

## Audubon Commission & Audubon Nature Institute Payroll Audit

AD-15-0001 • October 28, 2020

### Purpose of This Report

The Office of Inspector General (OIG) conducted a performance audit of the Audubon Nature Institute's (Institute) payroll for the period of January 1, 2012, through December 31, 2014. The objectives of the audit were to determine if the Institute's payroll policies complied with best practices, provided adequate controls to ensure all payroll expenses were business-related and allowed by law, and if the Institute complied with its policies, applicable laws and/or best practices pertaining to expenditures of Audubon Commission (Commission) funds.

### What the OIG Found

The Institute used Commission funds to pay \$430,720 in employee bonuses during the period of January 1, 2013 through December 31, 2014. The Louisiana Third Circuit Court of Appeal opined, "bonuses paid from public funds are not legal as they are in violation of [the Louisiana Const. art. VII §14(A)]."<sup>1</sup> Additionally, the Institute paid \$16,975 in on-call pay to five information technology employees during 2014 without adequately restricting their time. The Louisiana Attorney General stated, "...if the on-call time is not compensable because the employees are able to use the on-call time for personal purposes, such payments will be unlawful as they constitute a prohibited donation of public funds."<sup>2</sup> Both the employee bonuses and the on-call pay were paid directly from the Commission's Payroll bank account. The funds in the bank account were owned by the Commission and were reported as the Commission's cash in the Commission's year-end audited financial statements. Because these payments were made from the Commission's funds, the Institute may have violated Louisiana Const. art. VII, §14(A).

The Institute may have also violated Louisiana Const. art. VII, §14(A) because the executive compensation was not comparable to other similar sized organizations and, therefore, may have been gratuitous in nature. The Institute Compensation Committee commissioned an independent assessment of executive compensation (HTAC Report). The 16 organizations selected for the peer group included zoos with a national focus that were more than stand-alone entities and had a significant impact on their city's culture and economy. The peer group was determined to have "comparable metrics such as number of employees, revenue, and assets with the goal of having the metrics fall in a range of one half to twice the size of Audubon..."<sup>3</sup> The OIG also used the HTAC Report in its analysis and adjusted all salaries to account for cost of living, a widely accepted adjustment. When the OIG compared the peer group's revenues and assets to those generated and managed by the Institute, the Institute was in the 50th percentile and the 38th percentile, respectively. However, when the compensation of the CEO and EVP were compared to the peer group, the CEO was in the 85th percentile and the EVP was in the 92nd percentile. This analysis indicates that some compensation may be gratuitous.

The OIG found the executives' compensation was paid in accordance with the terms of their employment contracts; however, the executives' fringe benefit payments may have violated La. Const. art. VII, §14(A) because no additional performance or duties were required of the executives to receive the additional compensation.

The Institute developed a payroll policy aligned with best practices; however, the Institute did not comply with the policy because hourly employees did not utilize the time reporting procedures, paid time off information for salaried employees was not maintained, and Institute supervisors did not approve hourly and/or salaried employees' time. Despite effective internal controls over the termination process, the Institute management could not verify all property was returned upon termination and prior to issuing each employee's final paycheck.

<sup>1</sup> *State vs. Davis*, 539 So.2d 803, 810 (3rd Cir. 1989).

<sup>2</sup> La. Atty. Gen. Op. No. 15-0048.

<sup>3</sup> *The Audubon Nature Institute Executive Compensation Assessment*. Prepared by: Heidi Töppel & Ashwin Chase. May 9, 2011.

### What the OIG Found (continued)

Despite the findings noted above, the Institute developed and adopted a new hire and termination policy that complied with best practices. The Institute's internal controls over new hire and termination processing were designed properly and implemented and operating effectively.

### What the OIG Recommended

#### To resolve these findings, the OIG recommended the Institute:

Revise its policies to recognize the public nature of Commission funds, including unconstitutional spending pursuant to La. Const. art. VII, §14(A), and develop restrictions for on-call employee compensation. The Institute should also require all Institute employees and new hires to take annual training on prohibited expenses.

Structure the employment contracts so additional duties and responsibilities are assigned for all compensation.

Replace or implement new time reporting protocols and communicate time-keeping policies and procedures to its employees to ensure policies are understood and followed.

Develop a process to catalogue property and equipment provided to Institute employees to ensure return of all property and equipment prior to the issuance of the employee's final paycheck.

#### To resolve these findings, the OIG recommended the Compensation Committee:

Revise its policy to include an annual review and full board approval of executive compensation. When determining executive compensation, the Compensation Committee should select a peer group with similar assets, revenues, and cost of living criteria to ensure reasonable, comparable executive compensation.

### Audubon Commission and Audubon Nature Institute Joint (Audubon) Comments

In regards to Finding 1, Audubon stated, "In order for this finding to have any validity one must assume that the payments by the Commission of these bonuses are a gratuitous donation and as such violate La. Const. art VII § 14(A) which they do not." Despite this assertion, Audubon acknowledged they "...reviewed this operational finding and ha[ve] already started the process of evaluating alternatives for bonus structures and will be implementing a revised means of segregating funds generated by the Nature Institute for Nature Institute employee-related operational expenses, including establishing a separate bank account for such expenditures, rather than a separate accounting code. ***This finding is being resolved.***"

Despite the various laws granting jurisdiction over the Commission and Institute's operations, Audubon challenged the OIG's jurisdiction over Finding 2. Audubon stated, "[T]his finding falls well outside the jurisdiction of the OIG. It is highly questionable that the OIG is using public funds and resources to make recommendations to a private non-profit board on alleged best practices." La. R.S. 33:9613(D) and (E) confers OIG jurisdiction over City component entities. Audubon's assertion that this finding is outside of the OIG's jurisdiction ignores the plain language of the law. Audubon also contended the OIG "ignore[d] the longevity and success of the executive team and the competitiveness of the marketplace..." The OIG notes benchmarking and comparative analysis is an accepted audit methodology as determined by Generally Accepted Government Auditing Standards, and the OIG used the same information used by the Institute's Compensation Committee.<sup>4</sup>

In regards to Finding 3, Audubon updated the executive contract. They stated, "The current agreement for personal services between the Institute and the CEO does not contain the language referenced by the OIG."

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<sup>4</sup> *Government Auditing Standards, Chapter A6.05d*; U.S. Government Accountability Office, 2011. "The audit objectives might focus on comparisons or benchmarking between various government functions or agencies. These types of audits are especially useful for analyzing the outcomes of various public policy decisions. In these cases, auditors may perform analyses, such as comparative statistics of different jurisdictions or changes in performance over time, where it would be impractical to verify the detailed data underlying the statistics. Clear disclosure as to what extent the comparative information or statistics were evaluated or corroborated will likely be necessary to place the evidence in context for report users."