



Audit Report

Arkansas State University-Mountain Home Fraud Allegation Review

March 2011

Table of Contents

Executive Summary	1
Introduction	1
Audit Objectives and Scope	1
Background	1
Audit Findings.....	1
Audit Recommendations	3
Management Response.....	3
 Report.....	 4
Purpose and Scope	4
Background.....	5
Findings, Recommendations, and Response	6
Comments	8

Executive Summary

Introduction

In accordance with the May 5, 2010, request of the State of Arkansas Division of Finance and Administration –Internal Audit Administrator, a review of a fraud allegation filed by Ms. Lisa McBrayer, a former employee of Arkansas State University-Mountain Home (ASUMH) against Carol Miller Gresham, the ASUMH Vice Chancellor for Development, has been conducted. The purpose of the review was to furnish management with an evaluation regarding the auditable claims made against Ms. Gresham.

This report contains an overview of the audit, a list of the findings and recommendations made by Internal Audit, and the response from the Vice Chancellor for Administrative Affairs.

Audit Objectives and Scope

The objective of this audit is to provide management with an assessment and evaluation regarding the fraud allegations filed by Ms. Lisa McBrayer against Ms. Carol Miller Gresham. The scope of the review was defined as the fiscal year periods July 1, 2007, to June 30, 2010, to encompass the time that Ms. Gresham and Ms. McBrayer were both employed in the Office of Development. Information for the review was obtained primarily through interviews, examination of university contracts and Office of Development account documents, and review of procedures deemed necessary to provide an analysis and comments concerning the following:

1. Compliance with Arkansas State University (ASU), State of Arkansas and other applicable policies, procedures and regulations;
2. Adequacy of documentation; and
3. Adequacy and application of accounting and operating controls.

Background

The Vice Chancellor for Development is Ms. Carol Miller Gresham. Ms. Gresham has been employed in this position since January 8, 2007, and reports directly to the ASUMH Chancellor. Ms. Lisa McBrayer was employed as an Administrative Specialist III for the Office of Development/Public Relations until terminated on March 8, 2010. After termination, Ms. McBrayer filed a grievance with ASUMH on March 30, 2010, and a claim against Ms. Gresham with the State of Arkansas Department of Finance and Administration on April 5, 2010. The claim was subsequently forwarded to Arkansas State University System Internal Audit on May 5, 2010. The review of the auditable allegations made in the claim began on August 18, 2010, after the grievance and other employment hearings were concluded.

Audit Findings

The accompanying findings and recommendations are submitted to provide management with the results of the audit where the claims made by Ms. McBrayer against Ms. Gresham or ASUMH were validated. In all other auditable areas regarding Ms. McBrayer's claims that were reviewed, no allegations were validated.

1. Recording Ethics:

Internal Audit listened to both Ms. Gresham's and Ms. Brayer's LiveScribe recordings. There were thirty-five (35) LiveScribe recording files on Carol Gresham's stand-alone PC and fifty-eight (58) recording files identified on Lisa McBrayer's stand-alone PC. Since there were potential legal and staff policy issues noted on the recordings, Internal Audit requested University Counsel also listen to the recordings. Internal Audit and University Counsel agree that from a legal standpoint, the LiveScribe pen appears to have been used for surreptitious recording and captured inappropriate language that could constitute sexual harassment.

2. Gate Contracts:

A copy of the contract and associated supporting documents, including payments, for the ASUMH Thompson-Martin Gate and the McClure Gate were obtained from the ASUMH Administration Office. The contract was an agreement between the owner, Arkansas State University-Mountain Home and the contractor, GRR Land Company, LLC. Mr. Lyndle McCurley, former Vice Chancellor for Administrative Affairs, signed the contract as owner on behalf of ASUMH, and Mr. John Gresham, contractor, signed for GRR Land Company, LLC. Mr. John Gresham is the husband of Ms. Carol Miller Gresham, Vice Chancellor for Development at ASUMH. The total cost of the contract was \$218,623.00, and no bidding documents were provided. The current Vice Chancellor for Administrative Affairs advised the project was not placed for bid. He also advised this project was the only project not bid during the period July 1, 2007 through June 30, 2010. This project was paid for by private funds through the ASU Foundation.

A legal opinion was requested from University Counsel as to whether an institution of higher education could award a contract for a construction project costing in excess of \$20,000.00 without following state bidding laws if the project was paid for with private funds. The brief answer received was that open bidding laws apply to all public works in excess of \$20,000 regardless of the source of funding.

3. Computer Files:

Ms. Gresham is assigned three (3) computers, a mini-computer, a laptop, and a stand-alone PC that are State of Arkansas property. Computer files for the three (3) computers were reviewed and the following exceptions related to the claim were noted:

- A. Four (4) personal file documents located on the Office of Development's laptop related to Carol Miller Gresham's spouse's businesses, including a loan document, steel building proposal, steel building purchase order, and a flyer for commercial marketing; and
- B. One (1) personal document located on the Office of Development's stand-alone PC related to a rental property advertising narrative.

In total, five (5) document files were located on Ms. Gresham's computers related to her and her husband's real estate/construction business.

4. Lost HR Records:

There were two (2) documents not located during the review of Ms. McBrayer's Human Resources' files:

- A. *Voluntary Short Term Disability Employee Enrollment Form*; and
- B. *Statement of Selective Service Status*.

A copy of the *Voluntary Short Term Disability Enrollment Form* was obtained from the vendor during the course of the review by the director of ASUMH Human Resources.

Audit Recommendations

Internal Audit recommends ASUMH management:

1. Reeducate employees on the ASU System Staff Handbook policies for Recording Ethics and Unacceptable Behavior as well as formally address the violations of the ASU System Handbook that appear to have occurred.
2. Adhere to A.C.A. § 22-9-203(a) when entering into a contract for major repairs, alterations, erections of buildings, construction of other structures, or permanent improvements and offer the work through public bids.
3. Determine if Ms. Gresham's personal use of the state computers is within the nature and scope of authorized, incidental personal use, and take appropriate action as necessary.
4. Develop procedures to ensure required Human Resources files are maintained and that current Human Resources files be reviewed to ensure that all required documents and forms are on file for each employee.

Management Response

ASU management response to recommendations:

1. ASUMH totally understands the need for notification if recordings are made. If it happened in the past, it was not according to policy and shall not happen again in the future.
2. In the future, all projects will be bid according to state regulations.
3. The administration, faculty and staff of ASUMH have been educated many times about the fact that all technology on our campus is to be used for professional/authorized purposes. I have reviewed the five items found on Ms. Gresham's computer since January 2007, and I have discussed them with her. Ms. Gresham understands our policy and pledges to adhere to it in the future.
4. The Human Resources Office of ASUMH is dedicated to obtaining and maintaining all appropriate records. This is a fairly new office on our campus, and I am convinced that they will do an outstanding job for the university. We now have a checklist of all forms required.

DATE: March 7, 2011

TO: Dr. Robert L. Potts, President
Arkansas State University System

FROM: Jo LunBeck, Assistant Vice President for Administration *Jo L*
Arkansas State University System Operations

RE: Arkansas State University-Mountain Home – Fraud Allegation Review

PURPOSE AND SCOPE

In accordance with the May 5, 2010, request of the State of Arkansas Division of Finance and Administration – Internal Audit Administrator, a review of a fraud allegation filed by Ms. Lisa McBrayer, a former employee of Arkansas State University-Mountain Home (ASUMH) against Carol Miller Gresham, ASUMH Vice Chancellor for Development, has been conducted. The purpose of the review was to furnish management with an evaluation regarding the auditable claims made against Ms. Gresham.

The scope of the review was defined as the fiscal year periods July 1, 2007, to June 30, 2010, to encompass the time that Ms. Gresham and Ms. McBrayer were both employed in the Office of Development. Information for the review was obtained primarily through interviews, examination of university contracts and Office of Development account documents, and review of procedures deemed necessary to provide an analysis and comments concerning the following:

1. Compliance with Arkansas State University (ASU), State of Arkansas and other applicable policies, procedures and regulations;
2. Adequacy of documentation; and
3. Adequacy and application of accounting and operating controls.

Because the review was based on limited tests of university records and related procedures, not all instances of control weakness, noncompliance, or operational deficiencies may have been discovered. Any issues or comments on items necessary to be addressed are listed in the Findings, Recommendations, and Response section of this report.

BACKGROUND

The ASUMH Office of Development is located on the third floor of Roller Hall. The Vice Chancellor for Development is Ms. Carol Miller Gresham. Ms. Gresham has been employed in this position since January 8, 2007, and reports directly to the ASUMH Chancellor. As stated on the ASUMH Web-site, "The ASUMH Office of Development works to remove barriers to higher education with encouragement and monetary assistance for students who experience financial hardship and to create financial support for campus facilities, new college program initiatives, and endowments that will help insure future growth for years to come."

Ms. Lisa McBrayer was employed as an Administrative Specialist III for the Office of Development/Public Relations until terminated on March 8, 2010. After termination, Ms. McBrayer filed a grievance with ASUMH on March 30, 2010, and a claim against Ms. Gresham with the State of Arkansas Department of Finance and Administration on April 5, 2010. The claim was subsequently forwarded to Arkansas State University System Internal Audit (Internal Audit) on May 5, 2010. The review of the allegations made in the claim identified as auditable began on August 18, 2010, after the grievance and other employment hearings were concluded.

In the performance of this review, the following areas were identified as auditable as related to Ms. McBrayer's claims against Carol Miller Gresham:

- 1) *Higher Education Holdings;*
- 2) *Noncompliance with ASU's Progressive Discipline Policy;*
- 3) *Lost HR Records;*
- 4) *Grievance Procedures - Staff Hearing Committee;*
- 5) *Pyramid/Ponzi Scheme;*
- 6) *Recording Ethics;*
- 7) *Gate Contracts;*
- 8) *PayPal;*
- 9) *Personal Travel paid with State Funds;*
- 10) *Lisa McBrayer's Personal E-mail found saved on State Computer assigned to Carol Miller Gresham;*
- 11) *Account Expenditures; and*
- 12) *Personal Use of State of Arkansas Computer.*

The State of Arkansas Division of Legislative Audit reviewed and reported December 14, 2010, on a similar instance as claimed regarding *Higher Education Holdings*, and ASU System University Counsel (University Counsel) was previously engaged in handling the claims regarding *Noncompliance with ASU's Progressive Discipline Policy* and *Grievance Procedures – Staff Hearing Committee*; therefore, no further audit in these areas was considered necessary.

FINDINGS, RECOMMENDATIONS, and RESPONSE

The accompanying findings and recommendations are submitted to provide management with the results of the audit where the claims made by Ms. McBrayer against Ms. Carol Miller Gresham or ASUMH were validated. In all other auditable areas regarding Ms. McBrayer's claims that were reviewed, no allegations were validated. An extensive analysis was conducted in the areas listed below that included a 100% review of the records provided by ASUMH, and in some instances, files were reviewed by both Internal Audit and University Counsel.

1. Recording Ethics: Ms. McBrayer alleged the following related to recording ethics:

“Approximately one year ago, Carol had our department purchase two LiveScribe recordable pens, which purchase order yourself and Administrative Affairs approved. These pens are made to look like a regular writing pen, but they come with the ability to record everyone in an entire conference room. They come with software so that not only can you download your hand-written notes, but you can also use the pen to playback the entire recording. I was directed to tell no one about these pens. The pen I was given was to be used to record minutes of an official committee. Carol has a pen, and Carol does not record minutes...”

Internal Audit listened to both Ms. Gresham's and Ms. Brayer's LiveScribe recordings. There were thirty-five (35) LiveScribe recording files on Carol Gresham's stand-alone PC and fifty-eight (58) recording files identified on Lisa McBrayer's stand alone PC.

Since there were potential legal and staff policy issues noted on the recordings, Internal Audit requested University Counsel also listen to the recordings. Internal Audit and University Counsel agree that from a legal standpoint, the LiveScribe pen appears to have been used for surreptitious recording and captured inappropriate language that could constitute sexual harassment.

Arkansas State University System Staff Handbook, Page 11 – RECORDING ETHICS, states:

“Arkansas State University does not permit the recording of conversation surreptitiously. The concealed recording of conversations among administrators, faculty, students, or staff constitutes grounds for dismissal.” and

“Employees are prohibited from engaging in conduct listed below and may receive discipline up to and including termination for such behavior. This list has been established to serve as examples of behavior that could warrant a range of disciplinary sanctions. Appropriate levels of discipline may be based on the severity of employee behavior...

Sexual Harassment including, but not being limited to, unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature or behaviors which create a hostile environment. Examples include:

1. Verbal harassment including, but not being limited to, comments or questions about a person’s sexual behavior, sexually oriented jokes, comments or questions about a person’s body, and conversations with sexual innuendo;
2. Physical harassment including, but not being limited to, unwelcome touching, fondling, patting, pinching, or kissing; and
3. Direct or implied threats that failure to cooperate with the request or advance will result in negative employment consequences...

Other misconduct such as, but not limited to, the following:

1. Use of vulgar or obscene language;...”

A. *Recording Ethics:*

The review of selected files by Internal Audit and University Counsel indicates that certain conversations were recorded surreptitiously. Because some conversations include comments confirming they are being recorded while others are silent on the topic, one can infer that some conversations were secretly recorded. While Internal Audit or University Counsel cannot say with certainty that all in attendance were unaware of the recordings, since an announcement might have been made before the LiveScribe pen was turned on, the content of some of the conversations certainly would allow a listener to conclude that those in attendance were unaware of the recording.

B. Unacceptable Behavior:

Other portions of the files contain inappropriate language which could be construed as sexual harassment. One conversation included a comment that is a clear use of vulgar language and could subject the university to a charge of sexual harassment.

Recommendation: Internal Audit recommends that ASUMH management reeducate employees on the *ASU System Staff Handbook* policies for Recording Ethics and Unacceptable Behavior as well as formally address the violations of the *ASU System Staff Handbook* that appear to have occurred.

Response: LiveScribe pens were obtained to facilitate accurate records. ASUMH totally understands the need for notification if recordings are being made. If it happened in the past, it was not according to policy and shall not happen again in the future. It should be noted that the person making the allegations was involved in inappropriate use. One pen was not returned from Ms. McBrayer, the other is broken and was returned to the Chancellor's Office. The reference to inappropriate language is attributed to Ms. McBrayer, but regrettably was not addressed as inappropriate.

2. Gate Contracts: Ms. McBrayer alleged the following related to the ASUMH gate contracts:

“Carol’s husband, John Gresham, (GRR Land) was the builder of two brick college ‘gates’ which were donated by two donors. It was sort of hush-hush, but how on earth did Carol, who is in charge of Development and donors get her husband the contract to build these \$75,000+ gates?”

A copy of the contract and associated supporting documents, including payments, for the ASUMH Thompson-Martin Gate and the McClure Gate were obtained from the ASUMH Office of Administrative Affairs. The contract was an agreement between the owner, Arkansas State University-Mountain Home and the contractor, GRR Land Company, LLC. Mr. Lyndle McCurley, former Vice Chancellor for Administrative Affairs, signed the contract as owner on behalf of ASUMH, and Mr. John Gresham, contractor, signed for GRR Land Company, LLC. Mr. John Gresham is the husband of Ms. Carol Miller Gresham, Vice Chancellor for Development at ASUMH. Ms. Gresham is not listed as a “Member” or “Manager” in the LLC Operating Agreement of GRR Land Company, LLC. The total cost of the contract was \$218,623.00, and no bidding documents were provided. The current Vice Chancellor for Administrative Affairs advised the project was not placed for bid. He also advised this project was the only project not bid during the period July 1, 2007 through June 30, 2010. This project was paid for by private funds through the ASU Foundation. The payments were made by draws from an ASU Foundation

account totaling \$110,849.00 for the Thompson-Martin Gate and \$107,774.00 for the McClure Gate payable to GRR Land Co, LLC.

A legal opinion was requested from University Counsel as to whether an institution of higher education could award a contract for a construction project costing in excess of \$20,000.00 without following state bidding laws if the project was paid for with private funds. The brief answer received was that open bidding laws apply to all public works in excess of \$20,000 regardless of the source of funding.

A.C.A. § 22-9-203(a) requires that any state agency entering into a contract for major repairs, alterations, erections of buildings, construction of other structures, or permanent improvements offer the work through public bids. An exception exists for construction that exceeds \$5 million dollars where at least 80% of the cost comes from private funds. That exception does not exist under the circumstances at hand.

Therefore, since the construction project for the ASUMH Thompson-Martin gate and the McClure gate cost \$110,849.00 and \$107,774.00 respectively, or a total of \$218,623.00, the amount exceeded \$20,000, and was required to be publicly bid. The failure to offer the construction project for bid violated Arkansas law.

Recommendation: Internal Audit recommends ASUMH management adhere to A.C.A. § 22-9-203(a) when entering into a contract for major repairs, alterations, erections of buildings, construction of other structures, or permanent improvements and offer the work through public bids.

Response: The construction of two of our entrance gates was made possible through donations that were given to the ASU Foundation. Lyndle McCurley, Vice Chancellor for Administrative Affairs, was convinced that the use of private funds did not require the university going through the open bid process. It is our understanding that if the Foundation had signed the contract it would have been acceptable, and then the foundation would have transferred ownership to ASUMH. In the future, all projects will be bid according to state regulations.

3. **Computer Files:** Ms. McBrayer alleged the following related to Ms. Gresham's usage of computers assigned to her by ASUMH.

“Carol has three computers for her office. One stand alone and two laptops... Carol used her state computer to work on ... she and her husband's real estate/home construction business.”

Ms. Gresham is assigned three (3) computers, a mini-computer, a laptop, and a stand-alone PC that are State of Arkansas property. Computer files for the three (3) computers were reviewed and the following exceptions related to the claim were noted:

- A. Four (4) personal file documents located on the Office of Development laptop related to Carol Miller Gresham's spouse's businesses, including a loan document, steel building proposal, steel building purchase order, and a flyer for commercial marketing; and
- B. One (1) personal document located on the Office of Development stand-alone PC related to a rental property advertising narrative.

ASU System Staff Handbook, Page 29 - Internet Code of Conduct states the following:

“Information Technology Resources may be used only for their authorized purpose – that is to support the research, education, administration, and other functions of Arkansas State. The particular purposes of any IT resource as well as the nature and scope of authorized, incidental personal use, may vary according to the duties and responsibilities of the user.”

In total, five (5) document files were located on Ms. Gresham's computers related to her and her husband's real estate/construction business.

Recommendation: Internal Audit recommends ASUMH management determine if Ms. Gresham's personal use of the state computers is within the nature and scope of authorized, incidental personal use, and take appropriate action as necessary.

Response: The administration, faculty and staff of ASUMH have been educated many times about the fact that all technology on our campus is to be used for professional/authorized purposes. I have reviewed the five (5) items found on Ms. Gresham's computer since January 2007, and I have discussed them with her. Ms. Gresham understands our policy and pledges to adhere to it in the future.

4. **Lost HR Records:** Ms. McBrayer alleged the following related to her Human Resources' files:

“...While looking at my file, I said some of my evaluations, in particular my last evaluation, seemed to be missing. The witness and I were told that

there were lost employment records due to the filing inabilities of the previous HR Director.”

There were two (2) documents not located during the review of Ms. McBrayer’s Human Resources’ files:

- A. *Voluntary Short Term Disability Employee Enrollment Form*; and
- B. *Statement of Selective Service Status*.

A copy of the *Voluntary Short Term Disability Enrollment Form* was obtained from the vendor during the course of the review by the director of ASUMH Human Resources.

To be eligible for employment with the State of Arkansas, a person must register, or be exempt from registration, with the Selective Service System in accordance with the Military Selective Act, 50 USC Appx §452 et seq., as specified in Act 228 of the 1997 Acts of the Arkansas General Assembly. The *Statement of Selective Service Status* provides the necessary assurance of these facts with the employee’s signature.

Recommendation: Internal Audit recommends ASUMH management develop procedures to ensure required Human Resources’ files are maintained and that current Human Resources’ files be reviewed to ensure that all required documents and forms are on file for each employee.

Response: The Human Resources Office of ASUMH is dedicated to obtaining and maintaining all appropriate records. This is a fairly new office on our campus, and I am convinced that they will do an outstanding job for the university. We now have a checklist of all forms required.

COMMENTS

ASU System staff appreciates the cooperation, professional attitude, and prompt responsiveness of the ASUMH Chancellor, Vice Chancellor for Administrative Affairs, and Vice Chancellor for Development during the course of the review.

If you have any questions or desire further information regarding any aspect of the review, please contact me.

cc: Board of Trustees
Ms. Lucinda McDaniel
Dr. Ed Coulter
Mr. John Davidson
Ms. Carol Gresham
Mr. Ricky Quattlebaum