

April 5, 2001

Hon. Robert M. Morgenthau
District Attorney
New York County District Attorney's Office
One Hogan Place
New York, NY 10013

Re: Steven J. McGuire
SCI Case #99-0428

Dear District Attorney Morgenthau:

By the enclosed letter we are referring this matter to you for review and for whatever action you deem appropriate. Please contact me or First Deputy Commissioner Regina A. Loughran if you need any information or assistance. She can be reached at (212) 510-1426. Thank you.

EDWARD F. STANCIK
Special Commissioner
of Investigation for the
New York City School District

By: _____

Regina A. Loughran
First Deputy Commissioner

EFS:RAL:ai

April 5, 2001

Hon. Harold O. Levy
Chancellor
New York City Public Schools
110 Livingston Street, Room 1010
Brooklyn, NY 11201

Re: Steven J. McGuire
SCI Case #99-0428

Dear Chancellor Levy:

An investigation conducted by this office has substantiated that Steven J. McGuire, the custodian at the School of the Future in Manhattan, used Board of Education (“BOE”) funds for his personal use.¹ During the period examined, from January 1997 through August 2000, McGuire commingled personal funds with those provided for custodial payroll and purchases, and used that account to pay his personal credit card, taxes, and mortgage debts.² Further, he wrote checks in amounts above and beyond his salary to himself and others, including his wife, a casino in Atlantic City, and two of his employees. McGuire then directed these two workers to cash the checks and return the money to him.

In essence, McGuire used his BOE budget as a sort of interest-free credit line. The “balance” of improperly removed BOE funds fluctuated over the three-and-a-half-year period. For example, at any given time, he could owe the Board anywhere from about \$10,000 to \$57,000. This improper use of BOE funds continued until McGuire learned that his account had come under scrutiny. Evidence indicates that McGuire had become aware of this investigation sometime after April 2000. By that August, he had repaid most of the BOE funds he had used for personal expenses. In fact, records reveal that McGuire deposited \$60,000 in just the last two months prior to that date.

¹ McGuire is still custodian at the School of the Future.

² McGuire’s activities may have begun prior to and continued beyond this time frame.

McGuire's misuse of this account was able to occur because it has long been BOE practice to allow custodians complete control over the bank accounts containing BOE funds. Moreover, there is a lack of supervision of custodial accounts. We found that under current practice, annual audits would not have discovered McGuire's misconduct.³

This investigation began after this office received an anonymous phone call alleging that McGuire stole money from his custodial account and spent most of it in Atlantic City. Investigators from this office subpoenaed his bank records and uncovered the extent of McGuire's improprieties.

McGuire's scheme succeeded because he violated rules and regulations set by the BOE, the custodial contract, and the City Comptroller by commingling non-BOE funds with BOE funds deposited into a bank account.⁴ The BOE gave McGuire a budget to be deposited into a bank account and used solely for custodial expenditures and payroll. Instead, McGuire deposited the funds into an account in his and his wife's names, and regularly used the money in it to pay his own personal debts. Records show deposits and withdrawals of a personal nature, as well as those that were BOE related.

A review of McGuire's bank records revealed that he has been writing personal checks from the account containing both BOE and non-BOE funds. Between January 9, 1997 and August 17, 2000, McGuire paid himself almost \$7,000 more than he was entitled to in salary.

³ This is not the first time that this office has reported on the improprieties of custodians in the handling of custodial bank accounts. See, *A System Like No Other: Fraud and Misconduct by New York City School Custodians*, November 1992. McGuire was also mentioned in that report in connection with a "wife-swapping" scheme. See, page 5, *infra*.

⁴ As a result of this office's November 1992 report, the Office of the New York City Comptroller issued Memorandum #92-12, which expanded upon the Comptroller's Internal Control and Accountability Directive #11- "Cash Accountability and Control" that established basic guidelines for safeguarding the City's cash and use of bank accounts. According to Memorandum #92-12, "Agency policies and procedures must state clearly that under no circumstances may City funds be deposited in a bank account that the employee uses for personal expenditures or shares with a spouse, family member or any other person, and that the account must not be used to process non-City transactions of any kind, including deposits, transfers or disbursements." Then, the New York City Public Schools Division of School Facilities, Office of Building Services, Department of Plant Operations, issued Plant Operations Circular No. 11- 1992/93 which required that, "[e]ffective January 1, 1993, custodians must maintain all Board of Education funds separate from personal accounts and in an account containing only Board of Education funds to be used only for Board of Education purposes." Further, the 1994 contract between the BOE and the custodians' union, the last agreement between the parties to date, mandated that custodians must "maintain all Board funds separate from personal accounts in an account containing only Board funds, to be used only for Board purposes."

Further, McGuire wrote a number of checks for other personal expenses. From the commingled account he issued:

- ?? eight totaling \$19,843 to pay his American Express bills;
- ?? three totaling \$3,000 to Champion Mortgage;
- ?? two totaling \$2,964 to his wife Angela McGuire, although there is no record that she ever worked at his school;⁵
- ?? four checks totaling \$1,000 to Caesar's Palace;
- ?? one for \$2,360.72 for his property taxes;
- ?? one check for \$200 to Chase;
- ?? three checks totaling \$644.32 to Citibank;
- ?? two totaling \$297 to The Wiz;
- ?? \$1,000 to his daughter, Stephanie McGuire;
- ?? \$150 to EZ Pass;
- ?? \$4 to the College of Staten Island; and
- ?? twenty-four checks totaling \$9,650 payable to cash.

McGuire gave unauthorized checks to his custodial employees at the School of the Future solely for his own benefit. Bank records reveal that he issued seventy-eight checks totaling \$162,025, made payable to Fireman Adolfo Mont Etna, and six checks totaling \$20,000, made payable to Cleaner Louis Kyle. These payments were above and beyond their standard salaries and, in fact, both employees admitted the money went to the custodian. According to Mont Etna, over a two-year period, McGuire wrote a series of checks payable to him. The custodian then directed the fireman to cash them and return the money to him. The checks were for different amounts, up to \$5,000. Mont Etna asserted that he always gave the cash to McGuire and never kept any money for himself. Kyle also told investigators that he has cashed checks and given the money to McGuire. Both employees defended their actions as complying with a directive from their boss.⁶

Through his attorney, McGuire refused to be interviewed.

Early audits of McGuire's custodial purchases by the BOE's Office of the Auditor General ("OAG"), did not uncover his improprieties. This is not surprising since, according to Steven Neuman, the director of custodial audits for the OAG, while BOE

⁵ On one of these checks, for \$2,464, McGuire noted that he was repaying Angela McGuire for a rent loan.

⁶ According to both employees, McGuire did not owe them the funds from these extra checks.

auditors review custodial purchases, they do not conduct payroll audits and, therefore, never examine checks written to custodial employees. Further, auditors never look at a custodian's bank account. Only documents turned over by the custodian relating to custodial purchases are reviewed. Thus, under current practice, a BOE audit would never have revealed that McGuire was commingling BOE and non-BOE funds in one account.

However, a mere observation of McGuire's checks shows that his BOE account was shared jointly with his wife, as both of their names are on the face of the checks. Regarding this practice, according to Neuman, "it's not prohibited in the custodial contract...you can't commingle, but nothing says you can't have your wife's name on your account."⁷ On that point, Neuman was incorrect because the 1992 Comptroller's Memorandum clearly states that City funds may not be deposited in an account that the employee shares with a spouse.

Moreover, Neuman asserted that ideas for change have been introduced in the past, but nothing has come of it. On December 4, 2000, Louis Sommo, the assistant director of administration for building services, Division of School Facilities, wrote a memo to James Lonergan, senior director of building services, proposing changes in the distribution of custodial payroll, including the direct deposit of funds into an account that would be under the name of the individual school custodian and the BOE. The memo specifically stated that "no wives" may be listed on the accounts. It also suggested specific guidelines on what custodians could do with the funds in the account and who would have access to review the account. Then, on January 8, 2001, Steven Neuman sent a memo to Jess Fardella, the Auditor General, suggesting similar changes that should be made regarding custodians. According to Neuman, to date, no action has been taken on either memo.⁸

McGuire conducted many transactions in his account that were not BOE related. Further, he used BOE funds to cover his personal expenses that exceeded what he had in the account. On any given day, the amount that McGuire spent over what he had on deposit in personal funds varied. When he spent more than he had on deposit, he relied on BOE money to cover his expenses. At a later date, he replenished the personal funds in the account.

⁷ As an explanation for this practice, Neuman advised that if the custodian dies, the wife could still pay the employees. We do not find this to be a valid explanation.

⁸ In June 1996, New York City Comptroller Alan G. Hevesi released an audit report that examined whether custodians complied with the custodian's union contract, NYC Comptroller's Directive #11, and Memorandum 92-12, which required them to establish a bank account, which was separate from personal funds, for the deposit of the BOE's allocation. The audit concluded that the BOE did not ensure that the union contract and other regulations were adhered to and therefore, City funds were being exposed to the risk of misappropriation. The report suggested a number of recommendations. By all appearances no changes were made. However, if there were any changes, they were insufficient to stop McGuire.

Thus, the amount of BOE money that McGuire used for his own purposes fluctuated throughout the whole time period we reviewed. At any given time, he could owe the BOE from about \$10,000 up to \$57,000. However, a review of the account on August 14, 2000, disclosed that McGuire had repaid all but around \$4,000 of the BOE funds he "borrowed." In fact, the records show that McGuire deposited over \$60,000 in just the two months prior to August 14, 2000, including approximately \$50,000 from the liquidation of stock in June 2000. By this time, McGuire must have been aware of the investigation being conducted by this office. When we subpoenaed documents from American Express in April 2000, that company informed us that its client would be notified of our request.

This is not the first time McGuire has taken advantage of the custodial system. Like this arrangement, in which McGuire used a bank account in his and his wife's names for BOE transactions, his last scheme also involved his spouse. In 1992, it was discovered as a result of an investigation by this office that McGuire was involved in a "wife-swapping" scheme.⁹ In that case, McGuire and another custodian, in order to circumvent the anti-nepotism rules, hired each other's wives. As a result of that report, changes were made in the 1994 custodial contract that now specifically prohibit the practice of job swapping between custodians and their relatives.

For years, Steven McGuire has been abusing his position as custodian. He has not only been commingling funds in violation of both Plant Operations Circular No. 11 and the terms of the 1994 custodial contract, but he has also been using BOE funds to cover personal expenses paid out of the commingled account in his and his wife's names. Moreover, his prior scheme of circumventing the anti-nepotism rules demonstrates his propensity to repeatedly manipulate the system for his own benefit. For these reasons, it is the recommendation of this office that McGuire's employment with the BOE be terminated and this matter be considered should he ever apply for reemployment with the Board.

Additionally, the BOE should review the actions of Adolfo Mont Etna and Louis Kyle to determine if disciplinary action is appropriate.

⁹ See, *A System Like No Other; Fraud and Misconduct by the New York City School Custodians*, November 1992, page 78.

Further, we recommend that BOE custodial auditing guidelines be reviewed and changed as necessary through regulations and collective bargaining.¹⁰ Specifically, audits should be done on payroll, as well as purchases and no one but the custodian and the BOE should be permitted to be joint holders of BOE fund accounts. This is the rule as per the Comptroller's Memorandum #92-12, and must become BOE policy in order to avoid an unnecessary risk of improprieties such as those committed by McGuire. Further, it is impossible for an auditor to thoroughly examine a custodial account unless a custodian is required to turn over bank records. The Plant Operations Circular from 1992/93, mandates that BOE funds must be kept separate from personal accounts. Custodial accounts are supposed to be used solely for BOE spending purposes. Even a cursory look at McGuire's bank account records would have revealed to an auditor that he was violating these rules and a more detailed look would have revealed that McGuire had been using this account for his personal expenses.

We are forwarding a copy of this letter to the Office of Legal Services. Should you have any inquiries regarding the above, please contact Vicki L. Multer, the attorney assigned to the case. She can be reached at the above address or by telephone at (212) 510-1454. Please notify Ms. Multer within thirty days of receipt of this letter of what, if any action has been taken or is contemplated against Steven McGuire. Thank you for your attention to this matter.

Sincerely,

EDWARD F. STANCIK
Special Commissioner
of Investigation for the
New York City School District

By: _____
Regina A. Loughran
First Deputy Commissioner

EFS:RAL:VLM:ai
c: Chad Vignola, Esq.

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April 5, 2001

Hon. Ninfa Segarra
President
New York City Board of Education
110 Livingston Street, Room 1130
Brooklyn, NY 11201

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SCI Case #99-0428

Dear President Segarra:

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In essence, McGuire used his BOE budget as a sort of interest-free credit line. The “balance” of improperly removed BOE funds fluctuated over the three-and-a-half-year period. For example, at any given time, he could owe the Board anywhere from about \$10,000 to \$57,000. This improper use of BOE funds continued until McGuire learned that his account had come under scrutiny. Evidence indicates that McGuire had become aware of this investigation sometime after April 2000. By that August, he had repaid most of the BOE funds he had used for personal expenses. In fact, records reveal that McGuire deposited \$60,000 in just the last two months prior to that date.

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McGuire's misuse of this account was able to occur because it has long been BOE practice to allow custodians complete control over the bank accounts containing BOE funds. Moreover, there is a lack of supervision of custodial accounts. We found that under current practice, annual audits would not have discovered McGuire's misconduct.³

This investigation began after this office received an anonymous phone call alleging that McGuire stole money from his custodial account and spent most of it in Atlantic City. Investigators from this office subpoenaed his bank records and uncovered the extent of McGuire's improprieties.

McGuire's scheme succeeded because he violated rules and regulations set by the BOE, the custodial contract, and the City Comptroller by commingling non-BOE funds with BOE funds deposited into a bank account.⁴ The BOE gave McGuire a budget to be deposited into a bank account and used solely for custodial expenditures and payroll. Instead, McGuire deposited the funds into an account in his and his wife's names, and regularly used the money in it to pay his own personal debts. Records show deposits and withdrawals of a personal nature, as well as those that were BOE related.

A review of McGuire's bank records revealed that he has been writing personal checks from the account containing both BOE and non-BOE funds. Between January 9, 1997 and August 17, 2000, McGuire paid himself almost \$7,000 more than he was entitled to in salary.

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Moreover, Neuman asserted that ideas for change have been introduced in the past, but nothing has come of it. On December 4, 2000, Louis Sommo, the assistant director of administration for building services, Division of School Facilities, wrote a memo to James Lonergan, senior director of building services, proposing changes in the distribution of custodial payroll, including the direct deposit of funds into an account that would be under the name of the individual school custodian and the BOE. The memo specifically stated that "no wives" may be listed on the accounts. It also suggested specific guidelines on what custodians could do with the funds in the account and who would have access to review the account. Then, on January 8, 2001, Steven Neuman sent a memo to Jess Fardella, the Auditor General, suggesting similar changes that should be made regarding custodians. According to Neuman, to date, no action has been taken on either memo.⁸

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This is not the first time McGuire has taken advantage of the custodial system. Like this arrangement, in which McGuire used a bank account in his and his wife’s names for BOE transactions, his last scheme also involved his spouse. In 1992, it was discovered as a result of an investigation by this office that McGuire was involved in a “wife-swapping” scheme.⁹ In that case, McGuire and another custodian, in order to circumvent the anti-nepotism rules, hired each other’s wives. As a result of that report, changes were made in the 1994 custodial contract that now specifically prohibit the practice of job swapping between custodians and their relatives.

For years, Steven McGuire has been abusing his position as custodian. He has not only been commingling funds in violation of both Plant Operations Circular No. 11 and the terms of the 1994 custodial contract, but he has also been using BOE funds to cover personal expenses paid out of the commingled account in his and his wife’s names. Moreover, his prior scheme of circumventing the anti-nepotism rules demonstrates his propensity to repeatedly manipulate the system for his own benefit. For these reasons, it is the recommendation of this office that McGuire’s employment with the BOE be terminated and this matter be considered should he ever apply for reemployment with the Board.

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Should you have any inquiries regarding the above, please contact me or First Deputy Commissioner Regina A. Loughran. She can be reached at the above address or by telephone at (212) 510-1426.

Sincerely,

EDWARD F. STANCIK
Special Commissioner
of Investigation for the
New York City School District

By:

Regina A. Loughran
First Deputy Commissioner

EFS:RAL:VLM:ai

c: Members of the Board

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April 5, 2001

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Commissioner
New York City Department of Investigation
80 Maiden Lane, 18th Floor
New York, NY 10038

Re: Steven J. McGuire
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- ?? one check for \$200 to Chase;
- ?? three checks totaling \$644.32 to Citibank;
- ?? two totaling \$297 to The Wiz;
- ?? \$1,000 to his daughter, Stephanie McGuire;
- ?? \$150 to EZ Pass;
- ?? \$4 to the College of Staten Island; and
- ?? twenty-four checks totaling \$9,650 payable to cash.

McGuire gave unauthorized checks to his custodial employees at the School of the Future solely for his own benefit. Bank records reveal that he issued seventy-eight checks totaling \$162,025, made payable to Fireman Adolfo Mont Etna, and six checks totaling \$20,000, made payable to Cleaner Louis Kyle. These payments were above and beyond their standard salaries and, in fact, both employees admitted the money went to the custodian. According to Mont Etna, over a two-year period, McGuire wrote a series of checks payable to him. The custodian then directed the fireman to cash them and return the money to him. The checks were for different amounts, up to \$5,000. Mont Etna asserted that he always gave the cash to McGuire and never kept any money for himself. Kyle also told investigators that he has cashed checks and given the money to McGuire. Both employees defended their actions as complying with a directive from their boss.⁶

Through his attorney, McGuire refused to be interviewed.

Early audits of McGuire's custodial purchases by the BOE's Office of the Auditor General ("OAG"), did not uncover his improprieties. This is not surprising since, according to Steven Neuman, the director of custodial audits for the OAG, while BOE

⁵ On one of these checks, for \$2,464, McGuire noted that he was repaying Angela McGuire for a rent loan.

⁶ According to both employees, McGuire did not owe them the funds from these extra checks.

auditors review custodial purchases, they do not conduct payroll audits and, therefore, never examine checks written to custodial employees. Further, auditors never look at a custodian's bank account. Only documents turned over by the custodian relating to custodial purchases are reviewed. Thus, under current practice, a BOE audit would never have revealed that McGuire was commingling BOE and non-BOE funds in one account.

However, a mere observation of McGuire's checks shows that his BOE account was shared jointly with his wife, as both of their names are on the face of the checks. Regarding this practice, according to Neuman, "it's not prohibited in the custodial contract...you can't commingle, but nothing says you can't have your wife's name on your account."⁷ On that point, Neuman was incorrect because the 1992 Comptroller's Memorandum clearly states that City funds may not be deposited in an account that the employee shares with a spouse.

Moreover, Neuman asserted that ideas for change have been introduced in the past, but nothing has come of it. On December 4, 2000, Louis Sommo, the assistant director of administration for building services, Division of School Facilities, wrote a memo to James Lonergan, senior director of building services, proposing changes in the distribution of custodial payroll, including the direct deposit of funds into an account that would be under the name of the individual school custodian and the BOE. The memo specifically stated that "no wives" may be listed on the accounts. It also suggested specific guidelines on what custodians could do with the funds in the account and who would have access to review the account. Then, on January 8, 2001, Steven Neuman sent a memo to Jess Fardella, the Auditor General, suggesting similar changes that should be made regarding custodians. According to Neuman, to date, no action has been taken on either memo.⁸

McGuire conducted many transactions in his account that were not BOE related. Further, he used BOE funds to cover his personal expenses that exceeded what he had in the account. On any given day, the amount that McGuire spent over what he had on deposit in personal funds varied. When he spent more than he had on deposit, he relied on BOE money to cover his expenses. At a later date, he replenished the personal funds in the account.

⁷ As an explanation for this practice, Neuman advised that if the custodian dies, the wife could still pay the employees. We do not find this to be a valid explanation.

⁸ In June 1996, New York City Comptroller Alan G. Hevesi released an audit report that examined whether custodians complied with the custodian's union contract, NYC Comptroller's Directive #11, and Memorandum 92-12, which required them to establish a bank account, which was separate from personal funds, for the deposit of the BOE's allocation. The audit concluded that the BOE did not ensure that the union contract and other regulations were adhered to and therefore, City funds were being exposed to the risk of misappropriation. The report suggested a number of recommendations. By all appearances no changes were made. However, if there were any changes, they were insufficient to stop McGuire.

Thus, the amount of BOE money that McGuire used for his own purposes fluctuated throughout the whole time period we reviewed. At any given time, he could owe the BOE from about \$10,000 up to \$57,000. However, a review of the account on August 14, 2000, disclosed that McGuire had repaid all but around \$4,000 of the BOE funds he "borrowed." In fact, the records show that McGuire deposited over \$60,000 in just the two months prior to August 14, 2000, including approximately \$50,000 from the liquidation of stock in June 2000. By this time, McGuire must have been aware of the investigation being conducted by this office. When we subpoenaed documents from American Express in April 2000, that company informed us that its client would be notified of our request.

This is not the first time McGuire has taken advantage of the custodial system. Like this arrangement, in which McGuire used a bank account in his and his wife's names for BOE transactions, his last scheme also involved his spouse. In 1992, it was discovered as a result of an investigation by this office that McGuire was involved in a "wife-swapping" scheme.⁹ In that case, McGuire and another custodian, in order to circumvent the anti-nepotism rules, hired each other's wives. As a result of that report, changes were made in the 1994 custodial contract that now specifically prohibit the practice of job swapping between custodians and their relatives.

For years, Steven McGuire has been abusing his position as custodian. He has not only been commingling funds in violation of both Plant Operations Circular No. 11 and the terms of the 1994 custodial contract, but he has also been using BOE funds to cover personal expenses paid out of the commingled account in his and his wife's names. Moreover, his prior scheme of circumventing the anti-nepotism rules demonstrates his propensity to repeatedly manipulate the system for his own benefit. For these reasons, we have recommended that McGuire's employment with the BOE be terminated and this matter be considered should he ever apply for reemployment with the Board.

Additionally, we have recommended that the BOE should review the actions of Adolfo Mont Etna and Louis Kyle to determine if disciplinary action is appropriate.

⁹ See, *A System Like No Other; Fraud and Misconduct by the New York City School Custodians*, November 1992, page 78.

Further, we have recommended that BOE custodial auditing guidelines be reviewed and changed as necessary through regulations and collective bargaining.¹⁰ Specifically, audits should be done on payroll, as well as purchases and no one but the custodian and the BOE should be permitted to be joint holders of BOE fund accounts. This is the rule as per the Comptroller's Memorandum #92-12, and must become BOE policy in order to avoid an unnecessary risk of improprieties such as those committed by McGuire. Further, it is impossible for an auditor to thoroughly examine a custodial account unless a custodian is required to turn over bank records. The Plant Operations Circular from 1992/93, mandates that BOE funds must be kept separate from personal accounts. Custodial accounts are supposed to be used solely for BOE spending purposes. Even a cursory look at McGuire's bank account records would have revealed to an auditor that he was violating these rules and a more detailed look would have revealed that McGuire had been using this account for his personal expenses.

Should you have any inquiries regarding the above, please contact me or First Deputy Commissioner Regina A. Loughran. She can be reached at the above address or by telephone at (212) 510-1426.

Sincerely,

EDWARD F. STANCIK
Special Commissioner
of Investigation for the
New York City School District

By:

Regina A. Loughran
First Deputy Commissioner

EFS:RAL:VLM:ai

¹⁰ Custodians are bound by both the Plant Operations Circulars and the terms of their contract with the BOE. In some cases, the Circular regulations are incorporated in the next contract, and in some cases they are not.