



STATE OF NORTH CAROLINA
Office of the State Auditor

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May 27, 2008

The Honorable Martin L. Nesbitt
North Carolina Senate
300 N. Salisbury Street, Room 300-B
Raleigh, NC 27603-5925

Dear Senator Nesbitt:

Thank you for your response to the Office of the State Auditor's (OSA) investigative report. In this letter, I would like to provide a response to your comments regarding the State Auditor's Hotline being used as a "smear tactic" for negative campaigns, provide you with reasons why OSA denied your second deadline extension request, and provide you with greater insight into the differences between my *former* financial planning work and your *current* financial relationship with Nesbit Racing Enterprises. I have addressed in part the legal issues you raised concerning the State Ethics Commission in a letter to the Commission delivered May 9, 2008.

State Auditor's Hotline

Let me begin by addressing your concern that the State Auditor's Hotline may become a "new smear tactic in increasingly negative and cynical campaigns." I agree with you that the State Auditor's Hotline is an essential tool used by my office to ensure that State government is run as effectively and efficiently as possible. Inherent in this tool is the ability for citizens to *anonymously* report issues to OSA investigators. This allows the complainant to file a complaint free from the fear of political retribution and allows his complaint to be judged strictly on its merits and not on the reputation or motivation of the complainant. This procedure is in contrast to the State Ethic Commission's method of receiving complaints of which the complainant must be *readily identified* and provide a sworn statement attesting to the facts of his or her complaint at the risk of perjury. I believe that the Commission's process will prove to have a chilling effect on complainants who will not come forward for fear of political or personal retribution because of their complaints.

At no time do I, or any of my executive staff, intervene in the investigator's decision making process. The OSA investigator who receives the anonymous complaint is a non-exempt, permanent State employee that conducts a review of the complaint's merits and makes a professional judgment as to whether to proceed with a preliminary inquiry or full review. The decision to conduct an investigation will rise or fall depending on the merits of the complaint and not any other factor.

Denial of Second Deadline Extension

Your letter indicated that you can think of no reasons, other than political reasons, for OSA's denial of a second extension for your response to our investigative report. I believe that this "political" charge is moot because the investigative report of which your response is included has only been released after your interview with the Asheville Citizen-Times was published May 27, 2008. This attempt to assign political motives to a legitimate investigation was a simple *ad hominem* attack designed to deflect focus from the findings of the report. However, I am more than willing to share with you the events that lead to the denial of your second extension request.

To be fair to all sides, OSA allows the subjects of our audits and investigations the opportunity to be heard in our audit reports by providing a written response within 14 days after receiving a copy of a confidential draft. This is not a right of the auditee but simply a courtesy extended by the OSA.

OSA began this investigation on 10/08/07, delivered a copy of the confidential draft report to you on 4/15/08 and requested that any response be returned no later than 4/29/08 as in line with other investigative reports. OSA received a letter on 4/28/08 requesting an extension until 5/15/08 without providing an explanation. In good faith, OSA granted your request for an extension until 5/07/08. On 5/05/08, OSA received a request for a second extension until 5/13/08 to await the product of an Ethics Commission Meeting taking place on 5/09/08. OSA believed that a total of 21 days was a sufficient timeframe for which an auditee can prepare his response without delaying the report's publication, or being unfair to other auditees who met their deadlines. *I assure you that you received no special treatment due to your position as a State Senator or as a member of any political party.*

Former vs. Current Financial Relationship

The information you shared concerning your son and his business was sincere and heartfelt. As a father, I can identify with you and sympathize with your concerns. Respectfully, that's where the similarities end. I made it a point to avoid financial relationships with any company that had business before the State. When it came to my attention that a company news release was issued that used my public title, *I immediately accepted responsibility*, had the company retract the release and wrote a letter to the Commission acknowledging the mistake. When your potential conflict of interest entered the public domain, *it was denied and maintained to this day that no potential conflict exists* despite a clear reading of the facts.

Furthermore, I have chosen to put an end to all financial planning services and I make efforts to include any potential conflicts of interest on my Statement of Economic Interest, even if they are not technically required by law. In 2007, I filed an amendment noting my advisory role in a community bank even though it was not required by law or recommended by Commission staff. As a result, the public was able to examine this advisory role and despite receiving media criticism because of it, I think that disclosure

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was the right thing to do in the interest of openness and transparency. On this issue you have yet to make the same attempts to comply, but I encourage you to err on the side of sunshine and transparency when it comes to filing your SEI.

Once again, thank you for your response to OSA's investigative report. It is my sincere hope that the above explanation will provide enough insight into OSA's processes that you will be able to look beyond Party identification and look toward our shared desire for sunshine and transparency in State government.

Sincerely,

A handwritten signature in cursive script that reads "Leslie Merritt".

Leslie Merritt
North Carolina State Auditor