



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
September 10, 2009

DEC Employee Improperly Engaged in Political Activities

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General determined that Mary Kramarchyk, an employee of the New York State Department of Environmental Conservation (DEC), violated the federal Hatch Act and DEC policy by campaigning for and winning two terms on the Kinderhook Town Board in Columbia County from 2001 to the present while employed in a state position partly funded by federal monies.

Kramarchyk also violated the New York State Public Officers Law in this period by earning approximately \$3,500 annually in her Town Board position without receiving official approval and serving as an officer in a partisan political club while designated by DEC as a "policy maker." Additionally, Kramarchyk's simultaneous employment at DEC and service as an elected town official presented the appearance of a conflict of interest between her DEC duties and matters that came before or were likely to come before her and the Town Board concerning development projects in Kinderhook.

Equally troubling, the Inspector General also found Kramarchyk's campaign and election to the Town Board were known at the highest levels of Kramarchyk's supervision, yet, despite these obvious violations of applicable law and agency policies, DEC supervisors and executive staff failed to take any action to ensure that Kramarchyk complied with statutory and policy requirements regarding her public office. Finally, despite being informed of Kramarchyk's potential violation of the Hatch Act, DEC's management and ethics staff failed to take timely, appropriate action to address the issue.

ALLEGATION

On July 18, 2008, the Inspector General received a complaint from a confidential source that Mary Kramarchyk was in violation of the federal Hatch Act by holding elected office in the Town of Kinderhook while employed by DEC in a program that receives federal funding. The complainant notified DEC management of these concerns shortly after lodging the complaint with the Inspector General.

SUMMARY OF INVESTIGATION

Applicable Laws, Rules, and Policies

Both federal and state laws restrict government employee involvement in political activities. The federal Hatch Act¹ restricts the political activities of individuals principally employed by state, county, or municipal executive agencies in connection with programs financed in whole or in part by loans or grants from the United States government or federal agencies. The Hatch Act expressly prohibits an employee covered by the act from being a candidate for public office in a partisan election, which is any election in which any candidate is running for office as member of a political party.² The stated purpose of the Hatch Act is “to remove partisan political influence from the administration of federal funds” and inspire “confidence in the government by eliminating the appearance of influence.”³ Notably, the United States Supreme Court has held that “it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent.”⁴

DEC has implemented policies to ensure compliance with the Hatch Act, which is applicable to many agency employees. DEC policy (CP-7, III) reads, “**Because of the restrictions imposed by the Hatch Act, and the pervasiveness of Federal funding for DEC activities, prior approval should be sought in every instance where an employee is running for a partisan political office**” (emphasis original). DEC policy further states that “the Hatch Act applies to any employee who performs any functions in connection with federally financed activities.” It adds that “employees who are subject to the provisions of the Hatch Act may not be a candidate for elective public or private office in a partisan election, including primary and runoff elections.” The policy states that sanctions for failure to comport with any of these policies may result in administrative actions including termination, fine, and demotion, and/or referral to the Commission on Public Integrity. The policy also indicates that employees must be aware of any conflicts of interest, or the appearance of a conflict of interest, in engaging in outside employment or activities.

New York State law similarly attempts to prevent both actual and apparent conflicts of interest generated when certain state employees engage in certain outside activities or partisan politics. The state Public Officers Law⁵ mandates that “[n]o officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or

¹ 5 U.S.C. §§ 1501-1508.

² 5 U.S.C. § 1502 (a)(3).

³ Molina-Crespo v. U.S. Merit Systems Protection Bd., 547 F.3d 651, 665 (6th Cir. 2008) (internal citations and quotations omitted”).

⁴ U. S. Civil Service Commission v. National Ass'n of Letter Carriers, AFL-CIO, 413 U.S. 548, 565 (1973).

⁵ Public Officer’s Law § 74.

transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.” Moreover, under state law, agencies must annually designate in writing to the state Commission on Public Integrity, or previously to its predecessor the state Ethics Commission, which individuals in its employ “hold policy making positions.”⁶ Pursuant to Public Officers Law § 73-a, all state employees so designated as policymakers must file annual financial disclosure statements with the Commission on Public Integrity and are subject to more stringent restrictions on outside activities. Namely, applicable regulations provide that an individual who is serving in a policymaking position may not simultaneously serve as a member of any political party committee or as an officer of any political party or “political organization.”⁷ These regulations also require that “[n]o individual who serves in a policymaking position . . . shall expend time or otherwise engage in any private employment, profession or business, or other outside activity from which more than \$1,000 but less than nominal compensation, in whatever form, is received or anticipated to be received without, in each case, obtaining prior approval from his or her approving authority.” DEC policy provides that employees must receive written approval from the DEC Director of Personnel and the General Counsel, as Ethics Counsel, if they receive annual compensation between \$1,000 and \$4,000. Finally, DEC policy also mirrors applicable law and prohibits employees who are designated as “policy makers” from serving as officers of any “political party or political organization that is affiliated with a political party,” or “from serving as members of any political party committee.”

Mary Kramarchyk

Mary Kramarchyk began her career with New York State government in the mid-1980s. Prior to joining DEC in 1996, Kramarchyk held various positions including aide/staffer to several state senators and former Lieutenant Governor Betsy McCaughey Ross. When she joined DEC, Kramarchyk first was employed as an executive assistant in the commissioner’s office.

In 2001, Kramarchyk applied for a position in DEC’s Urban and Community Forestry Division, which “supports and assists communities in comprehensive planning, management, and education to create healthy urban and community forests to enhance the quality of life for urban residents.” Funding for this program is provided in part by the U.S. Forest Service. The program also awards competitive cost-share grants to communities to encourage them to actively enhance and care for trees. Although her duties remained constant in the Urban and Community Forestry Division, Kramarchyk’s job title has changed several times throughout her tenure.

Between March 1, 2001 and March 26, 2003, Kramarchyk performed her duties in a federally funded temporary project coordinator position. On March 27, 2003 her funding source changed and, for budgetary purposes only, her title was changed to special assistant. In November 2006, after obtaining a satisfactory score on a state

⁶ Public Officer’s Law § 73(c)(ii).

⁷ 19 NYCRR § 932.2.

competitive examination, Kramarchyk was hired as a community participation specialist 1, a protected civil service position that she currently holds. Between March 2003 and November 2006, DEC annually informed the Commission on Public Integrity that Kramarchyk was a “policy maker.” Kramarchyk’s designation as an agency policymaker ended when she obtained the protected civil service position, although according to her supervisors, Kramarchyk’s duties remained the same.

The Inspector General questioned Kramarchyk about her state employment and political activities. She informed the Inspector General that when she moved to Kinderhook in 1998, she became involved in Republican events and organizations, and was asked to join the local Kinderhook Republican Club, eventually assuming the positions of vice president and president of the group around 1999 or 2000. She remained involved in this club for several years. In 2001, Kramarchyk ran as a Republican-endorsed candidate for councilperson on the Kinderhook Town Board. Kramarchyk was elected and began her first four-year term in office in 2002. Kramarchyk reported that she resigned her leadership position with the Kinderhook Republican Club around 2004 based on a phone call from an attorney in Governor George Pataki’s Appointments Office informing her that she could not hold the position in the club while designated a policymaker. Kramarchyk testified that the only topic of discussion with Governor Pataki’s office was her position as an officer in the Kinderhook Republican Club, and that neither her elected position in Kinderhook nor the Hatch Act were discussed. Subsequently, Kramarchyk successfully ran for re-election to the Town Board in 2005, and her current term expires at the end of 2009.

The Inspector General confirmed that Kramarchyk’s town board position is compensated. According to town board meeting minutes, Kramarchyk’s 2008 salary was \$3,779.64 and her 2009 salary is \$3,893.16. Town of Kinderhook records show Kramarchyk has earned \$24,821 over her eight years as councilperson. A review of records of the Commission on Public Integrity confirms that Kramarchyk appropriately disclosed this position and her salary on annual financial disclosure forms during the period she was required to report such as a policymaker

Asked about her involvement in political organizations or as an elected official, Kramarchyk claimed that she was not aware of the Hatch Act or that her activities were in violation of state laws, regulations, or DEC policy and procedures. Kramarchyk also said she was not aware that DEC policy required agency approval before engaging in outside employment. She stated that none of her supervisors told her that she needed to check if her elected position was a problem. She admitted that she did not seek approval, but believed that her supervisors would have informed her if it was a problem. She said that her supervisors at DEC had knowledge of her running for and winning political office, and they did not address any concerns with her. “They should have known,” she reported. As to why she did not get approval, she said that she viewed her state work and politics as separate things, and “it just did not occur to me.”

Undermining Kramarchyk’s profession of ignorance, on April 23, 2003, Kramarchyk received a letter from then-DEC Commissioner Erin Crotty informing her of

her designation and responsibilities as a “policymaker.” Kramarchyk was specifically advised that she was required to evaluate outside activities for a “potential conflict of interest and bring any outside activity which may present a conflict to the attention of [her] supervisor” (emphasis original). The letter continued, “In particular, it is important to closely scrutinize . . . political activities or office holding. Any questions should be referred through the supervisory chain to the Office of General Counsel.” Kramarchyk said she did not recall receiving this specific letter, but she indicated that all policymakers receive these types of letters.

Additionally, to assist state employees with understanding the various laws, regulations and rules related to political activities by state employees, the Governor’s Office of Employee Relations (GOER) issues a memorandum to all agencies outlining the rules concerning political campaign activities by state employees. According to GOER representatives, this memorandum is distributed electronically during every major election cycle (every four years, usually coinciding with national elections). The memorandum addresses all laws related to political activities by state employees, including Public Officers Law § 74 and the federal Hatch Act. GOER officials reported that the memo was distributed to all agencies in 2000 and 2004, and most recently on August 25, 2008. The memo instructs agencies to make all staff aware of the various laws restricting political activities by state employees, and informs agencies that any questions should be discussed with agency counsel or the agency’s GOER liaison. It explains:

While employees are not discouraged from participating in the political campaign process, they must keep their political campaign activities separate from the discharge of their duties as state employees. For the purposes of these guidelines, “political campaign activities” include any act, activity, or event designed to communicate a political endorsement, urge voters to vote for a particular candidate, support a political party, or raise funds for a political candidate or party.

DEC representatives received the memorandum on August 25, 2008, and distributed it to all agency employees via e-mail the next day.

To determine if Kramarchyk had solicited donations to her campaign from her co-workers at DEC, the Inspector General contacted the New York State Board of Elections and the Columbia County Board of Elections to review Kramarchyk’s campaign filings, which are required by law.⁸ According to the New York State Board of Elections, “All Candidates and Political Committees are required to disclose, at specific times, all of the financial activity made in connection with their Campaign or in support or opposition of Candidates, Committees or Ballot Proposals/Propositions.” Additionally, the state board notes that “Local Candidates who make their own filings and who raise or spend, or expect to raise or spend over \$1,000, must file Disclosure Reports with NYSBOE in addition to filing with their Local Board of Elections.” There are substantial penalties and consequences for failing to file required financial disclosure statements including

⁸ New York State Election Law §14-104

civil penalties and criminal charges.⁹ Neither entity had a record of any financial filings for Kramarchyk's 2005 campaign.

Failure of DEC Management/Supervisors

The Inspector General's investigation revealed that Kramarchyk's activities in political organizations and as an elected official were common knowledge throughout DEC by co-workers, supervisors, and executive management. The Inspector General interviewed Kramarchyk's supervisors, including Lands and Forests Division Director Robert Davies, former Program Manager for the Urban and Community Forestry Section Peter Frank, Private Land Services Bureau Chief Bruce Williamson, and former Lands and Forests Division Director Frank Dunstan. All admitted that they were aware that Kramarchyk campaigned for and served in an elected office. Kramarchyk's supervisors revealed that they too failed to identify Kramarchyk's activities as problematic or as a conflict of interest. Even the current DEC Ethics Officer, Ann Lapinski, admitted that Kramarchyk did not keep her political activities secret.

Similar to Kramarchyk, her supervisors at DEC claimed ignorance of DEC's own policies and federal and state laws on such matters, and failed to make any connection between relevant guidelines and Kramarchyk's activities. Kramarchyk's direct supervisor at the time of her first election in 2001, Peter Frank, told the Inspector General that he was aware that Kramarchyk ran for public office in her hometown, but did not recall if she ever obtained approval from DEC management. He added that when Kramarchyk first ran for elected office there were no discussions by management about whether Kramarchyk's activities were authorized, and that he had no prior knowledge of the Hatch Act. Lands and Forest Division Director Robert Davies indicated to the Inspector General that while he was aware of Kramarchyk's political activities, he did not realize her activities were not approved by DEC. Bureau Chief Bruce Williamson told the Inspector General that he has been aware for years that Kramarchyk is an elected official. Former Division Director Frank Dunstan said, "Anyone who works there [DEC] knows [about Kramarchyk's political activities]." Dunstan added, "She was open about it [her political activities]. We all knew it." Dunstan also reported that he may have contributed a small amount of money to her campaign, but he could not recall the specifics. He also admitted that some staff at DEC had Kramarchyk campaign magnets from previous elections.

Kramarchyk confirmed that she provided some of her political campaign magnets to co-workers at DEC, although she claimed these items were usually provided at political events and not at work. Also, Kramarchyk conspicuously listed her involvement as an elected official and as an officer in a political group on her résumés for positions she sought at DEC.

When each of Kramarchyk's former and current supervisors were shown the August 25, 2008, GOER memorandum explaining the rules and laws governing political activities, each recalled receiving it or something similar. Dunstan quipped, "I never ran

⁹ New York State Election Law §14-126

for political office, so I never paid it a lot of detail.” Even the DEC Ethics Officer, Ann Lapinski, was surprised by DEC management’s lack of diligence in this matter, stating, “I would have hoped that a supervisor or somebody in that position would have taken a look at it and said, ‘Probably we need to think about this.’ ” However, when Lapinski first became aware of the allegation, she incorrectly concluded that Kramarchyk had not violated the Hatch Act in 2001 and 2005.

Potential Conflicts between Kramarchyk’s DEC Job and Her Role on the Kinderhook Town Board

The Inspector General learned that environmental matters that might require interaction with DEC did come before the Kinderhook Town Board on which Kramarchyk serves. For example, in the early 2002, the Kinderhook board was dealing with a controversial commercial retail shopping center proposal and its possible impact on the environment and community. According to DEC’s Environmental Notice Bulletin dated January 1, 2003:

The Planning Board of the Town of Kinderhook, as lead agency, has accepted a Supplemental Draft Environmental Impact Statement on the proposed Retail Center (Widewaters Commons) located on Routes 9, 9H and State Farm Road, Town of Kinderhook, Columbia County, New York.

Kinderhook Town Board minutes reflected that Kramarchyk was active in support of the commercial project development and opposed any moratorium on commercial development.

Although her DEC supervisors saw no actual conflict of interest between Kramarchyk’s DEC job responsibilities and her position on the Town Board, some admitted there were issues that could create the appearance of a conflict of interest. Current Division Director Robert Davies reported he did not view this situation as an actual conflict with her duties in her DEC position because Kramarchyk exerts no control over where DEC funding is directed. However, Davies acknowledged that there could be an appearance issue in the event the town has dealings with DEC on development projects and environmental issues. Similarly, former supervisor Frank Dunstan said there could be planning, zoning, or environmental impact issues before the Town Board that would involve DEC, but he did not believe these would pose a conflict with Kramarchyk’s DEC duties. Even Ann Lapinski, the DEC Ethics Officer, said she would need more information to determine if a conflict existed between Kramarchyk’s DEC job and her position on the town board.

DEC’s Investigation of the Complaint

Following the distribution of the GOER memorandum in 2008, DEC Director of Employee Relations Joseph Lattanzio received a complaint from a DEC employee that Kramarchyk was in violation of the Hatch Act. Lattanzio forwarded the complaint to Lapinski for follow-up that same day. On August 28, 2008, Lapinski responded to

Lattanzio. Unfortunately, as she later admitted to the Inspector General, Lapinski's response was incorrect. Lapinski stated that she misread the complaint to mean that Kramarchyk held a position with a local Republican committee, not a position obtained in a partisan election, and based upon this misreading inaccurately advised Lattanzio that, "[r]unning for a Republican committee position is not a partisan election so would not be prohibited. Those individuals here designated as policymakers (like you) are prohibited from being a committee person but I checked the list and Mary [Kramarchyk] is not on it." Lapinski planned to take no further action.

However, Lapinski reported that she was contacted about the matter on September 2, 2008, by Lands and Forest Division Director Robert Davies, who told her that Kramarchyk was actually in an elected position in the Town of Kinderhook. Despite being informed that a potential Hatch Act violation may have occurred, Lapinski did not discuss the matter with the complainant or Kramarchyk, and took no further action. Lapinski claimed to the Inspector General that she had intended to follow up on the complaint, but noted, "This [ethics issues] is about 25 percent of my job. I have a lot of other things to do." Lapinski further claimed that when she learned on September 29, 2008, that the Inspector General was investigating this matter, she decided not to conduct any follow-up inquiry in deference to the Inspector General's investigation.

Findings from the Office of Special Counsel

During this investigation, the Inspector General learned that the United States Office of Special Counsel had reviewed the alleged Hatch Act violation and issued an opinion in a letter to Kramarchyk, a copy of which she provided to DEC. In the December 10, 2008, letter, the Office of Special Counsel indicated that Kramarchyk's "candidacy in the 2005 partisan election for Town Council of Kinderhook, New York, violated the Hatch Act." The letter further stated that while Kramarchyk "knew, or should have known, [her] actions were in violation of the Hatch Act, [the office believed it found] insufficient evidence to conclude that [her] violation was willful," thus, the office "decided not to pursue disciplinary action." The office advised Kramarchyk that if she sought future election to any "partisan office and are in a Hatch Act covered position, it would be a knowing and willful violation of the Hatch Act and could result in removal from your employment." The letter also recommended that Kramarchyk obtain an advisory opinion from the office prior to being a candidate in another partisan election. The letter did not address Kramarchyk's 2001 campaign or any existing policies or prior memoranda that apprised Kramarchyk of her obligations under the Hatch Act.

FINDINGS AND RECOMMENDATIONS

Mary Kramarchyk

The Inspector General found that Mary Kramarchyk violated federal and state laws that explicitly address political activities by government employees, as well as her own agency's policies on political activities and outside employment. Specifically, the Inspector General determined that Kramarchyk:

- Violated the federal Hatch Act by running for public office in a partisan election in 2001 and 2005 while employed in a position and/or program funded by the federal government.
- Violated Public Officers Law § 74 by holding an office in which she presided over matters that could give the public the appearance of a potential conflict of interest.
- Violated Public Officers Law § 73-a related to outside activities for holding an office in the Kinderhook Republican Club while designated as a “policymaker” between March 2003 and 2004.
- Violated the Public Officers Law, applicable regulations, and DEC policy by earning a salary in excess of \$1,000 as counsellor of the Kinderhook Town Board without obtaining agency approval.
- Violated DEC policies related to outside employment and political activities by holding an elected, paid position on the Kinderhook Town Board and a position on the Kinderhook Republican Club.

The Inspector General recommends that DEC take appropriate action against Kramarchyk for her violations of the Hatch Act, state law, and DEC policies. Further, the Inspector General refers Kramarchyk’s apparent violations of Public Officers Law to the Commission on Public Integrity. The Inspector General also is providing a copy of this report to the United States Office of Special Counsel for any action it deems appropriate.

Inquiries with the State and Columbia County Boards of Elections and county Board of Elections revealed no campaign expense or campaign donation filings for Mary Kramarchyk for her 2005 re-election campaign. Based on this information, the Inspector General refers this matter to the State Board of Elections and the Columbia County Board of Elections for appropriate action.

DEC Management

The Inspector General found that DEC officials and managers failed to address conflicts with federal or state laws, or violations of DEC’s own policies, in relation to Kramarchyk’s political activities between 2000 and 2008. Kramarchyk’s activities in political organizations and as an elected official were well documented, common knowledge throughout DEC, and conspicuously evident to co-workers, supervisors and executive management. Like Kramarchyk, DEC supervisors and management were apprised of the Hatch Act through the GOER memorandum and the agency’s own policy and procedures manual. The supervisors’ claims that they were unaware that Kramarchyk’s activities violated any laws or policies lack credibility.

Based on these findings, the Inspector General recommends that DEC take appropriate action against Kramarchyk's DEC supervisors and managers for failing to ensure Kramarchyk's activities were in accordance with all laws, regulations, and policies related to political activities and outside employment throughout the period she held public office as councilperson for the Kinderhook Town Board. In addition, it is recommended that DEC conduct training as appropriate on the various laws, rules and regulations related to outside employment and political activities.

Lastly, DEC Ethics Officer Ann Lapinski failed to take prompt action to address the allegations of the violation of the Hatch Act once a complaint had been filed. The Inspector General recommends that DEC review her actions and ensure future ethical complaints are addressed in a timely fashion.

Response of the Department of Environmental Conservation

The Department of Environmental Conservation advised the Inspector General that Kramarchyk will be counseled to ensure she is fully aware of the laws and agency policies restricting political activities and outside employment. DEC said it will determine if further disciplinary action is appropriate following the Commission on Public Integrity's review of Kramarchyk's conduct.

DEC also advised that agency officials will meet with Kramarchyk's current supervisors to discuss their responsibilities to be aware of policies regarding outside employment and political activities by subordinates.

Further, DEC advised that, in addition to periodic training on the Public Officers Law it already conducts for all employees, it will provide executive staff and division and regional directors refresher training on agency policies related to outside employment and political activities.