

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: INDUSTRIAL COMMISSION NOMINATING COUNCIL
FILE ID NO.: 2011-089
DATE OF REPORT: August 23, 2011

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

“Safeguarding integrity in state government”

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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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REPORT OF INVESTIGATION

FILE ID NUMBER: 2011-089

SUBJECT NAME: Industrial Commission Nominating Council

AGENCY: Industrial Commission of Ohio

BASIS FOR INVESTIGATION: Complaint

ALLEGATIONS: Failure to comply with state law and/or regulations.

INITIATED: May 10, 2011

DATE OF REPORT: August 23, 2011

INITIAL ALLEGATION AND COMPLAINT SUMMARY

The Office of the Ohio Inspector General received a complaint alleging the Ohio Industrial Commission Nominating Council failed to act in compliance with Ohio Revised Code (ORC) Section 4121.02(D), which impeded upon the process for a timely appointment with regard to the June 30, 2011, expiration of Commissioner Kevin Abrams' term on the Industrial Commission of Ohio. A similar complaint was received in 2009 that alleged the same violation. The 2009 investigation by the Office of the Ohio Inspector General determined that the Ohio Industrial Commission Nominating Council did not comply with ORC 4121.02 by failing to submit nominees to the Governor in a timely manner.

BACKGROUND

The Industrial Commission of Ohio serves injured workers and Ohio employers through the prompt and impartial resolution of issues that arise from workers' compensation claims and through the establishment of an adjudication policy. Hearings on disputed claims are conducted at three levels within the Commission: the district level, the staff level, and the Commission level. The Industrial Commission of Ohio is responsible for providing a forum for fair and impartial claims resolution, conducting hearings on disputed claims, adjudicating claims involving an employer's violation of specific safety requirements, and determining eligibility for permanent disability benefits.¹

Ohio Revised Code 4121.04(A) created the Industrial Commission Nominating Council, "... consisting of five employer representatives, four labor representatives, one representative from the Ohio association for justice, and two members of the public, each of a different political party, who are appointed by the Governor." The nominating council shall make recommendations to the Governor for the appointment of members to the Industrial Commission of Ohio as provided in ORC Section 4121.02.

¹ The Industrial Commission of Ohio works in conjunction with the Bureau of Workers' Compensation which is responsible for collecting workers' compensation insurance premiums, overseeing the insurance system, and paying out compensation claims.

APPLICABLE POLICY AND STATUTES

Ohio Revised Code 4121.02 (D) Industrial commission. (**Exhibit 1**)

INVESTIGATIVE SUMMARY

In a June 16, 2011, interview with Michael Travis, Chief Ombuds for the Workers' Compensation System², Travis explained the two functions of the Industrial Commission Nominating Council are to nominate an ombudsman and to nominate candidates for vacancies on the Industrial Commission of Ohio. The names of nominated candidates are then forwarded to the Governor of Ohio for final appointment. In responding to the question of whether there was any discussion by the nominating council about filling the pending vacancy for the public member position on the Industrial Commission of Ohio, Travis stated that the nominating council met on June 3, 2011. During the course of the meeting, Travis confirmed there was a discussion regarding the upcoming vacancy of the public member candidate's position. That same day, the nominating council provided a list of potential candidates. After a unanimous 10 to 0 vote, the council nominated three candidates for the Governor's appointment to fill the vacancy on the Industrial Commission of Ohio. The candidates who were nominated by the nominating council were Kevin Abrams, Tom Connor, and Karen Gillmor.

On June 10, 2011, Governor John Kasich announced the appointment of Senator Karen Gillmor to be commissioner of the Industrial Commission of Ohio. She replaced Commissioner Kevin Abrams whose term expired June 30, 2011. Gillmor's appointment became effective July 14, 2011.

CONCLUSION

The Office of the Ohio Inspector General reviews complaints to determine whether there is reasonable cause to believe that the allegations made constitute "wrongful acts or omissions" on the part of a state officer, agency, or employee. A wrongful act or omission is defined, in part, as

² The Workers' Compensation System includes both the Bureau of Workers' Compensation and the Industrial Commission of Ohio.

“(a)ny willful act or failure to act or perform... that violates or fails to comply with statutory law...” In this instance, the Industrial Commission Nominating Council failed to comply with the time periods specified in ORC Section 4121.02(D). Specifically, the council should have submitted three names to the Governor’s office by May 2, 2011, but failed to do so until June 3, 2011. Once the information was received by the Governor’s office, the Governor did make a timely appointment in accordance with ORC Section 4121.02. Although the Ohio Revised Code does not have penalties or consequences for failing to comply with ORC Section 4121.02, the process should be followed to ensure the integrity of the appointment process.

The Office of the Ohio Inspector General finds that a wrongful act or omission occurred in this instance because the Ohio Industrial Commission Nominating Council failed to deliver to the Governor, before a date specified under ORC 4121.02, a list of nominees to fill a vacancy on the Industrial Commission of Ohio.

RECOMMENDATION

The Office of the Ohio Inspector General makes the following recommendation and asks that the Industrial Commission Nominating Council respond within 60 days with a plan as to how this recommendation will be implemented.

The Industrial Commission Nominating Council and the Chief Ombuds for the Workers’ Compensation System should work in conjunction with each other to make sure the appointment process is followed as specified in ORC Section 4121.02.

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