

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

**REPORT OF
INVESTIGATION**



**AGENCY: OHIO DEPARTMENT OF NATURAL RESOURCES
FILE ID NO.: 2019-CA00007
DATE OF REPORT: APRIL 28, 2020**

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

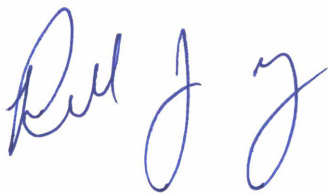
“Safeguarding integrity in state government”

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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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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.



Randall J. Meyer
Ohio Inspector General



STATE OF OHIO

OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF INVESTIGATION

FILE ID NUMBER: 2019-CA00007

SUBJECT NAME: James Zehringer

POSITION: Former Director

AGENCY: Ohio Department of Natural Resources

BASIS FOR INVESTIGATION: Complaint

ALLEGATIONS: Management and Supervision

INITIATED: February 28, 2019

DATE OF REPORT: April 28, 2020

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On February 15, 2019, the Office of the Ohio Inspector General received a confidential complaint. The complainant alleged that on July 19, 2018, approximately 10 boat charter captains (captains) provided nearly 40 state employees and/or elected officials with a free fishing charter trip on Lake Erie in Ashtabula County in violation of the Ohio Ethics Law. The complainant identified several Ohio Department Natural Resources (ODNR) employees as participants.

The complainant also alleged that the captains provided their services for free and participants were expected to provide gratuities to the captains. The complainant added that the captains did not receive any gratuities for the fishing trip, and noted participants would have normally been charged between \$125-\$150 per person for the trip.

The authority of the Office of the Ohio Inspector General is limited to state agencies and state employees as defined in ORC §121.41 and does not extend to persons in the Ohio legislature. As such, no conclusions were made regarding the propriety of any actions by any members of the state legislature.

BACKGROUND

The Ohio Department of Natural Resources (ODNR) is responsible for the state's wildlife, forests, natural areas, state parks, geological and mineral resources, inland lakes and waterways, regulation of the issuance of hunting and fishing licenses, watercraft registrations, the Lake Erie coastline; and enforces state law in regard to natural resources and conservation. ODNR is also responsible for more than 800,000 acres of land, including 75 state parks, 23 state forests, 136 state nature preserves, and 152 wildlife areas. ODNR has jurisdiction over more than 120,000 acres of inland waters, 7,000 miles of streams, 481 miles of the Ohio River, and 2.25 million acres of Lake Erie. In addition, ODNR's operating divisions carry out these functions, along with a central administrative office that oversees their day-to-day operations. The director of ODNR is appointed by the governor and is confirmed by the Ohio Senate.

Funding for ODNR is provided through general revenue funds, federal funds, and licenses and fees for those they regulate.¹

Applicable Policies and Statutes

ODNR Ethics Policy sets forth rules to ensure all employees serve the State of Ohio in an ethical manner. Employees found in violation of the rules outlined below may be disciplined up to and including removal. This policy states, in part:

No public official or employee shall accept, solicit, or use his/her position to secure anything of value from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which the official serves. R.C. Section 1.03 defines “anything of value” to include money goods, and chattel, and every other thing of value, except items of nominal or de minimus value (\$20 or less). Under the **[then in effect]** Governor’s Executive Order #2007-01S there are only four categories of people from whom those affected by the Order may accept gifts (a term which includes the gift of food and/or beverages). Those categories are defined in the Order as follows:

- Close family members.
- Friends (including other family members) who aren’t lobbyists, state contractors or state grantees.
- Anyone providing a token gift (including food and/or beverages) valued at less than \$20.
- Government officials from other states or countries (with gifts accepted on behalf of the State of Ohio).

If the gift’s donor doesn’t fit into one of these four groups, state employees may not take the gift.

¹ Biennial budget documents and ODNR website.

Employees who are required to file a financial disclosure statement pursuant to R.C. 102.02 must report gifts in excess of \$75 and meals in excess of \$100 aggregated per calendar year.

To avoid the appearance of impropriety, employees should follow the ‘pay your own way’ maxim and refuse even gifts of nominal value.

Ohio Revised Code (ORC) §102.03 (D) states:

No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person’s duties.

ORC §102.03 (E) states: “No public official or employee shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person’s duties.”

Ohio Ethics Commission

The Ohio Ethics Commission bulletin regarding gifts and entertainment provides guidance concerning what public officials and public employees can accept as gifts and entertainment. To determine if a public official or public employee may accept a gift, meal, or entertainment, they need to determine both:

- The value of the item.
- The source of the item.

The Ohio Ethics Commission bulletin advises that gifts of a nominal value which is described as promotional items, such as a t-shirt, mouse pad, or a coffee mug may be accepted. However, the Ohio’s Ethics Law prohibits all public officials and all public employees from soliciting or accepting a gift of a substantial value, including entertainment, from any “prohibited source.” A “prohibited source” is any person, company, organization, or other entity that has any of these relationships with the public agency an official or employee serves:

- Doing or seeking to do business with the agency.

- Regulated by the agency.
- Interested in matters before the agency.

ORC §1533.51 *Fishing guide license*, states in part: “No person shall be or serve as a fishing guide in the Lake Erie fishing district without a license from the chief of the division of wildlife.”

ORC §1501.02 *Cooperative or contractual arrangements with federal and local government*, states in part:

The director shall adopt rules in accordance with Chapter 119. of the Revised Code establishing guidelines for entering into and may enter into a cooperative or contractual arrangement with any individual, agency, organization, or business entity to assist the department in funding a program or project of the department, its divisions, or its offices, through securing, without limitation, donations, sponsorships, marketing, advertising, and licensing arrangements. State moneys appropriated to the department shall continue to be used as authorized and shall not be redirected to any other purpose as a result of financial savings resulting from the department’s entering into the cooperative or contractual arrangement.

Ohio Administrative Code §1501-4-01 *Donations*, states in part:

The department of natural resources may accept donations of money, equipment, material and services that benefit the department ... The department may reject donations from any entity whose activities are either intended or may be construed to influence the outcome of any election, department permitting, contracting, or other regulatory program.

INVESTIGATIVE SUMMARY

The Office of the Ohio Inspector General conducted a social media search of Lake Erie charters in Ashtabula, Ohio. On the website of the Lucky Strike fishing charters, investigators discovered the following post and photograph dated July 19, 2018:



LUCKY STRIKE fishing charters on Lake Erie
 Like This Page · July 19, 2018 ·

On the LUCKY STRIKE today with Captain Art Miller and Ashtabula, Ohio harbors "Fish House" fish cutter and Lucky Strike's first mate Jeff Plant were Jim Zehringer - ODNR Director, and boy can he catch fish!! State Representative John Patterson who spear headed this event and worked with me to make it happen, Rick Henninger from Fish and Field report, Charlie Plats - President Conneaut Fish and Game Club, and George Distel - former State Representative. If it could have been any fish catching better I certainly don't know how. Thank you, all our guests aboard the LUCKY STRIKE today for making this first annual Fish Ashtabula Ohio fishing day a success. I enjoyed your company, what a great group of guys!

Andy Bouch, Patrick Sommers and 2 others like this.

2 Shares

In a Lucky Strike Facebook post reviewed by investigators, the event was described as the first annual Fish Ashtabula Ohio fishing day and was “spear headed” by State Representative John Patterson and Lucky Strike Captain Art Miller. This article also listed the names of the other boat captains, charters, and state employees involved in the event. Employees listed were: ODNR Director James Zehringer, ODNR Assistant Director Gary Obermiller, Wildlife Officer Supervisor Scott Angelo, ODNR Deputy Director Bethany McCorkle, ODNR Coastal Management Deborah Beck, Wildlife Assistant Chief Peter Novotny, ODNR Biologist Travis Hartman, ODNR employee Kendra Wecker, and Wildlife Chief Mike Miller. Also listed were Ohio State Senator Joe Uecker and State Representative Sarah LaTourette. Additional articles listed the following as taking part in the fishing event: State Senator Sean J. O’Brien, State Representative Marlene Anielski, and Ashtabula County Commissioner Casey Kozolowski.

In a post dated October 27, 2018, on the Lucky Strike charter Facebook site, Lucky Strike Captain Art Miller thanked the other boat captains who participated in the first annual Fish Ashtabula Ohio fishing day and for making the event a success. Attached to this post was a handwritten note to Miller from Representative Patterson, thanking him “... for helping us to

coordinate such a successful fishing event.” Patterson expressed his embarrassment about the lack of tips to the captains and promised to rectify the situation the following year.

Reception

Investigators learned that a reception for the Experience Ashtabula County event was held at the Lodge and Conference Center at Geneva-on-the-Lake, located in Geneva State Park on July 18, 2018, prior to the fishing event. ODNR Assistant Director Gary Obermiller authorized a payment of \$1,482.84 for overnight accommodations at the lodge for himself and ODNR employees Zehringer, McCorkle, Fred Shimp, Brad Bales, Eric Heis, and Glen Cobb at this event. ODNR also paid for the lodging at the Holiday Inn in Austinburg, Ohio, totaling \$278.44 for Wecker and Novotny. Per diem meal reimbursements totaled \$354.25 for the group.

Payment records also revealed that ODNR paid \$397.50 for 50 box lunches for the fishing participants.

Payroll

Investigators reviewed the payroll records of the state employees involved in the events, which revealed some employees claimed regular paid time, while others claimed earning compensatory time or overtime while on the free fishing trip.

Emails

Investigators reviewed the email records of Zehringer, Obermiller, and McCorkle, and discovered a February 27, 2018, email sent from State Representative Patterson’s legislative aide to the ODNR legislative liaison, with a letter attachment from Patterson to Zehringer. The letter invited Zehringer to share in a fishing event for “... the cabinet, and my fellow legislators.” Patterson wrote that he had spoken with the “... lead captain of the Ashtabula fleet who can accommodate as many who might be interested in this option. He understands that there would be no fee charged for the charters.”

An email sent on March 7, 2018, between an Ohio House of Representatives legislative aide and an ODNR legislative liaison discussed possible dates for a meeting to plan an Ashtabula fishing

event. The meeting was held on April 13, 2018. As a result of that meeting, June 27, 2018, was selected as the date to host an evening reception at the Lodge and Conference Center at Geneva-on-the-Lake. The fishing event was planned for the following day on June 28, 2018, at 7 a.m. However, the event dates were rescheduled to July 18-19, 2018, due to a legislative conflict.

Invitation sent to invitees to the Ashtabula fishing event



Cast a Line, Sip Some Wine!

Join the Ashtabula County Visitors Bureau as they highlight Lake Erie's eastern coast and the endless offerings the area provides visitors. Kicking off the event will be an evening reception, featuring a sampling of local wines and produce, followed by a day of fishing for steelhead and walleye along Ashtabula County's shores.

Who: ODNR Director Jim Zehringer
State Senator Sean O'Brien
State Representative John Patterson

When: Reception: Wednesday, June 27, at 6 p.m.
Fishing Outing: Thursday, June 28, from 7 a.m. to 2 p.m.

Where: The Lodge at Geneva-on-the-Lake
4888 North Broadway (S.R. 534)
Geneva, OH 44041

For more information or to RSVP, contact Carey Santiana at carey.santiana@dnr.state.oh.us or 614-265-6824.



Interviews

On March 28, 2019, investigators interviewed Art Miller, owner and fishing guide of the Lucky Strike and the 'Bring It On' charter fishing boats. Miller confirmed that he is a licensed fishing

guide and obtained his license from the Ohio Division of Wildlife in Sandusky, Ohio, as required in ORC §1533.51. Miller stated that he had been operating Lucky Strike charters since the mid-1990s. Miller said that his and other fishing guide charter rates varied, but at the time of this interview, he charged \$650 for one-to-five people and \$800 for six people.

When asked how he became involved with the fishing outing on July 19, 2018, Miller said State Representative John Patterson called him to discuss his participation. Miller recalled that he received this call sometime in late February or early March of 2018. Miller said,

... John wanted to put together a fishing outing like the Governor's outing on the west side of the lake. John wanted us to go later in the year and perch fish. I talked him into walleye fishing because the perch fishing would be a failure in my expectation, and they went with what I was thinking.

Miller explained that fishing earlier in the season is better than later in the year because the fish become "fished out" as the season progresses. Miller said this event was originally scheduled for June 28, 2018, but was rescheduled because both the Ohio House of Representatives and Senate were in session on that date.

Miller said he was responsible for inviting and organizing the group of charter boats for the event. He said he originally had 12 boats committed for the June date, but when the date changed to July 19, 2018, he only had nine boats available. When investigators asked who determined which individuals rode on which boat, Miller said ODNR was responsible for boat assignments. Miller said he had Zehringer, Patterson, and former State Representative George Distel on his boat.

Investigators asked Miller how the conversation originated that the charter boats would offer their services for this event at no cost. Miller said that during a telephone call early in the planning stages, Patterson told him "... you know this will be gratis but with tips." Miller said he did receive a small gratuity, but not enough to pay for the gas, and he knew some of the other boat captains did not receive any gratuities. When asked why he and the other boat captains would do this for free, Miller said, "... to promote the area, fishing, and Ashtabula ... to show the politicians and ODNR heads our fishing." Miller added that although he was retired and

conducted chartered fishing trips as a hobby, the other fishing guides worked regular jobs and conducted the fishing trips on their days off or used leave time. Miller said he knew some of them did not receive any gratuities and could understand their disappointment. Miller stated that fishing guides Chris Hoopes, Ron Bradway, Greg Bogard, and Dave Diver did not receive any gratuities. Miller acknowledged that he talked to Patterson about the boat guides not receiving any gratuities and Patterson said he was embarrassed by the matter and assured him that it would not happen next year. When asked if that meant there was going to be a second fishing event the following year, Miller said “I guess.” Miller stated that he had received a telephone voicemail from Patterson while his wife was in the hospital, but he had not returned the call at the time of his interview. Miller told investigators that he did not have a problem participating in the event at no cost and would do it again to promote fishing in this area of Lake Erie.

Miller said he and charter captains Dave Diver and Tom Hogan also attended the reception held on July 18, 2018, at the Lodge at Geneva-on-the-Lake. He described the reception as a promotional event for Ashtabula and the winemakers in the area. Miller provided to investigators a list of the boat captains and the names of their boats that participated in the fishing event:

<u>Charter Captain</u>	<u>Charter Boat</u>	<u>Charter Captain</u>	<u>Charter Boat</u>
Captain Art Miller	Lucky Strike	Captain Tom Hogan	Kona Babe
Captain Justin Dubiel	Bring It On	Captain Greg Bogard	Eye-Trapper
Captain David Diver	Wrek-N-Eyes	Captain Ron Bradway	Special Eyes
Captain George Benko	Common Man	Captain Jeff Lansberry	Eye Detective
Captain Chris Hoopes	Hoopes Line and Sinker		

On June 10, 2019, the Office of the Ohio Inspector General consulted with the Ohio Ethics Commission (OEC) to determine if they had issued an opinion or some special exception allowing ODNR employees to accept a free fishing charter from a regulated entity, and the OEC responded that they had not.

On July 29, 2019, investigators interviewed Former Assistant Director Gary Obermiller regarding the fishing event held in Ashtabula. Obermiller said that Representative Patterson contacted Zehringer and “wanted to mimic what we [ODNR] were doing in the western basin of Lake Erie in the eastern basin and promote the fishing and tourism in that part of the state.” Obermiller noted this conversation occurred a few months prior to the event, and that he and Zehringer met with sportsmen groups, the visitor and convention bureau, and the charter boat captains in April at the Lodge at Geneva-on-the-Lake. Obermiller confirmed that the original date for the fishing event was scheduled for June but was rescheduled to July 18 and 19. Obermiller also confirmed that he and ODNR employees Fred Shimp, Zehringer, Katie Hegarty, Bethany McCorkle, Matt Eiselstein, Mike Miller, Pete Novotny, and Brad Bales attended the reception. Obermiller said the fishing event occurred the following morning, but Shimp did not fish, because he had to return to Columbus to speak on some legislation.

Obermiller said the purpose of the fishing event was to promote fishing, tourism, wineries, and hotels in the area. Obermiller agreed that an original goal of the fishing event had been to catch perch, but some of the boat captains believed the perch fishing in that area was off, so it became a walleye fishing event. Obermiller added that some of the charter fishermen had told him that they believed commercial fishermen had over-harvested the perch in the area.

Obermiller confirmed that the fishing event was by invitation-only. When investigators asked Obermiller how taking a group of ODNR administrators and legislators on a fishing charter promoted fishing in the area, Obermiller said that he had also thought about that. He noted that this type of event was very popular with outdoor writers, legislators, and those involved in tourism, and he believed there were benefits. Obermiller said they discussed the event with the ODNR Chief Legal Counsel Brock Miskimen, and it was determined the event was no different than the governor’s fishing event, all the same rules applied, and “... as long as we didn’t keep any of the fish we were good.” Obermiller said he did not observe any ODNR personnel keeping the fish. Obermiller confirmed that as part of the event, free filleting of the fish was provided.

Obermiller confirmed that he and other ODNR personnel did not pay for the charter boat trip and that he had not tipped the boat captain. Obermiller confirmed that he was aware that the boat

charters were gratis and that tipping was part of the arrangement when Patterson organized the event. Obermiller stated he was aware that charter boat captains normally charged \$600-\$800 for a similar trip for six people. Obermiller also acknowledged that the fishing guides were licensed through ODNR Division of Wildlife. Obermiller confirmed that he was on state time while attending the event and probably earned comp-time.

Obermiller acknowledged signing the letter to authorize payment for the lodging and per diems for himself and other ODNR personnel. His letter claimed the overnight accommodations were for employees “who worked at the event.” Obermiller acknowledged the work was fishing.

Obermiller confirmed that he attended the governor’s Fish Ohio day on the west side of the lake but did not fish or stay overnight. Obermiller again stressed to investigators that the Ashtabula fishing event on the east side of the lake was just like the fishing event on the west side of the lake, and,

... there was conversation that as long as we did not accept anything of value, per se the fish there was no problem. The trip itself, we did not request they not charge us, so they voluntarily provided their boat and time.

On August 2, 2019, the Office of the Ohio Inspector General contacted Damien Sikora, current ODNR chief legal counsel, regarding the upcoming 2019 Ashtabula Fish Ohio Event that was planned for September 27-28, 2019. Sikora stated that ODNR was aware of the problem with ODNR employees accepting free fishing charter trips from a prohibited source, and he noted that for similar future events, ODNR would pay the fishing charters.

On September 10, 2019, investigators interviewed former ODNR Deputy Director of Communications Bethany McCorkle who agreed that during her employment at ODNR she attended the Lake Erie fishing event in July 2018 at Ashtabula, Ohio. McCorkle explained that Representative Patterson sent a letter to Director Zehringer stating he was interested in planning a fishing event on the east end of the lake similar to the governor’s event on the west end of the lake. McCorkle confirmed that she saw the letter from Patterson and was aware there was no fee specified for the fishing charters.

McCorkle said the purpose for the fishing event was to bring awareness to the fishing in that area and create tourism. McCorkle acknowledged to investigators that this event was not open to the public. Investigators asked McCorkle to explain how this event created awareness of fishing and tourism when it was mostly legislators and ODNR administration participating. McCorkle said she was involved because she was responsible for communications for ODNR and there were media personnel invited who would write articles about the event.

McCorkle said her role was to coordinate the event and she was given a fishing boat captain's name as a contact to arrange for the charter boats needed. McCorkle confirmed that she and the other ODNR employees did not pay for the fishing charters to take them out fishing. McCorkle said the captains donated their services and noted it was similar to the fishing event held on the west end of the lake. McCorkle added that she believed ODNR obtained ethics opinions regarding whether "can we do this." She said then-ODNR Chief Legal Counsel Brock Miskimen signed off on the event, concluding the event was not an ethics issue. McCorkle stated she did not have any first-hand knowledge of this opinion but said it was discussed by ODNR executives. McCorkle said ODNR employees were not permitted to keep the fish because they are worth a dollar amount, "so from an ODNR standpoint we didn't keep fish." McCorkle said she believed ODNR employees did not keep the fish and noted that she did not know what happened to the fish. McCorkle was not aware of any arrangement for the participants to tip the boat captains.

McCorkle said Pete Novotny and an ODNR biologist were on the boat with her. She said the ODNR and wildlife employees selected to go on the trip were the same individuals selected to go on the governor's fishing event that was held on the west side of the lake.

McCorkle confirmed that she was present for the reception the night before the fishing event at the Lodge at Geneva-on-the-Lake, and that her lodging and meals were paid by ODNR. She also added that this event was to promote tourism but was not open to the public. When asked why

her lodging and meals were not reported on her Financial Disclosure Statement (FDS),² McCorkle said the travel and meal payments were created by the legal and fiscal department and she just sent in what they provided.

On October 1, 2019, the Ohio Ethics Commission confirmed again that they had searched their records and found that no opinion had been issued to ODNR concerning employees accepting free fishing charters or accepting the fish caught on the charters.

On October 7, 2019, investigators interviewed former ODNR Chief Legal Counsel Brock Miskimen regarding his knowledge about the July 2018 fishing event. Miskimen said he started with ODNR on July 2013 and left February 22, 2019. Miskimen said he was aware of the event through general office conversation but did not recall seeing the letter of invitation from Representative Patterson to Director Zehringer. When asked if he was asked for guidance or provided guidance on ODNR employees accepting a free fishing charter, Miskimen said that would fall under attorney/client privilege and without a waiver he could not talk about that. Miskimen said he did not contact the Ohio Ethics Commission for an opinion regarding accepting the free fishing charter and did not know of any other ODNR attorneys requesting an opinion. Miskimen said that whether he did or did not give any advice would be considered privileged information. After the interview concluded, investigators contacted ODNR officials to discuss the matter and ODNR subsequently waived the attorney/client privilege regarding ODNR's participation in the fishing event on Lake Erie.

On October 28, 2019, Miskimen agreed to continue with the interview after receiving the requested waiver. Miskimen was asked if he provided or was asked to provide an ethics stance or guidance regarding participating in or accepting a free fishing charter trip for ODNR employees. Miskimen said he was aware that the fishing event that was to occur on the east end of Lake Erie would be similar to the annual fishing event on the west end of Lake Erie that had taken place for 40 years. Based on this past history and the Ohio Revised Code [§1501.02] that

² The Ohio Ethics law requires certain elected officials, candidates for elected offices, public employees, and appointees to public positions to annually file a financial disclosure statement with the Ohio Ethics Commission. A financial disclosure statement requires a filer to disclose information regarding their personal financial interests and fiduciary relationships for the preceding calendar year.

allows the director to accept gifts, sponsorships, etc., on behalf of the department, without limitation, and the Ohio Administrative Code [§1501-4-01] that allows for a number of things and sets up the framework and services that benefit the department, he believed the director could accept the free fishing charter on behalf of the agency. Miskimen said he was not asked for an ethics opinion about accepting the free charter, but he did have conversations with Bethany McCorkle to instruct employees not to accept any fish caught, because those would be considered as gifts to individuals. Miskimen said he did not contact the Ohio Ethics Commission for an opinion regarding employees accepting a free fishing trip.

Miskimen was asked if he instructed any of the employees on this fishing event who were required to file financial disclosure statements to report this fishing event as a gift. Miskimen said, “no I was not asked, and I guess I would not have been there come filing time this year.” Miskimen also said that he did not recall any employees asking him if they should report the fishing trip as a gift.

Ohio Ethics Commission Opinions

The Office of the Ohio Inspector General, in continued consultation with the Ohio Ethics Commission, was provided an OEC Informal Opinion 1996-INF-1216-2 which involved a similar situation where an administrative rule conflicted with prohibitions of ORC §102.03 (D) and (E). This Informal Opinion was based on a Supreme Court of Ohio ruling; State ex rel. Melvin v. Sweeney 154 Ohio St. 223, 234-35 (1950). The Supreme Court of Ohio held that an administrative rule is invalid where it conflicts with the constitution and statutes of the State of Ohio.

CONCLUSION

On February 15, 2019, the Office of the Ohio Inspector General received a confidential complaint. The complainant alleged that on July 19, 2018, approximately 10 boat charter captains (captains) provided nearly 40 state employees and/or elected officials with a free fishing charter trip on Lake Erie in Ashtabula County in violation of the Ohio Ethics Law. The complainant identified several Ohio Department Natural Resources (ODNR) employees as participants. The complainant also alleged that the captains provided their services for free and

participants were expected to provide gratuities to the captains. The complainant added that the captains did not receive any gratuities for the fishing trip, and noted participants would have normally been charged between \$125-\$150 per person for the trip.

In the State of Ohio, fishing guides are required to be licensed by the Ohio Division of Wildlife, a division of the parent agency Ohio Department of Natural Resources (ODNR) and are regulated and have an interest in matters before the agency, making fishing guides a prohibited source. ODNR's Ethics Policy and Procedure prohibits its employees from accepting anything of substantial value from a party that is interested in matters before, regulated by, or doing or seeking to do business with the agency with which the official serves. ODNR policy also requires employees who file a financial disclosure statement pursuant to ORC §102.02 to report gifts in excess of \$75 and meals in excess of \$100, aggregated per calendar year.

The chief legal counsel for ODNR was aware that this fishing event, which was to take place on the east end of Lake Erie, would be similar to the annual fishing event on the west end of Lake Erie that has taken place for 40 years. Based on this past history and the Ohio Revised Code section that allows the director to accept gifts, sponsorships, etc., on behalf of the department, without limitation, and the Ohio Administrative Code that allows donations of money, equipment, material, and services that benefit the department, the chief legal counsel believed the director could accept the free fishing charter on behalf of the agency. The chief legal counsel did have a conversation with the ODNR communications director who was making the arrangements for the event, to instruct employees not to accept any fish caught, because those would be gifts to individuals.

The Ohio Revised Code §1501.02 allows the ODNR director to enter into a cooperative or contractual arrangement with any individual, agency, organization, or business entity to assist the department in funding a program or project of the department, its divisions, or its offices, through securing, without limitation, donations, sponsorships, marketing, advertising, and licensing arrangements.

The Ohio Administrative Code §1501-4-01 also allows that the Ohio Department of Natural Resources may accept donations of money, equipment, material and services that benefit the department. However, the department may reject donations from any entity whose activities are either intended or may be construed to influence the outcome of any election, department permitting, contracting, or other regulatory program.

As such, both the Ohio Revised Code and Ohio Administrative Code provide that ODNR may accept gifts to further programs or projects of the department but may reject those gifts from any entity whose activities are either intended or may be construed to influence the outcome of any election, department permitting, contracting, or other regulatory program.

The Ohio Ethics Law and ODNR's Ethics Policy prohibit all public officials and all public employees from soliciting or accepting a gift of a substantial value, including entertainment, from any prohibited source.

ODNR, based on past practice, and a belief that an administrative rule allowed the acceptance of donations to the agency, accepted the free fishing charters for select employees as a gift to the agency from a prohibited source. ODNR used a questionable interpretation of ORC and OAC provisions that conflict with the ethics laws found in the Ohio Revised Code and ODNR Ethics Policy and failed to obtain an opinion from the OEC.

Accordingly, the Office of the Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

On January 30, 2020, the Office of the Ohio Inspector General received documentation from ODNR that the fishing boat captains who participated in the Ashtabula Fish Ohio event held on September 27-28, 2019, received payments for their services.

On February 4, 2020, investigators received documentation from the Ohio Ethics Commission (OEC) that the OEC had sent letters to state employees in the executive branch who attended the 2018 Ashtabula Fish Ohio event and who were required to file Financial Disclosure Statements

(FDS), stating a possible need for those individuals to amend their FDS for the value of the charter boat.

RECOMMENDATION(S)

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

1. Consider requesting training from the Ohio Ethics Commission regarding accepting donations or services from a source that is regulated by ODNR.

REFERRALS

The Office of the Ohio Inspector General has determined that no referrals are warranted for this report of investigation.



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OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Department of Natural Resources

FILE ID #: 2019-CA00007

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.

**Jill Jones
KEEPER OF RECORDS**

**CERTIFIED
April 28, 2020**

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