

**SPECIAL REVIEW**

**NEUSE RIVER  
COUNCIL OF GOVERNMENTS**

**OCTOBER 1994**

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The Honorable Dennis A. Wicker	Lieutenant Governor of North Carolina
The Honorable Harlan E. Boyles	State Treasurer
The Honorable Michael F. Easley	Attorney General
Mr. J. Richard Futrell	State Budget Director
Mr. Edward Renfrow	State Controller
Mr. S. Davis Phillips	Secretary, Department of Commerce
Mr. James J. Coman	Director, State Bureau of Investigation

### LEGISLATIVE BRANCH

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#### Other Legislative Officials

Representative David G. Balmer	Minority Leader of the N.C. House of Representatives
Mr. Thomas L. Covington	Director, Fiscal Research Division

#### Other Parties

Mr. W. David McFadyen, Jr.	District Attorney for Prosecutorial District Three B
Mrs. Dorothy Pullicino	President of the Neuse River Council of Governments Board of Directors
Mr. Charles C. Master	Inspector General, U.S. Department of Labor
Ms. Suzette Stroud	Senior Compliance Officer, U.S. Department of Labor

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October 19, 1994

The Honorable James B. Hunt, Jr., Governor  
The Honorable Michael F. Easley, Attorney General  
Mr. W. David McFadyen, District Attorney Prosecutorial District Three B  
Secretary S. Davis Phillips, North Carolina Department of Commerce  
Mrs. Dorothy Pullicino, President of the Neuse River Council  
of Governments Board of Directors  
Mr. Charles C. Master, Office of Inspector General  
Department of Health and Human Services  
Members of the General Assembly of North Carolina

Ladies and Gentlemen:

Pursuant to General Statute 147-64.6(c)(16), we have completed our special review into allegations concerning the Neuse River Council of Governments. The results of our review, along with recommendations for corrective actions are contained in this report. The Board of Directors has reviewed this report and their written comments are included in Exhibit A.

We began this review in April 1994. It required additional time to complete this review because the majority of the staff at the Council of Governments were reluctant to talk with auditors concerning the activities at the agency. They feared that they could lose their jobs if they disclosed any negative information. In addition, we received such conflicting information in so many areas that it took time to sort out the facts.

General Statute 147-64.6(c)(12) requires the State Auditor to provide the Governor, the Attorney General, and other appropriate officials with written notice of apparent instances of violations of penal statutes or apparent instances of malfeasance, misfeasance, or nonfeasance by an officer or employee. In accordance with that mandate, and our standard operating practice, we are providing copies of this special review to the Governor, the District Attorney for Prosecutorial District Three B, the Attorney General, the Director of SBI, and other appropriate officials.

Ralph Campbell, Jr.  
State Auditor

## OVERVIEW

The Neuse River Council of Governments is a multi-county planning region for the following nine counties: Carteret, Craven, Duplin, Greene, Jones, Lenoir, Onslow, Pamlico and Wayne. The Council provides the organizational mechanism for local government members to pool scarce financial resources to provide assistance such as: economic, community and business development, environmental problems, water resources, solid waste disposal, housing, highways and transportation, emergency medical services, and planning for programs for older adults and job training for economically disadvantaged adults and youth.

The Council has thirty-five employees including an Executive Director who reports to a Board of Directors. The Council's operating expenditures for fiscal year 1992-93 were \$6,685,486. Revenues consisting of state, federal, and local monies for fiscal year 1992-93 were \$6,729,996.

## INTRODUCTION

We were requested by the District Attorney of Prosecutorial District Three B to review the Neuse River Council of Governments' (COG) Job Training Partnership Act (JTPA) records to determine if there were any financial improprieties. We completed our review and issued a report of our findings and recommendations in April 1994.

Subsequent to the release of our report but after the completion of our fieldwork, we received additional allegations regarding the COG through the State Auditor's Hotline. Since these allegations involved a phase of operations outside the scope of our request from the District Attorney, we opted to investigate these additional allegations and issue the results in a separate report.

We have completed our investigation in accordance with G. S. 147-64.6(c)(16) and are presenting our findings and recommendations in this report. We did not conduct a financial audit. The COG contracts annually with a private accounting firm to perform a financial audit.

## **FINDINGS AND RECOMMENDATIONS**

1. **Terminated Employees Were Paid Severance Pay Without An Approved Severance Pay Policy.**

The Executive Director approved the payment of severance pay to five employees who were terminated. The Board had not approved a severance pay policy at the time these employees were terminated. A policy was approved at a COG Board meeting on November 18, 1993 and, at the request of the Executive Director, was made retroactive to July 1, 1993.

According to the policy, the Executive Director is the sole authority on whether an employee receives severance pay and how much the employee will receive.

The Executive Director approved severance pay for the following employees:

- Employee A - Salary: \$31,928  
Severance Pay - \$11,052 - Was employed only six months. Could have been terminated during six months probationary period.
- Employee B - Salary: \$25,017  
Severance Pay - \$8,660 - Was employed only six months. Could have been terminated during six months probationary period.
- Employee C - Salary: \$20,581  
Severance Pay - \$7,124 - Was employed sixteen months.
- Employee D - Salary \$19,601  
Severance Pay - \$2,832 - was employed twenty-one months.
- Employee E - Salary: \$45,574  
Severance Pay - \$17,932 - was employed for over twenty years.



For Employee E, the method used by the Executive Director to make the severance payment was to keep the terminated employee on the COG's payroll until the regular paychecks received every two weeks equaled the amount of severance pay the employee had been granted. Employee E was asked to sign postdated timesheets as if he were still employed by the COG during this period. He refused to sign the timesheets because, in his opinion, the practice was illegal. According to the Executive Director, he was ordered by the Board to pay severance pay to Employee E. According to the Board Chairman, the recommendations came from the COG's attorney.

Some employees who were involuntarily separated from the COG were required to sign a separation agreement in order to receive severance pay. These agreements contained the following language.

....Employee hereby does release, acquit, quitclaim and discharge employer, and any and all subsidiaries and affiliates thereof, and their successors and assigns, and officers, employees, directors and their attorneys, and any and all associated persons, firms, or corporations, whether named herein or not, of and from any and all actions, causes of action, claims, demands, damages, costs, loss of services, expenses, compensation, and actual, punitive or consequential damages, known or unknown, on account of or in any way growing out of any and all known or unknown claims and damages resulting from or arising out of the employment relationship between Employee and Employer, terms and conditions of such employment, and the termination of such employment. Likewise, Employer hereby does release, acquit, quitclaim and discharge Employee, and his heirs, executors, administrators and assigns, of and from any and all actions, causes of action, claims, demand, damages, costs, loss of services, expenses, compensation, and actual, punitive or consequential damages, known or unknown, on account of or in any way growing out of any and all known or unknown claims and damages resulting from or arising out of the employment relationship between Employee and Employer, the terms and conditions thereof, or the termination of such relationship.

6. Subject only to such legal obligations as shall be imposed by subpoena or court order, the parties hereto agree to keep the terms of this agreement confidential.

....Employee furthermore acknowledges his understanding that confidentiality is a material term of this agreement, without which Employer would not have agreed to pay Employee his regular salary after the date Employee resigned from active employment. Employee furthermore agrees and stipulates that, if he breaches this confidentiality clause or causes the confidentiality clause to be breached, then he will forfeit and will be obligated to refund to Employer the full amount of money which he was paid in salary after he resigned from active employment by Employer on the (date)

According to the Executive Director, these agreements were the recommendation of his attorneys.

These separation agreements, including severance pay, were used for employees whose separations were involuntary. During the course of our investigation, these agreements were effective in preventing us from obtaining information from these former employees until they were convinced that they would not have to refund the severance pay they had received.

### **Conclusion and Recommendation**

The payment of severance pay without an approval policy was inappropriate. The retroactive approval of a policy was an attempt by the Executive Director to justify the payments which had already been made and was inappropriate. Official Board Minutes were changed by the Executive Director after we questioned these payments (See Finding #2). The purpose of the change was to show that the severance pay was recommended by persons other than himself. This was inappropriate.

The use of separation agreements, combined with the Executive Director's discretion regarding whether to provide severance pay, and if so, how much, raise significant public policy questions. The COG's policies have created a situation where public funds may be used to foreclose public or private debates or discussions of the COG's operations.

We recommend that severance pay be approved by the Board of Directors before it is paid in the future. We recommend that the \$47,600 paid to employees in severance pay before a policy was approved be reimbursed by the COG to the sources from which the funds originally were paid. We also recommend that the COG Board of Directors address the signing of separation agreements by involuntarily terminated employees to determine if they want this practice to continue. This practice when combined with the Executive Director's extensive use of legal counsel in personnel matters, routine and otherwise, has resulted in a significant amount of legal fees paid by the COG.

2. **The Executive Director Ordered that Official COG Board Minutes be Altered Without the Board's Knowledge or Authorization.**

In May 1994, the Executive Director drafted a change to the official minutes of a COG Board of Director's meeting held on May 14, 1992. He gave the draft to his secretary and ordered that it be placed in the minutes. His instructions were that the change be made on the same computer that had been used two years earlier to type the original minutes. The Executive Director's secretary had the addition to the board minutes made by the COG employee who was using the same

equipment used to type the minutes originally. The addition to the minutes was as follows: “[Executive Director] reviewed the problem of employee turnover and the need to upgrade the salary ranges for some positions so that the COG could hire and keep good employees. [Executive Director] reminded the board that the organization originally adopted a “training ground” strategy. It was a consensus that this be done as soon as possible.” This change appears in the official minutes of the board in the Executive Director’s office. It does not appear in the board minutes that were sent out to the board members. The Executive Director acknowledges that he changed the minutes but said that this was not uncommon since he sometimes forgot until later, items that were discussed in the meetings. We also found changes and additions made to official Board minutes of the Neuse River Development Authority (NRDA) and the Private Industry Council (PIC) without the approval of either Board.

### **Conclusion and Recommendation**

The Executive Director acted beyond his authority when he amended official Board minutes without Board approval. In doing so, he raised a concern that the official minutes of other Board meetings may have been altered.

We recommend that the minutes of board meetings be corrected by removing the unauthorized additions made by the Executive Director.

Also, we recommend that the official board minutes of other COG board meetings be compared to the copies sent out to Board Members to determine if any additional changes to the official minutes have taken place.

**3. We Received Allegations of Racial Discrimination at the COG.**

We reviewed several examples of personnel actions that were allegedly motivated, at least in part, by discrimination. These examples are as follows:

- a. An African-American female was put in a supervisor position and was not given any staff. The Executive Director complained about her performance. She was removed from her job without being given justification as to why. Her job was then given to a white male who had been a former COG board member for several years. He was paid \$4,500 a year more in salary than the African-American female. He was also given a staff of employees to assist him which his predecessor did not have. According to the JTPA Director, the white male made the statement that he did not want a woman or African-American working for him because they would not “work.” He was given an all white staff of seven employees. He denies he ever said this.
- b. The Executive Director was recently going to give the above white male an additional salary increase. When the employee’s Director protested because the employee was already paid more than two other managers (both African-American) in the same program, the Executive Director agreed to raise their salaries to the same level. He also agreed to raise the salaries of two additional African-American employees in the section who were hired at lower salaries than whites in the same type positions at the same time. When the Director of the JTPA program sent the list of recommended pay raises to the Executive Director for his final approval, he cut and pasted the list so that the two African-American managers were not listed and he reduced the proposed increase for the other two African-American employees. The altered list which contained the name of the white male and the signature of the Director of the JTPA program was left intact to appear as though this was her recommendation. The list was then sent to payroll for the raises to become effective. The Executive Director admitted that he may have cut and pasted the list but that he did not agree with the Director on her recommendations.

- c. The Director of the JTPA Program was then ordered in writing to fire, demote, or move to satellite offices, the two African-American managers in her program. Since the Executive Director had already moved the African-American manager referred to in (a) above, this would have left the largest program at the COG without any African-Americans in a supervisory capacity. The Director considered this act to be discriminating but the Executive Director said that he had numerous complaints against these employees and was justified in taking action against them. As of August 31, 1994, no action has been taken.
  
- d. According to the JTPA Director, there has been a history of hiring whites at a higher salary than African-Americans in the same type position. Payroll records and personnel files reveal the following:
  - ◆ An African-American female and a white female were hired at the same time to do the same job. The African-American female had superior qualifications in education and experience. She was paid \$4,000 less than the white female. The Executive Director approved the starting salary recommended by a former JTPA Director. He said that he thought the salary for the African-American female was too low but he still approved it.
  
  - ◆ Seven employees were hired on the same day, for the same kind of position. Five of the employees were white and two were African-American. The five whites were hired at a higher salary than the two African-Americans. The two African-Americans were hired at a salary that was lower than the advertised minimum salary for the position. The Executive Director approved the recommendation of the JTPA Director regarding the starting salaries. The Executive Director also stated that salaries were sometimes set at what the employee was willing to accept, which in some cases was less than the COG was prepared to pay.

### **Conclusion and Recommendation**

While examining documentation and inquiring about these examples, we received vastly conflicting viewpoints on whether discrimination occurred or not. It is obvious, however, that a problem does exist at the COG, whether it is real or perceived. Furthermore, the evidence is conflicting as to the source of any

problems. The Executive Director stated that he was irritated by a constant barrage of questions from African-American Board members concerning the hiring and promoting of African-Americans. In fact, he partially attributes the allegation of racial discrimination to certain African-American board members.

It is clear that the Board of Directors must address these allegations so that the agency may turn its attention to serving the community. In addition, we are referring this matter to the Civil Rights Division of the U.S. Department of Labor.

4. **The Executive Director Did Not Take Personal Leave for Time Spent Taking Art Classes.**

The Executive Director took three art classes at Carteret Community College from January 11, 1991 through November 20, 1992. The classes were held on the main campus in Morehead City on Fridays from 1:00 p.m. until 4:00 p.m. The driving time to the campus is approximately one hour from the COG office in New Bern.

According to the official class attendance records, the Executive Director attended twenty-eight class meetings during this period. On twenty-two occasions, the Executive Director did not charge the time to vacation. On four other occasions, there were no time records available for the Executive Director that would show whether or not leave was recorded. He did appropriately charge his time for the remaining two classes.

The Executive Director earns vacation and is required to sign out for his vacation time as are all COG employees.

The eighty-eight hours that the Executive Director failed to charge to vacation were charged against various grants from which his salary is paid. One of these grants is the JTPA Grant.

According to the Executive Director, his time off on Friday afternoons was in accordance with the COG's flex-time policy and he put in many additional hours at the COG beyond his normal work week. However, the COG has no supporting documentation.

### **Conclusion and Recommendation**

The Executive Director has not recorded vacation for the time spent taking art classes. The grants which were charged for his salary during the eighty-eight hours he attended classes without being on appropriate leave should be refunded \$3,842.50 which was his gross salary for those hours. The Executive Director's vacation should be reduced by the eighty-eight hours or he should be required to refund the salary if his accumulated vacation is insufficient to cover this period.

We are referring this matter to the United States Inspector General of the Department of Labor to determine if it violates Federal Statutes concerning inappropriate charges to the JTPA grant.



5. **An Embezzlement Occurred at A Contract Agency That Was Receiving JTPA Funds.**

On July 20, 1994, the Director of the JTPA Program learned of a significant embezzlement in an agency that received in excess of \$100,000 from the COG for a Summer Youth Program. In addition, the agency receives significant funding from other local, state, and federal agencies. She stated that she reported the information to the Executive Director of the COG and he ordered her not to provide this information to the State Auditors, the Division of Employment Training, or the Office of Inspector General. The Director of the JTPA program has signed a statement that this incident occurred. The Executive Director denies that the embezzlement was ever brought to his attention.

Based on the information we received from the JTPA Director, we contacted the contract agency and examined the records pertaining to the embezzlement. It appeared that the embezzled funds did not contain any federal or state monies. We have referred this matter to the State Bureau of Investigation.

According to G. S. 159-34, "If any member of a governing board or any other public officer or employee shall conceal, falsify, or refuse to deliver or divulge any books, records, or information, with an attempt thereby to mislead the auditor or impede or interfere with the audit, he is guilty of a misdemeanor and upon conviction thereof may be fined not more than one thousand (\$1,000), or imprisoned for not more than one year, or both, in the discretion of the court."

In addition, Public Law 665 states “Whoever willfully obstructs or impedes or willfully endeavors to obstruct or impede, an investigation or inquiry under the Comprehensive Employment and Training Act or the Job Training Partnership Act, or the regulations thereunder, shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.”

### **Conclusion and Recommendation**

The Executive Director of the COG may have violated state and federal laws if he ordered the Director of the JTPA Program not to disclose the embezzlement in a Contract Agency receiving JTPA funds from the COG.

We recommend that this information be turned over to the District Attorney for Prosecutorial District Three B and the U. S. Attorney for a determination of whether a violation has occurred.

We also recommend that the COG Board of Directors put controls in place that insures the proper and timely reporting of possible criminal violations that occur at the COG or any of its Contract Agencies when the information becomes available to COG employees.

6. **COG Management Has Been Reluctant to Share Information Concerning Its Operations.**

Several instances occurred during our review that clearly indicate the reluctance of management to share information regarding COG activities. An embezzlement occurred at a contract agency that received JTPA funds. We were informed of this embezzlement by the JTPA Director who thought there was an obligation to make this information known. However, according to the JTPA Director, the Executive Director ordered her not to share this information. He denies this and stated that he was never made aware of the embezzlement. Conflicting information such as this was commonplace during our attempt to investigate allegations involving COG employees.

The Board of Directors complained that they were given insufficient information about the COG operations, particularly with regard to finances. Audit reports were shared with Board members only after they were summarized and the information contained in the reports was restated by the Executive Director. Some Board members said that they did not feel comfortable asking detailed questions about COG operations during board meetings because the questions appeared to irritate the Executive Director.

Board members were not made aware of changes to official board minutes, payment of severance packages, payment of travel to a national conference by a Board member's spouse, and instances such as the embezzlement referred to earlier.

The Executive Director prepared the agenda for board meetings, held the meetings, prepared the minutes, and signed the minutes. In addition, as we have addressed previously, he has altered minutes well after they were adopted and approved as official minutes by the Board.

Many employees were reluctant to share any information with us during our review for fear of retaliation. Some of the calls we received from employees were made from their homes or pay telephones because they did not want the COG telephone bill to reveal that they called the State Auditor's office.

### **Conclusion and Recommendation**

Accurate and complete information is not readily shared by COG management. We recommend that the Board address this issue and take steps to insure that they are fully informed about COG operations and that employees are not retaliated against for talking with auditors or representatives of other monitoring or investigative agencies.

## CONCLUSION

This report is not intended to condemn the good that the COG does for the counties and municipalities in its service area. The funds and programs it provides are greatly needed in the surrounding area. However, if the COG is to continue to provide worthwhile services and have a positive impact on citizen's lives, then the Board must address the issues raised by this report and the divisions which exist among its staff and others. Positive action by the Board to boost the morale of COG employees can help begin restoring the public's confidence and high standard of credibility in the COG's ability to deliver useful and needed services in the future. This action must be undertaken on the Board in an aggressive and timely manner.

## STATEMENT OF FINANCIAL IMPACT

The following schedule represents a quantification of the items examined during our special review. We cannot completely quantify the tangible benefits or detriment, if any, to the taxpayer resulting from the findings of our review. We are simply noting those areas where the systems of internal controls were either circumvented or should be enhanced.

1) Severance pay paid without an approved policy.	\$47,600.00
2) Executive Director's salary during the time he attended art classes without being on leave.	<u>3,842.50</u>
<b>TOTAL FINANCIAL IMPACT</b>	<b><u>\$51,442.50</u></b>

This statement only presents the financial impact of the issues addressed in this report. It does not represent what has been lost due to the low morale, high turnover, and the conflict and dissension in and around the agency. These losses, while difficult to measure in economic terms, have had a significant impact on the agency and its employees, and their ability to provide the services needed by the community.