



**REPORT OF  
THE  
STATE AUDITOR**

**Lieutenant Governor's Office**

**Financial Audit  
May 2002**

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May 22, 2002

Members of the Legislative Audit Committee:

This report contains the results of a financial audit of the Lieutenant Governor's Office. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Lieutenant Governor's Office and the Governor's Office.

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# Financial Audit of the Lieutenant Governor's Office

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## Audit Purpose and Scope

This audit was conducted under the authority of Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The audit was conducted in accordance with generally accepted governmental auditing standards. The purpose of the audit was to investigate allegations of wrongdoing at the Lieutenant Governor's Office. Allegations included using state funds to pay for installation of a campaign-related phone line and for a video clip of a political opponent. Upon conducting a preliminary review of the documentation associated with these and other expenditures, staff concluded that a more in-depth financial review of the Office was warranted. Consequently, we reviewed expenditures made by the Lieutenant Governor's Office over the period mid-January 1999 to January 2002. This report presents the results of that review.

## Overview

The Colorado Constitution establishes five elected officers within the executive branch of state government. They are the governor, lieutenant governor, secretary of state, state treasurer, and attorney general. Terms of office for these elected positions are four years with the further stipulation that individual officeholders may not serve more than two consecutive terms. The Colorado Constitution also sets forth a requirement for the governor and lieutenant governor to be jointly elected through the casting of a single vote.

The main responsibility of the lieutenant governor is to serve as governor upon the governor's death, impeachment, felony conviction, or resignation. Since statehood in 1876, two lieutenant governors have succeeded to the governor's office under one of these circumstances. Statutes (Section 24-44-102 & 104, C.R.S.) also establish the Colorado Commission of Indian Affairs within the Lieutenant Governor's Office and designate the lieutenant governor as the Commission's chairman. The Commission acts as the official liaison between the State and the Southern Ute and Ute Mountain Ute tribes within Colorado. In addition, statutes set the annual salary for the lieutenant governor at \$68,500 and grant the lieutenant governor a \$5,000 annual discretionary fund, subject to appropriation by the General Assembly.

The Lieutenant Governor's Office was appropriated approximately \$272,200 for Fiscal Year 2002. Of this amount, \$189,800 was for administration, \$5,000 was for the Lieutenant Governor's discretionary fund, and \$77,400 was for the Commission of Indian Affairs. General funds account for all but \$1,500 of the Office's funding sources (\$1,500 of the Commission's appropriation comes from private donations). The Fiscal Year 2002 appropriation is similar to the amounts appropriated to the Office for Fiscal Years 1999-2001. Through March 31, 2002, the Lieutenant Governor's Office has spent a total of about \$235,100, or about 86 percent of its appropriation. Of this amount, \$136,000 was spent for personal services, \$51,400 for operating expenses, \$16,300 for travel, and \$31,400 for consultants and other purchased services. The Lieutenant Governor's Office was also appropriated 5.5 FTE for Fiscal Year 2002. In addition to the Lieutenant Governor, the Office currently employs three full-time staff (i.e., a chief of staff, a communications director, and the executive secretary for the Commission of Indian Affairs). The Office also reports that it currently employs at least one consultant and five interns.

The Lieutenant Governor's Office is constitutionally and statutorily separate from the Governor's Office and, as noted above, has its own budget. Because of its small size, however, certain accounting functions for the Lieutenant Governor's Office are handled by staff at the Governor's Office. For example, when paying its bills, staff in the Lieutenant Governor's Office assemble the appropriate receipts and documentation, approve the transaction(s) for processing, and then forward the paperwork to the accounting staff in the Governor's Office. The Governor's accounting staff then review the paperwork and code and enter the transaction into the State's accounting system (COFRS). It should be noted that as elected officials, both the Governor and the Lieutenant Governor can opt out of following the State Fiscal Rules. However, because the Fiscal Rules provide a framework for good accounting and business practices, it is the general policy of both the Governor's Office and the Lieutenant Governor's Office to follow the rules.

## **Findings and Recommendations**

Overall, we found that lax accounting practices, significant staff turnover, and poor management oversight led to errors in the recording and reporting of expenditures for the Lieutenant Governor's Office over the period covered by our audit. The following sections provide more detail about the problems we found.

### **Controls Over Expenditures**

State Fiscal Rules require that all expenditures must be (1) for official state business purposes only and (2) reasonable and necessary under the circumstances. In addition, Section 24-17-102, C.R.S., requires state departments to institute and maintain systems

of internal accounting and administrative control that provide for adequate authorization and record keeping and effective accounting control over state assets, liabilities, revenues, and expenditures. Further, Section 24-9-105(1), C.R.S., states that elected officials must use their discretionary funds for expenditures in pursuance of official business. Overall, we found it difficult to audit the books and records of the Lieutenant Governor's Office because of missing or inadequate documentation. Consequently, upon our request, the Lieutenant Governor's Office provided us with further explanations regarding the business purpose of about 140 items. This was time-consuming for the Office and would have been unnecessary if proper documentation had been provided initially. The problems we noted regarding documentation included:

- C **Missing documentation and approvals.** We found 23 cases where expenditures were completely unsubstantiated (i.e., no supporting documentation could be located). These transactions totaled about \$12,100. According to COFRS information, these transactions included a payment to a sportswear company for about \$900, three payments for official functions totaling about \$1,100, and one payment for approximately \$1,100 to a video clipping service. We also found 22 additional travel-related payments that did not contain the appropriate receipts, reimbursement forms, and/or supervisory approvals as required by Fiscal Rules. Without appropriate supporting documentation, we were unable to determine the appropriateness of these expenditures.
  
- C **Inadequately documented business purposes.** We could not clearly ascertain the business purpose of about 130 expenditures because of inadequate documentation. These included payments for various overnight packages, expenditures made for official functions, and a variety of travel-related expenses. These items totaled about \$39,100. Generally, a properly completed travel reimbursement request and official function request form will adequately document the business purpose of expenditures like these. In many cases, however, we found that these forms were incomplete or did not contain enough information to make a determination regarding the appropriateness of the expenditure without additional inquiries.

In addition to problems with inadequate documentation, we found 33 instances where inappropriate expenditures were made (including certain items that were part of the initial allegations). These items totaled about \$8,900, and included the following:

- C **Travel for the Lieutenant Governor's spouse and friends of a deceased Office employee.** The Office purchased airline tickets for the Lieutenant Governor's spouse for four trips that totaled \$2,200. Although the

State Fiscal Rules specifically state that protocol may require the Governor's spouse to travel on state business, this allowance does not apply to the Lieutenant Governor's spouse. These are, therefore, disallowed costs according to our analysis and the informal opinion of the Office of Legislative Legal Services. In addition, after the death of the Lieutenant Governor's chief of staff, the Office paid about \$800 for airfare for friends of the chief of staff to attend an out-of-state funeral service. These are not allowable expenses according to State Fiscal Rules.

- C **Political activities.** These items totaled about \$1,200 and included mileage reimbursement for travel to political events, the installation of a phone line that was intended to be billed to the Lieutenant Governor's campaign group, and a video clip of a political opponent. These expenses are also non-reimbursable according to state law and the State Fiscal Rules.
- C **Flower purchases.** Our review identified expenditures for flowers that the Lieutenant Governor's Office sent to a number of individuals for various occasions. In some cases it was clear that the purchases were related to the business or ceremonial duties of the Office (e.g., flowers and letters of condolences sent after the Oklahoma State basketball team tragedy). In other cases, however, the business or ceremonial purpose of the flower purchases was not clear so we requested further explanations from the Office. Although further explanations were received, they were not always helpful in identifying the business purpose of certain expenditures. Consequently, we believe that these purchases, which totaled about \$1,600, are inappropriate.
- C **Double reimbursement.** We found that the Lieutenant Governor was reimbursed twice for a \$94 car rental.
- C **Payments related to the Lieutenant Governor's Conference on Youth Education.** In October 1999 the Lieutenant Governor participated in the creation of a nonprofit corporation called the "Lieutenant Governor's Conference on Youth Education." The nonprofit was created to establish a one-day youth conference that was held on April 8, 2000, at the University of Denver. In addition to donations and in-kind support, the Lieutenant Governor's Office expended about \$33,600 in state general funds on items related to the youth conference over the period June 1999 through December 2001. During our review we found instances where the Office paid expenses for the youth conference that appeared inappropriate. For example, the Office paid \$1,400 in legal fees related to the nonprofit's incorporation. This is a problem because the Lieutenant Governor's Office has asserted that the nonprofit was a private entity—a position that has been supported by the Attorney General's Office.

Second, the Office charged \$1,600 in conference-related printing expenses to the Commission of Indian Affairs' line item appropriation. We believe this was inappropriate because this expenditure appears to be unrelated to the General Assembly's intended purpose for this line item. Therefore, the Office should work with Central Collections Services within the State Controller's Office to seek repayment of these sums.

The Lieutenant Governor has reimbursed the State for one of the items that was among the initial allegations and also for an inappropriate expenditure that we identified during the audit. In addition, in January 2002 the vendor from which the political video clip was purchased indicated that a refund would be issued to the Office for this item. The Lieutenant Governor also indicated that one trip where the State paid for his spouse to travel was cancelled and the airline issued a credit in his spouse's name. To date, however, neither the refund nor the credit for the airfare had been accounted for in COFRS.

We also found that 58 payments were not processed within time frames established by state law and State Fiscal Rules. Fiscal Rules require that payments are made in accordance with invoice terms or, in the absence of such terms, within 45 days. For invoices where we could identify or calculate a due date, we found the associated payments were approximately 54 days past due, on average. In addition, we identified two small accounts (about \$50) that had been referred to a collection agency and seven instances where the Lieutenant Governor's Office paid approximately \$135 in late fees on past due accounts. The Office should ensure its payments to vendors are processed in accordance with the time line established in state law and Fiscal Rules to avoid interest or late payment charges. Paying bills in a timely manner also encourages vendors to continue doing business with the State.

Finally, we found four instances in which duplicate or otherwise erroneous payments were made. These payments totaled about \$850. The State's accounting system does not automatically notify users of payments that may be duplicates unless an agency inputs an invoice number with each transaction. Utilizing this feature of COFRS, in addition to conducting a periodic review of all payments, should help the Office avoid duplicate and erroneous payments in the future.

Because of the extent of problems we found with expenditures at the Lieutenant Governor's Office and because the Governor's Office accounting staff is responsible for processing transactions for the Lieutenant Governor's Office, we also reviewed a sample of 25 payment vouchers for the Governor's Office. We found three payment vouchers that were problematic. Specifically, we identified one case where the business purpose of the travel was not documented and two cases where payments were made 18 and 38 days late according to Fiscal Rule standards.

## **Recommendation No. 1:**

The Lieutenant Governor's Office and the Governor's Office should improve controls over expenditures by:

- a. Ensuring that state funds are used only for allowable expenditures and adequately documenting the business purpose of all expenditures. This includes ensuring that travel reimbursement requests and official function request forms are submitted when required and that the forms contain all necessary information and documentation (e.g., business purpose of the travel, supervisory approvals, and receipts).
- b. Processing payment to vendors in a timely manner.
- c. Improving review of vendor invoices and other documentation to avoid the payment of duplicate or erroneous charges and collecting the amount due to the State that is identified in this audit.

## **Lieutenant Governor's Office Response:**

Agree. The Office of the Lieutenant Governor has no accounting department or staff whose function it is to record, report, and process its receipts, bills, invoices, and expenses. All of these functions are the responsibility of the Office of the Governor, which has an accounting office, and, staff therein entirely devoted to the purpose of recording, reporting, and processing of receipts, bills, invoices, and expenses for both the Office of the Governor and the Office of the Lieutenant Governor.

The Office of the Lieutenant Governor followed the specific directives of the Governor's Accounting Office in submitting expenses related to these activities for reimbursement. This entire process involved multiple layers of approval beyond the Governor's Accounting Office, including the review and approval of the Governor's Deputy Chief of Staff and Chief of Staff. The expenditures of the Office of the Lieutenant Governor were approved as proper and in accordance with state law based on this process and procedure.

The Office of the Lieutenant Governor believes that all expenditures described in the report were proper and were made in the interests of the people of the State of Colorado.

## **Governor's Office Response:**

- a. Partially agree. We agree that state funds should only be expended for allowable purposes and that these forms should contain complete information. However, we rely on the Lieutenant Governor to certify that his expenses meet state guidelines when the measurement is subjective. (Already implemented.)
- b. Partially agree. If payments were late to vendors of the Lieutenant Governor, it may be because invoices for payment were submitted late. Our Office now date stamps all items received from the Lieutenant Governor and from employees in the Governor's Office. (Already implemented.)

The two items identified for late payment from the Governor's Office were paid on terms of when they were received by our finance office—not from the date of the vendor's original invoice. As evidence that these two payments were timely, we note that there were no late charges incurred.

- c. Partially agree. We agree that duplicate payments are unacceptable but note that the two items identified in the audit were related to expense reimbursements submitted by the Lieutenant Governor's Office. (No change anticipated.)

## **Recommendation No. 2:**

The Lieutenant Governor should reimburse the State for the unallowable expenditures we identified in the audit. Subtracting out the items that the Lieutenant Governor has already reimbursed, these expenditures total approximately \$5,800.

## **Lieutenant Governor Response:**

Disagree. As described more fully in Appendix A the Lieutenant Governor believes that all expenditures were proper and were made in the interests of the people of the State of Colorado and, therefore, no reimbursement should be required. If directed to do so, however, the Lieutenant Governor will comply.

## **Recommendation No. 3:**

The Lieutenant Governor's Office should work with the State Controller's Office to seek repayment of the inappropriate expenditures related to the Lieutenant Governor's

Conference on Youth Education. This includes \$1,400 for legal fees and \$1,600 for printing services inappropriately charged to the Commission of Indian Affairs.

### **Lieutenant Governor's Office Response:**

Partially agree. The Office of the Lieutenant Governor believes that all expenditures related to the Youth Conference on Education were proper and were made in the interests of the people of the State of Colorado.

The Conference on Youth Education will reimburse the State the costs paid for incorporation on May 30, 2002.

Expenditures by the Commission of Indian Affairs were appropriate for printing of copies of the report of the Conference on Youth Education which were distributed to the Ute Mountain Ute and Southern Ute Indian Tribes and to Native American organizations, families, and students from throughout Colorado. This is entirely consistent with the mission, purpose, and scope of the Colorado Commission of Indian Affairs.

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## **Payments to Consultants**

From January 1999 through January 2002, the Lieutenant Governor's Office spent approximately \$52,100 to pay 18 consultants and \$4,950 to pay five interns. The consultants served in various capacities within the Office including acting as chief of staff, serving as office manager, performing database and network administration tasks, maintaining the Lieutenant Governor's schedule, and performing administrative services for the Colorado Commission of Indian Affairs. During this period the Office also occasionally utilized services from a temporary staffing agency. Interns were not paid a regular wage; however, at the discretion of the Lieutenant Governor, in Fiscal Year 2002 some interns received stipends at the end of their service. The Lieutenant Governor has stated that the consultants and interns were hired through regular business channels and there were no related party transactions.

We have two concerns regarding the use of consultants. First, the Lieutenant Governor's Office did not use a contract, purchase order, or other type of written agreement to procure services in any of the above-mentioned situations. In addition, we found that 29 of 48 payments the Office made to consultants did not contain sufficient information regarding the services performed (e.g., number of hours worked; rate at which the

consultant was paid; or other specifics about the conditions of employment, assigned tasks, or project deliverables). We also identified two cases where the invoices were missing altogether and, therefore, could not be reviewed for propriety. In all, these 31 invoices totaled approximately \$48,800, or about 94 percent, of the Office's total consultant-related expenditures for the period we reviewed.

Although the Lieutenant Governor's Office has the authority to hire staff and consultants as needed, it also has the responsibility to ensure that using outside employees is the most cost-beneficial approach to getting the services it needs. Further, when hiring outside employees, state agencies should take certain measures to avoid potential liability and to adequately protect the interests of the State. Because most of the documentation associated with these contractors was incomplete (e.g., hourly compensation rates), it was not possible to determine what the expectations of the individuals were in terms of official state business and whether the rates paid were reasonable.

Second, in addition to the issue discussed above, State Fiscal Rules require agencies to carefully distinguish between the work of employees and independent contractors. The Fiscal Rules provide guidance regarding the situations where an employee/ employer or independent contractor relationship exists. For example, an independent contractor has a place of business and a business listing in a directory when services are offered to the public, selects clients and is free to work for one or more clients during any given period of time, and determines the time and place where work will be performed. The distinction between the work of employees and independent contractors is important because the State's responsibilities are different in each of these employment situations. For example, incorrect classification as an independent contractor could expose the State to federal income tax withholding, unemployment compensation, and workers' compensation claims. The Lieutenant Governor indicated that all of the consultants he has hired since taking office were properly classified as independent contractors. However, there is no documentation to indicate that the consultants met the above conditions and, further, some appeared to be acting in an employee role. For example, consultants were answering phones, sorting mail, filing, and corresponding with constituents. These same job duties were previously performed by a state employee. As a result, we believe that the Lieutenant Governor's Office needs to work with the Department of Personnel & Administration to ensure that individuals are properly classified as state employees or independent contractors.

### **Recommendation No. 4:**

The Lieutenant Governor's Office should improve its personnel management by:

- a. Ensuring that services from consultants are procured with written agreements (e.g., a contract, purchase order, or memorandum of understanding). These agreements should include the following information, at a minimum: number of hours worked; billing rate; and other specifics about the conditions of employment, assigned tasks, or project deliverables (as appropriate).
- b. Working with the Department of Personnel & Administration to ensure that individuals are properly classified as state employees or independent contractors and that adjustments to past and current classifications are made, if appropriate.

### **Lieutenant Governor's Office Response:**

The Office of the Lieutenant Governor, in its discretion, has determined that the use of consultants in this situation is the most cost-beneficial method of obtaining the services required by the Office of the Lieutenant Governor. (See Appendix A for a more detailed discussion.)

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## **Controls Over State Assets**

Section 24-17-102, C.R.S., directs state agencies to maintain a system of internal accounting and record keeping procedures to promote effective control over state assets. These procedures are aimed at ensuring that assets are (1) properly accounted for when acquired, (2) inventoried, (3) safeguarded, and (4) properly accounted for upon disposal. Typical asset management procedures include establishing criteria for the assets that will be monitored (e.g., a minimum dollar value, likelihood that an item is susceptible to theft or loss), affixing state identification tags to items, maintaining an up-to-date inventory, and periodically conducting a physical inventory to account for all items.

During our review we found that the Lieutenant Governor's Office has no procedures in place to properly account for and safeguard state assets. As a result, we were unable to identify the assets that the Office should have in its possession. Using a listing we developed from Office expenditure records, we identified 18 assets valued at \$9,600 that were purchased over the period January 1999 through January 2002. These purchases

included items such as computers, printers, fax machines, and computer software. Using this list, we performed a walk-through to ascertain the location and condition of the items. We could not locate four of the items costing a total of approximately \$1,500 (computer components and software). Further, none of the items that we could locate had a state identification tag. Untagged assets included a digital camera and a video cassette recorder—items that are susceptible to loss or theft. The Office also has other assets that were purchased prior to the period we reviewed including artwork, computers, and televisions. Our walk-through also showed that none of these items possessed a state identification tag. To lessen the risk of loss or theft, the Lieutenant Governor’s Office should establish and implement policies and procedures to ensure that state assets are properly safeguarded and tracked.

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### **Recommendation No. 5:**

The Lieutenant Governor’s Office should develop and implement procedures for properly safeguarding and tracking state assets. These should include, at a minimum:

- a. Establishing criteria, such as a minimum cost threshold, for assets that will be tracked.
- b. Identifying and assigning a state identification number for all assets that meet the established criteria.
- c. Developing and maintaining a current inventory listing of all assets.
- d. Periodically conducting a physical inventory and updating the inventory listing for all additions and deletions.

### **Lieutenant Governor’s Office Response:**

Agree. There are no missing state assets. The four items costing approximately \$1,500 (computer components and software) are not missing as identified by the Auditor. They are in the possession of Ms. Linda Lorberam who was the person hired by the Office of the Lieutenant Governor to create and manage the database of participants in the Conference on Youth Education. These items are being returned upon completion of the database management.

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## Statutory Exemptions for Elected Officials

Statutes (Section 24-2-102(4), C.R.S.) exempt Colorado's five state-level elected officials from complying with a variety of laws and common procedures that other state agencies and employees must follow, including the State Fiscal Rules. The exemptions include the following:

- C Certain laws governing the appointment of officers and other employees (Section 24-2-102, C.R.S.).
- C The "Controller's Statute," which gives the State Controller the authority to promulgate the State Fiscal Rules and also outlines the process for handling commitment vouchers and issuing state warrants, among other things (Section 24-30-201, et seq., C.R.S.).
- C Various statutes governing the operations of the Departments of Law, Revenue, Treasury, and the Division of Central Services within the Department of Personnel & Administration (Section 24, Articles 31, 35, 36, and part 11 of Article 30, C.R.S.).
- C The State Procurement Code (Section 24, Articles 101 through 111, C.R.S.).

As part of our audit, we reviewed the exemption law and found that the General Assembly may want to consider amending this statute for three reasons. First, the law is silent on whether elected officials need to adopt fiscal guidelines of their own should they choose to opt out of using the State Fiscal Rules. Because of the problems that could result from an agency's operating without any fiscal guidance, we believe that statutes should be amended to require elected officials to formally acknowledge and document all cases where they choose not to follow specific Fiscal Rules. Further, if elected officials choose to opt out of using the Fiscal Rules entirely, we believe they should formally adopt fiscal operating guidelines of their own. We note, however, that this issue was not relevant for the purposes of this audit, because it is the general policy of both the Governor's Office and the Lieutenant Governor's Office to follow the State Fiscal Rules.

Second, the exemption regarding the Department of Treasury (Section 24, Article 36, C.R.S.) is problematic because these statutes include general requirements for state agencies to deposit and invest their funds at the State Treasury. It appears that this exemption was created to give elected officials the option of not using services under the control of another elected official. We could not determine what advantages an elected

official could derive from using this exemption, but we could identify several benefits that accrue to the State from maintaining the deposit and investment requirements. Consequently, this appears to be an antiquated provision.

Third, it is unclear why an elected official would want or need to be exempted from complying with the statutes governing the Department of Revenue (Section 24, Article 35, C.R.S.), but these statutes are included in the exemption. It appears that this situation may be the result of the General Assembly's making changes over time to the various statutes to which the exemption applies, but not modifying the exemption statute itself.

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### **Recommendation No. 6:**

The General Assembly should consider introducing legislation to amend Section 24-2-102(4), C.R.S. to :

- a. Require elected officials to either formally acknowledge and document all cases where they choose not to follow specific Fiscal Rules or formally adopt fiscal operating guidelines of their own, should they opt out of using the Fiscal Rules altogether.
  - b. Eliminate the exemptions regarding the Departments of Treasury and Revenue (Section 24, Articles 36 and 35). In addition, the remaining exemptions (Section 24, Articles 2, 31, 101 to 111, and parts 2 & 11 of Article 30) should be reviewed to ensure their continuing appropriateness given the statutory changes that have occurred over time.
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## Appendix A

### Detailed Responses to Recommendation Nos. 2 and 4 by the Lieutenant Governor's Office

#### Recommendation No. 2:

The Lieutenant Governor believes that all expenditures described in the report were proper and were made in the interests of the people of the State of Colorado and consistent with the discretionary authority of the Lieutenant Governor. The Office of the Lieutenant Governor followed the specific directives of the Governor's Accounting Office in submitting expenses related to these activities for reimbursement. With respect to the specific expenses discussed in the Auditor's report:

**Travel for the Second Lady.** There is no specific fiscal rule dealing with travel expenses incurred by the Second Lady. However, as the Colorado Attorney General's Memorandum of March 12, 1999, notes, "the Lieutenant Governor is the alter ego of the Governor." (Memorandum of Maurice G. Knaizer, March 12, 1999, p. 1). The Governor and the Lieutenant Governor are elected jointly, Colo. Const. Art. IV § 3, and in the event the Governor is absent from the State, the powers and duties of the Office of Governor devolve upon the Lieutenant Governor. Colo. Const. Art. IV § 13(5). Moreover, the Lieutenant Governor serves as the official representative of the State of Colorado at a variety of public functions in the same manner as the Governor. Because the public functions of the Governor and the Lieutenant Governor as official representatives of the State of Colorado are in large part co-extensive, Exception .03 to Fiscal Rule 5-1 must be interpreted to permit reimbursement of travel expenses for the spouse of the Lieutenant Governor where her attendance would be required by "protocol."

For example, the Second Lady's travel on behalf of the people of Colorado to the memorial service for the victims of the September 11 terrorist attacks at the invitation of the Governor and Lieutenant Governor of New York was clearly appropriate.

**Political activities.** The Office of the Lieutenant Governor specifically requested guidance as to how to properly expend public resources at the beginning of the term of the Lieutenant Governor. This guidance was obtained from the chief legal officer for the State of Colorado—the Colorado Attorney General.

As the Colorado Attorney General specifically advised the Lieutenant Governor:

Except as may be established by statute, there is no bright line which distinguishes between political or unofficial activities which are related to the powers, duties, and functions of the governor [or Lieutenant Governor] and those which are not. The courts will generally

review the use of the resource to determine whether it has reasonable and rational connection to a function, duty, or power of the office. For example, in [Colorado Taxpayer's Union, Inc. v. Romer, 750 F. Supp. 1041 (D. Colo. 1990)], Colorado taxpayers challenged Governor Romer's use of a state-owned airplane, automobile, and security personnel during the course of speech activities concerning a proposed initiated constitutional amendment. The court concluded that the use of these resources was incidental to activities which were part and parcel of the office of the governor. Id. at 1045.

(Memorandum of Maurice G. Knaizer, March 12, 1999, p. 2).

*Based upon these cases, I conclude that public resources may be used for "unofficial" or "political" activities if these activities are reasonably related to the duties and functions of the office of lieutenant governor.*

(Memorandum of Maurice G. Knaizer, March 12, 1999, p. 3).

The Auditor does not dispute the accuracy and validity of the advice and counsel of the Colorado Attorney General. The Fiscal Rules cannot be interpreted to usurp Colorado law. The Fiscal Rules must be interpreted to comply with Colorado law—not the other way around.

The travel referenced by the Auditor was reasonably related to the duties and functions of the Office of the Lieutenant Governor and is therefore appropriate in accordance with Colorado law.

**Flower purchases.** The Office of the Lieutenant Governor believes these expenditures were proper and in the best interests of the people of the State of Colorado. The Lieutenant Governor sees no distinction under the law between flowers sent as condolences after the Oklahoma State basketball team tragedy, which the Auditor concedes were proper, and flowers sent as official condolences to others suffering personal tragedy. These items were clearly within the discretionary authority of the Lieutenant Governor.

#### **Recommendation No. 4:**

The Auditor does not dispute the Lieutenant Governor's authority to "hire staff and consultants as needed," nor does the Auditor dispute the propriety of the work performed by any consultants engaged by the Office of the Lieutenant Governor.

The Office of the Lieutenant Governor has been careful to distinguish between work performed by "employees" and work performed by consultants, who are engaged as "independent contractors." In that regard, the Lieutenant Governor has taken into consideration the guidance of State Fiscal Rule 3-1 and controlling legal authorities. The fact that an individual performs work that may have been performed in the past by an "employee," such as answering telephones and

sorting mail, is not controlling in determining whether an individual is properly classified as an “employee” or an “independent contractor.” Fiscal Rule 3-1 provides, for example:

A relationship of independent contractor exists when the firm or individual is responsible to the State for the results of certain work but is not subject to the State’s control as to the means and methods of accomplishing those results. Further, an independent contractor generally:

- A. Has a place of business and a business listing in a directory when the services are offered to the public.
- B. Selects the clients and is free to work for one or more during any given period of time.
- C. Determines the time and place where the work shall be performed.
- D. Provides the tools and materials needed to perform the work.
- E. Does not participate directly or indirectly in benefit programs of the State. For example, the individual is not covered by the State for workers’ compensation covering injury to the worker, for public liability covering injury to others, or for unemployment compensation.
- F. May agree to perform specific services for a fixed price and generally does not receive regular amounts at stated intervals.

1 CCR 101-1, Rule 3-1.

Rule 3-1 further provides an exception to the documentation requirements for certain appointees by the Governor and the Lieutenant Governor and their administrative staffs. Specifically, the exception provides:

Excluded from the provision of this Fiscal Rule are:

.02 State contracts for personal services exempted from the State personnel system by the Colorado Constitution and paid through an authorized State payroll system. *Examples include appointees by the Governor and Lieutenant Governor and their administrative staffs*, members of boards and commissions, faculty members of educational institutions, attorneys at law serving as assistant attorneys general, and employees of the legislative and judicial department of the State. These State contracts are considered to be advises of employment and, therefore, are not covered by this Fiscal Rule.

1 CCR 101-1, Rule 3-1 (emphasis added).

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