

What are McKinley County property taxes paying for?

The special audit that was the subject of arguments between RMCHCS and McKinley County is now in the hands of the Internal Revenue Service.

State Auditor Brian Colón released a Special Audit report Sept. 14, stating that Hinkle & Landers, the Independent Public Accountant who conducted the audit made note of significant issues that included findings related to management contracts, improper reimbursements, violations of internal controls and policies and procedures.

Also noted were issues concerning private inurement transactions, which happen when an individual with significant influence over an organization, enters into arrangements with the nonprofit and receives benefits greater than he or she provides in return.

Page nine of the Hinkle & Landers forensic audit, lists one of those inurements as “The CEO charged his daily breakfast burrito to RMCHCS.”

WHERE DID THE MONEY GO?

In its tracking of mill levy funds, the IPA report stated that it had established that commingling of funds had occurred at RMCHCS.

Furthermore, the audit mentioned the salary of CEO David Conejo, (fired June 11), saying there are references in the 2014 minutes of the Board of Trustees that the CEO salary would be based on the market rate. But no documentation could be found for such an analysis.

According to the special audit, Conejo entered into a five-year agreement with the hospital to serve as sole and exclusive manager and administrator, receiving nearly $572,000 in 2017, $629,000 in 2018, which was said to be comparable to that of the CEO at the University of New Mexico Hospital, which has more than ten times the number of beds as RMCHCS, and where the salary for the CEO is approximately $676,000.

In addition Conejo's company Health Care Integrity LLC was paid a minimum of $350,000 per year beginning in 2016, plus all expenses incurred by HCI, including the salaries and benefits for its employees.

The IPA did not receive any evidence that the Board evaluated the agreed-upon compensation for Conejo and HCI to determine if the amounts paid out were fair and reasonable.

The review of the compensation set-up would result in all monthly profits being paid to HCI. HCI would receive a minimum of over $29,000, even if the hospital incurred losses.

The audit results also noted that the way Conejo's HCI contract is written, it largely does away with internal controls by the hospital, because all control was placed in the hands of HCI, with only minimal oversight by the Board.

Since Conejo was not considered a hospital employee, it appears he was not required to sign

off on a conflict of interest policy or a code of conduct, the report stated.

The report, which was sent to the IRS, N.M. Dept. of Taxation and Revenue and N.M. Mexico Atty. Gen. Hector Balderas on Sept. 15, shows that criteria for hiring the CEO is required to be approved by the Board of Trustees and documented in the Board minutes.

It also states that the IRS allows tax-exempt organizations, such as RMCHCS to pay executives “fair and reasonable” compensation, which is determined at least partially by researching what someone in a similar position would earn at an organization of the same size with a comparable mission.

In the auditor’s determination, the terms laid out in the CEO contract for Conejo do not appear to qualify as reasonable compensation and would be considered a violation of the private inurement regulations.

THE RISKS

Based on the findings concerning the compensation and contract for Conejo and HCI, Hinkle & Landers’ report said the contract may not be valid.

“The contract is so one-sided in favor of HCI that it does not appear to have been properly reviewed and accepted by those with the fiduciary duty to do so, and the terms of the contract are not in the best interest of RMCHCS,” the report stated.

It also said the compensation paid may not be correct.

Further, the audit findings indicate the IRS may determine the CEO was a “disqualified person,” whose compensation is unwarranted. That could mean Conejo’s paid salary and personal benefits could be considered excess and subject to an excise tax equal to 25 percent of the amount.

Board members and organization managers could also be subject to an excise tax equal to 10 percent of the excess benefit for their participation in the transactions.

If the IRS determined the violations were egregious enough, RMCHCS could lose its tax-exempt status.

McKinley County Manager Anthony Dimas, Jr. told the *Sun*, Sept. 16, that McKinley County has no interest in taking over the hospital. But it does have an interest in tightening up audit requirements for a new lease.

In particular he pointed to Article 12 section 1, where it states, “RMCHCS shall provide [the] County with an annual Balance Sheet, personal and real property inventories, Profit and Loss Statement, Accounts Receivable and Accounts Payable records and any other financial records bearing on the operation of the hospital.”

Dimas highlighted the following, “Said financial information shall be in sufficient detail to allow County to appropriately analyze the fiscal status and management practices of the Hospital.”

HOSPITAL RESPONSE

RMCHCS released a statement Sept. 15 saying it has begun working to insure proper internal controls are in place to restore its financial integrity.

“RMCHCS is a critically important partner to its patients and community – perhaps more now than ever before,” interim CEO Don Smithburg said.

The release also included information regarding staff changes, stating that RMCHCS has appointed a new Chief Nursing Officer, Chief Human Resources Officer and Director of WellSpring Recovery Center. The hospital says it is also in the process of engaging a specialized CPA firm to conduct internal audit reviews of various hospital operations.

McKinley County District III Commissioner Bill Lee was pleased to learn about the hospital’s response to the report.

“I am happy to see that the hospital has taken the audit to heart and has begun to work to correct a lot of the problems that were there,” Lee told the *Sun*, Sept. 16. “They started with dismissing the CEO.

“Many of the problems stemmed from the CEO, but it also highlighted the lack of attention to detail that the board has to own up to as well,” he concluded.

CONEJO’S ATTORNEY REFUTES REPORT CLAIMS

State Auditor Brian Colón has misrepresented the true financial picture of Conejo’s tenure as CEO at RMCHCS, according to a statement released by Luis Robles, attorney for the former hospital head.

“The whole nature of the report is shoddy and paints a completely inaccurate description of my clients’ financial transactions,” Robles stated.

Robles, who is representing Conejo in a six-count lawsuit against RMCHCS, called the audit a blatant political attack by the state auditor. “We were never afforded an opportunity to review the audit by McKinley County, despite a request under the Freedom of Information Act.”

Robles continued his statement introducing different figures.

“Conejo’s salary was in fact $280,000, not the alleged amount of $350,000. Conejo’s salary was actually $70,000 less than the previous CEO,” Robles stated.

He went on to say that the report did not take into consideration that his client donated $50,000 to the hospital each year for its annual charity fundraiser.

Robles indicated he was ready to have any outside organization review the audit.

Despite those objections, Colón trusts the report.

“I’m confident in the integrity of Hinkle & Landers and the quality of their past work. I have no reason to think their report isn’t reliable. And as such, I referred it to the proper authorities,” he told *The Gallup Sun* Sept. 16.

Hinkle & Landers CPA Farley Vener also spoke to the challenges Robles made against the report.

“We think the report speaks for itself and we do have supporting documentation,” Venner told the *Sun*. “We stand by the report.”

THE LONG AND WINDING ROAD OF THE SPECIAL AUDIT

In the late summer and early fall of 2019 there were discussions about terms for the audit, even whether the audit would be called a special audit or a forensic audit. There were arguments about what would be included and where it would be reviewed.

The audit was meant to track the hospital's spending of mill levy funds, a property tax based on the assessed value of a property.

At the time, Conejo expressed confidence that copies of the financial documents would satisfy any concerns.

Those documents began arriving at the state auditor's office after a meeting with Conejo, the CFO, COO, comptroller and financial administration May 12, 2020. Robles states the documents were delivered previously, but not accessed.

As for the IRS, taxation and revenue departments and the state attorney general's office, "They'll do their own investigation," Colón said. "They all have their individual process and procedure."

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