



**OFFICE OF**  
**STATE INSPECTOR GENERAL**  
**USED MOTOR VEHICLE AND PARTS COMMISSION**

Report by  
Inspector General Bill Lynch

Prepared for  
Governor M.J. "Mike" Foster, Jr.

April 18, 2001

File No. 1-01-0042



State of Louisiana

**OFFICE OF  
STATE INSPECTOR GENERAL**

**Used Motor Vehicle and Parts Commission**

Report by

A handwritten signature in black ink, appearing to be "BL", written over a horizontal line.

Inspector General Bill Lynch

Prepared for

A handwritten signature in black ink, appearing to be "M.J. Foster", written over a horizontal line.

Governor M.J. "Mike" Foster, Jr.

January 8, 2001

File No. 1-01-0042

# Used Motor Vehicle and Parts Commission

The assistant director of the Louisiana Used Motor Vehicle and Parts Commission, Jon Witherington, has been unable to adequately verify working more than two and a half days weekly while being paid on the basis of a 40-hour week.

A review of his activities indicates that Mr. Witherington, whose salary is \$50,000 a year, worked approximately 20 hours a week, rather than 40. He was employed as assistant director in 1996 and his official work domicile is Baton Rouge. He acknowledged that in 1998 he began commuting from Bernice in Union Parish, which is near the Arkansas border, to Baton Rouge on Monday mornings and left after lunch on Wednesdays, returning to Bernice.

Mr. Witherington, whose jurisdiction is statewide, contends he worked a 40-hour week by carrying out his duties in the northern part of the state. He was unable to produce sufficient documentation, or otherwise corroborate, either in the form of diaries, logs or work product, his contentions.

Mr. Witherington was required to but did not submit leave slips for numerous times he was absent, which resulted in him not being charged annual or sick leave for those absences. Mr. Witherington filed false time and attendance sheets attesting to working a 40-hour week when in fact he was absent for personal and medical reasons.

The agency incorrectly added 68 hours of annual and 68 hours of sick leave to Mr. Witherington's credit by applying the wrong factor in its calculations.

John M. Torrance, executive director, failed to properly oversee the activities of Mr. Witherington.

Mr. Witherington was fired by the Commission on Oct. 17, 2000, then reinstated on Dec. 7, 2000, with back pay, and is currently on paid administrative leave. Mr. Torrance was fired by the Commission on Oct. 31, 2000, reinstated on Dec. 7, 2000, with back pay, and is also currently on paid administrative leave.

## Background

---

The Louisiana Used Motor Vehicle and Parts Commission, which was created in 1984, licenses and regulates sales involving used vehicles; and new and used motor homes, trailers, semi-trailers, all terrain vehicles and motorcycles; automotive dismantlers; parts recyclers; boat dealers; and dealers, manufacturers, and distributors of marine products and motorcycles.

The agency currently has 23 staff members, of whom three are unclassified employees, including an executive director, an assistant director, and a student worker. Its annual budget for fiscal year 2001 is \$1,080,000.

Headquarters for the agency is in Baton Rouge. There are 11 field investigators located throughout the state and one in Baton Rouge.

The agency is overseen by a 12-member board which meets once a month. The board is appointed by the governor and its chairman is named by the governor. Mike Roberts of Lafayette is the current chairman.

This review covered the period 1996 to the present.

## Work Hours

---

From January, 1998 to September, 2000 (33 months), Mr. Witherington has made a general practice of commuting weekly by personal vehicle from his home in Bernice, in Union Parish, which is on the border with Arkansas, to Baton Rouge. Mr. Witherington would arrive in Baton Rouge on Monday mornings and leave after lunch on Wednesdays. He acknowledged that he spent approximately two and a half days a week on the job in Baton Rouge. It is estimated that he worked approximately 20 hours a week. His annual salary is \$50,000 a year.

As an unclassified employee, which means he was not under civil service time and attendance rules, Mr. Witherington was subject to Executive Order MJF 98-23, which

governs his annual and sick leave. The executive order required Mr. Witherington to work 40 hours a week and have his leave earnings and usage recorded.

Mr. Witherington claimed that he worked a 40-hour week. He said that upon leaving on Wednesdays, he announced to the staff that he was going to North Louisiana. He said this meant he was going to work in the northern part of the state for the remainder of the week. He said he also stopped at businesses en route home to make official inspections. However, he failed to maintain records which verify these activities.

Mr. Witherington submitted no reports of his activities to the executive director.

He said that at one point he started maintaining a diary of his comings and goings because he believed an effort was being made to get rid of him. The diary, which he began two years ago, covered nine months of the 33 months in question. However, it lacks information on who he visited, what places were inspected by him, or the findings of his inspections. Mr. Witherington's "diary" did not detail adequately his activities during the latter part of each week when he was located in the northern part of the state.

Since he had statewide supervisory authority over field agents, Mr. Witherington stated that field agents with whom he worked could support his claim. All of the field agents throughout the state were interviewed, but all asserted that there was little contact with Mr. Witherington in the field. Of the 12 field agents, three stated that they had never worked with Mr. Witherington. The nine who have worked with him during the four years since his employment acknowledged only a handful of times he has accompanied them on any visits or inspections of licensees. The most contacts in the field with any one agent was six times, according to them. Additionally, two retired field agents were interviewed, one of whom was a field agent supervisor. Both former field agents stated that they worked infrequently with Mr. Witherington.

No vehicle logs or expense accounts which might have supported his claim, were maintained by Mr. Witherington.

While we estimate that Mr. Witherington worked no more than 20 hours a week, a calculation of the total amount of money improperly paid to him by the state would be difficult to assess because of the salary adjustments and dates. However, for the purposes of establishing an example, Mr. Witherington was paid \$3,846, in the two pay periods of August, 2000, which covered four weeks. His salary was \$24.04/hour, and by using the 20-hour factor we conclude he was overpaid \$1,923 for that period.

## Leave Time

---

Under executive order MJF 98-23, Mr. Witherington was required to submit leave slips for annual or sick leave. He was also required to sign attendance sheets attesting to the hours worked and the leave taken.

He provided records showing he was absent 144 hours for medical reasons, and 16 hours for personal reasons during the period from June, 1998, through September, 2000, for which he was not charged leave.

Mr. Witherington falsified the attendance sheets by attesting that he was working during these times when in fact he was absent.

He asserted that he initially submitted such leave slips, but that the executive director made a habit of tearing them up or throwing them away and he, therefore, stopped submitting them. However, Commission records contain six leave slips for 132 hours for personal reasons, and 8 hours for medical reasons, signed by both Mr. Witherington and Mr. Torrance for other absences in that period. Mr. Torrance stated that he never tore up any leave slips.

## Incorrect Leave

---

Through an error, the agency credited Mr. Witherington with 68 hours of annual leave and 68 hours of sick leave because the wrong factor was used to calculate his leave earnings.

In calculating Mr. Witherington's leave earnings, the agency erroneously used a factor of .083333 for each hour of regular work time. This resulted in the overage. However, Executive Order MJF 98-23, requires that leave for employees of less than three years, as was the case for Mr. Witherington, be calculated with a factor of .0461 for each hour worked.

The agency has not corrected the error.

## Inadequate Supervision

---

The executive director was remiss in his obligation to assure that Mr. Witherington was working the amount of time for which he was being paid by the state.

Mr. Torrance stated he felt that he had no authority over Mr. Witherington and therefore, did not take steps to rectify the situation.

Under La. R.S. 32:772 (D)(2), the executive director is responsible for the day to day operations of the agency, and has authority over all personnel matters.

### *Conclusions:*

---

1. Mr. Witherington cannot verify working more than 20 hours a week while being paid to work 40. This practice took place for a 33 month period.
2. Mr. Witherington falsified attendance and payroll records when he signed that he was present when he was actually absent 144 hours for medical reasons and 16 hours for personal reasons, from June, 1998 through September, 2000.
3. The Commission credited Mr. Witherington with 68 hours of annual leave and 68 hours of sick leave because the wrong factor was used to calculate his leave earnings.
4. Mr. Torrance did not exercise proper supervision over Mr. Witherington.

### *Recommendations:*

---

1. This report should be sent to the appropriate authorities.

2. The Commission should correct Mr. Witherington's leave balance with respect to the 144 hours sick and 16 hours annual for absences not charged.
3. The Commission should correct Mr. Witherington's leave balance with respect to the 68 hours annual and 68 hours sick because the wrong factor was used to calculate his leave earnings.
4. The Commission should review this report and take appropriate action.

*Management Response:*

---

See Attached. The exhibits and attachments referred to in the responses can be obtained from those individuals.

*IG Comment:*

---

Chairman Roberts' response to the incorrect leave finding is not responsive to the issue. The issue mentioned in this report is regarding the use of an incorrect factor to calculate leave earnings. From Feb. 14, 1996, to Dec. 29, 1996, the Commission used a factor of .083333 to calculate leave earnings instead of .0461. The resulting overage of 68 annual and 68 sick leave hours was not deducted from Mr. Witherington's leave balance. Also, Executive Order MJF 98-23 mentioned in this report, supersedes MJF 96-79, which both did not allow the annual allotment of four weeks of annual and sick leave by the Commission to Mr. Witherington.

Chairman Roberts asserts in his response that Mr. Torrance attempted to supervise Mr. Witherington. The fact is, that the supervision Mr. Torrance exercised was obviously inadequate because Mr. Witherington continued working a 20 hour work week, for a 33 month period.

December 21, 2000

Mr. Bill Lynch  
State Inspector General  
Office of State Inspector General  
P.O. Box 94095  
State Capitol Annex  
Baton Rouge, LA 70804-9095

In re: **Your File No. 1-01-0042**

Dear Mr. Lynch:

I write as a follow-up to your December 15, 2000 letter relating to specific issues regarding actions at the Used Motor Vehicle and Parts Commission, and more specifically allegations of inaccurate reporting of work activities and omissions of reporting absenteeism related to medical and personal leave.

1. First, I would appreciate the opportunity to address that portion of the report entitled "Work Hours" that states that I acknowledged working approximately 2 ½ days per week in Baton Rouge, and further, the inspectors conclusion that states that it is estimated that I worked approximately 20 hours per week. During my first visit with Inspectors Williams and Lindsey (who I must say were extremely professional and accomplished in putting me at ease during this process), I voluntarily offered for their use, a journal that I began keeping in May, 1998. The original purpose of the journal was to document what I believe to be the bazaar and irrational behavior of the Executive Director and certain civil service employees, and the stressful atmosphere of the Baton Rouge office. It was never my intention to use the journal as proof of my work schedule since I did not realize that there was a need to report my work schedule. Regardless, I attach the journal hereto as Exhibit "A". I believe that you will note that, upon compilation, the journal would indicate that I worked approximately 35 hours per week, with allowances for medical, personal and holiday leave.
2. The domiciliary office of the Louisiana Used Motor Vehicle and Parts Commission is in Baton Rouge. At no time was I led to believe that my job description encompassed only the Baton Rouge area. As is more fully set forth in the job description provided to me (copy attached as Ex. B) "the Assistant Director will primarily supervise the field operation". The field operations does not occur primarily in Baton Rouge.
3. The Inspector General report indicates that I currently draw a salary of \$50,000. I began my employment with the Commission at a salary of \$40,000. I received my latest salary

increase of fourteen (14) percent in June, 2000, only four months prior to my termination (which was purported to be for failure to work forty hours per week in the Baton Rouge office but more specifically because there was a sitting commissioner that desired to be put in my position by a handful of his fellow commissioners, the executive director and staff attorney (see Exhibit "C"). The staff attorney has been terminated by the commission. At the time of the increase in my salary, various commissioners questioned the Executive Director as to my job performance, and was told that everything was running smoothly, and a pay increase was merited.

4. In Paragraph 2 of that portion of the report entitled "Work Hours", it is pointed out that, as an unclassified employee, I was subject to Executive Order MJF 98-23. Section III of that Order addresses annual and sick leave of unclassified employees. The Order further addresses the requirement for the appointing authority to establish an administrative work week of not less than forty (40) hours per week, with annual and sick leave.

At no time during my employment with the Louisiana Used Motor Vehicle and Parts Commission was I notified of such an Executive Order. To my knowledge, no Notice of the Executive Order was posted, placed on my desk, faxed or mailed to my attention, or discussed in any commission or field meeting.

However, being now made aware of the subject order (Inspectors Williams and Lindsey will verify that I stated during our first interview that I had never heard of the order), I have read the Executive Order as it appears on the Internet and note the following, to-wit:

Executive Order MJF 98-23, Section 13, Paragraph "C", states:

"No unclassified officer or employee who sets his own work schedule shall be eligible to earn compensatory leave; however overtime work which the appointing authority judges to be extraordinary and which the appointing authority closely monitors, the appointing authority may grant compensatory leave to such an unclassified officer or employee. Inspectors Williams and Lindsey can attest to my statement that I did not believe I was eligible for compensatory leave as an unclassified employee."

Executive Order MJF 98-23, Section 21, discusses the need for record keeping which I deemed the responsibility of the office staff, or as unnecessary per memorandum from the Executive Director stating that the "daily report was discontinued in an effort to better assist the field investigators". Section 22A discusses the necessity of employees complying with and being guided by and cooperating in the implementation of the provisions of this order. Section 22 states that the head of each department shall be responsible for deciding the extent to which the discretionary provision of this order shall be implemented within their department. Therefore, all unclassified workers within our

office should be instructed to follow the lead of the head of the Louisiana Used Motor Vehicle and Parts Commission, Executive Director, John Torrence.

5. Regarding that portion of the Inspector General's report that addresses the supervision of field agents. I want to clarify the purpose of my "ride-a-long" activities. The agents are completely correct in their estimation of time that I accompanied them on their duty rounds. These agents are competent, reliable employees who have considerable insight concerning the Commission and its' purpose. It has been and continues to be my belief that the field agents are not treated by this office with the respect that they deserve as important members of our staff. In truth, they are the "first impression" the general public sees as the Used Motor Vehicle and Parts Commission. It was never my intention to have these agents believe that I was "watching" their activities, but rather to offer to them the support of the Baton Rouge office, and extending to them the appreciation we feel toward the job they are responsible for doing. Indeed, I often learned more from them than from other staff members or my supervisor.

Please take note of the tone of those memos directed to All Field Investigators which are attached hereto as Exhibit "D". It should be evident that morale needed to be boosted.

6. No vehicle logs or expense accounts were kept by me because I was instructed that the Director did not keep these type records and did not wish to have the assistant keeping them either. At one point I was instructed to sign a statement that I would not turn in expense accounts or vehicle logs. It was this attitude toward written reports concerning activities and expenses that permeated the day to day actions of the administrative staff.
7. In order to address that portion of the Inspector General's report entitled "Leave Time", I would relate the following: Having never worked in a state or governmental position prior to my employment with the Louisiana Used Motor Vehicle and Parts Commission, and being married to a legislative assistant (who is not required to sign attendance sheets, nor does she draw leave time or compensatory time - she simply draws a salary and works until she gets the job done), I have never had any experience with submitting attendance slips, leave slips, medical leave or personal leave time records.

In an attempt to record my vacation time or doctor appointments, I tried to submit such information. But, in the "spirit of comradery" the Executive Director indicated that I shouldn't be bothered with such minuscule record keeping. His usual response to my questions had the tone that indicated that we shouldn't concern ourselves with those necessities of the civil service employees. I reassert that the Executive Director of the Louisiana Used Motor Vehicle and Parts Commission tore up (or wadded up) leave slips presented to him for signature, and threw them into the garbage container.

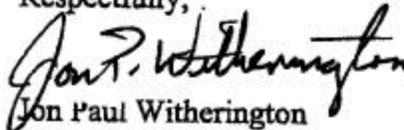
8. I am without knowledge, information or belief by which I might form an opinion to that portion of the report that is captioned "Incorrect Leave". It would appear to me however, that there are other employees who are unaware of Executive Order MJF 98-23.
9. Directing your attention to that portion of the report entitled "Inadequate Supervision", I will simply state that it is my understanding that Mr. Torrence has been under considerable strain caused by illness within his family, and has indicated to me that he is experiencing other personal difficulties which may account for certain lapses of memory or his unwillingness to attend to detailed day to day office activities. However, I must refute the statement made by Mr. Torrence that he believed that he had no authority over the Assistant Director. Not only had Mr. Torrence been employed by the Commission as either Director or Assistant Director for approximately two decades, and surely understood or should have understood the job description of both positions, Exhibit "A", Page Two, memo dated June 2, 1998 of the attached journal clearly states that he knew he had complete authority over his assistant.

In conclusion, I would like to quote a portion of a letter written to a former Louisiana Commissioner of Administration. A former Director of the Louisiana Used Motor Vehicle and Parts Commission wrote, "my duties .....are not those of a normal eight to five state employee, but rather are dictated by the activity of the business I am charged with helping regulate.....". Likewise, just as the Governor does not cease to be Governor at 5:00 p.m., the Commissioners, Executive Director, Assistant Director, and field investigators do not cease to be representatives of the Louisiana Used Motor Vehicle and Parts Commission. We should all be willing to answer questions, offer assistance and protect the public no matter what the time of day or night. It is our duty.

Further, I would be remiss if I did not express as a part of this response, my concern about the general atmosphere of anger, jealousy, vulgarity, unnecessary rough language, disloyalty and feelings of animosity exhibited within this office (see Exhibit "E", Page 2). The lack of gentility is evident not only to the employees but also to the citizens of the State of Louisiana. It is absolutely imperative that the general perception of this organization be improved so that the Commission might earn the respect that it deserves.

Thanking you for the opportunity to respond to your report, I am

Respectfully,



Jon Paul Witherington  
Assistant Director

LA Used Motor Vehicle and Parts Commission

**JOHN M. TORRANCE  
4171 Highway 68  
Jackson, Louisiana 70748  
Telephone (225) 654-4968**

December 18, 2000

Mr. Bill Lynch  
State Inspector General  
Office of State Inspector General  
Post Office Box 94095  
State Capitol Annex  
Baton Rouge, Louisiana 70804-9095

Dear Mr. Lynch:

On December 15, 2000, I received a copy of the report resulting from the audit conducted by Ms. Paula Williams of the Louisiana Used Motor Vehicle and Parts Commission. By this correspondence, I would like to respond to #4 of her conclusion that stated that I did not exercise proper supervision over Mr. Witherington.

First, I want to let you know that I have been employed by this Commission for more than ten years and have been the Executive Director for the past five years. During this time, I have successfully worked with a number of employees and have always maintained an open relationship with them. However, Mr. Witherington was another issue. Mr. Witherington was hired after a meeting in the Governor's Office wherein Rep. John Travis and I was informed that he was to be the Assistant Director. From the outset, every time I attempted to get Mr. Witherington to comply with Agency rules and attend work as required by law, he would state, "he was connected." On numerous occasions, I spoke with Mr. Witherington regarding his work ethics. I instructed him that he was not performing all of his assigned duties which included reviewing all cases being scheduled for administrative hearings and working more closely with the field staff and reviewing their weekly and monthly reports. On several occasions, he would tell me that he could be reached at the Pentagon at a certain Representative's suite. When I told him that he had to have a Baton Rouge residence, he would tell me that his residence was at the Pentagon. Stated simply, every time I attempted to get him to work, he would state that he was connected with the "Fourth Floor."

Attached are copies of memorandums I issued to Mr. Witherington regarding his time spent in the office, work and time sheets not submitted timely, scheduled vacation time and a valid Baton Rouge address and telephone number. Also attached are notes

Mr. Bill Lynch  
December 18, 2000  
Page two (2)

from a meeting with Mr. Withering and Mr. Politz, Field Supervisor, on February 10, 1999, where the above items were discussed. I admit that I should have taken action against Mr. Witherington earlier however; I was concerned that he would carry out his threats and have me fired. Apparently, he does have connections as I was fired on October 31 without legal cause.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Torrance", written in a cursive style. The signature is positioned above the printed name.

John M. Torrance



M. J. "MIKE" FOYER, JR.  
GOVERNOR

*State of Louisiana*  
DEPARTMENT OF ECONOMIC DEVELOPMENT  
USED MOTOR VEHICLE AND PARTS COMMISSION

December 28, 2000

Mr. Bill Lynch, State Inspector General  
Office of State Inspector General  
P.O. Box 94095, State Capitol Annex  
Baton Rouge, LA 70804-9095

RE: File No. 1-01-0042

Dear Mr. Lynch:

I, Michael Roberts, Chairman of the Louisiana Used Motor Vehicle and Parts Commission, would like to respond to your draft report on the investigation of Jon Witherington as follows:

1. Mr. Witherington cannot verify working more than 20 hours a week while being paid to work 40. This practice took place for a 33 month period.

Response to #1. I concur with your finding in #1. Mr. Witherington did not complete reports while working in the field which would have indicated his time worked.

2. Mr. Witherington falsified attendance and payroll records when he signed that he was present when he was actually absent 144 hours for medical reasons and 16 hours for personal reasons, from June, 1998 through September, 2000.

Response to #2. I concur with your finding in #2. The agency could not find where Mr. Witherington had submitted leave slips for the time he claimed he was out on medical leave nor the time he was out for personal reasons. If he did not submit leave slips, it was assumed that he was working in the field. It was his responsibility and duty to provide leave slips to the appropriate parties. The completed time sheet was given to Mr. Witherington to review and sign if correct. His time sheet was never sent back for any corrections. He signed each sheet validating the correction of time submitted.

3. The Commission credited Mr. Witherington with 68 hours of annual leave and 68 hours of sick leave to which he was not entitled.

Response to #3. I disagree with the finding in #3. When Mr. Witherington was hired, the board allotted him four (4) weeks of vacation and four (4) weeks of sick time annually. Vacation time and sick time was not allowed to accrue and expired at the end of the calendar year. Mr. Witherington's vacation and sick time was recalculated according to Executive Order #MJF 96-79 for the four (4) week period ending on December 29, 1996.

4. Mr. Torrance did not exercise proper supervision over Mr. Witherington.

Response to #4. I disagree with the finding in #4. Mr. Torrance counseled Mr. Witherington on numerous occasions both in writing and verbally regarding his work performance and work duties. Meetings were held with Mr. Witherington where his job performance was discussed and directives were given to him. Attached are the following items of documentation.

1. Attached are hand written notes taken by Mrs. Linda Stroud at a meeting on February 10, 1999, in Mr. Torrance's office where Mr. Witherington, Mr. Bubba Politz, Mr. Jack Torrance and Mrs. Stroud were all present. The seven points addressed in hand notes indicate that Mr. Torrance attempted to supervise Mr. Witherington. Hand note number 5 specifically memorializes the order by Mr. Torrance that Mr. Witherington was to be at the commission office each (work) day. Mr. Torrance also instructed Mr. Witherington and Mr. Politz to have one of the employees under their direct supervision to not return to the office each day, but work in her assigned territory.

2. The attached letter to Mr. Witherington and Mr. Bubba Politz dated February 12, 1999, some two days after the meeting on February 10, 1999, repeats and reinforces the orders given to the two men on February 10. Also attached is a note to Mr. Witherington dated February 12, 1999, indicating that one of the field investigators failed to submit his attendance sheet for the week of February 1 - 5, 1999.

Mr. Bill Lynch  
December 28, 2000  
Page 3

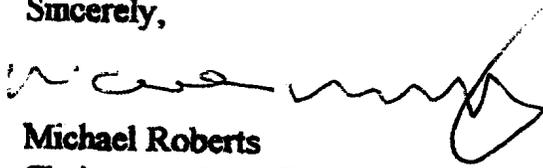
3. In a memo dated February 15, 1999 to Mr. Witherington, Mr. Torrance advises Mr. Witherington that he and Mr. Politz are not complying with the performance planning requirements for their subordinates and Mr. Torrance reminds Mr. Witherington and Mr. Politz that it is their responsibility to make sure the work is completed on a timely basis.

4. In a memo also dated February 15, 1999, Mr. Torrance again admonished Mr. Witherington for allowing both he and Mr. Politz being out of the office at the same time as was directed in the meeting of February 10, 1999.

5. In the memo dated February 17, 1999, Mr. Torrance again requested that Mr. Witherington advise of his daily whereabouts and to get permission from Mr. Torrance to deviate from the standing instruction that Mr. Witherington was to be in the office each day. Mr. Witherington was again asked to provide a Baton Rouge address and telephone number.

I would like to thank Ms. Paula Williams for her professional conduct during this investigation. She was very accommodating in her investigation making every effort to not cause any disruption in the office.

Sincerely,



Michael Roberts  
Chairman, LUMVPC

LS  
Attachments