



STATE OF NORTH CAROLINA
Office of the State Auditor

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

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November 26, 2007

Mr. Howard Lee, Chairman
North Carolina State Board of Education
301 N. Wilmington Street
Raleigh, North Carolina 27601

Ms. June Atkinson, State Superintendent
Department of Public Instruction
Education Building
301 N. Wilmington Street
Raleigh, North Carolina 27601

Dear Mr. Lee/Ms. Atkinson:

We received a complaint through the *State Auditor's Hotline* concerning the arrangement that allowed the Chairman of the State Board of Education (State Board) to rent a car to use while conducting State Board business. Pursuant to North Carolina General Statute §147-64.6(c)(16), our investigation of this matter resulted in the following findings and recommendations.

Rental car arrangement was not most economical option

On May 15, 2003, the Governor appointed the State Board of Education Chairman to fill an unexpired term as a board member. The board membership unanimously elected him to serve as Chairman.

During the initial months of his appointment, the State Board Chairman utilized his personal vehicle when conducting official board activities. These activities included travel from his Chapel Hill home to his State Board office in Raleigh as well as travel to other locations throughout the state. As a non-state employee board member, the State Board Chairman was entitled to receive compensation for vehicle use of \$0.25 per mile.

After a few months, due to increased mileage on his personal car, the State Board Chairman requested a state vehicle to drive. However, the Department of Administration's Motor Fleet Management regulations state that, "State owned passenger-carrying vehicles shall be driven by state employees and for official state business only." Because the position of Chairman of the State Board is an un-paid appointed position, the State Board Chairman was not authorized to drive a state vehicle.

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Therefore, the State Budget Office granted approval by e-mail as follows:

“...after consultation with Motor Fleet Management and the Department of Insurance and referring to various statutes and the State Budget Manual, a member of the State Board of Education can either use their privately owned automobile reimbursable at twenty-five cents per mile or the Department may rent an automobile.”

State Budget Office officials cited an Attorney General’s opinion which referred to North Carolina General Statute § 138-6(a)(2) and considered a rental car as an “other conveyance” reimbursable at the actual cost. After giving approval for the rental car, State Budget officials advised:

“...since this vehicle is being used in lieu of a privately owned personal vehicle for which actual mileage reimbursement would be paid at the allowable twenty-five cents per mile rate, the Department is encouraged to monitor the total costs and compare it to what would have been the cost using the state-allowed mileage rate because we may wish to explore other options.”

The State Board rented a Chrysler 300 from Triangle Rent-A-Car¹ on September 19, 2004 and continued on a monthly basis until November 8, 2006. Monthly payments during that period totaled \$43,514.22 at an average of \$1,611.64 per month.²

The State Board Chairman said he returned the vehicle from November 8, 2006 to February 5, 2007 because he was not going to be traveling for a few months. However, during that period, the State Board Chairman received mileage reimbursement for use of his personal vehicle for \$935 for 3,740 miles. This amount included an overlap of five days when the State Board also paid for the rental car.

On February 5, 2007, the State Board rented a Chrysler 300 from Enterprise Rent-A-Car at a rate of \$1,503.12 per month. We reviewed invoices related to five payments thru June 2, 2007 totaling \$7,515.60. In addition to the rental car payments, the State Board Chairman was reimbursed for \$6,069.58 for gas purchases related to the rental car.

Due to inconsistent information contained on the rental car invoices, we were unable to determine actual miles driven on a monthly basis. The State Board Chairman said that he included all gas receipts with his reimbursement requests related to his travel activities while on State Board business and did not use the car for personal use. Therefore, we used those gas

¹ Triangle Rent-A-Car and Enterprise Rent-A-Car are two approved vendors on state contract.

² During one brief period between February 1 and February 22, 2006, the State Board Chairman drove his personal vehicle and was reimbursed \$520.50 for mileage.

receipts and applied a 25 mile per gallon average³ to calculate miles driven. Based on this estimate, we determined that during the 34-month period we reviewed, the State Board Chairman drove approximately 67,795 miles for an average of 1,994 per month or approximately 24,000 miles per year.

We asked the State Board Chairman if a long-term lease was considered as a lower cost option instead of a month-by-month arrangement. He said he thought the monthly rental was the most economical option when excess mileage charges and insurance payments were factored into the total cost of a leased vehicle. He also said the monthly arrangement gave the State Board flexibility to turn the car in if it was not needed for a short period of time.

We obtained three quotes for a lease of a 2007 Chrysler 300 for a period of 36 months with a mileage limit of 30,000 miles. The amount less property tax and insurance was an average of \$615 per month. Table 2 below shows a comparison of the cost associated with renting the same vehicle as opposed to leasing it for a 36-month period.

Table 2							
Rental vs. Lease Comparison							
	Payments (1)	Insurance (estimate) (2)	Tax (estimate) (3)	Gas	Total	Miles Driven	Ave. Per Mile
Rental	\$51,030			\$6,070	\$57,100	67,795	\$0.84
Lease	\$20,910	\$2,475	\$1,200	\$6,070	\$30,655	67,795	\$0.45
Difference					(\$26,445)		(\$0.39)
Sources: Lease quotes obtained from three local Chrysler dealerships							
(1) 34 monthly payments of \$615 on 36-month lease compared to actual payments related to rental car.							
(2) Based on quote from G.E.I.C.O. Standard full coverage, average mileage of 25,000 per year, clean driving record. \$825 per year.							
(3) Property tax estimate provided by leasing company \$300-\$400 per year. Sales tax included in monthly rate.							

Our analysis revealed that leasing the same vehicle rather than renting it on a monthly basis would have resulted in a savings of approximately \$0.39 per mile or \$26,445 in total.

When State Budget Office officials approved the vehicle rental, they suggested that records be maintained related to miles driven and cost so that a review could be made to explore less expensive options at a later time. According to State Budget Office and State Board officials, this analysis was never performed.

³ EPA mileage estimate for Chrysler 300. 21/28 mpg, city/highway

Recommendation

The State Board should consider alternative options related to providing the State Board Chairman with a vehicle. The State Board should monitor the costs of each alternative and review it periodically to determine whether future changes should be made.

Improper payment of travel expenses

On April 1, 2005, the State Board Chairman was appointed to the Utilities Commission. According to the State Personnel Management Information System, this position is classified as a permanent, full-time position that is exempt from the State Personnel Act and has a statutorily set salary of \$119,900. As such, the Utilities Commission position qualifies the State Board Chairman as a state employee.

The State Budget Manual outlines regulations governing payments to members of state boards as follows:

Travel Policies for Non-State Employee Members of State Boards

- 1) Section 5.3.1 “...*non-state employees who are members of state boards...shall receive \$15 per day of official service. State employees and members of all state boards...whose salaries or any portion of whose salaries are paid from state funds shall receive no per diem compensation from state funds for their services.*”
- 2) Section 5.3.2 “*Meal subsistence for non-state employee members of state boards...is a daily lump-sum allowance payable per day of official service.*⁴”

Travel Policies for State Employee Members of State Boards

- 3) Section 5.3.7 “*When an overnight stay is not required, the state employee is allowed actual cost of any meal (including lunch) eaten while on official state business if the meal is preplanned as part of the meeting for the entire board....*”
- 4) Section 5.3.8 “*If the employee is eligible for reimbursement for any other meal, that reimbursement is limited by the same reimbursement amounts and regulations as those allowed for in-state and out-of-state travel by a state employee who is not a member of a state board...*” (emphasis added)

Reimbursement request forms submitted by the State Board Chairman for the period September 2004 to June 2007 state: “In order to be reimbursed for the below listed meals, the following guidelines must be met. Travel destination must be 35 miles from your regularly assigned workstation. Departure and arrival times must be included on form in order to be reimbursed for meals.”

⁴ \$32.00 per day during the period under review.

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Prior to the State Board Chairman's appointment to the Utilities Commission, he was properly paid a \$15.00 per diem and reimbursed for meals in accordance with state regulations. Department of Public Instruction (DPI) staff responsible for processing the reimbursement requests indicated that, after he was appointed to the Utilities Commission, they stopped paying the per diem because he was now receiving a salary from state funds.

When asked to explain the reimbursement regulations, DPI staff expressed a proper understanding of the different requirements related to a state employee rather than a non-state employee board member. They said questions arose regarding the State Board Chairman's status and they wrongly concluded that his position as a Utilities Commissioner was not classified as a state employee. As a result, they continued paying subsistence reimbursement requests as if he were a non-state employee board member by paying a lump-sum amount for meals (less any meals provided for him).

We reviewed reimbursement forms submitted by the State Board Chairman after his appointment to the Utilities Commission. The forms did not indicate departure times or overnight travel status as required by the regulations related to state employee board members. Therefore, we determined that \$9,523 related to meals expense was improperly paid to the State Board Chairman.

Recommendation

We recommend that the Department of Public Instruction clarify its policies regarding reimbursement of expenses for board members and determine if any other payments have been improperly made to state employee board members. In addition, the Department of Public Instruction should seek re-payment of the \$9,523 of improper payments.

Appropriate to drive state vehicle

The State Board Chairman requested to be assigned a state vehicle to use while conducting State Board business. Because he was not a state employee, he was not authorized to drive a state vehicle. However, on April 1, 2005, the State Board Chairman was appointed to the Utilities Commission. This position meets the definition of a state employee according to Motor Fleet Management Regulations as follows: "*A state employee is defined, for the purpose of vehicle assignment, as any individual working for the State of North Carolina for wages or salary.*"

State Board officials told us that, when the State Board Chairman was appointed to the Utilities Commission, Department of Administration officials informed the State Board that the State Board Chairman's position with the Utilities Commission would not allow him to have a state vehicle assigned to him for State Board business. Therefore, the rental car arrangement continued.

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However, we contacted Motor Fleet Management officials during our review and Motor Fleet Management officials confirmed that an appropriate alternative existed. The State Board could have a vehicle permanently assigned to it. Then, the State Board could assign the car to the State Board Chairman. Currently, the Department of Public Instruction has such a vehicle assigned that lists the State Superintendent of Schools as the primary driver.

According to Motor Fleet Management officials, the requirement for a vehicle assignment would be a minimum mileage of 1,000 per month at \$0.25 per mile and \$0.25 per additional mile. If that arrangement had been utilized since the State Board Chairman's appointment to the Utilities Commission, the cost would have been approximately \$13,871⁵ instead of \$46,566⁶ for a savings of approximately \$32,695.

Recommendation

We recommend that the State Board consider requesting a state-owned vehicle be assigned to the State Board and be made available to the State Board Chairman to drive while carrying out his official duties.

Please provide your written response to these findings and recommendations, including corrective actions taken or planned, by November 5, 2007. 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. If you have any questions or wish to discuss this matter further, please contact us. We appreciate the cooperation received from the employees of the North Carolina Board of Education and Department of Public Instruction during our review.

Sincerely,



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

⁵ Estimate based on 55,484 miles driven at \$0.25 per mile since appointment to the Utilities Commission.

⁶ Total cost of rental car plus gas since appointment to the Utilities Commission.

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



PUBLIC SCHOOLS OF NORTH CAROLINA

STATE BOARD OF EDUCATION Howard N. Lee, *Chairman*

DEPARTMENT OF PUBLIC INSTRUCTION June St. Clair Atkinson, Ed.D., *State Superintendent*

WWW.NCPUBLICSCHOOLS.ORG

November 14, 2007

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

Dear Mr. Merritt:

We are providing this letter in response to the complaint your office received through the *State Auditor's Hotline* concerning the arrangement that allowed the Chairman of the State Board of Education (State Board) to rent a car to use while conducting State Board business.

Response to Findings and Recommendations:

1. The State Board should consider alternative options related to providing the State Board Chair with a vehicle. The State Board should monitor the costs of each alternative and review it periodically to determine whether future changes should be made.

The Department of Public Instruction (DPI) since February 2004, has consistently attempted to provide the State Board Chair with the most cost effective, legal transportation option while on State Board of Education business. DPI explored giving the State Board Chair access to the car assigned to the State Superintendent, access to a car assigned to DPI for its employees' use, or use of a Motor Pool vehicle. DPI was unable to secure approval for any of those options from the appropriate agencies. The State Budget Office did authorize DPI to obtain a rental vehicle for the Chairman's use from a rental car agency with which the State had contractual relationships. At that time, the option to lease a vehicle was discussed at length. Since the length of the lease was fixed and no one knew how much or how long the Chairman would use the rental vehicle, a lease was determined not to be the most cost effective resolution. In hindsight, given the Chairman's extensive travels to address the significant reform issues facing our public schools, a lease would have been a more cost effective option. However, at the time DPI was making decisions about the rental car, we could not anticipate events and the shorter commitment seemed to be the more

OFFICE OF FINANCIAL AND BUSINESS SERVICES

Philip W. Price, *Associate Superintendent* | pprice@dpi.state.nc.us

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AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

reasonable course. As DPI addresses future car needs for the State Board Chair, we will diligently pursue the most cost effective means to meet the Chairman's travel needs, will monitor his use, and revise the decisions when appropriate.

2. We recommend that the Department of Public Instruction clarify its policies regarding reimbursement of expenses for board members and determine if any other payments have been improperly made to state employee board members. In addition, the Department of Public Instruction should seek re-payment of the \$9,523 of improper payments.

The Department of Public Instruction has confirmed that State Board members who are State employees have been properly reimbursed in accordance with State Budget Manual regulations. In April 2005, when the Chairman was appointed to the Utilities Commission, he asked the Staff Attorney for the State Board to inquire if a State car could be assigned for his use. The Deputy Secretary of Motor Fleet Management informed the Staff Attorney that he had been told by State Personnel that Utility Commissioners are not state employees entitled to drive State vehicles. However, since the Utility Commissioners are paid with State funds, the Staff Attorney communicated that the \$15 per day stipend was not appropriate under G.S. § 138-5(f). The decision to stop paying the Chairman a \$15 stipend because his position on the Utilities Commission is State funded but to continue to reimburse him for meals as a non-State employee is not inconsistent. Not every person paid with State funds is deemed a State employee. For example, teachers are paid with State funds and are not eligible to receive the \$15 per day stipend but are deemed to be local employees, not State employees.

We have since learned that Utility Commissioners are, in fact, State employees. Consistent with that determination, we are now reimbursing the State Board Chair in accordance with the rules governing State employee reimbursement. To reduce the probability of similar errors in the future, we have initiated procedures that require two independent inquiries on matters such as employment verification.

Following receipt of the Auditor's report, we performed a complete review of all travel reimbursements, to date, for the State Board Chair. First, we analyzed the reimbursements made to the Chairman for travel from April 1, 2005, the date of his appointment to the Utilities Commission, to August 1, 2007. That analysis indicated that, because the Chairman's appointment to the Utilities Commission classified him as a State employee for purposes of

travel reimbursement, the Chairman was over reimbursed \$10,031.00 after April 1, 2005. That figure, which is based on a close review of the documents, is \$508.00 more than the \$9,523.00 stated in the Auditor's report.

We then analyzed the State Board Chair's travel from May 15, 2003, through March 31, 2005, i.e., before his April 1, 2005, appointment to the Utilities Commission. G.S. § 138-6 and Section 5.3.2 of the State Budget Manual authorize non-State employee board members to be paid a daily meal subsistence lump sum allowance (ranging from \$29.50 to \$30.50) for any day they are working on State Board related duties. During this period, the State Board Chair was only reimbursed for specific meals while he was working on Board duties (for example: lunch). Based on our review and the appropriate reimbursement rate, we determined that the Chairman was reimbursed \$7,688.00 less than he was legally entitled to be reimbursed while working on behalf of the State Board of Education during that period. Furthermore, because non-State employees are not required to have departure and arrival times documented on their travel reimbursement forms, we are not able to identify meals for which the Chairman could legally have sought reimbursement after April 1, 2005.

The Department of Public Instruction uses due diligence to determine the appropriate reimbursement regulations for employees and Board members. Our review does not indicate any reimbursement policy that is at odds with prescribed regulations. In this case, we were informed that Utility Commissioners were not State employees and we established reimbursement processes to align with that information. Our review of travel and reimbursement records show: (1) the Chairman did not receive all the reimbursement to which he was legally entitled for May 15, 2003, through March 31, 2005; (2) it is likely that the Chairman had additional reimbursable meal expenses after April 1, 2005; and (3) the errors in reimbursement for allowable meals after April 1, 2005, were not the fault of the Chairman but were due to DPI's inaccurate understanding of the consequences of the Chairman's appointment to the Utilities Commission. In light of those factors, we do not believe that fairness and equity require the requested repayment.

However, when informed of our analysis, the Chairman insisted on repaying the difference between the reimbursement to which he would have legally been entitled and the reimbursement he actually received during the term of his appointment. Therefore, he has written a check to DPI for \$2,343.00 to cover the difference between \$10,031.00 and \$7,688.00. That check has been received and will be credited to the proper account.

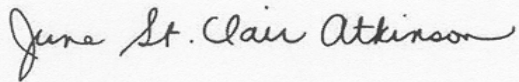
3. We recommend that the State Board consider requesting a state-owned vehicle to be assigned to the State Board and be made available to the State Board Chairman to drive while carrying out his official duties.

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The Department of Public Instruction has been attempting to obtain a State car for the State Board Chair to use since 2004. As outlined in our response to recommendation # 1, DPI was told that, even though he was an employee of the Utilities Commission, the State Board Chair is not authorized to be assigned, or drive, a State vehicle when pursuing State Board business. We will continue discussions with Motor Fleet Management to determine the most cost effective, legal transportation option for the State Board Chair to use while traveling on State Board of Education business.

Please contact Philip Price at 807-3601 if you have any questions about our responses. As always, we appreciate the effort and professionalism of your staff in conducting this audit.

Sincerely,

A handwritten signature in cursive script that reads "June St. Clair Atkinson".

June St. Clair Atkinson

JSA/tm

c: Howard Lee
J.B. Buxton
Philip Price

AUDITOR'S NOTE

The Department of Public Instruction (DPI) management response indicated that they are continuing discussions with Motor Fleet Management to determine the most cost effective, legal transportation option for the State Board Chairman. The response also indicated that DPI has been informed that, even though the State Board Chairman is a state employee, he is not allowed to drive a state vehicle while on State Board business.

As our report indicates, we have contacted the official in charge of Motor Fleet Management who verified that, as a state employee, the Chairman is allowed to drive a state vehicle. He also said that when an agency has an assigned vehicle, it is up to the agency's discretion who drives it as long as the individual is authorized to drive a state vehicle.

The DPI asserted in their response that the justification for the rental car arrangement was "...the Chairman's extensive travel to address the significant reform issues facing our public schools..." Our review of the State Board Chairman's travel indicated that most of the miles driven by the State Board Chairman were related to his 80-mile round trip commute from his Chapel Hill home and short trips around the Raleigh area.

Considering his full-time activities as a non-state employee member of the State Board, initially it was reasonable to provide an alternative vehicle for the Chairman's use in lieu of the \$.25 per mile statutory rate since a state vehicle was not an option. However, the Chairman is now a compensated full-time state employee and providing a vehicle for him to use primarily to commute from his home is not appropriate. In fact, the use of this vehicle primarily for his commute from his home to work is, to our knowledge, a benefit no other state employee enjoys.

Therefore, our recommendation to have a state vehicle assigned to the DPI and allow the Chairman to drive that vehicle while conducting State Board business remains the most cost-effective alternative that is consistent with state regulations for such assignment and use.