

THE MUNICIPAL EMPLOYEES' RETIREMENT
SYSTEM OF LOUISIANA



INVESTIGATIVE AUDIT
DECEMBER 2, 2015

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

December 2, 2015

**MR. WARREN PONDER, ACTING EXECUTIVE DIRECTOR,
AND BOARD OF TRUSTEES
MUNICIPAL EMPLOYEES' RETIREMENT
SYSTEM OF LOUISIANA**
Baton Rouge, Louisiana

We have audited certain transactions of the Municipal Employees' Retirement System of Louisiana. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the credibility of certain allegations.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*.

The accompanying report presents our findings and recommendations as well as management's response. This is a public report. Copies of this report will be distributed in accordance with state law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/aa

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EXECUTIVE SUMMARY

Former Executive Director and Board of Trustees Misused System Funds

From January 2010 through December 2014, Municipal Employees' Retirement System of Louisiana's (MERS or System) former Executive Director, Robert Rust, planned and attended out-of-state conferences and in-state meetings and conferences for MERS' Board of Trustees (Board) and employees at a cost of \$317,379 in System funds. In addition, MERS paid a \$42,698 cancellation fee to cancel an out-of-state conference in June 2015. It appears that the Board had knowledge of, and/or approved, each of these meetings and conferences as well as the 2015 conference cancellation. It further appears that a portion of the \$317,379 and the \$42,698 cancellation fee did not benefit the System or its members.

MERS provided attendees at MERS' out-of-state conferences with expensive dinners, cocktail parties, transportation to and from local restaurants, and in some cases, gifts. MERS also provided attendees' guests (including family and/or friends) with breakfasts, lunches, dinners, cocktail parties, and transportation free of charge. Mr. Rust also allowed attendees to arrive one or more days early to conferences and meetings at MERS' expense. In addition, Mr. Rust used System funds to provide hotel accommodations for his sons at out-of-state conferences with no apparent benefit to the System or its members. Also, Mr. Rust rented a vehicle to drive to the conferences and meetings; however, the rentals began several days before and ended several days after the conferences and meetings took place, again with no apparent benefit to the System or its members.

MERS also often provided attendees at in-state meetings and conferences with expensive dinners, including alcoholic beverages. According to detailed dinner receipts, four meetings held during December 2010, 2011, 2012, and 2014 were actually Christmas celebration dinners. By incurring and/or authorizing such expenditures that were of little or no benefit to the System or its members, Mr. Rust and the Board may have violated state law and the Code of Governmental Ethics.

Cell Phone Usage

From January 2010 through June 2015, MERS paid Mr. Rust's cell phone bill, which included an additional cell phone for one of Mr. Rust's sons. According to available documentation, Mr. Rust reimbursed MERS \$3,413.23 in eight separate payments for his son's portion of the bills. In some instances, Mr. Rust did not reimburse MERS until 13 months after MERS paid his bill. According to MERS' former general counsel, now Acting Executive Director, the Board did not give Mr. Rust approval to delay his cell phone reimbursements.

BACKGROUND AND METHODOLOGY

The Municipal Employees' Retirement System of Louisiana (MERS or System) was created by Act 356 of the 1954 Regular Session of the Louisiana Legislature. MERS provides retirement benefits to eligible, participating employees of all incorporated villages, towns, and cities within the state of Louisiana not specifically excluded by law.

MERS is administered by an 11-member Board of Trustees. Louisiana Revised Statute (La. R.S.) 11:1821(B) requires that six of the 11 trustees be active and contributing System members with at least 10 years of creditable service. Three of these six must be officials elected to office in accordance with the Louisiana Election Code; the remaining three cannot be elected officials. La. R.S. 11:1821(C) states that these six trustees shall serve six year terms.

MERS' remaining five trustees are the:

- President of the Louisiana Municipal Association, who shall serve as an *ex officio* member during his tenure, or his designee.^A
- Chairman of the Senate Committee on Retirement, who shall serve as a voting *ex officio* member, or his designee.
- Chairman of the House Committee on Retirement, who shall serve as a voting *ex officio* member, or his designee.
- Commissioner of Administration, who shall be a nonvoting member, or his designee.
- State Treasurer, who shall be a nonvoting member, or his designee.

La. R.S. 11:1823(A) mandates each of MERS' trustees to "discharge his fiduciary duties solely in the interest of the system's members and beneficiaries and for the exclusive purpose of providing benefits to the members and their beneficiaries, and defraying reasonable expenses of administering the system...." La. R.S. 11:1821(D) requires each trustee to take an oath of office that "he will diligently and honestly administer the affairs of the board, and that he will not knowingly or willingly permit to be violated any provision of law applicable to the system." Pursuant to La. R.S. 11:183, a trustee is "deemed a public employee for purposes of compliance with" the Louisiana Code of Governmental Ethics. La. R.S. 11:1821(E) provides that trustees "shall serve without compensation but shall be reimbursed at the rate of fifty dollars for each regularly scheduled meeting of the board and for reasonable expenses in performing duties on behalf of the board." However, that provision must be read in conjunction with La. R.S. 11:182(A)(1), which provides, "Notwithstanding any other provisions of law to the contrary, the members of the boards of trustees of the ... Municipal Employees' Retirement

^A La. R.S. 11:1821(B) provides that the president of the Louisiana Municipal Association is an *ex officio* member of MERS, but does not state whether the LMA president is a voting or nonvoting member. In our conversations with MERS' staff, we were informed that MERS considers the LMA president to be a voting member and that he does vote.

System of Louisiana ... shall receive for attendance at meetings of the boards a per diem of seventy-five dollars per meeting plus the normal expense allowance, provided funds are available for this purpose.” La. R.S. 11:1824 provides that the “administrative director” (the term the statute uses to refer to MERS’ Executive Director) is in charge of the System’s general administration and has such special powers and duties as may be properly delegated or assigned by the Board.

MERS is funded by employer contributions from Louisiana municipalities that do not manage their own retirement systems and who elect to participate as MERS’ members, member contributions, ad valorem taxes, state revenue sharing funds, and investment income. Although the vast majority of MERS’ funds are held in a trust fund account for investment and payment of members’ benefits, a small percentage of these funds are placed in the “Operating Fund” account to fund MERS’ operations. (La. R.S. 11:1823)

Robert Rust served as MERS’ Executive Director from November 17, 2003, to June 5, 2015, when he was placed on administrative leave amidst allegations of possible misspending of System funds. Mr. Rust subsequently retired on June 18, 2015. This audit was conducted to determine the credibility of the allegations of possible misspending and violation of fiduciary duties.

The procedures performed during this audit consisted of:

- (1) interviewing MERS employees,
- (2) interviewing other persons as appropriate,
- (3) examining selected documents and records,
- (4) gathering documents from external parties, and
- (5) reviewing applicable state laws and regulations.

FINDINGS AND RECOMMENDATIONS

Former Executive Director and Board of Trustees Misused System Funds

From January 2010 through December 2014, Municipal Employees' Retirement System of Louisiana's (MERS or System) former Executive Director, Robert Rust, planned and attended out-of-state conferences and in-state meetings and conferences for MERS' Board of Trustees (Board) and employees at a cost of \$317,379^B in System funds.^C In addition, MERS paid a \$42,698 cancellation fee to cancel an out-of-state conference in June 2015. It appears that the Board had knowledge of, and/or approved, each of these meetings and conferences as well as the 2015 conference cancellation. It further appears that a portion of the \$317,379 and the \$42,698 cancellation fee did not benefit the System or its members.

MERS provided attendees at MERS' out-of-state conferences with expensive dinners, cocktail parties, transportation to and from local restaurants, and in some cases, gifts. MERS also provided attendees' guests (including family and/or friends) with breakfasts, lunches, dinners, cocktail parties, and transportation free of charge. Mr. Rust also allowed attendees to arrive one or more days early to conferences and meetings at MERS' expense. In addition, Mr. Rust used System funds to provide hotel accommodations for his sons at out-of-state conferences with no apparent benefit to the System or its members. Also, Mr. Rust rented a vehicle to drive to the conferences and meetings; however, the rentals began several days before and ended several days after the conferences and meetings took place, again with no apparent benefit to the System or its members.

MERS also often provided attendees at in-state meetings and conferences with expensive dinners, including alcoholic beverages. According to detailed dinner receipts, four meetings held during December 2010, 2011, 2012, and 2014 were actually Christmas celebration dinners. By incurring and/or authorizing such expenditures that were of little or no benefit to the System or its members, Mr. Rust and the Board may have violated state law and the Code of Governmental Ethics.

State law¹ requires MERS' trustees and staff to participate in annual educational training relating to investments and investment strategies. In April 2007, Mr. Rust, with the Board's approval, created the Educational Conference Account to fund its annual educational training. From January 2010 through December 2014, MERS solicited and received contributions totaling \$212,484 to fund its annual educational training conferences. Most contributors were investment firms that contract with MERS.

^B The \$317,379 comprises of \$292,626 spent on out-of-state conference expenses and \$24,753 spent on in-state conference and meeting expenses.

^C System funds are any funds used to support the operations of MERS, including the Operational Fund and Educational Conference Accounts.

According to Mr. Rust, the funds MERS solicited from the investment firms were private in nature, separate from MERS' trust and operating funds, and could be used as they were used. However, our research failed to indicate any provision of law that allows funds held by a public retirement system to be private funds. Moreover, MERS' general counsel – now its Acting Executive Director – told us that he did not believe these were private funds. As will be discussed later in this report, MERS' operating funds were used to pay for a sometimes substantial portion of these expenditures. Mr. Rust told auditors that one of MERS' former general counsels advised him to structure MERS' training program like the Louisiana Association of Public Employees' Retirement Systems' (LAPERS) training program. However, LAPERS, unlike MERS, is a private, non-profit corporation that generates private funds and has much greater flexibility in the use of its funds.

MERS' operating funds are comprised of a mixture of employer contributions from Louisiana municipalities that do not manage their own retirement systems and who elect to participate as MERS' members, member contributions, ad valorem taxes, state revenue sharing funds, and investment income. Our research also failed to reveal any legal authority for operating funds to be used in a manner inconsistent with the mandate that a trustee “discharge his fiduciary duties solely in the interest of the system's members and beneficiaries and for the exclusive purpose of providing benefits to the members and their beneficiaries, and defraying reasonable expenses of administering the system...”²

In our review of MERS' records, we also found that the Board and its staff participated annually in LAPERS' three-day educational training in New Orleans. This training consisted of 14 hours on topics such as investments, investment strategies, and economic outlooks; many of which are required by law. From 2010 through 2014, MERS' Board and employees also traveled to Point Clear, Alabama for MERS' annual training conference. Before each annual conference, Mr. Rust would take a trip to plan and organize the current year's conference. Following the annual training conference, Mr. Rust said, and we confirmed, the Board evaluated the conference and Mr. Rust's pre-conference trip results and voted on whether to approve the same for next year.

The following is a detailed analysis on the use of System funds by MERS' trustees and staff during (1) annual out-of-state training conferences and (2) in-state meetings and training conferences.

Out-of-State Training Conferences

Ms. Susita Suire, MERS' Administrative Assistant – now Retirement Benefits Administrator – was hired in 2003 to manage MERS' accounting, including recording and paying balances due on invoices/statements. According to Ms. Suire, Mr. Rust gave the master bill of all conference expenditures to her for processing following the 2007 out-of-state training conference. Upon examination of the master bill, Ms. Suire identified what appeared to be personal expenditures and brought them to Mr. Rust's attention. Mr. Rust agreed with Ms. Suire and reimbursed MERS \$221.66 for expenses incurred during the 2007 Conference for jet ski and movie rentals. After 2007, Mr. Rust no longer gave Ms. Suire the master bills and credit card statements. Instead, Mr. Rust began telling Ms. Suire the name of the vendors to be paid, the

amounts of the payments, and the bank accounts from which the payments are to be made. Ms. Suire would then write checks to pay the vendors.

MERS' records indicate that from January 2010 through December 2014 contributions totaling \$212,484 were received and deposited into the Educational Conference account. During the same time period, expenditures totaling \$296,063 were made for out-of-state training conferences, \$193,267 from the Education Conference account and \$102,796 from the Operating Fund account. These expenditures included hotel rooms, meeting rooms, training materials, meals, transportation to and from off-site dinners, alcohol, and gifts. Most conference expenditures were made by Mr. Rust using a MERS credit card. During our review, we noted that System funds appear to have been spent in violation of state laws. The following describes how these funds were misused:

Meals, Alcohol, Incidental Purchases, and Transportation

During our audit period, all out-of-state training conferences were held at the Marriot Grand Hotel Resort in Point Clear, Alabama. Training was from Monday through Thursday, meaning attendees typically should arrive Sunday afternoon and depart Friday morning. In addition to the daily training, MERS' trustees, employees, conference sponsors, and their guests were provided breakfast, lunch, dinner at various local restaurants, and a cocktail party in the evenings. Transportation to and from the restaurants was also provided.

Based on our review of available records, the Board and Mr. Rust invited guests (family and/or friends) to the conference each year. It was understood that guests' hotel rooms were to be paid by the guests if they had their own rooms. A review of MERS' records indicates that, with the exception of Mr. Rust's sons, discussed in the section titled "Extended Hotel Stays and Extra Rooms," this practice was followed. However, although guests were expected to pay for their hotel rooms, MERS' records indicate that guests did not pay for their meals, alcohol, and transportation to and from restaurants; rather, these expenditures were paid using System funds.

Mr. Rust did not maintain itemized receipts of meals, alcohol, and transportation expenses. To illustrate, of the 48 meals and nightly cocktail parties associated with the out-of-state training conferences from 2010-2014, Mr. Rust retained only 18 itemized receipts. Based on the 18 itemized receipts, Mr. Rust spent \$17,027.57 on alcohol at dinners and cocktail parties for conference attendees and guests. MERS' records, however, indicate that \$81,737 in System funds were used to purchase meals, alcohol, and transportation for MERS' trustees, Mr. Rust, and their guests, as well as conference sponsors and their guests. Because Mr. Rust did not maintain itemized receipts, we could not determine the exact amount of System funds that were used to pay for guests' food, alcohol, and transportation.

According to the master bills, Mr. Rust also charged thousands of dollars in incidental costs at these out-of-state training conferences. From 2010 through 2014, Mr. Rust charged \$6,688 in incidental costs, including purchases at the Pro Shop and at various bars and restaurants (e.g., a \$227.12 charge in 2014 for alcohol).

By using System funds to provide free meals, alcohol, and transportation to guests, and by soliciting funds from investment firms having business or financial relationships with MERS – and using them for what appears to be their personal benefit – the Board and Mr. Rust may have violated the Code of Governmental Ethics.³

Extra Rooms, Gifts, and Extended Hotel Stays

A review of the Marriott Grand Hotel Resort group master bills and invoices shows that in 2010, 2013, and 2014 a room was booked in the name of one of Mr. Rust's two sons.^D These rooms were paid for with System funds and not reimbursed by Mr. Rust or either of his sons. In 2010 and 2011, two rooms were booked under Mr. Rust's name and paid for with System funds.^E According to Mr. Rust, he booked an extra room at the out-of-state training conferences to store conference literature and gifts purchased with System funds (which Mr. Rust referred to as "supplies") that Mr. Rust gave to MERS' trustees who attended the conferences. Mr. Rust said that one of his sons typically would stay in the room with the "supplies." Records indicate that from 2010 through 2013, eight MERS' trustees attended the conference each year and received gift baskets/bags filled with a combination of clothing, alcohol, and food items. A review of available records indicates that the expenditures for gift baskets/bags totaled approximately \$11,500. In sum, MERS paid at least \$6,768.65 for extra hotel rooms that Mr. Rust reserved in his name or in a son's name.

In addition to booking extra rooms for his son and gifts to MERS' trustees, Mr. Rust also allowed MERS to pay for extended hotel stays. According to conference agendas, out-of-state training conferences began on Mondays and ended on Thursdays, meaning that attendees typically should have arrived on Sundays and departed on Fridays. According to MERS' records and interviews with MERS' employees, MERS' trustees and employees often arrived on Saturdays, and, for at least one conference, Mr. Rust arrived on a Friday.

Records indicate that from June 2010 to July 2014, MERS paid for 22 extra hotel nights for MERS' trustees, employees, and Mr. Rust totaling \$5,960.88. During this time, records indicate that on seven occasions MERS' trustees reimbursed the System \$1,961.36, indicating that MERS' trustees were aware that extended hotel stays were not MERS' responsibility. This left a balance due to MERS of \$3,999.52. Of the \$3,999.52 balance, eight extended stays were for Mr. Rust and his family totaling \$2,106.42, and four extended stays were for MERS' employees totaling \$1,019.08. After Mr. Rust was placed on administrative leave amidst allegations of possible misspending of System funds, MERS' trustees reimbursed MERS the remaining \$874.02 they owed for extra hotel stays.

By using solicited funds to purchase extra hotel rooms and gifts, and to extend hotel stays, Mr. Rust and the Board appears to have received greater benefits than they are allowed by law and may have violated the Code of Governmental Ethics.³

^D According to payroll records, neither of Mr. Rust's sons were employees of MERS.

^E We could not report on 2012, because Mr. Rust did not maintain the master bill or invoices for the 2012 conference.

Pre-Planning/Location Scouting Trips

From 2010 through 2014, Mr. Rust took seven trips to Point Clear, Alabama and Sandestin, Florida at a cost of \$14,590.24. For five of the seven trips, Mr. Rust traveled to Point Clear, Alabama and stayed at the Marriott Grand Hotel Resort, which hosted the out-of-state training conference each year of our audit period. The other two trips were to Sandestin, Florida, where Mr. Rust stayed at Sandestin Golf and Beach Resort. According to Mr. Rust, the trips to Alabama were all pre-planning trips to coordinate details associated with MERS' upcoming educational conferences, and his trips to Florida were to scout out possible new locations for the conferences. Mr. Rust further stated that the pre-planning trips were all predicated on the Board approving the conference locations prior to the conferences. Additionally, Mr. Rust stated the Board was interested in other sites for the educational conference, necessitating his visit to Sandestin, Florida to explore other possible conference sites.

All five pre-planning trips were taken within three months of the scheduled educational conference, with one trip taking place three weeks prior to the conference. Of the \$14,590.24 paid for these trips (car rentals, meals and lodging), \$10,547.72 was paid with Educational Conference account funds and \$4,042.52 was paid with Operational Fund account funds.

| <i>Pre-Planning Trips to Point Clear, Alabama</i> | | | | |
|--|-------------------------|----------------------------|---------------------------------|------------------------------------|
| Trip Dates | Conference Dates | Total Trip Expenses | Paid from Education Fund | Paid From Operating Account |
| April 5-9, 2010 | June 28-July 1, 2010 | \$993.28 | \$993.28 | \$0 |
| June 4-6, 2011 | June 27-30, 2011 | 2,170.31 | 2,170.31 | 0 |
| April 5-9, 2012 | June 25-28, 2012 | 3,717.73 | 1,850.47 | 1,867.26 |
| May 3-6, 2013 | June 24-27, 2013 | 1,831.63 | 1,321.56 | 510.07 |
| May 22-25, 2014 | July 21-24, 2014 | 1,349.15 | 1,349.15 | 0 |
| <i>Location Scouting Trips to Sandestin, Florida</i> | | | | |
| July 21-25, 2010 | June 27-30, 2011 | 2,514.10 | 2,514.10 | 0 |
| April 19-23, 2011 | June 27-30, 2011 | 2,014.04 | 348.85 | 1,665.19 |
| Total | | \$14,590.24 | \$10,547.72 | \$4,042.52 |

Both the 2011 location scouting trip to Sandestin, Florida and the 2012 pre-planning trip to Point Clear, Alabama occurred over an Easter weekend. The 2014 pre-planning trip to Point Clear, Alabama occurred over the Memorial Day weekend. According to Mr. Rust, his wife planned the conferences and selected dates to best accommodate his and his wife's schedules.

In his Easter 2011 scouting location trip to Sandestin, Florida, Mr. Rust rented a three-bedroom, three-bath house at Sandestin Golf and Beach Resort. For his Easter 2012 pre-planning trip to Point Clear, Alabama, Marriott Grand Hotel Resort receipts indicate that Mr. Rust had two rooms (Room numbers 3336 and 3338). Charges for Room 3336 totaled \$978.32 and were paid from the Operating Fund account, while Room 3338 charges totaled \$1,362.84, including \$196.16 in Pro Shop charges, were paid from the Educational Conference account.

When asked the reason for two rooms for the pre-planning trip, or the need for a three bedroom house during the scouting location trip, Mr. Rust stated that the extra room was for one

of his sons. According to Mr. Rust, he rented the house because the property manager gave him a discounted price. However, according to the property management company, the discounted price was still \$159 more per night than a one-bedroom house, the cost difference of which was not reimbursed to MERS.

According to MERS' employees, the out-of-state training conferences were always held at the Marriott Grand Hotel Resort in Point Clear, Alabama, and there was no benefit to or need for the pre-planning trips. Emails between Mr. Rust, his wife, and the Marriott Grand Hotel Resort's event manager prior to the conferences (which discussed the details of each conference), support the employees' assertions that there was no benefit to or need for having the pre-planning trips.

Because Mr. Rust appears to have purchased lodging beyond what was needed for business purposes with System funds, and because he appears to have purchased personal items with System funds, Mr. Rust may have violated the Code of Governmental Ethics.³ Also, because the Board approved trips that do not appear to be in the interest of the System's members and beneficiaries, the Board may also have violated the law.²

Rental Car Usage

From June 2010 to July 2014, Mr. Rust charged 25 extra days of car rentals for out-of-state training conferences totaling \$3,190 to his MERS credit card. MERS' records indicate that rental car charges for the training conferences occurred on dates outside of the conference dates. Mr. Rust's rental car typically was picked up two to three days before the conference start date and returned four days after the conference end date. When questioned about this practice, Mr. Rust stated that he was willing to reimburse MERS for the additional rental costs but did not realize that he "would have owed for it." Because the extra car rental days did not benefit the System or its members, Mr. Rust may have violated the Code of Governmental Ethics.³

Cancellation of 2015 Educational Conference

As a result of the allegations surrounding its use of System funds for educational conferences and other meetings, MERS' trustees canceled the 2015 educational conference in Point Clear, Alabama. Because the conference was canceled close to the event date, MERS was contractually obligated to pay \$42,698 (90% of the room, food, and beverage costs) as a cancellation fee. Subsequent to the cancellation, MERS' general counsel – now Acting Executive Director – returned the contributions received from the investment firms for the 2015 educational conference, meaning all of the funds used to pay the cancellation fee came from MERS' Operating Fund account.

In-State Meetings and Training Conferences; Expenses and Lack of Documentation

According to MERS' employees and available records, in-state meetings and training conferences consisted of Board meetings, employee and Board training meetings, and individual meetings with MERS' trustees and employees. Most of these meetings involved meals for attendees. Mr. Rust typically did not submit itemized receipts for meals to MERS' accounting

department, but, rather, only submitted the authorization ticket (i.e., the credit card receipt) as documentation. Good business practices suggest that signed authorization tickets are not adequate documentation to support expenses because they do not provide sufficient detail to allow for verification of the number of meals purchased, the cost of each meal, the types and costs of beverages purchased, the business purpose of the meals, and the names of the attendees.

From 2010 through 2014, Mr. Rust did not submit itemized receipts for 37 meal purchases totaling at least \$24,753. As a result, we could not determine whether these purchases benefitted the System or its members. The following are three examples of what appear to be excessive food and alcohol purchases made during MERS' in-state meetings:

- (1) On April 17, 2013, Mr. Rust charged \$762.56 to his personal credit card at Juban's Restaurant in Baton Rouge. Three weeks later, on May 9, 2013, MERS paid Mr. Rust \$762.56 from the Educational Conference account to reimburse him for that charge. According to a MERS employee, the meal was associated with training for MERS' trustees on the Request for Proposal (RFP) process. The receipt indicates a party size of 12 guests, but due to the lack of detailed records, MERS could not provide us with the names of the MERS trustees in attendance. However, records obtained from Juban's indicate that \$190.25 was spent on alcoholic beverages.
- (2) In addition to this meal, Mr. Rust charged four additional visits to Juban's Restaurant totaling \$1,408.07 on his MERS credit card. Because Mr. Rust did not submit adequate documentation for these meals, we could not determine the total amount of charges for alcoholic beverages, the public purpose, or those in attendance for these meals.
- (3) Mr. Rust signed a Banquet Event Order form with Galatoire's Bistro for a "MERS Holiday Dinner." In our review of his credit card charges, we noted that each December from 2010 through 2014 (but excluding 2013), Mr. Rust incurred charges at either Ruth's Chris Steak House or Galatoire's Bistro. Based on available records, we determined that Mr. Rust spent \$12,893.22 from the Educational Conference account on these holiday dinners. Of this amount, \$1,350.70 was used to pay for alcohol at two of these dinners. Information was not available for us to determine the alcohol purchased at the remaining two dinners. Food items purchased included steaks and lobster. The itemized receipts also indicate that some attendees ordered both steak and lobster.

| MERS Holiday Dinner Parties | | | | |
|-----------------------------|--------------------------|------------------|--------------------|-------------------|
| Date | Location | Number of Guests | Charged Amount | Total Alcohol |
| 12/16/10 | Ruth's Chris Steak House | 25 | \$3,365.98 | Unavailable |
| 12/15/11 | Ruth's Chris Steak House | 24 | 3,185.59 | \$698.20 |
| 12/12/12 | Ruth's Chris Steak House | 21 | 2,957.65 | 652.50 |
| 12/10/14 | Galatoire's Bistro | 28 | 3,384.00 | Unavailable |
| Total | | | \$12,893.22 | \$1,350.70 |

According to Mr. Rust, the Educational Conference account also was used to pay for meals after the LAPERS training conference attended by Mr. Rust and Board members. From September 2011 to September 2014, six meals were paid for with System funds at the following New Orleans restaurants: The Palace Café, GW Fins, and Bon Ton. Purchases for these six meals totaled \$5,220.93, an average cost of \$870.16 per meal. Because Mr. Rust did not retain documentation concerning these meals, we were unable to determine whether they were a reasonable or appropriate use of System funds or if they fell within the normal expense allowance.

In *Opinion No. 03-0387*, the Louisiana Attorney General opined that the payment of, or reimbursement for, food, drink, or other expenses associated with luncheons, banquets, parties, or other similar function, from public funds is improper under state law. Although the opinion did not address the use of retirement system funds, we question whether System funds can be used to purchase alcohol and expensive meals for Board and training meetings if that use does not benefit the System or its members. By allowing these purchases, the Board and Mr. Rust may have violated the Code of Governmental Ethics.³

During the course of the audit, we spoke to six trustees and two of their designated representatives. According to the trustees and representatives, they were not aware that System funds were being misspent. The trustees and representatives stated that because: (1) Mr. Rust did not provide them with detailed receipts and invoices, (2) the conferences and meals were not included in the budget, (3) their external auditor did not question the expenditures, and (4) their general counsel agreed with the expenditures, they believed that the conference and meal expenditures were appropriately spent. The trustees and representatives further stated that after Mr. Rust terminated his employment and details of the conference and meal expenditures came to light, Warren Ponder was appointed Interim Director and has kept them informed of all System fund expenses.

Cell Phone Usage

From January 2010 through June 2015, MERS paid Mr. Rust's cell phone bill, which included an additional cell phone for one of Mr. Rust's sons. According to available documentation, Mr. Rust reimbursed MERS \$3,413.23 in eight separate payments for his son's portion of the bills. In some instances, Mr. Rust did not reimburse MERS until 13 months after MERS paid his bill. The following table illustrates the amount of time between MERS payments to the cell phone service provider and reimbursements to MERS by Mr. Rust:

| Payment Date from MERS | Payment Date to MERS | Months Before Payments |
|------------------------|----------------------|------------------------|
| June 2011 | July 2012 | 13 |
| February 2012 | September 2012 | 7 |
| June 2012 | July 2013 | 13 |
| December 2012 | August 2013 | 8 |

According to MERS' former general counsel, now Acting Executive Director, the Board did not give Mr. Rust approval to delay his cell phone reimbursements.

Recommendations

We recommend that MERS:

- (1) consult with its legal counsel to determine whether Mr. Rust and/or the Board of Trustees have an obligation to reimburse MERS for the costs of any of the expenditures discussed in this report, including the 2015 conference cancellation fee; and
- (2) establish rules or written policies and procedures regulating the use of System funds, including their use at meetings and educational training conferences.

LEGAL PROVISIONS

¹ **La. R.S. 11:185(D)(3), Educational requirements for members of retirement system boards of trustees.**

“Each year, any member to whom this Section applies shall attend at least eight hours of investment training, four hours of actuarial science information education, two hours of education regarding the laws, rules, and regulations applicable to his system, and two hours of instruction on fiduciary duty and ethics. These training hours may be conducted by the staff of the respective retirement systems or by outside experts....”

² **La. R.S. 11:1823(A). Board responsibilities, powers, and duties.** “Each board member shall discharge his fiduciary duties solely in the interest of the system’s members and beneficiaries and for the exclusive purpose of providing benefits to the members and their beneficiaries, and defraying reasonable expenses of administering the system, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.”

³ **La. R.S. 42:1115, Gifts.** “A. No public servant shall solicit or accept, directly or indirectly, anything of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person: (1) Has or is seeking to obtain contractual or other business or financial relationships with the public servant’s agency, or (2) Is seeking, for compensation, to influence the passage or defeat of legislation by the public servant’s agency.

B. No public employee shall solicit or accept, directly or indirectly, anything of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public employee knows or reasonably should know that such person: (1) Conducts operations or activities which are regulated by the public employee’s agency. (2) Has substantial economic interests which may be substantially affected by the performance or nonperformance of the public employee’s official duty.”

La. R.S. 42:1111(A), Payment from nonpublic sources. “A. (1) Payments for services to the governmental entity. No public servant shall receive anything of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities of his office or position....”

La. R.S. 42:1112(A), Participation in certain transactions involving the governmental entity. “A. No public servant, except as provided in R.S. 42:1120, shall participate in a transaction in which he has a personal substantial economic interest of which he may be reasonably expected to know involving the governmental entity.”

La. R.S. 42:1113, Prohibited contractual arrangements; exceptions; reports. “A. (1)(a) No public servant, excluding any legislator and any appointed member of any board or commission and any member of a governing authority of a parish with a population of ten thousand or less, or member of such a public servant’s immediate family, or legal entity in which he has a controlling interest shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.”

La. R.S. 42:1117, Illegal payments. “No public servant or other person shall give, pay, loan, transfer, or deliver or offer to give, pay, loan, transfer, or deliver, directly or indirectly, to any public servant or other person anything of economic value which such public servant or other person would be prohibited from receiving by any provision of this Part.”

APPENDIX A

Management's Response

MUNICIPAL EMPLOYEES' RETIREMENT SYSTEM OF LOUISIANA

October 27, 2015

Mr. Darryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor
P.O. Box 94397
Baton Rouge, LA 70804-9397

Re: Municipal Employees' Retirement System

Dear Mr. Purpera:

Municipal Employees' Retirement System of Louisiana (MERS) has received your report of the audit conducted in response to the allegations reported through the media. We commend you for the thoroughness and professionalism of your staff during the examination. The Board of Trustees and the staff of MERS are grateful for the presentation of the findings and the recommendations made for improving our system.

When the allegations were first aired, the Board instructed staff to review the policies and procedures in place for MERS. The Board discovered the existing policies were outdated and in need of revision. The Board has reviewed sample policies from other systems and samples of "best practices" on your website, and has installed the following controls and safeguards for MERS:

- 1.) The "Travel Policy" adopted August 20, 2015 tracks the language of the state travel policy which sets limits on the amount that can be spent for food and lodging.
- 2.) A credit card policy was adopted on September 13, 2015, which safeguards the one credit card belonging to MERS. It will be used ONLY for emergencies or for "internet" purchases, such as paying the fee for the website.
- 3.) The Board approved a procedure whereby ALL reimbursements will be paid ONLY with a written receipt approved by the Chief Financial Officer and by the Director. The CFO will deny any request without proper documentation, including names of all attendees and the nature of MERS business discussed. If the reimbursement is requested for the CFO or Director then the Chairman of the Board must also approve.

- 4.) All operating account checks are now required to be countersigned by the Director and by a designated Board member.
- 5.) The Board members receive a copy of the MERS check register each month for their review.
- 6.) The staff CFO now reports directly to the Board of Trustees concerning all MERS accounts as well as any matter that needs to be considered by the Trustees.

These reforms have been designed and instituted so the Board of Trustees can exercise better oversight of the operations of MERS. The Board has directed Staff to routinely examine the “best practices” recommendations of your office and constructive practices of other systems in an effort to further strengthen controls and safeguards.

In response to the Legislative Auditor’s recommendation to have MERS’ counsel advise whether reimbursement is due from the Trustees, the Board will seek independent counsel to review the findings.

Finally, it should be noted that each member of the Board has represented to me that they never knowingly or intentionally violated any ethical, fiduciary, or legal standard; and, the Board recognizes the importance of and is committed to a proactive approach in preventing possible abuse of any type going forward.

Sincerely,



Warren D. Ponder
Acting Director

WDP/ss
Enclosures

APPENDIX B

Mr. Robert Rust's Response

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MORGAN HARGROVE JOHNSON
JOHN AYDELL, (OF COUNSEL)

(REPLY TO BATON ROUGE OFFICE)

October 26, 2015

Mr. Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor
1600 N. Third Street
Baton Rouge, Louisiana 70804-9397

VIA HAND DELIVERY

Dear Mr. Purpera,

This is in response to the draft investigative audit of the Municipal Employee Retirement System (MERS).

I believe that the initial conclusion of the audit report that the funds donated to MERS by private individuals and companies that attend the Annual Conference were not private funds is incorrect. What the report failed to mention was that the funds were also not public funds, as per the opinion of MERS General Counsel and now Acting Director Warren Ponder. Mr. Ponder informed me that his opinion was that this was a special fund, donated by attendees for the exclusive use of the Board of MERS and its staff for educational purposes and that he and prior Counsel gave the opinion to the Board that the use of the donated funds for the Educational Meeting held each year was proper.

Mr. Ponder informed Counsel for Mr. Rust that he was relying on Attorney General's Opinion 09-0070 for his opinion. Further when Counsel for Mr. Rust met with your auditors, He gave them the cite to Attorney General's Opinion 86-183, which stated monies received by the Retirement System are not public funds. In Attorney General's opinion 09-0156, the Attorney General gave the definition of "public funds." In that opinion he stated that public funds were funds legislatively appropriated, judicial expense funds, self-generated funds or funds raised by local, parish or municipal governments.

Although the donated funds are not public, they are not purely private either in that the Board of MERS could not use them for just any purpose. They were donated by private individuals or companies for the exclusive use of the board and its staff for educational purposes and were used for such. Further Attorney General Opinion number 03-0157 was cited to the auditors, stating that conferences out of town would be proper if used to provide a board member or staff member's Continuing Professional Education, which was legally obligated by statute.

Nowhere in the report was the question asked to the Board's General Counsel whether or not his opinion was that the use of the donated funds was proper for the out of state Conferences held by MERS.

It is a DISSERVICE to the MERS Board of TRUSTEES not to have this question answered by their counsel. We were also informed that an Attorney General's Opinion on this issue was requested and the request was denied.

It should also be noted that approximately \$50,000.00 per year was budgeted for the MERS Board and staff, travel, Board meetings, and conventions. During the five year period discussed in your audit the Board could have spent a total of \$250,000.00 for these meetings. Further, the Board had an additional \$212,484.00 donated as contributions.

The audit found that \$317,379.00 was spent on the meetings and another \$42,698.00 was spent cancelling the 2015 meeting, a decision made by the BOARD. This totals \$360,077.00.

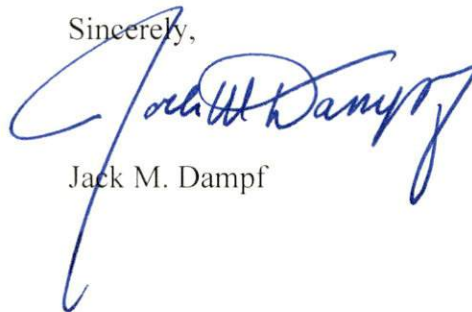
The Board had approximately \$462,484.00 to spend on these events with the contributions (donations) and BUDGETED amounts.

No one who attended these annual conferences believed that spending the donated funds and budgeted funds for the conference was improper. Most of the Board of Trustees were elected officials, members of the Secretary of Treasury's Office and Legislators.

As to the planning trips, the Board was fully aware and approved these trips by Mr. Rust and his wife, who helped plan the conference without consideration.

If the Board felt that these trips were improper, they had a duty to not approve them. I hope this letter will be attached to the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jack M. Dampf", with a large, stylized initial "J" and "D".

Jack M. Dampf

JMD/jlm