



## OFFICE OF THE COUNTY AUDITOR

Craig Glendenning, CPA  
County Auditor

August 15, 2017

The Honorable Members of the County Council  
The Honorable County Executive Allan Kittleman  
3430 Courthouse Drive  
Ellicott City, MD 21043

Dear Members and Mr. Kittleman:

In accordance with the Howard County Charter, I am reporting on the results of our investigation of an allegation involving the State's Attorney's Office by an anonymous complainant.

### **BACKGROUND**

Section 15-414(e)(3) of the Criminal Procedure Article of the Annotated Code of Maryland authorizes the County Auditor to perform a special audit of the State's Attorney's Office in accordance with Section 213 of the Howard County Charter. Section 213 states "either the Council or the County Executive may at any time order the examination or audit of the accounts of any department, office or agency receiving funds from the County government."

Other than some nominal grant funding, the County funds 100% of the operations of the State's Attorney's office. The FY2018 budget for the State's Attorney's Office is \$8,816,446, of which \$7,974,298 (90%) is for personnel costs. Because the County provides the funding for all State's Attorney's Office employee leave and benefits, any allegations of abuse may, and should be investigated by the County Auditor.

In April 2017, I received a letter which alleged that a former employee of the State's Attorney's Office received a full salary while they were sick and not working.

After our initial work revealed that further investigation was needed, I requested and received the approval of the five Council Members to move forward with an investigation. It

should be noted that due to the sensitivity of the issue, I did not advise the Council Members of the specifics of the allegation at that time.

We relied on the following resources for our investigation:

- ADP payroll records
- State's Attorney's Office payroll reports
- Emails and social media
- The Office of Law
- Interviews of the State's Attorney and a staff member

## **FINDINGS**

After reviewing payroll records, reports, and emails, we determined that the allegation was valid. It was apparent that the individual performed some research from home and the office after exhausting all available leave balances. However, we calculated that the individual was inappropriately compensated as much as \$115,000 of regular salary and benefits.

After determining that the allegation was substantiated, we met with Dario Broccolino, the State's Attorney, and a staff member from his Office. Mr. Broccolino indicated that he was anticipating the allegation. While he agreed with our findings, he stated that he believed he was justified and authorized to take the approach he did because he is an independent elected official with the constitutional authority to run his office in the manner he sees fit. Per Mr. Broccolino, the rest of the staff stepped up to cover the employee's caseload so the office was not negatively impacted.

According to the County Solicitor, "an assistant State's Attorney 'shall serve at the pleasure of the State's Attorney' and 'shall receive a salary' set by the County." Additionally, State Code "provides support for a conclusion that the hiring and firing of an assistant State's Attorney is within the sole discretion of the State's Attorney, and that as long as it is the pleasure of the State's Attorney to have a person serve in the position, the assistant State's Attorney 'shall receive' the salary approved by the County." However, the County Solicitor also opined that "Maryland law seems to recognize the common law principle that a public employee is generally not entitled to payment for services not actually rendered." Considering the term "serve" generally means to render assistance or perform duties and the common law rule would not prevent the State's Attorney from performing constitutional duties, this seems to be the stronger of the two arguments according to the County Solicitor.

## **CONCLUSION**

Although I understand the State's Attorney's position on why the employee was paid a full salary after all of their leave was exhausted, in my opinion County funds should not be used

to compensate an employee who is not working. According to the County Solicitor the County has only a few remedies, including issuing the audit findings and/or reducing the State's Attorney's next budget request. However, the County Government may not exercise its budgetary and fiscal authority in a way that would prevent the State's Attorney from carrying out his constitutional responsibilities. Mr. Broccolino asserted that he would be willing to take steps to find the savings in his Office's budget required to make the County whole without preventing him from carrying out his duties. Other remedies involve asking State officials to take action.

Sincerely,



Craig Glendenning  
County Auditor

cc: Mr. Dario Broccolino, State's Attorney  
Mr. Gary Kuc, County Solicitor  
Mr. Lonnie Robbins, Chief Administrative Officer