

Office of the Chief Inspector General Case #200704200006

EXECUTIVE SUMMARY

Introduction:

On April 25, 2007, at the request of Chief Financial Officer Alex Sink, and on behalf of the Financial Services Commission¹, the Office of the Chief Inspector General, in coordination and cooperation with Inspectors General with the Office of the Attorney General, the Department of Agriculture and Consumer Services, and the Department of Financial Services, initiated an investigation to determine if the Commissioner of Insurance Regulation, Kevin M. McCarty, violated applicable Florida State laws, rules, regulations, policies or procedures. The scope of the investigation consisted of allegations that McCarty may have misused state resources for a political campaign and improperly solicited funds from entities his office regulates for a political campaign.

Allegations and Findings:

Allegation 1: *Florida Insurance Commissioner Kevin M. McCarty, Office of Insurance Regulation used state resources for the political campaign of a judicial candidate.*
SUPPORTED

Electronic records disclosed that on April 16, 2007, McCarty received an email on his state issued computer from Tony A. Loughman, President, Southern Oak Insurance company, with the subject line: "Invitation." The email states, "Kevin, Thanks for the call last night, sorry I missed it. I am unable to attend the event for Robbie Lotane, but I will look into providing her our support. Thanks." Electronic records further disclosed that on this same date, McCarty forwarded the email from his state issued computer to former Director of Communications Robert Lotane, Office of Insurance Regulation, at Lotane's state email address. No message was included in McCarty's email to Lotane. Other than the single forwarded email, no other witness or documentary evidence was obtained that supported the allegation.

Section 104.31, Florida Statutes², prohibits state employees from participating in any

¹ According to Section 20.121(3), Florida Statutes, "Effective January 7, 2003, there is created within the Department of Financial Services the Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, which shall for purposes of this section be referred to as the commission. Commission members shall serve as agency head of the Financial Services Commission. The commission shall be a separate budget entity and shall be exempt from the provisions of s. 20.052. Commission action shall be by majority vote consisting of at least three affirmative votes. The commission shall not be subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters." Section 20.121(3)(a), Florida Statutes, further establishes the Offices of Insurance Regulation and Financial Regulation, and outlines the responsibilities of both.

² Section 104.31, Florida Statutes, states in pertinent part: (2) An employee of the state or any political subdivision may not participate in any political campaign for an elective office while on duty. (3) Any

political campaign for an elective office while on duty. Further, this statute provides for criminal penalties if violated. Mark Perez, Chief Inspector, Executive Investigations, Florida Department of Law Enforcement, was contacted and he advised that based solely on the finding of one email, there was no clear, established pattern of misuse of state resources for political activities that warranted a criminal referral and that his recommendation would be to continue the investigation administratively. In the absence of a viable criminal violation, the actions of McCarty constitute misconduct under Rule 60L-36.005 (e), (f), and/or (g), Florida Administrative Code.

Allegation 2: *Florida Insurance Commissioner Kevin M. McCarty, Office of Insurance Regulation, may have been aware of and/or allowed Office of Insurance Regulation employees to engage in political activities using state resources. NOT SUPPORTED*

Witness testimony, documentary evidence, and electronic records did not disclose information to support this allegation.

Allegation 3: *Florida Insurance Commissioner Kevin M. McCarty pressured insurance entities his office regulates to contribute funds for the political campaign of a judicial candidate. NOT SUPPORTED*

Witness testimony, documentary evidence, and electronic records did not disclose information to support this allegation.

Other issues that were determined to be outside the scope of this investigation, but which were worthy of further comment, are presented in the **Additional Information** section of the report.

Conclusions:

The findings in this report disclosed that McCarty forwarded one email to an Office of Insurance Regulation employee that concerned the political campaign of a judicial candidate. Despite a possible perception of influence by McCarty, witness testimony, documentary evidence and electronic records did not disclose information to support that McCarty had knowledge of or allowed Office of Insurance Regulation employees to use state resources for political campaigns or that he improperly solicited entities which his office regulates to contribute to the campaign of a judicial candidate.

Recommendations:

Appropriate recommendations to address the findings are contained in the report of investigation (see pages 15-16).

person violating the provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.