



KANSAS LEGISLATIVE
DIVISION *of*
POST AUDIT

A Limited-Scope Performance Audit Report Presented to the Legislative Post Audit Committee

Highway Patrol Personnel Actions

November 2020

Report Number: L-20-019

Introduction

Representative John Barker requested this limited-scope audit, which was authorized by the Legislative Post Audit Committee at its September 2, 2020 meeting.

Objectives, Scope, & Methodology

Our audit objective was to answer the following question:

1. Did the Highway Patrol follow applicable policies and procedures for the recent termination of two majors in July 2020?

Our work evaluated the actions taken by the Kansas Highway Patrol related to the dismissal of two majors in July 2020.

We reviewed state laws and regulations that guide how agencies dismiss employees. We reviewed the Kansas Highway Patrol's internal policies related to dismissing employees. We also examined the personnel files of the two majors in question. Last, we talked with highway patrol officials about the steps they took in dismissing the majors.

More specific details about the scope of our work and the methods we used are included throughout the report as appropriate.

Important Disclosures

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Overall, we believe the evidence obtained provides a reasonable basis for our findings and conclusions based on those audit objectives.

Kansas Highway Patrol officials followed state law and regulations when dismissing two majors in July 2020.

The state legislature established the Kansas Highway Patrol in 1937 to enforce traffic laws on state highways.

- The Kansas Highway Patrol (KHP) is primarily tasked with enforcing traffic laws on state highways. However, the KHP also inspects vehicles, provides security for public officials, and oversees the Capitol Police.
- The patrol is led by a superintendent who is appointed by the governor and confirmed by the senate. Governor Laura Kelly appointed the current superintendent, Colonel Herman Jones. The senate confirmed him in January 2020.
- In 2019, KHP spent \$92.8 million and employed 937 FTE staff. KHP is primarily funded through a transfer from the state highway fund, federal funds, and fee funds.

Most KHP staff are classified employees but senior management are unclassified employees.

- The Kansas Civil Service Act and other laws describe which positions are classified or unclassified. Unclassified positions include a broad range of employees. They include employees hired by appointment, elected officials, and all employees in the office of the governor or the courts. Classified positions are all positions not designated as unclassified positions.
- The superintendent, assistant superintendent, and majors of the KHP are unclassified employees in accordance with K.S.A 74-2113 and K.S.A 74-2935. All other uniformed highway patrol positions are classified.
- Unclassified employees are “at-will” employees, which means they serve at the pleasure of the person who hired them. Unclassified employees can be dismissed for nearly any reason, and do not have to be given the reason. Conversely, state law provides many protections to classified employees. This includes the right to be provided a reason for dismissal, and the right to appeal a dismissal to the state civil service board.

The Kansas Highway Patrol dismissed two majors in July 2020.

- On July 23, 2020 Governor Laura Kelly announced Majors Scott Harrington and Josh Kellerman had been dismissed from the Highway Patrol. KHP officials told us the majors were dismissed due to work performance issues. Although KHP provided us access to the majors’ recent evaluations, state law (K.S.A. 45-221(4)) prohibits us from disclosing those details.

- These personnel actions were noteworthy for a few reasons:
 - The highway patrol dismissed two of its five majors in one day. Additionally, according to Department of Administration records, a KHP major has not been dismissed for at least 25 years.
 - On the same day the highway patrol dismissed the majors, the Governor's office announced the results of two independent investigations into complaints against KHP's superintendent, Colonel Herman Jones. Employees at KHP made numerous complaints against the Colonel related to sexual harassment, misuse of a state aircraft, and gender discrimination. The investigations found the claims were unsubstantiated.
 - The Kansas State Trooper's Association questioned whether the majors' dismissal was retaliatory. The association does not represent majors or other management positions. They claimed the majors had shown support to several female employees who had made harassment complaints against Colonel Jones. In September 2020, the majors filed claims with the U.S. Equal Employment Opportunity Commission alleging their dismissal was retaliatory. That case is ongoing.

State law and regulations only have a few requirements related to the highway patrol dismissing an unclassified employee.

- Both majors were unclassified employees. As such, they were "at will" employees who could be dismissed for nearly any reason. Additionally, state law and regulation do not require agencies to notify or explain the reason an unclassified employee is being dismissed. Further, state law and regulation do not require an agency to follow many steps before dismissing an unclassified employee.
- We identified only three laws or regulations related to the dismissal of unclassified staff at the highway patrol:
 - K.S.A 74-2113 requires a major to be returned to his or her previous rank upon termination (this law applies only to the highway patrol). In this case, law required both majors to be demoted to the rank of captain (a classified position).
 - K.A.R. 1-7-4(h) requires any employee demoted from an unclassified position (major) to a classified position (captain) to serve a probationary period of six months.
 - K.A.R. 1-7-3(d) allows an agency to dismiss an employee serving a probationary period at any time during that period. During the probationary period, an employee does not have the typical civil service protections that a permanent employee has.

The highway patrol followed applicable requirements.

- KHP officials told us that the majors were given the opportunity to resign before being dismissed. KHP documents show that Major Harrington resigned from his position. Major Kellerman declined to resign.
- As state law requires, KHP demoted Major Kellerman to the rank of captain prior to his dismissal. The highway patrol notified Major Kellerman of this action on July 23, 2020. Additionally, KHP notified Major Harrington of this requirement even though he resigned.
- As state regulation requires, KHP placed Major Kellerman on probation when he was demoted.
- KHP officials then notified the major that he was dismissed as a probationary employee as of July 24, 2020. The dismissal letter did not provide any reasons.
- As to the appropriateness of KHP actions, this audit focuses only on whether the department followed applicable requirements related to these personnel actions. It does not evaluate the reasons for the dismissals or the intent behind them.

Recommendations

We did not make any recommendations for this audit.

Potential Issues for Further Consideration

We did not identify any other issues for further consideration.

Agency Response

On November 2, 2020 we provided the draft audit report to the Kansas Highway Patrol. Because we did not make any recommendations, a written response was optional. The highway patrol chose to not submit a response.