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May 18, 2015

Robert Megna
Executive Director
New York State Thruway Authority
200 Southern Boulevard
P.O. Box 189
Albany, New York 12201-0189

RE: NYSIG 0078-041-2011

Dear Mr. Megna:

My office received a complaint that former Thruway Authority [REDACTED] engaged in misconduct to improperly advance her career. I am writing to advise you of the results of our investigation of this matter.

[REDACTED] began her state service in the Executive Chamber in 1995 as a [REDACTED]. [REDACTED] was hired by the Thruway Authority on June 1, 2000, as a [REDACTED], but was assigned the duties of the Director of Personnel. Notably, [REDACTED] did not serve in any civil service personnel title before assuming these duties.

On June 29, 2010, [REDACTED] was promoted to the title of Thruway Authority [REDACTED], the duties of which she had been performing for 10 years. At the time of her promotion, three other Thruway Authority employees were also eligible for the promotion: [REDACTED]

According to Civil Service Law §61, a competitive promotional list appointment may be made from one of the three persons with the highest score on the list. The Thruway Authority could not make a list appointment, however, because the Department of Civil Service had not held a promotional examination for the position of Director of Personnel in decades, and no list existed. Without a list, the Thruway Authority could only appoint

██████████ to the position by utilizing Civil Service Law §52.6, pursuant to which agencies may appoint a person to a competitive position by non-competitive promotion if three or fewer employees are eligible for the appointment. But, as previously stated, the promotion field at the Thruway Authority contained four potential candidates.

██████████ realized that her only recourse was to persuade one of the other candidates to decline the promotional opportunity. ██████████ told my investigators that she was a friend of ██████████ one of the three other employees eligible for the ██████████ promotion. ██████████ stated that while she and ██████████ were together on a work break, she asked ██████████ “Would you ever consider it? And if not, you know, this is not something, you know, I don’t want to jeopardize you in any way, don’t worry about it, I don’t care if you do or not. I just, you never know unless you ask.” According to ██████████ ██████████ responded, “Yeah, I don’t have a problem with it” and submitted a declination. ██████████ stated that ██████████ “didn’t flinch at it . . . because she figured that I was doing the job.” In fact, both ██████████ and ██████████ confirmed that ██████████ was well aware that ██████████ was her boss and would continue to act as her supervisor even if ██████████ did not receive the official promotion to ██████████

██████████ testified to my investigators that she declined the position because ██████████ asked her to do so. According to ██████████ ██████████ asked her, “Would you be willing to decline?” ██████████ admitted that she would have liked the job but knew that the Thruway Authority wanted to promote ██████████ and considered it a foregone conclusion, so she declined the promotion. ██████████ told my office, “I knew there wasn’t anything there for me.”

██████████ told my investigators that she was unaware of any civil service rules against requesting declinations and professed ignorance of any law against interfering with employees’ civil service rights. ██████████ conceded, however, that supervisors should not ask subordinates to waive their civil service rights, including the right to be considered for a promotion.

██████████ misuse of her authority for her personal benefit continued after her appointment to the ██████████ title. In March 2011, ██████████ directed her subordinate, ██████████, to make an entry in the Thruway Authority computer system indicating that she had passed probation in the ██████████ title approximately three months earlier than her scheduled completion date of June 27, 2011. ██████████ who had only been working in the office a short time, executed ██████████ order while she stood over him at his computer.

According to Thruway Authority and Department of Civil Service policy and procedure, an employee may be passed on probation early only if a probation report is signed by both a rater and a reviewer. ██████████ testified that she told ██████████ that her rater, Director of Administration ██████████, had passed her on probation and, therefore, he could complete the transaction. ██████████ did not mention that her reviewer, then Executive Director ██████████, had not signed the report. ██████████ testified that

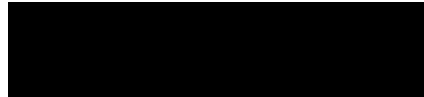
he refused to sign [REDACTED] probation report because he knew that there was an open complaint against her. [REDACTED] admitted that she knew that a fully signed probationary report was required before her office could process the report. When asked why there should be an exception for her, [REDACTED] responded, "There shouldn't. I was wrong." The Thruway Authority subsequently revoked [REDACTED] probationary appointment as Director of Personnel.

Based on this investigation, I recommend that the Thruway Authority ensure that all promotions are reviewed and authorized by the [REDACTED] before such appointments are made. Individuals who decline positions on a promotional civil service list should submit a statement, in writing, advising their reasons for doing so. Thruway Authority Personnel Office staff should review a sample of declinations to ensure that the stated reasons are, in fact, the basis for the declination. I am recommending that similar measures be instituted by the Department of Civil Service's Staffing Services.

In addition, I recommend that [REDACTED] be disciplined for her conduct outlined in this letter. On January 23, 2014, my office provided materials to your labor relations staff to commence discipline against her. To date, we have not been advised of any disciplinary action.

Within 45 days, please provide information concerning your review and actions, including copies of any revised policies. If you require further information about our investigation, please contact Deputy Inspector General Audrey Maiello Cunningham at 518-474-1010.

Sincerely,

A large black rectangular redaction box covering the signature of Catherine Leahy Scott.

Catherine Leahy Scott
Inspector General