



Washington State Auditor's Office

Troy Kelley

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Whistleblower Investigation Report

South Puget Sound Community College

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Washington State Auditor Troy Kelley

November 26, 2014

Judy Hartmann, Board Chair
South Puget Sound Community College

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. WB 14-032 at South Puget Sound Community College.

The State Auditor's Office received an assertion of improper governmental activity at the College. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Whistleblower Manager, Jim Brownell, at (360) 725-5352.

Sincerely,

TROY KELLEY
STATE AUDITOR
OLYMPIA, WA

cc: Ken Harden, Chief Human Resources Officer

Governor Jay Inslee

Kate Reynolds, Executive Director, Executive Ethics Board

Jacque Hawkins-Jones, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertion and Results

Our Office received a whistleblower complaint asserting the president of South Puget Sound Community College allowed alcohol to be served at an employee recognition event held on campus during work hours.

We found reasonable cause to believe an improper governmental action occurred.

About the Investigation

Each year the College hosts an annual employee recognition event. The event occurs during work hours and is held on campus. The 2014 event took place on Friday, May 9th from 3:00 p.m. to 5:00 p.m. As part of the event, the College contracted with a catering service to provide food, which was paid for by public funds. As part of that contract, the catering service also served alcohol. The alcohol was paid for with private funds from the College's Foundation. A banquet permit allowing for the service of alcohol at the event was properly obtained by the caterer from the Liquor Control Board. Obtaining the proper permit does not preclude the entity from following laws related to alcohol service at the workplace.

The Department of Labor and Industries interprets state law and implements rules that govern workplace safety. The Department has established a rule (WAC 296-800-11025) that prohibits alcohol from the workplace. We spoke with a safety and health specialist from the Department to discuss the rule and were told that there are exceptions, which would allow alcohol to be served to employees in the work place. The exceptions are:

- The event cannot take place during work hours.
- Employees cannot be required or ordered by the employer to attend.
- Employees cannot be compensated for the time spent at the event.

We spoke with the chief human resources officer, who said the College campus was closed during the event; no classes were held and all College services were closed. Employees were not required to attend; however, those who did attend remained in pay status.

When we spoke to the subject he said he approved the serving of alcohol and believed the College was in compliance with the law; the College had adhered to its longstanding policy governing the service of alcoholic beverages on campus and the caterer had obtained the appropriate banquet permit from the Liquor Control Board.

However, it is not the responsibility of the caterer to ensure the entity is following the appropriate laws and rules for alcohol service.

The subject violated state law when he allowed alcohol to be served at an event held on campus during work hours for which employees received compensation. Therefore, we found reasonable cause to believe an improper governmental action occurred.

College's Plan of Resolution

Thank you for the opportunity to add South Puget Sound Community College's (the College) plan of resolution to whistleblower investigation report number 14-032. As outlined below, the College will update its policy in light of the information provided in this whistleblower report.

The College wants to be clear regarding two points:

- 1. The alcohol that was served at the employee recognition event in question was served in accordance with the rules of the Washington State Liquor Control Board and the policy of the College Board of Trustees; the College had believed itself to be in full compliance with the law; and*
- 2. There is no allegation that alcohol was served to individuals under 21 years of age, or that any of the employees who attended the event were "under the influence of alcohol."*

Notably, the College was not aware of the Department of Labor and Industries' (L&I) rule that forms the basis of the Auditor's findings and now finds itself in the untenable position of being found to have violated a broad and unclear rule based, at least in part, on verbal communications between an L&I Safety and Health Specialist to the Auditor's office.

WAC 296-800-11025 states:

You must:

Prohibit alcohol and narcotics from your workplace except in industries and businesses that produce, distribute, or sell alcohol and narcotic drugs.

Prohibit employees under the influence of alcohol or narcotics from the worksite.

This rule was adopted pursuant to L&I's authority to "maintain, continue, and enhance the industrial safety and health program of the state." See RCW 49.17.010. This rule, as written, appears to be overly broad in that it encompasses a variety of circumstances that have little, if any, bearing on workplace safety.

As written, this rule creates a conflict of law. The first component speaks only in terms of presence of alcohol at a location (workplace), despite the Liquor Control Board's authority to issue banquet permits for events at certain venues, including those that occur on college campuses. The rule as written does not take into consideration context, or the fact that a variety of entities routinely hold events on college campuses throughout this state during which alcohol is legally served pursuant to college policies and Liquor Control Board permits. Moreover, the rule, as written, provides no notice or information that an employer will be found in violation of the rule based on the oral interpretations communicated by an L&I employee to the Auditor's office. This places the College and employers throughout the state, in the difficult position of being found to have violated unwritten provisions of a rule, despite clear good faith efforts to comply with the law.

The College also wants it to be clear that there is no allegation, or evidence, that the second component of this rule was violated; there is no allegation that any of the College's employees were "under the influence of alcohol" (which is a legal term of art) during the event in question.

For the reasons stated above, the College's violation of the L&I rule was, at best, de minimus in that: 1) it was unintentional and occurred in the context of the College's clear efforts to adhere to its understanding of the governing legal requirements; and 2) it is based on unwritten, oral guidance provided to the Auditor after these allegations were levelled against the College.

Nevertheless, the College will update its policy and practices regarding serving of alcohol on its campus in an effort to bring them into alignment with the oral interpretation that has been memorialized in the Auditor's report.

State Auditor's Office Concluding Remarks

The scope of our investigation was only to determine if the subject allowed alcohol to be served to College employees on campus during work hours. According to WAC 296-800-11025, employers must prohibit alcohol from the workplace.

We reaffirm our position that there is reasonable cause to believe an improper governmental action occurred.

We thank College officials and personnel for their assistance and cooperation during the investigation.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

Assertion 1: The South Puget Sound Community College President allowed alcohol to be consumed at a College function during work hours.

RCW 49.17.010 – Purpose:

The legislature finds that personal injuries and illnesses arising out of conditions of employment impose a substantial burden upon employers and employees in terms of lost production, wage loss, medical expenses, and payment of benefits under the industrial insurance act. Therefore, in the public interest for the welfare of the people of the state of Washington and in order to assure, insofar as may reasonably be possible, safe and healthful working conditions for every man and woman working in the state of Washington, the legislature in the exercise of its police power, and in keeping with the mandates of Article II, section 35 of the state Constitution, declares its purpose by the provisions of this chapter to create, maintain, continue, and enhance the industrial safety and health program of the state, which program shall equal or exceed the standards prescribed by the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590).

WAC 296-800-11025 – Prohibit alcohol and narcotics from your workplace.

You must:

- Prohibit alcohol and narcotics from your workplace, except in industries and businesses that produce, distribute, or sell alcohol and narcotic drugs.
- Prohibit employees under the influence of alcohol or narcotics from the worksite.

CONTACTS

Washington State Auditor

Troy Kelley auditor@sao.wa.gov (360) 902-0360

Director of State and Performance Audit

Chuck F. Pfeil chuck.pfeil@sao.wa.gov (360) 902-0366

Deputy Director of State Audit

Jan M. Jutte, CPA, CGFM jan.jutte@sao.wa.gov (360) 902-0363

Audit Manager

Jim Brownell jim.brownell@sao.wa.gov (360) 725-5352

Lead Investigator

Cheri Elliott cheri.elliott@sao.wa.gov (360) 725-5358

Deputy Director of Communications

Thomas Shapley thomas.shapley@sao.wa.gov (360) 902-0367

Public Records Officer

Mary Leider publicrecords@sao.wa.gov (360) 725-5617

Main phone number (360) 902-0370

Website www.sao.wa.gov

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