

State of Wisconsin\Government Accountability Board

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August 18, 2015

Joe Chrisman, State Auditor
Legislative Audit Bureau
22 East Mifflin Street, Suite 500
Madison, WI 53703

Subject: Government Accountability Board Audit

Dear Mr. Chrisman:

The purpose of this letter is to respond to the findings and recommendations contained in the Legislative Audit Bureau's (LAB) audit of confidential complaints filed with the nonpartisan Government Accountability Board (G.A.B.) from FY 2010-11 through FY 2012-13. It was prepared by G.A.B. staff under the direction of Director and General Counsel Kevin J. Kennedy, but does not represent a formal position taken by the Board.

LAB Audit Report 14-14 identified areas where the agency was unable to meet certain statutory requirements or could improve its operations. The G.A.B. quickly addressed those recommendations to bring the agency into full compliance with statutory requirements and further improve its operations.

This second audit report covers areas the LAB could not finish in report 14-14 due to statutory restrictions on access to confidential complaints and investigatory records, which the Legislature has now removed.

Response to Recommendations

The LAB made two findings that resulted in recommendations.

- Staff did not consistently provide Board Members with the names of three potential special investigator candidates, as required by statute, which resulted in a recommendation to comply with statutes. We believe there is only one instance where staff may not have provided three names, and that the staff has substantially complied with the requirement.
- Staff recently closed 277 complaints because they believed that no further action was warranted, which resulted in a recommendation for staff to "consistently resolve complaints in a timely manner." Most of these complaints were reviewed and analyzed as the G.A.B. received them, though they were not formally documented as closed matters until recently. We now have improved and formalized our complaint handling procedures to ensure timely resolution of complaints.

The LAB's recommendations are set out in italics, followed by the agency's detailed response.

Complaints Filed with the Ethics & Accountability Division

We recommend the administrator of the Ethics and Accountability Division comply with statutes by consistently providing the Government Accountability Board with the names of three qualified individuals who may be retained as a special investigator.

The LAB's basis for this recommendation is a finding that staff "did not consistently provide GAB with the names of three individuals who could be retained as special investigators." LAB cited four instances in which

it believes this requirement was not satisfied. In making these findings, LAB relied on Board meeting materials and on closed session minutes which are not designed to be transcripts of everything considered during the meetings.

- In the first instance cited, minutes indicate that staff may have provided the Board with only one name of a potential special investigator.
- In the second instance cited, the evidence provided to LAB shows that the division administrator complied with the statutory requirement to provide three names, and in fact provided two additional names at a subsequent meeting.
- In the third instance cited, the Board considered approximately 20 special investigator candidates. Prior to the meeting when the investigation was authorized, two Board Members were actively involved in vetting investigator candidates. When the investigation was authorized, the division administrator presented the Board with the names of 10 possible candidates. Although this was not documented in the minutes, G.A.B. staff provided LAB with a copy of staff notes containing a list of 10 names presented for the Board's consideration.
- The fourth instance involved a case that Board Members initially put on hold but resurrected several months later. The Board considered three special investigator candidates suggested by Board Members. The Board and staff treated those names as the list to be provided by the division administrator.

While statutes establish a formal requirement that staff present the Board with the names of three potential investigator candidates, at times Board Members have suggestions of investigators they want considered. This results in a more robust process and more fully vetted selection than a pro-forma list of three candidates presented by staff. In no case was the Board's consideration of investigator qualifications limited by the staff's presentation.

It is clear that the staff has substantially complied with the statutory requirement. Staff will ensure that the agency's compliance with the statutory requirement is more clearly documented in the future.

Complaints Filed with the Elections Division

We recommend the Government Accountability Board's staff consistently resolve complaints in a timely manner.

The LAB's basis for this recommendation is a finding that the G.A.B.'s staff recently closed 26 confidential and 251 non-confidential complaints from FY 2010-11 through FY 2012-13. LAB goes on to state that, "Because staff did not consider the 277 complaints in a timely manner, it is not known whether some of them would have been substantiated."

Each complaint was reviewed upon receipt by a staff member who determined that the complaint was either outside the Board's jurisdiction, did not contain enough factual information to warrant dedicating staff time and resources to the matter, or involved matters which the G.A.B. knew were already being addressed by local election officials or law enforcement. Where appropriate, complaints were also reviewed by staff counsel, a division administrator or the director. However, as an administrative matter, these complaints were not closed until recently.

The audit report also states that "more than half" of the recently closed confidential complaints related to voter intimidation; however, none of these involved claims the complainant was threatened with force or violence to discourage voting. Eleven of the 26 complaints were about an anonymous Facebook page encouraging the firing of employees who signed recall petitions. One third of these complaints came from outside Wisconsin.

G.A.B. Decision Making

The key finding of this report is LAB's description of an engaged Board that in closed session considers the facts and analysis provided by the staff, yet makes its own independent decisions regarding confidential complaint and investigation matters. The Board actively examines staff's reasoning and recommendations. A majority of the Board sometimes agrees and sometimes disagrees with those recommendations. What LAB observed in closed session reflects the Board Members' level of engagement since the agency's inception, in both open and closed sessions.

Improving Complaint Procedures

Statutes lay out detailed and complex procedures for the agency to handle politically-sensitive and highly-charged complaints about campaign finance, elections, ethics and lobbying that come before the Board. The report confirms the staff has developed written complaint procedures and a database for tracking complaints, both of which the Board approved in March 2015. Since then, staff has provided the Board with reports at each of its three subsequent meetings on the status and resolution of complaints, and will continue to do so at future meetings. For a more detailed explanation of the G.A.B.'s complaint process, please visit the agency website: <http://www.gab.wi.gov/complaints/about-process>.

Conclusion

We appreciate the observations and analysis of the LAB, which provide the public and the Legislature with new insights into the agency, including the Board's confidential proceedings and interactions with staff. The agency will continue to ensure compliance with the recommendations in the LAB's reports.

The report describes an engaged Board that probes, evaluates and considers the materials and recommendations presented by staff. It puts to rest any questions as to whether the six Board Members exercise independent judgment when they make decisions about complaints, investigations and penalties.

Thank you again for your thorough review of the Government Accountability Board's complaint resolution process. We appreciate the courteous and professional approach your staff brought to the audit.

Government Accountability Board



Kevin J. Kennedy
Director and General Counsel