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Cultural Assessment Interviews

1 message

Dale Pierce <dpierce@innercite.com>

Mon, May 12, 2014 at 3:22 PM

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El Dorado County Board of Supervisors

Cultural Assessment Interviews

May 13, 2014

“Why would the Auditor choose to make a public attack in the Mt. Democrat first, and check the law second?”

Dr. Dale R. Pierce

As an elected official I would like to contribute to the cultural assessment interviews.

I would like to share the experience of the El Dorado County Resource Conservation District in recent interactions with Mr. Joe Harn, the Auditor-Controller. In 2013 our RCD Districts had been trying to resolve an overtime pay issue pointed out to us by our independent auditor. We held open meetings to discuss it, consulted two legal resources and an HR specialist, took steps to prevent future problems and ultimately reviewed the results with the Office of the Auditor-Controller. After an exchange of emails with Mr. Harn that included legal opinions, we agreed to follow his final recommendation, and submitted a voucher for payment in the form he suggested.

In response, on April 22, 2013 the Auditor-Controller wrote a letter regarding overtime pay for the Resource Conservation District Manager in which he stated: “Your board’s action related to this matter is just about the most absurd give-away of the taxpayers’ money I have seen during my 33-year career in governmental accounting and auditing.” That letter was simultaneously sent to every member of the Board of Supervisors and to the Mountain Democrat. The tone and the distribution of this letter made it obvious that the purpose was to achieve maximum impact and publicity.

At the time I was deeply troubled by the unprofessional nature of Mr. Harn’s letter, and by the totally unfair attack on our employee, and I wrote letters to Supervisor Briggs and to the Mountain Democrat in response. (attached). I include here the final paragraph of my April 25 letter to the BOS:

In light of his omission of material information, the Auditor’s 9401 Pubs attachem our District Manager. and the implied threat of County C. BOS Row 5-12-14 Page 1 of 1 letter

is an intentional misstatement of the facts done for intimidation rather than an attempt to resolve a real issue. The letter in question reads like it could have been written by the Senate Permanent Subcommittee on Investigations, and if I were a county employee I would be reluctant to raise these issues for fear of retaliation. The wide distribution to the Board of Supervisors and almost simultaneous release to the Mountain Democrat supports this picture of desire for maximum dramatic impact and publicity. The issue here is that our employees worked extra hours, our policy said they were entitled to compensation and a careful legal review indicated the Districts needed to pay that compensation. If Mr. Harn felt our two legal opinions were not credible and wanted a third review then we could have had that discussion without the threats and innuendo.

On April 9, 2013 I wrote the following response to the Mt. Democrat:

The Directors of the RCD's are all unpaid volunteers interested in natural resources-not experts on the Fair Labor Standards Act-who received legal advice from the El Dorado County Counsel and from the Auditor-Controller before deciding how to meet our obligations to our employees. The Auditor states he plans to ask County Counsel to review his options and obligations. Why would the Auditor choose to make a public attack in the Mt. Democrat first, and check the law second?

On April 10, 2013 I wrote the following response to the Mt. Democrat:

I thought Mr. Harn was a breath of fresh air when he started as Auditor, but I think the kind of public attacks that are common in politics, with 10 second sound bites and oversimplification of complex issues will ultimately damage the County and drive out people who just want to do their jobs.

This was the first time I had an issue with Mr. Harn, as our Conservation Districts have had a long history of helpful and professional assistance. To quote a Georgetown RCD Director "I find it appalling that this process has dragged on for more than a year. Perhaps you should have written this letter a year ago. Looking as I must at things ex post facto, it seems like the county didn't want to go along with the decision from the get go and has continually put up road blocks and dragged their feet rather than just coming out and saying "no" and fighting the legal battle over that decision. I also note that the RCDs are by law independent governmental agencies, and I do not see where it is the responsibility of the Auditor-Controller to tell us how much or how we pay our staff. Plus, the time consumed by county staff, our RCD staff and our two boards as we go through one option after another, the foot dragging, this is what I find absurd! It is exactly what the public hates about government...slowly dragging their feet, putting up road blocks rather than getting a decision and an execution in reasonable time." This entire issue is an example of the kind of inefficiency and damaging actions that were mentioned by Mr. Applegarth in his

presentation to the Board.

So what has been the outcome of this-where are we today?

On the issue of overtime pay: It is a year later and the Auditor has taken no steps to review his options and obligations, or the 30 pages of supporting documents of our consultations with the office of El Dorado County Counsel and an outside law firm. There has been no contact with our Boards to resolve the issue, and no discussion of the facts involved.

In addition, the Auditor-Controller took more than two years to implement CalPERS contracts for our Conservation District employees. Admittedly it was a complex and complicated process, but there were long periods when neither the RCD nor CALPers could get the Auditors office to respond to requests for action or information. Whether that was retaliation or inefficiency, the result is that our employees owe almost \$25,000 dollars in retroactive contributions, hundreds of hours of time have been spent trying to find out what was needed to complete the process and our Districts have been exposed to potential legal liabilities.

In conclusion, my concern from the very beginning has been the tone and nature of the attacks by Mr. Harn. As an elected official I am prepared for criticism of my actions. We make the best decision we can and accept the responsibility that follows. What I was not prepared for was the destructive nature of this attack, which wrongly targeted our District Manager, ignored the facts involved and created an extremely hostile working relationship.

As long as this letter is, I would like to invite the Board of Supervisors to review the attachments and decide themselves if this matter was handled appropriately and professionally. The fact of the matter is that Mr. Mark Egbert has been an exemplary District Manager and Mr. Harn's actions could have needlessly driven him away. This kind of personal hostility is damaging the ability of government employees to perform their duties, is driving good employees out of the county, and there have been numerous examples of the risk that this kind of behavior creates for the organizations that allow it.

Dr. Dale R. Pierce

Director

El Dorado Resource Conservation District

Writing for Myself and Not as Authorized Spokesman for the District



Harn BOS attachments.docx

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Attachment 1- Email to BOS

Resource Conservation District/Harn letter

April 25, 2013 3:33 PM

Dear Supervisor Briggs;

I know that your office had requested background on the letter written April 22 by the Auditor-Controller. I have written a response to that letter (as an individual, not as spokesman for the Board) because the tone of that letter made me uncomfortable. I feel there is a misstatement of the facts that I feel is an inappropriate criticism of our District Manager, and I don't want any disrepute to attach to his reputation.

If you have any questions I will be happy to answer

Sincerely

Dale Pierce
El Dorado RCD

In RE: Auditor-Controller's letter of April 22, 2013

I have tremendous respect for the efforts of the Office of Auditor-Controller to safeguard public funds, and in the current economic cycle these efforts are more important than ever.

However, I find myself very troubled by Mr. Harn's letter of April 22, 2013 to the Boards of the El Dorado and Georgetown Divide Resource Conservation Districts regarding payment for accrued Compensatory Time.

As a Director of the El Dorado RCD I take very seriously my fiscal responsibility and our accountability for our actions. It is one thing to criticize our Boards for their decisions. That is Mr. Harn's job. It is another thing entirely to criticize our employee for following the Personnel Policies established by the Districts before he was hired. Mr. Harn's statement that **"the basic premise of your Board's action is that your District Manager did not know he was an 'exempt' employee."** is a misstatement of the facts. For one thing, our Manager was originally hired to a position that was not exempt before being promoted to the District Manager position, and his status was never fully defined. More importantly, it was District Policy that employees who attended the Board meetings scheduled after business hours (giving up time with their families, and sometimes working until midnight) were to receive compensatory time off. Any lack of clarity in our policies or misunderstanding of the Fair Labor Standards Act is the responsibility of the Board, not the employees.

Those policies were established before our District Manager was hired in 2002. In his more than 10 years of exemplary service our District Manager has brought to the

Resource Conservation Districts a level of commitment, professionalism, and accountability that has transformed the Districts from 2 groups of 10 volunteers with one part-time employee to organizations that administer millions of dollars in projects to benefit the natural resources of El Dorado County. Our District Manager can take personal pride for his role in projects such as the Finnon Dam Restoration Project, The Camp Sacramento Erosion Control project, the Watershed Education Summit with local schools, and numerous fire safety projects with Fire Safe Councils. He has worked with a long list of partners who can support his professionalism and ability including El Dorado County; State Agencies such as Cal Fire, the Department of Fish and Wildlife and the Division of Dam Safety; Federal Agencies such as the Forest Service and the Department of Agriculture; private landowners; schools and teachers; and conservation organizations such as the Sierra Nevada Conservancy. El Dorado County is a better place today because of his work both in delivering these projects and in developing the capacity of our Districts. Any slur attached to our District Manager is completely inappropriate and unjustified.

The most troubling aspect of this letter is what is omitted. The Auditor-Controller calls our proposal absurd and that he plans to request a review by County Counsel. He omits that the submission to his Department included more than 30 pages of supporting documents, including legal review by both the El Dorado County Counsel and by an outside law firm. He also neglects to mention the numerous contacts between our Districts and his office, or that our final submission to his office was in response to his emailed recommendation. Mr. Harn specifically asks for supporting information without acknowledging it was included in the submission.

The Directors are all unpaid volunteers with varying backgrounds and areas of expertise. None of us are experts in labor law. Decisions made more than a decade ago created a difficult situation. When it was pointed out to us by our independent auditor, we held open meetings to discuss it, consulted two legal resources and an HR specialist, took steps to prevent future problems and ultimately reviewed the results with the Office of the Auditor-Controller. As a form of Special District we rely on certain services provided by El Dorado County, and in the past the Auditors office has been one of our most valuable partners with a long history of helpful and professional assistance. This letter is a significant change.

In light of his omission of material information, the Auditor's sideways attack on our District Manager, and the implied threat of County Counsel review, I feel that his letter is an intentional misstatement of the facts done for intimidation rather than an attempt to resolve a real issue. The letter in question reads like it could have been written by the Senate Permanent Subcommittee on Investigations, and if I were a county employee I would be reluctant to raise these issues for fear of retaliation. The wide distribution to the Board of Supervisors and almost simultaneous release to the Mountain Democrat supports this picture of desire for maximum dramatic impact and publicity. The issue here is that our employees worked extra hours, our policy said they were entitled to compensation and a

careful legal review indicated the Districts needed to pay that compensation. If Mr. Harn felt our two legal opinions were not credible and wanted a third review then we could have had that discussion without the threats and innuendo.

Sincerely

Dale R Pierce DDS

Writing for Myself and Not as Authorized Spokesman for the District

Resource Conservation Districts were created alongside the Soil Conservation Service as the Federal Government's response to the Dust Bowl years. They are a unique model of local leadership in partnership with government programs. As specialists in partnerships and cooperation with other agencies our mission is to promote the responsible stewardship of our natural resources

OT pay for resource chief in limbo

By Dawn Hodson

From page A1 | May 08, 2013 | 9 Comments

A request for supplemental pay for the district manager of the El Dorado Resource Conservation District (EDRCD) is being questioned by El Dorado County Auditor-Controller Joe Harn.

Previously the EDRCD submitted a claim to the county to pay District Manager Mark Egbert for time he had accrued over the past 10 years, primarily for attending board meetings.

In an April 22 letter addressed to Chuck Mitchell, president of the EDRCD, Harn asked county counsel to review “any options and obligations regarding your request for my office to process a \$31,597 supplemental payroll payment to the RDC’s district manager.”

The letter continued, “Your board’s action related to this matter is just about the most absurd give-away of the taxpayers’ money I have seen during my 33-year career in governmental accounting and auditing. The basic premise of your board’s action is that your district manager did not know he was an ‘exempt’ employee as defined by the Fair Labor Standards Act.”

However, in an e-mail dated May 6, Egbert said, “The county auditor-controller advised the district that his office could process payment of the accrued compensation in its entirety as wages, even though the RCD boards never authorized this until after receiving this recommendation. It is of great concern that the information provided by the diversity of entities on this matter be reliable and those entities that provided the information to the board be accountable.”

Egbert said the request was a result of his board of director’s efforts to evaluate the validity of accrued compensation time for all district positions. He said the supplemental pay request was recommended by a third-party law firm, an independent auditor and an independent human resources firm.

Claiming his position is not exempt, even though he is designated the district manager, Egbert said the district will rely on the county's definition of who is an exempt employee.

However, Harn disagrees. "He's always been the district manager and if you're a manager you don't get paid for overtime," Harn said. "He's the district manager for 10 years and he didn't know managers don't get overtime?"

Harn also questioned how much it cost to hire outside people to render that judgment. "I can get a lawyer to say I'm beautiful and have a beautiful full head of hair. You can hire a lawyer to say anything you want," he said. "It's absurd for a district to pay a manager for working extra hours. I don't believe the payment is correct and I won't make the payment until it's my lawful duty to make that payment."

He said that the county needed extra justification to support why Egbert should receive overtime pay.

Egbert maintains he does not want the additional compensation. He claims the entire issue arose because of advice the district received from its auditor.

"I do not have a claim against the district for the supplemental payment and would never do so," he said. "The integrity, accountability and transparency of the district is of utmost importance."

Egbert said he hopes county counsel renders a judgment on the issue this week.

Contact Dawn Hodson at 530-344-5071 or dhodson@mtdemocrat.net. Follow @DHodsonMtDemo on Twitter.

Attachment 3- Comments to the Mountain Democrat Article

These are comments posted by two RCD directors to the Mountain Democrat article resulting from the Auditor-Controllers' letter of April 22.

<http://www.mtdemocrat.com/news/county-counsel-ot-pay-for-resource-chief-in-limbo/>

Rich Milner May 08, 2013 - 1:13 pm Sent to Mountain Democrat

Whether overtime pay is justified or not, one thing is quite clear, Mr. Egbert is grossly under paid for his position, and he hasn't had a raise in 4 years. Actually, I might even argue that this one-time \$31,597 on top of his annual pay is considerable less than many county managers and employees receive in annual pay...definitely not out of fair pay range for a district manager-chief policy consultant-chief fiscal officer and his own secretary -- who is also simultaneously beholden to two separate and independent boards of directors. His overtime helps the district manage many projects that bring outside funds to the district...leveraging five outside dollars for every one dollar of local taxes. Mr. Harn wouldn't work for half Mr. Egbert's salary and put in the equal amount of overtime.

Rich Milner May 08, 2013 - 11:48 pm Sent to Mountain Democrat

According to records of the California State Controller's Office, in 2011, Auditor Controller Joe Harn received \$155,676 in regular pay, \$864 in lump sum pay, \$43,566 in other pay, for a total of \$200,106 in total wages. In addition to salary, he received \$26,798 in a defined benefit plan, \$4,745 in deferred compensation and \$16,093 in health/dental/vision coverage. A total cost to El Dorado County taxpayers in 2011: \$247,742. That is \$100,000 more than the entire county funding for the TWO districts Egbert manages. His salary was \$70,000 more than the California State Inspector General or the California State Controller, and \$35,000 more than the Governor's salary. Harn's salary is 2.5 times Mr. Egbert's salary which he calls "the most absurd give-away of the taxpayers' money I have seen during my 33-year career in governmental accounting and auditing." Is Harn also complaining about the 349 El Dorado county employees making more than Mr. Egbert, or the 122 county employees whose six figures salaries are more than Mr. Egbert's yearly salary plus his one-time overtime pay earned over a ten year period? Joe Harn is an elected politician who seems to have a political agenda here.

Dale Pierce May 09, 2013 - 6:07 pm

The Directors of the RCD's are all unpaid volunteers interested in natural resources-not experts on the Fair Labor Standards Act-who received legal advice from the El Dorado County Counsel and from the Auditor-Controller before deciding how to meet our obligations to our employees. The Auditor states he plans to ask County Counsel to review his options and obligations. Why would the Auditor choose to make a public attack in the Mt. Democrat first, and check the law second?

LATE DISTRIBUTION 5-12-14

Dear Members of the Board of Supervisors:

Though I can't sign this because I have too much to lose, I hope that you will accept this in support of item #39 on your agenda for May 13th. First, I would like to say that I am thankful every day for my job with the County of El Dorado. However, the environment of fear and paralysis that the Auditor-Controller has been allowed to cultivate here is, sadly, a great hindrance to me being able to say "I love my job". I am tired of constantly having to consider how the slightest action might turn me into a "target" in the irrational view of Joe Harn. Those who defend his behavior in the name of fiscal conservatism or who say that watchdogs aren't supposed to be friendly completely miss the point. They are subscribing to the Auditor's delusion that it is necessary to belittle and demean people in order to be effective. Joe Harn points to the strangely high employee satisfaction rating in his office and asserts that the County has never paid a penny to settle a case against him as proof of his innocence. Those of us who have worked in the County for years understand that, just as a beaten wife will tell people on the outside that her husband is wonderful and never ask for help, the employees in the Auditor's Office have many reasons for professing job satisfaction, the least of which is that they are actually happy. While the editor of the Mountain Democrat would prefer to label anyone who dare complain about Joe as a "nutcase", I hope the Board realizes that there are many, many intelligent, hard-working employees who can't come forward as Mike Applegarth so bravely did. I am ashamed that I can't sign my name to this letter, but I am absolutely certain that if I were to speak publicly the remainder of my employment here would be a living hell. Please do everything you can to help the silent majority. Thank you.