

CONCLUSIONS OF IG'S POLITICAL CONTRIBUTIONS REVIEW A FOREGONE CONCLUSION

Investigative Report number 11-01-15-2005-014 (Report), issued by the Florida, Department of Environmental Protection's (FDEP) Office of Inspector General (OIG) on October 13, 2005, failed to find any wrongdoing on the part of FDEP officials.¹ The investigation was requested by PEER because of a record of campaign contributions that was found in the personnel file of the Panama City Branch Manager, Henry Hernandez. Hernandez had applied for, and was eventually promoted to the Branch Manager position after the sudden departure of the previous Branch Manager, Gary Shaffer. After Hernandez applied for the job, which was a promotion, someone conducted a review of his political campaign contributions.

In a May 3, 2005, transmittal, PEER asked for the Office of the State Attorney to investigate this matter because:

“The activities involved implicate violations of Section 110.105(2), Fla. Stat., which states that:

(2) All appointments, terminations, assignments and maintenance of status, compensation, privileges, and other terms and conditions of employment in state government shall be made without regard to age, sex, race, religion, national origin, political affiliation, marital status, or handicap, except when a specific sex, age, or physical requirement constitutes a bona fide occupational qualification necessary to proper and efficient administration. (Emphasis added)

The Florida Legislature takes the violation of this statute seriously, as is evidenced by Section 110.127(1), which elevates the violation to a criminal offense. The violation constitutes a second degree misdemeanor. Section 110.127(2) disqualifies those convicted of violating Section

¹ A copy of the Report is attached hereto.

110.105 from employment with the State of Florida for a period of five (5) years.”

The State Attorneys subsequently referred the matter to Steve Meadows, the State Attorney who sits in Bay County, Florida.² PEER also referred the matter to the FDEP’s OIG on May 3, 2005, in order to allow that office to conduct its own review of the matter. An examination of the Report produced by the OIG reveals a stunning failure to conduct a meaningful investigation. The issues presented demonstrate either a significant ineptness on the part of the investigators or a deliberate refusal to probe the areas where the evidence was leading. Neither scenario should be accepted by Floridians.

A. The Findings

The Report begins with a summary of the investigation conducted by the OIG. The summary correctly asserts that PEER found the campaign contribution printouts in Hernandez’ file and that PEER requested the OIG to investigate the same. The report failed to note that the reliance upon such information constitutes a criminal offense in the State of Florida. Moreover, the Report also notes that PEER’s May 3, 2005, “article” noted that Hernandez had been directed by FDEP to interview with a prominent Republican Panama City attorney, William Harrison, prior to being chosen for the position (Report @ 1).

The Report further indicates that the OIG reviewed the printouts found in Hernandez’ personnel file and confirmed that they, in fact, were found in the file. The OIG also determined that one of the campaign contribution searches found in the file did

² To date, Meadows has not even acknowledged receipt of the complaint that his office has now had for over five months.

not represent contributions made by Hernandez, but rather, another Hernandez who contributed to causes in the 2002 General Election.

The report then summarizes statements taken from the witnesses that were interviewed in the case.

The Report concludes, in pertinent part, that

“[e]xamination of the document in the file and testimonial evidence from those parties who are known to have handled the promotional packet or participated in the selection process revealed no information that explains how the item became a part of the file. . . . There is no evidence to show how the document got into the file. . . . There is also no evidence to indicate that the document was considered or had any bearing on the final decision to promote Henry Hernandez to the position of Branch Manager over the Panama City Branch Office. This case is **closed.**”

(Emphasis in original) (Report @ 14) Thus, the OIG declined to find that any wrongdoing had occurred. The office was further unable to establish who had conducted the search.

No findings were made with respect to the issue of Hernandez’ meeting/interview with William Harrison prior to being finally selected for the Branch Manager position.

B. The Printouts

The Findings on page 14 include this statement: “A review of the specific document did reveal that it does not relate to the former DEP employee Henry Hernandez who was being considered for promotion at the time. The contributions query results in the file does not show a political campaign contribution by former DEP employee Hernandez.” This “finding” is apparently made to somehow indicate a lessening of the severity of the DEP’s action in this case.

An objective assessment of the situation with the printouts would lead in the opposite direction however. Not only did the DEP conduct a search of an employee's campaign contributions but, if the OIG's findings are true, the DEP used the wrong search results in the consideration process and included irrelevant campaign contributions in Hernandez' personnel file! We fail to see how this conduct is somehow less harmful to the employee.

C. The Witness Interviews

1. *What The Witnesses Said--Generally*

The OIG interviewed eight (8) persons for this investigation: Henry Hernandez (Former Panama City Branch Manager),³ Valerie Huegel (Program Administrator), Terry A. Wheat (Personnel Technician III), Mary Jean Yon (Former Northwest District Director),⁴ Allan Bedwell (Deputy Secretary of Regulatory Programs), Cameron Cooper (Former Program Administrator for the Secretary of Regulatory Programs), Mona Strickland (Operations Consultant II, BPS) and Sherry Severance (Senior Executive Assistant to former Deputy Secretary for Planning and Management). The statements are unremarkable in their similarity. Every witness denied having any idea how the printouts made their way into Hernandez' personnel file. Every witness also denied conducting the search. In addition, Huegel and Wheat summarized the manner in which personnel files are maintained by the FDEP.

2. *Mary Jean Yon*

³ Hernandez resigned from the FDEP on April 29, 2005.

⁴ Yon is now the Director of Waste Management for the FDEP and works in the Tallahassee Headquarters.

Mary Jean Yon denied any involvement with the political contributions search. She also denied asking Hernandez to interview with William Harrison before Hernandez was formally given the promotion as Branch Manager (Report @ 10-11). However, Yon did shed light on the consideration of campaign contributions in employment considerations. According to the Report, Yon told the investigators:

“Yon stated that she knew as one goes up the chain and gets approval from the Governor’s Office they look at things like that.”

(Report @10)

Yon’s statement is remarkable. **It is an acknowledgement by a senior level management employee that “things like that” are done in the highest office in state government, i.e. the Governor’s Office.** However, Yon was not pressed on this point. She was not asked how she knew it. No specific evidence was sought and none was therefore obtained. The extent to which crimes have been committed is thus unknown.

3. *Allan Bedwell*

Allan Bedwell is the Deputy Secretary of Regulatory Programs. He is the individual who gave final administrative approval to the promotion of Henry Hernandez to the position of Branch Manager. He signed off on the approval on the same day that the search of Hernandez’ campaign contributions was conducted. The Report does not indicate on what day he was interviewed. Bedwell denied any knowledge of the printout.

The Report also states that:

“Bedwell was asked if he was familiar with the practice of an individual’s political contribution history being considered during a promotional process at this level. He stated that he was not aware of it ever being used and this

was the first time he has ever heard of the contribution check being placed in a personnel file. He had no information about the document that was found in Hernandez's file, but he was confident it had not been in the file during his review and had no bearing on the selection process.”

(Report @ 11-12). Bedwell's denial of the use of such searches in the selection process is a direct contradiction of Yon, who stated that such things were done.

3. *Cameron Cooper and Sherry Severance*

Cameron Cooper was also a signatory on the promotion package for Hernandez. He, like Allan Bedwell, denied the use of such information in the selection/hiring process at FDEP (Report @ 12).

Sherry Severance was the assistant to Deputy Secretary, Lisa Edgar. Ms. Severance also denied any knowledge of the practice of using campaign contribution information when considering an applicant for hire or promotion.

D. Procedures

1. *Selective Handling of Witnesses—The Oath*

Prior to the taping of interviews of an OIG witness the OIG investigators administer an oath to the person. The person swears that the information that they are about to give is true and correct to the best of their knowledge. The interviewee is also informed that perjury charges can be brought in the event that the person lies during the statement. That is, unless you happen to be the subject of the investigation.

Two of the witnesses in this investigation were subjects: Mary Jean Yon and Valerie Huegel. Both witnesses were sworn by Captain Percy E. Griffin, III, OIG. After she was sworn, Captain Griffin specifically advised Ms. Yon that:

“This investigation concerns administrative matters only and cannot be used as evidence in any criminal proceedings against you, except for criminal perjury charges that may arise from your statement. . . .”

Valerie Huegel was given the same notice after she was sworn. This caveat is not mentioned in the Final Report.

The impact of this notice to these two witnesses is simple and straightforward. If they testified to violating the criminal statute at play in this investigation they were assured that no criminal prosecutions would result. Furthermore, it is arguable that any evidence derived from the statements given by these two witnesses would itself be inadmissible in any future criminal case against them on this issue. Simply stated, they were all but immunized from prosecution!

2. *Selective Handling of Witnesses—The Statements Themselves*

Giving immunity to Yon was bad enough. However, the Report reflects that as to Allan Bedwell, the man who signed the promotion on the same day that the campaign contribution search was conducted, “[**the**] **interview was via telephone and was neither sworn nor recorded.**” (Report @ 11) (Emphasis added) The interviews of Cameron Cooper, Mona Strickland, and Sherry Severance were likewise neither sworn nor recorded. All were telephonic interviews. While witness Severance was not employed with the FDEP at the time, the remaining witnesses were still employed with the FDEP

and working in Tallahassee. Nevertheless, face-to-face interviews were not conducted with them—even though the investigators worked in the same town.

The bottom line, therefore, is that the interviews of the very witnesses who would have been most likely to have been able to shed light on the hiring and review process were not sworn and they were not recorded. In addition, the Report does not even reflect the dates on which the interviews were conducted.

3. *Failure to Interview Witnesses*

The Report indicates that witnesses Hernandez and Yon were asked about Hernandez' interview/meeting with William Harrison (Report @ 5-6, 11). However, the Report reflects no effort being expended to call, much less formally interview, William Harrison.

Hernandez attempted to recast his meeting with Harrison as being a simple lunch meeting at a restaurant (Report @ 5). However, he further denied a report by Insider Magazine that the meeting was an interview and that it was approved by upper management (Report @ 5). He now called the magazine a “rag (Report @ 5).

Hernandez' new version of the meeting contradicts a version given by Sally Cooley, NWD Media Spokesperson. Cooley gave Mike Salinero of the Tampa Tribune an interview on this subject and is quoted as stating: “Mr. Harrison came into the office, and they did talk,” Cooley said. “But that’s not unusual for an individual in the community to come in and schedule appointments with our administrator. ... We’re a public service organization.”⁵ Thus, Cooley placed the meeting in the FDEP offices, not in a restaurant,

⁵ Watchdog Hammers Pollution Oversight, Tampa Tribune, June 8, 2004.

and further implied that the meeting was a business meeting—something not admitted and in fact denied by Hernandez.

The OIG's failure to even attempt to interview Harrison is a glaring omission in this Report.

In addition to Harrison, the OIG failed to interview Sally Coeey. Coeey was either repeating what she had been told by another employee, or she had first-hand knowledge of the Hernandez-Harrison meeting. In either event she should have been questioned if the intent was to seriously investigate the allegations.

Finally, the OIG investigation was closed without ever interviewing Deputy Secretary Lisa Edgar. Edgar's office, according to Ms. Severance, would have reviewed the promotion package for Mr. Hernandez. Ms. Edgar's recollection of the situation is not known.

4. *Notes and Emails*

The OIG investigation was opened on May 3, 2005 and closed on October 5, 2005. **According to the OIG, during those five (5) months the personnel in the OIG's office took no notes and sent no emails associated with this investigation!**

PEER submitted a public records request to the OIG pursuant to Chapter 119, Florida Statutes. That request sought all notes and emails pertaining to the investigation. While the OIG has provided a handful of emails dealing with a companion investigation, it has provided no emails or notes on this issue.

The import of this is particularly troubling with respect to those witnesses whose statements were neither sworn, nor taped. Since there were no notes taken the public can

have no confidence that the interview summaries are accurate—assuming that the interviews even took place. The bottom line is that the OIG’s assertion that none of these documents exist is hardly credible. If, however, it is true, it suggests that serious training needs to be performed in that office.

E. Conclusion

The Report raises more questions than it answers. Unfortunately sloppy procedures were used by the OIG investigators such that one simply cannot rely upon half of the interview summaries contained in the report. In addition, the investigators failed to ask truly probing questions—even when witnesses were shedding light on avenues that needed to be explored.

Mary Jean Yon’s admission that public officials as high up as the Governor’s staff conduct illegal campaign contribution searches should have sent alarm bells to the OIG that the investigation needed to be broadened. Instead, the case was closed without further action. No external agencies, e.g. FDLE, were contacted and the matter referred to them for investigation.