

SPECIAL COMMITTEE REPORT NO. 16-14

RE: SPECIAL COMMITTEE PURSUANT TO C.R. NO. 16-131

SUBJECT: HEARINGS ON ALLEGED VIOLATIONS OF THE
FINANCIAL MANAGEMENT ACT AND THE
NATIONAL PUBLIC SERVICE SYSTEM ACT

MARCH 28, 2011

The Honorable Isaac V. Figir
Speaker, Sixteenth Congress
Federated States of Micronesia
Sixth Special Session, 2011

Dear Mr. Speaker:

Your Special Committee established pursuant to Congressional Resolution No. 16-131, and appointed per letters dated November 16, 2010, begs leave to report as follows:

Further to its mandate to investigate apparent violations by the Executive Branch of the Financial Management Act and the National Public Service System Act, your Committee held a series of hearings in Palikir from January to March 2011. On January 6, February 15, and March 21, your Committee heard testimony from witnesses from the Office of the National Public Auditor; on January 7, from the Department of Finance and Administration, SBOC, and the Budget and Economic Management Division; on January 13, from the Personnel Division and the Department of Justice; on January 14, from the Division of Immigration and Labor and the Office of National Archives; on January 17, from the Department of Foreign Affairs; on January 18, from the Office of Environment and Emergency Management and the Department of Resources and Development; on February 15, from the Department of Finance and Administration; and on February 16 and March 17, from the Office of the Attorney General. A summary of the issues investigated follows, with the Committee's recommendations in bold.

National Public Auditor's Audit of Budget Overruns

Before calling on witnesses from the relevant departments and divisions, the Committee questioned the National Public Auditor's Office with respect to progress on the audit into budget overruns that you requested in September 2010. On receiving your request, the

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Auditor's Office created a team to carry out the audit and requested information from the relevant departments. They stated that any violations will be referred to their Investigation Division, which will carry out an additional review for wrongdoing, and if appropriate forward recommendations for criminal prosecution to the Department of Justice.

The audit is focusing on the issues you raised in your letter of September 29, 2010: the budget overruns in the Department of Education, Office of Immigration, National Police and the Coconut Development Authority. The Auditor's Office has also identified an overrun at the Office of National Archives. In particular, the Office noted that:

- a number of problems originated in Finance and Budget;
- some appropriations were not entered into the accounting system until September 2010;
- the budget office was using amounts different from appropriations;
- Finance had operated one account for personnel, including both base salaries and overtime;
- Immigration and National Police budgets overran primarily because of overtime;
- funds appropriated for National Police overtime were paid to Immigration employees and funds were subsequently transferred back to National Police as an "adjustment."

The Auditor said that all departments and offices had been cooperating with the audit, although they had not necessarily been viewing it as a priority. He stated he was comfortable auditing the Executive Branch despite having been appointed by the President, and that there had been no pressure to delay the report until after the election. He stated that as of mid-February they had started writing a draft report which would first be shared with the offices and departments who had been audited.

Although the Auditor's Office initially reported that they expected to have the results of the audit by mid-February, they subsequently revised this estimate to late March/early April. Your Committee would have preferred to review the National Public Auditor's findings and refer to them in our report. However, because of the delay it is not possible to do so and to give Congress an opportunity to fully consider this report by submitting it while Congress is in session.

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Your Committee recommends that the Government give serious consideration to the National Public Auditor's recommendations and implement them as appropriate. We also recommend that any potentially criminal activity identified by the National Public Auditor's report is fully investigated and, if appropriate, prosecuted to the full extent of the law.

Financial Controls

A consistent theme among the witnesses was the role of the absence of effective financial controls in contributing to the overruns. In particular, the computer software used by the Department of Finance and Administration did not flag that accounts had a zero balance and thus permitted the overexpenditure of funds. Staff attempted to work around this problem by cross-referencing printouts of account balances, but this inevitably led to some errors being made, including the release of payroll checks for the Department of Education when funds were not available in the relevant account.

Furthermore, there appeared to be a culture of "passing the buck" for responsibility for keeping within budget, especially with respect to overtime. Overtime was apparently approved by supervisors and divisional and departmental heads without adequate reference to whether funds were available, with the expectation that Finance would catch any overruns. At that point, however, staff had already worked the hours and it was difficult to argue that they should not be compensated; thus, such overruns tended to result in supplemental budget requests to Congress.

It appears that mid-level administrative staff are being singled out for blame by the Executive for some of the overruns. However, any decisions by such staff that could have led to budget overruns must also have been signed off by the relevant heads of departments and approved by Finance.

Your Committee recommends that the Department of Finance and Administration urgently address the apparent deficiencies in its computer system, such that payments cannot be made when an account contains insufficient funds. We also recommend that the Government take appropriate steps to ensure that senior managers understand their responsibility to monitor account balances for their offices and departments and are held accountable for any budget overruns.

Division of Immigration and Registrar of Corporations Reclassifications

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Moving to the specific budget overruns investigated by your Committee, much of the overrun at the Division of Immigration was due to a reclassification of positions being made retroactive to the beginning of the fiscal year. Immigration interpreted the fact that the reclassifications were effected by a supplemental budget bill as evincing congressional intent that the reclassification should be effective for the entire fiscal year. This appears to be contrary to general practice for reclassifications, as reflected in Section 8.2 of the Public Service System regulations, which states that "a reallocation action shall be effective on the first pay period immediately following approval by the Personnel Officer."

Although the funds appropriated were sufficient for the increase in base salaries for the entire fiscal year, they were not sufficient to cover the additional costs for overtime for these positions, and the Department of Justice appears not to have considered this before making the reclassifications retroactive.

A similar issue appears to have arisen with respect to the Registrar of Corporations, where funds appropriated were sufficient only to cover the increase in base salary associated with a reclassification and not the concomitant increase in benefits.

Your Committee recommends that the legality of retrospective payments to Division of Immigration personnel reflecting increases in base salary and overtime for a period prior to their approval by the Personnel Officer be investigated further, and that the Government seek repayment of any sums determined to have been paid out illegally. We also recommend that, to avoid confusion, funds for base salaries, benefits, and overtime are allocated as separate line items in future appropriations bills, and that future legislation reclassifying positions is drafted to avoid any possible ambiguity with respect to the effective date of the reclassification.

Overtime Compensation

Overtime compensation in general, and to Immigration personnel in particular, continues to be an issue of concern to the Committee, particularly in the light of regulations and attorney general opinions allowing for overtime payments grossly in excess of actual hours worked. Of particular note are the regulation providing for a minimum of two hours' overtime in each instance regardless of actual hours worked and interpretations of this regulation applying the two-hour minimum to each vessel with a separate owner processed on a single

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occasion and to time worked during lunch breaks.

Figures from the Department of Finance suggest that Immigration spent over \$100,000 in overtime in the first three months of FY 2011. Although Immigration contests this figure, the Division is attempting to control overtime costs by instituting a two-hour maximum for processing flights and vessels. However, although well-intentioned, this policy effectively attempts to remedy a system that pays more than the actual number of hours worked in some instances by paying less than the actual number of hours worked in others.

Your Committee recommends that the Government carry out a review of regulations and management practices pertaining to overtime and make changes aimed at eliminating unnecessary overtime and fairly and consistently compensating staff for hours of overtime actually worked. If the Government fails to make such changes, Congress should consider amending the Public Service Act to achieve the same ends.

Appointment of Personnel Officer

Your Committee believes that robust, transparent, and consistent personnel policies and procedures are critical to maintaining a national public service system that recruits and retains staff based on their qualifications, experience, and performance, and not on political patronage. We were therefore particularly concerned to hear testimony suggesting that the President personally intervened in the selection process for the position of Personnel Officer.

Your Committee recommends that, to avoid any appearance of undue political influence, the position of Personnel Officer be returned from the Office of the President to the Department of Finance and Administration.

Appointment of Chief of National Police

The Committee heard from Personnel that the promotion to fill the Chief of Police position was on an "acting" basis and would be subject to the usual advertising requirements when filled permanently. The Attorney General, however, stated it was a permanent appointment and, based on his interpretation of 52 F.S.M.C. §135(2), was exempt from these requirements. However, the Committee does not believe it was Congress's intent to exempt vacancies from the advertising requirements merely because they might be filled by promotion. Nor is

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the Committee persuaded by the Attorney General's argument that because other individuals may have been promoted in the past without their positions being advertised any correction of this practice would violate the Equal Protection Clause.

Your Committee recommends that the Public Service System regulations, and if necessary the Public Service System Act, be amended to clarify that vacancies should be publicly announced and filled with the most qualified candidate even when there is an employee eligible for promotion to the position.

National Archives Budget Overrun

The overrun at the Office of National Archives appears to be due to an accounting issue, with the Director taking payment in lieu of annual leave he had accumulated in his prior position as Assistant Secretary for Social Affairs.

Your Committee recommends that the Public Service System regulations be amended to clarify that annual leave up to the maximum permitted accumulation should be carried over rather than cashed out when an employee leaves one position in the Public Service System for another; in any event, the Office or Department where such leave was accrued should be liable for any such payment.

Approval of Foreign Grants

Departments appear to be spending funds from a number of foreign grants that have not been properly approved by Congress. There is confusion over which grants require such approval, and whether such approval should take place before a grant application is submitted or after a grant has been awarded. Witnesses conceded that there was no consistent approach across departments. And it was apparent that the status of grant awards is not adequately communicated to all governmental stakeholders.

Your Committee recommends that the Government clearly assign to a single office responsibility for tracking the status of all foreign grants and for ensuring all such grants and applications are appropriately submitted to Congress for approval.

Congressional Oversight

In addition to the recommendations made above, your Committee recommends that the appropriate congressional committees maintain

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oversight over these issues to ensure they are addressed and resolved.
In particular, we recommend that the relevant committee(s):

- conduct oversight hearings on the Department of Finance and Administration's accounting procedures, and in particular its computer software;
- conduct oversight hearings on financial controls within government departments, and in particular on regulations and management practices pertaining to overtime;
- conduct oversight hearings on the processes for approval of foreign grants;
- conduct oversight hearings on the processes for filling public service vacancies through promotion; and
- conduct oversight hearings on making payments in lieu of accrued leave to public service staff who leave one government position and start another, and in particular any time limit on such payments and from which budget they should be made.

Respectfully submitted,

/s/ Fredrico O. Primo
Fredrico O. Primo, chairman

Tony H. Otto, member

/s/ Paliknoa K. Welly
Paliknoa K. Welly, member

/s/ Joseph J. Urusemal
Joseph J. Urusemal, member