

Investigative Report

Non-Authorized Use of City Personnel and Resources for a Nonprofit

March 2019



City management appears to be in violation of City policy regarding the appropriate use of City resources. City management approved of City employees planning and attending activities and events for a third-party nonprofit, Honor Flight Austin. However, the City does not have a written agreement of co-sponsorship with Honor Flight Austin, as required by policy. We also found evidence that this use of City resources may be in violation of the Texas Constitution because City management failed to follow established guidelines and controls when allocating City resources to a nonprofit without proper documentation.

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Cover: Aerial view of downtown Austin, iStock.com/RoschetzkylstockPhoto

Allegation

The Office of the City Auditor received an allegation against an employee in the Veterans Services Office (VSO) in the Human Resources Department (HRD). It was alleged that this employee misused City resources for their nonprofit organization, Honor Flight Austin. Specifically, the informant alleged that this employee raises money for Honor Flight Austin on City time, conducts nonprofit work at the office, and sends emails to City employees about Honor Flight Austin events and activities.

Background

HRD is responsible for attracting, engaging, developing, supporting, and retaining the City of Austin’s workforce. HRD is also responsible for the VSO, which “provides support for City employees who are in the National Guard and Reserve or are veterans, as well as their families.” The VSO is also responsible for educating departments on federal legislation related to “hiring, leave and benefits,” as well as for monitoring “the health, welfare and morale of veterans in the City workforce.” Additionally, this office “stays up-to-date on available veteran services both within the City and with other agencies.” The VSO operates on a budget of at least \$140,000.

Honor Flight Austin is a nonprofit organization in Austin that “transport[s] America[n] veterans to Washington, D.C. to visit those memorials dedicated to honor their service and sacrifices.” Honor Flight Austin serves veterans who reside in the 14 counties in and around the City of Austin. Three City employees, two of which are VSO employees, either serve or have served on the board of Honor Flight Austin.

Investigation Results Summary

City management appears to be in violation of City policy regarding the appropriate use of City resources. City management approved of City employees planning and attending activities and events for a third-party nonprofit, Honor Flight Austin. However, the City does not have a written agreement of co-sponsorship with Honor Flight Austin, as required by policy. We also found evidence that this use of City resources may be in violation of the Texas Constitution because City management failed to follow established guidelines and controls when allocating City resources to a nonprofit without proper documentation.

Finding 1 The Non-Authorized Use of City Resources for Honor Flight Austin

The Texas Constitution prohibits the use of City resources to benefit private individuals or entities, including nonprofits, unless the use and subsequent municipal purpose is properly documented. A similar prohibition also exists in the City of Austin's Administrative Bulletin 07-07, which states that "City funds or property may not be donated to a charitable purpose or organization." The administrative bulletin also clarifies that though the purpose of a group may be a "laudable public purpose," it may not necessarily be a "City purpose." Furthermore, "a gratuitous donation... lacks the required controls to ensure that a City purpose is accomplished with the City's funds." The administrative bulletin goes on to prescribe controls that would allow an appropriate use of City resources for a nonprofit. It permits the City to co-sponsor with a nonprofit organization through a written agreement that documents the City purpose.

We found evidence that City management allowed City resources to be used to organize trips, fundraisers, and events for Honor Flight Austin without a written agreement as required by policy. Also, City management expected the VSO to complete work in support of Honor Flight Austin. These activities were included in the performance appraisals of the VSO employees.

We also found evidence that one of the VSO employees was involved in the creation of the nonprofit, Honor Flight Austin; and that up until December 2017, the two employees at VSO served on Honor Flight Austin's board while they were still VSO employees. We did not find evidence that the VSO employees were paid by Honor Flight Austin in their capacity as board members.

When we interviewed City management, both in HRD and the City Manager's Office, they told us that working with Honor Flight Austin was an initiative of the former Mayor. They told us that they considered any work done for Honor Flight Austin to be City-related work. The Director of HRD and the Assistant Director over VSO considered it appropriate for VSO employees to incorporate Honor Flight Austin into their City work time, which appears contrary to Administrative Bulletin 07-07.

Investigation Criteria:

“A private group or charity serving Austin’s citizens may be performing a laudable public purpose that nevertheless may not be a City purpose. Even if a City purpose is furthered by the work of a private group, a gratuitous donation to the group lacks the required controls to ensure that a City purpose is accomplished with the City’s funds. Therefore use of City funds to participate in a charitable event is strictly limited.”

*Administrative Bulletin 07-07:
Authorized Use of Public Funds*

See Investigation Criteria Section for More Details

When interviewed, the former Mayor said that he worked with the City Manager in 2011 to incorporate Honor Flight Austin into the VSO’s activities. Additionally, the former Mayor told us he did not consult the Law Department about Honor Flight Austin. Witnesses confirmed that HRD and City management did not request legal advice on the use of City resources for Honor Flight Austin. Neither City management nor HRD were aware of or had a copy of any written agreement that explicitly permitted the use of City resources for Honor Flight Austin activities, as required by policy.

When asked about this, the former Mayor stated that there was no memorandum of understanding, contract, or written agreement with Honor Flight Austin. He added that it did not seem necessary to obtain Council action because no City resources were being dedicated to the program. As of September 2018, there was no official record or written agreement that stated the City’s express intent to allocate City resources to Honor Flight Austin.

Due to a lack of a written agreement between the City of Austin and the nonprofit Honor Flight Austin, there were no clearly written guidelines on how many resources the City would devote to Honor Flight Austin activities compared to other VSO core functions. Additionally, there were no clear guidelines on how VSO employees would distinguish between Honor Flight Austin work for the City and Honor Flight Austin work for the nonprofit. As a result, it was unclear whether VSO employees were representing Honor Flight Austin’s interest or those of the City of Austin when they were at Honor Flight Austin events.

VSO employees were spending anywhere between 25 to 50 percent of their City work time on Honor Flight Austin activities during flight season, which takes place in the spring and the fall every year. These activities involve accepting and processing applications, making travel arrangements for attendees, and coordinating with public safety teams. The VSO employees stated that they also attended the Honor Flight Austin trips to Washington D.C. We did not find evidence that either employee used overtime or claimed extra hours for these trips. VSO employees did note that they regularly work over 40 hours in any given week, so they can prioritize City activities and then work on Honor Flight Austin tasks.

Additionally, we learned that Emergency Medical Services (EMS) employees also accompanied attendees on Honor Flight Austin trips in case of emergencies and claimed some work time for those trips. This was confirmed by an EMS division chief.

We also found evidence that Honor Flight Austin, along with VSO employees, did not limit applicants to Austin and Travis County, but accepted veterans from towns and counties outside of Austin; for example, Georgetown, Gillespie County, and Temple. One applicant lived as far away as Arlington, which is roughly 200 miles from Austin.

City management’s failure to follow established guidelines and controls, by approving the use of City resources for Honor Flight Austin without a

written agreement, may constitute a violation of the following criteria, as detailed in the Investigation Criteria section:

- Administrative Bulletin 07-07: Authorized Use of Public Funds For Employee Recognition, Commemorative Retirement Gift, Charity Event, and Gratuities
- Texas Constitution, Article III, Section 52(a)

Appendix A - Management Response



To: Corrie Stokes, City Auditor

From: Spencer Cronk, City Manager *sc*

Date: March 20, 2019

Subject: Management Response: Investigative Report on Non-Authorized Use of City Personnel and Resources for a Nonprofit

The purpose of this memorandum is to provide a management response to the Investigative Report regarding City of Austin employees planning and attending events for a third-party nonprofit, Honor Flight Austin.

I have reviewed the report and discussed its findings with Joya Hayes, Director of HRD, as she oversees the Veterans Service Office (VSO). Honor Flight Austin is a nonprofit that conducts outreach to regional veterans and provides educational opportunities through visits to veteran memorials in Washington, DC. Honor Flight Austin also uses these opportunities to recognize these veterans' service. The City of Austin, through the VSO, conducts outreach to local veterans and their families and provides a resource guide. The City of Austin operates Austin-Bergstrom International Airport and other services necessary to Honor Flight Austin operations. The City of Austin has recognized the value of the service of its veterans and their sacrifices made to ensure our enduring freedoms. Therefore, Honor Flight Austin and the City of Austin have an opportunity to work cooperatively to assist the City of Austin's veterans and their families.

We will take the following steps to ensure that VSO's activities for Honor Flight Austin comply with state law and city policies:

1. **Written Agreement:** The City of Austin will enter into a written agreement with Honor Flight Austin. VSO will consult with the Law Department regarding the written agreement. The written agreement will identify the public purpose of providing outreach, education, and recognition of veterans and their families in the City of Austin, and will identify the opportunities where city resources may be used to further this public purpose. This may include:

Appendix A - Management Response Continued

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- a. VSO personnel attending Honor Flight Austin opportunities to the extent that these events serve VSO's duties. This may include assisting veteran employees to participate in an Honor Flight, or obtaining information that will be helpful to the health, welfare, and morale of veteran employees or that assists veterans in the transition to civilian life.
- b. VSO personnel coordinating other city resources. This may include consulting with Austin EMS to ensure medical personnel is available. This is in recognition of the fact that veterans participating with Honor Flight Austin may be elderly, have functional needs, or may be terminally ill. This may include coordinating with Airport Services.

The written agreement between the City and Honor Flight Austin will ensure that Honor Flight Austin is primarily responsible for accepting and processing applications and making travel arrangements, including for those veterans outside the City of Austin. The agreement will also ensure that city resources are not utilized in Honor Flight Austin's fundraising efforts.

2. Annual Memorandum: Going forward the VSO will provide HRD with an annual memorandum that documents the public purpose accomplished by VSO assisting Honor Flight Austin. It may provide information such as the number of veterans assisted, the reaction of the community, and any other information on how VSO efforts for Honor Flight Austin benefitted the veterans of the City of Austin and their families.

I appreciate the work the Auditor's Office has done in this investigation, and believe that addressing these concerns will strengthen this program in a positive way.

Cc: Joya Hayes, Director, HRD

Investigation Criteria

Finding 1

Administrative Bulletin 07-07: Authorized Use of Public Funds For Employee Recognition, Commemorative Retirement Gift, Charity Event, and Gratuities.

“A private group or charity serving Austin’s citizens may be performing a laudable public purpose that nevertheless may not be a City purpose. Even if a City purpose is furthered by the work of a private group, a gratuitous donation to the group lacks the required controls to ensure that a City purpose is accomplished with the City’s funds. Therefore, use of City funds to participate in a charitable event is strictly limited.”

“City funds or property may not be donated to a charitable purpose or organization. This includes the purchase or sponsorship of a table at a charitable event, a charity golf tournament, or other charity-sponsored social event.”

“The City may co-sponsor through a written agreement with another entity, including a nonprofit charitable organization, a specific event that serves a City purpose. This includes in-kind contributions or the expenditure of any authorized public funds. A co-sponsored event must be approved by an Assistant City Manager.”

Texas Constitution Article III § 52: Counties, Cities, Towns, or Other Political Corporations or Subdivisions; Lending credit; Grants

(a) “The Legislature shall have no power to authorize any county, city, town, or other political corporation or subdivision of the State to lend its credit or to grant public or thing of value in aid of, or to any individual, association or corporation whatsoever”

Methodology

To accomplish our investigative objectives, we performed the following steps:

- reviewed applicable City Code, policy, and State Law;
- research ordinances, resolutions, and memorandums of understanding related to Honor Flight Austin;
- conducted background research on Honor Flight Austin;
- analyzed City email data using keyword searches;
- conducted a forensic review of relevant computer files and internet usage; and
- interviewed City staff and former officials.

CAIU Investigative Standards

Investigations by the Office of the City Auditor are considered non-audit projects under the Government Auditing Standards and are conducted in accordance with the ethics and general standards (Chapters 1-3), procedures recommended by the Association of Certified Fraud Examiners (ACFE), and the ACFE Fraud Examiner's Manual. Investigations conducted also adhere to quality standards established by the Council of the Inspectors General on Integrity and Efficiency (CIGIE), Quality Standards for Investigations, and City Code.

The Office of the City Auditor, per City Code, may conduct investigations into fraud, abuse, or illegality that may be occurring. If the City Auditor, through the Integrity Unit, finds that there is sufficient evidence to indicate that a material violation of a matter within the office's jurisdiction may have occurred, the City Auditor will issue an investigative report and provide a copy to the appropriate authority.

In order to ensure our report is fair, complete, and objective, we requested responses from both the subject and the Department Director on the results of this investigation. Please find attached these responses in Appendix A and C.

The Office of the City Auditor was created by the Austin City Charter as an independent office reporting to City Council to help establish accountability and improve city services. We conduct investigations of allegations of fraud, waste, or abuse by City employees or contractors.

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