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# Utah State Auditor releases report on alleged impropriety in Emery County Economic Development Department

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Editor

The Emery County Economic Development Department recently underwent an audit by the Office of the Utah State Auditor. The findings and recommendations were for the period between January 2012 through September 2014.

Emery County Deputy County Attorney Brent Langston said they are reviewing the audit findings and consulting with the Emery County Sheriff's Office on the matter. The sheriff's office is continuing their investigation of the matter. Langston says there could be possible charges resulting from an alleged conflict of interest which is a class A misdemeanor concerning former economic development director Michael McCandless. Langston said it will be up to the Emery County Attorney's Office to determine if charges will be filed in this matter after a thorough review of the investigation.

Langston pointed out the Utah code in question is Utah Code 17-16a-5 which states that no appointed officer may receive compensation for assisting any business entity in any transaction involving the county unless he files a sworn conflict of interest statement detailing his personal information, the business' information, and a description of the transactions and the services to be performed.

The Office of the Utah State Auditor's sent a letter to the Emery County Commission and to then county attorney David Blackwell.

"The Office of the Utah State Auditor has a hotline program, through which we receive complaints with financial or compliance implications related to state and local governments. We received allegations of impropriety regarding the Emery County Economic Development Director's compliance with conflict of interest policies. As part of our investigation, we performed reviews of certain records for the period January 2012 through September 2014. The results of our investigation are included in the attached findings and recommendations section of this report. We feel that the findings are significant weaknesses to Emery County. If these weaknesses are left uncorrected, an unacceptable amount of errors or misappropriations could occur without detection.

"Our procedures were more limited than would be necessary to express an opinion on any of the items referred to above or to express an opinion on the effectiveness of Emery County's internal control or any part thereof. Accordingly, we do not express such opinions. Had we performed additional procedures or had we made an audit of the effectiveness of Emery County's internal control, other matters might have come to our attention that would have been reported to you. By its nature, this report focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments. We appreciated the courtesy and assistance extended to us by the personnel of Emery County during the course of the engagement, and we look forward to a continuing professional relationship," Sincerely, Van Christensen, CPA Audit Director.

Findings from the report included: FAILURE TO PROPERLY DISCLOSE CONFLICT OF INTEREST: a. Unallowed Compensation from Business Entity 1 b. Conflict of Interest with Company Regulated by the County 1 c. Use of Director's Position to Secure Special Privileges

## FAILURE TO PROPERLY DISCLOSE CONFLICT OF INTEREST

Emery County does not have controls in place to ensure that County employees properly disclose all conflicts of interest, as required by Utah Code 17-16a. As a result, the Economic Development Director violated several aspects of this law due to his involvement with a business (hereinafter referred to as Company A) with which he failed to properly disclose his relationship, as follows: a. Unallowed Compensation from Business Entity; The Director inappropriately received compensation from Company A for performing actions which were within the scope of the Director's County responsibilities. The Director wrote a letter to the Governor's Office of Economic Development requesting a "Rural Fast Track Grant" for Company A. The letter was written on

County letterhead and the Director signed using his title as Economic Development Director. However, the Director also submitted an invoice to and received payment from Company A for consulting work performed on six separate occasions. The invoice descriptions for the work were: Initiate Fast Track Application; Work with Governor's Office of Economic Development on Fast Track Application; GOED Application (on two occasions) Submit GOED Application; Follow up with GOED on Fast Track Grant Data.

The Director submitted other invoices to Company A over a two-year period resulting in payments totaling \$19,299.39. These other invoices included descriptions for services such as economic development, building inspection, right of way, easements, tour facility with USTAR, work with GOED, etc. All of these billed services were within the scope of the Director's responsibilities with the County; therefore, he was compensated by both the County and the Company A for the same work.

The Director's actions violated Utah Code 17-16a-5 which states that no appointed officer may receive compensation for assisting any business entity in any transaction involving the County unless he files a sworn conflict of interest statement detailing his personal information, the business's information, and a description of the transactions and the services to be performed. b. Conflict of Interest with Company Regulated by the County: Company A received an economic development loan from the economic development council. The Director signed this loan as the authorized agent of the County. Because Company A is regulated by the County, and because the Director is a consultant for Company A, the Director should have made a sworn disclosure of his conflict of interest as required by Utah Code 17-16a-6. However, no disclosure was made.

c. Use of Director's Position to Secure Special Privileges: Because of the Director's relationship with Company A, the Director's actions in the instances noted above may have also violated Utah Code 17-16a-4(1)(b), which states that an appointed officer may not "use or attempt to use the officer's official position to secure special privileges for the officer or for others." At the very least, the Director's actions present the appearance of providing special privileges not only for Company A, but for the Director himself.

When a public official uses their position to secure special privileges for themselves or others, it erodes public trust, creates an opportunity for dual compensation, and the opportunity to use their public position in their best interest rather than the best interest of the government entity.

These errors occurred due to the Director's poor ethical judgment and inadequate oversight by the County Commission. The Director indicated that he did not make the required disclosures because he was not aware of them. However, a person in the Director's position should be familiar with ethical behavior and the statutes that govern the ethical performance of their duties.

Payments from outside entities to a public official with regulatory responsibilities or who oversees government services provided to the business could influence the conduct or judgment of a person in a position of trust.

Recommendation: In addition to any other penalty or provision of County policy or State law, we recommend that the Director be dismissed from employment as required by Utah Code 17-16a-10. We also recommend that the Director be required to pay back money, as determined appropriate by the County, in an amount ranging from the \$510 that was directly related to GOED, up to the entire \$19,299.39 that was received in violation of procedures described in the statute. We also recommend that the County prohibit employees from receiving compensation from companies that are regulated by the County or that conduct transactions with the County. In rare circumstances where the County believes the outside employment or consulting work is allowable, the County should carefully monitor the activity and ensure that the appropriate disclosures have been made and maintained according to the corresponding statute contained in the Utah Code.

Emery County Commission with Jeff Horrocks, chairman of the board, sent a letter to Van Christensen of the Office of the State Auditor. The letter submitted a response to the findings and recommendations of the report to the county by the state auditor's office. The letter stated that Michael McCandless resigned from Emery County employment on Oct. 24, 2014. The letter further stated, "The commission chairman will work with the county attorney, clerk/auditor, and the Emery County Sheriff to ensure the appropriate amount is repaid to Emery County.

The letter stated the Emery County Personnel Policy handbook does contain a conflict of interest policy. This policy will be reiterated among all county employees and discussed in department head meetings and risk management meetings. "The county has allocated funds to have a legal review of the Personnel Handbook to make sure it remains current with state and federal law. The review will take place in 2015."

"Emery County will have the personnel office work directly with department heads and elected officials to ensure that individuals properly disclose conflicts of interest, outside employment or consulting work to ensure that state statutes and county policies are followed and enforced," stated the letter.

Former Economic Development Director Michael McCandless was contacted by email for a statement regarding this matter, but at press time there had been no response.

The Emery County Commission declined further comment while the matter is under investigation.

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