



STATE OF NEW YORK
OFFICE OF THE INSPECTOR GENERAL
EMPIRE STATE PLAZA
AGENCY BLDG. 2, 16TH FLOOR
ALBANY, NEW YORK 12223
(518) 474-1010

Catherine Leahy Scott
INSPECTOR GENERAL

61 BROADWAY, SUITE 2100
NEW YORK, NEW YORK 10006
(212) 635-3150

65 COURT STREET, 5TH FLOOR
BUFFALO, NEW YORK 14202
(716) 847-7118

August 2, 2013

Mr. James Cox
Medicaid Inspector General
800 North Pearl Street
Menands, New York 12204

Re: NYSIG #: 0128-165-2011

Dear Inspector General Cox:

On June 28, 2011, my office commenced an investigation into allegations that Office of the Medicaid Inspector General (OMIG) employee [REDACTED] a Management Specialist 3 in OMIG's White Plains office, misused state resources in order to manage his personal real estate investments and for tax preparation of his personal clients by using his state-assigned computer, e-mail system, fax machine and telephone. This letter advises you of the findings of this investigation.

During the course of the investigation [REDACTED] employment file for requests for outside employment were reviewed, which revealed that [REDACTED] requested and received permission to conduct outside employment in accordance with OMIG policy. Specifically, [REDACTED] employment file contained one denial for outside employment in 1991¹ and approvals from 2008 through 2011.² Initially, from 2008 through 2011, [REDACTED] requested permission from OMIG for the outside employment of owning and managing his rental properties; however, he did not request permission for this outside employment in 2012. When questioned as to why he did not do so for 2012 as he had done in prior years, [REDACTED] asserted that he did not consider the management of his personal property outside employment because he does not spend time in Buffalo.³

¹ Within [REDACTED] employment file, [REDACTED] requested permission to work as a residential counselor at a Planned Community Living Facility, but was denied because performance of his duties with this entity could create a potential conflict of interest.

² In 2008, [REDACTED] applied and was approved for "Income tax preparation and Property Rental." In 2009, [REDACTED] applied and was approved for "real estate rental." In 2010 and 2011, [REDACTED] applied and was approved for "real estate personal properties."

³ Inspector General investigators requested and reviewed [REDACTED] 2010 and 2011 JCOPE filings to determine if the forms were completed and properly filed. While [REDACTED] noted his five rental properties

Notwithstanding, for the years 2008 through 2011, ██████ submitted forms to his supervisors confirming his awareness that state resources (facilities, personnel, equipment, etc.) may not be used for any outside business. Specifically, the forms state, "You may not use state resources for this activity nor perform any of this work on state time."

██████ OMIG e-mail account from the agency's server and his assigned computer hard drive were also obtained. An e-mail analysis revealed e-mails that were personal in nature, including e-mails to tax clients, and information indicating ██████ used office resources to manage five free standing two-family rental properties that he owns in Buffalo.⁴ In addition, on the hard drive of his state computer, tax preparation information for approximately 10 different individuals for the year 2006 were found. Of note, no outside employment form was filed by ██████ in 2006. When queried about this omission, ██████ asserted that he gives tax advice mainly to friends and family. Regardless of whether ██████ deemed his activities worthy of seeking permission from OMIG, state resources may not be used for any outside business activities.

Additionally, ██████ state telephone records and personal cell phone records were reviewed to determine the amount of time spent during work hours on the phone managing his personal property. For the period January 1, 2009, to July 21, 2011, the investigation found calls relating to his real estate business conducted during working hours, but they were limited in frequency and duration. Of note, however, that many of the calls were placed from the state telephone rather than his personal cell phone. In addition, in 2010, ██████ received a number of faxes regarding his personal properties on the state fax machine.

Based on these findings, it is recommended that OMIG review ██████ conduct and take appropriate action.

Of note, I recently developed and disseminated to all agencies under my jurisdiction uniform guidelines relating to outside activity by state employees. The guidelines include the following provisions:

- Every agency must have a policy on outside activity, which is defined as an outside activity, secondary employment, volunteer work, etc., outside of regular employment.
- The agency must distribute the policy annually and require acknowledgment by employees.
- Employees must annually file a request to engage in outside activity. Management approval/denial of the request is to be documented.

under the section of the form devoted to "Real Estate," he did not note the management of those properties under the Outside Employment section of the forms. The Inspector General has informed JCOPE of ██████ omission.

⁴ Inspector General investigators also reviewed ██████ state vehicle usage and found no trips to Buffalo.

- Supervisors are to be trained on that policy.
- Supervisors should monitor/check outside activity to ensure there is no interference with State employment.

OMIG should review its policy on outside employment/activity and implement revisions necessary to ensure conformity with these uniform guidelines. It is further recommended that OMIG require its staff annually file signed acknowledgments of their receipt, review and understanding of these policies.

Within 45 days of this letter, please provide information concerning OMIG's review and actions, including copies of any revised policies. If you require any further information about our investigation, please contact me or Deputy Inspector Audrey Maiello Cunningham at (518) 474-1010.

Sincerely,



Catherine Leahy Scott
Inspector General