



Claire McCaskill

Missouri State Auditor

December 2006

Birmingham Drainage District

Year Ended December 31, 2005



Office Of
Missouri State Auditor
Claire McCaskill

December 2006

The following findings were included in our audit report on the Birmingham Drainage District.

The Birmingham Drainage District's board needs to increase its oversight and management of district operations. It appears that many duties/functions performed by the District Attorney are outside the scope of services as provided by state law. The board only holds two meetings a year, and relies upon the District Attorney to perform most of the day-to-day responsibilities for the operation of the district. During 2005, the district paid the District Attorney's firm over \$45,000 for legal services.

State law provides for the appointment of a District Secretary/Treasurer, District Overseer, District Engineer, and District Attorney. The district did not report wages, withhold payroll taxes, or pay the employer's share of social security on compensation paid to these officials. Rather, it appears the district considers the officials independent contractors; however, they do not have written agreements with the officials regarding their duties, responsibilities, and compensation.

In March 2004, the district hired a former supervisor as its District Engineer and paid \$200 per month during the year ended December 31, 2005 for his services. The District Engineer, who lives in Utah, has not attended a board meeting since July 2004, and did not attend the May 2006 U.S. Army Corps of Engineers inspection of district improvements. Also, he does not prepare annual reports required by state law. The district could provide no documentation of the work done by the District Engineer.

For the year ended December 31, 2005, the District Overseer was paid \$650 per month for his duties as Overseer. In addition, the district paid him almost \$23,000 for various maintenance services, such as mowing, chemical application, tractor work, and other general labor. This situation may be a conflict of interest in violation of state law.

There was no documentation that the board approved all significant district business. In addition, the board does not report to the landowners at the annual landowner's meeting the work which was done within the district.

There is little independent oversight or adequate segregation of duties regarding the district's accounting functions. At December 31, 2005, the district had several accounts which totaled approximately \$1.3 million, and were held at 6 banks and an investment firm. The district needs to better manage these accounts.

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YIELD OWN SHEET

The district does not review or verify the accuracy of its maintenance tax book. In the 2005 tax book and tax calculations, we found that the maintenance tax for 6 of 10 properties reviewed was not correctly calculated. Errors in the tax book were not detected and corrected, nor were the assessed benefits always calculated in accordance with the court order. As a result, the district had little assurance that taxes assessed are proper and accurate.

There were numerous weaknesses with the district's procedures for conducting and documenting board meetings and elections. The meetings were infrequent and were not always at a location and time that were conducive for the public to attend, the minutes did not always contain sufficient detail of business conducted and actions taken, and some meetings did not comply with the open meetings law. Also, the district did not have written policies and procedures for public access to records, absenteeism by supervisors, and election of supervisors.

The district does not have a formal bidding policy. As a result, the decision of whether to solicit bids for a particular purchase is made on an item-by-item basis. During the year ended December 31, 2005, bids were either not solicited or bid documentation was not retained for certain goods and services totaling over \$200,000.

In March 2004, the district completed a construction project to repair a section of the levee. The district did not document the basis or justification for awarding the bid to a contractor other than the low bidder for the project. Board minutes did not indicate that construction change orders totaling approximately \$28,000 relating to the project were approved by the board, nor could the district provide copies of these change orders. In November 2003, the district requested the contractor to purchase extra steel, costing \$209,170, for Phase II of the project; however three years later, the steel has not been used. In addition, no documentation was available to support that the district procured the engineering services for the project, as provided by state law.

The board as a whole does not approve expenditures or review invoices before payment of the district's expenses. There was no evidence that the board requested or reviewed invoices and/or other supporting documentation for expenditures. Additionally, the board is not provided with a listing of payments made until after the fiscal year has ended.

The district did not prepare and adopt annual budgets in accordance with state law, nor obtain annual audits as required by state law. Actual expenditures exceeded budgeted amounts by over \$69,000 for the year ended December 31, 2005.

The district's responses did not address many of our recommendations. The lack of board oversight and various weaknesses need to be addressed.

All reports are available on our website: www.auditor.mo.gov

BIRMINGHAM DRAINAGE DISTRICT

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STATE AUDITOR'S REPORT



CLAIRE C. McCASKILL

Missouri State Auditor

To the Board of Supervisors
Birmingham Drainage District

The State Auditor was petitioned under Section 29.230, RSMo, to audit the Birmingham Drainage District. The scope of our audit of the district included, but was not necessarily limited to, the year ended December 31, 2005. The objectives of this audit were to:

1. Perform procedures to evaluate the petitioners' concerns.
2. Review internal controls over significant management and financial functions.
3. Review compliance with certain legal provisions.

To accomplish these objectives, we reviewed minutes of meetings, financial records, and other pertinent documents; interviewed various officials of the district, as well as certain external parties; and tested selected transactions. Our methodology included, but was not necessarily limited to, the following:

1. We obtained an understanding of petitioner concerns and performed various procedures to determine their validity and significance.
2. We obtained an understanding of internal controls significant to the audit objectives and considered whether specific controls have been properly designed and placed in operation. However, providing an opinion on internal controls was not an objective of our audit and accordingly, we do not express such an opinion.
3. We obtained an understanding of legal provisions significant to the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of contract or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting significant instances of noncompliance with the provisions. However, providing an opinion on compliance with those provisions was not an objective of our audit and accordingly, we do not express such an opinion.

Our audit was conducted in accordance with applicable standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and included such procedures as we considered necessary in the circumstances.

The accompanying History, Organization, and Statistical Information is presented for informational purposes. This information was obtained from the district's management and was not subjected to the procedures applied in the audit of the district.

The accompanying Management Advisory Report presents our findings arising from our audit of the Birmingham Drainage District.



Claire McCaskill
State Auditor

September 15, 2006 (fieldwork completion date)

The following auditors participated in the preparation of this report:

Director of Audits: Thomas J. Kremer, CPA
Audit Manager: Toni M. Crabtree, CPA
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**MANAGEMENT ADVISORY REPORT -
STATE AUDITOR'S FINDINGS**

BIRMINGHAM DRAINAGE DISTRICT
MANAGEMENT ADVISORY REPORT -
STATE AUDITOR'S FINDINGS

1.

District Policies and Procedures

The Birmingham Drainage District's board needs to increase its oversight and management of district operations. Public accountability and internal controls need to be improved. It appears that the board's infrequent meetings and lack of attendance (see MAR finding number 3) by supervisors have contributed to many of the problems identified in this report.

Our review of district policies and procedures noted the following problems:

- A. It appears that many duties/functions performed by the District Attorney are outside the scope of services as provided by state law. During 2005, the District Attorney billed the district \$310 per hour for his services, and the district paid the District Attorney's firm over \$45,000 for legal services.

Since the board only holds two meetings a year, it relies upon the District Attorney to perform most of the day-to-day responsibilities for the operation of the district, with little oversight by the board. In addition to legal services, the District Attorney negotiates contracts, requests proposals/quotes for goods and services, hires and oversees companies and individuals who provide services to the district, reviews and approves invoices, and receives the district's revenues. Also, many district records are maintained by the attorney rather than the District Secretary/Treasurer, and many district records list the attorney's law firm as the district's address.

Section 242.390, RSMo, provides that the duties to be performed by the attorney be legal in nature, such as conducting legal proceedings, providing legal advice, and attending to matters of a legal nature. This section does not provide that the attorney have oversight of the day-to-day operations of the district.

The board should ensure that its attorney only provides services that are legal in nature, as provided by state law. The day-to-day operations of the district should be handled by the board or other district appointed officials.

- B. The district has not clearly shown whether its appointed officials are independent contractors or employees.

Chapter 242, RSMo, provides for the appointment of a District Secretary/Treasurer, District Overseer, District Engineer, and District Attorney to perform certain duties. The district did not report wages, withhold payroll taxes, or pay the employer's share of social security on compensation paid to these

officials. Rather, it appears the district considers the officials independent contractors and issues Form 1099-MISC for their compensation paid. However, they do not have written agreements with the officials regarding their duties, responsibilities, and compensation.

If these officials are independent contractors, the district needs written agreements with the officials, which outline their duties and compensation. Also, Section 242.390, RSMo, provides that the employment of the district's attorney be "evidenced by an agreement in writing", and Section 432.070 RSMo, requires all contracts of the district to be in writing. Additionally, while the district officials' services may not be subject to standard bidding procedures, proposals should be sought for such services and the best proposals selected based on cost, experience, the type of services to be provided, and any other relevant factors.

For employees, the Internal Revenue Service (IRS) requires employers to report compensation on W-2 forms and withhold and remit federal income taxes. Similarly Chapter 143, RSMo, includes requirements for reporting wages and withholding state income taxes. Also, state and federal laws require employers to pay the employer's share of social security on the compensation paid to employees. Additionally, Section 105.300, RSMo, defines an appointive officer or employee of a political subdivision as an employee for social security tax purposes.

The district needs to contact the IRS and/or the Missouri Department of Revenue for guidance regarding the situation.

- C. It appears the board does not receive documentation which supports that all district officials are adequately performing their duties/responsibilities.
 - 1. The District Engineer has not attended a board meeting since July 2004, and did not attend the May 2006 U.S. Army Corps of Engineers inspection of district improvements. Also, he does not prepare annual reports required by state law. The district could provide no documentation of the work done by the District Engineer. In addition, the district hires a consulting engineer for specific projects.

In March 2004, the district hired a former supervisor as its District Engineer. He lives in Utah and was paid \$200 per month during the year ended December 31, 2005 for his services. The District Attorney indicated the former supervisor was hired because of his expertise and familiarity with the district properties and improvements, and his responsibilities include oversight of district improvements and providing advice at the request of the board.

Sections 242.220 and 242.330 RSMo, require that the board appoint a competent civil engineer as chief engineer, to control the engineering

work and supervise all the district works and improvements. The chief engineer, at least annually, is required to provide a written report of all work done and improvements made, including suggestions and recommendations, to the board.

The board should ensure that the District Engineer adequately performs his duties and should require an annual report be prepared as required by state law.

2. The work performed by the District Overseer appears to represent a potential conflict of interest. The overseer determines what work needs to be done, and receives additional compensation for doing that work.

For many years, the district has hired a landowner to serve as the District Overseer. For the year ended December 31, 2005, the District Overseer was paid \$650 per month for his duties as Overseer. In addition, the district paid him almost \$23,000 for various maintenance services, such as mowing, chemical application, tractor work, and other general labor. (See bidding concerns at MAR finding number 4)

Section 242.380, RSMo, provides that the District Overseer "keep the ditches, drains, levees, dikes and other works of the district in good repair, and remove all obstructions from ditches, drains or watercourses within or without said district that may affect the works of the district." The District Attorney indicated the overseer is in charge of day-to-day levee operations; and that all work done is first verbally approved by either himself or the board president. According to the District Overseer, he does not always ask for board approval prior to providing the services, but does frequently communicate with one of the board members regarding the work that needs to be done.

This situation may be a conflict of interest in violation of Section 105.454, RSMo, which prohibits an employee or official, serving in an executive or administrative capacity of any political subdivision, from performing any service for the district for more than \$500 per transaction or \$5,000 per year unless the transaction is made by competitive bidding and the lowest bid accepted.

The board should ensure that a conflict of interest does not exist with the District Overseer's duties. His duties should be defined (see above) and all documentation, discussions, and decisions regarding additional payments to him should be documented and retained, so that the public has assurance that no district official has improperly profited from his position.

- D. There was no documentation the board approved all significant district business. Some examples include 1) a construction contract, totaling approximately \$735,000, 2) an amendment to the construction contact, totaling \$131,000, and 3) the purchase of steel, totaling \$209,000 for Phase II of the construction contract. This construction contract is also addressed at MAR finding number 4.

Additionally, there was no documentation that the board approved the extension of two lease agreements in 2005. One agreement was extended through 2010, while the other agreement was extended through 2085. Receipts from these leases for the year ended December 31, 2005, totaled \$43,233 and \$140,000, respectively.

All significant district business should be approved by the board, and documented in the board minutes.

- E. The board does not report to the landowners at the annual landowner's meeting the work which was done within the district. The board minutes document that the board discussed the prior year's financial statement and the current year's proposed budget. However, the minutes do not document the nature or location of improvements and maintenance. Section 242.200, RSMo, requires the board to report to the landowners at the annual landowner's meeting the work which was done within the district.

- F. There is little independent oversight or adequate segregation of duties regarding the district's accounting function. The District Secretary/Treasurer's duties include maintaining receipt and disbursement records; making bank deposits and transfers; preparing, signing, and distributing checks; reconciling bank statements; and preparing financial reports. There was little evidence the board provided adequate supervision or review of the work performed by the secretary/treasurer. The current procedures jeopardize the system of independent checks and balances.

To safeguard against possible loss or misuse of funds, internal controls should provide reasonable assurance that all transactions are accounted for properly and assets are adequately safeguarded. Internal controls could be improved by segregating duties to the extent possible. If proper segregation of duties cannot be achieved, at a minimum, timely supervisory or independent review of the work performed and investigation into unusual items and variances is necessary.

- G. Although the District Secretary/Treasurer is bonded, other check signers are not. Dual signatures are required on checks, and check signers include the District Secretary/Treasurer, the board president, and a supervisor. Failure to properly bond individuals who have access to funds exposes the district to risk of loss.
- H. The district needs to better manage its bank accounts. At December 31, 2005, the district had three checking accounts, one savings account, ten Certificates of

Deposit (CDs), and an investment account consisting of CDs and a money market fund. These accounts and CDs, which totaled approximately \$1.3 million, were held at 6 banks and an investment firm.

1. The district has not solicited proposals for its checking and depository services nor entered into written agreements with its depository banks.

To ensure the quality of banking services and interest earnings received by the district are maximized, the district should procure its banking services through a competitive bid process. A written depository contract helps both the bank and the district understand and comply with the requirements of any banking arrangement. The depository agreement provisions should include, but not be limited to, bank fees for check printing, checking account services, interest charges for borrowed funds, interest rates for invested funds, and a requirement for the bank to pledge collateral security for any deposits in excess of Federal Deposit Insurance Corporation (FDIC) coverage.

2. The investment in the money market fund does not appear to be an appropriate investment for the district.

At December 31, 2005, the district maintained approximately \$985,000 in an investment account through an investment firm. The account consisted of approximately \$182,000 held primarily in a money market fund and approximately \$803,000 held in 9 CDs. According to the fund's prospectus, the funds held in the money market fund are neither insured by the FDIC or any other government agency nor protected from market loss.

Section 242.190.4, RSMo, provides that funds be invested in instruments which are direct obligations or guaranteed by federal agencies, accounts in savings and loan associations which are insured, and accounts in banking institutions. Additionally, the State Treasurer's Office investment guidelines for political subdivisions does not authorize the investment of public monies in money market funds.

The board should ensure district funds are invested in accounts insured by the FDIC or guaranteed by federal agencies.

3. The board should consider consolidating its bank accounts to help simplify the district's records and reduce the number of accounts that must be monitored and controlled. The District Attorney indicated the district's funds are held in multiple accounts and banks so that balances are covered by the FDIC insurance and to allow multiple banks to benefit from the district's business.

A large number of bank accounts requires additional record keeping and increases the likelihood that errors will occur in the handling of funds. Consolidating accounts would also allow funds to be pooled for increased investment opportunities.

WE RECOMMEND the Board of Supervisors:

- A. Ensure the District Attorney provides services which are legal in nature. The day-to-day operations of the district should be handled by the board or other appointed officials.
- B. Contact the IRS and/or Missouri Department of Revenue for guidance regarding the reporting of compensation paid its appointed officials.
- C.1. Ensure the District Engineer adequately performs his duties. In addition, the board should require the District Engineer to prepare and submit an annual report of all work done and improvements made, including suggestions and recommendations, to the board.
- 2. Ensure a conflict of interest does not exists with the District Overseer's duties. All documentation, discussions, and decisions regarding payments in addition to his monthly compensation should be documented and retained,
- D. Ensure that all significant district business is approved by the board. Documentation of the board's approval should be retained.
- E. Report to the landowners at the annual landowner's meeting the nature and location of improvements and maintenance, and maintain documentation of this report in the minutes.
- F. Segregate the duties of the District Secretary/Treasurer to the extent possible. If proper segregation of duties cannot be achieved, at a minimum, timely supervisory or independent review of the work performed and investigation into unusual items and variances is necessary.
- G. Obtain bond coverage for all individuals handling district monies.
- H.1. Seek proposals or competitively bid the district's banking services, and enter into written depository agreements with its depository banks.
 - 2. Ensure district monies are invested in appropriate accounts.
 - 3. Consider consolidating the district's bank accounts and CDs.

AUDITEE'S RESPONSE

The Board of Supervisors of the Birmingham Drainage District is appreciative of the efforts of the State Audit Department in reviewing the practices of the Birmingham Drainage District. The Board is pleased the audit found no illegalities or glaring deficiencies in the manner in which the Board is fulfilling its responsibilities. The Board of Supervisors will seriously consider all of the observations and recommendations contained in the audit and make such changes as it determines are appropriate and would better enable it to fulfill its responsibility to maintain the drainage and levee improvements over which it has jurisdiction.

The Supervisors believe many of the observations and recommendations are attributable to the lack of familiarity of the Auditor's Office with the duties, functions, and responsibilities of the District. There are certain areas to which the Board has generally responded.

The Board of Supervisors disagrees strongly with the implication it does not adequately supervise its independent contractors. None of the work those contractors perform is done without authorization and direction from the Board or its designees. The Board further, at least annually, reviews the performance of each contractor to make certain each is performing as expected and being fairly compensated. The Board is also cognizant of potential conflicts of interest. No member of the Board receives compensation other than for services as a Board member and when practicable proposals for work to be done are received from more than one source. The Board further believes it has adequate controls on its accounting procedures and accounts. No one individual has the ability to approve statements and write significant checks and the audit has raised no questions as to improper payment.

AUDITOR'S COMMENT

The district has not addressed many of our recommendations. The lack of board oversight and documentation of significant operations, and the need for improved accounting controls and procedures are all deficiencies which need to be addressed.

2.

Maintenance Tax

The district does not review the maintenance tax book prepared by an outside entity, does not conduct an analysis of the district's financial information prior to setting the tax rate, and does not maintain documentation to support the funds reserved for pump replacement and emergencies.

The district levies an annual maintenance tax to pay the district's operating expenses, including the costs of maintaining and preserving the levee and other district improvements. Each year, the board sets the maintenance tax levy rate at the July meeting. Each property is assessed a maintenance tax based on the benefit the property derives from the district improvements. The method for determining the assessed benefit for each property type within the district is outlined in a 1997 court order. The court order provides that the value for agricultural property be based on the soil class(s) of the

property multiplied by 50 percent to determine the assessed benefit amount. For all other property, the assessed benefit amount is the assessed value of the property at January 1 multiplied by a set percentage; 90 percent for commercial, 80 percent for residential, and 70 percent for governmental and railroad/utilities.

Since 1994, the district has had a title company calculate the assessed benefit and tax amounts for each property and prepare the district's tax book. The District Secretary/Treasurer then certifies the tax book to the Clay County Collector who bills each property owner, collects current and delinquent taxes, and remits the tax collections to the district. During 2005, the maintenance tax levy generated almost \$374,000 in tax revenues.

Our review of the maintenance tax noted the following problems:

- A. The district does not review or verify the accuracy of the tax book. Errors in the tax book were not detected and corrected, nor were the assessed benefits always calculated in accordance with the court order. As a result, the district has little assurance that taxes assessed are proper and accurate.

During our review of the 2005 tax book and tax calculations, we found that the maintenance tax for six of ten (60 percent) properties was not correctly calculated. For three properties, landowners were overcharged a total of \$1,480 and landowners for three other properties were undercharged a total of \$555.

Our review disclosed the following problems:

- For agricultural properties, the proper acreage and soil class was not used to calculate the assessment of benefits. For four agricultural properties tested, the acreage listed in the tax book did not agree to the acreage in the Clay County Assessor's records. Although the acreage and soil class is available from the county assessor, the tax book preparer does not obtain this information to calculate the assessed benefit, but uses \$500 per acre as the value in her calculation. It is unclear how or why the \$500 per acre was established and used.

We also identified 26 other agricultural properties in which the tax book acreage did not agree with the county assessor's acreage. Since a significant portion of district property is agricultural; errors in the acreage could result in considerable incorrect tax amounts.

- For railroad and utility properties, the assessed value of these properties as of April 1995 was used in the tax calculation. The tax preparer indicated that she did not know where to get this information and was using the values from the tax books she received when she started preparing the tax books. However, the applicable current assessed value for railroads and utilities is available from the State Tax Commission.

- For one property consisting of both commercial and agricultural property, a portion of the property was used twice in assessing benefits and taxes. On another property the assessed benefit was calculated to be \$273,258, however the district could not document how this amount was determined. Based upon information from the county assessor, the assessed benefit appears to be only \$13,680, which would result in an actual tax difference of almost \$1,300.
- For governmental properties, although assessed benefits and taxes were calculated, it appears these properties are exempt from paying maintenance taxes. Article X, Section 6 of the Missouri Constitution, exempts from taxation all property, real and personal, of the state, counties and other political subdivisions.

The district is responsible for ensuring benefits are properly assessed and the correct tax is calculated. Policies and procedures should be established to review and test the tax book to ensure all information is accurate, benefits are properly assessed, and the tax is the proper amount.

- B. The district has no documentation to support the annual maintenance tax levy. Each year, the July board minutes simply state the rate set and the amount of assessed benefits. The 2006 maintenance tax levy is one-half of one percent.

Our observation of the board's process for setting the 2006 maintenance tax rate noted that the board had not prepared estimations and/or analysis of the funds needed for 2007; expected income, including revenues to be generated at various tax rates; estimated expenditures; and estimated beginning and ending fund balances. However, there was discussion that by setting the rate the same as the previous year, additional funds should be generated which could be set aside for emergencies. In recent years, the board increased its tax rate to cover the costs of repairing the levee, and as noted below, to maintain reserve funds. In four of the last five years, receipts have exceeded expenditures ranging from \$50,000 to \$300,000.

The board should set the tax levy based on proper analysis and estimation of district financial information. This process, including the rationale supporting the rate set, should be documented.

- C. Beginning in 2004, the district sets aside funds for future replacement of its three pumps and for other emergencies; however, the amounts set aside are not supported by cost estimates or other replacement cost documentation. In addition, it appears two of these pumps were donated by a landowner; however, the district did not provide documentation regarding its ownership and/or responsibilities for these pumps. At December 31, 2005, the reserve for pump replacement totaled \$850,000 and the emergency contingency fund totaled \$250,000.

Additionally, in July 2006, the board voted to increase the emergency contingency fund to \$500,000. The District Attorney indicated the amount in the pump replacement fund is based on verbal estimates obtained from suppliers; however, these estimates were not documented.

Without documentation such as a cost estimate or other replacement cost documentation, there is little assurance the amounts set aside are reasonable. This cost information should be periodically reviewed and updated as needed and the reserve amounts adjusted as necessary.

WE RECOMMEND the Board of Supervisors:

- A. Review and test the maintenance tax book to ensure all information is accurate, benefits are properly assessed, and the tax is the proper amount.
- B. Set the tax levy based on proper analysis and estimation of district financial information. This process, including the rationale supporting the rate set, should be documented.
- C. Prepare documentation to support the amounts reserved for pump replacement and emergencies. The documentation should be periodically reviewed and updated as needed and the reserve amounts adjusted as necessary.

AUDITEE'S RESPONSE

The Board of Supervisors does not have the expertise to analyze the intricacies of the tax book. The Board did, several years ago, engage in a judicial process to more equitably assess benefits within the District. It has for many years relied on a recognized expert to calculate and maintain its tax books (in conjunction with the Clay County Assessor and Collector). However, the Board will be engaging a new contractor in this area in 2007 and the audit recommendations will be considered and made available to the new contractor.

3.

Meetings, Minutes, and Elections

There were numerous weaknesses with the district's procedures for conducting and documenting board meetings and elections. The meetings were infrequent and were not always at a location and time that were conducive for the public to attend, the minutes did not always contain sufficient detail of business conducted and actions taken, and some meetings did not comply with the open meetings law. Also, the district did not have written policies and procedures for public access to records, absenteeism by supervisors, and election of supervisors.

- A. The district needs to consider more frequent meetings and to ensure its meetings are at a location and time that are conducive for the public to attend. Also, the district needs to ensure its notices of board meetings and related agendas are

posted at the building in which the meeting is held and should consider publishing notices and agendas in a newspaper(s) within the district so that the landowners and public are adequately notified.

The problems noted below appear to have contributed to reduced involvement by the landowners and the public. There was little attendance by the landowners and public at district meetings.

1. The board of supervisors only meets twice a year, in March and July, with the annual landowners meeting held in conjunction with the March meeting. It appears some district business was conducted outside of board meetings. For example, levee inspections as noted below.

The governing bodies of all political subdivisions in this state are required to conduct most business in regular open meetings. Overseeing and managing district operations as a formally functioning body strengthens public accountability and internal fiscal controls. Additionally, more frequent regular meetings would allow the public a forum for addressing concerns and questions to the board.

2. Although the March meetings are held at a business within the district's boundaries, the July meetings are held in downtown Kansas City, at the District Attorney's office, approximately 12 miles from the district. These meetings started at 9 a.m.

Section 610.020, RSMo, requires reasonable accommodation to assure public access. This section provides that meetings shall be held at a place that is reasonably accessible and a time that is reasonably convenient to the public, unless it is impractical or impossible.

3. The notice and tentative agenda of board meetings are not posted in the building in which the meeting is to be held. Additionally, advertisements announcing the meetings and tentative agendas are published in a newspaper in Kearney, Missouri, rather than a newspaper(s) within and/or closer to the district.

Section 610.020, RSMo, requires all public governmental bodies to give advance notice of their meetings. The notice is to include the time, date, and place of the meeting, as well as the tentative agenda, and should be given "in a manner reasonably calculated to advise the public of the matters to be considered ...". This section also describes reasonable notice as the posting of such notice in a prominent place which is easily accessible to the public and at the building in which the meeting is to be held. Also, it appears that advertisements in a newspaper(s) within the district would more readily inform the landowners and public of board meetings. According to the District Attorney, notices are published in the

Kearney's newspaper because it is the recognized vehicle for legal publications in the county.

- B. Board minutes did not always contain sufficient detail of business conducted and actions taken or all information required by state law. In addition, minutes were not always accurate. For example:

1. Board minutes did not document when new supervisors were sworn into office. The District Attorney stated that new supervisors take an oath before exercising their official duties; however, this is not documented.

In addition, the minutes did not indicate the terms of office for the newly elected supervisors. In one instance, the minutes indicate a supervisor was elected to fulfill an unexpired term of a former supervisor who had resigned; however, the length of that unexpired term was not identified in the minutes.

2. Board minutes did not contain some information required by statute. There were several instances where the minutes indicated a motion had passed, but did not indicate the number of votes for and against. Also, minutes did not record the supervisors absent from the meeting and some minutes did not document the time the meeting took place.
3. The District Overseer was paid more than the compensation documented in the minutes, for the year ended December 31, 2005. The minutes indicate compensation of \$600 per month was approved; however, he was paid \$650 per month. See MAR finding number 1.
4. Board minutes did not always include sufficient detail of bid information.

Section 610.020, RSMo, states that "the minutes shall include the date, time, place, members present, members absent, and a record of votes taken." Minutes serve as the only official permanent public record of decisions made by the board. Therefore, it is imperative that the minutes be prepared to clearly and accurately document all business conducted.

Furthermore, Section 242.180 RSMo, provides that "each supervisor before entering upon his official duties shall take and subscribe to an oath ...". Board minutes should document when supervisors are sworn into office.

- C. Meeting notices and related agendas are not published and posted for the annual levee inspection by the U.S. Army Corps of Engineers, as applicable. In addition, minutes are not maintained for these inspections.

Typically, several supervisors attend the inspection. For example, in June 2006, three supervisors attended the inspection. When a majority of supervisors are

present for the inspection, it appears this constitutes a board meeting subject to provisions of the open meetings law.

Section 610.010, RSMo, indicates that any meeting of a public governmental body where public business is discussed, decided, or public policy formulated is subject to the provisions of the open meetings law. Public business is defined as matters that relate in any way to the performance of the public governmental body's functions or the conduct of its business. Additionally, Section 242.420, RSMo, requires the board to keep a record of all its proceedings.

- D. The district does not have a formal policy regarding public access to district records. A formal policy would establish guidelines for the district to make the records available to the public. This policy should identify a person to contact, provide an address to mail such requests, and establish a cost for providing copies of public records.

Section 610.023, RSMo, lists requirements for making district records available to the public. Section 610.026, RSMo, allows the district to charge fees for copying public records, not to exceed the district's actual cost of document search and duplication.

- E. The district does not have a policy regarding absenteeism by supervisors. Although the board meets only twice a year, there is generally at least one supervisor absent from each meeting. One supervisor, who lives in Utah, missed each meeting during 2005 and 2006. Also, the July 2005 meeting was held with only two supervisors physically present and one participating via telephone.

A quorum is necessary before decisions can be made. The lack of attendance by supervisors can result in the inability to hold meetings and take votes, which disrupts the conduct of district business. To help ensure district business is conducted in a timely manner, the district needs to have a policy addressing absenteeism by supervisors.

- F. The district has not established written guidelines to govern district elections pursuant to Chapter 242. While meeting minutes indicate the landowners and representatives in attendance, and who was nominated and won the elections for board of supervisors, adequate documentation, including a record of the votes, was not maintained.

In addition, it was not clear how the number of votes per landowner or proxy was determined and who was allowed to vote. The District Attorney indicated that a corporate landowner owns a majority of the district property, and that landowner's votes determine who is elected to the board. However, the district could not provide us with an accurate listing of the number of acres owned per landowner.

Section 242.160, RSMo, which outlines the election requirements, requires that each owner, or representative of the owner, of property having benefits assessed against it shall be entitled to one vote per acre of land owned. The district should formulate policies for voting in meetings held in accordance with Chapter 242 to avoid misunderstandings and allow all landowners to better understand the procedures. Also, the district should maintain a complete and accurate record of the number of acres owned per landowner to be used in determining the number of votes which each landowner is entitled. A record of votes should be maintained for every election, which indicates votes received by each candidate.

WE RECOMMEND the Board of Supervisors:

- A. Consider holding more frequent, regularly scheduled meetings to allow for public participation. The board meetings should be scheduled at locations and times that are conducive for landowners and the public. Also, the board should ensure meeting notices are published in a manner that informs the landowners/public and are posted in a prominent place which is easily accessible to the public and at the building in which the meeting is to be held.
- B. Ensure all significant discussions, actions taken, and information required by state law are included in the minutes.
- C. Ensure activity required to be conducted in open meetings is handled in accordance with state law.
- D. Develop written policies regarding procedures to obtain access to, or copies of, public district records.
- E. Develop a policy regarding absenteeism by supervisors.
- F. Establish written policies and procedures for the district's elections. Additionally, the district should maintain a complete and accurate record of the number of acres owned for each landowner and election results which indicate the number of votes for each candidate should be prepared and retained.

AUDITEE'S RESPONSE

The Board does not believe there is a problem with respect to the manner in which it conducts meetings, records its business or holds elections as its activities in this area are in conformity with Missouri law. In addition to the formal notice of meetings, informal notice is given to landowners. The Board is aware of no landowner who has raised any objection to its meeting times, places or frequency.

4.**Expenditures**

The district does not have a formal bidding policy. Additionally, there were several weaknesses in the district's management of a construction project. Also, the district did not adequately review and approve expenditures.

- A. The district does not have a formal bidding policy. As a result, the decision of whether to solicit bids for a particular purchase is made on an item-by-item basis. During the year ended December 31, 2005, bids were either not solicited or bid documentation was not retained for the following:

Mowing	\$ 22,139
Chemical applications	11,295
Insurance/surety bond	8,523
Tax book preparation	2,000
Accounting services	700
Engineering services (see below)	12,924
Levee repair (see below)	148,042

Overall, it appears the district bids very few items and services. The District Attorney indicated prices and/or bids were solicited for some items/services; however, documentation of these inquiries was not always maintained.

Formal bidding procedures for major purchases provide a framework for economical management of district resources and help ensure the district receives fair value by contracting with the lowest and best bidders. Also, soliciting proposals for professional services provides a range of possible choices and allows the district to make a better-informed decision to ensure necessary services are obtained from the best qualified vendor at the lowest and best cost. In addition, competitive bidding helps ensure all parties are given an opportunity to participate in the district's business. Complete documentation should be maintained of all bids/proposals received and reasons noted why the bid/proposal was selected. If circumstances provide that bidding is not necessary or practical, such as sole source providers or emergency situations, the reasons for not soliciting proposals/bids should be documented.

- B. The district did not document its reasons for selecting other than the low bidder for a construction project, and there was no documentation that change orders for the project were approved by the board. Additionally, extra steel was purchased and has not been used. Also, engineering services were not obtained in accordance with state law.

The district recently completed a construction project to repair a section of the levee. The district entered into an agreement with a contractor in October 2003 for Phase I of the project, which was completed in March 2004. An amendment

to the contract in August 2005 provided for the completion of a portion of Phase II of the project. Payments to the contractor totaled over \$894,000 related to work for Phase I and part of Phase II. In addition, the district paid a consulting engineer almost \$138,000 for project plans/specifications and oversight of the project during the three years ended December 31, 2005.

Our review of the construction project noted the following areas of concern:

1. The district did not document the basis or justification for awarding the bid to a contractor other than the low bidder for the construction project. The difference between the low bid and the bid accepted was almost \$37,000. To justify decisions made on awarding contracts where the apparent low bidder was not selected, the district should maintain complete documentation of its reasons for selecting the winning bid.
2. It appears the district should have bid the work on Phase II. In August 2005, the district signed an amendment, totaling \$131,000, with the contractor for Step I of Phase II of the project. However, district records indicated the contractor had only held its proposal open on Phase II until April 15, 2004.

If the scope of a project changes or if a proposal is no longer valid, the district should consider re-bidding those parts of the project.

3. The minutes did not indicate that construction change orders totaling approximately \$28,000 relating to Phases I and II were approved by the board. In addition, the district could not provide copies of these change orders.

The board should authorize all significant changes to construction contracts to ensure any additional expenditures represent valid and appropriate costs to the district. Adequate documentation of the change orders should be retained by the district to document the purpose and amount of the order. In addition, board approval of the change orders should be documented in the board meeting minutes.

4. Extra steel was purchased and three years later, the steel has not been used. In November 2003, the district requested the contractor to purchase extra steel, costing \$209,170, for Phase II of the project.

However, it appeared that in November 2003, the district had not determined when or even if the portion of Phase II, which would have utilized the steel, would begin. As a result, the district currently owns this extra steel without a plan for utilizing it. At the July 2006 board meeting, the District Attorney informed the board about the extra steel and that it could be sold since it would not be needed for a future project.

The district needs to ensure that it does not order unnecessary materials.

5. No documentation was available to support that the district procured the engineering services for the project, as provided by state law. The District Attorney cited an emergency as the reason for not soliciting proposals for the engineering services. Additionally, the district could not provide a contract with the engineering firm which described the services to be provided and the related compensation.

Sections 8.285 to 8.291, RSMo, provide that when obtaining engineering services, at least three highly qualified firms should be considered. The firms should be evaluated based on specified criteria and qualifications for the type of service required.

The district should obtain engineering services in accordance with state law. Also, written agreements should be prepared and retained which specify the services to be rendered and the manner and amount of compensation to be paid.

- C. The board as a whole does not approve expenditures or review invoices before payment of the district's expenses. We saw no evidence that the board requested or reviewed invoices and/or other supporting documentation for expenditures. Additionally, the board is not provided with a listing of payments made until after the fiscal year has ended.

After the Secretary/Treasurer prepares and signs checks, she sends the checks to one of the supervisors to co-sign the checks. However, it appears the supervisor is not furnished invoices and/or other supporting documentation. The checks are then sent back to the Secretary/Treasurer, who mails the checks. The District Attorney indicated he reviews and approves invoices prior to payment; however, this review is not documented.

To ensure all disbursements represent valid transactions of the district, a complete and detailed listing of bills should be prepared, signed or initialed by the supervisors to denote their approval, and retained with the official minutes. Supporting documentation should be reviewed by the board and/or supervisor before payment is made to ensure all disbursements represent valid operating costs of the district.

WE RECOMMEND the Board of Supervisors:

- A. Establish a formal bidding policy. Such a policy could require competitive bids be solicited through advertising for any purchases over an established amount.
- B.1. Maintain complete documentation of the reasons for selecting the winning bid.

2. Re-bid construction projects when substantial changes are made to the project or if contractor proposals are no longer valid.
 3. Ensure all change orders are approved by the board and retained.
 4. Ensure only necessary materials are ordered for each part of the project as needed. The district should consider selling the extra steel if it cannot be used in a timely manner.
 5. Ensure engineering services are procured in accordance with state law. Additionally, formal written agreements for engineering services should be prepared which specify the services to be rendered and the manner and amount of compensation to be paid.
- C. Ensure disbursements are adequately reviewed and approved before payment. The board should review and approve a complete and detailed list of expenditures, and the approved list should be retained to document the board's approval.

AUDITEE'S RESPONSE

The Board has solicited bids in all instances required by Missouri law. The Board has also solicited proposals in many instances where practicable when formal bidding was not required.

AUDITOR'S COMMENT

The failure to have a formal bid policy and to maintain appropriate bid documentation over significant transactions does not provide district taxpayers assurance that the district is efficiently managing its resources and receiving fair value by contracting with the lowest and best bidders.

5. Budgeting and Financial Reporting

Significant weaknesses were identified in the district's budgeting and financial reporting. The district's budgets were not adequate and actual expenditures exceeded budgeted expenditures in 2005. In addition, the district did not obtain annual audits.

- A. The district did not prepare and adopt annual budgets in accordance with state law. The budgets for the years ending December 31, 2006 and 2005 did not include a budget message, ending fund balance, and actual revenues and expenditures for the preceding two years. The approved budgets only included estimates of revenues and expenditures for the year and the beginning fund balance. Additionally, the district approved the budgets several months after the beginning of the applicable year. The budgets for 2006 and 2005 were not approved until March 2006 and March 2005, respectively.

Section 67.010, RSMo, requires the preparation of an annual budget and Sections 67.010 to 67.080, RSMo, set specific guidelines for the format, approval, and amendments of the annual budget. A complete budget should include a budget message, actual (or estimated for the years not yet ended) revenues and expenditures for the preceding two budget years, and the beginning and estimated ending available resources. Also, Section 67.030, RSMo, provides that the district adopt and approve the budget prior to the beginning of the applicable fiscal year.

A complete and well-planned budget, in addition to meeting statutory requirements, can serve as a useful management tool by establishing specific costs and revenue expectations for each area of district operations. A budget can also provide a means to effectively monitor actual costs by periodically comparing budgeted amounts to actual expenditures. Also, it will assist in setting the maintenance tax and informing the public about district operations and current finances.

- B. Actual expenditures exceeded budgeted amounts by over \$69,000, for the year ended December 31, 2005. Actual expenditures were \$280,958, while the budget expenditures were \$211,710. It appears the board did not detect the overspending because budget to actual comparisons are not prepared and reviewed by the board.

The District Attorney indicated the board monitors budgeted and actual revenues and expenses at the semi-annual meetings; but, this review is not documented. However, reviewing budget to actual amounts twice a year, in March and July, does not appear to provide adequate monitoring of expenditures. More frequent meetings with budget to actual reports would allow the board to more effectively monitor expenditures.

Additionally, Section 67.040, RSMo, requires political subdivisions to keep expenditures within amounts budgeted and allows for budget increases, but only after the governing body officially adopts a resolution setting forth the facts and reasons. Failure to adhere to the expenditure limits imposed by the budget weakens the effectiveness of the process. Also, Section 67.080, RSMo, provides that no expenditure of public monies shall be made unless it is authorized in the budget. The budget process provides a means to allocate financial resources in advance and to monitor revenues and expenditures throughout the year. A periodic comparison of budgeted versus actual revenues and expenditures is necessary to properly monitor the financial activity of the district.

- C. The board has not obtained annual audits as required by state law. Section 242.210, RSMo, requires annual audits of the district records. In addition to being required by state law, annual audits of district records would help ensure district financial transactions have been properly recorded and reported.

WE RECOMMEND the Board of Supervisors:

- A. Prepare budgets which contain all information as required by state law. Also, the budgets should be adopted before the beginning of the applicable fiscal year.
- B. Ensure actual expenditures do not exceed budgeted amounts. In addition, the board should periodically compare budget to actual revenues and expenditures to monitor the district's financial activity.
- C. Obtain annual audits of the district's financial records as required by state law.

AUDITEE'S RESPONSE

The Board reviews expenditures and adopts a budget on at least an annual basis. In addition, it conducts a mid-year review of expenditures to date and considers budget revisions and unanticipated needs when setting the tax levy. Its financial statements are reviewed by an outside independent auditor on an annual basis.

AUDITOR'S COMMENT

The district's budgeting and financial reporting practices are not in accordance with state law.

HISTORY, ORGANIZATION, AND
STATISTICAL INFORMATION

**BIRMINGHAM DRAINAGE DISTRICT
HISTORY, ORGANIZATION, AND
STATISTICAL INFORMATION**

The Birmingham Drainage District, located in Clay County, was established in 1913 through a circuit court order and is organized under Chapter 242 RSMo. The district was reorganized in 1970; and in 2004, its life was extended to February 2085. The district covers almost 5,400 acres north of the Missouri River, and serves approximately 190 landowners.

The district government consists of a five-member board of supervisors. The members are elected for five-year terms. The Board of Supervisors, and other officials during the year ended December 31, 2005, are identified below. The board members are compensated \$300 per meeting and/or levee inspection attended. The compensation of these officials is established in the annual landowners meeting.

Board of Supervisors	Dates of Service During the Year Ended December 31, 2005	Compensation Paid for the Year Ended December 31, 2005
Henry Kester, President	January 2005 to December 2005	\$ 900
Arsene Vandendaele, Supervisor	January 2005 to December 2005	600
G. Scott Dean, Supervisor	January 2005 to December 2005	600
Kerry Nielsen, Supervisor (1)	January 2005 to December 2005	0
Bob Campbell, Supervisor	March 2005 to December 2005	900
Chris Leahey, Supervisor	January 2005 to March 2005	0

Other Principal Officials	Dates of Service During the Year Ended December 31, 2005	Compensation Paid for the Year Ended December 31, 2005
Norbert Kemp, District Engineer	January 2005 to December 2005	\$ 2,400
Dan Sissom, District Overseer (2)	January 2005 to December 2005	30,630
Debbie Riekhof, District Secretary/Treasurer	January 2005 to December 2005	6,500
Robert McKinley, District Attorney (3)	January 2005 to December 2005	

(1) Re-elected in March 2006

(2) The compensation includes \$650 per month for overseer duties, plus \$22,830 for levee maintenance services such as labor, mowing, and chemicals.

- (3) The district is billed on an hourly basis by the law firm of Lathrop & Gage for Robert McKinley to serve as District Attorney. The district paid \$45,026 for legal services for the year ended December 31, 2005.

Assessed benefits for 2005 totaled \$57,565,482, and the maintenance tax rate was one-half of one percent of assessed benefits. Assessed benefits are calculated in accordance with a 1997 court order as follows:

ASSESSED BENEFITS

Property Classification

Agricultural

50 percent of the property value
calculated as follows:

Soil Class	Value per acre
1	\$ 1,800
2	1,500
3	1,250
4	950
5	650
6	500
7	250
8	100

Commercial

90 percent of assessed value at January 1

Residential

70 percent of assessed value at January 1

Governmental, Quasi-Governmental,
Railroad, and Utility

60 percent of assessed value at January 1

A summary of the district's financial activity for the year ended December 31, 2005, is presented below:

	Maintenance Fund
RECEIPTS	
Maintenance taxes	\$ 373,883
Rent	183,233
Interest	<u>23,711</u>
Total Receipts	<u>580,827</u>
DISBURSEMENTS	
Supervisors compensation	3,000
District Engineer compensation	2,400
District Overseer compensation	7,800
District Secretary/Treasurer compensation	6,500
Legal services	45,026
Tax book preparation services	2,000
Accounting services	700
Insurance and bonds	8,523
Advertising	96
Postage	101
Investment firm service charges	300
Electricity	5,349
Levee and pump maintenance	36,257
Maintenance supplies	1,700
Construction	148,042
Consulting engineer services	12,924
Miscellaneous	<u>240</u>
Total Disbursements	<u>280,958</u>
Receipts Over (under) Disbursements	<u>299,869</u>
 Cash balance, January 1	 <u>973,777</u>
Cash balance, December 31	<u>\$ 1,273,646</u>