



**ANNE ARUNDEL COUNTY
OFFICE OF THE COUNTY AUDITOR**

July 23, 2013

The Honorable Members of the County Council
The Honorable Laura Neuman, County Executive
Mr. William Schull, Acting Central Services Officer
Anne Arundel County
44 Calvert Street
Annapolis, Maryland 21401

Dear Members, Ms. Neuman and Mr. Schull:

In accordance with Section 311 of the County Charter, I am calling to your attention and taking exception to the improper procedure noted in this report regarding the Self Insurance Fund Committee's approval of claims for payments from the Self Insurance Fund that are greater than \$5,000.

Anne Arundel County has established the Self Insurance Fund to secure the liability for automobile liability, general liability, property damage, and workers' compensation claims against the County and its employees. The County's coverage is extended to the Public Library Association of Annapolis and Anne Arundel County, Inc. and to the County's volunteer fire companies and rescue squads. Additionally, certain coverage is provided to the Board of Education (BOE) and to Anne Arundel Community College (AACC) through cooperative agreements. The fund is administered by the Self Insurance Fund Committee comprising the Chief Administrative Officer, the County Attorney, the Central Services Officer, the Controller, a member of the Library Board of Trustees, a member of the AACC Board of Trustees, and a member of the Board of Education, or their designees.

We recently conducted a performance audit to determine whether the Committee was administering the fund in accordance with Section 3-11-105 of the County Code. Specifically, the objectives of our audit were to determine whether:

1. the Committee established policies and adopted rules and regulations for the operation of the fund and whether the Committee complied with the policies it established and the rules and regulations it adopted; and
2. the Committee reviewed and approved all claims for payment greater than \$5,000, but less than \$100,000.

We conducted our audit in accordance with generally accepted government auditing standards prescribed by the Comptroller General of the United States. Those standards require us to plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To accomplish our objectives, we:

- met with Office of Central Services personnel to document the policies, rules, and regulations governing the operations of the fund;
- tested compliance with established policies, rules, and regulations; and
- reviewed available claim records and supporting documentation.

Our findings and recommendations address controls in place and transactions that occurred during calendar years 2011 and 2012. Attached to this report is management's response to our findings and recommendations as well as our comments on management's response.

This report is intended solely for the use of the County Council and the management of Anne Arundel County. However, this report is a public document that may be obtained from the Office of the County Auditor.

BACKGROUND

Article 3, Title 11 of the County Code establishes the Self Insurance Fund and the Self Insurance Fund Committee. Section 3-11-105(d) requires the Committee to (1) review and approve all claims for payment from the fund greater than \$5,000, but less than \$100,000; (2) establish policies relating to the operation and maintenance of the fund; and (3) adopt rules and regulations necessary for the operation of the fund, including rules to establish the nature of the losses to be paid from the fund, the limits of liability payable from the fund, and the nature of the administrative expenses to be paid by the fund if not otherwise provided by law.

The Self Insurance Fund is funded through contributions from participating entities based on the entities' claims histories. The County's General Fund contributes approximately 65% of the fund's revenues; the BOE contributes approximately 30%, and the County's enterprise funds, the Library, and AACC contribute the remaining 5%. Contributions to the fund totaled \$100.2 million and claims expenses totaled \$103.7 million from July 1, 2006 to June 30, 2012. The fund also earned \$11.7 million in investment income and incurred administrative expenses of approximately \$9.7 million during the same six-year period.

FINDINGS AND RECOMMENDATIONS

Objective 1: To determine whether the Self Insurance Fund Committee established policies and adopted rules and regulations for the operation of the fund and whether the Committee complied with the policies it established and the rules and regulations it adopted.

We determined the Committee established policies and adopted rules and regulations necessary for the operation of the fund. Further, we tested 20 claims with payments totaling \$1.2 million during 2011 and 2012 and determined that the Committee complied with the policies it established and the rules and regulations it adopted for the operation of the fund.

We also found the Committee's rules and regulations to be comprehensive and reasonable. However, we recommend modifying one regulation adopted by the Committee regarding punitive damages.

Under Maryland case law, punitive damages may be awarded only if a plaintiff can prove "actual malice" by clear and convincing evidence, and actual malice is conduct characterized by evil motive, intent to injure, ill will, or fraud. Punitive damages may not be awarded for "implied malice," which is gross negligence, recklessness, or when the defendant should have known of the harm.

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Section 5-303 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland provides that the County may not be held liable for punitive damages. However, the County may choose to indemnify an employee for punitive damages, and the Committee has adopted a regulation that allows payment from the Self Insurance Fund to do so.

The regulation adopted by the Committee allows the Committee to authorize payment from the fund to indemnify an employee held liable for punitive damages if the Committee finds that (1) the employee was performing a duty within the scope of employment when the act or omission was made, and (2) the act or omission was not malicious or grossly negligent. The Committee adopted this regulation because County officials may strongly disagree with a verdict or judgment in which an employee was held liable for punitive damages. The Office of Law is aware of only one situation about 20 years ago in which the Committee approved payment of a small punitive damage award.

It is my opinion that when a judge or jury has ruled that a plaintiff proved with clear and convincing evidence that an act or omission *was* malicious (actual malice), it is inappropriate for the Committee to substitute its judgment for that of the judge or jury and determine that the act or omission *was not* malicious. Further, punitive damages may not be awarded for gross negligence (implied malice), so the Committee's regulation allowing payment from the fund to indemnify an employee for an act or omission that is grossly negligent is not consistent with State law. Accordingly, I recommend that the Council pass legislation that either precludes the Committee from indemnifying an employee for punitive damages or requires the County Council's approval to do so.

Objective 2: To determine whether the Self Insurance Fund Committee reviewed and approved all claims for payments greater than \$5,000 but less than \$100,000.

Section 3-11-105(d)(1) of the County Code requires the Committee to review and approve all claims for payment from the Self Insurance Fund that are greater than \$5,000 but less than \$100,000. In determining whether the Committee complied with this Code provision, we considered the application of the following three provisions of County law:

- § 3-11-108 of the County Code: This section requires the County Attorney to provide legal counsel to any person whose liability is secured under the Self Insurance Fund and provides that all fees paid for legal counsel appointed by the County Attorney shall be paid from the fund.
- § 528 of the Charter: This section permits the County Attorney to engage the services of an outside attorney for a temporary period when the work is of such a character or magnitude to require legal services in addition to those provide by the Office of Law staff.
- Section 3-11-106(3) of the County Code: This section tasks the Central Services Officer with the duty to obtain administrative and consulting services as he finds necessary *after* the approval of the Self Insurance Fund Committee.

We reviewed 20 claims from calendar years 2011 and 2012 totaling \$1,215,000. In our review, we interpreted "claims for payment" to mean *all* payments from the fund, whether for damages, for workers' compensation benefits, or for defense costs such as outside attorneys, consultants, expert witnesses, and court reporters. We did not interpret "claims for payment" to be synonymous with the "payment of claims" only for damages or workers' compensation benefits.

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In our review of 20 claims totaling \$1,215,000 we determined:

- \$715,000 comprised claims that were \$5,000 or more for vehicle damages or amounts paid to claimants that were approved by the Committee.
- \$477,700 comprised claims for payments that were \$5,000 or more to outside attorneys, consultants, expert witnesses, and court reporters retained by the County. The Committee did not approve these claims for payment.
- \$22,400 comprised claims for payment that were \$5,000 or less, so the Committee's approval was not required.

In our testwork we found that the County Attorney regularly enters into contracts anticipated to exceed \$5,000 with outside counsel. Additionally, the County Attorney, not the Central Services Officer, regularly hires consultants and expert witnesses to assist in the County's defense. The Office of Law approves the vendor's invoices, and the invoices are paid from the Self Insurance Fund without the Committee's review and approval.

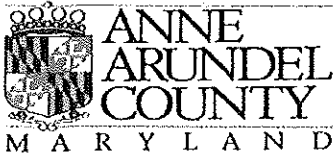
The Committee would have no choice but to pay a claim for payment greater than \$5,000 when the services had already been rendered under a contract entered into by County. Likewise, the County Council would have no choice but to approve a claim for payment of \$100,000 or more when the services had already been rendered under a contract entered into by the County. Therefore, we recommend amending the County Code to require the Committee to approve all contracts for which payment from the fund is expected to be greater than \$5,000 and to require the Council's approval of all contracts for which the payment from the fund is expected to be \$100,000 or more.

We thank the Office of Central Services for their assistance and courteous cooperation during our audit. Please call if you have any questions regarding our findings and recommendations.

Sincerely,



Teresa Sutherland, CPA
County Auditor



OFFICE OF CENTRAL SERVICES
Annapolis, Maryland
ADMINISTRATION

Laura A. Neuman
County Executive

INTER-OFFICE CORRESPONDENCE

TO: Teresa Sutherland, County Auditor

FROM: Amy Lanham, Safety & Insurance Manager *AL*

VIA: William L. Schull, Acting Central Services Officer *WLS*

DATE: July 10, 2013

SUBJECT: SIF Audit Letter to County Council dated June 17, 2013

Thank you for your comments regarding the Self Insurance Fund. I have reviewed the audit report. Please see our responses below.

This report focused on two specific objectives. Each is outlined below with an appropriate response. Please also note the attached response from the County Attorney.

OBJECTIVE 1: **To determine whether the Self Insurance Fund Committee established policies and adopted rules and regulations for the operation of the fund and whether the Committee complied with the policies it established and the rules and regulations it adopted.**

The auditor reports that a random test sample was reviewed and all established policies and adopted rules and regulations were complied with. Further, the auditor recommends a change of policy regarding punitive damages. The proposed change would preclude the County from indemnifying an employee for punitive damages without approval of the County Council. The auditor recommends removing the ability of the Committee to make such a decision.

Response: *The Risk Management office does not directly dispute the concept of this recommendation. However, we agree with the attached memo from the County Attorney providing many considerations and cautions that should be considered in relation to such a change.*

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OBJECTIVE 2: To determine whether the Self Insurance Fund Committee reviewed and approved all claims for payments greater than \$5,000 but less than \$100,000.

The auditor reports that the County regularly enters into contracts anticipated to exceed \$5,000 with attorneys, consultants, expert witnesses, and court reporters and recommends an amendment to the County Code to require the Committee to approve all contracts for which payment from the fund is expected to exceed \$5,000.

Response: The purpose of the Self Insurance Fund is to protect the County's assets by way of claims handling and defense. The County routinely receives claims that require defense and processing costs regardless of actual liability. In most cases, while costs for investigation and defense may exceed \$5,000, this is not something that's easily estimated and can change rapidly. Requesting authority for defense costs is unreasonable and will add inefficiency to the claims process. The current practice promotes regular communication between the Self Insurance Fund and Defense team to ensure reserves remain adequate through the course of a claim. This is the reasonable standard among the industry. These payments are not considered claims payments; they are the cost of doing business. This recommendation raises the following three concerns from the Office of Risk Management.

1. Workers' Compensation claims, which account for an estimated 85% of total open claims, yield frequent payments, which yield a total payment in excess of \$5,000. As of June 30, 2012 the Risk Management office records reflect 1450 open Workers' Compensation claims with an average incurred loss of just over \$80,000. Involving the Committee in the authorization of such a large volume of claims will decrease productivity and delay claims processing. In addition, the Maryland Workers' Compensation Commission will assess penalties if claim processing is delayed regardless of the County's position or code restrictions.

2. Liability claims often incur defense costs regardless of actual liability. The use of experts, court reporters, etc. is a common necessity for appropriate claims handling and defense. Experts are chosen based on the specifics of the case and based on the County Attorney's defense strategy. What value would be added by a Committee review? The members of the Committee would not have the defense knowledge to determine what experts or charges were appropriate in each case and would be relying solely on the recommendation of the County Attorney and/or their staff. Review by the Committee will simply cause delay.

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3. The current outdated code already provides the County Risk Management office with a disadvantage by maintaining the limit of authority set into place at the inception of the Self Insurance Fund in 1977. That limit, which remains at \$5,000 despite market changes over the past 36 years, applies to even the most basic property damage claims causing delayed payments both vendors and citizens.

I'd respectfully request that the fund not be any further crippled in its ability to conduct efficient claims management.

cc: Karen L. Cook, Chief Administrative Officer
Laureen Toney, Acting County Controller
David A. Plymyer, County Attorney

Attachment

interoffice
MEMORANDUM

Anne Arundel County Office of Law

To: William L. Schull, Acting Central Services Officer

From: David A. Plymyer, County Attorney /s/

Date: June 25, 2013

Subject: Letter from County Auditor Dated June 17, 2013, Self-Insurance Fund

Mr. Schull,

I am providing this memorandum to you in light of the letter prepared by the County Auditor dated June 17, 2013. Because her findings under both Objective 1 and Objective 2 implicate legal and policy matters affecting the Office of Law, I offer this memorandum to you to assist you in preparing management's response.

Under Objective 1, the County Auditor recommends that the County Council pass legislation to preclude the County from indemnifying an employee for punitive damages without approval of the County Council. Although this is a matter of legislative policy resting within the sound discretion of the County Council, I have a couple of words of caution about any change.

First of all, it should be emphasized that this simply is the County Auditor's own recommendation as to appropriate public policy, and she is not reporting this as her "exception" to a current practice that does not comply with existing law. Indeed, the Self-Insurance Fund Committee long has retained the right, where not prohibited by law and acting in its sole discretion, to authorize payment of a punitive damage award rendered against an employee. Although this is characterized by the County Auditor as a "policy," it is more accurately described as a published regulation adopted by the Self-Insurance Fund Committee that governs the nature of losses to be paid from the Fund in accordance with the delegation of authority under § 3-11-105(d)(4) of the County Code.

Long story short, the public policy behind this regulation is that juries in particular on occasion make decisions with which the Self-Insurance Fund Committee (and others) disagree. This regulation conforms to the authority recognized under § 5-303(c) of the Courts and Judicial Proceedings Article allowing local governments to indemnify employees for punitive damage awards even if not required by the Local Government Tort Claims Act to do so.

As noted by the County Auditor, there appears to be one case in 20 years in which this regulation was employed in order to pay a punitive damage award on behalf of an employee. In that case, the Committee concluded that a (relatively small) punitive damage award against a

police officer was unjustified on the basis that the Committee believed that that the officer had used an appropriate amount of force in the performance of his duties.

Having said the above, I do not dispute that this regulation could be foreclosed by an ordinance enacted by the County Council, if the County Council concludes that the regulation is inappropriate as a matter of public policy or is subject to abuse. However, as this regulation was adopted primarily to provide the potential for relief to law enforcement and correctional officers accused of misconduct in the course of their duties, I would suggest consultation with representatives of those officers before a final decision is reached. Finally, I have some concerns about a legislative body doing the kind of fact-finding that goes into this type of decision, but those concerns again rest within the sound discretion of the County Council.

Under Objective 2, the County Auditor interprets the phrase "claims for payment from the Fund" requiring approval of the Committee under § 3-11-105 of the County Code to refer not only to claims for payment of damages under the County's various self-insured liability coverages and claims for the payment of benefits under the County's workers' compensation coverages, but also to any "claims for payment" of expenses incurred in defending against claims in suit, such as expenses for depositions, experts, and outside counsel. Consequently, she takes exception to the existing practice of not submitting invoices for such services to the Committee for approval. This is a matter of statutory interpretation, and I do not believe that the interpretation by the County Auditor is correct.

In her analysis, the County Auditor distinguishes the phrase "claims for payment" from the "payment of claims." She states that if the County Council intended to limit the role of the Self-Insurance Fund Committee as currently limited in practice, the County Council would have used the phrase "payment of claims" rather than "claims for payment."

In my analysis, I have not found there to be a distinction that makes any difference in terms of the "plain meaning" of the words. In other words, there is nothing in the case law that instructs us that when the phrase "claims for payment" is used it is intended to refer not only for claims for payment of damages, but also to claims for payment of defense costs. Therefore, the meaning must be determined by the intent and context of the specific ordinance.

Long-standing administrative practice has considerable force in determining the proper interpretation of a statute or ordinance. See *Cosby v. Department of Human Resources*, 425 Md. 629, 638 (2012). There is at least a 27-year history of administrative practice of which I am aware that contradicts the County Auditor's interpretation of the phrase "claims for payment." To my knowledge, the Self-Insurance Fund Committee never has construed its role in approving "claims for payment" to include review of expenses incurred in defending against claims and suits brought to enforce the claims for damages and worker's compensation benefits.

Another rule of statutory construction is that interpretations that lead to illogical and unreasonable results should be avoided, if possible. See *Employees' Retirement System of Baltimore v. Dorsey*, 430 Md. 100, 113 (2013). As observed by the Central Services Officer, it is unclear what value it would add to the administration of the Self-Insurance Fund to have the Committee involved in reviewing invoices submitted for payment by outside counsel,

consultants, expert witnesses, and court reporters retained by the County. In fact, it would make administration more difficult *without* adding any value, which likely is one reason the Committee did not adopt the interpretation urged by the County Auditor.

As noted by the County Auditor, most of the decisions at issue are made by the Office of Law in the course of preparing a defense against claims that are in litigation. The expense for court reporting services is dictated by the number and length of depositions required. The use of consultants and expert witnesses is determined as a part of litigation strategy through the normal supervisory channels of the Office of Law, for which the County Attorney ultimately is responsible. In that sense, there is very little difference between those decisions and the types of decisions routinely made by the heads of other offices and departments as they decide what is necessary in order to perform their County duties. (And, because the Central Services Officer or designee must approve all payments from the Fund, there is an additional check-and-balance that exceeds the requirements in other situations.)

What the County Auditor basically is recommending is that the Self-Insurance Fund Committee should serve a supervisory role over the decisions made by the Office of Law in the course of preparing and executing a legal defense against civil suits. Although she is entitled to her views in that regard, there is no basis to believe that such a role ever was contemplated for the Committee by the County Council.

In conclusion, I do not believe that management needs to take any action in response to the above finding by the Auditor, because I believe the Auditor is wrong. If the Auditor feels strongly enough about the need for a change in the decades-old practice of the Self-Insurance Fund Committee she may make a recommendation to the County Council that legislation be introduced requiring the Committee not only to approve "claims for payment" of damages and benefits, but also "claims for payment" submitted by court reporters, expert witnesses, etc.

The County Auditor makes a second recommendation under Objective 2. In light of her argument that "claims for payment" requiring approval of the Committee includes claims for payment of invoices submitted by expert witnesses, consultants, etc., she recommends "amending the Code to require the Council's approval of all contracts for which the payment from the fund is expected to be \$100,000 or more."

My threshold reply is that, because I disagree that approval by the Committee of such claims is necessary under the law, I do not believe that any limits on the authority of the Committee to approve such payments are necessary. However, there is a second, independent reason why I believe that such a change in policy would be misguided.

Budgeting for any future undertaking is an inexact science. Anticipating at the inception of litigation the costs that will be necessary to see the litigation through to a conclusion is particularly difficult because of the many variables; cases settle, they get dismissed, etc. The Offices of Central Services and Law do cooperate in setting "defense reserves" that, although reasonably accurate in the aggregate over time, are not necessarily a precise predictor of the costs in an individual case. These reserves become a part of the annual budget process.

The only type of contract of which I am aware that could be "expected to be \$100,000 or more" would be a contract for outside counsel. A separate memorandum was prepared for Assistant County Auditor Mannion describing the situations in which the use of outside counsel is required.

Agreements with outside counsel contemplating expenditures of that magnitude almost always call for payment on an hourly basis. As noted above, the course and duration of litigation is almost always impossible to predict with a high degree of confidence. I cannot think of one case in which we were able to negotiate a "fixed fee" for defending a case at that scale. At most, what the County Council would be approving would be an agreement to pay a specified attorney or law firm a specified hourly rate.

However, § 528 of the County Charter empowers the County Attorney, with the approval of the County Executive and subject to the availability of an appropriation, to engage the services of outside counsel for "temporary additional legal assistance." That authority extends to the selection of outside counsel to perform the duty imposed on the County Attorney under § 526(b) of the County Charter to defend officers and employees of the County in civil actions brought against them.

Consequently, under the allocation of powers set forth in the County Charter, the County Council has no role in the selection of the lawyer or lawyers retained to provide "temporary additional legal assistance." Unless the Council believes that it should have some role in "capping" the hourly rates paid to outside counsel (which I believe would be unrealistic and unworkable), I do not know where the County Auditor's recommendation would take us, or what it would accomplish.

Because the County Auditor's recommendations under Objective 2 take her into areas that have to do solely with changes to public policy, it is fair to ask the following rhetorical question: What specific problems are her recommendations intended to fix? I believe that an answer to that question might help shape management's response.

cc: Karen L. Cook, Chief Administrative Officer
Richard K. Drain, County Controller

Auditor's Response to Management's Response

County Auditor's Comments on Management's Response on Objective #1:

The Committee has adopted a regulation that allows the Committee to authorize payment to indemnify an employee held liable for punitive damages if the Committee determines that (1) the employee was performing a duty within the scope of employment when the act or omission was made, and (2) the act or omission was not malicious or grossly negligent.

In my report I write that it is inappropriate for the Committee to authorize a payment to indemnify an employee held liable for punitive damages because the Committee may do so only by finding the employee's act *was not* malicious, and a judge or jury may award punitive damages only when the court has found that the act *was* malicious. Further, I write that the Committee's regulation to indemnify an employee for punitive damages from an act that was grossly negligent is inconsistent with State law because State law does not allow an award of punitive damages for grossly negligent acts. In my report I recommend that the County Council pass legislation that either precludes the Committee from authorizing a payment to indemnify an employee for punitive damages or requires the County Council's approval to do so.

In management's response, the Central Services Officer and the Safety and Insurance Manager state that they do not directly dispute the concept of my recommendation. However, they urge caution and consideration of the comments written by the County Attorney in his June 25, 2013 memorandum in which he expresses concern about the County Council "doing the kind of fact-finding that goes into this type of decision" and suggests that the Council consult with representatives from law enforcement and correctional officers before making such a change.

If the County Council agrees that it is inappropriate as a matter of public policy for the Committee to substitute its judgment for that of a judge or jury whereby the Committee determines an act was not malicious when a judge or jury determined that the act was malicious, then the Council should consider an ordinance to preclude the Committee from authorizing such payments. Alternatively, the Council may wish to pass an ordinance that requires their approval for such an unusual action. Regardless of whether the Council chooses to take legislative action, I recommend that the Committee amend its regulation to remove the language that allows the Committee to indemnify an employee liable for punitive damages arising from grossly negligent acts or omissions because punitive damages may not be awarded for grossly negligent acts or omissions in Maryland.

County Auditor's Comments on Management's Response on Objective #2:

Section 3-11-106(3) of the County Code allows the Central Services Officer to obtain administrative and consulting services as he finds necessary after the approval of the Committee, and § 3-11-105(d)(1) requires the Committee to review and approve all claims for payment greater than \$5,000, but less than \$100,000.

In our testwork we reviewed 20 claims totaling \$1,215,000 to determine whether the Administration complied with these two provisions of the County Code. In our testwork we interpreted "claims for payment" as *all* payments from the fund, including defense costs, and not just the payment of claims for damages or workers' compensation benefits. We found that the fund paid \$477,000 of expenses that individually were greater than \$5,000 for outside attorneys, consultants, expert witnesses, and court reporters without the Committee's approval. Further, we found that the County Attorney, not the Central Services Officer, regularly retains the services of expert witnesses and consultants.

The Committee would have little or no choice but to pay a claim for payment greater than \$5,000, and the County Council would have little or no choice but to pay a claim for payment of \$100,000 or more, when the

services were rendered under a contract entered into by the County. Accordingly, I recommend in my report that the Committee approve all contracts for which payment of the fund is expected to exceed \$5,000, and that the County Council approve all contracts for which payment from the fund is expected to be \$100,000 or more.

In management's response to my findings and recommendations, they assert that costs for investigation and defense are not easily estimated and can change rapidly, and that requesting authority for defense costs is unreasonable and will add inefficiency to the claims process. Further, they assert that payments for defense costs are not claims payments; they are the cost of doing business. Management asserts:

- that having the Committee approve the large volume of workers' compensation claims will decrease productivity and delay claims processing.
- that the Committee would not have the defense knowledge to determine what experts or charges were appropriate in each case, and the members would be relying solely on the recommendation of the County Attorney and/or his staff, and that such a review would cause delay with no added benefit.
- that the County Code is outdated and provides the Risk Management Office with a disadvantage by maintaining the \$5,000 threshold set in 1977.

I offer the following comments in response to management's response. First, we did review any payments for workers' compensation benefits because we understand that the benefit amounts are determined by the Maryland Workers' Compensation Commission, and the County pays the benefits upon receiving an order from the Commission that has the force of law. Therefore, we had no findings or recommendations with respect to the payment of workers' compensation benefits. However, the Administration may wish to seek explicit permission in the County Code to pay such benefits without the Committee's approval when the amounts exceed \$5,000.

Second, the members of the Self Insurance Fund Committee have an obligation to ensure the Self Insurance Fund is managed in accordance with the parameters and limitations set forth in the County Code that are designed to protect the interests of the taxpayers and ensure the integrity of the fund. The County Code segregates duties such that the County Attorney secures legal counsel, but the Central Services Officer is responsible for obtaining administrative and consulting services after obtaining the Committee's approval. If the Committee believes it is appropriate for the County Attorney to secure consulting services, expert witnesses, etc., committing the County to the payment of such costs without limitation, then they should seek the appropriate changes to the County Code. Likewise, if the Committee believes the \$5,000 threshold is too low, then they should seek the appropriate legislative remedy.

Finally, if the County Council agrees that the Committee should approve *all* claims for payment from the fund, including defense costs, and not just the payment of claims for damages or workers' compensation benefits, then I recommend that the Council ask the County Attorney to draft the appropriate language since the County Attorney does not agree that "claims for payment" as the term is used in §3-11-105(d) applies to payments for defense costs such as outside council, expert witnesses, or consultants.

Please call if you have any questions on our report.

Teresa Sutherland, CPA
County Auditor