

**State of Illinois
LEGISLATIVE AUDIT COMMISSION**

**Meeting Minutes – July 16-17, 2014
Chicago, Illinois**

MEMBERS PRESENT:

Senators:	Barickman	Representatives:	Brauer
	Brady		Crespo
	Manar		Mautino
	Mulroe		Reis
	Oberweis		Rita
			Sandack

MEMBERS ABSENT:

Senator: Martinez

Staff Present: Cullen, Dunne and Stricklin

Appearances: Representative Scott Drury
Heather Wier Vaught, Chief Legal Counsel, House Democrats
Andrew Freiheit, Lead Counsel, House Republicans
Eric Madiar, Chief Legal Counsel, Senate Democrats
Jo Johnson, Chief Legal Counsel, Senate Republicans
Criminal Justice Information Authority -- Jack Cutrone, Executive Director; and Lisa Stephens, General Counsel.
John King, Counsel for Dr. Toni Irving
John Theis, Counsel for Barbara Shaw
Thomas S. Moore, Counsel for Jack Lavin
Richard Saldinger, Counsel for Andrew Ross
Richard Prendergast, Counsel for Warren Ribley
Billy Ocasio, former Senior Advisor, Office of Governor Quinn
Office of the Auditor General – William G. Holland, Becky Patton, Bruce Bullard, Jim Schlouch and others.

The meeting was called to order by Representative Mautino at 10:15 a.m. on Wednesday, July 16, 2014. Eleven members answered the attendance roll call. Senator Martinez was absent due to a prior travel commitment. Representative Mautino stated he would like to discuss a request made by the federal government. He said a phone call was received from the Department of Justice, followed up by a letter explaining their request which was to ask the Audit Commission to refrain from taking any interviews or testimony regarding the Neighborhood Recovery Initiative for a period of 90 days. The U.S. Attorney stated that it was concerned that the interviews and testimony would pose several substantial risks to their ongoing criminal investigation.

Representative Mautino stated that he asked Representative Scott Drury, formerly an Assistant U.S. Attorney, to explain the request and the potential consequences of defying such a request to the U.S. Attorney.

Mr. Drury stated that he would strongly encourage the LAC to heed the request of the U.S. Attorney and should be very concerned that its failure to do so could impede or obstruct the progress of a federal criminal investigation. In a worst-case scenario, the Commission's failure to respect the request could interfere with the federal government's ability to properly investigate and if necessary prosecute criminal wrongdoing that may have occurred.

A federal grand jury is secret. One important benefit of nonpublic proceedings is that witnesses may talk more freely and honestly, knowing their comments will not show up in the news. The purpose of a grand jury investigation is to find out the truth.

In response to questions from Senator Oberweis, Representative Drury stated that earlier in the week he made contact with Democratic members of the Commission and through mutual discussion they learned he was familiar with these types of requests. He was asked by Will Cousineau if he would be willing to testify before the Commission. Representative Mautino said he asked Representative Drury to appear because he was the only sitting member of the General Assembly who is a former federal prosecutor.

In response to questions from Representative Sandack, Representative Drury stated that during the Blagojevich impeachment hearings after the charges were made public, conversations outside of public forums were had between the U.S. Attorney's Office and members of the General Assembly. He also stated in regard to the issue of gathering documents, that the Commission should respect the request of the U.S. Attorney's Office.

Representative Mautino recalled that when he spoke with representatives of the Department of Justice along with Senator Barickman and the four caucus counsels, he asked that the DoJ put their request in writing and that they also address the issue regarding the requests for emails, which they did so quickly, allowing the Commission to pass on the information in the emails to the general public.

Mr. Drury stated that the Audit Commission is not the best body to determine criminal charges.

In response to a question from Representative Crespo on whether the DoJ has a way to enforce his request on the LAC, Representative Drury stated that he had never seen it get past the point of making the request and people sitting down and coming to a conclusion. It's worked out in some way.

A motion from Representative Reis, seconded by Senator Oberweis, to place Senator Barickman in the chair was ruled out of order by Chairman Mautino.

In response to questions from Representative Rita, Representative Drury stated that the criminal investigation may have been impaired somewhat by the fact that the U.S. Attorney had to publicly state that there is a criminal investigation going on and potentially witnesses may be deterred from cooperating with the government. In public they may say something to save themselves from embarrassment that may not actually be true and then hurt their credibility and hurt the government's possibility of successfully prosecuting somebody.

In response to questions from Senator Mulroe, Representative Drury stated that a citizen who interferes or attempts to interfere with another witness or someone called to testify could be charged with obstruction of justice. Mr. Drury urged members who are concerned that moving forward with testimony could be considered obstruction of justice to consult with the (caucus) attorneys.

The attorneys for the subpoenaed witnesses introduced themselves: Jon King for Dr. Toni Irving; John Theis for Barbara Shaw; Lisa Stephens, General Counsel for the Criminal Justice Information Authority; Jack Cutrone, Executive Director for the Criminal Justice Information Authority; Thomas S. Moore for Jack Lavin; Richard Saldinger for Andrew Ross; Richard Prendergast for Warren Ribley; and Billy Ocasio for himself.

Mr. King stated that Dr. Irving is not appearing because of her belief that it would be inappropriate to do so in light of the DoJ investigation and the DoJ's request that the Commission postpone the taking of testimony. Dr. Irving welcomes the opportunity to provide relevant testimony to the Commission. Her intent is to postpone her testimony in deference to the request of the U.S. Department of Justice. In response to questions from Senator Barickman, Mr. King stated that he disclosed to Ms. Vaught, caucus counsel, and Ms. Stricklin that Dr. Irving was in possession of 107,000 emails from all of her state service, a subset of which is duplicative of the ones the Commission had received from the Governor's Office. Mr. King added that he did not intend to produce 107,000 emails today since he has not been through the emails to determine which are responsive or relevant or privileged—something the Governor's Office may wish to assert—since the emails were given to her in her capacity as a government employee. Representative Mautino added that Ms. Vaught told Ms. Johnson of the existence of these emails.

In response to questions from Representative Sandack, Mr. King asked to step away and contact Mr. Schomberg. In response to questions from Senator Brady, Mr. King stated that if a person failed to obey the summons, the Commission may apply to the Circuit Court for an order; upon refusal and neglect of the order, the Court may compel obedience of such order by proceedings for contempt. Dr. Irving welcomes the opportunity to provide information that the Commission requires of her, but not if doing so would risk serious damage and harm to the ongoing grand jury investigations. As for the emails, in response to Senators Brady, Mulroe and Barickman, Mr. King stated it was his intent to appear and work out a process for producing some portion of 107,000 emails with the assumption that the vast majority are not within the scope of this inquiry and duplicative of the ones received from the Governor. He would have preferred to work this

in advance of the hearing, which is normal and typical, but he was told the Commission would not take up the issue before the hearing. Senator Barickman advised Mr. King to meet with his client and reappear shortly to let the Commission know how you will proceed on the emails. Senator Brady suggested that Mr. King provide the Commission with the relevant emails on July 17th. He agreed.

On behalf of Barbara Shaw, Mr. Theis stated that it was her decision that it would be inappropriate not to respect the intent of the Justice Department's request until their concerns are resolved. In response to questions from Representative Sandack, Mr. Theis stated it is his belief that she has no documents/emails in her possession. Representative Sandack asked Mr. Theis to check with Ms. Shaw and provide a letter to that effect. Senator Barickman asked Mr. Theis to appear on July 17 at 9am with information on whether Ms. Shaw has NRI-related documents in her possession.

On behalf of Jack Lavin, Mr. Moore stated that Mr. Lavin wanted to appear today, but given the letters from the DoJ, it would be inappropriate at this time. But he will appear at the appropriate time. In response to Representative Sandack, Mr. Moore stated that Mr. Lavin made a search and he had no documents. Representative Sandack asked that Mr. Lavin search his personal email as well. In response to a statement by Senator Barickman, Mr. Moore stated that there has been no statement that Mr. Lavin is withholding documents.

On behalf of Andrew Ross, Mr. Saldinger stated that Mr. Ross is happy and will be willing to testify before this Commission once the DoJ completes its investigation. Mr. Saldinger stated he would provide the Commission with a letter stating Mr. Ross has no responsive documents.

On behalf of Warren Ribley, Mr. Prendergast stated that Mr. Ribley desires to cooperate with the LAC and requests that the Commission continue his subpoena to a later date consistent with the request of the U.S. Attorney's Office. In response to Mr. Sandack, Mr. Prendergast will provide a letter on the issue of whether Mr. Ribley possesses any responsive documents. Senator Barickman commented that based on emails from the Governor and files from the Auditor General, Mr. Ribley was involved in the creation of the NRI program.

Representative Crespo, Senator Mulroe, and Representative Rita each stated at various times that the LAC should not interfere with a criminal investigation.

Representative Mautino read a letter from Lisa Noller dated July 11th stating neither she nor her client Malcolm Weems would be available on July 16-17 due to a previously scheduled court date for the attorney.

All the attorneys agreed to provide letters to Ms. Stricklin by the end of the day if their clients had no documents in their possession or to appear at 9:00am on July 17 with the documents or a reason that they do not have the documents.

Representative Mautino welcomed Mr. Ocasio and stated that there had been a request from members to hear his testimony. Mr. Ocasio stated that he appeared and he has no documents. Senator Mulroe stated that he wanted to make sure that Mr. Ocasio was aware that his providing testimony and the LAC receiving the testimony may pose risks to an ongoing criminal investigation. Mr. Ocasio stated he would not be testifying today and he had no documents.

Senator Mulroe asked that Mr. Ocasio be dismissed until the Commission is given the green light to accept testimony. Representative Sandack stated that dismissing Mr. Ocasio may have an effect on all the other witnesses that were represented by attorneys.

The Commission recessed for lunch.

Representative Mautino reconvened the Commission and announced that the Commission had received a letter and copies of one document that had been in Mr. Ribley's possession from Mr. Prendergast who represents Warren Ribley.

Representative Mautino announced that he and Senator Barickman agreed that the Commission would not take testimony at this meeting, but will continue with the collection and release of documentation because the U.S. Attorney had no problem with that. Representative Sandack made a motion to publicly post on the Legislative Audit Commission website all documents received by the Commission with respect to this audit. Representative Rita seconded the motion. In response to Senator Brady's question, Representative Mautino announced that issues related to items contained within the subpoenas would require seven votes for passage under Section 4 of the Audit Commission Act. The motion passed 11-0.

Senator Barickman stated that the Commission took the communications from the U.S. Attorney's Office very seriously and the U.S. Attorney very clearly believed any interviews conducted by the LAC would pose substantial risk to the ongoing federal investigation. The discussion during the morning was an opportunity to fully explore how this body intends to move forward with the handling of documents.

Senator Barickman made the following motion: (1) to defer testimony and interviews for 90 days as requested; (2) that the Legislative Audit Commission reconvene on October 7th and 8th, 2014, and that the subpoenas issued to Barbara Shaw, Malcolm Weems, Jack Lavin, Toni Irving, Billy Ocasio, Warren Ribley, and Andrew Ross for appearance and testimony be reissued to compel each person's attendance and testimony on October 7th, at 10:00 a.m., and October 8th, 2014, at 9:00 a.m.; and (3) that pursuant to the previously issued subpoenas as they pertain to relevant documents, Barbara Shaw, Malcolm Weems, Jack Lavin, Toni Irving, Billy Ocasio, Warren Ribley, and Andrew Ross submit such documents to the Commission by 9:00 a.m., July 17, 2014. The motion was seconded by Representative Sandack.

Representative Mautino stated that the motion should have a date certain to return only as long as we get a sign-off from Mr. Lewis. Senator Barickman stated that he clearly had no intentions of impeding a federal investigation. Representative Mautino stated that he wanted to postpone today's meeting with a conference call, taking no risk of obstructing the federal investigation. Further, Representative Mautino proposed continuing the subpoenas to October 10 provided the Feds give the Commission the green light.

Representative Sandack stated that the counsels for the House and Senate Republicans contacted Mr. Lewis on the afternoon of July 15th after receiving his letter and he made it abundantly clear that the Commission could proceed unencumbered after 90 days, and Representative Sandack invited Chairman Mautino to call Mr. Lewis because he was very accommodating to the Republican counsels. Representative Brauer stated that if the Commission sets a date certain and hears from Mr. Lewis that he needs more time, the Commission can deal with that problem at that time. Representative Reis encouraged the Commission to stick with the 90 days stated by the U.S. Attorney in his letter. Senator Mulroe suggested simply extending or continuing the subpoenas to a date certain, provided that Mr. Lewis gives the green light to go forward, which may be earlier than 90 days. He added that even the U.S. Attorney cannot say with certainty what they will find 90 days from now which may greatly affect their schedule. Senator Brady stated that the public never knows when the U.S. Attorney drops a case. He also stated that the Commission needed to meet to continue work on the document phase of the subpoena. Senator Barickman suggested that the chairmen call the U.S. Attorney now. There being no more discussion on the motion, Representative Mautino stated that the motion would take nine votes to pass. Upon a partisan roll call vote, the Senator's motion failed with six voting yes and five voting present.

Senator Mulroe made a motion to defer and continue the subpoenas for the purpose of receiving testimony of witnesses on the Neighborhood Recovery Initiative until October 10, 2014 at 10:00a.m., provided the Commission receives communication from a representative of the Office of the U.S. Attorney permitting such testimony. The motion was seconded by Representative Rita. Representative Sandack stated if Senator Mulroe would hold his motion in abeyance, Representative Sandack would confirm Mr. Lewis' conversation with the Republican counsels. Senator Mulroe and Representative Mautino stated that they want to know from the U.S. Attorney that the Commission may proceed. Senator Brady stated that his preference was to meet unless the U.S. Attorney says not to meet. Representative Mautino offered that prior to the date of the meeting, he and Senator Barickman would contact the U.S. Attorney to inquire whether the Commission is free to meet. Representative Mautino agreed to a short recess. Mr. Ocasio asked to leave, but there was no response to his question. After the recess, there being no more discussion on the motion, Representative Mautino stated that the motion would take nine votes to pass. Upon a partisan roll call vote, the Senator's motion failed with five voting yes and six voting present. The Commission took another short recess.

Representative Mautino called the Commission back to order and stated that the Commission had gained some ground in the area of documents. However, while all

the members want to defer testimony for 90 days, there is no exact agreement on the motion. Senator Barickman stated that members are extremely frustrated with the unwillingness to strike reasonable ground. Representative Mautino stated that the Democrats stand ready to work toward compromise tomorrow.

In response to questions from Representative Crespo, Senator Mautino stated that with no agreement on how to defer testimony, the subpoenas are in order and the witnesses are expect to appear and comply. Representative Mautino stated that the two-day hearing would use about \$3,985 of the Commission's \$4,000 travel budget.

In response to questions from Representative Brauer, Senator Brady stated that staff should come to an agreement on the testimony subpoenas tomorrow. Senator Oberweis stated that during the break he called and talked to Mr. Lewis. He said it was fine with them to postpone testimony for 90 days and the Office would provide a written notification at least 10 days prior to the end of the 90 days. Senator Oberweis stated that the Republicans will agree to delay testimony for 90 days and there will be no testimony if, and only if, the U.S. Attorney's Office, 1 day prior to the end of the 90 days, notifies the Commission in writing that they want us to delay further. Representative Mautino stated his preference was for the U.S. Attorney's Office to notify the Commission if it is fine to proceed. Senator Mulroe stated that he would prefer to allow the co-chairs to come to an agreement and give witnesses or their attorneys 15 days to produce documents, or reconvene tomorrow. Representative Mautino and Senator Barickman agreed to contact U.S. Attorney Lewis at 9:02am on July 17. Senator Brady suggested that the witnesses return on July 17.

Upon a motion made by Representative Sandack, seconded by Representative Rita and carried, the Commission agreed to adjourn at 5:42 p.m. and reconvene at 9:00 a.m. on Thursday, July 17, 2014.

Thursday, July 17, 2014

The Commission reconvened at 9:00 a.m. on Thursday, July 17, 2014 and was called to order by Representative Mautino. Eleven members answered the attendance roll call. Senator Martinez was absent due to a prior travel commitment. Representative Mautino announced that letters had been received from Richard Saldinger (Ross), Richard Prendergast (Ribley), and Thomas Moore (Lavin), which will be posted to the LAC website. Mr. Ribley had one document in his possession that was turned over to the LAC. Mr. Lavin and Mr. Ross had no documents.

Representative Mautino stated it is neither his nor Senator Barickman's intent to take any testimony at this time. Representative Mautino reported that the co-chairs and counsels had a good discussion with Mr. Lewis and came to some resolutions. It is their intent to comply with the request of the U.S. Attorney, Mr. Jim Lewis. At this time,

attorneys for the witnesses who had other obligations were excused. Mr. Theis was excused due to a court appointment.

Mr. King, counsel for Dr. Irving, was allowed to make a statement regarding his intentions as to document production. He stated he was asking for a 21-day extension to produce emails and documents. In the event it might not be sufficient, he added he could reach out to Jane Stricklin, Executive Director and let her know that. He also stated that he received a letter from Mr. Schomberg indicating the State's position that certain documents in Ms. Irving's emails are potentially privileged. Senator Barickman asked Mr. King and he agreed to outline Dr. Irving's position on any claims of privilege for certain documents. Representative Mautino excused Mr. King.

Representative Mautino stated that the documents will not begin appearing on the LAC website instantly, but they will be expedited. Documents will be gone through and redacted for personal information.

Representative Mautino that he and Senator Barickman and their counsels met to discuss how to go forward and to talk with U.S. Attorney Jim Lewis. They decided to call Mr. Lewis 80 days into the delay to determine if the U.S. Attorney has completed the investigation or if there are people the Commission should not talk to. Representative Mautino reported that they are prepared to schedule a one-day, or possibly two-day, meeting that contains a schedule for the witnesses taking into account their timelines.

Senator Barickman moved to continue the subpoenas for the purpose of receiving witness testimony until the next meeting of the Legislative Audit Commission or a subsequent meeting scheduled by the co-chairs provided that the co-chairs jointly communicate with the Office of the U.S. Attorney prior to convening any meeting. Senator Mulroe seconded the motion.

Senator Barickman stated that Mr. Lewis said he did not intend to impede the work of the Audit Commission. He informed the Commission again of his 90-day commitment and he intends to complete the activities and does not anticipate any extension. Ms. Stricklin will communicate with the attorneys about meeting on October 8 and if any accommodations are to be made with any of the witnesses or their attorneys, the co-chairs will make those accommodations by joint agreement.

There being no further discussion, on a roll call vote, the motion passed 11-0.

Representative Mautino asked Ms. Stricklin to contact Mr. Weems' attorney today to inquire whether Mr. Weems has any documents. Senator Brady suggested that if Mr. Weems or any other witness fails to produce documents that the Attorney General be asked to appoint a special Attorney General to go to court to force somebody to deliver documents since she has somewhat of a conflict of interest since she had an official position on the board of the IVPA. Representative Mautino asked the Senator to hold his motion since the two co-chairs have the authority to compel on their own if they are in agreement. Senator Barickman stated that if Mr. Weems has any documents he should

turn them over within 21 days just like the schedule for Dr. Irving. However, if he does not comply, then the co-chairs will request that the Attorney General enforce the subpoena. Representative Mautino stated that a discussion of enforcing a subpoena is premature, but he would work with Senator Barickman and confer with the Office of the Attorney General if necessary. Ms. Stricklin stated it was her memory that she had heard from the attorneys and none of their clients had documents except Dr. Irving.

Senator Barickman mentioned that some members raised concerns about the limited nature of the number of emails received from the Governor's Office and that the Governor's Office did not fully comply. The concerns were that the Governor's Office issued a blanket privilege claim and the Office significantly limited the scope of their search for emails in a way that produced a result that is incomplete with the Commission's initial request. We will work to communicate with the Governor's Office and hope they comply. Representative Mautino stated that they narrowed the scope to fit within the framework of the audit.

NEXT MEETING

The next meeting was set for 10:00 a.m. on October 8, 2014, in Chicago.

CONSENT CALENDAR

The Commission considered audits that do not appear to require the attendance of agency officials. All of the audits are for the audit period ending in 2013 unless otherwise noted. Upon a motion made by Senator Barickman, seconded by Representative Crespo and carried, the audit reports listed below were accepted.

Agency

Court of Claims

Board of Higher Education

Department on Aging's Community Care Program Reform Implementation Report, on
Actions taken by February 1, 2014

Department of Human Rights

Eastern Illinois University

Illinois Commerce Commission

Illinois Grain Insurance Corporation

Labor Relations Board

Regional Offices of Education –

Carroll, Jo Daviess and Stephenson Counties No. 8

Fulton and Schuyler Counties No. 22

Kane County No. 31

Intermediate Service Center No. 2 (2012)

State Actuary's Report, The Actuarial Assumptions and Valuations of the Five
State Funded Retirement Systems

FINANCIAL STATEMENT

The May 2014 financial statement was approved as submitted.

MINUTES

Upon a motion made by Representative Crespo, seconded by Representative Reis and carried, the Commission approved the minutes of the May 28, 2014 meeting as submitted.

OTHER ITEMS

Receipt of the following item was acknowledged:

- C. Correspondence from DCFS regarding questions from the April 1, 2014 meeting.

Upon a motion made by Representative Sandack, seconded by Representative Crespo and carried, the Commission adjourned.