



STATE OF NORTH CAROLINA
Office of the State Auditor

Leslie W. Merritt, Jr., CPA, CFP
State Auditor

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December 28, 2005

Mr. Robert Zippay, Chairman, Board of Trustees
Wake Technical Community College
9101 Fayetteville Road
Raleigh, North Carolina 27603

Dear Mr. Zippay:

We received two complaints through the State Auditor's Hotline alleging self-dealing among Wake Technical Community College Trustees. One allegation concerned the lease of a building from a College Trustee's family member without full disclosure to the Board of Trustees. The other allegation involved a College Trustee benefiting from the sale of land to the College and the construction of a building without seeking competitive bids.

We have completed a special review of these allegations. The following findings and recommendations are based on our review of applicable policies and procedures, board minutes, contracts, expenditure documentation, state regulations, and interviews of personnel.

Lease of Property from a College Trustee's Family Member

On August 1, 2002, the College entered into a \$229,000 three-year lease agreement with a college trustee's son for a building near its campus on Opportunity Lane. The College Trustee's son acquired the building earlier in 2002 and filed heating, plumbing and electrical permits with Wake County in May of that year. During this same period, the College Trustee negotiated, on behalf of the College, an agreement with the Town of Fuquay-Varina to extend a sewer line to the property. The College President and the Business Manager confirmed the College owns the sewer system servicing this property through an inter-local agreement with the Town of Fuquay-Varina.

College officials said the lease agreement with the College Trustee's son was disclosed in the minutes of the Board of Trustees meeting dated August 15, 2002. They also said the lease agreement was properly disclosed in the notes to the College's financial statements for the fiscal years ended June 30, 2003, and June 30, 2004. Our review of the Board minutes and financial statements confirmed these disclosures. However, the Board of Trustees did not approve the lease agreement until after it was signed and there is no evidence the College Trustee in question abstained from voting on the matter. As a result, the lack of advance disclosure to the Board and

failure to abstain from the voting process created, at a minimum, the appearance of a conflict of interest.

Pursuant to N.C.G.S. §115D-26, all trustees and employees of community colleges are subject to the conflict of interest provisions found in N.C.G.S. §14-234 which addresses public officers or employees benefiting from public contracts. Although N.C.G.S. §14-234 includes the spouses of public officials benefiting from public contracts, and not children, in our opinion, the above transaction still created the appearance of a conflict of interest for the College Trustee and should have been avoided.

Subsequent College Action

The College President said the Board adopted the following motions at its meeting on February 17, 2005:

“Regarding real estate transactions and in order to identify potential conflicts of interest, to resolve real or potential conflicts of interests and to avoid the appearance or perception of any conflict(s) of interest, it is the policy of the Trustees of Wake Technical Community College to provide individual certification that the Board of Trustees has adhered to the conflict of interest provisions of N.C.G.S. §14-234.”

“For the purchase, sale, or lease of real estate, approval of the Board of Trustees of Wake Technical Community College is required. Evidence of that approval must be in the official Board of Trustees minutes and the Board Chair’s signature is required on the appropriate legal documents executed on behalf of the Board of Trustees.”

Each member of the Board of Trustees also received a copy of Code of Ethics for the Community College Trustee from a Manual for Trustees of North Carolina Community College System, a copy of Executive Order Number One from the North Carolina Board of Ethics, and a copy of N.C.G.S. §§14-234, 143-318.10 and 143-318.11.

Recommendations

While we commend the actions already taken, we recommend the College strengthen its conflict of interest policy by including a provision that addresses the appearance of a conflict by a trustee, directly or indirectly, inclusive of all immediate family members. Board members should fully disclose any potential conflicts of interest to the entire Board of Trustees.

We also recommend the College consider adopting the North Carolina Board of Ethics Executive Order Number One dated January 12, 2001, or a similar policy. This Order states “a public official shall not knowingly use his or her position in any manner which will result in financial benefit, direct or indirect, to the Public Official, the Official’s family, or an individual with whom or business, organization, or group with which the Public Official is associated.”

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Acquisition of Land and Construction of Building through Zip Capital, LLC

In 1999, a consortium of several community colleges received a \$650,000 grant from the N.C. Community College System to build a regional training center to train students in the manufacture of plastics. In March of 2001, the College entered into a contract with a company named Zip Capital, LLC to purchase land and construct a training center for \$625,000.

The College made five progress payments totaling \$550,000 to Zip Capital, LLC between May 29, 2001, and October 9, 2001. The College made a final payment at closing on October 16, 2001, for \$76,558.46 of which \$62,776.60 was disbursed to Zip Developers, Inc. to extinguish a loan. The \$76,558.46 included various settlement charges related to the acquisition of the property.

The former Chairman of the Board of Trustees (the Chairman) was a principal in Zip Developers, Inc. with an 8 $\frac{1}{3}$ % ownership interest during the time of these transactions. Zip Capital, LLC was a wholly-owned subsidiary of Zip Developers, Inc. until its dissolution in January 2005. The former Chairman acknowledged receiving \$5,610 from the sale of this property to the College.

The following state law prohibits public officials from benefiting from public contracts:

N.C.G.S. §14-234 – Public officers or employees benefiting from public contracts; exceptions.

(a) (1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.

* * *

(a1) (4) A public officer or employee derives a direct benefit from a contract if the person or his or her spouse: (i) has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract; (ii) derives any income or commission directly from the contract; or (iii) acquires property under the contract.

Therefore, the former Chairman of the Board of Trustees appears to have violated N.C.G.S. §14-234 by receiving a direct benefit from a public contract. According to the statute, violations of this law are a Class 1 Misdemeanor. Moreover, minutes from the meetings of the Board of Trustees during this period do not include disclosure of the former Chairman's ownership interest in Zip Developers, Inc. or abstention from voting on the contract with Zip Capital, LLC.

As noted earlier, the total contract price for the construction of the new training center was \$625,000. The following state law requires competitive bidding for all new construction with a value greater than \$300,000.

N.C.G.S. §143-129. Procedure for letting of public contracts.

- (a) Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than three hundred thousand dollars (\$300,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars (\$90,000) may be performed, nor may any contract be awarded therefore, by any board or governing body of the State, or of any institution of the State

Mr. Robert Zippay, Chairman, Board of Trustees

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government, or of any political subdivision of the State, unless the provisions of this section are complied with.

There is no evidence the College solicited or obtained competitive bids for this project. Thus, the College appears to have violated the above general statute by failing to obtain competitive bids for the construction of the training center.

Subsequent College Action

The College President said the Wake County Board of Education did not re-appoint the former Chairman to the Board of Trustees. Additionally, the Board adopted the motions mentioned previously at its meeting on February 17, 2005.

Recommendations

As recommended above, the College should strengthen its conflict of interest policy by including a provision that addresses the appearance of a conflict by a trustee, directly or indirectly, and the Board should fully disclose any potential conflicts of interest to the entire Board of Trustees.

Also, we recommend the College consider adopting or establishing an ethics policy prohibiting a trustee from knowingly using his or her position in any manner for financial gain or benefit, directly or indirectly. All Board members should comply with G.S. 14-234 which prohibits public officers from benefiting from public contracts. The College should consult with legal counsel concerning repayment of the amount the former Chairman of the Board of Trustees received through his interest in Zip Capital, LLC.

Finally, the College should implement procedures to ensure compliance with N.C.G.S. §143-129 for construction or repair work exceeding \$300,000.

Please provide your written response to these findings and recommendations, including corrective actions taken or planned, by January 17, 2006. In accordance with N.C.G.S. §147-64.6(c)(12), the Governor, the Attorney General, and other appropriate officials will receive a copy of this management letter. If you have any questions or wish to discuss this matter further, please contact us. We appreciate the cooperation received from the staff of Wake Technical Community College during our review.

Sincerely,



Leslie W. Merritt, Jr., CPA, CFE
State Auditor

Management letters and responses receive the same distribution as audit reports.



WAKE TECH COMMUNITY COLLEGE

Office of the President

January 10, 2006

Hon. Leslie W. Merritt, Jr., CPA, CFE
State Auditor
Office of the State Auditor
2 South Salisbury Street
20601 Mail Service Center
Raleigh, North Carolina 27699-0601

Subject: Your draft letter dated December 28, 2005 concerning two complaints received through the State Auditor's Hotline.

Dear Mr. Merritt:

Thank you for the December 28, 2005 draft letter that you forwarded to me in my capacity as chairman of the Board of Trustees of Wake Technical Community College.

We appreciate the courtesy of allowing us to respond to the draft prior to its being made final. Also, we are glad to learn that you feel that the staff of the College was cooperative during your review.

I have reviewed the draft with Dr. Stephen Scott, president of the College. We have also had the letter reviewed by Wake Tech's legal counsel, and his memorandum is attached.

Based on your recommendations, I will ask the Board of Trustees to do the following:

1. The Board should develop and implement a strengthened ethics and conflicts of interest policy which provides, among other things that:

(a) all Board Members should disclose to the Board facts that could appear to be a conflict of interest, and such disclosure should appear in Board minutes (or accounts of closed sessions); and

(b) a Board Member should not knowingly use his or her position in any manner that would result in financial benefit, directly or indirectly, to the Board Member, the Board Member's mother, father, spouse, siblings, children or grandchildren, or any business entity in which he owns more than 10% equity or voting interest; and

(c) all Board members comply with N.C. Gen. Stat. § 14-234.

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2. The Board should develop and implement procedures to ensure compliance with N.C. Gen. Stat. § 143-129 for all construction or repair work exceeding \$300,000.00.

Per your recommendation, we have consulted with legal counsel, M. Blen Gee, Jr., concerning the conduct of former Board Chairman, Don H. Perry. Our attorney's opinion is that it is unlikely that a court would find that Mr. Perry's conduct violated the statute as it existed at that point in time, and that legal action is not recommended. Please see the attached memorandum from counsel.

I would happy to discuss this matter if you have any questions or if you feel that further action by the Board would be appropriate.

Sincerely,



Robert Zippay
Chairman, Board of Trustees
Wake Technical Community College

cc: Board of Trustees, Wake Technical Community College

Attachment