



**Washington State Auditor's Office**

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**Whistleblower Investigation Report**  
**Eastern Washington State Historical**  
**Society**  
**(Northwest Museum of Arts and**  
**Culture)**

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## Washington State Auditor's Office

June 23, 2016

Toni Pessemier, President, Board of Trustees  
Northwest Museum of Arts and Culture

### Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 16-002 at the Northwest Museum of Arts and Culture.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. 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 cursive script that reads "Troy X. Kelley".

TROY KELLEY

STATE AUDITOR

OLYMPIA, WA

cc: Governor Jay Inslee

John Moredo-Burich, Interim Director

Kate Reynolds, Executive Director, Executive Ethics Board

Cheri Elliott, Lead Investigator

# WHISTLEBLOWER INVESTIGATION REPORT

## Assertions and results

In October 2015, our Office received a whistleblower complaint asserting the executive director (subject) of the Northwest Museum of Arts & Culture (Museum) was engaged in improper governmental action by violating multiple state laws. Specifically, the complaint asserted the subject moved money between various state and local accounts and the Eastern Washington Museum Foundation (Foundation) accounts; subsidized financial losses incurred by a vendor; improperly used restricted funds; used the Foundation funds to pay for a position that was funded by a private donor; had state employees working for the Foundation; failed to follow state travel rules; received a performance bonus of more than \$21,000; and several other potential violations of law.

We found reasonable cause to believe the subject engaged in improper governmental actions when he violated multiple state laws and gifted public funds.

## Background

### *About the Society*

The Eastern Washington State Historical Society (Society) was founded in 1916. In 1926 the Legislature designated the Society as a trustee for materials of historical significance to the state. In 2001, the Society opened a new exhibit hall and changed its public name to the Northwest Museum of Arts & Culture. The Museum's purpose is to inspire and foster understanding of the history, cultures, communities, commerce and art of the Inland Northwest.

The Society is a state agency that is bound by state laws, rules, regulations and policies. The Society is governed by a Board of Trustees (Board), comprised of no less than 15 and no more than 25 trustees. Trustees are nominated by Board members after which the Board votes to seat the nominee. Trustees serve a three-year term. The executive director is delegated by the Board to manage the Museum's day-to-day operations.

### *About the Foundation*

In 1984, Articles of Incorporation of the Eastern Washington Museum Foundation were signed. The stated purpose of the Foundation was to assist in providing funds for the operation of the Museum. The Foundation is also charged with receiving gifts and bequests to be used as the donor specifies. The Foundation is not a state agency and therefore, not required to comply with the same laws, regulations and state policies that govern the Museum.

The Foundation is governed by a Board of Trustees (Foundation Board). Pursuant to the Foundation's bylaws, the number of trustees shall not be less than five nor more than nine. The Foundation Board elects the trustees and the trustees serve a three-year term. The Foundation

Board decisions are made by a majority of trustees present at a meeting at which a quorum is present. The trustees are instructed to work with the executive director and the development officer of the Museum to direct and supervise day-to-day Foundation activities.

The Museum and the Foundation are both registered with the Secretary of State as tax-exempt, non-profit organizations.

## **About the Investigation**

We requested and reviewed Museum and Foundation financial records, travel documentation, contracts, and computer and email data. We also interviewed witnesses.

### **Assertion 1 - The Executive Director received extra compensation for performing his official duties, contrary to state law.**

It is a violation of law for a state employee to receive compensation for his or her official duties from a source other than his or her employer. In this instance the subject received compensation from the Foundation, which is a separate legal entity from his employer. Therefore we found reasonable cause to believe an improper governmental action occurred.

Our review of emails, Board minutes, and witness interviews found the following transpired:

In 2012, the subject was terminated from his position by the Board. After approximately three months he was reinstated with back pay.

According to the subject, in 2014 a former Board president, who served from July 2013 through June 2014, (ex-officio) opined that the subject had not been compensated appropriately after his termination and reinstatement. The ex-officio suggested the subject draft a request for additional compensation and present it to the then presiding president, who served from July 2014 to June 1, 2015, (president). The subject told our Office that he had not been compensated for the emotional distress he underwent at the time of his termination and the hostile work environment to which he had returned. He also had undertaken additional positions throughout the years and had not received compensation for the extra work.

The subject drafted a performance-based compensation plan requesting \$18,000; \$750 for each month from August 2012 through August 2014, which equated to 7.5 percent of his annual salary. The subject said he spoke with the president who agreed the additional compensation was warranted and advised that he would ask the Foundation to pay it. At that point, according to the subject, he was no longer involved in the process.

The president presented the subject's request during executive session at a Board meeting. The president advised that the Board's executive committee would review the request and return with a recommendation for the Board's approval. During an executive committee meeting, the

president selected a subcommittee to discuss the request and present for the executive committee's approval.

In December 2014, the subject's executive secretary sent an email, at the request of the president, to all but one member of the executive committee to vote whether to send the subject's compensation package to the Board for ratification. The email described work the subject had accomplished and also areas for improvement. The recommendation was for \$13,900, which equated to a three percent raise for each year the subject had been employed at the Museum and an additional five percent "bonus."

According to the president, the executive committee was to determine whether to approve the compensation package for presentation to the Board for ratification. However, a review of the Board minutes revealed the Board was never presented with the opportunity to vote on the subject's compensation package, contrary to the Board's bylaws, which state that the executive committee shall "report its actions for ratification at each meeting of the [Board]."

Emails show the president and the ex-officio voted "yes" to the compensation package. According to the Board's bylaws, neither was allowed to vote, except in the case of a tie, which would allow the president the opportunity to cast a vote. There was no tie in this instance.

The president told us it was the responsibility of the ex-officio, as sub-committee chair, to take it to the Board. The ex-officio told us he did not recall there being a "committee", but if there was, he may have been the chair. He also said he thought the recommendation was brought to the Board.

During our examination of the Foundation's financial records we found a check written to the subject for \$13,900, dated December 31, 2014. The invoice identified the subject as a Foundation employee, with the gross amount including federal taxes, totaling \$21,262.

The president and the ex-officio said it was their understanding that the bonus was approved for \$13,900 with the subject responsible for paying his own taxes. Both indicated surprise when we communicated the subject received \$13,900, after taxes were withheld. The president said he did not recall any discussion regarding an amount as high as \$21,262 and, in fact, the committee had not even recommended the \$18,000 the subject had requested.

In response to an email from the Museum's fiscal analyst asking whether \$13,900 was gross or net, the president responded that it was the net amount. Considering the discrepancy between what the email stated and what the president told our Office, we contacted the president for clarification; he did not respond.

**Assertion 2 - The Executive Director violated state law when he failed to ensure public funds were spent and accounted for properly.**

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

The Museum provided us with documentation to support payments made with public funds from July 1, 2014, through June 30, 2015. We judgmentally selected and examined a sample of payments from each month. We found approximately \$48,000 of payments which may have been made in violation of state law.

*Honoraria*

The Museum paid almost \$30,000 to individuals and businesses who provided services during Museum events. All the payments were supported by a one-page form titled: Request for Honoraria/mileage. For example:

- A lecturer received \$2,000.
- A research company received a “pre-paid honoraria” of \$2,450.
- A musical group received \$700.
- Five employees received more than \$900.
- On 11 occasions an individual received honoraria for a demonstration in clay. On four occasions she received \$180; on six occasions she received \$140, and on one occasion she received \$280.

When asked about the purpose of the payments, the subject said most were paid to presenters and performers who took part in the Museum’s programming and special Saturdays, such as painters, music groups and interpreters.

According to the subject, the Museum had not established a rate structure for these payments because the activities are so different. He said Museum program managers requested the payments and the budget manager approved them. He said although he does not know the details, he does know there is a form used by the recipient to receive payment. When asked why five employees received honorarium, he said he was surprised they had and did not know why they would have.

The Museum has no policies or procedures regarding how these payments should be approved, processed, and monitored. We found no written agreements between the Museum and the presenters and performers.

### *Promotional hosting*

State agencies must have explicit authority in state law to pay for expenses related to promotional hosting. According to state accounting policies, a state agency cannot expend public funds for meals during social events that are unrelated to governmental business. We found instances when public funds were used to purchase restaurant meals in non-business situations, as well as providing food for social events held at the Museum. For example:

- \$1,593 for catering an invitation-only event held for Museum patrons.
- \$250 for a restaurant meal, which included alcohol.
- \$105 for a restaurant meal.

In the case of the two payments for restaurant meals, there was no documentation showing to whom the meals were provided.

When asked if he understood the state's policies on purchasing meals, the subject said the Museum is not abiding by it in every case. He also said Foundation funds should be used to pay for meals.

### *Gifts of public funds*

State courts have applied Article VIII, Section 7 of the state constitution to state agencies, which prohibits agencies from gifting public funds.

We found three payments totaling \$250 where public funds were gifted:

- \$70 donation to a non-profit business.
- \$98 for flowers for a memorial service.
- \$82 for flowers for a memorial service.

### *Payments for Foundation expenses*

We found four instances totaling almost \$1,200 when Museum funds were used to pay for Foundation expenses:

- \$643 for mailing supplies.
- \$258 for mail processing.
- \$40 for charity license renewal.
- \$255 for a Foundation employee's professional membership fees.

When asked what his role is with the Foundation, the subject said it is his understanding that he is not only Executive Director of the Museum, but also Director of the Foundation. We asked if he has the authority to authorize Foundation expenses. The subject said yes – for checking and savings; he believes his limit is \$5,000. Usually the payments are for expenses the state does not allow.

#### *Loan from the Foundation*

During our review of payments we found a copy of a check dated June 30, 2014, for \$100,000 made payable to the Museum and drawn from the Foundation account. The check included a notation of “short-term loan to museum.” Additional documentation showed the Museum repaid the loan on September 30, 2014.

When asked if he was aware of the loan, the subject said he must have been. When asked who made the decision to incur the debt, he said he did not recall, but he probably authorized it with the approval of the Foundation president. He said he did not consult with the Museum’s legal counsel before deciding to accept the loan. He explained that the Museum had missed payments owed to the Department of Enterprise Services and also had a “major obligation” owed to the Office of Financial Management. The subject was not aware of any statutory authority that would allow the Museum to accept a loan from the Foundation.

The powers and duties of the Museum are outlined in state law (RCW 27.34.070). These powers and duties do not authorize the Museum to incur debt.

#### *Summary*

As required by state law (RCW 43.88.160), the Office of Financial Management has established policies in the State Administrative Accounting Manual (SAAM) with which all agencies must comply. Chapter 20 of the manual discusses who is responsible for internal control. The manual states in part:

The agency head or authorized designee, is ultimately responsible for identifying risks and establishing, maintaining, and reviewing the agency’s system of internal control.

We found reasonable cause to believe that the subject was negligent when he failed to establish adequate internal controls, policies and procedures, which led to improper use of public funds.

**Assertion 3 - The Executive Director failed to follow state and federal laws when he established professional service contracts.**

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

We examined professional service contracts executed by the Museum and the Foundation, Museum organizational charts, and interviewed witnesses.



The Washington State Department of Labor and Industries (L&I) has established guidelines to assist businesses in determining whether an individual is an employee or an independent contractor. We compared the contracts and the scope of work to these guidelines.

We requested the subject provide us with all professional services contracts; he provided six fully executed contracts. Other contracts he provided lacked signatures and were missing pages. Some of the individuals identified by the subject as “contractors” did not have current contracts in place.

When examining the six contracts, we found they included provisions considered employee activities by L&I and not those of an independent contractor:

*The individual works with the subject or Museum staff*

We found one individual who was purportedly under contract with the Foundation, but did not have a current contract. This individual said she was hired by the subject and although she is considered a contracted employee with the Foundation, supervises two employees – one Museum employee and one Foundation employee, who worked 30 percent for the Foundation and 70 percent for the Museum. The individual said she was told she accrued leave, but is responsible for tracking it.

*The contracts have provisions that represent control or direction*

In order to be considered independent, the contractor must not be under the Museum’s control. There are elements of control in all of the contracts reviewed. For example:

- Contractors are required to attend trainings with Museum staff.
- Contracts use terms such as “as requested” and “as assigned” when defining the scope of work.
- Contracts set work hours.
- Contracts require submission of timesheets.

*The individual is paid more frequently than other creditors*

While most creditors of the Museum are paid monthly, five contracts specifically stated the contractor would be paid twice monthly.

*The individuals do not have their own business*

Only one individual of the six contracted, had an independent business license.

State law (RCW 39.26.110(3)) requires state agencies to ensure all employees responsible for developing, executing, or managing contracts complete training approved by the Department of Enterprise Services.

Three of the contracts were with the Museum, but expenses were paid from Foundation funds. Two contracts were signed by an employee who lacked signing authority and had not taken the required training.

We spoke with a witness who told us the Museum did not have a contracts manager and only one employee of the Museum had taken the state-required contract training.

Regarding the contractor/employee overlap between the Museum and the Foundation, the subject said the situations were not ideal, but were in place due to budget constraints. He said having contractors alleviated the need for the Museum to pay health benefits.

The subject failed to establish policies and procedures necessary to ensure the Museum followed state law. Based on the information reviewed, and following L&I guidelines, we found reasonable cause to believe "contractors" were treated as Museum employees.

**Assertion 4 - The Executive Director was reimbursed for travel expenses contrary to state law.**

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

The SAAM requires agency heads to establish an effective system for management and control over travel-related costs. The system should include written policies and procedures, an approval process for travel costs and to ensure that travel costs are obtained at the most economical price. Another responsibility is to establish meal periods, such as dinner from 5 p.m. to 7 p.m. Travelers must use state funds prudently and not incur additional expenses for personal convenience.

Between July 1, 2014, and June 30, 2015, the subject took 13 business trips. We examined his travel documentation, electronic calendar and interviewed witnesses. We found documentation, such as receipts or the business need for the trips, were not adequate to support the expenses.

*Airfare*

The subject traveled by plane on 12 of the 13 trips. In each case, the airfare was purchased a few days before departure, even though his calendar showed he had accepted meeting invitations as far as 14 days in advance. In no case was airfare purchased more than four days in advance. Due to the late purchase date, we found some airfare fees were more than double what they would have cost if purchased in advance. For example, airfare purchased two days before departure cost

\$379; when airfare for the same commuter flight was purchased in advance for another staff member, it cost \$166.

The subject paid \$4,251 for 11 roundtrip tickets from Spokane to Seattle; advance-purchased tickets would have cost \$1,828, a potential savings of \$2,423.

We also found the subject purchased roundtrip airfare to Missouri four days before departure at a cost of \$933. He also purchased roundtrip airfare from North Carolina to Missouri, for a future Museum employee, for \$754; also purchased four days before departure. The cost of the trip, including airfare and hotel rooms for one night was \$1,857.

When we asked the subject why his airfare was purchased at such late dates, he said his travel was focused on three factors: meeting with legislators; meeting with agency representatives; and meeting with counterparts. He said his calendar was "fluid" and he did not commit to traveling until and unless he had enough appointments on his calendar to justify the trip.

Regarding the trip to Missouri, the subject said he met with a Museum applicant for a final interview and to spend time with him to see if they could work together. He said the applicant did not want to meet in North Carolina as he did not want his employer to know he was interviewing for a new position, so the subject chose Missouri as a halfway point. When we asked why he had not flown the applicant to Spokane, as had been done previously, he said he made the decision to meet in Missouri.

We spoke with the applicant, a current Museum employee, who stated the purpose of the trip had been to present a final job offer packet. He said he did not understand why the offer had to occur in person, and had told the subject he was not interested in meeting in person. He said he spent only a few hours with the subject.

We spoke with the subject's administrative assistant, who was responsible for purchasing his airfare, about the lateness of the purchases and she said the subject did not give her much lead time to schedule his flights.

### *Fuel Service Option*

The fuel service option is a service provided by a rental car agency that allows the customer to pay in advance to have the agency fill the gas tank at the conclusion of the rental. The company charges for a full tank of gas, regardless of whether a full tank was used. Although the per-gallon rate is usually comparable to local gas prices, unless a full tank of gas is used, this is not an economical option.

We found that on eight occasions the subject used the fuel service option for a total of \$391. On one trip to Olympia, the subject paid \$72 for the option. He drove 125 miles in a vehicle that averages 28 miles per gallon. If he had filled the gas tank instead of using the option, he would

have paid approximately \$19, a savings of \$53. Based on the number of miles driven and the cost of fuel per gallon, we determined the cost of fuel would have been approximately \$135 if the subject had filled the gas tank; a savings of \$256.

During an interview, the subject said the main reason he selected the option was to save time. We pointed out that based on the time of drop off, he usually returned the rental car with plenty of time to catch his flight. He said he liked to get to the airport early to fly standby for the next available flight.

#### *Meal Reimbursements*

We found three trips when documentation was not adequate to support the subject's eligibility to claim per diem for meals. On two occasions the subject claimed dinner when his flight landed in Spokane at or near 5 p.m. On two occasions the subject claimed breakfast when he did not enter into travel status until approximately 8 a.m.

As the Executive Director of the Museum, the subject was responsible for establishing travel policies, one of which is to establish meal periods. Because the Museum has no policies regarding meal periods we were unable to determine if the subject qualified for these reimbursements.

We found the subject violated required state policies when he failed to obtain the most economical price for travel and incurred additional expenses for his personal convenience.

#### **Assertion 5 - The Executive Director extended a special privilege to the concessioner of the Museum's café by compensating him for monthly business losses.**

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

In 2007, the Museum contracted with a concessioner (vendor) to operate the *Café at the MAC*. In the original agreement, which covered March 1, 2007, to February 29, 2008, the vendor agreed to lease the café from the Museum for \$150 each month for March and April 2007. For the remainder of time the lease payment was \$650 a month. According to a former Museum employee, the vendor made his lease payments for a "couple of months." He said during his time at the Museum the vendor was not subsidized for business losses. We spoke with the previous vendor who said she had paid a lease to the Museum and had never received a subsidy.

We requested from the subject, copies of more recent agreements and received two versions of the current one. One version included a memo that authorized payments to the vendor for operating losses incurred for July and August 2015. The other version included language that the Museum would reimburse the vendor for monthly operating losses and, beginning in October 2015, authorized reimbursement for managerial oversight "purchasing, bookkeeping/payroll, food preparation training, health standard monitoring, and associated

transportation costs.” The subject said he could not find any other agreements that covered March 2008 to August 2015.

We spoke with the subject about the vendor and the subsidizing of his business losses. The subject said the vendor had never made a lease payment since the subject has been with the Museum. He was the Museum’s sole decision maker and authorized the subsidy, although he did tell the president what he intended to do. The subsidy payments first began in February 2014, which was during the time the Museum shut down. The vendor wanted to leave because he was operating at a loss, but the subject wanted him to remain and keep the café open for visitors to the Campbell House, an additional building owned by the Museum.

In September 2015, the subject said he made the decision to pay the vendor a management fee of \$1,000 each month as an incentive to continue to operate the café. He said the Museum had new exhibits and they could not afford to have the café closed, plus this gave the Museum time to see if the business improved.

We reviewed the Board’s executive committee minutes for October 27, 2015, and found the subject reported the financial difficulties the café was experiencing. He reminded the committee it had agreed during the closure of January and February 2014 to subsidize the café, which contradicts the information he told us – that he had made the decision to subsidize the café and had informed the president of his decision. The minutes further showed the subject reported that he had recently received 30 days’ notice from the vendor and, due to the upcoming exhibits and in order to maintain the café until a new operator could be found, he "committed" to subsidize the café so it would break even. He anticipated the subsidy would amount to approximately \$500 per month [even though the contract dated more than one month prior, indicated the management fee alone was \$1,000].

We reviewed payments made to the vendor from March 2014 through November 2015. The vendor received payments totaling \$9,013 from the Museum and Foundation to subsidize his business losses and for management fees.

State courts have applied Article VIII, Section 7 of the state constitution to state agencies, which prohibits agencies from gifting public funds.

The subject violated state ethics law when he extended a special privilege to the vendor by subsidizing his business. The subject violated the state constitution when he used public funds to subsidize a private business.

**Assertion 6 - The Executive Director of the Museum interfered with a whistleblower investigation when he contacted a witnesses’ employer.**

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

From January 26 through 28, 2016, our Office conducted staff interviews at the Museum.

On February 5, 2016, we were told that one of the witnesses we interviewed, who has an office at the Museum but is not a Museum employee, was copied on an email from the subject to the witness' employer. Within the email, the subject wrote of problems he was having with the witness, which included his "destructive conversations with and about Museum staff." The subject also cited a "confidential source" who described information purported to have been shared with [our Office] by the witness, which he shared in the email. The investigators who interviewed the witness confirmed that what was stated in the email did not accurately reflect the information provided by the witness.

According to the witness, after his employer received the email from the subject, he was given three options by his employer: the first two were to change office locations and the third was to be laid off.

In our initial meeting with the subject, we requested that he not attempt to determine who the whistleblower was or who our witnesses might be. We also advised him that state law prohibits retaliation against anyone who cooperates with our investigations.

We spoke with the subject regarding the email and his intent behind sending it. The subject said it was not his intent to interfere with the investigation. He said he had approached the witness' employer in the past in an attempt to get the employer to do something about the witness' behavior and this was just another attempt. When asked why he felt the need to include information from this investigation, he said it was just another demonstration of the witness' damaging behavior toward the Museum.

The Whistleblower Act (RCW 42.40.030) states an employee shall not use his or her position of authority to interfere with the right of an individual to disclose to our Office information relating to an improper governmental action.

Therefore, we found reasonable cause to believe an improper governmental action occurred.

## **Other matters**

During the investigation an additional matter came to the attention of our Office that we believe is significant enough to report.

### *Repeal of agency rules*

When planning this investigation, no current agency rules in Washington Administrative Code (WAC) were found. According to state law (RCW 27.34.070(h)), the governing boards of state historical societies shall:

[a]dopt rules to govern and protect the receipt and expenditures of the proceeds, rents, profits, and income of all such gifts, grants, conveyances, bequests, and devises;

Through Internet research, we found prior agency rules in Chapter WAC 256-01. According to the Washington State Register's website, the agency's rules were repealed on February 7, 2013. Additional documents show the repeal was done through the expedited rule-making process, which does not require agencies to hold public hearings, prepare a small business economic impact statement, or provide responses to the criteria for a significant legislative rule. The stated purpose was, "Repealing bylaws from 1968 that are out of date." The subject's name was listed at the bottom of the document.

When asked if he was involved in the repeal process the subject said he was, but it was driven by the Board. He said his termination in 2012, and later reinstatement, prompted the Board to revise its bylaws. He said the Board worked closely with its legal counsel to make the revisions. The subject said he did not recall why the expedited rule-making process was used.

## **Recommendations**

We recommend the Board of Trustees:

- Work with the Executive Director to ensure sufficient internal controls, policies and procedures are implemented to safeguard public funds from misuse or abuse.
- Evaluate current and future employment contracts to ensure the agency complies with federal and state laws.
- More thoroughly scrutinize travel reimbursement requests from the Executive Director to ensure they comply with required state policies.
- Ensure agency staff receive required state contract training.
- Establish agency rules, as required by RCW 27.34.070.
- Update the agency's affiliation agreement with the Foundation to more clearly define each entity's roles and responsibilities.

## **Agency's Plan of Resolution**

*The Eastern Washington State Historical Society ("EWSHS" or "Museum") Board of Trustees reviewed the May 16, 2016 Draft Investigative report prepared by your Office following the review of an October 2015 whistleblower complaint asserting the former executive director engaged in improper governmental action. In response to the complaint and report, the Board of Trustees has already taken some action steps and developed the following plan of resolution.*



- 1) *The Board, working with its assigned Assistant Attorney General, is initiating the process to adopt the rules required by RCW 27.34.070 and Chapter 43.21C. Additionally, the Board and the assigned AAG are working to establish the rules required by RCW 42.56.070.*
- 2) *The Board is evaluating and assessing Museum staffing and potential reorganizational needs in conjunction with DES Human Resources and current Museum administration. EWSHS will take appropriate steps to ensure proper staffing consistent with funding availability. EWSHS's Board and administration will coordinate and develop a proposed course of action that ensures the Museum is staffed consistent with state rules and regulations and consistent with available funding sources. Efforts between the Board and Administration will be collaborative and EWSHS will continue to work with the Attorney General's Office and Human Resources as necessary to ensure compliance with applicable rules and regulations during this transition.*

*EWSHS plans to enter an interagency agreement with DOT to ensure the availability of local Human Resource Services on an as needed basis. It will work with DES to develop that interagency agreement.*

- 3) *EWSHS will update the Affiliation Agreement with the Northwest Museum of Arts & Culture (Foundation) to clarify a number of issues including, but not limited to, duties and responsibilities of respective staff; roles and responsibilities regarding solicitation and receipt of gifts, grants, conveyances, devises, and bequests; roles and responsibilities regarding approval of and payment of Foundation expenses; roles and responsibilities regarding accounting and auditing; and roles and responsibilities of the respective entities. In order to clarify the separate status of the entities, the EWSHS Interim Executive Director and its new Executive Director, when appointed, will not be permitted to serve as the Foundation's Executive Director.*
- 4) *To enhance compliance with rules and regulations governing contracts issued by EWSHS, the Board ensured the interim Executive Director, appointed in mid-February 2016, completed required state contracts training. During the Museum's review of staffing needs described in section 2 above, EWSHS will identify additional internal position(s) that are best-suited to provide assistance and backup related to contracts. Completion of mandatory state contract training will be required for individual(s) serving in assigned position(s).*
- 5) *The Board of Trustees has commenced a review of all EWSHS policies to ensure that the Museum has appropriate policies in place and that existing policies are consistent with all applicable rules and regulations. As a consequence of this ongoing review, the Board has enacted a number of policies that address the expenditure of public funds, including:*



*a Petty Cash Policy on April 6, 2016; a Purchase Card Policy on November 4, 2015; and a Meals, Coffee and Light Refreshments Policy on December 8, 2015. Currently, the Museum is working with the Office of the Attorney General to develop policies on policies addressing capital assets, inventories, and accounting (account receivables and expenditures, expenses and disbursements) that are consistent with the requirements of the State Administrative and Accounting Manual (SAAM).*

- 6) We terminated the lease with the Museum café concessioner, and will be working with DES and/or the Attorney General's Office to develop a lease with a new food service provider that complies with applicable rules and regulations.*
- 7) The Board of Trustees adopted a travel policy on November 4, 2015 consistent with the policies and procedures in Chapter 10 of the SAAM Manual. As part of this policy, the Board adopted specific provisions that require the Executive Director to "obtain prior approval from the EWSHS Board President or his/her designee before making travel arrangements." Like other staff, to obtain travel approval, the Executive Director has to identify the purpose of the trip; how it relates to the work assignment, a description of expected benefits, the anticipated costs associated with the travel and a statement of whether the state business could be accomplished by an alternative approach to achieve the same or similar result. The policy also provides additional requirements for out-of-state travel and details expenses that are not subject to reimbursement. The travel policy also emphasizes the responsibility to ensure that any form of travel is most economical to the state.*
- 8) Current Board Members have familiarized themselves with the provisions of RCW 42.52.110 regarding compensation and the EWSHS Board Bylaws governing procedures for Board Action. Additionally, the Board of Trustees completed Open Public Meeting Act and Public Records training on May 4, 2016.*

*We appreciate the professionalism of the representatives who conducted this investigation. We hope the efforts to date in conjunction with Plan of Resolution evidence the commitment of current Board Members to support the best interests of the Museum and the public it serves.*

## **State Auditor's Office Concluding Remarks**

We thank Museum 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 Executive Director of the Eastern Washington State Historical Society (Society) received extra compensation for performing his official duties, contrary to state law.**

RCW 42.52.110 Compensation for official duties or nonperformance.

No state officer or state employee may, directly or indirectly, ask for or give or receive or agree to receive any compensation, gift, reward, or gratuity from a source for performing or omitting or deferring the performance of any official duty, unless otherwise authorized by law except: (1) The state of Washington; or (2) in the case of officers or employees of institutions of higher education or of the \*Spokane intercollegiate research and technology institute, a governmental entity, an agency or instrumentality of a governmental entity, or a nonprofit corporation organized for the benefit and support of the state employee's agency or other state agencies pursuant to an agreement with the state employee's agency.

**Assertion 2: The Executive Director violated state law when he failed to ensure public funds were spent and accounted for properly.**

RCW 43.88.290 Fiscal responsibilities of state officers and employees – Prohibitions relative to appropriations and expenditures.

No state officer or employee shall intentionally or negligently: Over-expend or over-encumber any appropriation made by law; fail to properly account for any expenditures by fund, program, or fiscal period; or expend funds contrary to the terms, limits, or conditions of any appropriation made by law.

**Assertion 3: The Executive Director failed to follow state and federal laws when he established professional service contracts.**

RCW 51.08.070 "Employer" - Exception.

"Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of this title, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers. Or as an exception to the definition of employer, persons or entities are not employers when they contract or agree to remunerate the services

performed by an individual who meets the tests set forth in subsections (1) through (6) of RCW 51.08.195 or the separate tests set forth in RCW 51.08.181 for work performed that requires registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW.

#### RCW 51.08.180 "Worker" - Exceptions.

"Worker" means every person in this state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer under this title, whether by way of manual labor or otherwise, in the course of his or her employment, or as an exception to the definition of worker, a person is not a worker if he or she meets the tests set forth in subsections (1) through (6) of RCW 51.08.195 or the separate tests set forth in RCW 51.08.181 for work performed that requires registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW: PROVIDED, That a person is not a worker for the purpose of this title, with respect to his or her activities attendant to operating a truck which he or she owns, and which is leased to a common or contract carrier.

#### RCW 51.08.195 "Employer" and "worker" — Additional exception.

As an exception to the definition of "employer" under RCW 51.08.070 and the definition of "worker" under RCW 51.08.180, services performed by an individual for remuneration shall not constitute employment subject to this title if it is shown that:

- (1) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of service and in fact; and
- (2) The service is either outside the usual course of business for which the service is performed, or the service is performed outside all of the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and
- (3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the

business the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting.

**Assertion 4: The Executive Director was reimbursed for travel expenses contrary to state law.**

RCW 43.88.160 Fiscal management—Powers and duties of officers and agencies, states in part:

This section sets forth the major fiscal duties and responsibilities of officers and agencies of the executive branch. The regulations issued by the governor pursuant to this chapter shall provide for a comprehensive, orderly basis for fiscal management and control, including efficient accounting and reporting therefor, for the executive branch of the state government and may include, in addition, such requirements as will generally promote more efficient public management in the state.

(1) Governor; director of financial management. The governor, through the director of financial management, shall devise and supervise a modern and complete accounting system for each agency to the end that all revenues, expenditures, receipts, disbursements, resources, and obligations of the state shall be properly and systematically accounted for. The accounting system shall include the development of accurate, timely records and reports of all financial affairs of the state. The system shall also provide for central accounts in the office of financial management at the level of detail deemed necessary by the director to perform central financial management. The director of financial

management shall adopt and periodically update an accounting procedures manual. Any agency maintaining its own accounting and reporting system shall comply with the updated accounting procedures manual and the rules of the director adopted under this chapter. An agency may receive a waiver from complying with this requirement if the waiver is approved by the director. Waivers expire at the end of the fiscal biennium for which they are granted. The director shall forward notice of waivers granted to the appropriate legislative fiscal committees. The director of financial management may require such financial, statistical, and other reports as the director deems necessary from all agencies covering any period.

#### State Administrative and Accounting Manual (SAAM) Chapter 10 – Travel

**Assertion 5: The Executive Director extended a special privilege to the concessioner of the Museum’s café by compensating him for monthly business losses.**

#### Washington State Constitution Article VIII, Section 7

Credit not to be loaned – No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

#### RCW 42.52.070 Special Privileges.

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

**Assertion 6: The Executive Director interfered with an open whistleblower investigation when he contacted a witnesses' employer.**

RCW 42.40.030 Right to disclose improper governmental actions -- Interference prohibited, states in part:

(1) An employee shall not directly or indirectly use or attempt to use the employee's official authority or influence for the purpose of intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence any individual for the purpose of interfering with the right of the individual to: (a) Disclose to the auditor (or representative thereof) or other public official, as defined in RCW 42.40.020, information concerning improper governmental action; or (b) identify rules warranting review or provide information to the rules review committee.