State of Louisiana

OFFICE OF

STATE INSPECTOR GENERAL

ST. BERNARD PORT DISTRICT

Report by

Inspector General Bill Lynch

Prepared for

Governor M.J. "Mike" Foster, Jr.

March 15, 1999

File No. 1-98-0083

State of Louisiana

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February 26,1999

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St. Bernard Port District

The travel reimbursement practices of the St. Bernard Port are substantially more liberal than those customarily allowed state employees. In addition, the Port exercises little control over its reimbursement of travel, entertainment and "special meal" expenses, resulting in the payment of expenses which are not adequately documented and not reasonable or necessary.

The Commission violated Article VII, Section 14 of the Louisiana Constitution prohibiting donation of public funds by paying $2,498 for membership dues, luncheons, and office refreshments, purchasing $917 worth of Christmas hams and gift certificates for its employees, and paying $130 for personal items of non-business purposes.

Port Commissioner Harold Felger is also an employee of the Port, which appears to violate both the state's Dual Officeholding Law and the Code of Governmental Ethics.

Background

The St. Bernard Port is a political subdivision of the state, created by state law, and has 18 employees. The five members of the Board of Commissioners, who are appointed by the Governor, are Sam Bella, Jr., Harold Felger, Stephen Juan, Elton LeBlanc, and LeRoy Phillips.

The board of commissioners for the district has complete jurisdiction to regulate all domestic, coastwise, and intercoastal commerce and traffic of the district, and all commerce and traffic within the district including cargo bound for and /or in and / or out of international commerce where such commerce is conducted by or through a facility wholly owned by the district.

Travel and Entertainment

The St. Bernard Port Commission has adopted travel reimbursement guidelines that are substantially more liberal than those allowed most state employees. Travel reimbursements allowed employees within the executive branch of government are set forth by the Division of Administration in Policy and Procedure Memorandum 49 (PPM 49). Even though the Port is an agency within the executive branch, the Division of Administration takes the position that the St. Bernard Port is not bound by the provisions of PPM 49.

In reviewing the 21 travel vouchers submitted between June, 1997, and May, 1998, it became apparent that the Commission exercises little control over the travel reimbursements of its commissioners and executive director. The Port does not provide any meaningful review or audit of its travel expenses. According to the former executive director, he reviewed and approved the commissioners' travel vouchers for payment. However, he felt he did not have the power to deny a commissioner’s travel expense reimbursement request. The former executive director also reviewed and approved his own travel vouchers.

Further complicating this review is that the Port reimbursed not only from travel vouchers, but also charged travel expenses on the Port’s credit cards. No single document reported all the charges reimbursed by individual for each trip. By not recording each individual’s travel expenses on a single document the audit of expenses is more difficult and the agency exposes itself to greater risk that errors, namely overpayments, could occur without detection. In contrast, PPM 49, which applies to most state employees, generally prohibits employees from using agency credit cards for securing transportation, lodging, meals or telephone services. PPM 49 requires these costs to be paid by the traveler and claimed on a travel voucher for reimbursement rather than being charged to the agency.

The travel vouchers and supporting documentation for some reimbursements did not contain sufficient detail to determine if the reimbursement was proper. Some amounts reimbursed are unreasonable and extravagant, in our opinion, and others are simply not allowed. Shown below are some examples:

Meals

The travel policy of the Port allows for reimbursement of up to $50 per day for meals and other incidentals without receipts while on official business. However, when traveling in high cost or extra high cost areas where meal reimbursements exceed $50 per day receipts are required. This policy is not always followed. Some examples are as follows:

In March, 1998, Commissioner LeRoy Phillips, and the then executive director, Irvin Ruiz, attended a four-day conference in Washington, D.C. Because Washington, D.C. is classified by the Port as an extra high cost area, receipts for meals were required for meal reimbursements if exceeding $50 per day.

There was a lack of documentation for the reimbursement of $214 to Mr. Phillips for meal expenses. Based on the Commission's policy regarding receipts, Mr. Phillips should have been reimbursed only $140. In Mr. Phillips' response he said he did not fully document his expenses. He explained that the reason his meals exceeded the amount allowed by port policy, without receipts, was that one of the dinner meals, which totaled $89, was attended by staff members from Senator Breaux's and Representative Tauzin's offices.

Mr. Ruiz requested and was paid $601.35 for meal expenses for the same trip. He submitted receipts for all but two meals. None of the receipts listed other individuals partaking in the meals, which is a prudent business practice and the practice of Port employees when buying meals for others. While Mr. Ruiz submitted receipts for three dinner meals, the charges for these meals in our judgment are unreasonable and excessive, even for Washington, D.C. For dinner on March 23, Mr. Ruiz listed the cost at $85.30. For dinner on the next evening, the cost was $150.08, and for the third night, $175.80. In Mr. Ruiz's response he attached receipts for one of these meals to which he said he added the other persons who were his guests.

Entertainment

The Port improperly reimbursed its commissioners and executive director $1,168.67 during the audit period for entertainment expenses while on business trips. We consider the entertainment reimbursements to be prohibited donations of public funds as per Article VII, Section 14 of the Louisiana Constitution as well as an unreasonable and extravagant expenditure of public funds.

The policies of the Port are silent about entertainment expenses except for special meals. However, it was common practice for the commissioners and the executive director to include reimbursement amounts for entertainment when submitting their travel vouchers. Most of the entertainment charges were not supported with receipts nor was adequate documentation provided indicating the person(s) being entertained or the reason for the entertainment. In most instances when partial receipts were provided in support of reimbursement requests, it was impossible to determine if the receipt was in support of entertainment charges or provided for support of the individual's meal reimbursement request.

Some examples are as follows:

The Washington, D.C. expense vouchers for Mr. Phillips, Mr. Ruiz and Commissioner Stephen Juan listed entertainment expenses of $165, $125 and $75 respectively. The entertainment expenses were not supported by any receipts or explanation other than entertainment for "port officials, Washington staff and congress."

An example of where it was not clear as to whether the receipts which were provided supported entertainment or an individual's meal reimbursement was the travel voucher submitted by Mr. Juan for a four-day trip to Houston, TX in August 1997. The Commission reimbursed Mr. Juan $182.21 for meals and $184 for entertainment. However, Mr. Juan only submitted two restaurant receipts totaling $166.21, one for $47 and the other for $119.21. The receipt for $119 was for two meals but Mr. Juan did not include the name of the guest or the reason for providing the meal as required by good business practices. With this lack of documentation, it is impossible to determine the validity of the reimbursements and, therefore, they are prohibited donations.

Tips

In reviewing the 21 travel expense vouchers there were at least three instances where the Commission reimbursed for extravagant tips with no requirement of an explanation. For example, Mr. Juan's travel voucher for his four day Houston trip listed tips of $87. Mr. Phillips' and Mr. Ruiz's travel vouchers listed tips of $75 and $70 respectively for their four day trip to Washington, D.C. Mr. Phillips expense voucher listed tips of $20 for the first day, $15 for the second, $20 for the third and $20 for the last day of travel. Similarly, Mr. Ruiz listed tips of $15, $25, $10 and $20 for the four days, respectively. No additional explanation other than Mr. Ruiz listing "tip – bags" on his expense voucher was provided. In contrast, the state travel policy allows tips for baggage handling not to exceed $1 per bag for a maximum of 3 bags, and limited to handling two times for arrival and two times per departure, a total of $12.

Alcohol Charge Reimbursements

The commissioners and former executive director were reimbursed a total of $368 for items identified as alcohol in the 21 travel vouchers reviewed. The Attorney General has consistently opined that expending public funds for alcohol is prohibited.

In-Room Movies

In–room movies totaling $58 were reimbursed by the Commission. In-room movies are personal items with no business purpose and are, therefore, prohibited donations.

Conclusions:

1. The travel policy of the Port is substantially more liberal than that governing state employees.

2. The former executive director failed to properly review the expense reimbursement requests that contain items which in our view are both excessive and unwarranted.

3. The Commission has failed to secure adequate documentation to support travel reimbursements for its commissioners and executive director.

4. The Commission is reimbursing for alcoholic beverages, which the Attorney General has consistently opined is improper.

Recommendations:

1. The Commission should abide with Port policy in reimbursing its members for travel expenses.

2. The Commission should require a proper procedure for reviewing both its Board members and executive director's expenses.

3. The Commission should not reimburse its members without adequate documentation to support the travel expenses of its board members and executive director. The documentation should include receipts and an explanation of unusual or extraordinary expenses.

4. The Commission should insure that its travel reimbursements are both necessary and reasonable.

5. The Commission should seek reimbursement of all travel expenses which were not in accord with its travel policy, not supported with adequate documentation, unnecessary and unreasonable, for alcohol, or for in-room movies.

Special Meals

In addition to the commissioners and the executive director being reimbursed for meals and entertainment expenses incurred while traveling, the port also paid for "Special Meal" expenses.

Special meals as defined in the Port's policy manual are reimbursements designed for those occasions when, as a matter of extraordinary courtesy or necessity, it is appropriate and in the best interest of the Port to use public funds for provision of meals to persons who are not otherwise eligible for such reimbursement. Examples include: a) visiting dignitaries or executive-level persons providing services to the Port, when such persons are not being reimbursed from other sources for the expenditures, or b) bona-fide official business meetings at which a meal is served and is required to meet during a meal hour.

We reviewed 203 special meals from May, 1997, through April, 1998, totaling $12,173. Over half of the meals were supported by receipts, contained the names of potential customers or tenants, and business reasons for the meal. These meals we do not question.

We question 72 special meals totaling $4,942 because they were meals with port vendors or there was no business reason to provide such a meal with public funds. A summary of the questioned meals follows:

1. 52 vendor meals, totaling $1,253. These meals were with vendors providing goods and services to the Port and included telephone company employees, the Port's engineering consultants, and the insurance agent of the Port. These are not occasions of extraordinary courtesy or necessity and we consider these meals donations, prohibited by the Louisiana Constitution.

2. In 1997, the Port hosted a Christmas Open House at a cost of $2,390, a Christmas meal for eight guests at Café Giovanni at a cost of $334, and a Secretary's Day lunch for 8 guests at the World Trade Center at a cost of $201. These expenditures constitute prohibited donations. Included in the costs for

the Christmas Open House, Christmas meal and the Secretary's Day lunch are alcohol charges totaling $401.

3. 16 meals totaling $737 lacked documentation of who the meal was with and/or there was no explanation of the business necessity for the meal. Therefore, we consider the expense of these meals to be prohibited donations.

4. A bar charge of $27 at the Plimsoll Club in New Orleans. Again, several AG opinions hold against spending public money for alcohol.

Conclusions:

1. The Commission has reimbursed $4,942 for special meals of questionable purposes.

2. The Commission is reimbursing for alcoholic beverages which the Attorney General has consistently opined is improper.

Recommendations:

1. The Commission should insure that only special meals which meet the requirements as defined in its travel policy be reimbursed with public funds.

2. The Commission should not use public funds to reimburse for alcohol.

Dues, Luncheons, and Refreshments

The Commission violated the State Constitution prohibition against donations of public funds by paying $2,498 for membership dues, luncheons, and office beverages. The Commission paid $300 for membership in the St. Bernard Chamber of Commerce. The Attorney General has consistently opined that payment of dues from public funds to civic, social, and community organizations such as the Chamber of Commerce is a prohibited donation.

The Commission has also paid $180 for eight people to attend the Professional Women's Club award banquet and $105 for seven people to attend a Chamber of Commerce membership meeting luncheon. The Attorney General has opined that these types of expenditures are prohibited donations.

The Commission spent $1,913 for office refreshments such as soft drinks, coffee and tea in a 10-month period, or about $191 per month. The refreshments are available to port employees, vendors and visitors during business hours and the monthly board meetings. These expenditures are also considered prohibited donations.

Conclusion:

1. The Commission spent $2,498 for a Chamber of Commerce membership, luncheons and office beverages in violation of the State Constitution.

Recommendations:

1. The Commission should adhere to state laws.

Dual Officeholding, Ethics

Harold Felger is both a commissioner and an employee of the board, a situation that appears to be in violation of the Dual Officeholding Law and the Ethics Code.

Mr. Felger has been an appointed commissioner since 1981. In 1989, the Board elected Mr. Felger President and authorized him to be paid $35,000 per year for assuming marketing and planning duties. As of August 1998, Mr. Felger is both the Director of Planning with an annual salary of $46,000 and a Board member.

The state's Dual Officeholding Law and the Ethics Code generally prohibit an individual from serving as both a board member and an employee for the same board.

Conclusion:

1. Mr. Felger, by serving as both a commissioner and an employee of the St. Bernard Port, may be in violation of the Dual Officeholding Law and the Ethics Code.

Recommendation:

1. Refer this matter to the State Board of Ethics.

Christmas Hams and Gift Certificates

The Commission violated Article VII, Section 14 of the Louisiana Constitution prohibiting donation of public funds by purchasing Christmas hams and gift certificates for its employees.

In December 1997, the Commission bought 23 hams from Sam's Club and 19 Gift Certificates from Winn-Dixie for its employees at a total cost of $917.47.

Mr. Ruiz, the former executive director, said he started the practice of the Port purchasing Christmas presents for its employees around 1992.

Numerous Attorney General opinions have concluded that state and local governments are prohibited from donating public funds or things of value by Article VII, Section 14 of the Louisiana Constitution.

Conclusion:

1. The Commission violated Article VII, Section 14 of the Constitution by donating hams and gift certificates to its employees.

Recommendation:

1. The Commission should adhere to the law.

Personal Use Items

The Commission paid $130 for personal items and flowers for non-business purposes.

The Commission paid two charges to Mr. Ruiz's Port credit card totaling $17.44 from a casino giftshop in Gulfport, MS. There was no documentation explaining what was purchased nor could Mr. Ruiz remember what he purchased.

The Commission paid $112.33 for three floral arrangements. Two were for employees who had a family member die and the other the Executive Assistant believes was for Secretary's Day.

The Louisiana Constitution prohibits using public money for personal use and the Attorney General has held against a public entity purchasing flowers for employees.

Conclusion:

1. The Commission paid $130 for personal items of a non-business nature.

Recommendation:

1. The Commission should seek reimbursement of the credit charge expenses.

Management Response:

Management response is attached.

As a result of this report the commission has requested and received $575.20 from its commissioners and employees for reimbursements for alcohol, in-room movies and other miscellaneous items.

IG Comment:

The commission's attempt to escape oversight by the Governor by characterizing itself as a local government rather than as a state agency is at odds with the fact that its members are appointed by the Governor and confirmed by the Senate, it has received millions of dollars in state funding, and its employees participate in the Louisiana State Employees Retirement System. The courts have determined that a political subdivision, even though the term is found in the local government section of the Constitution, may be a state agency. It has long been our opinion that any state agency is in one of the three branches of government – either the legislative, judicial or executive. The port commission certainly is not in the legislative or judicial branches.

BL/SO/fs
File No.: 1-98-0083

ST. BERNARD PORT, HARBOR AND TERMINAL DISTRICT

P. O. Box 1331, Chalmette, Louisiana 70044-1331
Telephone (504) 277-8418
Fax (504) 277-8471

Robert J. Scafidel, Ed.D.
Executive Director

Harold C. Felger
Director of Planning

Charles H. Reppel
Director of
Operations/Marketing

February 19, 1999

Mr. Bill Lynch
State Inspector General
State of Louisiana
Division of Administration
Office of State Inspector General
P. O. Box 94095
Baton Rouge, Louisiana 70804-9095

Re: File No. 1-98-0083

Dear Mr. Lynch:

As per your letter of February 1, 1999, I am herein responding to your recent draft review of the St. Bernard Port, Harbor and Terminal District:

The St. Bernard Port, Harbor and Terminal District is a political subdivision of the State first created by legislative Act in 1960. Prior to the 1974 Constitution some ports had been created by constitutional amendment (i.e., Port of New Orleans, Greater Baton Rouge Port and South Louisiana Port) as state agencies in the Executive Department. They could issue general obligation bonds which were the primary obligations of the State. Many other port commissions, including the St. Bernard Port, though legislatively created under the authority of our 1921 Constitution, were created as "political subdivision" of the state. All port commissioners, however since the 1974 Constitution are not state agencies, but political subdivisions of the state and not within the Executive Department of the State. With the adoption of the 1974 Constitution, all port commissioners were changed from an agency of the state to a political subdivision.

The Port Commissions, in the Legislative Reorganization of the Executive branch of government in Title 36 were not included in the Executive branch, and were treated as local government entities and as such were not subject to the provisions of the Procurement Code of 1980. Op. Atty Gen. No. 81-1026. Port commissioners are not subject to the state travel regulations at R.S. 39:231-239. Op. Atty. Gen. No. 81-713.

While the draft report of your office candidly states the St. Bernard Port Commission is a political subdivision of the State not subject to the Division of Administration travel policy (PPM 49), it continues to measure erroneously the activities of members of the Board of Commissioners of the St. Bernard Port and its former Executive Director by standards set forth in the state employees travel restrictions. Such a comparison is unfair and unwarranted for several reasons.

1) The St. Bernard Port is not a state agency but a political subdivision of the State.

2) The members of the Board of Commissioners are not state employees but hold offices as part-time appointed officials of a political subdivision of the State.

3) The St. Bernard is not in the executive department of the state.

4) Its former executive director is not a state employee.

5) The statement that the Division of Administration takes the position that the St. Bernard Port is not bound by travel policy of the Division of Administration without further disclosure that the Office of Inspector General is an office within the Division of Administration.

6) The exclusion of the St. Bernard Port from the travel and procurement regulations of the statute and policy of the Division of Administration is supported by the constitution and the laws of the state as expressed by the legal precedent in our jurisprudence and Attorney General's opinions interpreting same.

The St. Bernard Port is a "deep water port" of the state and, thusly, enjoys constitutional guarantees that its board membership or its jurisdiction may be modified or altered by less than a two-thirds vote of the legislature. The jurisdiction of the St. Bernard Port is incorrectly stated in the draft report. The St. Bernard Port does not only regulate all domestic, coastwise or intercostal traffic and commerce in the district (which is co-extensive with the boundaries of the Parish of St. Bernard) it also regulates all international commerce in the district, however limited on the Mississippi River to that international commerce that is conducted by or through its wholly owned facilities. The St. Bernard Port is obligated by law to "promote the commerce and industry in its port jurisdiction".

R.S. 51:1201 further requires an examination in light of the constitutional constraints of La. Const. Art. VII s 14. It authorizes port authorities to promote the development and industry within and for their respective jurisdictions and may advertise and expend public funds in the furtherance of the promotion of trade, industry and commerce. The provisions of law authorizing the use of public funds to promote a commerce within a port and the nature and source of these funds should be considered in response to your draft report.

The St. Bernard Port is not a state budgetary unit. Its operational budget, on the revenue side, consist of primary self generated funds derived from revenues from its facilities. The travel and leave policy for its members are to be determined by the Port Commission. Such policies for its employees are to be determined by the port director and the port commission. Op. Atty. Gen. No. 86-232. A port commission may use self generated funds to provide health insurance for its members since no state funds are appropriated or used for that purpose. These self generated funds remain the funds of the port commission and may be used to pay for extra benefits which state funds could not be so used. Op. Atty. Gen. No. 93-182.

Expenditures for special needs, travel and entertainment and office expenses (coffee, cokes, etc.) were from self generated funds for the purpose of port promotion. Christmas hams and gift certificates for office employees were from self generated funds intended as an additional benefit to low paid employees who are not state employees. Though it may be ultimately determined such expenses were improper, they were driven by noble purpose. Moreover, we will discontinue this practice.

The St. Bernard Port, in the course of its mandate to encourage and promote commerce in the port district, has reimbursed its members for entertainment expenses and special meals and receptions. These type of expenses have been incurred in port promotion functions to bring clients and potential customers to do business in the port area. The St. Bernard Port has genuine concern for lack of complete documentation for these expense reimbursements as "good business practice" and have taken steps to require the desired documentation for these expenses in the future. However, expenses which are not fully documented, in and of itself, does not cause these expenses to be prohibited donations in La. Const. Article VII s 14, not having a public purpose as being excessive or unwarranted. Moreover, the promotional expenses incurred by the port have been in the past and will be in the future commensurate with the benefit received as a direct result of the expenditure. Although a sample of special meals and travel appear to be not supported by adequate documentation, the port has taken steps to place controls in effect to prevent this from happening in the future. As of this writing the St. Bernard Port has further ceased reimbursement for alcohol or in room movie charges and other personal use items.

Annual dues to the Chamber of Commerce and the purchase of tickets to BPEW club dinner are advertising in the promotion of the port. These groups refer customers to the port for location and operation in the port district.

The St. Bernard Port is now aware of opinions of the Attorney General respecting membership dues in the Chamber of Commerce and participation in civic events. Op. Atty. Gen. No. 95-439; 80-965. However, it should be considered that participation in this organization and other civic events contribute to the commerce of the Port by providing opportunities to meet potential port clients and receive referrals form the civic organizations. The St. Bernard Port will discontinue participation in these organizations and functions at a loss more substantial than the dues expense.

The St. Bernard Port, however, receives many visitors, prospective customers, port lessees, maritime operators and public officials and vendors, at its office during business hours and believes it is proper to serve soft drinks, coffee and tea there. These expenses are proper for its purpose and should not rise to a claim of a constitutional violation as a prohibited donation. However, strict controls are now in effect so that this practice can not be abused.

Commissioner Harold Felger is no longer employed in any capacity by the St. Bernard Port. In his capacity as a member of the board of commissioners of this port, he is a part-time appointed official of a political subdivision, who receives no compensation for his services as board member or currently in any other capacity.

The statute creating the St. Bernard Port (R.S. 34:1701) and its organization in that statutory creation provides:

> "The governing authority of the district is declared to be a board of commissioners consisting of five members who shall be citizens of the United States and qualified voters and tax payers within the district during their term of office."

> "The commissioners shall serve without compensation and will have the power to organize and reorganize legal, executive, engineering, clerical and other departments and forces of the board and to fix their duties, power, and compensation of all officers, agent and employees under the board."

To the extent that any violation may have occurred, such no longer continues to exist by virtue of the termination of the board member as a employee of the St. Bernard Port.

After reviewing the draft report the St. Bernard Port has requested individuals identified by your office to reimburse the Port for items which could be identified as an expenditure related to alcohol, an expenditure for in- room movies and an expenditure for personal use items. All individuals requested have complied. We have attached a copy of all the reimbursements.

Furthermore, I have included statements from Mr. Irwin Ruiz, Mr. Leroy Phillips and Mr. Stephen Juan explaining the expenses that required additional documentation and clarification.

If you need additional information, please do not hesitate to contact me.

Sincerely,

Robert J. Scafidel, Ed.D.
Executive Director

RJS/lpd

Attachments