

November 1, 1995  
ILR 95-I

President R. Lane Beattie, Co-Chair  
Speaker Melvin R. Brown, Co-Chair  
Members of the Audit Subcommittee  
State Capitol Building  
Salt Lake City, UT 84114

**Subject: Conflict of Interest**

Dear Legislatures:

We have completed our survey responding to allegations regarding the construction of the Tracy and Cindy Kirkham home in Parowan, Utah. This report concerns several allegations regarding the conflict of interest in the construction of a home and relationships between a state employee and city building inspectors. The home referred to in this report was owned (while under construction) by Mr. and Ms. Antone Robinson. Mr. Robinson is an employee of the Division of Occupational and Professional Licensing which regulates building construction in the state. After construction, the home was sold to the Kirkhams, who are the current owners and will be referred to as the owners of the home in this report. This report will specifically examine each of the three following concerns:

1. Has the Division of Occupational and Professional Licensing (DOPL) pursued complaints regarding the construction of the Kirkham home in an aggressive and timely fashion?
2. Is there a conflict of interest between Mr. Antone Robinson's position as a state building investigator and his involvement in the construction and sale of the Parowan home?
3. Were all building inspections completed by qualified city building inspectors? If building inspections were not made as required, was any undue influence exercised upon the city building inspectors by Mr. Antone Robinson?

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In addition to the above concerns we were asked to assist the current owners in obtaining a fair and complete inspection of the home from a qualified and independent building inspector. The Kirkham's were concerned that the Parowan home may have significant building code violations. Consequently, this report will consider the three areas identified above and also include the results of an independent inspection of the Kirkham home by a qualified building inspector to determine if building code violations exist.

We received a complaint alleging that Mr. Antone Robinson (an investigator employed by DOPL) had a conflict of interest because he used his state position to obtain favorable building inspections on a home he owned that was recently constructed by his son (Mr. Rick Robinson) in Parowan City. The concern specified that Mr. Antone Robinson's position with the state allows him to work closely with the city building inspectors and in fact he had recently investigated the licensing status of one of the Parowan City building inspectors who was in turn conducting building code inspections on his home while it was under construction. This relationship did not appear to be appropriate. The Kirkham's concern was further increased because the Parowan City files showed only two building inspections were conducted on their home when seven or more should have been completed. Consequently, the Kirkham's were concerned that all the required inspections may not have been done or that the inspectors may have given favorable inspections because of the influence of Mr. Antone Robinson. Finally, the Kirkham's were concerned by the fact that several of the city building inspectors who had conducted inspections of the home were later found to be unlicensed or unqualified to inspect homes. As a result of all of these issues the Kirkhams feared the division would not aggressively pursue their complaint and asked us to examine their concerns.

We found no evidence in this survey to suggest a complete and more detailed audit of the division would be beneficial. However, some questionable decisions were made by division staff regarding the anonymous reporting (by Antone Robinson) of an unlicensed Parowan City building inspector and then the assignment of the investigation of that complaint to Mr. Robinson. Evidence indicates that Mr. Robinson's supervisor was aware that Mr. Robinson reported (anonymously) the Parowan City building inspector as being unlicensed. But then the supervisor inadvertently assigned Mr. Robinson to investigate his own complaint. Finally, Mr. Robinson's decision to observe an inspection of his own home as part of the investigation process was inappropriate. In our opinion, the actions of the state employees involved in this incident helped to fuel criticism.

Further, Mr. Antone Robinson (the division employee) should have notified his agency in writing regarding his involvement as part owner of a home under construction in Parowan Utah and his involvement in assisting his son who was the contractor of the home. Four years ago (on July 23, 1991) Mr. Robinson had requested permission to do small remodeling and repair projects for family members without reimbursement which was granted by the department.

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However, his involvement as owner and his assistance in the construction of a home for his son is far beyond the scope of small remodeling and repair projects for which he was granted permission. At a minimum Mr. Robinson should have officially notified the agency in writing of his involvement in the home once he was aware that the home was going to be sold. We believe Mr. Robinson's activities required a new request for outside employment and a fresh examination by the department concerning the potential for a conflict of interest. However, we have not identified any action, regarding the construction or sale of the home, where Mr. Antone Robinson used his state position or authority to his own personal benefit. The following will report on each of the above questions in more detail.

### **The Division has Adequately Pursued the Complaint**

Although the Kirkham's complaint was not processed quickly by the division, we found no evidence to indicate DOPL staff were not attempting to process the complaint in an aggressive or timely fashion. The complaint was received on April 12, 1995 and at the time of our first meeting with the division staff (June 5, 1995) the complaint had been under investigation for about 35 working days. During that time the staff person conducting the complaint investigation took 9.5 days of leave. Discounting the leave taken and a national holiday the complaint had been under investigation for about 25 working days. In our opinion, the progress made on this complaint was reasonable given the nature of the complaint.

An examination of the complaint file for this period indicates contact and discussions by division staff with various city building inspectors, the state investigator, the Kirkhams and other officials. Also, the file contains copies of numerous documents relating to the construction, building inspections and ownership of the home. The division was also attempting to obtain an independent inspection of the home because of concerns over possible building code violations coupled with unqualified city building inspectors. The allegations also required an internal examination because concerns were raised about a potential conflict of interest of a division employee. In our opinion, the division appeared to be aware of all the major concerns and was examining the actions of their staff. After contact with our auditors the division staff choose to put on hold any further examination awaiting our report. We have received total cooperation from the division.

## **Poor Decisions Led to Concerns Regarding a Conflict of Interest**

The Kirkham's were concerned about the potential conflict of interest between the construction/sale of the Parowan home and the authority or influence of Mr. Robinson's state position upon the city building inspectors. The Kirkhams had obtained from the city files copies of the building inspection reports on their Parowan home. There were only two inspection reports on file (when 7 to 10 would normally be expected). Consequently, the Kirkham's were concerned that Mr. Antone Robinson's position may have influenced the city building inspectors not to report code violations or not to conduct the required building inspections. The Kirkhams knew of Mr. Robinson's state position and was concerned that his investigative authority and frequent contact with the city building inspectors put him in a position to influence city inspectors to provide favorable inspections.

We concur with the concern of the Kirkhams: a conflict of interest could have existed and there was ample reason for criticism or suspicion of a conflict. For example, Mr. Antone Robinson stated that at one point in the construction of the home he checked the state licensing files and realized the Parowan City Building Inspector was unlicensed (therefore unqualified). But he said he dared not publicly report the inspector's unlicensed status for fear the inspector would retaliate with a harsh inspection of the Parowan home for which Mr. Robinson was a part owner and his son was the contractor. Consequently, Mr. Robinson reported the unlicensed inspector anonymously.

The state DOPL supervisor was aware that Mr. Robinson reported the "anonymous" complaint against the unlicensed city inspector but the supervisor said he forgot about the source of the complaint and later assigned Mr. Robinson to investigate his own complaint. Mr. Robinson did not refuse or ask that another person be assigned to the complaint. Mr. Robinson felt he was assigned because he had already done some of the work and his assignment would be the most efficient use of division staff time. Consequently, this assignment resulted in Mr. Robinson investigating the license status of the Parowan City inspector who in turn was inspecting a home under construction that Mr. Robinson partly owned. In addition (in his role as a state building investigator), Mr. Robinson observed at least one of the inspections conducted by the Parowan City building inspector to determine the quality of the city inspection. However, he chose to observe an inspection of his own home. Consequently, he was investigating the city inspector while the Parowan City Building Inspector was directly examining Mr. Robinson's home. In our opinion, the potential conflict created by this situation is unacceptable.

State policy regarding outside activities is defined by Department of Human Resource Management Rule 477-9-2, which states: *"An employee may engage in outside employment ...*

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*under the following conditions...Outside employment must not interfere with employee's efficient performance in their position. Outside employment must not conflict with the interests of the agency or the State of Utah. Outside employment must not give reasons for criticism or suspicion of conflicting interests or duties."* Although Mr. Antone Robinson was not in the employment of any one individual, he and his wife are clearly listed as owners and stood to gain from the construction and sale of the home. Mr. Robinson had told us he owned the lot and had difficulty selling it as raw land. Consequently, the construction and sale of the home benefited him by providing a reasonable value for the lot and possibly the home.

Our concern is that Mr. Antone Robinson's actions certainly gave reason for criticism or suspicion of a conflict of interest. The anonymous reporting of an unlicensed city inspector and the assignment of Mr. Robinson to investigate his own complaint give reason for criticism or suspicion. Also, the fact that he was the owner of a home being inspected by a city inspector over whom he has investigative influence was another reason for suspicion. Finally, the lack of complete and qualified inspections was a concern for the Kirkhams.

We also believe that Mr. Robinson's outside involvement in the construction and ownership of the home interfered with the efficient performance of his duties. The fact that he felt the need to report the unlicensed city inspector anonymously required that his complaint be handled differently and less efficiently than it otherwise would have been. Also, the assignment of Mr. Robinson to investigate his own complaint is not efficient considering he had already indicated a concern about potential retaliatory action by the city building inspector against his home under construction. Finally, Mr. Robinson's decision to observe an inspection of his own home as part of his investigative process is controversial. Why would Mr. Robinson fear the influence or actions of an unlicensed inspector, when the fact that the city inspector is unlicensed makes the inspection unqualified? Any of these actions, if misinterpreted by the present or future city inspectors, could result in the city inspectors providing the Robinson home with more favorable inspections than might be fair.

Department of Human Resource Management Rule 477-9-2 also requires that an employee engaging in outside activities notify their employer in writing for approval to participate in that employment. Although Mr. Robinson's supervisor was well aware of the outside activity, it was never reported in writing. There is no evidence that the division director knew of the activities or any division official ever considered whether Mr. Robinson's outside activities could result in a conflict of interest or have a negative effect on Mr. Robinson or the division. We understand the division director has consistently urged these type of activities be reported in writing and monitored by management.

In our discussions with the past and present Parowan City building inspectors they did not indicate ever feeling intimidated or pressured by Mr. Antone Robinson to provide favorable

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inspection results. In fact they characterized Mr. Robinson as a professional who would always provide assistance and advice. Even the city inspector who was investigated by Mr. Robinson and determined unqualified to conduct building inspections felt that Mr. Robinson maintained a professional distance.

For this survey, we contracted with an independent building inspector to determine if the Parowan home has building code violations that were never identified by the city inspectors. In the last two sections of this report we will discuss in more detail the quality of Parowan City's inspections and the code violations identified by an independent inspection of the Kirkham home. We are concerned that a number of the building code violations identified in our independent inspection (although not really serious violations) were the kind that our consultant stated should normally be identified by city building inspections. It appears that all three of the city inspectors conducted inspections for which they were not licensed, consequently the unidentified code violations could be a result of poor quality inspections.

Although this situation had great potential for a conflict of interest between Mr. Robinson's state position and the construction and sale of his home, we have not identified any conclusive evidence indicating Mr. Robinson used his position to obtain a personal benefit. However, we believe that the DOPL should make a stronger effort to ensure that all division employees understand and comply with their obligation to report in writing all outside activities and employment interests. Finally the director (or his staff) should assess the potential conflict of those activities and then give written approval or denial.

### **Qualified Building Inspections Were not Provided by Parowan City**

The Kirkham home had been inspected by three different city building inspectors. Records indicate that two of the three inspectors were not licensed and consequently were unqualified to conduct the building inspections. In addition the one licensed inspector (the current inspector) holds several licenses but does not have an electrical license and according to the division is not qualified to conduct electrical inspections even if supervised. The first city inspector approved the building permit and made several inspections of the home while he was not licensed by the state. He quit the city inspection position to pursue his own business and said the state licensing requirements were too stringent for a small town like Parowan. The second city inspector (the inspector investigated by Mr. Antone Robinson) also made several inspections of the home prior to being reported to the state for conducting building inspections without a license. The DOPL investigated the complaint and issued the inspector a cease and desist order regarding any future inspections. The current inspector conducted an electrical inspection and the final inspection of the home and is licensed in several areas but is not a licensed electrical inspector. Consequently,

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according to the division, this inspector is not qualified to conduct any electrical inspection even under direct supervision.

In addition to the unqualified building inspections, we are also concerned because we could find no record of the rough heating and final framing inspections ever being conducted. The Building Inspection Card was not signed (indicating approval) for these two inspections and there were no records of these inspections in the city files. In addition, all three city inspectors said they did not conduct these inspections. Our consultant's opinion was that both the rough heating and final framing inspections were necessary. These inspections may have been missed because three different inspectors were involved over the period the home was constructed. However, evidence indicates the home never received a consistent pattern of qualified inspections nor all the required inspections.

In our opinion, Parowan City failed to provide the Kirkhams with building inspectors licensed and qualified to identify code violations. One city building inspector explained that Parowan City was so small it could not afford to hire a full-time licensed inspector. However, the city has the option to contract existing inspection work out to the county and has chosen not to do so.

The residents of all Utah cities trust that the building inspectors will protect them from poor quality construction by ensuring that all homes meet the state and local building codes. However, this does not appear to be the case in Parowan City.

The Division of Occupational and Professional Licensing is the state agency required to license city building inspectors and investigate allegations of unlicensed building inspectors. Consequently, we recommend that DOPL take the additional responsibility of determining if the city inspectors (from small cities) are properly licensed and qualified to conduct building code inspections. This action would help to ensure that all small cities in Utah have licensed building inspectors and thereby provide the proper protection for future home owners from the type of problems discussed in this report. The division could simply compare names from a sample of small city building inspectors against the names licensed by the division.

## **Independent Inspection Identifies a Number of Building Code Violations**

We contracted with a well qualified building inspector to conduct an independent inspection of the Parowan home. This inspection was conducted on June 26, 1995. The inspection identified the following 12 building code violations:

1. Access to the crawl space is gained through an approximate 4 ft. by 4 ft. opening in the garage floor. This allows the crawl space to become a hazardous area with the possibility of gas fumes collecting into the area.
2. Grounding conductors are not isolated from neutrals in the electrical panel.
3. Furnace, water heater and water system are located in a pit in the crawl space. Uniform Mechanical Code require it be on a 3" slab above ground level or have an approved drain.
4. The crawl space is not adequately ventilated, but with insulated walls could be considered a conditioned space, therefore, neither ventilation nor insulation are required in the floor. If changed, then all exposed plumbing and floor would need insulation.
5. Water pressure exceeds 80 lbs. Pressure (130 lbs tested) therefore, requires a pressure reducer valve.
6. Dryer not vented to outside.
7. Furnace and water heater vent do not have 1 inch clearance as per manufacturer's requirements.
8. Toilets not sealed around base.
9. Nails not approved to attach non-metallic cable.
10. No weather barrier under vinyl siding.
11. Insulation is falling off foundation walls.
12. No filter on furnace.

Some of the above violations were already known and were included on the punch list (agreement between the builder and buyer) of things to be completed. Also, our consultant made



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it clear that this inspection may not include all code violations; because the home is finished he has to limit his inspection to the observable work. However, most of the code violations were not previously identified in any of the inspection reports available to us. Our consultant did not believe the code violations he identified were life threatening but most were of concern and should be corrected. He stated that some of the violations he has cited may not have been enforced by the local jurisdiction at the time of construction. For example, violation number 10 citing the lack of weather barrier under the vinyl siding was not enforced until recently and since this home was under construction about two years ago it may not have been required by the local jurisdiction.

He acknowledged that a number of the violations he cited were the type that previous building inspections should have identified. Some examples he cited were: the small access to the crawl space below the home, the furnace and water heater located in a pit in the crawl space, the need to isolate neutrals from grounding conductors in panel over clothes dryer, and the clothes dryer not vented to the outside. We are concerned that such violations should have previously been identified and documented and may be the result of the unqualified inspectors.

We have been told by division officials that they are in the process of ensuring that building inspectors in small cities are licensed. We believe that the problems identified in this report are serious but have no reason to believe such concerns exist in most small cities in Utah. In fact we are told that many cities contract building inspections out to the counties if they are too small to provide qualified licensed inspectors.

### **Recommendations:**

1. We recommend that the Division of Occupational and Professional Licensing ensure that all employees engaged in outside activities report in writing the nature of the activity.
2. We recommend that the management within the Division of Occupational and Professional Licensing review all requests for outside activities and ensure that the activities do not conflict with the interests of the state.
3. We recommend that the Division of Occupational and Professional Licensing compare a sample of building inspectors from small cities with the licensing records on file at the division to ensure that the public (buying homes) has the protection of qualified building inspectors.

We hope this letter has provided the information that you need on these issues. If you have any further questions or concerns, please contact us.

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Sincerely,

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Legislative Auditor General

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