

July 18, 2005

Mr. Ken Mead
Inspector General
Office of the Inspector General
Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Inspector General Mead:

It has come to our attention that a meeting allegedly took place between the Administrator of the Federal Motor Carrier Safety Administration (FMCSA), Ms. Annette Sandberg, and representatives of the trucking industry to jointly plan a lobbying strategy to alter the pending highway legislation, H.R. 3, that is before a joint House-Senate conference committee. At the meeting, which occurred on or about July 14, 2005, we understand that a lobbying strategy was developed to advance legislative amendments pertaining to the hours of service (HOS) regulations. In particular, the meeting may have included discussion of a plan to promote amendments sought by the Department of Transportation (DOT), one to codify the current HOS even though rulemaking is pending, another to undercut federal law that now requires health protection for truck drivers, along with a separate proposal to amend the HOS rules by counting daily break time as off-duty time (i.e., "off the clock") rather than as on-duty time ("on the clock"). The latter proposal would, in effect, extend the length of the driver's workday to 16 hours and was withdrawn on the House floor because of major opposition. We are concerned that participation in this meeting, and in the discussion regarding HOS legislative strategy, if it indeed occurred, may well constitute a violation of statutory lobbying restrictions and the ethical conduct required of federal officials.

First, federal law prohibits appropriated federal funds from being used, **directly or indirectly**, to pay for actions "**intended or designed to influence in any manner a Member of Congress . . . to favor or oppose by vote or otherwise, any legislation or appropriation by Congress. . .**" Consolidated Appropriations Resolution, 2003, Sec. 322, Pub. L. 108-7 (Feb. 20, 2003), identical language has appeared in previous DOT appropriations bills. A meeting with a major industry lobbying group involving federal agency personnel to jointly plan strategy or discuss actions involving efforts to secure Congressional approval of legislation, or amendments to legislation, may constitute a violation of federal law. **Any expense** of federal agency funds, whether used directly or indirectly, to advance an effort to influence Congress to favor these amendments violates the letter, meaning, and intent of the law. Thus, the cost of the Administrator's time to attend the meeting, or the presence of agency staff at the meeting, the use of an agency telephone to set up the meeting or convey the results, or the use of agency stationary in furtherance of the intent or design to influence Congress would qualify as an expense and violate the law.

Second, merely holding such a meeting to discuss matters that are the subject of a pending agency rulemaking constitutes a prohibited *ex parte* meeting. In this instance, rulemaking on the HOS regulation is pending, U.S. DOT docket No. FMCSA-2004-19608, and the public comment period closed on March 10, 2004. Moreover, the intent of such a meeting appears to have been to develop a legislative plan that would substantively affect the provisions in the pending rule and thwart the rulemaking process. Participation in a private meeting to discuss ways and means to obviate pending agency rulemaking or to alter or change the substance of the rule behind closed doors could implicate agency personnel in official misconduct. Private meetings between agency officials with stakeholders regarding substantive issues of pending rules at the very least abridge the public's due process rights and violates both the Administrative Procedures Act (APA) and DOT regulations prohibiting *ex parte* meetings while rulemaking is pending.

Finally, participation in a meeting to secretly discuss pending business before the agency presents serious implications regarding the role of agency management in relation to the industry over which they have regulatory authority and their responsibility for public safety. These actions may also constitute an ethical violation of the guidelines published by the federal Office of Government Ethics.

Because such a meeting would have a significant impact on the integrity of a federal agency and the conduct of official government business, we request that you open a formal investigation in order to determine the facts and whether any laws, regulations, and ethical standards may have been violated.

Joan Claybrook
President
Public Citizen

Daphne Izer
Founder
Parents Against Tired Truckers

John Lannon
Executive Director
Citizens for Reliable and Safe Highways

Andrew McGuire
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Trauma Foundation