



Board of Health

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June 28, 2016

Glenn A Cunha
Inspector General
John W. McCormack State Office Building
One Ashburton Place
Room 1311
Boston, MA 02108

RE: Addressing the Risks of Time Abuse Across Multiple Jurisdictions

Attention Inspector General Cunha:

Summary

In response to the Office of Inspector General's ("OIG") letter of May 17, 2016, the following is a summary of the Town of Sherborn's key actions:

- the adoption of a new policy regarding employees and contractors who work for multiple jurisdictions, which includes strengthening communication and coordination across jurisdictions that share employees;
- enhanced procedures for documenting time, in accordance with best practices recommended by the OIG; and
- suspension of Mr. Oram's work until the legal/administrative matters are fully resolved.

Specific Issues

The Sherborn Board of Health ("BOH") would like to clarify how it has addressed or plans to address issues raised in the OIG letter. Many of the actions described were undertaken prior to the issuance of the Kinshurf report and/or the OIG letter.

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.

- As soon as the allegations were made, the BOH made internal investigations – reviewing past documentation, contacting prior Board members, and assessing Health Agent activities.

- Documentation provided by Mr. Oram and accepted by the towns prior to June 2016 does not specify clock time. However, it was the experience of those conducting Sherborn work with Mr. Oram that he did not take calls nor conduct other communications on Sherborn matters during his office hours in Ashland. Instead, he would be in Sherborn and/or respond in the late afternoon, evening, on Friday afternoons, and on the weekend.
- No violations of Sherborn policies were identified.
- No violations of any contracts between the Town and Mr. Oram have been identified.
- On April 6, 2016, the Town of Sherborn provided notice to Mr. Oram that it was terminating its independent contractor relationship with him based upon its analysis that his status as an independent contractor may have been inconsistent with the provisions of G.L. c. 149, § 148B. The Town underwent a substantial analysis in making this determination, which included legal opinions and opinions from outside auditors. Throughout this process, it became clear that the question of whether Mr. Oram should be an independent contractor or an employee was complicated with different factors supporting each conclusion. However, the Town's final decision was that Mr. Oram would need to become an employee, since continuing as an independent contractor would risk being inconsistent with the provisions of G.L. c. 149, § 148B. As such, Mr. Oram was offered a letter of employment on April 6, 2016 and began as a Town employee on May 4, 2016.
- Since the Town of Sherborn does not believe that Mr. Oram overlapped his hours, the Town does not believe there was any violation of G.L. c. 268A in regard to his work with the Town of Sherborn.

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.

- Investigations performed by the BOH prior to and in parallel with Mr. Kinsherr's assessment did not find evidence that Mr. Oram had overstated his Sherborn hours. Rather, the hours billed correlated with the types and number of tasks expected of the Health Agent.
- In August 2014, upon receiving legal advice from Town Counsel regarding the need to make contractual changes with Mr. Oram, the Board cancelled the existing contracts, established a new, compliant contract for Health Agent services, and arranged for separate food inspection services.
- The BOH involved the Town Administrator, Town Counsel, and the Personnel Board in recent hiring and contractual arrangements with Health Agents and Food Inspectors expressly to ensure that appropriate administrative procedures were followed.

The boards also need to address possible violations of M.G.L. c. 111, Section 27A.

- The BOH suspended work for Mr. Oram on May 26, 2016, until written approval from the original appointing authority is received. Ashland has hired an independent investigator and will complete that due diligence prior to issuing written approval. As of this date, the Town's employment relationship with Mr. Oram remains suspended.
- As stated earlier, Mr. Oram became an employee of the Town on May 4, 2016. On such date and through the time his employment was suspended, the Town of Sherborn inadvertently was in

violation of G.L. c. 111, § 27A. There is no precedent to suggest that the Town of Sherborn's previous independent contractor relationship with Mr. Oram violated the provisions of G.L. c. 111, § 27A.

[T]he boards of health in Ashland, Norfolk and Sherborn have largely ignored Mr. Kinsherf's findings.

- Although Mr. Kinsherf was unable to reach a conclusion about the exact hours worked on each day invoiced, the BOH's investigation and working knowledge of when Mr. Oram performed his work for and in Sherborn (including that a significant portion of his duties required field work performed in Sherborn) corresponded to its understanding of his work schedule for Ashland. Furthermore, the BOH considered billings to correlate with services provided. Evidence of fraud was not found.
- The BOH was not aware of the types of documentation that the OIG considers best practices for timekeeping or of the requirement for such documentation. Now that the BOH is aware of these practices, it has adopted more rigorous time tracking and has engaged in communications with Ashland about future coordination.
- Mr. Kinsherf's findings regarding billings at the end of the fiscal year are known to correspond to several aspects of BOH work level dynamics. For example, although Mr. Kinsherf noted that applications/permits did not go up at the end of the year in a way that explained the level of activity, the testing season (and associated follow-on tasks) does occur late in the fiscal year, since such testing is taking place in response to applications submitted during earlier periods. Another factor that is important to note is that the BOH is not able to predict the work load that will be required to meet health needs of the public throughout the fiscal year. Thus, lower priority tasks may be deferred until the end of the fiscal year when remaining budget availability is known.

[T]he OIG recommends that town officials consider adopting a policy requiring employees to disclose all outside employment.

- The Town Administrator has developed an informal policy and the BOH will adopt a related version appropriate to the BOH.

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.

- The BOH has not used Enviro-Tech Consultants since cancellation of the food inspections contract in August 2014.

[T]he OIG recommends that the boards implement measures to prevent and detect time fraud.

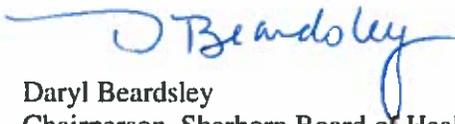
- The BOH had a discussion with Mr. Meyer, OIG, and has reviewed the OIG's on-line advisory, "Timekeeping Best Practices for Employers with Employees with Multiple Positions" for suggested methods to provide transparency and ease of responding to time fraud allegations.

Subsequent communication with Sherborn's Town Administrator lead to the development of new timekeeping requirements for employees.

- The new requirements were communicated to BOH Health Agent staff.

The Town of Sherborn appreciates the issues and concerns raised by the Inspector General. The BOH believes it has taken the necessary steps to address these issues and continues to investigate new information as it arises. If you have any further questions or inquiries, please do not hesitate to contact our office. Thank you for your attention.

As voted by the Sherborn Board of Health,



Daryl Beardsley
Chairperson, Sherborn Board of Health

Cc: Town of Sherborn Board of Selectmen
David Williams, Administrator, Town of Sherborn
Town of Sherborn Town Clerk
Town Counsel at KP | LAW