

Senator Don Benton
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April 29, 2016

WA State Auditor's Office
Insurance Building/Capitol Campus
302 Sid Snyder Ave SW
Olympia, WA 98504-0021

Dear Auditor,

I am writing to you in order to protect myself and my job under the whistleblower laws of Washington. As a county employee I have become aware of illegal and improper activity at Clark County and would like your office to investigate the matter.

I have enclosed a copy of the whistleblower complaint filed with the County HR department as required by county policy. I am also requesting protection under state law as well.

Please treat this matter with the confidentiality it deserves and is required by law.

Thank you,


Don Benton

To Francine Reis,

Dear Ms. Reis,

I am writing to you seeking protection and whistleblower status under HR Policy 23. This protection is also being sought consistent with state and federal law.

RCW 42.41.030

Right to report improper governmental action—Policies and procedures.

(1) Every local government employee has the right to report to the appropriate person or persons information concerning an alleged improper governmental action.

(2) The governing body or chief administrative officer of each local government shall adopt a policy on the appropriate procedures to follow for reporting such information and shall provide information to their employees on the policy. Local governments are encouraged to consult with their employees on the policy.

(3) The policy shall describe the appropriate person or persons within the local government to whom to report information and a list of appropriate person or persons outside the local government to whom to report. The list shall include the county prosecuting attorney.

(4) Each local government shall permanently post a summary of the procedures for reporting information on an alleged improper governmental action and the procedures for protection against retaliatory actions described in RCW **42.41.040** in a place where all employees will have reasonable access to it. A copy of the summary shall be made available to any employee upon request.

(5) A local government may require as part of its policy that, except in the case of an emergency, before an employee provides information of an improper governmental action to a person or an entity who is not a public official or a person listed pursuant to subsection (3) of this section, the employee shall submit a written report to the local government. Where a local government has adopted such a policy under this section, an employee who fails to make a good faith attempt to follow the policy shall not receive the protections of this chapter.

(6) If a local government has failed to adopt a policy as required by subsection (2) of this section, an employee may report alleged improper government action directly to the county prosecuting attorney or, if the prosecuting attorney or an employee of the prosecuting attorney participated in the alleged improper government action, to the state auditor. The cost incurred by the state auditor in such investigations shall be paid by the local government through the municipal revolving account authorized in RCW **43.09.282**.

(7) The identity of a reporting employee shall be kept confidential to the extent possible under law, unless the employee authorizes the disclosure of his or her identity in writing.

Improper Acts

Mistreatment of employees in the Department of Environmental Services

Recently County Manager Mark McCauley directed that I prepare a staff report that would contradict a board resolution and action. I was directed to stop the processing of the Pearson property into surplus.

The Manager verbally indicated that the majority of the BOCC had already made a decision on action involving this property in violation of Washington State Open Meetings Act.

This directive is in direct contradiction of the board action taken on December 15, 2015.

This directive was confirmed by an email I sent confirming this desired action. The action mandated by the Manager was reiterated in an email dated 4/20/2016 despite the fact that this action would waste all the man hours and time invested in the efforts to follow the standing resolution of the board.

This is part of an ongoing vendetta that is politically motivated and in contradiction with HR Policy 13.6

Discrimination for or against a County employee based upon political views or affiliations is prohibited unless such affiliation or support is found to be a bona fide consideration in the quality and effectiveness of their job performance and contribution to the organization.

Manager McCauley has been targeting me in an attempt to gain favor with the new majority of the current council members in an attempt to retain his position. He has treated me unfairly and has directed me to take actions that are illegal, or unethical.

Manager McCauley has targeted and disciplined employees at the behest of the current Council Chair, Marc Boldt. An example of this behavior was the "counseling" of Chris Clifford, a senior member of my staff, after he had emailed a memo to Council Member Madore regarding a complaint that was filed against Councilor Madore by Oliver Orijoko.

This "counseling" was done after Marc Boldt sent a email to Mark McCauley stating that "something should be done" after it was made public that Mr. Clifford had sent an email to Councilor Madore.

Mr. Clifford did nothing wrong and did not violate any county policies, yet Manager McCauley verbally chastised Mr. Clifford at the behest of the Chair of the Council. This is a direct violation of the separation of powers outlined in the County Charter. It would also appear to be retaliation against Mr. Clifford for having dared write an email supporting a minority member of the council from false allegations.

CCHRP 23.1

2. Hostile actions by another employee toward a local government employee that were encouraged by a supervisor or senior manager or official. (retaliation)

Manager McCauley approved the promotion of Pete Dubois to Manager of the Solid Waste Division in the Department of Environmental Services. Mr. Dubois accepted this offer and it was announced at a managers meeting (Mr. Dubois's peers in the department). Three days later Manager McCauley rescinded the approval and stated that the position should be open to the public, that it "would be good for Pete to compete for his job".

Despite the offer and acceptance, despite the fact that Mr. Dubois had been doing the job for over 8 months, this employee was subjected to the embarrassment and humiliation of having to try and explain why the offer had been pulled back, I was directed by Manager McCauley to pull back the offer.

This caused tremendous anxiety amongst my staff and had a negative impact on moral in the department. I have seen Mr. McCauley promote others to management positions without making the job open to the public. Adriana Prada and Bob Stevens are examples of individuals elevated to higher positions without having to go through the open application process. All of these positions were filled **after** the new charter was in effect.

POLITICAL RETALIATION

Currently, I am being directed to act in contradiction of standing county policy and direction voted on by the members of the County Council.

I believe my failure to act in this matter will provide the County Manager and the Council Chair an opportunity to punish me and further pursue their retaliation directed toward me.

The actions of the County Chair are purely politically motivated.

The actions of the County Manager are motivated by self-preservation.

I have brought to light many improper and illegal acts by the County Manager. Almost all of these have been in the last 12 months. Nothing has been done to resolve them. I have attempted to deal with these issues directly with Manager McCauley. These issues seem to be creating a situation where the philosophical approach is to kill the messenger.

Mr. McCauley altered my terms of employment while I served in the legislature at the behest of Chairman Marc Boldt. I was placed under terms and conditions that no other Department Directors have had imposed upon them.

This year the County Manager altered the conditions of my employment as a fulfillment of a campaign promise made by Marc Boldt. I was forced to be in the office from 8am – 5pm, limited my presence to the Public Services Building preventing me from carrying out my duties for meetings, I was not allowed to telecommute as other managers are allowed to do, conditions for my compensation were altered, and the duties of my position were altered. These actions while appearing to be arbitrary and capricious were in fact calculated retaliation with the intent of making my position with the County untenable.

The intent of these actions were meant to curry favor with Chairman Marc Boldt and to create a hostile environment for me to work under. I have suffered serious health issues related to these hostile acts.

Over the last year the County Manager has engaged in or knowingly allowed:

- Multiple violations of the new County Charter in hiring and the failure to open jobs to the public as called for in the charter
- Arbitrary and disparate treatment of County employees
- Financial improprieties, and miss-use of enterprise funds
- Improper acts of county employees that have substantially harmed private property owners
- Violations of the Open Public Meetings Act
- Improperly interfering with the operations of the Department of Environmental Services in contradiction to the County Charter.

As these illegal acts continue I fear that I will be subject to greater hostility and retaliation. This next level of retaliation may take the form of “reorganizing” the department I direct and terminating my position in the County.

I believe that this may already be occurring and is at the request and encouragement of Chairman Marc Boldt consistent with the pattern on hostile and disparate treatment I and my employees have been subjected to over the previous year.

RCW 49.60.210

**Unfair practices—Discrimination against person opposing unfair practice—
Retaliation against whistleblower.**

(1) It is an unfair practice for any employer, employment agency, labor union, or other person to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter, or because he or she has filed a charge, testified, or assisted in any proceeding under this chapter.

(2) It is an unfair practice for a government agency or government manager or supervisor to retaliate against a whistleblower as defined in chapter 42.40 RCW.

(3) It is an unfair practice for any employer, employment agency, labor union, government agency, government manager, or government supervisor to discharge, expel, discriminate, or otherwise retaliate against an individual assisting with an office of fraud and accountability investigation under RCW 74.04.012, unless the individual has willfully disregarded the truth in providing information to the office.

Marc McCauley and Marc Boldt are conspiring to harm Councilor Madore and intend to use public funds to pursue this design.

I have heard that in an effort to harm David Madore the new Council majority have conspired to "settle" a lawsuit for hundreds of thousands of dollars in an effort to brand Councilor Madore a racist. The litigation is meritless but as a political hammer it could irreparably harm Councilor Madore's personal reputation.

I am notifying you of this issue and these issues consistent with the policies of the Clark County Human Resources Policy.

I am also informing you that a complaint has been forwarded to the Washington State Auditor's Office and the Washington State Attorney General's Office. This issue cannot linger for another 30 days.

Respectfully

Don Benton
April 28, 2016