

STATE OF OHIO  
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF  
INVESTIGATION



AGENCY: OHIO DEPARTMENT OF INSURANCE  
FILE ID NO.: 2011-072  
DATE OF REPORT: NOVEMBER 18, 2011

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

*“Safeguarding integrity in state government”*

The Ohio Office of the Inspector General is authorized by state law to investigate alleged wrongful acts or omissions committed by state officers or state employees involved in the management and operation of state agencies. We at the Inspector General’s Office recognize that the majority of state employees and public officials are hardworking, honest, and trustworthy individuals. However, we also believe that the responsibilities of this Office are critical in ensuring that state government and those doing or seeking to do business with the State of Ohio act with the highest of standards. It is the commitment of the Inspector General’s Office to fulfill its mission of safeguarding integrity in state government. We strive to restore trust in government by conducting impartial investigations in matters referred for investigation and offering objective conclusions based upon those investigations.

Statutory authority for conducting such investigations is defined in *Ohio Revised Code §121.41* through *121.50*. A *Report of Investigation* is issued based on the findings of the Office, and copies are delivered to the Governor of Ohio and the director of the agency subject to the investigation. At the discretion of the Inspector General, copies of the report may also be forwarded to law enforcement agencies or other state agencies responsible for investigating, auditing, reviewing, or evaluating the management and operation of state agencies. The *Report of Investigation* by the Ohio Inspector General is a public record under *Ohio Revised Code §149.43* and related sections of *Chapter 149*. It is available to the public for a fee that does not exceed the cost of reproducing and delivering the report.

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The Inspector General’s Office remains dedicated to the principle that no public servant, regardless of rank or position, is above the law, and the strength of our government is built on the solid character of the individuals who hold the public trust.



STATE OF OHIO  
**OFFICE OF THE INSPECTOR GENERAL**

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RANDALL J. MEYER, INSPECTOR GENERAL

**REPORT OF INVESTIGATION**

**FILE ID NUMBER:** 2011-072

**SUBJECT NAME:** Ohio Department of Insurance

**POSITION:** State Agency

**AGENCY:** Ohio Department of Insurance

**BASIS FOR INVESTIGATION:** Complaint

**ALLEGATIONS:** Misappropriation of Funds

**INITIATED:** April 12, 2011

**DATE OF REPORT:** November 18, 2011

## **INITIAL ALLEGATION AND COMPLAINT SUMMARY**

On October 12, 2010, the Office of the Ohio Inspector General received an anonymous complaint alleging misappropriation of funds at the Ohio Department of Insurance (ODI). The complainant alleged ODI submitted proposals to the Ohio Department of Administrative Services to reclassify certain employees, which would allow ODI to increase the employees' pay around the time that the Ohio Civil Service Employees Association (OCSEA) union contract was being negotiated. These reclassifications would ensure certain employees would not lose money when the step freeze and cost savings days included in the union contract were implemented.

The information in the anonymous complaint led to the opening of an additional investigation by the Office of the Ohio Inspector General involving various personnel actions which warranted further analysis. This analysis included a review of employees who received multiple pay rate increases during a six-month period, excessive pay rate increases for employees assigned to temporary work levels, and violations of the hiring control process.

## **BACKGROUND**

The Ohio Department of Insurance regulates insurance businesses and agents operating in the state of Ohio. The department has an operating budget of \$36 million for fiscal year 2012, and a staff of more than 270 employees.<sup>1</sup> It is a cabinet-level agency whose director is appointed by the Ohio Governor and confirmed by the Ohio Senate.

In late 2008, former Governor Ted Strickland and the OCSEA began negotiations on a three-year contract for bargaining unit employees, effective April 16, 2009. Included in the final contract were provisions freezing step increases for state employees and implementing cost savings days.<sup>2</sup> Step increases are defined as, "...the specific value(s) within the pay range to which the employee is assigned."<sup>3</sup> Cost savings days required employees to take 10 work days off without pay each fiscal year. The effect of implementing cost savings days would be to temporarily reduce employees' pay by approximately 3.6 to 4 percent each fiscal year.

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<sup>1</sup> Source: [www.lsc.state.oh.us](http://www.lsc.state.oh.us).

<sup>2</sup> Cost savings days are also referred to as furlough days.

<sup>3</sup> Source: OCSEA contract page 126: <http://das.ohio.gov/Divisions/CollectiveBargaining.aspx>.

On January 19, 2007, Governor Strickland implemented temporary hiring controls. These controls required agencies to receive approval from the Ohio Office of Budget and Management (OOBM) prior to posting positions or hiring, and a review from the Governor's Office of all personnel actions for administrative staff with pay rates over \$20 per hour. **(Exhibit 1)** These controls were terminated on May 1, 2007, but were reinstated by Executive Order (2008-01S) on January 31, 2008. **(Exhibit 2)**

Other payroll cost savings measures were implemented by Governor Strickland regarding pay increases for employees classified as administrative staff.<sup>4</sup> The following is a timeline of the memos issued by the Governor's Office that address payroll cost savings measures:

- June 8, 2007 – Rate increases not granted to administrative staff employees;
- November 27, 2007 – Rate increase freeze for administrative staff employees continued;
- June 20, 2008 – Rate freeze lifted;
- October 16, 2008 – Rate freeze reinstated;
- February 26, 2009 – Rate increases for promotions only granted when employees "...are assigned substantial new duties." **(Exhibit 3)**

## **INVESTIGATIVE SUMMARY**

*Allegation – The Ohio Department of Insurance submitted proposals to the Ohio Department of Administrative Services to reclassify certain employees.*

The complainant provided a spreadsheet with a list of employees that allegedly worked for the Ohio Department of Insurance (ODI) with salary information obtained from the Buckeye Institute and the Ohio Department of Administrative Services websites. The information provided listed the total compensation received by each employee for a particular fiscal year, but did not include the source of compensation. The Office of the Ohio Inspector General obtained an Employee History of Change report<sup>5</sup> for all employees assigned to ODI from January 2007 to April 2011. This report listed personnel actions and pay rate changes for each employee within the timeframe covered by the complaint.

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<sup>4</sup> Administrative staff employees are also referred to as "unclassified" employees.

<sup>5</sup> An Employee History of Change report documents a state employee's personnel status throughout his or her service time with the state.

The Office of the Ohio Inspector General narrowed down the list of employees to review, based on those receiving pay rate increases, promotions, reclassifications, transfers or temporary work levels. Personnel information was then requested from ODI, including any Personnel Action forms,<sup>6</sup> Position Descriptions,<sup>7</sup> and any letters, memos or emails related to changes noted in the Employee History of Change report.

After reviewing the documents obtained from ODI, the Office of the Ohio Inspector General determined the allegation that ODI was reclassifying or promoting certain employees to avoid the impact of the OCSEA contract provisions was not supported. Of the 34 employees reviewed, several administrative staff employees received pay rate increases of 3.5 percent, effective June 22, 2008. However, these were the same increases received by bargaining unit and classified/exempt employees with the same effective date. Other Personnel Action forms were submitted throughout the years under review and did not seem to indicate that numerous changes were made shortly before the start of the new OCSEA contract.

**Accordingly, there is not reasonable cause to believe that a wrongful act or omission occurred in this instance.**

During the course of the investigation, the Office of the Ohio Inspector General noted some personnel actions – unrelated to the initial complaint – that warranted further analysis, to determine whether the personnel actions were processed according to policy.

*Other Matter 1 – Improper pay rate increases during a six-month period.*

Pursuant to Ohio Revised Code §124.15(H), employees may not receive more than one pay rate increase in a six-month period. Two ODI employees received pay rate increases on June 22, 2008, and again on November 9, 2008: the assistant director of Communications was named the assistant director of the Ohio Senior Insurance Information Program and assumed new duties related to this role; and the Health Policy and Education liaison assumed additional supervisory duties. According to the Ohio Department of Administrative Services, because the pay rate

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<sup>6</sup> Personnel Action forms are standardized forms obtained from and required by the Ohio Department of Administrative Services that initiate and document personnel changes such as new hires, promotions, pay rate increases, terminations, etc.

<sup>7</sup> Position Descriptions list the job duties, knowledge, and skills for a particular position.

increases were related to promotions or reassignment of job duties, these actions were processed correctly.

**Accordingly, there is not reasonable cause to believe that a wrongful act or omission occurred in this instance.**

*Other Matter 2 – Excessive pay rate increases through temporary work levels.*

Temporary work levels are temporary assignments to positions of higher responsibility often resulting in temporary pay rate increases. When granting temporary work levels for employees temporarily assigned to an administrative staff position, there is no limit on the temporary pay rate increase. The chart below depicts administrative staff receiving significant pay rate increases.

Position	Temporary Work Level	Effective Date	Pay Rate Increase
Insurance Investigation Supervisor	Deputy Director	4/11/10 – 1/1/11 and 1/2/11 – 1/29/11	53.4%
Deputy Director of Human Resources	Assistant Director	12/13/10 – 1/1/11 and 1/2/11 – 2/12/11	25.3%

Source: Ohio Department of Insurance Personnel Action forms  
Compiled: Office of the Ohio Inspector General

These rate increases were approved by Ohio Department of Insurance Chief of Staff Amy Andres on behalf of Director Mary Jo Hudson. Relative to the payroll-related cost savings measures implemented by the Ohio Governor’s Office, these increases in pay, although allowable, are significant.

While the state of Ohio’s earned and unearned wages<sup>8</sup> decreased by 2 percent from 2008 to 2010, ODI’s increased by 5.7 percent. As ODI earned and unearned wages increased, the number of employees at ODI remained relatively steady, only increasing by 2.6 percent, or seven employees total.

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<sup>8</sup> Earned and unearned wages are classifications used in the state accounting system, Ohio Administrative Knowledge System (OAKS). Unearned wages include vacation, sick leave, holidays, and other leave used by employees.

Effective August 17, 2008, the deputy chief information officer was assigned to the temporary work level of Deputy Director 6. The Ohio Department of Administrative Services recommended it would have been more appropriate to process these as a rate change with a note in the “Comments” section of the Personnel Action form stating that the rate increase was temporary and the reason why. When the temporary assignment was then completed, a second Personnel Action form would be processed as a rate change, returning the employee to their original pay rate.

**Accordingly, the Office of the Ohio Inspector General believes that although an appearance of impropriety occurred, there is not reasonable cause to believe a wrongful act or omission occurred in this instance.**

*Other Matter 3 – Violations of the hiring control process.*

During the course of the ODI investigation, questions surfaced regarding the department’s adherence to the hiring control process implemented by the Ohio Office of Budget and Management and the Ohio Governor’s Office on January 31, 2008. The Office of the Ohio Inspector General requested documentation related to new hires, promotions, re-classifications and pay rate increases from the Ohio Department of Insurance, the Ohio Office of Budget and Management, and the Ohio Governor’s Office. Based on the documents provided, there was an instance where it appeared ODI failed to follow the hiring controls implemented by the January 31, 2008, Executive Order (2008-01S).

The Office of the Ohio Inspector General made a subsequent request to the agencies named above to provide additional documentation that might be applicable. ODI provided an internal spreadsheet, listing the job classification, date the request for approval was sent to the Ohio Office of Budget and Management, the date of approval, and the status for each position subject to the hiring control process. However, the Office of the Ohio Inspector General did not rely upon the information contained in the spreadsheet during the investigation because it was not part of the official hiring control documentation required by the Ohio Office of Budget and Management or the Ohio Governor’s Office and could not be verified.

Using the documentation submitted, the following timeline was compiled regarding the promotion of ODI's chief of information technology to a deputy director position:

- September 19, 2008 – According to ODI, the department sent a letter requesting approval for the promotion to the Ohio Governor's Office. **(Exhibit 4)** The Office of the Ohio Inspector General requested a copy of the response, and neither ODI nor the Governor's Office was able to provide a copy. As a result, it could not be determined when or if the Ohio Governor's Office approved this request.
- September 23, 2008 – According to the internal spreadsheet provided by ODI, an email requesting approval for the promotion was sent by ODI to the Ohio Office of Budget and Management. The Office of the Ohio Inspector General requested a copy of the response, and neither ODI nor the Ohio Office of Budget and Management was able to provide a copy. As a result, it could not be determined when or if the Ohio Office of Budget and Management approved this request.
- September 27, 2008 – According to ODI, this was the effective date of promotion.
- September 30, 2008 – An email was sent from ODI to OOBM requesting approval for the promotion. **(Exhibit 5)** This was the first instance in which the Office of the Ohio Inspector General received written documentation showing that an actual request for approval of the promotion had been submitted by ODI to the Ohio Office of Budget and Management.

As further evidence that ODI did not seek the required approval of the promotion from the Ohio Office of Budget and Management prior to the date the promotion went into effect, a copy of the position information audit report was obtained from the Ohio Department of Administrative Services. The position information audit report showed the promotion was processed on October 8, 2008. The Ohio Department of Administrative Services stated this may not have been the date the promotion was approved, but rather was the date the promotion was processed. Evidence suggests that since ODI did not send an email requesting approval for the promotion to the Ohio Office of Budget and Management until September 30, ODI did not follow the hiring control process when processing the promotion.

**Accordingly, there is reasonable cause to believe that a wrongful act or omission occurred in this instance.**

## **CONCLUSION**

The Office of the Ohio Inspector General found no evidence to support the original allegation that ODI submitted proposals to the Ohio Department of Administrative Services to reclassify certain employees, which would allow ODI to increase the employees' pay around the time that the Ohio Civil Service Employees Association (OCSEA) union contract was being negotiated. However, the Office of the Ohio Inspector General did find that the Ohio Department of Insurance did not process personnel actions in accordance with policies in place at the time they occurred. The Ohio Department of Insurance provided employees with significant pay rate increases while assigned to temporary work levels and processed Personnel Action forms without seeking Ohio Office of Budget and Management approval as required by the hiring control process.

## **RECOMMENDATIONS**

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

- 1) Create internal policies and procedures to ensure that temporary work assignments from one administrative staff position to a higher administrative staff position are processed as temporary rate changes.
- 2) Adopt internal policies and procedures to ensure temporary rate changes are processed reasonably and consistently. This could be accomplished by establishing maximum rates or percentages for various levels of administrative staff positions.
- 3) Create internal policies and procedures that strictly follow hiring controls put in place by the Ohio Office of Budget and Management or the Ohio Governor's Office.



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RANDALL J. MEYER, INSPECTOR GENERAL

**NAME OF REPORT: Ohio Department of Insurance**  
**FILE ID #: 2011-072**

**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", with a long horizontal flourish extending to the right.

**Jill Jones**  
**KEEPER OF RECORDS**

**CERTIFIED**  
**November 18, 2011**

*MAILING ADDRESS*

OFFICE OF THE INSPECTOR GENERAL  
JAMES A. RHODES STATE OFFICE TOWER  
30 EAST BROAD STREET – SUITE 2940  
COLUMBUS, OH 43215-3414

*TELEPHONE*

(614) 644-9110

*IN STATE TOLL- FREE*

(800) 686-1525

*FAX*

(614) 644-9504

*E-MAIL*

OIG\_WATCHDOG@OIG.STATE.OH.US

*INTERNET*

WATCHDOG.OHIO.GOV