The Commonwealth of Massachusetts

Office of the Inspector General

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May 17, 2016

Mary F. Mortensen, Chair
Ashland Board of Health
101 Main Street
Ashland, MA 01721

Daryl Beardsley, Chair
Sherborn Board of Health
19 Washington St.
Sherborn, MA 01770

Thomas Gilbert, Chairman
Norfolk Board of Health
One Liberty Lane, Room 205
Norfolk, MA 02056

Re: Addressing the Risks of Time Abuse Across Multiple Jurisdictions

Dear Town Officials:

The Office of the Inspector General ("OIG") received a complaint about possible time abuse by Mark Oram, a full-time employee of the Ashland Board of Health who simultaneously holds contracts with the boards of health in Sherborn and Norfolk and an elected position in the City of Marlborough. Mr. Oram never disclosed the outside contracts to Ashland in writing. The complaint alleges that Mr. Oram performs work for Sherborn and Norfolk during his regular work hours for Ashland, thereby double-billing for those overlapping hours. The complaint also alleges that Mr. Oram may overstate the hours he works for Sherborn and that Sherborn's contractual relationship with Mr. Oram violates state laws.

Ashland pays Mr. Oram an annual salary as the town's health agent, a position he has held for many years. The Norfolk Board of Health has employed Mr. Oram since at least 1999 through annual professional services contracts that pay him an hourly rate for acting as the town's health agent and for inspecting food establishments. Mr. Oram performs the contracts under the name of "Enviro-Tech Consultants," but no such business entity is registered as a corporation or limited liability company with the Secretary of State. Mr. Oram also has not registered as an individual conducting business under an assumed name with the city clerk of Marlborough, where Mr. Oram lives. Enviro-Tech's tax identification number is Mr. Oram's

social security number. Norfolk's end-of-year 1099 tax forms list Mr. Oram, not Enviro-Tech Consultants, as the income recipient.

The Sherborn Board of Health has employed Mr. Oram for more than 20 years. In recent years, the Board of Health has typically signed two separate professional services contracts, one with Mr. Oram individually for health agent services and another with Enviro-Tech Consultants for food establishment inspection services. For example, on December 21, 2011, the Sherborn Board of Health signed a five-year contract with Mr. Oram individually for health agent services. On the same day, the Board of Health signed a five-year contract with Enviro-Tech Consultants for food establishment inspection services. Mr. Oram signed for Enviro-Tech Consultants. The Board of Health awarded nearly all of the contracts to Mr. Oram and Enviro-Tech Consultants without public bidding or any competitive procurement process.

The following chart shows Mr. Oram's compensation from each town over the past three years:

Town*	2013 pay	2014 pay	2015 pay
Ashland	$81,619.00	$83,252.00	$85,243.00
Norfolk	$3,150.00	$2,380.00	$3,290.00
Sherborn	$45,469.00	$27,296.00	$51,290.00

*Ashland figures are for each fiscal year. Norfolk and Sherborn are for each calendar year.

Beginning in 2014, Sherborn officials received complaints similar to those brought to the OIG. In July 2014, Sherborn's town counsel told the Board of Health and Board of Selectmen that Mr. Oram's interest in two municipal contracts at the same time appeared to violate Section 20 of M.G.L. c. 268A, the state's conflict-of-interest law. Counsel recommended that the Board of Health cancel both of Mr. Oram's five-year contracts, which it did.

During the next several months, Sherborn's Board of Selectmen and town administrator took steps to investigate the complainant's allegations about Mr. Oram. In the fall of 2014, the town hired an independent accountant, Eric A. Kinsherf, to check the validity of the complaints. While Mr. Kinsherf was conducting his review, town officials also sought to obtain health agent and food establishment inspection services following the termination of Mr. Oram's five-year contracts. On November 19, 2014, the Board of Health issued a request for proposals for health agent services. The only response by the December 5, 2014 bid deadline came from Mr. Oram. The Board of Health signed a contract with Mr. Oram for the remainder of the fiscal year.

On April 24, 2015, Mr. Kinsherf provided his analysis and conclusions to the Board of Selectmen, which published his report on the town's website. Mr. Kinsherf had inspected various records related to Mr. Oram's work, including Town of Ashland time cards, Town of Norfolk invoices, Town of Sherborn food inspection reports and health agent work logs, and Marlborough City Council meeting minutes.

Mr. Kinsherf reported that "[u]tilizing the logs Mr. Oram submitted with his invoices, it is impossible to determine exact hours worked on each day invoiced." Mr. Kinsherf also reported that, near the end of each fiscal year, Mr. Oram dramatically increased the number of hours he billed the Town of Sherborn. Mr. Kinsherf found no corresponding increases in the number of septic and well inspections Mr. Oram performed. Mr. Kinsherf did, however, find that Mr. Oram's increased hours corresponded with the amount of money Sherborn had available at the end of the year to pay for his services. Mr. Kinsherf concluded that Mr. Oram did not provide "sufficient detail … to support the amount of time charged to the Town."

Mr. Kinsherf also concluded that Ashland, Norfolk and Sherborn did not have the necessary internal controls and recordkeeping practices to determine whether Mr. Oram had committed time fraud. The towns' recordkeeping systems made it impossible to determine whether Mr. Oram had performed inspections for Norfolk and Sherborn while he was being paid to work for Ashland, billed multiple towns for overlapping work hours, or overstated the hours he worked.

Following publication of Mr. Kinsherf's report, the Sherborn Board of Health prepared a seven-page response. The Board acknowledged some lapses in documentation while asserting its confidence that Mr. Oram had worked all of the hours billed to Sherborn. On May 20, 2015, the Sherborn Board of Health signed a new contract with Mr. Oram to perform health agent duties for fiscal year 2016. The Sherborn Board of Health also required Mr. Oram to provide somewhat more detail about his work schedule. For example, he has begun having weekly office hours at Town Hall. His invoices also list the number of hours he worked for Sherborn on a specific day, although they do not identify which hours of the day. In the past, Mr. Oram's invoices reported a total number of hours worked over a period of days or weeks.

Norfolk and Ashland have not implemented any significant modifications to their policies as a result of Mr. Kinsherf's report. Ashland officials are considering whether to adopt a policy requiring town employees to disclose outside employment but no specific policy language has been proposed to date.

In short, the boards of health in Ashland, Norfolk and Sherborn have largely ignored Mr. Kinsherf's findings. This disregard is unjustified and unwise for two reasons. First, as noted above, Mr. Kinsherf's report is inconclusive as to whether Mr. Oram committed time fraud. "[I]t is impossible to determine exact hours worked on each day invoiced," Mr. Kinsherf reported, because "invoice detail was inadequate for substantiation purposes." The inability to reach a conclusion due to a lack of adequate records does not mean Mr. Oram was absolved of time fraud.

Second, Mr. Oram's subpar timekeeping records point to the failure of the boards of health to exercise proper oversight of its employee/contractor. Given the lack of specific information the boards required Mr. Oram to provide, Mr. Kinsherf determined, "[i]t is plausible the hours billed could have been worked." Plausibility is not the appropriate standard to which public employees and contractors should be held; accuracy is.

The OIG recommends that the three towns' boards of health and boards of selectmen conduct an investigation to determine whether Mr. Oram billed for overlapping hours or otherwise committed time fraud. The boards should also determine whether Mr. Oram violated the terms of his contracts, town policies or the state's conflict-of-interest law.

The boards also need to address possible violations of M.G.L. c. 111, § 27A. State law permits a board of health to hire a health agent employed by another town "if such health agent has received written approval from the original appointing authority...." M.G.L. c. 111, § 27A. According to Ashland officials, Mr. Oram never disclosed in writing his outside employment or received written approval to act as a health agent for another town. The OIG therefore recommends that all three towns determine whether Mr. Oram's work in multiple jurisdictions complies with M.G.L. c. 111, § 27A.

Further, the OIG recommends that town officials consider adopting a policy requiring employees to disclose all outside employment. This would enable each town to ensure that an employee's outside work responsibilities "are not inherently incompatible with the responsibilities of [the employee's] public office," as set forth in M.G.L. c. 268A, § 23(b)(1).

Additionally, Enviro-Tech Consultants is neither registered with the Secretary of State's Corporations Division as a corporation or limited liability company nor with the Marlborough city clerk's office as an individual conducting business under an assumed name. This may violate state law. Because Mr. Oram is conducting business under the name of Enviro-Tech Consultants, state law requires him to file a certificate, under oath, with the clerk of any city or town where he has an office, informing the city or town that he is conducting business under an assumed name. *See* M.G.L. c. 110, § 5. The failure to do so is punishable by a fine of not more than $300 for every month in which an individual fails to file such a certificate. Mr. Oram listed his home address in Marlborough on various contracts between Enviro-Tech Consultants and the towns of Norfolk and Sherborn. As a result, he likely should have filed a certificate under oath with the City of Marlborough. Each town should look into this possible legal violation. The OIG also recommends that all towns doing business with Enviro-Tech Consultants also ensure that Mr. Oram's failure to register the business entity does not raise any tax, insurance or liability issues for the towns.

Looking forward, each town's board of health and board of selectmen should also implement procedural changes to remedy all timekeeping deficiencies and internal control weaknesses identified in this letter and Mr. Kinsherf's report. As part of this process, the OIG recommends that the boards implement measures to prevent and detect time fraud. For instance, Ashland must ensure that Mr. Oram is not performing work for Sherborn or Norfolk during his regular work hours at the Ashland Board of Health. The boards can find more information on preventing and detecting time fraud in the Office's online advisory, *Timekeeping Best Practices for Employers with Employees with Multiple Positions*.[1] Effective timekeeping practices are a fundamental internal control that helps ensure towns pay their employees and contractors

[1] http://www.mass.gov/ig/publications/arra/arra-advisories-and-grant-reviews/timekeeping-best-practices-nov-2009.html

accurately. Proper timekeeping practices also provide the public with a measure of transparency and accountability with regard to public employees and contractors.

Please inform the OIG by June 30, 2016, in writing, of the results of your review and what steps you have taken to address the recommendations identified in this letter. Please contact us if you have any questions or require any further information. Thank you for your cooperation in this matter.

Sincerely,

Glenn A. Cunha
Inspector General

cc: Michael D. Herbert, Town Manager, Town of Ashland
David Williams, Town Administrator, Town of Sherborn
Jack Hathaway, Town Administrator, Town of Norfolk
Lisa M. Thomas, City Clerk, City of Marlborough
Town of Ashland Board of Selectmen
Town of Sherborn Board of Selectmen
Town of Norfolk Board of Selectmen