

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

STATE OF NORTH CAROLINA
Office of the State Auditor

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June 28, 2006

Mr. Robert Gruber, Executive Director
North Carolina Utilities Commission Public Staff
4326 Mail Service Center
Raleigh, North Carolina 27699-4326

Dear Mr. Gruber:

We received a complaint through the State Auditor's Hotline alleging the Information Technology Director (Director) for the North Carolina Utilities Commission Public Staff (Public Staff) engaged in secondary employment on state time using state resources. According to the complainant, the Director used a state computer and network resources to teach college courses during the day.

We have completed a special review of these allegations. The following findings and recommendations are based on an examination of the Director's computer and Public Staff computer network; verification of the Director's secondary employment; interviews of personnel; and review of various documents, records, policies and regulations.

Violation of Secondary Employment Policy

Allegations concerning the Director's secondary employment were also reported to Public Staff management. As a result of an internal investigation the Director completed a *Request for Approval of Secondary Employment* in July 2004 indicating he devoted four and one half hours per week to secondary employment at one local college. We determined that the Director taught courses at Peace College, Wake Technical Community College, and Capella University during the past two years. The Director's class schedules indicated he taught two to five classes per semester, primarily in the evenings and on weekends, although some classes were scheduled during the day.

The Secondary Employment Policy for the Public Staff and the North Carolina Department of Commerce requires that all employees obtain approval from their supervisor, a Commission or Division Head, and the Human Resources Director before engaging in secondary employment. Additionally, the policy specifies that the request, "...should include specific duties and work schedule for the secondary employment." The policy also maintains that secondary employment may not adversely affect the primary employment of the employee.

In our opinion, the Director violated the Public Staff's secondary employment policy by excluding two of his teaching positions on the secondary employment request. Moreover, this deficiency prevented management from adequately assessing the effect of the Director's secondary employment on his primary employment with the Public Staff.

Use of State Resources for Secondary Employment

Our review also confirmed the Director used state computer resources for secondary employment. An examination of the Director's state computer revealed 8,337 emails related to secondary employment over a six-year period. The emails included communications between the Director and his students and staff at the educational institutions identified above. We also identified 941 additional emails related to student petitions. The emails were generally sent or received during normal work hours and included the Director's contact information at the Public Staff. The Director acknowledged that students sent emails to him at work.

Public Staff employees are subject to the North Carolina Department of Commerce *Internet Acceptable Use Policy*. The policy was adopted from the North Carolina Information Resource Management Commission policy governing the use of the North Carolina Integrated Information Network (NCIIN). It identifies allowable use of computer resources, including hardware, software, and networking facilities and specifies that employees **"...may make reasonable personal use of publicly owned or provided NCIIN or internet resources as long as...there is no negative impact on employee performance of public duties."**

In our opinion, the Director's extensive use of state computer resources for secondary employment violated the "reasonable personal use" provision of the above policy. In addition, the Director's email activities as well as his class schedules suggest a considerable amount of time was devoted to secondary employment during normal work hours. The Director said he often worked into the evenings to make-up any time associated with teaching during the day. However, our review of the Director's computer event logs as well as interviews of Public Staff employees did not fully support this assertion.

Recommendations

Management should take appropriate disciplinary action for the Director's failure to fully disclose the extent of his secondary employment and for violating the "reasonable personal use" provision of the Public Staff internet policy. Management should ensure that employees fully disclose all secondary employment, on an annual basis, including specific duties, schedules, and time commitments beyond scheduled hours, to fully assess the impact on primary employment with the Public Staff. Management should also reemphasize the "reasonable personal use" provision of the Public Staff internet policy.

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

Sincerely,



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

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



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

July 17, 2006

The Honorable Leslie W. Merritt, Jr.
State Auditor
20601 Mail Service Center
Raleigh, NC 27699-0601

Dear Sir:

I am responding to your letter dated June 28, 2006, wherein you notified me that your office had concluded an investigation relating to the Information Technology Director of the North Carolina Utilities Commission Public Staff (Public Staff), and found that this employee violated the Public Staff's policy regarding secondary employment as well as the "reasonable personal use" provision of the Public Staff's internet policy. Your office recommended that Public Staff management should take appropriate disciplinary action, and should ensure that all secondary employment be accounted for in substantial detail, and that management should also reemphasize the "reasonable personal use" provision of the Public Staff internet policy.

The Executive Director of the Public Staff has discussed the matter with the employee in conference and has taken disciplinary action, and issued a Memorandum which was hand-delivered to him, which provides as follows:

- (1) Prohibits any further secondary employment by the employee as of September 1, 2006, but allows him to continue on-line instruction during the remainder of the summer so as not to disadvantage current students at Capella University.
- (2) Repeats an earlier warning to the employee that he must not violate the "reasonable personal use" provision of the Public Staff's internet policy.
- (3) The Information Technology Division of the Public Staff is reorganized effective July 17, 2006, and will no longer operate as a separate division of the Public Staff, but its members will operate as part of the Economics and Finance Division. The employee will no longer serve as a division director, and will report to Mr. Thomas Farmer who is Director of the Economics and Finance Division.

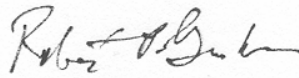
Robert P. Gruber, Executive Director
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- (4) The employee will be required for a period of one year from July 17, 2006, to provide to his immediate supervisor weekly, daily, and hourly documentation regarding his work schedule and project tasks. This requirement may be discontinued after one year at the discretion of the Division Director and the Executive Director.

I appreciate the professional and courteous manner in which you and your employees investigated and resolved this matter.

Sincerely,



Robert P. Gruber
Executive Director