

Office of the Chief Internal Auditor
December 3, 2009

On October 14, 2009 a copy of a fax was received by the Office of the Chief Internal Auditor (OCIA) from Chairman Hugh Atkins. Chairman Atkins received the original fax and requested an investigation. The investigation was assigned to Paul Townes, Deputy Chief Internal Auditor. While many allegations were made only six had enough detail to allow investigation.

1. Improper influence by Secretary Limehouse to use Phillips and Jordan for Highway 17 project.
2. I-385 improperly bid to use concrete and with an excessively expensive traffic control plan.
3. Excessive settlement to the Limehouse family for a bridge right of way.
4. Loss of federal funding.
5. Improper relationship with Ron Joye.
6. Independence of Robert Wilkes.

1. Improper influence by Secretary Limehouse to use Phillips and Jordan for Highway 17 project.

The Highway 17 project was started in 2006 with work on the first of three phases. All three phases could not be completed at one time due to a lack of funding. The Commission was aware of serious safety issues in a very complex environmentally sensitive area. So on June 21, 2007, Executive Director Mabry was asked to explore funding opportunities to complete the US 17 project. On June 12, 2009 Robert L. Lee, Division Administrator, of the Federal Highway Administration (FHWA) sent Secretary Limehouse a letter expressing concerns about the large unobligated balances of ARRA and regular FY09 Federal funding. SCDOT went through a list of projects that were possibilities for a quick obligation of funds. The Highway 17 project was shovel ready and SCDOT selected this project since funding seemed available for the completion of the project.

The Highway 17 project was initially bid as a three-phase project with bids on each segment and then as a total. The first phase was awarded before Secretary Limehouse became Secretary of Transportation. There was a change order to complete a portion of the second phase which was approved by the Commission on February 21, 2008. In 2009, a portion of the second phase and all of the third phase needed completion.

The original bid responses included a price for the second and third phase and the total project cost if completed at the same time. Also noted was that Phillips and Jordan bid had consistent lower prices on all phases when compared to the other bidder. FHWA suggested that if Phillips and Jordan would agree to the original total project which was approximately \$28,360,850 less than the sum of the phases, then FHWA might agree without a rebid. Phillips and Jordan agreed to lower the price for completion from the sum of the three individual bids by \$8,688,695 but not to the original price if all three phases were awarded at one time. Pursuing a longer completion time would require additional administrative cost for supervising the extended project.

On August 28, 2009, FHWA sent a letter to Tony Chapman denying the use of Federal aid without a competitive bidding process for the completion of Highway 17. The letter detailed the benefits of this process. On August 31, 2009, Secretary Limehouse informed Mr. Lee that he would appeal the decision which he did on September 3, 2009. The appeal was denied again on September 22, 2009. By this time, Secretary Limehouse submitted an appeal to the US Secretary of Transportation. This appeal was also denied and the project has been solicited for bids.

SCDOT's position is that Phillips and Jordan had performed well in an environmentally sensitive area. They had worked well with SCDOT. Mobilization costs would be reduced and understanding the scope of the project was clear to Phillips and Jordan. Additionally, SCDOT knew Phillips and Jordan had been the low bidder of the two

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original bidders and that the difference between bids was significant. Phillips and Jordan negotiated their original price downward. SCDOT decided that timeliness and cost favored using the original bid modified by a lower price rather than rebidding the project. At the insistence of FHWA, the project has been put out for bids. This is now a moot issue.

OCIA discovered another related issue. Secretary Limehouse recused himself from any decision making on this project as of July 1, 2009. However, we were informed that Secretary Limehouse attended an executive session after this date that possibly discussed this project. OCIA is not certain of the discussion in that executive session but was informed that Secretary Limehouse attended which seemed to be in conflict with his decision to recuse himself from the project decision making. Additionally, FHWA sent all their correspondence to Tony Chapman but Secretary Limehouse returned all correspondence.

OCIA recommends that the Commission be aware of perceived conflicts of interest and avoid these during executive sessions. In addition, Secretary Limehouse should have allowed Deputy Secretary Chapman to handle the appeal.

2. I-385 improperly bid to use concrete and with an excessively expensive traffic control plan.

This allegation is unusual because the individual who wrote the complaint seems to act as a representative for the asphalt companies. "The asphalt companies want an opportunity to give bids to do the work in less time, at less cost and with the same quality and life expectancy as concrete." "However, if the asphalt companies are allowed to bid, they say they would warrant the asphalt to have the same life expectancy as concrete ..." All these comments seem to come directly from the asphalt companies. Per FHWA, the type of surface to be used on a project is determined by a committee of which Secretary Limehouse is not a member. FHWA is a member and concluded that the recommendation to use concrete was appropriate. FHWA suggested that opening up a surfacing project to both asphalt and concrete would create numerous problems because asphalt does not last as long as concrete and future repair costs and life expectancy differences have to be agreed to by all parties to avoid claims of unfair selection criteria when the projects are equalized for their life expectancies. FHWA also stated that bids for asphalt projects have been higher than expected while the concrete was lower than expected. They have concluded this is due to more competition in the concrete business.

FHWA requires SCDOT to develop a traffic management plan for any request for proposals. FHWA approved the traffic management plan for this project. OCIA made inquiries within SCDOT and found that Secretary Limehouse did not influence the traffic control plan or the use of concrete. OCIA concludes the use of concrete was appropriate and had proper oversight by FHWA.

3. Excessive settlement to the Limehouse family for a bridge right of way.

This issue was resolved in 2009 but had begun in 1997. It appears that John Limehouse was difficult to work with based on at least one settlement that he agreed to but then refused to sign. He also terminated his first lawyer and hired a former SCDOT retained attorney.

In 2007, Secretary Limehouse assigned the project to Deputy Secretary Chapman. OCIA did not find any attempts by Secretary Limehouse to influence anyone. Both Deputy Secretary Chapman and Oscar Rucker, Director of Right of Way, said Secretary Limehouse did not attempt to influence them. The final negotiations had SCDOT valuing the property at \$75,000. Mr. Limehouse countered with an unsupported \$121,868 and the final agreed to number was \$100,000. SCDOT initially offered \$6,100. Mr. Limehouse produced an appraisal

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for \$33,400. In 2001, SCDOT asked for another appraisal determining what the value would have been in 1998. Based on later information, the second appraisal for SCDOT was \$26,500. Both parties agreed to settle for \$33,400 but later Mr. Limehouse disavowed the settlement agreement and refused to sign the settlement documents. Based on Mr. Limehouse's initial acceptance, SCDOT agreed to take the condemnation off the court roster before a signed document was in place. It then was six years before Deputy Secretary Chapman became involved and finally settled in January 2009. There is no explanation for the delay. Deputy Secretary Chapman indicates that the change of attorneys by Mr. Limehouse may have been a source of delay. However, it is apparent that the project was overlooked. OCIA concludes that Secretary Limehouse did not involve himself in this issue.

4. Loss of federal funding.

The allegation was made that due to the leadership of Secretary Limehouse and Deputy Secretary Rountree, SCDOT "has lost a great deal of federal money." FHWA was asked to review any projects that did not get federal assistance as planned. FHWA listed six projects. The total of all six projects was \$3,970,591.85. \$552,000 was never obligated and was available for other projects. \$2,338,613.91 was returned and available for other projects. These funds are not considered lost by FHWA. We did in fact return \$1,079,977.94 that was not able to be utilized on other projects. \$58,000 was related to a cancelled Scenic Byways Program. Due to the grant restrictions, this money was not used on other projects. The remaining balance of \$1,021,977.94 was Emergency Relief Funding. Per FHWA, SCDOT estimated a sufficient amount to cover for unknown storm damage. In fact, this extra amount was not needed and returned. The total amount returned is less than 1/10th of one percent of SCDOT's annual revenue. The allegation was that a great deal of federal money was lost. This is unsupported. The complaint suggests that Secretary Limehouse and Deputy Secretary Rountree are incompetent, lazy, or deliberately failed to follow FHWA procedures. It is apparent that based on data provided by FHWA and their verbal discussion, this allegation is not supported.

5. Improper relationship with Ron Joye

This allegation is that Ron Joye has improperly influenced Secretary Limehouse. It is alleged that Mr. Joye is an agent for Limehouse Properties. Mr. Joye was an agent for Limehouse Properties but that relationship ended before Limehouse became Secretary of Transportation. In addition, there are no ethical restrictions on whom Secretary Limehouse employs in his private business. Mr. Joye is employed by the Carolinas Ready Mixed Concrete Association. Again, there is nothing illegal with this. OCIA investigated whether Mr. Joye should be classified as a lobbyist. The Ethics Commission said that he was not a lobbyist so certain restrictions do not apply to Mr. Joye that might apply to a lobbyist. Mr. Joye readily admits promoting concrete which he believes offers a better value to SCDOT. Again, this is not illegal or unethical. There was an allegation that he performed services for Secretary Limehouse by providing transportation, entertainment, and food. OCIA was told Secretary Limehouse has caught rides with Mr. Joye and others, including SCDOT employees. OCIA was informed that Secretary Limehouse does this to reduce expenses to SCDOT. The allegation of golf outings being an influence on Secretary Limehouse is limited because OCIA was told by two sources that Secretary Limehouse does not play golf.

OCIA did hear of instances where Joye attempted to pick up the tab for meals. OCIA was told that on those occasions, Mr. Joye was reimbursed. Mr. Joye was sternly warned that this behavior opened SCDOT to criticism and that he would do himself, Secretary Limehouse, and SCDOT a service by not even being close to the register when the Commission or Secretary Limehouse are in a restaurant.

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Based on the information that OCIA was able to obtain, Mr. Joye was an employee of SCDOT for over thirty years. He was awarded the Order of the Palmetto and has a senate resolution congratulating him on his service to SCDOT. Mr. Joye feels a strong affiliation to SCDOT and its employees. He reports attending retirements and funerals. He spoke of his relationship to the families of two commissioners. Perhaps the most telling description of Mr. Joye was made by one of our senior managers. He stated that he considered Mr. Joye a friend and that while Mr. Joye had never tried to influence him, it would not work if he did. SCDOT has systems in place that prevent the Secretary of Transportation from initiating and directing projects. His role is largely one of oversight and to forward projects to the Commission for approval.

OCIA concludes that Mr. Joye has not tried to influence Secretary Limehouse in an inappropriate manner. Therefore, this allegation is not supported.

6. Independence of Robert Wilkes.

This allegation suggests that Mr. Wilkes is close to Secretary Limehouse and Deputy Secretary Rountree. In addition, the allegation suggests that he "hangs out" with them and Angela Feaster who is the Controller of SCDOT. OCIA's contact with Secretary Limehouse is extremely limited because there is rarely a need to gain his perspective on an issue. OCIA has frequent meetings with Deputy Secretary Rountree but with the Deputy Chief Internal Auditor and the Audit Managers. He has more interaction with Ms. Feaster due to her duties concerning external auditors. Mr. Wilkes stated that he met with each of them less than five times annually. His calendar noted for the last sixteen months he had scheduled four meetings with Secretary Limehouse. He scheduled seven meetings with Deputy Secretary Rountree. He scheduled one meeting with Ms. Feaster. Also, he scheduled five meetings with Wendy Nicholas, Executive Assistant to Secretary Limehouse, without Secretary Limehouse's attendance. He also denies any social interaction outside of SCDOT.

Another claim is that Mr. Wilkes shares an office suite with Deputy Secretary Rountree. This is not true nor has it been since his employment as Chief Internal Auditor. This fact is easily verifiable and leads to a serious credibility issue with the complaint in total.

OCIA concludes that Mr. Wilkes is not influenced by any of the three individuals listed. His contacts seem reasonable.