



Washington State Auditor's Office

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Whistleblower Investigation Report Green River College

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Washington State Auditor's Office

December 3, 2015

Eileen Ely, President
Green River College

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 15-022 at the Green River 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,

A handwritten signature in blue ink that reads "Jan M. Jutte".

JAN M. JUTTE, CPA, CGFM
ACTING STATE AUDITOR
OLYMPIA, WA

cc: Marshall Sampson, Vice President of Human Resources and Legal Affairs
Governor Jay Inslee
Kate Reynolds, Executive Director, Executive Ethics Board
Jennifer Wirawan, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertions and results

Our Office received a whistleblower complaint asserting two employees who signed a contract between Green River College (College) and a local raceway (raceway) engaged in improper governmental action.

Assertion 1:

Two College employees (Subject 1 and Subject 2) failed to exercise the proper stewardship of state resources when they permitted the raceway to use state property for private events.

We found no reasonable cause to believe an improper governmental action occurred.

Assertion 2:

A College employee (Subject 2) violated state ethics laws when he accepted a managerial position with the raceway after participating in the process of contracting with the raceway.

We found no reasonable cause to believe an improper governmental action occurred.

Background

The College serves approximately 9,000 students and can accommodate about 2,500 cars in its parking lots. In 2003 the College began contracting with the raceway for parking in one of the raceway's large parking lots. The College owns shuttle buses and contracts with a company to drive College students between the raceway parking lot and the College.

The College leases the raceway parking lot and the raceway uses the College's parking lot during an annual racing event. The contract stipulates that during this event the College will provide the equivalent of 10, eight-hour days of shuttle and shuttle driver service to the raceway. The College pays the raceway \$700 a month for 10 months each year.

The contract has been renewed for varying lengths of time since 2003. The most recent renewal was finalized in December 2012 and covered the period of July 1, 2012 to June 30, 2017.

About the Investigation

Assertion 1:

We reviewed the most recent contract between the College and the raceway. The contract was signed by Subject 1, but not Subject 2. Subject 1 said that while he did sign the contract, he had no involvement in the negotiation of the contract and simply acted as a "contracts officer" within his role with the College. He said the negotiations for contracts are handled by program staff.

We reviewed College shuttle records and found the College used state-owned vehicles to shuttle private passengers between the College parking lot and the raceway during the annual race event. In 2014, the College provided the raceway with 72 hours of shuttle and shuttle driver service over three days.

Chapter 12 of the State Administrative & Accounting Manual, established by the Office of Financial Management (OFM), states in part:

A state vehicle is to be used only for official state business of state agencies.

The following definitions are listed in the manual:

Official State Business - Activities performed by an official or state employee, authorized volunteer, or contractor, work experience program participant, student or employee of another governmental jurisdiction as directed by his or her supervisor in order to accomplish state programs or as required by the duties of his or her position or office.

Authorized Passengers - Individuals authorized by the agency head or authorized designee to ride as passengers in a state vehicle driven by a state driver conducting official state business. Authorized passengers can include students, volunteers, contractors, clients, and private citizens.

We spoke with a financial consultant from OFM who said that when private citizens were included in the definitions in Chapter 12 there was no consideration that state agencies would contract with private companies to transport private citizens to recreational or sporting events. Recently, Senate Bill 5315, Section 325, transferred the authority to set policies related to state-owned passenger vehicles to the Department of Enterprise Services (Department). As a result, Chapter 12 will be repealed. The consultant also questioned the legality of using state-owned vehicles for private events.

We spoke with a Department manager, who said the Department is currently developing a work group to create and adopt policies regarding state-owned vehicles in order to comply with Senate Bill 5315. He said he had not heard of any agency contracting with a private company for the transportation of private citizens in state-owned vehicles. He expressed concerns regarding the College's insurance coverage in the case of an accident.

The College is self-insured through the Washington Self-Insurance Liability Program. We spoke with a College risk manager who said the College does not carry additional insurance. She said if a private citizen is injured on one of the state-owned buses the injured person would need to file a claim against the state.

We spoke with a representative from the Department's Office of Risk Management who, like the OFM financial consultant, questioned the legality of using state-owned vehicles for private events.

We found no reasonable cause to believe the subjects are responsible for the contents of the contract between the College and the raceway. We were unable to determine if the College had legal authority to enter into a contract for the private use of state vehicles.

Assertion 2:

In early 2012, Subject 2 accepted a position with the raceway. Shortly after leaving the College for the raceway, Subject 2 sent an email to College staff requesting the contract, which was under negotiation, be amended to include a lease increase. College staff had concerns as to the ethical appropriateness, considering Subject 2 had recently been employed by the College and now appeared to be negotiating on behalf of the raceway. The raceway general manager provided a statement to the College advising that the increase had been her (the general manager's) decision and Subject 2 was only the messenger. The College approved the increase.

During an interview, Subject 2 said he had not advised the raceway to increase the lease and had only sent the email. He said he was not involved in the raceway's contract negotiations.

While the Subject may have had some involvement in past contracts, witnesses reported that Subject 2 was not involved in the negotiation of the 2012 contract because he had already left the College before negotiations began. Subject 2 said he was involved in negotiating the original contract, but was not involved with the 2012 contract.

Recommendations

We recommend the College:

- Take steps to determine if it has the legal authority to enter into a contract for the use of state-owned vehicles for private events.

If it does have the legal authority, we recommend the College:

- Incorporate a hold harmless agreement into the contract for injuries of passengers as a consequence of riding the buses, including passenger negligence.
- Request that the Department of Enterprise Services Risk Management evaluate the adequacy of insurance coverage currently available for the shuttle buses.

Agency's Plan of Resolution

Green River College (College) has reviewed your preliminary whistleblower investigation report involving two assertions of alleged improper governmental conduct related to a contract between the College and a local raceway (raceway). We agree with the results of your investigation for both assertions, which concluded “there is no reasonable cause to believe an improper governmental action occurred.” Thank you for the opportunity to provide a response to your report.

The Background presented by the Washington State Auditor’s Office is an accurate representation of the facts regarding this specific investigation.

Regarding Assertion 1, the College disagrees with the repeated suggestion in the report that this is a contract to transport private citizens in state-owned vehicles. The primary purpose of the contract is to lease parking for the College. Under the terms of the parking lease, the College provides a few days of shuttle service for the raceway as in kind payment to the raceway in exchange for year-round off-campus parking at a competitive lease rate. Securing off-campus parking by contract is official College business, and agreeing to in kind payment is legally permissible. As stated in the lease, the Department of General Administration (now reformed as the Department of Enterprise Services) delegated authority to the College to enter into and renew this lease under RCW 43.82.010. As mentioned in the report, Chapter 12 of the State Administrative and Accounting Manual authorizes transporting private citizens in state vehicles if authorized by the agency head or authorized designee. The contract terms, including the in kind services, were approved by the College’s Vice President of Business Affairs. The contract was approved as to form by an assistant attorney general. The investigative report mentions that representatives from OFM and the Office of Risk Management had concerns about the legality of this lease arrangement. The College cannot respond to their concerns without them identifying what their actual legal concerns are. With regard to insurance, we agree that the College is covered by the Washington Self-Insurance Liability Program.

Regarding Assertion 2, the College agrees with the findings and conclusions in the report.

The College acknowledges the recommendations in the report. The College will incorporate the recommendations of the Washington State Auditor’s Office in future contracts of this nature.

The College thanks the Washington State Auditor’s Office for its diligence in reviewing this Whistleblower Complaint.

State Auditor’s Office Concluding Remarks

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:

WAC 292-110-010 Use of state resources.

(1) Statement of principles - stewardship. The proper stewardship of state resources, including funds, facilities, tools, property, and employees and their time, is a responsibility that all state officers and employees share. Accordingly, state employees may not use state resources for personal benefit or gain or for the benefit or gain of other individuals or outside organizations. Responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state officer or state employee, or with the state officer or state employee who authorizes such use. State officers and employees should ensure that any personal use of state resources permitted by this section is the most efficient in terms of overall time and resources.

Assertion 2:

RCW 42.52.080 Employment after public service.

(1) No former state officer or state employee may, within a period of one year from the date of termination of state employment, accept employment or receive compensation from an employer if:

(a) The officer or employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration;

(b) Such a contract or contracts have a total value of more than ten thousand dollars; and

(c) The duties of the employment with the employer or the activities for which the compensation would be received include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of

actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts. This subsection shall not be construed to prohibit a state officer or state employee from accepting employment with a state employee organization.