
**OFFICE OF THE NATIONAL PUBLIC AUDITOR
FEDERATED STATES OF MICRONESIA**

**INSPECTION OF KITTI COUNCIL ALLEGATIONS
ELECTION DISTRICT TWO IN POHNPEI**

REPORT NO. 2010-02



**Haser H. Hainrick
National Public Auditor**

February 10, 2010



FEDERATED STATES OF MICRONESIA

Office of the National Public Auditor

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February 10, 2010

His Excellency Manny Mori, President
Honorable Members of FSM Congress
Federated States of Micronesia

Re: Inspection of Kitti Council Allegations Election District Two In Pohnpei

We completed our inspection of the Kitti Council Allegations of the Senator representing Pohnpei Election District Two regarding the March, 2009 election. Altogether, seven allegations were made.

The Office of the National Public Auditor (ONPA) established the following three allegations warrant further investigation:

- *Coral and PVC pipes were given to individuals, households and churches by the Senator as gifts in exchange for votes*
- *Wone Elementary School Road project was suspended prior to completion hours after the election because the Senator was not satisfied with the number of votes he received in the area.*
- *Public funds designated for projects located in ED #2 were used for purposes of campaign travel to Guam in the month of January, 2009*

The ONPA's methodology included interviews with staff of the ED #2 Office, the Mayor of Kitti, recipients of project materials, members of the Kitti Council, and contractors. We reviewed records at the Department of Finance and Administration for project expenditures alleged in the complaint letter. We reviewed Project Control Documents and expenditure records for public projects. We also conducted site visits and took photographs in Kitti.

The Senator representing Pohnpei Election District Two denies all of the allegations made.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "H. Hainrick".

Haser Hainrick
National Public Auditor

CC: Kaun en Wehi
Speaker and Members of Isokohnedi
Chairman, Kitti Delegation, PSL
Chairman, Pwihn en Wahu
Luhkenmoanlap

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BACKGROUND

This inspection was initiated because of a letter of complaint sent to the Office of the National Public Auditor (ONPA) by the Isokohnedi En Wein Kitti (*hereinafter referred to as Kitti Council*) dated March 17, 2009. (Refer to the synopsis of the complaint letter in Appendix I, page 6.) The letter made allegations of the FSM Congressman representing Pohnpei Election District #2 (ED #2)¹ regarding misuse and abuse of publicly funded projects. The allegations centered on the matter of post-legislative involvement in the awarding of projects to gain voter support in the election held in March 2009. The FSM Supreme Court made such activity, *if true*, illegal (see Udot Municipality vs. FSM, 10 FSM Intrm. 354 (Chk. 2001)).

The National Public Auditor (NPA) addressed a response letter dated March 30, 2009 to the speaker of the Kitti Council advising that a review was to be initiated to test the merits of the allegations. On May 1, 2009, ONPA interviewed three members of the Kitti Council to request clarification and discussion of the allegations.

The Senator representing ED #2 (the Senator) addressed a letter on June 1, 2009, to the NPA in response to the Kitti Council complaint letter. The Senator refuted the allegations and claimed the Kitti Council members attacked his character. (Refer to the synopsis of the Senator's response letter in Appendix I, page 6).

Eight years earlier on July 27, 2001 the FSM Supreme Court issued a judgment in Udot Municipality vs. FSM, 10 FSM Intrm. 354, 362 (Chk. 2001) stating “[t]he involvement of congressmen (either consultation or approval) in deciding which projects are to be funded after Congress has already appropriated the money is unconstitutional and is permanently enjoined.” In a letter addressed to NPA dated October 16, 2006, the Department of Justice stated again, “[w]hat Congress, or individual congressmen, may not do is involve themselves in the administrative and executive process of determining which projects are to be funded after the money has already been appropriated.” Id.

Results of recent audits conducted by this Office reveal that the problems continue to exist whereby individual congressmen are involved in the administrative and executive process of determining which projects are to be funded after the money has been appropriated, as prohibited by Udot Municipality vs. FSM.

Prior Audit Coverage

This Office recently completed a series of audits of public projects, projects funded by the Congress of FSM (CFSM). Each audit focused on one state, e.g. one audit report per state. Common findings revealed that:

- a) Congress was involved in activities outside their legislative oversight function because it funds election district offices to oversee project implementation;
- b) Project Control Documents were not sufficiently clear or complete; and
- c) Projects were selected without clarity of purpose, proper justification, or transparency.

¹ Pohnpei Election District Two (ED#2) is comprised of the municipalities of Kitti and Madolenihmw. Staff of the ED#2 Office, reporting to the FSM Executive Branch, administer and direct the execution of the public projects.

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Objective

The objective of this inspection was to validate whether the Kitti Council allegations have merit to warrant further investigation.

The allegations are as follow:

1. Coral and PVC pipes were given to individuals, households, and churches by the Senator in exchange for votes;
2. Public funds designated for projects located in ED #2 were used for purposes of campaign travel to Guam in the month of January, 2009;
3. Wone Elementary School Road project was suspended prior to completion, hours after the election because the Senator was upset at the low number of votes he received in the area and, as a result, the Senator relocated the equipment to Nan Mand;
4. A mini truck (flatbed) purchased in 2005 or 2006 with public funds designated for Kitti Municipal Government was never delivered to date;
5. No line item in any appropriation law existed for the purchase of a 30 hp outboard engine;
6. Funds were allotted to selected churches to refurbish synagogues under the disguise of civic centers; and,
7. Funding for Kitti Fish Market may have been used for other purposes.

Scope and Methodology

The scope of this review is the specific allegations set forth in the letter from the Kitti Council. ONPA's methodology included interviews with staff of the ED #2 Office, the Mayor of Kitti, recipients of project materials, members of the Kitti Council, and contractors. We reviewed records at the Department of Finance and Administration for project expenditures alleged in the complaint letter. We reviewed Project Control Documents² (PCD) and expenditure records for public projects titled as civic centers, Kitti Fish Market, Secondary Road Improvement, Outboard Motor for Kitti Police, and Water Delivery Services³. We also conducted site visits and took photographs in Kitti.

ONPA conducted this review pursuant to Title 55 FSM Code, Chapter 5, which states in part:

"The Public Auditor shall inspect and audit transactions, accounts, books, and other financial records of every branch, department, office, agency, board, commission, bureau, and statutory authority of the National Government and of other

² Project Control Documents are legal documents that enable the allotments of appropriated project funds. In general, project control documents include the project budget, project description, the project inspection officer, and others.

³ We reviewed, relative to projects located in ED #2, the following Public Project Laws: PL 14-52, PL 14-106, PL 14-107, PL 15-07, PL 15-20, PL 15-30, PL 15-32, PL 15-36, PL 15-44, PL 15-63, PL 15-66 (repealed), & PL 15-76 (PL repealing PL 15-66).

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public legal entities, including, but not limited to, States, subdivisions thereof, and nonprofit organizations receiving public funds from the National Government.”

ONPA, furthermore, performed this review in accordance with the Quality Standards for Inspections, promulgated by the U.S. President’s Council on Integrity and Efficiency, Executive Council on Integrity and Efficiency, 2005 revision.

CONCLUSION

Of the seven allegations made by the Kitti Council, ONPA established that three allegations warrant further investigation, as follows:

- *Coral and PVC pipes were given to individuals, households and churches by the Senator as gifts in exchange for votes*
- *Wone Elementary School Road project was suspended prior to completion hours after the election because the Senator was not satisfied with the number of votes he received in the area.*
- *Public funds designated for projects located in ED #2 were used for purposes of campaign travel to Guam in the month of January, 2009*

ALLEGATIONS & FINDINGS

Allegation: *Coral and PVC pipes were given to individuals, households, and churches by the Senator in exchange for votes*

Finding:

Interviews with recipients, contractors, staff of the ED #2 Office and site visits indicated that the Senator more probably than not distributed coral and PVC pipes to individuals, households and churches. ONPA concludes that this allegation warrants further investigation by CID.

Allegation: *Public funds designated for projects located in ED #2 were used for purposes of campaign travel to Guam in the month of January, 2009*

Finding:

We interviewed three members of the Kitti Council and the traveler. The Senator’s letter of June 1, 2009 indicated that the traveler’s airline ticket was procured using his (Senator’s) One Pass account. As of this report date, the Senator has not provided the authorization we requested to access the One Pass information at the Continental Office; as a result, the inspection process of this allegation was not completed. ONPA concludes that this allegation warrants further investigation by CID.

Allegation: *Wone Elementary School Road project was suspended prior to completion, hours after the election because the Senator was upset at the low number of*

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votes he received in the area and, as a result, he relocated the equipment to Nan Mand

Finding:

We interviewed the contractor for this project and he confirmed receiving a phone call at his office after the election from the Senator to “pull out” from the road-capping project. The contractor shared that the Senator wanted him to relocate his equipment to Wenik to complete a road around the Nan Mand area and another in Salapwuk.

FSM Election Office results indicate that the Senator garnered 46 votes while his opponent received 277 in this area.

We conducted a site visit to Wone Elementary School Road to verify evidence of coral capping and project termination point. We confirm that the road improvement project was not completed. ONPA concludes that this allegation warrants further investigation by CID.

Allegation: *A mini truck (flatbed) purchased in 2005 or 2006 with public funds designated for Kitti Municipal Government was never delivered to date*

Finding:

We found that the staff of the ED #2 Office purchased three flat bed trucks, two in FY 2005 and one in FY 2006. The PCD’s and expenditure documents did not specify which of the two municipalities comprising ED #2 would have the legal title to these vehicles.

We do not see a basis in this allegation as control and use of the flat bed trucks were decided by the staff of the ED #2 Office, as is normal procedure.

Allegation: *No line item in any appropriation law existed for the purchase of a 30 hp outboard engine*

Finding:

Line item section 1(3) (c) (x) of Public Law 15-44 indicates that funds were appropriated for an outboard motor for the Kitti Police for \$3,000. This appropriation became law in June of 2008. The outboard motor was purchased in December of 2008. This allegation lacks a basis for further investigation.

Allegation: *Public funds were allotted to selected churches to refurbish synagogues under the guise of civic centers*

Finding:

Public funds were allotted for the building and repair of civic centers located in ED #2. We observed that two different civic centers were located adjacent to churches, one in Rohng Kitti and the other in Nan Mand. Expenditure documents show that public funds were used for the repair of the Rohng Kitti civic center. Both were located on private properties.

We determined that funds for civic centers did not refurbish the adjacent churches. This allegation lacks a basis for further investigation.

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Allegation: *Funding for Kitti Fish Market may have been used for other purposes*

Finding:

Although funds were appropriated per Public Law 15-30, President Mori declared an emergency in December 2008 and funding for this law was repealed.

We therefore do not find a basis for further investigation.

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APPENDIX I

Kitti Council's March 17, 2009 Complaint Letter Synopsis

“The 6th Kitti Municipal Council (Isokohnedi) would like to register a formal complaint and petition for an investigation into the manner in which Public Funds were used in Kitti Municipality by the ED #2 Representative in the FSM Congress. Most, if not all, of the project funds appropriated by the FSM Congress for projects in ED #2, and earmarked for projects in Kitti were used to support Senator Neth’s campaign for re-election during the March 3, 2009 election. His so called “Public Projects targeted individuals and households, civic and civil organizations that supported him or promised to support him during the election.””

Synopsis of the Senator's Letter to the Public Auditor

“I take this opportunity to touch base with you [Public Auditor] regarding the letter addressed to your office dated March 17, 2009 from the 6th Kitti Municipal Council (Isokohnedi). It has taken me this long to decide whether to respond or not, for I don’t want to bring myself down to the level of these arrogant, ignorant, and selfish individuals. However, the letter contained defamatory information, which infuses negative thoughts to many, especially my constituents. Few of them have already questioned my integrity as a public servant. Furthermore, the letter has already tainted my character as a person and representative of Election District No. 2, Pohnpei State, to the FSM Congress. I feel that I must unearth the truthfulness of such accusations brought against me so that people of Pohnpei, especially my constituents should know the truth.””

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ONPA CONTACT AND STAFF ACKNOWLEDGEMENTS

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ACKNOWLEDGEMENTS In addition to the contact named above, the following staff made key contributions to this report:

Eric Spivak, CIA, Audit Manager
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Ivan Alafanso, Auditor-in-Charge

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