State of New Jersey
Office of the Inspector General
Mary Jane Cooper, Inspector General

New Jersey Schools Construction Corporation
Ethics Complaint Investigation

November 14, 2006
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Honorable Jon S. Corzine
Governor, State of New Jersey
State House
P.O. Box 001
Trenton, New Jersey 08625

Dear Governor Corzine:

Enclosed is a copy of the report the Office of the Inspector General (OIG) has prepared in regard to an ethics complaint received by OIG that involves an employee of the New Jersey Schools Construction Corporation (SCC). The attached report concludes that the actions of the SCC employee implicate the New Jersey Conflicts of Interest Law and recommends that the SCC take the appropriate personnel action.

As required by OIG statute, a copy of this report has been sent to Senate President Richard J. Codey, Assembly Speaker Joseph J. Roberts and SCC CEO Scott Weiner. As the attached report involves a potential personnel action and on-going contractual relationships, certain information, including the identity of the SCC employee, will be reported to the SCC in a separate and confidential letter.

I am available to discuss this report with you at any time.

Very truly yours,

Mary Jane Cooper
Inspector General

Enclosure

Cc: Senate President Richard J. Codey, New Jersey State Senate Speaker Joseph J. Roberts, New Jersey State Assembly Scott Weiner, SCC CEO Kenneth Zimmerman, Chief Counsel to the Governor Matthew Boxer, Director of Governor’s Authorities Unit
The Office of the Inspector General ("OIG") recently received information that a Senior Project Officer ("SPO") of the New Jersey Schools Construction Corporation ("SCC") asked fellow SCC employees, SCC design consultant ("SCC consultant") employees and SCC Project Management Firm ("PMF" or "SCC consultant") employees to participate in a charity golf outing. In response to that information the OIG has collected and reviewed relevant documents and has interviewed 12 witnesses including the SPO and SCC and PMF employees. The investigation has revealed that the conduct of the SCC SPO has implicated the New Jersey Conflicts of Interest Law and the SCC Code of Ethics. The OIG is referring the matter to the SCC for consideration. The following is a synopsis of the OIG's findings.

I. FACTS

A SPO asked fellow SCC employees, employees of an SCC consultant and employees from two SCC PMF's to participate in a charity golf outing.\(^1\) The golf outing ("golf outing") took place on July 13, 2006. The SPO has organized this golf outing for the past three years for the SPO's Church ("Church") and each year has asked fellow SCC employees and SCC consultants to participate in the outing. The SPO is a "Vestal Member" of the Church, which means that the SPO is on the Church Board of Directors. A "Vestal Member" of the Church is an elected position with a term of one year. The SPO indicated that this is the SPO's first year as a "Vestal Member."

The SPO has been employed with the SCC for approximately four years and initially started as a project officer. The SPO is assigned to oversee ten (10) school construction projects. The SPO is responsible for monitoring design consultants and for managing PMFs and is responsible for approving the change orders and requisitions for payment submitted by both design consultants and PMF's. (EDA Job Description and SPO 2003-2004 Annual Performance Review.) There are two PMFs assigned and responsible for the ten projects for which the SPO has supervisory responsibility.

\(^1\) SCC design consultants and SCC PMF consultants are in a contractual relationship with the SCC and are monitored and managed by SCC staff, including SCC SPOs.
During our interview, the SPO acknowledged that the SPO has organized the golf outing for the Church for the past three years. The SPO explained that the SPO verbally disseminated information regarding the golf outing to fellow employees and to SCC consultants, but never aggressively solicited sponsorships for the golf outing. The SPO indicated that pamphlets were only given to individuals whom the SPO told about the golf outing and the pamphlet was not posted at the SCC office or at any of the SCC work sites. The SPO recognized that members of the Church were aware that the SCC consultants attended the event because of the SPO’s actions. When asked whether the SPO thought that requesting vendors, whom the SPO supervised, to pay to attend an event that benefited the SPO’s Church was improper or violated any rule or regulation, the SPO stated that the SPO did not believe any rule or regulation was violated because the SPO personally did not receive any money for the golf outing and only the Church benefited.

When asked if the SPO’s supervisors were aware that the SPO organized the outing and that both SCC employees and SCC consultants attended the outing, the SPO explained that the SPO’s prior supervisor knew about the golf outing, knew that SCC consultants participated in the golf outing, and never told the SPO that the conduct was violative of the SCC Code of Conduct. Although the SPO’s current supervisor knew about the golf outing, the current supervisor did not know that SCC consultants, whom the SPO supervised, were asked to participate in the event. The SPO conceded, however, that the SPO never specifically asked anyone if the golf outing was inappropriate because in the SPO’s own mind it was not inappropriate, and thus, there was no reason to ask.

Review of SCC records indicated that the SPO received a copy of the “Plain Language Ethics Guide to New Jersey’s Executive Branch Standards” on June 22, 2005 and received a copy of the SCC Code of Conduct on March 14, 2006. Moreover, SCC records reveal that the SPO received ethics training on July 13, 2005.
Our investigation confirmed the acknowledgements and statements of the SPO. A
golf tournament to benefit the Church did in fact occur on July 13, 2006. A review of a
pamphlet for the golf outing ("the pamphlet") revealed that the cost for greens fee, cart,
lunch, dinner, golf course refreshments, prizes and awards would be $90 per individual or
$360 per foursome. The pamphlet also indicated that various sponsorships would be
available for amounts of $100 to $1,000. The pamphlet indicated that this was the third
annual golf outing.

A review of canceled checks provided by the SPO, who as a part of the SPO’s
organization of the outing received copies of the checks from the Church, revealed that
the two PMF firms that the SPO supervises and a design consultant that the SPO
monitors paid for attendance at the golf outing as did employees from the SCC. PMF 1
paid the fees for two foursomes and provided sponsorship toward the golf outing, paying
a total of $1,060. PMF 2 paid the fees for one foursome and also provided sponsorship
toward the golf outing, paying a total of $1,035. Design Consultant 1 paid the fees for
one foursome for a total of $360. Three SCC employees, including the SPO, paid $90
each to the Church and one employee paid $180 for the employee and a guest. All
checks were made payable to the Church.

The SCC employees who went to the golf outing each stated that they paid their
own way to the golf outing and none felt any pressure to accept the SPO’s request that
they attend the golf outing. SCC records revealed that SCC employees either took a
personal or vacation day off from work in order to attend the golf outing. Interviews with
the SCC consultants revealed that the golf outing was paid for by their respective
companies, that the employees were not required to take a day off to attend the outing,
and that the employees did not feel any pressure to attend the golf outing. The SCC
consultants’ stated reasons for attending the golf outing ranged from a desire to foster
business relationships with individuals who might attend the outing other than the SPO,
to simply wanting to play golf. Not one of the PMF attendees had any connection to the
Church and the majority of those interviewed only knew that the outing would generally
support the Church but did not know the specific purpose of the fundraiser. Interviews
with several SCC consultants, who participated in the golf outing, revealed that their respective companies sponsor several of these types of charitable events and have several similar events to choose from each year. The interviews also revealed that several of the employees of the SCC consultants who participated in the golf outing were not invited by the SPO, but rather were invited by their employer.

II. CONFLICTS OF INTEREST LAW

The New Jersey Conflicts of Interest Law indicates that:

[n]o State officer or employee . . . should accept any . . . thing of value under circumstances from which it might be reasonably inferred that such . . . thing of value was given or offered for the purpose of influencing him in the discharge of his official duties.” N.J.S.A. 52:13D-23(e)(6).

A personal benefit to the state employee is not required in finding a violation of N.J.S.A. 52:13D-23 (e)(6). In the Matter of Howard & Paparozzi, 93 N.J.A.R. 2d (ETH) 1 (1993)(Although a State vendor’s payment for the transportation cost of State employee benefited the State, Final Agency Decision of the Executive Commission of Ethical Standards found that statute did not require personal gain.)

Furthermore, N.J.S.A. 52:13D-23(e)(7) also states, in relevant part, that:

No State officer or employee or special State officer or employee should knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his acts that he may be engaged in conduct violative of his trust as a State officer or employee or special State officer or employee.

Pursuant to the New Jersey Conflicts of Interest Law, see N.J.S.A. 52:13D-23, the SCC has recently promulgated a Code of Conduct which includes a Code of Ethics.

Similar to the New Jersey Conflicts of Interest Law, the SCC Code of Ethics states that:

[n]o employee or director shall knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts, that he or she may be engaged in conduct violative of his or her trust as a director or employee. SCC Code of Ethics § 2 V Restrictions on Individual Conduct.
Moreover, the SCC Code of Conduct similarly prohibits an employee from accepting:

anything of value which he or she knows or has reason to believe or under circumstances from which it might be reasonably inferred is offered to him/her with the intent to influence him or her in the performance of his/her public duties and responsibilities. SCC Code of Ethics §2 IX (a) Prohibition against acceptance of a gift or thing of value.

The SCC Code of Conduct defines a thing of value as including:

[but] . . . not limited to, compensation; money; a stock, bond, note or other investment in an entity; employment, offer of employment; gift; reward; honorarium; favor; goods, service; loan; forgiveness of indebtedness; gratuity; property or real property; labor; fee; commission; contribution; rebate or discount in the price of any thing of value; an automobile or other means of personal transportation; entertainment; meal; or any other thing of value offered to or solicited or accepted by a State official in connection with his or her official position. SCC Code of Ethics § 2 II. Definitions (emphasis added).

The Plain Language Guide to New Jersey’s Executive Branch Ethics Standards (“Plain Language Guide”) mirrors both the Conflicts of Interest Law and SCC Code of Conduct. The Plain Language Guide states that:

[y]ou are not allowed to accept any gift, favor, service, or other thing of value from any person or entity under circumstances from which it might be reasonably inferred that the thing was given or offered in order to influence you in the discharge of your official duties.

The Plain Language Guide’s General Standards of Conduct also state that you must not:

knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of your acts that you may be engaged in conduct violative of your trust as an officer or employee of the State.

III. ANALYSIS OF A VIOLATION OF THE CONFLICTS OF INTEREST LAW

The SPO is a Vestal Member of the Church, an elected position, and volunteered to organize the golf outing. The SPO acknowledged that members of the Church are aware that the SCC consultants attended the event because of the SPO’s actions. Clearly, the Church received something of value -- in the form of financial support -- because of the SPO’s actions. While the fact that the SPO did not personally receive a financial benefit
can be viewed as a mitigating factor, it is inconsequential in the analysis of whether a violation occurred. (See In the Matter of Howard & Paparozzi, supra at 24-25). Accordingly, it is reasonable to conclude that the Church received something of value from the SCC consultants because of the SPO’s conduct and the next step in the analysis is to examine the circumstances under which that value was conferred to the Church.

Given the circumstances of this case it is reasonable to conclude that the SCC consultants participated and paid for the golf outing in an attempt to gain favor with the SPO. The SPO supervises a total of ten projects that the SCC consultants were hired to manage and has the authority to evaluate the SCC consultants’ work product before authorizing change orders and the payment of invoices. The SPO solicited participation of the SCC consultants in this golf outing. A member of the public could play on the same golf course on any day of the week for the same approximate cost of the golf outing. The SPO was also able to obtain corporate sponsorship from SCC consultants with a value above and beyond the applicable golf outing fees.

The SCC consultants and their employees had no connection to the Church; the majority of those interviewed only knew that the outing would generally support the Church and did not know the specific purpose of the fundraiser, and the SCC consultants had many other opportunities to sponsor a charity that was not organized by a State employee. The willingness of the SCC consultants to pay a premium for a golf outing on a public course sponsored by a State employee and to pay their employees a full day’s salary while attending the event tends to point towards an ulterior motive behind the SCC consultants’ actions. That willingness, taken in conjunction with the SCC consultants’ effort to maximize their number of participants for a charity function without knowing the specific purpose of the fundraiser, reasonably leads to the conclusion that the SCC

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2 A review of the Golf Course’s 2006 Outing Rates indicated that the cost for a round of golf, including a cart, would be between $33.00 and $42.00 per person for non-seniors on a weekday, daylight to 4:00pm. The cost for food ranged between approximately $14.00 to $20.50 per person for the “Club Cookout” or “Club Barbecue” and $20.50 to $25.25 per person for the “Club Dinner.” Those prices do not include the cost of extra food items, beverages or gratuity. The maximum total for greens fees, cart, and two meals (“Club Cookout” or “Club Barbecue” and “Club Dinner” is $87.75 ($42.00 + $20.50 + $25.25 = $87.75) compared to the golf outing price of $90.00 per person.
consultants attended the event in an effort to cause the SPO to look favorably upon their generous contribution and, by extension, their work product. In fact, there is no other reasonable explanation that fully explains the SCC consultants’ attendance at this particular golf outing.

In this case it is reasonable to conclude that the SPO received value, albeit in the form of financial support to the Church, from SCC consultants under circumstances from which it could be reasonably inferred that such value was given for the purpose of influencing the SPO in the discharge of the SPO’s duties. It is equally reasonable to conclude that the SPO’s actions could have created the impression among the public having knowledge of the SPO’s acts that the SPO allowed State vendors the opportunity to convey something of value with the hope that it would have a positive affect on the supervisory relationship. Accordingly, it is apparent that the SPO’s conduct implicates N.J.S.A. 52:13D-23 (e) (6) and (7) and the corresponding provisions in the SCC Code of Ethics.

IV. NO FINDING OF OFFICIAL ACT IN EXCHANGE FOR BENEFIT

N.J.S.A. 52:13D-24(a) states, in relevant part, that:

No State officer or employee, special State officer or employee, or member of the Legislature shall solicit, receive or agree to receive, whether directly or indirectly, any compensation, reward, employment, gift, honorarium, out-of-State travel or subsistence expense or other thing of value from any source other than the State of New Jersey, for any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, except as authorized in this section.

There has been no allegation in this case that the SPO agreed to perform an official act in exchange for the value given to the Church by SCC consultants. Nonetheless, as indicated above, the SPO had the authority to scrutinize the SCC consultants’ work product prior to the approval of change orders and work invoices, and thus, there is the potential that the SPO could have favorably approved change orders or invoices in exchange for the value received by the Church.
We have reviewed all of the change orders and invoices for the two PMF firms involved in the SPO’s Church golf outing. The majority of change orders and invoices were either not approved by the SPO or were co-approved by other SCC staff or approved by the SCC Board of Directors, who had no connection to the benefit received by the Church. Accordingly, because of the checks and balances utilized in the majority of cases, there was a lack of opportunity for the SPO to unilaterally, and by consequence inappropriately, approve a change order or invoice in exchange for the value given to the Church.

In approximately seven (7) instances, invoices were submitted for payment with only the SPO’s signature when SCC operating authority called for additional authorization; however, SCC Contract Administration identified the deficiency and returned the invoices for the appropriate signature before authorizing payment. Thus, the invoices were ultimately subjected to the required checks and balances and approved according to the SCC operating authority.

There were also three (3) November 2003 change orders that were singularly approved by the SPO. The SCC operating authority, in effect at the time, allowed for such singular approval by a project officer. Accordingly, it seems that no policy or procedure was violated as a result of the singular approval by the SPO. Nonetheless, at least one of the change orders, without a more detailed review and analysis, appears to represent a change to the contract as opposed to simply an increase in the scope of work. Such a change to the contract would require Board approval. However, that change order, whether or not improperly approved, is more likely then not, unrelated to the benefit received by the SPO’s Church. The change order in question was initiated in November 2003 and approved in December 2003 while the first golf outing occurred almost one year later on or about July 2004. Accordingly, it is unlikely that there is a connection between that change order and the benefit received by the Church because the change order predates the golf outings by such a substantial period of time.
In light of the above discussion and in the absence of other evidence, the OIG finds that there is no indication of an official act by the SPO in exchange for the benefit bestowed upon the Church. Nonetheless, it is recommended that SCC Change Order Review Unit ("CORU") conduct an independent review of the above mentioned change order to determine whether it is appropriate and reasonable.

V. MITIGATION

Generally, having received prior approval for an employee's action or conduct is a valid defense to an ethics charge. In the Matter of Howard & Paparozzi, supra at 27. However, certain prerequisites must be satisfied in order to rely on such a defense. Id. First, "the employee must have sought and received approval prior to the occurrence of the action or event in question." Id. Second, "the employee must have received the advice or approval from an individual within the employee's agency with authority or responsibility for making determinations with regard to ethical issues on behalf of employees." Id. Third, "the employee in seeking the advice or approval must have made a full and complete disclosure of all pertinent facts and details surrounding the issue which would be necessary for the appropriate individual to make his or her determination." Id. Fourth, "the employee must have followed the advice given including any restrictions included with the advice." Id. The remedy flowing from the satisfaction of the four part test differs depending on the alleged violation. Id. In regard to N.J.S.A. 52:13D-23(e)(6), no penalty should be imposed for a violation if the four part test is satisfied. In regard to N.J.S.A. 52:13D-23(e)(7) no violation can be found if the four part test is satisfied because the prior advice would negate the knowledge requirement included in the statute. Id. at 28 (emphasis added).

In this case, the SPO indicated that the SPO's prior supervisor knew about the golf outing and knew that SCC consultants participated in the golf outing, but never told the SPO that the conduct was violative of the SCC Code of Conduct. However, the SPO acknowledged that the SPO never asked the SPO's superior or ethics officer whether the request that vendors support the charity by participating in the golf outing was
appropriate. Accordingly, the SPO has not satisfied the first prong of the four part test and therefore cannot rely on the defense because the SPO never sought ethical advice prior to the golf outing. Furthermore, in regard to the remaining three prongs of the test, it is not clear that: 1) the SPO’s prior supervisor had the authority to approve the SPO’s actions; 2) that the SPO made full disclosure to the prior supervisor; or 3) that the prior supervisor rendered advice to the SPO with regard to the outing. This was certainly not the case of the SPO’s current supervisor. As such the SPO does not have a viable defense to an ethics violation.

Although not exonerating the SPO, in determining the appropriate discipline for the SPO’s conduct, it may be considered that during the investigation the SPO was candid, cooperated fully and did not attempt to mislead us. Further, the benefit did go to the charity and the value received by the Church was, at most, $2,500. However, no matter how well intentioned the SCC consultants or the SPO may have been in providing a benefit to a charity, the SCC consultants’ response to the request from a State employee charged with supervising their work is in direct conflict with the State of New Jersey Conflicts of Interest Law and cannot be tolerated. Accordingly, it is recommended that the SCC take the appropriate personnel actions.

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3 This amount does not include the monies paid by the SPO or his fellow SCC employees. This office also does not have information on the amounts of money paid to the Church for the previous two golf outings.