State of South Carolina
Office of the Inspector General

March 10, 2015

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Chairman Merita A. Allison
House Education and Public Works Committee
402C Blatt Building
Columbia, South Carolina 29201

Chairman John E. Courson
Senate Education Committee
412 Gressette Building,
Columbia, South Carolina 29201

RE: South Carolina State University

Dear Chairmen Allison and Courson:

Enclosed with this letter are two State Inspector General (SIG) reports titled, "Investigation of a Misconduct Allegation against President Thomas J. Elzey, South Carolina State University," and "Investigation of Two Whistleblower Retaliation Allegations at South Carolina State University."

The purpose of this letter is to notify South Carolina State University's (SCSU) legislative oversight committees of two SIG reports provided to SCSU's Board of Trustees (Board). Neither of these reports has been acted upon by the Board, and therefore are being brought to the attention of SCSU's legislative oversight.

In February 2014, based on information from three SCSU employees who claimed whistleblower status, the SIG initiated an investigation of alleged misconduct against President Elzey, along with two other reviews previously publically released. The SIG's report on the misconduct allegation against President Elzey was presented to SCSU Board Chairman William Small on 4/22/2014. It is the SIG's policy to present its findings to the highest adjudicating official at the agency. At that time, Chairman Small was advised of the SIG's policy to keep its investigative file open to conduct follow-up investigation upon request through SCSU's final adjudication, allowing SCSU's adjudication process to operate without Freedom of Information Act (FOIA) disseminations which could taint a fair adjudication process.

The other two reviews pertained to SCSU's gross mismanagement by inappropriately diverting $6.4 million from the 1890 Program, which serves low income citizens, to SCSU's general funds in order to cover the university's deficit spending (see link #1 below); and SCSU's gross mismanagement by inappropriately diverting $2.29 million from its general funds supporting its core mission to SCSU foundations for expenses inconsistent with state procurement policies on the spending of state funds, such as executive bonuses, entertainment, and golf club memberships (see link #2 below).

1. Review of South Carolina State University 1890 Program.pdf
2. Review of Suspicious Indicators at South Carolina State University Foundations.pdf

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On 6/27/2014, the three SCSU whistleblowers filed a retaliation lawsuit (2014-CP-38-780) in Orangeburg Common Pleas Court, First Judicial Circuit. These whistleblowers feared their SCSU positions could be eliminated through a reduction-in-force (RIF) due to SCSU budget shortfalls. President Elzey's budget proposal did in fact attempt to RIF all three whistleblowers, of which two were terminated due to a budget RIF in August 2014. On 8/29/2014, the SIG initiated a whistleblower retaliation investigation, of which the final report was provided to the Chairman Small on 12/17/2014.

The SIG recognized the whistleblower's lawsuit in state court and the SIG's independent whistleblower retaliation investigation likely slowed the Board's actions on addressing the initial alleged misconduct report. However, given it has been ten months since the Board received the SIG's initial report and two months since being provided the retaliation report, the SIG, via a 2/23/2015 letter, requested Chairman Small provide an adjudication status on both reports for two reasons. First, given no subsequent request for a SIG follow-up investigation or visible progress on adjudication, the SIG needed to reconsider its posture on how to handle lawful FOIA requests, which in the past have been referred to the agency due to pending adjudication. Second, the lack of action on the initial report has had an adverse impact on the alleged victim, Derrick Green, inasmuch potential remedies have not even been considered. Evidence exists of possible administrative wrongdoing in removing Green as the supervisor of SCSU's Fleet Management Office, as well as the potential his RIF was retaliation just six months from Green's eligibility for a state retirement. Unfortunately, his and another whistleblower's only remedy to date has been to file a lawsuit against SCSU. SCSU, via letter dated 3/6/2015, advised it has not taken any action in terms of inquiry or adjudication on both SIG's reports.

This is the first SIG misconduct report where the affected agency has not affirmatively acted in a responsive and timely manner. The two enclosed SIG reports are being provided to SCSU's legislative oversight committees for whatever action is deemed appropriate. Further, since a recent state circuit judge's order to the Board pertaining to President Elzey's employment, it appears, based on pending legislation, a future board or receivership will have to address these two reports.

Given the proposed legislation impacting SCSU's Board and governance, this letter, without the enclosed two reports, has been provided to Governor Nikki R. Haley; Senate President Pro Tempore Hugh K. Leatherman, Sr.; Speaker of the House of Representatives James K. "Jay" Lucas; Chairman W. Brian White, House Ways & Means Committee; and Executive Director Marcia Adams, Budget and Control Board. To provide all recipients sufficient situational awareness of these two reports' allegations, attached to this letter are brief summaries (3 pages). Inasmuch as neither of the two reports pertaining to personnel matters has been adjudicated, the two enclosed reports remain confidential and cannot be disseminated other than for official use and coordination with the SIG.

Please do not hesitate to call me (803/896-4721) if you have questions, concerns, or clarification.

Sincerely,

Patrick J. Maley

Patrick J. Maley
State Inspector General

CC: Honorable Nikki R. Haley, Governor
Honorable Hugh K. Leatherman, Sr., Senate President Pro Tempore
Honorable Jay Lucas, Speaker of the House of Representatives
Honorable W. Brian White, Chairman of the House Ways & Means Committee
Honorable Marcia Adams, Executive Director of the Budget and Control Board

Attachment to the SIG Letter to Chairmen Allison and Courson, dated March 9, 2015

Summary of Allegations in SIG Report Titled, "Investigation of a Misconduct Allegation against President Thomas J. Elzey, South Carolina State University"

This review was initiated based on three credible whistleblower complaints alleging wrongdoing. The complainants alleged President Thomas J. Elzey abused SCSU employee Derrick Green, Director of SCSU Fleet Management Office (FMO), by demoting him and transferring the FMO function to a university contractor, DTZ, to circumvent state fleet management and procurement policy in order to acquire a Chrysler 300 automobile as President Elzey's state vehicle.

After President Elzey assumed his position as SCSU President in June 2013, he expressed an interest to Green of obtaining a Chrysler 300 for his state car. According to Green, he informed President Elzey the Chrysler 300 was considered a luxury car and was not approved as a state vehicle, therefore funding would be needed from a private SCSU foundation. The SCSU foundations were contacted but would not fund the Chrysler 300 purchase. Green then asked President Elzey to identify an SCSU funding source for the Chrysler 300, after which Green would then seek a policy waiver to lease/purchase a luxury car, the Chrysler 300, from State Fleet Management, Budget and Control Board's (BCB).

Funding was never identified by President Elzey or by Green from within the FMO budget. On Monday, 10/7/2013, according to Green, President Elzey stated, "*You can't get me my 300, I'm going to make a change. You're no longer Director of Fleet Management and you are to report to Ken Davis (DTZ Contractor).*" Without further discussion, Green was placed under the supervision of SCSU's facilities and grounds contractor, and was given no other explanation for his removal as the fleet management director. President Elzey denied Green was removed because he could not acquire the vehicle for him. President Elzey's defense of his decision was that Green wasn't answering his questions on the Chrysler 300, his personal observations of fleet management inefficiencies, and anecdotal comments about excessive overtime use by fleet management personnel.

Following his meeting with Green, President Elzey contacted Ken Davis, DTZ onsite director, and informed him that Green was being reassigned to Davis' supervision, and that the FMO was being placed under the contractor's oversight. Davis responded to President Elzey that he would conduct some due diligence and have a cost proposal for President Elzey's approval within two weeks. Davis stated this was met with resistance, to which President Elzey, according to Davis, replied *'No, you don't understand; this is effective Tuesday [10/8/2013].'* Davis received a manila folder with a Chrysler 300 window sticker from President Elzey's secretary the same day. On 10/8/2013, the very next day, DTZ leased a Chrysler 300 and delivered it to President Elzey.

Continuing on 10/7/2013, President Elzey contacted SCSU's Director of Human Resources (HR). He instructed her to draft a reassignment letter transferring Green to facilities management, which was operated by DTZ, and to terminate Green's dual employment agreement with the SCSU athletic department. President Elzey did not provide HR with a reason for the reassignment or the dual employment termination.

On 10/8/2013, Green reported to DTZ, where over the initial two week period he was not given an assignment. Eventually, Green was placed on the facilities committee for the president's inauguration and subsequently assigned to events management. SCSU's HR director advised the SIG Green was "laterally reassigned" to a position without a reduction in pay or job classification so the reassignment was allowed without a grievance or personnel action. From the SIG's analysis, Green was effectively demoted from a supervisory position to a non-supervisory role, and his $10,000 stipend which he had been earning for many years assisting SCSU's Athletic Department was punitively terminated resulting in a loss of income. The potential human resource policy violations generated from this transaction are many, with the primary allegation of President Elzey and SCSU HR taking an adverse personnel action against an employee through a demotion and a loss of pay, and then circumventing basic management and human resource policies/duties without a basis for these actions or due process, to include a written justification and change of the employee's duties to his new position as foremost. There was not one shred of derogatory performance related data for Green in any SCSU file relative to his FMO performance. Further, from an economic waste perspective, Green's salary was provided by SCSU, yet the DTZ contractor benefitted from his daily services in meeting its contractual requirements with SCSU. If Green's poor performance was the reason for the demotion to a non-supervisory role, then his pay should have been reduced commensurate with his new duties to save SCSU/taxpayer funds—it was not.

Another issue stemming from the Chrysler 300 included SCSU and DTZ structuring the continual rental of President Elzey's Chrysler 300 through a series of less than 30 day rentals to avoid triggering a violation of state fleet policy prohibiting leasing (greater than 30 days) luxury cars. SCSU developed a longer-term plan to have DTZ lease the car which would then be reimbursed through its contracts.

The last issue pertained to President Elzey allegedly violating state contracting policy when he turned SCSU's FMO over to a contractor (DTZ) on 10/7/2013, without modifying the existing contract. Over the next five months, DTZ managed the FMO and paid for President Elzey's Chrysler 300 without a contract modification or being compensated for the additional duties. Ultimately, SCSU determined this contract was not authorized, and planned to request the BCB ratify this unauthorized contract. SCSU elected not to seek ratification, likely due to the possibility of it not being approved by the BCB. In mid-May 2014, SCSU resumed control of managing the FMO. It appears DTZ was never paid for managing the FMO for over five months or the rental of the Chrysler 300.

The end of the chain of events stemming from the Chrysler 300 pertained to Green being transferred from DTZ back to FMO on 5/16/2014 as the supervisor. One month later, President Elzey's proposed budget recommended eliminating FMO and Green's position through a reduction-in-force (RIF) due to the budget crisis. Essentially, Green was brought back into FMO at a time when SCSU executive management was planning to eliminate the FMO in its budget. On 6/27/2014, Green, Linda Elmore, and Evelyn Anderson filed a state whistleblower lawsuit against President Elzey, which then prompted the SIG to initiate a review concerning whistleblower retaliation.

<u>Summary of Allegations in SIG Report Titled, "Investigation of Two Whistleblower Retaliation Allegations at South Carolina State University"</u>:

In February 2014, two SCSU employees, Derrick Green and Linda Elmore, claimed whistleblower status after providing information to the SIG pertaining to allegations of misconduct by President Elzey involving his acquisition and use of a new Chrysler 300 vehicle. In June 2014, President Elzey's budget proposal for Fiscal Year (FY) 2014-2015 recommended eliminating FMO through a RIF, which included Green and Elmore's positions. The budget proposal was approved and both lost their jobs in August 2014. Both alleged the RIF and their loss of jobs was in retaliation as whistleblowers against President Elzey and the university.

Eliminating the FMO, which resulted in the RIF of Green and Elmore's positions, was not inconsistent with good management given the FMO was not a core function of SCSU's academic mission, and executive management had anecdotal data of fleet management inefficiencies underpinning their decision. The SIG furthered acknowledged management's needs to have wide latitude to make operational decisions in the best interest of the university. <u>However</u>, given SCSU's crisis budgetary environment, many budget reduction plans could have achieved the same objective of balancing the university's budget, yet this plan purportedly just by happenstance or coincidence resulted in terminating two whistleblowers and attempted to terminate a third, Internal Auditor Evelyn Anderson. Although the SIG did not develop any SCSU witness testimony that Green's and Elmore's RIFs were related to whistleblower retaliation, the SIG identified four issues which raised questions about the "reasonableness" of the budget plan not intentionally targeting whistleblowers Green and Elmore's positions for elimination. These four issues were:

1. The FY 2014-2015 management recommended budget eliminated seven FTEs representing 1.3% of all FTEs, of which three of the seven (43%) recommended for elimination were whistleblowers.

2. SCSU executive management allowed functional managers to decide the combination of personnel or non-personnel budget cuts to meet the overall budget reduction target, except for FMO where executive management pre-determined all cuts would come from personnel.

3. Two long-term FTE employees, Green and Elmore, were RIF-ed while:

   - 60 of the 100 P-13s (temporary workers) eliminated from the FY 2013-2014 budget were re-hired in FY 2014-2015;
   - 58 of these 60 P-13s were re-hired after the FY 2014-2015 budget proposal containing the RIFs was implemented;
   - 26 of the 58 P-13s were re-hired after Green and Elmore received their RIF letters; and
   - Management had the budget capacity to minimize the impact on FTE RIF-ed employees over temporary employees but apparently this was not considered; and

4. Despite the SIG's request on 6/27/2014, that SCSU document any adverse management actions against whistleblowers Green and Elmore, SCSU failed to create any documentation to underpin its decision to eliminate fleet management, which resulted in the RIF of Green and Elmore; long-time employees known to be whistleblowers, one within six months from retirement eligibility, were terminated without a written explanation justifying this action.