

## INSPECTOR GENERAL REPORT

2013-08-0149

July 10, 2014

*Inspector General David O. Thomas, after an investigation by Special Agent Charles Coffin, reports as follows:*

This investigation commenced after a report to the Office of the Inspector General (OIG) alleging a violation of 42 IAC 1-5-12, the use of state property rule. It was alleged that Dr. Charles Anthony Bennett (Dr. Bennett), elected in 2008 as the Indiana Superintendent of Public Instruction, violated this rule in 2012.

The OIG is a law enforcement agency directed by statute to investigate alleged violations of the Indiana Code of Ethics. IC 4-2-7-5(b) and IC 4-2-7-3(3).

### I

#### Use of State Property

An investigation commenced which revealed the following findings. As the Superintendent of Public Instruction, Dr. Bennett was a “state officer,” and not a “state employee,” for purposes of applying the Indiana Code of Ethics.

As a state officer, who was also a candidate for public office, Dr. Bennett was not prohibited from engaging in political activity. *See* 42 IAC 1-5-4 (the “political activity rule” does not apply to “state officers”). However, state officers

are still subject to the rule governing the use of state property in 42 IAC 1-5-12.

Under the use of state property rule, state officers “shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for official state business *unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation*” (emphasis added).

Therefore unlike state employees, Dr. Bennett was *not* prohibited to engage in political activity, but he still could not use state materials, funds, property, personnel, facilities, or equipment to engage in political activity unless there was a policy or regulation that *expressly* permitted him to do so.

In this case, the Indiana Department of Education (“IDOE”) had a policy on the use of electronic information, such as electronic calendars and e-mail. It was entitled “Indiana Department of Education Information Resources and Internet Access Acceptable Use Policy” (hereinafter the “Policy”). Dr. Bennett certified on January 12, 2009, at the time he took office, that he had “received, read, and understood” the policy and agreed “to abide by it during [his] employment with the Indiana Department of Education.”

Paragraph 1(a) of the Policy expressly permitted the “limited personal use” of DOE’s “Information Resources,” a term of art in the Policy defined as all “IDOE hardware, software, data, information, network, personal computing devices, phones, or other information technology.” Under Paragraph 2(a), however, the Policy prohibited the use of Information Resources “to conduct business related to an outside activity, either for profit or not for profit,” and “to

support any political party or candidate.” The Policy did not expressly permit Dr. Bennett to engage in political activity, even if it was of a “limited personal” nature. Use of state property for political activity was expressly prohibited in the written policy.

Dr. Bennett now acknowledges, pursuant to the terms of a Settlement Agreement, that he violated the terms of the Policy and therefore, violated the “use of state property” rule in three significant respects.

First, prior to the 2012 election as an incumbent political candidate, Dr. Bennett began participating in various political events, including attending campaign meetings and functions, participating in fundraisers, and conducting fundraising calls and meetings. The OIG did not find evidence that these political events occurred on state property. However, with Dr. Bennett’s knowledge, joint meetings between the campaign staff and IDOE staff were conducted in Dr. Bennett’s Statehouse office in order to coordinate Dr. Bennett’s calendar. Dr. Bennett then knowingly kept a consolidated calendar, using his state-owned and maintained Microsoft Outlook account, to track both his official public appointments and these campaign scheduled events. The use of both the state office and the state Outlook account were not expressly permitted by the Policy.

Second, Dr. Bennett received e-mails of a political or campaign nature at his state e-mail address at “tb@doe.in.gov”. Dr. Bennett maintains that these e-mails were unsolicited and that he does not recall receiving, reviewing, or responding to many of them. Nonetheless multiple emails included communications about political subjects. For example, on one occasion in

September of 2012, Dr. Bennett responded to an e-mail from a political supporter that was sent to his state e-mail account asking Dr. Bennett to provide him with questions to ask Dr. Bennett's political opponent, Glenda Ritz, at a public forum.

Finally, following Dr. Bennett's defeat in the 2012 election, Dr. Bennett asked his staff to compile a list of personal contacts for his use in his new position as Florida's Education Commissioner. In January of 2013, responding to Dr. Bennett's request, Dr. Bennett's staff solicited contacts from multiple individuals, including individuals who had worked on Dr. Bennett's campaign. In response to that request, campaign staffers sent three lists, entitled "The 5000," "The Big Hitter List," and the "Red Meat List" that had been used during the political campaign for various political and campaign functions, including fundraising. These lists were placed on a state server, prior to putting them on an electronic data storage device, for Dr. Bennett to take when he left office. These lists remained on the computer system and were later discovered by staff for Dr. Bennett's successor and reported to the OIG. Our investigation did not reveal that Dr. Bennett knew these lists were on the state computer system. However, Dr. Bennett's request to compile a personal contact list and the subsequent use of state resources and equipment to do so was not expressly permitted by the Policy and therefore, was prohibited by the "use of state property" rule.

Dr. Bennett, as the Superintendent, had the authority to enact written policies that permitted these limited uses of state property for non-official purposes under 42 IAC 1-5-12 and 13. If enacted, those policies would have been documents subject to public review through the public access laws. However,

those policies could not authorize conduct that was illegal. In this case, the OIG investigation was submitted to the Marion County Prosecuting Attorney's Office where criminal prosecution has been declined.

## II A-to-F Grading Changes

While Dr. Bennett was Superintendent of Public Instruction, the Indiana Department of Education implemented regulations to create a school ranking system, known as the "A to F System," which was designed to evaluate and grade public schools on a variety of educational performance metrics. A bipartisan report was issued to the Indiana General Assembly on September 6, 2013, entitled "Examination of Indiana's A to F School Accountability Model" (hereinafter "Examination"), that more comprehensively investigated and detailed the development and implementation of the A to F System.

The Inspector General's role and review is more focused. We were asked to determine whether Dr. Bennett violated the State's Ethics Code, when in September, 2012, e-mails indicate that Dr. Bennett asked employees of IDOE to review and revise portions of the grading system after preliminary, unpublished internal IDOE reports indicated that certain schools had unexpectedly received lower grades than anticipated.

Specifically, we were asked to investigate the circumstances which led to the grade for the Christel House Academy being raised from a "C" on the preliminary report to an "A" on the final published report, and e-mails from September, 2012, which indicated that Dr. Bennett may have requested that

increase.

We find no Code of Ethics violation for several reasons. First, no one has shared with us a specific rule violation. Second, the separate, bi-partisan investigation requested by the Indiana Legislature and which interviewed more than 20 witnesses and examined voluminous documentation, specifically found no special treatment on this issue. In fact, it specifically concluded “the accommodations made to Christel House Academy were consistently applied to at least 16 other schools which had analogous situations,” and “the two adjustments administered to determine Christel House Academy’s final grade were plausible and the treatment afforded to the school was consistently applied to other schools with similar circumstances.” Examination, at page 17. Third, we find it relevant that it appears that schools which were awarded higher adjusted grades received fewer funds as a result.

For the above reasons, we find no Code of Ethics violations on this issue.

### III Penalty

The State Ethics Commission (Commission) has approved settlement agreements in at least three prior matters that are similar to this case. In two matters, one involving former Indiana Department of Transportation (“INDOT”) Secretary Bryan Nicol and the other involving former Indiana State Police Superintendent Melvin Carraway, both state employees took responsibility for their actions, admitted to violations of the state ethics rules, and the Commission approved settlements which assessed \$5000 civil fines to each. INDOT official

Vaneeta Kumar contested her Ethics complaint and after a full public hearing the Commission issued a fine of \$6,100. The OIG recommends this settlement agreement with a fine of \$5000 as consistent with each of these previous matters and the confirmed violations contained herein.

/s/ David O. Thomas, Inspector General

STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

INDIANA STATE ETHICS COMMISSION  
CASE: 2013-07-0149 *et seq*

INDIANA  
STATE ETHICS COMMISSION  
JUL 10 2014  
FILED

IN RE THE MATTER OF  
CHARLES ANTHONY (TONY) BENNETT,  
Respondent

AGREED SETTLEMENT

1. Respondent admits to the facts as alleged in the complaint filed on November 14, 2013, and a violation of 42 I.A.C. 1-5-12, the ethics rule pertaining to the use of state property.
2. Respondent shall be fined five thousand dollars (\$5,000.00), which payment is to be made by Respondent to the "Indiana Ethics Commission" within ninety (90) days.
3. The parties acknowledge that this agreement reflects the entire agreement between the parties, that an approval of these terms by the Commission shall result in the final disposition of this litigation, and that Respondent is waiving an alternative statutory right to a public hearing in I.C. 4-2-6-4 to contest the complaint.

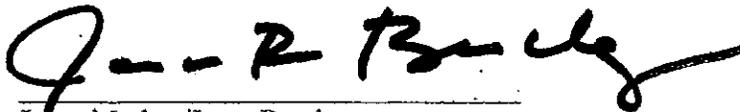
Dated this 7<sup>th</sup> day of JULY, 2014.



Charles Anthony Bennett, Respondent



David O. Thomas, Inspector General



Larry Mackey/Jason Barclay  
Attorney for Respondent