

# STATE OF NORTH CAROLINA

OFFICE OF THE STATE AUDITOR

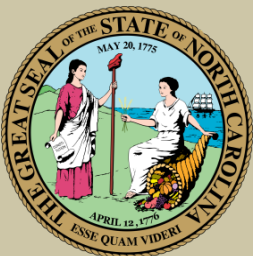
BETH A. WOOD, CPA



## TOWN OF RURAL HALL

RURAL HALL, NORTH CAROLINA

INVESTIGATIVE REPORT  
FEBRUARY 2023



**NC OSA**  
The Taxpayers' Watchdog

# EXECUTIVE SUMMARY

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## **PURPOSE**

The Office of the State Auditor initiated an investigation in response to 13 allegations received concerning the Town of Rural Hall (Town).

## **BACKGROUND**

The Town is located in Forsyth County, North Carolina. According to the 2021 census estimate, the Town has approximately 3,400 residents. The Town operates under a council-manager form of government, whereby the Town Council oversees the general administration of the Town, makes policy, and sets budgets. The Town Manager is appointed by the Town Council to carry out the day-to-day administrative operations.

For the fiscal year ended June 30, 2022, the Town operated on an annual budget of approximately \$4.2 million for the General Fund, Fire Department Fund, and Cemetery Fund.

## **KEY FINDINGS**

- The Town failed to produce public records that were requested by members of the public.
- The Town Council violated the North Carolina open meetings law.
- The interim Town Attorney's contract was not preaudited.<sup>1</sup>

## **KEY RECOMMENDATIONS**

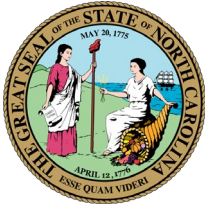
- The Town Council should ensure that its Town Attorney is knowledgeable in legal matters relating to local government, including the North Carolina public records law, North Carolina open meetings law, and the council-manager form of government.
- The Town Council and Town Manager should ensure that all contracts are provided to the Finance Director to be preaudited prior to the obligation being incurred.
- The Town Council should seek legal advice in regards to the potentially invalid contract.

*Key findings and recommendations are not inclusive of all findings and recommendations in the report.*

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<sup>1</sup> A preaudit would have included a review to ensure the contract was included in the Town's budget and funds were available to pay for the contract

STATE OF NORTH CAROLINA  
**Office of the State Auditor**



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## **AUDITOR'S TRANSMITTAL**

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The Honorable Roy Cooper, Governor  
Members of the North Carolina General Assembly  
The Honorable Josh Stein, Attorney General  
Timothy M. Flinchum, Mayor, Town of Rural Hall  
Town of Rural Hall Town Council

Ladies and Gentlemen:

Pursuant to North Carolina General Statutes § 147-64.6(c)(16) and 147-64.6B, we have completed an investigation of allegations concerning the Town of Rural Hall. The results of our investigation, along with recommendations for corrective action, are contained in this report.

Copies of this report have been provided to the Governor, the Attorney General, and other appropriate officials in accordance with N.C.G.S. § 147-64.6(c)(12). We appreciate the cooperation received from the management and employees of the Town of Rural Hall during our investigation.

Respectfully submitted,

A handwritten signature in black ink that reads "Beth A. Wood".

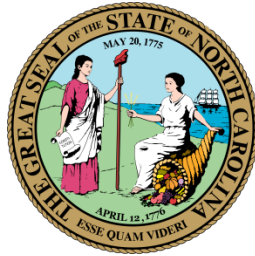
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State Auditor



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**State Auditor**

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# BACKGROUND

The Office of the State Auditor initiated an investigation in response to 13 allegations received regarding the Town of Rural Hall (Town).

Our investigation of these allegations included the following procedures:

- Review of applicable North Carolina General Statutes and Town policies and procedures.
- Examination and analysis of available documentation related to the allegations.
- Review of minutes from meetings of the Town Council.
- Interviews with current and former Town officials and personnel.

This report presents the results of the investigation. The investigation was conducted pursuant to North Carolina General Statutes § 147-64.6(c)(16) and § 147-64.6B.

The Town is located in Forsyth County, North Carolina. According to the 2021 census population estimate, the Town has approximately 3,400 residents.<sup>2</sup>

The Town operates under a council-manager form of government, whereby the five-member Town Council, which includes the Mayor, oversees the general administration of the Town, makes policy, and sets budgets. The Town Manager is appointed by the Town Council to carry out the day-to-day administrative operations of the Town.

The Town Manager oversees the Public Works Director, Finance Director, Town Clerk, Fire Chief, License Plate Agency Supervisor, and an administrative assistant.

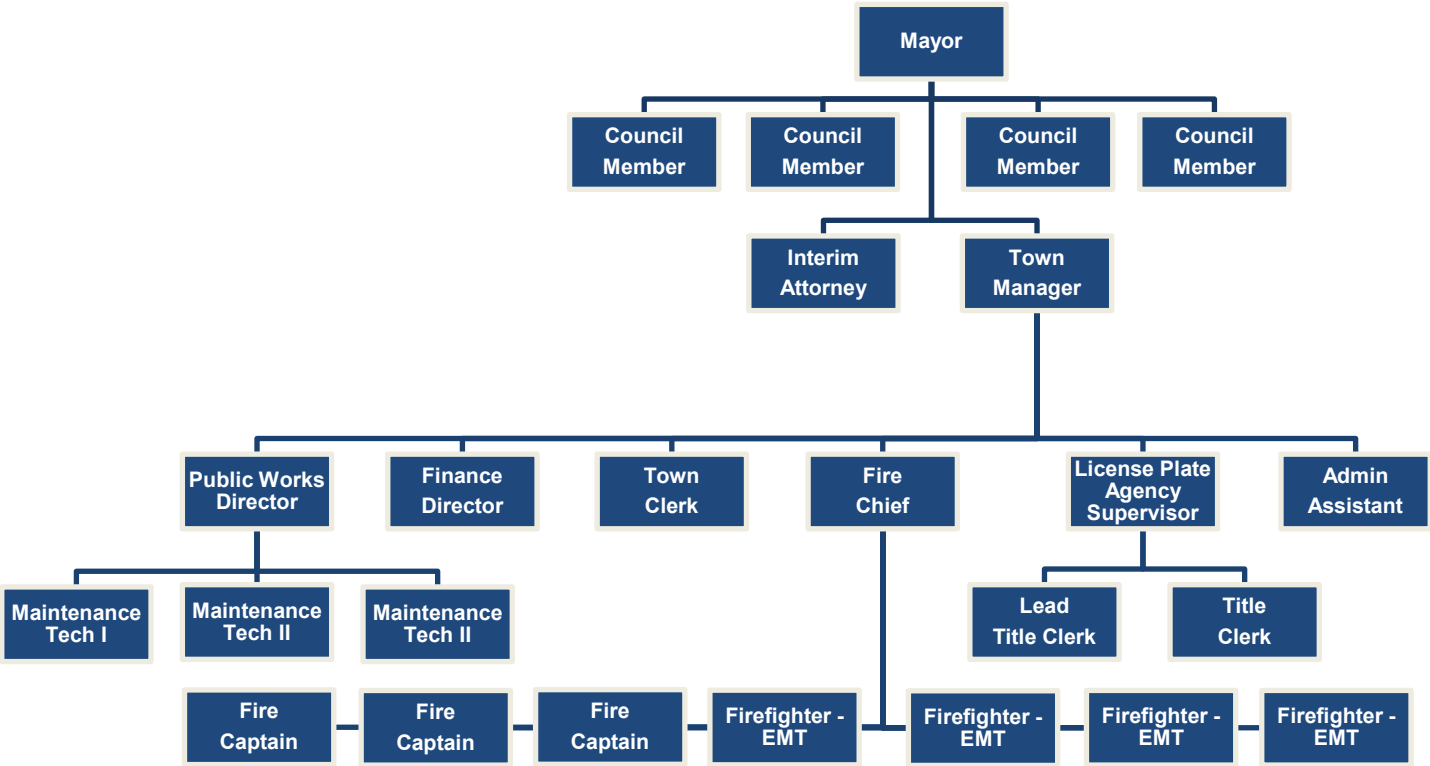
For the fiscal year ended June 30, 2022, the Town operated on a budget of approximately \$4.2 million for the General Fund, Fire Department Fund, and Cemetery Fund.

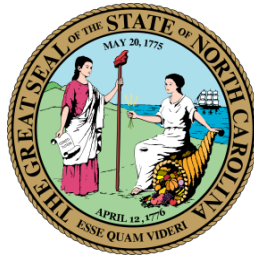
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<sup>2</sup> Bureau, US Census. "City and Town Population Totals: 2020-2021". Census.gov. US Census Bureau. Retrieved August 6, 2022.

BACKGROUND

See below for the organizational chart for the Town of Rural Hall.





# **FINDINGS AND RECOMMENDATIONS**



## 1. PUBLIC DENIED PUBLIC RECORDS REQUESTS

The Town of Rural Hall (Town) failed to produce public records that were requested by members of the public. The failure to produce public records improperly limited public transparency and accountability. Additionally, North Carolina General Statutes § 132-9 states that if someone is denied access to public records, they may apply for a court order compelling disclosure, and the Town could be responsible for the attorneys' fees of the requester.

The public records were not produced because the Town relied on the interim Town Attorney to respond to public records requests. However, the interim Town Attorney disregarded North Carolina public records law.<sup>3</sup>

North Carolina General Statute § 132-1(b) states that public records are the property of the people, and that the people may obtain copies of their public records and public information.

### **Public Records Not Produced**

The Town failed to produce public records that were requested by members of the public, including residents of the Town. Specifically, from November 2021 through June 2022, the Town failed to produce 19 of 50 (38%) public records requested.

In November 2021, the Town notified the public that all public records requests would be sent to the interim Town Attorney. A notice on the Town's website stated: "Due to pending litigation, all Town of Rural Hall public record requests are being routed through our attorney ... . Due to pending litigation, all requests are being tracked."

During the period November 2021 through June 2022, the Town forwarded requests for 50 public records to the interim Town Attorney.

Of the 50 public records requested, the Town failed to produce 19 public records.

Examples of the public records that the Town failed to produce included:

- Copies of resignation letters from five former Town staff.
- Employment history for two Town employees.<sup>4</sup>
- Employment contract for the former Town Manager.
- Copy of a letter from the former Town Manager to the Mayor and Town Council.<sup>5</sup>
- Copies of a presentation at an open session Town Council meeting.
- Video footage from security cameras at all Town facilities.

<sup>3</sup> Chapter 132 of the North Carolina General Statutes.

<sup>4</sup> North Carolina General Statutes § 160A-168 details what information of an employee's personnel file is public record. While not all information is public record, some information can be produced. The interim Town Attorney produced information that is public record to one requester; however, the same information was denied when requested by a different person.

<sup>5</sup> This public record was produced for one request, but was denied when it was requested by a different person.

### **Improperly Limited Public Transparency and Accountability**

The Town's failure to produce public records upon request improperly limited the public's ability to be informed about the operations and performance of their government and to hold Town officials accountable.

### **Legal Action and Legal Fees**

Also, since the Town did not produce public records, the person who made the request can ask a court to compel the Town to produce public records. The Town could be responsible for paying attorney's fees.

North Carolina General Statutes § 132-9 states:

- (a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying...

The statutes further state:

- (c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court shall allow a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys' fees if attributed to those public records...

### **Caused by Interim Town Attorney's Disregard for State Law**

The Town did not produce public records when requested by members of the public due to the Interim Town Attorney's disregard for the North Carolina public records law.<sup>6</sup>

Several of the requests made, including a request for employment records, a request for a letter from the former Town Manager to the Mayor, and the former Town Manager's employment contract, were made by the same person. The interim Town Attorney wrote in a letter to the person making the request that he denied the requests because the requester "demonstrated malice towards Rural Hall."<sup>7</sup>

However, the interim Town Attorney's denial is in direct conflict with the North Carolina public records law. Specifically, the law<sup>8</sup> states:

No person requesting to inspect and examine public records, or to obtain copies thereof, shall be required to disclose the purpose or motive for the request.

The interim Town Attorney did not identify any legitimate statutory exception to the North Carolina public records law as grounds to deny the requests.

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<sup>6</sup> Chapter 132 of North Carolina General Statutes.

<sup>7</sup> The interim Town Attorney stated that he believed the requester was providing the records produced to the attorney of the opposing party in an ongoing litigation. Therefore, he denied access to public records.

<sup>8</sup> North Carolina General Statutes 132-6(b).

Further, the interim Town Attorney denied a requester access to camera footage, despite admitting to investigators that the footage was “technically public records.”<sup>9</sup> He stated that he did not provide the footage because of the volume of footage that the Town had retained. He stated that someone would have to go through the footage before it could be disclosed, and “the Town does not want to pay me to do that.”

However, the interim Town Attorney’s denial of access to camera footage is in direct conflict with the North Carolina public records law. Specifically, the law<sup>10</sup> states:

Every custodian of public records shall permit any record in the custodian’s custody to be inspected and examined at reasonable times ... and shall, as promptly as possible, furnish copies thereof ...

Inconvenience and expense, the reasons cited by the interim Town Attorney for not producing the camera footage, are not recognized exceptions to the requirement to produce public records.

Investigators asked the interim Town Attorney if there was state law to support his reasons for denying the public records to the requesters. He stated, “No, I don’t think there is anything in the statute that per se permits that. There is in the statute a ... remedy for folks who are dissatisfied with what they have been provided. They have the remedy of filing a lawsuit [against the Town].”

### **North Carolina General Statutes**

Chapter 132 of the North Carolina General Statutes is the North Carolina public records law and states in part:

§ 132-1(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law.

### **Recommendations**

The Town should fulfill public records requests in accordance with North Carolina public records law.

The Town Council should ensure that the Town Attorney is knowledgeable in legal matters relating to local government, including the North Carolina public records law.

The Town Attorney should adhere to the North Carolina General Statutes.

<sup>9</sup> The interim Town Attorney stated that the footage is a record of citizens coming and going.

<sup>10</sup> North Carolina General Statute 132-6(a).

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### 2. VIOLATIONS OF OPEN MEETINGS LAW

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The Town Council for the Town of Rural Hall (Town) violated the North Carolina open meetings law<sup>11</sup> by not properly entering into closed sessions.<sup>12</sup> Further, the Town Council discussed items in closed session that should have been discussed in open session.

As a result, the Town Council improperly limited public transparency and accountability. Additionally, any person may initiate a legal suit asking that any action taken in closed session, that should have been discussed in open session, be deemed null and void.<sup>13</sup>

The Town Council did not properly enter closed sessions and discussed unallowed topics in closed sessions because the interim Town Attorney did not provide guidance to the members of the Town Council as to how to enter closed session and what topics were not allowed to be discussed in closed session.

North Carolina General Statute § 143-318.11(c) requires the Town Council to cite one or more permissible purposes for entering into closed session, with additional information being required for some permissible purposes.<sup>14</sup> North Carolina General Statutes § 143-318.11(a) lists the permissible purposes allowed to be discussed in closed session.

#### **Violation of Open Meetings Law**

From January 2021 through July 2022, the Town Council violated the North Carolina open meetings law by:

- Not properly entering closed sessions.
- Discussing topics in closed session that should have been discussed in open session.

#### *Not Properly Entering Closed Session*

From January 2021 through July 2022, the Town Council held 43 meetings. The Town Council entered into closed session during 24 of the 43 meetings. For 20 of the 24 closed sessions, the meeting minutes for the open session show that the Town Council did not properly cite all of the information required to enter into closed session.

While the open session minutes reflect that the Town Council did disclose the section of the North Carolina General Statutes § 143-318.11(a) to indicate the permissible purpose for which the closed session would be held, the open session minutes show that the Town Council **did not disclose** all information required per the North Carolina Open Meetings Law, such as the parties to any existing lawsuits discussed during closed session.

For example, North Carolina General Statute 143-318.11(a)(3) cites a permissible purpose “to consult with an attorney employed or retained by the public body in order to preserve the

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<sup>11</sup> Chapter 143, Article 33C of North Carolina General Statutes

<sup>12</sup> A portion of a meeting closed to all but Council members and invited guests.

<sup>13</sup> North Carolina General Statute § 143-318.16A(a).

<sup>14</sup> For example, a closed session for attorney-client privilege shall also identify the parties in each existing lawsuit which the Town expects to receive advice during the closed session.

attorney-client privilege...” According to meeting minutes, the Town Council went into closed to discuss existing lawsuits, citing “attorney-client privilege,” 21 times.

However, the statutes also state that the Town Council shall identify “the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.”<sup>15</sup> In 20 of the 21 instances where the minutes cited the permissible purpose to go into closed session to consult with an attorney, the parties in each lawsuit were not identified.<sup>16</sup>

#### *Non-permissible Purposes Discussed in Closed Session*

According to closed session minutes, in closed session meetings from October 25, 2021, through January 3, 2022, the Town Council discussed items that should have been discussed in sessions open to the public.

Specifically, the Town Council discussed the following unallowed items in closed sessions:<sup>17</sup>

- At the October 25, 2021, closed session:
  - Discussed the cost for a new interim Town Attorney.
  - Discussed the internal security cameras at Town Hall and the Fire Department.
- At the November 1, 2021, closed session:
  - Discussed and agreed that keys needed to be changed and inside cameras taken down. (The minutes did not reflect which building was being discussed.)
  - Discussed the fire chief getting bids for the lettering on the chief’s vehicle.
- At the November 8, 2021, closed session:
  - Discussed the candidates for the vacant council seat and the possibility of doing a second interview with the best candidates.
  - Discussed the applications and resumes for the Town Clerk position.
  - Discussed and determined the candidate that would be appointed as Town Clerk.<sup>18</sup>
- At the December 1, 2021, closed session:
  - Discussed staffing needs at Town office.
- At the December 13, 2021, closed session:

<sup>15</sup> North Carolina General Statute § 143-318.11(c)

<sup>16</sup> In one meeting held in July 2022, the open session meeting minutes properly reflect the parties of the lawsuit to be discussed.

<sup>17</sup> Other items were discussed in the meetings. The items listed here are the items that were discussed in closed session that should have been discussed in open sessions.

<sup>18</sup> Although this topic should have been discussed in open session, the Town Council did not have the authority to appoint a Town Clerk. See Finding 5 for more information.

- Discussed the Sanford Holshouser Contract. The Town contracted with the Sanford Holshouser firm for a five-year strategic plan for \$55,000. A payment of \$15,000 has already been paid; however, the Town has not received any data/results from Sanford Holshouser.
- At the January 3, 2022, closed session:
  - Discussed the Sanford Holshouser Contract. The Town retained Sanford Holshouser for a five-year strategic plan for \$55,000. A payment of \$15,000 has already been paid. The contract has been cancelled, and the balance will not be paid. The Town has not received any data/results from Sanford Holshouser.

### **Improperly Limited Public Transparency and Accountability**

The Town Council's failure to properly enter into closed session and the discussion of unallowed topics in closed session limited the public's ability to be informed about the operations and performance of their government and to hold Town officials accountable.

### **Actions May Be Null and Void**

Any decisions made by the Town Council that relate to items discussed in closed session that should have been discussed in open session are at risk of being deemed null and void. Specifically, North Carolina General Statutes § 143-318.16A states:

Any person may institute a suit in the superior court requesting the entry of a judgment declaring that any action of the public body [that] was taken, considered, discussed, or deliberated in violation of this Article [including N.C.G.S. § 143-318.11]. Upon such a finding, the court may declare any such action **null and void**. (emphasis added)

### **Caused by Lack of Guidance from Interim Town Attorney**

According to the interim Town Attorney, the Town Council did not properly go into closed session and the members of the Town Council discussed unallowed items in closed session because they did not have sufficient experience or knowledge of the North Carolina Open Meetings Law.

However, the interim Town Attorney did not provide guidance to the Town Council regarding how to properly enter a closed session or what they should not discuss in closed session.

The interim Town Attorney told investigators that he served at the pleasure of the Town council and it would be "awkward" if he "fusses at them" about discussing things in closed session that should be in open session.

According to open session meeting minutes, the interim Town Attorney was present at 12 meetings where the Town Council cited the permissible purpose to go into closed session to consult with an attorney, but did not cite the parties in each lawsuit to be discussed.

Further, according to closed session meeting minutes, the interim Town Attorney was present at five meetings where the Town Council discussed topics that should have been discussed in open session.

While the interim Town Attorney stated that he was trying to be the “gatekeeper” for what was discussed in closed sessions to ensure it was in compliance with state law and that he was providing guidance to the Town Council when necessary, the meeting minutes do not reflect any evidence to support his statements.

### **North Carolina General Statutes**

North Carolina General Statutes § 143-318.11(c) requires the Town Council to cite a permissible purpose when holding a closed session. In some instances, the Town Council shall also provide additional information. Specifically:

A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.

Subsection (a) provides the permitted purposes for which a closed session can be held. Those topics listed above are not permitted pursuant to state law.

### **Recommendations**

The Town Attorney should advise the Town Council when items discussed in closed session are not in compliance with state law.

The Town Council should consult their Town Attorney and adhere to legal advice regarding topics to be discussed in closed session.

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### **3. INTERIM TOWN ATTORNEY’S CONTRACT NOT PREAUDITED**

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The Town of Rural Hall (Town) did not preaudit a contract with an attorney to provide interim legal services. A preaudit would have included a review to ensure the contract was included in the Town’s budget and funds were available to pay for the contract. As a result, the Town signed a contract without ensuring that there were sufficient funds to pay the amounts that would come due. Also, since the contract was not preaudited, the contract is invalid and may not be enforced.

According to the Finance Director, the contract was not preaudited due to a disregard for the procedures in place at the Town for contracts.

North Carolina General Statute § 159-28(a1) states that if an obligation is reduced to a written contract or written agreement, the contract or agreement shall include on the face a certificate stating that the expenditures incurred as a result of the contract were budgeted for and that funds were available to pay the amounts that come due.



### **Contract Not Preaudited**

The Town entered into a contract with an attorney for interim legal services.<sup>19</sup> The contract was not reviewed before it was executed to ensure that it was budgeted for and that funds were available to pay for the contract.<sup>20</sup>

When the Town enters into an obligation in the form of a written contract, the contract must be preaudited **before** the contract is executed.<sup>21</sup> The preaudit process does three things:

- (1) Ensures that there is an appropriation authorizing the expenditure in the Town's annual budget or project ordinance.
- (2) Ensures that sufficient funds are available to pay any amounts that will come due in the current fiscal year.
- (3) Ensures a certificate signed by the Finance Director is affixed to each contract that states that the contract has been preaudited in accordance with the Local Government Budget and Fiscal Control Act.

On October 25, 2021, the Town Council unanimously voted to pass a motion to hire an attorney to provide interim legal services to the Town.

According to closed session<sup>22</sup> minutes for a meeting held the same day, the Town Council discussed the interim Town Attorney's fee structure, and stated that "There will be a written contract in [the attorney's] file."

When investigators asked for a copy of the contract, the Finance Director found the contract located in the interim Town Attorney's personnel file. The contract did not have, on its face, the certificate signed by the Finance Director that the contract had been preaudited.

### **Town Entered Into a Contract Without Knowledge of Sufficient Funds**

Since the contract was not preaudited as required, the Finance Director did not have an opportunity to ensure that there were sufficient funds available to pay any amounts that came due in the current fiscal year.

During the preaudit process, the Finance Director would have been required to ensure that the Town's budget included an appropriation sufficient for the expected expenditures related to the interim Town Attorney's services. Additionally, the Finance Director would ensure that funds were available in the budget to pay for the services.

Since the contract was not presented to the Finance Director for preaudit, he could not make these assurances.

In fact, the original amount budgeted for legal fees for the fiscal year ended June 30, 2022 was \$10,000. From November 2021 through February 2022, the Town spent \$72,915 on legal fees,

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<sup>19</sup> Total paid to the interim Town Attorney during the fiscal year ended June 30, 2022 was \$147,793.

<sup>20</sup> A preaudit review is to ensure that the expense was included in the Town's budget and that there are funds available in the budget to pay for the expenses coming due within the current fiscal year.

<sup>21</sup> North Carolina General Statutes § 159-28

<sup>22</sup> A portion of a meeting that is closed to all but Town Council members and invited guests.



which far exceeded the budgeted amount. The Town amended the budget in April 2022, so the final budget was \$155,000. The actual legal expenses paid during fiscal year 2022 were \$147,793.

### **Also Resulted in Potentially Invalid Contract**

Since the Finance Director did not preaudit the contract, the contract is invalid and may not be enforceable. North Carolina General Statutes 159-28(a2) states:

An obligation incurred in violation of subsection (a) or (a1) of this section is invalid and may not be enforced.

Subsection (a1) of the North Carolina General Statute is the preaudit requirement.

### **Caused by Disregard for Town Procedures**

According to the Finance Director, the interim Town Attorney's contract was not preaudited because the contract was not routed in accordance with the Town's procedures.

Despite not having written policies and procedures related to the preaudit process, the Finance Director stated that department heads and others entering into contracts are responsible for bringing a contract to the Finance Director **prior to** executing the contract in order to have the contract preaudited.

The Finance Director stated that once a contract is preaudited, the contract is routed to the Town Manager for approval. After a contract is preaudited and the Town Manager's approval is granted, the contract may be executed.

The interim Town Attorney's contract did not follow the procedures above. Instead, the interim Town Manager (at the time the contract was executed) signed the contract without routing it through the Finance Director for the preaudit.

In an email to investigators, the Finance Director stated, "I agree that the document would serve as the contract. However, it was never presented to me and therefore was not pre-audited. I didn't know that it existed until your request, and I'm not sure how it got placed in the personnel files ... because those files require a key."

### **State Law Requires Preaudit of Contracts**

North Carolina General Statutes § 159-28(a1) requires preaudit of contracts. Specifically, the statute states:

If an obligation is reduced to a **written contract** or written agreement requiring the payment of money, or is evidenced by a written purchase order for supplies and materials, the written contract, agreement, or purchase order **shall include on its face a certificate stating that the instrument has been preaudited** to assure compliance with subsection (a) of this section. The certificate, which shall be signed by the finance officer, or any deputy finance officer approved for this purpose by the governing board, shall take substantially the following form:

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act. \_\_\_\_\_ (signature of finance officer).” (emphasis added)

### **Recommendations**

The Town Council and Town Manager should ensure that all financial obligations, including contracts, are provided to the Finance Director to be preaudited prior to the obligation being incurred.

The Town Council should seek legal guidance in regard to the potentially invalid contract, since it was not preaudited.

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### **4. BANK RECONCILIATIONS NOT COMPLETED**

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The Town of Rural Hall (Town) did not complete its monthly bank reconciliations. Specifically, as of April 2022, the monthly bank reconciliations for the Town’s General Fund had not been completed since November 2021. As a result, there was an increased risk that accounting errors or the theft or misuse of cash could have occurred and not been detected. Additionally, the Town Council could not be sure that they had accurate and timely information on which to base decisions.

According to the Finance Director, the bank reconciliations were not completed because of “increased responsibilities.” Additionally, the Town Manager told investigators that she did not ensure bank reconciliations were completed.

The Town’s *Cash Management and Investment Policy* requires prompt reconciliation of accounts.

Further, the staff of the North Carolina Local Government Commission (LGC)<sup>23</sup> provides resources, guidance, and oversight to units of local government on internal controls. The LGC states<sup>24</sup> that all bank statements should be reconciled promptly upon receipt to help identify any errors or discrepancies.

### **Bank Reconciliations Not Completed**

A bank reconciliation is a process used to identify and examine variances by comparing the cash balance in the Town’s accounting system to the balance reported by the bank. Preparing bank reconciliations monthly helps the Town prevent or detect possible errors or the theft or misuse of cash.

As of April 2022, the bank reconciliations for the Town’s General Fund had not been completed since November 2021. For this same period of time, the average balance in the Town’s General Fund was \$1.1 million, and approximately 100 transactions were posted to the account each month.

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<sup>23</sup> The staff of the North Carolina Local Government Commission (LGC) is responsible for fulfilling the obligations of the Commission found in North Carolina General Statutes, Chapter 159.

<sup>24</sup> Memorandum 2015-15

**Resulted in Increased Risk of Undetected Errors or Theft**

As a result of the monthly bank reconciliations not being performed, there was an increased risk that accounting errors or theft of cash could have occurred and not been detected. Bank reconciliations could detect unauthorized payments or transfers.

Bank reconciliations would have given the Finance Director an opportunity to review transactions and to address any mistakes or variances in a timely manner.

**Also Resulted in Lack of Accurate, Relevant, and Timely Information**

As a result of the monthly bank reconciliations not being performed, the Town Council could not ensure that they had accurate and timely information on the Town's cash flow.

Consequently, the Town Council could have unknowingly made unsound financial decisions for the Town based on inadequate information.

**Caused by Increased Responsibilities For Finance Director**

According to the Finance Director, he did not complete the monthly bank reconciliations because of "increased responsibilities."

The Finance Director stated that the General Fund reconciliations were "a little behind due to my increased responsibilities ... plus helping to interview and train new staff."

The Finance Director also stated "I'm also the only one here with any budget experience so that is currently on my plate as well."

**Also Caused by Lack of Oversight from the Town Manager**

The Town Manager did not ensure that monthly bank reconciliations were being performed.

The Town Manager stated she reviewed financial information provided by the Finance Director monthly. When asked if this review would let her know that bank reconciliations were not being performed, the Town Manager stated that it would.

However, after further conversation, the Town Manager admitted that the bank reconciliations "did not come across my desk for review."

**Town Policy Requires Prompt Reconciliation of Accounts**

The Town's *Cash Management and Investment Policy* states:

The Finance Officer [Finance Director] shall establish a system of internal controls. ... The internal control structure shall address the following points:

- Segregation of duties.
- **Prompt reconciliation of accounts.**
- Custodial safekeeping requirements.

- Proper training and supervision of subordinate staff members. (emphasis added)

### **North Carolina General Statutes and Local Government Commission**

The staff of the North Carolina Local Government Commission (LGC) is responsible for fulfilling the obligations of the LGC found in North Carolina General Statutes, Chapter 159. Specifically, North Carolina General Statutes § 159-25(c) states:

The Local Government Commission... may inquire into and investigate the internal control procedures of a local government or public authority, may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable **to prevent embezzlements or mishandling of public moneys...** (emphasis added)

The LGC provides resources, guidance, and oversight to units of local government on a variety of topics, including internal controls.

In regard to monthly bank reconciliations, the LGC states<sup>25</sup> that:

All bank statements should be reconciled promptly upon receipt to help identify any errors or discrepancies. Any discrepancies should be investigated immediately and acted upon accordingly.

### **Recommendations**

The Town Manager should ensure that the Finance Director is prioritizing tasks, such as completing monthly bank reconciliations.

The Town Manager should provide adequate oversight of the Finance Director, including ensuring bank reconciliations are completed each month and that they are accurate.

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## **5. TOWN COUNCIL APPOINTED THE TOWN CLERK IN VIOLATION OF STATE LAW**

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The Town of Rural Hall Town Council (Town Council) appointed a Town Clerk without having the authority to do so. As a result, the Town Clerk was not legally employed in that position.

The Town Council appointed the Town Clerk in violation of state law, and the interim Town Attorney did not advise them that they did not have the authority to make the appointment. According to the interim Town Attorney, he did not agree that the Town Council did not have the authority to appoint the Town Clerk.

However, North Carolina General Statutes § 160A-148(a)(1) states that, in a council-manager form of government, only the Town Manager can hire or fire Town officers or employees not elected by the people, and whose appointment or removal is not otherwise provided for by law.

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<sup>25</sup> Memorandum 2015-15

### **Town Council Appointed Town Clerk Outside of Their Authority**

On November 8, 2021, during a Town Council meeting, the Town Council for the Town of Rural Hall (Town) appointed the interim Town Clerk to fill the position permanently. At that time, the Town did not have a Town Manager.

On October 21, 2021, the Town Manager resigned along with three council members. At that time, the remaining Town Council appointed an interim Town Manager. The interim Town Manager appointed an interim Town Clerk on November 1, 2021.

The interim Town Manager subsequently resigned his role effective November 3, 2021.

In the absence of a Town Manager, the Town Council appointed the interim Town Clerk to be the permanent Town Clerk on November 8, 2021.

The Town operates under a council-manager form of government. The Town Council (including the Mayor) oversees the general administration of the Town, while the Town Manager, appointed by the Town Council, carries out the day-to-day administrative operations of the Town. Only the Town Manager can hire and fire officers and employees of the Town not elected by the people, and whose appointment or removal is not otherwise provided for by law.<sup>26</sup>

North Carolina General Statute § 160A-171 establishes the role of the Town Clerk and states:

There shall be a [Town] clerk who shall give notice of meetings of the council, keep a journal of the proceedings of the council, be the custodian of all [Town] records, and shall perform any other duties that may be required by law or the council.

However, the State law does not dictate who appoints the clerk. As a result, the Town Manager is responsible for appointing the Town Clerk.<sup>27</sup>

### **Resulted in Hiring in Violation of State Law**

As a result of the Town Council appointing the Town Clerk outside of their authority, the employee in the Town Clerk position did not legally hold the position.

Since the Town operates on a council-manager form of government, the Town Manager has the statutory power to appoint all Town officers and employees of the Town not elected by the people, and whose appointment or removal is not otherwise provided for by law.<sup>28</sup>

With no State law or Town ordinances to the contrary, the Town Council did not have the authority to appoint the Town Clerk.

<sup>26</sup> North Carolina General Statute § 160A-148(a)(1)

<sup>27</sup> As an enactment of the North Carolina General Assembly, the Town Charter would constitute law. Therefore, if the Town Charter directed the Town Council to appoint the Town Clerk, their appointment would be valid per State law. However, the Town of Rural Hall Charter does not provide for the appointment of the Town Clerk by the Town Council.

<sup>28</sup> North Carolina General Statute 160A-148(a)(1)

### **Caused by Interim Town Attorney Interpretation of State Law**

The Town Council did not follow State law when appointing the permanent Town Clerk at the advice of the interim Town Attorney.

As mentioned above, several members of the Town Council, as well as the Town Manager and Town Attorney, resigned on October 21, 2021. The remaining members of the Town Council, as well as the interim Town Attorney were present at the November 8, 2021, Town Council Meeting. During closed session, at which the interim Town Attorney was present, the Town Council decided to appoint the interim Town Clerk as the permanent Town Clerk.

The interim Town Attorney did not agree that State law does not allow for anyone other than a Town Manager to appoint and suspend or remove Town officers and employees not elected by the people, and whose appointment or removal is not otherwise provided for by law.

Subsequent to the November 8, 2021, Town Council meeting, the interim Town Attorney reached out to the University of North Carolina School of Government (UNC SOG) to ask for clarification on whether the Mayor can “implement the hiring of [the Town Clerk] per the motion and vote of the Council in closed session followed by the same in open session.”

The UNC SOG’s employment law specialist<sup>29</sup> responded, as an interpretation to North Carolina General Statute § 160A-148(a)(1), “As far as what happens with respect to hiring and firing when there is no manager or no duly-appointed acting or interim manager, I’m afraid no hiring or firing can take place.”

In an email from the interim Town Attorney to the Town Finance Director, the interim Town Attorney stated, “I respectfully disagree with the opinion offered by [UNC SOG].”

### **State Law Describes Council-Manager Form of Government**

North Carolina General Statutes § 160A, Article 7, Part 2 describes the administration of council-manager cities.<sup>30</sup>

Specifically, North Carolina General Statutes § 160A-148(a) states:

The manager shall be the chief administrator of the city. The manager shall be responsible to the council for administering all municipal affairs placed in the manager's charge by the council, and shall have the following powers and duties:

- (1) **He shall appoint and suspend or remove all city officers and employees not elected by the people, and whose appointment or removal is not otherwise provided for by law**, except the city attorney, in accordance with such general personnel rules, regulations, policies, or ordinances as the council may adopt. (emphasis added)

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<sup>29</sup> The employment law specialist with the UNC SOG is an attorney with over 20 years experience in North Carolina local government employment law.

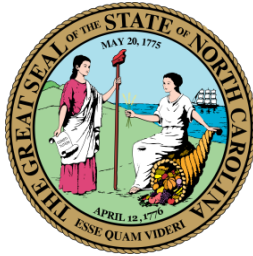
<sup>30</sup> N.C.G.S. § 160A-1(2) defines the term “city” as interchangeable with the terms “town” and “village” when used in Chapter 160 of the North Carolina General Statutes.

According to State law, in the absence of a Town Manager, and the absence of any other law providing for the Town Council to appoint the Town Clerk, the Town Council did not have the authority to appoint the Town Clerk. That appointment could only be made by the Town Manager position, which was vacant.

### **Recommendations**

The Town Council should ensure that its Town Attorney is knowledgeable in legal matters relating to local government, including the Council-Manager form of government.

Additionally, the Town Attorney should adhere to the interpretation and advice provided by experts in the North Carolina General Statutes impacting local governments, such as the UNC SOG.



# **STATE AUDITOR'S RESPONSE**



The Office of the State Auditor (OSA) strives to provide reports with complete and accurate information to the Governor, the General Assembly, and the citizens of North Carolina. When the response of an auditee potentially obscures an issue, misleads the reader, or minimizes the importance of auditor findings and recommendations, OSA provides clarifications regarding the auditee's response.

In their response to this investigative report, the Town of Rural Hall (Town) made several statements that were incorrect, that may **obscure** the issue, **mislead** the reader, and **minimize** the importance of OSA's finding and recommendations.

To ensure complete and accurate information, OSA offers the following clarifications.

### **Public Denied Public Records Requests**

In the response from the Town of Rural Hall, the Town disputes each example listed in the report. However, the information included to dispute each of the six examples listed in the report is **not accurate**. Specifically,

- The Town states that resignation letters were read in an open meeting.

#### **This statement is misleading.**

Reading resignation letters in open session does not satisfy the North Carolina Public Records Law,<sup>31</sup> which states:

Every custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof...

Verbally reading the letters in a public meeting would not be the same as producing the public records.

- The Town states that, in regards to not providing the employment history for two Town employees, "there was no identification of a denial for the second requester."

#### **This statement is not true.**

The interim Town Attorney provided a listing of all public records requested, the date of the request, the person making the request, and whether the request was provided. In response to the individual requesting employment history that did not receive what they requested, the request is marked as 'Denied' on the listing provided by the interim Town Attorney.

- The Town stated that the employment contract for the former Town Manager was attached to the lawsuit, and that the requestor had a copy. However, no documentation was provided to investigators by the Town that supported the Town's statement.

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<sup>31</sup> Chapter 132 of the North Carolina General Statutes

- The Town stated that there were several letters from the former Town Manager to the Mayor and Town Council and that the date was not identified.

**This statement is not true.**

In the original request from a member of the public regarding the letter from the former Town Manager to the Mayor and Town Council, the date of the letter requested **was** provided. The listing provided by the interim Town Attorney marked this request as 'Denied.'

- The Town stated that there was no knowledge of a presentation at open session.

**This statement is misleading.**

The presentation requested was from the Town's external auditor. The auditor provided the presentation to investigators and stated that a copy was provided to the Mayor and Town Council when originally presented. The listing provided by the interim Town Attorney marked this request as 'Denied.'

- The Town states that, in regards to the video footage from security cameras, "the findings inaccurately state the interim Town attorney's response."

**This statement is misleading.**

As stated clearly in the report, during a **recorded** interview with the interim Town Attorney, he stated that the video footage was "technically public records" and that the "Town does not want to pay me to do that," referring to him reviewing the footage before it was released.

Additionally, the Town states that "Any denial of a public record does not automatically translate to recovering attorney fees for seeking enforcement of denied Public Records Request." The investigative report does not state that the "denial of a public record automatically translates to recovering attorney fees..."; however, North Carolina General Statute 132-9 does state that the denial of a public record **could** result in the recovering of attorney fees.

### **Violations of Open Meetings Law**

In the response to the finding related to violations to open meetings law, the Town states:

[T]his entire section has a false premise by the Investigators who were not provided with any closed session minutes in which attorney client privileged communications occurred between Interim Town Attorney and Council during a closed session.

**This is irrelevant.**

Regardless of whether some closed session minutes were not provided, for those that **were** provided, investigators identified for 20 of the closed sessions, the Town Council **did not** properly cite all of the information required to enter into closed session. Additionally, during six

of the closed session meetings for which minutes were provided, the Town Council discussed items that should not have been discussed in closed session.

The fact that there were **some** closed session minutes that were not provided has **no impact** on this finding.

#### **Interim Town Attorney's Contract Not Preaudited**

In the response to the finding that the interim Town Attorney's contract was not preaudited, the Town stated:

However, asserting the [contract] is invalid because it was not preaudited lacks merit and a misunderstanding of the applicable law.

**This statement is not true.**

North Carolina General Statute 159-28(a1) requires a preaudit if the expense was budgeted in the annual budget ordinance and the Town entered into a legal commitment to pay money. The annual budget ordinance for the year ended June 30, 2022 included an item for legal fees in the amount of \$10,000.

Although the contract did not require advanced payment by the Town, a legal commitment was made upon execution of the contract. When a legal commitment was made, there was an expectation that at least some money would be paid in the current fiscal year. Therefore, a preaudit was required.

In fact, in the same fiscal year that the interim Town Attorney's contract was signed, the Town spent over \$147,000 on legal fees.

#### **Town Council Appointed the Town Clerk in Violation of State Law**

In the response to the finding that the Town Council inappropriately appointed the Town Clerk, the Town stated:

Since § 160A-148, and the Town of Rural Hall's Town Charter were silent on who can appoint a Town Clerk in the absence of a Town Manager, the Council did not violate state law.

**This statement is not true.**

North Carolina General Statute 160A-148(a) requires the Town Manager to appoint and remove all Town officers and employees **not elected by the people** and **not appointed in state law**.

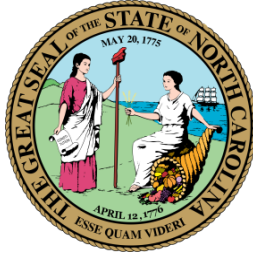
The Town Clerk is **not elected by the people** and the appointment of the Town Clerk is not provided for in state law.

Therefore, only the Town Manager has the authority to appoint the Town Clerk, **not the Town Council**.

This is not an interpretation of the law; this is clearly stated in the law.

### **Redaction With Town's Response**

In their response to this investigative report, the Town included names of employees at the North Carolina Office of the State Auditor. Those names have been redacted from the response. Further, the response refers to attachments that were not included in this response.



# **RESPONSE FROM THE TOWN OF RURAL HALL**

RANDOLPH M. JAMES, P.C.

ATTORNEYS AT LAW

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www.rmjameslaw.com

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January 20, 2022

**VIA: Email**

Beth A. Wood, CPA, NC State Auditor  
[REDACTED], CPA Audit Director -Investigations  
Office of the State Auditor  
2 S. Salisbury Street  
Raleigh, NC 27601  
[REDACTED]

***RE: Response from the Town of Rural Hall to State Auditor's Investigative Report***

Dear Ms. Wood and [REDACTED]:

I and the elected Town council for the Town of Rural Hall, by my and their signatures hereto, respond to your Investigative Report. The response is by category starting with a Background Statement.

**BACKGROUND STATEMENT**

On 21 October 2021 three of the four elected council members, namely John McDermon, Ricky S. Plunkett and Jesse Stigall resigned along with the 45-year tenured Town Attorney Barry Burge. Just prior to reading their resignation letters in an open session, the three council members had approved a putative settlement with Megan Garner, the Town of Rural Hall's Town Manager from 10 July 2017 to 21 October 2021. Dora Moore, the Town Clerk for Rural Hall for nearly three decades also tendered her two-week notice.

Megan Garner and her attorney were to receive payments totaling nearly \$150,000 in accordance with a putative settlement agreement which agreement was labeled confidential, contrary to N.C. Gen. Stat. § 132-13. Megan Garner's employment contract with the Town of Rural Hall provided she was not to receive a severance payment if she resigned her position with the Town of Rural Hall to accept a new position. Megan Garner left the Town of Rural Hall to accept the position of City Manager with Graham, North Carolina.

On 21 October 2021 Eddie Horn and Terry Bennett were appointed to fill the unexpired terms of Ricky Plunkett and Jesse Stigall. Both were elected to their Town of Rural Hall Council seats in the November election several weeks later.

On 26 October 2021 attorney Randolph James filed a Rule 3 Application and Order to Extend time to file complaint against Megan Garner which articulated the nature of the later filed complaint as a Declaratory Judgment asking a Forsyth County Superior Court Judge to declare the putative settlement agreement between the Town of Rural Hall and Megan Garner as void because the six-figure settlement violated N. C. Gen. Stat. § 159-28(a1) in that the settlement agreement failed to have a Budget Amendment approved by the Town of Rural Hall council followed by the statutorily required pre-audit certification by then Finance Director Wade Gilley.

On 1 November 2021, then interim Town Manager Frank James, executed an engagement letter with the law firm of Randolph M. James, P.C. This letter agreement, attached to the answer and counterclaim of Megan Garner, did not require a retainer payment or any payment.

On 15 November 2021, the Town of Rural Hall filed its formal complaint against Megan Garner seeking a declaratory judgment. An amended complaint was thereafter filed followed by an answer and counterclaim filed by Megan Garner's attorneys. Following written discovery by both parties, depositions of Mayor Flinchum, councilwoman Susan Gordon, Megan Garner and former councilmen John McDermon, Ricky Plunkett, and Jesse Stigall, Superior Court Judge Richard Doughton on 12 October 2022 entered Judgment on the pleadings in favor of the Town of Rural Hall finding that Megan Garner's putative settlement agreement with the Town of Rural Hall was void as a matter of law and dismissed Megan Garner's counterclaims against the Town of Rural Hall.

The Town of Rural Hall's Rule 3 Application and Order, Complaint, Amended Complaint along with Megan Garner's Answer and Counterclaims and the Order granting the Town of Rural Hall's Motion for Judgment on the pleadings declaring Megan Garner's six figure putative settlement agreement with the Town of Rural Hall void.<sup>1</sup>

With the abrupt departure of the three sitting Town of Rural Hall council members, its Town Manager Megan Garner, its 45-year Town attorney followed by the Town Clerk, the Town of Rural Hall moved forward by appointing two new council members and on 7 March 2022 a

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<sup>1</sup> All relevant pleadings from the Town of Rural Hall vs. Megan Garner have been uploaded to the Town of Rural Hall website [www.ruralhall.com](http://www.ruralhall.com)



third council member, Janet Carithers, an interim Clerk – Misty Meadows, later named Clerk followed by acceptance of the Town Manager role. Thereafter a new Clerk, Lynette Hendrick was employed by the Town Manager. As is apparent from the Investigative Report, the Town of Rural Hall made some mistakes; however, none were intentional and have been remedied by the adoption of new procedures and strict adherence to North Carolina General Statutes where clearly defined.

# **I. PUBLIC DENIED PUBLIC RECORDS REQUEST**

The report recites public records not produced by Interim Town attorney Randolph James. Respectfully, interim town attorney disputes the findings as follows:

- a. Copies of resignation letters from five former Town staff were attached to defendant Garner's answer and counterclaims and were read in an open meeting during which the requester was present.
- b. The employment history for two Town employees was produced. There was no identification of a denial for the second requester.
- c. The employment contract for the former Town Manager was attached to the lawsuit which the requester acknowledged having a copy.
- d. Copy of a letter from the former Town Manager to the Mayor and Town Council (date not identified) as there were several letters from the former Town Manager to the Mayor and Town Council making monetary demands or claiming an unproven hostile work environment.
- e. No knowledge of a presentation at an open session Town council meeting which is not identified further.
- f. Video footage from security cameras at all Town facilities. – the findings inaccurately state the interim Town attorney's response. There are 10 Terabytes of data with no software available to view the data as the prior Town Manager, Megan Garner, left her employment without providing the operating system for the data. Interim Town Attorneys comment to the Investigator in context explained that if the operating system were available, a review of the more than 10 Terabytes of data would take hours by a digital forensic specialist at significant cost. Undersigned Interim Town Attorney stands by his denial as appropriate and in accordance with the North Carolina General Statutes encompassing public records in that no software is available to review/view the data; the Town of Rural Hall could insist



upon prepayment of the cost to extract the data, if even possible and the vendor cost to extract whatever generalized request had been made.

- g. The Interim Town attorney is currently representing North Carolina limited liability companies resident in Alamance County/Burlington against the City of Burlington related to denial of Public Record requests by the Burlington City attorney. Any denial of a public record does not automatically translate to recovering attorney fees for seeking enforcement of denied Public Record Request.
- h. However, going forward, the Clerk for the Town of Rural Hall has assumed the responsibility of systematically receiving and reviewing all public record requests using a non-mandatory request form. This procedure/protocol will permit an accurate historical public record request. Interim Town attorney discovered his system did not preserve as accurate account of public record requests as most were made by emails to the Interim Town Attorney.

## II. VIOLATIONS OF OPEN MEETINGS LAW

Respectfully, this entire section has a false premise by the Investigators who were not provided with any closed session minutes in which attorney client privileged communications occurred between Interim Town Attorney and the Council during a closed session. Interim Town attorney and one Investigator experienced an adversarial professional relationship related to the attorney-client privileged Town of Rural Hall closed session minutes. Following Interim Town Attorney's refusal to provide the attorney-client privileged minutes, the State Auditor issued a subpoena to Interim Town Attorney. Thereafter Interim Town Attorney submitted written objections and threatened legal action against the State Auditor to protect attorney-client privilege. An agreement was reached with [REDACTED], General Counsel for the Office of the State Auditor preventing the production of the attorney-client privileged closed session meeting minutes per the attached letter from Interim Town Attorney to [REDACTED].

Throughout the Investigative report, the investigators criticize Interim Town Attorney including suggesting the Town of Rural Hall retain the services of a "municipal attorney". Such criticism, as evidenced by this section, is founded upon an apparent dissatisfaction with Interim Town Attorney's zealous representation of the Town of Rural Hall in litigation characterized by at least one Superior Court Judge as "ugly" during an unprecedented period in the Town of Rural Hall's history. Your findings fail to acknowledge the difficulties encountered by Interim Town

Attorney and the Town of Rural Hall's Town Manager, Town Clerk, and the Council during this difficult period of time.

Interim Town Attorney, an AV Martindale rated attorney and Super Lawyer designee began representation of the Town of Rural Hall in 2021 which was his 40<sup>th</sup> year of practice. Throughout his practice, Interim Town Attorney has utilized the extensive knowledge base of the School of Government and has done so in his representation of the Town of Rural Hall. However, and contrary to the summary findings, the applicable statutory and case law related to municipality is not always black and white and often must be interpreted by an attorney prior to ultimate interpretation by an appellate court.

### III. INTERIM TOWN ATTORNEY'S CONTRACT NOT PREAUDITED

This section of this response presents a perfect example of an apparent misunderstanding of the applicable law related to preaudit certification of municipality financial obligations. "N.C. Gen. Stat. §159-28(a) sets forth the requirements and obligations that must be met before a [municipality] may incur contractual obligations." *Cincinnati Thermal Spray, Inc. v. Pender County*, 101 N.C. App. 405, 407, 399 S.E.2d 758, 759 (1991). N.C. Gen. Stat. § 159-28 Budgetary accounting for appropriations reads, in pertinent part:

(a) Incurring Obligations - No obligation may be incurred in a program, function or activity accounted for in a fund included in the budget ordinance unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year.

(a1) Preadit Requirement - If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this subsection. The certificate, which shall be signed by the finance officer or any deputy finance officer approved for this purpose by the governing board, shall take substantially the following form:

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
(Signature of finance officer)."

Under §159-28, "[i]f an obligation is evidenced by a contract or agreement **requiring the payment of money** ... the contract [or] agreement ... shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this subsection." (*emphasis added*).

In *Cabarrus County v. Systel Business Equipment Co., Inc.*, the court found that “the settlement agreement required Cabarrus County to pay Systel money and was thus subject to North Carolina General Statutes section 159–28(a). The agreement lacked a preaudit certificate signed by a Cabarrus County finance officer. The settlement agreement therefore failed to meet North Carolina General Statute § 159–28(a)’s requirements, and, as a consequence, the settlement agreement was unenforceable.” 171 N. C. App. 423, 614 S.E.2d 596 (2005). However, the settlement agreement called for an immediate payment from Cabarrus County to *Systel* in the amount of \$21,695.00.

The Engagement Letter between the Town of Rural Hall and, the Interim Town Attorney, Randolph M. James, P.C. lacks a pre-audit certification. However, asserting that the Randolph M. James, P.C. Engagement Letter is invalid because it was not pre-audited lacks merit and a misunderstanding of the applicable law. The Engagement Letter explicitly states that no advanced payment will be necessary by the Town of Rural Hall. “[A] contract that is signed in one year but results in a financial obligation in a later year will not violate §159-28(a).” *Myers v. Town of Plymouth*, 135 N.C. App. 707, 714, 522 S.E. 2d 122, 126. The Engagement Letter does not obligate the Town of Rural Hall to any fiscal obligation, unlike a settlement agreement which calls for an immediate payment of funds. A contract for payment that has not been preaudited is invalid and unenforceable. Once a payment became due by the Town of Rural Hall, The Town of Rural Hall passed an amendment to by a Budget Ordinance, which permitted the payment of attorney fees to the interim town attorney when the amount owed exceeded the prior Town of Rural Hall Budget for attorney fees. See Ordinance #834 on the Town of Rural Hall website.

In *Lee v. Wake County*, the court had held that the preaudit statute did not apply to a preliminary settlement agreement in which both parties committed to draw up a final settlement agreement. 165 N.C. App. 154, 598 S.E.2d 427 (2004). According to the *Lee* court, the preliminary settlement agreement was a contract for specific performance, not a contract “requiring the payment of money or a purchase order,” therefore it did not trigger the preaudit requirement.

The preaudit statute is triggered only when a unit orders goods or enters into a contract (or other agreement) which obliges the unit to pay money. It is not triggered if the purchase order, contract, or agreement does not, by its terms, require the unit to pay money. The requirement does not apply to contracts requiring a unit to undertake a specific performance, even if that indirectly requires the payment of money. And, if the expenditure is accounted for in the budget ordinance,

the preaudit requirement also may not apply if the unit does not expect to make any payments under the contract or agreement in the current fiscal year. See <https://canons.sog.unc.edu/2013/05/court-of-appeals-reaffirms-new-interpretation-of-pre-audit-requirement/>

Additionally, prior to the Engagement Letter, the Town of Rural Hall had previously allocated funds in the budget to pay legal counsel. Prior to the litigation commencing, it would have been imprudent to require a prepayment from the Town of Rural Hall, as the Interim Town Attorney did not know whether Garner would oppose the declaratory judgment lawsuit as she knew a preaudit certification and Budget Amendment to the Town of Rural Hall would have been required for her settlement and so testified in her deposition under oath; however, these statutory requirements did not occur for Garner's putative settlement with the Town of Rural Hall. Once the litigation proceeded and the Interim Town Attorney began litigating the case with Garner, the Interim Town Attorney sent invoices to Wade Gilley, Town of Rural Hall's Finance Director, which were then pre-audited, approved by the Finance Director Wade Gilley and by the Rural Hall council with a budget amendment.

The Engagement Letter between the Town of Rural Hall and, the Interim Town Attorney called for no "payment of money" under §159-28. "[T]he purpose of the pre-audit certificate is to ensure that a town has enough funds in its budget to pay its financial obligations." *Myers* at 713, 522 S.E.2d at 126. It was not until the Interim Town Attorney submitted an invoice that an obligation was incurred by the Town of Rural Hall, wherein the Town of Rural Hall passed a budget amendment. The Engagement Letter does not obligate the Town of Rural Hall to any fiscal obligations, and therefore §159-28 does not apply. As such, the Engagement Letter did not need to be pre-audited, and the letter agreement/'contract' is valid.

#### IV. BANK RECONCILIATIONS NOT COMPLETED

The Town Manager was unaware of the Finance Director's failure to complete bank reconciliation of accounts. Following the meeting with the State Auditor Beth Wood and the Investigators, Wade Gilley, Town of Rural Hall Finance Director tendered his resignation giving two weeks' notice effective on December 28, 2022. The Town Manager had regular meetings with Wade Gilley throughout 2022. When Wade Gilley expressed feeling overwhelmed, Town Manager Misty Meadows approved the retention of a part-time accounting person who had retired from the City of Winston-Salem finance department to help Wade Gilley "catch up." (This



individual has been brought back on a part-time basis following the resignation of Wade Gilley.) As a result of Wade Gilley's resignation and in accordance with N. C. Gen. Stat. § 159-24 *et. seq.*, the Town of Rural Hall's council has approved the designation of Council member Terry Bennett as the Town of Rural Hall Finance Officer, which appointment has been accepted. Mr. Bennett has an extensive 40-year business experience and has the requisite background to recommend vendors/accountants to assist the Town of Rural Hall's financial needs. Additionally, Town Manager reached out to the LGC for guidance. Going forward the Town of Rural Hall through its Town Manager and Finance Officer will be better able to comply with the applicable municipal financial statutes.

**V. TOWN COUNCIL APPOINTED THE TOWN CLERK IN VIOLATION OF  
STATE LAW**

Respectfully Interim Town Attorney will have to disagree with the conclusions of the State Auditor. While the School of Government represents a veritable treasure trove of municipal law, it and the professors who write the monographs are not the final arbiters of the law. As the State Auditor's office knows, if all who are required to interpret the North Carolina laws as codified in our statutes agreed upon the interpretation, there would not be a need for the Court of Appeals and the North Carolina Supreme Court. The absence of a statutory authorization (statute) does not prohibit action by a municipality. In this particular instance, there is no question that Misty Meadows was properly appointed as an Interim Town Clerk and properly appointed as the Town Manager. Since §160A-148, and the Town of Rural Hall's Town Charter were silent on who can appoint a Town Clerk in the absence of a Town Manager, the Town Council did not violate state law.

RESPECTFULLY SUBMITTED,

This the 20<sup>th</sup> day of January 2023.



Randolph M. James NC Bar #10,000  
Interim Town Attorney for Rural Hall

Interim Town Attorney for Rural Hall

WE, THE MEMBERS OF THE RURAL HALL COUNCIL, HAVE READ AND APPROVE  
OF THE RESPONSE TO THE STATE AUDITOR'S INVESTIGATION REPORT.



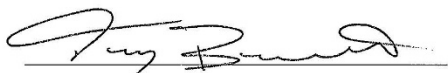
TIMOTHY FLINCHUM, Mayor of Rural Hall



Susan Gordon, Councilwoman and Mayor Pro Temp



Norman Eddie Horn, Councilman



Terry Bennett, Councilman



Janet Carithers, Councilwoman

# ORDERING INFORMATION

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State of North Carolina  
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North Carolina Office of the State Auditor at:  
**919-807-7666**



This investigation required 168 hours of OSA investigator effort at an approximate cost of \$20,160.00. Additionally, the cost of the contractor's effort was \$31,687.50. As a result, the total cost for the investigation was \$51,847.50.