

The Miami Herald

Posted on Tue, Aug. 17, 2010

Auditor: Miami misusing millions in gas taxes

BY CHARLES RABIN
crabin@MiamiHerald.com

Already in the sights of federal investigators over questionable money transfers, Miami's fragile financial picture took another hit Monday: The city auditor found yet another series of multimillion dollar moves to balance Miami's sinking books.

In a stinging report, Auditor Victor Igwe, backed by an opinion from the state attorney general, said the city tapped into even more restricted money -- this time, \$9.47 million in gas taxes -- to fill gaping budget holes.

The 154-page report says the city shifted the money to the general fund to balance its plummeting checkbook, an improper practice that has been used in the past to mask deeper financial woes. The money went to operate street lights.

The city is already under federal investigation for the questionable transfers of millions in Impact Fees and other restricted funds, but this is the first time the use of gas taxes was found by auditors.

In his report, Igwe concludes the practice of tapping into the Local Option Gas Tax has been going on for nearly a decade.

The findings prompted a former U.S. Securities & Exchange Commission attorney who investigated the city for similar practices in the 1990s to say the latest report will more than likely widen the existing probe.

"It seems to me that it's raising the same type of issue," said David Chase, whose review a decade ago led to sanctions against the city. "Is this really a municipality that is desperate to plug any gaps?"

Igwe, the city auditor, says Miami used the gas tax money to operate street and traffic lights, a move approved in an opinion from the city attorney but shot down in an opinion from Attorney General Bill McCollum this summer.

Collected from the purchase of fuel, the tax is intended to maintain rights-of-way and bridges -- not to keep up daily operations.

In a July letter to Igwe, McCollum says there is a clear distinction between daily operations and maintenance.

"The legislature has used the terms, "maintenance" and "operation" separately. To interpret them to mean the same thing would mean that the legislature had enacted redundant, useless legislation," wrote McCollum.

Defending the city, Chief Financial Officer Larry Spring cited a 2002 opinion from then-Attorney General Bob Butterworth allowing the use of gas tax money for daily operations, such as paying street light bills.

Spring also included an opinion from Assistant Miami City Attorney Rafael Suarez-Rivas which said if the cost of street lighting can be separated from general utilities, "then that portion can be paid from the revenue collected from the local option fuel tax."

Igwe's audit comes nine months after the U.S. Securities & Exchange Commission launched an investigation into whether Miami misled bond investors about the city's ailing financial health. It also comes a decade after the SEC first chided Miami for shuffling millions to mask a massive deficit -- an investigation that led to SEC sanctions in 2003.

Much of the SEC's current probe has centered on the transfers of \$26.4 million -- including \$8.2 million in impact fees -- that went to the city's general fund in 2007 and 2008 to make its budgets whole.

Federal agents are trying to determine whether city leaders engaged in an elaborate shell game by moving money around to make it appear Miami's finances were healthy to bond holders.

The SEC investigation into the transfers has rocked City Hall. The practice has been stopped, the city has implemented spending freezes and Budget Director Michael Boudreaux was ousted. He has filed a grievance against the city.

Former SEC investigator Chase said Igwe's findings go to the same dispute over Impact Fees: Is the financial picture "true and accurate" to those looking to invest in Miami?

Igwe's audit also delves into the city's reserve fund, which was created during the budget fiasco in the 1990s, and must be maintained at about \$80 million.

If not, the city is required to submit a two-year plan to replenish the account.

Only seven years ago, Miami's rainy-day fund was a healthy \$143 million, but by September, it's expected to be about \$5 million.

Despite personnel cuts and spending freezes, the city is looking at more than a \$20 million shortfall this year, and a whopping \$100 million deficit next year.

The city intends on using lucrative parking revenues to refill the reserve. But to do so it would have to take control of the quasi-independent Miami Parking Authority, which runs the city's parking lots and garages.

Voters will decide if they want to hand the reigns of the authority to commissioners by referendum in November, well after the 2011 budget year is under way.