



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
October 14, 2009

**DOCS Tightens Rules After Mechanic Disables Truck
To Buy At Auction**

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General determined that Larry Andrew, a general mechanic employed by the New York State Department of Correctional Services (DOCS) at Cossackie Correctional Facility (Cossackie CF), purchased a DOCS surplus pickup truck at auction at a substantially reduced price due to absence of the truck's malfunctioning transfer case which had been removed prior to submitting the truck for auction. Andrew later took the malfunctioning transfer case from the correctional facility, had it repaired at no cost to him and re-installed it on the truck, thereby doubling the truck's value. Andrew was criminally prosecuted by the Green County District Attorney's office and disciplined by DOCS.

The State Inspector General identified irregularities in the process by which Cossackie CF maintenance officials surplussed the truck which enabled Andrew's misconduct. Although the truck had been driven less than 20,000 miles, Thomas King, the maintenance chief, and Edward Pebler, King's assistant, decided to surplus the truck without ascertaining the cause of the transfer case malfunction or inquiring about repair costs. Furthermore, King and Pebler surplussed the truck without involving the facility steward, contrary to DOCS policy. Notably, documentation concerning the truck's maintenance was woefully incomplete.

The actions of Andrew, King, and Pebler cast serious doubt on the legitimacy of the decision to surplus the truck in question, and underscore the need for DOCS to better examine the surplussing of vehicles in general. It is noted that DOCS has implemented new policy expressly prohibiting employees from bidding on surplus property about which they might possess inside knowledge. DOCS previously declined to adopt such policy when specifically recommended by OGS. The Inspector General recommends DOCS take action to ensure effective implementation of the new prohibition.

ALLEGATION AND METHODOLOGY

On April 11, 2008, the DOCS Inspector General¹ received an anonymous letter alleging that DOCS employee Larry Andrew had removed the transfer case from a DOCS pickup truck in order to disable the vehicle and cause it to be surplussed, and then purchased the vehicle at a reduced price when it was later sold at an auction. It was further alleged that Andrew then stole the transfer case and reinstalled it on the same disabled vehicle which he had purchased for a discounted price at the auction.

The DOCS Inspector General initiated an investigation of the allegation, and on June 26, 2008, referred the matter to the State Inspector General. The State Inspector General's findings are based on its separate investigation of the allegation as well as evidence obtained by the DOCS Inspector General.

SUMMARY OF INVESTIGATION

Coxsackie Correctional Facility is a maximum-security prison operated by the New York State Department of Correctional Services in Coxsackie, Greene County. Like other state prisons, Coxsackie CF operates and maintains a fleet of vehicles. The vehicles serve various purposes, including transport of inmates, security patrols, snow removal, and other general uses. The facility's maintenance unit is responsible for keeping the vehicles in working order. The vehicle fleet is periodically updated in accordance with DOCS policy requiring the facility to first surplus a vehicle in order to replace it with a new vehicle.

In October 2007, after being advised that DOCS was purchasing new vehicles for facility use, Coxsackie CF's chief maintenance official, Plant Superintendent Thomas King, and King's assistant, Maintenance Supervisor III Edward Pebler, prepared a list of six vehicles to be surplussed and replaced. A vehicle is identified for surplus and replacement, King stated, because it "had a history of maintenance problems or it's old or it's not running right, or the time has come for it to go." King's and Pebler's initial list included a pickup truck with the designation Cox-34. However, King stated, when he was told that another pickup truck in the facility fleet, Cox-46, "broke down," he "substituted" that vehicle for Cox-34 on the replacement list.

History of Cox-46

At the time it was surplussed in October 2007, the vehicle designated Cox-46, a 2002 Dodge Ram pickup truck, had an odometer reading of only 19,591 miles. The truck, which was equipped with a plow, had been used primarily to remove snow at the facility. Pebler claimed that there had been mechanical problems with the truck for the previous two years, and for some time its four-wheel drive was inoperable. Several mechanics in the Coxsackie CF maintenance unit confirmed there had been problems

¹ DOCS "Inspector General" is an internal investigative unit within DOCS and not part of the State Inspector General's Office.

with the truck, with one mechanic recalling the truck was “making noise and shaking” when used to plow snow the previous winter. Despite these complaints, a summary of work orders for the truck from January 19, 2004 to October 1, 2007, showed no inspections or repairs relating to the reported problem. King maintained that he prepared a work order for the truck to be repaired; however, no such order could be located during this investigation.

Regardless of whether a work order was issued, in October 2007, Larry Andrew, a general mechanic, and Ed Goff, a vehicle mechanic, removed the transfer case, a component of the four-wheel drive system, from the truck and placed in on the garage floor. Goff reported that after removing the transfer case, he examined it and noted that the transfer case jumped out of gear when manipulated by hand, but made no efforts to determine the cause of the problem. Apart from the problem with the transfer case and a few minor dents, according to Goff, the truck was in good condition. Both King and Pebler stated that Goff advised them of the malfunctioning transfer case. However, no record reflecting the removal of the transfer case from the truck or its purported assessment by Goff existed in DOCS’s records. The truck was purchased with a manufacturer’s 36-month/36,000 mile power train warranty that expired in October 2005.

Rather than repair Cox-46, which Goff said he expected to occur, King and Pebler decided to surplus it in place of another pickup truck on the list. Significantly, before making this decision, neither King nor Pebler ascertained specifically what was wrong with the transfer case or what would be the cost to repair or replace it. As King admitted, “I never priced what it would cost to fix the transfer case.” On October 23, 2007, Pebler completed and signed a “Report of Surplus Motor Vehicles and Motorized Equipment,” which noted, among other information, that the truck’s transfer case was “inoperable.” On November 8, 2007, the truck was towed to an Office of General Services facility in Albany to be sold at auction. Consistent with normal practice, the transfer case should have been sent with the truck to auction, but, due to what King claimed was an “oversight,” it was left in the Cocksackie maintenance garage.

The joint investigation found that the manner in which King and Pebler surplused Cox-46 violated DOCS policy. DOCS Directive 3173 (“Acquisition and Disposition of Surplus Property”) requires that the “originating unit” (in this case the maintenance department) file a written report with the Facility Steward indicating equipment items, including motor vehicles, that the unit has identified for surplus. The directive states it is the Steward’s responsibility to complete and sign the surplus vehicle form and forward it to the Division of Support Operations. With respect to Cox-46 and the other Cocksackie CF vehicles surplused in October 2007, King and Pebler did not file a report with the Steward; rather, as noted, Pebler completed and signed the vehicle surplus form, and, according to King, they submitted the form directly to Support Operations.

Andrew’s Purchase of Cox-46 and Theft of the Transfer Case

Andrew informed the State Inspector General that he had been interested in replacing the truck he then owned, and, after learning that Cox-46 was to be surplus, he asked Pebler if he could bid on it at the OGS auction. Pebler stated that he recalled reviewing DOCS policy and informing Andrew that no policy existed prohibiting his purchase of the truck. In fact, the relevant DOCS policy, Directive 3173, at the time did not prohibit employee purchases of surplus equipment. Goff also reported that Andrew inquired of him about buying the truck after learning it was to be sent to auction. According to Goff, he told Andrew that, because he was aware of other DOCS employees who had purchased agency surplus vehicles in the past, Andrew's purchase of Cox-46 should not pose a problem. King stated he didn't know of Andrew's interest in the truck until he learned of the purchase.

Cox-46, lacking its transfer case, and several other Coxsackie CF surplus vehicles were offered for sale at the OGS auction held in Albany on November 27, 2007. At the auction, which Goff also attended, Andrew purchased Cox-46 with an accepted bid of \$5,600. After the sale, Goff used his own trailer to transport the truck to Andrew's home in Coxsackie. According to Goff, Pebler also attended the auction, a fact denied by Pebler.

Andrew admitted that sometime later he removed the transfer case from the maintenance garage, where it had remained since its removal from the truck approximately one month earlier. Andrew stated he used a facility tractor/loader to move the transfer case, which weighs approximately 150 pounds, from the garage and place it in his own pickup truck in the facility parking lot. Although he had purchased the truck "as is" at the auction, Andrew asserted that he believed he could remove the transfer case from the facility because "I figured it belonged with the truck." Andrew claimed to have received permission to take the transfer case from Robert Kohler, a Coxsackie CF general mechanic and part-time maintenance supervisor, and possibly from King. When asked about Andrew's claim, King denied giving such permission and Kohler said he didn't remember discussing the matter with Andrew. Pebler went as far as to say that Andrew's removal of the transfer case from the facility was not authorized.

After removing the transfer case from the facility, Andrew arranged for it to be repaired by his brother-in-law, James Hildebrandt, a private vehicle mechanic. Hildebrandt told investigators that he determined that the transfer case's linkage was jammed, which simply required soaking it in kerosene to cause it to be fully operational. Hildebrandt said he incurred no expense by fixing the transfer case, but that Andrew gave him his old truck in lieu of payment for his work.

Through a review of published used vehicle prices, investigators determined that the truck Andrew purchased at auction for \$5,600 was worth, upon replacement of the repaired transfer case, approximately \$12,000.

On October 1, 2008, the State Inspector General's Office with the assistance of the State Police arrested Andrew on charges of Grand Larceny in the Fourth Degree and Official Misconduct. At the time of his arrest, Andrew admitted he did not have

permission to take the transfer case. Thereafter, DOCS filed disciplinary charges against Andrew seeking his termination. Subsequent to arbitration under the applicable collective bargaining agreement, Andrews was suspended without pay for 10 months. Andrew completed his suspension and returned to work at Coxsackie CF in August 2009. The criminal case was subsequently adjourned in contemplation of dismissal.

DOCS Amends Policy to Prohibit Employee Purchases of Facility Equipment

The issue of state employees purchasing equipment surplussed by their agencies has previously been of concern to state government. In a May 11, 2006 letter to state agency legal departments, then-OGS Deputy Commissioner Richard Reed advised that OGS had revised its policy to prohibit OGS employees from bidding on property declared surplus “by their own program.” Reed explained that OGS had enacted the policy change due to concern that allowing a state employee to bid on such property could potentially create a situation in which an employee might have an “interest, financial or otherwise . . . which is in substantial conflict with the proper discharge of his duties in the public interest.” In the letter, Reed urged state agencies to adopt similar prohibitions regarding their employees and surplus property.

DOCS General Counsel Anthony Annucci acknowledged that he had received and reviewed Reed’s recommendation, but that DOCS did not promulgate any policy changes at that time. Assuming the veracity of Pebler’s statement that he reviewed DOCS policy prior to advising Andrew that he could bid at the auction, if DOCS had accepted OGS’s recommendation in 2006 and amended its policy, Andrew’s crime might have been prevented. Subsequent to the events described in this report, however, DOCS amended Directive 3173, the relevant policy. The amendment, effective January 29, 2009, prohibits DOCS employees from bidding on surplus property “originating from the employee’s facility or work unit.” The Inspector General has been advised by DOCS Commissioner Brian Fischer that the new directive has been issued to every correctional facility in the state.

FINDINGS AND RECOMMENDATIONS

The Inspector General determined that Larry Andrew, a general mechanic at DOCS’s Coxsackie CF, purchased a DOCS surplus pickup truck at auction at a substantially reduced price due to removal of the truck’s malfunctioning transfer case. Andrew later took the malfunctioning transfer case from the correctional facility, had it repaired and re-installed it on the truck, thereby doubling the truck’s value. Andrew was criminally prosecuted by the Green County District Attorney’s office and disciplined by DOCS.

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The Inspector General recommended that DOCS take action to ensure the effective implementation of the new prohibition and Commissioner Fischer has confirmed that the revised directive has been issued to every DOCS correctional facility across the state.