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PRESENTATION TO EMPLOYEE BENEFITS PROGRAMS COMMITTEE
August 25, 2008

Presented by Gordy Smith, CPA

At the request of Interim Industry, Business, and Labor Committee, the State Auditor's Office is providing information regarding the results of the Legislative Council's survey of state entities relating to specific types of expenditures. This survey was originally requested by the Employee Benefits Programs Committee and the revised results are dated August 22, 2007.

We noted an important issue while reviewing the Legislative Council summary of the Employee Benefits Programs Committee Benefits Survey Results and the Legislative Council document entitled "Summary of Professional Dues and Memberships Paid by State Agencies". The financial information presented in the survey summary does not necessarily agree with what is presented in the "Summary of Professional Dues and Memberships Paid by State Agencies."

My discussion with a Legislative Council representative indicated they obtained the data presented in the "Summary of Professional Dues and Memberships Paid by State Agencies" from the Peoplesoft computer system. It would be reasonable to expect the data appearing in the responses to Question 5 (relating to employer-paid membership dues for professional organizations or service clubs) would be reasonably close to the same information obtained from Peoplesoft. However a comparison of some of the financial figures reveals this is not the case.

For example, the survey results indicate one agency spent $131 during the 2005-2007 biennium for employee membership dues for professional organizations while the Peoplesoft detail obtained by Legislative Council indicates that the agency charged over $223,000 for such expenditures during that same time period. Another agency's survey information indicates it does not pay for any employee membership dues for professional organizations or service clubs. However in the Peoplesoft detail, over $232,000 of expenditures are listed for these types of expenses during the same time period. If the Legislative Council's techniques for extracting financial information from Peoplesoft were appropriate, it is reasonable to expect that information is materially correct.

It is unclear why such significant differences exist without substantial additional review. This does not mean, nor are we suggesting that the agencies did not respond truthfully to the survey. Instead it demonstrates that there are variables involved, including differing interpretations of what information is being requested. The point is that the information in the survey summary may not be accurate because it represents the results of a survey and not the results of an independent audit or detailed review of individual state agency's expenditures.

The Legislative Council survey asked state entities to respond to specific questions. The three relevant questions my presentation pertains to are:

a) Does your agency pay for employee service awards or employee recognition, reward, or incentive programs?

b) Does your agency provide employer-paid tuition for higher education coursework for employees?

c) Does your agency pay employee membership dues for professional organizations or service clubs?

I will address each of these individually in my presentation and I will present the specific guidance and/or requirements that state entities have in the individual sections. In addition there is overall guidance and/or requirements provided in the North Dakota Constitution and interpretations of it in Attorney General's Opinions as well as in decisions made by the North Dakota Supreme Court.

The state's Constitution has been interpreted through various Attorney General Opinions. One of the more relevant interpretations was issued in January, 1993 and this opinion states "Under these provisions the government may not use public moneys for a private purpose." It further clarifies this by stating "Thus, when the government spends tax dollars the legality of that expenditure turns on whether the expenditure was for a public or private purpose. A public purpose is one which has as "its objective the promotion of the general welfare of all the inhabitants or residents within a given political division."

A second relevant Attorney General's Opinion issued in May, 1996 states "A universal test does not exist for deciding whether a public purpose is served by a expenditure and, if so, whether such purpose is paramount or merely incidental. Each case must be decided with reference to the object sought to be accomplished and the degree and manner in which that object affects the public welfare."

Recently the Supreme Court (State v. Blunt, 2008 ND 135) indicates the restriction on the expenditure of public funds is "constitutionally based" and refers to the specific language and states "These provisions restrict expenditures of public funds to public purposes. In this context, a public purpose is defined as "the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all inhabitants or residents of a given political subdivision."

Employee Service Awards or Employee Recognition, Rewards or Incentive Programs

In addition to the overall guidance and/or requirements there is guidance specifically addressing service award programs found in NDAC Chapter 4-07-18. Agencies may award length of service awards to employees who meet the employment requirements set forth in this administrative code. The administrative code goes on to identify specific dollar limits for each of the years of service identified in this section. The agencies may provide a certificate or plaque and a gift within the dollar limits listed. The administrative code also lists parameters that must be followed for retirement awards, (i.e. the employee must have a minimum of 15 years of state service and the gift's value cannot exceed $200).

The Legislative Council survey results indicate the state agencies are, for the most part awarding employee service awards in accordance with the administrative code. This assertion appears to be supported by our audit work which (as described below) has not traditionally revealed instances where public funds have been inappropriately expended for employee awards, recognition, and reward or incentive programs.

The State Auditors' Office is required by statute to conduct audits of state entities once every two years. During these types of audits the audit team specifically uses computer assisted auditing techniques to establish samples for testing expenditures to ensure they are within the parameters established by the Constitution, statute, NDAC, Attorney General's Opinions, NDUS policies and OMB policies.

Interviews with audit teams and a review of prior audit reports indicates that we do not typically find expenditures relating to the three questions addressed by this presentation which violate the parameters established by the Constitution, statute, NDAC, Attorney General's Opinions or OMB policies. In those unusual instances where such expenditures are found, they generally appear to be isolated cases and not widespread noncompliance by the agencies involved.

We do not typically find expenditures such as those identified in the 2006 performance audit of WSI, however when they are found we include recommendations addressing the circumstances in our audit reports. For example, during our performance audit of the North Dakota Veteran's Home issued in June, 2002 we identified expenditures which were inappropriate. The North Dakota Veterans' Home performance audit specifically identified public funds were used to pay for gift certificates for employees, employee meals at an employee recognition banquet, and employee meals on other occasions. The total value of these expenditures was approximately $1,800. As we did in the WSI performance audit we cited that these expenditures were paid with public funds and were not for a public purpose.

The State Auditor's Office has found other isolated instances where an agency has not followed the employee travel expense reimbursement parameters established in statute and in OMB policies and we have identified this in the agency audit reports and made appropriate recommendations. In one instance we found an agency was expending money to recognize non-state employees who had won national awards. We identified this in the agency's audit report and made the appropriate recommendation.

Employer-Paid Tuition for Higher Education Coursework for Employees

NDAC provides guidance (effective July 1, 2008) relating to training and tuition reimbursement in section 4-07-36-02. This section specifically states "Costs of training or educational courses, including tuition and fees, may be paid for, within budgetary constraints, by the agency or reimbursed to the employee in accordance with agency policy." Prior to July 1, 2008 state entities followed their own internal policies relating to these expenditures. The North Dakota University System's (NDUS's) Human Resource Policy Manual also provides guidance to the NDUS institutions regarding these types of expenditures.

Most state entities that pay for tuition for higher education coursework for employees do so under internal department policies. Most of the state entity policies set forth parameters (such as maximum amounts that will be paid, percentages of tuition that will be reimbursed, and minimum grades that need to be received etc) and identify that payments will be made subject to the availability of funds.

Based on the Legislative Council survey and related information, it appears many of the department policies do not appear to require the employee to remain employed with the department for a specified period of time and require repayment if the employee doesn't meet the time requirement. This would seem to be prudent in order to protect the state's investment in the employee's education.

As previously state, the State Auditors' Office is required by statute to conduct audits of state entities once every two years. During these types of audits the audit team specifically uses computer assisted auditing techniques to establish samples for testing expenditures to ensure they are within the parameters established by the Constitution, statute, NDAC, Attorney General's Opinions, NDUS policies and OMB policies. The State Auditor's Office has not routinely found violations of department or NDUS policies relating to employer-paid tuition for higher education coursework for employees.

Employee Membership Dues for Professional Organizations or Service Clubs

OMB Policy 209 provides guidance relating to professional membership dues. The policy states ".....association memberships should be related to an employee's job duties or should be beneficial to the state." In addition the policy suggests that whenever possible a membership should be carried in the name of the state agency and not an individual because this would promote transferability of the benefits of membership.

As can be seen in Legislative Council's document entitled "Summary of Professional Dues and Memberships Paid by State Agencies", there are state entities making expenditures for service clubs memberships and for dues to chambers of commerce. Some may feel that an argument could be made that these types of expenditures are beneficial to the state entities making them. However, there are others who may feel this type of use of public funds is inappropriate. Typically, we have not cited these types of expenses as inappropriate in agency audit reports, including our WSI 2006 performance audit. A cursory review of the Legislative Council's "Summary of Professional Dues and Memberships Paid by State Agencies" revealed over 100 payments to various chambers of commerce as well as in excess of 70 payments to various service clubs.

Other types of expenses identified in the Legislative Council document include what appear to be payments for subscriptions to newspapers as well as payments to organizations such as Toastmasters. There are also several lines of expenditures where no description is available. In other cases the description is that of an individual (most likely a state employee) who it appears is being reimbursed. In both of these types of expenditures it's not possible to determine what the payment relates to without reviewing the relevant documentation.

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Potential Options

The State Auditor's Office has not conducted in-depth work relating to the specific questions included in the Legislative Council's survey and therefore it is not possible to provide specific recommendations or suggestions for the Legislature to consider.

The Legislative Council document entitled "Summary of Professional Dues and Memberships Paid by State Agencies" indicates there were in excess of $3.15 million of expenditures for professional dues and memberships during the period covered by the document. Presently, the management of the individual state entities is responsible for exercising their judgment as to the propriety of these types of expenditures.

As the policy-making branch of government the Legislature needs to decide whether it is necessary to provide more guidance and/or requirements to the executive branch agencies relating to the types of expenditures referred to in the Legislative Council's survey. It would be prudent to ensure that such guidance and/or requirements is not unduly burdensome to state agencies or results in a loss of flexibility. State entities have wide ranging duties and responsibilities and prohibiting a specific type of expenditure may seem appropriate for most state entities but prove to be a hardship for others.

Guidance provided by the Legislature could be specific by prohibiting or discouraging certain types of expenditures (such as payments to chambers of commerce or service clubs) or the guidance could be general in nature by providing criteria that these types of expenditures must meet in order to be appropriate. It should be noted that any prohibition established in statute will not be able to be revised without future legislative action.

The Legislature could also direct OMB to adopt more specific guidance and/or requirements either in OMB policies or in the NDAC. Addressing the issue in this manner would ensure that modification to the guidance and/or requirements would be more easily accomplished in a timely manner.

Other

At this committee's request I gathered information relating to the Mill and Elevator's Gain Sharing Program. The Gain Sharing Program began in the late 1990's and is approved annually by the Industrial Commission. The costs related to the Gain Sharing Program are appropriated each biennium within the Mill and Elevator's salaries and wages line item.

The Gain Sharing Program has two parts, the 4% bonus potential and the uncapped bonus potential. The 4% bonus potential is based on various factors agreed to between the General Manager and the Union Negotiating Committee. This is for exceeding gain sharing goals. For fiscal year 2007 (the most recently audited year) a 1% bonus was awarded for meeting each of the goals established in four areas. These include:

a) Cwt./man hour of 27 (hundred weight per man hour)
b) Cost per cwt of $1.65
c) Yield of 75.5%
d) Safety Record of 150 points.

This portion of the Gain Sharing Program begins to pay out at a profit (before gain sharing expense accrual) level greater than $1 million. The final percentage is given to each employee based on their gross salary.

The second part of the Gain Sharing Program is the uncapped bonus potential and begins to payout at a profit (before gain sharing expense accrual) level greater than $2 million. For a profit level of $2 million, a 2% bonus is paid out. For a profit level of $4.5 million a 4.5% bonus is paid. For each additional $1 million in additional profit, an additional 1% bonus is paid.

For example, assume the Mill and Elevator had a profit of $2.5 million (before gain sharing expense accrual) for fiscal year 200X and the workers met three of the goals set forth above. The total bonus was 3% for the goals and 2.5% for a total bonus payout of 5.5%. Therefore each employee would receive a bonus payment of 5.5% of their gross salary.

For fiscal year 2007, all of the goals were met and employees were provided a 9.81% bonus which amounted to approximately $698,000. For fiscal year 2006, the bonus percentage was 10.95% and amounted to approximately $725,000.