

STATE OF NORTH CAROLINA  
Office of the State Auditor

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

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January 10, 2008

Mr. Richard H. Moore, State Treasurer  
North Carolina Department of State Treasurer  
325 N. Salisbury Street  
Raleigh, North Carolina 27603-1385

Dear Treasurer Moore:

On the morning of September 18, 2007, the Office of Lieutenant Governor's general counsel sent a letter to the State Auditor requesting an investigation into the possible use of state computers within the Department of State Treasurer (State Treasurer) for political purposes. Allegedly, a private citizen used a state computer to send a public records request to conduct political campaign opposition research. While we recognize the potential partisan political intent of this request, the Office of the State Auditor has a statutory obligation to review allegations of misconduct, abuse of power, and misuse of state resources. Pursuant to North Carolina General Statute § 147-64.6(c)(16), our investigation of this matter resulted in the following findings and recommendations.

**Use of State Resources for Politically-motivated Public Information Request**

The Office of the Lieutenant Governor received public information requests from a "Cliff Bennett" of St. Claire Shores, Michigan. The Lieutenant Governor's staff conducted research into the origin of these requests and determined they were sent from a state computer within the Department of State Treasurer using a private e-mail account.

Upon learning of the complaint to the State Auditor, the State Treasurer's Chief Deputy conducted an internal review. The review confirmed the Senior Advisor<sup>1</sup> to the State Treasurer sent these requests through State Treasurer computers via a private e-mail account belonging to her father-in-law. However, the Chief Deputy said their review did not include any further investigation of the Senior Advisor's computer, work hours, or work activities since the Senior Advisor admitted sending the e-mails in question.

The Chief Deputy sent an immediate e-mail reminder to all employees regarding the department's "Internet Usage" policies. The State Treasurer's "Protection of Electronic Communication" policy states non-compliance with the policy *"could result in removal of access rights and special system privileges, removal of system access, or...disciplinary action to include potential termination of employment."* Further, the "Internet Web and Email Usage" policy

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<sup>1</sup> The Senior Advisor also acts as the deputy campaign manager for the State Treasurer's campaign for governor.

requires “*staff will identify themselves clearly and accurately.*” The Senior Advisor’s use of a relative’s e-mail account also violates that policy. After this political use of state resources was confirmed by State Treasurer officials, the State Treasurer took “appropriate disciplinary action” against the Senior Advisor.

When we interviewed the Senior Advisor, she admitted using her state computer and her father-in-law’s personal e-mail account between August 2006 and January 2007 to send these public information requests as well as requests to other state agencies including the State Ethics Commission and the Attorney General’s Office. She told us the requests were intended for political research purposes. The Senior Advisor said she was not instructed to send the e-mails by anyone associated with the State Treasurer or the campaign. Also, she said nobody was aware she used state computers to send the public information requests. The Senior Advisor stated she used the alias because she did not believe agencies would respond to requests using her name given her connection to the campaign.

### **Use of State Computers for Other Political Activities**

As a result of the confirmation of political activity regarding the public information requests and prior political activity reported by the Office of the State Auditor (management letter released April 17, 2006), we expanded our review to determine whether other political activity was occurring within the Department of State Treasurer. Our review revealed that four State Treasurer employees worked both part-time as state employees and part-time as paid volunteers of the State Treasurer’s campaign for governor. These four employees are the Senior Advisor, the Director of Scheduling and Constituent Affairs, the Special Assistant for Legislative Affairs, and the Executive Assistant for Logistics. Each of these four employees is classified as exempt from the State Personnel Act.

Analysis of state computers assigned to these four employees revealed significant evidence of political activity using state resources. We found these employees accessed political websites belonging to political action committees, polling consultants, and the North Carolina Democratic Party’s on-line voter database. In addition, our review revealed 53 political documents including campaign speeches, planning documents, a donor “thank you” letter, fliers and agendas for campaign meetings, and political action committee and Democratic Party contact lists. Finally, we discovered approximately 60 e-mails<sup>2</sup> regarding campaign activity that circulated between State Treasurer employees and the State Treasurer’s campaign staff. It appears State Treasurer employees accessed these e-mails on state computers using private e-mail accounts and often responded to these e-mails on their state computers. While the employees primarily used private e-mail rather than State Treasurer e-mail accounts, these activities were still conducted in state

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<sup>2</sup> This number is unduplicated as we did not count each reply within an e-mail chain as an individual e-mail and we did not count each employee involved as a separate incident.

offices on state computers using the state network. In addition, computer analysis indicated the Chief Deputy and the Communications Director were occasionally included in correspondence related to campaign activities.

The State Treasurer and all employees interviewed said there were clear instructions to keep campaign activities separate and only perform state functions on state time. All employees interviewed denied witnessing others performing campaign duties within the State Treasurer's offices. In addition, all employees claimed they had not been instructed to perform campaign duties or observed anyone else instructed to conduct political tasks. In general, the employees denied performing political activity themselves. However, four employees (Special Assistant for Legislative Affairs, Director of Scheduling and Constituent Affairs, Senior Advisor, and Communications Director) admitted access of and response to campaign e-mails through private e-mail accounts on their state computers.

The Special Assistant for Legislative Affairs admitted she received some campaign e-mails on her state computer and may occasionally write a "brief response." The Special Assistant for Legislative Affairs further admitted reading campaign e-mails through her private e-mail account on her state computer. She said she keeps her private e-mail account open all day and accesses it on her state computer "daily."

The Director of Scheduling and Constituent Affairs said all campaign activities are performed through a different e-mail, phone, and post office box. However, she admitted bringing a campaign-provided laptop computer to the State Treasurer's offices "on very rare occasions" but had not used the State Treasurer's internet access with the campaign laptop. The Director of Scheduling and Constituent Affairs admitted accessing campaign e-mails through private e-mail accounts on her state computer and responding to some of those e-mails.

The Senior Advisor said she uses a personal e-mail account for campaign duties and admitted accessing those e-mails "daily" on state computers. In addition, the Senior Advisor said she "probably" responded to campaign e-mails through her personal e-mail account using state computers.

The Communications Director said she accesses her private e-mail account on state computers. She said she "tries hard not to" read or respond to campaign e-mails but conceded it was possible that she had "on occasion."

After being provided evidence of this political activity, State Treasurer management admitted that nine e-mails, the donor "thank you" letter, a spreadsheet listing female supporters of the State Treasurer's campaign, and a memo from the Democratic Leadership Council were inappropriate. In addition, management responded that eight political e-mails we questioned

were not originally sent from state computers though they could not refute their appearance on the computers. Further, their response regarding 18 other campaign-related e-mails was that the Senior Advisor did not recall responding to the e-mails but they did not disprove that these e-mails were accessed or read on state computers.

For most items we believe are political in nature, State Treasurer management claimed the documents and e-mails were related to the Department of State Treasurer's official duties or involved speeches in which the State Treasurer was speaking in an official capacity. However, many of these speeches were given to partisan political groups (including local Democratic Party organizations) and included mentions of the State Treasurer's campaign for governor as well as comments regarding support of and work for the political party. Further, many e-mail messages that State Treasurer management classified as "official duties" involved correspondence with campaign staff to ensure "a consistent message" between the Department of State Treasurer and the campaign for governor. As a result, we believe these are inappropriate uses of state resources.

General Statute §126-13 prohibits political activity by state employees while on duty or using state resources as follows:

**§ 126-13. Appropriate political activity of State employees defined.**

(a) As an individual, each State employee retains all the rights and obligations of citizenship provided in the Constitution and laws of the State of North Carolina and the Constitution and laws of the United States of America; however, no State employee subject to the Personnel Act or temporary State employee shall:

- (1) Take any active part in managing a campaign, or campaign for political office or otherwise engage in political activity while on duty or within any period of time during which he is expected to perform services for which he receives compensation from the State;
- (2) Otherwise use the authority of his position, or utilize State funds, supplies or vehicles to secure support for or oppose any candidate, party, or issue in an election involving candidates for office or party nominations, or affect the results thereof.

(b) No head of any State department, agency, or institution or other State employee exercising supervisory authority shall make, issue, or enforce any rule or policy the effect of which is to interfere with the right of any State employee as an individual to engage in political activity while not on duty or at times during which he is not performing services for which he receives compensation from the State. A State employee who is or may be expected to perform his duties on a twenty-four hour per day basis shall not be prevented from engaging in political activity except during regularly scheduled working hours or at other times when he is actually performing the duties of his office. The willful violation of this subdivision shall be a Class 1 misdemeanor. (1967, c. 821, s. 1; 1985, c. 469, s. 1, c. 617, s. 5; 1993, c. 539, s. 930; 1994, Ex. Sess., c. 24, s. 14(c).)

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While the individuals cited above are all exempt from the provisions of the State Personnel Act, the use of the State Treasurer's computer system to maintain political files was an inappropriate use of state resources. In his response to the 2006 management letter, the State Treasurer said the department would continue to educate employees on the proper use of state resources. The State Treasurer said multiple reminders were given to employees regarding prohibitions against political activity on state time or using state resources and that he "set a hard tone" against such activity. Given the significant evidence of political activity contained on these computers, there exists a lack of oversight of these activities. As a result, we believe stronger action is necessary.

### **Recommendation**

The State Treasurer should discipline all employees who either used state resources for political activity or authorized use of the state computers for such a purpose. Management should provide education to all departmental employees regarding the proper use of state resources and better monitor the activities of employees.

Please provide your written response to these findings and recommendations, including corrective actions taken or planned, by January 24, 2008. 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 employees of the Department of State Treasurer.

Sincerely,

A handwritten signature in black ink that reads "Leslie W. Merritt, Jr." with a stylized flourish at the end.

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

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



RICHARD H. MOORE  
Treasurer  
State of North Carolina

January 24, 2008

The Honorable Leslie W. Merritt, Jr., CPA, CFP  
Office of the State Auditor  
2 S. Salisbury Street  
Raleigh, NC 27699-0601

*via hand delivery*

Dear Auditor Merritt,

On 12/6/07, your staff provided the Department of State Treasurer a list of 60 emails and 53 computer documents your staff deemed "questionable" following their forensic investigation of state computers used by four department employees, over the course of three years. Upon reviewing your list, we discovered most of the emails and documents were clearly state business, personal email, or simply water cooler talk among friends and colleagues. Specifically, your list of questionable items included:

- 6 Excel news media outlet lists
- 12 Excel Christmas card lists
- 51 scheduling items related to official duties
- 1 personal email that included a divorce settlement agreement
- 8 emails sent from a personal home computer while the staffer was on vacation in another state, evidence of which was provided to your office
- 31 emails, for which your office provided no evidence that the email was opened, responded to, or sent from a state computer

There are clearly serious problems with your investigation. First, your staff has adopted a definition of "political" that goes far beyond any reasonable person's definition. Further, what is "political" is not defined by our statutes. I shared the above explanations for the questionable documents with your senior staff and was told that when a legitimate business purpose for an item could be imputed, we would be given the "benefit of the doubt." You have chosen to ignore the evidence that refutes your claims.

In addition, the Department must question your entire methodology given that a number of the emails you identified were not, in fact, sent from a state computer - but were sent from an employee's personal email account, using a friend's personal computer while on vacation in another state. We hoped that our initial response and detailed explanation would give you pause regarding your methodology and the technical forensic work you performed, but apparently it did not.

Based on our review of the "questionable" emails and documents, we found only nine that were of a political nature. However, nine emails among four employees over three years is not "significant"

evidence of political activity. Further, we shared with you early on in your investigation that the specific employee involved in the initial inquiry (and who was responsible for 8 of the 9 problematic items) was suspended for a week without pay. In fact, all of the "recommendations" you propose had already been undertaken prior to your launching your investigation, and documentation was provided to you to show such actions.

Specifically, our review of your findings concludes that nearly all of the electronic incidents can be characterized in the following manner:

**1. Activity that pertained to state business.**

The majority of the documents, emails and web hits on the Auditor's "questionable" list are state business. Many of the items you flagged are related to the Treasurer's public calendar. For example, you note a flyer for the 63<sup>rd</sup> Annual NAACP State convention as "political." The NAACP is a 501c(3) entity which is prohibited from engaging in political activity. Treasurer Moore has supported this organization on such issues as raising the minimum wage, establishing an Earned Income Tax Credit, promoting retirement security, teaching financial literacy, and fighting to end predatory lending practices. In his capacity as State Treasurer, Moore was invited to attend the group's convention. This was a routine scheduling matter.

A number of the items you included, such as visiting websites of labor organizations, are related to the pension fund's corporate governance agenda. The North Carolina Retirement System is a member of the Council of Institutional Investors. The Council is made up of public pension funds, corporate pension funds, and labor organizations. CII works cooperatively with many organizations on corporate governance issues. NCRS partnered with other public pension funds and labor groups on a number of initiatives, including proxy vote issues related to Cintas, CVS Caremark and Exxon Mobil.

The State Treasurer's duties and agenda are far reaching and cover Department-specific issues including retirement, unclaimed property, and the Local Government Commission as well as overarching issues like state budget and personnel policies. The Treasurer sits as Chair of the Banking Commission and serves as a member of the State Board of Education. Like all Council of State members, he is charged with participating on a number of boards and commissions. He currently serves on more than 20 such entities. Due to this wide range of responsibilities, the Treasurer is often asked to take positions or offer opinions on various issues. For example, you note email exchanges with the Center for Voter Education at a time when they contacted a number of statewide elected officials and asked office holders' positions on a pending bill regarding public financing of campaigns. Another example would include staff research on public policy issues such as the Dorothea Dix campus sale. The issue was percolating in the media and staff anticipated the issue might come before the Local Government Commission, which the Treasurer chairs, or before the Council of State. The Treasurer's public agenda includes such diverse issues as global warming, anti-terrorism efforts, executive compensation, minimum wage, and public finance. It is his staff's duty to collect, assess and process diverse information regarding public policy and current events and to interact with many entities including news media and constituency groups.

The Department of State Treasurer, like any other Council of State agency, makes public speeches in its effort to fulfill its statutory missions. For example, working with community-based clubs, key constituency groups and other organizations has proven to be a good way to get the word out about the 1-in-8 citizens whose property we hold in the unclaimed property program. We also sponsor and attend many events that provide citizens with information about the broad range of services this department provides – retirement processing for nine governmental systems representing over 800,000 employees, management of an \$80 billion investment pool, banking services for state agencies, all state bond issuances and local government assistance. Our communications office works diligently to maintain



media lists and monitors media coverage of the Department to ensure the accuracy of information. You have included a number of Excel documents in your list, such as "African American Media" and "Black Radio," which are databases of media outlets in North Carolina to whom we regularly send press releases.

You have included correspondence from the Department that is congratulatory in nature. The Treasurer routinely writes letters to individuals appointed to boards and commissions, to students whose achievements are highlighted in their local newspaper, to citizens who are recipients of awards such as the Order of the Long Leaf Pine, and to state employees who retire following exemplary service to the State.

**2. Activity that was personal in nature.**

A number of the documents cited in the Auditor's preliminary list appear to be personal in nature and have no political value or relevance, such as documents related to one employee's divorce settlement.

**3. Communication that occurred between personal computers that did not involve state resources or were only "received."**

Most of the emails and documents listed as questionable appear to be from exempt employees' private email accounts, rather than from state accounts, and were sent while the employees had dual employment status. It is important to note that the vast majority of the "questionable" emails were not created on state computers. They were not sent from state computers. They were not replied to using state computers. Some of the emails you included were sent while the one particular employee was on vacation in another state and on days the employee did not work in the state office. In fact, no information has been provided to demonstrate that any of these emails originated from a state computer.

Based on the information provided, the State Auditor's forensics appear unable to determine if a particular email was actually opened and read or was simply in a personal email account inbox and accessed at another time on a non-state computer. Your office has openly acknowledged many times that none of us can control who calls us or what email people choose to send to us.

Merely opening or possessing a document, especially an email message on a private account, does not confirm any intent on the part of a recipient nor does it provide any information on how an item was used – if it was used at all. If such a document was opened, it could have been opened by mistake (as some default settings dictate) or only to determine content.

**4. Communication that was electronic gossip or "water cooler talk" among friends and colleagues that had little or no political value.**

A number of the emails cited in the Auditor's preliminary list appear to have little, if any, political value. They were essentially "electronic gossip" between colleagues and friends regarding the news of the day. Such emails did not involve the discussion of political or campaign strategy and did not involve political advocacy. One example of this would include the discussion of a clip in the News & Observer about spelling errors in Bill Graham's press release.

**5. Incidental communication related to secondary employment.**

Nearly all of the emails contained in your spreadsheet either bore no dates at all or were from dates while the employees were in dual-employment status. The exact dates of their dual-employment periods were provided to you during your initial interviews. The State of North Carolina recognizes that employees may have more than one employer and has allowed for this by offering dual employment status. Each of the four employees in question had sought and received approval from the Department for such status.



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The very few emails sent during their secondary employment were brief, primarily logistical in nature, and required little time to send.

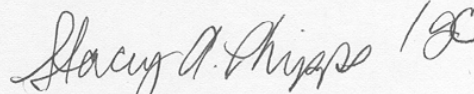
#### Summary

While we acknowledge based upon our review of the documents you provided following your forensic analysis that a total of nine emails during three years' worth of data you reviewed were arguably "political," this hardly constitutes evidence of "significant" political activity. Appropriate actions have been taken in the Department to discipline employees and to educate them about computer usage.

Elected officials, by definition, function in a political environment and the determination of what defines "political activity" is entirely subjective. We have worked to separate the functions of our state office from those of the campaign by maintaining separate physical offices and by having separate command and control structures. We moved several exempt employees to dual employment status while transitioning from the state office to the campaign with the specific goal of avoiding the use of state resources for activities that were purely campaign-related.

Each of your recommendations had already taken place when the Department was first made aware of the situation months ago including disciplining the employee(s), providing education to all department employees regarding the proper use of state resources, and better monitoring employee activities. We look forward to working with you to put this matter to rest.

Sincerely,

A handwritten signature in dark ink, appearing to read "Stacey A. Phipps" followed by a stylized flourish or initials.

Stacey A. Phipps  
Chief of Staff and General Counsel

## AUDITOR'S NOTE

We have carefully reviewed the response provided by the Department of State Treasurer and considered the objections and concerns voiced therein.

The response primarily appears to be directed at a preliminary meeting with state auditors on December 6, 2007 and not our confidential draft management letter delivered January 10, 2008. Many of the items cited in their response do not appear in the draft report we provided. For example, media outlet lists, congratulatory letters, personal correspondence (including the divorce settlement), and "water cooler talk" were not included in the final draft submitted to the Department of State Treasurer.

The response questions our auditors' investigative ability, methodology and forensic work. We therefore take the extraordinary step here to briefly outline our methodology. Our analysis of computers assigned to the four individuals who work both for the Department of State Treasurer and the Treasurer's campaign for governor revealed many other items that could be questioned. There were hundreds of additional documents, e-mails, and internet site hits that raised concern regarding their potential political purpose. For example, a keyword search of the four computers revealed 6,873 appearances of the word "Reiff." (Jay Reiff is the campaign manager for the State Treasurer and our review of those "Reiff" keyword hits revealed many documents and e-mails clearly related to the campaign.)

After this initial computer hard drive image search, investigators analyzed individual documents. While many more items were questionable, we pared down that list to remove any item that appeared to have any relationship to the State Treasurer's duties, even if slight. We then provided a list of 176 items to the management of the Department of State Treasurer to allow explanation as to a business purpose (and provided hard copies of some 150 of these items upon request from the Department of State Treasurer Chief Deputy). After considering their justifications, we removed 55 items. As a result, our final draft included internet site hits, 53 documents, and 60 e-mails which we consider inappropriate political items. To ensure a fair and objective analysis, the management letter excluded any items that could be construed as having any reasonable association to the State Treasurer's official duties. As such, we believe the items cited are reasonable and merit inclusion in our management letter.

Some of the items the State Treasurer's response takes issue with are addressed as follows:

1. The four computers were placed in operation for 22 months, eight months, three months, and two months respectively, not "three years" as claimed.
2. The "Christmas card lists" exclusively contained contact information for officials of a major political party.
3. The "scheduling items related to official duties" often involved partisan political statements asking for support for the State Treasurer's campaign and candidates

of a major political party as well as information about potential donors in the audience.

4. The Department of State Treasurer places relevance in their response that certain e-mails were not created on state computers and that staff were accessing their personal or campaign e-mail accounts. We place relevance in the fact that the material is on state computers and that state computer assets are engaged in campaign-related, election-focused activity. Further, at least four employees admitted accessing, reading, and responding to campaign-related e-mails through their private e-mail accounts on their state computers.
5. The management letter explains that Department of State Treasurer management acknowledged 38 items as potentially political rather than the nine cited throughout the response.
6. Department of State Treasurer management was unable to provide any documentation as to the “exact dates” and times of secondary employment by the four employees in question. Rather, they simply provided the date at which these employees began working on secondary employment. Management and all four employees said there were no set schedules for these employees and their state and campaign work schedules varied from day-to-day and week-to-week.
7. Four employees interviewed stated that they also work for the campaign. To imply that they would not know that e-mails sent from the campaign leadership were related to the campaign is not plausible. The explanation that these e-mails were opened by mistake is also not plausible.

The respondent argues, and we quote, “*Elected officials, by definition, function in a political environment and the determination of what defines ‘political activity’ is entirely subjective.*” We clearly disagree. Campaign-related, election-focused activity involving the use of state facilities, state salaries, state cars, computers, resources, etc. is objective rather than subjective and is addressed by statute. See North Carolina General Statute § 126-13.

It is self-evident that advances in technology, including the internet, cell phones, handheld devices, wireless environments and remarkable and even extreme connectivity sometime make difficult the separation of allowable appropriate state agency operations from disfavored campaign-related, election-focused activity. We do not intend to set an artificial, unreasonable or unattainable standard. We acknowledge that, because of technology and connectivity, at times there will be *de minimis* use and occasional incidental contacts involving state resources and candidate campaigns. This report does not involve matters that we consider to be either *de minimis* use or incidental contacts.

It is also clear that all public servants should strive to honor the reasonable expectation of taxpayers that state resources paid for by taxpayer dollars (state salaries, supplies, vehicles, computers, buildings, etc.) be used for public purposes and not for campaign-related, election-focused political activity. The public trust deserves no less. Accordingly, pursuant to North Carolina General Statute § 147-64.6(c)(16), and notwithstanding the objections of the Department of State Treasurer, we stand by our investigation of this matter and the resulting findings and recommendations.

