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Fellow State Appeal Board Members:

I have a few issues with the two settlements brought before the State Appeal Board (SAB) related to Dave Jamison's conduct while he ran the Iowa Finance Authority (IFA). I think our deliberation may be better if I share them with you in a written format. Items (A) and (B) list those.

As you know the State can see restitution from employees under Iowa Code 669.21(2) in these types of cases, when their conduct is "willful and wanton." I believe that we should know whether the state will be doing that before we approve payment. That is item (C).

I believe getting restitution from Jamison is important in this matter. It is a truly extraordinary case of sexual harassment for many reasons, and it would be good public policy for the State to start to use Iowa Code 669.21(2). I lay this out in (D) and (E).

Finally, no action we could take today, including tabling or denying, would mean settlements would be out of the question. I address that in (F).

I look forward to our discussion.

Sincerely,

Rob Sand
State Auditor

A. Issues with These Contracts:

1. One victim settles a "sexual assault" claim in this contract: Under 669.14(4) those claims cannot be settled through this process. This makes me concerned that we may still have liability to that victim despite this settlement. I believe the contract language needs to be changed to address this.
2. It contains a February payment date: It is problematic to bring a settlement to SAB with only one meeting set prior to an agreed-upon payment date, even when contract acknowledges approval is required. Meeting this deadline may not be legally necessary because the contract acknowledges SAB's role. But, if necessary, if we decided to table this discussion, it would require an emergency meeting to be set. As a board, we should formally discourage this practice.
3. Lack of clarity regarding a restitution suit against Jamison: if victims had no awareness of Iowa Code 669.21(2) or had a reasonable expectation no such suit would be filed and no testimony would ever be required, they may be able to undo these settlements. I would like to see or conduct research regarding this issue before any vote on approval, or at least have it addressed within the settlement.

B. Purpose of the IFA “Repayment”:

1. The Solicitor General’s Letter notes the Governor may request that IFA repay the general fund for this settlement. I am unsure as to the purpose. IFA’s assets are taxpayer assets, so it seems to be just taking money out of one account instead of another, with no effect.
2. Even if IFA had some private property, the government cannot simply go take it. The Constitution’s Takings clause requires eminent domain result in just compensation for the owner. So again, it is still taxpayers funding all settlements.
3. If all parties fully agree that this has no impact on taxpayers, then this is not important. But if there is a dispute we need an investigation prior to establish the facts.

C. The SAB Has a Right to Know if the State will Seek Restitution:

1. Financial Question Related to the Financial Request: When asked to write a check, it is fair, appropriate, and necessary for the SAB to ask if the other legally responsible party will be contributing.
2. Fairest to the Victims: A victim deserves an open discussion as to whether or not they may need to testify, and how many times, prior a settlement. Settling, but then later deciding to sue for restitution could re-victimize them and potentially undo the settlement if the victim had not known that was a possibility.
3. We have a full investigation already: Taxpayers already paid for the Weinhardt Report. Fact questions here are smaller. We have enough information to make this decision. If taxpayers paid for the report, let’s use it.

D. Why IFA is Different from the Senate Republican Caucus Staff (SRCS):

1. Intimidation: only here were jobs threatened by the harasser, or were others reminded of the harasser’s powerful connections. Not in SRCS.
2. Executive: *This is an agency head.* Literally from the top. Guy responsible for setting culture was doing the harassing. In SRCS it was another staffer, few comments from Senators.
3. Severity: Iowa’s Policy Prohibiting Sexual Harassment for Executive Branch Employees offers 8 forms of sexual harassments. Here, 7 are present including a very important one: actual physical contact. SRCS had 3 or 4, without physical contact.
4. Supervisory capacity: Direct supervisory relationship between harasser and victims
5. Related Misuse of Taxpayer Money: The massive salary increases to targeted victims is an unconscionable use of taxpayer money. That did not happen in SRCS.
6. Single Individual: Here, a single individual drove all harassment. Proving “willful and wanton” misconduct is easier than trying to apportion in out amongst others. It is also easier to prove because there is no culture that makes him think this is normal or okay.
7. More Money: We know it is worse because we are being asked to pay more money.

E. Why The State Should Start Seeking Restitution in Similar Cases:

1. Accountability: harassers, not taxpayers, will pay for their harassment.
2. Deterrence: If we want to stop tolerating sexual harassment, we must stop paying for it when it meets the legal standard. This will send a message. This reduces the number of future victims and reduces the amount of future liabilities.
3. Long-Term Money Saver: By deterring future sexual harassment, and by getting money back from harassers, taxpayers are better off in the long run.
4. Fairness: We should use existing legal channels to reduce costs to taxpayers who have done no wrong.

F. Settlements are Always Possible for Both the Victims and the Harasser:

1. Were this claim presently denied, plaintiffs still have 6 months to file their suit. That is plenty of time to continue negotiations, especially when so many terms have already been set. Nothing in the law says a claim cannot be re-presented to SAB in that time.
2. At the same time, the State could negotiate a resolution with the harasser for restitution.
3. And of course, the state can also negotiate after filing a suit.