

LETTER TO THE ATTORNEY GENERAL

Sunalei Stewart

From: Sunalei Stewart
Sent: Thursday, July 9, 2015 7:59 AM
To: 'hbalderas@nmag.gov'
Cc: Tim Keller
Subject: TRD Referral and Report
Attachments: Letter to AG re TRD (7-9-15).pdf; Report of Predicate Investigation 06-30-15 (Unredacted).pdf

Attorney General Balderas:

Please find the attached letter from Auditor Keller regarding allegations involving officials at the Taxation and Revenue Department. Thank you for your attention to this matter.

Sunalei

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Timothy M. Keller
State Auditor



Sanjay Bhakta, CPA, CGFM, CFE, C
Deputy State Auditor

State of New Mexico
OFFICE OF THE STATE AUDITOR

July 9, 2015

VIA EMAIL AND CERTIFIED MAIL, RETURN RECEIPT

The Honorable Hector Balderas
Attorney General
408 Galisteo Street
Villagra Building
Santa Fe, NM 87501
hbalderas@nmag.gov

Dear Attorney General Balderas:

We enclose the confidential report of a predicate investigation based on a complaint that the Office of the State Auditor (OSA) received through its fraud hotline. The complaint contained allegations against the Secretary of Taxation and Revenue Department. The enclosed report, from an independent accounting firm hired by the OSA to examine these matters, recommends that an investigation be opened for three primary reasons:

1. The report concludes "that predication exists for an investigation to be opened into allegations that [Secretary Padilla] used her official position as Cabinet Secretary to inappropriately influence or pressure NMTRD employees to obtain differential treatment" to benefit a taxpayer who was the Secretary's former client. In addition to the benefit to the taxpayer, the report finds predicate for the possibility that "Secretary Padilla took these actions, in whole or in part, to protect herself from possible individual liability resulting from her actions as a certified public accountant working for that taxpayer."
2. The report also states that predication exists "to investigate whether Secretary Padilla retaliated against employees who refused to support her efforts to obtain differential treatment for this taxpayer."
3. The report also states that predicate exists "to open an investigation into the actions of certain other senior level NMTRD employees who assisted Secretary Padilla in obtaining differential treatment for the taxpayer."

As you know, "predication" means that certain circumstances, taken as a whole, would lead a reasonable, prudent professional to believe fraud, waste or abuse has occurred, is occurring, or will occur. The next step is to conduct further investigation.

We believe that the Office of the Attorney General is the appropriate office to investigate certain issues within its jurisdiction that are discussed in this report. Specifically, the report suggests that predicate exists to investigate violations of a range of statutes of which the Attorney General is charged with enforcement. These include, but are not limited to, the Tax Administration Act, specifically NMSA 1978, §§ 7-1-72.1 (setting forth the civil penalty for willful attempt to cause evasion of another's tax), 7-1-72 (describing the criminal violation of tax fraud), and 7-1-74, (describing the criminal violation of interference with the administration of revenue laws). In addition, the report states that predicate exists to investigate matters that could, in the OSA's view, constitute violations of the Whistleblower Protections Act (NMSA 1978, §§ 10-16C-1 et seq.) and the Governmental Conduct Act (NMSA 1978, §§ 10-16-3, setting a general standard of ethical conduct, and 10-16-4, barring public officers from acting to further their own financial interests). Accordingly, we refer this matter to you for your consideration pursuant to the Audit Act, NMSA 1978, § 12-6-6.

If the Office of the Attorney General perceives a conflict or other concerns with pursuing this investigation because of the Office's role within the executive branch of government, we will refer this matter to the United States Attorney's office for further investigation. Please keep us informed in this respect.

The complaint to the OSA Fraud Hotline included other allegations within the OSA's purview that we continue to investigate. In addition, the OSA may designate TRD for a special audit regarding the financial impact of these allegations to the State of New Mexico. We stand ready to assist the Office of the Attorney General with these matters, and to coordinate our work for the efficient use of resources.

We believe it is in the best interests of all New Mexicans to pursue to the fullest extent any violations of law that further investigation may suggest. Please do not hesitate to contact us if you have any questions. Thank you for your attention to this matter.

Sincerely,



Timothy M. Keller
State Auditor