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The Honorable Gail Lowe  
Chair, State Board of Education  
Via email: [glowe@lampases.com](mailto:glowe@lampases.com)  
Cc: [Thomas@thomasratliff.com](mailto:Thomas@thomasratliff.com)

Dear Madam Chairwoman:

In early February the Public Integrity Unit was asked to review the situation concerning the election of Thomas Ratliff, a registered lobbyist, to the State Board of Education (SBOE), and whether his service on the SBOE has violated any Texas criminal statutes. As prosecutors, we are not in the business of offering advisory opinions on future conduct, but because the election had occurred and because Mr. Ratliff has participated in meetings and other activities related to the SBOE, we determined that it would be appropriate to review that conduct for the purpose of determining whether any criminal statutes have been violated. We were particularly interested in examining any prohibited conflicts of interest his dual role might create.

To that end, attorneys and investigators of the Public Integrity Unit have, over the last month, conducted an investigation of this matter and have spoken to numerous people to obtain information about the operation of the SBOE, Ratliff's appointment to the Board's permanent fund committee, investment decisions, and conflicts that might arise from those decisions.

As part of that process, I spoke with you on March 1 to learn more about the SBOE and to find out any particular concerns that you had. I appreciate your cooperation and the time you took to explain the makeup of the Board, how the chair and other officers are appointed, the makeup of the three permanent committees and how the committee assignments are made, as well as how Mr. Ratliff came to be assigned to the committee he is on. The information I received from you was crucial to our review of this matter.

I also reviewed the archive videos of the first general meeting of the SBOE on January 19, 2011, in which members were sworn into office and committee assignments were announced, the first permanent school fund committee meeting on January 20, 2011, and the general meeting on January 21, 2011. I observed that during the committee meeting, Mr. Ratliff publicly announced who his clients with publicly traded companies were, and that he would not participate in any review, discussion or vote on any item that involved those clients.

In the general meeting on January 21, 2011, Mr. Ratliff again read a list of his clients into the record in open session, and he recused himself from the vote on ratifying the investment fund for Oct. – Nov. 2010. It appears that his recusal was probably unnecessary, due to the fact that the asset allocations and trades had already been completed in Oct. and Nov., 2010, and could not be changed. However, it appeared that Mr. Ratliff did not participate in the vote to avoid any appearance of impropriety.

To more fully understand the investment process, I spoke with Holland Timmins, the chief investment officer for the permanent school fund. He explained that the SBOE had given his division authority to manage the large fixed income portfolio of about \$11 billion in assets, and that their assignment is to “match the index” in their asset allocations. According to Mr. Timmins, no board member ever has any input in asset placement. The board only ratifies the asset allocations after the fact. He explained that the asset allocation ratification usually takes place up to 90 days after all the transactions are completed, and that there is no possibility for undoing or changing the decisions that have been made. He described ratification as a “ministerial act” or a “formality” required in the SBOE by laws. In his 9 years of service, the asset allocations have always been unanimously ratified. It was his opinion that there is no practical reason for Mr. Ratliff to recuse himself, because it is irrelevant.

During my conversations with you and with Mr. Timmins, I learned that board members have recused themselves for various reasons in the past, and that one of those members was also a lobbyist.

I also spoke to David Anderson, who is the General Counsel for the Texas Education Agency. He explained that he drafted the request for an Attorney General opinion that you and I had discussed for your signature. He explained that his concern was focused on Texas Education Code §7.103, regarding whether or not a lobbyist can serve as a board member, and whether the statute may be unconstitutionally vague. He did not indicate a concern that any crime had been committed, as that was not his focus.

Additionally, I made contact with the offices of Senator Florence Shapiro, Chair of the Education Committee for the Texas State Senate, and Representative Rob Eissler, Chair of the Public Education Committee for the Texas House of Representatives. I briefed staff members in each of those offices on the issue we were investigating, and asked whether Senator Shapiro or Representative Eissler would like to have input into our investigation. Both offices called me back after discussing it internally and indicated that they had no concerns that they wished us to address in our investigation.

Finally, we interviewed Mr. Ratliff about this matter and asked him to produce documents to answer some of the questions we had. He answered our questions and provided documents per our request.

The documents Mr. Ratliff provided showed that he had sent letters to his lobby clients dated October 1, 2010 notifying them that his duties to them as clients did not include representing their interests before the State Board of Education. He also showed us that after the election, he amended his existing client contracts to specifically state that he was not representing those client’s interests before the SBOE.

Another set of documents he provided also showed that, prior to being sworn in, he sent correspondence to other lobbyists he is acquainted notifying them that his status as an elected official made any money spent on him a “reportable expense”, and that from September 30, 2010 forward, he would pay his own way when dining with others. He also asked that if any lobbyist discovered they had spent money on Mr. Ratliff’s behalf, he asked them to give him a statement so he could repay his pro rata share. The documents showed that he also reminded them to report any expenditure on his behalf on their own lobbyist expense report.

Based upon our review of this situation, it appears that Mr. Ratliff has fully informed his clients and fellow lobbyists of his service on the board. He has amended his client contracts to specifically state that he will not represent their interests at the SBOE. He has made a public announcement of who his clients are, and has recused himself from voting on the asset allocations that involve a client or clients. He also expressed a willingness to do this again, should a situation arise that required his recusal.

We also learned that the Board has a past history of members recusing themselves from decisions on a case by case basis, and that another registered lobbyist had served on the board in the past. We also determined that Board members do not have the ability to influence or change the asset allocation, and the trades are complete long before the matter is brought before the board for ratification.

Based upon all of the above facts, we have determined that it does not appear that any crime has been committed over which our office would have jurisdiction and venue. We are formally closing our review of this matter with no further action to be taken by this office.

I hope you find this information useful in going forward as you serve the State of Texas as Chair of the SBOE.

Sincerely,

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