

DOT head's connection to key contractor drives conflict-of-interest concerns

By Mike Tony mtony@hdmediallc.com 5 hrs ago 9-18-23

West Virginia Department of Transportation Secretary Jimmy Wriston addresses members of the Joint Department of Transportation Accountability Commission during a September 2022 interim legislative session meeting. Government ethics experts voiced conflict-of-interest concerns stemming from the DOT contracting with a firm that employs Wriston's son. Wriston has approved multimillion-dollar contracts between his agency and the firm for work on Corridor H.

The head of the West Virginia Department of Transportation has approved contracts totaling millions of dollars for a major roadway project between his agency and an engineering consulting firm that employs his son as an engineer.

"It's a concern," said Patrick McGinley, a West Virginia University law professor and administrative law expert. "The concern, really, is with the appearance of conflict, or appearance of impropriety."

Department of Transportation Secretary and Division of Highways Commissioner Jimmy Wriston's approval could violate federal statute prohibiting an employee from a contracting agency from participating in awarding a contract supported by federal funds if a real or apparent conflict of interest is involved. The prohibition applies when an immediate family member has an interest in the awardee.

Wriston signed two contracts in 2020 for the DOH to pay over \$25.7 million to Michael Baker International, according to documents obtained by the Gazette-Mail through a Freedom of Information Act request. At the time, Wriston was deputy secretary of the DOT and deputy commissioner of the Division of Highways. Gov. Jim Justice named Wriston DOT secretary and DOH commissioner in October 2021.

Wriston's son, Adam Wriston, joined Pittsburgh-headquartered Michael Baker full-time in April 2008 after starting as a college intern in May 2006, according to company spokesperson Julia Covelli. The younger Wriston conducts bridge inspections for

Michael Baker clients across the country and performs engineering design for bridge rehabilitation and replacement projects, Covelli said.

The contracts were for quality assurance management for work on a segment of the four-lane Corridor H of the federal Appalachian Development Highway System from Kerens in Randolph County to Parsons in Tucker County. Most of Corridor H is open to traffic, with the Kerens-to-Parsons segment still under construction. The Federal Highway Administration has provided roughly \$2.05 billion in federal funding toward Corridor H since 1975, according to the agency.

Michael Baker provides engineering plan review, National Environmental Policy Act documentation preparation and construction inspection services for Corridor H, Covelli said.

Covelli noted Michael Baker has a long history of partnering with state highways officials. Michael Baker designed the New River Gorge Bridge, which was completed in 1977, for state officials.

Federal Highway Administration statute prohibits any employee of a contracting agency from participating in the selection, award or administration of a contract supported by federal funds if a conflict of interest, "real or apparent," would be involved. Such a conflict occurs, per the statute, if there is a financial or other interest in the awardee from the employee, any member of the employee's immediate family, or the employee's partner.

John Pelissero, senior scholar in government ethics at the Markkula Center for Applied Ethics at Santa Clara University, says there is a conflict of interest if a public official can award contracts to a firm that employs a family member.

"The conflict of interest occurs when a public official acts in a way that may favor the private or financial interest of a family member, either directly or indirectly," Pelissero said in an email.

‘The Secretary has signed all the contracts’

The FHWA declined to comment directly on Wriston’s approval of the Corridor H contracts. An agency spokesperson noted federal statute makes it the state’s responsibility to enforce the requirements of the section of code prohibiting real or apparent conflicts of interest.

Federal statute also requires a contracting agency to “promptly disclose” any potential conflict of interest to the FHWA.

Wriston has been a vocal proponent of completing Corridor H. In a September 2022 legislative committee meeting, Wriston accused opponents of the DOT’s favored plan for constructing a 10-mile stretch of the project in Tucker County of spreading “disinformation” to delay the project long beset by funding and legal issues.

The DOH has paid Michael Baker over \$16.2 million since Gov. Jim Justice appointed Wriston DOT secretary and DOH commissioner in October 2021 and over \$41.7 million since Justice appointed him DOT deputy secretary in March 2019, per State Auditor’s Office data.

The Governor’s Office did not respond to a request for comment.

DOT spokesperson Jennifer Dooley asserted there is no conflict of interest.

Dooley said Wriston never participated in selection committees that awarded contracts to Michael Baker while he was secretary or deputy commissioner.

But an April 2021 DOH memorandum listed Wriston as a voting member of a panel that ranked Michael Baker first in order of preference among three firms for a federally supported Glenville Truss Bridge project in Gilmer County. Wriston served on a standing selection committee that prepared the short list for the project consultant, according to the memorandum.

Dooley said in an email the memorandum was “found to be in error,” pointing to a March 2021 email from a DOT employee saying Wriston wouldn’t be available for interviews for a Glenville Truss project.

Dooley said the DOT secretary is the only person with the authority to sign agency contracts. Wriston, though, signed the 2020 Corridor H contracts with Michael Baker when he was deputy secretary. Dooley said then-Secretary Byrd White delegated areas of his role requiring technical engineering expertise to Wriston since Wriston is a licensed professional engineer.

West Virginia code allows the DOT secretary to designate their place in any hearings, appeals, meetings or other activities to any department employee. State code similarly allows the highways commissioner to delegate duties to their appointees or employees.

“It is our understanding that, should the need arise, the Secretary could delegate this signature authority to others, such as Deputy Secretary [Alanna] Keller,” Dooley said via email. “To date, the Secretary has signed all the contracts.”

“What could the [Division] of Highways do? I think the best thing they could do is not Weber cited a 2021 commission opinion that held a county board of education member need not recuse herself from a vote on matters related to a lawsuit filed against the board by her brother because the board member had no financial interest in the litigation or financial relationship with her brother. The advisory opinion overruled parts of three past opinions. Michael Baker,” McGinley said.

Dooley contended Adam Wriston isn’t associated with his employer in a fashion that would trigger a conflict of interest per state code.

Dooley pointed to a state statute holding that public employees or members of their immediate family are considered to be “associated” with a business only if they or their

immediate member are a director, officer or stockholder of 5% or more of stock of any class of the business.

West Virginia Ethics Commission Executive Director Kimberly Weber said the state Ethics Act wouldn't prohibit a state agency's contract with a business that employs the adult son of an agency's official, citing past commission advisory opinions.

Weber said the Ethics Act wouldn't prohibit a state official from voting on a contract with the employer of their adult son unless the son is a dependent or the public official has a financial interest in the contract.

But McGinley is looking for state officials to set a higher standard.

McGinley, in part, highlighted state code that prohibits a public employee from "knowingly and intentionally" using their office for their own or another person's private gain.

McGinley said state code governing DOT employees doesn't sufficiently match federal standards guarding against the appearance of impropriety. FHWA statute prohibits "apparent" conflict of interest stemming from an employee, their immediate family member or partner having a financial or other interest in a contract.

"When a public body is entering into contracts for millions of dollars of taxpayer money, as the federal regulations indicate, the agency should be forthcoming to remove any question about conflict of interest or appearance of impropriety," McGinley said.

"Even if the official does not believe that a family member is benefiting from the contract award, there is the perception that the official is using their position to help a family member," Pelissero said. "When members of the public believe that a conflict of interest is taking place, it can erode the public's trust in state government and its officials."

The importance of transparency

An April 2022 memorandum from Wriston updating the DOT's employee ethics and conflict of interest policy prohibits an agency employee from approving any contract in which they have any financial or personal interest. The memorandum doesn't directly address the appearance of a conflict of interest.

Dooley indicated the DOH's engineering division began submitting a letter to FHWA in any instance in which Michael Baker is selected as a consultant.

A DOH letter to FHWA sent on Aug. 14 notes that Wriston has an "immediate relative" employed by Michael Baker. The letter signed by DOH Chief Development Engineer Jason Foster said Wriston wasn't involved in short-list or selection decisions that led to the agency's Aug. 1 selection of Michael Baker to design a bridge in St. Marys.

Dooley said the DOH would keep sending letters to FHWA in any instance in which Michael Baker is selected as a consultant to make "abundantly clear that we are an open and transparent agency."

The DOH letter to FHWA was dated the same day as a Gazette-Mail inquiry regarding DOT oversight.

It took the DOT 4 1/2 months to provide copies of agency contracts with Michael Baker in response to a Gazette-Mail Freedom of Information Act request.

The DOT said it didn't determine that it wasn't the correct custodian of West Virginia Turnpike-related documents requested by the Gazette-Mail in a Freedom of Information Act request until six months after the request. The DOT deferred the request to one of its subagencies, the Parkways Authority, which provided records a month later.

The Gazette-Mail received records the DOT contends are responsive to a separate Freedom of Information Act request last week only after 8 1/2 months of delay and a Gazette-Mail lawsuit to compel compliance with the law.

McGinley says the DOT must be sensitive to appearances of impropriety and appearances of a conflict of interest.

“And they have to be transparent,” McGinley said. “Transparency is incredibly important with regard to what public agencies do.”

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