UPPER CUMBERLAND HUMAN RESOURCE AGENCY

Comptroller's Investigative Report

May 24, 2018

Justin P. Wilson, Comptroller

TENNESSEE COMPTROLLER OF THE TREASURY

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May 24, 2018

Mayor Curtis Hayes, Chairman
and Members of the Board of Directors
Upper Cumberland Human Resource Agency
580 South Jefferson Avenue, Suite B
Cookeville, TN 38501

Ladies and Gentlemen:

The Office of the Comptroller of the Treasury conducted an investigation of pertinent records of the Upper Cumberland Human Resource Agency, and the results are presented herein. These results have been reviewed with the district attorney general for the Thirteenth Judicial District of Tennessee.

Copies of this report are being forwarded to Governor Bill Haslam, the State Attorney General, the District Attorney General, certain state legislators, and various other interested parties. A copy is available for public inspection in our office and may be viewed at http://www.comptroller.tn.gov/ia/.

Sincerely,

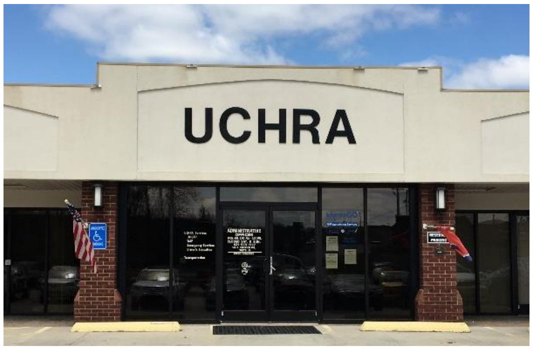
Justin P. Wilson
Comptroller of the Treasury

JPW/RAD

INVESTIGATIVE REPORT

UPPER CUMBERLAND HUMAN RESOURCE AGENCY

BACKGROUND



In August 2017, the Office of the Tennessee Comptroller of the Treasury received several allegations regarding the Upper Cumberland Human Resource Agency (UCHRA). As a result, we performed an investigation of selected records for the period June 16, 2012, through March 31, 2018.

The Human Resource Act of 1973, which is codified in *Tennessee Code Annotated*, Title 13, Chapter 26**,** establishes and governs human resource agencies in the State of Tennessee. Human resource agencies are considered quasi-governmental organizations and are primarily funded by federal and state grants as well as contributions from local governments. Management oversight, including fiscal responsibility, is provided by a board of directors consisting of one state senator, one state representative, the county mayors, the city mayors, and the consumer representatives of the region served by the human resource agency. The day-to-day operations and personnel decisions of the agency are the responsibility of the executive director, who is appointed by and reports to the board of directors.

The UCHRA is based in Cookeville, Tennessee, with several regional offices throughout its service area. The agency serves 14 counties in the Upper Cumberland region: Cannon, Clay, Cumberland, DeKalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, Van Buren, Warren, and White counties. The UCHRA is a multi-million-dollar operation that administers several programs to citizens. According to the agency's financial statements for its 2017 fiscal year, major programs included the Low-Income Home Energy Assistance Program, Transportation, Workforce Innovation and Opportunity Act (WIOA), Nutrition, Residential, Community Services, and Commodities programs.

Note: While our investigation was ongoing, the fiscal agent responsibility of the Local Workforce Development Area Seven programs was removed from the UCHRA and transitioned to the Upper Cumberland Development District. The service provider responsibility of the WIOA program remains with the Mid-Cumberland Human Resource Agency.

The Upper Cumberland Human Resource Agency Board of Directors terminated the executive director, noted in this report, on May 9, 2018.

INVESTIGATIVE FINDINGS AND RECOMMENDATIONS

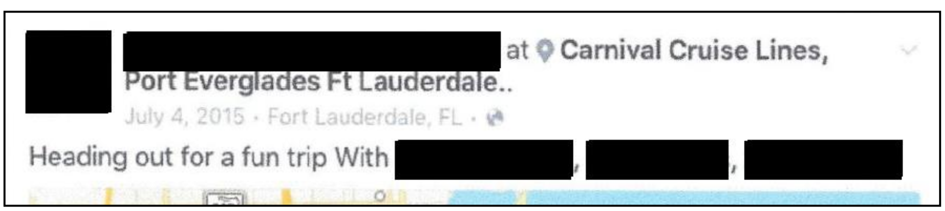
FINDING 1: Deficiencies existed concerning the executive director's time reporting and his claims for compensatory time

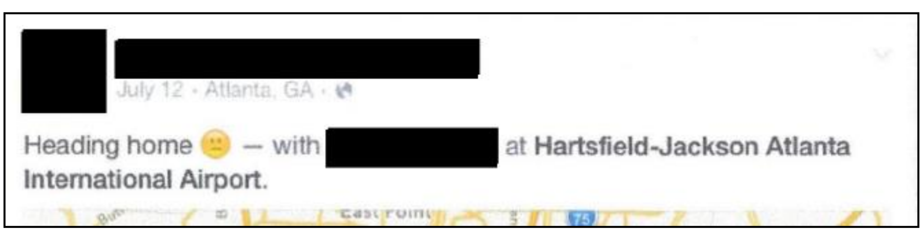
We noted deficiencies existed concerning the executive director's time reporting and his claims for compensatory time as explained below:

A. We observed at least two instances when the UCHRA executive director was not working; however, his timesheets did not reflect any earned leave taken. The practice of not reporting work time and leave accurately could have occurred more frequently due to a lack of management oversight over the executive director; therefore, investigators could not determine how often the executive director's timesheets were not reported accurately.

   The first publicly documented instance of inaccurate reporting occurred in October 2013. Photos posted on the Facebook social media site showed the executive director on a hunting trip in Colorado; however, the director's timesheets indicated he was working. These photos have since been removed from Facebook.

   The second publicly documented instance of inaccurate reporting occurred in July 2015. Two status and location updates posted on the Facebook social media site showed the executive director on a cruise; however, the director's timesheets indicated he was working. Although one of the two status updates referring to the executive director has since been removed from Facebook, the screenshots reflected below clearly show the status was posted on Facebook.





B. The UCHRA board of directors should ensure all employees, including the executive director, comply with the Fair Labor Standards Act, the UCHRA Bylaws, the *UCHRA Employee and Policy Handbook*, and board decisions relative to compensatory (comp) leave. The Fair Labor Standards Act exempts certain employees employed in a bona fide executive, administrative or professional capacity from the act's minimum wage and overtime requirements. The *UCHRA Employee and Policy Handbook* establishes the "exempt" or "non-exempt" classifications for all employees. In our opinion as an executive-level employee, the UCHRA executive director is not entitled to earn compensatory time and should take annual and/or sick leave when absent from work.

During the UCHRA personnel committee meeting on December 4, 2012, a board member made a motion "to allow [the executive director] to use comp time as long as it was in compliance with the DOL [Department of Labor]," and according to the meeting minutes the motion passed. During the UCHRA policy council meeting on December 12, 2012, the policy council voted to approve the UCHRA personnel committee report, and "it was recommended he keep up with his comp time and, as long as labor laws are observed, use that instead," according to the meeting minutes.

The executive director sent a letter to the board on February 16, 2018. He wrote, "For the time being, may I just say that I believe that I am operating in complete compliance with the spirit of the instructions I was given at the December 4, 2012, Board meeting regarding comp time, and for managing the balance between my regular work time and permissive time off.…"

When the executive director spoke with investigators regarding comp time, he stated the board gave him comp time about five and a half years ago. He repeatedly insisted he did not ask for the comp time, and he feels policies and procedures need to be put into place to govern his use of comp time. The executive director went on to state his comp time will reflect the trips he has taken. When asked about documenting and reporting his comp time, the executive director explained that he keeps a record of the comp time he has earned and used in his planners and on his calendars. He does not, however, report his comp time to the UCHRA finance department, nor could the executive director tell investigators how many hours per week he is supposed to work. The executive director stated he would accumulate comp time daily after he had worked eight hours per day. He was adamant that the time he has worked far exceeds the comp time he has earned and subsequently used. The executive director did note that from time to time he has had board members ask how much comp time he had accumulated, and he would provide them with an amount.

Furthermore, the executive director should have been aware he was not permitted to earn or use comp time because on March 11, 2016, the executive director sent a memorandum to all employees specifically stating, "… non-exempt employees shall receive comp time, but not exempt employees." Additionally, a list of exempt employees was also communicated to the agency's employees; the executive director was the first individual listed.

RECOMMENDATION:

The board of directors should take steps to ensure appropriate oversight for the executive director's time reporting. Written policies and procedures should be developed to clearly define those employees allowed to earn comp time. Reports on all types of allowable leave accumulated, earned, and used should be monitored by management.

FINDING 2: Weaknesses were identified regarding the executive director's claims for travel expense reimbursement

Multiple issues were identified regarding the UCHRA executive director's claims for business travel expense reimbursement. The executive director submitted several different types of claims to the UCHRA finance department from January 1, 2014, through December 31, 2017. The different types of claims are noted below:

1) Standard Claim – The executive director would travel on behalf of the UCHRA. After the trip, he would total his travel expenses such as per diem, mileage driven using his personal vehicle, parking fees, etc., and complete the UCHRA Claim for Travel Expenses Form.

2) Advance Claim – Before the executive director would travel on behalf of the UCHRA, he would complete a travel expense form estimating the per diem, mileage to be driven using his personal vehicle, etc., and receive 80 percent of this estimated amount before leaving on his trip.

3) Actual Claim – After the executive director would travel on behalf of the UCHRA, he would submit a follow-up travel expense form to his advance claim. The actual claim would detail the per diem, miles driven using his personal vehicle, parking fees, etc. The UCHRA finance department would compare the actual claim with the advance claim and reimburse the executive director the difference between the total reimbursement due and the amount already paid on the advance claim. If the advance claim exceeded the actual claim or if the trip was canceled, the UCHRA finance department required the executive director to refund the UCHRA.

4) Regions Claim – The executive director was provided a Regions Bank credit card, which the UCHRA assigned to the director to be used for travel and other business-related expenses. The executive director would pay for hotels, conference fees, minor fees, etc., using this assigned credit card. After receiving documentation supporting his credit card expenses, the UCHRA finance department would pay the balance on the monthly credit card statements.

The executive director submitted numerous types of travel expense forms as identified in Table 1 below. The dates of the travel expense forms are for the period January 1, 2014, through December 31, 2017.

Table 1: Summary of The Executive Director's Travel Expense Forms

Type of Travel Expense Form	Number of Times Submitted	Amount Reimbursed
Standard Claim	130	$ 9,072.08
Advance Claim	32	8,111.87
Actual Claim	30	2,197.49
Regions Claim	40	18,896.95
	Total	$38,278.39

For each travel expense form, investigators reviewed and, if necessary, recalculated each expense. In addition, investigators traced travel expense forms to supporting documentation for events sponsored by the Tennessee Association of Human Resource Agencies (TAHRA), the Tennessee Public Transportation Agency (TPTA), and the Tennessee Association of Community Action. Investigators identified the following issues:

A. The executive director violated the Department of Finance and Administration's Policy 8 – Comprehensive Travel Regulations on multiple occasions. The policy allows travel advances only if the employee can justify extraordinary circumstances. These travel regulations state that employees who are ineligible for a corporate travel card are an example of an extraordinary circumstance. The executive director possessed the agency's Regions Bank credit card; therefore, extraordinary circumstances could not be justified. Our investigation noted 32 instances from January 1, 2014, through December 31, 2017, totaling $8,111.87 when he inappropriately received advance travel claims.

B. Investigators identified three instances in which the executive director stated he traveled for agency business, but supporting documentation obtained from the TAHRA and the TPTA did not support the executive director's travel expense forms as detailed in Table 2 below.

Table 2: Events in Which the Executive Director's Attendance is Not Supported

Agency	Type of Event	Time Period	Amount Reimbursed	Regions Charge
TAHRA	Board Meeting	October 14-15, 2014	$172.32	$ 166.51
TAHRA	Board Meeting	January 25-26, 2016	172.32	186.20
TPTA	Conference	April 25-28, 2016	362.13	3,438.60
		Totals	$706.77	$3,791.31

The TAHRA met for board meetings on October 14, 2014, and January 26, 2016, in Nashville. The executive director submitted travel expense forms stating he drove to Nashville, stayed in hotels overnight, claimed per diem, and traveled using his personal vehicle to attend each event. Included with each travel expense form was a timeline of events to be completed at each board meeting. Investigators contacted the TAHRA to obtain supporting documentation, and the TAHRA provided the meeting minutes for each board meeting. These TAHRA meeting minutes include the names of everyone who attended the event. Furthermore, at each meeting the TAHRA confirms the meeting minutes taken at the previous meeting. The executive director's name was not listed on either document. In at least one instance, another UCHRA employee also attended a TAHRA board meeting. The employee does not remember the executive director attending the meeting.

The TPTA held a conference in Washington, D.C., from April 25, 2016, through April 28, 2016. Investigators contacted the TPTA to obtain further documentation. The TPTA stated the only documentation the organization maintains from conferences are who registered for the events. The TPTA confirmed that the executive director did not register for the 2016 conference in Washington, D.C.; yet, the executive director submitted a travel expense form with a hotel receipt and itinerary of events that took place at the conference.

As a result of these three instances, the executive director was reimbursed $706.77 and also charged $3,791.31 to his agency credit card for travel expenses when supporting agencies had no record of his attendance.

Investigators discussed these issues with the executive director. He stated that if he turned in travel to Nashville or anywhere else, he absolutely believes he was there. Regarding the executive director's travel to Washington, D.C., for a conference, he explained that he may have been in Washington lobbying for transportation and other departments. The executive director insisted he was in Washington, D.C.

C. The executive director's travel expense forms indicate he drove his personal vehicle for agency business 25,667 miles, which equates to $12,063 in mileage reimbursement at $.47 per mile, according to the Department of Finance and Administration's Policy 8 – Comprehensive Travel Regulations. During the review period, the UCHRA had agency vehicles and fuel cards to be used for agency business; however, the executive director frequently used his own vehicle to travel for agency business.

Finally, the executive director sent a memorandum to all employees on August 4, 2017, stating, "In order to cut expenses as much as possible, anyone needing to travel for agency business, please use an agency vehicle, rather than your personal vehicle." After the executive director sent this memo to all employees, from October 3, 2017, through November 30, 2017, the executive director submitted travel expense forms indicating he drove his personal vehicle for agency business 543 miles and was reimbursed $255.21.

RECOMMENDATION:

The board of directors should take steps to ensure the executive director and agency employees comply with all federal, state, and agency regulations, policies, and procedures for business-related travel. Management should review the supporting documentation for all travel claims.

FINDING 3: The executive director entered into legally binding agreements on behalf of the agency without prior board approval

The executive director entered into legally binding agreements on behalf of the agency without prior board approval. Because of the executive director's actions, the agency was financially obligated to pay a settlement to a former UCHRA employee, rent and related expenses for various regional office spaces, and invoices for billings by outside attorneys (in addition to the agency attorney retained by the board). These financial obligations are detailed below:

A. The executive director authorized a "Separation Agreement and General Release" as well as a subsequent settlement payment of $5,000 to a former UCHRA employee. Investigators were advised the agency attorney suggested to the executive director that the agreement and subsequent payment be made to avoid future legal problems with the former employee; however, the executive director failed to present these issues and proposed solution to the UCHRA board for approval prior to entering into the agreement.

It should be noted that our investigator discovered a similar circumstance in which the board did vote to approve a "Separation Agreement and General Release" as well as a subsequent settlement payment to a former UCHRA employee – providing an example of how such legally binding and financially obligating agreements should be managed.

B. The executive director entered or renewed 11 leases for office space in the counties the UCHRA serves; however, the full board was not made aware of and did not vote to approve these leases. Of the 11 leases, eight of the agreements were signed by county mayors on behalf of the county as the lessor, yet the county mayors also did not bring the leases to the attention of the finance committee or the full board.

C. In one instance, the executive director did not present to the board an invoice for legal services rendered by an outside attorney until after the executive director retained the attorney and the agency received the services. According to the board meeting minutes, when board members questioned the executive director about hiring an outside attorney without prior board approval, the executive director responded that "he had several Board members requesting another opinion;" however, prior board meeting minutes do not document such a request. Furthermore, the investigation revealed that a second invoice for an outside attorney's services was paid but not presented to or approved by the board at all. The single, unapproved invoice was signed by the UCHRA executive director, a second unidentified signature, and initialed by the UCHRA finance director at the time.

In contrast, when the attorney the agency retains on an annual basis rendered services not captured in the annual retainer fee, the board voted to approve payment for the additional services rendered – providing another example of how such legally binding and financially obligating agreements should be managed.

The UCHRA Bylaws grant fiscal responsibility to the UCHRA executive committee. The UCHRA executive director is not permitted to enter into legally binding agreements on behalf of the agency resulting in financial obligations without prior board approval.

In summary, we do not question the legitimacy of the legal agreements or the resulting cash outflows. Based on guidance outlined in the UCHRA Bylaws, we question the executive director authorizing or entering into such agreements on behalf of the agency without prior board approval.

RECOMMENDATION:

The board of directors should have written policies and procedures governing the process of entering into legally binding agreements.

FINDING 4: The agency paid in advance for travel expenses of board members, board members' family, employees, and employees' family

The agency paid in advance for upcoming travel expenses for board members, board members' families, employees, and employees' families. In some instances, the travel expenses were nonbusiness-related but personal in nature, such as airline tickets for family members, additional nights stayed (before or after the actual conference dates), and tickets for entertainment purposes. The practice of using an agency credit card to pay in advance for travel expenses occurred in at least two programs (i.e. departments) within the agency has been ongoing for at least 15 years.

Based on discussions with agency employees, often a program employee would prepare travel advance claims for agency employees. On behalf of the board members and employees going on the trip (usually to an out-of-state conference), the program employee would also use the agency's credit card to purchase airline tickets, book hotel rooms, and in at least one instance purchase tickets for entertainment. After the trip, the program employee would prepare actual travel claims for board members and employees to sign and submit to the UCHRA finance department.

Investigators were able to determine that the agency did have a process in place to recover costs incurred for personal travel expenses. The program would also prepare invoices detailing personal travel expenses in which board members and employees were required to reimburse the agency. The UCHRA finance department relied on the program to account for the personal travel expenses. Once repayment was received by either the program or finance department, both would update their separate accounting records.

As noted in Finding 2 above, the UCHRA is subject to the Tennessee Department of Finance and Administration's Policy 8 – Comprehensive Travel Regulations; therefore, the agency should not pay in advance for travel-related expenses unless extraordinary circumstances exist. Furthermore, the agency should not pay for travel-related expenses that are personal in nature or for board and employees' family members.

RECOMMENDATION:

The board of directors should have policies and procedures in place to ensure the agency is following state travel regulations and good internal control practices. The agency should not use its funds to pay personal and nonemployee travel expenses.

FINDING 5: The executive director failed to report allegations of fraud, waste, and abuse to the Office of the Tennessee Comptroller of the Treasury

The executive director failed to report allegations of fraud, waste, and abuse to the Office of the Tennessee Comptroller of the Treasury. Our investigation revealed the executive director was aware of at least one former UCHRA employee acting unlawfully. In a letter to the employee, the executive director detailed the unlawful acts he was aware of – including using an agency credit card for personal expenses, issues with travel reimbursements, and forgery – among other acts of "dishonesty."

Tennessee Code Annotated, Section 8-4-501, requires a public official—a person elected or appointed to any office of a public entity—with knowledge based upon available information that reasonably causes the public official to believe that unlawful conduct has occurred to report the information in a reasonable amount of time to the Office of the Comptroller of the Treasury.

As a public official, the executive director failed to report his knowledge of unlawful acts of an employee under his management to the Comptroller of the Treasury.

RECOMMENDATION:

The board of directors should advise the executive director of his obligation to report allegations of fraud, waste, and abuse to the Office of the Tennessee Comptroller of the Treasury as required by *Tennessee Code Annotated*.

INTERNAL CONTROL AND COMPLIANCE DEFICIENCIES

FINDING 6: The agency had time reporting deficiencies

Our investigation revealed the following time reporting deficiencies in the UCHRA, which can be attributed to a lack of management oversight and an inadequate maintenance of time records.

A. The executive director's timesheets were never signed by the board chairman as an oversight measure.

B. The executive director often signed his timesheets before the end of the pay period.

C. Investigators noted at least three instances in which the executive director reported leave for the prior pay period.

D. The executive director did not follow agency policy regarding sick leave taken on consecutive days.

E. We noted the UCHRA finance department maintained inaccurate annual and sick leave balance reports.

RECOMMENDATION:

A. The board chairman should sign the executive director's timesheets as evidence of review and approval.

B. All employees should sign and submit their timesheets at the end of the pay period.

C. Annual and sick leave should be reported in the pay period in which the leave was used.

D. All employees should follow agency policy regarding the accrual and use of annual, sick, and compensatory leave.

E. The finance department should take steps to ensure annual leave, sick leave, and comp time balances are accurately maintained according to agency policy as set by the UCHRA board.