

## MEMORANDUM

**TO:** Joint Committee on Government Reform

**FROM:** Thomas J. Homer, Legislative Inspector General

**DATE:** February 24, 2009

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Thank you for the opportunity to appear before your committee. By way of background, I have served as the Legislative Inspector General since my appointment by the General Assembly on July 24, 2004. My professional career spans 30 years of public service as a state's attorney, legislator, appellant court judge and now legislative inspector general. I applaud the efforts of the General Assembly and this committee to foster and promote legislation designed to promote integrity and ethics throughout state government. The topic of today's hearing, "Open Government" is central to that goal.

The General Assembly made significant progress towards ethics reform with the passage of the State Officials and Employees Ethics Act in 2003. This comprehensive legislation was well thought out and established a process for the orderly investigation and adjudication of certain enumerated ethics violations. Prohibited political activity was defined and prohibited. Campaign contributions were banned on State Property. Fundraising in Sangamon County was prohibited on days when the General Assembly is in session, Legislators and legislative employees and members of their families were banned for one year from accepting employment with a company if the State employee participated substantially in a state contract awarding \$25,000 or more to a prospective employer. This is referred to as the Revolving Door Prohibition. The Gift Ban Act prohibitions were added to the Act making it unlawful for legislators and State employees to accept gifts from lobbyists. Ex parte communications made by interested parties to regulatory agencies must be reported. Whistleblower protections are accorded state employees who bring forth evidence of wrongdoing by state officials or other state employees. Persons having a financial interest in contracts with an entity are prohibited from serving on boards and commissions which oversee the entity. The Act also mandates an ethics training program for all covered employees. While the legislation is far reaching and has provided an important

framework for the implementation ethics reforms, more can and should be done.

One of the main criticisms of the Act has been the lack of transparency due to the strict confidentiality provisions. In an attempt to protect the privacy rights of the subject of the complaint, the legislation limits the parties who are entitled to receive information relative to the complaint and investigation.

Section 25-50 of the Act (5 ILCS 530/25-50) provides that if the Inspector General, upon the conclusion of an investigation, determines that reasonable cause exists to believe that a violation has occurred, then the inspector general shall deliver a summary report of the investigation "to the appropriate ultimate jurisdictional authority and to the head of each state agency affected by or involved in the investigation, if appropriate." Section 25-50 (c) of the Act provides that the legislative inspector general "shall keep confidential and shall not disclose information exempted from disclosure under the Freedom of Information Act or by this Act."

While it is understandable that the General Assembly desires to protect the innocent from the public revelation of alleged wrongdoing, the same provisions have served to thwart the public's right-to-know and have served to undermine public confidence in the process.

It has been proposed by the former Chair of the Executive Ethics Commission, Scott Turow, and others that findings by an inspector general that result in significant discipline (at least three-day suspension) be subject to Commission approval, and if approval is granted, to publication. Others, including the former executive inspector general for the office of the governor, have proposed that final founded reports issued by the IG's be subject to publication.

In the spirit of legislative compromise, I propose that the legislature amend the current statute to require that all summary reports issued by an IG together with the report of the ultimate disposition (if applicable) be filed with the Commission. The Commission would then have the discretion to determine which reports would be made available to the public. The legislature could set forth the criteria by which the Commission is to make the decision to publicize a report. The criteria may include such factors as the seriousness of the infraction and the public's right to know. A redaction requirement could be included to minimize the potential deleterious impact on the accused and innocent individuals. In this way, oversight by the Commission will be provided, the independence of the office of the Inspectors Generals preserved, and the privacy rights of the accused be balanced against the public's right to know. While this compromise

falls short of giving the Commission the right to approve or reject disciplinary dispositions, as Mr. Turow has proposed, it would provide oversight and transparency that is not available under the current statutory scheme. I believe that such legislative amendments to the Act will go a long way toward addressing the various concerns that have been expressed without unduly interfering with the independent role of the Inspectors General or violating the privacy rights of the parties.

In further promotion of transparency, I believe that there is at least one additional matter that should be considered. Under the current statutory scheme, all investigatory files and reports of the Inspectors General, other than quarterly reports, are to be kept confidential, and shall not be divulged except as necessary (i) to the appropriate law enforcement authority, (ii) to the ultimate jurisdiction authority, or (iii) to the appropriate ethics commission. See 5 ILCS 430/20-95 and 5 ILCS 430/25-95. The statute does not specifically authorize an IG to inform a complainant of the status or ultimate disposition of the complaint. It is my understanding that at least one of the IGs has taken the position that complainants are not entitled to any notification. Although I do not read the current statute as precluding general notification of disposition to the complainant, I believe that the IGs should be specifically authorized to notify complainants of the disposition of their complaints. Unless an IG has the authority to inform a complainant, at least in general terms, of the disposition of the complaint, the matter lacks closure. The failure to communicate with the complainant can lead to unwarranted speculation as to what if any action was taken with respect to the complaint.

Separately, I propose that section 25-5(d) of the State Officials and Employees Ethics Act (the Act) ((5 ILCS 430/25-5(d)) be amended. This section limits jurisdiction of the Legislative Ethics Commission to matters arising under the Act. The Commission was not given jurisdiction over matters arising under the Illinois Governmental Ethics Act (5 ILCS 420/1-101 et seq.). The Governmental Ethics Act, which was enacted in 1967, prohibits certain restricted activities and sets forth a code of conduct for legislators. Although my office has jurisdiction to investigate alleged violations of the Governmental Ethics Act ((see 5 ILCS 430/25-10(c)), the Legislative Ethics Commission is without jurisdiction to hear such matters ((see 5 ILCS 430/25-5(d)). The potential harm that could result from this dichotomy is apparent and foreseeable. When my office receives a complaint alleging that a member of the General Assembly has violated the Illinois Governmental Ethics Act, for example by accepting an honorarium prohibited by that Act, I am compelled to investigate the complaint. However, where I conclude that the complaint was founded, the Commission is without jurisdiction to consider the matter. This

scenario can lead to a lack of enforcement and serves to undermine public confidence in the integrity of the investigatory process. Consequently, I recommend that section 25-5(d) of the Act be amended to extend the jurisdiction of the Legislative Ethics Commission to violations of Article 2 (Restricted Activities) and Article 3, Part 1 (Rules of Conduct for Legislators) of the Illinois Governmental Ethics Act as well as for violations of other rules and laws. I further recommend that section 25-95(b) of the Act be amended to authorize the Legislative Ethics Commission to impose administrative fines for violations of those provisions.

Thank you for your consideration and for providing a forum for the airing of these important issues.

Sincerely,

Thomas J. Homer  
Legislative Inspector General