



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
July 21, 2008

Worker's Jamesville-to-Albany Commute Costs State Nearly \$30,000

SUMMARY OF FINDINGS/RECOMMENDATIONS

The Inspector General determined that the State Liquor Authority (SLA) may have improperly reimbursed Director of Enforcement Daniel Malay for travel between his official work station in Albany, NY, and his home in Jamesville, NY. The Inspector General will refer these findings to the Office of the State Comptroller (OSC) to review the expenses.

ALLEGATIONS

On June 8, 2007, the Inspector General received a complaint alleging that Malay is permitted by SLA management to submit travel vouchers and collect per diem expense reimbursements for weekly travel from his home in Jamesville, near Syracuse, to the SLA office in Albany, despite the fact that his official work station is Albany.

SUMMARY OF INVESTIGATION

Background

The SLA is responsible for issuing licenses to sell alcohol and ensuring compliance with the Alcoholic Beverage Control Law. Malay, a retired Syracuse Police Department detective, was hired in May 2006 as an Assistant Director of Enforcement. At the time there was one other Assistant Director of Enforcement, who was based in Albany and supervised the Albany and New York City investigative staffs. Malay stated that he was hired to supervise investigators based in the Syracuse and Buffalo offices, although at the time he was hired, there were no investigators working in the Syracuse office. A single investigator was later hired to work in Syracuse.

Soon after Malay was hired, his fellow Assistant Director for Enforcement was transferred to work exclusively in New York City. Malay assumed responsibility for supervising the investigative staff located in Albany, in addition to Buffalo and Syracuse. There were approximately seven investigators in Albany, seven in Buffalo and,

eventually, one in Syracuse. Shortly thereafter, the second Assistant Director retired, leaving Malay responsible for the entire state.

Malay stated that when he began his employment he knew he would be required to travel to Albany regularly, but the travel turned out to be much more extensive than anticipated, especially once he assumed the duties of the other Assistant Director. Despite his extensive travel and many nights away from home, Malay stated that he views the Syracuse area as his home and he has no intention of relocating to Albany. Malay's home in Jamesville is less than ten miles from the Syracuse office of SLA; Albany is approximately 150 miles from Jamesville.

Applicable Rules

State regulations require agencies to minimize travel expenses by authorizing travel only when necessary and ensuring that travelers are not in travel status any longer than assignments require. While an employee may be reimbursed for travel and lodging, and receive a per-diem cash allowance when travelling away from his official work station, an employee may not receive reimbursement for travel between his home and his official work station. Although the Chairman of SLA is charged with designating the workstations of agency employees, he is required to assign the work station of each employee "in the best interests of the state, and not for the convenience of the employee or to maximize travel expense reimbursement." The State Comptroller has the authority to review work station assignments to ensure compliance with these regulations.

Malay's Official Work Station

Although Malay has received reimbursement for travel between his home and Albany, documentary evidence indicates that Albany is Malay's official work station. The main offices of SLA are located at 80 Swan Street in Albany, making it an appropriate location for a statewide director. The directors of communications and licensing are based in Albany, as is the agency's counsel.

The Inspector General reviewed documents related to Malay's official work station designation that were filed with various state agencies. The Office of General Services (OGS), which is responsible for maintaining human resource files for SLA employees, indicates that Malay's official station is Albany. Likewise, the NYSTEP personnel database, maintained by the Department of Civil Service, lists Malay's official work station as Albany. The Division of Budget further informed NYS IG that, based upon records filed with that office including the "Request for Budget Directors Approval" and his "Notification of Employment," Malay's official work station is Albany. In addition, as discussed further below, the Inspector General determined that Malay spent nearly 60 percent of his working days over the past two years in Albany and only 28 percent in Syracuse.

Contradicting this documentary evidence, Malay asserted that his official work station was in Syracuse. SLA Chairman Daniel Boyle, who worked for many years as a law enforcement officer in Syracuse prior to his appointment as Chairman in 2006, confirmed Malay's assertion.

Extent of Travel

NYSIG conducted a review of the extent of Malay's travel since he began his employment at SLA in May 2006. The review examined all of Malay's travel records and time and attendance records for two extended time periods.

The first period covered Malay's first 13 months of employment, May 2006 through June 6, 2007. During this period Malay worked 257 days: 154 days in Albany, 77 days Syracuse, and 26 days in either New York City or Buffalo. Malay submitted travel vouchers for hotel fees, per diem and miscellaneous charges. The total cost of this travel to the state was approximately \$22,680. Travel to Albany accounted for \$17,485 of that amount.

During the second period reviewed by NYSIG, July 2, 2007 through March 13, 2008, Malay worked 164 days. During this time he spent 93 days in Albany, 42 days in Syracuse, and 29 days in either New York City or Buffalo. He submitted vouchers for travel, lodging and miscellaneous expenses totaling approximately \$17,855, of which \$10,852 was incurred for travel to Albany. In total, Malay spent 59 percent of his working days in Albany, 28 percent in Syracuse, and 13 percent in Buffalo or New York City. Notably, an examination of Malay's Syracuse time revealed that of the 80 percent of the 119 days Malay spent in Syracuse were either Mondays or Fridays.

FINDINGS AND RECOMMENDATION

Evidence gathered in this case indicates that Malay's purported Syracuse workstation appears to be a matter of convenience for Malay, who lives in nearby Jamesville.

State regulations permit SLA Chairman Boyle to designate the workstations of his agency's employees, subject to certain limitations and review by the State Comptroller. However, other than Chairman Boyle's statement to the Inspector General, there is no evidence that SLA has formally designated Malay's workstation as Syracuse. To the contrary, official state records related to Malay's employment indicate that Malay's official workstation is in Albany. Plus, Malay spent the majority of his working days in Albany over the past two years. Even if SLA had formally designated Malay's official workstation as Syracuse, this designation would likely violate state regulations requiring workstations to be located in the best interest of the state, not to maximize travel reimbursements for the employee.

State regulations do not permit employees to be reimbursed for travel to and from their official workstations or for hotels in the vicinity of their official workstations.

Malay's travel to Albany cost the state of approximately \$28,337. The Inspector General will forward these findings to the State Comptroller to review Malay's expenses.