

September 22, 2014

Senator Larry Tidemann, Chair  
Government Operations and Audit Committee  
State Capitol  
500 East Capitol Avenue  
Pierre, SD 57501

Dear Senator Tidemann,

I appreciate the opportunity to answer the questions provided by the Government Operations and Audit Committee. Despite the overt political nature of many of these questions – you will find that my responses are straight forward. I will not engage in speculation or respond to defamatory comments. By stating as fact that someone “stole” money absent a conviction certainly tests that legal threshold, and a state legislator title does not provide protection from such a violation.

The federal EB-5 program is about jobs and the economy. The vast majority of these projects have been successful. And, this federal program provided invaluable funding, during a deep recession, when alternative sources of financing were scarce.

In South Dakota, it has been reported, that we can attribute more than 5000 jobs and \$600 million in capital investment. As with any private sector business venture, there is economic risk. In fact, this federal program requires the investment be at risk. Fortunately, the vast majority of these projects are operating throughout South Dakota today employing thousands of South Dakotans. These projects employ real people, in real South Dakota communities.

The federal EB-5 program is almost 25 years old. Since it is a federal program, state governments are not charged with nor do they have the ability to improve or change programmatic, regulatory or oversight parameters. This is a federal program. The press has reported on concerns from U.S. Senators, notably Senator Grassley who is a supporter and friend of mine. America has seen many changes since the federal EB-5 program was enacted with bi-partisan support. For example, the illegal immigration issue has escalated beyond reason and America was hit by terrorists on 9-11. The Obama administration as well as the U.S. Congress is overdue in their review of many federal programs, including EB-5. If elected to the U.S. Senate, I would support and lead a proactive effort to review all aspects of the federal EB-5 program, with a specific emphasis on federal regulatory oversight.

Additionally, I support constructive recommendations from this committee for improved handling of the federal program within state government. Sound operational improvements can always be considered and made at the state level when appropriate. Of course, that requires a sincere effort – not grandstanding.

New Angus, LLC (formerly Northern Beef Processors) located in Aberdeen is a state of the art facility that will soon employ hundreds of South Dakotans. Cattle producers from throughout the region will have access to new markets and we'll finish more of our livestock right here in South Dakota. For those of your members who will point to other federal EB-5 projects such as the three dairies that, indeed filed bankruptcy, understand that they are operational today. The free market can be difficult – but just as the dairies that were bought out of bankruptcy, New Angus, LLC will soon be another success story for South Dakota.

The federal EB-5 program has been supported by South Dakota's entire congressional delegation. Democrats and Republicans have supported it since its inception. In fact, my democrat opponent in the U.S. Senate race worked for Tom Daschle, who supported EB-5 when the program was created.

The fact is, no one has talked about the federal EB-5 program more than I have. Eight local, state and federal law enforcement and investigatory agencies have reviewed various aspects of this case.

To suggest a "conspiracy" the democrats should have the insight or at least courage and the evidence to follow their logic through. Eight different organizations – including republican and democrat elected officials and appointees have been involved. If there is a conspiracy – all eight of those entities are either all-together conspiring or all-together negligent. It's a suggestion that goes beyond reason and lacks respect for all levels of law enforcement – and by suggesting such wild accusations – knowingly or unwittingly the democrats implicate their own party. Instead, there has been irresponsible political innuendo without evidence.

An accusation that is not on your list that I'd like to address is "Where'd the money go?" The answer is simple. It is in Brown County. A state of the art facility is nearing operational status in Aberdeen. For those who haven't taken the time to see the project – particularly those that choose to vilify it, I'd recommend a visit to New Angus, LLC.

Second, in response to the accusation that the state lost millions in tax money. This sounds easy to say and politicize. But it's impossible to prove – because it's simply not true. During the construction phase and the short time the plant operated – state and local governments collected more than what NBP received in taxpayer money. That is a fact.

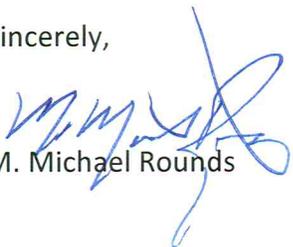
I cannot speak to the singular actions of Mr. Benda. Sadly, we will never know what he did. What we do know is that the attorney general had summoned a grand jury. The attorney general has stated that his investigation found no evidence of involvement from additional state officials. What occurred was an isolated incident with a single state employee – allegedly taking place before and after his employment with state government. The attorney general has clearly stated that I was not a target of the investigation.

It's tragic on many fronts. Mostly, it's tragic for the family that was left behind.

Finally, I have been completely cooperative, open and transparent throughout the investigative process. As I've stated, no one has talked about the federal EB-5 program more than I have. If there are legitimate questions that need to be asked – I recommend they be directed to the South Dakota Attorney General or the U.S. Attorney.

I agree, if there is information being withheld from the public – it should be released immediately. Moreover, if there are legitimate programmatic issues or concerns that need to be addressed at the state or national level, I would also support the effort.

Sincerely,



M. Michael Rounds

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

This issue was the subject of independent state and federal investigations. As I stated to the attorney general as part of his investigation, I had no knowledge of the funds that Richard Benda allegedly diverted for personal use.

- 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?**

Based upon press reports, the alleged transaction occurred in late January 2011. I was no longer governor. Mr. Benda was no longer a state employee.

I am not aware of any discussion between anyone in state government and Northern Beef Processors concerning this transaction.

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

*Provided - The Letter of Agreement authorizing the \$1 million grant was signed by Governor Rounds. This information was obtained by the South Dakota Department of Legislative Audit as part of their audit of the governmental funds of the Governor's Office of Economic Development.*

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

Based on press reports, the attorney general has conducted an extensive investigation and concluded that there were no other state officials involved.

- 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?**

See #4

- 6. How close did Mike Rounds work with Richard Benda and Joop Bollen on the EB-5 Program?**

The federal EB-5 program was only one of the many financing tools available for private economic development projects. Governors, including me, receive regular updates on projects utilizing Future Funds, Rural Economic Development Initiative Funds, Community Development Block Grants, bonding authority activity, Small Business Administration loans and other state and federal programs.

As governor, I received regular updates on ongoing economic development projects. While serving as governor, the state created 28,000 new jobs despite the greatest national recession since the great depression. The federal EB-5 program was a tool that, as reported, helped create more than 5000 jobs and \$600 million in capital investment in South Dakota. Yes, job creation was a focus during my time as governor, regular updates – provided by staff - were an obvious component.

There are successful federal EB-5 projects located throughout South Dakota. Many of your constituents likely have employment because of that focus on job creation in the private sector. Counties throughout both eastern and western South Dakota have jobs today – ranging from ag processing, wind energy, resorts, utility and dairies. These projects are operating and employing people today because of the federal EB-5 program.

No amount of political defamation will change that.

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

The premise of the question appears incorrect and defamatory. I did not approve a \$1 million grant for Richard Benda.

As the committee knows and as has been reported publically, I approved the Future Fund grant request for reimbursement of construction infrastructure costs, up to \$1 million, by Northern Beef Processors (NBP). That requirement had been met by NBP. And, as reported, a check was issued after I left office to NBP for reimbursement for construction costs.

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

The question appears incorrect on both points. As has been reported, the “check” is a product of NBP meeting their requirement set forth in the contract. The chronology or date of the check leaving state government and the manner in which it was delivered – I cannot speak to – as I was in the private sector and no longer governor.

**9. How did Joop Bollen get the contract to privately manage the EB-5 visa program for the State of South Dakota. Was there a public bidding process?**

- a. KELO reported Mike Rounds sliced Joop Bollen's pay in half for managing the state's EB-5 program to grant Bollen the lucrative EB-5 contract through a no bid process.

My understanding is that the contract was negotiated between the state agency and SDRC. Since the contract was less than \$50,000 *state law* did not require a bid.

**10. Follow up on Keloland story: Why did Mike Rounds think it was ok to grant a no-bid contract to a state employee for the lucrative EB-5 contract?**

See #9. In fact, state law governs contract matters.

**11. What were the full terms of Joop Bollen's contract to manage the EB-5 program?**

*Provided - That contract has been made available to the public (see attached copy)*

**12. Who determined the terms of Joop Bollen's contract to privately manage the EB-5 program?**

I did not participate in those specific transactional details. The contract was between a state agency and the contractor.

The press has reported that Mr. Benda and Mr. Bollen negotiated the contract.

**13. Who wrote the contract to privatize the EB-5 program for Joop Bollen?**

The contract was between a state agency and the contractor. Each state agency would normally handle those specific transactional details - not unlike the thousands of contracts state agencies engage in every year.

The press has reported that private attorneys for the parties drafted the agreement based on the terms they negotiated.

**14. Who else was earning money from the state's privatization of the EB-5 program?**

To my knowledge, the only financial obligation the state had is articulated in the contract.

SDRC, Inc. is a private business. State government would not necessarily have or know that information.

**15. Did any beneficiaries of the EB-5 program make political contributions to elected officials, and/or their party committees, who oversaw the EB-5 program?**

The “beneficiaries” of the federal EB-5 program number in the tens of thousands. As reported, 5000+ jobs, \$600 million in capital investment, local property tax payers, schools, 27 or more projects in almost as many different communities, utility users, investors, indirect jobs created, service providers, and spin-off businesses. Where, precisely, should we draw the line with “beneficiaries”?

If the questioner has a specific person in mind, political contributions are public information for both state and federal candidates.

**16. How many people, who have participated in the EB-5 program, have come to South Dakota and have become contributing citizens to the State of South Dakota?**

I am not aware of this information. This is a federal program – I suggest you contact the federal agency that administers the program.

September 22, 2014

Senator Larry Tidemann, Chair  
Government Operations and Audit Committee  
State Capitol  
500 East Capitol Avenue  
Pierre, SD 57501

Dear Senator Tidemann,

Thank you for the additional questions. As a former state senator, I deeply respect your leadership and the stated responsibilities of the Government Operations and Audit Committee (GOAC). However, it is unfortunate that the democrats have resorted to using GOAC for political purposes.

Regardless, I appreciate the additional venue to provide the following information because I believe that it's extremely important.

As you can see from the attached letter dated June 16, 2008, Mr. Bollen was an employee of the Board of Regents. Northern State University President Patrick Schloss specifically states; *"Management, personnel and fiscal oversight reside with the Dean of the Business School in collaboration with the Human Resources Office; Purchasing Office; Finance Office; and subject to the above chain of command. All members of Northern State University are responsible to the South Dakota Board of Regents."*

This information is highly relevant because it clearly states that the Board of Regents claim full responsibility for SDIBI six months after the contract in question was executed. Given the chronology – there is no way that a governor would have or be led to believe that anything other than what was reported by the BOR to GOAC on June 16, 2008 was true and correct. The same questions could be asked of GOAC. GOAC received the letter, the governor's office did not. If anyone was misled, it started with GOAC.

**Below is a statement that my campaign provided the Argus Leader on September 8, 2014 in response to Representative Tyler's press conference on this same matter. The Argus Leader did not include this information in their story**

*"Attached is a document that confirms the SDIBI reporting structure, including fiscal, personnel and overall management as of June 16, 2008 ; it also shows that Bollen was still an employee of the BOR at that time. NSU Pres James Smith has reported that Bollen was employed by BOR until December 21, 2009.*

*Governor Rounds had no knowledge of the contract Rep. Tyler, shared with the media today. At the time of the contract (which Rep. Tyler is unwilling to divulge the source of), Joop Bollen was an employee of the Board of Regents, and the BOR, does not fall under the purview of the Governor's office and therefore, not be expected to report it's day to day operations to the Governor's office. Any contract between SDIBI (which was a Board of Regents office) and a third party would fall under the purview of the Board of Regents and be reviewed by their regular chain of command. An employee of the board of regents executing a contract on behalf of an office of the BOR would also fall under the purview of the BOR and therefore be expected to gain approval though their normal operating procedures. Again, the BOR does not fall under the purview of the Governor's office."*

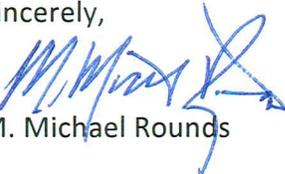
Based on the facts, if there was a breakdown and if we're to believe the democrat conspiracy theory, GOAC was the first to be misled in this scenario. GOAC had investigatory authority over the Board of Regents, which you were obviously pursuing.

Now, if the democrats are going to pursue their conspiracy theory further, they should be willing to add GOAC to the list of eight separate local, state and federal law enforcement and investigatory agencies that have reviewed various aspects of this case. As I've stated, that conspiracy would require that all of these organizations, and all of the elected and appointed democrats and republicans, were either all-together conspiring or all-together negligent.

If there is information being withheld, I continue to agree, it should be released immediately. The attorney general, who has from the beginning coordinated with federal officials, has clearly stated that I was not a target of the investigation. I suggest the democrats expect the same transparency from the U.S. Attorney.

If there is additional evidence, bring it forward. Innuendo, political defamation and lies do not help South Dakota.

Sincerely,



M. Michael Rounds

June 16, 2008

Senator Jason M. Gant, Chair  
Government Operations and Audit Committee  
South Dakota Legislature  
State Capitol  
500 East Capitol Avenue  
Pierre, SD 57501-5070

Dear Senator Gant:

In response to the information request by Gary Hoscheid, Department of Legislative Audit, the following data is provided:

**1. The nature and purpose of the International Business Institute at NSU.**

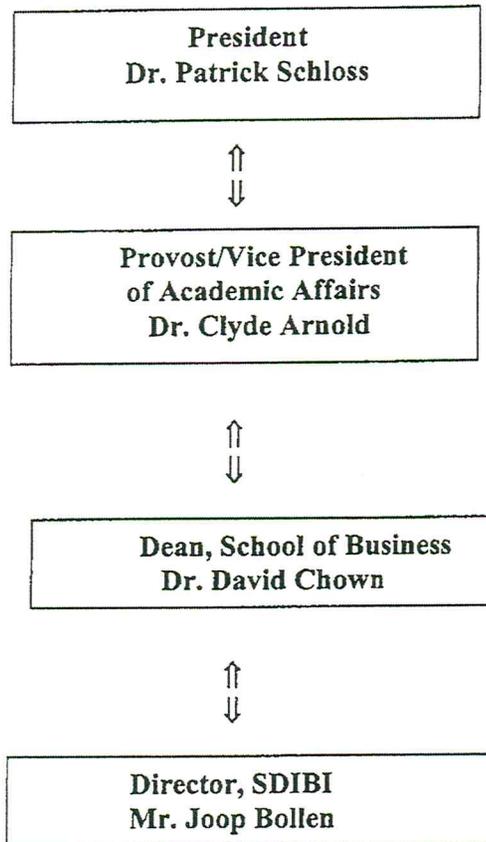
The South Dakota International Business Institute is a part of the international business academic experience at Northern as well as an engine for economic development in South Dakota. Developed as a cooperative effort between the state of South Dakota and Northern State University, the South Dakota International Business Institute (SDIBI) supports the Governor's Office of Economic Development (GOED) in facilitating and enhancing international trade for South Dakota. International trade creates jobs which corresponds with GOED's mission of creating quality job opportunities for South Dakotans. SDIBI is also available as a learning laboratory for international business students at NSU and plays a significant role in the annual international business conference at Rapid City/Mount Rushmore.

**2. The actual work being performed at this institute.**

SDIBI conduct export promotion services such as educational sessions for companies, conducts export consulting sessions, disseminates trade leads, maintains an exporter's directory, publishes South Dakota export statistics and provides access to export finance and international credit reports. SDIBI also developed and implemented a foreign direct investment program, which mainly revolves around the regional center status obtained initially in April 2004 and which was amended in June 2005. For more details on SDIBI please visit <http://www.sd-exports.org/> SDIBI is staffed by a director, secretary and student labor.

**3. Who Mr. Joop Bollen actually works for; reports to; and has management and fiscal oversight responsibility over his activity.**

Mr. Joop Bollen is the Director of SDIBI and works for Northern State University. He reports to the Dean of the Business School, who in turn reports to the Provost/V.P. for Academic Affairs, who in turn reports to the President of Northern State University:



Management, personnel and fiscal oversight reside with the Dean of the Business School in collaboration with the Human Resources Office; Purchasing Office; Finance Office; and subject to the above chain of command. All members of Northern State University are responsible to the South Dakota Board of Regents.

If you have additional questions please contact me at your convenience.

Respectfully,

Patrick J. Schloss  
President



# SOUTH DAKOTA LEGISLATURE

State Capitol, 500 East Capitol Ave., Pierre, South Dakota 57501-5070

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September 16, 2014

Mr. Michael Rounds  
P.O. Box 250  
Pierre, SD 57501

Dear Mr. Rounds:

The Government Operations and Audit Committee has scheduled a meeting for September 24, 2014 in room 414 in the State Capitol Building to review various issues involving state government.

As the Chair of the Committee, I would like to request that you respond to the following questions, asked in a September 5, 2014 press release by Democratic leader Representative Bernie Hunhoff.

1. As a state employee, Joop Bollen granted SDRC Inc, a private company he owned, the contract to administer the EB5 program on January 15, 2008.
  - a. When did you approve this contract?
  - b. Why did Bollen sign the contract on behalf of the State when he incorporated and owned SDRC, Inc.?
  - c. Have you requested or reviewed a copy of Bollen's deposition transcript in the Darley arbitration where Bollen discusses the transactions between the State, his own company, Darley International LLC and Hanul Law Corporation?
  - d. Did you know Bollen was asked at deposition "why didn't you sign on behalf of SDRC, Inc." and he responded "it would look silly"?
  - e. Was this transaction (the contract signed on January 15, 2008) between the State and SDRC, Inc. reviewed by an attorney acting on behalf of the State? Who?
  - f. Do you know if anyone else had an ownership interest in SDRC, Inc. besides Bollen when he signed this agreement on behalf of the State 5 days after forming his company in January 2008?
  - g. Did you know Bollen did not resign from the State until December 21, 2009?
  - h. Did you know Bollen took all the EB5 records with him on December 21, 2009 without permission from NSU? Do you know if anyone from the State gave him permission? Do you know whether the State has copies of those EB 5 files now?
  - i. Did you know that Bollen, on behalf of South Dakota, was requesting recognition of SDRC, Inc. (his own company) by U.S. Immigration Services while he was a state employee?
  - j. Did you know that the foreign investors must invest the proper amount of capital in a business, called a new commercial enterprise, which will create or preserve at least 10 full-time jobs, for qualifying U.S. workers, within 2 years of receiving conditional permanent residency? Do you know if there is a listing of jobs created with each project in the state that received EB5 funds?

- k. Do you know how much in fees has been received by the State under the Agreement with SDRC, Inc.? How much SDRC, Inc. received?
  - l. When did you first learn about this contract? Did you read it? Ask an attorney to review? Distribute?
2. Clause 6 of the same contract signed between SDIBI and SDRC, Inc. on January 15, 2008, states "SDRC, Inc. shall indemnify, defend, and hold harmless SDIBI, SDIBI/SDRC, the state of South Dakota and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of SDRC, Inc. acts and/or omissions performed under this agreement." South Dakota had multiple opportunities to protect taxpayers:
- a. Who selected the attorneys to represent the States' interests in these matters?
  - b. Who are the primary State contacts with the attorneys representing the State's interests in the Darley arbitration?
  - c. Didn't some of the attorneys representing the State in the above-described matters have an affiliation with Hanul Law Corporation who is a defendant in the Darley arbitration?
  - d. When did you first learn about potential issues with the administration of EB5 issues? Didn't Attorney Rich Williams in the SD AG's office receive notice of EB5 issues several years before the contract with SDRC, Inc. was finally terminated?
  - e. What was your participation in EB5 investor recruiting? Trips? Discussions? Correspondence?

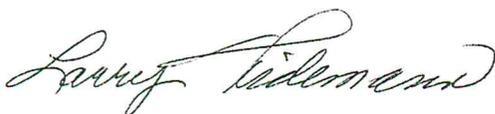
The following additional questions were presented by Senator Larry Lucas:

3. Once you, Attorney General Larry Long, and the South Dakota Board of Regents were made aware of the Darley International lawsuit, did you fully brief state legislative leadership or members of the joint appropriations committee of this ongoing legal matter?
4. Did you provide the authority for Joop Bollen to sign the contract granting SDRS, Inc. the right to administer the EB5 program on January 15, 2008, since the South Dakota Board of Regents did not grant such authority?
5. When you were served legal matters of the Darley petition in July of 2009 to force South Dakota into arbitration because of Joop Bollen's actions, why didn't you fire Joop Bollen and why didn't you initiate legal action against SDRC, Inc. which had pledged to hold harmless and indemnify the state of South Dakota?

Please submit this information to Tim Flannery, Department of Legislative Audit, 427 South Chapelle, Pierre, SD, 57501.

If you have any questions, please contact Tim Flannery with the Department of Legislative Audit at 773-3595.

Sincerely,



Senator Larry Tidemann, Chair  
Government Operations and Audit Committee

1a. I did not approve this contract. This contract was under the supervision of Northern State University and the Board of Regents (BOR). See previous comments and organizational chart provided to GOAC on June 16, 2008.

1b. I had no knowledge of the contract. Did GOAC?

1c. No

1d. No

1e. This contract was under the supervision of Northern State University and the Board of Regents. See previous comments and organizational chart provided to GOAC on June 16, 2008.

1f. No. I had no knowledge of the contract. Did GOAC?

1g. I was generally aware of the transition to privatize the program. I was not aware of any personnel activities within the BOR. This contract was under the supervision of Northern State University and the Board of Regents. See previous comments and organizational chart provided to GOAC on June 16, 2008.

1h. No. No. No.

1i. I was generally aware of the transition to privatize the program. I was not aware of personnel actions within the BOR.

1j. Yes, I am aware of the general parameters of this federal program. I am aware that the federal government reports jobs created.

1k. No. No.

1l. If you are referring to the January 2008 contract, I read about it in recent press reports. See 1a.

2a. This contract was under the supervision of Northern State University and the Board of Regents. See previous comments and organizational chart provided to GOAC on June 16, 2008 – six months after the contract you are questioning.

2b. I am not aware. As the attorney general has publically stated, this question should be directed to the BOR.

2c. I am not aware.

2d. October, 2013. I am not aware. This question should be directed to the SD Attorney General's Office.

2e. I was not directly involved in recruiting. See question #6 on separate questionnaire for additional information.

3. The South Dakota Board of Regents is the party that is handling the matter on behalf of the State. The Department of Legislative Audit and Bureau of Finance and Management publically disclosed this arbitration action in the annual financial reports of the State for 2010 and 2011. If GOAC read the reports, there are numerous items that are publically reported. Each agency would normally handle these specific legal details – not unlike the hundreds of legal issues state agencies engage in every year.

4. No. Did GOAC entertain the same question, when you received the June 16, 2008 management and organization structure explanation from the BOR?

5. The governor's office "was not served". The BOR was. See #3 and the letter to GOAC dated June 16, 2008 regarding your personnel questions.