

**BEFORE THE STATE PUBLIC INTEGRITY COMMISSION
IN AND FOR THE STATE OF DELAWARE**

In Re: MICHAEL SCUSE

Respondent

COMPLAINT 23-28

***Hearing and Decision By:** Hon. Rourke Moore (Acting Chair); Ron Chaney (Vice-Chair). Commissioners: Andrew T. Manus, Hon. Alex Smalls, Dr. Melissa Harrington.*

I. PROCEDURAL POSTURE

Any person may file a sworn Complaint alleging violations of Title 29, Delaware Code, Ch. 58., including the Public Integrity Commission (“PIC”).¹ The Commission’s Counsel generated a Complaint² against Michael Scuse after receiving information about improper fiscal conduct at the Delaware Department of Agriculture (“DDA”). At a Preliminary Hearing on July 24, 2023, the Commission found that it had both personal and subject matter jurisdiction over Mr. Scuse, Secretary of the DDA. The Commission also made a preliminary

¹ 29 Del. C. § 5810(a).

² See Appendix A for a copy of the Complaint with Attachments A-N.

finding that the Complaint alleged sufficient facts that, if true, would support a finding of a violation of the State Code of Conduct.³ The Commission then issued a Notice of Hearing for October 11, 2023, at 10 a.m. On Sept. 21, 2023, Mr. Scuse, by and through his attorney Mr. Chambers, submitted a formal Response to the Preliminary Hearing Decision⁴ denying the Complaint's allegations and relying upon the Secretary of DDA's emergency powers set forth in 29 *Del. C.* § 6907.⁵ Mr. Scuse appeared for his hearing on the appointed day and time. The Hearing was held in the second-floor conference room at 410 Federal Street, Dover, DE 19901 on October 11, 2023. In addition to members of the Commission and Commission Counsel (Deborah J. Moreau, Esq.), the following individuals were present: Michael Scuse (Respondent); Scott E. Chambers, Esq. (Atty. for Respondent); Joseph Stanley, Esq. (Atty. for Complainant); John P. Donnelly (Stenographer); Liam Gallagher (Mr. Chambers' law clerk); Andrea Brzoska (Mr. Stanley's law clerk); Matt Weber (Mr. Chambers' assistant).

³ As to each of the allegations, the Preliminary Hearing Letter Opinion stated that "this allegation is substantiated." Clearly, if the allegations were substantiated, there would be no need for a formal hearing. A better phrasing of the procedural posture would be: "the Commission made a preliminary finding that the Complaint alleged sufficient facts that, if true, would support a finding of a violation of the State Code of Conduct." See Appendix B.

⁴ See Appendix C.

⁵ Emergency procedures and critical need for professional services. (a) An agency head may waive any or all provisions of *this chapter* to meet the critical needs of the agency as required by emergencies or other conditions where it is determined to be in the best interest of the agency. The agency head may determine an emergency condition exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against. An emergency condition creates an immediate and serious need for materiel and/or nonprofessional services that cannot be met through normal procurement methods for the protection of public health, safety or property. (Emphasis added).

II. THE COMPLAINT

The Complaint alleged that on May [REDACTED] 2023, Michael Scuse violated 29 *Del. C.* § 5805(b)(1) by approving a contract (MOU # [REDACTED]) benefitting a private enterprise, [REDACTED], before the state agency, the DDA, by which Michael Scuse and [REDACTED] were both associated by employment or appointment, a violation of the State Code of Conduct. The next allegation was that on May [REDACTED] 2023, Michael Scuse violated 29 *Del. C.* § 5805(b)(1) by entering into a contract (MOU # [REDACTED]) benefitting a private enterprise, [REDACTED], the spouse of [REDACTED], before the state agency, the DDA, by which [REDACTED] and Michael Scuse are associated by employment or appointment, a violation of the State Code of Conduct. Third, the Complaint alleged on February [REDACTED] 2023, Michael Scuse violated 29 *Del. C.* § 5805(b)(1) by allowing his employees, [REDACTED] and [REDACTED], to enter into a contract (MOU# [REDACTED]) benefitting a private enterprise, [REDACTED], before the state agency, the DDA, by which they were both associated by employment or appointment, a violation of the State Code of Conduct. It was also alleged that on May [REDACTED], 2023, Michael Scuse did violate 29 *Del. C.* § 5805(c) by entering into a contract (MOU # [REDACTED]), in excess of \$2000, on behalf of the State without public notice and competitive bidding, a

violation of the Code of Conduct. Similarly, the Complaint alleged that on May █ 2023, Mr. Scuse did violate 29 *Del. C.* § 5805(c) by entering into a contract (MOU # █, in excess of \$2000, on behalf of the State without public notice and competitive bidding, a violation of the State Code of Conduct. The next allegation stated that on February █ 2023, Michael Scuse did violate 29 *Del. C.* § 5805(c) by permitting █ and █, DDA employees, to engage in a contract (MOU # █, in excess of \$2000, on behalf of the State without public notice and competitive bidding, a violation of the State Code of Conduct. On May █ and █ 2023, Michael Scuse did violate 29 *Del. C.* § 5806(a) by engaging in conduct which was in violation of the public trust and which will reflect unfavorably upon the State and its government. Mr. Scuse authorized over \$100,000 in contractual payments to DDA employees. Lastly, the Complaint alleged that on May █ and █ 2023, Michael Scuse violated 29 *Del. C.* § 5806(e) by using his public office to benefit select agency employees, a violation of the State Code of Conduct. Appended to the Complaint, and incorporated by reference, were Attachments A-N.⁶

III. COMPLAINANT'S CASE

A. Michael Scuse

⁶ See Appendix A.

Michael Scuse has been the Secretary of DDA since January 2017. Tr. 17:5-7. One of DDA's primary responsibilities is to ensure that domestic agricultural animals are not subjected to cruelty or mistreatment.⁷ Consequently, DDA has the ability to seize and impound animals pursuant to a court order.⁸ According to Mr. Scuse, the DDA's animal seizures are coordinated with the Office of Animal Welfare and the State Veterinarian. Tr. 22:11-20, Tr. 26:21-24. Mr. Scuse was then asked about a February 2023 animal seizure, the first seizure at issue in this matter. Tr. 22.

The OAW notified DDA in February 2023 that there were hogs being mistreated on a local farm. Tr. 26:21-24. After seizing the animals and placing them at [REDACTED] (a DDA vendor), the State Veterinarian contacted Mr. Scuse with concerns about the treatment the hogs were receiving in their new placement. Tr. 34:7-13. Mr. Scuse stated that after traveling to the site and viewing the conditions, he declared an emergency and waived the procurement rules to allow the DDA to contract with anyone who could care for the hogs. Tr. 39:2-8.

In regards to the May 2023 seizure, Mr. Scuse testified that while responding to a citizen complaint regarding a horse, OAW staff had an

⁷ 16 Del. C. § 3031F.

⁸ *Id.*

opportunity to observe multiple animals on the property that evidenced signs of abuse. Tr. 42:15-21. In preparation for the seizure, Mr. Scuse testified that the DDA hired cattle wranglers to round up the livestock to be seized and coordinated with the Office of Management and Budget to obtain additional funds. Tr. 44:19-24, Tr. 65: 1-8. Mr. Scuse also confirmed that the DDA paid [REDACTED] and [REDACTED]) to take care of the livestock seized at this location.⁹ Tr. 46:1-2. He cited the difficulty of finding locations to place sick animals as the primary reason why DDA contracted with their own employees. Tr. 47:11-13, Tr. . When asked about DDA's response to emails from PIC Counsel advising that issuing and/or accepting payments from DDA to their own employees would violate the State Code of Conduct, Mr. Scuse denied knowing that paying the employees would violate the State Code of Conduct. Tr. 49:9-17. Mr. Scuse acknowledged that he was aware of, and usually abides by, the State's competitive bidding process. Tr. 57:15-19.

IV. RESPONDENT'S CASE

In his Response, and at the hearing, Mr. Scuse claimed that the Secretary's emergency powers, pursuant to 29 *Del. C.* § 6907, gave him (and the DDA) the power to waive Title 29, Chap. 58., the State Code of Conduct, and award the

⁹ Mr. Scuse testified that he did not know how much [REDACTED] was paid for caring for the animals for 30 days. He did acknowledge that it was likely more than 2 times her annual salary. Tr. 56:1-11. Later he stated, "I know that we paid them a lot of money." Tr. 89:3-4.

contract(s) to DDA employees. Tr. 60:1-10. Mr. Scuse stated that “every time there is a seizure we have an issue with the lack of facilities.” Tr. 61:5-7. In explaining the lack of vendors, Mr. Scuse noted that the seized animals are required to be quarantined. Tr. 63:17-23, 67:9-13. Consequently, most active farms in Delaware are not interested in housing seized animals.

In anticipation of the May 2023 seizure, “knowing it would be large,” Mr. Scuse stated that DDA contacted OMB and obtained additional monies to pay for the animal’s care. Tr. 65:4-8. They also reached out to some of the DDA’s vendors to determine if they would be willing to accept the seized animals, but were unsuccessful. Tr. 64:22-24, 65:1-6. Mr. Scuse’s attorney then asked Mr. Scuse about any advice he received from the agency’s Deputy Attorney General (“DAG”). Mr. Scuse stated that the DDA’s DAG told him that to avoid any issues with the PIC, he should not pay his employees for their contractual work. Tr. 70:14-22, 80:6-11. Despite receiving this advice from his DAG, Mr. Scuse decided to pay the employees anyway. *Id.* Mr. Scuse stated that he continues to believe he has the authority to waive provisions of the Code of Conduct pursuant to his emergency powers contained in 29 *Del. C.* § 6907. Tr. 71:6-7. However, he expressed remorse that his employees were caught up in the matter. “And I don’t think that my staff should be hauled before the commission to answer questions for doing their jobs.” Tr. 71:10-12. After stating that he acted in the

best interest of DDA, Mr. Scuse stepped down from the witness stand. No further witnesses were called.

V. APPLICABLE LAW

The Complaint alleged that Mr. Scuse violated the following provisions of the State Code of Conduct:

29 Del. C. § 5805(b)(1). *Restrictions on representing another's interest before the State.* — (1) No state employee, state officer or honorary state official may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the employee, officer or official is associated by employment or appointment. (3 counts).

29 Del. C. § 5805(c). For all contracts in excess of \$2000, public notice and bidding are required in order for a contract to be awarded to a State employee. The standard applies even if the State employee did not work for the department offering the contract. Delaware Courts have held that in judging the fairness of a government contract when a government employee seeks the contract, that the price "is not the exclusive test by which a vendor is chosen" because when government employees seek contracts with their governmental entity, the concern is that the award of such contracts "has been suspect, often because of alleged favoritism, undue influence, conflict and the like."¹⁰ (3 counts).

29 Del. C. § 5806(a). Each state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government. (1 count).

29 Del. C. § 5806(e). No state employee, state officer or honorary state official shall use such public office to secure unwarranted privileges, private advancement or gain. (1 count).

¹⁰ *Commission Op. No. 98-23 (citing W. Paynter Sharp & Son v. Heller, Del. Ch. 280 A.2d 748, 752 (1971)).*

VI. DISCUSSION

After the parties were excused, the Commission began reviewing and discussing the evidence presented at the hearing, as well as Mr. Scuse's formal Response. The Commission dismissed two (2) violations of 29 *Del. C.* § 5805(b)(1) (the allegations regarding [REDACTED] and [REDACTED]); all three (3) violations of § 5805(c) and the single violation of 29 *Del. C.* § 5806(e) for insufficient evidence on the record. When considering Mr. Scuse's role in executing the MOUs, the Commission decided that Mr. Scuse's relationship with the spouse of [REDACTED] was too attenuated to sustain that allegation. The Commission also dismissed the allegation regarding the MOU with [REDACTED] because the MOU was signed by DDA employee [REDACTED] at the recommendation of the State Veterinarian. The Commission decided that there was ample evidence on the record to support the dismissal of the three (3) counts of failure to publicly notice and bid a contract for over \$2000, when the recipient is a State employee. The nature of the seizure work performed by the DDA staff does not always afford the agency the opportunity to publicly notice and bid contracts at all, regardless of value. Lastly, no evidence was presented that indicated Mr. Scuse benefitted from the MOUs between the DDA and its employees.

The Commission then turned to consideration of the two remaining allegations. As to the MOU with the DDA's employee, [REDACTED], the Commission decided that Mr. Scuse violated 29 *Del. C.* § 5805(b)(1) by entering into MOU# # [REDACTED] worth more than \$100,000, with [REDACTED], a DDA employee.

The Commission found Mr. Scuse's comments regarding the DDA's efforts to locate livestock facilities to be unconvincing. Mr. Scuse stated that "every time there is a seizure we have an issue with the lack of facilities." Tr. 61:5-7. Yet, he later justified the May contract with [REDACTED] by stating that "the [seizure] we had in February was the first one of its kind that we had had in, what, 12 years. So, who was going to think that we were going to have another one that soon?" Tr. 51:17-21. Mr. Scuse also repeatedly emphasized the fact that he found it difficult to locate people willing to care for diseased animals. And yet, when the need arose on two separate occasions, the DDA had not one, not two, but *three* employees who would be willing to do so. While it is likely not Mr. Scuse's job to search for livestock facilities, he is the Secretary of the Department and he is ultimately responsible for the situation in which the DDA found itself. He cannot claim to lack livestock facilities when neither he, nor his staff, has properly searched for suitable locations. Furthermore, the first instance

of contracting with DDA employee [REDACTED] set a bad precedent for the seizures that followed.

Turning to the MOU between the DDA and [REDACTED], [REDACTED] was paid over \$100,000 to care for seized chickens for 30 days. Mr. Scuse knew [REDACTED] because she worked at DDA [REDACTED]. Despite the existing acquaintance between them, and Mr. Scuse's clear knowledge that [REDACTED] was a DDA employee, he nonetheless engaged in an agreement with her to care for the seized animals. As such he represented her private interest (as a vendor) before the agency by which she was employed, a violation of 29 *Del. C.* § 5805(b)(1).

The Commission then focused on the appearance of impropriety standard in the Code of Conduct. To determine if an appearance of impropriety has occurred, the Commission considers whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the official's duties could not be performed with honesty, integrity and impartiality.¹¹ In weighing appearance of impropriety issues, the Commission examines the totality of the circumstances.¹² Those circumstances are examined within the framework of the Code's purpose which is to achieve a balance between a "justifiable impression" that the Code is

¹¹ *In re Williams*, 701 A.2d 825 (Del. 1997).

¹² *See, e.g., Commission Op. No. 97-23 and 97-42.*

being violated by an official, while not “unduly circumscribing” their conduct so that citizens are encouraged to assume public office and employment.¹³

The Commission first considered the following mitigating factors. Mr. Scuse had a statutory duty pursuant to 16 *Del. C.* § 3031F to provide care to the animals the DDA had previously seized from their owners. A concern and obligation the Commission does not take lightly. Additionally, Mr. Scuse did not benefit monetarily from the transaction(s).

The Commission then turned to consideration of the aggravating factors. It appeared that the DDA had a long history of being unable to find suitable locations for seized livestock. Yet, despite the difficulties they encountered in the past, the DDA, and Mr. Scuse, did nothing to remedy the situation. Nor was the Commission swayed by Mr. Scuse’s assertion that the ‘emergency’ waiver of the procurement rules allowed the DDA to waive the entire State Code of Conduct, set forth in Title 29, Chapter 58. The emergency exception to the statute specifically states:

An agency head may waive any or all provisions of *this chapter* to meet the critical needs of the agency as required by emergencies or other conditions where it is determined to be in the best interest of the agency. The agency head may determine an emergency condition

¹³ 29 *Del. C.* §§ 5802(1) and 5802(3).

exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against.¹⁴

Following Mr. Scuse's logic, the statute empowered the DDA to cast aside ALL provisions of the Delaware Code, or at a minimum all provisions of Title 29, which is at odds with the plain reading of the statute. When a court is tasked with interpreting statutory language, it must first determine that the statute is actually ambiguous.¹⁵ However, a statute is not ambiguous merely because the parties disagree about the meaning of the statutory language.¹⁶ A statute is only ambiguous if it is *reasonably* susceptible to different interpretations.¹⁷ It is the Commission's position that Mr. Scuse's belief that he had the power to waive an entire *Title* of law is unreasonable. Title 29 not only includes the procurement law, it includes statutes setting forth the establishment and operation of the entire state government. Consequently, the Commission decided that the Secretary's waiver powers do not waive the State Code of Conduct.

VI. CONCLUSION

Based upon the above facts, evidence and law, the Commission unanimously voted to find that: (1) Mr. Scuse violated 29 Del. C. § 5805(b)(1), by allowing [REDACTED], a DDA employee, to engage in a vendor agreement

¹⁴ 29 Del. C. § 6907. (Emphasis added).

¹⁵ *Friends of H. Fletcher Brown Mansion v. City of Wilmington*, 34 A.3d 1055, 1059 (Del. 2011).

¹⁶ *Id.*

¹⁷ *In re Port of Wilmington Gantry Crane Litigation*, 238 A.3d 921, 927 (Del. Super. 2020) (*emphasis added*).

with her employing agency; and (2) created an appearance of impropriety by contracting with a DDA employee for work unrelated to their State job duties, a violation of 29 *Del. C.* § 5806(a). Pursuant to statute, 29 *Del. C.* § 5810(d), “[w]ith respect to any violation with which a person has been charged and which the Commission has determined as proved, the Commission may...[i]ssue a written reprimand or censure of that person’s conduct.”¹⁸ Consequently, a copy of this opinion letter will be made available to the public.

It is so ordered, this 6th day of November 2023.
FOR THE PUBLIC INTEGRITY COMMISSION

/s/ *Rourke A. Moore*

Rourke A. Moore
Vice-Chair (Acting Chair)

[REDACTED]

¹⁸ A redacted version of this opinion will be posted publicly to protect the identities of those whose hearings are still pending or those who have been found ‘not in violation’.

APPENDIX A

**BEFORE THE STATE PUBLIC INTEGRITY COMMISSION
IN AND FOR THE STATE OF DELAWARE**

IN RE: MICHAEL SCUSE

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COMPLAINT 23-28

COMPLAINT

1. This Complaint was initiated by the State Public Integrity Commission (“PIC” or “Commission”) pursuant to the statutory authority granted in Title 29, Chap. 58 of the Delaware Code.¹ The PIC is the agency responsible for the enforcement and administration of the State Code of Conduct.² All attachments are hereby incorporated by reference.

JURISDICTION

2. The Commission’s jurisdiction is limited to interpreting Title 29, *Del. C.*, Ch. 58.³ It may only act if it has jurisdiction over the party charged and jurisdiction over the Complaint’s substance.
3. A ‘State employee’ is any person “[w]ho serves as an appointed member,

¹29 Del. C. §§ 5808A(a)(3) and (4).

² Delaware Code Annotated, Title 29, Ch. 58.

³ See, e.g., 29 Del. C. § 5808(a) and § 5809(2).

trustee, director or the like of any state agency and who receives or reasonably expects to receive more than \$5,000 in compensation for such service in a calendar year.⁴ Michael Scuse is the Secretary of the Delaware Department of Agriculture (“DDA”). He was appointed to the position in January 2017⁵ and receives compensation from the State in excess of \$5000 per year. Mr. Scuse was a State employee during all relevant time periods at issue in this Complaint.

4. The Complaint sets forth violations of the State Code of Conduct, Title 29, Ch. 58.⁶ over which this Commission has exclusive jurisdiction.

PROCEDURAL HISTORY

5. The Commission met on July 24, 2023, to review this Complaint.

FACTS

6. In late May 2023, the PIC received an anonymous phone call during which the caller alleged that two employees of the DDA were receiving monies from their employing agency in the amounts of \$100,000 and \$30,000. The caller alleged that the disbursements were the result of an animal seizure and the attendant boarding fees for the animals.

⁴ 29 Del. C. 5804(12)(2).

⁵ <https://agriculture.delaware.gov/office-of-the-secretary/>.

⁶ 29 Del. C. § 5810(h).

7. On May 22, 2023, Commission Counsel emailed two DDA employees to warn them against engaging in such conduct and included relevant portions of the State Code of Conduct for their reference.⁷ The two employees responded later that afternoon with the following identical message: “I want to confirm that I received your email and have brought this to the attention of my supervisor and agency administration. You can expect a response soon.”⁸ The identical responses suggest collaboration.
8. On May 23, 2023, Commission Counsel contacted Jane Cole, Director of the Division of Accounting, within the Department of Finance. Commission Counsel requested copies of recent DDA purchase orders so it could be determined if DDA had paid one, or more, of their employees as a vendor/contractor, a violation of the State Code of Conduct.
9. The Division of Accounting provided the PIC with copies of Purchase Order (“PO”) # [REDACTED] and a Memorandum of Understanding (“MOU”)¹⁰ with the same reference number. The MOU was signed by [REDACTED], a DDA employee, on May [REDACTED] 2023, and by Michael Scuse, Secretary of DDA, on May [REDACTED] 2023.

⁷ Attachment A (Email to [REDACTED], 5/22/2023 10:10 a.m.).

⁸ Attachment B (email from [REDACTED], 5/22/2023 3:43 p.m.; email from [REDACTED], 5/22/2023, 2:39 p.m.).

⁹ Attachment C.

¹⁰ Attachment D.

10. The Division of Accounting provided the PIC with copies of Purchase Order (“PO”) # [REDACTED],¹¹ and a Memorandum of Understanding (“MOU”)¹² with the same reference number. The MOU was signed by [REDACTED], the spouse of [REDACTED], a DDA employee, on May [REDACTED], 2023, and by Michael Scuse, Secretary of DDA, on May [REDACTED], 2023.
11. On May 23, 2023, Commission Counsel was contacted via email by the agency’s legal representative, [REDACTED], Deputy Attorney General (“DAG”). DAG [REDACTED] was made aware of the issue because a DDA employee forwarded her a copy of Commission Counsel’s inquiry email sent the day prior.
12. On May 24, 2023, Commission Counsel spoke by phone with DAG [REDACTED]. Commission Counsel explained that the DDA’s attempts to enter into a vendor/contractor agreement with their own employees, or spouses of employees, was a violation of the State Code of Conduct and that proceeding with the purchase order and payment would result in an enforcement action. However, because the transaction was not completed at that time, Commission Counsel referred the matter to the Office of the Auditor of Accounts (“AOA”) for potential violations of the State’s accounting policies and procedures.

¹¹ Attachment E.

¹² Attachment F.

13. Commission Counsel contacted the AOA on May 24, 2023, to make them aware of the improper financial transactions.¹³ At this point, no payments had been made to [REDACTED] or [REDACTED] spouse). Commission Counsel incorrectly believed that once the issue of the payments had been raised with the DDA's DAG and employees, that the DDA would not proceed with the improper payments.
14. On June 20, 2023, after the referral to the AOA, Commission Counsel again received anonymous phone calls during which the callers stated that the DDA payments had been processed and disbursed.
15. Commission Counsel contacted the AOA and determined that they had not yet acted on the PIC's referral. After verifying with the Division of Accounting that payments had been issued to [REDACTED] and [REDACTED] [REDACTED] Commission Counsel sent an email¹⁴ to DDA Secretary Michael Scuse and the DDA employees who participated in the transaction(s), advising them that Commission Counsel would be initiating formal Complaint(s) for the Commission's review. Michael Scuse did not respond to the email.¹⁵

¹³ Attachment G (Copy of Letter to Lydia York, State Auditor, May 24, 2023).

¹⁴ Attachment H (Copy of email from Commission Counsel to employees of DDA and Secretary Scuse).

¹⁵ Attachment I (Commission Counsel spoke to Michael Scuse on June 26, 2023, via telephone. Commission Counsel invited Mr. Scuse to submit a letter explaining his decision-making process. The letter was received by PIC via email on June 30, 2023).

16. Pursuant to PO and MOU # [REDACTED], on June [REDACTED], 2023, the State of Delaware issued check # [REDACTED] to [REDACTED] in the amount of [REDACTED]. The check was drawn on the account of the Department of Agriculture, her employing agency.
17. Pursuant to PO and MOU # [REDACTED], on June [REDACTED], 2023, the State of Delaware issued check # [REDACTED] to [REDACTED] in the amount of [REDACTED]. The check was drawn on the account of the Department of Agriculture, her employing agency.
18. Pursuant to PO # [REDACTED] on June [REDACTED], 2023, the State of Delaware issued check # [REDACTED] to [REDACTED] in the amount of \$ [REDACTED]. The check was drawn on the account of the Department of Agriculture, [REDACTED] employing agency.
19. In reviewing this matter, Commission Counsel discovered that the DDA had previously contracted with another DDA employee, [REDACTED], in March 2023.
20. Commission Counsel contacted the Division of Accounting to obtain the supporting documentation for her payment. [REDACTED] submitted an invoice for payment titled "Invoice for Animal Care."¹⁹ The total of the

¹⁶ Attachment J (State Checkbook, [REDACTED]).

¹⁷ *Id.*

¹⁸ Attachment K (State checkbook [REDACTED]).

¹⁹ Attachment L.

invoice was \$[REDACTED]. The payment was made on March [REDACTED] 2023, via check number [REDACTED]²⁰ and pursuant to purchase order and MOU #

[REDACTED]¹ The MOU, dated February [REDACTED] 2023, was signed by [REDACTED]

[REDACTED] and [REDACTED]

[REDACTED] both DDA employees. The check was drawn on the account of the Department of Agriculture, [REDACTED] employing agency.

LAW

21. 29 *Del. C.* § 5804(1). “Close relative” means a person’s parents, spouse, children (natural or adopted) and siblings of the whole and half-blood.

22. 29 *Del. C.* § 5805(b)(1). No state employee, state officer or honorary state official may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the employee, officer or official is associated by employment or appointment.

23. 29 *Del. C.* § 5806(a). Each state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public

²⁰ Attachment M (State checkbook, [REDACTED]).

²¹ Attachment N.

trust and which will not reflect unfavorably upon the State and its government.

24. 29 *Del. C.* § 5806(e). No state employee, state officer or honorary state official shall use such public office to secure unwarranted privileges, private advancement or gain.

ALLEGATIONS

25. Michael Scuse was appointed the Secretary of DDA in January 2017. He is responsible for the operation of the entire agency.

26. Michael Scuse did violate 29 *Del. C.* § 5805(b)(1) by approving a contract (MOU # [REDACTED]) benefitting a private enterprise, [REDACTED], before the state agency, the DDA, by which Michael Scuse and [REDACTED] are both associated by employment or appointment, a violation of the State Code of Conduct.

27. Michael Scuse did violate 29 *Del. C.* § 5805(b)(1) by entering into a contract [REDACTED] benefitting a private enterprise, [REDACTED], the spouse of [REDACTED], before the state agency, the DDA, by which [REDACTED] and Michael Scuse are associated by employment or appointment, a violation of the State Code of Conduct.

28. Michael Scuse did violate 29 *Del. C.* § 5805(b)(1) by allowing his employees, [REDACTED] and [REDACTED], to enter into a contract

(MOU# [REDACTED]) benefitting a private enterprise, [REDACTED] before the state agency, the DDA, by which they are both associated by employment or appointment, a violation of the State Code of Conduct.

29. Michael Scuse did violate 29 *Del. C.* § 5805(c) by entering into a contract (MOU # [REDACTED]), in excess of \$2000, on behalf of the State without public notice and competitive bidding, a violation of the Code of Conduct.

30. Michael Scuse did violate 29 *Del. C.* § 5805(c) by entering into a contract (MOU # [REDACTED]), in excess of \$2000, on behalf of the State without public notice and competitive bidding, a violation of the Code of Conduct.

31. Michael Scuse did violate 29 *Del. C.* § 5805(c) by permitting [REDACTED] and [REDACTED] DDA employees, to engage in a contract (MOU # [REDACTED]), in excess of \$2000, on behalf of the State without public notice and competitive bidding, a violation of the State Code of Conduct.

32. Michael Scuse did violate 29 *Del. C.* § 5806(a) by engaging in conduct which was in violation of the public trust and which will reflect unfavorably upon the State and its government. Mr. Scuse authorized over \$100,000 contractual payments to DDA employees.

33. Michael Scuse did violate 29 *Del. C.* § 5806(e) by using his public office to

benefit select agency employees, a violation of the State Code of Conduct.

Attested To By:



Deborah J. Moreau, Esq.
Commission Counsel

DATE: July 24, 2023

ATTACHMENT A

Moreau, Deborah (DOS)

From: Moreau, Deborah (DOS)
Sent: Monday, May 22, 2023 10:10 AM
To: [REDACTED]
Public Inquiry

Categories: Egress Switch: Unprotected

Good afternoon,

Our agency is responsible for enforcing the State Code of Conduct (ethics laws). We have received several inquiries about a matter handled by your division. Please know that at this point, I have not yet verified the information shared by the callers and do not know if the information is correct.

It has been alleged that you (and a co-worker) have contracted with the State to provide housing for 475 chickens and/or various cows, sheep and horses that were seized by your division. (Under the law, it makes no difference if the contract is in the name of a spouse). The contracts are allegedly for \$39K and \$111K. There are various laws that prohibit contracting with your state agency.

§ 5805. Prohibitions relating to conflicts of interest.

(a) *Restrictions on exercise of official authority.* — (1) No state employee, state officer or honorary state official may participate on behalf of the State in the review or disposition of any matter pending before the State in which the state employee, state officer or honorary state official has a personal or private interest, provided, that upon request from any person with official responsibility with respect to the matter, any such person who has such a personal or private interest may nevertheless respond to questions concerning any such matter. A personal or private interest in a matter is an interest which tends to impair a person's independence of judgment in the performance of the person's duties with respect to that matter.

(c) *Restrictions on contracting with the State.* — No state employee...shall enter into any contract with the State (other than an employment contract) unless such contract was made or let after public notice and competitive bidding. Such notice and bidding requirements shall not apply to contracts not involving more than \$2,000 per year if the terms of such contract reflect arms' length negotiations.

I wanted to offer you an opportunity to correct any misinformation I received before I reach out to the Finance Dept. to see if there are purchase orders, etc. that would tend to prove or disprove the information. I want to reiterate that this is not an accusation. We have received information and are following up with you to ascertain the accuracy of that information. Thank you for your cooperation. Best,

Deborah J. Moreau, Esq.
Public Integrity Commission
Commission Counsel
410 Federal St., Suite 3 (Rm 213)
Dover, DE 19901
Office: 302-739-2399
Cell: 302-300-0108
depic.delaware.gov

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ATTACHMENT B

Moreau, Deborah (DOS)

From: Moreau, Deborah (DOS)
Sent: Monday, May 22, 2023 3:43 PM
To: [REDACTED]
[REDACTED] RE: Public inquiry

Categories: Egress Switch: Unprotected

Thank you

Deborah J. Moreau, Esq.
Public Integrity Commission
Commission Counsel
410 Federal St., Suite 3 (Rm 213)
Dover, DE 19901
Office: 302-739-2399
Cell: 302-300-0108
depic.delaware.gov

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[REDACTED]
Sent: Monday, May 22, 2023 2:54 PM
To: Moreau, Deborah (DOS) <Deborah.Moreau@delaware.gov>
[REDACTED]
Subject: Re: Public inquiry

Good afternoon,
I want to confirm that I received your email and have brought this to the attention of my supervisor and agency administration. You can expect a response soon.

[REDACTED]

[REDACTED]

Moreau, Deborah (DOS)

From: Moreau, Deborah (DOS)
Sent: Monday, May 22, 2023 2:54 PM
To: [REDACTED]
[REDACTED] RE: Public Inquiry

Categories: Egress Switch: Unprotected

Thank you.

Deborah J. Moreau, Esq.
Public Integrity Commission
Commission Counsel
410 Federal St., Suite 3 (Rm 213)
Dover, DE 19901
Office: 302-739-2399
Cell: 302-300-0108
depic.delaware.gov

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[REDACTED]
Sent: Monday, May 22, 2023 2:39 PM
To: Moreau, Deborah (DOS) <Deborah.Moreau@delaware.gov>
[REDACTED]
Subject: RE: Public Inquiry

Good Afternoon,

I want to confirm that I received your email and have brought this to the attention of my supervisor and agency administration. You can expect a response soon.

Thank you.

[REDACTED]

ATTACHMENT C

Purchase Order:

05/17/2023 PO Status: Pend Appr
05/18/2023 9:05:49AM Budget Status: Valid

Activity Summary Document Status

☐ Hold From Further Processing

Header

PO Date: 05/17/2023
Accounting Date: 05/17/2023
Supplier: [REDACTED] Advanced Supplier Search
Supplier ID: [REDACTED]
Supplier Location: ACH
Address: 1 [REDACTED]

Billing Location: AGR001 AGR Main Office
Buyer: [REDACTED]
PO Reference: [REDACTED]
Dispatch Method: Print [Dispatch](#)

Total Amount: 111,950.00 USD [Calculate](#)

Header Comments

Lines

Line	Item	Description(254)	PO Qty	UOM	Category	Price	Merchandise Amt
1		Boarding Fees for PAH seizure	1.0000	EA	70122000	111,950.00	111,950.00
	Physical Nature	Contract ID	Recv Req'd	Due Date	Ship To	Match Status	SpeedChart Key
	Goods		Optional	05/17/2023	AGR001	Unmatched	

Distributions

Dist	Status	Percent	Merchandise Amt	*Bud Ref	*Fund	*Dept	Oper Unit	*Approp	Account	Program	Sch Code
1	Open	100.0000	111,950.00	2022	100	650109		00607	55639		

Line Comments

[Add Comment](#)

[Flat View](#)

[Print](#)

Search By User

[Search](#)

[Clear](#)

[Reply](#)

DDA is encumbering funding to the impound fee and maximum 45 day boarding for the animals seized on May 11th, 2023. This PO is being established under the attached MOU. Additional funds maybe needed for vet services, but at this time the details on that care have not been provided.

ATTACHMENT D



Animal Boarding Facility Provider Agreement

E.I.N. (Number): _____

AGREEMENT

(Name of provider) agrees to provide veterinary care and animal boarding services for large animals received from the Delaware Department of Agriculture (hereafter called the Department). I understand that our organization will be receiving animals detained through the Department's enforcement activities.

2. My organization will be reimbursed for the medical procedure(s) and boarding services as outlined in the associated fee page. I understand my organization must submit invoices to the Department in order to receive reimbursement for services. The fee schedule will be in effect from the date of this Agreement unless 30 days written notice is provided to me by the Department prior to such change.
3. I understand that my organization must receive pre-approval from the Department before conducting any medical procedures not included in this agreement unless those procedures are necessary to stabilize an animal under immediate threat of death or irreversible harm. Upon stabilization of the animal, my organization will submit a recommended treatment plan to the Department for approval before further treatment will commence. The Department will reply within two hours of acknowledging receipt of the proposed treatment plan.
4. I understand that my organization must receive written approval prior to building any new infrastructure to board or house any animals received from the Department. I understand that if approval is not granted prior to the time of purchase my organization will be liable for entire cost.
5. I agree to allow members of the Department to access medical records of animals treated pursuant to this Agreement upon request. I agree to have the veterinarian who provided treatment to an animal pursuant to this Agreement document the medical procedures, including tests and test results on the appropriate medical records at the facility. I also agree to record nutritional and behavioral services provided to the animal during boarding. The Department shall also have the ability to audit all claims and relevant financial documentation submitted for payment pursuant to this Agreement, as well as access to the organization's premises and staff, including all medical and personnel files.
6. I recognize that the Department may seek to criminally prosecute individuals for animal cruelty on behalf of the animals treated at my organization. For that reason, when euthanasia is requested by the Department, my organization will make every attempt to preserve the animal's carcass (cool, not frozen) until a Department-employed inspector or investigator can retrieve the carcass in order to preserve possible evidence to the best of the organization's ability.
7. I agree to submit complete and correct invoices within 30 days following the end of the month in which the services were performed. I understand that my organization will forfeit reimbursement for any services that are not invoiced to the Department within 30 days following the end of the month the services were performed.
8. I understand that termination of my participation can occur at the request of either party and requires written notification within 10 days prior to the termination. Should the Department find any evidence of neglect, such as improper shelter, feeding or watering the animals can be removed from your organization immediately.
9. I agree to indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorney fees) directly arising from: a) The negligence or other wrongful conduct of the organization, its agents or employees, or b) Organization's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided that: organization shall have been notified promptly in writing by the Department of any notice of such claim; and shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

INSTRUCTIONS

- Complete three copies of this Agreement.
- Mail three copies, with proof of authorized signer (copy of Articles of Incorporation and/or Corporate By-Laws), to Delaware Department of Agriculture, 2320 S. DuPont Hwy, Dover, DE 19901.
- One signed copy will be returned as approval to participate as a provider.
- Complete the online *Delaware Substitute Form W-9* found under "Services" at www.accounting.delaware.gov.



10. I agree to comply with all State and Federal licensing standards and all other applicable standards as required to provide service(s) under this Contract, to assure the quality of services provided under this Agreement. I agree to immediately notify the Department in writing of any change in the status of any accreditations, licenses or certifications in any jurisdiction in which I provide service(s) or conduct business. If this change in status regards the fact that its accreditation, licensure, or certification is suspended, revoked, or otherwise impaired in any jurisdiction, I understand that such action may be grounds for termination of the Contract.

I certify that I have read, understand, and agree to all requirements stated above.

Name – Please print clearly

Signature

Date

Impound Fee: \$25.00 per animal

Veterinary-related and Boarding Reimbursement Fees (\$)						
Service	Horse	Cattle (adult)	Pig or calf <200 lb	Sheep/Goat	Camelid	Poultry
Boarding Per Day	15/d	15/d	10/d	10/d	10/d	5/d
Physical Examination	50	50	50	50	50	50

LIST THE NAME AND DELAWARE LICENSE NUMBER OF EACH PARTICIPATING VETERINARIAN EMPLOYED, CONTRACTED, OR ASSOCIATED WITH THIS ORGANIZATION IN THE NEXT SECTION BELOW. If additional space is required, continue on separate sheet.

Veterinarians employed, contracted, or associated with your organization:

Dr. Matthew Weaman

Name – Please print

DE veterinary License number

Middleton Vet Hospital (if weaman not available)

Name – Please print

DE veterinary License number

Name – Please print

DE veterinary License number

STATE USE ONLY

Karen M. Lopez

Signature of Karen Lopez, DVM, State Veterinarian

5/12/23

Date of Approval

Michael Scuse

Signature of Michael Scuse, Secretary of Agriculture

5/16/23

Date of Approval

ATTACHMENT E

Purchase Order: 0000642542

Entered By: [REDACTED] 05/17/2023 PO Status: Pend Appr
 Modified By: [REDACTED] 05/18/2023 9:09:34AM Budget Status: Valid
[Activity Summary](#) [Document Status](#) ☐ Hold From Further Processing

Header

PO Date: 05/17/2023
 Accounting Date: 05/17/2023
 Supplier: [REDACTED] Advanced Supplier Search
 Supplier ID: [REDACTED]
 Supplier Location: ACH [REDACTED]
 Address: 1 [REDACTED]
 Billing Location: AGR001 AGR Main Office
 Buyer: [REDACTED]
 PO Reference: [REDACTED]
 Dispatch Method: [REDACTED]

Total Amount: 39,100.00 USD [Calculate](#)

Header Comments

Lines [Find](#) | [View All](#) First 1 of 1 Last

Line	Item	Description(254)	PO Qty	UOM	Category	Price	Merchandise Amt
1		Boarding fees for PAH seizure ☒ Amount Only	1.0000	EA	70122000	39,100.00	39,100.00
Physical Nature		Contract ID	Recv Reqd	Due Date	Ship To	Match Status	SpeedChart Key
Goods			Optional	05/17/2023	AGR001	Unmatched	

Distributions [Personalize](#) | [Find](#) | [View All](#) | [Print](#) First 1 of 1 Last

Dist	Status	Percent	Merchandise Amt	*Bud Ref	*Fund	*Dept	Oper Unit	*Approp	Account	Program	Sch Code	P
1	Open	100.0000	39,100.00	2022	100	650109		00607	55639			

Line Comments

[Add Comment](#)

[Flat View](#)

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[Reply](#)

DDA is encumbering funding to the impound fee and maximum 45 day boarding for the animals seized on May 11th, 2023. This PO is being established under the attached MOU. Additional funds maybe needed for vet services, but at this time the details on that care have not been provided.

ATTACHMENT F



Animal Boarding Facility Provider Agreement

INSTRUCTIONS

- Complete three copies of this Agreement.
- Mail three copies, with proof of authorized signer (copy of Articles of Incorporation and/or Corporate By-Laws), to Delaware Department of Agriculture, 2320 S. DuPont Hwy, Dover, DE 19901.
- One signed copy will be returned as approval to participate as a provider.
- Complete the online *Delaware Substitute Form W-9* found under "Services" at www.accounting.delaware.gov.

AGREEMENT

(Name of provider) agrees to provide veterinary care and animal boarding services for large animals received from the Delaware Department of Agriculture (hereafter called the Department). I understand that our organization will be receiving animals detained through the Department's enforcement activities.

2. My organization will be reimbursed for the medical procedure(s) and boarding services as outlined in the associated fee page. I understand my organization must submit invoices to the Department in order to receive reimbursement for services. The fee schedule will be in effect from the date of this Agreement unless 30 days written notice is provided to me by the Department prior to such change.
3. I understand that my organization must receive pre-approval from the Department before conducting any medical procedures not included in this agreement unless those procedures are necessary to stabilize an animal under immediate threat of death or irreversible harm. Upon stabilization of the animal, my organization will submit a recommended treatment plan to the Department for approval before further treatment will commence. The Department will reply within two hours of acknowledging receipt of the proposed treatment plan.
4. I understand that my organization must receive written approval prior to building any new infrastructure to board or house any animals received from the Department. I understand that if approval is not granted prior to the time of purchase my organization will be liable for entire cost.
5. I agree to allow members of the Department to access medical records of animals treated pursuant to this Agreement upon request. I agree to have the veterinarian who provided treatment to an animal pursuant to this Agreement document the medical procedures, including tests and test results on the appropriate medical records at the facility. I also agree to record nutritional and behavioral services provided to the animal during boarding. The Department shall also have the ability to audit all claims and relevant financial documentation submitted for payment pursuant to this Agreement, as well as access to the organization's premises and staff, including all medical and personnel files.
6. I recognize that the Department may seek to criminally prosecute individuals for animal cruelty on behalf of the animals treated at my organization. For that reason, when euthanasia is requested by the Department, my organization will make every attempt to preserve the animal's carcass (cool, not frozen) until a Department-employed inspector or investigator can retrieve the carcass in order to preserve possible evidence to the best of the organization's ability.
7. I agree to submit complete and correct invoices within 30 days following the end of the month in which the services were performed. I understand that my organization will forfeit reimbursement for any services that are not invoiced to the Department within 30 days following the end of the month the services were performed.
8. I understand that termination of my participation can occur at the request of either party and requires written notification within 10 days prior to the termination. Should the Department find any evidence of neglect, such as improper shelter, feeding or watering the animals can be removed from your organization immediately.
9. I agree to indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorney fees) directly arising from: a) The negligence or other wrongful conduct of the organization, its agents or employees, or b) Organization's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided that: organization shall have been notified promptly in writing by the Department of any notice of such claim; and shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

10. I agree to comply with all State and Federal licensing standards and all other applicable standards as required to provide service(s) under this Contract, to assure the quality of services provided under this Agreement. I agree to immediately notify the Department in writing of any change in the status of any accreditations, licenses or certifications in any jurisdiction in which I provide service(s) or conduct business. If this change in status regards the fact that its accreditation, licensure, or certification is suspended, revoked, or otherwise impaired in any jurisdiction, I understand that such action may be grounds for termination of the Contract.

I certify that I have read, understand, and agree to all requirements stated above.

[Redacted Signature Area]

Impound Fee: \$25.00 per animal

Veterinary-related and Boarding Reimbursement Fees (\$)						
Service	Horse	Cattle (adult)	Pig or calf <200 lb	Sheep/Goat	Camelid	Poultry
Boarding Per Day	15/d	15/d	10/d	10/d	10/d	5/d
Physical Examination	50	50	50	50	50	50

LIST THE NAME AND DELAWARE LICENSE NUMBER OF EACH PARTICIPATING VETERINARIAN EMPLOYED, CONTRACTED, OR ASSOCIATED WITH THIS ORGANIZATION IN THE NEXT SECTION BELOW. If additional space is required, continue on separate sheet.

Veterinarians employed, contracted, or associated with your organization:

Dr. Tim Mears N1-0002220
 Name – Please print DE veterinary License number

 Name – Please print DE veterinary License number

 Name – Please print DE veterinary License number

STATE USE ONLY

Karen M. Lopez
 Signature of Karen Lopez, DVM, State Veterinarian

5/15/23
 Date of Approval

Michael Scuse
 Signature of Michael Scuse, Secretary of Agriculture

5/16/23
 Date of Approval

ATTACHMENT G



STATE OF DELAWARE

DELAWARE STATE PUBLIC INTEGRITY COMMISSION

MARGARET O'NEILL BUILDING
410 FEDERAL STREET, SUITE 3
DOVER, DELAWARE 19901

TELEPHONE: (302) 739-2399
FAX: (302) 739-2398

May 24, 2023

Lydia York
Office of the Auditor of Accounts
401 Federal Street, Suite 1
Dover, DE 19901

RE: Delaware Department of Agriculture

Dear Auditor York,

On May 22, 2023, an anonymous caller advised me that two employees of the Delaware Department of Agriculture ("DDA") had opened purchase orders with their agency to receive contractual fees in the amounts of \$39,000 and \$110,000. According to the caller, the purchase orders were approved (or in the process of approval) through the ordinary course of the agency's procedures.

By way of background, DDA had confiscated a large number of chickens and a few other farm animals from their owner, for animal cruelty.¹ I believe the agency is required to take care of the animals for 30 days to allow the owner time to negotiate a return of the animals. Unable to locate anyone willing to take the animals, the agency agreed to enter into contracts with two individuals. [REDACTED]

Their conduct, accepting State contracts for over \$2000 without notice and bidding is a violation of the State Code of Conduct.³ However, due to the dollar amounts of the purchase orders and the apparent failure of the agency's checks and balances to catch such a transaction, I believe the matter is more appropriately handled by your office. Although I am not aware of any other problematic transactions, only you and your staff have the required expertise to examine this transaction and evaluate the agency's accounting practices.

¹ Related to Commission Counsel by [REDACTED] Deputy Attorney General representing DDA.

² Attached please find copies of documents obtained from Jane Cole, Director, Division of Accounting.

³ 29 Del. C. § 5805(c).

Please contact me if you have any questions.

Sincerely,

/s/ Deborah J. Moreau, Esq.

Deborah J. Moreau, Esq.
Commission Counsel



ATTACHMENT H

Moreau, Deborah (DOS)

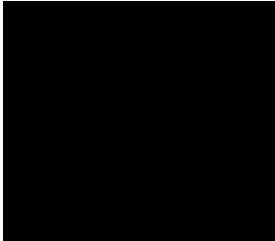
From: Moreau, Deborah (DOS)
Sent: Wednesday, June 21, 2023 2:26 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Code of Conduct Rules--CONFIDENTIAL

Importance: High

Categories: Egress Switch: Unprotected

Good afternoon,

After an initial review, the following employees have been determined to have had a role in the unlawful financial dealings at DDA (so far).



Everyone can expect to receive a copy of the Commission's Complaint in mid-July. The Complaint will set forth the particular allegations of which each is being accused (conflict of interest, using public office for personal gain are the 2 most serious). Along with a copy of the Complaint, you will all receive notice of a date and time for the hearings (we haven't decided whether to have one big hearing or several smaller hearings). For planning purposes, the first hearing(s) will likely take place in August. I will update you all as needed.

Have a pleasant day.

Deborah J. Moreau, Esq.
Public Integrity Commission
Commission Counsel
410 Federal St., Suite 3 (Rm 213)
Dover, DE 19901
Office: 302-739-2399
Cell: 302-300-0108
www.depik.delaware.gov



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message and any attachment(s) from your system. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited. Any unintended transmission shall not waive the attorney/client privilege or any other privilege.

ATTACHMENT I



STATE OF DELAWARE
DEPARTMENT OF AGRICULTURE
2320 SOUTH DUPONT HIGHWAY
DOVER, DELAWARE 19901
AGRICULTURE.DELAWARE.GOV

MICHAEL T. SCUSE
SECRETARY

TELEPHONE: (302) 698-4500
TOLL FREE: (800) 282-8685
FAX: (302) 697-6287

June 28, 2023

Delaware Public Integrity Commission
410 Federal Street, Suite 3
Dover, DE 19901

RE: Complaint Regarding Housing of Seized Animals

Dear Public Integrity Commission Members,

This letter intends to inform the Commission about an animal welfare seizure that occurred in May. This seizure resulted in the Department of Agriculture (DDA) contracting with two of our employees to provide boarding and care for the seized animals.

Delaware's animal welfare laws are enforced by the Department of Health and Social Services, Office of Animal Welfare with joint authority from the Department of Agriculture, Poultry and Animal Health Section for cases involving livestock. DDA's responsibilities during an investigation and seizure include assessing the conditions and care provided, compared to typical livestock husbandry. Enforcement actions are made jointly by DDA and the Office of Animal Welfare (OAW) and if needed, OAW obtains search warrants to seize livestock. For seizures, DDA must arrange for boarding while the criminal case against the defendant is processed. After 30 days, if the defendant does not reimburse DDA for boarding costs then the livestock become the property of the State.

Regarding this case, DDA received a constituent complaint on May 1, 2023. DDA's animal welfare officer position was vacant, so an OAW officer visited the respective farm. OAW provided evidence to DDA on May 3, 2023. Given the evidence, it was decided that OAW would obtain a search warrant. Since these defendants had prior animal welfare violations, DDA and OAW wanted to move quickly, so the owners did not remove animals from the premises. The seizure would occur on May 11, 2023. Once a search warrant is issued, DDA/OAW have 24 hours to move all animals off the property. When DDA arrived on site with OAW to conduct the seizure, DDA staff realized that OAW had greatly underestimated the number of animals on the property. By the end of the day, animals seized included 475 birds (chickens, ducks, and geese) and 84 sheep, and a smaller number of goats, various equine species, and cattle.

Since this seizure involved livestock, DDA had five business days (May 3 – May 11) to secure adequate boarding facilities. Finding facilities to board seized livestock, poultry, and horses has been extremely difficult in the past, but the size of this seizure was unprecedented. The short timeframe made searching for new vendors very difficult and prevented any opportunity for a bidding process.

Dr. Lopez, the State Veterinarian, reached out to regional organizations, in- and out-of-state, to try and secure boarding facilities, including First State Animal Center & SPCA, PA SPCA, Days End Horse Rescue, Maryland Department of Agriculture, the Humane Society of the U.S., ASPCA, and previous vendors DDA has used in the past. Most organizations could not assist DDA because they are focused on rescuing pets and are not versed in livestock care standards. Some shared that they could take a small number of animals, and many could not be ready by May 11. The most significant

need was for organizations that could house the sheep and poultry that would be seized, but unfortunately, no one could accommodate these species.

When animals are seized and live in the conditions found at this property, they are very sick, with unknown diseases and pests, malnutrition, and dehydration. Following biosecurity protocols, these animals must be isolated from other animals at a facility so as not to infect others. DDA tested the poultry through the University of Delaware's National Animal Health Lab to determine the diseases present, and the samples were positive for every poultry respiratory disease they test for at the lab. The sheep were also sick with multiple diseases. For these reasons, it was necessary to find facilities that could quarantine these sick animals and people who had the knowledge to care for many animals without having any animals themselves. The horses, goats, and cattle had minor health issues and, being fewer in number, were accepted by facilities DDA worked with in the past.

The health issues are an extremely important consideration in finding boarding facilities. Though Delaware has many farms with poultry and livestock, a suitable facility must be able to quarantine the animals and implement proper biosecurity measures to care for these animals without spreading disease that could damage Delaware's agriculture industry.

The last option for housing and caring for the poultry and sheep from this seizure was to enter into Memorandum of Agreements (MOA) with two employees. These employees/contractors received the same MOA terms/payment schedule as all previous vendors who boarded animals from seizure operations with DDA. These employees were not involved in deciding where animals would be sent. Our goal was to ensure that these animals received the care they needed to help them regain their health and ultimately enter back into production. DDA's MOA reimburses facilities at flat per-animal rates, covering costs including physical space and equipment to care for the animals, food, medications and treatments administered by the facility, biosecurity requirements, and time to provide care.

On May 22, 2023, DDA was notified by the Commission Counsel that public inquiries had been received regarding these contracts and subsequently that the matter was being referred to the State Auditor. At that point, our situation had not changed. DDA was required to provide boarding, proper nutrition, and veterinary care for hundreds of seized animals. Those animals were legally the defendants' property and also evidence in the criminal animal cruelty case against them. Many were also very sick and required frequent health checks and treatments. This care could not be paused or postponed, and DDA still had no alternate facilities. Therefore, I felt it necessary to continue providing and paying for care under the existing MOAs.

Once the State legally owned the animals, 30 days after the seizure under state law, DDA moved as quickly as possible to rehome the animals and minimize further boarding costs.

Over the past three years, animal welfare cases involving horses, poultry, and livestock have increased. Unfortunately, much of this is due to the increasing costs of feed and veterinary care, which is also why we are seeing a decrease in the number of rescues in the tri-state area that can assist DDA with these seizures. I have tasked our staff to work through all scenarios and find farms that meet the criteria required to assist us with future animal welfare cases so that we do not have to depend on our agency's employees to fill that void.

Sincerely,



Michael T. Scuse
Secretary of Agriculture

ATTACHMENT J

	A	B	C	D	E	F	G	H	I	J
1	FISCAL YR	FISCAL PD	Department	Division	Vendor	Expense Category	Fund Type	CHECK #	Date	Amount
2										
3										
4										
5										

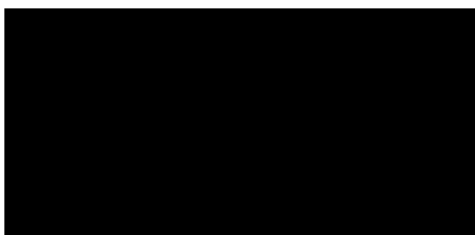
ATTACHMENT K

1										

ATTACHMENT L

3/15/2023

INVOICE FOR ANIMAL CARE



Impound Fee:	48 Swine @ \$25.00	\$ 1,200.00
February 16, 2023	1 Ram @ \$25.00	<u>\$ 25.00</u>
		\$ 1,225.00
Feeding, Housing and Care Fee: 19 days @ \$490.00		\$ 9,310.00
(\$10.00 per head per day)		
February 16 – March 6, 2023		
Total Charge:		\$10,535.00

ok to pay
GF 65025
PO 0000 
(Kmg)
3/14/23

ATTACHMENT M

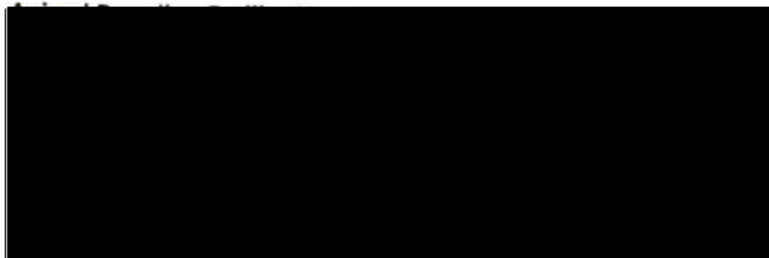
[illegible]

ATTACHMENT N



Poultry and Animal Health
2320 S. DuPont Highway
Dover, DE 19901
(302) 698-4500

Animal Boarding Facility Provider Agreement



E.I.N. (Number): _____

Instructions for boarding facility:

- Prepare three (3) signed copies of this Agreement.
- Mail three (3) copies, with proof of authorized signer (copy of Articles of Incorporation and/or Corporate By-Laws of your organization), to: Delaware Department of Agriculture, Attn: Dr. Lopez, 2320 S. DuPont Hwy, Dover, DE 19901.
- One signed copy will be returned to you as approval to participate as a provider.
- Complete the online Delaware Substitute Form W-9 – link can be located under the "SERVICES & INFORMATION" section at

AGREEMENT

1. [Redacted] (name of provider) agrees to provide veterinary care and animal boarding services for large animals received from the Delaware Department of Agriculture (hereafter called the Department). I understand that our organization will be receiving animals detained through the Department's enforcement activities.
2. My organization will be reimbursed for the medical procedure(s) and boarding services as outlined in the associated fee page. I understand my organization must submit invoices to the Department in order to receive reimbursement for services. The fee schedule will be in effect from the date of this Agreement unless 30 days written notice is provided to me by the Department prior to such change.
3. I understand that my organization must receive pre-approval from the Department before conducting any medical procedures not included in this agreement unless those procedures are necessary to stabilize an animal under immediate threat of death or irreversible harm. Upon stabilization of the animal, my organization will submit a recommended treatment plan to the Department for approval before further treatment will commence. The Department will reply within two hours of acknowledging receipt of the proposed treatment plan.
4. I agree to allow members of the Department to access medical records of animals treated pursuant to this Agreement upon request. I agree to have the veterinarian who provided treatment to an animal pursuant to this Agreement document the medical procedures, including tests and test results on the appropriate medical records at the facility. I also agree to record nutritional and behavioral services provided to the animal during boarding. The Department shall also have the ability to audit all claims and relevant financial documentation submitted for payment pursuant to this Agreement, as well as access to the organization's premises and staff, including all medical and personnel files.
5. I recognize that the Department may seek to criminally prosecute individuals for animal cruelty on behalf of the animals treated at my organization. For that reason, when euthanasia is requested by the Department, my organization will make every attempt to preserve the animal's carcass (cool, not frozen) until a Department-employed inspector or investigator can retrieve the carcass in order to preserve possible evidence to the best of the organization's ability.
6. I agree to submit complete and correct invoices within 30 days following the end of the month in which the services were performed. I understand that my organization will forfeit reimbursement for any services that are not invoiced to the Department within 30 days following the end of the month the services were performed.
7. I understand that termination of my participation can occur at the request of either party and requires written notification within 10 days prior to the termination.
8. I agree to indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorney fees) directly arising from: a) The negligence or other wrongful conduct of the organization, its agents or employees, or b) Organization's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided that: organization shall have been notified promptly in writing by the Department of any notice of such claim; and shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.



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9. I agree to comply with all State and Federal licensing standards and all other applicable standards as required to provide service(s) under this Contract, to assure the quality of services provided under this Agreement. I agree to immediately notify the Department in writing of any change in the status of any accreditations, licenses or certifications in any jurisdiction in which I provide service(s) or conduct business. If this change in status regards the fact that its accreditation, licensure, or certification is suspended, revoked, or otherwise impaired in any jurisdiction, I understand that such action may be grounds for termination of the Contract.

I certify that I have read, understand, and agree to all requirements stated above.

Impound Fee: \$25.00 per animal

Boarding Reimbursement & Physical Examination Fees (\$)						
Service	Horse	Cattle (adult)	Pig or calf <200 lb	Sheep/Goat	Camelid	Poultry ?
Boarding Per Day	15/d	15/d	10/d	10/d	10/d	5/d
Physical Examination	50	50	50	50	50	25/cost covers up to 5 birds

LIST THE NAME AND DELAWARE VETERINARY LICENSE NUMBER OF EACH PARTICIPATING VETERINARIAN EMPLOYED, CONTRACTED, OR ASSOCIATED WITH THIS ORGANIZATION IN THE NEXT SECTION BELOW. If additional space is required, continue on separate sheet.

Veterinarians employed, contracted, or associated with your organization:

Timothy Mears

Name - Please print

DE veterinary license number

Name - Please print

DE veterinary license number

Name - Please print

DE veterinary license number

STATE USE ONLY

Karen M. Lopez

Signature of Karen M. Lopez, DVM, MPH, Dipl. ACVPM, State Veterinarian

Signature of Jimmy Kroon, Administrator for Department Management

2/13/23

Date of Approval

2/13/23

Date of Approval

APPENDIX B

**BEFORE THE STATE PUBLIC INTEGRITY COMMISSION
IN AND FOR THE STATE OF DELAWARE**

In Re: MICHAEL SCUSE

Respondent

COMPLAINT 23-28

**PRELIMINARY HEARING ON EVIDENCE BEFORE THE
COMMISSION**

Hearing and Decision By: *Hon. Rourke Moore (Acting Chair); Ron Chaney (Vice-Chair). Commissioners: Andrew T. Manus, Hon. Alex Smalls. Hon. F. Gary Simpson (Chair) (recusing)*

I. PROCEDURAL POSTURE

Commission Counsel has the statutory authority to review and investigate potential violations of the Code of Conduct.¹ After review and investigation of this matter, Commission Counsel, Deborah J. Moreau, Esq., drafted a Complaint for the Commission's review.² All attachments to the original Complaint are hereby incorporated by reference.

¹ 29 Del. C. § 5808A(2) & (3).

² See Complaint 23-28 (*enclosed*).

On July 24, 2023, a quorum of the Commissioners met to review the Complaint against Michael Scuse, Secretary of the Delaware Department of Agriculture (“DDA”) and a State employee.

II. JURISDICTION

The Commission’s jurisdiction is limited to interpreting Title 29, Del. C., Ch. 58.³ It may only act if it has jurisdiction over the party charged and jurisdiction over the Complaint’s substance.

A. Personal Jurisdiction

Michael Scuse receives compensation as an appointee and employee of the DDA. A ‘State employee’ is any person who receives compensation as an employee of a state agency.⁴ Michael Scuse was a State employee during all relevant time periods at issue in the Complaint.

B. Subject Matter Jurisdiction

The Commission can only address alleged violations of “this chapter”- Title 29, Ch. 58.⁵ The Complaint alleged that Michael Scuse violated: 29 *Del. C.* § 5805(b)(1); 29 *Del. C.* § 5805(c); 29 *Del. C.* §§ 5806(a) and (e). The alleged conduct fell within the Commission’s statutory jurisdiction.

³ See, e.g., 29 *Del. C.* § 5808(a) and § 5809(3).

⁴ 29 *Del. C.* § 5804(12).

⁵ 29 *Del. C.* § 5810(h).

III. FACTS SPECIFIC TO THE VIOLATIONS

The Commission first examined the Complaint to determine if the allegations were frivolous or failed to state a violation.⁶ At this stage of the proceedings all facts are assumed to be true.⁷ Allegations that are deemed to be frivolous or that fail to state a claim should be dismissed.⁸ The remaining allegations are then examined to determine if a majority of the Commission has reasonable grounds to believe a violation may have occurred.⁹ "Reasonable grounds to believe" is essentially whether there is any reasonably conceivable set of circumstances susceptible of proof of the allegation.¹⁰

Generally, the Complaint alleged that Michael Scuse violated multiple provisions of the State Code of Conduct and permitted his employees to engage in similar unethical conduct. Specifically, the Complaint alleged that on May 16, 2023, pursuant to a Memorandum of Understanding ("MOU") # [REDACTED] and a Purchase Order ("PO") with the same reference number, Michael Scuse did enter into a contract with [REDACTED], a DDA employee, to pay her over \$90,000 in State monies. The checks were drawn on the account of the Department of

⁶ 29 Del. C. § 5809(3); *Commission Rules*, p.3, III(A).

⁷ 29 Del. C. § 5808(A)(a)(4).

⁸ 29 Del. C. § 5809(3).

⁹ "Reason to believe" means "probable cause." *Coleman v. State*, 562 A.2d 1171, 1177 (Del., 1989). "Probable cause" means facts and circumstances are enough to warrant a person of reasonable caution to believe an offense occurred. *State v. Cochran*, 372 A.2d 193, 195 (Del., 1977).

¹⁰ Superior Court Rules are used because if a violation is found, the individual may appeal to that Court. 29 Del. C. § 5810(h)(2). *Spence v. Funk*, 396 A.2d 967 (Del. Super., 1978) (interpreting motion to dismiss under Super. Ct. Civ. Rule of Procedure 12(b))

Agriculture, [REDACTED] employing agency. A request for bids regarding the contracted services was not issued, despite the fact that the contract (MOU) exceeded the \$2000 bidding threshold imposed when a contract is awarded to a State employee.

Also on May 16, 2023, pursuant to a Memorandum of Understanding (“MOU”) [REDACTED] and a Purchase Order (“PO”) with the same reference number, Michael Scuse did enter into a contract with [REDACTED], the spouse of DDA employee [REDACTED] to pay him over \$30,000 in State monies. The check was drawn on the account of the Department of Agriculture, [REDACTED] [REDACTED] employing agency. A request for bids regarding the contracted services was not issued, despite the fact that the contract (MOU) exceeded the \$2000 bidding threshold imposed when a contract is awarded to a State employee.

In the course of investigating the two MOUs, Commission Counsel discovered another payment to a DDA employee, [REDACTED]. On February 13, 2023, [REDACTED] and [REDACTED], both employees of the DDA, entered into an MOU [REDACTED] to pay [REDACTED] over \$10,000 in State monies. The check was drawn on the account of the Department of Agriculture. Michael Scuse did nothing to remedy the conflict of interest inherent in such a transaction. A request for bids regarding the contracted

services was not issued, despite the fact that the contract (MOU) exceeded the \$2000 bidding threshold imposed when a contract is awarded to a State employee.

IV. APPLICABLE LAW

A. Standard of Review

As noted, at this stage all of the proceedings are assumed to be true.¹¹ For the matter to move forward to a disciplinary hearing, a majority of the Commission must find reasonable grounds to believe a violation may have occurred.¹² "Reasonable grounds to believe" is essentially whether there is any reasonably conceivable set of circumstances susceptible of proof of the allegation.¹³

29 Del. C. § 5805(b)(1): No state employee, state officer or honorary state official may represent or otherwise assist any private enterprise with respect to any matter before the state agency with which the employee, officer or official is associated by employment or appointment.

On May 16, 2023, Michael Scuse, a State employee, did violate 29 *Del. C.* § 5805(b)(1) by assisting a private enterprise [REDACTED], an Animal Boarding Facility Provider, as set forth in MOU # [REDACTED]) before the DDA, a state

¹¹ 29 *Del. C.* § 5808A(a)(4).

¹² "Reason to believe" means "probable cause." *Coleman v. State*, 562 A.2d 1171, 1177 (Del., 1989). "Probable cause" means facts and circumstances are enough to warrant a person of reasonable caution to believe an offense occurred. *State v. Cochran*, 372 A.2d 193, 195 (Del., 1977).

¹³ *Spence v. Funk*, 396 A.2d 967 (Del. Super., 1978) (interpreting motion to dismiss under Super. Ct. Civ. Rule of Procedure 12(b)). Superior Court Rules are used because if a violation is found, the individual may appeal to that Court. 29 *Del. C.* § 5810(h)(2).

agency by which she is associated by employment or appointment, a violation of the State Code of Conduct.

On May 16, 2023, Michael Scuse, a State employee, did violate 29 *Del. C.* § 5805(b)(1) by assisting a private enterprise [REDACTED], an Animal Boarding Facility Provider, as set forth in MOU # [REDACTED] before the DDA, a state agency by which his spouse, [REDACTED], is associated by employment or appointment, a violation of the State Code of Conduct.

On February 13, 2023, Michael Scuse, a State employee, did violate 29 *Del. C.* 5805(b)(1) by assisting a private enterprise ([REDACTED], an Animal Boarding Facility Provider, as set forth in MOU # [REDACTED]) before the DDA, by allowing [REDACTED] to enter into a contract to pay her over \$10,000 in State monies. Both [REDACTED] and [REDACTED] are associated with the DDA through their employment, a violation of the State Code of Conduct.

The Commission determined these three counts were substantiated by signed copies of the MOUs between the employees and the DDA.

C. 29 *Del. C.* § 5805(c). No state employee... shall enter into any contract with the State (other than an employment contract) unless such contract was made or let after public notice and competitive bidding. Such notice and bidding requirements shall not apply to contracts not involving more than \$2,000 per year if the terms of such contract reflect arms' length negotiations.

On May 16, 2023, Michael Scuse did violate 29 *Del. C.* 5805(c) by entering into a contract (MOU # [REDACTED]) with [REDACTED] for more than \$2000 without public notice and competitive bidding; a violation of the Code of Conduct. By his own admission, in a letter dated June 28, 2023,¹⁴ Michael Scuse acknowledged that the MOU was not publicly noticed and bid. Consequently, this allegation was substantiated.

On May 16, 2023, Michael Scuse did violate 29 *Del. C.* 5805(c) by entering into a contract (MOU # [REDACTED]) with [REDACTED] for more than \$2000 without public notice and competitive bidding; a violation of the Code of Conduct. By his own admission, in a letter dated June 28, 2023,¹⁵ Michael Scuse acknowledged that the MOU was not publicly noticed and bid. As a result, this allegation was substantiated.

On February 13, 2023, Michael Scuse did violate 29 *Del. C.* 5805(c) by allowing [REDACTED] to enter into a contract (MOU # [REDACTED]) with [REDACTED] for more than \$2000 without public notice and competitive bidding; a violation of the Code of Conduct. Michael Scuse, [REDACTED] and [REDACTED] the contract had not been publicly noticed and bid through their work at the DDA. As a result, this allegation was substantiated.

¹⁴ Attachment B (Letter from Michael Scuse, Secretary, Department of Agriculture, June 28, 2023, p. 1.)

¹⁵ *Id.*

D. 29 Del. C. § 5806(a). Each state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government.

This is basically an appearance of impropriety test.¹⁶ The test is whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the official's duties could not be performed with honesty, integrity and impartiality.¹⁷ In deciding appearance of impropriety issues, the Commission looks at the totality of the circumstances.¹⁸ Those circumstances should be examined within the framework of the Code's purpose which is to achieve a balance between a "justifiable impression" that the Code is being violated by an official, while not "unduly circumscribing" their conduct so that citizens are encouraged to assume public office and employment.¹⁹

Michael Scuse's conduct raised suspicion among at least two members of the public as evidenced by the anonymous phone calls received by Commission Counsel. Consequently, the Commission substantiated this allegation.

E. 29 Del. C. § 5806(e). No state employee, state officer or honorary state official shall use such public office to secure unwarranted privileges, private advancement or gain.

¹⁶ *Commission Op. No. 92-11.*

¹⁷ *In re Williams*, 701 A.2d 825 (Del. 1997).

¹⁸ *See, e.g., Commission Op. No. 97-23 and 97-42.*

¹⁹ 29 Del. C. §§ 5802(1) and 5802(3).

Michael Scuse used his position as Secretary of Agriculture to pay [REDACTED], a DDA employee, over \$90,000 in State funds unrelated to her compensation as a State employee. State records confirm that two checks were issued to [REDACTED] in [REDACTED] 2023; one for \$[REDACTED] and another for \$[REDACTED], which totaled over \$90,000. As a result, this allegation was substantiated.

Michael Scuse used his position as Secretary of Agriculture to pay the spouse of [REDACTED], [REDACTED], over \$30,000 in State funds unrelated to [REDACTED] compensation as a State employee. State records confirm that check # [REDACTED] in the amount of \$[REDACTED] was issued to [REDACTED]. As a result, this allegation was substantiated.

Michael Scuse used his position as Secretary of Agriculture to allow the payment of over \$10,000 in State funds to [REDACTED], unrelated to her compensation as a State employee. State records confirm that check # [REDACTED] in the amount of [REDACTED] 0 was issued to [REDACTED]. As a result, this allegation was substantiated.

V. CONCLUSION

Based on the above facts and law, a majority of the Commission found that there was reason to believe that violations of 29 *Del. C.* §§ 5805(b)(1); 29 *Del. C.* §5805(c); and 29 *Del. C.* §§ 5806(a) and (e) may have occurred. A notice of a

formal hearing date will be sent to you (or your attorney) under separate cover.

It is so ordered, this 24th day of July 2023.

FOR THE PUBLIC INTEGRITY COMMISSION

/s/ *Rourke Moore*

Hon. Rourke Moore
Vice-Chair (Acting Chair)

APPENDIX C

Nicholas H. Rodriguez
Douglas B. Catts
William D. Fletcher, Jr.
Craig T. Eliassen
Crystal L. Carey*
Scott E. Chambers**
Walt F. Schmittinger
B. Brian Brittingham***
Gary E. Junge****
Dianna E. Stuart
Candace E. Holmes

*Also admitted in Maryland
**Also admitted in Maryland, D.C., and North Dakota
***Also admitted in New York and Connecticut
**** Also admitted in Pennsylvania

Law Offices
Schmittinger and Rodriguez, P.A.

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Harold Schmittinger
(1928 – 2008)
John J. Schmittinger
(1941 – 2011)

Rehoboth Beach Office
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Middletown, DE 19709
Telephone (302) 378-1697
Fax (302) 378-1659

September 21, 2023

The Honorable Rourke Moore
Public Integrity Commission
410 Federal Street
Suite 3 (Room 213)
Dover, DE 19901

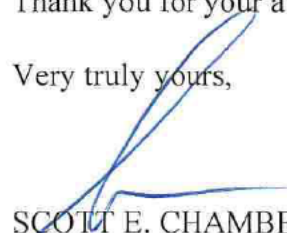
RE: Michael Scuse (Complaint No. 23-28)

Hon. Mr. Moore,

Enclosed please find Respondent Michael Scuse's Response to the Preliminary Hearing Decision. Copies have been sent to Deborah Moreau, Esquire and Joseph D. Stanley, Esquire via U.S. Mail.

Thank you for your attention to this matter.

Very truly yours,


SCOTT E. CHAMBERS



SEC/Ing

**BEFORE THE STATE PUBLIC INTEGRITY COMMISSION
IN AND FOR THE STATE OF DELAWARE**

In Re: MICHAEL SCUSE

Respondent

COMPLAINT 23-38

**RESPONDENT MICHAEL SCUSE'S RESPONSE TO PRELIMINARY
HEARING DECISION**

NOW COMES Respondent Secretary of Agriculture Michael Scuse ("Secretary Scuse"), by and through undersigned counsel, Schmittinger and Rodriguez, P.A., and responds in opposition to the Public Integrity Commission's ("PIC") Preliminary Hearing decision as follows:

29 Del C. § 5806(a). Each state employee, state officer and honorary state official shall endeavor to pursue a course of conduct which will not raise suspicion among the public that such state employee, state officer or honorary state official is engaging in acts which are in violation of the public trust and which will not reflect unfavorably upon the State and its government.¹

This is basically an appearance of impropriety test.² The test is whether a reasonable person, knowledgeable of all the relevant facts, would still believe that the official's duties could not be preformed with honesty, integrity and impartiality.³ In deciding appearance of impropriety issues, the Commission looks at the totality of the circumstances.⁴

¹ Preliminary Hearing decision at 8.

² Id.

³ Id. (Citing to In re Williams, 701 A.2d 825 (Del. 1997)).

⁴ Id.

In the instant case, the alleged violations arise from two separate incidents. The first incident took place in February of 2023. The Office of Animal Welfare (“OAW”), acting on a constituent complaint, and with a valid search warrant, seized swine and a ram off a farm in Delaware. When DDA conducts a seizure of livestock, the Department of Agriculture (“DDA”) is statutorily obligated to arrange for boarding of the livestock while the criminal case against the owner is processed.⁵ Based on an estimate provided by OAW, DDA made contractual arrangements for the care of 20 swine with [REDACTED], an independent contractor. Upon arrival, DDA employees quickly realized that the estimates provided were inaccurate and they were faced with finding accommodations for 48 swine and one ram. This was the first time that DDA has ever had such an underestimation in the number of livestock. After contacting [REDACTED], DDA was informed [REDACTED] could not accommodate or care for this number of animals. Hence, DDA had an emergency situation.

When animals are seized and live in conditions like those found at the property where the swine were seized, they are usually sick and may have unknown diseases. Following biosecurity protocols and the direction of Dr. Karen Lopez (“Dr. Lopez”), State Veterinarian, the seized animals needed to be quarantined so as to not infect other livestock. Based on this protocol, the lack of any viable alternatives and because of the extremely cold conditions existing at the time of the seizure, Secretary Scuse exercised his emergency powers to make a quick decision regarding accommodations for the animals.

Under 29 Del. C. §6907(a): An agency head may waive any or all provisions of this chapter to meet the critical needs of the agency as required by emergencies or other conditions where it is determined to be in the best interest of the agency. The agency head may determine an emergency condition exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against. An emergency condition creates an immediate and serious need for materiel and/or nonprofessional services that cannot be met through normal procurement methods for the protection of public health, safety or property... In addition to the waiver provisions provided for in

⁵ 16 Del. C. § 3031F

subsection (a) of this section, an agency head may waive any or all provisions of subchapter VI of this chapter to meet a critical need of the agency as required by an emergency or other condition where it is determined to be in the best interest of the agency. The agency head may determine a critical need exists by reason of conditions or contingencies that could not reasonably be foreseen and guarded against. A critical need creates a need for professional services that cannot be met through normal procurement methods.

Acting under the lawful powers granted to him by the Delaware General Assembly, Secretary Scuse determined that the situation was emergent which required suspension of the formal requirements under Title 29 of the Delaware Code. [REDACTED], a DDA employee agreed to house these animals since there were no other options available.

Thereafter, an Animal Boarding Facility Provider Agreement ("MOU")⁶ was executed between [REDACTED] and the DDA. [REDACTED] took possession of the 48 Swine and the goat. The MOU reimbursed [REDACTED] at a flat per-animal rate, covering costs including physical space and equipment to care for the animals, food, medications and treatments administered by the caretaker, biosecurity requirements and time to provide care. The per-animal rates of pay were standardized amounts, having been previously established for the care of similar animals by other facilities.

It should be noted that prior to issuing payment to [REDACTED], Scuse contacted the Delaware Department of Justice regarding the emergency and requested guidance as the DDA had never experienced an emergency like this before. [REDACTED] was already housing and rehabilitating the animals. The Department of Justice declined to provide guidance on the matter.

The second incident occurred on May 11, 2023. OAW, acting on another constituent complaint, and with a valid search warrant, seized various animals off a farm. Again, upon arrival at the farm, DDA quickly realized OAW severely underestimated the number of animals on the property. Prior to the arrival of DDA employees, OAW advised that there were roughly 250 poultry and smaller various numbers of sheep, goats, equine species, and cattle. In fact, there were 475 poultry, 80 sheep, 15 cattle, 17 equine, and 13 goats.

⁶ Department of Agriculture's form MOU was previously reviewed and approved by the Delaware Department of Justice.

Again, DDA was overwhelmed by the seizure and unable to find accommodations for such a large quantity of livestock. By law, DDA had five (5) days to find boarding facilities for the animals. As a result, there was no time to implement a bidding process for the boarding of these animals. Further, the short time frame made it very difficult to find adequate facilities for the animals. Dr. Lopez contacted numerous organizations, both in-state and out-of-state to try and secure boarding facilities. Some of the organizations indicated that they could accommodate a small number of animals, but they would likely not be ready to take delivery within the five (5) days. There were no organizations who indicated they could take all of the sheep or poultry seized.

The animals seized on May 11, including the almost 500 poultry, were very sick and suffered from unknown diseases, pests, malnutrition and dehydration. Again, following biosecurity protocols, and the direction of Dr. Lopez, it was necessary to quarantine the animals to prevent the spread of disease and to limit exposure to Delaware's agriculture industry. The horses, goats and cattle had minor health issues and because of their fewer numbers, they were able to go to facilities that DDA has worked with in the past.

As required under Delaware law,⁷ the DDA was required to provide boarding, proper nutrition and veterinary care for the hundreds of animals. The animals were still the property of the owner who allegedly committed abuse and/or neglect and were evidence in the criminal proceeding. After 30 days of seizure, the animals become property of the State, and then the State is then able to sell and rehome the animals to minimize boarding costs.

After exhausting all other options, and being completely unable to find any facilities that could accommodate the remaining livestock, Secretary Scuse, relying on his emergency powers determined there was an emergency situation, and in accordance with 29 Del. C. §6907(a), he suspended the requirements of Title 29, and made emergency accommodations for the remaining animals. MOUs and Purchase Orders were drafted and executed between the DDA and DDA employees, [REDACTED] and [REDACTED] respectively, for the boarding and care of the animals. The MOUs reimbursed [REDACTED] at a flat per-animal rate, covering costs including physical space and equipment to care for the animals, food,

⁷ See 16 Del. C. § 3031F

medications and treatments administered by the caretaker, biosecurity requirements and time to provide care. The per-animal rates of pay were standardized amounts, having been previously established for the care of similar animals by other facilities.

In summary, the Public Integrity Commission is responsible for the oversight and administration of Delaware employees, officers, and honorary officials. The purpose of the Commission to evaluate claims of wrongdoing and misconduct and to make a determination as to whether misconduct occurred. In making their determination, the Commission must look at the totality of the circumstances, and decide, whether a reasonable person, knowledgeable of all the relevant facts would still believe misconduct occurred.

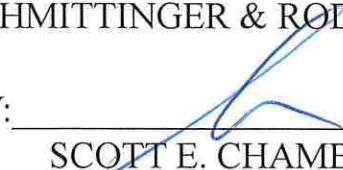
As the facts demonstrate, there was absolutely no misconduct by Secretary Scuse or any DDA employee. The decision made by Secretary Scuse was clearly in the best interest of his Department and was necessitated as the direct result of emergency circumstances the DDA faced when performing their statutory duties.

Unfortunately, the DDA had no choice but to seize the animals. DDA was overwhelmed by the volume of the animals seized. After making numerous attempts to find suitable boarding for the seized animals, and at the direction of the State Veterinarian, Dr. Lopez, Secretary Scuse, acting within the bounds of 29 Del C. §6907, determined an emergency situation existed and he suspended the requirements under Title 29.

If a reasonable person had knowledge of all the aforementioned facts, particularly the sheer volume and need for specialized care for the hundreds of animals seized, coupled with the complete inability to find anyone take the sick and neglected livestock (except for the DDA employees), Secretary Scuse made the only decision he could. There is no doubt that there was no wrongdoing or misconduct in this case.

WHEREFORE, Respondent Secretary Michael Scuse, by and through counsel, respectfully requests this matter and all pending matters against other DDA employees be **dismissed**.

SCHMITTINGER & RODRIGUEZ, P.A.

BY: 

SCOTT E. CHAMBERS, ESQUIRE

Bar I.D. No. 2532

414 S. State Street

P.O. Box 497

Dover, DE 19901

(302) 674-0140

Attorney for Respondent

DATED:

9/21/23

**BEFORE THE STATE PUBLIC INTEGRITY COMMISSION
IN AND FOR THE STATE OF DELAWARE**

In Re: MICHAEL SCUSE

Respondent

COMPLAINT 23-38

CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the following:

**RESPONDENT MICHAEL SCUSE'S RESPONSE TO PRELIMINARY
HEARING DECISION**

to be served upon:

Deborah J. Moreau, Esquire
Public Integrity Commission
410 Federal Street, Suite 3 (Room 213)
Dover, DE 19901

Joseph D. Stanley, Esquire
Schwartz & Schwartz Attorneys At Law
1140 South State Street
P.O. Box 541
Dover, DE 19903

by U.S. Mail on September 21, 2023.

SCHMITTINGER AND RODRIGUEZ, P.A.

BY: 

SCOTT E. CHAMBERS, ESQUIRE

Bar I.D. No.: 2532

414 South State Street

P.O. Box 497

Dover, Delaware 19903

Phone: (302) 674-0140

Fax: (302) 678-6586

Email: schambers@schmittrod.com

Attorney for Respondent

Michael Scuse

DATED: 