



STATE OF NORTH CAROLINA

SPECIAL REVIEW

**DEPARTMENT OF LABOR
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
WILMINGTON OFFICE**

WILMINGTON, NORTH CAROLINA

NOVEMBER 1997

OFFICE OF THE STATE AUDITOR

RALPH CAMPBELL, JR.

STATE AUDITOR

SPECIAL REVIEW

**DEPARTMENT OF LABOR
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
WILMINGTON OFFICE**

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NOVEMBER 1997

LETTER OF TRANSMITTAL

November 17, 1997

The Honorable James B. Hunt, Jr., Governor
The Honorable Harry Payne, Commissioner
N.C. Department of Labor
Members of the North Carolina General Assembly

Ladies and Gentlemen:

Pursuant to General Statute §147-64.6(c)(16), we have completed our special review into allegations concerning an employee of the North Carolina Department of Labor, Division of Occupational Safety and Health, Wilmington, North Carolina Office. The results of our review, along with recommendations for corrective actions, are contained in this report.

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 Attorney General and other appropriate officials.

Respectfully submitted,

Ralph Campbell, Jr., CFE
State Auditor

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OVERVIEW

The North Carolina Department of Labor (Department) is created by statute to promote the “health, safety, and general well-being” of North Carolina’s working citizens. A Commissioner of Labor, who is elected every four years, manages the Department. The Department provides labor information to the public, as well as, enforces the labor regulations. Approximately 416 employees work for the Department.

The Department is divided into six divisions: Standards and Inspections, Human Resources, Administration, Budget and Management, Communications, and Occupational Safety and Health. The division of Occupational Safety and Health (Division) has five bureaus and each is managed by a bureau chief. The Division has offices in Charlotte, Winston-Salem, Raleigh, and Wilmington. The Wilmington office is managed by an Area Supervisor who reports to the Safety Compliance Bureau Chief in Raleigh. The Wilmington office Area Supervisor manages seven employees; six safety officers, and an office assistant.

The Department’s general fund revenues were approximately \$22 million for the fiscal year ending June 30, 1997, of which approximately 67 percent was from state appropriations, 22 percent from federal sources, 10 percent from fees, licenses, and fines, and 1 percent from other sources.

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INTRODUCTION

We received the following allegations through the State Auditor's Hotline concerning the District VIII Area Supervisor for the Department of Labor.

1. The Area Supervisor required an employee to drive him from Wilmington, North Carolina to the Raleigh-Durham Airport during working hours, so he could leave on his vacation.
2. The Area Supervisor is using his state owned computer to view pornographic material during working hours.
3. The Area Supervisor loaned state owned equipment to non-state employees.

In addition, the North Carolina Department of Labor requested that we investigate the following allegations it had received concerning the Area Supervisor.

1. The Area Supervisor required employees to perform personal tasks for him.
2. The Area Supervisor works for outside consultants creating a conflict of interest with his State employment.
3. The Area Supervisor uses the Internet at work to view sexually explicit material.

INTRODUCTION (CONCLUDED)

We used the following procedures to conduct our special review of the allegations.

1. Interviews with employees of the North Carolina Department of Labor.
2. Interviews with individuals external to the North Carolina Department of Labor.
3. Examination of computer files.
4. Examination of pertinent travel records.
5. Examination of pertinent North Carolina Department of Labor internal policies.
6. Review of pertinent personnel files and complaints.

This report presents the results of our Special Review. This review was conducted pursuant to G.S. §147-64.b(c)(16), rather than as a financial audit. The Office of the State Auditor performs a financial audit of the State's Comprehensive Annual Financial Report that includes the Department of Labor.

FINDINGS AND RECOMMENDATIONS

1. THE AREA SUPERVISOR VIOLATED DEPARTMENTAL POLICY BY VIEWING PORNOGRAPHIC MATERIAL ON HIS STATE COMPUTER.

We examined the files stored on the Area Supervisor's computer and found evidence the Area Supervisor viewed pornographic websites over the Internet. A history of entries revealed the Area Supervisor entered multiple pornographic websites during a two-hour period on September 11, 1997. The websites visited contain pictures and/or narratives of topics such as; homosexual encounters, bisexual encounters, heterosexual encounters, incestual relationships, and sex with minors. In addition to visiting these websites, we found files stored on the computer containing stories of incest, heterosexual, and homosexual activities. Some of these websites were "bookmarked" on the Area Supervisor's computer.

On May 13, 1997, the Area Supervisor signed an agreement with his employer, the North Carolina Department of Labor, detailing his obligations to the Department in using the INTERNET. Paragraph VI, page 2, of the agreement reads,

If an employee is authorized by his/her supervisor to have access to the INTERNET, **the employee is expected to use the INTERNET responsibly and professionally and make no use of these resources on an illegal, malicious or obscene manner... Use of the INTERNET to purposely send, receive, and/or access sexually oriented messages or images while on duty and with departmental equipment is strictly forbidden** by the Commissioner of Labor.

When asked about his apparent violation of the Departmental agreement, the Area Supervisor stated he had violated the agreement and takes full responsibility for his actions. He said it was wrong and he should not have done it.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

In addition to the pornographic material, we found personal correspondence on the Area Supervisor's assigned state computer. Some of the personal correspondence related to consulting work the Area Supervisor was performing secondary to his state position (See Finding 4). On one piece of personal correspondence, the Area Supervisor signed the letter using his state title. When questioned, the Area Supervisor stated that he should not have used his state title.

RECOMMENDATION

Considering the nature of the pornographic sites visited by the Area Supervisor, and his admission of guilt, we recommend the Department determine the appropriate action to prevent this type of abuse in the future.

2. THE AREA SUPERVISOR REQUESTED THAT EMPLOYEES PERFORM PERSONAL TASKS FOR HIM.

According to the Wilmington Office Assistant, the Area Supervisor asked her in July 1996, to drive him and his wife to the Raleigh-Durham Airport so they could catch a flight for their summer vacation. The Office Assistant stated she agreed to drive them and the Area Supervisor paid her \$20 for gas. The Office Assistant drove her personal vehicle and deducted two hours compensatory leave. In a signed statement, the Office Assistant stated she did not want to drive the Area Supervisor to the Raleigh-Durham Airport, but felt she had no choice. The Office Assistant said she viewed the request as a "supervisor's request" and thought the Area Supervisor would be angry if she refused.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

During the time the Area Supervisor was on vacation, he called one of the Safety Officers under his supervision and told the Safety Officer to pick up him and his wife at the Raleigh-Durham Airport. The Safety Officer said the Office Assistant gave him records to deliver to the Raleigh Office, so he could claim mileage for his trip. The Safety Officer said he claimed 289 miles at .20 per mile totaling \$57.80 for the roundtrip to Raleigh. The Office Assistant said the records were given to the Safety Officer to make the trip “legitimate.” The Safety Officer said he took the request as a “direct order from his supervisor” and it would have been a “bad situation” if he refused.

In addition to picking up the Area Supervisor from the airport, the Safety Officer stated he has performed various personal tasks for the Area Supervisor such as taking his personal vehicle to the car wash. The Safety Officer stated the Area Supervisor asked him to take his car to be washed during working hours. The Safety Officer said the Area Supervisor paid for the car wash.

Furthermore, the Safety Officer said in May 1994, he had been out of town all week in training and arrived home on Friday evening. He stated the Area Supervisor left a message on his answering machine stating, “call me.” The Safety Officer said when he returned the Area Supervisor’s call, the Area Supervisor told him to come over and install a storm door at his home. The Safety Officer said he did not want to do this, but felt he could not refuse. Again, in March 1997, the Area Supervisor telephoned the Safety Officer at home. According to the Safety Officer, the Area Supervisor told him, “I need you over here now.” The Safety Officer said the Area Supervisor wanted him to install a

FINDINGS AND RECOMMENDATIONS (CONTINUED)

satellite dish. He said he told the Area Supervisor he did not know how to install a satellite dish and that he had recently hired someone to install his. The Safety Officer said he installed the Area Supervisor's satellite dish because he would have had a "bad Monday" if he refused.

The Safety Officer said in all the instances stated above, he felt if he refused, the Area Supervisor would retaliate in some manner. On one occasion, the Safety Officer left for lunch without informing the Area Supervisor because he did not want him to go along. When he returned from lunch, the Safety Officer said the Area Supervisor told him, "you slipped me, you'll see it in your evaluation." The Safety Officer said he had the lowest evaluation during that period.

Both the Safety Officer and the Office Assistant said the Area Supervisor could be very vindictive. Neither of the employees wanted to perform the various personal tasks requested by the Area Supervisor, however, they both stated they felt they could not say "no."

When questioned, the Area Supervisor stated he asked the Office Assistant to take him to the airport, however, he paid her \$40 and expected her to take time off. Additionally, he asked the Safety Officer to pick him up at the airport, but he was not aware the Safety Officer took files to the Raleigh office to make the trip "legitimate." The Area Supervisor stated that maybe he should reimburse the State for the mileage claimed by the Safety Officer. The Area Supervisor stated both requests were made by him as a friend, and not in his role as supervisor.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

The Area Supervisor said he did not recall asking the Safety Officer to wash his car, although he did ask the Safety Officer to install a storm door and satellite dish at his home. He said it was not an order, but he considered the Safety Officer a close friend. The Area Supervisor said the Safety Officer told him there was no need to pay someone to install the satellite dish because he had recently seen a dish installed. Furthermore, the Area Supervisor said he has helped the Safety Officer at his home. The Area Supervisor said the employees could have refused.

The Area Supervisor's explanation of these incidents conflicts with what we were told by his subordinates. It is clear, however, that the two employees felt pressured when asked by their supervisor to perform personal tasks.

RECOMMENDATION

We recommend that management take the necessary steps to stop the Area Supervisor from abusing his authority over employees within the District VIII office.

3. THE AREA SUPERVISOR LOANED STATE EQUIPMENT TO A PRIVATE SAFETY CONSULTANT.

A Safety Officer in District VIII stated, in 1994, the Area Supervisor told him to calibrate five (5) noise dosimeters for a private safety consultant. The noise dosimeters were assigned to another Safety Officer and are used to conduct noise surveys. The Safety Officer stated he calibrated the noise dosimeters and the private safety consultant picked up the equipment at the Wilmington office. The noise dosimeters were later returned to

FINDINGS AND RECOMMENDATIONS (CONTINUED)

the Area Supervisor. The Safety Officer said he could not recall when the equipment was returned. According to the Safety Compliance Bureau Chief, the noise dosimeters are purchased in sets of five costing between \$5,000 - \$7,000 a set.

Neither the Department of Labor nor the State of North Carolina have a specific written policy addressing the loaning of state equipment. However, the Safety Compliance Bureau Chief stated it is an understood policy that state equipment should be used strictly by Department of Labor personnel and under no circumstances should equipment be loaned to non-Departmental personnel. The Safety Compliance Bureau Chief stated the quantity of this type of equipment is limited within the Department and costly to replace.

The Area Supervisor stated he did not recall loaning the state equipment, but if the Safety Officer said he did, then he did.

The private safety consultant stated he borrowed one noise dosimeter from the Area Supervisor in 1994. He stated he used the equipment for one day then returned it to the Area Supervisor.

RECOMMENDATION

We recommend the Department develop a formal written policy addressing the misuse of state equipment as well as the loaning of state equipment to non-Departmental personnel.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

4. THE AREA SUPERVISOR'S SECONDARY EMPLOYMENT CREATED A CONFLICT OF INTEREST.

We determined the Area Supervisor worked for private safety consultants on several occasions in the last seven years. These consultants, including the consultant referred to in the previous finding, provide services to North Carolina companies that are regulated by the North Carolina Department of Labor. The Area Supervisor said he only worked for the consultants' out-of-state clients; however, he did admit that his working for the consultants might give an appearance of a conflict of interest to outsiders. In addition, we determined the Area Supervisor had not submitted a secondary employment form requesting permission to perform this work. The Area Supervisor said he did not think he needed approval for secondary employment because the consultants' clients were out-of-state.

The Area Supervisor said that in August 1997, while he was working for a North Carolina based consultant, one of the consultant's competitors called the company in Texas where he was working. The competitor told the company he was going to have the Area Supervisor fired from his state job because he was working for the consultant.

The Area Supervisor said he became concerned over the statement and decided to submit a memo requesting secondary employment on September 9, 1997. The memo reads:

I would like permission to teach safety courses related to PSM and Emergency Response to employers as I get the opportunity. I will devote this instruction to out-of-state employers only and will utilize weekends or leave time to accomplish this.

I currently have no clients for training but would like the authorization if the opportunity arises.

If you need additional information let me know. Thanks.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

The Area Supervisor's request was never approved. The memo was submitted after he had already performed the secondary employment and about the same time the Department received the allegations regarding his secondary employment.

The North Carolina State Personnel Manual, Section 4, Page 5, Secondary Employment reads:

...an employee shall have approval from the agency head before engaging in a secondary employment. The purpose of this approval procedure is to determine that secondary employment does not have an adverse effect on the primary employment and does not create a conflict of interest...

...secondary employment shall not be permitted when it would:

- a) Create either directly or indirectly a conflict of interest with the primary employment.*
- b) Impair in any way the employee's ability to perform all expected duties, to make decisions and carry out in an objective fashion the responsibilities of the employee's position.*

FINDINGS AND RECOMMENDATIONS (CONCLUDED)

The work the Area Supervisor performed for the consultants created a conflict of interest since the Department regulates the companies that employ the consultant. In addition, we became aware that another employee within the Department maybe performing similar duties with private consultants.

RECOMMENDATION

We recommend the Department examine the secondary employment of all its employees to determine if other situations exist which create a conflict of interest, or even appearance of a conflict of interest.

CONCLUSION

We performed this special review based on the complaints we received and at the request of the Commissioner of the Department of Labor. The District VIII Office in Wilmington had been the subject of an internal investigation previously over the misuse of the State telephone system. Some employees were calling an adult sex line during working hours at the State's expense. Two employees each repaid the State \$1,321 for the cost of these calls. This incident was not reported at the time to the State Bureau of Investigation. We recommend that it be reported at this time. Also, there have been other complaints concerning the Area Supervisor and certain employees that have required the intervention of management to resolve. One incident involved a state owned vehicle. The Area Supervisor claimed one of his employees intentionally damaged the engine in a State car because he did not want to drive the car. The employee claims he was "set up" by his supervisor.

In an office as small as the District VIII Office (eight employees), it is imperative that the employees treat each other with dignity and respect. As a result of our interviews with employees, it is apparent that such an atmosphere does not exist. We recommend that management examine this situation and take appropriate action to create a professional working environment and assure the taxpayers of North Carolina that they are getting positive results from their tax dollars.



Response from the N. C. Department of Labor

John E. Frazier
Director
Department of Labor
100 North Salisbury Street
Raleigh, NC 27603-5903

November 14, 1997

Mr. Ralph Campbell
Office of the State Auditor
300 N. Salisbury Street
Raleigh, NC 27603-5903

Dear Mr. Campbell:

Before responding to the findings of the special review performed by your office at our request into allegations of misconduct by one of our employees, I want to thank you and your staff for your prompt, timely and professional response to our request for review. Without the diligence of your staff, along with the honesty of our interviewed employees, we may never have discovered the truth about what had been occurring in our Wilmington branch OSH office.

As a manager, I was deeply disturbed by the allegations communicated to me. While I am similarly disturbed now that the majority of those allegations have been substantiated by your investigation, I find comfort in the system which allows independent investigations to be conducted to protect the tax paying citizens of our State. In the five years that I have served as the Commissioner of Labor, I have consistently communicated to my co-workers in the department the importance of treating each other with respect and the special responsibilities that come with public service. While the vast majority of my staff takes these responsibilities to heart, which is evidenced by their words and deeds, I must confess that I am dismayed that one of our longtime supervisors has shown no respect for these basic tenets.

Following the receipt of the draft report, we immediately took action, in accordance with state personnel policies, to institute disciplinary proceedings. On Thursday, November 13, 1997, the employee was given an opportunity to respond to the findings in the report. He did not dispute the findings and on Friday, November 14, 1997, he was terminated from his employment with the Department of Labor for improper personal conduct which is discussed further in response to each specific allegation.

1. THE AREA SUPERVISOR VIOLATED DEPARTMENTAL POLICY BY VIEWING PORNOGRAPHIC MATERIAL ON HIS STATE COMPUTER.

As you are aware, the Department of Labor long ago foresaw the need to limit the personal use of the state computers, and I have had in place a Departmental agreement which is signed by every employee of the Department. The employee in question violated this agreement in two ways, by accessing and viewing pornography of an extremely offensive nature via the Internet and by using the state computer to draft personal correspondence, some of which related to secondary

employment. In light of the investigatory findings of using the state Internet service to access and view pornography in violation of express policy, I have determined that the appropriate level of discipline that the employee should receive is termination for improper personal conduct (which was carried out on November 14, 1997).

Additionally, I am personally sending out an E-mail to all employees advising that the departmental agreement must be honored and that infractions will be dealt with seriously.

2. THE AREA SUPERVISOR REQUESTED THAT EMPLOYEES PERFORM PERSONAL TASKS FOR HIM.

In this allegation, employees communicated to your investigator that they were required to perform a variety of personal tasks for this supervisor, some of which occurred on state time. The supervisor's response is that while they may have performed personal tasks for him, in no way were they required to perform these tasks. Even though the evidence is in conflict as to whether or not the tasks were actually performed in violation of state policy, your report clearly reveals that employees under this supervisor felt that they had no right to refuse to perform personal tasks for the supervisor.

I recognize that co-workers will become friends and may agree to perform personal tasks for one another. However, the assertions that the Wilmington staff members felt powerless to refuse their supervisor's requests, coupled with the apparent lack of respect for subordinates, lead me to believe that this supervisor abused his authority over his staff. The staff's perceptions that any refusal would result in acts of reprisal were certainly real to them.

I plan to develop a formal policy to be communicated to all staff members that while I do not intend to meddle in their interpersonal relationships, that they should always feel free to refuse any requests to perform personal tasks for any supervisor. Staff members who feel that refusal could result in acts of reprisal will be directed to report any such incidences to either me personally or my designee in my absence for appropriate handling. In this policy, I also plan to remind all supervisors that no one is to ask a subordinate to perform any personal tasks on state time, and that such will result in disciplinary actions up to and including dismissal. Additionally, any legitimate request should be accompanied by an oral reminder that refusal will not reflect negatively on the relationship.

During the pre-disciplinary conference, the supervisor was asked about the staff's assertions that personal tasks were done on state time at his direction. The supervisor was unable to convincingly refute the staff's numerous assertions, and I have determined that the appropriate level of discipline is termination.

3. THE AREA SUPERVISOR LOANED STATE EQUIPMENT TO A PRIVATE SAFETY CONSULTANT.

In the findings relating to this allegation, it is clear that the supervisor's loaning of state equipment to a private consulting firm for private sector use was unauthorized. This is repugnant to me in light of our limited state resources and the statutory mandate that I have sworn to uphold.

I have asked my staff to develop a formal written policy prohibiting the unauthorized loaning or use of state equipment for private use. Violation of this policy will result in appropriate disciplinary action up to and including dismissal. I have also determined that the appropriate level of discipline for this employee is termination for improper personal conduct.

4. THE AREA SUPERVISOR'S SECONDARY EMPLOYMENT CREATED A CONFLICT OF INTEREST.

Your report reveals that the supervisor admitted to engaging in secondary employment by working for private safety consultants on several occasions within the last seven years. Even though the supervisor alleges that all consulting was done out of state, the conflict of interest is apparent. We have repeatedly informed all employees that no secondary employment is allowed without prior approval. Additionally, the State Personnel Manual clearly states that no secondary employment is allowed without prior approval. All Department of Labor employees are aware of these policies; the supervisor was aware of this policy as evidenced by his coincidental request for permission to engage in secondary employment. In light of the investigatory findings, I have determined that the appropriate level of discipline for this employee is termination.

To avoid this type of conflict in the future, I have asked my staff to develop a written secondary employment policy that prohibits any consulting in the field in which an employee has any enforcement or training responsibilities. Employees will be required to sign a statement that they understand that all secondary employment must be approved personally by me or my designee, and that they agree that they will not engage in any outside employment in consulting activities that violate the written policy or state law. The policy will make it clear that violations that create a conflict of interest, a potential conflict of interest, or the appearance of a conflict of interest will result in appropriate disciplinary action up to and including termination. We also plan to examine any existing secondary employment contracts for potential conflicts of interests and void any and all secondary employment contracts to allow institution of the new policy.

In concluding my responses to your findings, I must also advise you that during your investigation, an appropriate senior staff member was in contact with the SBI both orally and in

Mr. Ralph Campbell
November 14, 1997
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writing concerning both the allegations that I forwarded to you for review and the circumstances surrounding the misuse of state telephones. You have been copied on all correspondence to the SBI.

Additionally, the complaint which we referred to your office contained an allegation that the employee in question made inappropriate remarks of a racial, sexual, and religious nature. While the investigation did not support these allegations, I am of the opinion that any remarks of this nature have no place in a truly nurturing work environment. Even though there has been no formal finding, I feel it appropriate to inform you that I immediately directed an appropriate senior staff member to make a referral to EEOC along with a letter to the aggrieved employee advising them how to file their own complaint with EEOC.

Of a more general note, I have also begun to institute additional measures to insure that this type of behavior does not occur again within my department. I plan to put into place an internal confidential complaint procedure where employees can report unacceptable behavior to a neutral party outside of their chain of command within the department. Hopefully, this will help us discover any potential problems. As always, I intend to refer allegations of improper activities outlined in N.C.G.S. §147-64.6 and N.C.G.S. §126-84 to your office for impartial investigation.

Additionally, it is my intention to devote a portion of our annual All Employee Day session, which includes all Department of Labor employees, to remind them of their fiduciary duties to the citizens of this State, their responsibilities to each other, and the importance of exhibiting behaviors and actions that are both impartial and appear to be impartial. I also intend to integrate refresher training on EEO issues, secondary employment issues and use of State property into planned training sessions over the next six months.

I also plan to instruct my program managers to become more involved with district offices under their supervision, especially those where only one supervisor is assigned. For this particular field office, I am concerned with the emotional well-being of the remaining employees. I plan to meet with them personally and offer the services of EAP or some other form of counseling to help these employees recover from the lack of dignity and respect to which they have been subjected.

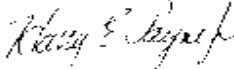
I truly believe that we have done a good job of communicating the parameters of unacceptable behavior; I also believe that the behavior of the subject employee is an aberration which unfortunately casts a shadow over his 20 years of service with this agency. I urge you to review my remedial action plan as set forth in this letter and make any further recommendations that you think appropriate.

Mr. Ralph Campbell
November 14, 1997
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I pledge to you and the citizens of this State that this Department will redouble its efforts to make it clear to our employees that this type of behavior will not be tolerated. Again, let me thank you and your staff for assisting us in uncovering the truth

With warmest professional regards, I remain

Very truly yours,



Harry E. Payne, Jr.
Commissioner of Labor

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DISTRIBUTION OF AUDIT REPORT

In accordance with G.S. §147-64.5 and G.S. §147-64.6(c)(14), copies of this report have been distributed to the public officials listed below. Additional copies are provided to other legislators, state officials, the press, and the general public upon request.

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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. James J. Coman	Director, State Bureau of Investigation
Mr. Marvin K. Dorman, Jr.	State Budget Officer
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Mr. Thomas L. Covington	Director, Fiscal Research Division

November 17, 1997

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Raleigh, North Carolina 27602-5903

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