

**OFFICE OF INSPECTOR GENERAL
CITY OF ALBUQUERQUE**



**Investigative Report
Case # 12-212**



**OFFICE OF INSPECTOR GENERAL
CITY OF ALBUQUERQUE**

April 9, 2012

Mr. David Tourek
City Attorney
City of Albuquerque

Re: OIG 12-212: Request for Investigation into the expenditures and actions of the Director of the Albuquerque Housing Authority (AHA)

On March 28, 2012, I received a letter from you, and on behalf of the Chief Administrative Officer (CAO) Robert Perry, requesting the above mentioned investigation. Specifically, you requested the Office of Inspector General (OIG) conduct an investigation into the actions of the Executive Director of AHA as it pertained to the following:

1. Whether she facilitated the sale of two city fleet vehicles and purchase of two fleet vehicles;
2. Whether the purchase of the two fleet vehicles were and have been properly registered and insured;
3. Whether the transference of the license plates from the two sold vehicles onto the two purchased vehicles occurred and, if so, was lawful;
4. Whether expenditures of AHA money related to the purchase of hams, turkeys, and polo shirts for AHA employees during the holiday season last year occurred and, if so, was lawful;
5. Whether expenditures of AHA money for renovations of AHA administrative offices occurred and, if so, was lawful;
6. Whether she has taken unapproved or inappropriate half day afternoon leave on Fridays during the period of her employment as Director of AHA, and;
7. Whether the use of AHA moneys received from rents have been properly spent and accounted for during the period that she has been the AHA Director.

Before the OIG could commence its investigation into the various allegations, we first needed to come to a determination of two key and critical questions, (1) was the Executive Director of AHA an employee of the City of Albuquerque and, (2) was the Albuquerque Housing Authority an independent political subdivision of the government of the State of New Mexico and therefore, separate and apart from the City of Albuquerque. It is also important to note that the Albuquerque Housing Authority is 100% funded by HUD Grants and monies collected from fees they charge for providing their services.

After research and consultation, the OIG relied on language contained in the City of Albuquerque's City Council Resolution, Council Bill No. R-10-97, Enactment No. R-2010-145, which was passed and adopted by City Council on December 6, 2010 and approved by the Mayor on December 22, 2010, and which stated the following:

Section 8. City Employees. Except for the Executive Director, for at least the first two years following the creation of the Albuquerque Housing Authority, all employees shall be City of Albuquerque employees working for the Authority.

In addition, the Memorandum of Understanding (MOU) between the City and Albuquerque Housing Authority¹ at ¶ 3 (a) (1) (emphasis added) states:

The employees of the City's Albuquerque Housing Services (AHS) Division shall become employees of the Albuquerque Housing Authority under contract from the City **except for the Executive Director, who shall be an employee of the Albuquerque Housing Authority Board of Housing Commissioners.**

Therefore, the OIG concluded that the Executive Director of AHA was not an employee of City of Albuquerque.

The next question regarding the status of the AHA was answered by looking at the authority delegated to municipalities by the State of New Mexico under the Municipal Housing Law, NMSA 1978, §§ 3-45-1 et seq, (2009), formerly §§14-46-1 et seq., N.M. Stat. Ann. (1953). Pursuant to that law, the City of Albuquerque ("City") created the Albuquerque Housing Authority ("AHA") in 1967 by the adoption of a Resolution of the Albuquerque City Commission.² The Legislature amended the Municipal Housing Law in 2009 to expand eligibility for housing assistance and provide additional oversight of local housing authorities. On December 22, 2010, the Albuquerque City Council adopted a Resolution (R-2010-97) in response to the amendments to the Municipal Housing Law.

In New Mexico, housing authorities are defined by the following:

¹ The MOU was signed on December 16, 2011 by CAO Robert Perry, and signed on January 18, 2012 by the AHA Chair and the Executive Director. The MOU is intended to be retroactive to July 1, 2011. The OIG will have more to say about this MOU and other matters in the OIG's final report.

² AHA was later called "Albuquerque Housing Services" when it became a department of City government. It later became a division of the Human Services Department which itself became Family and Community Services.

A. Every City, in addition to other powers confirmed by the Municipal Housing Law, shall have power and is authorized, by proper resolution of its governing body, to create **as an agent of the city**, an authority to be known as the “housing authority” of the city. The housing authority of the city may constitute **a public body corporate**.

Municipal Housing Law, NMSA 1978, § 3-45-1 (A) (emphasis added).

The OIG, based on the above language contained in the state statute, has concluded that the Albuquerque Housing Authority is a public agency of the City and not an independent political subdivision of the government of the State of New Mexico, and therefore, not separate and apart from the City of Albuquerque. This distinction is extremely important because once it is understood that AHA is an agent of the City and, as such, a part of the City, the Executive Director of AHA was obligated to follow the rules, procedures, policies and administrative instructions issued by the City even though she was not a City employee.

ISSUE 1: Whether the Executive Director of AHA facilitated the sale of two city fleet vehicles and purchase of two fleet vehicles.

Based on interviews conducted and documentation obtained, the OIG has concluded that, on or about January 17, 2012 at the Executive Director’s direction, a business transaction was conducted by AHA staff member(s) and Melloy Dodge for the purchase of 2 vehicles (2012 Dodge Caravan and 2012 Dodge Charger) for the total price of \$39,866.00. The price was after the deduction of \$5,000.00 for trade-in value of two City vehicles (2001 Chevy Cavalier and 2001 Ford Taurus). The original titles, which were signed over for these two trade-in vehicles, were obtained and used to conduct the transaction for the purchase of the two new vehicles. The individual signing the titles was authorized to do so, but based on procedures and policies, should not have done so.

On April 6, 2012, the Executive Director was interviewed by the OIG and asked on what theory or policy she based her decision that she had the authority to conduct this purchase. The Executive Director stated that her understanding of Section 4 of the R-2010-97 which stated that, “All of the assets, debts, and employees of the Albuquerque Housing Services (AHS) division are hereby transferred to Albuquerque Housing Authority,” and the MOU entered between AHA and the City. The Executive Director stated she was relying on these two documents as giving her the authority to make this purchase.

The Executive Director was asked why specifically the Dodge Charger was chosen and not another model? She stated that she looked at gas mileage and cost as the criteria for her analysis and based on this analysis among the possible choices, the Charger came out best. The Executive Director was then asked if she thought a Charger was a good choice given that it is commonly regarded as a ‘muscle car,’ a choice of many law enforcement agencies including the Albuquerque Police Department, given the fact that

no other Director the OIG knows of, had a Charger as a City Vehicle, and given the fact that some of her staff advised against the purchase of this model. She maintained that in spite of the given objections, it was the best choice.

ISSUE 2: Whether the purchase of the two fleet vehicles have been properly registered and insured.

Based on interviews conducted and documentation obtained, the OIG has concluded that when these two vehicles were initially purchased, they were not properly registered. The insurance issue is complicated in that, since the proper procedures for the purchase of these vehicles were not followed, Fleet Management did not have the documentation to register and account for them on the City's Fleet inventory. This means that Risk Management would not have had a record of them for insurance purposes. However, in speaking with the City's Risk Manager, the vehicles would have been covered under the City's insurance as they were still City vehicles. It is the understanding of the OIG that the vehicles have not been registered as the dealer is still awaiting payment and will not release the Certificates of Origin which would allow for the proper registration process. In addition, Fleet would have needed the vehicle to install the new gasoline device which allows the vehicles to go to City pumps to gas up.

ISSUE 3: Whether the transference of the license plates from the two sold vehicles onto the two purchased vehicles occurred and, if so, was lawful.

Based on interviews conducted, the OIG has concluded that transference of plates from the two sold vehicles onto the two purchased vehicles did not occur. The two new vehicles would have been issued Dealer Temporary Tags which would allow for the operation of the vehicle for 30-days. Once these tags expired, and without asking for an extension, the vehicles would have needed to have been properly registered to have the permanent license plates obtained for legal operation. As such, driving the vehicles with the two "old" plates not only violated City policies and procedures but also was in violation of New Mexico State Motor Vehicle regulations.

The Executive Director was advised that proper procedure for the purchase of new City vehicles is to go through the Department of Finance and Administrative Services (DFAS) Fleet Management Division. The procedure is as follows:

- Each department must identify the type of vehicles that they are interested in purchasing. There are various types of contracts that can be used in purchasing of vehicles such as (State Contracts, GSA Contracts, and NJPA Contracts, etc.). This information must be utilized first and foremost by each department. AHA did utilize and piggy backed off the state contract for these purchases.
- Requisitions must be brought to the DFAS/Fleet Materials Manager to be reviewed and to ensure that proper contracts and information are documented on requisitions. This was not followed by AHA for this purchase.

- It is then the responsibility of the department's "Point of Contact" to get proper signature authorizations. Once proper signatures are on the requisition, it is brought back to the DFAS/Fleet Materials Manager for the final approval letter. This letter is then attached to the requisition and sent to the Purchasing Department. AHA did not complete any requisitions, as required, and therefore failed to receive the proper approvals.
- All new vehicles must be delivered to the DFAS/Fleet Materials Manager along with all attached documentation. The Materials Manager will then assign a new vehicle number to each unit and enter all information into the Fleet System; vehicles are then photographed and inspected. This procedure was not followed, and the OIG has probable cause to believe that the Dodge Charger was actually delivered to the Executive Director at her home.
- Once vehicles are entered into the Fleet System, the Materials Manager will turn over ownership to the designated department.
- "All Certificates of Origin" must be delivered to the DFAS/Fleet Materials Manager for processing of Government license plates. Once the license plates have been received and entered into the Fleet System, departments will be notified and must sign for them before being released. This procedure was not followed by AHA and therefore, the vehicles today remain booted, not registered and not properly plated.

DFAS procedures for purchasing new city vehicles also reference the following which were not followed by AHA:

- Administrative Instructions No. 4-2 (Revised) with regard to Vehicle Identification. This requires all vehicles to have the City logo on each driver and passenger door and vehicle number above the logo and on the trunk lid or tailgate which shall be administered by the Fleet Management Division.
- Administrative Instructions No. 4-3 (Revised) with regard to Policy of Purchasing of New City Vehicles and Vehicle Acquisition Policy and Procedures.
- Administrative Instructions No. 6-2 (Revised) with regard to Vehicle Turn-In Procedures and the Control of Fixed Assets and Disposition of Surplus Property and Salvage.

In addition, the OIG found the Executive Director to be in violation of Administrative Instruction No. 4-5 (Revised) with regard to City Vehicle Usage Policy. This instruction states that City vehicles will be used exclusively in the conduct of City official business. City vehicles are not to be used to conduct personal business including, but not limited to, leaving City property solely for meals or breaks, running personal errands to cleaners, banks, etc., going to medical appointments unless based on a workers compensation claim or visiting friends or relatives. The Executive Director stated that on at least one occasion, she had used the City vehicle to get her hair done and realized she was being followed. She went home, switched cars and then she went to get her nails done.

Furthermore, this instruction states that City vehicles shall not be used for commuting between the employee's residence and the place where the employee reports to work on a regular basis, unless the employee has been authorized the use of a specific take-home City vehicle. For the purposes of this Administrative Instruction, a "take-home" vehicle is one that is assigned exclusively to an individual because of the nature of their job duties and that they are authorized to operate outside of normal working hours. Absent union contract provisions to the contrary, no employee shall be authorized the use of a "take-home" vehicle unless:

- The employee's primary residence is within the City limits; and
- The employee must normally respond to after-hour call outs or attend after-hour meetings on an average of two times per week; and
- Call outs must be related to the mitigation of public health and or safety emergencies.

The OIG finds that the Dodge Charger was purchased as a staff car and was not for the Executive Director's exclusive use and that she, in her capacity as the Executive Director, did not meet any of the criteria stated for a 'take-home' car and therefore she was in violation of this instruction in utilizing the Dodge Charger as a 'take-home' vehicle.

ISSUE 4: Whether expenditures of AHA money related to the purchase of hams, turkeys, and polo shirts for AHA employees during the holiday season last year occurred and, if so, was lawful.

Based on interviews conducted and documentation obtained, the OIG has concluded that the purchases of hams and turkeys for AHA employees during the holiday season last year and, the purchase of polo shirts, did occur. Purchase Orders reviewed for November 2011 reflect a purchase of 84 Turkeys totaling \$1,116.16 and a Purchase Order for December 2011 reflected a purchase of 90 Hams totaling \$1,506.06. A Purchase Order for November 2011, was reviewed, reflected a purchase of 114 Polo shirts totaling \$2381.90

The OIG met with local representatives of the US Department of Housing and Urban Development (HUD) Office of Public Housing to discuss the issue of AHA possibly utilizing federal monies for these purchases, and if so, its legality. The HUD representatives stated that a number of years ago, HUD mandated the creation of a Central Office concept for the Housing Authorities. This also required the establishment of a General Ledger Account for the Central Office to account for the various fee monies taken in and expended. The monies in this account were considered de-federalized or unrestricted and therefore could be utilized by the Housing Authority for various expenses to include the purchase described in this particular issue. As such, as long as it is verified that AHA used monies from the Central Office account, HUD has no legal issues as to the expenditure of these monies for the turkeys/hams/shirts. The OIG reviewed the purchase vouchers and confirmed the account utilized for these purchases was a 106 account which is the account used for Central Office.

Notwithstanding HUD's position, since AHA is considered a part of the City and was therefore required to follow prescribed City policies, procedures, regulation and administrative instructions, the OIG has concluded that this purchase was in violation of Albuquerque Ordinance § 3-3-4 Gifts and Donations Prohibited, as well as Personnel Rules and Regulations 301.10 Bribery, Gifts and Donations. Both basically state the following:

“No reward, favor, gift, emolument, or other form of remuneration in addition to regular compensation and employee benefits shall be received by any employee for the performance or non-performance of his or her duties from any vendor, contractor, individual or firm doing business with the city or who can be reasonably anticipated to do business with the city in the future, or from any other source having or proposing to have any relationship with the city.”

The Executive Director was asked if she ever requested permission to do this from her Board or anyone else. She stated “No”. When asked as to what she was relying on to do this she stated that her employees had been working hard and she wanted to reward them in a way that would be a morale booster. She stated that in her previous position she could do this and assumed that this ability was the same in her position now. She stated that she did not know she was a part of the City, or that she was required to follow the City rules, regulations, procedures and instructions. She said she thought she had the ability under the AHA and HUD regulations to do this.

ISSUE 5: Whether expenditures of AHA money for renovations of AHA administrative offices occurred and, if so, were lawful.

Based on interviews conducted and documentation obtained, the monies utilized to purchase furniture for AHA offices came from GL Account 106 which is allowed by

HUD. In addition, the OIG was told by the HUD representatives that AHA had submitted a required 5-year plan for renovation, which would have included the renovation of their building and could have included the purchase of furniture. The HUD funds were capital funds outlay monies and were justified and approved by HUD. The purchase orders the OIG reviewed included various furniture purchases for a number of staff members to include chairs for employees. The OIG has concluded that these purchases were not extravagant nor were they solely to furnish the Executive Director's office and were lawful, justified and documented. The OIG was also advised by AHA staff members, that contrary to the reported allegations, the Executive Director had been in the process of buying chairs for all of her employees.

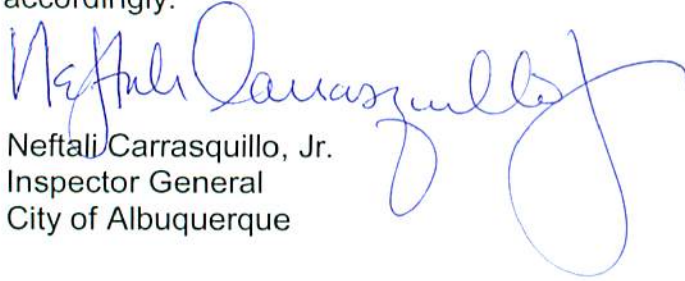
ISSUE 6: Whether she has taken unapproved or inappropriate half day afternoon leave on Fridays during the period of her employment as Director of AHA.

The Executive Director as a non-City and exempt employee had discretion to set her work schedule. The Executive Director's workday usually started between 7:00 AM and 7:30 AM and ended between 4:30 PM and 5:00 PM, Monday through Thursday. She typically worked through lunch and therefore by Friday noon had in fact worked at least 40 hours. As such, she felt that by Friday mid-day, she had worked the required hours which allowed her to take the afternoon off. The Executive Director was asked if she had asked anyone for permission to work this schedule and she stated "No" but she did state that the Board knew this was her schedule and never questioned her about it. Notwithstanding her ability to set her schedule, the Executive Director was asked if in hindsight, and in view of all the criticism, this might be seen as setting a bad example as the head of this organization. The Executive Director acknowledged that this was probably not a good example to set. As such, the OIG concludes that taking half day afternoons off though not what is normally expected of a Department Director and not the example you want to set as the leader of your organization did not necessarily violate any policies we could find.

ISSUE 7: Whether the use of AHA moneys received from rents have been properly spent and accounted for during the period that she has been the AHA Director.

Based on the interviews conducted of the Fiscal Manager for AHA, there are various GL Accounts utilized to track monies taken in and expended. The Fiscal Manager explained that for the first time in several years AHA was taken off of HUD's Troubled Agency list and passed the required audit with only three findings. A copy of the Independent Auditors' Report was obtained and reviewed. The Report expressed an opinion on the financial statements of AHA's Fund which stated that, "based on the financial statements referred to presented fairly, in all material facts, the financial position of the Fund as of June 30, 2011, and the respective changes in financial position and cash flows thereof for the year then ended in conformity with accounting principles generally accepted in the United States of America." As such, without requesting an audit and

review of these specific funds and accounts, the OIG cannot definitively state that all monies *were properly* spent and can only rely on AHA being removed from the negative status they previously held as a result of a successful audit and spending monies accordingly.

A handwritten signature in blue ink, reading "Neftali Carrasquillo, Jr.", with a large, stylized flourish at the end.

Neftali Carrasquillo, Jr.
Inspector General
City of Albuquerque

cc: Richard J. Berry, Mayor
City Council
Robert J. Perry, CAO
John Soladay, COO
Robin Dozier-Otten, Interim Director AHA