

STATE OF NORTH CAROLINA

OFFICE OF THE STATE AUDITOR

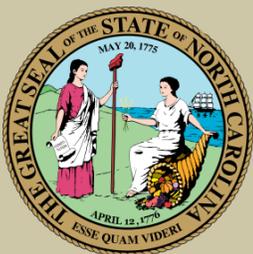
BETH A. WOOD, CPA



ALBEMARLE COMMISSION

HERTFORD, NORTH CAROLINA

INVESTIGATIVE REPORT
JANUARY 2019



NC  **OSA**
The Taxpayers' Watchdog

EXECUTIVE SUMMARY

PURPOSE

The Office of the State Auditor received an allegation through its Hotline concerning a potential conflict of interest in the awarding of a construction management contract to a company owned by the Executive Director's husband.

BACKGROUND

The Albemarle Commission is a regional planning commission serving 10 counties (Camden, Chowan, Currituck, Dare, Gates, Hyde, Pasquotank, Perquimans, Tyrrell, Washington) in the northeastern area of North Carolina. Created in 1970, the Albemarle Commission seeks to enhance the lives of citizens in the region through a variety of programs. Major program areas include economic development, workforce development, rural planning including transportation and infrastructure, and services for the aging such as senior nutrition.

A 14-member Board of Delegates consisting of representatives from all 10 counties plus four at-large members provides oversight for the Albemarle Commission. The Board of Delegates hires an executive director to oversee the daily operations.

KEY FINDING

- The Executive Director violated the Albemarle Commission's conflict of interest policy by awarding her husband's company a \$22,000 construction management contract and, in doing so, may have violated *North Carolina General Statute §14-234*

KEY RECOMMENDATIONS

- Any future contracts should be reviewed and approved by the Albemarle Commission's attorney prior to approval by the Board of Delegates and should include a declaration from the contractor that no conflict of interest exists
- The Albemarle Commission's Board of Delegates and management should ensure all employees understand and follow its conflict of interest policy as well as its newly-established code of conduct in the awarding of all contracts or any other transactions with related parties

STATE OF NORTH CAROLINA
Office of the State Auditor



Beth A. Wood, CPA
State Auditor

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AUDITOR'S TRANSMITTAL

The Honorable Roy Cooper, Governor
Members of the North Carolina General Assembly
Robert Murphy, Interim Executive Director, Albemarle Commission

Ladies and Gentlemen:

Pursuant to *North Carolina General Statute §147-64.6(c)(16)*, we have completed an investigation of allegations concerning the Albemarle Commission. The results of our investigation, along with recommendations for corrective action, are contained in this report.

Copies of this report have been provided to the Governor, the Attorney General and other appropriate officials in accordance with *G.S. §147-64.6(c)(12)*. We appreciate the cooperation received from the management and employees of the Albemarle Commission during our investigation.

Respectfully submitted,

A handwritten signature in cursive script that reads "Beth A. Wood".

Beth A. Wood, CPA
State Auditor

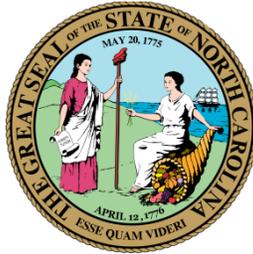


Beth A. Wood, CPA
State Auditor

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Article 5A, Chapter 147 of the *North Carolina General Statutes*, gives the Auditor broad powers to examine all books, records, files, papers, documents, and financial affairs of every state agency and any organization that receives public funding. The Auditor also has the power to summon people to produce records and to answer questions under oath.



BACKGROUND

The Office of the State Auditor initiated an investigation in response to a Hotline allegation regarding a potential conflict of interest in the awarding of a construction management contract to a company owned by the Executive Director's husband.

Our investigation of this allegation included the following procedures:

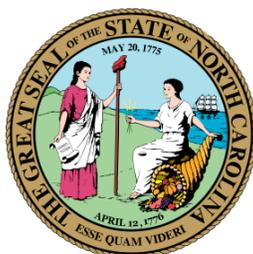
- Review of applicable policies and procedures and *North Carolina General Statutes*
- Examination and analysis of available documentation including contracts, requests for proposals, invoices, payments, board minutes, business registrations, and bank statements
- Interviews with management and staff of the Albemarle Commission and its Board of Delegates, municipal officials from Elizabeth City, contractors, bank representatives, and state officials from the North Carolina Department of State Treasurer, North Carolina Department of Revenue, and North Carolina Department of Secretary of State

This report presents the results of the investigation. The investigation was conducted pursuant to *North Carolina General Statute § 147-64.6 (c) (16)*.

Albemarle Commission

The Albemarle Commission is a regional planning commission serving 10 counties (Camden, Chowan, Currituck, Dare, Gates, Hyde, Pasquotank, Perquimans, Tyrrell, Washington) in the northeastern area of North Carolina. Created in 1970, the Albemarle Commission seeks to enhance the lives of citizens in the region through a variety of programs. Major program areas include economic development, workforce development, rural planning including transportation and infrastructure, and services for the aging such as senior nutrition.

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FINDING AND RECOMMENDATIONS

THE EXECUTIVE DIRECTOR VIOLATED THE ALBEMARLE COMMISSION'S CONFLICT OF INTEREST POLICY BY AWARDING HER HUSBAND'S COMPANY A \$22,000 CONSTRUCTION MANAGEMENT CONTRACT AND MAY HAVE VIOLATED *NORTH CAROLINA GENERAL STATUTE §14-234*

The Albemarle Commission's Executive Director violated its conflict of interest policy by failing to fully disclose her husband's ownership of a company awarded a \$22,000 construction management contract. As a result, the Albemarle Commission made payments of \$11,000 to her husband's company, which ultimately led to her resignation. All Board of Delegates members said they did not know he owned the company and admitted they should have asked more questions prior to awarding the contract.

Contract Awarded to Company Owned by Executive Director's Husband

The Albemarle Commission planned to construct or renovate a building to house its operations. Based on a recommendation by the Executive Director, the Albemarle Commission sought a construction manager to help identify and select design, engineering, and general contractors; assist in property selection; conduct site visits during construction; analyze the project budget; and evaluate and manage change orders among other duties.

The Executive Director participated in the making and awarding of the \$22,000 construction management contract to a company owned by her husband. Specifically, the Executive Director:

- contacted her husband to seek his company's services
- established the criteria for selection of a contractor
- recommended his company to the Board of Delegates for approval
- signed the agreement between the Albemarle Commission and her husband's company with her husband signing the agreement on behalf of his company
- approved \$11,000 in payments to her husband's company

In addition, the Executive Director claimed no other company in the area provided the needed construction management services. She said she reached out to other potential contractors but did not document her alleged outreach.

However, the company owned by the Executive Director's husband had questionable legitimacy.

- The Executive Director's husband said that the company had no clients prior to the contract with the Albemarle Commission.
- The company registered with Elizabeth City's planning department in April 2017, only eight days prior to contract approval by the Albemarle Commission although its registration license listed an effective date of October 1, 2016. The Executive Director's husband allowed the company's business registration with the Elizabeth City planning department to expire on September 30, 2017.

- The company's listed address was a post office box within a UPS store. On July 13, 2018, the Executive Director told investigators that address was the location of an "office" for the business and later added that her husband did some work from home. On September 5, 2018, the Executive Director claimed she learned of the post office box address "this summer."

Incomplete Disclosure of Conflict of Interest to Board of Delegates and External Auditor

The Executive Director failed to fully disclose her husband's ownership in a company for which the Albemarle Commission awarded a \$22,000 construction management contract. She claimed to investigators on July 13, 2018, that she provided "full disclosure to the Board...that he does project management and he's an owner."

However, the April 20, 2017, board minutes do not reflect that she disclosed his ownership to the Board. All board members indicated to investigators that she did not tell the Board that he owned the company.

In both July 2018 and September 2018, the Executive Director told investigators that she fully disclosed her husband's ownership to the Albemarle Commission's external auditor in July 2017.

As evidence of that disclosure, she provided investigators a copy of the audit questionnaire for the fiscal year ended June 30, 2017. Replying to a question regarding related parties, the Executive Director disclosed the name of the company and the legal name of the owner without specifying that her husband owned the company. She initially wrote "my" before her husband's name but crossed out that descriptor. She told investigators that she "started to write 'my husband,' but I wanted to clarify who actually owned it."

The external auditor told investigators that he instructed the Executive Director to ensure the Board was fully aware of all facts, that the Board approve the contract, and that the Albemarle Commission's attorney review and approve the contract. Neither the agreement nor the board minutes reflect any review or approval by the Albemarle Commission's attorney.

Resulted in \$11,000 Payment to Company Owned by Executive Director's Husband

The Albemarle Commission awarded a \$22,000 contract to the Executive Director's husband's company and made payments totaling \$11,000 to his company before the Board of Delegates canceled the construction project. As a result, the Executive Director derived a direct benefit from her involvement in the contracting process.

Also Resulted in Repayment of \$11,000 and Resignation by Executive Director

The Executive Director repaid the \$11,000 to the Albemarle Commission at the July 19, 2018, board meeting. She told the Board, reporters, and investigators that she repaid the amounts because she did not originally know the payments may violate state law.

The Executive Director said that she repaid the funds from her private, personal account rather than a joint account she shares with her husband. However, review of bank account information revealed her husband listed as "joint owner" of the account from which she made the \$11,000 repayment.

On October 2, 2018, the Executive Director submitted her resignation effective November 2, 2018. The Board of Delegates accepted her resignation.

Caused by Executive Director's Failure to Disclose Conflict of Interest

The Executive Director misled the Albemarle Commission's Board of Delegates by not fully disclosing her husband's ownership of the company. In addition, she withheld other facts about his company, other potential vendors, and the nature of the company's experience.

The Executive Director admitted she knew about the Albemarle Commission's conflict of interest policy prohibiting benefiting from a contract. She claimed she did not consider it a conflict of interest because she did not know her husband owned the company.

In September 2018, the Executive Director claimed she learned her husband owned the company in July 2017 when she informed the Albemarle Commission's external auditor in the related parties disclosure. However, she repeatedly maintained in other statements that she did not learn of his ownership until "this summer [2018]" after "the newspaper actually showed me the detail."

However, the Executive Director's husband told investigators that she approached him about doing business with the Albemarle Commission, that he signed the agreement as owner, and that he was the company's only employee. The Executive Director's husband said, "She knew I ran it." When investigators asked him if she had always known he owned the company, he replied, "I would have thought so but there was the possibility for confusion."

Also Caused by Board's Failure to Conduct Due Diligence

The Board of Delegates accepted statements presented by the Executive Director rather than conducting any other research about the company or verifying relevant information. Several board members admitted to investigators that they should have asked more questions prior to voting to award the contract.

Albemarle Commission Policy Prohibited Executive Director Involvement

The Albemarle Commission's *Personnel Policy* manual outlines a "Conflict of Interest Policy" adopted in January 1994. The policy states, "the Albemarle Commission desires to require its Board of Directors or managing employees to avoid conflicts of interest or the appearance of impropriety."

Further, the policy requires:

No member of the Board of Directors or managing employee of the Commission shall participate in the solicitation, negotiation, formation, award, arbitration, modification, or settlement of any contract or grant funded in whole or in part by State funds...when the Board of Directors or managing employee stands to benefit, either directly or indirectly, from such contract or grant

State Law Prohibited Benefiting from Public Contracts

North Carolina General Statute §14-234 specifies conflict of interest provisions for public officers benefiting from public contracts. Specifically, *NCGS §14-234(a)(1)* states, "No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract."

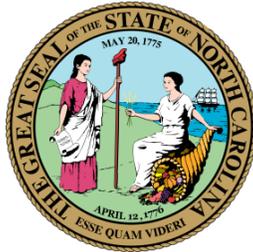
NCGS §14-234(a1)(3) notes that "making a contract" includes participation in "the development of the specifications or terms or in the preparation or award of the contract."

NCGS §14-234(a1)(2) clarifies that “administering a contract” involves overseeing “the performance of the contract.”

NCGS §14-234(a1)(4) specifies that “a public officer or employee derives a direct benefit from a contract if the person or his or her spouse: (i) has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract; (ii) derives any income or commission directly from the contract; or (iii) acquires property under the contract.”

RECOMMENDATIONS

- Any future contracts should be reviewed and approved by the Albemarle Commission’s attorney prior to approval by the Board of Delegates and should include a declaration from the contractor that no conflict of interest exists
- The Albemarle Commission’s Board of Delegates and management should ensure all employees understand and follow its conflict of interest policy as well as its newly-established code of conduct in the awarding of all contracts or any other transactions with related parties



RESPONSE FROM THE ALBEMARLE COMMISSION



TO: Beth Wood, CPA
 NC State Auditor

DATE: January 17, 2019

RE: Albemarle Commission Audit Response

- CAMDEN
- CHOWAN
- CURRITUCK
- DARE
- GATES
- HYDE
- PASQUOTANK
- PERQUIMANS
- TYRRELL
- WASHINGTON
- COLUMBIA
- CRESWELL
- DUCK
- EDENTON
- ELIZABETH CITY
- GATESVILLE
- HERTFORD
- KILL DEVIL HILLS
- KITTY HAWK
- MANTEO
- NAGS HEAD
- PLYMOUTH
- ROPER
- SOUTHERN SHORES
- WINFALL

The Albemarle Commission has reviewed the Office of the State Auditor’s report on its investigation of a potential conflict of interest on the part of the commission’s former executive director arising from the award of a construction management contract in April, 2017. The commission has already implemented the report’s key recommendations for the enactment of policies designed to prevent any such future occurrences.

All contracts are being reviewed by the commission attorney prior to their being signed by the executive director or any other officer of the commission. Moreover, all formal contracts to which the commission is a party will include a declaration from the contractor that no conflict of interest exists.

All managers have been briefed on the commission’s conflict of interest policy as well as the agency’s code of conduct in the awarding of contracts or any other transactions with related parties. All employees have signed a statement acknowledging that they have received and read the agency’s personnel policy handbook, which contains the conflict of interest policy. All new employees receive the appropriate briefings before starting work and sign the same affirmation.

The Albemarle Commission Board of Directors is committed to managing such that neither the directors nor agency employees engage in any conflicts of interest or conduct themselves in any way that creates the appearance of conflicts of interest. We believe the board of directors and agency management have enacted the appropriate preventative policies and internal controls.

I thank you for giving the commission the opportunity to respond to the report. Please feel free to contact me if you have any questions or require any further information from the commission.

Tracey Johnson
 Chair, Albemarle Commission Board of Delegates

ORDERING INFORMATION

COPIES OF THIS REPORT MAY BE OBTAINED BY CONTACTING:

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For additional information contact:
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This investigation required 525.5 hours at an approximate cost of \$54,126.50.