

# Kane County Recreation & Transportation Special Service District

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Findings and Recommendations  
For the Period January 2011 through December 2015

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Report No. KCRT-16-SP



## OFFICE OF THE STATE AUDITOR

AUDIT LEADERSHIP:

John Dougall, State Auditor  
Jeremy Walker, CPA, Manager



OFFICE OF THE  
**STATE AUDITOR**

**REPORT NO. KCRT-16-SP**

April 11, 2017

Administrative Control Board  
Kane County Recreation & Transportation Special Service District

Dear Board Members:

We have performed the procedures described below to certain aspects of internal control and compliance at Kane County Recreation & Transportation Special Service District (R&T) for the period January 2011 through December 2015, unless otherwise noted. The purpose of these procedures is to assist R&T, in evaluating internal controls and compliance with state laws.

- We reviewed compliance with certain laws by R&T.
- We reviewed the compensation received by certain Kane County officials for either serving on the board or contracting with R&T.

Our procedures were more limited than would be necessary to express an audit opinion on compliance or on the effectiveness of internal control or any part thereof. Accordingly, we do not express such opinions. Alternatively, we have identified the procedures we performed and the findings resulting from those procedures. Had we performed additional procedures or had we made an audit of the effectiveness of internal control, other matters might have come to our attention that would have been reported to you.

Our findings resulting from the above procedures are included in the attached findings and recommendations section of this report. By its nature, this report focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by the personnel of R&T during the course of the engagement, and we look forward to a continuing professional relationship. If you have any questions, please contact Jeremy Walker, Local Government Manager, at 801-538-1040 or [jeremywalker@utah.gov](mailto:jeremywalker@utah.gov).

*Office of the State Auditor*

Office of the State Auditor

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## **BACKGROUND**

The Kane County Recreation and Transportation Special Service District (R&T) was created in 1996 by the Kane County Commission. The R&T was created to develop recreation and transportation infrastructure countywide. Members of R&T's administrative control board (Board) are appointed by the Kane County Commission.

*Utah Code* 17D-1, part 2, allows a county or municipality to create a special service district (SSD). SSDs are special-purpose local governments, meaning that they generally provide a single specific service, or a group of closely related services, to a defined geographical area. In Utah, SSD budgets vary widely—some SSDs have a few hundred dollars and others have many millions of dollars. SSDs operating with small budgets are required to comply with nearly all laws required of larger entities. However, small budgets generally do not justify employing permanent individuals to provide professional services, such as accounting and legal services. Small budgets may also make it difficult to hire professionals on a temporary or contract basis. As such, SSD board members often perform support that may be outside of their area of expertise.

Creating entities should provide oversight for any entity they create. Laws relating to SSDs provide creating entities with the tools necessary to provide this oversight. Oversight should ensure compliance with applicable laws, which may include appointing members to the SSD board and providing professional services to the SSD. When a creating entity appoints a member of their governing body to the board, that member of the creating entity may serve with or without compensation. Also, when the creating entity provides professional services, it may charge the SSD for these services.

## **FINDINGS AND RECOMMENDATIONS**

### ***Public Official Compensation***

#### **1. EXCESSIVE COMPENSATION FOR R&T BOARD MEMBERS**

The April 7, 2015 R&T board meeting minutes state that, "As a smaller workload is projected for the future, the Board ... will be reduced from 6 to 3 members (to be decided upon by the Commission), and meeting times will be only 2 to 4 times a year." Previously, the R&T board held monthly meetings. However, in spite of what is anticipated to be a smaller workload, the September 1, 2015 board meeting minutes approve an increase in board member compensation from \$75 per meeting (x 12 meetings = \$900 x 6 members = \$5,400 per year) to the maximum board member compensation allowed by law of \$5,000 per board member (x 3 members = \$15,000 per year).

There is a contradiction between the meeting minute's statement regarding a projected smaller workload and the Board's action to increase board member compensation. The amount of compensation also seems excessive especially given that meeting minutes indicate that meetings last approximately 1½ hours. At the new rate set by the Board, if the Board met four times during the year for 1½ hour per meeting, then board members would receive approximately \$833 per hour for their service on the Board.

**Recommendation:**

**We recommend that R&T compensate all board members equitably (which compensation may be waived in whole or in part) and that the pay be generally commensurate with the time commitment and expertise.**

**2. FAILURE TO USE COMPETITIVE BID PROCESS RESULTED IN POSSIBLY OVERPAYING FOR ACCOUNTING SERVICES**

R&T’s contract accountant, who is also the Kane County clerk/auditor, received \$14,400 for services from 2013-2015. The table below shows the number of transactions processed by the contract accountant and the amounts received for 2014 and 2015.

<b>Year</b>	<b>Deposits Made</b>	<b>Checks Written</b>	<b>Total Transactions</b>	<b>Annual Contract Accountant Compensation</b>	<b>Average Cost per Transaction</b>
2015	4	33	37	\$4,800	\$129.72
2014	4	36	40	\$4,800	\$120.00

With the average cost per transaction being between \$120 and \$130, the contract accountant’s compensation appears excessive. Our understanding is that R&T did not obtain the contract accountant’s services through a competitive procurement process. A best practice would be to obtain professional services through a competitive procurement process to ensure that market rates are being paid. The excessive compensation indicates that the Board failed to effectively evaluate the amount of compensation paid to the contract accountant compared to the work she performs.

**Recommendation:**

**We recommend that the R&T Board:**

- **Obtain professional services through an established competitive procurement process that considers both cost and qualifications.**
- **Avoid overpaying the contract accountant.**

**3. POTENTIAL CONFLICT BETWEEN PUBLIC DUTIES AND PERSONAL INTERESTS**

As noted in the Background section above, counties that create SSDs should provide them with professional resources to ensure that the SSDs comply with the law. In November 2012, the Kane County clerk/auditor was hired as a consultant at the rate of \$4,800 per year without any specified duties or number of hours spent working on R&T related business. This type of arrangement could raise questions regarding whether the county clerk/auditor obtained this position with R&T by virtue of her official capacity with the County.

Public officer and employee ethics laws generally allow public officials the same opportunities to acquire economic interests as all other citizens, as long as it does not interfere with the discharge of their public duties. However, *Utah Code* 17-16a-4(1)(b) prohibits a public official from using their position, "... to secure special privileges for the officer or for others...". Also, *Utah Code* 17-16a-8 requires certain disclosures by the public official when "Any personal interest of or investment ... creates a potential or actual conflict between the official's personal interests and [her] public duties...." We requested from Kane County all disclosure statements submitted by the clerk/auditor and were provided with two statements, one dated July 22, 2015 and another April 19, 2016. The law required disclosure statements prior to this time; nevertheless, the County did not use this information to establish oversight and ensure that the potential conflict did not interfere with public duties.

In order to protect public officers and employees from real or perceived conflicts of interest, the County Commission should provide close oversight of this type of arrangement. This oversight could include any of the following:

- Request that SSDs inquire with the County (creating entity) to determine if the County is willing or able to provide services. The County Commission could require that SSDs pay the County directly for services its officers and employees provide and the County could appropriately compensate these employees for the additional work.
- If the County is not willing or able to provide services, the SSD should go through a competitive procurement process to obtain the services. As noted in Finding No. 5 below, R&T does not have a formal purchasing policy. A purchasing policy would have provided procedures for competitively procuring these professional services, allowing other qualified candidates the opportunity to be selected.
- Ensure that public officers or employees have disclosed personal interests that "...create a potential or actual conflict between the official's personal interests and... public duties..." as required by law. The Board should examine the disclosed potential conflicts to ensure that any services provided by public officers or employees do not interfere with their public duties. For example, some services the county clerk/auditor provides to R&T may fall within the scope of her responsibilities as county clerk/auditor. A clear distinction must be made regarding responsibilities that fall within the scope of county employment and those that do not.

**Recommendation:**

**We recommend that R&T inquire with the County to determine if the County is able to provide needed professional services. If not, R&T should obtain the services through an established competitive procurement process.**

***Potential Noncompliance with State Laws***

**4. POTENTIAL VIOLATION OF STATE NEPOTISM LAW AND VIOLATION OF OPEN AND PUBLIC MEETING ACT**

The September 1, 2015 board meeting minutes indicate that the R&T Board hired the wife of a board member to serve as R&T's secretary. *Utah Code 52-3* prohibits a public officer from voting for or recommending a relative for employment and from directly supervising a relative. The meeting minutes indicate that the motion passed but do not reflect whether the board member who is the husband of the secretary abstained from the vote. *Utah Code 52-4-203(2)* requires that, "Written minutes of an open meeting ... include...a record, by individual member of each vote taken by the public body." Because the minutes do not indicate the vote taken by individual member, as required by law, we are unable to determine whether R&T complied with nepotism laws.

R&T's potential failure to comply with nepotism and open and public meeting laws indicates a lack of understanding of relevant laws by R&T. Failure to comply with these laws creates an opportunity for relatives to receive an advantage over others when obtaining employment with R&T.

**Recommendation:**

**We recommend that the R&T Board:**

- **Review laws regarding the employment of relatives and consider whether the current district secretary should be replaced.**
- **Record all information required by law in the minutes, including the vote taken by each individual board member.**

**5. FAILURE TO ADOPT PURCHASING POLICY**

The R&T Board has not formally adopted written purchasing policies in accordance with *Utah Code 17B-1-618*, which requires that, "All purchases ... be made or incurred according to the purchasing procedures established by each district by resolution and only on an order or approval of the person or persons duly authorized." Without a purchasing policy, R&T cannot legally procure goods and services.

Purchasing procedures should establish a competitive procurement process which safeguards money from waste or abuse. Formal written policies also facilitate continuity and the consistent application of internal controls over time. The term "internal controls" is used to describe processes put in place by the governing body, management, or others, to provide consistent and efficient operations, including reasonable assurance that funds will be properly safeguarded.

**Recommendation:**

**We recommend that R&T prepare and adopt formal written purchasing policies as required by *Utah Code 17B-1-618*.**

**Response from  
Kane County Recreation & Transportation  
Special Service District**

To: Jeremy Walker  
Utah State Auditor

From: Tony Wright  
Chairman of the Board

Re: Kane County Recreation & Transportation Special Service District Audit  
Response

Dear Jeremy Walker,

I am writing this response to address the recent audit findings for the Kane County Recreation and Transportation Special District. I will address each of the five items mentioned.

**Item 1:**

**Excessive compensation for R & T board members**

Current Compensation was within the allowed State guidelines and not in conflict with any current Kane County policies. However, the district is in the process of reviewing new county guidelines and will adjust compensation to be in line with those developed policies.

**Item 2:**

**Failure to use competitive bid process for services**

The District now uses the Kane County procurement policies and a competitive bid process was used to hire administrative and accounting services effective January of 2017. A new person for accounting has been hired from this process.

**Item 3:**

**Potential Conflict between public duties and personal interests**

At the present time training has been completed and the services are all being determined using the procurement policies.

**Item 4:**

**Potential violation of State nepotism law and violation of open public meeting act**

Persons who were involved in possible nepotism were due to a temporary assignment for secretary services. As of January 2017, this service was advertised for applicants. As of February, 2017 the secretarial services have been assigned to a person based on this review process a service provider who has no relationship to board members. Training was completed for all board members in December 2016 and actions have taken place to ensure that all discussion and meetings conform to the open meeting act.

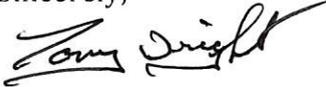
**Item5:**

**Failure to adopt purchasing policy**

The Recreation & Transportation Special Service District is currently in process of adopting the Kane County procurement policy established August of 2017. Plans are to adopt this policy on April 19<sup>th</sup>, 2017 at the next scheduled board meeting.

I hope that I have addressed your questions adequately. If you have any other questions or concerns, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Tony Wright". The signature is written in a cursive style with a large, sweeping "T" and "W".

Tony Wright