El Dorado County Grand Jury 2014-2015

Putting Political Gain Above What's Right for the County

Case GJ-14-12

The Grand Jury heard the same allegations repeated from credible witnesses in a number of different complaints:

- The Auditor/Controller Joe Harn creates problems, blames others for those problems and then leaks information about the problem and a scapegoat to the press.
- The Auditor/Controller Joe Harn refuses to cooperate with the Chief Administrative Officer or staff to fix problems.
- The Auditor/Controller Joe Harn is a bully and targets individuals or departments for harassment.

The Grand Jury found all of these allegations to be substantiated.

The Auditor/Controller failed to submit a complete and correct Cost Allocation Plan to the State of California resulting in a loss of more than $1 million in federal reimbursement for Fiscal Year 2013-14 and additional losses in succeeding years

The Auditor/Controller is responsible for preparing and submitting the County's Cost Allocation Plan in accordance with the current federal Office of Management and Budget Circular A-87. The Cost Allocation Plan determines the amount of money the County will receive from the State for administering federal programs. The county's plan is subject to review and approval by the California State Controller who may conduct a field review to verify that the data incorporated in the county cost plan is supported. The State Controller communicates with the El Dorado County Auditor/Controller and not the Chief Administrative Officer (CAO). The Auditor/Controller is the county official responsible for the Cost Allocation Plan.

The California State Controller did conduct a field review of El Dorado County's Cost Allocation Plan for fiscal year 2013-14 and found that the Information Technologies Department functional costs could not be substantiated and required a revised Cost Allocation Plan. The State Controller found that Information Technologies staff did not understand the purpose of the Countywide Cost Allocation Plan and recommended that the Information Technologies Department Management should work with the Auditor/Controller to develop a corrected methodology.

Corrected Information Technologies Department costs were not submitted to the state. On October 3, 2014, the Auditor/Controller signed a *Negotiation Agreement, Countywide Cost Allocation Plan* resulting in a loss to the county of approximately $1.5 million in fiscal year 2014-15 and additional losses of more than $1 million in each of two subsequent fiscal years.

The Grand Jury spoke to the Auditor/Controller, former and current Chief Administrative Officer as well as staff from both of their offices, staff from the Information Technologies Department and staff from the Health and Human Services Agency. The Auditor/Controller testified that he knew the state would disallow the Information Technologies costs, saying that he repeatedly warned the CAO, and blamed the CAO and Information Technologies staff for not taking care of the problem. He asserted that the Information Technologies staff was incompetent, the Assistant CAO was incompetent and the CAO was incompetent. The Information Technologies Department staff and the Chief Administrative Officer and her staff admitted they had made a mistake in the original submittal. They said they tried to work with the Auditor/Controller to correct those mistakes, but the Auditor/Controller and his staff refused to communicate with Information Technologies department staff or to provide the information they needed to resolve the issue.

The Grand Jury found that the Auditor/Controller was focused on blaming the CAO, Assistant CAO and Information Technologies staff rather than on working with them to remedy deficiencies in the Cost Allocation Plan.

The Grand Jury found that the Auditor/Controller's refusal to communicate and work with the CAO and Information Technologies staff is directly responsible for loss of funds to the county.

The Grand Jury found that the Auditor/Controller is ultimately responsible for the Cost Allocation Plan, that the Auditor/Controller had full knowledge that the state would disallow reimbursement if the Cost Allocation Plan was not corrected and that the Auditor/Controller had full knowledge of the impact this loss of reimbursement would have on the county's fiscal situation. As soon as the State Controller raised the specter of this loss of reimbursement, the Auditor/Controller should have convened a work group of appropriate staff to resolve the issue.

THE AUDITOR/CONTROLLER IS MORE FOCUSED ON PLACING BLAME ON OTHERS FOR PROBLEMS THAN ON WORKING WITH THEM TO RESOLVE PROBLEMS

The Auditor/Controller's willingness to allow the county to lose substantial revenue rather than work with county staff to submit a correct and complete Cost Allocation Plan is but one example of a pattern of behavior the Grand Jury repeatedly observed. The Auditor/Controller will not work with staff for whom he has little, or no, respect.

Over and over again the Grand Jury observed situations in which the Auditor/Controller identified problems – some major, some minor – and focused his energy on casting blame for those problems while refusing to work with others to find solutions to the problems he had identified.

THE AUDITOR/CONTROLLER DELAYS OR REFUSES PAYMENTS FOR POLITICAL OR PERSONAL REASONS

Over and over again the Grand Jury heard testimony from credible witnesses that the Auditor/Controller refuses, for political or personal reasons, to pay invoices submitted by specific vendors or for work done for specific departments. The Auditor/Controller causes invoices to sit on his desk for months, taking no action because he has issues with the staff, the project or the vendor. In many cases no communication at all is given to the submitting department. In other cases the invoice is returned to the department with a note so abbreviated that it is meaningless.

Even staff loyal to the Auditor/Controller acknowledged that claims sit on his desk for months for reasons that include politics and personal alliances.

THE BOARD OF SUPERVISORS HAS NOT ENSURED THE TRANSPARENCY AND INDEPENDENCE OF THE OUTSIDE AUDIT OF THE COUNTY'S FINANCIAL STATEMENTS

California Government Code §25250 requires "At least biennially the board of supervisors shall examine and audit, or cause to be audited, the financial accounts and records of all officers having responsibility for the care, management, collection, or disbursement of money belonging to the county or money received or disbursed by them under authority of law." The Board may "…employ the services of an independent certified public accountant or licensed public accountant…"

The Board of Supervisors Policy Number B-9 requires that "Representatives of the County Grand Jury shall be given an opportunity to participate each time the Board of Supervisors selects an outside auditor to perform the annual or biennial audit…"

The Government Financial Officers Association recommends as a best practice the establishment of an Audit Committee as a means of providing independent review and oversight of the county's financial reporting processes, internal controls and independent auditors.

It has been the practice in El Dorado County for the Auditor/Controller to suggest the outside auditor to perform this audit, to submit a contract for that audit to the Board of Supervisors for approval, and for the Board to approve the contract without discussion on its consent agenda. The Board of Supervisors has not involved its Chief Administrative Officer or the Grand Jury in the selection of the outside auditor. Nor has the Board of Supervisors created or utilized an Audit Committee.

THE AUDITOR/CONTROLLER REFUSED TO RELEASE AN AUDIT OF THE PUBLIC GUARDIAN WHEN THE FINDINGS DID NOT SUPPORT HIS CRITICISM OF THAT OFFICE

The duties of the Controller include performing audits of county departments and functions. The Auditor/Controller through one of his staff performed an audit of the Public Guardian's office. That audit would have been useful to the Public Guardian for the effective management of the office and would have been important information for the public. However, the audit was never released. Credible witnesses testified that the Auditor/Controller did not release the audit because it did not corroborate his allegations of malfeasance by the Public Guardian.

Auditor Fails to Comply with Reporting Requirements

El Dorado County Ordinance Code section 3.16.130 requires the County Auditor to prepare a list of "… claims approved by him or her each calendar week, and present it to the Board of Supervisors at its next regular meeting, for allowance by the Board." Ordinance Code section 3.16.140 requires "Each month, the County Auditor shall transmit to the Board of Supervisors a report of all claims rejected by him or her filed during the preceding calendar month…" The report is required to include a listing of each claim rejected, the date the claim was filed with the Auditor, the name of the claimant, the amount of the claim and the reason for rejection.

The Auditor does not comply with either of these ordinances. Violation of a county ordinance is a misdemeanor.

The Auditor acknowledges that he does not comply with these requirements. He told the Grand Jury that the requirements were out of date, that the California Government Code sections on which they were based have been repealed. He further stated that he has directed the Chief Administrative Officer to have the ordinances repealed.

It is not within the Auditor's prerogative to decide with which provisions of the county Ordinance Code he will or will not comply, nor is it within his authority to direct the Chief Administrative Officer to have specific provisions repealed. These ordinances remain on the books.

The Grand Jury finds that the ordinances serve a useful purpose. Compliance would allow the Auditor to defend himself against charges that he has unreasonably delayed or withheld payment. Compliance would allow the Board to know where County money is being spent.

The Grand Jury notes that four of the five members of the Board of Supervisors told the Grand Jury they do not trust the Auditor/Controller's statements about the budget. This is an opportunity for the Board to take meaningful steps to ensure their trustworthiness.

The Auditor/Controller fails to adhere to basic principles of human resources management

The Auditor/Controller engages in behavior inappropriate for a public employee supervisor:

- One of the Auditor/Controller's employees is assigned to prepare the Countywide Cost Allocation Plan. The employee is widely reputed to be extremely difficult to work with and to be un-communicative in dealings with other county employees. It was also reported that the employee's behavior recently has become progressively less acceptable. Knowing this about his employee, and knowing that the county risked loss of significant federal reimbursement if the employee did not work with other county staff to prepare the Cost Allocation Plan, the Auditor/Controller took no action to address the employee's behavior and deteriorating performance.

- One of the Auditor/Controller's employees, after some delay, filed a complaint for harassment with the county. Credible witnesses reported that this employee excused the delay in filing this complaint by saying that the Auditor/Controller himself insisted that the complaint not be filed until after the election.
- The Auditor/Controller personally interfered with the Human Resources Department's appropriate and necessary efforts to address the behavior of one of his employees who may have presented a risk of workplace violence.
- The Auditor/Controller physically interposed himself in an attempt to prevent the Grand Jury from interviewing one of his employees, suggesting that questions the Grand Jury wished to ask the employee should be turned over to him and that he would get the answers.

THE AUDITOR/CONTROLLER IS GUILTY OF BULLYING OTHERS

The Grand Jury heard credible testimony that the Auditor/Controller is guilty of disrespectful and harassing behavior toward others. One member of the Board of Supervisors told us, "Everybody knows Joe Harn is a bully. They have known it for twenty years." Staff generally supportive of the Auditor/Controller told us that he has made inappropriate comments.

As a result of the Auditor/Controller's behavior, he received *executive coaching* regarding his relationships with others. That *executive coaching* was paid for by the County.

Complaints about inappropriate, disrespectful and intimidating behavior were received from employees of both the county and other agencies.

> *The Grand Jury does not identify the names of the specific witnesses who made these statements because so many expressed fear of reprisal. Indeed, the Grand Jury inquired about the services of an outside audit firm. They were not interested, fearing reprisal by the Auditor/Controller.*

FINDINGS

1. The Auditor/Controller is ultimately responsible for the Cost Allocation Plan. The Auditor/Controller had full knowledge that the state would disallow reimbursement if the Cost Allocation Plan were not corrected, and he had full knowledge of the impact that this loss of reimbursement would have on the county's fiscal situation. As soon as the State Controller raised the specter of this loss of reimbursement, the Auditor/Controller should have convened a work group of appropriate staff to resolve this issue.
2. The Auditor/Controller willfully refused to prepare a complete Cost Allocation Plan. In doing so he failed to protect the fiscal integrity of the County.
3. The Auditor/Controller delays or refuses to make payments for reasons of personal and political motivation.
4. The Board of Supervisors has not ensured the independence of the outside audit of the county's financial statements.

5. The Auditor/Controller willfully fails to comply with Ordinance Code sections 3.16.130 and 3.16.140.
6. The Auditor/Controller allows personal relationships to interfere with his management of his staff.
7. The Auditor/Controller is guilty of harassment and disrespectful conduct toward employees of both the county and other entities.

RECOMMENDATIONS

1. The Board of Supervisors should establish an Audit Committee as recommended by the Government Financial Officers Association.
2. The duties of the Audit Committee should include proposing the outside auditor and coordinating the outside audit.
3. The Board of Supervisors should give the Grand Jury the opportunity to participate with the Audit Committee in the selection of the outside auditor, as required by existing policy B-9.
4. The Board of Supervisors should require the Auditor/Controller to comply with all of its duly adopted ordinances.
5. The District Attorney should investigate the allegations and findings in this report to determine whether the Auditor/Controller should be removed from office and should consider impaneling a criminal grand jury for that purpose.

RESPONSES

Responses to both findings and recommendations in this Report are required by law in accordance with California Penal Code §933 and §933.05. Address responses to:

The Honorable Suzanne N. Kingsbury
Presiding Judge of the El Dorado County Superior Court
1354 Johnson Blvd.
South Lake Tahoe, CA 96150

This Report has been provided to the El Dorado County District Attorney for review, to the El Dorado County Auditor/Controller for response and to the El Dorado County Board of Supervisors for response.

The Presiding Judge of the El Dorado County Superior Court additionally requests that the responses be sent electronically as a *Word* or *PDF* file to facilitate the economical and timely distribution of such responses. Please email responses to the El Dorado County Grand Jury at: courtadmin@eldoradocourt.org