



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA OFFICE OF ATTORNEY GENERAL (OAG)

TITLE: OAG GHOST EMPLOYMENT AND MISUSE OF STATE PROPERTY

CASE ID: 2019-04-0105

DATE: January 7, 2021

Indiana Inspector General Lori Torres and Inspector General Chief Legal Counsel Tiffany Mulligan, after an investigation by Inspector General Special Agent Jack Bedan, reports as follows:

The Indiana General Assembly charged the Office of the Indiana Inspector General (OIG) with addressing fraud, waste, abuse and wrongdoing in the executive branch agencies of state government. Ind. Code §4-2-7-2(b). The OIG also investigates allegations of criminal activity and Code of Ethics (Code) violations within state government. Ind. Code §4-2-7-3. The OIG may recommend policies and carry out other activities designed to deter, detect and eradicate fraud, waste, abuse, mismanagement and misconduct in state government. Ind. Code §4-2-7-3(2).

I. Complaint and Background

On April 12, 2019, the OIG received a complaint raising three allegations against Indiana Attorney General (AG) Curtis Hill and the Office of Attorney General (OAG). First, the complaint alleged that AG Hill provided certain staff members extra vacation time that is not provided to other state employees. Second, the complaint alleged that the OAG hired an investigator from a local law enforcement agency (LEA) who was getting paid for full-time work by both the LEA and the OAG at the same time and driving his LEA vehicle to and from his OAG work. Third, the

complaint alleged that AG Hill assigned an investigator who worked for the OAG to drive AG Hill's wife and daughter from Elkhart, Indiana to Indianapolis, Indiana to attend a political fundraising event.

The OIG reviewed all three allegations. The OIG determined that the compensation package and vacation time that AG Hill allotted to his staff was within his discretion as a separately elected statewide office holder; therefore, the OIG declined to investigate the allegation related to employee vacation time. The second and third allegations both involved potential misuse of state time and property; thus, the OIG opened an investigation into these two allegations.

II. OIG Investigation

A. Allegation involving LEA Investigator

Special Agent Bedan first investigated the allegation that the OAG hired an investigator (LEA Investigator) who was getting paid to work full-time for a local LEA at the same time he was working for the OAG and that he was driving his LEA vehicle to and from his OAG employment. Special Agent Bedan investigated the matter to determine if the LEA Investigator was engaging in ghost employment and performing work for the LEA during hours he was getting paid to work for the OAG.

Special Agent Bedan first confirmed that the OAG hired the LEA Investigator and that the LEA Investigator was getting paid by the LEA during some of the same months he was working for the LEA. Special Agent Bedan learned that the LEA Investigator started work with the OAG in December of 2017.

Special Agent Bedan contacted the LEA's human resources department to inquire about the LEA Investigator's employment status with the LEA. Special Agent Bedan learned that the LEA Investigator's last day with the LEA was scheduled in May of 2018. The LEA's human resources department stated that the LEA Investigator went on "terminal" vacation starting in

November of 2017. Terminal vacation allows the employee to use up his vacation time with the LEA until his final day of employment with the LEA. The LEA's human resources department also stated that the LEA allows its employees to drive their assigned vehicles until the date that they leave LEA employment.

Special Agent Bedan found that the LEA Investigator was not performing work for the LEA while he was reporting hours worked for the OAG; instead the LEA Investigator was taking vacation hours at the LEA while working for the OAG. Special Agent Bedan informed the LEA human resources department that the LEA Investigator was getting paychecks from both the LEA and OAG so that the LEA could ensure the LEA Investigator was following any rules the LEA may have regarding terminal vacation.

Special Agent Bedan found no evidence that the LEA Investigator engaged in ghost employment or misuse of state property as an OAG employee; therefore, the OIG is closing this allegation for insufficient cause.

B. Allegation involving OAG Investigator

Special Agent Bedan also investigated the allegation that AG Hill assigned an OAG investigator (OAG Investigator) to drive AG Hill's wife and daughter from Elkhart, Indiana to Indianapolis, Indiana to attend a political fundraising event on December 14, 2018. During the investigation into this allegation, Special Agent Bedan interviewed multiple individuals, including the reporting party and several OAG employees, and reviewed documents, such as emails, OAG policies and payroll attendance records.

Special Agent Bedan interviewed the OAG Investigator who allegedly drove AG Hill's wife and daughter from Elkhart to Indianapolis. During the interview, the OAG Investigator stated that his supervisor asked him to drive AG Hill's wife and daughter from Elkhart to Indianapolis on December 14, 2018. He stated that his supervisor originally asked him to pick up AG Hill's

wife from Elkhart and either drive her to the Indiana State Capitol building or to AG Hill's apartment in Indianapolis. He later learned that he would be transporting AG Hill's daughter, as well as his wife. The OAG Investigator stated that as he was driving AG Hill's wife and daughter to Indianapolis, he received a call from an OAG security staff member who directed the OAG Investigator to take AG Hill's wife and daughter to the Lucas Estate, which was formerly known as the Hilbert Mansion, in Carmel, Indiana. The OAG Investigator stated that he first drove AG Hill's wife and daughter to a shopping mall because they arrived in Indianapolis early.

The OAG Investigator stated that he drove AG Hill's wife and daughter on December 14, 2018, while on state time. Special Agent Bedan checked the OAG Investigator's payroll attendance records and found that the OAG Investigator reported working eleven hours on December 14, 2018. He did not receive overtime for this work, but instead flexed his time to have shorter workdays at a later time.

Special Agent Bedan obtained a copy of a Special Investigation Report (SIR) 18-13838 that the OAG Investigator completed on December 17, 2018 documenting the December 14, 2018 trip. The SIR was consistent with the OAG Investigator's interview with Special Agent Bedan. The SIR also reads that AG Hill's daughter received a call from AG Hill, and AG Hill asked to speak to the OAG Investigator. According to the SIR, AG Hill directed the OAG Investigator during the call to drop his wife and daughter off at the Lucas Estate early for an event.

Special Agent Bedan received a written statement from an OAG employee (OAG Employee) who helped arrange the transportation for AG Hill's wife and daughter on December 14, 2018. In the written statement, the OAG Employee writes, "[o]n or about December 10, 2018 the Attorney General asked me to make arrangements to have an investigator from the office pick Mrs. Hill up from Elkhart on Friday, December 14th and bring her to Indianapolis."

Special Agent Bedan also obtained documents showing that the event at the Lucas Estate on December 14, 2018, was a political fundraiser to benefit AG Hill. Special Agent Bedan received copies of invoices and checks showing that Curtis Hill for Indiana, which was AG Hill's reelection campaign organization, paid for the catering for the event.

During his investigation, Special Agent Bedan also learned that the OAG Investigator was asked to drive AG Hill's wife on state time one other time on a previous date. During his interview with Special Agent Bedan, the OAG Investigator confirmed that on November 14, 2018, he drove AG Hill's wife from Indianapolis to Elkhart as instructed.

Special Agent Bedan obtained emails showing that on November 11, 2018, the OAG Employee asked the OAG Investigator's supervisor to assign an investigator to drive AG Hill's wife "back to Elkhart" on November 14, 2018. The OAG Investigator's supervisor originally assigned a different OAG investigator to transport AG Hill's wife; however, the OAG Investigator's supervisor sent an email back to the OAG Employee stating that AG Hill would "rather have someone he is familiar with drive his wife. . ." so the OAG Investigator's supervisor reassigned the OAG Investigator to drive AG Hill's wife to Elkhart.

In summary, Special Agent Bedan's investigation determined that that the OAG Investigator was instructed to drive and did drive AG Hill's family members between Elkhart and Indianapolis on two separate dates: November 14, 2018 and December 14, 2018. The investigation also found that AG Hill was aware that the OAG Investigator was transporting his family members, and the OAG Investigator did so on state time. AG Hill was not with them on either occasion. Special Agent Bedan found no evidence that AG Hill or the OAG leadership staff asked an OAG staff member to transport his family members on any other date. The OAG Investigator stated that to his knowledge, no OAG investigator was asked to drive AG Hill's family members on any other dates.

III. Potential Criminal Code Violation

On February 11, 2020, the OIG submitted the results of the investigation into the allegations involving the OAG Investigator to the Marion County Prosecutor's Office for possible charges under Ind. Code § 35-44.1-1-3, the criminal ghost employment statute. This statute makes it a Level 6 felony for a public servant to "knowingly or intentionally assign an employee under his or her supervision any duties not related to the operation of the governmental entity that the public servant serves."

On March 9, 2020, the Marion County prosecuting attorney petitioned the court to appoint a special prosecutor to review the case because the OAG represents the Marion County Prosecutor's Office in certain legal matters. The Marion Superior Court appointed a special prosecutor the following day.

The special prosecutor notified AG Hill's attorney of the case. In response, AG Hill's attorney provided the special prosecutor with a signed written statement, which was sworn under oath, from AG Hill addressing the allegations. In the statement, AG Hill points to security threats as one of the reasons his office asked an OAG investigator to drive his wife on November 14, 2018 and on December 14, 2018. He also points to adjustments in schedules. He explains that on November 13, 2018, he and his wife were returning from a Republican Attorneys General Association meeting in California when their flight was changed and delayed. They arrived in Indianapolis and received their luggage later than anticipated. AG Hill's wife needed to be in Elkhart on November 14, 2018, and AG Hill had a press conference and other meetings in Indianapolis on the 14th. Due to their conflicting schedules, AG Hill's staff asked the OAG Investigator to drive his wife back to Elkhart. For the December 14, 2018, event, AG Hill's statement explains that he was in Washington D.C. for work with the Republican Attorneys General Association when he had a scheduling change that required him to stay in D.C. for an

extra day. He did not return to Indianapolis until the morning of the 14th, and he had meetings scheduled in the afternoon. Due to the scheduling conflict, his staff asked for an OAG investigator to transport his wife and daughter from Elkhart to a political event that evening in Indianapolis.

In his statement, AG Hill writes that the November 14, 2018 and December 14, 2018 trips are the only two instances he recalls in which he needed “supplemental security” to drive his wife to and from events in his three and a half years in office. He also writes that he believes travel by the investigator and use of the vehicle was “a limited personal use consistent with I.C. 4-2-7-5(c)(1)(2)(3).”

In May of 2020, the originally appointed special prosecutor identified a potential conflict of interests and notified the OIG that he was withdrawing from the case. The Marion County Prosecutor’s Office notified the Inspector General that a new special prosecutor was appointed in June of 2020. The OIG provided all investigative records to the newly appointed special prosecutor and briefed the special prosecutor on the case.

On September 24, 2020, the special prosecutor, Special Agent Bedan and OIG Chief Legal Counsel Mulligan interviewed AG Hill at his attorney’s office. During the interview, AG Hill discussed security issues. He also relayed the same information he included in his written statement regarding the scheduling changes that prompted the OAG to ask the OAG Investigator to drive his wife between Elkhart and Indianapolis on November 14, 2018 and December 14, 2018. He also stated that he did not order the OAG Investigator to drive his family members, but he was aware that it was occurring, and he approved of it. Hill said these were the only two occasions he remembered having OAG staff drive his wife or other family members, and it was in the context of security being provided to him. AG Hill’s attorney stated that he believed the trips were allowed under Ind. Code §4-2-7-5(c).

The OIG provided additional information to the special prosecutor upon request, including information regarding potential security threats to AG Hill and flight schedules. On November 6, 2020, the special prosecutor notified the OIG that he was declining to file charges in the case.

IV. Potential Code of Ethics Violations

The OIG carefully analyzed 42 IAC 1-5-13, the Code’s ghost employment rule, and Ind. Code §4-2-6-17, the Code’s misuse of state property rule, to determine whether to file a complaint against AG Hill or any OAG employee with the State Ethics Commission (SEC). 42 IAC 1-5-13 prohibits a state officer from directing others “to engage in work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.” Ind. Code §4-2-6-17 prohibits a state officer, subject to Ind. Code §4-2-7-5, from using “state . . . personnel . . . or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the [SEC].” After evaluating these rules and the facts of the case, the OIG is declining to file a complaint with the SEC for a variety of reasons.

First, the OAG adopted a “Policy on Limited Use of State Property/Resources”, which AG Hill signed in March of 2017, and the SEC approved in April of 2017. This policy cites Ind. Code 4-2-7-5(c) to allow the AG or someone he designates “to use state resources . . . to provide transportation and security for (a) the state officer; and (b) any state employee or special state appointee who accompanies the state officer; [and for] (3) incidental or de minimus political communications or activity involving the state officer.”

Similarly, Ind. Code § 4-2-7-5(c) allows a state officer or person designated by the state officer to “use state materials, funds, property, personnel, facilities, or equipment . . . (2) To provide transportation and security for: (A) the state officer; and (B) any employee or special state

appointee who accompanies the state officer [and] (3) Incidental or de minimus political communications or activity involving the state officer.” According to AG Hill, he only recalls two occasions on which his staff drove his family members without him in the car: November 14, 2018 and December 14, 2018. The reporting party stated he was unaware of any other occasions on which AG Hill asked staff to drive his family members. Likewise the OAG Investigator stated he only was asked to drive AG Hill’s family members on the two occasions identified in this investigation.

The OIG found no precedent for how the SEC might interpret Ind. Code §4-2-7-5(c) or the OAG’s limited use policy; therefore, it is uncertain whether the SEC would find that either the statute or policy allowed AG Hill to use the OAG Investigator and an OAG vehicle to transport AG Hill’s family members on two occasions. The plain language of Ind. Code §4-2-7-5(c)(2) and the relevant portion of the OAG policy is limited to allowing only the state officer and any employee or special state appointee accompanying the state officer to use state resources for transportation and security; however, the language in Ind. Code §4-2-7-5(c)(3) and the relevant portion of the OAG policy does not contain the same limitation with regards to “de minimus” political activity.

Special Agent Bedan’s investigation revealed evidence of only two trips for which AG Hill used OAG personnel or property to drive his family members. These two trips amount to a very small percentage of the OAG Investigator’s work hours over the course of a year and represent a very small percentage of the OAG’s overall travel budget. Furthermore, both trips involved a scheduling conflict due to AG Hill’s involvement in the Republican Attorney General Association,

a political organization. As a result, the SEC may consider these two trips “de minimus political . . . activity involving the state officer” pursuant to Ind. Code §4-2-7-5(c)(3) and the OAG’s policy.

Even if these two trips are not considered de minimus political activity involving the state officer, AG Hill leaves office in January 2021. Pursuing an ethics complaint at this stage will have a limited impact on improving policies and practices of the OAG because a new attorney general will take office within the month and presumably set his own policies and procedures. The OIG is providing a copy of this Report to the incoming Attorney General.

VI. Conclusion

Although the OIG is declining to file a complaint with the SEC in this case, the OIG reminds state officers and their employees that the exceptions in Ind. Code §4-2-7-5(c) are limited. Only the state officer or an employee or special state appointee accompanying the state officer can use state property for security and transportation under Ind. Code §4-2-7-5(c)(2), and only incidental or de minimus use of state property is allowed for political communications or activity under Ind. Code §4-2-7-5(c)(3). State officers risk violating the criminal ghost employment statute or the Code’s rules on ghost employment and misuse of state property if their use of state personnel or property extends beyond these exceptions.

The OIG urges state officers to use state personnel and property to transport family members or perform other tasks that may appear personal in nature only when a statute or administrative rule clearly allows it.¹ State officers should not use state personnel or property for their own personal convenience unless the use clearly meets the de minimus standard.

State officers also should keep in mind that state employees may feel pressure to comply with a request to run personal errands for the state officer due to the state employee’s subordinate

¹ The OIG recognizes that the Indiana State Police provides the Governor and First Lady an executive security protection detail consistent with Ind. Code §§10-11-2-21 and 28.

position. State officers should be careful to avoid even the appearance that they are using their position of power to intimidate a subordinate employee into performing personal errands for the state officer. These are exactly the type of activities against which the criminal ghost employment statute and Code rules are in place to protect.

Furthermore, the OIG reminds state officers that any use of taxpayer resources, including personnel, to perform activities that appear personal in nature likely will raise questions by the public. Even if such activity falls under the exception for the use of state property under Ind. Code §4-2-7-5(c), the state officer should carefully consider whether the activity raises the appearance of impropriety or if he or she has a legitimate public purpose for using state property. Any activity that raises the appearance of impropriety may raise questions of ghost employment or a misuse of state property and will decrease the public's confidence in state government.

Accordingly, this investigation is closed.

Dated: January 7, 2021

APPROVED BY:

A handwritten signature in black ink that reads "Lori Torres". The signature is written in a cursive, flowing style.

Lori Torres, Inspector General