



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

November 9, 2012

FINAL
12-10-2012

Honorable William F. Boyland, Jr.
Member of the Assembly
402 Marion Street
Brooklyn, NY 11233

Re: Draft Report - Travel Expenses

Dear Assemblyman Boyland:

In response to a request from Albany County District Attorney, P. David Soares, we examined¹ 206 vouchers you submitted for \$153,089 in travel expenses during the period January 1, 2007 through January 31, 2012. On these vouchers, you certified that you were in Albany to conduct legislative duties on 975 days during that time. The objective of this examination was to determine whether sufficient, appropriate evidence existed to support your claims that you were in Albany for legislative duties on these days and, therefore, entitled to the travel expense reimbursements received.

A. Results of Examination

Our examination found a lack of sufficient, appropriate evidence to support you were entitled to receive \$67,497 in mileage and per diem expenses related to 609 of the 975 days you claimed on 180 of the 206 travel vouchers during the examination period. This includes:

- \$35,097 in per diem and mileage expenses for 323 days where evidence indicates that you were elsewhere, including Court appearances in New York City and travel out of state,
- \$28,749 in per diem and mileage expense reimbursements for 182 days where there was no evidence to support you were in Albany, and
- \$3,651 in net per diem overpayments for 104 days where you misrepresented the amount of time spent in Albany, claiming the amount for a full per diem when you were entitled to only a partial per diem or vice versa.

¹We performed our examination in accordance with the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, as well as Article II, Section 8, and Article VII, Section 111 of the State Finance Law.

We identified a pattern where you were in Albany for some period, but claimed to arrive earlier and/or leave later than records support, thus increasing or "padding" reimbursement requests. We also found that when you returned to Albany after lengthy absences, you regularly submitted multiple vouchers at the same time, claiming to be in Albany during the periods of your absence. This is in contrast to vouchers you filed within two weeks when evidence supports your presence in Albany.

B. Background and Methodology

According to Legislative Law §5(2), Assembly Members in travel status for legislative duties are entitled to payment for transportation expenses and a per diem equal to the most recent Federal rates. The associated Assembly travel policy provides that Assembly Members are entitled to reimbursement for (i) an allowance for a full per diem when a Member's legislative duties require an overnight stay, (ii) an allowance for a partial per diem when a Member's legislative duties do not require an overnight stay, (iii) actual and necessary mileage at the most current Federal rate when a Member uses a privately owned vehicle, and (iv) actual and necessary tolls when a Member submits receipts or EZ Pass statements with the travel voucher.

In accordance with State Finance Law §109, you certified on travel vouchers that you were eligible for the per diem allowance(s); that you incurred the travel expenses to carry out legislative duties; that the amount of travel reimbursement sought was just, true and correct; and that the balance shown was due and actually owing.

To accomplish our objective, we examined your travel vouchers, Assembly session attendance records, session voting records and committee attendance records. We also examined records maintained by the Office of General Services of the dates and times your State identification (ID) cards were used to gain access to (i) the parking garage under the Empire State Plaza in Albany and (ii) the Legislative Office Building. Finding no support for numerous claims you certified on travel vouchers, we further examined the docket records of the United States District Court for the Southern and Eastern Districts (Federal Court docket records); a December 2011 Federal Indictment against you; and your EZ Pass and bank account records. For more detailed information about our methodology, see Attachment A to this report.

We also afforded you the opportunity to provide us with any evidence to support you were in Albany for legislative duties for the days where there was not sufficient, appropriate evidence to support your presence. You responded, through counsel, that you would not provide any information as a response could incriminate you in future criminal proceedings.

C. Details of Findings

You obtained travel expense reimbursements to which you were not entitled by certifying you were in Albany for legislative duties where:

- Evidence demonstrates you were not in Albany.
- We found no evidence to support you were in Albany.
- Evidence demonstrates you misrepresented the amount of time you claimed to be in Albany.

Evidence You Were not in Albany

You represented on travel vouchers that you were in Albany for 323 days where the evidence shows that you were, in fact, in locations far from Albany. Specifically, records indicate you were in and around New York City for 85 percent of the 323 days, including 3 days where Federal Court docket records show that you were in court and 4 days where a Federal Indictment indicates that you were meeting with Federal investigators. There is no evidence to suggest that you also traveled to Albany for any part of these days in order to carry out legislative duties. Absent this evidence, you were not entitled to travel expense reimbursements for these days.

For the remaining 15 percent of the days, evidence demonstrates that you were in other locations, including Wilson, North Carolina; Chester, Maryland; South Hampton, New York; and Atlantic City, New Jersey. For example, you claimed to be in Albany for legislative duties for six days during the period August 3, 2011 through August 9, 2011. However, records reflect you were in New Jersey, Maryland, North Carolina and Virginia during this period, including Virginia State University – your Alma Mater. In another example, you claimed that you were in Albany for legislative purposes for the four days before Christmas 2008. The Legislature was not in session these days and there was no activity on EZ Pass or State ID card records to corroborate your claim to be in Albany. However, your bank account records showed that your ATM and debit cards were used in Brooklyn on each of these days, including at Circuit City and Toys R Us.

You received \$35,097 in per diem and mileage expenses to which you were not entitled for these 323 days.

No Evidence You Were in Albany

You represented on travel vouchers that you were in Albany for 182 days where there is no evidence to support your claims. For example, evidence supports you were in Albany for legislative duties on July 9, 2008. There is no evidence to suggest you were in Albany again until August 18, 2008. However, on August 20, 2008, you submitted three vouchers in which you claimed mileage and per diems for 12 days during the period July 13, 2008 through July 30, 2008, including five days where evidence shows your presence elsewhere, as discussed in the previous section. There was no record of your presence in Albany on session attendance or committee attendance records and no other evidence reflecting any travel to or presence in Albany on those days.

You received \$28,749 in per diem and mileage expenses to which you were not entitled for these 182 days.

Evidence You Misrepresented the Amount of Time in Albany

For 104 days, you certified on travel vouchers that you arrived in Albany earlier than records support or that you returned to Brooklyn later than records support. For example, on one voucher, you claimed a full per diem for May 11, 2011. However, EZ Pass records show that you returned to Brooklyn mid-afternoon on that day. Since you were not required to stay overnight on May 11, 2011 for legislative duties, you were entitled to only a partial per diem.

Over the course of the examination period, the vouchers included 35 days where you claimed a partial per diem when you were entitled to a full per diem and 69 days where you claimed a full per diem when you were entitled to a partial per diem.

You received \$3,651 in net per diem reimbursements to which you were not entitled for these 104 days.

Unreimbursed Travel Expenses

We found you may be entitled to reimbursement for other travel expenses during the examination period. For example, evidence supports you were present in Albany for legislative duties on 14 other days you did not claim on travel vouchers. You may be entitled to full or partial per diems and potentially, mileage. Also, you are entitled to seek reimbursement for tolls for travel to Albany for legislative duties.

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Next Steps

Because we have found no sufficient and appropriate evidence – and you have declined to supply any information supporting your reimbursement claims – you should immediately repay \$67,497 in unsupported expenses referenced in this report. We have shared our findings with the Albany County District Attorney's Office for further review.

We would appreciate your response to this draft report by December 10, 2012, indicating any actions planned to repay the unsupported amount. If we do not hear from you with additional information by this date, we will consider this report final.

Sincerely,


Bernard J. McHugh
Director of State Expenditures

cc. F. David Soares, Albany County District Attorney

Detailed Audit Methodology

We used the following methodology to evaluate whether records contained sufficient, appropriate evidence to support you were in Albany for legislative duties, thus entitled to the travel expenses reimbursed.

We gave credit to you for a full per diem claimed when:

- An EZ Pass record showed you arrived in Albany but did not show you returned to Brooklyn on that same day, and on the following day: (i) an ID card record showed the your card was used, (ii) session attendance records showed your attendance, or (iii) committee attendance records show your attendance.
- One of the following occurred and EZ Pass records support you did not return to Brooklyn on that day: (i) an ID card record showed your card was used, (ii) session attendance records showed your attendance, or (iii) committee attendance records show your attendance.
- There was no record of your arrival in Albany and one of the following occurred on the next day: (i) an ID card record showed your card was used, (ii) session attendance records showed your attendance, or (iii) committee attendance records show your attendance.

We gave credit to you for a partial per diem claimed when:

- EZ Pass records indicate that you traveled home from Albany and arrived in Brooklyn before midnight.
- There was no record of your return to Brooklyn in EZ Pass records and one or more of the following occurred on the previous day: (i) an ID card record showed your card was used, (ii) session attendance records show your attendance, or (iii) committee attendance records show your attendance.

We gave credit to you for mileage claimed when:

- Evidence supports you were entitled to a full or partial per diem on at least one day of a given trip.