

DATE: November 1, 2011

TO: Audit Committee

FROM: Susan L. Coskey, JD, MBA, Principal
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SUBJECT: Commissioner Practices Review

Scope of Review

In July, 2011, I was retained by the Port of Seattle (“POS”) Commission to conduct a review of certain Commissioner practices relating to POS credit card use and selected other activities. The purpose of the review was to identify potential concerns and provide recommendations sufficient to enable the Commissioners to determine potential next steps. This review was not an exhaustive audit, but rather was in response to specific identified issues. The review included document and policy review, interviews with POS staff and Commissioners, and follow up conversations and emails as needed.

Policies Reviewed

The POS Resolutions and Policies upon which I relied were:

- Commission Resolutions No. 3583, 3628;
- POS AC Policies 1-4;
- Commissioner Transparency Code of Conduct.

It is important to note that the Commission Resolutions do not consistently state that Commissioners will be subject to the same policies relating to credit card, travel and expense practices as POS employees are (i.e., AC policies). Certain of the AC policies specifically refer to the Commissioners, while others do not. Nonetheless, the AC policies have been generally presumed to include the Commissioners and have been applied as such by Commission administrative staff and POS Accounting and Financial Reporting staff. Although several Commissioners have stated that they do not believe some or all of these general POS policies should or do apply to them, in general they have agreed to the application of these policies as a whole.

Summary of Findings

Improper Credit Card Use

¹ The review referenced in this memo was conducted by Susan Coskey who was a principal with the consulting firm of Seabold Group until 10/31/2011. As of 11/1/2011, Ms. Coskey moved her practice to Bright Spring Consulting, where she is also a principal.

The issues identified relating to credit card use (assuming application of AC policies to commissioners) fell into three broad categories:

- Commissioners inappropriately charging personal expenses to the POS credit card;
- Commissioners charging meals to the POS that were not allowed by policy; and
- The timeliness of Commissioner reimbursement to the POS when personal or disallowed expenses were charged to the POS credit card.

I found instances where every Port Commissioner at one time or another since 1/1/2010 had improperly included a personal or disallowed expense on his or her POS credit card. One Commissioner in particular appeared to have been unaware during his first few months of office of the proper uses of the POS credit card and incurred extensive personal charges on his card that were not consistently repaid in a timely manner. These improper expenses dissipated over time, particularly after the Commissioner turned in his credit card to Commission office staff. Another Commissioner commonly charged personal expenses related to POS expenditures on his POS credit card ostensibly for ease of use and then generally promptly reimbursed the Port for these items. The remaining three Commissioners had incidental personal or disallowed use, and each reimbursed the POS when these expenditures were identified to them as questionable or inappropriate.

Related to the use of credit cards were two other issues that arose during the review. One, which was unsubstantiated, was an allegation that a Commissioner had allowed a third party to use his credit card to make an expenditure on his behalf. The second involved POS coverage of a significant conference cancellation fee incurred by a Commissioner and the process and analysis that went into this decision.

Further Issues Raised

In addition to evaluating Commissioner credit card use, I was asked to review several ethics and compliance issues that were identified either prior to or during the course of the review. These issues included potential conflicts of interest, improper use of office for personal or professional gain, and improper use of POS resources.

Contextual Observations

In assessing Commissioner credit card use and the other issues identified, I formed numerous observations relevant to specific concerns as well as to Commission operations more generally. Those observations are set forth below.

- Although Commission staff have made efforts to familiarize new Commissioners with POS policies and practices, there is no specific Commissioner orientation, and it does not appear that current efforts are adequate.
- There is ambiguity as to the applicability of general POS policies to Commissioners.
- Even when the general POS policies are applied to Commissioner behavior, there are ambiguities in the language of some of the policies that make their application confusing.

- One way Commissioners have dealt with the lack of clarity regarding application of the POS credit card policies is to stop using the cards – which does not address the underlying issues.
- There is no identified mechanism through which the Commission as a body uniformly identifies, evaluates or responds to potential breaches of policy, ethics or conflict of interest or through which Commissioners hold themselves or each other accountable.
- The Board of Ethics identified in Commission Resolution 3583 is inactive and, even if active, does not incorporate an advisory function. Thus, at present, Commissioners are left to relying on their own judgment or seeking advice from POS General Counsel on potential ethics or conflict issues.
- There is no identified mechanism through which POS staff concerns relating to Commissioner adherence to policy or interaction with staff are brought to Commissioner attention or resolved.
- There is no identified mechanism through which Commissioner concerns with staff are identified or resolved.
- Without resolving outstanding issues at staff or Commissioner levels, individuals can lose the benefit of the doubt and interactions and/or motives can be misconstrued.
- There appear at times to be decisions relating to policy/ethics/conflicts of interest made by Commission office staff on behalf of but not in consultation with the Commissioners.
- The roles/responsibilities within the Commission office as relate to staff and Commissioners themselves are not clear, thus making it difficult both to identify responsibilities within the office and to hold people accountable for meeting clear expectations.
- In the absence of specific policies and procedures, there exists the possibility of inconsistent (real or perceived) treatment of/approach to situations and individual Commissioners.
- The lack of consistent policies, practices and expectations affects the ability and morale of Port and Commission staff in their efforts to support Commissioners and Commission activities.

Recommendations

Consistent with the scope of this review, the recommendations provided to the Commission to enable it to determine next steps fall into three main categories.

Recommendations Related to Commissioner Accountability

With regard to specific issues that were raised in the context of this review, it is recommended that the Commission consider taking the actions that are identified below.

- Determine how to respond to issues that appear to be policy violations, including confirmed (even if not intentional) credit card misuse.
- Determine whether and how to make further inquiry into the propriety of matters that have not been fully vetted or subject to a specific process when raised.

- Determine how potential conflicts of interest concerns will be resolved when Commissioners participate in matters that might be perceived as leading to professional gain.
- Determine how the Commission will document its findings and actions.

Recommendations Related to How the Commissioners Engage as a Body

With regard to specific findings related to how the Commission interacts as a body, it is recommended that the Commission consider taking the actions identified below.

- Institute a new Commissioner orientation.
- Establish and/or clarify the application of POS and /or Commission policies to Commissioners.
- Institute processes and procedures through which Commissioners as individuals and the Commission as a body identify, evaluate and respond to potential breaches of policy, ethics or conflict of interest and through which Commissioners hold themselves and each other accountable.
- Create a means through which potential conflict of interest issues can be analyzed.
- Identify an entity that can provide an advisory ethical function for the Commissioners, whether through the existing Board of Ethics structure or otherwise, and remove this function from the POS General Counsel's office.

Recommendations Related to the Commission Office Operations

With regard to specific findings related to how the Commission Office operates, it is recommended that the Commission consider taking the actions identified below.

- Clarify roles/responsibilities/expectations/accountability within the Commission office as relate to:
 - Commissioners to Commission staff and staff to Commissioners;
 - Commission staff to Commission staff/other POS staff.
- Institute a procedure through which Commission or other POS staff concerns relating to Commissioner adherence to policy or interaction with staff are brought to Commissioner attention and resolved with regard to:
 - Perceived ethical/conflict issues;
 - Perceived policy violations;
 - Perceived other issues that raise concern with colleagues/staff.
- Determine how Commission staff will be managed and institute procedures through which:
 - Expectations are identified and articulated;
 - Staff concerns with staff are identified and resolved;
 - Commissioner concerns with staff are identified and resolved.