



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL

Final Report
September 28, 2007

**IG's Investigation Finds Conflict by DOT Employee
Who Supervised Contractor that Hired His Relatives**

SUMMARY OF FINDINGS/RECOMMENDATIONS

The investigation by the Office of the State Inspector General found that Christopher Carlon, a New York State Department of Transportation (DOT) Engineer-in-Charge, violated the Public Officers Law and DOT policy by knowingly supervising a contractor that employed his daughters and by possessing DOT equipment at his residence. DOT has disciplined Carlon, and this matter is being referred to the State Ethics Commission.

ALLEGATIONS

In September 2006 this Office received information from DOT advising that the agency had received an anonymous complaint that Carlon took DOT tools and/or equipment, and requested that a company under contract with DOT employ his daughters.

SUMMARY OF INVESTIGATION

Carlon served as an Engineer-in-Charge on the "Bridge Where and When Contract", an ongoing emergency repair project, in Region 8, which covers Columbia, Dutchess, Orange, Putnam, Rockland, Ulster and Westchester counties. E. Daskal Corporation (Daskal) was the contractor on the project from April 12, 2005 through May 31, 2007.

Each DOT construction project undertaken by a private contractor is overseen by a DOT Engineer-In-Charge (EIC) who, in turn, supervises one or more DOT or consultant inspectors who monitor the project on a daily basis. Only after the EIC is satisfied that the work performed is satisfactory does the EIC initiate payment, full or partial, through DOT to the contractor. While Carlon does not have the required certifications to be an EIC, a DOT memorandum, dated December 15, 2005, indicates that Carlon was granted a temporary appointment to an EIC, a grade 22 position. This

memo further provides for Carlon to be reassigned to his Civil Engineer position (grade 20) at the discretion of DOT.

Carlon's supervisor spoke with Carlon about the telephone complaint that had been received two days earlier. In a memorandum she prepared after her meeting with Carlon, the supervisor indicated that Carlon "denied any wrong doing on his part," although he did "admit" that his daughter worked for the contractor "once." The supervisor requested that Carlon provide a "detailed account" of the circumstances relating to his daughter's employment with the contractor, E. Daskal. Several days later, Carlon provided a memorandum in which he stated that he believed he was acting "in the best interest of the State" because Daskal had difficulty hiring and retaining flag persons and his daughters' employment by Daskal in that capacity purportedly minimized delays to the project.

DOT's policy on conflicts of interest states that the "employment of relatives of Department employees by persons or companies doing business with the Department" presents an apparent conflict of interest and that "it is the duty of each employee to recognize and avoid actual or potential conflicts of interests or situations that present the appearance of a conflict of interest." DOT employees who have relatives working for entities doing business with DOT must notify the Assistant Commissioner for Human Resources of the fact. To implement this policy, DOT has established a procedure for the notification of the Assistant Commissioner for Human Resources by means of an internal document titled "PER 79," which identifies the relative, contractor and project. The PER 79 must be approved by the employee's supervisor prior to submission to the Assistant Commissioner for Human Resources.

A review of Carlon's personnel file revealed one PER 79, dated March 6, 2006, submitted by Carlon advising DOT that one of his daughters had become employed as a "Trainee" with a DOT contractor called Haks Engineering. Carlon's supervisors approved the PER 79 with an expiration date of December 31, 2006. In that reported instance, DOT took appropriate steps to ensure that Carlon had no supervisory responsibility for Haks projects. The file also contained the name of Carlon's other daughter. The file, however, did not contain a PER 79 for the employment of either daughter by Daskal.

In order to determine whether Carlon's daughters had worked for Daskal on projects overseen by Carlon, this Office analyzed Daskal's payroll records and DOT's "Daily Record of Work Authorized, not Included in Contract" (Daily Record) for Carlon's projects. The records show that one of Carlon's daughters grossed \$3,935.20 when she worked 80 hours over 10 days as a laborer for Daskal at an hourly rate of \$49.19, on two separate project sites in September and October of 2005. This daughter again worked for Daskal — this time as a flag person — at a third project site for 21 days in January and February 2006. For three of those days she was paid \$20.95 per hour (earning \$502.80), and for the remaining 18 days she was paid \$38.85 per hour (earning \$4,720.28), for a total of \$5,223.08. These documents established that the other daughter worked for Daskal as a laborer on two consecutive days in October 2005 for 10 hours

each day. She was paid an hourly rate of \$49.19, with additional overtime pay, and grossed \$1,082.18. In sum, Carlon's two daughters were paid in excess of \$10,000 by Daskal for work performed on a project overseen by their father.

During an interview with this office, Carlon claimed that because the flag person that Daskal had hired was not showing up to work, thereby delaying the project and inflating the costs to DOT, he suggested to the Daskal onsite supervisors that the company hire his daughters as flag persons. Carlon claimed that he did not "think about" the ethical questions of having his daughters working for a contractor on a project he was supervising. Carlon posited that he was trying to help advance the project and, at the same time, help his daughters earn money. During the third project, according to Carlon, Daskal again had difficulty finding reliable flag persons and he again suggested that his daughter be hired. At this time, Carlon claimed, he was not aware of the requirement to prepare a PER 79 and get approval for his daughters to work for Daskal.

Additionally, upon further questioning, Carlon advised this Office that he had stored DOT equipment at his residence. He identified the equipment as hydraulic jacks purchased by DOT for use by Daskal on the bridge projects. When asked for an explanation, Carlon said that he kept the equipment at his residence because there was no room for it in his office, and that he took it to the work site on days it was needed.

Following this Office's interview of Carlon, his supervisor spoke with Carlon and requested that he remove the equipment in question from his residence and store it at an appropriate DOT location. Carlon subsequently moved the equipment as requested. Carlon also prepared and submitted a new PER 79, dated April 27, 2007, informing DOT that his daughter was still employed by Haks Engineering.

By facilitating the employment of his daughters by a contractor that he monitored, Carlon not only ran afoul of DOT's policy on conflicts of interest, but he also violated Public Officers Law § 74, which governs the ethical conduct of state employees. For example, Public Officers Law § 74(2) states that "[n]o officer or employee of a state agency . . . should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest." The contractor's employment of his daughters, one of whom was not emancipated, resulted in Carlon having an indirect financial interest that substantially conflicted with him properly supervising the contractor.

Furthermore, the very appearance of impropriety results in a violation of the code of ethics. Public Officers Law § 74(3)(f) provides that "[a]n officer or employee of a state agency . . . should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person," and Section 74(3)(h) further states that "[a]n officer or employee of a state agency . . . should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of

his trust.” Carlon’s conduct certainly created an “impression” of possibly improper influence by the contractor or a “suspicion” that Carlon was probably engaged in acts which would undermine the public’s confidence in him.

FINDINGS AND RECOMMENDATIONS

The investigation established that Carlon violated DOT policy and the Public Officers Law by supervising a contractor that employed his daughters. He also improperly possessed DOT equipment at his residence. DOT issued Carlon a Counseling Memorandum dated May 11, 2007 and removed him from the EIC position (grade 22), returning him to his permanent item as a Civil Engineer (grade 20). This Office referred this matter to the State Ethics Commission (now the Commission on Public Integrity), which has jurisdiction over breaches of the Public Officers Law.