



INSPECTOR GENERAL REPORT

2012-06-0144

October 16, 2012

THE GOVERNOR AS PURDUE UNIVERSITY PRESIDENT

Inspector General David O. Thomas reports as follows:

This report addresses an investigation of Governor Mitchell E. Daniels, Jr. (hereinafter “Governor”). It was announced in June of 2012 that the Governor was selected by Purdue Trustees to be the next President of Purdue University, scheduled to commence in January of 2013. The Governor earlier appointed Purdue University Trustees under the statutory directive in IC 21-23-3-2. Complainants allege this circumstance violates the Indiana Code of Ethics and request the Office of the Inspector General (OIG) to investigate.

“Purdue Watchdog” is one of the Complainants and an entity publicly opposed to Governor Daniels’ appointment as Purdue President. It has publicly demanded the results of the OIG investigation after its initial request for an investigation. *Exhibit A*. An offer by the OIG was made to meet with its leaders during the week of September 17, 2012 to receive additional evidence, but this invitation was declined. *Exhibit B*.

An investigation has been conducted which included interviews, the

review of documents and legal research.

The OIG is charged to investigate wrongdoing in the Executive Branch of Indiana Government, including violations of the Indiana Code of Ethics. IC 4-2-7-3. Investigating the actions of the Governor of the state is within this authority. IC 4-2-6-1(1), (3) and (8). The OIG has previously investigated the Governor. *E.g.* <http://www.in.gov/ig/files/2005-07-0360RV1.pdf> (2005-07-0360) and http://www.in.gov/ig/files/2007120262_Gov_Contractor.pdf (2007-12-0262).

We now make the following findings after our investigation.

I
Conflict of Interest Rule
42 IAC 1-5-6 / IC 4-2-6-9

The Governor appointed Purdue Trustees who subsequently participated in the vote which selected him as President of the university. These appointments were made pursuant to the Governor's statutory directive to appoint Trustees for Purdue University.¹ Pursuant to another statutory directive, the Governor has also previously approved bonds for Purdue University after the bonds were considered and approved by the State Budget Committee.² Complainants allege that these earlier actions by the Governor are in violation of the Conflict of Interest Rule

¹ IC 21-23-3-2 Board; appointments

Sec. 2. The governor shall appoint ten (10) trustees for Purdue University for the term beginning on July 1 in conformity with this chapter.

² IC 21-34-10-1 Bonds; approval of budget committee, budget agency, and governor

Sec. 1. (a) Bonds may not be issued by the board of trustees of a state educational institution under this article without the specific approval of the:

- (1) budget committee;
- (2) budget agency; and
- (3) governor.

(b) The budget agency may request and consider the recommendation of the staff of the Indiana finance authority with respect to the approval of a bond issue under this section.

(COI Rule).

The investigatory resolution of this issue is clear. The COI Rule³ is not violated if the action is required by that public official through another specific statutory duty. *See*: State Ethics Commission (SEC) Advisory Opinions 07-01-013⁴ and 07-01-014⁵.

In these two 2007 decisions, the SEC addressed similar circumstances. The SEC publicly provided advice to the CEO and President of the Lincoln Museum in Fort Wayne and a Trustee for the Indiana Historical Society. *Id.*

³ IC 4-2-6-9 Conflict of economic interests

(a) A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

- (1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or
- (2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

⁴ 07-01-013 is published on-line at http://www.in.gov/ig/files/s07-I-13_Lincoln_Museum-COIdv_SP.pdf

⁵ 07-01-014 is published on-line at http://www.in.gov/ig/files/s07-I-14_IHS-COIdv_SP.pdf.

Both public opinions advised these state workers that because their actions which might otherwise be a violation of the COI Rule were authorized by another statute for their specific positions, the COI Rule would not be violated.

The Indiana Supreme Court has also recently held that the SEC's "construction of its own regulations is entitled to substantial deference" and "entitled to great weight" by the courts. *Ghosh v. Indiana State Ethics Commission*, 830 N.E.2d 23 (Ind. 2010).

The law is equally clear that "a person is justified in engaging in conduct otherwise prohibited if he has legal authority to do so." IC 35-41-3-1.

Furthermore, examples exist for exempting from specific conflict of interest laws those acts which are authorized by other authorities.⁶

Due to these authorities and facts, we do not find a violation of the COI Rule.

⁶ See e.g. IC 35-44.1-1-4(c)(1)(a conflict of interest for a public official does not exist if the act is permitted by law); 18 U.S.C.A. Section 208(b)(2) and (d)(2)(federal conflict of interest law exempts conduct required in other laws); 48 C.F.R. 3.101-2 and 3.101-3 (a conflict of interest in federal procurement is exempted by other authorizing agency regulations). Other Indiana examples addressing conflicts of interest include: IC 23-1-35-2(c) (in Indiana corporation law a conflict of interest may be ratified by majority vote of directors); IC 21-9-4-13 (statute determines conflict of interest exemptions in serving on the Indiana Education Savings Authority); IC 12-15-35-20.1(c) (board member in Medicaid drug utilization review with conflict of interest may still participate in discussion for recommendation or action); IC 27-1-7-12.5(f) (insurance company director conflict of interest not actionable if "the transaction was fair to the corporation"); IC 2-7-5-10 (a legislative lobbyist and the lobbyist's client may authorize the lobbyist's action if a conflict of interest develops); IC 30-4-3-5 (conflicts of interest in trusts permitted if authorized by the court or within the terms of the trust); *Spranger v. State*, 650 N.E.2d 1117 (Ind. 1995)(even if an actual conflict of interest existed for defendant's attorney in murder case, no reversible error when the conflict did not adversely affect counsel's performance). See also: 12 Fed. Reserve System Hearing Rules, CFR Section 263.8 (authority to waive conflicts of interest in Federal Reserve adjudications).

II
Post-Employment Rule (“PER”)
41 IAC 1-5-14 (IC 4-2-6-11)

Complainants also allege the Governor will be in violation of the PER if he serves as President of Purdue University in the future.

We initially note that an investigation may be premature in that the Governor is not yet the President of Purdue University, a necessary component of a PER violation.⁷ The Governor is not yet a “former” state worker. IC 4-2-6-

⁷ IC 4-2-6-11

One year restriction on certain employment or representation; advisory opinion; exceptions

Sec. 11. (a) As used in this section, "particular matter" means:

- (1) an application;
- (2) a business transaction;
- (3) a claim;
- (4) a contract;
- (5) a determination;
- (6) an enforcement proceeding;
- (7) an investigation;
- (8) a judicial proceeding;
- (9) a lawsuit;
- (10) a license;
- (11) an economic development project; or
- (12) a public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(b) This subsection applies only to a person who served as a state officer, employee, or special state appointee after January 10, 2005. A former state officer, employee, or special state appointee may not accept employment or receive compensation:

- (1) as a lobbyist;
- (2) from an employer if the former state officer, employee, or special state appointee was:
 - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
 - (B) in a position to make a discretionary decision affecting the:
 - (i) outcome of the negotiation; or
 - (ii) nature of the administration; or
- (3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer; before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

- (1) employment; or
- (2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state

11(b). Future events which may occur in the remainder of the Governor's administration may also change these investigative results. However, because it is imminent that the Governor wishes to accept the Presidency upon the expiration of his term as Governor, we have examined the allegations presented to us by Complainants and have additionally initiated an investigation for a potential and future PER violation.

The Governor has also requested an advisory opinion, asking for the details of the ethics rules which apply through the remaining months of his tenure as Governor. *See Exhibit C, attached.*

As a threshold matter, the SEC has determined the PER applies to state employees moving their employment to a state university. SEC Advisory Opinion 12-I-2.⁸

It is also undisputed that if the Governor's duties trigger the PER, he will be unable to be employed with Purdue University for one year after leaving the Office of the Governor. IC 4-2-6-11.

In order to determine whether a violation of the PER might occur in the future, we examined contracts, bonds and other documents which involved the

appointee in the performance of his or her duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the commission certifying that:

- (1) employment of;
- (2) representation by; or
- (3) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

(f) Subsection (b) does not apply to a special state appointee who serves only as a member of an advisory body.

(g) An employee's or a special state appointee's state officer or appointing authority may waive application of subsection (b) or (c) in individual cases when consistent with the public interest. Waivers must be in writing and filed with the commission. The inspector general may adopt rules under IC 4-22-2 to establish criteria for post employment waivers.

⁸ SEC Advisory Opinion 12-I-2 is published on-line at: http://www.in.gov/ig/files/s12-I-2_OMB-PE_Misc.Def.pdf.

Governor and Purdue University. We also conducted interviews and researched applicable laws. Our findings are as follows.

A
Contracts

If the Governor “administered or negotiated” a contract with Purdue University, the PER could apply. IC 4-2-6-11(b)(2).

We reviewed all professional service contracts from 2005 to present and found none between the Governor and Purdue University. We therefore cannot say that the Governor has “negotiated or administered” a contract with Purdue University which would require him to wait the 365 days before accepting employment with the university. IC 4-2-6-11(b)(2).

B
Bonds

Bonds are also considered contracts within the application of the PER. *See footnotes 9 and 10, infra.* Pursuant to the Governor’s statutory authority in IC 21-34-10-1, the Governor has advised that although he approved certain bonds as required by statute, he did not negotiate or administer any of the bonds issued to Purdue University. He has also alleged that the State Budget Committee minutes should reflect this in that he did not attend these State Budget Committee meetings where the bond reviews were made. He contends his involvement was in subsequently signing the State Budget Committee minutes or bonds which were prepared after the meetings and decisions and that this was done for compliance with IC 21-34-10-1.

We reviewed the minutes of these meetings and could find no evidence of the Governor participating beyond his statutory approval.

The SEC has addressed this issue previously in at least two Advisory Opinions, namely 12-I-2⁹ and 10-I-10.¹⁰ In both opinions, it was determined that the state worker did not negotiate or administer the bonds. The Governor's involvement appears to be even more removed than in those two circumstances, in that he was not a member of the State Budget Committee, did not attend the State Budget Committee meetings where these were reviewed and voted upon, and did not vote on the projects as did the State Budget Committee members.

We cannot say that the Governor has violated the PER in this respect.

C

Regulatory or Licensing Decision

A Governor's actions with regard to a state university are not considered, and to our knowledge has never been urged to be, a "regulatory or licensing decision" which might trigger the PER. IC 4-2-6-11(b)(3). *See e.g. SEC Advisory Opinions 12-I-2, supra, and 10-I-10, supra.*

We therefore cannot say that there would be a violation of the PER in this respect.

D

Particular Matters

The Governor would also be subject to the PER's "particular matter" restriction. Although a particular matter restriction does not require the 365-day

⁹ SEC Advisory Opinion 12-I-2 is published on-line at: http://www.in.gov/ig/files/s12-I-2_OMB-PE_Misc.Def.pdf.

¹⁰ SEC Advisory Opinion 10-I-10 is published on-line at: http://www.in.gov/ig/files/s10-I-10_OMB-PE.pdf

delay before the post-employment, this restriction prevents a state worker from *ever* working on statutorily specified matters if he or she personally and substantially participated in the matter as a state employee. IC 4-2-6-11(c).

We found none but have instructed the Governor through our advisory opinion to be aware of this potential restriction. *See Exhibit D.*

Because of these facts and authorities, we cannot say that there is evidence to support a finding of a future PER violation.¹¹

III Qualification Requirements

We are also asked by Complainants to investigate whether the Governor is qualified to be the President of Purdue University.

Our research reveals no such statutory standards. *See:* IC 21-23-4-1 (enabling statute for appointment of Purdue president by trustees). We therefore find no violation of law on this issue. *Compare:* IC 5-11-1-1 (“The state examiner [of the State Board of Accounts] must be a certified public accountant with at least three (3) consecutive years of active experience as a field examiner with the state board of accounts that immediately precedes the appointment as state examiner”).

¹¹ To those seeking further insight on post-employment laws in general, we respectfully refer them to our discussion regarding the federal scrutiny and caution that should be used in urging an interpretation of a PER beyond a strict, statutory construction. *See: IG Report, Case Report 2012-06-0165, published on-line at: http://www.in.gov/ig/files/2008-06-0165.Recommendations_for_2012-2013_Legislative_Session_WEB.pdf, pages3 -11.*

IV
Use of Property

We also received a public request by Indiana Representative Charlie Brown, House District 3, requesting that we investigate the Governor for issuing a media advisory about Purdue University, alleging Code of Ethics violations of: (1) 42 IAC 1-5-12 (use of state property), (2) 42 IAC 1-5-13 (ghost employment) and (3) future lobbying activity. *Exhibit E*.

First, we address the two Code of Ethics allegations. We believe we would find our burden of proof difficult in filing and proving an ethics complaint alleging that a state Governor and his or her state employee staff are not engaging in “official state business” and “official duties” for purposes of the rules when commenting on state university activities. 42 IAC 1-5-12 and 13, *supra*.

Second, with regard to the allegation of a lobbying violation, this activity has not yet occurred. A violation would depend on the specific lobbying activity that might occur in the future. Both the OIG and the Department of Administration Executive Branch Lobbyist Executive Director have issued public advisory opinions to the Governor on the rules regarding lobbying restrictions. *Exhibits F and G*. As pointed out in these opinions, the restriction on lobbying only applies to the Executive Branch. Under the Executive Branch lobbying rules, university employees are exempt. *Id.*

Conclusion

For the above reasons, we find no violations of the Indiana Code of Ethics. We wish only to exercise what is required of us by law, with the hope that the

views urged upon us remain focused on our duties, the evidence and the established law. A copy of this report will be issued to the Governor for consideration of waiver of confidentiality.

Dated this 16th day of October, 2012.

/s/ David O. Thomas, Inspector General

Thomas, David

From: Carrasco, Cynthia (Cyndi)
Sent: Friday, August 03, 2012 9:56 AM
To: Thomas, David
Subject: FW: Ethics Policy Prohibits Gov. Mitch Daniels Donors From Sitting on State Boards Like Purdue

-----Original Message-----

From: IG Info
Sent: Friday, August 03, 2012 9:38 AM
To: Carrasco, Cynthia (Cyndi)
Subject: FW: Ethics Policy Prohibits Gov. Mitch Daniels Donors From Sitting on State Boards Like Purdue

-----Original Message-----

From: Watch Dog [mailto:purduewatchdog@gmail.com]
Sent: Friday, August 03, 2012 9:37 AM
To: Bangert, Dave; eweddle@journalandcourier.com; The Purdue Exponent (Purdue Univ.); managingeditor@purdueexponent.org; campus@purdueexponent.org; John Russell; Kara Kenney
Cc: IG Info; vpec@purdue.edu; iadirector@purdue.edu
Subject: Ethics Policy Prohibits Gov. Mitch Daniels Donors From Sitting on State Boards Like Purdue

It's been over 30 days....

What are the findings of the Indiana Inspector General and Purdue Office of the Vice President for Ethics and Compliance on conflicts of interest and ethics violations by Purdue Trustees, Officers, and Governor Mitch Daniels?

Keep in mind, Governor Mitch Daniels has been interviewing for this job for over a year with over 6 meetings and countless communications while he signed off on legislation and state financial appropriations for Purdue University.

Daniels, Purdue first talked a year ago

<http://www.wishtv.com/dpp/news/indiana/daniels-purdue-first-talked-a-year-ago>

In 2007, most of the Indiana Department of Financial Institutions Board Members resigned because an "ethics policy introduced by Gov. Mitch Daniels that prohibits his donors from sitting on state boards."

Purdue trustees gave \$27K to Daniels' campaigns

<http://www.jconline.com/article/20120707/NEWS0501/307050034/Purdue-trustees-gave-27K-to-Daniels-campaigns>

Indiana Government Ethics Code -

Gifts, Donor Restrictions, Honoraria, Political Activity, Moonlighting, Conflicts of Interest
<http://www.in.gov/ig/2336.htm>

Purdue Ethics Policy - Political Activities
<http://www.purdue.edu/policies/ethics.html>

This email was sent to you by Purdue Watchdog

"Rice, who is up for reappointment in 2008, is one of two members with the most seniority. Most of the others resigned following an ethics policy introduced by Gov. Mitch Daniels that prohibits his donors from sitting on state boards. "All of the other appointees have been on the board for a year or less," said Jane Jankowski, the governor's spokeswoman. "He really and truly has the most experience on the board. It was a logical move to name him to the position."

State's financial institutions leader quietly blazes trail: appointment of Rice puts a credit union leader in top spot for first time; bankers group withholds judgment.

(FOCUS / BANKING & FINANCE QUARTERLY)(Rick Rice)
Indianapolis Business Journal
March 19, 2007 | Olson, Scott

Rick Rice's ascension to chairman of the Indiana Department of Financial Institutions typically would be the type of low-key government appointment that invokes nary a murmur of opposition.

Why would it when current affairs facing the seven-member panel are as harmless as allowing state-chartered financial institutions to charge patrons who wish to skip a loan payment? Yet, Rice's selection in late January as head of the DFI board has the credit union community gushing with pride, and the banking industry a bit perplexed.

Credit union leaders are touting Rice as the first non-traditional banker in the nation to lead such a board with a scope similar to Indiana's agency.

The DFI, created by the Indiana Financial Institutions Act of 1933, regulates the state-chartered financial services industry, meaning an out-of-state behemoth such as Chase is out of its jurisdiction. Its regulatory reach has broadened in recent years, though, to include the burgeoning business of pawn brokerages and check cashers.

"To have a credit union leader rise to that type of position is very significant," said John McKenzie, president of the Indiana Credit Union League. "It's further reinforcement of the role credit unions play in the financial services industry."

Rice, 57, is president and CEO of the South Bend-based Teachers Credit Union, where he has spent his entire 35-year career. With 225,000 members and \$1.6 billion in assets, the institution is the largest credit union in the state. Local assets rank it as the fourth biggest in Indianapolis.

But whether the Indiana Bankers Association supports Rice's appointment is unclear. Its CEO, Jim Cousins, declined to comment on the hiring.

That's understandable, said Mike Renninger, a principal of Renninger & Associates LLC, a banking consulting firm based in Carmel.

"It's an interesting choice because I would have expected the person serving in that capacity to be one with broad and deep experience in a number of financial institutions that are facing the competitive aspects that the DFI is responsible for overseeing" Renninger said. "Having said that, he may prove to be an excellent choice who will bring a fresh perspective."

For its part, the Governor's Office cited Rice's experience. Rice, who is up for reappointment in 2008, is one of two members with the most seniority. Most of the others resigned following an ethics policy introduced by Gov. Mitch Daniels that prohibits his donors from sitting on state boards.

"All of the other appointees have been on the board for a year or less," said Jane Jankowski, the governor's spokeswoman. "He really and truly has the most experience on the board. It was a logical move to name him to the position."

Often overshadowed by banks, credit unions are not-for profit, member-owned cooperatives that historically offered only savings accounts and loans. To have a veteran of the industry lead the board that oversees the state's financial institutions is momentous, Rice admitted.

"Certainly, it gives more credibility that credit unions are more professional than they were," he said. "We have to be."

As in any business, credit unions need to stay competitive. During the past few decades, some have expanded their offerings to include credit and debit cards, checking accounts and individual retirement accounts. The types of loans have grown as well and include mortgages, and home-equity, small-business and student loans.

The DFI now is in the process of granting credit unions the authority to provide short-term loans similar to those available from the payday lending offices abundant throughout the state, without the costly lenders' fees.

The additional services have prompted the banking industry to charge that state-chartered credit unions have an unfair advantage, especially since they aren't subject to federal income taxes. They do pay a franchise fee, however, like the state-chartered banks do.

Rice said if banks think the credit unions have a competitive edge, they should convert. One of Rice's chief concerns is the number of acquisitions involving Indiana-based banks. Most recent, Sky Financial Group Inc. purchased locally based Union Federal Bank, which it quickly resold to another Ohio bank, Huntington Baneshares Inc.

"Our role is to encourage and do whatever we can to make our state charter attractive, without sacrificing consumer rights," Rice said, "because it brings revenue to the state." Members of the DFI board are appointed by the governor and represent a wide spectrum of lenders, from banks to savings and loan associations.

Former Gov. Frank O'Bannon appointed Rice to the board in 1996. After a stint on the State Board of Education, Rice returned to DFI in 2004. Members, including the chairman, are paid \$4,000 annually and serve four-year terms.

Rice is an Evansville native who studied to be a priest for a year at the Saint Meinrad seminary in southern Indiana before graduating from Indiana University in 1971. In the meantime, he enlisted in the Army Reserves for fear of being drafted. As a history major with a minor in Southeast Asian history, he didn't object to the Vietnam War but questioned some of his country's motives, he said.

In 1972, he accepted a job with TCU in South Bend, from where his then-fiancee hailed. Rice became CEO in 1987, and through the years witnessed the changes to the industry.

One that would have a major impact is the introduction of expensive accounting demands like those required of public companies and banks. The stricter internal controls would be similar to those of the Sarbanes-Oxley accounting rules for public companies passed in 2002. The agency that regulates credit unions, the Alexandria, Va.-based National Credit Union Administration, is holding off proposing rules that would tighten accounting controls on credit unions. Yet many in the industry who think the changes are coming argue they shouldn't have to comply, since credit unions aren't public and don't deliver stock options to shareholders.

Rice's credit union, TCU, already complies with some of the regulations. But costly accounting mandates could force smaller credit unions out of business, he said. His banking brethren at least might agree with his belief that the financial services industry in general is the most regulated of all.

Department of Financial Institutions

Founded: 1933

Purpose: Regulate state-chartered financial institutions such as banks, credit unions and savings-and-loan associations. Its scope in recent years has been expanded to include pawn brokerages and check-cashing companies.

Board: a bipartisan panel of seven members appointed by the governor to four-year terms

Annual pay for board members: \$4,000

Department revenue: \$8 million annually, derived from the supervision of, examination of and license fees assessed to financial institutions regulated by the department

Source: IBJ research

Scott Olson

solson@ibj.com

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Thomas, David

Subject: FW: State Ethics Commission Meeting - September 13th

From: Watch Dog [<mailto:purduewatchdog@ymail.com>]

Sent: Monday, September 10, 2012 10:03 AM

To: Thomas, David

Cc: S.O.A.P. ; ACLU Indiana; Citizens Action Coalition of Indiana; Common Cause; The Purdue Exponent (Purdue Univ.); Purdue Campus Editor; Bangert, Dave; Eric Weddle; John Russell; Kara Kenney; Kristan Mensch; Laura Rosenbaum; mcpc@indy.gov; Tim Horty

Subject: Re: State Ethics Commission Meeting - September 13th

Dear David Thomas,

Thank you for the kind offer.

While we are considering your meeting offer for the week of September 17th, could you please provide the State Ethics Commissions agenda for the September 13th meeting with the time and room number for this public meeting?

As you are aware, it is difficult to attend a meeting without this information and helpful to have the agenda to understand what is being discussed.

We look forward to working cooperatively with you in an open and responsible manner to ensure that the spirit of the ethics laws are followed to maintain the public's trust.

Best Regards,

Purdue Watchdog

From: "Thomas, David" <dathomas@ig.IN.gov>

To: Watch Dog <purduewatchdog@ymail.com>

Sent: Friday, September 7, 2012 3:08 PM

Subject: RE: State Ethics Commission Meeting - September 13th

Dear Purdue Watchdog,

The State Ethics Commission meeting is scheduled at the Indiana State Library. Your proposed agenda item will not be on the agenda. Only an ethics complaint filed by the Inspector General or an advisory opinion request from a state worker is eligible for the agenda.

Regarding Governor Daniels being hired as the president of Purdue, your questions should be to me rather than the Commission. The Commission has no jurisdiction unless a complaint is filed by the Inspector General. If you would like to designate three representatives to meet with me, I am available and willing to meet the week of September 17, on Tuesday (Sept 18) or Thursday (Sept 20) here at my office. Although the law is clear I am unable to talk about the case until or unless probable cause is established, I am willing to meet and receive any evidence of violations you may have and answer any questions I can.

Please let me know if you would like to do so.

David Thomas, Inspector General

1 Exhibit B-1

From: Watch Dog [<mailto:purduewatchdog@ymail.com>]

Sent: Friday, September 07, 2012 8:34 AM

To: Thomas, David

Cc: The Purdue Exponent (Purdue Univ.); Purdue Campus Editor; Bangert, Dave; Eric Weddle; John Russell; Kara Kenney; Mike Loizzo; Elle Moxley; Tully, Matthew; Kelly, Niki; Kyle Stokes; mcpo@indy.gov; J.K. Wall; Jeff Smith; Aaron Hoover; Abdul Shabazz ; Bangert, Dave; Elizabeth Trybula; Elle Moxley; Eric Weddle; Gina Quattrocchi; J.K. Wall; Jeff Smith; John Russell; Kara Kenney; Kyle Stokes; Tully, Matthew; Mike Loizzo; Kelly, Niki; The Purdue Exponent (Purdue Univ.); Purdue Campus Editor; S.O.A.P.

Subject: State Ethics Commission Meeting - September 13th

Mr. Thomas,

Could you please forward the exact location, time, and agenda for the September 13th Indiana Ethics Commission Meeting?

We would like you to place S.O.A.P.'s ethics concerns regarding Governor Mitch Daniels' hiring at Purdue and have a full commission vote on the official post employment ruling at this meeting.

Best Regards,

Purdue Watchdog



STATE OF INDIANA
OFFICE OF THE GOVERNOR
State House, Second Floor
Indianapolis, Indiana 46204

Mitchell E. Daniels, Jr.
Governor

August 10, 2012

Inspector General David Thomas
315 West Washington Street, Room 104
Indianapolis, IN 46202

Dear Inspector General Thomas,

Thank you for providing the informal advisory opinion regarding the Governor's question on legislative lobbying. He has also obtained an informal advisory opinion regarding executive branch lobbying from IDOA.

The Governor further requests clarification of all rules that apply to his exit from state government and commencement of his employment with Purdue University. Please provide to the Governor an informal advisory opinion with guidance on all postemployment rules and restrictions that would be applicable to him for the remainder of his term as Governor and that may carry over to his new role with Purdue. The Governor wants to fully understand all postemployment provisions to ensure full compliance.

If you have any questions, feel free to contact me.

Sincerely,

Anita K. Samuel
General Counsel

Exhibit C

INDIANA
OFFICE OF INSPECTOR GENERAL

315 WEST OHIO STREET, ROOM 104, INDIANAPOLIS, IN 46202 317.232.3850

October 16, 2012

Governor Mitchell E. Daniels, Jr.
Statehouse
Indianapolis, Indiana

In re: Informal Advisory Opinion

Dear Governor Daniels,

Thank you for contacting our office. As the Governor of the State, you report that you have accepted the position of President of Purdue University, to commence in January of 2013 upon the expiration of your term as Governor.

You are requesting guidance on all ethics rules, including post-employment rules that would be applicable for the remainder of your term as Governor and may carry over to your new role with Purdue University. You also offered that I speak with your General Counsel to help obtain additional and necessary information and records for this review.

As you recognize in your request, keep in mind that this advice is only for activity that occurs in the future.

In general, you recognize that the Governor of the State obviously has interaction with the different state agencies and state universities. You allege that you have not executed any contracts with Purdue University. You also disclose that as Governor there are various decisions required by specific statutes involving state universities, and you request advice on what is permitted with regard to those statutory duties and the Code of Ethics.

Your employment with Purdue University invokes consideration of the provisions of the Ethics Code pertaining to conflicts of interest, post-employment, and confidentiality. I will include at the end of this opinion the relevant laws addressed.

I

Conflicts of Interest
42 IAC 1-5-6 (IC 4-2-6-9)

This rule prohibits a state employee from participating in any decision or vote if he has knowledge that certain persons have a financial interest in the outcome of the matter, including the employee himself as well as any person or organization with whom he is negotiating or has an arrangement concerning prospective employment. Negotiations commence for purposes of this rule as soon as an employer and employee begin discussing potential employment,

1

Ex 10-1

regardless of who initiates the contact. *See*: State Ethics Commission (SEC) Advisory Opinion 12-I-9 (published on-line at http://www.in.gov/ig/files/s12-1-9_SBA-COIdv_PE.pdf). Because your employment is imminent, you need to follow procedures outlined in 42 IAC 1-5-6 (IC 4-2-6-9(b)) if any future potential conflict arises.

You further asked about the rule and your statutory duties as Governor that may involve Purdue University. One example is appointments to university boards of trustees. Under IC 21-23-3-2, the Governor shall appoint ten trustees for Purdue University. Another example of state responsibility relates to university bonds. Under IC 21-34-10-1, bonds may not be issued by the board of trustees of a state educational institution without the specific approval of the budget committee, budget agency and governor. I have been informed this approval is facilitated through your signature on budget committee minutes.

The conflict of interest rule is not violated if the action is required by that specific public official through another specific statutory duty. The SEC has twice addressed this circumstance. In two Formal Advisory Opinions in 2007, the SEC provided advice to the CEO and President of the Lincoln Museum in Fort Wayne and a Trustee for the Indiana Historical Society through published opinions. *See*: Advisory Opinion 07-01-013 (published on-line at http://www.in.gov/ig/files/s07-1-13_Lincoln_Museum-COIdv_SP.pdf) and Advisory Opinion 07-01-14 (published on-line at http://www.in.gov/ig/files/s07-1-14_IHS-COIdv_SP.pdf). Both opinions advised these state workers that because their actions which might otherwise be a violation of the conflict of interest rule were authorized by another statute for their specific position, the conflict of interest rule would not be violated. *See also*: IC 35-41-3-1 (“a person is justified in engaging in conduct otherwise prohibited if he has legal authority to do so.”).

These previous SEC Advisory Opinions are consistent with other conflict of interest laws. *See e.g.* IC 35-44.1-1-4(c)(1) (a conflict of interest for a public official does not exist if the act is permitted by law). Therefore, your appointment of trustees and your approval of bonds by signing budget committee meeting minutes would not violate the conflict of interest rule.

II

Post-employment rule (PER) 42 IAC 1-5-14 (IC 4-2-6-11)

As a threshold matter, the SEC has determined the PER applies to employees and officers moving to a state university. SEC Advisory Opinion 12-I-2 (published on-line at: http://www.in.gov/ig/files/s12-1-2_OMB-PE_Misc.Def.pdf).

The PER consists of two separate limitations: a “cooling off” period and a particular matter restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents you from accepting employment

for 365 days upon leaving state employment: (A) as a lobbyist, (B) from an employer with whom you engaged in the negotiation or administration of a contract and were in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration, or (C) from an employer for whom you made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary. In addition, you are also prohibited altogether from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence you in your official capacity as a state employee.

Each prohibition is discussed below.

A
Lobbying

In my August 9, 2012 opinion, I advised you were not restricted from lobbying the Legislature pursuant to 42 IAC 1-5-14 (IC 4-2-6-11(b)(1)). The Executive Branch Director of Executive Branch Lobbying advised you on Executive Branch lobbying rules.

B
Contracts

Based on the information you provided, you did not engage in the negotiation or administration of a contract with Purdue University on behalf of the State. We reviewed all professional service contracts from 2005 to present and found none between your office and Purdue University.

However, bonds are considered within the application of the PER. Pursuant to your statutory authority in IC 21-34-10-1, you further advise that although you approved certain bond issues as required by statute, you did not negotiate or administer any of the bonds issued to Purdue University. You also allege that the State Budget Committee minutes should reflect this in that you did not attend these State Budget Committee meetings where the bond reviews were made. You point out your involvement was in subsequently signing the State Budget Committee minutes which were prepared after the decisions regarding the bonds in order to comply with IC 21-34-10-1.

The SEC has addressed this issue previously in at least two Advisory Opinions, namely 12-I-2 (published on-line at: http://www.in.gov/ig/files/s12-I-2_OMB-PE_Misc.Def.pdf) and 10-I-10 (published on-line at: http://www.in.gov/ig/files/s10-I-10_OMB-PE.pdf). In both opinions, it was determined that the applicant did not negotiate or administer the bonds. Your involvement appears to be even more removed than in those two circumstances, in that you are not a member of the State Budget Committee, you did not attend the State Budget Committee meetings where these were reviewed and voted upon, and you did not vote on the projects as did the State Budget Committee members.

C

Licensing/Regulatory

A Governor's actions with regard to a state university are not considered, and to our knowledge has never been urged to be, a "regulatory or licensing decision" which might trigger the PER. *See e.g.*: 12-1-2 (published on-line at: http://www.in.gov/ig/files/s12-1-2_OMB-PE_Misc.Def.pdf) and 10-1-10 (published on-line at: http://www.in.gov/ig/files/s10-1-10_OMB-PE.pdf), *supra*.

D

Particular Matters

Keep in mind that in addition to the cooling off period, you are also subject to the post-employment rule's "particular matter" restriction. This restriction prevents you from working on any of the following twelve matters if you personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project or 12) a public works project. The particular matter restriction is not limited to 365 days, but instead extends for the entire life of the matter at issue, which may be indefinite. No particular matters have been presented to me for review. However, you would be prohibited from representing or assisting your prospective employer or any other person in a particular matter that you personally and substantially participated in as a state employee. If, after reviewing this law, you have any questions regarding whether your intended work would involve any other particular matters, I invite you to submit additional facts for a more detailed analysis.

III

Confidentiality

IC 4-2-6-6

Finally, please be aware that a state employee is prohibited from accepting any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature. So long as working for Purdue University does not result from information of a confidential nature, any such employment would not violate IC 4-2-6-6.

Thank you for submitting your inquiry. Please let me know if you have any questions regarding this opinion. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving an informal advisory opinion, and the alleged violation was directly related to the advice rendered. Also, remember that

the advice given is based on the facts as I understand them. If this letter misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

/s/ David O. Thomas, Inspector General

CONFIDENTIALITY NOTICE:

This e-mail message is for the sole use of the intended recipient(s). It contains confidential and privileged information. If you are not the intended recipient, please contact the sender by replying to our e-mail administrator and destroying and deleting all copies of the original message. Any unauthorized review, use, disclosure or distribution is prohibited. You may also reach the sender by phone at (317) 232-3850, or by fax at (317) 232-0707. To reply to the e-mail directly, send an e-mail to: info@ig.in.gov.

IC 4-2-6-1

Definitions

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

* * *

(10) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received compensation. For purposes of this chapter, a customer or client of a self-employed individual in a sole proprietorship or a professional practice is not considered to be an employer.

* * *

(11) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun.

* * *

(12) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) is not a public record, but if it were would be confidential.

* * *

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

* * *

IC 4-2-7-1

Definitions

Sec. 1. The following definitions apply throughout this chapter:

... (5) "Lobbyist" means an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under rules adopted by the Indiana department of administration.

42 IAC 1-5-14 Postemployment restrictions

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-6-11; IC 4-2-7

Sec. 14. Postemployment restrictions are set forth in IC 4-2-6-11.

IC 4-2-6-11

One year restriction on certain employment or representation; advisory opinion; exceptions

Sec. 11. (a) As used in this section, "particular matter" means:

- (1) an application;
- (2) a business transaction;
- (3) a claim;
- (4) a contract;
- (5) a determination;
- (6) an enforcement proceeding;
- (7) an investigation;
- (8) a judicial proceeding;
- (9) a lawsuit;
- (10) a license;
- (11) an economic development project; or
- (12) a public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(b) This subsection applies only to a person who served as a state officer, employee, or special state appointee after January 10, 2005. A former state officer, employee, or special state appointee may not accept employment or receive compensation:

- (1) as a lobbyist;
- (2) from an employer if the former state officer, employee, or special state appointee was:
 - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
 - (B) in a position to make a discretionary decision affecting the:
 - (i) outcome of the negotiation; or
 - (ii) nature of the administration; or
- (3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer;

before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

- (1) employment; or
- (2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of his or her duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the commission certifying that:

- (1) employment of;
- (2) representation by; or
- (3) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

(f) Subsection (b) does not apply to a special state appointee who serves only as a member of an advisory body.

(g) An employee's or a special state appointee's state officer or appointing authority may waive application of subsection (b) or (c) in individual cases when consistent with the public interest. Waivers must be in writing and filed with the commission. The inspector general may adopt rules under IC 4-22-2 to establish criteria for post employment waivers.

42 IAC 1-5-6 Conflicts of interest; decisions and voting

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-6-9; IC 4-2-7

Sec. 6. Decision and voting restrictions are set forth in IC 4-2-6-9.

IC 4-2-6-9

Conflict of economic interests

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is

serving as an officer, a director, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

IC 4-2-6-6

Present or former state officers, employees, and special state appointees; compensation resulting from confidential information

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.



STATE OF INDIANA
HOUSE OF REPRESENTATIVES

THIRD FLOOR STATE HOUSE
INDIANAPOLIS, INDIANA 46204

CHARLIE BROWN
9439 LAKE SHORE DRIVE
GARY, IN 46403
219-938-6548 PH
219-938-3881 FAX

COMMITTEES:
PUBLIC HEALTH, RRM
INSURANCE
STATUTORY COMMITTEE ON INTERSTATE AND
INTERNATIONAL COOPERATION

September 12, 2012

RECEIVED

SEP 12 2012

OFFICE OF THE INSPECTOR GENERAL

David Thomas
Office of Inspector General
315 West Ohio Street, Room 104
Indianapolis, Indiana 46202

Dear Inspector General Thomas:

Please consider this letter an official ethics complaint and request for an investigation concerning the inappropriate actions of Governor Mitch Daniels in relation to his recent appointment as future President of Purdue University.

The source of this ethics complaint and the need for an investigation stems from three sources:

- 1) Governor Daniels clearly misused state property for personal reasons by directing his staff use the state media advisory network and email system to disseminate information clearly unrelated and outside his official duties as Governor (attached exhibit 1) in violation of ethics code 42 IAC 1-5-12;
- 2) Governor Daniels was quoted (attached exhibit 1) in the aforementioned media advisory as saying he "asked that any work" on the President's office at Purdue University be cancelled which is clearly inappropriate, and warrants investigation to reveal if these directions and conversations with Purdue rise to the level of ghost employment in violation of ethics code 42 IAC 1-5-13;
- 3) Finally, despite a publicly circulated informal opinion from your office, any attempt by Governor Daniels' to lobby the legislature would be a clear violation of Executive Order 05-12, section 8(a) which specifically prohibits any state officer from engaging in lobbying the executive or legislative branches of Indiana for one year after leaving government employment (attached exhibit 2).

Considering the impending end of Governor Daniels' term of office, the taxpayers of Indiana deserve swift action and investigation into these complaints and alleged violations of the state ethics code.

Please do not in any way consider this letter a criticism of Governor Daniels' attempt to stop extravagant spending on Purdue's campus. To let this matter degenerate into a debate about university spending cuts would be a distraction that would disservice the citizens of Indiana who expect and deserve better from our Governor.

I thank you in advance for your attention to this important matter. I would respectfully request a written response reporting the results of your investigation on or before September 25, 2012, and whether you will file a formal ethics complaint with the State Ethics Commission for a hearing.

Regards,

Charlie Brown
State Representative
House District 3

Exhibit E-1

From: govigacomm-bounces@lists.in.gov [mailto:govigacomm-bounces@lists.in.gov] **On Behalf Of** Bovis, Alexandra M (Allie)

Sent: Tuesday, September 04, 2012 12:50 PM

To: #All Governor's Office; #All Lieutenant Governor's Office

Subject: [Govigacomm] ADVISORY: Governor's statement about renovations at Purdue President's office

MEDIA ADVISORY

September 4, 2012

A number of media outlets have published a story about renovations occurring in Hovde Hall, which houses the president's office at Purdue University. Governor Daniels issued this statement about the work:

"It is important to me that friends of Purdue and all citizens of Indiana know the following with regard to the renovation of the Purdue University president's office: I knew nothing about it and was no part of the decision to perform this work. If I had been asked in advance, I would have requested that the work not be done. The renovation had nothing to do with my becoming president, but was part of a longstanding plan to renovate parts of Hovde Hall after many decades.

"I have asked that any work not already complete be canceled. Nothing about my service in business or public life suggests that I would initiate or condone a dollar of excessive or unnecessary spending on my account."

-30-

Contact: Jane Jankowski, 317/232-1622, jjankowski@gov.in.gov

EXHIBIT 1

Exhibit E-2

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER 05-12

FOR: ESTABLISHING ETHICAL RULES OF CONDUCT FOR STATE OFFICERS, EMPLOYEES,
AND SPECIAL APPOINTEES

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS.

WHEREAS, Hoosiers deserve to know that state government is being conducted in an open and honest fashion and in the public interest;

WHEREAS, currently the functions of state government are often performed with a lack of openness and adequate disclosure;

WHEREAS, Indiana continues to trail other states and the federal government in the ethical expectations demanded of its officers, employees, and special appointees; and

NOW, THEREFORE, I, Mitchell E. Daniels, Jr., by virtue of the authority vested in me as Governor of the State of Indiana, do hereby order that:

1. No agency officer, employee, or special state appointee, as defined by IC 4-2-6-1, shall solicit or accept gifts, favors, services, entertainment, food, or drink in any amount from a person who has a business relationship with the employee's agency, except as permitted under 40 IAC 2-1-6(a) or 40 Indiana IAC 2-1-6(b)(1)-(6). Upon enactment of legislation codifying the position of Inspector General, the Inspector General shall promulgate rules, in consultation with the Indiana State Ethics Commission, to effectuate this prohibition. Executive Order 04-08, which continues in effect, is hereby amended to be consistent herewith.
2. The Commissioner of Administration shall consult with the Inspector General and State Ethics Commission prior to promulgating rules requiring registration for individuals who lobby the Executive Branch. Executive Order 04-11, which continues in effect, is hereby amended to be consistent herewith.
3. The heads of all state agencies and instrumentalities of the executive department, including all bodies corporate and politic, and all employees or special state appointees with purchasing or procurement authority on behalf of the State, shall not solicit political contributions on behalf of any candidate for public office, unless that individual is a candidate for public office himself or herself.
4. No state officer, employee, or special state appointee shall accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired. The Inspector General is directed to create procedures for the issuance of an advisory opinion granting approval to outside employment, which advisory opinion would serve as conclusive proof that such employment is not in violation of this section and is consistent with the State's desire to attract quality individuals who are successful in the community and/or private sector and are willing to serve the State in some capacity.
5. A state officer, employee, or special state appointee may not participate in any decision or vote if that individual has knowledge that any of the following has a financial interest in the outcome of the matter:
 - a. The state officer, employee, or special state appointee.
 - b. A member of the immediate family of the state officer, employee, or special state appointee.
 - c. A business organization in which the state officer, employee, or special state appointee is serving as an officer, director, trustee, partner, or employee; or
 - d. Any person or organization with whom the state officer, employee, or special state appointee is negotiating, or has an arrangement concerning, prospective employment.

The Inspector General is directed to create procedures to allow an individual who identifies a potential financial conflict of interest to make full disclosure, establish screening procedures, and obtain an advisory opinion that would serve as conclusive proof that it is not a violation of this section for a state officer, employee, or special state appointee to participate in a particular matter.

6. A state officer, employee, or special state appointee may not knowingly have a direct or indirect financial interest in a contract made by any agency. This prohibition does not apply if:

Exhibit E-3

EXHIBIT 2

- a. the contract is made after public notice or, where applicable, through competitive bidding;
- b. the state officer, employee, or special state appointee files with the State Ethics Commission a statement making full disclosure of all related financial interests in the contract;
- c. the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee; and
- d. in the case of a contract for professional services, the appointing authority of the contracting agency makes and files a written certification with the State Ethics Commission that no other state officer, employee, or special state appointee of the agency is available to perform those services as a part of their regular duties.

The Inspector General is directed to create procedures for the issuance of an advisory opinion that would serve as conclusive proof that it is not a violation of this section if a state officer, employee, or special state appointee who, acting in good faith, learns of an actual or prospective violation of this section no later than thirty (30) days after the agency makes the contract, makes full disclosure of any financial interest, and terminates or disposes of the financial interest.

7. The revolving door prohibitions created by Executive Order 04-10, which continues in effect, shall continue to apply to any state officer, employee, or special state appointee who left state government prior to January 10, 2005, or to any individual who served as a state officer, employee or special state appointee prior to and after January 10, 2005 and who seeks and receives a waiver from the State Ethics Commission of the requirements of this Executive Order that are in addition to those imposed by Executive Order 04-10.
8. No state officer, employee, or special state appointee who leaves state government after January 10, 2005 shall accept employment or receive compensation for one year:
 - a. as a lobbyist engaged in lobbying the executive or legislative branches of state government in Indiana;
 - b. from an employer if the former officer, employee, or special state appointee was engaged in the negotiation or administration of one or more contracts with that employer or in a position to make a discretionary decision affecting the outcome of the negotiation or administration of such a contract; or
 - c. from an employer if the former officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a company that controls, is controlled by, or is under common control with, the employer.
9. No state officer, employee, or special state appointee who leaves state government after January 10, 2005 shall represent or assist a person in a particular matter involving the State if such former officer, employee, or appointee personally and substantially participated in the matter while serving in the capacity of a state officer, employee, or special state appointee, even if such former officer, employee, or appointee receives no compensation for such representation.
10. A registered lobbyist may not serve as a member of a board, commission, committee, authority, or task force of the executive department, unless that body is an advisory body only. This provision shall not apply to any person who was appointed to a board, commission, committee, authority, or task force of the executive department prior to January 10, 2005.
11. All instrumentalities of the executive, including the administrative, department of state government, as well as all bodies corporate and politic set up as instrumentalities of the State, are directed to notify the State Ethics Commission within thirty (30) days of this executive order that they are under the jurisdiction of the State Ethics Commission.

Exhibit E-4



Todd Rokita

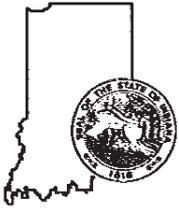
ATTEST: Todd Rokita
Secretary of State

IN TESTIMONY WHEREOF, I, Mitchell E. Daniels, Jr., have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 10th day of January, 2005.

M. E. Daniels, Jr.

Mitchell E. Daniels, Jr.
Governor of Indiana

Exhibit E-5



STATE OF INDIANA

Mitchell E. Daniels Jr., Governor

DEPARTMENT OF ADMINISTRATION
Office of the Commissioner

Indiana Government Center South
402 West Washington Street, Room W479
Indianapolis, IN 46204
(317) 232 - 3114

August 8, 2012

The Honorable Mitchell E. Daniels, Jr.
206 State House
Indianapolis, IN 46204

Governor Daniels:

I forward this response to you with respect to the inquiry submitted on your behalf, specifically focusing upon "*are there any executive branch lobbying restrictions upon you leaving state office and serving as President of Purdue University.*"

The response and analysis below are strictly limited to the applicable statute and administrative rules currently promulgated and in place defining "Executive Branch Lobbying" and any restrictions and requirements imposed upon persons which fall under the mandates of such laws. Questions regarding additional areas or topics of inquiry should be directed to the Ethics Commission and/or the Lobby Registration Commission.

My review of 25 IAC 6-1-1 has focused upon the pertinent and defining provisions of 25 IAC 6-1-1 which are enclosed.

25 IAC 6-1-1 provides as follows:

(8) "Executive branch lobbyist" means any individual who is employed and receives payment, or who contracts for financial consideration, exceeding one thousand dollars (\$1,000) in any registration year, for the purpose of engaging in executive branch lobbying activity. *The term does not include any of the following:*

(A) An elected or appointed officer, *...a state educational institution*, or a political subdivision (as defined in IC 36-1-2-13) who attempts to influence an executive branch action that is within the scope of the individual's employment or official duties. [*emphasis added*].

Pursuant to this definition it is my opinion that there are no restrictions placed upon you regarding, Executive Branch Lobbying, while acting within the scope of your employment or official duties as President of Purdue University.

Kindest Regards,

Tim A. Grogg, Director
Executive Branch Lobbying

Encl.

Exhibit F

INDIANA
OFFICE OF INSPECTOR GENERAL

315 WEST OHIO STREET, ROOM 104, INDIANAPOLIS, IN 46202 317.232.3850

Informal Advisory Opinion

August 9, 2012

Dear Governor Daniels,

I understand you are requesting advice on legislative lobbying restrictions upon leaving employment with the Executive Branch of State Government. I further understand that you intend to commence employment with Purdue University upon completing your term as Governor.

A state officer or employee leaving state employment in the Executive Branch is not restricted from lobbying the Legislature. Those lobbying restrictions apply to Executive Branch lobbying. IC 4-2-6-11(b)(1); adopted in: 42 IAC 1-5-14; 42 IAC 1-3-1; IC 4-2-6-1(b) and IC 4-2-7-1(5). A lobbyist is defined as "an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under rules adopted by the Indiana Department of Administration (IDOA)." IC 4-2-7-1(5). These IDOA rules for Executive Branch lobbying may be found at 25 IAC 6-1-1 et seq. Advisory Interpretations of Executive Branch lobbying restrictions are issued by the IDOA Executive Director of Executive Branch Lobbying.

Thank you for submitting your inquiry. Please let me know if you have any questions regarding this opinion. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving an informal advisory opinion, and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this letter misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.


David Thomas, Inspector General

Exhibit 5