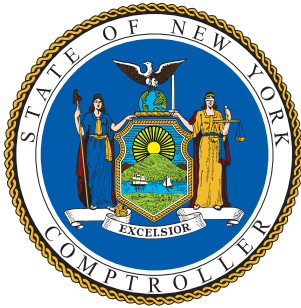


**Thomas DiNapoli**  
**State Comptroller**



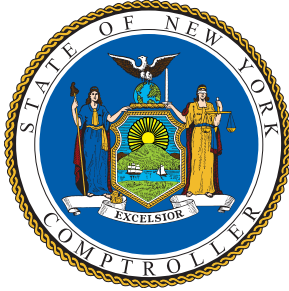
**Joseph Fisch**  
**Inspector General**



# **Violations of Law, Conflicts of Interest and Other Improprieties at the Department of Correctional Services' Food Production Center**

**2009-S-6**





August 31, 2010

Mr. Brian Fischer  
Commissioner  
NYS Department of Correctional Services  
1220 Washington Avenue, Bldg. #2  
Albany, New York 12226-2050

Dear Commissioner Fischer:

Our joint audit and investigation found apparent ethical problems with purchases made between favored vendors and the former Director of the Food Production Center, Howard Dean, and his staff. In addition, many of these purchases did not comply with the State Finance Law.

Our findings have been forwarded to the Oneida County District Attorney's Office for possible criminal charges and will also be provided to the Commission on Public Integrity for potential action under the Public Officers Law.

We urge you to take appropriate action to ensure that similar practices will not occur in the future at the Food Production Center and at other locations within the prison system.

Respectfully submitted,

*Office of the State Comptroller  
New York State Office of the Inspector General*



# Table of Contents

<b>Summary.....</b>	<b>1</b>
<b>Scope, Methodology and Authority .....</b>	<b>2</b>
<b>Background .....</b>	<b>3</b>
<b>Gifts .....</b>	<b>4</b>
<b>Free Food and Donations .....</b>	<b>9</b>
<b>Other Potential Ethics Law Violations.....</b>	<b>11</b>
<b>No Bid Contracts.....</b>	<b>12</b>
<b>Special Privileges Afforded a Truck Driver.....</b>	<b>12</b>
<b>How these Apparent Ethical Problems were Allowed to Occur.....</b>	<b>13</b>
<b>Recommendations .....</b>	<b>14</b>
<b>Reporting Requirements .....</b>	<b>14</b>
<b>Contributors to the Report .....</b>	<b>14</b>
<b>Commissioner’s Response.....</b>	<b>15</b>



## Summary

A joint audit/investigation conducted by the Offices of the New York State Comptroller and the New York State Inspector General, found apparent ethical violations regarding purchases from favored vendors by Howard Dean, the former Director of the Food Production Center, and his staff. For example, favored vendors paid for dinners for Mr. Dean and his staff and were also solicited for donations for annual picnics and Christmas parties. As a result, Correctional Services employees were invited to attend the parties without cost. Any money which was not dispensed from the donations was placed in a Department of Correctional Services Food Production Center Sunshine account (employee benefit fund) and used to pay for bagels for staff, gifts for staff, and other items.

In return, these same favored vendors were provided millions of dollars in State business each year, most of which was procured in violation of the State Finance Law. For example, no documentation exists demonstrating that purchases were based on open competition. In fact, the current Assistant Director of the Food Production Center, Kevin Bowen, informed auditors and investigators that one favored vendor was provided the potential missing ingredient essential in the production of cheese sauce the Food Production Center wished to utilize. None of the other vendors were provided the potential missing ingredient. As a result, the favored vendor received the State's business.

Mr. Dean habitually exploited his position of power (i.e. control over a \$55 million Food Production Center budget) to garner every personal advantage he could obtain from the State. Members of his management team exhibited similar, inappropriate behavior.

Mr. Dean was unhampered in his acquisition of personal benefits because there existed no effective management oversight of his activities. Indeed, the evidence raises concerns regarding whether the apparent ethical problems, committed by Mr. Dean and his staff, were condoned by Correctional Services management at the highest levels. One supervisor, Mr. Russell DiBello, former Correctional Services Chief Fiscal Officer, stated that he left Mr. Dean alone because he received no inmate complaints about food. Because there were no reported problems with the food service program, Mr. DiBello saw no reason to monitor Mr. Dean's management of the Food Production Center and its annual \$55 million budget. Moreover, the picnics subsidized by the vendors and held annually for at least 13 years were three-day events held at a campground near the Food Production Center. Each year an invitation was sent to all Correctional Services employees, including those at the highest levels of the organization, inviting them to attend the picnic at no cost. Management should have questioned how such an event could be hosted by a state agency at no cost to employees or their families.

The State Comptroller and the State Inspector General have forwarded these findings to the Oneida County District Attorney's Office for consideration of possible criminal charges and these findings will also be provided to the Commission on Public Integrity, the state entity which adjudicates violations of the state's ethics law, for consideration of potential action.

## **Scope, Methodology and Authority**

The Inspector General and the State Comptroller sought to determine whether Howard Dean, the former Director of the Food Production Center, his staff and various food vendors complied with the laws of New York State regarding ethics and procurement. This examination covered the period from January 1, 1996 through December 31, 2009.

Staff of the State Comptroller's Office and the State Inspector General Office conducted this performance audit according to generally accepted government auditing standards. Those standards require examiners to plan and conduct the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for their findings and conclusions based on the audit objectives.

The work was performed according to the State Comptroller's authority in Article V, Section 1, of the State Constitution and Article II, Section 8 of the State Finance Law, as well as New York State Executive Law Article 4-a which establishes the Office of the New York State Inspector General and outlines its duty and authority to investigate allegations of corruption, criminal activity, conflicts of interest or abuse in agencies, such as Correctional Services. The State Inspector General further has the duty to review and examine the policies and procedures of agencies regarding the prevention of misconduct and to recommend remedial action to prevent or eliminate such abuse.

The State Comptroller, in addition to being the State Auditor, also performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.



## Background

The Department of Correctional Services' Food Production Center located in Rome, New York commenced operation in 1992. The Center initially served about 5,000 inmates at the four nearby State prisons but in October 2003, it began producing food for all 70 State correctional institutions. The Center now produces cook/chill and processed food items for about 60,000 State inmates and 1,900 local jail inmates in 12 counties. In summary, cook/chill is a process in which food items are prepared and then immediately cooled in a central location for dissemination to other locations. The 2008-09 Food Production Center budget was \$55 million.

The Director of Nutritional Services manages the Food Production Center. Mr. Howard Dean, who served as the first Director of the Food Production Center designed and implemented the centralized Food Production Center. In this capacity, Dean supervised approximately 80 employees. Until he retired in 2008, Dean was the primary decision maker regarding the Food Center and responsible for managing the \$55 million budget.

In 2008-09, the Food Center purchased \$32 million of food from Sysco Food Services, which has a statewide contract with the Office of General Services and has been the primary food vendor for New York State agencies since 1995. The Food Center also contracts directly with other vendors to supply additional food items. During 2008-09 these contracts totaled \$15 million. As Director of the Food Production Center, Mr. Dean was responsible for purchases made from the Sysco Food Services contract and for contracting with other vendors to supply large volumes of food needed by the Food Center.

"New York has a multitude of procurement statutes applicable to public entities, but the underlying purpose is uniform: to assure prudent use of public moneys and to facilitate the acquisition of high quality goods and services at the lowest possible cost."<sup>1</sup> Therefore, in addition to procuring necessary goods and services, two fundamental goals of State purchasing are to protect the interests of the State and its taxpayers and promote fairness in contracting with the business community. As State employees involved in purchasing activities on behalf of a State agency, Mr. Dean and his management staff were subject to these goals and specifically required to follow the rules set forth in the State Finance Law. Additionally, as a public servant, Mr. Dean and his staff were required to abide by the ethical proscriptions contained in the State Public Officers Law.

The State Finance Law provides in relevant part:

- The objective of state procurement is to facilitate each state agency's mission while protecting the interests of the state and its taxpayers and promoting fairness in contracting with the business community. The state's procurement process is guided by several principals, one of which is to ensure that officers and employees of state entities do not benefit financially or otherwise from the award of state contracts.

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<sup>1</sup> State Finance Law - Article XI, State Purchasing §163.

- State agencies should promote purchasing from responsive and responsible offerers, to be based on: clearly articulated procedures and a documented process, a balanced and fair method, and regular monitoring.
- Agencies must keep a procurement record which includes: a statement of need, a description of specifications regarding performance, a reasonable process to ensure a competitive field, a fair and equal opportunity for offerers' to submit responsive offers and a balanced and fair method of award.

The Public Officers Law provides, in relevant part:

- No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.
- An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.
- An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.
- No statewide elected official, state officer or employee...shall, directly or indirectly solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.<sup>2</sup>

## Gifts

The Comptroller and Inspector General determined that for at least 13 years, Mr. Dean, Purchasing Officer William Leaver, the supervisor of the Purchasing Office, Joseph Haskell and other Corrections staff, were provided

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<sup>2</sup> This provision was amended in February 2010 to expressly prohibit State employees from using State property, services or other resources for private business or other compensated non-governmental purposes. This same legislation also effected a change to the Penal Law to provide that a State employee is guilty of defrauding the government, where s/he engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud the State by making use of State property, services or other resources for private business purposes or other compensated non-governmental purposes and the value of such resources is in excess of \$1,000.

free dinners by at least two vendors<sup>3</sup> (Global Food Industries, Inc. and Good Source, Inc.) conducting business with the Food Production Center.<sup>4</sup>

The vendors provided free meals each time representatives of these businesses met with correctional officials at the Food Production Center (at least four times a year in the case of Global Food Industries, Inc. and once a year for Good Source, Inc.). Staff who attended dinners, as well as one of the vendors, confirmed that the dinners were not working dinners or otherwise an extension of the workday. Accordingly, the dinners may constitute impermissible gifts as the circumstances under which they were given could reasonably be inferred as intended to influence staff, or reasonably be expected to influence staff in the performance of their official duties, or intended as a reward for official action by staff.

Although Mr. Dean claimed that part of his job as Director of the Food Production Center was to entertain vendors,<sup>5</sup> his overriding responsibility as a public official and head of the Food Production Center was to facilitate the agency's mission while protecting the interests of the State and its taxpayers. In addition to receiving personal benefits from these vendors, Food Production Center staff stated Mr. Dean also supported and encouraged employees to attend the vendor-paid meals. As a matter of fact, other key Food Production Center staff, including the current Director Robert Schattinger, the current Assistant Director Kevin Bowen, various Department Regional Coordinators (when they were at the Food Production Center for meetings), and various Food Production Center business office staff accepted these gifts during the 13 years. One staff member who attended one dinner, advised that she felt so uncomfortable with the vendor paying that she refused to attend again. Clearly this employee understood the ethical implications.

Staff who received these free meals, including Mr. Dean, acknowledged that they were aware of the Public Officers Law prohibition on the receipt of gifts but claimed a belief that if the value of one meal, on one occasion, did not exceed \$25, the law was not violated. Even if this purported belief is accepted as truly reflecting the thinking of such employees, information provided by Global Food Industries, in response to a subpoena, established that the cost of the dinners provided to Department staff for over 13 years cost as much as \$55 per person attending.

Since meals were provided to individuals with responsibility to procure food, it could reasonably be inferred that the gifts were intended to influence

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<sup>3</sup> Other vendors also could have provided gifts. However, in order to make this determination it would have required issuing subpoenas to each of the vendors (more than 100) to obtain their records.

<sup>4</sup> Mr. Dean and Mr. Leaver were both authorized to select new vendors and approve purchases.

<sup>5</sup> If this truly reflects Mr. Dean's thinking, his managers failed to train him in the ethical requirements of the State's purchasing process. State employees are required to maintain independence in dealing with State vendors.

or reward them to perform their official duties in a way that favored the vendors. In fact, the acceptance of gifts from Global Food Industries Inc. and Good Source Inc. appears to have influenced the professional judgment of Mr. Dean resulting in his steering of substantial State business to these gift-giving vendors. Specifically, these vendors improperly received \$2.5 million annually in State business through their association with Mr. Dean. This occurred when Mr. Dean:

- instructed Sysco Food Services, the main food vendor contractor, to use the gift-giving vendors as suppliers for certain products and
- assisted one of the gift-giving vendors to obtain preferred source status.

#### *Main Food Vendor Clause*

The main statewide food contract awarded by the Office of General Services contains a clause that allows State agency managers to direct Sysco Food Services to utilize other suppliers. Notably, the Office of General Services advised that Mr. Dean was influential in having this clause added to the main statewide food contract. The justification for this provision is to permit the agencies to use suppliers with lower costs and to obtain necessary products not available through Sysco. Accordingly, when managers direct Sysco Food Services to use a vendor for a product, they are required to demonstrate that the process of selecting the vendor is fair and the price is reasonable, as required by the main statewide food contract and by New York Finance Law §163(9).

Mr. Dean directed Sysco Food Services to use the two gift-giving vendors as suppliers for about 14 products, thus guaranteeing them about \$1.7 million in State business annually.

One of the gift-giving vendors informed the Comptroller and Inspector General that Mr. Dean compelled Sysco Food Services to do business with his company because Mr. Dean wanted to purchase his product. Mr. Leaver acknowledged that Sysco Food Services, "...does what we tell them to do."

Mr. Dean was unable to provide a reasonable justification for his direction to utilize these vendors who had provided him and his staff with complimentary meals. Contrary to the law, Mr. Dean did not maintain documentation to support that the selection of these gift-giving vendors was fair and that the price was reasonable.

A review of the vendor selection process with the Purchasing Officer identified the following omissions in the process:

- No formal list of available vendors;
- No documentation on product selection criteria;
- No written description of the product needed;
- No documentation of the vendors contacted for a certain product;
- No established timeframes for vendor responses;
- Employee taste tests (the main justification for selection) are destroyed after selection;
- No documentation supporting cost reasonableness; and
- The managers did not ensure the selected vendor was responsible, based on Office of the State Comptroller's Vendor Responsibility standards.

For example, the selection process of cheese sauce, one of the products supplied by Global Food Industries, Inc was examined. The Food Center purchased about \$298,000 of this product annually. The examination demonstrated that the selection process was not documented and that Global Food Industries, Inc. was given preferential treatment in that it was exclusively provided with essential information not shared with other vendors. Mr. Leaver and Mr. Bowen stated that although they worked with dozens of vendors over the course of a year to identify a cheese sauce formula that was compatible with the cook/chill process, none of the vendors could develop a formula that worked. However, Mr. Bowen, a Food Center official, discovered a potential solution in a food trade magazine, but communicated the potential solution solely to Global Food Industries, Inc. According to Mr. Bowen, the solution worked and Global Food Industries, Inc. received the State's business. When Mr. Bowen was asked why he communicated the information only to Global Food Industries, Inc. and not the other vendors that had participated in the testing, he claimed all of the other vendors had dropped out of the process by that time. Under the law and in fairness to the other vendors, Mr. Bowen should have communicated the potential solution to all vendors that participated in the process.

Further, once a successful formula was found, Mr. Dean did not put the product out to bid to ensure the State was receiving a competitive price.

Rather, he directed Sysco Food Services to use Global Food Industries, Inc. to supply cheese sauce.

Not only was the provision of the recipe solely to Global Food Industries improper, but Mr. Dean's arrangement added unnecessary cost to the process. Sysco Food Services' role in these transactions is merely administrative (ordering and billing); Sysco itself does not handle a product such as the cheese sauce. Instead, Global Food Industries, Inc. ships the cheese sauce directly to the Food Production Center. By directing Sysco to utilize Global Food Industries rather than soliciting bids to directly supply the sauce to the center, the Food Production Center was required to pay Sysco Food Services an up-charge fee for its administrative involvement, amounting to approximately \$5,600 per year.

Compounding Dean's conferral of preferential treatment to Global Food Industries at taxpayer expense, Dean's direction to Sysco to utilize Global Food Industries also circumvented New York State law which would have prohibited Global Food Industries from receiving the contract. Under the State Finance Law, New York State agencies such as DOCS are prohibited from contracting with companies located in states which discriminate against New York businesses.<sup>6</sup> Global Food Industries, Inc. is located in South Carolina, a state that has been determined under New York State authority to discriminate in its procurement practices against New York vendors. Therefore, State agencies are prohibited from purchasing directly from Global Food Industries, Inc.

By instructing Sysco Food Services to use Global Food Industries Inc. as a supplier, Mr. Dean used Sysco as a "front" in order to bypass the legal bar on direct business dealings with Global Food Industries in order to ensure that his preferred vendor was able to receive the contract.

#### *Preferred Source Purchasing*

Pursuant to §162 of the State Finance Law, the New York State Industries for the Disabled is a preferred source for State purchases. As a preferred source, procurements made through the Industries for the Disabled can be completed without open competition that would otherwise be required under the Finance Law. Similar to his direction to Sysco to utilize Global Food Industries, Mr. Dean further directed that the Industries for the Disabled procure certain products for the Food Production Center through Global Food Industries, Inc. Specifically, the owner of Global Food Industries, Inc. confirmed that Mr. Dean introduced him to representatives of the Industries for the Disabled and instructed him to work with Industries for the Disabled officials to obtain more State business. This irregular arrangement enhanced

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<sup>6</sup> NY State Finance Law §165 (6).



Global Food Industries ability to obtain New York State business despite the ban on dealings with the South Carolina-based company and the State's open competition mandate.

As a result of these machinations, Global Food Industries, Inc. a vendor located in a State that discriminates against New York vendors, was virtually assured of no-bid, State business and through Mr. Dean's intervention with the Industries for the Disabled obtained \$796,000 worth of business annually.

### **Free Food and Donations**

Mr. Dean, Mr. Leaver and Mr. Haskell solicited free food and donations from vendors with whom they were doing business in apparent violation of the State's code of ethical conduct. For 13 years, donations were solicited annually from vendors for the Food Production Center's Christmas party and summer picnic. The vendors also provided free food and other non-food items used in employee auctions. Mr. Leaver and Mr. Haskell declared that they felt entitled to these donations because they were providing vendors a substantial amount of New York State business. As public officials, these employees were required to act in the public benefit; thus their sense of entitlement was unwarranted and contrary to their obligations to the state.

The annual parties were free to employees. Monies raised through the employee auction were used year-round for employee benefits including flowers for sick employees, gifts for employee promotion celebrations and bagels for the office.

Mr. Dean conceded that he was advised by the Department's Central Office he could not take gifts and donations from vendors. Nevertheless, he encouraged the practice to continue because he claimed that Department employees in other units were also accepting gifts from vendors and purportedly believed that he should be able to receive the same benefits.

#### *Christmas Parties*

The annual Christmas party was held at the Food Production Center and was attended by about 200 Department employees. Mr. Leaver and Mr. Haskell admitted that they solicited food donations from vendors with Mr. Dean's knowledge and support. Sysco Food Services donated much of the food during the 13 years, but additional vendors also donated food including Good Source, Inc., one of the vendors providing free dinners to Food Production Center staff.

Auctions were held at the Christmas party to generate monies for party expenses and other employee benefits. Donations for the auctions were solicited from many vendors. For example, a review of the documentation

related to the 2004 annual Christmas party demonstrates that at least 13 vendors donated more than 42 items including a golf putter, leather bag, gift cards with values between \$5 and \$50, an espresso machine, gourmet pies, and overnight hotel stays. Most of the donating vendors had food contracts with the Food Production Center.

An examination of deposits in the bank accounts associated with the proceeds and disbursements for the 2004 party reveal that the employee auction generated about \$1,500 in proceeds. Over nine years, auction deposits totaled about \$14,000.

Several donating vendors attended the Christmas parties at no cost. Specifically, the owner of Global Food Industries informed auditors and investigators that he not only attended the parties but bid on auction items thus providing an additional means to confer contributions to Food Production Center staff.

#### *Summer Picnics*

The other annual party was the summer picnic. This three-day event was hosted by the Food Production Center in August at a campground with Saturday constituting the main day of the picnic. Food and beverages, camp ground entry fees, and parking were free to attendees, including family members of employees. Staff from the entire Department of Correctional Services statewide was invited to attend, and more than 200 persons attended the event annually. The food was free to attendees because most of it was donated by vendors with whom the Food Production Center staff was doing business. Other items, such as beer and wine, were provided for free as a result of money from employee raffles and other fund raisers.

Mr. Leaver and Mr. Haskell admitted that they solicited vendors for food donations. A review of the picnic menu showed donated items included BBQ chicken, BBQ ribs, hamburgers, hotdogs, chips, bottled water and desserts. The fact that Food Center managers sought these items, and in such large quantities, demonstrates a disregard for maintaining independence and ensuring integrity in their purchasing responsibilities.

The dubious relationship between Food Production Center staff and vendors extends beyond the donations. For example, items that were not donated, such as plastic utensils, foil and charcoal, were purchased from Sysco Food Services, the same vendor from whom the food was solicited. Sysco Food Services participated in the 2003 fund raiser by purchasing 30 Food Production Center Nutritional Services baseball caps for \$300. This constituted another method by which this vendor made donations which personally benefited Food Production Center staff.



Compounding the actual and apparent conflicts of interest present in these arrangements, the Food Production Center staff members who sought and obtained these donations also determined which vendors were chosen for the purchases of services and products. Indeed, Mr. Bowen confessed, “We (Food Production Center staff) would hit up all of our vendors for donations - any vendor doing business with us.” Mr. Haskell displayed the attitude that the Food Production Center staff were “owed” by the vendors for providing the vendors with ample State business. Mr. Leaver, who solicited donations and possessed purchasing power, stated although he believed this practice was not proper, he continued nonetheless because this was the way it was done prior to his employment at the Food Production Center. He also stated that Mr. Dean expected him to obtain donations.

Department managers failed to manage or exercise any true oversight of the Food Production Center and its staff. Pointedly, Department managers failed to identify or refused to address these readily apparent recurring ethical lapses. All 32,000 Department staff, including the Director’s supervisors, were invited to the picnic via e-mail notification sent by Mr. Dean to all Department of Correctional Services staff. This invitation listed the extensive menu and clearly stated there was no cost for attending the picnic. Over the course of 13 years, the Director had five different supervisors; yet no supervisor ever inquired as to how a state agency could provide a cost-free annual picnic for so many people.

The current Director of Nutritional Services, Robert Schattinger, agreed that soliciting donations from vendors is inappropriate and during this audit and investigation discontinued the practice of accepting donated items from vendors for employee parties and auctions.

**Other Potential  
Ethics Law  
Violations**

The Inspector General and Comptroller discovered other examples of possible ethics violations Mr. Dean and his management team allowed including:

- Mr. Bowen utilized his State position to secure a personal benefit by annually purchasing discounted quality cuts of meats (e.g. prime rib) for himself and a dozen other Department employees from vendors (e.g. Smith Packing) engaged in business under contract with the Food Production Center. In addition, Mr. Bowen owns a catering business and purchases meat items from Smith Packing when he performs private catering events. Because Mr. Bowen is involved in the bidding process and assists in establishing the specifications for Food Production Center procurements, there is, at a minimum, the appearance of a conflict of interest between his official duties and his personal business transactions with Smith Packing. Moreover, the discount accorded to him and other Correctional Services employees by Smith Packing and other vendors

doing business with the Food Production Center is an impermissible gift or benefit.

Evincing the acceptance of these conflicts of interest as part of the culture at the Food Production Center, Mr. Bowen informed investigators that he asked Mr. Dean and other staff, including the Deputy Commissioners, if they wished to participate in this discount buying. Despite this awareness of ethically questionable behavior, executive management failed to question much less act to prohibit this misconduct.

- Public Officers Law §73.(4)(a) provides that no state employee shall sell any goods or services having a value in excess of \$25 to any state agency unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. The Food Production Center continually purchased without competitive bidding from a vendor who became an employee of the Department. The employee was hired as a general mechanic in March 2004 but continued to be paid as a vendor through July 2004. During that time, he received \$2,645 in produce sales.

#### **No Bid Contracts**

Mr. Dean and his staff violated the State Finance Law, which obligates managers to aggregate expected purchases for the same commodities or services within 12 months from the date of purchase to determine whether the procurement falls within the discretionary threshold, which is less than \$50,000. If purchases are expected to be more than \$50,000, purchases must be done through a formal contract.

Further apparent violations of the State Finance Law by Mr. Dean include:

- WM Rosenstein and Sons, located in Pennsylvania, was paid over \$537,000 during a 12-month period for fresh produce without a formal contract.
- Frank Gargiulo and Sons, from New Jersey, was paid more than \$250,000 during a 12-month period for fresh produce without a formal contract.
- Unistel Inc. was paid approximately \$55,000 for bulk spices without a formal contract.

As a result, DOCS Food Production Center staff violated the law, depriving other vendors of a fair opportunity to earn the State's business and failed to assure that the state obtained the best price.

#### **Special Privileges Afforded a Truck Driver**

As stated above, the Public Officers Law admonishes that a state official "should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship,

rank, position or influence of any party or person.” Mr. Dean’s favoring of selected parties extended beyond contracting. For example, Mr. Dean arranged for a facility driver with whom he had a friendship and prior private business relationship, to drive a tractor trailer loaded with Food Production Center food to his home overnight twice a week for more than 15 years. Specifically, this driver’s duties included transporting food from the Rome facility to New York City. On the return trip from New York City to the Food Production Center, rather than proceeding directly to the facility, Dean permitted this driver to detour to his personal home with the tractor trailer. Unlike all other Food Production Center drivers, Dean’s friend was not required to report back to the Food Production Center immediately after food deliveries or pickups. Notably, this driver’s home is located significantly southwest of the facility and does not lie directly on route to the Food Production Center. This arrangement created an atmosphere of favoritism and suspicion, and gave the appearance of impropriety. Moreover, leaving the truck, periodically loaded with items belonging to the state and requiring refrigeration, on the personal premises of the driver rather than at the Food Production Center substantially increases the risk for loss of accountability over products located on the truck. As the driver did not travel on toll roads, it is impossible to verify if the driver made unscheduled stops by comparing his time sheets with toll receipts.

Mr. Schattinger, the current Director, told us Mr. Dean’s justification for the arrangement was to save monies in tolls, fuel and driver overtime. Notwithstanding this justification, on two occasions, Mr. Schattinger reported that he was concerned about this arrangement and the opportunity for improper actions it provided.

**How these  
Apparent Ethical  
Problems were  
Allowed to Occur**

Mr. Dean exploited his position of power to garner personal benefits from the State. He was unhampered in his pursuit of these free benefits by any effective management oversight of his activities. In fact, members of his management team exhibited similar, inappropriate behavior.

Russell DiBello, Mr. Dean’s supervisor, stated that he left Dean alone because he did not receive any inmate complaints about food. Mr. DiBello described Mr. Dean as the “czar” of the Cook/Chill program and an expert in the food service field. Mr. DiBello was satisfied with Mr. Dean’s ability to control the \$55 million food service budget. As the program grew, Correctional Services officials increasingly considered Mr. Dean’s supervision as critical to its success. Because no problems were reported with the food service program, Mr. DiBello saw no reason to monitor Mr. Dean’s management of the Food Production Center. This attitude of management indifference rendered Mr. Dean utterly unaccountable and permitted him free reign over the Food Production Center without regard to the law.

The autonomy afforded to Mr. Dean during his career is neither acceptable nor excusable. The failure of his supervisors to properly oversee his activities created an atmosphere in which he and other DOCS employees were able to exploit their positions to benefit themselves at the expense of the public. Although they were required to act on the State's behalf, Mr. Dean and his subordinates failed to exercise any measure of proper discretion in their dealings with vendors doing business with the Food Production Center.

The Office of the State Comptroller and the State Inspector General have forwarded these findings to the Oneida County District Attorney's Office for consideration of possible criminal charges and these findings will also be provided to the Commission on Public Integrity, the state entity which adjudicates violations of the state's ethics law, for consideration of potential action.

- Recommendations**
1. Institute safeguards to ensure that similar practices will not occur in the future at the Food Production Center or other locations within the prison system.
  2. Assist the District Attorney and the Commission on Public Integrity.

**Reporting Requirements**

A draft copy of this report was provided to the Correctional Services Commissioner for his review and comment. The Commissioner's comments were considered in the preparation of this final report and are included at the end of the report. The Commissioner agreed with our recommendations and indicated that steps have been taken to implement them.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Correctional Services Commissioner will report to the Governor, the State Comptroller and the leaders of the legislature and fiscal committees, advising what steps were taken to implement our recommendations, and if recommendations were not implemented, the reasons why.

**Contributors to the Report**

Major contributors to this report include Office of the State Comptroller staff members David R. Hancox, Melissa Little, Eileen Chambers, Suzanne Mazone, Thalia Melendez, Meredith Holmquist, Devisha Baldeo, Anthony Cartusciello, Joseph Fiore, and Office of the New York State Inspector General staff members Nelson R. Sheingold and Daniel Sullivan.

# Commissioner's Response



BRIAN FISCHER  
COMMISSIONER

STATE OF NEW YORK  
DEPARTMENT OF CORRECTIONAL SERVICES  
THE HARRIMAN STATE CAMPUS – BUILDING 2  
1220 WASHINGTON AVENUE  
ALBANY, N.Y. 12226-2050

August 25, 2010

Mr. David R. Hancox  
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RE: Draft Report 2009-S-6  
Improprieties at DOCS' Food Production Center

Dear Messrs. Hancox and Sheingold:

As required, the following is the Department's response to Draft Report 2009-S-6, entitled Violations of Law, Conflicts of Interest and Other Improprieties at the Department of Correctional Services' Food Production Center.

As previously discussed, and acknowledged in response to a prior audit of the Food Production Center, the actions taken by the former Director and some currently employed individuals, were unsanctioned and improper on every administrative level. Should any of their behavior ultimately lead to criminal charges, this agency has and will continue to fully support and rigorously assist the appropriate law enforcement jurisdiction in that pursuit.

In reviewing the detailed audit findings, several distinct and unacceptable practices were allowed to occur. It is appropriate that they be highlighted as to confirm that the Department concurs with the auditors' conclusions and that the agency has already taken steps to either correct the problems or develop plans to ensure that such problems are never again allowed to take place.

Messrs. Hancox and Sheingold  
Page 2  
August 25, 2010

Under the broad category of failure by staff to comply with State Finance Law, the lack of documentation regarding justification of purchases, vendor contracts, dates bids were sent out or received, and a host of other non-compliance issues stand out as evidence of malfeasance.

Under the more serious category of personal enrichment in violation of the Public Officer's Law, and in particular the Code of Ethics, evidence indicates that staff again acted in ways that cannot be condoned.

Accepting free dinners, or soliciting free food and donations from vendors was an apparent violation of the State Ethics Code. Free food and donations are the same as accepting gifts, made worse since they came from vendors doing business with the State. Likewise, the staff member who purchased food at a state discounted rate for his own outside business seemingly violated the State Ethics Code.

Other findings of inappropriate behavior also showed a lack of understanding regarding potential ethical and possible criminal implications. Providing one vendor important information withheld from other vendors, or only purchasing goods without going through bidding procedures, are but two examples.

As a result of the findings, and those of a prior audit report, the Department has already taken a number of steps beyond merely stopping the actions by a few staff members.

The practice of accepting and/or soliciting free dinners or donations no longer exists. The checking account held by the Food Production Center is being audited. If it is determined that any funds in the account came from vendors, they will be forwarded to the General Fund as receipted funds. The practice of allowing the staff member (tractor trailer driver) to drive his truck home instead of returning to the facility was halted. The Department is now looking to replace a particular vendor (Global Food) with a more acceptable vendor through the appropriate bidding process. In addition to being located in a state that discriminates against New York businesses, this particular vendor was also seen as a major contributor to the improper actions of the staff.

Moving forward, there is serious consideration being given to removing the purchasing unit from the Food Production Center and relocating it in Albany under management control of the Department's Division of Support Operations. This would, to a significant degree, eliminate the personal connection between vendors and purchasing agents and better ensure that all competitive bidding rules were followed. Doing so, however, is complicated by labor management rules that currently preclude the ability to relocate staff from one location to another unless they agree. Involuntary transfers are not available to management. To further separate local staff from being too involved in matters such as food quality, tasting practices and other food related matters, staff from Central Office's Nutritional Services will be involved in final decision making situations.



Messrs. Hancox and Sheingold  
Page 3  
August 25, 2010

Lastly, administrative action against individuals identified in the audit report is being seriously considered. Such action will be dependent upon available and specific documentation and evaluated after consultation with the District Attorney in whose district the Food Production Center exists.

In regard to the recommendations contained within the audit report, the Department will act aggressively in meeting the intent of both:

Recommendation #1

Institute safeguards to ensure that similar practices will not occur in the future at the Food Production Center or other locations within the prison system.

Response:

As already noted, steps have been taken that have put a stop to all inappropriate actions. Additional action is in the process of being taken to prevent any reoccurrence, and to deal with individuals on an administrative level. Issues pointed out in the audit, particularly those that relate to potential ethical code or finance law violations have been brought to the attention of staff throughout the Department. Establishing an internal audit unit within the Department to review and audit the agency's internal policies and practices is under discussion with the Division of the Budget and Office of Taxpayers' Accountability. Lastly, all staff, but particularly those at the highest management level, have been made aware of the problems at the Food Production Center. The latter will be given more details in an upcoming All Superintendent and Division Head conference to be held in September. At that conference, a presentation by the Commission on Public Integrity will also take place, heightening everyone's awareness of their responsibilities.

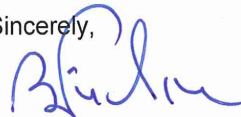
Recommendation #2

Assist the District Attorney and the Commission on Public Integrity.

Response

The Department has, and will continue, to assist both in any further investigation or actions deemed necessary.

Sincerely,



Brian Fischer  
Commissioner

