

State of New York
Office of the Inspector General



Investigation of Improper Snowmobile Registrations
By the Fulton County Department of Motor Vehicles

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EXECUTIVE SUMMARY

The Inspector General received a complaint from the New York State Department of Motor Vehicles (DMV) that then Fulton County Clerk William Eschler was allowing snowmobile clubs in the county to register their club-owned snowmobiles as “government” vehicles, thereby avoiding the payment of required registration and trail maintenance fees.

The Inspector General’s investigation determined that the Fulton County DMV Office permitted local snowmobile clubs to register their snowmobiles as government, contrary to DMV regulation, for at least 10 years, resulting in uncollected fees totaling more than \$10,000. Fulton County DMV officials, including Eschler and the then-DMV office supervisor, testified that the improper practice resulted from their mistaken belief that club-owned snowmobiles, which are used solely for trail grooming and not for personal use, could be registered as government vehicles. However, even after he was advised that this practice violated DMV regulation, Eschler allowed it to continue for a year, during which 34 additional improper registrations were processed thereby allowing those registrants to avoid paying the required fees. Eschler’s conduct appears to have violated both the Fulton County Code of Ethics and his oath of office.

In response to the Inspector General’s recommendation that it develop a process for the review of government vehicle registrations, DMV advised that its new initiative for the certification of eligibility for official license plates addresses the concerns identified in this investigation. As part of the initiative, DMV issued in March 2014 a new form for the registration of government vehicles that includes a definition of a governmental entity that excludes volunteer organizations such as snowmobile clubs.

DMV also advised that it has communicated to current Fulton County Clerk Ann Nickloy the obligation “to collect all required fees” for vehicles and snowmobiles. Further, DMV is undertaking recoupment of the uncollected fees.

INTRODUCTION AND BACKGROUND

The New York State Department of Motor Vehicles (DMV) provides license, registration and related services for motor vehicles owned by New York State residents, governments, and commercial interests. Customers receive services through the mail, via the internet, and directly in DMV offices statewide. DMV offices in Albany and Onondaga County and in the five boroughs of New York City are operated by DMV and the personnel working in those offices are employees of the state of New York. In the remainder of the counties of New York, county clerk offices, staffed by county employees, provide DMV services. The county clerk’s office retains a percentage of the fees it collects, approximately 12.7 percent, to defray the expense of the DMV work.

Since at least 1973, snowmobiles operated within the state, with a few exceptions not relevant to this report, must be registered with DMV. In 1973, DMV charged \$5 to register a snowmobile and an additional fee of \$10 for snowmobiles owned by New York State residents (\$20 for out of state residents) to fund snowmobile trail maintenance. Later, the registration fee for all snowmobiles (other than dealer registrations) was set at \$10 for both in-state and out-of-state registrants. The trail maintenance fees increased to \$35 by 2004. In 2005, the Legislature created a two-tier trail fee for the registration of snowmobiles, increasing the trail maintenance fee for non-snowmobile club members to \$90, while the trail maintenance fee for snowmobile club members remained at \$35. Thus, since 2005, the total annual cost to register a snowmobile in New York State has been \$45 for snowmobile club members and \$100 for non-members. Snowmobiles owned by governmental entities or snowmobiles used by volunteer organizations solely for emergency purposes, for example volunteer fire or EMT companies, must also be registered, but no fees are charged for these vehicles. More than 18,000 snowmobiles are annually registered in New York, less than 500 of which are owned by government entities.

The fees DMV collects for snowmobile trail maintenance are forwarded to the New York State Office of Parks, Recreation and Historical Preservation (OPRHP), which disperses the funds to counties. Often, the counties will distribute the fees through grants to local snowmobile clubs for trail maintenance.

THE INSPECTOR GENERAL FINDS THE FULTON COUNTY DMV ALLOWED IMPROPER SNOWMOBILE REGISTRATIONS AND FAILED TO COLLECT REQUIRED FEES FOR AT LEAST 10 YEARS

The Inspector General's investigation revealed that the Fulton County DMV Office allowed local snowmobile clubs to register their snowmobiles as "government", contrary to DMV regulation, for at least 10 years. This improper practice, which exempted the clubs from payment of the required registration and trail maintenance fees, resulted in lost revenue to the county and state totaling more than \$10,000.

Fulton County Clerk's Office officials, including then County Clerk William E. Eschler and the former supervisor of the office's DMV operations, Sandra Savage, testified to the Inspector General that at the time the snowmobile registrations in question were processed, they believed their actions were proper. Both Eschler and Savage, who served as the office's DMV supervisor for approximately 15 years until her retirement in 2010, stated that they believed that a club-owned snowmobile, if used solely for maintaining trails and not for personal use, could legitimately be registered as a government snowmobile, exempt from fees. In fact, as noted, New York State Vehicle & Traffic Law defines a government snowmobile as one "owned by governmental agencies, or by volunteer organizations if used exclusively for emergency purposes." Clearly, club-owned snowmobiles, even if used only to groom trails, do not meet this

definition. Significantly, Eschler admitted that he never reviewed DMV statutes or policies – a serious omission given his DMV duties as county clerk.

By the time of his interview by the Inspector General in May 2013, Eschler understood that the practice of registering club-owned snowmobiles as government was improper and had directed that it cease. “We did this wrong,” Eschler admitted, referring to his office’s previous, longstanding practice. Savage, who was interviewed in December 2012, two years after her retirement from the Fulton County DMV Office, continued to profess the propriety of the practice until, during the interview, the Inspector General showed her copies of the relevant DMV procedure. “Until you showed me that, I still would believe [the practice was proper],” she stated.

When asked by the Inspector General when, or on whose authority, the practice of granting government status to club snowmobiles began, neither Eschler nor Savage provided a definite answer. While acknowledging that the practice had existed for a number of years, Eschler stated, “I don’t believe it was my idea.”¹ Savage testified that “it’s been that way for 10 or 15 years,” adding, “It was that way when I started. I don’t know who told me, but I believed it.” Numerous other employees of the Fulton County DMV office similarly testified that they believed that club-owned snowmobiles were eligible for government status, but they too stated that they did not know who was responsible for originating the practice. Notably, DMV records show that the Fulton County Clerk’s Office was the only DMV office in the state that operated under this misunderstanding.

According to the DMV database of snowmobile registrations, the Fulton County Clerk’s Office improperly processed a total of 237 snowmobile club registrations (including renewals) as government snowmobiles from 2004 through 2012, when the practice ended as a result of the Inspector General’s investigation. By granting government status to these snowmobiles, the Fulton County Clerk’s Office failed to collect a total of \$10,665 during this period, based on the \$45 due for each snowmobile.²

When interviewed by the Inspector General, representatives of the four clubs whose snowmobiles were registered as government snowmobiles³ expressed their belief that because the snowmobiles were used only for trail grooming, they were performing “government” work and thus entitled to the fee exemption.

According to the representatives, the snowmobiles registered were “work” vehicles not generally used for recreational purposes. The representatives stated that their clubs’ rules prohibit the use of the “work” snowmobiles for purposes other than trail maintenance although

¹ Eschler served as the elected Fulton County Clerk from January 1998 through December 2013.

² Annual registrations were as follows: 2004 (11); 2005 (22); 2006 (20); 2007 (29); 2008 (27); 2009 (31); 2010 (29); 2011 (34); 2012 (34). DMV data also show five improper registrations in 2002 and seven in 2003 when the fee structure was different. DMV’s database does not include registrations prior to 2002.

³ Two other snowmobile clubs in Fulton County registered their snowmobiles properly.

they are stored at various members' homes. The representatives stated that the practice of registering their snowmobiles as government was longstanding, and that they were not certain of its origin. One club treasurer, who is Eschler's brother-in-law, said he believed that Eschler "might have" informed the club of the government exemption. Eschler did not recall conveying this information, but as noted above he did testify that he had believed that such an exemption applied. Eschler himself was a member of two other snowmobile clubs which benefited from his office mistakenly granting government status to club snowmobiles. Eschler, however, also has owned snowmobiles for his personal use, all of which he properly registered and for which he paid the proper fees.

Eschler Continued to Permit Improper Snowmobile Registrations Despite Inquiry from DMV

In October 2011, DMV staff in Albany noted the large number of government snowmobiles registered by snowmobile clubs in Fulton County. As a result, a DMV Operations Unit program manager called the Fulton County DMV Office and discussed his concerns with Linda Kollar, who had succeeded Savage as office supervisor. Kollar related to the DMV program manager at the time, and later testified to the Inspector General, that when she worked as a Senior Motor Vehicle Clerk in the office prior to 2010, she had harbored doubts about the propriety of the practice. Notwithstanding her concerns, Kollar stated she had processed the registration of club-owned snowmobiles as government snowmobiles because Savage, then her supervisor, had advised that "they've got groomers, they're doing it for the government."

However, after receiving the call from DMV in October 2011, Kollar testified she knew "for sure" the practice was improper. Consequently, she brought the matter to the attention of Eschler, who, according to Kollar, responded, "Until they [DMV officials] do something, don't worry about it."

Eschler, in his interview with the Inspector General, acknowledged that he took no action, despite the information he received from Kollar. "I didn't stop it," Eschler admitted. In fact, the Fulton County DMV Office continued to improperly grant government status to club-owned snowmobiles, processing another 34 such registrations. The practice only ceased in November 2012 after Eschler became aware of the Inspector General's investigation. The Inspector General confirmed that no additional improper snowmobile registrations have been transacted by the Fulton County DMV Office since November 2012.

Eschler's Conduct May Have Violated County Code of Ethics and Oath of Office

The Fulton County Code of Ethics⁴ requires county officials and employees to avoid conflicts or potential conflicts of interest. To this end, the Code of Ethics states, among other provisions, that officials and employees may not:

Take action or participate in any manner whatsoever in his or her official capacity in the discussion, negotiation or the awarding of any contract or in any business or professional dealings with the County of Fulton or any agency thereof in which the official or employee has or will have an interest, direct or indirect, in such contract or professional dealings.

The Code of Ethics further states that any official or employee “who has knowledge of any matter being considered by any Board, Agency, officer or employee of the County of Fulton in which matter he or she has or will have or intends to acquire any direct or indirect interest, shall be required immediately to disclose in writing his or her interest to such Board, Agency, officer or employee, and the nature and the extent thereof.” Eschler, during his tenure as Fulton County Clerk, annually signed the Code of Ethics Review Form acknowledging his understanding of the provisions of the Code of Ethics.

As noted, Eschler, while serving as Fulton County Clerk, permitted the improper granting of government status to snowmobiles owned by clubs of which he or a relative were members. In addition, despite his knowledge of this practice, Eschler failed to disclose his membership in the snowmobile clubs that benefited as a result. Eschler's actions appear to have violated the county Code of Ethics.

In addition, County Law Section 402 requires a County Clerk, prior to assuming his or her official duties, to take an oath of office consistent with the New York Public Officers Law⁵ and codified in the New York State Constitution.⁶ Pursuant to these laws, those who swear this oath are required to “faithfully discharge the duties” of their office and to obey the laws of New York State.⁷ Eschler's actions appear to have violated the oath he repeatedly took during his tenure as County Clerk.

⁴ County of Fulton, Local Law 1 of the Year 1993, which was enacted to comply with Article 18 of the New York State General Municipal Law.

⁵ New York Public Officers Law section 10.

⁶ New York State Constitution Article XIII section 1.

⁷ New York State Constitution Article I section 14.

FINDINGS AND RECOMMENDATIONS

The Inspector General's investigation determined that the Fulton County DMV Office permitted local snowmobile clubs to register their snowmobiles as government, contrary to DMV regulation, for at least 10 years, resulting in uncollected fees that totaled more than \$10,000. Fulton County DMV officials, including then County Clerk William Eschler and the then-DMV office supervisor, testified that the improper practice resulted from their mistaken belief that club-owned snowmobiles, which are used solely for trail grooming, and not for personal use, could be registered as government vehicles. However, even after he was advised that the practice violated DMV regulation, Eschler allowed it to continue for a year, during which 34 improper registrations were processed thereby allowing those registrants to avoid paying the required fees. Eschler's conduct appears to have violated both the Fulton County Code of Ethics and his oath of office.

The Inspector General recommended that the Department of Motor Vehicles ensure that the Fulton County DMV Office is properly processing snowmobile and other vehicle registrations. DMV also should develop a process for the regular review of government vehicle registrations to ensure compliance with all procedural requirements.

The Inspector General recommended that the Department of Motor Vehicles recover the registration and trail maintenance fees that were uncollected by the Fulton County DMV Office.

The Inspector General also forwarded these findings to the Fulton County Attorney.

CORRECTIVE ACTION TAKEN BY THE DEPARTMENT OF MOTOR VEHICLES IN RESPONSE TO THE INSPECTOR GENERAL'S FINDINGS AND RECOMMENDATIONS

In response to the Inspector General's recommendation that it develop a process for the review of government vehicle registrations, DMV advised that its new initiative for the certification of eligibility for official license plates addresses the concerns identified in this investigation. As part of the initiative, DMV issued in March 2014 a new form MV-653 for the registration of government vehicles that includes a definition of a governmental entity that excludes volunteer organizations such as snowmobile clubs.

DMV also advised that it has communicated to current Fulton County Clerk Ann Nickloy the obligation "to collect all required fees – for vehicles and snowmobiles." Further, DMV is undertaking recoupment of the uncollected fees.