

Appendix D: Letter Issued After State Inspector General Investigation



OFFICE OF THE STATE INSPECTOR GENERAL

BRIAN P. KEMP
Governor

DEBORAH WALLACE
State Inspector General

March 24, 2020

The Honorable Brad Raffensberger
The Office of the Secretary of State
214 State Capitol
Atlanta, GA 30334

Ms. April King, CFO
Georgia State Financing and Investment Commission
270 Washington Street
Atlanta, GA 30334

RE: OIG File No. 20-0027-I

Dear Secretary Raffensberger and Ms. King:

On January 31, 2020, the Office of the State Inspector General (OIG) opened an administrative investigation into former Secretary of State (SOS) Chief Operating Officer (CFO) Gabriel Sterling and his business, Sterling Innovative Solutions, LLC (SIS). The investigation was opened after the Georgia State Finance and Investment Commission (GSFIC) notified OIG that GSFIC received requests for general obligation bond reimbursements with signed approval from Sterling, in his capacity as COO of SOS, for work performed by Sterling's company, SIS. However, bond fund regulations restrict the use of funds to pay the salary of a state employee. OIG's investigation aimed to determine if SOS doing business with SIS while Sterling was employed constituted a conflict of interest in violation of the Governor's Executive Order Establishing a Code of Ethics for Executive Branch Officers and Employees ("Ethics Order") or state law.

In reviewing this matter, OIG conducted interviews and reviewed bond documents, contracts between SIS and SOS, and existing laws, policies and procedures. Specifically, OIG focused on the Ethics Order, laws relating to conflicts of interest, and regulations relating to the administration of bond funds. The Ethics Order, in pertinent part, provides that:

(a) An employee of the Executive Branch of the State shall make every effort to avoid even the appearance of a conflict of interest. An appearance of conflict exists when a reasonable person would conclude from the circumstance that the

Page 2 of 3
March 23, 2020
Closing Ltr 20-0027-I

employee's ability to protect the public interest, or perform public duties, is compromised by personal interests. An appearance of a conflict could exist even in the absence of a true conflict of interest.

(c) An employee shall not be employed outside of his or her state employment or serve as a corporate officer or director of any organization if such employment or service conflicts with his or her duties as an employee of the state.

Furthermore, pursuant to O.C.G.A. § 45-10-23, it is unlawful for “any full-time employee, for himself or on behalf of any business, or for any business in which such employee or member of his family has a substantial interest to transact any business with the agency by which such employee is employed.” Thus, at all times Sterling was an employee of the State, he was subject to the Ethics Order and required to act in accordance with the Ethics Order. Additionally, when Sterling was a full-time employee of the State, he was prohibited by O.C.G.A. § 45-10-23 from transacting personal business with SOS.

In July 2019, SOS began the implementation process of a new statewide voting system (“SVS”) to be paid for with bond funds. Early on, SOS realized that it would need a project manager for the SVS project to help with budgeting and logistics. Sterling, who was most familiar with the project, was tasked with finding a project manager and to serve as a project manager in the interim. Sterling contacted multiple project management firms for quotes. Through Sterling’s research, it was determined, generally speaking, that (1) project management firms did not want short term work like this project; (2) project management firms did not want to take on this project due to possible “legal and reputational risk”; and, (3) hiring a reputable project management firm would be cost prohibitive to balance the perceived risk. Because a suitable project management firm could not be found, Sterling continued to manage the project in addition to performing his duties as COO for SOS.

In Fall 2019, it became apparent to SOS leadership that Sterling could no longer continue to perform the duties of COO and the duties of the SVS project manager. SOS leadership determined that Sterling would be placed on leave from his COO position at SOS. While Sterling was on leave, his business, SIS, a business in place prior to Sterling’s employment at SOS, would serve as the project management firm for the SVS project. On November 1, 2019, Sterling was placed on administrative leave. On January 15, 2020, Sterling returned from leave to handle budget hearings and on February 15, 2020, Sterling resigned from SOS. During the period between January 15, 2020 and February 15, 2020, SIS completed no work on the SVS project nor were any funds paid to SIS. SIS is currently and continues to serve as the project management firm for the SVS project.

Although Sterling was on administrative leave during the period of time when SIS performed services and received payment for services performed for the SVS project, Sterling’s work as project manager created the appearance of a conflict of interest. Because Sterling continued his employment, albeit on leave, while performing services as a private independent contractor, a reasonable person would conclude from the circumstances that his ability to protect the public interest, or perform public duties, was compromised by his personal interests. Additionally, Sterling’s role in contacting potential project management firms and in determining that no suitable project management firm could be found in time gave rise to the appearance of a conflict of interest considering that Sterling’s business eventually contracted

Page 3 of 3
March 23, 2020
Closing Ltr 20-0027-I

with SOS to serve as the project management firm for an amount that exceeded Sterling's salary as COO. Therefore, OIG substantiated a violation of the Ethics Order, but ultimately found no fraudulent practices by Sterling or SIS.

To remediate any actual or perceived conflicts of interest, Sterling has resigned from SOS and SOS has appointed Deputy Secretary of State Jordan Fuchs as the authorized individual to approve invoices that SOS submits to GSFIC for the implementation of the SVS. Also, it is our understanding, that to further distance Sterling from SOS, Sterling is no longer using an SOS email account. It is reasonable, though, that Sterling may have some continued contact with GSFIC as SIS is the project management firm for a bond funded project.

OIG recommends that SOS educate and inform all employees of the requirements of the Ethics Order and that the Ethics Order is taken into consideration when SOS enters any contractual relationship. OIG also recommends that SOS reach out to the Department of Administrative Services when complex procurement issues involving independent contractors arise. Further, OIG recommends that SOS review its practice of hiring independent contractors to avoid liability and conform with statewide policies and procedures. We understand and are sympathetic to the short time period within which SOS must implement the voting systems; however, we remind SOS that state policies and procedures must always be followed regardless of time constraints. We thank SOS for their attention to this matter, their swift implementation of remedial measures, and their cooperation with the investigation. Additionally, we thank GSFIC for their vigilance in administering bond funds and for reporting this matter to OIG. Based upon the administrative results of this investigation, OIG considers this matter closed.

Sincerely,



Deborah Wallace, CIG, CFE
Inspector General

DW:blw

cc: Ryan Germany, General Counsel, SOS
Gerald Pilgrim, Chief of Staff, GSFIC
Lisa Javorka, Senior Assistant Attorney General, Georgia Office of the Attorney General

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