



State of Louisiana

**OFFICE OF
STATE INSPECTOR GENERAL**

ALCOHOL AND TOBACCO CONTROL

**Report by
Inspector General Bill Lynch**

**Prepared for
Governor Kathleen Babineaux Blanco**

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File No. 1-04-0001

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STATE INSPECTOR GENERAL

ALCOHOL AND TOBACCO CONTROL

Report by

BL CWB
Inspector General Bill Lynch

Approved by

KDB
JTA
2/23/05
Governor Kathleen Babineaux Blanco

October 6, 2003

File No. 1-04-0001

Alcohol and Tobacco Control

An employee of the Office of Alcohol and Tobacco Control (ATC) was given use of a state vehicle, which he used for personal commuting, after an authorization document was falsified to show he was a law enforcement officer, when he was not. The agency's fleet manager stated twice on the document that the employee was a law enforcement officer, and the agency's commissioner signed off on it.

ATC Commissioner Murphy Painter also allowed the sale of 50-milliliter bottles of alcohol in possible violation of state law, and routinely issued 45-day temporary liquor permits without statutory authority to do so.

Background

The Office of Alcohol and Tobacco Control is an agency within the Department of Revenue, responsible for regulation and enforcement of laws pertaining to the wholesale and retail sale of alcohol and tobacco products in the state under Title 26 of the Louisiana Revised Statutes.

Commissioner Painter, an assistant secretary for the Department of Revenue, was appointed to head ATC by the Governor in February 1996. He serves as the agency's appointing authority, and acts as hearing officer on appeals to the agency. He supervises about 80 employees, including about 50 commissioned law enforcement officers. All officers are provided personally assigned state vehicles and have home storage authority, final approval of which must be provided by the Division of Administration.

False Document

An ATC employee and the agency fleet manager submitted to Commissioner Painter a request containing false information for personal assignment and home storage of a state vehicle for the employee. After the commissioner signed it, the request was submitted to and approved by the Division of Administration based on the false information. The employee, Keith Bernard, used his state car to commute to and from work for more than two years.

In March 2001, Commissioner Painter hired Mr. Bernard to oversee the agency's computer and information systems. The title of his unclassified position was Information Systems Director. He was provided with a badge, weapon and state vehicle.

Commissioner Painter said his intention was for Mr. Bernard to become certified through Peace Officer Standards and Training (POST), and serve as a commissioned special agent specializing in information systems and having state-wide responsibility. State law allowed Mr. Bernard to be immediately commissioned as a peace officer, but required him to complete POST within one year in order to remain a commissioned officer.

Mr. Bernard failed to become POST certified within one year. On July 1, 2002, more than a year after being hired, he and the agency fleet manager completed, signed and submitted to the commissioner a request for personal assignment and home storage authority for the state vehicle provided Mr. Bernard. Commissioner Painter approved the request by also signing the document, then forwarded the request to the Division of Administration for final approval. By signing, all three attested the information on the document was true.

The document stated that Mr. Bernard's job classification was Investigator II. However, according to Mr. Bernard, his job description and his identification credentials, he was the Information Systems Director. Mr. Bernard said he falsely stated on the document that his title was Investigator II after being told to do so by the fleet manager.

The ATC fleet manager, Will Brian, said he may have told Mr. Bernard to put that information on the document because Mr. Bernard's badge, provided when he was first hired, identified him as Investigator II.

As a reason for requesting personal assignment of the state vehicle, the form stated that Mr. Bernard was "in a position of law enforcement and has the power to arrest and uses this power in the regular performance of duties." It further stated, in requesting home

storage authority, Mr. Bernard was “a law enforcement officer with the power to arrest who uses this power in the regular performance of daily job duties...”

Mr. Bernard said this information was also false. He said he did not serve as a law enforcement officer, did not have the power to arrest and did not use such power in the performance of duties.

He said the fleet manager put that information on the document, and may have done so to make it easier for a state car to be assigned to him.

Mr. Brian, the fleet manager, said he probably did provide that false information on the document. He said he had never been told that Mr. Bernard was not acting as a law enforcement officer and did not realize the information was false.

The commissioner said he signed the form without carefully reviewing it because he depended on the employee and fleet manager to insure the information was accurate. He admitted that information on the document was incorrect, but said he did not realize that when he signed attesting to the accuracy of the document.

The commissioner, the fleet manager and the employee all signed the document below the statement, “By signing this agreement, the Agency Head, Transportation Coordinator and State employee attest to the accuracy of the information, which is subject to audit or investigation at any time.”

After initial inquiry by this office, Commissioner Painter directed the fleet manager to pick up Mr. Bernard’s badge, weapon and state car.

Since Mr. Bernard’s eligibility to be commissioned through POST expired a year after he was hired in March 2001, he improperly used his state car to commute for 16 months, from April 2002, until July 2003. During that time he drove approximately 1500 miles in commuting. At the state reimbursement rate of 32 cents per mile, this cost the state about \$480.

50-milliliter Bottles

Commissioner Painter allowed the general retail sale of 50-milliliter bottles of alcohol in Louisiana, even though state law may prohibit the sale of such items.

In June 2002, the commissioner began allowing the small bottles of liquor usually found for sale in hotel or motel rooms, to be sold through retail outlets in Louisiana. The sale was allowed by the commissioner only if the small bottles were packaged within a sealed wrapping with at least 15 to a package so that the total amount of alcohol sold as one item in the package was at least 750 milliliters.

State law allows for the sale of alcohol in 750 milliliter containers, but not in 50 milliliter bottles, except in hotel or motel rooms.

La. R.S. 26:351 states that 50-milliliter bottles of liquor with "high alcoholic content may be sold in or shipped into this state in 50-milliliter containers and stored by licensed wholesale dealers only for the purpose of sale to licensed retail dealers who own or operate hotels or motels which consist of sleeping rooms, cottages, or cabins, for purposes of sale at retail" in such rooms.

It is the opinion of this office that since the sale of liquor in these small bottles is only contemplated by statute to be made to such hotel and motel operators and owners for sale to guests, the retail sale otherwise, regardless of packaging, would be prohibited.

Commissioner Painter said his decision to allow the sale of the 50-milliliter bottles of liquor as long as the bottles were packaged as described was made based on his and his counsel's interpretation of the relevant statutes. He said such packaging converts the small bottles of liquor into 750 milliliters of alcohol within a single container, the sale of which would be in compliance with state law, an argument with which this office disagrees.

The retail sale in the state of such a product could result in substantial additional annual liquor sales in Louisiana, according to ATC officials.

Temporary Permits

Commissioner Painter has issued hundreds of 45-day temporary permits to allow for the sale of liquor without statutory authority to do so.

State law requires a permit for the sale of alcohol and establishes permit application procedures. La. R.S. 26:279 allows for the issuance of 35-day probationary permits following the completion of a "proper investigation" of a permit applicant. State law also

allows for the issuance of three-day temporary permits for such as parades and festivals.

However, state law does not provide for the issuance of any 45-day probationary or temporary permit to sell liquor.

The commissioner has routinely issued 45-day temporary permits for a variety of reasons. For example, as the licensing and regulatory authority, ATC receives and investigates applications for permits to sell liquor. The commissioner issued 45-day temporary permits to provide for applicants during delays in the investigative process of determining whether to issue a proper permit.

However, the law does not provide for the issuance of such permits, only for the issuance for 35-day temporary permits and then only after a "proper investigation" has been conducted.

Commissioner Painter said the issuance of 45-day temporary permits has been a practice of long-standing, going back to previous commissioners. He said he would discontinue the practice.

Conclusions:

1. The commissioner and two of his employees authorized a request to the Division of Administration for home storage and personal assignment of a state vehicle which included false information. As a result of the false information, an employee was improperly allowed to commute in a state vehicle at a cost of about \$480.
2. The commissioner allowed the sale of 50 milliliter bottles of alcohol at retail outlets in the state even though state law may prohibit such sale.
3. The commissioner routinely issued 45-day temporary liquor permits even though state law allows only for 35-day temporary permits after a "proper investigation" has been conducted.

Recommendations:

1. The commissioner should insure that requests for personal assignment and home storage of state vehicles contain accurate information.

2. The commissioner should require the employee to reimburse ATC \$480 for the improper use of the state vehicle.
3. The commissioner should discontinue allowing the sale of 50-milliliter bottles of alcohol in Louisiana and should seek a legal opinion from the Attorney General on the issue.
4. The commissioner should comply with state law and no longer issue 45-day temporary permits.

Management Response:

A response from Commissioner Painter is attached.

BL/JW/tp

File No. 1-04-0001



STATE OF LOUISIANA
DEPARTMENT OF REVENUE
OFFICE OF ALCOHOL AND TOBACCO CONTROL

J. "MIKE" FOSTER, JR.
Governor

CYNTHIA BRIDGES
Secretary

MURPHY J. PAINTER
Commissioner

September 30, 2003

Via Hand Delivery

Mr. William Lynch
State Inspector General
Office of State Inspector General
State Capitol Annex
Baton Rouge, La. 70804-9095

Ref: File No. 1-04-0001

Dear Inspector General Lynch:

I am in receipt of the draft copy of your agency's report of File No. 1-04-0001. As the appointing authority, I will be answering for all personnel of this Agency on all concerns in the above referenced file.

First, allow me to comment on the investigation itself. Having served in law enforcement or regulatory capacities for 30 years, I fully understand and accept the role that your agency plays in maintaining some sort of standard of integrity in this complex business of state government. In this investigation, I have found your office to be more than competent and professional. We have cooperated in every way possible to get to this point.

Although numerous allegations were filed, over twenty, you will see that the report is based on only three that had any need for comment. I opine that these three are also somewhat arbitrary and really form no substance for any further action granted to you by the authority of the Governor's Office. This is based on the following rationale and legal thought process.

"False" Document Issue:

During the course of any given day, I may apply my signature on fifty to one hundred documents that bear some form of authority or legal actions in the statutory duties of this agency. Every employee bears the same burden that I do, to uphold the legal and ethical fabric of this agency. I relied on that burden when I signed, not a false

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document as the report described, but a document that was mislabeled by a fleet supervisor. I use mislabeled because for it to be false there has to be a conspiracy to defraud the state or a reason why the intentional misrepresentation took place.

Keith Bernard, an honor graduate from the University of Southern Mississippi, with degrees in Criminal Justice and Computer Science, the son of an employee of the New Orleans FBI Office, applied for a law enforcement job with this agency. We had advertised for someone with exactly his criteria, law enforcement and computers, but were unable to find anyone in state civil service. The position being filled was based on a Department of Justice grant for the sole purpose of creating a law enforcement computer data repository for real time statistics on underage incidents involving alcohol. This person would have to travel extensively, contacting every Sheriff's Office and city police agency that had Internet capabilities.

Because no such position existed in OATC or the Department of Revenue, we worked with civil service and Revenue Human Resources to create the position. It was a law enforcement position and included in the enforcement division, for two reasons. First, the nature of the assignment and second, the need for transportation to travel the state and maintain contact with the law enforcement agencies.

Civil Service approved this detail, as Enforcement Information Systems Director, as did Revenue Human Resources. Included with this detail was the need for a contract with a software support agency. The detail, and the contract, expired with the completion of the repository on June 30, 2003.

Upon acceptance of that position, Mr. Bernard filled out a home storage report as required and entered Enforcement Information Systems Director as his title. That should have never changed regardless of how many times a new report was due as long as he was detail to that position. When Mr. Bernard's detail ended so did his authority to use an automobile. He is now employed as an IT Support Technician II under a civil service slot and has no state automobile.

My argument is that regardless of what and why Supervisor Will Brian chose to put Agent II on the home storage report instead of the duly authorized designation of Enforcement Information Director. Bernard was authorized to have a state vehicle as long as he was in that detail. Your investigation shows that this privilege was not being abused.

Supervisor Brian's first statement, when questioned on this issue, was that Director Chennault advised him to put that designation on the home storage report. Later, when asked to put that in writing for this investigation, he changed his statement to say

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that he now thinks he was mistaken and it probably was Director Bobby Jackson, who took Chennault's place when Chennault took a voluntary demotion. Bobby Jackson is no longer with this agency.

All that to reiterate that the wording used in your report of a false document I contend is incorrect. We have a valid state document that contains a misstatement.

50-milliliter Bottles Issue:

I have a disgruntled agent and your lawyer's legal opinion that says I need the attorney general to tell me whether I have the authority to give permission for the sale of 50ml bottles of alcohol packaged in legal size 750ml containers to be offered for sale in this state.

Your agency's legal opinion is based on a part of Title 26 that does say that individual bottles of 50ml alcohol products can only be offered for sale in hotels or airplanes. That is why, as the other statues demands, that they are being packaged in legal 750ml containers. We specifically agree that they cannot be sold as individual bottles.

I simply offer that I have the authority by statue, the Department of Revenue also had to approve this and has at least three times in my tenure and that the results of their actions and mine have created a totally legal avenue of commerce that has absolutely no negative impact on any level of any sort within the industry or the state.

Temporary Permits Issue:

Your report begins with the sentence that "Commissioner Painter has issued hundreds of 45-day temporary permits to allow for the sale of liquor without statutory authority to do so." It fails to tell you that any investigation will show that so has every other Commissioner of this office including Mr. Dickerson, since 1980. We have one supervisor that has been with the certification process since 1980 that will verify this, along with file documentation.

Also noted is the fact that every agent and supervisor of this agency has done the exact same thing, many of them being issued for other reasons than intended. Because of this abuse and the potential for future abuse we created a tracking system and a written policy that absolutely complies with the provisions of La. R.S. 26:279 with one exception that was found when this became an issue of an improper conduct allegation.

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The 45-day provision that again has been utilized as far as our research can go back to must have been misread or added to sometime before the early 1980's. The law states "The Commissioner can issue 35 day temporary permits after a proper investigation anytime after receipt of the application." I assure you, and I can only speak for me not any other Commissioners, that our policy calls for and documents a proper investigation before any temporary permit is issued. It also documents the suitability of the location and at least an affidavit certifying that the owners qualify as well.

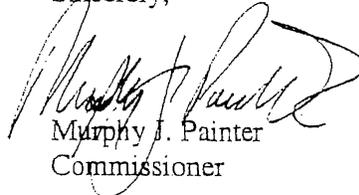
I would also mention that the original allegation was that I had no authority to issue a temporary permit of any kind. The 45 vs. the 35-day issue came up only after we supplied your office with this information.

I offer that there is absolutely no question that I have the authority to issue temporary permits and any investigation will show that this office is utilizing that authority properly. We have corrected the 45-day notice on the permits that we inherited to reflect 35 days.

Mr. Lynch, I looked up the responsibilities of your agency on your web page when this all began. I was confident that any and all allegations would be found to be insignificant or normal bureaucratic human errors. We have corrected all matters, if needed, to any and all allegations.

Your web page advises that after your investigation, you have the choice to say whether the report goes to the next step and that being the Governor's Office. I would humbly ask that you honestly weigh your report and my response and see that this issue bears no merit and should be closed. At the same time knowing that you and your office have done their job properly and that we are trying every way humanly possible to do ours within the proper restraints that laws and principles apply.

Sincerely,



Murphy J. Painter
Commissioner

MJP:pds