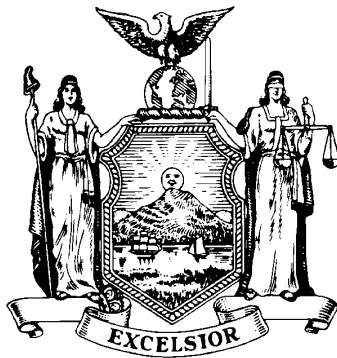


State of New York
Offices of the Inspector General



Investigation of Employee Misconduct at the New
York State Office of General Services

September 2017

Catherine Leahy Scott
Inspector General

STAFF FOR THIS INVESTIGATION AND REPORT

SPENCER FREEDMAN
Executive Deputy Inspector General

MICHELE HOST
Chief Counsel

PAULINE ROSS
Chief of Staff and Counsel

PHILIP FOGLIA
Special Deputy Inspector General
(Downstate Region)

BERNARD S. COSENZA
Deputy Inspector General for Investigations

JESSICA HAAZ
Investigative Attorney
(Downstate Region)

ROBERT R. WERNER
Chief Investigator (Downstate
Region)

NICHOLAS D'AMELIO
Deputy Chief Investigator (Downstate
Region)

WILLIAM GLEESON
Investigator (Downstate
Region)

AMY T. TRIDGELL
Director of Investigative Reporting
Special Counsel
(Downstate Region)

EXECUTIVE SUMMARY

The Inspector General received a complaint alleging that Willie Walker, a building superintendent for the New York State Office of General Services (OGS), may have violated the New York Public Officers Law by accepting “finder’s fees” for donations that he solicited for events held at the Adam Clayton Powell, Jr. State Office Building in Harlem (Powell Building). The Powell Building has an outdoor plaza that hosts community and cultural events, including the annual Summer Stage in Harlem (Summer Stage), a summer-long series of weekly musical performances. Although Summer Stage was not formally sponsored by OGS at the time, the complaint stated that Walker granted permission for Summer Stage to use the outdoor plaza and helped coordinate event logistics. Walker also became involved in event production, including the solicitation of sponsorship donations. The complaint further alleged that in 2009, Walker received a check for \$1,500 from Summer Stage’s financial manager, Harlem Memorial Community Development, Inc. (HMCD), as payment of a “finder’s fee” for soliciting a \$20,000 sponsorship donation.

The Inspector General found that over an approximately three-year period from 2009 through 2012, Walker solicited approximately \$80,000 in Summer Stage sponsorship donations and received \$6,750 in finder’s fees. Specifically, Walker received five checks representing finder’s fees from HMCD, a not-for-profit corporation that managed Summer Stage finances during the time period covered by this investigation. All five checks were made payable to Walker and included notations in the memorandum line, such as “Administrative Finders [*sic*] fee.” Walker also endorsed the back of each check. In sworn testimony to the Inspector General, Walker admitted that some, but not all, of the five checks were finder’s fee payments. For reasons discussed in this report, the Inspector General found that Walker’s testimony was not credible and concludes that all five checks that he received were improper finder’s fee payments.

The Inspector General also determined that Walker acted without authority and outside the scope of his building superintendent responsibilities in soliciting Summer Stage contributions. In addition, Walker utilized state resources, such as telephones, letterhead, and the work time of at least one other state employee to promote Summer Stage, even though OGS was not an official event sponsor at the time.

The investigation further revealed that while Walker was involved with Summer Stage, the condition of the Powell Building deteriorated and failed to meet OGS maintenance standards. Following a change in senior management in 2012, OGS conducted a complete assessment of the Powell Building and identified several maintenance deficiencies, such as unclean carpets, leaking windows, and poor air quality throughout the building. OGS also reviewed special events held at the Powell Building, and found that Walker and his staff failed to maintain adequate financial records, marketing materials, and other documentation from previous seasons of Summer Stage.

The Inspector General notes that OGS has taken measures to address the managerial problems at the Powell Building. Following the 2012 assessment, OGS brought in a team of engineers, architects, construction managers, and design personnel to restore the Powell Building to state standards. The OGS Special Events Office also assumed responsibility for special events at the Powell Building, including Summer Stage. Additionally, due to recent OGS designation of building superintendents as policymakers, Walker is now required to file an annual financial disclosure statement with the New York State Joint Commission on Public Ethics pursuant to New York Public Officers Law section 73-a.

Nonetheless, the Inspector General concludes that Walker violated several OGS policies regarding employee conflicts of interest, outside activities, use of state property and resources, and restrictions on receiving gifts and benefits. Walker may have also violated the conflict of interest and gift proscriptions of the Public Officers Law. The Inspector General is referring this matter to OGS to take whatever action it deems appropriate.

In addition, the Inspector General recommends that OGS provide training to all agency employees regarding the Public Officers Law and agency policies concerning conflicts of interest, limitations on outside activities, gift restrictions, and the appropriate use of state property. The Inspector General further recommends that OGS review the Facilities' Manager Manual and update it as necessary. The Inspector General is also referring this matter to the Joint Commission on Public Ethics, as well as to the New York State Department of Taxation and Finance for a review of Walker's reported income and taxes in the years that he received finder's fees, and any further action that the agency deems appropriate.

OGS has agreed to and is implementing the Inspector General's recommendation.

INTRODUCTION AND BACKGROUND

Office of General Services

The New York State Office of General Services (OGS) provides operations and support services for the New York State government, including management, energy saving operations, and maintenance services to state office buildings owned or managed by OGS. The OGS Real Property Management Group (Real Property Management) administers daily operations for 49 major office complexes and buildings. Real Property Management is divided into four separate regions: Empire State Plaza and Downtown Albany Region, Capital District Region, Downstate Region, and Harriman Campus and Upstate Region. The Downstate Region consists of six OGS-managed facilities, including the Adam Clayton Powell, Jr. State Office Building.

The Adam Clayton Powell, Jr. State Office Building

The Adam Clayton Powell, Jr. State Office Building (Powell Building)¹ is named in honor of the first African-American congressman from New York City. Located at 125th Street and Adam Clayton Powell, Jr. Boulevard, the 20-story high-rise is among the tallest buildings in Harlem. According to a February 2016 building census, the Powell Building is occupied by approximately 40 tenants with approximately 500 employees who work in various state and city government agencies, and in the offices of elected federal, state, and city officials.² On a given day, the Powell Building receives as many as 500 to 1,000 visitors.

The Powell Building is part of a tradition of community growth and urban development in Harlem and serves a central role within the community. The building hosts many public and private events and activities, including meetings, charitable events, health-screening clinics, and other community outreach. The building includes a 3,500 square-foot art gallery that displays rotating exhibits by local artists and school groups. In front of the building is an outside pedestrian plaza that hosts several community events throughout the year, including music concerts, a Halloween celebration (Harlemween), an annual holiday tree lighting ceremony, and a weekly farmers market.

¹ The Powell Building is referred to by many shortened versions of its name, such as the Powell Building, AC Powell Building, the ACP, and the Harlem State Office Building. In this report, the Inspector General refers to the building as the Powell Building.

² See OGS Adam Clayton Powell, Jr. State Office Building Census (February 10, 2016).

Role and Responsibilities of the Building Superintendent

Building superintendents are critical to the successful management and administration of the state facilities assigned to them. Building superintendents also supervise the fiscal condition of their assigned facilities, and are required to institute and maintain internal controls over operations to ensure that fiscal and personnel resources are properly utilized; codes, laws, rules and regulations are followed; and a safe, productive environment exists to conduct state business.³ Building superintendents also serve as OGS representatives to tenant agencies, private business representatives, and the general public. In his role as building superintendent, Walker is responsible for tracking the rental fees received from Powell Building tenants and ensuring that they are deposited into an OGS bank account. All building vendors are paid by OGS.

New York Public Officers Law and OGS Policies Governing Official Conduct

OGS employees are subject to several rules regarding their official conduct and outside activities under the New York Public Officers Law, as well as advisory opinions by the Joint Commission on Public Ethics (JCOPE) and its predecessor agencies.⁴

Public Officers Law: Code of Ethics

The Public Officers Law establishes certain limitations on the business and professional activities of state employees. The Code of Ethics set forth in Public Officers Law section 74 prohibits state employees from engaging in conduct where there is a conflict of interest between their official duties and their personal interests. Specifically, state employees may not 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.”⁵

Accordingly, the Code of Ethics establishes standards with which state employees are required to comply. Under Public Officers Law section 74(3)(d), state employees may not use

³ OGS, Division of Building Administration, Facility Managers’ Manual (2015). The Inspector General notes that Facility Managers’ Manual Item No. 2, titled, “Responsibilities of Facility Managers,” was last updated in June 2003.

⁴ The New York State Ethics Commission and the Commission on Public Integrity were the ethics commissions that preceded the formation of the New York State Joint Commission on Public Ethics (JCOPE). Specifically, in 2007, the Ethics Commission was replaced by the Commission on Public Integrity. In December 2011, the Commission on Public Integrity was disbanded and replaced by JCOPE.

⁵ N.Y. Pub. Off. Law § 74(2) (Consol. 2017).

their official position to secure unwarranted privileges for themselves or to misappropriate property and other state resources for private business or other compensated non-governmental purposes.⁶ Furthermore, Public Officers Law section 74(3)(h) forbids state employees from engaging in conduct that may raise suspicion among the public that they are engaged in actions that violate the public trust.⁷ In addition to disciplinary action and other legal remedies, state employees who knowingly and intentionally violate these restrictions “may be fined, suspended or removed from office or employment in the manner provided by law.”⁸

Public Officers Law: Gift Restrictions

In addition to the above proscriptions, Public Officers Law section 73(5) prohibits state employees from soliciting, accepting, or receiving “any gift having more than nominal value,⁹ whether in the form of money, service . . . or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.”¹⁰ The law also forbids any person from, directly or indirectly, offering or making “any such gift to a statewide elected official, or any state officer or employee, member of the legislature or legislative employee under such circumstances.”¹¹

Advisory opinions issued by the state’s ethics commissions have construed Public Officers Law section 73(5) to prohibit state employees from soliciting or receiving any gift from “disqualified sources.”¹² A disqualified source has been defined as “an individual who, on his or her own behalf or on behalf of a non-governmental entity, or non-governmental entity on its own behalf which: is regulated by, or regularly negotiates with, seeks to contract with or has contracts

⁶ N.Y. Pub. Off. Law § 74(3)(d). Before February 12, 2010, Public Officers Law section 74(3)(d) read as follows: “No officer or employee of a state agency . . . should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.”

⁷ N.Y. Pub. Off. Law § 74(3)(h).

⁸ N.Y. Pub. Off. Law § 74(4).

⁹ The Public Officers Law does not define “nominal value,” but the Commission on Public Integrity interpreted the term to mean a small amount that could not reasonably be interpreted to influence a state employee or public official. State of New York Commission on Public Integrity, Advisory Opinion No. 08-01 (Mar. 25, 2008). In 2014, JCOPE issued new regulations that define “nominal value” as “an item or service with a fair market value of fifteen dollars or less.” 19 N.Y.C.R.R. § 933.2(q) (2017).

¹⁰ N.Y. Pub. Off. Law § 73(5) (Consol. 2017).

¹¹ *Id.*

¹² New York State Ethics Commission, Advisory Opinion No. 94-16, at 5-6 (Aug. 10, 1994); State of New York Commission on Public Integrity, Advisory Opinion No. 08-01, at 16-17 (Mar. 25, 2008). In 2014, JCOPE issued regulations that replaced the term “disqualified source” with “interested source;” however, the definitions of both terms, and the restrictions on gifts to state employees, are substantially similar. 19 N.Y.C.R.R. § 933.2(l).

with the State agency with which the State . . . employee is employed or affiliated.”¹³ The ethics commissions have concluded that, with limited exceptions, gifts from disqualified sources can be inferred to be intended to influence or reward official action. Thus, as a general rule, state employees may not, directly or indirectly, solicit gifts from disqualified sources; disqualified sources are similarly prohibited from, directly or indirectly, offering or giving gifts to state employees.¹⁴

OGS Policies and Guidelines

Walker’s conduct was also governed by several OGS policies and guidelines, namely, the OGS Code of Conduct, which sets forth the agency’s official policies and standards regarding employee conduct and job-related activities; the Employee Handbook, which contains OGS administration policies, rules, regulations, and benefits that apply to all state employees; and the Policy Manual, which is a collection of official OGS policies applicable to all agency employees.

The Code of Conduct includes OGS’s Outside Employment or Activity and Conflicts of Interest policy, which requires that employees avoid the appearance that their private interests, financial or otherwise, may influence the conduct of their official duties.¹⁵ Accordingly, OGS employees must (1) inform their supervisors of any outside activities, paid or voluntary, that may conflict with their official duties, and (2) obtain prior approval from OGS of all outside employment or compensated activity from OGS. In addition, any outside employment or compensated activity cannot interfere with the normal performance of OGS duties or be performed during work hours.¹⁶ The Code of Conduct also includes a Gifts and Benefits policy, which prohibits employees from soliciting gifts of any value from anyone in connection with work-related activities. OGS employees are also required to report “any gifts, money, benefits,

¹³ New York State Ethics Commission, Advisory Opinion No. 94-16, at 5; State of New York Commission on Public Integrity, Advisory Opinion No. 08-01, at 16.

¹⁴ New York State Ethics Commission, Advisory Opinion No. 94-16, at 5; State of New York Commission on Public Integrity, Advisory Opinion No. 08-01, at 16.

¹⁵ OGS Code of Conduct, Outside Employment or Activity and Conflicts of Interest, at 7 (Nov. 2007). In April 2014, OGS issued a revised Code of Conduct that includes a Conflicts of Interest policy that is substantially similar to the Outside Employment or Activity and Conflicts of Interest policy issued in 2007.

¹⁶ Outside Employment or Activity and Conflicts of Interest, at 7. These requirements are also set forth in the OGS Policy Manual.

or gratuities that are offered or received to improperly influence you [the employee] to violate your work-related responsibilities. . . .”¹⁷

In addition, the Code of Conduct, Policy Manual, and Employee Handbook include policies limiting employee use of agency property and equipment to official state business.¹⁸ Under the Telephone and Cellular Use Policy, “state business” is defined as “any action or endeavor that is undertaken by an employee in the performance of his/her duties to accomplish the goals and objectives of the agency.”¹⁹ Although the procedure on Telephone Use “permits prudent use of the state telephones for the purpose of making local telephone calls for essential personal business,” such calls “should be limited in number, and restricted to brief messages rather than conversations.”²⁰

OGS provides the Code of Conduct and Employee Handbook to all new employees.²¹ Additionally, Walker, who became building superintendent in 2005, would have received an updated Code of Conduct in 2007, when OGS updated the Code of Conduct. Specifically, in November 2007, OGS distributed a memorandum to all employees advising that an updated Code of Conduct could be viewed electronically via the OGS intranet (through the H/R and/or Legal Services Pages or the agency’s Policy Manual on OGS Now). The memorandum further stated that hard copies of the updated code would be produced and distributed by supervisors to all agency employees. The memorandum instructed all employees to read the Code of Conduct, and noted that “[e]very one of us [OGS employees] must stand as an example of unquestioned honesty and integrity.”

Nonetheless, the Inspector General found that OGS’s training on ethics policies is limited. For example, OGS provides training on the Public Officers Law to OGS employees who are required to file annual financial disclosure forms. OGS also provides training on the agency Code of Conduct to any business unit upon request, such as when an audit by the Office

¹⁷ *Id.*

¹⁸ OGS Code of Conduct, Telephone and Cellular Use Policy, at 14; Policy Manual, Procedure on Telephone Use (October 10, 2007); and OGS Employee Handbook, Use of State Property/Personnel and Telephone Usage (August 1998), at 14 and 19.

¹⁹ OGS Code of Conduct, Telephone and Cellular Use Policy, at 14.

²⁰ OGS Policy Manual, Procedure on Telephone Use.

²¹ It should be noted that on the OGS Division of Human Resources Management Check List for New Employees for Walker, dated March 24, 2005, the box next to the Code of Conduct booklet is not checked, indicating that he may not have received it. However, Walker would have received the revised Code of Conduct in 2007, when it was distributed to all OGS employees.

of the State Comptroller identifies problems or issues within that unit. Absent a specific incident or requirement to file an annual disclosure form, however, some OGS employees may not receive training on the Code of Conduct. For example, at the time that Walker was accepting finder's fees, neither building superintendents, nor Real Property Management personnel, received training on the Code of Conduct's requirements. Moreover, although all new employees receive the Employee Handbook when they begin work, there is no training regarding its contents or requirements.

HISTORY OF SUMMER STAGE AND WALKER'S INVOLVEMENT WITH THE EVENT

Summer Stage in Harlem

One of the largest and most well-known events held at the Powell Building is Summer Stage in Harlem (Summer Stage),²² a free weekly summer concert series held on the building's outdoor plaza. Summer Stage was conceived in the late 1990s by the 125th Street Business Improvement District (125th Street BID), representatives from the New York City Housing Authority (NYCHA), and other community leaders. Primary funding for the event comes from private donations and sponsorship contributions. During the early years of Summer Stage, organizers collaborated to secure sponsors and donations, recruit musical acts and talent, and promote the event. On performance days, Summer Stage may draw nearly 1,000 visitors to the Powell Building plaza.

In 2004 or 2005, the Apollo Theater Foundation, Inc. (Apollo Theater Foundation), a not-for-profit corporation, began contributing significant financial and organizational support to Summer Stage. The event became a joint effort between the 125th Street BID, NYCHA, and the Apollo Theater Foundation, and production was transferred to the Apollo Theatre Foundation's office. The Apollo Theater Foundation brought a significant budget to Summer Stage in the form of sponsorship money from Coca-Cola, alleviating the need for other private sponsors and donations. The Apollo Theater Foundation's involvement also raised the profile of the concerts, thereby attracting more famous performers and musical acts. It was around this time that the

²² The name of the concert series has changed based on the producers and sponsors involved. Before OGS renamed the concert series to Summer Stage in Harlem, the event was called the Harlem Rhythm & Blues, the 125th Street BID Harlem Jazz Summer Stage, and Harlem Summer Stage.

event became known as Harlem Summer Stage. Other than providing the physical venue for the concerts, OGS had limited involvement with Summer Stage at this time.

In 2007 or 2008, the Apollo Theater Foundation and 125th Street BID stopped participating as the main sponsors of Summer Stage. The remaining Summer Stage organizers assumed control over event production, including the solicitation of contributions from corporate and community sponsors, booking musical acts for the weekly shows, and event promotion.

Walker Appointed Superintendent of the Powell Building and Assumed Control of Summer Stage

In March 2005, the then-commissioner of OGS appointed Willie Walker as building superintendent of the Powell Building. During this investigation, the Inspector General discovered that the resume in Walker's OGS employment file does not accurately represent his academic credentials. Walker's resume states that he obtained a Bachelor of Science degree from Miles College in Birmingham, Alabama, and a master of social work degree from Hunter College in New York City. Nonetheless, in his sworn interview with the Inspector General, Walker testified that the highest level degree he has received is a high school diploma. Walker explained that he attended Miles College for three-and-a-half years and took various courses at The City College of New York, but did not obtain a degree from either institution.

After his appointment as building superintendent, Walker took an immediate interest in special events at the Powell Building. When the 125th Street BID and the Apollo Theater Foundation exited Summer Stage in 2008, Walker assumed many management responsibilities, including the selection of a financial manager, solicitation of sponsorship donations, recruitment of musical acts, and other aspects of event production. In his interview, Walker acknowledged that his participation in Summer Stage was outside of his official duties as building superintendent: "When you look at [*sic*] job description, it's not a job description that I have as part of my job. Right. It was just something that we did extra for the community." Nonetheless, the Inspection General's investigation found no evidence that Walker sought or obtained approval for his outside activities from OGS.

Following the Apollo Theater Foundation's departure, Summer Stage needed a new organization to manage donations and pay its expenses for the 2008 season. Walker appointed a fiscal manager to oversee event production and finances. Walker selected arts and entertainment

producer Dillard Boone to produce the event and manage the finances through Boone's not-for-profit corporation, A'Vitar Foundation of Westchester. After only four concerts, Summer Stage stopped using Boone's services to manage Summer Stage's finances because several of the checks that Boone issued to vendors were returned for insufficient funds. Walker failed to report the problems with A'Vitar to OGS.

Prompted by Boone's mismanagement, Summer Stage hired Harlem Memorial Community Development, Inc. (HMCD) to audit the Summer Stage finances from the 2008 season managed by A'Vitar. HMCD is a not-for-profit corporation founded by Frederick Wilson in 2004 to support the development of a playground and community garden in Harlem. In his sworn interview with the Inspector General, Wilson testified that he was paid \$1 to audit and manage the Summer Stage finances. HMCD's audit determined that in 2008, A'Vitar had received a total of \$38,500 in Summer Stage contributions, of which approximately \$20,635 was used to pay event expenses. HMCD could not account for the remaining \$17,865 in donations received by A'Vitar. Notably, Walker failed report the missing funds to law enforcement officials.²³

After the audit, HMCD became Summer Stage's fiscal manager and handled all donations. The Inspector General learned that HMCD and Summer Stage did not have a formal written contract documenting the terms of their agreement. Wilson testified that HMCD was occasionally reimbursed or paid nominal amounts for expenses such as office supplies used for Summer Stage. Other than the initial \$1 payment, however, Wilson said that HMCD did not receive any additional compensation for auditing and managing Summer Stage's finances.

WALKER USED OGS RESOURCES TO SOLICIT SUMMER STAGE DONATIONS

In or about 2008, Walker assumed primary responsibility for soliciting Summer Stage donations from individuals and corporate sponsors. The investigation revealed that Walker devoted a portion of his work day at the Powell Building to event production and promotion. Walker also utilized OGS resources, such as telephones, letterhead, and the time of at least one other state employee, to promote the event, even though OGS was not a Summer Stage sponsor at the time.

²³By the time the Inspector General received these allegations, the statute of limitations on any potential criminal action had passed, precluding a referral by this office to a prosecutorial agency.

In his interview with the Inspector General, Walker explained that he obtained Summer Stage donations by contacting sponsors from prior seasons and asking them to match their previous contributions: “At the end of March, I would call them and say, ‘We got Summer Stage coming up. Right . . . will you do the same thing?’” Walker admitted that he contacted potential sponsors during the workday. Walker also claimed that his workday is not a standard eight-hour shift: “My workday is 24/7. . . . My job calls me almost every night for something and seven days a week. So, I don’t have a nine-to-five [job].”

Walker’s testimony was belied by that of his direct supervisor, Downstate Regional Manager Kevin Cahill, who manages the OGS facilities in the Downstate Region. In his interview with the Inspector General, Cahill testified that since he became Walker’s direct supervisor in 2008, Walker’s regular work hours have been 8:30 a.m. to 4:30 p.m. Cahill further explained that OGS also requested that Walker to be available 24 hours a day/seven days a week for emergencies, such as Hurricane Sandy or snow storms. According to Cahill, Walker is called in to address such issues approximately three-to-four times per year. Cahill said that Walker may also go to the facility after hours to supervise or monitor events, but he is not required to do so.

The investigation revealed that Walker also sent letters to potential sponsors requesting Summer Stage donations. Among the documents that the Inspector General obtained from HMCD was a letter, dated May 9, 2011, addressed to Affinity Health Care and requesting a \$20,000 donation. The letter is on OGS letterhead and signed by Walker, who is identified as “Executive Producer.” The letter states that sponsors will receive benefits including their company logo on all printed material, placement in the Summer Stage brochure, lead position on event banners, visibility to one million people, and a product display and sampling opportunity on the Powell Building plaza. The Inspector General notes this is the only Summer Stage sponsorship solicitation letter obtained during this investigation.²⁴ As discussed later in this

²⁴ The Inspector General also obtained two letters from the Holidays in Harlem Committee to potential sponsors, seeking donations for the December 2011 tree lighting ceremony on the Powell Building plaza. The letters are printed on Holidays in Harlem letterhead and signed by Walker, who is identified as “Chair.” According to Walker’s supervisor, Kevin Cahill, OGS knew that Walker was involved with events such as Harlemween and the annual tree lighting ceremony as part of his duties as building superintendent; however, these events are smaller and cost less to produce than Summer Stage. Cahill also said that he did not believe Walker was involved with soliciting donations for these events. None of the evidence obtained in this investigation indicates that Walker received finder’s fees for events other than Summer Stage.

report, the Inspector General discovered that Walker and OGS staff failed to maintain financial records, marketing materials, and advertising plans from previous seasons.

In his interview with the Inspector General, Walker confirmed that his signature is on the solicitation letter to Affinity Health Care, but he claimed that a former OGS employee prepared and sent the letter. Walker's testimony was contradicted by the former OGS employee, who told the Inspector General that her involvement with soliciting Summer Stage donations was limited to getting sponsors on the telephone at Walker's request.

The Inspector General also found that neither Walker nor OGS provided sponsors with an agreement setting forth the terms and conditions for their contributions. Instead, Walker testified that once he confirmed a donation, he directed the sponsor to send its contribution to HMCD, which accepted the funds and prepared an invoice reflecting the donation. HMCD then used the donations to pay event expenses, such as performers or sound system rental fees.

According to HMCD estimates, it cost approximately \$50,000 to produce ten weeks of Summer Stage concerts. Summer Stage typically raised less than \$40,000 per season under Walker's leadership. As a result, Summer Stage routinely cut production costs by shortening the season to eight weeks and eliminating a sound system for some concerts.

WALKER RECEIVED FINDER'S FEES FOR SOLICITING SUMMER STAGE DONATIONS

The Inspector General determined that over a three-year period from 2009 through 2012, Walker solicited approximately \$80,000 in Summer Stage donations and received five checks from HMCD totaling \$6,750 in finder's fees. Specifically, the following records obtained by the Inspector General show that Walker received one finder's fee check annually between 2009 and 2011, and received two finder's fee checks in 2012:

- On August 7, 2009, HMCD issued a \$1,500 check made payable to Walker that included a notation stating, "Administrative Finders [*sic*] fee." HMCD's corresponding invoice states, "Partial Administration Finders Fee [*sic*] (10%) Payment for recruitment of Affinity Health [Plan] \$20,000 sponsorship payment to the Harlem Summer Stage."
- On June 2, 2010, HMCD issued a \$2,000 check made payable to Walker that included a notation stating, "Administration Cost Fee 2010." HMCD's corresponding

invoice states, “Partial Administration Finders [*sic*] Fee (10%) for the recruitment of Affinity Health [Plan] \$20,000 sponsorship payment to the Harlem Summer Stage 2010 Event.”

- On June 14, 2011, HMCD issued a \$1,500 check made payable to Walker that included a notation stating, “Admin [*sic*] Consultant Fee.” HMCD’s corresponding invoice states, “Partial Administration Finders [*sic*] Fee (10%) for the recruitment Affinity Health [Plan] \$15,000 sponsorship payment to the Harlem Summer Stage.”
- On August 11, 2012, HMCD issued a \$1,000 check made payable to Walker that included a notation stating, “Administrative Fee.” HMCD’s corresponding invoice states “Partial Administration Finders [*sic*] Fee (10%) Payment” for the recruitment of three sponsorship donations to Harlem Summer Stage 2012: (1) \$5,000 from Metro PCS; (2) \$2,500 from Touro College; and (3) \$2,500 from the Harlem Community Development Corporation.
- On September 18, 2012, HMCD issued a \$750 check made payable to Walker that included a notation stating, “Affinity Fund – 2012 HSS Admin Fee.” HMCD’s corresponding invoice states, “Partial Administration Finders [*sic*] Fee (5%) Payment for Affinity Health Plan recruitment of sponsorship payment to the Harlem Summer Stage 2012 Event.”

In his interview with the Inspector General, Wilson testified that all of the HMCD checks identified above were “finder’s fee” payments that Walker received for recruiting Summer Stage sponsors. Walker and Wilson provided disparate testimony regarding the origin of the finder’s fees. According to Wilson, in the summer of 2009, Walker said he wanted 10 percent of all sponsorship donations that he secured for Summer Stage. Walker testified that the finder’s fee was proposed by Wilson, who suggested a fee of 10 to 15 percent for each sponsor that he secured.

The finder’s fee arrangement was not memorialized in any writing or written agreement. According to Wilson, he created the HMCD invoice for the 2009 finder’s fee at Walker’s request, but told Walker that he needed to sign the invoice and pay income taxes. The Inspector General found that the 2009 invoice was the only finder’s fee invoice signed by Walker. Wilson testified that Walker did not always sign the invoices for the finder’s fee payments, in part,

because Wilson was often preoccupied with other responsibilities when he gave the checks to Walker.

Wilson's testimony is consistent with other documents obtained by the Inspector General during this investigation. For example, the Inspector General obtained an Internal Revenue Service Request for Taxpayer Identification Number and Certification (W-9 form), which businesses use to record information from vendors and persons hired as independent contractors. The W-9 form is signed by Walker and dated August 6, 2009—the day before HMCD issued the August 7, 2009, check for \$1,500 to Walker. When questioned by the Inspector General, Walker denied that he completed the W-9 form to reflect his earnings from Summer Stage. Instead, Walker claimed that the W-9 form was from stipends that he earned as a member of a research board of directors at Mount Sinai Hospital, on which he served from approximately 2007 or 2008 until 2013. Walker could not recall how much money he received in this capacity. Neither OGS nor HMCD provided additional W-9 forms for the subsequent years in which Walker received finder's fees.

HMCD tax records from 2009 also reflect the payment of a finder's fee to Walker. Specifically, HMCD's Internal Revenue Service Form 990, Return of Organization Exempt from Income Tax for 2009, includes a \$1,500 payment to Walker as an "Independent Contractor." It should be noted that HMCD tax filings from 2010 through 2012 also included payments to "Independent Contractors," but did not specifically identify Walker.

Walker Admitted that He Received Finder's Fees

In his interview with the Inspector General, Walker provided contradictory testimony as to whether he had received finder's fee payments from HMCD for Summer Stage donations that he solicited. Walker initially denied he had received finder's fees, stating, "There was never any finder's fee for anything we did." Walker claimed that he had received checks from HMCD amounting "to a few hundred dollars" as reimbursement for out-of-pocket expenses, but the checks did not exceed \$500. The Inspector General's review of HMCD's invoices and Walker's personal bank accounts identified only one instance when HMCD reimbursed Walker for expenses that he paid with personal funds. On November 17, 2008, HMCD issued a \$3,000 check to reimburse Walker for checks that he wrote to pay for the rental of sound system

equipment. This \$3,000 check is not included in the total calculation of finder's fee payments received by Walker.

In response to Walker's initial testimony, the Inspector General presented Walker with the August 7, 2009, check for \$1,500. Walker denied that the check was a finder's fee payment. The Inspector General then showed Walker the corresponding HMCD invoice, dated August 7, 2009, which states, "Partial Administration Finders [*sic*] Fee (10%) Payment for recruitment of Affinity Health \$20,000 sponsorship payment to the Harlem Summer Stage." The invoice includes Walker's signature and social security number. After reviewing the invoice, Walker conceded, "I see now that I got a finder's fee. Yes."

Nonetheless, Walker testified that he did not recall receiving other HMCD checks he was shown during his interview. For example, when shown the June 2, 2010, check for \$2,000, Walker claimed that he did not remember receiving the check, but that he recognized his signature on the back. Walker similarly stated that he did not recognize the June 14, 2011, check for \$1,500. In addition, Walker contended that the signature on the back of some of the checks was not his. For example, when presented with the August 11, 2012, check for \$1,000, Walker said that the signature "looks like mine, but it's not mine." Walker similarly stated that the signature on the back of the September 18, 2012, check for \$750 was not his. Instead, Walker claimed that he had occasionally received checks that were cashed by a former OGS employee, who used the funds to pay Summer Stage performers and other event-related expenses. In her testimony to the Inspector General, the former OGS employee denied she had received checks from Walker that she cashed and used to pay Summer Stage expenses.

When the Inspector General presented Walker with bank records subpoenaed from his personal checking account, he finally admitted that some, but not all, of the checks he received were finder's fee payments. Specifically, Walker's bank records show that he deposited the following three HMCD checks into his personal checking account: (1) the June 2, 2010, check for \$2,000; (2) the June 14, 2011, check for \$1,500; and (3) the September 8, 2012, check for \$750. After reviewing the bank statements with Walker, the Inspector General asked whether he wanted to clarify his previous testimony. Walker finally conceded that he had received finder's fees for soliciting Summer Stage donations, stating, "I did accept [*sic*] finder's fee. I said 'no' in the beginning. I was afraid of why you was [*sic*] asking that. I didn't know why you was [*sic*]

asking that. Alright?” Walker said that he believed he earned the fees by soliciting sponsors for Summer Stage: “It’s stuff that I felt I worked for to get sponsors in . . . I couldn’t get them in any other way . . . I worked to get sponsors for Summer Stage—to have a Summer Stage. If there’s a finder’s fee for what I got and what I received, that’s a finder’s fee for what I received.”

Although Walker could not recall the number or amount of the finder’s fees he received, he eventually conceded that any HMCD check deposited into his personal account (except the \$3,000 reimbursement check noted above) was a finder’s fee. Walker also claimed he did not know that accepting a finder’s fee was improper, stating, “Nobody ever said that it was wrong to get a finder’s fee.” The Inspector General found that his testimony on these points was not credible and concludes all five HMCD checks received by Walker were finder’s fee payments. The Inspector General also notes that Walker never informed OGS about the finder’s fees that he received.

OGS Failed to Adequately Supervise Walker

The Inspector General determined that supervisory failures at OGS enabled Walker to assume control over Summer Stage production and sponsorship donations. The investigation also revealed that while Walker focused on special events, the condition and maintenance of the Powell Building deteriorated to the point where it failed to meet OGS standards.

The Inspector General interviewed former Deputy Commissioner for Real Property Management and Development William Hill, who oversaw all buildings in the state portfolio, and therefore indirectly supervised Walker during the time period covered by this investigation.²⁵ Hill testified that he knew Walker oversaw Summer Stage, but he was not aware of specific details. Hill also said that he knew Walker secured Summer Stage sponsors, but he did not know Walker had used OGS letterhead to solicit sponsors or had received finder’s fees for the donations that he secured.

The Inspector General also interviewed Walker’s direct supervisor, Downstate Regional Manager Keven Cahill, who testified that he was unaware of Walker’s extensive involvement

²⁵ Hill was the deputy commissioner for Real Property Management and Development from April 2007 until May 2011, when he became the director of Real Property Management. Hill remained in this position until the spring of 2012, when he was replaced by Eric McShane. When OGS appointed McShane, Hill became the deputy director of Real Property Management until February 2013, when Hill became the assistant commissioner of Minority and Women-Owned Business Enterprise and Community Relations at OGS.

with Summer Stage production and finances: “I didn’t believe that [Summer Stage] was part of his [Walker’s] responsibilities. I was under the impression at the time that his responsibilities were basically the same as any other building manager, which are basically related to the facility and the tenants, and not so much these outside events.” Cahill similarly stated that he did not know Walker had solicited sponsorship donations or received finder’s fees.

Nonetheless, Cahill testified that he discovered there were management problems at the Powell Building when he became downstate regional manager in 2008. Cahill said that during the time period covered by this investigation, he met monthly with his supervisors—Deputy Director of Facility Operations Richard Daley and Director of Facilities Operations Martin Gilroy—to discuss facilities in the Downstate Region.²⁶ Cahill said their meetings regularly began with a discussion of the Powell Building “because it was always the most problematic [facility].” During these meetings, Cahill emphasized the under and mismanagement of the Powell Building – *i.e.* that preventive maintenance and rehabilitation and improvement projects were not being completed and building service contracts were not properly administered or monitored. According to Cahill, Gilroy and Daley advised that “it is what it is” and to “do the best you can with what you have.”

Cahill testified that he also raised management issues with former Deputy Commissioner Hill, who became his direct supervisor in April 2012, but Hill did not believe the Powell Building was mismanaged or under-managed. When asked why he did not initiate corrective actions on his own, Cahill responded, “Probably, in retrospect, because the people above me—Martin Gilroy, Richard Daley, William Hill—right up the ladder, knew exactly what I knew, and they were giving me no direction, basically, to change it.”

MANAGEMENT CHANGES AND BUILDING REMEDIATION

In April 2012, OGS Commissioner RoAnn Destito appointed Eric McShane as the executive director of Real Property Management. Approximately one year later, McShane was

²⁶ From May or June 2008 to April 2012, Cahill reported to Deputy Director of Facility Operations Richard Daley, who left OGS in 2012 and was not interviewed as part of this investigation. Daily reported to Director of Facility Operations Martin Gilroy, who retired in or around April 2012 after an investigation by the Inspector General’s Office revealed systemic deficiencies in the management and supervision of the Sheridan Avenue Steam Plant operated by OGS. Gilroy was not interviewed for this investigation. *See* State of New York Office of the Inspector General, Investigation of Supervision at the Office of General Services’ Sheridan Avenue Steam Plant (August 2013); available at <https://ig.ny.gov/pdfs/JacksonOGSAug2013.pdf>.

promoted to deputy commissioner of Real Property Management.²⁷ In this capacity, McShane oversees 10 business units, including the Building Administration Unit, which is responsible for the maintenance and operation of OGS facilities, including 57 state office buildings and 127 ancillary buildings from Buffalo to Long Island. McShane also has a number of direct reports, including all of the regional directors.

Facility Assessment & Remediation

Shortly after his appointment in 2012, McShane initiated a comprehensive review of all OGS facilities in his portfolio, including a physical inspection of each building and an evaluation of staffing levels, organizational structure, maintenance plans, service contracts, and building security. During his interview with the Inspector General, McShane testified that as part of this review, he conducted a walkthrough of the Powell Building and discovered the building was “really run down” and “not maintained at all.” After the walkthrough, McShane met with Walker to discuss the condition of the building. McShane testified that he quickly realized Walker “didn’t have basic knowledge or understanding as to what his roles and responsibilities were as a superintendent.”

On May 23, 2012, a facility assessment team from the OGS Real Property Management and Facilities Group inspected the Powell Building’s infrastructure and administration and prepared a written report titled, “OGS Facility Assessment & Remediation Report.” As part of the assessment, Hill and Cahill met with Walker to discuss his managerial responsibilities. The two-hour interview revealed a number of “managerial shortcomings” that had “contributed to the . . . below average condition of the building.”²⁸ McShane and Cahill determined that Walker was not aware of or did not perform several of the building superintendent’s main responsibilities, including the following:

- Walker delegated day-to-day operations and responsibilities to staff, mainly the building manager and maintenance supervisor;
- Walker was unable to provide basic facts about his staff, such as their responsibilities or work hours, and there were no regularly scheduled staff meetings;

²⁷ In October 2016, McShane became Deputy Commissioner, Real Estate and Property Management Services.

²⁸ OGS Facility Assessment & Remediation Report of the Adam Clayton Powell, Jr. State Office Building, at 3 (June 4, 2012).

- Walker was unfamiliar with service contract requirements, such as daily security logs and custodial inspections;
- Walker did not know how to verify contractor hours worked versus hours invoiced; and
- Walker did not know the overall maintenance schedule for the facility.²⁹

The report concluded that the Powell Building did not meet OGS standards and identified multiple maintenance deficiencies, including the following:³⁰

- Approximately 50 percent of the carpet in the building needed cleaning, and approximately 10 percent required replacement;
- Approximately 50 percent of the tenant space and stairwell walls required patching and painting;
- Windows throughout the facility had air and/or water leaks and required cleaning; and
- Air quality was poor, stagnant, and had an odor.

Based on his personal observations and the report’s findings, McShane told the Inspector General that he concluded the Powell Building had been “neglected . . . both from a financial perspective, in terms of resources that were put into it, and from a management perspective in terms of addressing some of the issues.”

Following the assessment, McShane brought in a team of professionals, including engineers, architects, construction managers, and design personnel to restore the Powell Building to OGS standards. With their input, McShane prepared a remediation plan that identified deficiencies and recommended actions in four primary areas: physical condition, contractual services, management practices, and capital investment. The remediation plan determined that “all substandard conditions [at the Powell Building] could be rectified with managing assistance from the team and without any substantial impact to the existing operating budget.”³¹ None of the conditions identified in the remediation plan were considered a “life safety measure.”³²

²⁹ *Id.* at 5-6.

³⁰ *Id.* at 6-7.

³¹ *Id.* at 3.

³² *Id.*

Increased Oversight at the Powell Building

To implement the remediation plan and provide better supervision at the Powell Building, McShane permanently relocated Cahill's office from the Shirley A. Chisholm State Office Building in Brooklyn to an office adjacent to Walker's at the Powell Building. Cahill now works in the Powell Building at least three to four days each week. He interacts regularly with Walker to obtain status updates on various projects and to ensure that building staff members are performing their duties. Cahill and Walker also conduct building walkthroughs to ensure that all projects and repairs are addressed in a timely manner.

Since many problems at the Powell Building were present under Cahill's supervision, the Inspector General asked McShane why he tasked Cahill with implementing the remediation plan. McShane said that he believes Cahill is "very competent, without a doubt" and not responsible for the mismanagement of the Powell Building: "I don't necessarily believe that he was individually responsible for dropping the ball. I believe that there were other influences that prevented him from doing his job the way he should. And, that's clear now . . . because after we went down . . . after I came in . . . we began running the organization differently." McShane explained that although Cahill was responsible for the Powell Building, his efforts to address the mismanagement of the Powell Building met with resistance from Walker, Gilroy, and Daley.

According to Cahill, it took approximately three months to implement the remediation plan and another six-to-nine months to effectuate and complete the initiatives contained therein. By August 2012, staff had addressed many of the physical deficiencies in the building's common areas, lobby, garage, and miscellaneous areas, such as storage and mechanical rooms. Cahill and building management also addressed concerns with contractual service providers, such as custodial services, elevator maintenance, and security guards. As a result, cleaning standards and elevator response times improved, and security guard staffing was reduced by approximately 20 percent.³³ After implementing these immediate actions, Cahill focused on long-term initiatives, such as replacement of the windows and façade panel repair.

The Inspector General found that the remediation efforts resulted in positive changes at the Powell Building, as shown by the completion of the building's Preventative Maintenance and

³³ OGS Facility Remediation Progress Report for the Adam Clayton Powell, Jr. State Office Building, at 2-4 (August 2012).

Rehabilitation and Improvement Projects (Maintenance and Rehabilitation Projects).³⁴ Each year, the OGS building manager identifies approximately 15 Maintenance and Rehabilitation Projects and requests funding to complete them. Since McShane's arrival at OGS in 2012, the completion rate for combined Maintenance and Rehabilitation Projects at the Powell Building have increased significantly. For example, in fiscal year 2010-2011, building staff completed approximately 47 percent of the combined projects. By fiscal year 2014-2015, the completion rate had increased to 80 percent of the combined Maintenance and Rehabilitation Projects, and increased slightly to 83 percent in fiscal year 2015-2016.

OGS Assumed Responsibility for Special Events at the Powell Building

In addition to the improved maintenance and oversight discussed above, OGS also assumed responsibility for all special events held at the Powell Building. After the 2012 Summer Stage season, in order to remedy the mismanagement at the Powell Building and implement consistent oversight of events at all OGS facilities, the OGS Special Events Office began coordinating all events held at the Powell Building. The Special Events Office is located in Albany and led by the Director of Special Events, Heather Flynn. In an interview with the Inspector General's Office, Flynn testified that she had little, if any, information about how the event was produced in prior years, in part, because Powell Building staff, namely, Walker and a former OGS employee (discussed above), failed to maintain financial records, marketing materials, and advertising plans from previous seasons. In his interview with the Inspector General, McShane confirmed that Walker had failed to maintain adequate fiscal records for Summer Stage and other Powell Building special events.

After assuming responsibility for special events, the Special Events Office implemented a number of changes to create more formality, transparency, and oversight for Summer Stage, which is now a state-sponsored event. Walker and other Powell Building staff members remain involved by recruiting talent and providing logistical support. While Walker and his staff no longer handle Summer Stage finances, they assist by managing relationships with local sponsors.

³⁴ Examples of preventative maintenance projects include the testing, inspections, and maintenance of sprinkler systems; water treatment for HVAC equipment; and replacement of old or deteriorating plumbing fixtures and valves. Examples of rehabilitation and improvement projects include the replacement of old or deteriorating ceiling tiles; upgrades to security surveillance equipment; lighting retrofit to more energy efficient ballast bulbs; and painting.

If Walker finds a sponsor for the event, he directs the sponsor to the Special Events Office, which handles the donation process and money.

Since OGS assumed control of Summer Stage, the agency has consistently solicited donations to fully fund annual expenses and roll over funds to the next year. For example, in 2014, OGS raised \$62,999 from sponsors to cover approximately \$54,745 in event expenses; and in 2015, OGS raised \$73,000 from sponsors to cover approximately \$67,938 in event expenses. In 2016, OGS raised \$65,500 from sponsors to cover approximately \$45,601 in event expenses.

FINDINGS AND RECOMMENDATIONS

The Inspector General received a complaint alleging that Willie Walker, a building superintendent for OGS, may have violated the New York Public Officers Law by accepting “finder’s fees” for donations that he solicited for events held at the Adam Clayton Powell, Jr. State Office Building in Harlem.

The Inspector General determined that from 2009 through 2012, Walker improperly solicited sponsorship donations for Summer Stage, a series of weekly concerts held on the Powell Building’s outdoor plaza, and received \$6,750 in finder’s fee payments from Summer Stage’s financial manager, HMCD. In testimony to the Inspector General, Walker admitted that he acted outside the scope of his job responsibilities in soliciting Summer Stage contributions. In addition, Walker admitted that he utilized state resources, such as telephones, letterhead, and the work time of at least one other state employee to promote Summer Stage, even though OGS was not an official event sponsor at the time. The investigation further revealed that while Walker was involved with Summer Stage, the condition of the Powell Building deteriorated to the point where it failed to meet OGS maintenance standards.

The Inspector General concludes that Walker violated multiple OGS policies. The OGS Code of Conduct requires employees to inform their supervisors of any outside activities that may conflict with their official duties. The Code of Conduct further mandates that any outside employment or compensated activity cannot occur during work hours. Moreover, OGS policies limit the use of agency property and equipment to official state business. Walker’s solicitation of sponsorship donations—during the workday and using OGS property—and his receipt of finder’s fees violated these proscriptions. Walker may have also violated the OGS Gifts and

Benefits policy, which prohibits employees from accepting gifts of any value in connection with work-related activities. The Inspector General recommends that OGS take appropriate disciplinary action against Walker for violating agency policies.

In addition, Walker's involvement with Summer Stage, solicitation of sponsorship donations, and receipt of finder's fees may have violated several provisions of the New York Public Officers Law. Under Public Officers Law section 74(2), Walker was prohibited from having a financial interest or engaging in any business, transaction, or professional activity that substantially conflicts with the proper discharge of his public duties. As noted above, Walker's involvement in Summer Stage corresponded with, and likely contributed, to the below-average conditions identified during the 2012 assessment of the Powell Building. Walker's receipt of finder's fees and use of OGS resources also may have violated section 74(3)(d), which prohibits state employees from using their official positions for personal benefit. Walker's actions also may have violated section 74(3)(h), which prohibits state employees from engaging in conduct that may create an appearance that they are violating the public trust. Furthermore, Walker's receipt of finder's fees may have violated Public Officers Law section 73(5), which prohibits state employees from accepting gifts of more than nominal value. The Inspector General has referred these findings to the Joint Commission on Public Ethics for whatever action it deems appropriate. In addition, the Inspector General is referring this matter to the New York State Department of Taxation and Finance for a review of Walker's reported income and taxes in the years that he received finder's fees, and any further action that the agency deems appropriate.

The Inspector General notes that OGS has taken substantial measures to address the managerial shortcomings identified in this report. Following the building assessment in 2012, OGS brought in a team of professionals to restore the Powell Building to state standards. The OGS Special Events Office also assumed responsibility for special events at the Powell Building, including Summer Stage. Additionally, OGS recently designated building superintendent as a "policy-making" position under Public Officers Law section 73-a, meaning Walker is now required to file an annual financial disclosure statement with the Joint Commission on Public Ethics. Nonetheless, the Inspector General recommends that OGS provide training to all agency employees regarding the Public Officers Law and agency policies concerning conflicts of interest, limitations on outside activities, gift restrictions, and the appropriate use of state

property. The Inspector General further recommends that OGS review the Facilities' Manager Manual and update as necessary.

The Inspector General recommends that OGS review the findings in this report and take whatever personnel action against Walker it deems appropriate.

The Inspector General also is referring this matter to the Joint Commission on Public Ethics and the New York State Department of Taxation and Finance.

In response to the investigation, OGS has accepted and is implementing each of the Inspector General's recommendations.