

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: OHIO DEPARTMENT OF TRANSPORTATION
FILE ID NO.: 2010-404
DATE OF REPORT: MARCH 19, 2012

The Office of the Ohio Inspector General.... The State Watchdog

“Safeguarding integrity in state government”

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STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

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REPORT OF INVESTIGATION

FILE ID NUMBER: 2010-404

SUBJECT NAME: Cheryl L. Heintz

POSITION: Highway Technician 3

AGENCY: Ohio Department of Transportation

BASIS FOR INVESTIGATION: Agency request for assistance

ALLEGATIONS: Abuse or misuse of state time;
Operating a business during work hours.

INITIATED: November 19, 2010

DATE OF REPORT: March 19, 2012

INITIAL ALLEGATION AND COMPLAINT SUMMARY

The Ohio Department of Transportation (ODOT) Office of Investigative Services received a complaint alleging Cheryl Heintz, a Highway Technician 3 at ODOT's District 3 testing laboratory and county garage in Ashland, Ohio, was spending a significant amount of her time at work on her personal cell phone conducting personal business for a real estate agency. ODOT Office of Investigative Services requested the Office of the Ohio Inspector General subpoena Heintz's cell phone records. In a cooperative effort between the Office of the Ohio Inspector General and ODOT Office of Investigative Services, the investigation was expanded to explore the possibility that Heintz was also conducting personal business related to the management of her own rental real estate properties during times when she was being paid by the state of Ohio to be at work for ODOT.

BACKGROUND

On August 13, 2001, Cheryl Heintz began her employment with ODOT as a highway maintenance worker (now classified as a highway technician) at the Lorain County garage. In the summer of 2005, she volunteered to transfer to an interim position at the ODOT District 3 testing laboratory in Ashland. On January 9, 2009, after completing the interim assignment, she was permanently transferred to the Ashland testing laboratory.

Heintz and other ODOT District 3 employees were assigned to the Ashland ODOT testing laboratory during construction season – from March to November – and then were assigned to the adjacent Ashland County garage for the snow and ice season – from November to March. Heintz's responsibilities with the testing laboratory included performing laboratory and field tests on ODOT project materials (asphalt) and monitoring quality control at various asphalt plants. This included observing the production of asphalt, obtaining asphalt samples, and testing asphalt samples. During the period of the year when she was assigned to the county garage, her duties included road maintenance and driving an eight-ton truck with an attached snow plow during snow and ice storms.

The ODOT position description for a Highway Technician 3 specifies the employee "operates basic, standard and complex equipment ... performs snow and ice control and related

maintenance duties by operation of snow plow with spreader, brine dispensing equipment, dump truck with attachments ...”. In addition, the employee must possess a “valid class B CDL¹ w/ tanker endorsement without airbrake restriction of Project Inspectors and Material Controllers – Excludes equipment requiring class A CDL.”



Source: ODOT website.

Heintz attended ODOT Fraud and Ethics trainings in November 2005, November 2007, March 2008, and March 2010. The 2008 and 2010 trainings included reviews of ODOT policies and procedures against personal “for profit” business activities while at work. **(Exhibits 1, 2, and 3)**

ODOT’s Directive WR-101 – Work Rules and Discipline **(Exhibit 4)**, dated January 15, 2005, was issued to all ODOT employees and addresses ODOT’s disciplinary guidelines. Section I, item 27 lists the potential administrative penalties for actions that could compromise or impair an employee’s ability to effectively carry out his or her duties. Section I, item 28 lists the potential administrative penalties for operating a business during the time when an employee is working for the state of Ohio; specifically, “engaging in activities for personal profit during paid work hours, including break times.”

¹ Ohio Revised Code, Section 4506.01 (D)(2) specifies that an individual needs a Commercial Driver’s License (CDL) if he / she operates combination vehicles where the gross vehicle weight rating of the single vehicle exceeds 26,100 pounds. The vehicle in tow must not exceed 10,000 pounds. Class B licensees, with appropriate endorsements, may drive all vehicles in Class C or D.

ODOT employees are on paid time while on their morning and afternoon breaks. However, lunch breaks are not paid. ODOT does not have an agency-wide policy requiring employees to record their lunch break on a sign in/out sheet. Similarly, District 3 does not require employees to record their lunch break on a sign in/out sheet. A District 3 email sent on May 7, 2008, specifying the use of a new sign in/out sheet stated, “Remember there is no need to sign in or out for lunch or for work-related outings.” **(Exhibit 5)**

ODOT policies discourage employees from the use of cell phones while driving vehicles, and cell phone use is strictly prohibited when operating heavy equipment. ODOT vehicles are equipped with radios for purposes of communication between ODOT personnel. ODOT Policy 233-002 (SP) – Vehicle Use Standard Procedure **(Exhibit 6)**, effective October 1, 2008, addresses cell phone use and states, “The use of cell phones while driving a state vehicle is discouraged. Employees are required to observe any safety precautions issued by their cell phone provider, and to obey any ordinance regulating cell phone use while operating a moving vehicle.”

Furthermore, ODOT Policy 220-006 (SP) – Safety and Health Standard Operating Procedure **(Exhibit 7)**, dated June 1, 2009, addresses the use of cell phones and other electronic communication devices and states:

Employees are required to maintain absolute attention to the operation of vehicles and equipment – and other tasks requiring their undivided attention. Cellular phones and text messaging devices are distractions.

The use of cell phones and text messaging while driving a state vehicle or personal vehicle for state business is discouraged. ... Employees are required to observe any safety precautions issued by their cell phone provider, and to obey any ordinance regulating cell phone use while operating a moving vehicle. Employees are required to report any citations received in the same manner they are required to report other traffic citations received when operating a state vehicle...

Cell phone use is strictly prohibited when operating heavy equipment. Examples of heavy equipment are, but not limited to: backhoes; front end loaders; dozers, and graders.

INVESTIGATIVE SUMMARY

It was alleged that Cheryl Heintz, an ODOT Highway Technician 3 assigned to the ODOT District 3 testing laboratory during construction season and the ODOT Ashland County garage during the snow and ice season used her personal cell phone to perform work as a real estate salesperson. The investigation was expanded to include operating rental properties for personal gain. She engaged in these activities during the same time she was assigned and being paid by the state of Ohio to perform her work duties for the Ohio Department of Transportation.

Cheryl Heintz became an Ohio licensed real estate salesperson on March 6, 2006. Between March 2006 and December 2010, her real estate sales license was held by King Realty, an Ohio licensed real estate broker in Wellington, Ohio. In January 2011, Heintz transferred her real estate license to Bauer Management Realty, a real estate brokerage based in Ashland, Ohio.

(Exhibit 8)

From July 2009 until December 2011, Heintz was involved as an agent in eight transactions from which she was paid a commission; listed eight properties for sale, including five properties that she owned; and was involved as an agent in two contracts to purchase real estate which were not completed and did not culminate in a closing transaction.

In addition, Heintz and her husband, Russell Heintz, jointly or through limited liability companies, owned and operated 27 rental units consisting of single-family and multiple-family properties. Heintz acted as rental agent and performed the property management aspects of the rental property operations and her husband performed the maintenance and repair work. In addition, Heintz and her husband owned houses which they refurbished for resale, listing each with King Realty. This allowed Heintz to act as the owner/agent.

Heintz was paid real estate commissions and managed real estate listings during the period her real estate license was held by King Realty between 2006 and 2010. However, she neither

received commissions nor had any listings after becoming affiliated with Bauer Management Realty in January 2011.

The Office of the Ohio Inspector General's investigation found that Heintz listed her personal cell phone as the contact number when advertising rental properties for lease and real estate listings for sale. Between July 1, 2009, and February 13, 2011, an analysis of Heintz's cell phone records showed 4,169 phone calls were either incoming or outgoing during the time Heintz was on duty and at work for ODOT, totaling 232 hours. Because ODOT does not compel all employees to record when they choose to take their lunch, it could not be determined how much personal business Heintz completed during her lunch breaks. Further analysis of Heintz's cell phone usage during her time on duty at ODOT revealed:

- More than 62 hours of phone time were calls to phone numbers related to real estate and rental properties;
- Approximately 18 hours of phone time were calls to her husband. As her rental property partner, Heintz's husband worked full-time maintaining rental properties and refurbishing properties to be sold;
- Approximately 11 hours of phone time were calls to retrieve voicemail messages;
- Approximately 11 hours of phone time were calls to immediate family members other than her husband;
- Approximately 28 hours of phone time were calls to co-workers, ODOT, or state of Ohio-related entities.

In interviews conducted by the Office of the Ohio Inspector General, Heintz's ODOT co-workers stated that she spent much of her time at work on her personal cell phone, discussing real estate and her rental property business. Heintz's co-workers also noted that while Heintz was at work she was observed handling real estate and rental property paperwork. Heintz's co-workers reported the following instances where Heintz violated ODOT policies and procedures by conducting real estate and rental property business during times when she was on duty at ODOT:

- Heintz was observed spending time during work hours on her cell phone with churches, mental health agencies, and social service agencies to discuss the availability of her low-income rental properties.

- Heintz was observed initiating or answering personal cell phone calls relating to rental properties and real estate while co-workers traveled with her. She also was observed speaking with tenants, potential tenants, and her husband about the properties while in the presence of ODOT co-workers.
- Heintz was observed conducting real estate and rental property matters during her lunch break.

In an August 1, 2011, interview conducted by the Office of the Ohio Inspector General, Steve Durbin, the ODOT Ashland County transportation administrator, stated that several employees reported that Heintz spent a substantial amount of time on her personal cell phone. According to Durbin, the employees noted Heintz was working on her real estate business or her rental properties during her time at work. Durbin attempted to address the matter by checking on Heintz five or six times, but found she appeared to be working and completing her assignments. ODOT had issued inter-office communications reminding employees that it was not permissible to conduct or operate any personal business-related work during ODOT work hours.

Additionally, ODOT employees were made aware of the policy when an employee was terminated for operating a business during work hours. Durbin stated he held staff meetings where he discussed employees' use of personal cell phones during work hours, and reminded employees that personal calls were to be made only during breaks and lunch and were not to impede the completion of the employees' assigned duties.

In an August 1, 2011, interview conducted by the Office of the Ohio Inspector General, Brian Hickey, ODOT District 3 testing laboratory supervisor, stated that he knew Heintz was a licensed real estate agent but that she had not been very active for a couple of years. Instead, Hickey believed she was more focused on the real estate properties that Heintz and her husband owned. Hickey explained Heintz was involved in the property management duties, and assigned maintenance and repair work to her husband that was to be done at the rental properties. Hickey recalled Heintz attending the required ODOT Ethics and Fraud Training, which stated that the operation of personal businesses during ODOT work hours was strictly prohibited. Hickey said that he understood ODOT's policy prohibiting "earning income during state time" and there

should be no overlap. Hickey stated that during his staff meetings he had never specifically discussed the rules about operating a personal business. Hickey stated that he did not consider Heintz's cell phone usage as being excessive. However, Hickey said he directly supervised Heintz about one-third of her time because Heintz spent most of her time outside of the office. This left Hickey unaware of her cell phone usage during those times. Noting he had seen Heintz on the cell phone during her lunch breaks, Hickey said if Heintz received a cell phone call during work hours, she typically left the office area to talk on the phone.

Records corresponding to Heintz's 2009 and 2010 real estate sales, commissions, listings, and contracts were subpoenaed from King Realty. The analysis of these records determined:

- Heintz was paid real estate sales commissions involving eight real estate transactions. One property was owned by Heintz and her husband and another was purchased by their daughter.
- Heintz was the listing salesperson for eight additional properties that did not sell. Five of these properties were owned by Heintz and her husband.
- Two potential sales did not culminate in a closing transaction after purchase contracts were made by Heintz's clients.

Financial records relating to the Heintzs' real estate holdings, which appear to be worksheets prepared by Heintz, were subpoenaed and an analysis of these records determined:

- In 2009, the rental estate investments held by the Heintzs' produced a net profit, before depreciation, of \$33,415, and a loss from real estate agency operations.
- In 2009, Heintz deducted the entire cost of her personal cell phone use as an expense – 50 percent of this expense offset income from rental real estate investments and 50 percent offset income from her real estate agency business.
- In 2010, the rental estate investments held by the Heintzs' produced a net profit, before depreciation, of \$54,493, and a net profit from real estate agency operations of \$411.
- In 2010, Heintz deducted 100 percent of her personal cell phone costs from rental real estate income.

When interviewed by the Office of the Ohio Inspector General, Heintz admitted to initiating or receiving cell phone calls during the time when she was on duty and working for ODOT, but only during lunch or while on breaks. Heintz denied utilizing property owned or leased by the state of Ohio, including any state vehicle, for any purpose relating to her real estate agency business or real estate rental investments. Heintz described her time spent at the testing laboratory as “hurry up and wait” and noted long periods of down time at the asphalt plants during the production process. In reference to her cell phone usage during the times when she was on duty for ODOT, Heintz stated some of the phone calls were related to real estate and rental property matters, as she was a licensed real estate agent, and she and her husband owned rental properties, and bought, fixed up, and resold houses. Heintz said some of the calls she received were from tenants who were lonely and wanted to talk. Heintz acknowledged that ODOT employees are not supposed to drive state vehicles while on the phone.

On November 28, 2011, Heintz submitted her resignation letter to ODOT, effective December 2, 2011. Heintz stated her reasons for resignation were retirement, a family situation, and to return to school.

The Office of the Ohio Inspector General determined that between July 1, 2009, and February 13, 2011, Heintz used her cell phone for personal real estate and rental property use while on duty at work for ODOT for approximately 80 hours. Of the 80 hours, 62 hours of Heintz’s cell phone calls were associated with her real estate agency or rental real estate investment matters, and an additional 18 hours of phone calls were conversations with her husband, whose full-time employment was related to the rental properties business. ODOT paid Heintz more than \$1,220 in wages for the 62 hours of time she spent engaged in personal cell phone calls relating to her real estate agency and rental properties businesses. This calculation does not include any calls to her husband, who was her business partner and engaged full-time in the rental property and real estate resale business ventures. In addition, the calculation does not include other state of Ohio benefits, such as pension costs, health care, vacation and sick leave accrual, and compensatory time earned.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe an act of wrongdoing or omission occurred in this instance.

CONCLUSION

Cheryl Heintz engaged in activities for personal profit while she was on duty and working for the Ohio Department of Transportation. During the 19-month period covered by the investigation, Heintz spent a substantial amount of time on her personal cell phone, making or receiving more than 4,000 calls, totaling 232 hours, during times she was being paid to work for the state of Ohio (of which 28 hours of calls were to or from ODOT co-workers and/or state of Ohio agencies or entities). While a portion of these calls may have occurred during authorized breaks and during her lunch hour, the investigation determined Heintz performed real estate work for personal gain while on duty and being paid to work for ODOT. Heintz resigned from state employment effective the end of her work day on December 2, 2011.

Additionally, the analysis of Heintz's personal cell phone records found that her phone was often in use during the period Heintz was assigned to operate a snow plow truck for ODOT. While Heintz was not involved in any traffic accidents during the time reviewed, on average, ODOT employees were engaged in approximately 54 accidents annually from 2008 through 2011 while performing snow and ice removal operations. As of February 28, 2012, ODOT employees were involved in 18 accidents during the 2011-2012 winter season.

RECOMMENDATIONS

The Office of the Ohio Inspector General makes the following recommendations and asks the Ohio Department of Transportation to respond within 60 days with a plan detailing how these recommendations will be implemented. The Ohio Department of Transportation should:

1. Assess whether or not to pursue a civil legal action for reimbursement of any wages or benefits paid to Heintz.
2. Require all ODOT employees to disclose secondary employment and outside income, as well as proprietary interests by employees and their family members in all outside businesses in order to eliminate potential conflicts of interest. This recommendation was previously made to ODOT (see OIG File No. 2007-100, Recommendation 3) and ODOT reported that it was "developing a process which would require all employees to self-report secondary

employment ... and should be implemented by June 30, 2009.” To date, no such policy has been implemented.

3. Although ODOT addresses the prohibition of personal business during work hours in their Fraud and Ethics Training, ODOT should consider issuing a policy and procedure and possibly expand the Fraud and Ethics Training presentation to clearly note that it is prohibited for ODOT employees to conduct personal income-generating business during the ODOT work day. In addition, ODOT should emphasize to all staff the potential appearance of impropriety resulting from conducting personal income-generating business during lunch and break periods.
4. As a result of the inherent danger in operating a snow plow during inclement weather, ODOT should reevaluate its policy on the use of mobile devices. According to the National Safety Council, drivers using cell phones look but fail to see up to 50 percent of the information in their driving environment, have slower response time and reaction time, have problems staying in a lane of traffic, and cell phone conversations bring four times more crash risk.² While the Office of the Ohio Inspector General recognizes the use of two-way radio communication is essential in the performance of job duties, ODOT should consider prohibiting the use of mobile devices while operating a snow plow by implementing policies similar to the ones that exist for operating heavy equipment.

REFERRAL

The Office of the Ohio Inspector General provided an investigative referral package to the Ashland County Prosecutor for consideration. However, the prosecutor has declined to prosecute at this time.

² Source: http://www.nsc.org/safety_road/Distracted_Driving/Documents/Dstrct_Drvng_White_Paper_1_2011.pdf.



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OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Department of Transportation
FILE ID #: 2010-404

KEEPER OF RECORDS CERTIFICATION

This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.

A handwritten signature in black ink, appearing to read "Jill Jones".

Jill Jones
KEEPER OF RECORDS

CERTIFIED
March 19, 2012

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