

University of West Georgia
Summary Report
Investigation of Allegations Made Against the Vice President of University Advancement
April 8, 2011

BACKGROUND ON INVESTIGATION

At the request of University of West Georgia (UWG) President Dr. Beheruz Sethna, the Board of Regents of the University System of Georgia (USG) Office of Internal Audit and Compliance has performed an investigation of allegations made against UWG Vice President of University Advancement Dr. Michael Ruffner (VPUA). The investigation was led by USG Chief Audit Officer and Associate Vice Chancellor Mr. John M. Fuchko, III. The University of West Georgia Department of Internal Audit assisted in the engagement.

The allegations were brought to Dr. Sethna's attention on January 27, 2011 by members of the Executive Committee of the University of West Georgia Foundation, Inc. (the Foundation) in the presence of former UWG Associate Vice President for Development and Alumni Relations Mr. Jim Naughton.

Allegations 1-4 were included in the original scope of the investigation. Allegation 5 was added to the scope during the investigation. The five allegations are as follows:

1. The VPUA misled the Foundation Board to raise the administrative fee which is used to cover operating cost of the Foundation from 1% to 3% of the adjusted corpus balance of the endowment funds.
2. The VPUA withheld information which had been requested by an individual under the Georgia Open Records Act.
3. The VPUA made inappropriate comments regarding the selection of an investment advisor for the Foundation.
4. The VPUA presented incorrect information to the Student Fee Advisory Committee when requesting an increase in UWG's Athletic Fee.
5. The VPUA violated Section 8.2.20.5 of the USG Ethics Policy and the Georgia Whistleblower Act with respect to the termination of Mr. Jim Naughton's employment.

The investigation included conducting interviews of employees of the University and members of the board of the Foundation, researching issues, and reviewing documents related to the allegations.

REVIEW OF ALLEGATIONS

The following is a summary of the potentially significant allegations and findings:

Allegation 1: The VPUA misled the Foundation Board to raise the administrative fee which is used to cover operating cost of the Foundation from 1% to 3% of the adjusted corpus balance of the endowment funds.

Conclusion: At the time he made this claim, the VPUA lacked adequate data to claim that most Foundations charge 3 to 3 1/2 %. Data available to the audit team suggests that a 3 to 3 1/2% administrative fee is high; however, it is not entirely appropriate to make a direct comparison of UWG's Foundation to other Foundations in that other Foundations may charge other fees in support of Foundation operating costs that would likely result in a net effect of operating support greater than 1% of corpus. We do not dispute the VPUA's experience or background in this field or the appropriateness of him addressing the levels of operational support. However, we do believe that the Foundation would have benefited from a more thoroughly researched perspective as to the appropriate level of operational support.

We also assess that the need to fund an external lobbying contract with the firm Patton Boggs, LLP was a primary consideration in the request to increase the administrative fee. It should be noted that there were other considerations to include Dr. Sethna's overall desire to increase the operating support to the Foundation to enhance fundraising and other initiatives. However, the circumstances surrounding the Patton Boggs, LLP contract likely led to the need to move quickly with the increase in administrative fees. Specifically, Dr. Ruffner had signed the original Patton Boggs, LLP contract on behalf of UWG (as opposed to the UWG Foundation) in violation of state competitive bidding guidelines and USG contracting authority procedures. This contract created an obligation that could not be paid with state funds and so necessitated a transition to the Foundation contract and the subsequent need to fund that contract.

Background and Details: The VPUA admits that during the February 12, 2009 meeting of the Foundation Board, he stated that most Foundations charge a fee of 3% to 3 1/2%. The VPUA stated that at the time of the meeting his answer was based on his knowledge of the field. When asked if he still considered these rates to be accurate, he stated that based on information provided by Campbell & Company (a nonprofit consulting firm) the total aggregate rate of all funding mechanisms used by foundations range from 2% to 5%.

Mr. Naughton stated that he began researching this issue when a donor's complaint about the Foundation's fee was brought to his attention. The donor stated he would not make a contribution because the Foundation's administrative fee was 3% while other major universities charged their endowment accounts a 1% administrative fee. Mr. Naughton's research included contacting foundations associated with other institutions in the University System to determine their current administrative fee. Mr. Naughton believes his research validates the donor's complaint.

During our investigation, we reviewed a report prepared by staff at the University of Georgia who has considerable expertise in the field. The information in this report shows that the administrative fee for Southeastern Conference institutions for FY 10 ranges from a low of .35% to 1.5%. The report also states that many colleges and universities also assess a fee on all fully-expendable (non-endowed) gifts. Terms such as "administrative fees," "gift fees," or "contribution fees" are common, along with values of 3%, 5%, and 10% or higher. It was noted some institutions also assess a gift fee on gifts of endowments. The report noted that when addressing or discussing fees assessed on endowed and non-endowed gifts, both terminology and methodology are important. We believe the Foundation would benefit by having an independent

third party perform a review to assist the organization in determining the appropriate funding mechanisms and rates that should be used by the University of West Georgia Foundation, Inc.

During our investigation, several board members and Mr. Naughton expressed to us their belief that the VPUA requested the fee increase to fund a contract with Patton Boggs, LLP to work as a consultant to assist the University in obtaining federal earmarks. As part of our procedures, we reviewed the hiring of the consulting firm. The first engagement letter dated January 2, 2010 was with the University of West Georgia and signed by the VPUA. The VPUA lacked the authority to sign this engagement letter contract. No payments were made to Patton Boggs, LLP by the University, and the contract was later changed to be in the Foundation name. The VPUA also signed this engagement letter on behalf of the Foundation. The chairman of the Executive Committee of the Foundation stated she was unsure if Dr. Ruffner had the authority to sign the contract on behalf of the Foundation.

Allegation 2: The VPUA withheld information which had been requested by an individual under the Georgia Open Records Act.

Conclusion: Based on our review, it appears after consulting with the University General Counsel, the VPUA directed Mr. Gillespie to not include information which had been requested by an individual under the Georgia Open Records Act (Act). The VPUA stated to the engagement team that he did not believe it was necessary to include the information that was withheld. However, we also conclude that other UWG employees contributed to non-compliance with the Act's requirements. Specifically, the decision to interpret the initial request as not referring to the UWG Foundation bank account is an extremely aggressive interpretation of the original request, i.e., we believe the decision to inform the requester that there were no statements available in response to his request was a violation of the Act. We did note that not all parties agreed as to the appropriate response, i.e., the Open Records Officer generally felt that the entire set of bank statements (with appropriate redactions for donor information and account numbers) should have been provided in response to the initial request while the University General Counsel did not agree with this interpretation. UWG's procedure for responding to Open Records request was not clear as to the ultimate authority when there is a dispute in interpretation. We understand that UWG has since taken steps to ensure these issues are brought to the President in the future.

Background and Details: On November 18, 2010 at 8:58 p.m. an individual submitted an open records request via email to Tara Pearson, the University of West Georgia's Open Records Officer. Ms. Pearson was on approved leave from November 19, 2010 to November 30, 2010. Ms. Pearson had told her supervisor she would check her emails to review for requests during her leave, but due to illness did not do so. The failure of Ms. Pearson to review her emails during her leave caused the University to not be in compliance with the three-day response requirement of the Georgia Open Records Act. On November 24, the requester emailed Dr. Sethna inquiring why there was a delay in the response to his request. Dr. Sethna forwarded the email to Ms. Jane Simpson, University General Counsel. Ms. Simpson responded to the requester on November 29 (the University was closed for Thanksgiving holidays and the weekend from November 25 to November 28) stating that Ms. Pearson would respond to the request by providing an estimated cost by December 1. The administration of the University of West Georgia has revised the

policies and procedures for responding to open records requests to address the issue that caused the University to not be in compliance with the three-day response requirement.

One of the items listed in the request was “complete copies of all bank statements for all accounts associated with the West Georgia Athletic Fund for the months of June 2010 through the months of October 2010.” When Ms. Pearson returned from her scheduled leave to work on the request, she emailed Bart Gillespie, Associate Executive Director of the Foundation, requesting complete copies of the bank statements. Mr. Gillespie telephoned Ms. Pearson, and stated he was instructed to not provide the statements. Ms. Pearson stated that Mr. Gillespie told her that Dr. Ruffner did not want to give the records. After her conversation with Mr. Gillespie, Ms. Pearson called Ms. Simpson to inform her that records were being withheld. Ms. Simpson stated that her interpretation was that the requester only wanted Athletic Fund bank statements and not the Foundation bank statements. Ms. Pearson disagreed since the request was for all accounts “associated with” the Athletic Funds. (Note that there is no separate “West Georgia Athletic Fund” account; rather, these funds are maintained within the UWG Foundation account.) The attorney disagreed and instructed Ms. Pearson to draft a letter to the requester stating there were no statements available in response to his request.

On December 2, 2010, the requester amended his November 18 request to ask for “five months of itemized bank statements that are used on behalf of the Athletic Fund.” Ms. Pearson emailed Mr. Gillespie requesting the information. Mr. Gillespie called Ms. Pearson and stated he was bringing the bank statements over, but he was going to show them to Dr. Ruffner first. When Mr. Gillespie took the bank statements to Dr. Ruffner, Dr. Ruffner called Ms. Simpson. When the telephone conversation was over, Mr. Gillespie was told to not provide the pages with the images of the deposit slips and canceled checks. When Mr. Gillespie took the information to Ms. Pearson, he only provided the top pages of the bank statements. Ms. Pearson examined the bank statements and told Mr. Gillespie they were not complete. Mr. Gillespie stated he had just come from Dr. Ruffner’s office and Dr. Ruffner had decided to not provide the other pages after talking with Ms. Simpson. The degree to which this directive violated the Open Records Act depends on one’s interpretation of the word bank statements. UWG initially interpreted bank statement to mean the summary statement showing deposits, withdrawals, etc. and not the pages of the statement containing copies of cancelled checks, etc. The initial request for “complete copies” and the follow-up request for “itemized bank statements” would lead one to conclude that the request should have been interpreted to mean the pages that contained cancelled checks.

The requester sent a complaint letter to the Board of Regents. On February 1, he also sent another open records request again asking for “copies of the bank statements associated with the UWG Athletic Fund for the months of June 2010 through October 2010.” Ms. Pearson met with Dr. Sethna in his office to inform him of the new request. After this meeting, Ms. Pearson talked to Mr. Gillespie and told him to pull the bank statements and bring them directly to her. Mr. Gillespie then provided complete copies of the statements. The bank statements were reviewed and redacted for closed information such as account numbers and donor names.

Allegation 3: The VPUA made inappropriate comments regarding the selection of an investment advisor for the Foundation.

Conclusion: We did not find merit in this allegation.

Background and Details: Some members of the Executive Committee were told Dr. Ruffner made comments to imply “what he wants needs to be done.” Dr. Ruffner stated he does not have any personal interest in who should be selected as the investment advisor. He believes this allegation is based on a joke he made to a board member in a personal conversation. Dr. Ruffner stated the firm he really thought was best did not get selected by the committee for a second interview.

As part of our investigation, we interviewed the Chairman of the Investment Committee. He stated that he felt the process used during the review worked very well, and he considered it a good experience. He is not aware of any inappropriate comments made by Dr. Ruffner during the process. As of the date of this report, the Foundation has not selected a new investment advisor.

Allegation 4: The VPUA presented incorrect information to the Student Fee Advisory Committee when requesting an increase in UWG’s Athletic Fee.

Conclusion: We were unable to reach a conclusion due to the lack of consistent evidence.

Background and Details: Members of the Executive Committee reported that Mr. Naughton told them Dr. Ruffner presented incorrect information to the Student Fee Advisory Committee when requesting an increase in UWG’s Athletic fee.

Mr. Naughton stated that in a scheduled staff meeting the morning after the Student Fee Advisory Committee met, Dr. Ruffner commented that he could not believe that the vote was not 100% in favor of the increase even after telling the group the average athletic fee in the University System was \$200.

Dr. Ruffner denies that he made this statement to the Student Fee Advisory Committee. He stated there was some discussion about fees of other schools in the Gulf South Conference. He stated that Coach Dickey made most of the presentation, and he spoke only for a few moments.

We also reviewed fee levels within the USG and within the Gulf South Conference. The average athletic fee in both is well below \$200.

As part of our procedures, we interviewed several faculty members who served on the committee. We received contradicting information during these interviews:

- One Committee Member stated Dr. Ruffner made the statement
- One Committee Member remembers the statement being made, but is not sure if Dr. Ruffner or Coach Dickey made the statement
- One Committee Member does not recall the statement being made

We also spoke with the Vice President of Student Affairs to request that she share with us any feedback she received from students that served on this committee. She stated that one student had expressed concerns to her about the presentation, but when she talked to him a second time, he was not as vocal about his concerns. She stated that she had also spoken with two other students who did not express any concerns.

Based on this information, we are not able to reach a definite conclusion regarding this allegation.

Allegation 5: The VPUA violated Section 8.2.20.5 of the USG Ethics Policy and the Georgia Whistleblower Act with respect to the termination of Mr. Jim Naughton's employment.

Conclusion: While we will not opine on the VPUA's intent or draw a legal conclusion with respect to the VPUA's actions, there are issues of concern with respect to both the timing and the facts surrounding Mr. Naughton's termination. Mr. Naughton's first documented employee counseling that raised concerns with his behavior was scheduled within just a few days after the VPUA was made aware of Mr. Naughton having raised potential malfeasance concerns concerning the VPUA to the UWG Foundation Executive Committee. Additionally, several of the behaviors noted in the counseling were from several months prior to the counseling session and were not previously documented. One of the performance concerns previously had been disregarded by the VPUA. Based on the information we reviewed, the University should consult with USG legal counsel regarding the possibility that the USG Ethics Policy and/or the Georgia Whistleblower Act was violated.

Background and Details: Mr. Jim Naughton, former Assistant Vice President for Development and Alumni Services, was employed by the University on August 18, 2010 and was terminated on February 17, 2011. Mr. Naughton strongly believes his termination was the result of his bringing issues regarding Dr. Ruffner to the attention of the Foundation Executive Committee. He shared his concerns with board members on January 20. On January 27, 2011 several members of the Foundation Board met with Dr. Sethna to present Mr. Naughton's allegations. The Code of Conduct, which is part of the USG Ethics policy, requires employees to report wrongdoing to the proper authorities and refrain from retaliating against those who do report violations.

Mr. Naughton stated no personnel issues had been brought to his attention until after January 27, 2011. On February 2, 2011, Dr. Ruffner requested a meeting to discuss Mr. Naughton's performance during his provisional probation. During this meeting Dr. Ruffner addressed the following concerns:

- Professionalism
- Time Management
- Accepting oversight
- Style

The meeting notes suggest that Dr. Ruffner directly criticized Mr. Naughton having brought concerns about Dr. Ruffner to the UWG Foundation as opposed to bringing those concerns to Dr. Sethna. We do not dispute the importance of a chain of command or that Mr. Naughton's job description describes a reporting relationship to Dr. Ruffner. However, Mr. Naughton's written job description also states that he holds his position at the discretion of both UWG and the UWG Foundation Board of Trustees and that he serves concurrently as the UWG Foundation Executive Director. These facts create a de facto reporting line to the UWG Foundation.

Dr. Ruffner raised various concerns with respect to Mr. Naughton's behavior during our interviews. However, several of these issues were discovered post-termination by Dr. Ruffner and cannot be offered as a credible defense for why he was terminated at the time that that decision was made. Another significant issue raised in defense of the termination was an inappropriate email sent by Mr. Naughton on October 28, 2010. We agree that the email was inappropriate and that some form of personnel action would have been appropriate at the time. However, Dr. Ruffner's actual response at the time seemed to dismiss Mr. Naughton's behavior. This issue was raised as a more serious issue only after Mr. Naughton brought his concerns to the UWG Foundation.

Dr. Ruffner agreed that the timing of Mr. Naughton's dismissal may look retaliatory, but stated that the termination date was determined by the end of the probation period.