invoices, statements, and records of payment, Swain determined that Davis had been reimbursed \$128,642.59 between July 2009 and April 2011. Swain also obtained copies of all the credit card statements from Davis' BancorpSouth City credit card revealing charges of \$130,436.52 for the same time period. During the investigation, Swain also learned that Davis had been receiving from the City for mileage driven in his personal vehicle. After review, Swain determined that Davis had been paid \$37,316.99 in mileage reimbursement for the same time period.

On November 2, 2011, the State Auditor issued a demand letter to Davis and his surety, Travelers Casualty and Surety Co. of America ("Travelers") for reimbursement of \$170,782.28 for "misuse of public funds, interest, and cost of recovery." That sum consisted of the following: \$128,642.59 that was paid to Davis' Capital One credit card based on the personal invoices that he submitted to the City Clerk; two payments of \$8,410 and \$12,108 that the City made to PCS on Davis' behalf; \$4,428.19 in charges to Davis' City credit card related to his trip to PCS; \$16,822.14 in interest calculated at 1% per month on the outstanding balance; and \$13,571.18 in investigate costs through September 28,

2011. Subsequent to the demand, Davis repaid to the City \$13,199.82 for the cost of his wife's counseling at PCS; the same was deducted from the Auditor's demand. Further, Davis provided a number of receipts to the Auditor for certain charges on this personal credit card. Based on these receipts, the Auditor gave Davis an additional credit for \$10,319.24 in charges on his personal credit card, as well as a corresponding reduction in interest. On December 6, 2011, Davis made a payment on the demand in the amount of \$96,000. Davis asserted that he believed this payment to satisfy the Auditor's demand in full.

On April 20, 2012, the State Auditor issued a subsequent demand letter to Davis for reimbursement of \$73,915.27 for "unpaid amount of previous demand, and additional misuse of public funds including unapproved credit card charges, personal use portion of mileage expense and per diem for Scottsdale, AZ conference." This sum included the \$62,881.89 remaining from the first demand; \$5,951.96 of charges on Davis' City credit card that were not approved by the Board of Aldermen; 12% of Davis' mileage reimbursement from the City, totaling \$4,477.92; \$603.50 in per diem that Davis received in connection with his trip to Scottsdale, Arizona; \$15,240.89 in interest; and \$13,571.18 for the costs of the Auditor's investigation. To date, Davis has refused to pay the remaining amounts demanded and has refused to allow his bonding company to pay the demand.

On August 3, 2012, Plaintiffs filed the current action seeking a judgment against Davis and Travelers in the amount of \$73,915.27. In response, Davis filed several counterclaims against the Auditor, including claims for unjust enrichment, replevin and recoupment. Davis requests that this Court order the Auditor to return the \$96,000 that he paid in response to the initial demand.

## ANALYSIS

The State Auditor seeks a judgment against Davis and Travelers for reimbursement of funds paid to or on behalf of Davis by the City of Southaven for (1) payments to Capital One credit card based on Davis' invoices, (2) payments to PCS for counseling, (3) charges to the City credit card, (4) mileage reimbursement, (5) certain travel expenses and (6) investigative costs and interest.

First, the Auditor challenges payments of \$90,579.09 that were made to Capital One based on personal invoices created by Davis as "tourism expenses." During his years in office, Davis had a tourism budget of \$48,000 which was funded by a 1% tourist and convention tax on hotels. House Bill 1618 (H.B. 1618) authorized the imposition of this tax "[f]or the purpose of providing funds for the promotion of tourism and conventions." The statute further provides that the proceeds from this tax "shall be dedicated solely for the purpose of carrying out programs and activities which are designated by the governing authorities of the city and which are designed to attract conventions and tourists in the City of Southaven, Mississippi." The evidence at trial established that Davis considered himself to be constantly promoting the City at all times. Davis spent large sums of money on meals, travel and entertaining various businesspeople. Davis would typically pay for these expenses by charging them to his personal Capital One credit card and then submit an invoice that he created on his computer to the City Clerk. However, the invoices did not contain any meaningful itemization of the expenses for which Davis sought reimbursement. Instead, the invoices listed the type of expenditure, generally as "Travel & Training" or "Tourism", and the amount to be reimbursed. Davis never attached any receipts or supporting documentation to the personal invoices. The invoices were placed on the

claims docket and approved by the Board of Aldermen in the City's official minutes along with hundreds of other claims. However, without any documentation itemizing the expenses and identifying the business purpose for each charge, the Board lacked the ability to determine whether any of the claimed expenditures actually served to promote tourism in the City. In fact, the Board never made a finding that the invoiced expenses served to promote tourism in the City when it approved the claims docket and authorized the City Clerk to issue a check to Capital One. The Mississippi Supreme Court has noted that similar municipal expenditures must be based upon a "decision by the governing authorities ... spread on the minutes of the municipality suggesting the purpose" and "appropriately to document why the Board and Mayor determined to spend the tax payers' money as it did." *Nichols v. Patterson* 678 So.2d 673 (Miss. 1996). The Mississippi Supreme Court determined that a city may not legally expend public funds on tourism promotion in the absence of at least a "thorough discussion" noted in the city minutes that an expenditure is being made for that purpose. *Id.*

The Southaven Board of Aldermen made no finding that the alleged tourism expenses for which Davis sought reimbursement were "designed to attract conventions and tourists" to the City in accordance with H.B. 1618. Instead, the Board merely approved payment of Davis' monthly invoices without any consideration of whether there was any business justification for the expenses on his credit card. The Board approved personal invoices that lacked any supporting documentation or receipts that included only the amount to be reimbursed and a vague category of expenditure, "Travel & Training" or "Tourism". "Thus the Auditor's exception to these expenditures is valid." *Nichols*, 678 So. 2d at 680.

Therefore, this Court finds that the payments totaling \$90,579.09 paid to Capital One on behalf of Davis for claimed tourism charges were not legally valid expenditures. As such, the Auditor is entitled to recoup this amount in full.

The Auditor further challenges reimbursement of \$25,269.52 to Davis from the City for travel expenses charged to his personal credit card. As stated above, Davis would incur charges on his Capital One credit card and then present prepared invoices for "Travel & Training" without accompanying receipts or documentation. Davis asserts that the Board granted him authority to approve his own travel when it adopted the City's Employee Manual on December 1, 1998. Therefore, Davis routinely traveled without having the same pre-approved by the Board of Aldermen in its minutes. However, a review of the Manual demonstrates that there are no specific provisions authorizing the Mayor to approve his own travel. Mississippi Code § 25-3-41 mandates that travel be pre-approved by the governing authority in order to be lawfully reimbursed. The travel reimbursements challenged by the Auditor were not pre-approved by the Board of Aldermen in its minutes. As set forth above, the Board approved personal invoices for the "Travel & Training" that lacked any supporting documentation, receipts or meaningful explanation. Accordingly, this Court finds that the \$25,269.52 for travel expenses charged to Davis' personal credit card were not legally valid reimbursements and the Auditor's exception to the same is valid.

The State Auditor also seeks reimbursement of funds paid by the City for counseling services provided by PCS to Davis and his wife in Scottsdale, Arizona. On June 19-20, 2010, Davis and his wife flew to Scottsdale, Arizona to receive counseling at PCS. Davis testified that he attended PCS for stress counseling that he needed due to his wife's recent suicide attempt, his sexuality and his "workaholic" nature. Mrs. Davis testified that the



purpose of the trip was to seek “marriage counseling” and counseling for Davis’ “sexual addiction.” She further testified that the only treatment for stress management was related to stress and its impact on the marriage. Davis returned to Southaven, while his wife remained at PCS for another two weeks. Davis then flew back to Scottsdale on July 10 for a week of individual counseling. His wife returned to Scottsdale at the end of the week to resume joint counseling. Davis admits that his wife’s suicide threats precipitated the treatment at PCS. However, he maintains that his counseling was a legitimate expenditure benefitting the City by relieving his stress and anxiety. The evidence presented at trial clearly established that the counseling received by Davis and his wife at PCS was entirely personal in nature and was wholly unrelated to any City business. The Board’s retroactive approval of the payments to PCS are of no consequence as the Board is prohibited from authorizing the expenditure of public money for Davis’ personal benefit. See *Golding v. Salter*, 107 So.2d 348, 356-57 (Miss. 1958); *Nichols*, 678 So.2d 681. Both the Mississippi Constitution and the current statutory law prohibit the grant of a personal donation or gift to any public employee. The payments to PCS for counseling services of Davis and his wife constitute an unlawful donation in violation of § 96 of the Mississippi Constitution and Mississippi Code § 21-17-5. Therefore, the Auditor is entitled to recoup these amounts in full. For the same reasons as set forth above, this Court finds that the reimbursement for travel expenses and per diem associated with the Scottsdale, Arizona trips also constitute unlawful donations which are in violation of statutory law and the Mississippi Constitution.

Next, the State Auditor seeks recoupment of \$5,951.96 for expenses on Davis’ City credit card which were not approved by the Southaven Board of Aldermen. At the request of the Auditor, the Board of Aldermen reviewed the charges on Davis’ BancorpSouth City



credit card to determine if all charges were related to City business. On March 26, 2012, the Board voted to approve all but \$5,951.96 of those charges. In a letter dated April 6, 2012, the City attorney explained that the Board “concluded it did not possess sufficient information, proof or documentation to establish that the remaining credit card purchases amounting to \$5,951.96 were related to City business.” Davis failed to provide receipts to the City Clerk for the charges incurred on his City credit card in direct violation of Mississippi Code Ann. § 21-39-27(1). Therefore, Davis is personally liable for all of the expenditures on the City credit card that were not approved by the Southaven Board of Aldermen.

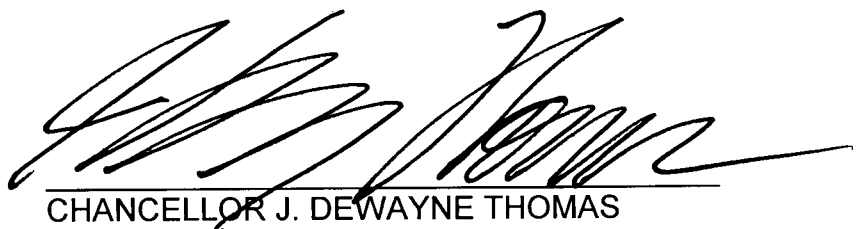
The State Auditor also takes exception to Davis’ reimbursement for mileage. Davis submitted documentation at the end of the month requesting reimbursement for mileage traveled in his personal vehicle. Davis testified that he believed that he was always engaged in the performance of his official duties while traveling within the city limits of Southaven and that he was entitled to be reimbursed for one hundred percent of his mileage traveled inside of the City, even his commute to and from work. In fact, Davis received reimbursement for one hundred percent of his mileage some months. Davis failed to keep any travel log, or business log. The Auditor has requested that the Court exclude 12% of the mileage reimbursement for Davis’ personal use. Davis asserts that the amount sought by the Auditor is arbitrary and that he should not have to repay any funds. It is obvious to the Court that Davis was not entitled to one hundred percent reimbursement for mileage driven within the city limits in his personal vehicle. It is also clear that the Board was without authority to approve such a mileage reimbursement. Davis failed to keep any record of actual business mileage and personal mileage; therefore, the Court is without any

actual documentation to establish actual business mileage. The Court finds the percentage proposed by the State Auditor to be reasonable given the lack of documentation provided by Davis. Accordingly, this Court finds that Davis is liable for repayment of 12% of his mileage reimbursement.

Finally, the Auditor has assessed interest and investigative costs to Davis. Mississippi Code Ann. § 7-7-211(g) and 7-7-213(1) specifically permit the Auditor to recover 1% interest for every month that money wrongly spent or obtained remains unpaid, as well as the investigative costs incurred by his Office. As set forth above, this Court has determined that Davis is liable for the full amount sought by the Auditor in this action. Therefore, under the applicable statutes, Davis is also liable for \$15,240.89 in interest and \$13,571.18 in investigative costs.

All counterclaims propounded by Davis are without merit and are summarily dismissed. Counsel for Plaintiffs shall present a Final Judgment in accordance with the preceding within ten (10) days of the entry of this Opinion.

SO ORDERED, ADJUDGED, AND DECREED THIS the 20<sup>th</sup> day of May, 2014.



CHANCELLOR J. DEWAYNE THOMAS