



STATE OF NEW YORK  
OFFICE OF THE STATE INSPECTOR GENERAL  
**Final Report**  
**September 21, 2012**

## SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General, working in conjunction with the Deputy Inspector General for the New York State Department of Taxation and Finance<sup>1</sup> (Tax and Finance), determined that Larry R. Graham, a Revenue Crimes Specialist at Tax and Finance, worked second employment at the same time as his state job on 18 occasions from October 2008 to October 2009. In these instances, Graham filed time records with Tax and Finance claiming that he worked for the state during times he did not, and thereby received \$1,163 in state salary to which he was not entitled.

The Inspector General forwarded these findings to the Cattaraugus County District Attorney for consideration of criminal charges, and a Special Prosecutor was named to prosecute the matter. A copy of this report is also being provided to the State Comptroller's Pension Integrity Office.

The Inspector General also found that Graham violated Tax and Finance policy by engaging in secondary employment without agency approval and used his state vehicle in furtherance of this unauthorized secondary employment. However, Graham's retirement from state service precludes disciplinary action by Tax and Finance.

The Inspector General recommended that Tax and Finance consider amending agency policy to require that employees obtain prior approval for any outside employment, and that the agency take steps to ensure that supervisory staff and employees are familiar with all provisions of the policy.

Finally, the Inspector General also found that Graham improperly used a state vehicle for personal use and that Tax and Finance policy regarding vehicle usage reporting allowed him to do so undetected. The Inspector General, therefore, recommended that Tax and Finance review agency vehicle policy and consider amending

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<sup>1</sup> Until 2011, the Office of the Deputy Inspector General for Taxation and Finance operated within the Department of Taxation and Finance, with reporting responsibilities to both the Department's Commissioner and the New York State Inspector General. Effective June 1, 2011, the functions of the Deputy Inspector General for Taxation and Finance were consolidated within the Office of the State Inspector General.

it to require employees to report their actual destinations and the case numbers associated with those destinations in their vehicle usage logs.

In response to the Inspector General's findings and recommendations, Tax and Finance advised that it has implemented new policies and procedures and is taking other steps to enhance oversight and accountability with respect to outside employment, vehicle usage, and supervision.

## ALLEGATION

The Inspector General received a complaint alleging that Larry R. Graham, an investigator for Tax and Finance, worked a second job at the Town of Ellicottville Police Department during his state work hours and received pay from both agencies for the same hours. The complaint also alleged that Graham drove his state vehicle while on duty for the Ellicottville Police Department.

## SUMMARY OF INVESTIGATION

### **Background**

From October 1998 until his retirement in December 2009, Larry Graham was employed as a Revenue Crimes Specialist, specifically an Excise Tax Investigator, with Tax and Finance's Petroleum, Alcohol, and Tobacco Bureau (PATB). Graham's duties included investigating excise tax violations on cigarettes, gasoline and alcohol. Graham was assigned to Tax and Finance's Buffalo office, which is responsible for the 11 western counties of New York. Graham resides in Chautauqua County and generally worked in Chautauqua, Allegheny, Cattaraugus, and Steuben counties. Tax and Finance Investigators, with limited exceptions, are designated peace officers under the New York State Criminal Procedure Law.<sup>2</sup>

Graham also worked for more than 20 years as a part-time police officer for the Town of Ellicottville Police Department, in Cattaraugus County, approximately 50 miles from Buffalo. In the fall of 2008, Graham was appointed Officer-in-Charge of the Ellicottville Police Department, assuming the typical duties and responsibilities of the Chief of Police including supervising members of the police force, establishing work rosters, reporting to the Ellicottville Town Supervisor, and representing the Ellicottville Police Department in meetings and conferences.

### **Graham Violated Tax and Finance's Outside Employment Policy**

Tax and Finance promulgates a "Code of Conduct for Employees of the Department of Taxation & Finance"<sup>3</sup> and executive memorandums of agency policy. Both are provided to all employees and are available to employees on Tax and Finance's intranet. The Code of Conduct explicitly states that, "The failure of employees to

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<sup>2</sup> Tax and Finance criminal investigators hold dual roles: as peace officers with authority to carry and use firearms within New York State, and as police officers with limited authority to execute warrants in criminal tax cases within New York State. N.Y. Crim. Proc. Law §§ 2.10(4)(a-c) and 1.20(34)(q).

<sup>3</sup> Dated October 23, 2008.

familiarize themselves with the Code and comply with its rules may result in administrative or disciplinary action and/or criminal prosecution.” Both the Code of Conduct and Executive Memorandum E-3 dated July 20, 2007, require employees, under certain circumstances, to request permission for outside employment. The memorandum states in pertinent part:

All Department employees are encouraged to seek review of any outside employment or business activities engaged in, even when approval of the activities by the Department is not required. This is necessary to insure that the Department’s interests as the primary employer are protected. Before engaging in outside employment or business activity, which is not expressly prohibited by this policy and which may cause either an actual conflict of interest or an appearance of a conflict of interest, all employees must request permission from the Outside Employment Committee.

The Code of Conduct also expressly prohibited employees designated as peace officers, such as Graham, from outside employment as uniformed police officers. The Code of Conduct states in pertinent part:

All Tax Department employees . . . are prohibited from performing the following activities:

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Private detective or investigative services which require or involve interviews of taxpayers, or others; investigations for any organization as a prerequisite for employment, a loan, insurance, or credit; surveillance; the taking of statements or affidavits; communication by correspondence, telephone or in person, for investigative purposes, are prohibited. Nothing in this section shall be deemed to prohibit the employment of Department employees (**who are not designated as peace officers**) as members of a uniformed county, city, town, or village police, constabulary, or fire department, or county sheriffs department. (Emphasis added) (Section III. B. 7)

Although Graham worked for more than 20 years as a part-time police officer for the Ellicottville Police Department, he failed to obtain required approval from Tax and Finance for his outside employment. Graham only sought approval for his secondary job when he was appointed Officer-in-Charge in the fall of 2008. On February 2, 2009, Graham first submitted an application requesting approval to commence employment on February 28, 2009, as a police officer for the Ellicottville Police Department. In his application, Graham certified that, “I am not to engage in this outside employment before approval from the committee head.” He also acknowledged in the application that he understood that, “False or misleading information may lead to disciplinary action,” and that “A separate request must be submitted for each employer.”

On February 27, 2009, then PATB Director Thomas Stanton approved Graham’s application and forwarded it for consideration by the Tax and Finance Outside Employment Committee, which reviews employees’ applications for outside employment for compliance with policy. Kiaran Johnson-Lew, the Tax and Finance Director of

Human Resources Management and a member of the Outside Employment Committee, reviewed Graham's application. Johnson-Lew determined that Graham's apparent prospective employment as a police officer was in violation of Tax and Finance's Code of Conduct that prohibits employees designated as peace officers from outside employment as uniformed police officers.

As a result, by memorandum to Graham dated April 13, 2009, Johnson-Lew denied Graham's application for outside employment. The memorandum also ordered Graham to immediately cease such employment if he was currently performing it, and advised Graham that if he did not comply with this directive he would be in violation of Tax and Finance's Code of Conduct.

Notwithstanding this clear directive, over five months later, on October 27, 2009, when queried by the Inspector General as to whether he was engaged in any outside employment, Graham responded that he worked for the Town of Ellicottville as a patrolman and at Holiday Valley Ski Resort as a security officer. Graham added that he had worked for the Town of Ellicottville Police Department for over 20 years. The Inspector General asked Graham to describe his duties at the Ellicottville Police Department, to which Graham responded, "Actually, sometimes I do scheduling or the payroll. I'm kind of the senior Officer-in-Charge." Graham also asserted to the Inspector General that he worked approximately 20 hours a week for the Ellicottville Police Department, generally in the evenings and on weekends.

In contravention of the denial of his application for outside employment, Graham, while noting the requirement to obtain approval for outside employment, claimed to the Inspector General that he had just recently requested permission to work for the Ellicottville Police Department. However, when asked if the request had been approved, Graham admitted that it had not been approved and conceded that he nevertheless was still employed at the Ellicottville Police Department.<sup>4</sup>

While Graham's outside employment as an Ellicottville police officer violated Tax and Finance's Code of Conduct on its face, Tax and Finance's outside employment policy is unclear as to when employees are actually required to submit requests for approval of outside activity. Both the Code of Conduct and the relevant policy memorandum<sup>5</sup> simply state that employees are encouraged to seek review of outside employment or business activities and, notably, appear to place the onus on the employee to determine whether the nature of the outside employment requires reporting. The Code of Conduct states, "Employees are encouraged to seek review of their outside employment or business activities to insure that they are in compliance with this policy." While Executive Memorandum E-3 ambiguously states:

Before engaging in outside employment or business activity, which is not expressly prohibited by this policy and which may cause either an actual

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<sup>4</sup> The Inspector General also asked Graham how often he worked at the Holiday Valley Ski Resort. Graham answered that he worked one night a week during the ski season, as he had for the last 20 years. When asked if he submitted a request for approval of this outside employment, Graham refused to answer. In fact, Tax and Finance has no record of such an application from Graham.

<sup>5</sup> Executive Memorandum E-3 dated July 20, 2007, quoted above.

conflict of interest or an appearance of a conflict of interest, all employees must request permission from the Outside Employment Committee.

This statement appears to leave the determination of when such employment may cause a conflict of interest or an appearance of one to the employee. This ambiguity is not, however, an issue in this case because the Tax and Finance Code of Conduct expressly precluded Graham's employment as a police officer.

The Inspector General found that Graham committed numerous violations of the Tax and Finance Code of Conduct. Specifically, he worked at the Ellicottville Police Department for over twenty years despite being expressly precluded from such employment. It was not until February 2009 that Graham submitted a request to engage in this outside employment. In that application, Graham falsely certified that he was not currently engaged in this outside employment before approval. Despite the denial of this application and the directive to cease such employment, Graham continued working at the Ellicottville Police Department.

### **PATB Supervisors Not Only Failed to Enforce Agency Policy But Were Ignorant of It**

The Inspector General further found that Graham's supervisors at the Buffalo PATB section of Tax and Finance all claimed to be unaware of the relevant agency policy regarding outside employment and the Code of Conduct that expressly prohibits employees designated as peace officers from outside employment as uniformed police officers. During the period relevant to this investigation, Graham was supervised by Chief Investigator Patrick Simet, Supervising Excise Tax Investigator Rosemarie Montante, and Senior Excise Tax Investigator Gwendolyn Popovich. Popovich was Graham's immediate supervisor, and she in turn reported to Montante and Simet.

Chief Investigator Patrick Simet, related to the Inspector General that since he began employment with Tax and Finance in 2000, he was aware of Graham's outside employment with the Ellicottville Police Department. Indeed, Simet noted that it was common knowledge in the section that Graham worked for the Town of Ellicottville. However, Simet proclaimed that he first became aware that Graham was required to obtain approval for such outside employment on February 24, 2009, from a conversation with then PATB Deputy Director Paul Rossi. Simet then advised Montante to determine if Graham had obtained approval and, if not, to direct Graham to submit a request for such approval.

Simet also informed the Inspector General that he was not aware of the prohibition against Tax and Finance peace officers engaging in outside employment as police officers prior to the instant investigation. Montante and Popovich similarly stated that they had no knowledge of the prohibition.

Regardless of their initial ignorance of Tax and Finance outside employment policy, even after Graham's application for outside employment was denied, Graham's supervisors took no meaningful steps to ensure his compliance with agency policy. Simet asserted that when he was informed that Graham's request had been denied, he directed Montante to inform Graham that he needed to stop working at the Ellicottville Police

Department. Simet added that he probably spoke to Graham about this as well, but he did not specifically remember doing so. Montante, however, denied being told by Simet to direct Graham to cease his employment with the town. Montante conceded to the Inspector General that Graham had in fact informed her that his request had been denied. She further admitted that after being informed of this denial, she neither inquired as to whether Graham had ceased working for the Ellicottville Police Department nor took any steps to ensure that he had done so. Montante explained that she was “not paying close attention” to the matter and “would not ask” that type of thing.

Popovich reported never speaking with Graham regarding this issue and claimed that checking on such things was not the responsibility of a first-line supervisor. Popovich explained that she only checked Graham’s assignments and approved his timesheets and time off requests. However, this investigation revealed, as discussed below, that Popovich failed to adequately monitor Graham’s time and attendance, thereby allowing him to regularly abuse state time.

### **Graham’s Time Abuse**

In the 20 years Graham worked as a part-time police officer for the Town of Ellicottville absent approval from Tax and Finance, he reportedly worked primarily weekend shifts; therefore, his secondary employment did not conflict directly with his assigned state hours. However, when he assumed the duties as the Officer-in-Charge of the police department in the Fall of 2008, (even in the face of an outright denial by Tax and Finance to engage in this outside employment) his town work hours began overlapping with his state Tax and Finance work hours. In turn, he improperly received compensation for working the same hours for both the state and the town. When interviewed by the Inspector General and asked if he ever worked at the Ellicottville Police Department during his state hours, Graham averred, “No, I do not . . . never.” This investigation, however, established otherwise.

The Inspector General’s analysis of Graham’s state time records and Ellicottville records revealed that from October 20, 2008, to October 20, 2009, Graham worked overlapping hours on 18 occasions (a total of more than 41 hours), resulting in \$1,163.53 in unearned and improper compensation from the state. For example, on October 31, 2008, Graham supervised firearms qualification at a firing range in Cattaraugus County and charged both the state and town for this time. Graham also reported on the time record he submitted to Tax and Finance that he worked 8:00 a.m. to 4:00 p.m. on January 30, 2009. However, Town of Ellicottville records indicated that Graham issued six parking tickets in the town as an Ellicottville Police Officer between 11:54 a.m. and 12:15 p.m. on that day.

Furthermore, on February 4, March 25, and September 30, 2009, Graham attended Cattaraugus County Chiefs of Police Association meetings during state time. Graham’s Tax and Finance supervisors advised the Inspector General that his attendance at these meetings and other similar meetings was permitted in his role as a Tax and Finance investigator. However, Graham also received credit from the Town of Ellicottville for his attendance at these meetings. Accordingly, he was paid by both the state and town for these meetings. Similarly, on April 16, 2009, Graham attended a meeting of the Western New York Chiefs of Police Association and was paid by both the

state and the town for the time. Again, on August 3, 2009, Graham attended anti-terrorism training in Rochester. Graham reported attending this training to both the state and town and was paid for eight hours of work by both.

Surveillance of Graham revealed further misreported state work time. On August 18, 2009, Graham reported on his state time record that he worked from 8:00 a.m. to 5:00 p.m. The Inspector General, however, observed Graham arrive at the Ellicottville Police Department at 9:05 a.m. in his state-assigned vehicle and remain there until 11:40 a.m.<sup>6</sup> Because Graham reported on his state time records that he worked more than a 7.5 hour day, the state not only paid Graham for the hours when surveillance showed he was actually at the Town of Ellicottville Police Department, but also provided Graham a half hour of compensatory time that could be used at a later date. When the Inspector General asked Graham if he was at the Ellicottville Police Department on August 18, 2009, for over two hours, Graham answered that he remembered being there for a while, adding, "It might have been two hours."

The Inspector General also reviewed digital video recordings from cameras installed at the Ellicottville Police Department. The recordings showed four instances (over 4.5 hours) between September 30, 2009, and October 20, 2009, when Graham was working at the Ellicottville Police Department that he reported as working for the state. For example, on September 30, 2009, Graham reported working at his Tax and Finance job from 8:00 a.m. to 4:00 p.m.; yet a video recording showed Graham arriving at the Ellicottville police station at 10:05 a.m. and leaving at 11:35 a.m. These cameras record to a hard drive which stores approximately one month of video. Therefore, the Inspector General was only able to establish Graham's overlapping work schedule for that monthly period.

In addition to the dates set forth above, testimonial evidence established that Graham regularly attended morning meetings with the Ellicottville Town Supervisor and other town officials on state time, receiving both town and state pay for the time spent in these meetings.

During the course of the investigation, Graham retired, effective December 31, 2009, from his position with Tax and Finance, precluding disciplinary action by the agency. He also resigned from the Ellicottville Police Department effective November 1, 2009.

### **Graham's Misuse of the State Vehicle**

The Inspector General also found that Graham regularly utilized his state-assigned vehicle in violation of Tax and Finance policy.<sup>7</sup> Witnesses reported that Graham

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<sup>6</sup> On that day, the Inspector General attempted to follow Graham when he left the Ellicottville Police Department. The Inspector General, however, terminated the surveillance because Graham activated the state vehicle's emergency lights and accelerated to over 80 miles per hour. A review of his case files for that day indicated no reason for the use of emergency lights related to any Tax and Finance investigation.

<sup>7</sup> Tax and Finance Agency Fleet Policy dated October 2006. Governor David A. Paterson's Executive Order No. 7 issued June 18, 2008, also explicitly prescribed: "State vehicles shall be used only for official business or incidental personal use associated with official business away from an employee's official work station."

regularly drove his state vehicle to the Ellicottville Police Department when he reported for duty there. Surveillance and review of video recordings by the Inspector General confirmed this violation of state vehicle usage.

Graham noted his awareness of rules and regulations restricting vehicle use to official business. When asked if he drove his state-assigned vehicle to and from Ellicottville Town Court, Graham replied, “No, I don’t.” Notwithstanding this assertion, on October 21, 2009, the Inspector General observed Graham at Ellicottville Town Court and his state vehicle parked in an adjoining parking lot from 5:50 p.m. to 6:15 p.m. Tax and Finance records indicated that Graham worked until 5:00 p.m. that day. When the Inspector General confronted Graham with evidence of his presence at the court with the state vehicle at that time, Graham acknowledged that he might have been present there. When the Inspector General inquired of Graham if such was an appropriate use of a state vehicle, Graham conceded that it was not.

The Inspector General also found that Tax and Finance’s policy and vehicle usage form was deficient and allowed Graham to use the state vehicle for non-state functions without detection. Tax and Finance policy did require employees who utilized state vehicles to complete and turn in a monthly vehicle use log, Form OSB-24 Use Record for Division-Assigned Vehicles. This form specifically required the operator to list the beginning and ending mileage, total mileage, a destination, purpose of travel and fuel consumption. The form only provides a single line for the employee’s destination and does not require that each trip be listed or that a case number for that trip be provided. Montante explained that the investigators generally only list the furthest destination for each day.

Graham, however, failed to even complete the form according to the above-stated practice. His entries for destination typically only listed a county or two, for example “Catt/Erie” was a common entry. Graham also commonly listed “Enforcement” as the purpose of his travel. Apparently, no one questioned this practice.

The Inspector General notes that supervision of employees’ vehicle usage and daily activities is critical. This supervision is particularly necessary for employees, such as Graham, who spend much of their day working independently in the field. The Inspector General, therefore, recommends that Tax and Finance consider revising its policy and vehicle usage form to require employees to document each individual trip and case number associated with that trip. The specific documentation recommended herein will provide supervisors with the information necessary to meaningfully review employees’ vehicle and time usage. Such details also facilitate later review or audit of such usage by the agency when necessary.

### **Inadequate Supervision of Graham**

The Inspector General again found that a lack of meaningful supervision at the Buffalo PATB section of Tax and Finance contributed to Graham’s misconduct. In addition to supervisory staff’s unfamiliarity with, and then their failure to enforce, the Tax and Finance Code of Conduct and policies, the investigation revealed that there existed little or no meaningful supervision or monitoring of Graham’s daily activities. Graham generally worked alone and reported in person to the Buffalo office only once or

twice a week. Other than that infrequent in-person reporting, Graham was only required to telephonically report in two or three times a day, which consisted of Graham contacting the PATB front desk to report his location and activities.

Popovich, Graham's first-line supervisor, reiterated that she only checked Graham's assignments and approved his timesheets and time off requests. She explained that, as to checking his location, Graham was required to call the office and report the case on which he was working. When asked if she had ever spot checked Graham, she answered, "Like go out and see if he is where he said he's supposed to be? No." She further said, "[T]here is [sic] three people here, me, Rose [Montante] and Larry [Graham]. I have my job . . . Larry had his cases and Rose had her cases." When asked how she could have assessed the accuracy of his timesheets, she replied, "I have to trust my employees that what their telling me is accurate." Montante, Popovich's supervisor, simply maintained that she never had a problem contacting Graham on his cell phone.

### **Referral for Criminal Prosecution**

On February 22, 2010, the Inspector General discussed the findings of this investigation with Cattaraugus County District Attorney Lori Rieman, who advised that, due to her acquaintance with Graham, she would seek the appointment of a Special Prosecutor. On April 26, 2010, Cattaraugus County Court Judge Larry M. Himelein issued an order appointing Jay D. Carr as Special Prosecutor in this matter. The Inspector General met with Carr on May 14, 2010, and provided him with a copy of the investigative file.

## **FINDINGS AND RECOMMENDATIONS**

The Inspector General found that Larry Graham, during his employment as Revenue Crimes Specialist for the New York State Department of Taxation and Finance, improperly worked for the Ellicottville Police Department on at least 18 occasions that overlapped with his state work hours. In these instances, Graham filed time records with Tax and Finance which falsely reported that he worked for the state during times that he did not, and as a result received at least \$1,163.00 in state salary to which he was not entitled.

The Inspector General forwarded these findings to the Cattaraugus County District Attorney for consideration of possible criminal charges, and a Special Prosecutor was named, upon motion of the District Attorney, to prosecute this matter. A copy of this report will also be provided to the State Comptroller's Pension Integrity Office to determine if Graham's actions affect his state pension.

The Inspector General also determined that Graham violated Tax and Finance policy with regard to outside employment and state vehicle use. However, as Graham has retired from his position with Tax and Finance, disciplinary action by the agency is precluded. Graham also resigned from the Ellicottville Police Department. The Inspector General further found that Tax and Finance vehicle policy and its vehicle usage form failed to require adequate documentation of vehicle usage. The Inspector General, therefore, recommends that Tax and Finance review its current vehicle usage reporting policy and consider amending it.

In addition, the Inspector General found that Graham's Tax and Finance supervisors were unaware of agency policy expressly prohibiting Graham's secondary employment as a police officer, and that even when they learned of such policy, they took no meaningful action. Further, ambiguity exists in Tax and Finance policy on outside employment that appears to place the onus on employees themselves to determine whether the nature of the outside employment requires reporting. Accordingly, the Inspector General recommends that Tax and Finance consider amending its policy to require that employees obtain prior approval for any outside employment, and that the agency take steps to ensure that supervisory staff and employees are familiar with all provisions of the policy.

### **Response of the Department of Taxation and Finance**

In response to the Inspector General's findings and recommendations, Tax and Finance advised that regarding vehicle usage, it revised the Criminal Investigations Division's field duties written policy to require maintenance of a daily record of activities, including a vehicle log which is reviewed and approved by supervisors on a monthly basis. Training and instruction of staff on these requirements has been provided. Additionally, Tax and Finance's Office of Risk Management is currently conducting a compliance review of vehicle policy, and identified deficiencies will be addressed through discipline as appropriate. Further, Tax and Finance has equipped all vehicles with location tracking technology and issued new policies and procedures relating to these technologies.

Tax and Finance further advised that it is re-evaluating whether its outside employment policy should be amended to require that all employees obtain approval prior to engaging in such employment. Tax and Finance also will ensure that all employees acknowledge an understanding of the rules on outside employment, and verify that supervisors confirm that their subordinates are complying with these rules and report violations.

Concerning supervisory responsibilities, Tax and Finance advised that it is reviewing adherence to existing policies which state that supervisors are responsible for ensuring that subordinate employees properly perform their duties, and has implemented a restructuring which will strengthen supervision.