

COUNTY EMPLOYEE OVERPAYMENT: THE GIFT OF GIVING

BACKGROUND:

A gift is defined as something voluntarily transferred by an individual or entity to another individual or entity without compensation; whereas compensation is payment that constitutes an equivalent or recompense as for a service rendered or damage incurred.

Attachment B of California Constitution, Article 16, Public Finance, and Section 6 stipulates:

The legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; *nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation...*

REASON FOR INVESTIGATION:

A citizen's complaint of unfair treatment by a Tulare County Governmental Agency (County) was received by the Tulare County Grand Jury (Grand Jury) for investigation and resolution, pursuant to California Penal Code §925 and §925a.

The specifics of the complaint alleged unfair treatment due to a County demand for repayment of monies that were incorrectly overpaid to the complainant. Sixty nine pay periods had elapsed before the complainant, and approximately 110 additional employees, were notified of either overpayments or underpayments. Due to the significant length of time that had transpired before the complainant's notification of demand for repayment totaling over \$3,000.00, the complainant claimed to have been wronged because there was no initial notification that the "benefit amount was going to change." The complainant also said that if there had been proper communication regarding a benefit change "I could have asked questions or disputed it at that time." The complainant believes the County should have had more proactive oversight that would have precluded the need for a substantial payback. As a result, the complainant had asked for relief, citing the County's lack of accountability and transparency in the matter.

County administrative personnel explained during an interview with the Grand Jury that previous budget cuts had negatively impacted the quality of accounting standards and controls. According to County personnel these problems have been resolved.

METHOD OF INVESTIGATION:

The Grand Jury began its inquiry by scheduling interviews with the complainant, an administrator, and several accountant/auditors, in addition to obtaining pertinent data for review.

In addition to interviews with County administrative and accounting personnel, the Grand Jury reviewed applicable California Government Codes. Upon request, the County submitted pertinent documents to the Grand Jury for further review.

FACTS:

1. The complainant's receipt of overpayments from County funds, totaling \$3,504.07, is not in dispute and the overpayment was not disbursed as payment for services rendered by complainant.
2. The County did not notify the complainant of the accounting change at the time of its implementation with pay period dated 4/5/2011. The complainant received a memo regarding the infraction that included Repayment Agreement instructions dated 5/19/2014, over three years later. There was no acknowledgement of the overpayment discrepancy by either the County or the complainant during the interim period between 4/5/2011 and 5/19/2014.
3. A Memorandum Of Understanding (MOU), a policy that was in place and enforceable during the time of the overpayment infractions, regarding employee Payroll Policy, Article 41 Payroll, letter C, OVERPAYMENTS states: 'Overpayment errors shall be corrected in the immediate next pay period. If the amount in the judgment of the Auditor's Office would constitute an unreasonable burden on the employee, overpayment errors may be corrected in subsequent pay periods pursuant to an agreement of court order. As a nonbinding guideline, repayments should be within the same number of pay periods in which the error occurred.'
4. There are multiple different benefit calculations possible for benefitted county employees. These calculations are based on bargaining unit negotiations, benefit choice selections, and MOUs in place at the time of employee hire.
5. Tulare County payroll is not centralized. Individual departments are responsible for accounting and auditing of payroll. County employee benefits are overseen by the Human Resources & Development Department.
6. A repayment agreement used by Auditor/Controller for collection of overpayments authorizes the complainant a conciliation waiver of \$300.00, subtracted from the total of monies to be repaid. This agreement, once signed by its recipient, offer additional repayment options including a hardship exception request.

FINDINGS:

- F1. The County may have prevented the occurrence of a significant overpayment discrepancy provided the appropriate quality controls were in place at the time. However, there is no evidence to support intentional impropriety. The complainant had equal opportunity to register concerns regarding the additional monies received. As such, attachment B of California Constitution, Article 16, Public Finance, and Section 6, previously referenced in this report, stands as the deciding factor in determining the complainant's obligation to reimburse the County.
- F2. The County has since required its employees, specifically in departments where the overpayments and underpayments occurred, to acknowledge by signature verification per Tulare County Section 125 Participation Form. This form outlines the terms and expectations for both County officials and employees pertaining to the deduction of premiums and/or fees from employee paychecks.

CONCLUSION:

The complainant is required to repay the county.

RECOMMENDATIONS:

- R1. Tulare County continue to implement and monitor financial safety measures for eligible employee benefit calculations.
- R2. The Tulare County Auditor undertake procedures to ensure that periodic comprehensive payroll audits of each county department are monitored.

REQUIRED RESPONSES:

1. Tulare County Auditor/Controller
2. Administrator, Human Resources & Development Department

Disclaimer

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Section 911, 924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Section 924.2 and 929).

**AUDITOR-CONTROLLER/
TREASURER-TAX COLLECTOR**



**Rita A. Woodard
COUNTY OF TULARE**

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March 10, 2015

The Honorable Judge Hillman
County Civic Center, Room 303
221 S. Mooney Blvd
Visalia, CA 93291

✓ Tulare County Grand Jury
5963 S. Mooney Blvd.
Visalia, CA 93277

Tulare County Board of Supervisors
2800 S. Mooney Blvd
Visalia, CA 93291

**Subject: Response to the 2014-2015 Grand Jury Final Report, titled,
"County Employee Overpayment: The Gift of Giving".**

Honorable Judge Hillman:

We are responding to the findings issued in your report dated February 24, 2015.

Finding F1:

The County may have prevented the occurrence of a significant overpayment discrepancy provided the appropriate quality controls were in place at the time. However, there is no evidence to support intentional impropriety. The complainant had equal opportunity to register concerns regarding the additional monies received. As such attachment B of California Constitution, Article 16, Public Finance, and Section 6 previously referenced in this report, stands as the deciding factor in determining the complainant's obligation to reimburse the county.

Response:

It is not in the purview of the Auditor-Controller/Treasurer-Tax Collector/Registrar of Voters to determine the benefit payment amounts and procedures.

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Finding F2:

The County has since required its employees, specifically in departments where the overpayments and underpayments occurred, to acknowledge by signature verification per Tulare County Section 125 Participation Form. This form outlines the terms and expectations for both County officials and employees pertaining to the deduction of premiums and/or fees from employee paychecks.

Response:

It is not in the purview of the Auditor-Controller/Treasurer-Tax Collector/Registrar of Voters to comment on this form as it is not an Auditor-Controller/Treasurer-Tax Collector/Registrar of Voters form.

Recommendations R1:

Tulare County continue to implement and monitor financial safety measures for eligible employee benefit calculations.

Response:

It is not in the purview of the Auditor-Controller/Treasurer Tax Collector/Registrar of Voters to monitor employee benefit calculations.

Recommendations R2:

The Tulare County Auditor undertake procedures to ensure that periodic comprehensive payroll audits of each county department are monitored.

Response:

This recommendation has been implemented.

The Auditor's Office does audit all departments. This is done at recommendation and assignment of the Audit Committee and is done on a risk-based methodology. Once the audits are completed, they are presented in a public forum at the quarterly Audit Committee meeting.

Sincerely,



Rita A. Woodard
Auditor-Controller/
Treasurer-Tax Collector/
Registrar of Voters

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HUMAN RESOURCES & DEVELOPMENT

TULARE COUNTY

April 13, 2015

The Honorable Judge Hillman
County Civic Center - Superior Court
221 S. Mooney Boulevard, Room 303
Visalia CA 93291

SUBJECT: Response to Tulare County Grand Jury 2014/15 Final Report
"County Employee Overpayment-Gift of Giving"

FINDINGS:

- F1. The County may have prevented the occurrence of a significant overpayment discrepancy provided the appropriate quality controls were in place at the time. However, there is no evidence to support intentional impropriety. The complainant had equal opportunity to register concerns regarding the additional monies received. As such, attachment B of California Constitution, Article 16, Public Finance, and Section 6, previously referenced in this report, stands as the deciding factor in determining the complainant's obligation to reimburse the County.

Response to F1:

The Human Resources and Development Department (HRD) concurs with this finding. The benefit audit conducted resulted in overpayments and underpayments which HRD staff were obligated to correct once identified.

- F2. The County has since required its employees, specifically in departments where the overpayments and underpayments occurred, to acknowledge by signature verification per Tulare County Section 125 Participation Form. This form outlines the terms and expectations for both County officials and employees pertaining to the deduction of premiums and/or fees from employee paychecks.

Response to F2:

In addition to instituting a 125 form and Summary of Benefits (premium costs and Flexible Benefit Allowance) which the employee receives annually in October, HRD staff have instituted procedures to audit benefits each pay period.

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RECOMMENDATIONS:

R1. Tulare County continue to implement and monitor financial safety measures for eligible employee benefit calculations.

Response to R1:

HRD concurs with this recommendation and has put processes in place to strengthen accuracy in applying benefit allowances and premiums.

R2. The Tulare County Auditor undertake procedures to ensure that periodic comprehensive payroll audits of each county department are monitored.

Response to R2:

While this recommendation directs the Auditor, HRD is currently undergoing an audit by the Auditors' Department in the benefits funds. HRD concurs with the recommendation to audit payroll processes.

Sincerely,



Rhonda Sjostrom, Director
Human Resources & Development

Cc: ✓ Tulare County Grand Jury 2014-15
Chuck White, Foreman

Tulare County Board of Supervisors
Chairman Steve Worthley

Jean Rousseau, CAO

Rita Woodard, County Auditor