



Office of the Public Auditor  
Commonwealth of the Northern Mariana Islands

Audit and Investigation of  
Misuse of a Government Vehicle of the  
Commonwealth Ports Authority



Letter Report  
LT-98-03



# Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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February 17, 1998

Mr. Carlos H. Salas  
Executive Director  
Commonwealth Ports Authority  
P.O. Box 1055  
Saipan, MP 96950

Dear Mr. Salas:

Subject: Final Letter Report on the Audit and Investigation of Misuse of a Government Vehicle of the Commonwealth Ports Authority (Report No. LT-98-03)

This report presents the results of our audit and investigation on the alleged misuse of a government vehicle of the Commonwealth Ports Authority (CPA), Saipan Office. The objectives of the audit and investigation were to (1) determine whether there was misuse of a government vehicle as reported to us, (2) identify the person or persons responsible for the alleged government vehicle misuse, and (3) verify whether CPA was in compliance with the government vehicle rules and regulations.

Our audit and investigation showed that the former CPA Deputy Director, who was already assigned a government vehicle, without authorization took full time possession of an additional government leased vehicle, described as a black Toyota Camry with license plate number ABD-724, for his personal use to conduct private matters during his working hours from late May or early June 1996 to September 18, 1996. This occurred because CPA did not comply with provisions of the CNMI government vehicle rules and regulations, including, 1 CMC §7406 (e), no tinting materials on the windows, (f), markings on both front doors, and (g), government license plates, and Sections 6(a), (b), and (c) of Government Vehicle Regulation No. 1101, the vehicle log records. As a result, the CNMI Government lost approximately \$3,275 and \$3,870, representing the lease cost of the black Toyota Camry and the salary of the former CPA Deputy Director, respectively, during the period he was using the government leased vehicle for personal matters on official government time. In addition, he also misused the white Toyota Camry which cost the CNMI Government amounts for the fuel, operations and maintenance expenses, and the unavailability of the white Toyota Camry for government use during the period it was parked at the Taiwan Commercial Center.

We referred this matter to the Attorney General's Office (AGO) for action, and the AGO filed criminal charges against the former CPA Deputy Director. On December 20, 1996, the CNMI Superior Court found the former CPA Deputy Director guilty of misusing a government vehicle in violation of 1 CMC §7406(e) and (f), and sentenced him to 3 days in jail, all suspended, plus a fine of \$300.

For the misconduct in office of this high-ranking official, we recommended that the Executive Director of CPA (1) issue administrative sanction(s) (e.g., admonishment, reprimand, suspension, reassignment, demotion, termination, etc.) deemed appropriate under the circumstances against the former CPA Deputy Director in accordance with 1 CMC §7406(i). The CPA Executive Director should (2) recover from the former CPA Deputy Director the \$3,275 equivalent lease cost of the black Toyota Camry during this period, (3) order the former CPA Deputy Director to repay \$3,870 cost of the salary he received from the government for the hours he was doing personal business, and (4) recover from the former CPA Deputy Director a reasonable amount for the cost of fuel and maintenance of the white Toyota Camry.

In his letter response dated January 30, 1998 (APPENDIX A), the CPA Executive Director stated that CPA could not carry out Recommendation 1 because the former CPA Deputy Director has already resigned from CPA. On Recommendations 2, 3, and 4, the CPA Executive Director stated that CPA needs to find out whether the criminal conviction entered against the former CPA Deputy Director was based on a plea-bargain made by the prosecutor and accepted by the former CPA Deputy Director. If it is, CPA needs to know whether CPA is precluded from now seeking restitution, if the agreement between the parties had intended preclusion of restitution. Another matter CPA wants to find out is why the criminal conviction that was entered did not include an order of restitution to CPA, the victim of the offense. Therefore, CPA will advise OPA of the course of action CPA will take once the CPA Board has fully reviewed the case and has obtained information needed to make a decision.

We have reviewed the written plea agreement and judgment of the court and found that the issue of restitution was not addressed by the parties or the court, and of course, any agreement not to seek restitution in a criminal case does not preclude civil remedies, i.e., a lawsuit for recovery of damages.

Based on the responses we received from the CPA Executive Director, we consider Recommendation 1 as closed and Recommendations 2, 3, and 4 as open. The additional information needed to close these recommendations is shown in APPENDIX B. In addition, we are also referring this matter to the Attorney General's office for further action.

## **BACKGROUND**

The Commonwealth Ports Authority (CPA) was established as an autonomous public corporation on October 8, 1981 by Public Law 2-48, 2 CMC §2101 et seq. CPA is responsible for the operations, maintenance, management, and improvement of all seaports and airports within the

Commonwealth of the Northern Mariana Islands (CNMI). This autonomous public corporation is governed by a seven-member Board of Directors, appointed by the CNMI Governor with the advice and consent of the Senate for a four-year term.

On September 16, 1996, the Office of the Public Auditor (OPA) received information from a concerned citizen about the possible misuse of a government vehicle. According to the concerned citizen, sometime in May or June 1996, he noticed a black Toyota Camry, with license plate number ABD-724 and heavily tinted windows, parked in the tenant parking lot at the rear of the Taiwan Commercial Center along As Lito Road. The concerned citizen further stated that when he first saw this vehicle being parked, he believed that it was not one belonging to any of the tenants living at the Taiwan Commercial Center.

Approximately one week after the first sighting of the black Toyota Camry, the concerned citizen noticed a male individual drive into the tenant parking lot in a white Toyota Camry with government license plate number 2147 and a CPA emblem on the door. The concerned citizen stated that the driver parked the white Toyota Camry in the tenant parking lot, got out of the car, locked the doors, walked to the black Toyota Camry, and drove the black car out of the parking lot. He also stated that approximately 2 to 3 hours later, he observed the same male individual return in the black Toyota Camry, park the car back in the tenant lot, and then leave in the white Toyota Camry.

The concerned citizen said that during the following months, the black Toyota Camry remained in the parking lot and again on numerous occasions, he observed the same driver parking the white Toyota Camry in the tenant parking lot and leaving in the black Toyota Camry. After observing this activity for several months, he noticed a pattern in the switching of vehicles. The driver only switched vehicles during weekdays but never on weekends. He also noticed that the first switch from the white Toyota Camry to the black Toyota Camry always occurred between 9:30 and 10:30 a.m., and that on some days, the driver switched vehicles back and forth 2 or 3 times. He also noticed that no switch to the black Toyota Camry occurred after 4:00 p.m., and that the black car was always the car left in the parking lot at the end of the day.

## **OBJECTIVES, SCOPE AND METHODOLOGY**

Acting on this information, the objectives of our audit and investigation were to (1) determine whether there was misuse of a government vehicle as reported to us, (2) identify the person or persons responsible for the alleged government vehicle misuse, and (3) verify whether CPA was in compliance with the government vehicle rules and regulations.

On September 17, 1996, we made inquiries to determine the ownership of the black Toyota Camry. From September 18 to 19, 1996, we conducted a surveillance of the vehicles involved in the switch. Between September 20, 1996 and September 24, 1996, we also interviewed the following CPA officials and employee: former Executive Director, former Deputy Director, Operations Manager, and Administrative Assistant.

We performed our audit and investigation in September 1996 on Saipan where the alleged misuse occurred. The audit was made, where applicable, in accordance with the Government Auditing Standards issued by the Comptroller General of the United States. Accordingly, we included such tests of records and such other auditing procedures as were considered necessary under the circumstances. As part of our audit, we evaluated the system of internal controls on the maintenance and use of CPA government vehicles to the extent we considered necessary to accomplish our audit objectives.

## **FINDINGS AND RECOMMENDATIONS**

### **Use of Government Vehicle and Time for Private Gain and Violation of the CNMI Government Vehicle Rules and Regulations**

The Commonwealth Code specifically prohibits the use of government vehicles other than for official government business. Our audit and investigation showed, however, that the former CPA Deputy Director, without authorization, took a government leased vehicle described as a black Toyota Camry with license plate number ABD-724, for his private use from late May or early June 1996 to September 18, 1996. This occurred because CPA did not comply with provisions of the CNMI government vehicle rules and regulations. As a result, the CNMI Government did not benefit from the lease of the black Toyota Camry for a period of approximately 3 to 4 months and CPA paid the full monthly lease rental of the car although it had been in the possession of the former CPA Deputy Director and was used by him for personal matters. The former CPA Deputy Director also received his full salary although he was not doing official government business for approximately 2 to 3 hours per work day from late May or early June 1996 to September 18, 1996. In addition, he also misused the white Toyota Camry which cost the government amounts for fuel, operation and maintenance expenses, and the unavailability of the white Toyota Camry for government use during the period it was parked at the Taiwan Commercial Center.

#### *Pertinent Government Vehicle Rules and Regulations*

Under Public Law No. 9-37, otherwise known as the Government Vehicle Act of 1994, 1 CMC §7406 was re-enacted redefining “Restriction Upon Use of a Government Vehicle.”

1 CMC §7406(d) provides that “government vehicles are only to be used for official government business, and no person may operate or use any government vehicle for any purpose other than official business. This subsection shall not apply to elected officials. Violation of this subsection shall be an infraction, punishable by a fine of up to \$500, and/or 3 days imprisonment.”

1 CMC §7406(e) provides that “no person shall operate or use a government vehicle that has any tinting materials on its windows. This subsection shall not apply to law enforcement vehicles, but shall apply to vehicles assigned to the Governor, Lieutenant Governor, and other elected officials. Violation of this subsection shall be an infraction, punishable by a fine of up to \$500, and/or 3 days imprisonment.”

1 CMC §7406(f) states, in pertinent part, that “all government vehicles, excepting only unmarked law enforcement vehicles and cars driven by elected officials, shall be clearly and legibly marked as such on both front doors. No person shall operate or use a government vehicle that is not marked in accordance with this subsection.”

1 CMC §7406(g) states, in pertinent part, that “only government license plates may be issued to government vehicles, and within one year of the effective dates of this act, all government cars must bear government license plates, excepting only government cars that are leased for less than 60 days.”

1 CMC §7406(i)(1) states, in pertinent part, that “any violation of subsections (d), (e), (f), and (g) above by any government employee, shall also be grounds for disciplinary actions, which may include suspension or termination.”

Finally, Section 6 of the Government Vehicle Regulation No. 1101 promulgated by the Department of Finance (DOF) provides that “except for vehicles assigned to and used by government officials; official government guests; emergency vehicles used by the Department of Public Safety, Civil Defense, Commonwealth Utilities Corporation, or Department of Public Health; and other authorized law enforcement officers, all other vehicles shall be equipped with continuous vehicle trip log forms at all times. The trip log forms shall be used by the operator to provide basic trip information such as date, time, place of travel, purpose of travel, beginning and ending speedometer readings, total miles driven, the signature of the vehicle operator and vehicle identification data. These log forms shall be placed in every vehicle and maintained by the vehicle operator. Monthly, each government official shall account for the accuracy of the log forms, and sign the log sheet.”

#### *Surveillance on the Black ABD-724 Toyota Camry*

On September 17, 1996, OPA staff members made inquiries to determine the ownership of the black Toyota Camry with license plate number ABD-724. It was found from Microl Leasing that the vehicle was on a two year lease by CPA starting April 8, 1996 at a monthly rate of \$950. On the same day, OPA staff members went to Taiwan Commercial Center and made a note of the location of the black ABD-724 Camry in the tenant parking lot. The OPA staff members noted that the vehicle did not have government markings and the windows were darkly tinted obscuring visibility of the car’s interior.

Continuing their surveillance on September 18, 1996, OPA staff members noted that at approximately 9:30 a.m., the black Toyota Camry was still in the parking lot and photos were taken (See Figure 1). At approximately 10:45 a.m., OPA staff members returned to the Taiwan Commercial Center and noted that the black Toyota Camry was gone and the white Toyota Camry was now parked in the parking lot. Photos of the white vehicle were taken.



Figure 1

On September 19, 1996, at approximately 10:10 a.m., OPA video taped the male driver getting out of the white Toyota Camry and walking to the black Toyota Camry at the Taiwan Commercial Center tenant parking lot. OPA then followed the black Toyota Camry to determine where it was being taken, and if possible, to determine the purpose of the use. The results of the surveillance established that the black Toyota Camry was being used for personal and not government business.

The male driver was later identified as the former CPA Deputy Director.

#### *Former CPA Deputy Director Admits to Using Government Leased Vehicle for Personal Reasons*

On September 20, 1996, the former CPA Deputy Director was interviewed at the Office of the Public Auditor. During the interview, the former CPA Deputy Director admitted using the black Toyota Camry for personal reasons during week days. According to him, in the early part of June 1996, there were some personal things he had to do and he did not want to use his assigned car with government license plates and markings. He added that he owns a personal car but the car was being used by his wife during the day. He, therefore, resorted to the use of the CPA leased vehicle without the government license plates or markings for his personal business.

#### *Noncompliance With CNMI Government Vehicle Rules and Regulations*

The former CPA Deputy Director said that in June 1996 he was in need of a vehicle for his personal use, and he recalled that the black Toyota Camry without a government license plate was available. He stated that he just took the vehicle from the airport parking lot without telling anyone or getting any authorization. He also said that CPA has no sign-out procedure in place for tracking vehicles, and because some of these vehicles were at times provided for use by off-island guests, no one paid attention to the fact that it was missing. The former CPA Deputy Director

likewise stated that he originally intended to keep and to use the black Toyota Camry for only a week, but after no one noticed that it was missing, he continued using it. According to him, he also had the vehicle's windows tinted to avoid recognition. He also said that he picked the rear parking lot of the Taiwan Commercial Center for storing this vehicle until he needed it because its remote location reduced the risk of his car switching being noticed.

#### *Response of Former CPA Executive Director*

On September 24, 1996, at approximately 3:00 p.m., we interviewed the then CPA Executive Director regarding this matter. During the discussion, the former CPA Executive Director stated that:

- The black Toyota Camry with license plate number ABD-724 was leased by CPA, based on the recommendation of the former CPA Deputy Director who advised that the Administrative Assistant of CPA needed a car because the Administrative Assistant's duties require visits to the various CPA facilities on Saipan. In response to the recommendation, the former CPA Executive Director approved and signed the lease for the black Toyota Camry.
- He was unaware that the former CPA Deputy Director had taken control of the black Toyota Camry.
- He was not aware of any CNMI government regulations requiring government leased vehicles to have government license plates and markings. He said that he is driving a CPA leased car which up to the prior week did not have government license plates and markings. He stated that he was told of these requirements by his Operations Manager, and as a result, he gave instructions for both his leased car and the black Toyota Camry to be so marked and licensed.
- He was also not aware that CNMI government regulations required vehicle log books to be kept to monitor the use of government vehicles, and therefore, no CPA vehicle had such a log. He said that he would insure that all CPA vehicles be equipped with logs and that they be used.

#### *Approximate Loss to the CNMI Government*

The CNMI Government did not benefit from the lease of the black Toyota Camry for the period it was being used for personal matters by the former CPA Deputy Director. For approximately 3 to 4 months from late May or early June 1996 up to September 18, 1996 at the monthly lease rental of \$950, CPA then lost approximately \$3,275 in lease payments for which no value was received. The CNMI Government also did not benefit from the services of the former CPA Deputy Director during the period he was doing personal matters during regular government working hours. If computed from June to August 1996 (a total of 64 working days), at the rate of approximately three hours per weekday, the former CPA Deputy Director utilized approximately 192 hours (64 working days times 3 hours per workday) of government time doing personal matters. With an hourly rate of \$20.19 (maximum annual salary of department deputy director of

\$42,000 per Public Law 7-31 “Commonwealth Compensation Adjustment and Salary Act of 1991” divided by 2,080 hours), CPA thus lost approximately \$3,870 in salary paid to the former CPA Deputy Director. In addition, the CNMI Government also lost amounts for the fuel, operations and maintenance costs of the white Toyota Camry, and the unavailability of the car for government use during the period it was parked at the Taiwan Commercial Center.

## **Conclusions and Recommendations**

Our audit and investigation showed that the former CPA Deputy Director used a black Camry government leased vehicle with license plate number ABD-724 for his private use from late May or early June 1996 to September 18, 1996. This occurred because CPA did not comply with 1 CMC §7406 (e), no tinting materials on the windows, (f), markings on both front doors, and (g), government license plates, and Sections 6 (a), (b), and (c) of the Government Vehicle Regulation No. 1101, vehicle log records. As a result, the CNMI Government lost approximately \$3,275 and \$3,870 representing the lease of the black Toyota Camry and the salary of the former CPA Deputy Director, respectively, during the period he was using the government leased vehicle doing personal matters on official government time. In addition, he also misused the white Toyota Camry which cost the government amounts for fuel, operation and maintenance expenses, and the unavailability of the car for government use during the period it was parked at the Taiwan Commercial Center.

We referred the matter of misuse of a government vehicle to the Attorney General’s Office (AGO) for action, and the AGO filed criminal charges against the former CPA Deputy Director. On December 20, 1996, the CNMI Superior Court found the former CPA Deputy Director guilty of misusing a government vehicle in violation of 1 CMC §7406(e) and (f), and sentenced him to 3 days in jail, all suspended, plus a fine of \$300.

For the misconduct in office of this high-ranking official, we recommend that the Executive Director of CPA (1) issue administrative sanction(s) (e.g., admonishment, reprimand, suspension, reassignment, demotion, termination, etc.) deemed appropriate under the circumstances against the former CPA Deputy Director in accordance with 1 CMC §7406(i). The CPA Executive Director should (2) recover from the former CPA Deputy Director the \$3,275 equivalent lease cost of the black Toyota Camry during the period of misuse, (3) order the former CPA Deputy Director to repay \$3,870 cost of salary he received from the government for the hours he was doing personal business, and (4) recover from the former CPA Deputy Director a reasonable amount for the cost of fuel and maintenance of the white Toyota Camry.

### *CPA Response*

In his letter response dated January 30, 1998 (APPENDIX A), the CPA Executive Director stated that CPA could not carry out Recommendation 1 because the former CPA Deputy Director has already resigned from CPA.

On Recommendations 2, 3, and 4, the CPA Executive Director stated that CPA needs to find out whether the criminal conviction entered against the former CPA Deputy Director was based on a plea-bargain made by the prosecutor and accepted by the CPA Deputy Director. If it is, CPA needs to know whether CPA is precluded from now seeking restitution, if the agreement between the parties had intended preclusion of restitution. Another matter CPA wants to find out is why the criminal conviction that was entered did not include an order of restitution to CPA, the victim of the offense. Therefore, CPA shall advise OPA of the course of action CPA will be taking once the CPA Board has fully reviewed the case and has obtained information needed to make a decision.

### *OPA Comments*

Based on the letter response, we consider Recommendation 1 closed. The former CPA Deputy Director has since resigned from CPA therefore the recommendation can no longer be implemented.

Restitution in criminal cases is normally requested when out of pocket losses by victims of crimes are easily discernible. Where disputed or otherwise complicated or not readily determinable, restitution is generally reserved for civil action. Although the lease payment cost in this case appears calculable, the hours of salary paid to the former CPA Deputy Director during his periods of personal time during working hours are not. Criminal cases must move through the courts as quickly as possible and should not be bogged down over resolution of disputed restitution issues. Another reason for not including restitution in a case such as this is because the offense carries a maximum jail penalty of only three days, and for that reason, the court would only have jurisdiction over the defendant to enforce a restitution order for three days (in the CNMI, the court cannot place the defendant on probation for any longer than the maximum jail sentence). Therefore, it would have been impractical and futile to consider restitution with such a short period of court jurisdiction. We have reviewed the written plea agreement and judgment of the court and found that the issue of restitution was not addressed by the parties or the court. We can only assume that the reasons for not including restitution in this case are for the reasons stated, and, of course, any agreement not to seek restitution in a criminal case does not preclude civil remedies, i.e., a lawsuit for recovery of damages.

For Recommendations 2, 3, and 4, the response of the CPA Executive Director also did not provide reasonable time frame for action, thus, these recommendations remain open. The additional information needed to close these recommendations is presented in APPENDIX B. In addition, we are referring this to the Attorney General's office for further action.

\* \* \*

Our office has implemented an audit recommendation tracking system. All audit recommendations will be included in the tracking system as open or resolved until we have received evidence that the recommendations have been implemented. An *open* recommendation is one where no action or plan of action has been made by the client (department or agency). A *resolved*

recommendation is one in which the auditors are satisfied that the client cannot take immediate action, but has established a reasonable plan and time frame of action. A *closed* recommendation is one in which the client has taken sufficient action to meet the intent of the recommendation or we have withdrawn it. Please provide to us the status of the recommendation implementation along with the documentation showing the specific actions taken.

Please provide to us the status of recommendation implementation within 30 days along with documentation showing the specific actions that were taken. If corrective actions will take longer than 30 days, please provide us additional information every 60 days until we notify you that the recommendation has been closed.

Sincerely,

ORIGINAL SIGNED

Leo L. LaMotte  
Public Auditor, CNMI

cc: Governor  
Lt. Governor  
Eleventh CNMI Legislature (27 copies)  
Attorney General  
Secretary of Finance  
Special Assistant for Management and Budget  
Public Information Officer  
CPA Board Chairman  
Press

Note: Appendix A which contained the response of the CPA Acting Executive Director was intentionally omitted to minimize this publication's size. This page is available upon request to the Office of the Public Auditor.

AUDIT AND INVESTIGATION OF MISUSE OF A GOVERNMENT VEHICLE OF THE  
COMMONWEALTH PORTS AUTHORITY

STATUS OF RECOMMENDATIONS

Recommendations	Agency	Status	Action Required
1. The Executive Director issue administrative sanction(s) (e.g., admonishment, reprimand, suspension, reassignment, termination, etc.) deemed appropriate against the CPA Deputy Director in accordance with 1 CMC §7406(i).	CPA	Closed	
2. Recover from the former CPA Deputy Director the \$3,275 equivalent lease cost of the black Toyota Camry during the period of misuse.	CPA	Open	The CPA Executive Director should provide OPA documents on the result of the review and final decision made by the CPA Board. The CPA Executive Director should provide OPA documents on the outcome of the recovery action.
3. Order the former CPA Deputy Director to repay \$3,870 cost of salary he received from the government for the hours he was doing personal business.	CPA	Open	The CPA Executive Director should provide OPA documents on the result of the review and final decision made by the CPA Board. The CPA Executive Director should provide OPA documents on the outcome of the recovery action.
4. Recover from the former CPA Deputy Director a reasonable amount for the cost of fuel and maintenance of the white Toyota Camry.	CPA	Open	The CPA Executive Director should provide OPA documents on the result of the review and final decision made by the CPA Board. The CPA Executive Director should provide OPA documents on the outcome of the recovery action.