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Investigative Summary
City of Springfield Public Utilities

Summary of Significant Complaint(s) Reported

The complainant reported the City of Springfield Utilities (CU) paid "Employee Retention Payments" to some Vice Presidents to incentivize staying with the organization that was experiencing significant turnover at the executive level. The complainant also alleges they were told not to disclose anything related to the retention payments and, if they did, it may impact their employment. The complainant alleges the retention payments are in violation of the Missouri Constitution.

Background

The City of Springfield Utilities executive team included 7 Vice Presidents (VPs) and a CEO-President (CEO). In its response, the CU indicated it was facing significant turnover at the executive level including 4 of the 7 VPs leaving to work elsewhere and the remaining 3 VPs and CEO were eligible to retire or be recruited elsewhere. There were also concerns over keeping union represented bus operators.

Complaint Review

To review the complaint we requested documentation of the board meetings approving retention payments, a list of who is or has received retention payments, payroll reports to support the retention payments, and an explanation as to how the purported payments are not in violation of the Missouri Constitution.

Retention Payments

The Board voted to approve and paid a total of $193,677.29 in retention payments to the CEO ($76,351.80), 3 VP's ($77,325.49), and union represented bus operators ($40,000). The Board President (BP) indicated in her response, that, because the organization was facing the departure of half of its senior leadership, the Board determined, in June 2023, it was critical to retain the CEO and remaining VPs. In January 2023, the Board approved, as part of the collective bargaining agreement, $1,000 retention payments for bus operators who remained employed for more than one year. Documentation provided indicates the retention payments were processed through the regular payroll process.

For the CEO, the Board determined it would be appropriate to incentivize the delay of his retirement. The CEO's contract required 9 months' notice for resignation or retirement or face substantial financial penalties. The goal of the incentive was to extend that retirement from March 31, 2024 (the CEO's first eligible retirement date) to at least the end of 2024. To accomplish this, the Board approved amending the CEO's employment agreement to include a one-time retention payment equal to 10.5 weeks of his base salary if he did not submit a notice of retirement or resignation before March 31, 2024. The CEO presented his letter of resignation on April 23, 2024, stating he plans to retire on February 14, 2025.

The Board also determined retention payments were necessary to retain the 3 remaining VPs. The Board President indicated as part of the payments the VPs took on additional responsibilities and were promoted to Senior Vice President. The CEO indicated the additional responsibilities include leading additional sections of CU. The payments were contingent on them remaining employed until December 31, 2023 and were based on years of service (1 week's pay per 5 years of service). The retention payment for the SVP - Chief Technology and People Officer was $46,345.33 (32 years of service), the payment for the SVP - Chief Financial and Supply Chain Officer was $17,525.70 (15 years of service), and the payment for the SVP - Chief Legal and Economic Development Officer was 13,454.26 (5.6 years of service).

As part of the collective bargaining agreement with bus operators, the Board agreed to $1,000 retention payments for employees classified as "Bus Operator-Thereafter" which, according to the CU, is a position that requires at least one year of prior employment with CU. The collective bargaining agreement was approved in January 2023 and in April 2024 the Board identified 41 employees eligible for the increase. One employee left employment and the CU paid a total of $40,000 to bus operators.

<u>CU Explanation and Justification for Retention Payments</u>

As noted previously, the BP indicated the CU was experiencing significant turnover at the executive level and was also concerned with the need to retain bus operators and determined retention payments to be a way of addressing this. The BP indicated the Board consulted with legal counsel and its compensation consultant and their counsel considered the Missouri Constitution and guidance provided by the Missouri Attorney General (AGO), Missouri State Auditor (SAO), and internal auditing staff.

The CU provided the following in response to our request for an explanation as to how they determined the payments were not in violation of the Missouri Constitution:

a. *No payment was or will be granted for standard job duties or past services rendered. Each payment may be earned by an employee working for CU between the time of the agreement between such employee and CU regarding the payment and the trigger date stated in the applicable employment agreement or Statement of Intent, which was not previously required.*

b. *Formalized, clearly-defined and consistently-documented objective processes and criteria of how the applicable employees were designated and notified and each payment was or may be earned (and in what amount) have been established in advance and followed consistently.*

c. *The Board discussed and ensured each payment was an incentive in the best interests of CU's customers and each payment is or was necessary to retain the applicable employee and provide stability and continuity as set forth above and in the attached minutes.*

The guidance supposedly provided by the SAO, is a reference to 4 prior audit reports, with emphasis on the University of Missouri Administration (report number 2017-012) that discusses how the University failed to follow a formal process or properly document incentive payments to executive level staff indicating the payments were in violation of the Missouri Constitution. While the CU response indicates these conditions did not exist for their process, the only formal criteria for receiving the retention payments was to stay to a certain date and there is no formal criteria for what should be achieved to earn the additional compensation. Similarly, the AGO opinions referenced (Opinions 72-55 and 114-87) are those that indicate bonuses violate the Missouri Constitution. It is unclear how the SAO or AGO documents support the decision made by the CU.

<u>Compliance with Missouri Constitution</u>

We reviewed the information provided by the CU regarding the retention payments and determined they likely constitute a prohibited bonus in violation of the Missouri Constitution and the vice president payments were not formally approved by the Board. Based on the information provided, it appears the only requirement to receive the retention payments was to remain employed with the CU for a certain time period and as the employees were already employed, this would not be an additional duty. Further, the retention payments were calculated based on years of services with a minimum of five years of service. The three SVPs all had or met that requirement prior to the employment deadline of December 31, 2023.

The closed Board meeting minutes indicate the Board approved the CEO's payment. The discussion of the vice president payments was limited to stating the potential retention payment methodology should be discussed in the next open meeting and a similar retention payment should be considered for the CEO. After we requested additional meeting minutes to show Board approval, CU personnel indicated the Board did not think "the multiplier for the Senior Vice Presidents was discussed specifically by the Board. Board Members discussed the multiplier offered to the President-CEO to determine his retention payment, and recommended retention payments to the remaining VPs (who were being promoted to SVPs). The retention payment multiplier for the SVPs was determined by the President-CEO and mentioned by him to the Board at its closed session on July 27, 2023, but was not discussed or voted on by the Board." CU personnel indicated the Board only approves CEO compensation, but it would appear appropriate for the Board to approve such payments for all employees given the dollar amount and unique nature of the payment. The Board cited Section 610.021(13), RSMo, as the reason for closing the meeting where the CEO compensation was discussed. This allows closure for individually identifiable personnel records, performance ratings or records pertaining to employees or applicants. The statute explicitly states that this exemption does not apply to the salaries of officers of public agencies. As the discussion related specifically to the compensation and did not disclose performance ratings or other personnel records, it appears the Board violated Sunshine Law provisions by approving the payment in closed session.

The CU's response indicated that the retention payments were not for standard duties, but did not provide any documentation to support what additional duties were required or actually performed. When asked, the CU provided an email indicating varied units would now fall under the Senior Vice President duties but does not provide any additional information as to how this differs from previous responsibilities and there is nothing related to these additional duties included in the criteria for earning the retention payment. Further, the payments were not made until after the employees met their retention requirement, indicating the payment was for services previously rendered.

For the CEO, the closed Board meeting minutes indicate the CEO should be considered for a similar retention payment as the VPs "based upon his most recent performance appraisal and subsequent accomplishments, market forces and the need for stability following recent turnover in the Executive Leadership Team." A one-time payment due to an employee's performance appraisal and accomplishments would indicate payment for past performance.

Payments for services previously rendered are in violation of Article III, Section 39(3), Missouri Constitution and contrary to Attorney General's Opinion 72-1955 (June 14, 1955), which states, ". . . a government agency which derives its power and authority from the Constitution and laws of this state would be prohibited from granting extra compensation in the form of bonuses to public officers or servants after the service has been rendered." The CU's determination that the payments were for stipulated dates does not negate that the payments were for regular duties performed previously.

Allegation of Retaliation

We did not see any evidence that employees would be retaliated against if the retention payments were discussed publicly. However, we did note the CEO payments were discussed in closed session and nothing indicates they were publicly disclosed. The payments were in documents the CU should provide if requested including the collective bargaining agreement, the CEO's contract, and payroll information. We do not have any evidence the CU attempted to conceal any of this information and they provided us all requested payroll documentation.

Conclusion

The retention payments made to executive level staff and the bus operators appear to be in violation of the Missouri Constitution as they were not for additional duties and appear to be for services previously rendered. In addition, some of the payments were not approved by the Board and the CEO payment that was approved, was discussed and approved in closed session in violation of the Sunshine Law. We will issue a closure letter indicating this and noting the Board should ensure payments to employees are properly approved in open session and comply with all applicable laws and regulations.