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The Commonwealth of Massachusetts

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June 24, 2016

Mr. Nicola Favorito, Esq.
Executive Director
Massachusetts State Retirement Board
One Winter Street, 8th Floor
Boston, MA 02108

Re: Mohammed H. Khan

Dear Mr. Favorito:

As the State Retirement Board is aware, the Massachusetts Department of Transportation (“MassDOT”) asked the Office of the Inspector General (“OIG”) to review whether Mohammed Khan, Administrator of the Montachusett Regional Transit Authority (“MART”), violated M.G.L. c. 32, § 91 (“Section 91”), which limits the number of hours and total earnings a retiree can receive from public employment while collecting a public pension.

On September 26, 2014, the Massachusetts State Retirement Board (“Retirement Board”) took initial action by notifying Mr. Khan that he had violated the retiree earnings limit during his post-retirement tenure at MART. The OIG would like to alert the Board to the following as it works to resolve the matter involving Mr. Khan.

The OIG believes that Mr. Khan violated Section 91. The evidence obtained by the OIG further indicates that Mr. Khan fully understood the ramifications of maintaining his position as MART’s Administrator while collecting a state pension. The OIG also believes that Mr. Khan may be receiving a larger pension than he is entitled to receive.

MRPC and MART

Mr. Khan’s pension is based on his employment at the Montachusett Regional Planning Commission (“MRPC”). In 1968, several municipalities established MRPC pursuant to M.G.L. c. 40B, which authorized municipalities to vote for inclusion in regional planning districts. Each regional planning district is led by a commission, which is comprised of a representative from each member municipality and is charged with conducting comprehensive regional planning for the physical, social and economic development of the region. Regional planning commissions receive funding through assessments of member municipalities as well as through federal and state grants. Four years after its creation, MRPC became a member of the state retirement system on January 1, 1972.

In 1978, the same communities that formed MRPC created MART under the authority of M.G.L. c. 161B (“Chapter 161B”), which established a system for regional transportation authorities across the Commonwealth. MART is charged with developing, financing and contracting for mass transportation services and facilities in its region. An Advisory Board (“Board”) composed of the primary elected or appointed official in each member municipality oversees MART. MassDOT has oversight responsibility over all of the regional transit authorities (“RTAs”). MART currently consists of 22 member communities in the greater Fitchburg/Leominster area. In addition to providing fixed-route transportation, MART contracts with the Commonwealth to provide transportation services for clients of MassHealth and various social service programs. MART is funded through direct-fare and contract revenue, member assessments, and federal and state grants and operating assistance.

Mr. Khan’s Employment at MRPC and MART

In 1975, MRPC hired Mr. Khan as its Principal Regional Planner. Shortly thereafter, MRPC named Mr. Khan its Executive Director. Mr. Khan also served as MART’s Executive Director from its inception in 1978. Between 1978 and 2003, Mr. Khan simultaneously had the titles and authority of MART’s Administrator and MRPC’s Director. MRPC issued his combined payroll check.

In 1983, the Massachusetts State Ethics Commission informed Mr. Khan, MRPC and MART that this dual employment violated, the conflict-of-interest law, M.G.L. c. 268A (“Chapter 268A”). *See* Conflict of Interest Opinion EC-COI-83-85. The Ethics Commission opined that Mr. Khan could not serve in both positions without violating Chapter 268A.

In 1984, after losing a request for reconsideration of that decision, MRPC and MART executed a Memorandum of Understanding (“MOU”) in an effort to allow Mr. Khan (and several others) to continue to work simultaneously for MRPC and MART. The MOU allocated Mr. Khan’s salary between MRPC and MART. MRPC was responsible for issuing Mr. Khan his paychecks, and MART reimbursed MRPC for its portion of his salary. Records indicate that the two entities continued to allocate and pay Mr. Khan’s salary in this same manner until Mr. Khan retired.

In 2003, Mr. Khan chose to retire from MRPC. In the seven months leading up to his retirement, Mr. Kahn received four raises, including an increase eleven days before his retirement. Consequently, when he retired, Mr. Khan’s annual salary was listed at \$110,549: \$75,400 attributable to MRPC duties and \$35,149 attributable to MART duties. The OIG’s investigation determined that contrary to Mr. Khan’s salary allocation, Mr. Khan dedicated his time primarily to MART during his last few years at MRPC.

Mr. Khan applied for and began receiving a state pension on February 12, 2003. Susan Gallien, MRPC’s Director of Fiscal Operations at the time, listed his three highest salary years as ranging between \$98,021 and \$110,549 on the salary request form submitted to the Retirement Board. However, these totals included the salaries from both the MRPC and the MART

positions. Based on MRPC's and MART's records, Mr. Khan's actual MRPC salary ranged from \$67,675 to \$75,400 for those years. However, payroll records show that MRPC deducted retirement contributions based on the combined totals of the MART and MRPC salaries.

In February 2003, Mr. Khan became the full-time Administrator of MART at a salary of \$91,058. (MRPC hired its own director.) From 2003 until the present, Mr. Khan has been solely employed as MART's Administrator while collecting a state retirement based almost entirely on his MRPC employment.

Discussion

The OIG's review indicates that MART is a government agency and, therefore, that Mr. Khan has violated Section 91. When the Retirement Board questioned Mr. Khan's pension status last year, his attorney wrote to MART and opined that because MART did not belong to the Massachusetts Public Employee Pension System, MART is a "private employer" and thus Mr. Khan is exempt from any earnings limitation under Section 91. However, MART has consistently referred to itself as a public body. More importantly, Chapter 161B defines MART (and the other regional transit authorities) as "a body politic and corporate and a political subdivision of the commonwealth." M.G.L. c. 161B, § 2. Notably, all but two of the other RTAs are members of public retirement systems; the remaining two self-identify as public entities and offer 457(b) deferred compensation plans to their employees. Representatives from both of those RTAs stated that they knew about the right to join the state system.

Indeed, the State Ethics Commission identified MART as a public agency at least as far back as 1983 when it rendered the opinion that Mr. Khan could not be a dual employee of both MART and MRPC. As part of his 1984 request for reconsideration, moreover, MART's legal counsel submitted a brief to the Ethics Commission that acknowledged MRPC as a municipal agency and MART as a state agency but disagreed with the Ethics Commission's opinion. Counsel offered that MRPC's governing body, the Regional Planning Commission, enacted a resolution allowing MRPC's staff "as a condition of employment" to perform compensated work for MART during normal MRPC working hours as "special" employees. *See* M.G.L. c. 268A, § 1(n). Counsel further stated that "the role of Mr. Khan as head of both the Commission and MART is wholly consistent with the requirements of law" and that "this administrative structure ... conforms quite perfectly to the spirit of federal regulations." In April 1984, the Ethics Commission denied the request for reconsideration.

Furthermore, evidence indicates that the MOU between MART and MRPC was designed to circumvent the Ethics Commission's ruling. According to the meeting minutes from a MART Advisory Board meeting on June 21, 1984, MART's legal counsel reported that the Ethics Commission regarded "it a technical violation of the ethical statutes for Mohammed [Khan] and other staff to be independently employed by MART and the Planning Commission.... The State Ethics Commission agreed to a contract between MART and MRPC." Neither MART nor MRPC could produce documentation to corroborate this representation. As stated earlier, to address the "technical violation" referenced by counsel, MRPC and MART entered into an MOU

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that stated that “Mohammed H. Khan will resign from his employment by MART, effective upon the signature of this MOU by both parties” and also indicated that “MRPC will provide the services of its Director Mohammed H. Khan to work as MART Administrator in addition to his MRPC duties. Mr. Khan will be employed by MRPC, not by MART.” MART compensated MRPC for Mr. Khan’s services. Furthermore, the MOU stated: “Mr. Khan will work as MART Administrator in accordance with Chapter 161B of Mass. General Laws, under the direction of the MART Advisory Board and shall serve at the pleasure of the MART Board.”

Mr. Khan should not gain financially from an arrangement designed to circumvent an ethics law violation. Mr. Khan could have resigned his MRPC position and become a MART employee, forgoing a state pension in lieu of the private plan MART had established. As MART’s Administrator he also could have had the agency join the state pension system, an action he personally terminated this past year.

Finally, the OIG asks the Retirement Board to review Mr. Khan’s pension because he overstated his earnings from MRPC. As set forth above, when MRPC reported Mr. Khan’s three highest salaries to the Retirement Board, it included his income from both MRPC and MART. Only MRPC is a member of the state pension system, however. Based on MRPC’s and MART’s records, Mr. Khan’s highest three years of salary working for MRPC ranged from \$67,675 to \$75,400. Further, the OIG believes that even these income figures are overstated because Mr. Khan dedicated his time primarily to MART during his last few years at MRPC.

Please also note that a preliminary review of Mr. Khan’s finances revealed that he has substantial assets that would be available to repay all or a substantial portion of the estimated over-earnings.

Thank you for your attention to this matter.

Sincerely,



Glenn A. Cunha
Inspector General