



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT (IDEM)
TITLE: IDEM OUTSIDE EMPLOYMENT; CONFLICT OF INTERESTS
CASE ID: 2017-04-0080
DATE: September 14, 2018

Inspector General Staff Attorney Kelly Elliott, after an investigation by Inspector General Special Agent Mark Mitchell, reports as follows:

The Indiana General Assembly charged the Office of the Indiana Inspector General (OIG) with addressing fraud, waste, abuse, and wrongdoing in executive branch agencies of state government. IC 4-2-7-2(b). The OIG also investigates allegations of criminal activity and Code of Ethics violations within state government. IC 4-2-7-3. The OIG may recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government. IC 4-2-7-3(2).

On April 20, 2017, the OIG received a hotline complaint that alleged an Indiana Department of Environmental Management (IDEM) employee (the Employee) violated the State Code of Ethics by providing consultation services to livestock owners.

OIG Special Agent Mark Mitchell conducted an investigation into the matter. Through the course of his investigation, he interviewed the Employee and other IDEM employees. He also reviewed documentation received from IDEM, including policies, permits, and emails.

I. Outside Employment and Conflict of Interests regarding Decisions and Votes

During the investigation, Special Agent Mitchell learned that the Employee serves in an IDEM section relating to livestock (the Section). The Employee provided that he also serves as a

certified consultant (Consultant) in conservation planning and design. Special Agent Mitchell learned that the Employee's certification as a Consultant was not a requirement of his employment at IDEM; however, it was beneficial for IDEM. The Employee provides his services as a Consultant to farmers outside his employment with IDEM.

Special Agent Mitchell reviewed IDEM's policy on outside employment, which became effective July 1, 2006. He found that IDEM employees must obtain written approval to engage in outside employment involving environmental consulting or other professional activities related to their state employment. IDEM's Commissioner must personally approve each request after receiving a positive recommendation from the employee's supervisor. Additionally, as of July 1, 2016, IDEM employees must also obtain a written advisory opinion from the State Ethics Commission stating the individual's outside employment does not violate the State Code of Ethics.

The Employee stated he received approval for his outside employment from his first supervisor at IDEM but failed to obtain approval for his outside employment from subsequent supervisors. Additionally, the Employee failed to obtain approval from IDEM's Ethics Officer or the State Ethics Commission for his outside employment.

The Employee provided that he has had three clients with his outside business during his employment at IDEM. He explained he created his own screen and limited his clients to those not required to obtain a permit through the Section. He stated his consultations are unrelated to matters overseen by the Section. Special Agent Mitchell reviewed the Section's permitting database and found that the database did not list any of the Employee's clients. The Employee provided that as of mid-December 2017, he no longer has any clients for his outside business.

Special Agent Mitchell interviewed the Employee's former supervisors. The supervisors stated they approved the Employee's requests to complete trainings to maintain his Consultant

certification, but they were unaware that the Employee engaged in outside employment as a Consultant. The Employee's first supervisor did not indicate that he provided approval for the Employee's outside employment. He stated he directed the Employee to inquire with IDEM's Ethics Officer regarding his outside employment.

Special Agent Mitchell found that although the Employee failed to obtain IDEM's approval for his outside employment, he did not provide consultation services to clients permitted by the Section. As a result, Special Agent Mitchell found insufficient evidence that the Employee violated the State Code of Ethics' rules on outside employment or conflicts of interests regarding decisions and votes.

II. Misuse of State Property and Ghost Employment

Special Agent Mitchell also found that the Employee used his state outlook account in emails sent to a client; however, Special Agent Mitchell learned that such emails originated from the Employee's personal email account and his state email address was carbon copied to the emails. The Employee could not provide Special Agent Mitchell an explanation as to why he carbon copied his state email address to emails sent to the client.

Special Agent Mitchell found no substantial evidence indicating that the Employee engaged in misuse of state property or ghost employment. As a result, Special Agent Mitchell found insufficient evidence that the Employee violated the State Code of Ethics' rules on misuse of state property or ghost employment.

III. Recommendation

Although the Employee no longer has any clients for his outside business, he is still a certified consultant and could provide services in the future. The OIG recognizes the Employee's previous efforts to prevent a conflict of interests as it relates to decisions or votes pursuant to IC

4-2-6-9; however, a self-monitored screen is not sufficient under the rule. IC 4-2-6-9 (b) requires a state employee who identifies a *potential* conflict of interests to notify his or her appointing authority and ethics officer in writing and either 1) seek a formal advisory opinion from the State Ethics Commission or 2) file a disclosure with the OIG within seven days after the conduct that gives rise to the conflict of interests. Accordingly, should the Employee seek to provide consultant services to clients in the future, the Employee first should seek an informal advisory opinion from the OIG or adhere to the requirements of IC 4-2-6-9 (b) because providing consultant services to clients may present a potential conflict of interests.

IV. Conclusion

The OIG found insufficient cause for a violation of the Code of Ethics; therefore, the OIG declines to pursue an ethics complaint in this matter. Should additional information be brought forward, the OIG may reexamine this initial evaluation.

Dated: September 14, 2018

APPROVED BY:

A handwritten signature in black ink that reads "Lori Torres". The signature is written in a cursive, flowing style.

Lori Torres, Inspector General