



STATE OF SOUTH DAKOTA
DENNIS DAUGAARD, GOVERNOR

September 19, 2014

Tim Flannery
Department of Legislative Audit
427 South Chapelle
Pierre, SD 57501

Dear Mr. Flannery,

Enclosed are my answers to the questions Senator Tidemann submitted to me in his letter of September 8, 2014. I appreciate that Senator Tidemann allowed me until today to provide these answers.

Since I first brought this matter to light, I have released all the information that I can to the public, and provided answers to every question the legislature has posed. Likewise, I have answered these questions to the extent of my knowledge. Some of these questions assume facts that I do not know to be true, or deal with matters of which I have no first-hand knowledge, and in those instances, I have so noted.

Sincerely,

A handwritten signature in black ink that reads "Dennis Daugaard".

Dennis Daugaard

DD:nn

Enclosure

1. Where is the \$550,000 from the \$1 million state grant that Mike Rounds cabinet secretary Richard Benda stole from Northern Beef Packers?

This \$1 million grant was made to Northern Beef Packers in 2010, to be paid to reimburse NBP for construction and equipment expenses they had incurred. Independent auditors, including the Department of Legislative Audit, verified that NBP provided necessary documentation that it had incurred at least \$1 million in construction and equipment expenses, and the grant was issued to and received by NBP.

Although state or federal investigators may know more, I have no first-hand knowledge as to what happened to those funds once they were received by NBP. Specifically, you would need to enquire with state or federal investigators as to any specific allegation that Benda stole these funds.

2. Who in state government did the Northern Beef CEO talk to ahead of time to feel comfortable giving Benda a check for \$550,000 upon his delivery of the \$1,000,000 Future Funds grant?

The NBP CEO did not talk to anyone in my administration about any arrangement he may have had with Richard Benda. The attorney general has indicated that, other than Benda, he did not find probable cause to charge any current or former state official with a crime.

3. Who in the Rounds Administration approved the \$1 million Future Funds grant for construction reimbursement to Northern Beef Processors (The check Benda ended up securing in physical form as a member of the private sector)?

Your letter indicated that the Department of Legislative Audit has provided you with an answer to this question.

4. Was Richard Benda working alone when he stole the state's money?

As I said in response to Question #2, the attorney general has indicated that, other than Benda, he did not find probable cause to charge any current or former state official with a crime.

I directed GOED to undertake three separate, independent audits and reviews, none of which found any wrongdoing beyond what was already known. You would need to enquire with state or federal investigators as to any specific allegation that Benda stole these funds or for other questions about what their investigations found.

5. How is it possible that Benda stole the \$550,000 state grant money without conspiring with either state officials, Northern Beef Packing plant employees or SDRC Inc President Joop Bollen?

I would refer you to my answers to Questions #1 and #4. Beyond that, this question is best directed to state or federal investigators.

6. How close did Mike Rounds work with Richard Benda & Joop Bollen on the EB5 program?

This is a question best directed to Governor Rounds.

7. Did Mike Rounds know the intended purpose of the \$1 million grant he approved for his departing cabinet secretary Richard Benda?

Documents indicate that the purpose of the grant was to reimburse Northern Beef for their construction and equipment expenses. Beyond that, this question is best directed to Governor Rounds.

8. Why is Governor Dennis Daugaard pointing the finger at the Rounds administration but former Governor Mike Rounds says the check is the Daugaard administration's fault?

There is no finger-pointing. With any state payment, the official authorizing payment directs whether the payment is to be made electronically, by a mailed check, or by a hand-delivered check. Before he left his position as Secretary, Richard Benda personally authorized the issuance of the \$1 million check to NBP, and directed that the check be held for him so that he could deliver it personally. The State Auditor's office processed the request for payment according to Benda's instructions.

9. How did Joop Bollen get the contract to privately manage the EB5 visa program for the state of South Dakota? Was there a public bidding process?

This occurred in 2009 and is a question best directed to state officials who were involved at that time.

10. Why did Mike Rounds think it was ok to grant a no-bid contract to a state employee for the lucrative EB5 contract?

This is a question best directed to Governor Rounds.

11. What were the full terms of Joop Bollen's contract to manage the EB5 program?

Your letter indicated that the Department of Legislative Audit will be providing a copy of the contract.

12. Who determined the terms of Joop Bollen's contract to privately manage the EB5 program?

This occurred in 2009 and is a question best directed to state officials who were involved at that time.

13. Who wrote the contract to privatize the EB5 program for Joop Bollen?

This occurred in 2009 and is a question best directed to state officials who were involved at that time.

14. Who else was earning money from the state's privatization of the EB5 program?

SDRC had a management contract to administer the EB-5 program on behalf of the state. As SDRC is a private business, questions about its finances are best directed to SDRC officers.

15. Did any beneficiaries of the EB5 program make political contributions to elected officials, and/or their party committees, who oversaw the EB5 program?

It is not apparent what "beneficiaries" this question references. Of course, contributions to state or federal candidates are reported online and are available for public review.

16. Is there any information you can provide the Committee regarding the results of the investigation being done at the private attorney to pursue the possible recover of the \$550,000 that was allegedly misappropriated by the late Richard Benda?

I take the potential loss of any state funds very seriously, and began late last year to consider the possibility of a civil claim. GOED has retained Paul Bachand as outside counsel to evaluate the possibility of a civil claim. Bachand cooperated with the attorney general to obtain a court order to gain access to information from the attorney general's investigation, and an additional court order allowing Bachand to use accountants from the Department of Legislative Audit to aid in his review of the file. Bachand has not yet concluded his evaluation of the case and has not offered any conclusions or legal advice.



STATE OF SOUTH DAKOTA
DENNIS DAUGAARD, GOVERNOR

September 22, 2014

Tim Flannery
Department of Legislative Audit
427 South Chapelle
Pierre, SD 57501

Dear Mr. Flannery,

Enclosed are my answers to the questions Senator Tidemann submitted to me on September 17, 2014.

Since I first brought this matter to light, I have released all the information that I can to the public, and provided answers to every question the legislature has posed. Likewise, I have answered these questions to the extent of my knowledge. Some of these questions assume facts that I do not know to be true, or deal with matters of which I have no first-hand knowledge, and in those instances, I have so noted.

Sincerely,

Dennis Daugaard

DD:nn

Enclosure

1. In regard to subparts (a)-(g), these questions are best directed to state officials who were involved at that time. As the Darley lawsuit is being defended by the Board of Regents, questions about that lawsuit are best directed to the Regents' general counsel.

In regard to subpart (h), the first two questions are best directed to state officials who were involved at that time. In regard to the third question, following the termination of the SDRC management contract, GOED received records from SDRC relating to SDRC's administration of the EB-5 program and individual investors that applied for EB-5 visas. SDRC has stated that these were all of the records it had under its control.

In regard to subpart (i), this question is best directed to state officials who were involved at that time.

In regard to subpart (j), I am aware generally that foreign investors under the federal EB-5 program are required to make investments of a certain size under certain terms. I believe the reports submitted to the United States Citizenship and Immigration Service (USCIS) by SDRC would reflect the estimated number of jobs projected to be created by each EB-5 project.

In regard to subpart (k): The 2009 agreement between the state and SDRC did not entitle the state to receive fees. The only funds the state received were through Indemnification Fund One and the Expense Fund. More information about those funds is available in the management contract and in the Department of Legislative Audit's audit report, which was submitted to GOAC during the legislative session.

Questions about SDRC's business relationships with individual investors are best directed to SDRC officers.

In regard to subpart (l), this contract was negotiated by a Board of Regents employee, and the Darley lawsuit is being defended by the Board of Regents. I do not recall being aware of this contract prior to recent press reports.

2. In regard to subparts (a)-(c), these questions are best directed to state officials who were involved at that time. As the Darley lawsuit is being defended by the Board of Regents, questions about that lawsuit are best directed to the Regents' general counsel.

In regard to subpart (d), I know that, in 2012, GOED Commissioner Pat Costello became increasingly concerned with SDRC's administration of EB-5 under the management contract, and took steps to remedy those issues. This culminated with our termination of the SDRC contract in 2013, following a briefing from the attorney general about the progress of his investigation. I am not aware that Rich Williams raised any issues, as you referenced in the second question.

In regard to subpart (e), I have had no personal participation in recruiting EB-5 investors.

3-4. I was not aware of the Darley litigation until I took office as governor in 2011. After taking office, I was briefed on the litigation, but I do not specifically remember when that was.

5. As I understand it, the fees that SDRC is collecting result from private business relationships the company has with EB-5 investors and projects. According to state attorneys, the state cannot rescind SDRC's ability to continue these private business relationships.

6. No.

7. The Darley lawsuit has been disclosed to GOAC at least twice, in the state's annual audit reports for Fiscal Years 2010 and 2011. For those who have been following this matter in the media, reporters have written about the Darley lawsuit in November 2013 and again in April 2014.

At the GOAC hearing, Commissioner Costello fielded a question about pending litigation involving EB-5. He understood this question to be about pending lawsuits against GOED, of which there are none. The Darley matter had already been disclosed in the audit reports, and as the Board of Regents is handling this matter, I would direct questions about that status of the case to the Regents general counsel.

8. My request to Attorney General Jackley was to investigate allegations of wrongdoing against Richard Benda. I would refer you to the attorney general for questions about his investigation.

9. I would refer you to my answer to question #5.