



A REPORT
TO THE
ARIZONA LEGISLATURE

Special Investigative Unit

Investigative Report

Arizona Historical Society—

Conflict of Interest and Procurement
Violations by Agency Officials

August • 2002



Debra K. Davenport
Auditor General

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AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

WILLIAM THOMSON
DEPUTY AUDITOR GENERAL

August 28, 2002

Members of the Arizona Legislature

The Honorable Jane Dee Hull, Governor

Board of Directors
Arizona Historical Society

The Honorable Janet Napolitano
Office of the Attorney General

We have conducted a special investigation of the Arizona Historical Society for the period August 1999 through December 2000. Our investigation was performed to determine whether there were conflict-of-interest and procurement violations during that period and whether the Agency's business practices were consistent with legal requirements.

Our investigation consisted primarily of inquiries and the examination of selected financial records and other documentation. Therefore, our investigation was substantially less in scope than an audit conducted in accordance with generally accepted auditing standards. Accordingly, we do not express an opinion on the Agency's financial records or internal control structure, nor do we ensure that all matters involving the internal control structure established by the American Institute of Certified Public Accountants or other conditions that may require correction or improvement have been disclosed.

The accompanying Investigative Report describes our findings and conclusion as a result of this special investigation.

After this report is distributed to the members of the Arizona State Legislature, the Governor, and the Attorney General, it becomes public record.

Sincerely,

Debbie Davenport
Auditor General

Enclosure

SUMMARY

Our investigation revealed that from August 1999 to December 2000, certain Arizona Historical Society (Agency) officials violated conflict-of-interest statutes and the Procurement Code. As a result of our investigation, the Attorney General has taken criminal action against the Southern Arizona Division Director. See the Conclusion on page 9.

Certain Agency officials violated the State's conflict-of-interest statutes by misrepresenting themselves to City of Tucson officials and/or concealing pertinent information from Board members in order to obtain personal benefits for themselves or their relatives.

- The Southern Arizona Division Director misused his employment status with the Agency to unlawfully receive monies through a City grant program in which he personally solicited City funds, using the Agency as the proposing entity.
- In addition, the Board President improperly participated in the hiring of his son-in-law as an Agency lobbyist, which contributed to the Agency's restrictive competitive practices.

Finally, Agency officials expended at least \$28,515 in violation of procurement regulations.

- Agency officials failed to obtain any price quotations before hiring the lobbyist referred to above.
- Agency officials also violated the Procurement Code when purchasing other goods and services.

Investigation Highlights:

- Agency officials violated conflict-of-interest statutes.
- Agency officials failed to comply with procurement regulations for purchases totaling over \$28,000.

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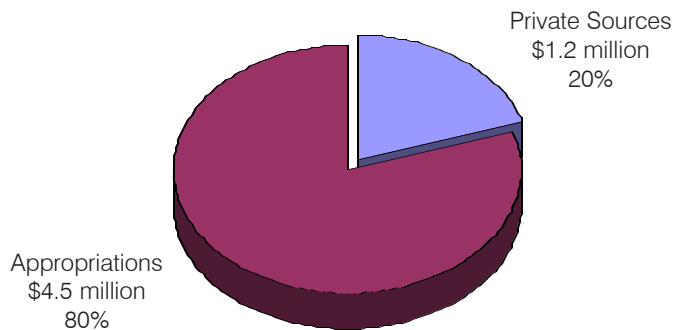
BACKGROUND

The Arizona Historical Society is a state agency whose mission is to collect, preserve, interpret, and disseminate the history of Arizona, the West, and northern Mexico as it pertains to Arizona.

In fiscal year 2001, the Agency's \$5.7 million total revenue included both private and state funding. State appropriations accounted for \$4.5 million, or 80 percent, of the total annual revenues. The remainder of the Agency's revenue is obtained through donations, grants, and other private sources such as membership dues. These private monies are held by public officials in their official capacity. Consequently, these monies are legally considered to be public monies, and must be accounted for and treated as public monies.

The Agency consists of an 81-member staff with \$5.7 million in total annual revenues consisting of both private and state funding.

Exhibit 1: Total Agency Revenues
Fiscal Year 2001



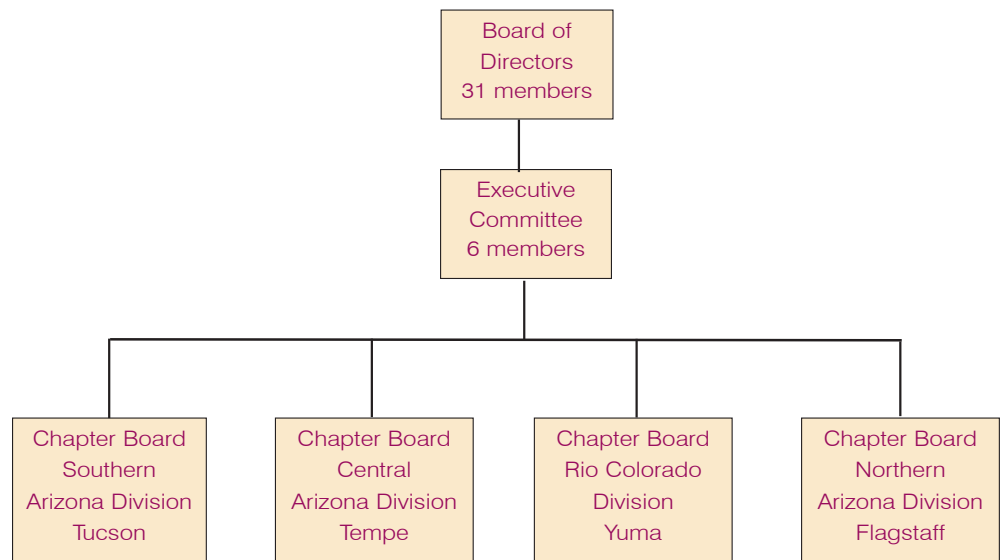
Source: Auditor General staff analysis of the Arizona Historical Society's Statement of Revenues, Expenditures, and Changes in Fund Balances for the year ended June 30, 2001.

The Agency's process used to elect its Board of Directors is based on laws that have remained relatively unchanged for almost 90 years.

A.R.S. §41-821 establishes a Board of Directors that holds in trust for the State all property acquired by the Agency. Further, the Board directs and oversees the Agency's operations. The Board is composed of 31 voting members, who govern the Agency and its 81-member staff. The Board is elected by the Agency's membership, which includes over 2,000 citizen members to date. Since its establishment in 1912, the Agency's process to elect the Board of Directors has remained relatively unchanged.

In addition, the Board of Directors established an Executive Committee, which has full authority to act for the Board of Directors. Further, the Agency has four divisions, located in Tucson, Tempe, Yuma, and Flagstaff. The Board has established a chapter within each division. These chapters conduct fund-raising, advise the division museum directors on museum programs and exhibits, and advocate for each chapter's needs to the Board of Directors. The presidents of these chapters also serve on the Board.

Exhibit 2: Arizona Historical Society Governing Structure



Source: Auditor General staff analysis of Arizona Revised Statutes and Arizona Historical Society records.

FINDING 1

Agency officials violated conflict-of-interest statutes

During the period August 1999 to December 2000, certain Agency officials disregarded the State's conflict-of-interest statutes by misrepresenting themselves and/or concealing pertinent information from Board members or other outside interests in order to obtain personal benefits for themselves or their relatives totaling over \$22,000. Their inappropriate actions may have harmed the Agency by limiting competition and compromising its reputation.

The Southern Arizona Division Director improperly used his employment status with the Agency to unlawfully receive personal income

State law restricts an employee of a public agency from receiving additional compensation for services personally performed regarding any matter pending before the agency for which he is an employee. In order to obtain additional personal income, the Southern Arizona Division Director misrepresented to City of Tucson officials that the Arizona Historical Society was the responsible party for services he personally performed in relation to one of the City's grant projects. Consequently, he and his subordinate inappropriately received personal income of \$13,000.

The Southern Arizona Division Director submitted a grant proposal to the City of Tucson soliciting monies for the Agency to plan and design a historical exhibit in Tucson. In the grant proposal, he listed the Arizona Historical Society as the

The Southern Arizona Division Director improperly used his employment status with the Agency to unlawfully receive personal income of \$13,000 for himself and his subordinate.

proposing entity and himself, with his professional title, as the contact person. However, the Southern Arizona Division Director did not obtain permission from the Agency's Board of Directors or Executive Director to apply for monies from the City on behalf of the Agency. In fact, he did not completely inform any of his superiors of his involvement or the Agency's involvement with this grant.

The Southern Arizona Division Director identified the Agency as the grant recipient on the grant proposal and other written communication with the City. Yet, he solicited his subordinate, the Exhibit Director, to personally complete a portion of the grant project prior to the City's approval of any grant monies to the Agency. Once the City of Tucson approved the grant to the Agency, the Southern Arizona Division Director requested that the City write the final contract for and issue payment directly to his subordinate's personal business. However, because the City Council approved the grant believing that the Agency was completing the project, the City required the Southern Arizona Division Director to sign the contract in his official capacity representing the Agency's responsibility for the completed grant project. The Southern Arizona Division Director signed the contract without notifying the Agency of the awarded grant monies or their responsibility regarding the final grant project.

After the grant monies were deposited into the Exhibit Director's personal business account, he and the Southern Arizona Division Director split the monies and received \$6,500 each.

Further, the Southern Arizona Division Director and the Exhibit Director did not document their partnership on the Agency's mandatory disclosure statement after the grant proposal was submitted to the City. Likewise, neither employee completed the Agency forms requesting permission for outside employment.

Board President may have improperly influenced the Agency to contract with his relative

The Board President was a significant participant in the hiring of his son-in-law as a lobbyist for the Agency.

State law restricts public officers from participating in any manner in contracts, sales, or purchases for which they have a substantial interest and requires them to make known that interest publicly in the agency's official records. However, the Board President improperly participated in the recruitment of his son-in-law as a lobbyist for the Agency by facilitating several phone conversations and setting up at least one meeting with his son-in-law and the Agency's interim Executive Director.

Subsequently, the Executive Committee hired the Board President's son-in-law for \$9,750 to provide the Agency lobbyist services during a 3-month period, without evaluating the services of any other potential vendors. Despite his improper

involvement and failure to file the required conflict disclosure, the Board President did properly abstain from the vote to hire his son-in-law as the Agency's lobbyist. However, without the Board President's vote, a quorum did not exist, so the vote to award a contract to the lobbyist was not valid.

Finally, the Agency has never maintained a conflict-of-interest file available for public inspection, as required by law. All disclosure statements completed by Agency employees are filed in the employee's confidential personnel file and are therefore not available for public inspection. In addition, most Agency officials do not have access to these files. Further, Directors were unaware of their responsibility to complete disclosure statements for any conflicts they may have.

With only three out of six committee members voting to hire the lobbyist, the Agency did not have a majority vote required to award a valid contract.

FINDING 2

Agency officials improperly purchased goods and services

During the period January 2000 to August 2000, Agency officials improperly procured goods and services totaling over \$28,000. Agency officials failed to solicit competitive price quotations or obtain authorization from the State Purchasing Office when spending monies received from private sources. Because these monies are held by public officials in their official capacity, they are subject to the same spending restrictions as appropriations and other public monies. State agencies are required, for purchases exceeding their specified spending limits, to use contracts competitively procured by the State Purchasing Office or to obtain permission from that Office to issue their own request for competitive solicitations. State agencies have no purchasing authority beyond the limits established by statute or the State Purchasing Office. The Agency's specified spending limit was \$5,000 until June 6, 2000.

From January through June 2000, Agency officials purchased over \$23,500 of goods and services without following the State's Procurement Code.

- The Executive Committee hired the Board President's son-in-law for \$9,750 in lobbying services. Agency officials spent almost twice their allowable spending limit of \$5,000 without obtaining price quotations or contacting the State Purchasing Office for authorization to expend these monies. In addition, the Agency did not include in the lobbyist's contract the State Procurement Office's Uniform Terms and Conditions required for all state agencies.

The Agency failed to comply with the procurement code when purchasing goods and services totaling over \$28,000.

The Agency spent almost twice its allowable spending limit to hire a lobbyist without following any competitive procurement process.

- Further, Agency officials made six other purchases totaling \$13,969 for items such as furniture and lodging for independent contractors without obtaining the required oral or written price quotations for purchases ranging from \$1,001 to \$5,000.

Because Agency officials did not comply with the Procurement Code when spending monies received from private sources, competition for these purchases was limited and the Agency may not have received the best value for the services received. Further, by failing to include the State Procurement Office's Uniform Terms and Conditions within the lobbyist contract, Agency officials failed to protect the Agency from possible legal action by the lobbyist or other parties to the contract.

During June 2000, the Department of Administration reduced the Agency's specified spending limit from \$5,000 to \$1,000 with clear instructions that all monies the Agency received are required to be expended in strict compliance with Arizona's Procurement Code. However, in July and August 2000, the Agency failed to follow the Department of Administration's recommendation and spent an additional \$5,000 for professional services and building materials without adhering to any competitive process.

CONCLUSION

On August 28, 2002, Jerry Kyle, former Arizona Historical Society Southern Arizona Division (Tucson) Director, pled guilty to one count of theft and agreed to pay restitution of \$6,500 to the Arizona Historical Society.

