

**THE DEPARTMENT OF THE AUDITOR GENERAL  
OFFICE OF SPECIAL INVESTIGATIONS**

**SUMMARY REPORT**

**DRUMORE TOWNSHIP SUPERVISOR,  
LANCASTER COUNTY**

**AUGUST 2004**

## **INTRODUCTION AND BACKGROUND**

The Department of the Auditor General (the Department) conducts audits of the use of liquid fuels tax funds and other highway program funds provided to local governments by the Commonwealth under the administration of the Pennsylvania Department of Transportation (PENNDOT).<sup>1</sup> In July 2003, the Department received a complaint that an elected supervisor for Drumore Township, Lancaster County (the Township), and who also worked as the Township's Roadmaster, was directing or causing work on Township road construction projects to be performed by a company that he owned.

The Department's Office of Special Investigations (OSI) conducted an inquiry which included reviews of Township records and records of contractors doing roadwork for the Township and interviews of Township officials and representatives/operators of private firms. During the period of the investigation, the Department's Bureau of County Audits conducted an audit of liquid fuels tax funds and other state highway funds provided to the Township for the 2000, 2001 and 2002 calendar years. Information obtained during the audit has been incorporated into this report.

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<sup>1</sup> The Department's authority to conduct the audits is derived from the Fiscal Code, 72 P.S. §§ 402-403. Liquid fuels tax funds are distributed to counties and from counties to their political subdivisions pursuant to 75 Pa. C.S. § 9010.

## **SUMMARY OF FINDINGS**

As an elected official and a Township employee, a Drumore Township supervisor participated in the award, approval and administration of contracts and purchases concerning Township roadwork from which a business owned and operated by him or members of his immediate family obtained financial benefits totaling approximately \$134,000.

The supervisor also used and caused the making of false and misleading records to conceal his involvement, and the involvement of his business, in the Township's contracting and purchasing activities.

## **FINDINGS**

### **Roadwork Contracting in Drumore Township**

The Township is a Second Class Township governed by three elected supervisors. One of the supervisors is the subject of this investigation. He has served as a supervisor since 1979, during which time he has also been employed as the Township's Roadmaster.<sup>2</sup> According to Articles of Incorporation filed on April 15, 1998, with the Pennsylvania Department of State's Corporation Bureau, he is also the President of a company in Quarryville, Pennsylvania.

As a supervisor, he votes to award contracts and approves payment of invoices related to Township contracts for supplies and services. The other two current supervisors (one of whom has been a supervisor for 12 years and the other for 10 years) told OSI that they defer to him on all matters related to roads because that is his area of expertise.

As Roadmaster, he is paid \$12 per hour by the Township. He is responsible for all aspects of road projects within the Township, including determining which projects are to be completed, drafting bid specifications, obtaining price quotes, awarding contracts for under \$10,000 and overseeing and approving work performed by contractors and the Township's road crew.<sup>3</sup>

The Township's contracting and purchasing practices are governed by the Second Class Township Code which contains competitive bidding requirements: With limited exceptions, all contracts or purchases in excess of \$10,000 are to be made with and from the lowest responsible bidder only after due notice in a newspaper of general circulation; written or telegraphic price quotations from at least three qualified and responsible bidders are to be requested for all contracts exceeding \$4,000 but less than \$10,000.<sup>4</sup>

### **Supervisor's Prior State Ethics Law Violation**

In 1992, the Pennsylvania State Ethics Commission issued a ruling that the supervisor had violated the State Ethics Law in connection with road contracts totaling over \$30,000 between the Township and his company, which had been doing business between 1987 and 1991.<sup>5</sup> He was cited for engaging in conduct

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<sup>2</sup> Under the Second Class Township Code, roadmasters are responsible for doing or directing all work necessary to carry out responsibilities imposed by the board of supervisors with respect to the maintenance, repair and construction of Township roads. 53 P.S. § 67302.

<sup>3</sup> The Township's road crew consists of one full-time employee (the supervisor's brother) and several part-time or seasonal employees.

<sup>4</sup> 53 P.S. § 68102(a) and (b).

<sup>5</sup> PA State Ethics Commission, Docket No. 92-009-C2 (September 10, 1992).

that constituted a conflict of interest, i.e., use by a public official or public employee of the authority of his office or employment, or confidential information received through the office or employment, for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated.<sup>6</sup> The Ethics Commission's ruling noted that in 1991, PENNDOT issued an audit report concerning the Township's liquid fuels tax funds. The PENNDOT report determined that the supervisor, as an interested party in his company, was prohibited from entering into contracts with the Township. The Ethics Commission's ruling found that as a Township supervisor, he approved payments to his company, and, as owner of the business, he entered into contracts with the Township that were in excess of \$500 and not awarded through an open and public process. The Ethics Commission ordered him to file amended Statements of Financial Interest for the calendar years 1988 and 1989 listing his ownership of his company.

In November 1992, the supervisor requested advice from the State Ethics Commission concerning whether his company could be hired in the future to do business with the Township. In an Advice of Counsel letter No. 93-502, dated January 5, 1993, the Ethics Commission's chief counsel stated:

As a Township Supervisor for Drumore Township, you are a public official subject to the provisions of the Ethics Law. Although . . . the Ethics Law would not preclude you or a business with which you are associated from contracting with Drumore Township, you could not use the authority of office or confidential information to obtain such business and such business activity may not be conducted using governmental facilities or personnel. The restrictions of . . . the Ethics Law set forth above must be observed. It is strongly recommended that you secure the advice of legal counsel as to the applicability of the Second Class Township Code as to your proposed conduct.

The section of the Ethics Law referred to in the Advice of Counsel prohibits any public official or employee or his spouse or child, or a business in which they are associated, from entering into a contract of more than \$500 with the governing body with which the public official or employee is associated, unless the contract is awarded through an open and public process and the public official or employee has no supervisory or overall responsibility for implementation or administration of the contract.<sup>7</sup>

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<sup>6</sup> Currently, the conflict of interest prohibition and definitions are found in the Public Official and Employee Ethics Act (the Ethics Act), 65 Pa. C.S. §§ 1103(a) and 1102, respectively.

<sup>7</sup> 65 Pa. C.S. § 1103(b).

The supervisor's Statements of Financial Interests filed for 2000, 2001 and 2002 in accordance with the Ethics Act, list him as the 100 percent owner of his company. The Statement of Financial Interests filed for 2003 lists him as vice-president and ten percent owner of his company.

### **Drumore Township Roadwork Contracts in 2000, 2001 and 2002**

The OSI investigation focused on the following Township roadwork contracting activities which took place during calendar years 2000, 2001 and 2002 using liquid fuels tax funds and other Commonwealth highway program funds. The investigation determined that the supervisor or his company received approximately \$134,000 directly or indirectly from the Township in connection with those activities without full disclosure, with his participation in the implementation and administration of the activities and through use of false and misleading records:

1. Vendor No. 1<sup>8</sup>

Vendor No. 1 was a family-owned trucking business started by a father and son in 1999. The son eventually became the self-employed sole owner of the trucking business which consisted of one truck. According to the son (owner), Vendor No. 1 began doing work as a hauler for the supervisor's company in 2000; in 2002, the supervisor brought a contract proposal to the owner's residence and asked him to submit a bid to do hauling for the Township. The proposal was approved by the Township supervisors, including the supervisor who is the subject of this investigation.

The owner of Vendor No. 1 told OSI that whenever additional hauling or equipment was needed during the course of the Township contract, the supervisor used equipment from his company and that the supervisor told the owner of Vendor No. 1 that he would invoice the Township as if his company was a subcontractor for Vendor No. 1. According to the owner of Vendor No. 1, the supervisor said it was legal and allowable.

During May 2002, Vendor No. 1 went out of business and sold its truck and the owner went to work for the supervisor's company as a driver. According to the owner of Vendor No. 1, the supervisor submitted invoices to the Township in the name of Vendor No. 1 for work done by the supervisor's company. The owner of Vendor No. 1 worked as a driver for the supervisor's company on some of those projects. The owner of Vendor No. 1 said the supervisor told him that he

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<sup>8</sup> In the interest of confidentiality, vendors are identified in the report by number rather than by name.

submitted the invoices in Vendor No. 1's name because Vendor No. 1 was obligated to fulfill the contract or risk being sued by the Township for breach of contract. The supervisor's daughter told OSI that she prepared the invoices at her father's request.

The owner of Vendor No. 1 told OSI that he endorsed Township checks payable to himself at the request of the supervisor's daughter and gave them to her. The owner of Vendor No. 1 also said that, on other occasions, the supervisor carried Township checks payable to Vendor No. 1 to the owner of Vendor No. 1 (the supervisor's daughter told OSI that she also carried some of the checks); the owner of Vendor No. 1 deposited them into his business account and wrote checks to the supervisor from that account for the supervisor's company's portion of the payment from the Township. According to the owner of Vendor No. 1, his name as an endorsement on one Township check payable to him owner was a forgery. (OSI has copies of the Township's checks made payable to Vendor No. 1).

In 2003, an IRS Form 1099 was issued by Vendor No. 1 to the supervisor for \$39,423.83. This amount represented the portion of Vendor No. 1's payments from Drumore paid to he supervisor. According to the owner's wife, the supervisor asked her to issue the Form 1099 to him personally, not to his company. The supervisor admitted to OSI that he received the total shown on the Form 1099. According to the Township supervisors' minutes, the supervisor voted to approve the payments to Vendor No. 1. There is no record that he formally disclosed his and his company's involvement in the work and payments.

## 2. Vendor No. 2

Vendor No. 2 consists of one truck that did hauling for the Township in 2002. According to the owner of Vendor No. 2, he submitted a price quote for his work after he was requested to do so by the supervisor. Shortly afterward, the supervisor informed him that he won the contract. The minutes of the Township supervisors' meetings do not contain any record of the price quote or the contract award.

The Township made seven payments to Vendor No. 2 totaling \$18,523.17. According to the owner of Vendor No. 2, he gave \$6,935 to the supervisor/the supervisor's company, in the form of cash, or by endorsing a Township check, for the use of heavy equipment and vehicles owned by the supervisor's company in the Township road projects for which Vendor No. 2 was, supposedly, doing the hauling.

The owner of Vendor No. 2 told OSI that one Vendor No. 2 invoice (No. 240182) was brought to the owner of Vendor No. 2 by the supervisor, together

with a Township check for \$4,790. The supervisor requested the owner of Vendor No. 2 to endorse it so that it could be cashed. The owner of Vendor No. 2 endorsed it. He told OSI that he told the supervisor not to do this again (i.e., prepare a Vendor No. 2 invoice). In the supervisor's interview with OSI, he said that he had the invoice prepared and submitted it to the Township. His daughter told OSI that she prepared the invoice.

The owner of Vendor No. 2 told OSI that the supervisor told him he (the supervisor) could not bid on Township contracts because he was a supervisor and Roadmaster; that he worked on Township road projects through subcontract work; and that the invoice the supervisor made up using Vendor No. 2's name was for extra work the supervisor did for which he had not been paid.

### 3. Vendor No. 3

Vendor No. 3 is a trucking company in the name of an individual who lived with the supervisor (individual) and with the same address as the supervisor's residence. Vendor No. 3 is not registered with the Pennsylvania Department of State and no vehicles are registered to Vendor No. 3. The supervisor told OSI that he created Vendor No. 3 so that he could continue to operate his business during a period when his business accounts were frozen by the Internal Revenue Service (IRS).

In 2001, Vendor No. 3 was paid \$5,038 by the Township for hauling and roadwork. The check contained endorsements of the individual, the supervisor and the supervisor's daughter. The individual told OSI that her endorsement was a forgery and that she informed the supervisor that she did not want any of his businesses to be in her name. Two invoices were prepared in connection with the payment to Vendor No. 3. The supervisor told OSI that Vendor No. 3's invoices submitted to the Township were prepared at the supervisor's company and submitted by the supervisor.

According to the Township supervisors' minutes, the supervisor voted to approve payment of the invoices.

### 4. Vendor No. 4

Vendor No. 4 is a Lancaster County firm located in East Petersburg, PA. The Township has purchased asphalt from Vendor No. 4 for many years pursuant to annual contracts. The supervisor's company has done hauling work for, and purchased asphalt from, Vendor No. 4. The supervisor's company had an account with Vendor No. 4. According to Vendor No. 4's owner, in 2002, the supervisor's son, who is the current operator of the supervisor's company, contacted Vendor



No. 4's owner about the possibility of Vendor No. 4 agreeing to hire the supervisor's company to lay asphalt purchased by the Township and to use the money due to the supervisor's company for that work to reduce the existing amount owed by the supervisor's company to Vendor No. 4. According to Vendor No. 4's owner, the balance owed by the supervisor's company to Vendor No. 4 at that time was approximately \$225,000. The owner of Vendor No. 4 told OSI that he refused to discuss such an arrangement because the Township's 2002 contract for the asphalt had not yet been awarded.

In April 2002, the Township awarded the asphalt contract to Vendor No. 4. In the same month, the supervisor's company signed an agreement with Vendor No. 4 to haul and lay the asphalt for a Township contract project.

Vendor No. 4 credited \$77,328.04 to the supervisor's company's account for the work on the asphalt-laying contract. Vendor No. 4's owner told OSI that the supervisor's son told him that there was no conflict of interest because the supervisor's company would be working for Vendor No. 4, not the Township, and that the subcontract was allowable provided that the supervisor's company was not dealing directly with the Township.<sup>9</sup>

According to the Township supervisors' minutes, the supervisor voted to approve the Township's 2002 asphalt contract with Vendor No. 4 and the payments for the work on the contract. There is no record that the involvement of the supervisor's company in the project was disclosed in the Township supervisors' minutes.

According to Vendor No. 4's owner, either the supervisor (in his capacity as Roadmaster), or the supervisor's brother (a member of the Township's road crew) approved asphalt deliveries to the Township, including all deliveries by the supervisor's company.

Vendor No. 3 received checks from Vendor No. 4 for hauling work unrelated to the Township project. Some of Vendor No. 4's checks were deposited into a joint account in the names of the individual (Vendor No. 3) and the supervisor. According to the individual (Vendor No. 3), her endorsements on two of Vendor No. 4's checks (totaling approximately \$5,600) were forgeries. The checks also contained the endorsements of the supervisor and his daughter. According to Vendor No. 4's owner, Vendor No. 3 was retained to do the work for Vendor No. 4 by the supervisor's brother who works for Vendor No. 4; the supervisor's company's equipment was used to do the work; Vendor No. 4 eventually applied half of the money due to Vendor No. 3 to the supervisor's

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<sup>9</sup> Vendor No. 4 also paid the supervisor's company approximately \$13,000 prior to 2002 for work in connection with hauling asphalt used on Township projects.

company's account at Vendor No. 4. Vendor No. 4 issued an IRS Form 1099 to Vendor No. 3 for approximately one-half of the total payments. Vendor No. 4 did not issue a Form 1099 for the amounts applied to the supervisor's company's account with Vendor No. 4.

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During the period reviewed by OSI, the supervisor's company was also involved in roadwork contracts the Township had with other firms. In those transactions, the supervisor's company delivered stone and/or salt and anti-skid material to the Township, or leased vehicles to the main contractor for the deliveries, and was paid by the firm that contracted with the Township. Payments to the supervisor's company were based on the quantity of material hauled and we were unable to obtain records showing the total amount received by the supervisor's company for the work.

The total amount obtained by the supervisor and/or the supervisor's company through the Township's contracts and purchases described above is shown in Table No. 1.

Table No. 1 - Funds Obtained by the Supervisor/Supervisor's Company Through Township Contracts and Purchases for Roadwork

<b>Vendor</b>	<b>Payments to Supervisor/Supervisor's Company</b>
No. 1	\$39,423
No. 2	11,725
No. 3	5,038
No. 4	77,328
<b>Total</b>	<b>\$133,514<sup>10</sup></b>

<sup>10</sup> The total does not include the other payments or credits from Vendor No. 4 to the supervisor's company directly or to Vendor No. 3 mentioned on p. 7.

### The supervisor's statements to OSI

The supervisor told OSI that his company received payments from the Township through use of third parties, subcontractors and invoices submitted in others' names. He said those practices were used because the Ethics Commission's 1992 case showed him that, as a Township supervisor, his company could not directly invoice, or receive payment from, the Township.

The supervisor also told OSI that he tried to get at least three price quotes for all Township contracts over \$4,000 but that it was difficult to do so because most vendors would not service or bid work for the Township due to the costs of travel and the small dollar value of the contracts.

### Other potential vendors

It should be noted that seven vendors were contacted by OSI in regard to doing work for the Township. Six of the seven stated that they had never received a proposal or been asked to bid for Township work. Four of the vendors stated that they were interested in bidding for Township work. Representatives of two firms stated that it was known that the Township's asphalt and roadwork contracts are completed by the supervisor's firm. One vendor representative referred to bidding on a contract with the Township as "a local joke . . . because it is well known that the road and maintenance contracts are handed out before any bids are given or accepted."

### Knowledge on the part of other Township supervisors

The other two Township supervisors told OSI that they knew the supervisor's firm was performing work for the Township and were aware of or "heard rumors" that the supervisor had been cited by the State Ethics Commission for doing work for the Township. Neither supervisor had read the Ethics Commission's 1992 ruling.

## **CONCLUSIONS AND RECOMMENDATIONS**

The supervisor's activities in connection with the Township's roadwork contracting and purchasing constitute a continuing pattern of conflicts of interest and misrepresentations. The supervisor and his private business did work for the Township and received financial benefit by using Vendor Nos. 1, 2, 3 and 4 as fronts or straw parties. The supervisor and/or a member of his immediate family

used the supervisor's position as a Township supervisor to benefit the supervisor's company in connection with Vendor No. 4's 2002 contract with the Township, the subcontract with the supervisor's company and the reduction of the debt the supervisor's company owed to Vendor No. 4.

All of the above activities took place without full formal disclosure by the supervisor in accordance with the Ethics Act and with the supervisor's participation in the contracting and purchasing, both as a Township supervisor and as the Roadmaster, resulting, overall, in a misuse of the supervisor's official position.

The matter has been referred to the State Ethics Commission for appropriate action. The Ethics Commission is authorized to conduct investigations and issue findings, reports and orders relating to violations of the Ethics Act, including requiring full restitution, with interest. The Ethics Commission may also make recommendations to law enforcement officials for criminal prosecutions of charges arising out of violations of the Ethics Act.<sup>11</sup>

Based on the information provided through interviews, referral to the Lancaster County District Attorney's office, the Office of Attorney General and federal law enforcement agencies for prosecutive review is warranted. The Second Class Township Code contains a provision with criminal penalties for Township officials or employees who have direct or indirect interests in township contracts or work.<sup>12</sup> Additionally, further investigation of violations of the Pennsylvania Crimes Code, including provisions relating to forgery and submitting or inviting reliance on forged or unauthentic writings, is appropriate.<sup>13</sup>

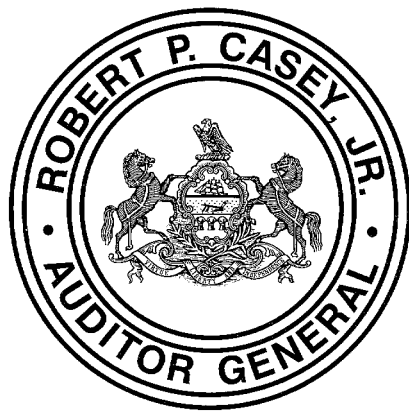
Copies of the report have also been sent to the IRS, PENNDOT and the Pennsylvania Department of Revenue for review.

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<sup>11</sup> Violations of the conflict of interest provisions of the Ethics Act are felonies, 65 Pa. C.S. § 1109(a).

<sup>12</sup> 53 P.S. § 68102(I). If the violation is a knowing one, the statute also includes the ouster of the official or employee from office as part of the penalties for its violation.

<sup>13</sup> 18 Pa. C.S. §§ 4101 and 4904(a).



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