DEPARTMENT OF HUMAN RIGHTS

SPECIAL REVIEW OF EMPLOYEE APPRECIATION DINNER EXPENSES

OCTOBER 1991

Financial Audit Division
Office of the Legislative Auditor
State of Minnesota

91-76

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DEPARTMENT OF HUMAN RIGHTS

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OBJECTIVES:

Our review addressed the following issues:

- Did the Department of Human Rights have the authority to use state funds for the purchase of alcoholic beverages at its employee appreciation dinner held on June 20, 1991?
- Did Commissioner Frank Gallegos participate in or cause the restaurant billing to be altered so that the purchase of alcoholic beverages would not be disclosed?
- When did Commissioner Gallegos decide to use his personal funds to reimburse the state for the alcoholic beverages?

CONCLUSIONS:

- We conclude that the Department of Human Rights did not have authority to use state funds to purchase alcoholic beverages at its employee appreciation dinner.
- We conclude that Commissioner Gallegos' responses to the Human Rights dinner coordinator's questions regarding the use of the residual funds caused her to request the restaurant to alter the restaurant billings to conceal the purchase of alcoholic beverages.
- We could not establish definitely when Commissioner Gallegos decided to use his personal funds to reimburse the state for the alcoholic beverages. However, the Commissioner did in fact write a personal check for $333 to reimburse the state for the alcoholic beverages.

Contact the Financial Audit Division for additional information.
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Legislative Audit Commission

Members of the Legislative Audit Commission

The Honorable Arne H. Carlson
Governor of Minnesota

Audit Scope

We conducted a special review of the use of state funds for a Department of Human Rights employee appreciation dinner. The dinner occurred at a St. Paul restaurant on June 20, 1991. The Department of Employee Relations (DOER), in the course of an investigation conducted of the event, received testimony which included allegations of improper use of state funds. Those allegations were not covered under the scope of the DOER investigation. In accordance with past practice, these allegations were brought to the attention of the Legislative Auditor on June 28, 1991.

Our review addressed the following issues:

- Did the Department of Human Rights have the authority to use state funds for the purchase of alcoholic beverages at its employee appreciation dinner?

- Did Commissioner Frank Gallegos participate in or cause the restaurant billing to be altered so that the purchase of alcoholic beverages would not be disclosed?

- When did Commissioner Gallegos decide to use his personal funds to reimburse the state for the alcoholic beverages?

Audit Techniques

We reviewed documentation supporting the plan, budget, and payment for the dinner expenses. We obtained documents from a variety of sources, including the Departments of Human Rights, Employee Relations, and Finance. We also obtained documents from the St. Paul restaurant, Chi Chi's Restaurante, where the dinner occurred. We took testimony under oath from Commissioner Gallegos, other Human Rights employees, and several restaurant employees. We also met with Commissioner Gallegos to discuss the results of our work and allowed him another opportunity to respond.

Background

In June 1991, Commissioner Gallegos decided to hold an employee appreciation dinner. The commissioner was scheduled to start a one-year leave of absence at the end of the month. He felt it was appropriate to show his appreciation to the staff before his departure. Further, the commissioner had learned that over $1,200 remained in his department head expense account, and since any unused money in the account would be returned to the General Fund on June 30, 1991, the commissioner decided to use the money to finance the costs of the dinner. A department head expense account, as authorized by Minn. Stat. Section 15A.081, Subd. 8, is for "necessary expenses in the normal performance of the commissioner's duties for which no other reimbursement is provided." A department head expense account is limited to $1,500 per year and is typically used to pay for such things as business meals and donuts for staff meetings. Commissioner Gallegos told us that he was not aware of the policy that governs the use of department head expense.

The commissioner appointed two department employees to make the dinner arrangements. One of the employees assumed primary responsibility as the dinner coordinator. This employee testified that she was concerned about holding an office dinner because of recent criticism of the department's previous employee recognition event. In March 1991, a Legislative Audit report and media accounts had criticized the department for inappropriate expenses incurred at a July 1990 Department of Human Rights employee recognition picnic. However, Commissioner Gallegos decided to hold an appreciation dinner at Chi Chi's Restaurante in St. Paul. He told us he chose this particular restaurant because of its convenient location.

Commissioner Gallegos issued a June 17, 1991, memorandum inviting the 70 department employees to the appreciation dinner. The memorandum indicated that the department would pay for the cost of employees' meals, coffee, and soda. The two employees coordinating the event also ordered appetizers for guests before the dinner. Fifty four employees accepted the invitation to attend the dinner.

Although the commissioner directed that his department head expense account be used to pay for the dinner, the event had to be authorized under the executive branch policy on "special expense." The policy was developed by the Department of Employee Relations. It is designed to require planning and provide control over "...expenses incurred in connection with official functions of an agency or...[employee] which are not reimbursable through regular expense regulations." The policy lists various events or situations that fall under its purview, including "employee award and agency recognition events." The policy explicitly prohibits use of special expense to pay for alcoholic beverages. State law and guidelines on the use of a department head expense account are silent on the question of using state funds to purchase alcohol.

The Department of Human Rights business manager knew that the recognition dinner proposed by the commissioner required authorization through the special expense process, and he prepared the appropriate documents for approval. He estimated that the dinner would cost $1,000. The forms he submitted to Commissioner Gallegos for signature indicated that the department would pay for the cost of employees' meals and nonalcoholic beverages. Because the restaurant would not bill the state, the business manager obtained a $1,000 state warrant from the Department of Finance on the day of the dinner payable to Chi Chi's Restaurante.

Employees began gathering at the restaurant at 4:00 PM on June 20, 1991. They consumed the appetizers and ordered drinks from a cash bar. The dinner occurred at 6:00 PM, followed by an awards ceremony. Most employees left around 7:00 PM. At this point, the waitresses informed the dinner coordinator that the bill for food was about $660 including tax and gratuity. The coordinator asked the business manager how to handle the residual funds remaining from the $1,000 state warrant. The business manager offered the dinner coordinator no help and left the restaurant. Thus, the dinner coordinator approached the commissioner and sought his advice. In his sworn testimony, the commissioner acknowledged that he responded to the coordinator by saying, "Oh, we have a lot left. For the diehards, we can order some drinks." The commissioner later told us that he meant to direct the dinner coordinator to allow the remaining employees to use the funds to buy what they wanted. He also told us that he realized that most employees used the residual funds to purchase alcoholic beverages.

The dinner coordinator told us that she questioned the commissioner about using state funds for purchasing alcoholic beverages. The coordinator and commissioner offered different versions of how the commissioner responded to her question. She told us that the commissioner suggested, "Go talk to the waitress to see if they could write it up as ice cream." The commissioner testified that he did not make such a statement to the coordinator. Rather, the commissioner told us that he had responded to the coordinator by stating, "Don't worry, I will take care of it." Regardless of the commissioner's exact words, the coordinator acted to carry out her understanding of his intentions. She informed the waitresses that the commissioner had decided to allow the remaining employees to spend the residual funds, and that he wanted drinks billed as ice cream, rather than alcoholic beverages.

After the first round of drinks, the restaurant managers intervened and directed the waitresses to record purchases accurately. The waitresses informed the coordinator that purchases of alcohol would have to be recorded as such. Therefore, at the end of the evening the coordinator and restaurant managers decided that the restaurant would prepare a handwritten bill in lieu of the waitresses' original tickets. The final handwritten billing for $993 simply listed the number of meals at an average cost and did not disclose the alcohol purchases.

Because of media attention, the event was publicly criticized on the next day, June 21. The commissioner was out of the office on June 21. When he returned to the office on Monday, June 24, he submitted a personal check for $333 to the business manager to cover the estimated cost of alcoholic beverages which had been purchased with state funds on June 20.

DOER Investigation

After receiving complaints, the Department of Employee Relations (DOER) initiated an investigation into allegations concerning the conduct of Commissioner Gallegos at the June 20 dinner. The primary focus of the DOER investigation centered on complaints that the commissioner had told offensive jokes. During the course of the investigation, DOER notified the Legislative Auditor of testimony concerning the propriety of the expenditure of state funds.

DOER Commissioner Linda Barton submitted a final investigative report to Governor Carlson on July 3, 1991. After consultation with the Office of the Attorney General, the Governor's Legal Counsel and the Department of Administration's Data Practices Division, Commissioner Barton concluded that her report and its supporting documentation are protected under the State Government Data Practices Act. This conclusion was based on the contention that no disciplinary action was taken against Commissioner Gallegos. However, it has been widely reported that the Governor directed Commissioner Gallegos to apologize to his staff and repay the state for the cost of alcoholic beverages. DOER contends that the apology and required repayment do not constitute disciplinary action. We question whether DOER has properly interpreted the State Government Data Practices Act. Accordingly, we have asked the Attorney General for an opinion on the status of the DOER report. Pending the Attorney General's opinion, we will maintain the DOER report and supporting documentation as confidential.

Conclusions

We found several problems with the June 20, 1991, employee recognition dinner conducted by the Department of Human Rights.

1. Unauthorized Use of State Funds for Alcoholic Beverages

We conclude that the Department of Human Rights did not have authority to use state funds to purchase alcoholic beverages at the employee appreciation dinner. The department used the state's special expense policy to authorize the event. That policy prohibits the use of state funds for alcohol at state sponsored recognition events. The department stated its intention to comply with the special expense guidelines.

As stated before, state law and guidelines on use of a department head expense account are both silent on the question of whether or not alcohol can be purchased with state funds, and it is likely that alcohol is purchased on occasion with state funds. But in our judgment that does not negate the obligation Commissioner Gallegos had to comply with the explicit prohibition in the state's special expense policy against purchasing alcohol with state funds at an employee recognition event.

Commissioner Gallegos admits that he initially authorized using the residual funds to purchase alcoholic beverages. He claims that he did not wish to receive the residual funds in cash and felt compelled to spend the funds that evening. He told us that when he learned about the residual funds, he did not think it improper to spend the remaining money on alcoholic beverages. The commissioner told us that it was his understanding that department head expense funds could be used to purchase alcoholic beverages. He indicated that he was not familiar with the state's special expense policy and its prohibition of using state funds for alcoholic beverages at state recognition events. However, the Department of Human Rights had completed a special expense form before the dinner. The form authorized only food and nonalcoholic beverages to be purchased with state funds. Commissioner Gallegos acknowledged that his signature appears on the form, but he told us that he does not recall signing the completed form.

To reiterate, although the commissioner used his department head expense account to finance the dinner, this did not remove his obligation to abide by the state's special expense policy and its explicit prohibition against using state funds to purchase alcoholic beverages.

2. Alteration of the Restaurant Billing

Two attempts were made to alter the restaurant billing to conceal the purchase of alcoholic beverages. First, the dinner coordinator asked the restaurant employees to show the alcoholic beverages served to the remaining employees as ice cream on the waitresses' itemized tickets. After the first round of drinks, restaurant staff decided that they would not show further alcoholic beverages as ice cream on the tickets. At the end of the evening, the second attempt was made when the dinner coordinator requested the restaurant employees to prepare a final billing that showed only food costs. This resulted in a final handwritten billing totalling $993, which showed only food purchases and concealed the purchase of alcoholic beverages. This billing was on file in the Department of Human Rights to support the employee recognition dinner.

The sworn testimony of Commissioner Gallegos and the dinner coordinator conflict on what was said about billing for the alcoholic beverages. The dinner coordinator testified that Commissioner Gallegos suggested showing alcoholic beverages as ice cream purchases. The commissioner told us under oath that he did not make such a suggestion to the coordinator. However, another department employee's testimony supports the dinner coordinator's statement. The employee testified to hearing the commissioner remark that the restaurant billing would show the drinks as ice cream.

The commissioner told us, under oath, that he had not seen the final handwritten billing until we showed it to him on August 13, 1991. Also, he emphasized to us that on the evening of June 20, he neither knew of or approved the handwritten billing. After the restaurant refused to show further alcoholic beverages as ice cream on the waitresses tickets, the dinner coordinator requested the handwritten billing.

We think evidence supports the conclusion that Commissioner Gallegos' responses to the dinner coordinator's questions regarding the use of the residual funds caused her to request the restaurant to alter the billings. Although we could not establish the commissioner's exact words in responding to the coordinator's question about purchasing alcoholic beverages, we do not think he suitably addressed her concerns. The commissioner did not offer the coordinator an appropriate method of resolving the disposition of the residual funds with the restaurant.

3. <u>The Commissioner's Reimbursement to the State for the Alcoholic Beverages</u>

We could not establish definitely when Commissioner Gallegos decided to use his personal funds to reimburse the state for the alcoholic beverages. When he returned to work on June 24, 1991, Commissioner Gallegos wrote a personal check for $333 to pay for the purchases of alcoholic beverages.

Commissioner Gallegos told us that he decided to repay the state for the cost of the alcoholic beverages during the evening of June 20. The commissioner told us that initially when the coordinator questioned the purchase of alcoholic beverages, he had intended to use department head funds to pay for the alcoholic beverages. However, he told us that he changed his mind ten to fifteen minutes later. He stated that he felt it would be a more genuine expression of his appreciation to the employees if he repaid the state for the alcoholic beverages. The commissioner claimed that he asked a waitress to run a separate tab for alcoholic beverages because he intended to take care of it himself. However, we found no collaborating evidence that he expressed his intention to repay on the evening of June 20, 1991. The dinner coordinator and restaurant employees testified that the commissioner gave them no indication that he intended to repay the state.

During Commissioner Gallegos' original testimony under oath, he gave us the names of two Human Rights employees who he claimed may have realized his intentions to repay the state. However, in sworn statements, both employees testified that, on the evening of June 20, 1991, the commissioner did not express any intentions to repay the state for the cost of the alcoholic beverages. In a later meeting, Commissioner Gallegos told us that he would not have expressly told department employees on the evening of June 20 that he had decided to pay for the alcoholic beverages from his personal funds. He did not wish to have the employees misconstrue his comments as bragging.

The event received public disclosure the following day, June 21, and the propriety of the purchases were challenged. When the commissioner returned to the office on June 24, 1991, he prepared a personal check payable to Chi Chi's Restaurante to pay for the cost of the alcoholic beverages. The next day he prepared a second check payable to the state since payment to the restaurant had already been made by the state. Neither of these checks have been cashed, however. At a department staff meeting on June 26, the commissioner announced that he had always intended to repay the state for the cost of the alcoholic beverages. On July 3, Commissioner Gallegos was officially told by Governor Carlson to make repayment. Governor Carlson acted on advice from DOER Commissioner Barton. On July 3, Commissioner Gallegos wrote a third personal check payable to the state and it was deposited in the state treasury.

4. Other Concerns

We noted other procedural problems with how the Department of Human Rights accounted for the employee recognition dinner. We are concerned that the department's business manager did not act more aggressively to help prevent these problems. We had issued a March 1991 audit report which criticized certain expenses incurred for the department's previous recognition event. As a result of our discussion with the department at that time, we expected that the business manager understood the proper accounting procedures. However, we found the following problems with how the department accounted for the June 20 dinner:

- The decision to use the department head expense account is questionable. Accounting for the event was unduly complicated by using the department head expense account, which has guidelines that are somewhat different from the state's special expense policy.

- Accounting for the dinner was further complicated by the decision to draw a state warrant for $1,000 in advance. That did not follow normal state procedure, and there were better options. We think the department could have found a restaurant willing to bill the department after the dinner for the exact costs. If, however, that had proven impossible, the department could have more accurately estimated the costs of the dinner in advance and drawn a warrant for an amount closer to the final costs, thus eliminating the problem of the residual funds. The department's business manager did not change his $1,000 estimate of the costs of the dinner even after only 54 of the department's 70 employees accepted the invitation. Finally, even without these steps, the department could have prevented the major problem that occurred--the purchase of alcohol--if it had simply required the restaurant to reimburse it for the residual funds.

Pursuant to Minn. Stat. Section 3.975, this report shall be referred to the Attorney General.

This report is intended for the information of the Legislative Audit Commission and the Governor. This restriction is not intended to limit the distribution of this report, which was released as a public document on October 30, 1991.

James R. Nobles
Legislative Auditor

John Asmussen, CPA
Deputy Legislative Auditor

REPORT SIGNED ON: October 25, 1991