



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
September 30, 2010

SUMMARY OF FINDINGS/RECOMMENDATIONS

The Inspector General determined that Edward J. Pebler, a Maintenance Supervisor employed by the New York State Department of Correctional Services (DOCS) and assigned to Coxsackie Correctional Facility, engaged in outside paid employment with the Town of Coxsackie as a Code Enforcement Officer without DOCS approval. The Inspector General further found that Pebler, on numerous occasions, conducted his unauthorized outside business on state time.

On September 30, 2010, the State Police and the Inspector General arrested Pebler on a charge of Offering a False Instrument for Filing. The Greene County District Attorney's Office is prosecuting the case. DOCS advised the Inspector General it will commence an internal investigation as the first step in disciplinary action against Pebler.

ALLEGATION

On July 28, 2009, during the course of another investigation involving Pebler's unit, the Inspector General learned of an allegation that Pebler was employed in a second job as the Town of Coxsackie's Code Enforcement Officer and performed duties related to that second employment on state time.

SUMMARY OF INVESTIGATION

Edward Pebler is currently employed by DOCS at Coxsackie Correctional Facility as a Maintenance Supervisor 3. In his official capacity, Pebler supervises vehicular and physical plant maintenance at Coxsackie. DOCS policy on outside employment, Directive 2218 issued on December 28, 2007, provides that no employee may engage in outside employment without written approval from the Commissioner or designee, and that any employee wishing to engage in outside employment must first present a written request to his or her supervisor by completing an official form, "Request for Permission for Outside Employment." An employee obtains such permission by filing the requisite paperwork with the appropriate Deputy Superintendent at his assigned facility acting as the Commissioner's designee.

The Inspector General reviewed Pebler's personnel file and found no evidence that Pebler had applied for, much less received, written approval to engage in outside

employment. Coxsackie Deputy Superintendant for Administration Mark Matthews further informed the Inspector General that he was the official at the facility tasked with reviewing such a request and that he had not authorized any outside employment for Pebler. Matthews added that Pebler's duties at the facility required him to be on site on a full-time basis and generally did not require travel beyond the prison grounds. Pebler's normal scheduled work hours at the facility are from 7 a.m. to 3 p.m.

The Inspector General confirmed that despite lacking DOCS approval for outside employment, Pebler has been employed by the Town of Coxsackie as a Code Enforcement Officer since 2004. Most recently, according to the minutes of the Town of Coxsackie's 2009 organizational meeting, the Town Board reappointed Pebler to the position on January 5, 2009, at an annual salary of \$12,216.

Town of Coxsackie Supervisor Alexander Betke confirmed that Pebler has been employed by the Town as the Code Enforcement Officer since 2004 when he was first appointed to that position by then-Town Supervisor John Flach. Flach reportedly hired Pebler specifically because the Town would not have to pay for Pebler's code enforcement training as such had already been funded by DOCS in relation to Pebler's state position. Namely, Pebler performed code inspection duties as part of his duties at the prison and consequently had received required training at state expense. In fact, a review of New York State Department of State Code Enforcement training records indicates that Pebler attended numerous training programs while on state time and paid for by the state. Pebler listed "training" on his time card and did not charge any accruals for those dates. In fact, in several instances Pebler attended training but indicated on his time card that he worked a full day at the facility.

Betke added that he served on the Town Board when Pebler was originally hired and recalled inquiring at that time if Pebler could accept the position while contemporaneously holding his full-time position at DOCS, which Pebler answered in the affirmative. Betke explained that, in his opinion, this arrangement was an example of the symbiotic relationship that exists between DOCS and towns in which prisons are located such as Coxsackie: because the prison uses many town resources, including water and emergency services, it reciprocates by providing other services to the community. Betke opined that Pebler working as the Town Building Inspector is an example of how the relationship works, but conceded he had never seen any written agreement to this effect.

To develop an understanding of the duties of a Code Enforcement Officer, the Inspector General spoke with an official in an analogous position in the region. Town of Bethlehem Building Inspector Gil Boucher informed the Inspector General that the common duties of the position include routine inspections for residential and business construction as well as general fire safety.¹ Notably, according to Boucher, most inspections are completed during daylight hours usually between 10:30 a.m. and 3:30 p.m., the heart of Pebler's scheduled state workday. Moreover, inspection activity tends

¹ According to Boucher, code enforcement could include any of the following areas: building permits, information on new buildings or building lots, building alterations or additions, disabled access requirements, enforcement of town codes, housing code enforcement, insulation requirements, town zoning ordinances, wood stove installation, heating and chimney alterations, decks, sheds, and detached garages. In addition, inspections typically completed at residential construction sites include footing inspections, pre-wall pourings, back fill, sump line, and water and sewer connections.

to increase in the fall as contractors work to complete projects before the onset of cold weather. Boucher added that every municipality has its own forms and procedures but all are supposed to follow New York State guidelines set forth in the state's code of rules and regulations. Boucher further noted that while larger towns often maintain exacting records of code enforcement activities, some smaller municipalities with part-time code enforcement, such as the Town of Coxsackie, may not maintain such detailed records.

In order to determine whether Pebler was conducting his unauthorized Town work on state time, the Inspector General obtained Pebler's DOCS time sheets and extant records from the Town of Coxsackie documenting Pebler's code enforcement and related activities. The Inspector General also obtained by subpoena phone usage records for Pebler's Town issued cell phone. The records showed that the Town of Coxsackie issued 51 building permits in 2009; 47 in 2008; 63 in 2007; 98 in 2006; and 119 in 2005 — all during the time Pebler served as Code Enforcement Officer, the only town official authorized to approve building permits. Prior to approving (or denying) a building permit, Pebler was required to review submitted paperwork and, in most instances, conduct an on-site inspection of the proposed construction or other work. Thus, considering the number of building permits issued, Pebler would have necessarily been required to devote substantial time during business hours to conduct these duties of his Town position.

Town officials also provided to the Inspector General a 2008 notebook and a 2009 calendar that Pebler had maintained that included specific information regarding at least some of his code enforcement and building inspection work. A comparison of the notebook and calendar entries with Pebler's DOCS time sheets for these two years revealed clear evidence that Pebler conducted Town activities on state time. For example, Pebler's notebook of his Town duties indicates that on January 28, 2008, he conducted four hours of Town code enforcement work, yet, in his official DOCS timesheet pertaining to that same date, Pebler claimed to not only have worked his full shift, from 7 a.m. to 3 p.m., at the Coxsackie Correctional Facility, but to have also worked five hours of overtime at the prison, from 3 p.m. to 8 p.m. Also on this date, while on state time, Pebler made numerous phone calls related to his position with the Town of Coxsackie, produced two certificates of occupancy, left the facility and went to Coxsackie Town Hall, and purchased gasoline for his assigned Town vehicle. In total, the Inspector General identified 13 dates when Pebler performed town duties outside the prison on state time.

A cross-reference of building permit applications for 2007, 2008 and 2009, Pebler's aforementioned notebook and calendar, and usage records for Pebler's Town issued cell phone revealed that over a three-year period Pebler made at least 570 phone calls related to his Town position while on state time. On numerous days, he made multiple calls. For example, on May 2, 2008, Pebler made six calls related to Town of Coxsackie business totaling 19.4 minutes while on state time. In addition, Pebler's notebook entry for that date also indicates that he approved a certificate of occupancy for a house on Fallen Tree Lane and spent a portion of his state work hours at the Coxsackie Town Hall.

The Inspector General further engaged in surveillance on several dates to determine whether Pebler was conducting his outside business on state time. This

surveillance revealed a pattern in which Pebler was not present at the prison, but claimed on his official certified time record that he had worked a full shift with the state. For example, the Inspector General determined that on October 1, 2009, Pebler was not present at the facility from 1:45 p.m. to the end of his assigned shift at 3 p.m.; yet, Pebler indicated on his time sheet for this period that he worked at the facility that day from 7 a.m. to 3 p.m. Pebler's actual whereabouts that afternoon are unknown. The following day, October 2, 2009, at 10:58 a.m., Pebler's vehicle was located leaving the Cumberland Farms store on Route 81 in Coxsackie, and at 11:05 a.m., Pebler parked the vehicle at his residence where he remained for at least the remainder of the morning. However, on his time card for that day Pebler indicated that he worked a full day from 7 a.m. until 3 p.m. with no leave or lunch break taken.

Additionally, the Inspector General found that Pebler improperly used sick leave in order to pursue his unauthorized, paid outside employment with the Town of Coxsackie on at least three occasions. Under state Civil Service Rules and DOCS policy, sick leave may only be used by an employee when "necessitated by personal illness or other disability, personal visits to a doctor or dentist, and illness or death in the employee's family." Sick leave may not be used in lieu of annual leave much less to ensure payment for the day while pursuing other outside activities. The Inspector General found that Pebler signed time and leave records indicating that he was "sick" on June 25, 2008, August 22, 2008, and November 14, 2008; however, Pebler's calendar indicates that he worked for the Town of Coxsackie performing code enforcement activities on all three days.

Further evincing Pebler's engagement in Town business while being paid by the state, the Inspector General was informed by David Moore of BBL Construction that he was familiar with Pebler in his capacity as Town of Coxsackie Code Enforcement Officer and that he had met with Pebler on several occasions regarding code enforcement matters. Moore reported that their first meeting occurred at an Empire Merchants North meeting held at the office of the Green County Industrial Development Authority (IDA) in Coxsackie on November 14, 2008, from 10 a.m. to 1 p.m. Moore recalled that Pebler arrived late, at approximately 11:30 a.m., and stayed for approximately 15 minutes. On his DOCS time sheet for the day, however, Pebler claimed that he worked from 7 a.m. to 11:00 a.m. and then took four hours sick leave. In another instance, Pebler's notebook indicates that for August 22, 2008, he conducted a site visit at a residence at 10 a.m. Pebler's phone records reflect that he spoke to the property owner at 9:42 a.m. However, Pebler's DOCS time sheet for that day indicates that he worked from 7 a.m. to 10 a.m. and then used four hours of sick leave and one hour of personal leave. In a third instance, on June 25, 2008, Pebler's notebook indicates he conducted a certificate of occupancy inspection at 11:30 a.m. for a specific property owner; Pebler's DOCS time sheet reports he worked at the prison from 7 a.m. to 11 a.m., then took four hours sick leave.

In sum, the Inspector General's examination of Pebler's DOCS time sheets, a notebook and calendar of Pebler's Town of Coxsackie code enforcement and related work, phone records for his Town-issued cell phone, and additional evidence, demonstrate that on numerous occasions Pebler conducted Town of Coxsackie business while on state time and submitted numerous false time sheets to the state. Not only did Pebler leave the facility without authorization to pursue his second unauthorized

employment, but, on several occasions, Pebler improperly utilized sick leave to account for time he was performing his duties for the Town of Coxsackie.

Pebler refused to be voluntarily interviewed by the Inspector General.

On September 30, 2010, the State Police and the Inspector General arrested Pebler on a charge of Offering a False Instrument for Filing. The Greene County District Attorney's Office is prosecuting the case.

FINDINGS/RECOMMENDATIONS

The Inspector General determined that Edward J. Pebler, a Maintenance Supervisor employed by the New York State Department of Correctional Services and assigned to Coxsackie Correctional Facility, engaged in outside paid employment without DOCS approval. Additionally, on numerous occasions Pebler conducted his unauthorized outside business on state time and submitted false time sheets indicating that he was present at the facility when, in fact, he was performing his Town duties and compensated by the Town for such activity, or at his residence.

Pebler is being criminally prosecuted. DOCS advised the Inspector General it will commence an internal investigation as the first step in disciplinary action against Pebler.

The Inspector General also forwarded a copy of this report to the Town of Coxsackie for appropriate action regarding Pebler's continued service as Code Enforcement Officer given the Inspector General's findings.