

C. DAVID EYSTER
DISTRICT ATTORNEY

Kevin Bailey
CHIEF DISTRICT ATTORNEY
INVESTIGATOR



OFFICE OF THE
DISTRICT ATTORNEY



COURTHOUSE
P.O. BOX 1000
UKIAH, CA 95482
(707) 463-4211
FAX (707) 463-4687



COAST OFFICE
700 S. FRANKLIN ST.
ROOM 148
FORT BRAGG, CA 95437
(707) 964-5624
FAX (707) 961-2429

M E M O R A N D U M

TO: C. David Eyster
District Attorney

FROM: Carmen Macias
Office Manager

DATE: February 28, 2019

RE: Conversation with Chamise regarding 2019 Continuing Education and Strategic Planning Claim

On 2/28/2019 at 8:20 a.m. Chamise Cubbison from the Auditor's Office called and said "I'm calling to find out how we can work together to get the Broiler paid." I replied to her, "I am not sure and that I am out and leaving this to David to handle." Chamise said "you know this is not me, everybody thinks it is me but I am just doing what I am told, just like you have to do what you are told." I said, "Yes I know and that is why I am leaving this up to the District Attorney."

Chamise went on to say that she wanted to let me how to get the claim paid, and that how she really shouldn't be telling me this. Chamise then went on to explain that if the Agenda would include something in regards to Asset Forfeiture then the whole claim would get paid including the public portion. Chamise thinks the discussion topics outlined on the agenda are not sufficient to have the claim paid from Asset Forfeiture. Chamise asked me to make the changes and resubmit the claim. I told her I would have to talk to David. Chamise wanted to know when I would be speaking to David. I told her I didn't know when because David has been busy in trial. Chamise said ok just let me know.

CARMEN'S CONVERSATIONS WITH AUDITOR'S OFFICE

- CARMEN: 1/28/19 – Claim submitted via email to Auditor's Office (Lloyd) for a special check to be drafted to pay Broiler Steak House from Asset Forfeiture Funds.
- LLOYD: 1/29/19 – Lloyd forwards email to Chamise and instructs her to coordinate with staff on granting this request.
- CHAMISE: 1/29/19 – email from Chamise notifying Carmen to send to Auditor: 1) List of county employees who attended the training; 2) Agenda that indicates the subject matter and continuing education provided; 3) Related section of (or link to) a program guideline that shows this training and food is an eligible cost for the source of funds.
- CARMEN: 1/29/19 – email from Carmen notifying Chamise that the elected Constitutional Officer David Eyster has approved the disbursement of Asset forfeiture funds, and asks if the Auditor is limiting the budget authority of the DA.
- CHAMISE: 1/29/19 – email from Chamise to Carmen pointing out: 1) room and food service for training is not related to the DA's prosecutorial authority; 2) DA is not exempt from Policy 18; 3) Chamise sends a legal authority 11495(a) and 11495(b) H&S to support the fact that the Controller/Auditor **maintains** the disbursements of the Asset Forfeiture Funds; 4) Chamise sends Federal Asset Forfeiture guidelines.
- CARMEN: 2/6/19 – email to Lloyd asking Lloyd to review the previous email sent from Chamise on 1/29/19. Carmen points out to Lloyd discrepancies found in Chamise's email
 - 1) 11495(a) states Controller/Auditor shall "Maintain" not "Control";
 - 2) 11495(b) is authority related to the distribution and percentage break down of monies shared between law enforcement agencies from seized property;
 - 3) This is State Asset Forfeiture not Federal Asset Forfeiture;
 - 4) Remind Lloyd there are two Asset Forfeiture related accounts a) the account that is maintained by the controller where the monies are deposited into from DA where monies or property is seized during an arrest; and b) DA's Office Asset Forfeiture fund account where Asset Forfeiture funds are disbursed for payment.
- LLOYD: 2/11/19 – email to Carmen asking Carmen to continue to work with Chamise and provide her with the requested backup information. Lloyd says after reviewing the information previously submitted he says it is vague.
- CARMEN: 2/11/19 – email to Lloyd sending the Agenda as an attachment.
- CHAMISE: 2/11/19 – email to Carmen telling Carmen, Auditor got your Agenda but not the list of attendees.
- CARMEN: 2/12/19 – email to Chamise sending as an attachment the list of attendees.
- CHAMISE: 2/12/19 – email to Carmen pointing out the fact that there were 42 county employee attendees and 25 not county employees, and that the Auditor can only process the payment for \$1,470, and is utilizing an after the fact Auditor-Controller approval. There is no provision in County Policy 18 which allows the county to provide meals to members of the public and doing

so would constitute a gift of public funds. Resubmit the claim for \$1,470 and add the word "State" to the source of funds. Resubmit claim by Wed. 2/13/19.

- CARMEN: 2/13/19 – email to Chamise and Lloyd to perhaps look at this again. 1) Expense previously approved by the CEO; 2) DA is not asking for reimbursement, DA is seeking as previously authorized by DA David to make payment of non-county funds, to wit, Asset Forfeiture; 3) ask question: If DA was seeking meal reimbursement wouldn't Policy 18, section 4.4.2 authorizes that to occur? 4) what changed between last year's DA authorized, CEO authorized, Auditor-approved payment and this year circumstances?
- CHAMISE: 2/20/19 – Carmen received a call from Chamise that DA is only approved for county employees and to resubmit the claim, and that 4.4.2 does not cover reimbursement for the public, that section is only meant for when a county employee attends a public meeting, and that last year's claim was a mistake and was overlooked. In addition Chamise sent to Carmen the authority of the Opinion of Daniel E. Lungren No. 94-406 Government Code Section 23005 and 25303 (attached)
- CHAMISE: 2/21/19 – Instant message to Carmen making sure that Carmen understood that if the DA wants Auditor to pay the employee's portion of the Broiler invoice it has to be in tomorrow's AP check run, and a revised claim is needed as (indicated in the 2/12/19 email) in a single invoice batch by the end of today. Also that a non-county payment for the balance should be sent along with the county check in order to pay the invoice in full.
- CARMEN: 2/21/19 – email to Chamise asking if DA resubmits the claim for \$1,470.00 for employees only, why would the DA send the non-county check for the remaining balance to the Auditor, if anything DA would send the money directly to the Broiler.
- CHAMISE: 2/21/19 – email to Carmen indicating that she did not mean that the non-county check had to be given to the Auditor's office but to simply that the county check should be sent with the other check so that the invoice would be paid in full. Also that DA can request that the county check be held so that DA can pick it up and send with the DA's check if we'd like.
- CHAMISE: 2/28/19 – Carmen got a call from Chamise : Chamise said that we need to try to work together to get the Broiler paid, I told Chamise I am out, David is handling now. Chamise said this if not her fault and everybody thinks it is her fault. Chamise is only following orders just like you have to (Carmen). Carmen told Chamise she understood. Chamise also told Carmen that there is something that she should not be telling her that is how to get the claim paid: modify the Agenda outline to include something regarding Asset Forfeiture and then Asset Forfeiture funds can be used to cover the expense of the county and non- county employees. Resubmit the claim. Carmen told Chamise she would speak to David.
- CHAMISE: 3/6/19 – Carmen received a call: This is Chamise, "you might want to grab a pen and write this down, I am giving you a chance to get the broiler paid, I ask that you submit an updated Agenda." "I am not sure if you understand or that David knows." Carmen replied, David had the Chief DA Investigator pay the Broiler, and I am not sure if you are aware that David has put an item on the BOS agenda regarding this. Chamise replied that she was aware and she does not know how David is planning to get that approved because in Government Code Section 29404 it is specially says the fund can only be used for 3 things, 1) expense incurred in criminal

cases; 2) expenses incurred in the detection of crime; 3) expenses incurred in civil actions. Chamise said, "The BOS does not have the authority to overrule the Government Code." Carmen points out Government Code 29407. Chamise tries to tell Carmen she has been helpful to the DA in trying to get this paid and that the DA Office is not doing as requested. (Note: subject of changing the Agenda only came up on 2/28/19, a month later after submitting the claim). Carmen replied that DA shouldn't have to amend the Agenda to include AF, Carmen pointed out that in the Agenda there was discussion of Marijuana and there was discussion of AF. And why does the DA if he is the budget authority of Asset Forfeiture have to explain or write the words AF on the Agenda. (Chamise wants and has wanted written authority where it says AF can be used, but yet wants DA to change the Agenda ?) Carmen explained to Chamise that DA is not using public funds and that this got as far as it did because of her fault for not paying the invoice. And the DA doesn't want to change the Agenda, and why so the Auditor can keep picking on things every time we submit things. Chamise replied other Departments have to do the same. Chamise also said, "well because of how it was taken care of I can't no longer try to help you."

2)

>>> Lloyd Weer 1/29/2019 9:18 AM >>>

Chamise, please coordinate with staff on granting this request. Thanks. Lloyd ✓

1)

>>> Carmen Macias 1/28/2019 4:38 PM >>>

Hi Lloyd attached please find a Claim and an Invoice from the Broiler; an expense that was pre-approved by the CEO. David Eyster, District Attorney ask me to make a request from the Auditor to have a special check to be made and available for pickup. I would like to be able to pick up the check by Thursday 1/31/19 or sooner.

Thank you for your assistance.

Carmen Macias
Office Manager
Mendocino County District Attorney's Office
(707) 463-4195

Given all of the above I believe that my request for the additional information is reasonable and appropriate. If the DA has different guidelines or if I've mistaken the source of funds, please let me know.

Thank you,

Chamise

>>> Carmen Macias 1/29/2019 11:48 AM >>>

The transaction has been approved by the elected constitutional officer David Eyster. The training is a DA staff training, in which State Asset Forfeiture funds are being used. Is the Auditor limiting the budget authority of the DA?

4)

*Carmen Macias
Office Manager
Mendocino County District Attorney's Office
(707) 463-4195*

>>> Chamise Cubbison 1/29/2019 9:35 AM >>>

Hi Carmen,

We may be able to accommodate this request provided that we receive the additional information we would need to process this claim:

List of County employees who attended the training

Agenda that indicates the subject matter and continuing education provided

Related section of (or link to) a program guideline, which show this training and food is an eligible cost for the source of funds

3)

If you are able to provide the above information, along with the Claim in a single invoice batch today, we will try to process your request with Thursday's AP check run.

Thank you,

Chamise

*Chamise Cubbison
Assistant Auditor-Controller
Mendocino County
501 Low Gap Rd., Rm 1080
Ukiah, CA 95482
Phone: 707-234-6871
cubbisoc@mendocinocounty.org*

I am requesting that you please review this matter and make a decision to issue the check.



Thank You.

Carmen Macias
Office Manager
Mendocino County District Attorney's Office
(707) 463-4195

>>> Chamise Cubbison 1/29/2019 2:33 PM >>>
Hi Carmen,

The invoice indicates that it is for room and food service for staff workshop and continuing education and does not appear to be related to the DA's prosecutorial authority.



I am not aware of a specific exemption for the DA, as a county officer, from Board Policy #18 (Travel and Meal Policy). The requested information regarding the list of attendees and Agenda/Continuing Education is standard required additional information when requesting payment of in county meals, which may in most cases require Auditor-Controller's prior written approval.

Regarding the Asset Forfeiture funds - Health and Safety Code 11495(a) reads in part "The Controller, auditor, or treasurer shall maintain a record of these disbursements..." 11495(b) indicates that the "Upon request of the governing body of the jurisdiction in which the distributions are made, the Controller, auditor, or treasurer shall conduct an audit of these funds and their use." Both of which indicate that the Auditor should maintain adequate information regarding the use of the funds.

Federal asset forfeiture proceeds received by a state or local law enforcement agency may be utilized for allowable law enforcement purposes as defined in the Federal Guide to Equitable Sharing.

The July 2018 *Guide to Equitable Sharing for State, Local and Tribal Law Enforcement Agencies* reads as follows regarding Impermissible Uses "e. Purchase of food and beverages – Shared funds may not be used to pay for food and beverages (alcoholic and non-alcoholic) except for meals for officers engaged in local emergency operations such as an earthquake or hurricane."

Carmen Macias - Re: Fwd: Need Special Check to Be Issued

From: Carmen Macias
To: Lloyd Weer
Date: 2/11/2019 10:24 AM
Subject: Re: Fwd: Need Special Check to Be Issued

8)

It was resubmitted with the Batch with additional information.

Carmen Macias
Office Manager
Mendocino County District Attorney's Office
(707) 463-4195

>>> Lloyd Weer 2/11/2019 8:40 AM >>>
Carmen,

1)

Please continue to work with Chamise and provide her with the requested backup information. After a quick review of your information... the request is still way too vague and as presented does not meet the requirements for Employee Meal reimbursement under Policy 18 Travel and Meal Policy.

Lloyd B. Weer ✓
Auditor Controller
County of Mendocino
(707) 234-6870 * FAX (707) 467-2503
weerl@mendocinocounty.org

>>> Carmen Macias 2/6/2019 12:39 PM >>>
Dear Lloyd:

6)

I received the below email from Chamise, on 1/29/19. I have reviewed policy 18 and the DA's Office followed policy 18 1.3 "Department Heads are encouraged to contact the Chief Executive Officer or Auditor-Controller to obtain approval before expenses are incurred when they are uncertain of specific allowable circumstances."

The elected District Attorney David Eyster has authorized the use of State Asset Forfeiture funds to be used for the training/workshop.

There are laws and rules that were quoted by Chamise regarding Asset Forfeiture in the email that should be reviewed.

Chamise quoted: Regarding the Asset Forfeiture funds - Health and Safety Code 11495 (a) reads in part "The Controller, auditor, or treasurer shall maintain a record of these disbursements..."

1) 11495(a) H&S reads as: (a) The funds received by the law enforcement agencies under Section 11489 shall be deposited into an account maintained by the Controller, county auditor, or city treasurer. These funds shall be distributed to the law enforcement agencies at their request. The Controller, auditor, or treasurer shall maintain a record of these disbursements which records shall be open to public inspection, subject to the privileges contained in Sections 1040 , 1041 , and 1042 of the Evidence Code .

11489 H&S is the "Distribution of Sale Proceeds". When property/money is seized and forfeited to the state or local government entity, 11489 is the law that describes how distribution of sale proceeds should be distributed among law enforcement agencies.

The first sentence in 11495(a) reads: The funds received by the law enforcement agencies under 11489 shall be deposited into an account **maintained** by the Controller, county auditor, or city treasurer.

a) The code section says **maintained** by the controller, county auditor or city treasurer. The code section **does not** say **control**.

the code further reads the funds shall be distributed to the law enforcement agencies at their request. The Controller, auditor, or treasurer shall maintain a record of these **disbursements** which records shall be open to public inspection.

b) The disbursement in this section is the Distribution of Sale Proceeds pursuant to H&S code 11489, the law that describes how the funds are to be distributed among law enforcement agencies that participated in the seize during an arrest.

Chamise is confusing "disbursements" of seized monies distributed to law enforcement agencies with the DA AF use of the funds.

As you know there is an account that exists separate from the DA Asset Forfeiture Fund where the monies/property that were seized are deposited into and maintained until distribution to law enforcement agencies.

Chamise further goes on to quote the rules regarding the use of Federal Asset proceeds. There are no Federal Asset Forfeiture Funds in the DA State Asset Forfeiture Account.

There are no state guidelines concerning the manner of which Asset Forfeiture proceeds are to be spent other than they shall not supplant other state/local funds that would be available to support law enforcement and prosecutorial efforts. This includes training.

Carmen Macias - Re: Fwd: Need Special Check to Be Issued

From: Chamise Cubbison
To: Carmen Macias
Date: 2/11/2019 1:54 PM
Subject: Re: Fwd: Need Special Check to Be Issued

Hi Carmen,

a)

We received the Claim re-submitted with the Agenda but no list of attendees. Please send me a list of attendees.

Thank you,

Chamise

>>> Lloyd Weer 2/11/2019 8:40 AM >>>
Carmen,

4

Please continue to work with Chamise and provide her with the requested backup information. After a quick review of your information... the request is still way too vague and as presented does not meet the requirements for Employee Meal reimbursement under Policy 18 Travel and Meal Policy.

Lloyd B. Weer
Auditor Controller
County of Mendocino
(707) 234-6870 * FAX (707) 467-2503
weerl@mendocinocounty.org

>>> Carmen Macias 2/6/2019 12:39 PM >>>

Dear Lloyd:

I received the below email from Chamise, on 1/29/19. I have reviewed policy 18 and the DA's Office followed policy 18 1.3 "Department Heads are encouraged to contact the Chief Executive Officer or Auditor-Controller to obtain approval before expenses are incurred when they are uncertain of specific allowable circumstances."

The elected District Attorney David Eyster has authorized the use of State Asset Forfeiture funds to be used for the training/workshop.

There are laws and rules that were quoted by Chamise regarding Asset Forfeiture in the email that should be reviewed.

Carmen Macias - Re: 2018 Year End Debriefing - List of Attendees

From: Chamise Cubbison
To: Carmen Macias; Lloyd Weer
Date: 2/12/2019 4:07 PM
Subject: Re: 2018 Year End Debriefing - List of Attendees
Cc: Margaret Yates

Hi Carmen,

Based on the list of attendees, it appears that 42 of the attendees were County employees and 25 were not County employees. Therefore our office can only process payment for \$1,470 utilizing an after the fact Auditor-Controller approval.

11)

There is no provision in County Policy 18 which allows the County to provide meals to members of the public and doing so would constitute a gift of public funds.

Please resubmit the Claim form for \$1,470.00 and add the word "State" to the source of funds.

If you resubmit the Claim, as indicated above, by Wednesday, February 13 at 3pm our office will include the payment in this week's check run.

Thank you,

Chamise

Chamise Cubbison
Assistant Auditor-Controller
Mendocino County
501 Low Gap Rd., Rm 1080
Ukiah, CA 95482
Phone: 707-234-6871
cubbisoc@mendocinocounty.org

>>> Carmen Macias 2/12/2019 9:45 AM >>>
See attached.

10)

Carmen Macias
Office Manager
Mendocino County District Attorney's Office
(707) 463-4195

Carmen Macias - Re: 2018 Year End Debriefing - List of Attendees

From: Carmen Macias
To: Chamise Cubbison; Lloyd Weer
Date: 2/13/2019 1:13 PM
Subject: Re: 2018 Year End Debriefing - List of Attendees
Cc: Margaret Yates; David Eyster; Zena Coughlin; Janelle Rau

Perhaps I can ask you to look at this again. Some of your assumptions and statements are not correct.

First, this was pre-approved by the CEO knowing the history and all the facts.

Second, the District Attorney is not seeking reimbursement of anything. Instead he has authorized payment by non-county funds, to wit, Asset Forfeiture monies.

Third, lets assume for the sake of argument that is a request for "meal reimbursement." Mendocino County Policy 18, section 4.4.2 authorizes that to occur.

Fourth, what has changed between last year's DA authorized, CEO authorized, Auditor-approved payment and this year circumstances?

Carmen Macias
Office Manager
Mendocino County District Attorney's Office
(707) 463-4195

>>> Chamise Cubbison 2/12/2019 4:07 PM >>>

Hi Carmen,

Based on the list of attendees, it appears that 42 of the attendees were County employees and 25 were not County employees. Therefore our office can only process payment for \$1,470 utilizing an after the fact Auditor-Controller approval.

There is no provision in County Policy 18 which allows the County to provide meals to members of the public and doing so would constitute a gift of public funds.

Please resubmit the Claim form for \$1,470.00 and add the word "State" to the source of funds.

If you resubmit the Claim, as indicated above, by Wednesday, February 13 at 3pm our office will include the payment in this week's check run.

Thank you,

Chamise

Chamise Cubbison

13) Hi Carmen....I just wanted to make sure that you understood that if the DA wants us to pay the employee only portion of the Broiler invoice in tomorrow's AP check run, we need a revised claim (as I indicated in my 2/12 email) in a single invoice batch by the end of today. And there will need to be a non-County payment for the balance sent along with the County check in order to pay the invoice in full.

Carmen Macias
ok thanks

Carmen Macias - Re: Instant Message Dated 2/21/19

From: Chamise Cubbison
To: Carmen Macias
Date: 2/21/2019 4:47 PM
Subject: Re: Instant Message Dated 2/21/19

Hi Carmen,

(5)

I did not indicate that he had to give us the check, simply that the County check should be sent with the other check so that the invoice is paid in full. You can request that the County check be held so that you can pick it up and send with the DA's check if you'd like.

Thanks,

Chamise

>>> Carmen Macias 2/21/2019 4:45 PM >>>

(14)

Per your email on 2/12/19, If I am resubmitting the claim for \$1470.00 for the employee's portion only. Why does the DA give the Auditor a non-county check for the remaining balance due if anything we would pay the remaining balance directly to the Broiler.

Carmen Macias
Office Manager
Mendocino County District Attorney's Office
(707) 463-4195