

Investigative Report

Fleet Services Employee had a Conflict of Interest and Accepted Compensation that Could Impair His City Duties

December 2020



We found evidence that Craig Subbert, a service center supervisor in Fleet Services, violated City Code by creating a conflict of interest with an employee he supervised. Specifically, Subbert sold the employee a toolbox for \$6,000 that the employee agreed to pay off over time. Subbert received his first payment for the toolbox in December 2018. As of July 2020, the employee still owed Subbert \$2,000. City Code prohibits Subbert from making decisions that directly affect someone with whom he has a conflict of interest, and from accepting payments that could impair his ability to perform his City duties. Throughout this time period, Subbert conducted the employee's performance evaluations, approved their timesheets and leave requests, and was responsible for supervising their work.

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Cover: Aerial view of downtown Austin, iStock.com/RoschetzkyPhoto

Allegation

In March 2020, Fleet Services contacted the Office of the City Auditor to share an allegation they had received. According to the informant, Craig Subbert sold a toolbox to an employee he supervised, and the employee still owed him money. The informant alleged that Subbert stopped disciplining the employee who bought the toolbox, because Subbert wanted to make sure the employee was not fired before they had finished paying for the toolbox.

Background

Fleet Services’ mission is to provide and maintain safe and reliable vehicles for the City of Austin. The department has multiple service centers across the City that perform vehicle maintenance work. Craig Subbert is a service center supervisor at one of these service centers. As a supervisor, Subbert is responsible for assigning and managing maintenance and repair work performed by Fleet Services’ technicians. He is also responsible for evaluating his technicians’ performance and recommending disciplinary action.

As a condition of their employment, Fleet Services’ technicians are required to provide their own tools, “including wrenches, sockets, ratchets, [and] toolboxes...” According to multiple service center employees, it is not uncommon for employees to sell tools to each other while at work. While Fleet Services does not have a specific policy that regulates these sales, employees are not allowed to enter into arrangements that could impair the performance of their job duties or create conflicts of interest as defined in City Code.

Investigation Results Summary

We found evidence that Craig Subbert, a service center supervisor in Fleet Services, violated City Code by creating a conflict of interest with an employee he supervised. Specifically, Subbert sold the employee a toolbox for \$6,000 that the employee agreed to pay off over time. Subbert received his first payment for the toolbox in December 2018. As of July 2020, the employee still owed Subbert \$2,000. City Code prohibits Subbert from making decisions that directly affect someone with whom he has a conflict of interest, and from accepting payments that could impair his ability to perform his City duties. Throughout this time period, Subbert conducted the employee's performance evaluations, approved their timesheets and leave requests, and was responsible for supervising their work.

We did not find evidence that that Subbert stopped disciplining the employee who bought the toolbox, as indicated in the allegation. However, the City's ethics guidance notes that even the appearance of bias or a conflict of interest can be damaging and should be avoided.

Finding 1 Conflict of Interest and Compensation that Could Impair City Duties

In 2014, Craig Subbert was promoted from Fleet Services technician to service center supervisor. Since his promotion, Subbert said he did not need his tools at work, and his toolbox had been sitting unused in the service center. In late 2018, Subbert was planning to take his tools and toolbox home, when an employee he supervised offered to buy the toolbox. Subbert agreed to sell the toolbox for \$6,000, which both Subbert and the employee said was a fair price. According to Subbert, they had a verbal agreement in which the employee would make regular payments to him until the toolbox had been paid off.

Subbert provided our office a copy of the signed payment receipts he kept for the sale of the toolbox. These receipts show that Subbert received 26 payments from the employee between December 2018 and July 2020. As of July 28, 2020, the most recent payment at the time of our request, the employee still owed Subbert \$2,000 for the toolbox.

City Code prohibits employees from accepting compensation that could reasonably be expected to impair their judgment or performance of City duties. As the employee's supervisor, Subbert's City duties involved making decisions that directly affected the employee. These decisions included assigning daily tasks and approving the employee's leave requests. Subbert was also responsible for completing the employee's performance evaluations. Any compensation received by Subbert from the employees he supervises could reasonably impact his ability to properly supervise them.

In addition, the City Code's conflict of interest rules prohibit employees from making decisions that affect people in which they have a substantial

Investigation Criteria:

No City official or employee shall solicit or accept other employment to be performed or compensation to be received while still a City official or employee, if the employment or compensation could reasonably be expected to impair independence in judgment or performance of City duties.

City Code §2-7-62(H)(1)

See Investigation Criteria for Details

interest. According to Code, Subbert had a substantial interest in his employee during the length of time the employee owed him at least \$5,000. In this case, the employee owed Subbert over \$5,000 from early December 2018 through late January 2019. Consequently, any decisions made by Subbert that affected the employee during this time were violations of the City's conflict of interest rules. During this time, Subbert reviewed the employee's timesheets, approved their leave requests, and was responsible for supervising their work.

Furthermore, Subbert did not notify his supervisor of his conflict of interest, as required by City Code. When we spoke with Subbert's supervisor, they said they saw the employee using Subbert's old toolbox and heard that the employee bought it from Subbert, but Subbert's supervisor did not know the details of the sale. Subbert's supervisor told us they expressed concern about the arrangement to Subbert on at least two occasions. Specifically, Subbert's supervisor told us they were concerned that problems could arise in Subbert's relationship with his employee if the employee stopped making payments. However, Subbert's supervisor gave this advice after Subbert had already made the deal, because they did not learn of the sale until after it had taken place.

Subbert denied treating the employee differently than any of his other employees. He cited recent disciplinary actions he had issued to the employee due to attendance issues. We confirmed the employee had received a memo of concern and an oral reprimand for attendance issues and that Subbert noted these issues in the employee's annual performance review. Subbert's supervisor said they did not think Subbert was showing the employee special treatment. However, Subbert's supervisor said employees who were not aware of the disciplinary action against the employee might think Subbert was showing favoritism.

By entering into an agreement in which an employee he supervised owed him \$6,000 to be paid off in installments, and by failing to notify his supervisor of the arrangement, Subbert appears to have violated the following criteria:

- City Code §2-7-62(H)(1): Accept Compensation that Could Impair City Duties
- City Code §2-7-63(A): Prohibition on a Conflict of Interest
- City Code §2-7-64(C): Disclosure of a Conflict of Interest

Appendix A - Subject Response

11/10/20

I would like to say that. During the inquiries of this investigation, I was upfront and honest. I was not aware of any city policy that I may have broken. I provided all information requested of me. I have been in the automotive industry for over 30 years and it has always been commonplace for people to trade or sell unused or unwanted tools or equipment. I hope I am not judged too harshly in this matter. It is my hope and belief that we can all learn from our mistakes. As I have learned that this could have been interpreted as a conflict of interest. And will never put myself or willingly allow others to make this same mistake.

Sincerely,

Craig Subbert

Appendix B - Office of City Auditor's Response to Subject Response

We have reviewed the subject's response and would like to affirm that he was especially cooperative and forthcoming throughout the investigation process, which we very much appreciate. We believe our findings stand.

Appendix C - Management Response



Memorandum

To: Corrie Stokes, City Auditor

From: Jennifer Walls, Fleet Officer *JW*

Date: December 8, 2020

Subject: IN20009

Fleet Mobility Services is in receipt of the draft investigation report outlining allegations of a violation of city code regarding a conflict of interest by Service Center Supervisor Craig Subbert. The Fleet Department's Human Resources team will coordinate with management staff to review the report and determine the appropriate next steps.

Fleet Mobility Services wishes to thank the City Auditor for their work on this case.

Should you have any questions, please contact Human Resources Manager, Angela Vogel at 512-974-1791.

Investigation Criteria

Finding 1

City Code §2-7-62(H)(1): ACCEPT COMPENSATION THAT COULD IMPAIR CITY DUTIES

No City official or employee shall solicit or accept other employment to be performed or compensation to be received while still a City official or employee, if the employment or compensation could reasonably be expected to impair independence in judgment or performance of City duties.

City Code §2-7-63(A): PROHIBITION ON CONFLICT OF INTEREST

A City official or employee may not participate in a vote or decision on a matter affecting a natural person, entity, or property in which the official or employee has a substantial interest; provided, however, that this provision shall not prohibit any member of the city council from participating in a discussion relating to a petition certified to the city council by the city clerk which petition seeks the recall of said member of the city council.

City Code §2-7-2(12): DEFINITION OF SUBSTANTIAL INTEREST

SUBSTANTIAL INTEREST means an interest in another person or an entity if: the interest is ownership of five percent or more of the voting stock, shares or equity of the entity or ownership of \$5,000 or more of the equity or market value of the entity; or funds received by the person from the other person or entity either during the previous 12 months or the previous calendar year equaled or exceeded \$5,000 in salary, bonuses, commissions or professional fees or \$20,000 in payment for goods, products or nonprofessional services, or 10 percent of the person's gross income during that period, whichever is less; the person serves as a corporate officer or member of the board of directors or other governing board of the for-profit entity other than a corporate entity owned or created by the city council; or the person is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000 or more except that a home mortgage loan for the person's homestead or a loan or lease of a personal automobile shall not be deemed a substantial interest in the creditor or guarantor if entered into at a market rate with a commercial lending institution before the previous 12 months.

City Code §2-7-64(C): DISCLOSURE OF A CONFLICT OF INTEREST

To comply with this section, a City employee shall notify in writing his supervisor of any substantial interest he may have in a natural person, entity or property which would be affected by an exercise of discretionary authority by the City employee and a supervisor shall reassign the matter.

Methodology

To accomplish our investigative objectives, we performed the following steps:

- reviewed applicable City Code and policy;
- conducted background research;
- reviewed payment receipts;
- reviewed timesheets, performance evaluations, and disciplinary action;
- interviewed Fleet Services employees; and
- interviewed the subject.

CAIU Investigative Standards

Investigations by the Office of the City Auditor are considered non-audit projects under the Government Auditing Standards and are conducted in accordance with the ethics and general standards (Chapters 1-3), procedures recommended by the Association of Certified Fraud Examiners (ACFE), and the ACFE Fraud Examiner's Manual. Investigations conducted also adhere to quality standards for investigations established by the Council of the Inspectors General on Integrity and Efficiency (CIGIE) and City Code.

The Office of the City Auditor, per City Code, may conduct investigations into fraud, abuse, or illegality that may be occurring. If the City Auditor, through the Integrity Unit, finds that there is sufficient evidence to indicate that a material violation of a matter within the office's jurisdiction may have occurred, the City Auditor will issue an investigative report and provide a copy to the appropriate authority.

In order to ensure our report is fair, complete, and objective, we requested responses from both the subject and the Department Director on the results of this investigation. Please find attached these responses in Appendix A and C.

The Office of the City Auditor was created by the Austin City Charter as an independent office reporting to City Council to help establish accountability and improve city services. We conduct investigations of allegations of fraud, waste, or abuse by City employees or contractors.

City Auditor

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