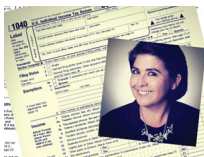


State Auditor: TRD tried to ‘obstruct’ investigation

Written by By Joey Peters NM Political Report
Friday, 24 July 2015 05:14



A state department attempted to thwart an outside investigation into its cabinet secretary’s alleged wrongdoings, State Auditor Tim Keller said in a press conference July 22.

Keller released four documents related to his office’s preliminary investigation into whether Taxation and Revenue Department Secretary Demesia Padilla illegally intervened to give preferential treatment to her former client and retaliated against employees who brought concerns. The Taxation Department collects and distributes tax funds in New Mexico.

Among the newly released documents are letters showing how the department attempted to prevent two of its employees from being interviewed by an outside firm hired by the state auditor to look into the matter.

“They basically were trying to obstruct our investigation,” Keller said. “As soon as they found out about it they immediately tried to prevent anyone in that organization from talking to us. And, of course, for a number of reasons that’s inappropriate and not allowed.”

Keller released the documents on Wednesday because of multiple public records requests following the announcement of the investigation.

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The preliminary investigation stemmed from an anonymous complaint to the state auditor's fraud hotline in February. Keller said his office performed "initial fact-finding" on the complaint before handing it over to an independent firm.

That firm, Albuquerque-based McHard Accounting Consulting (<http://www.mchardaccountingconsulting.com/>), entered a contract with the state in April to conduct a preliminary investigation that involved "interviewing no more than four staff or former staff members of the entity." The contract totaled \$11,500.

Keller noted that executives from not just his office, but also the Taxation Department signed off on the preliminary investigation.

Alleged obstruction of investigation

But soon enough, the Taxation Department told two of its employees to not talk to investigators. Keller's office wrote a letter to Taxation Department General Counsel Brad Odell on June 9, citing the auditing authority from his office and whistleblower protection laws that require the employees to cooperate with the investigation.

The letter, written by State Auditor Chief Legal Counsel Sarita Nair, threatened to take steps to file a subpoena to interview the employees and warned that the costs of the investigation would be shifted to the Taxation Department if it didn't comply.

Nair noted that up until that point, her office "has endeavored to keep this investigation confidential."

"With the filing of the petition, the investigation will become a matter of public record," she wrote.

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Investigators eventually interviewed the two employee without taking these steps. But at the press conference, Keller said that in this case “the damage was done in a sense that they tried to scare employees from talking about this serious matter.”

“There are many aspects we’re concerned about in terms of retribution here,” he said. “But one of them is, obviously if your boss says you can’t talk to someone, and then comes back and says you can talk to them, there’s a pretty dangerous situation where we’re not sure if they’re going to be straightforward with us and share the information that is appropriate for this kind of taxpayer protection situation.”

According to Nair’s letter, the Taxation Department also wanted its legal counsel present during the interviews.

“We do not believe this would be appropriate,” she wrote. “It is essential that interviewees feel comfortable to speak honestly and openly with the firm that is investigating this matter. We believe that the presence of Department counsel would have a dramatic chilling effect on this type of free communication.”

In a statement, Taxation Department spokesman Ben Cloutier called Keller’s comments that the department tried to obstruct the investigation “absolutely outrageous.”

“He was given access to everyone he wanted to interview and provided all documents, but didn’t bother to even ask to interview those at the center of this issue.” Cloutier said, referring to Padilla never being interviewed during the investigation. “That very fact just goes to show that this is nothing more than a media stunt with the only purpose of advancing his political career.”

Arguments that Auditor overstepped authority

Odell sent Nair a response two days later arguing that “the State Auditor seeks to perform an audit of the Department outside the scope of his authority.”

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Specifically, he wrote that the state auditor's office is limited to only looking at the Taxation Department's "financial affairs and transactions."

"Your letter provides that the authority of the Office of the State Auditor is based on a report made that there was an abuse within the Department that resulted in a loss of revenue," Odell wrote. "Based on the employee the Office of the State Auditor seeks to interview, the Department has grave concerns that this investigation seeks to determine whether the Department is properly enforcing the Tax Code and collecting taxes, penalties, and interest."

Odell added that his department had concerns that the investigation "will seek disclosure of taxpayer information."

Discussing anything apart from "the procedures for selecting audits, performing audits and collecting taxes" would put the employees "in jeopardy of disclosing confidential taxpayer information" that could result in "employment and criminal sanctions," he wrote.

The preliminary investigation eventually found basis for a deeper investigation, which is now in the hands of Attorney General Hector Balderas. Odell's letter notes that Keller also "had conversations with Secretary Padilla concerning this matter."

Keller also released his July 9 letter to Balderas, which said that the preliminary investigation found enough to warrant a look into whether Padilla retaliated against employees "to protect herself from possible individual liability resulting from her actions as a certified public accountant working for that taxpayer."

Keller wouldn't delve into more specifics at the press conference, including who Padilla's former client is or how much money the state potentially lost because of her alleged actions. Nor would he release the names of the state employees who were originally told not to cooperate with his investigation or the hours of audio recordings from the investigation.

He did, however, add that the primary issue at stake was "a change in the taxable amount" of Padilla's former client. Keller also noted that tax confidentiality laws may prevent the name of

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the client from ever being released publicly.