

From: Angrick, William [LEGIS] [mailto:william.angrick@legis.state.ia.us]

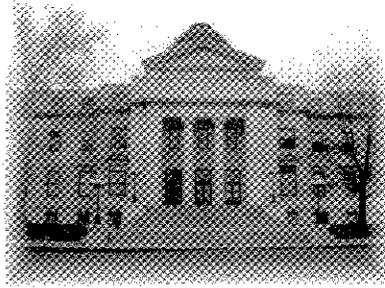
Sent: Thu 5/3/2007 11:01 AM

To: Miller, Thomas H [AG]

Cc: mbruns@iastate.edu; Steinke, Gary [REGENTS]; david-johnsen@uiowa.edu; jonathan-carlson@uiowa.edu; e-chrischilles@uiowa.edu; la-clark@uiowa.edu; sarah-england@uiowa.edu; ed-folsom@uiowa.edu; linda-maxson@uiowa.edu; gene-parkin@uiowa.edu; cheryl-reardon@uiowa.edu; paul-rothman@uiowa.edu; jsa-aadu@uiowa.edu; sarah-vigmostad@uiowa.edu; Connolly, Mike [LEGIS]; Jochum, Pam [LEGIS]

Subject: Ombudsman Concerns Regarding Open Governmental Search Processes

STATE OF IOWA



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WILLIAM P. ANGRICK II
CITIZENS' AIDE/OMBUDSMAN

CITIZENS' AIDE/OMBUDSMAN
OLA BABCOCK MILLER BUILDING
1112 EAST GRAND AVENUE
DES MOINES, IOWA 50319

May 3, 2007

Tom Miller
Attorney General
Hoover Building
L O C A L

Dear Attorney General Miller: *Tom*

I write you this open letter because your office has been asked by the University of Iowa presidential selection committee and the Board of Regents to give your opinion and advice about whether those bodies can proceed under a cloak of secrecy in the selection of a new president for the University of Iowa.

Since I have made several public statements about governmental bodies' responsibilities when dealing with applications and hiring decisions under Iowa's Open Meetings and Public Records laws, I want to take this opportunity to share with you my perspectives. I expressed my opinion in a December 29, 2006 letter to the Board of Regents and in a February 9, 2007 letter to the chair of the Presidential Search Committee (copies enclosed). My views were also made known in commentary to the Iowa General Assembly in a study bill proposal, in testimony at a public hearing of the House State Government Committee, and in comments before subcommittees of both the House and Senate State Government Committees. This past legislative session I asked the Iowa General Assembly to review how our public bodies make hiring decisions with a bill to amend both the Iowa Open Meetings and Public Records laws (HSB 38 and SSB 1042).

As you know, current law allows a governmental body to hold a closed meeting to evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered at a meeting of a governmental body when necessary to prevent needless and irreparable injury to that individual's reputation and the individual requests a closed session. While to me the Legislature has clearly expressed what the spirit of the law seeks, unfortunately some governmental bodies have employed a variety of strategies to skirt the two criteria which must be met before hiding behind closed doors the identities and qualifications of applicants for public positions of authority and trust. I believe explicit in the criteria are the requirements that 1) the individual must provide the reasons or information if he or she requests a closed session

and 2) the governmental body must determine, based on the reasons or information provided, whether the individual's reputation will be irreparably harmed by holding an open meeting. To me the determinative factor is not individual preference, mere inconvenience or even potential embarrassment. The standard is higher than that; it is needless injury that can not be repaired.

To me the fundamental questions are: Do I as a resident of my community have a stake in who becomes its city manager? Should I as a parent have the opportunity to know about the background and accomplishments of my school superintendent before he or she is hired? If different candidates for president of a major public university or college have different management styles or emphasize different ways of delivering public education, should not those differences be known and debated before the selection is made and in so doing, should not the hiring body be open to comment from the interested public?

Transparent selection processes instill trust. Closed ones promote suspicion. An informed government is a better government. Open government is a foundation stone for modern democracy. Transparency is an essential element of accountable government. Access to information and records is fundamental to meaningful citizen participation in the political process.

With this request, you have before you a distinct opportunity to clarify the issue of the public's right to know through a transparent selection process versus unnecessary secrecy in critical appointments and hirings. You can ensure the intent and spirit of the Open Meetings and Public Records laws are followed. Thank you for considering my comments.

Regards,



William P. Angrick II
Citizens' Aide/Ombudsman

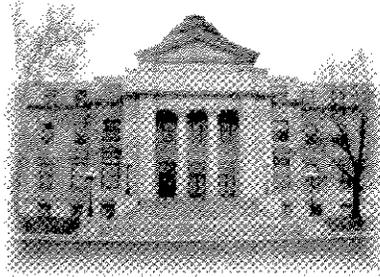
WPA/jbc

Enclosures

cc: Michael G. Gartner, President, Board of Regents
David W. Miles, President Pro Tem, Board of Regents
Bonnie J. Campbell, Member, Board of Regents
Jenny Connolly, Member, Board of Regents
Robert N. Downer, Member, Board of Regents
Jack B. Evans, Member, Board of Regents
Ruth R. Harkin, Member, Board of Regents
Craig A. Lang, Member, Board of Regents
Rose Vasquez, Member, Board of Regents

Gary Steinke, Executive Director, Board of Regents
Dr. David Johnson, Chair, Presidential Search Committee
Jonathan Carlson, Member, Presidential Search Committee
Elizabeth Chrischilles, Member, Presidential Search Committee
Lee Anna Clark, Member, Presidential Search Committee
Sara England, Member, Presidential Search Committee
Ed Folsom, Member, Presidential Search Committee
Leonard Hadley, Member, Presidential Search Committee
Linda Maxsom, Member, Presidential Search Committee
Gene Parkin, Member, Presidential Search Committee
Cheryl Reardon, Member, Presidential Search Committee
Paul Rothman, Member, Presidential Search Committee
Jarjisu Sa-Aadu, Member, Presidential Search Committee
Sarah Vigmostad, Member, Presidential Search Committee
Senator Mike Connolly, Chair, State Government Committee
Representative Pam Jochum, Chair, House State Government Committee

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December 29, 2006

Michael Gartner, President
Iowa Board of Regents
100 Market Street #515
Des Moines, IA 50309

Dear President Gartner:

As the Board of Regents begins its new search for a president of the University of Iowa, the Office of the Iowa Citizens' Aide/Ombudsman (Ombudsman) has an interest in understanding precisely how the process will proceed.

Under Iowa Code section 2C.11 the Ombudsman may review administrative actions that may be contrary to law, rule, or policy, or unreasonable or unfair, or unaccompanied by an adequate statement of reasons. The Ombudsman "may also be concerned with strengthening procedures and practices which lessen the risk that objectionable administrative actions will occur."

Based on the recent observations of students and faculty, the media, the public, and some Regents, our office has an interest in ensuring that the new search is done in accordance with the requirements and intent of Iowa's open meetings law (Iowa Code chapter 21). Section 21.1 states the requirements of the law are to assure "the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people" and that any ambiguity "should be resolved in favor of openness."

In addition, given the significant impact and public interest in the selection of the university president, our office is interested in seeing that the process be kept as open as possible so that all Iowans may have the opportunity to observe and participate in the process. Maintaining transparency in the selection process fosters confidence and effectiveness in the Regents' work.

In that spirit, my office is asking you to explain, step by step, the process that the Regents plan to use in the recruitment and evaluation of the candidates and in the eventual hiring of a new president. We also want to know what opportunities the public will have during

this process to listen to Regents' discussions and to offer comments as may be customary and appropriate in such important decisions.

At a minimum, that process would conceivably include:

- the creation of a search committee
- the recruitment of candidates
- the assembling of criteria used to assess the candidates
- the interviewing of candidates
- committee discussion and debate on the candidates
- the short-listing of the original pool of candidates
- the on-campus visits of finalists
- discussion and deliberation on the finalists
- the rationale for the choosing of a president

We also want to know how the Regents intend to provide public notice of meetings relating to the search process, whether they take place in person or telephonically. If the Regents intend to close any meetings or any portions of meetings, we want to know the legal justification(s) for those decisions. In particular, if the Regents anticipate holding any closed sessions under section 21.5(1)(i), please inform us of the process by which the Regents will 1) ascertain if an individual requests a closed session, and 2) determine the closed session is necessary to prevent "needless and irreparable injury to that individual's reputation."

Similarly, we want to know how the Regents intend to maintain records of their research and discourse on the presidential search. If the Regents choose to hold any of these records confidential during or after the search process, we want to know the legal justification(s) for those decisions.

As public officials, the Regents are currently under scrutiny to be inclusive, responsive and accountable to the public they serve. I hope you give serious consideration to the concerns and interests that have been raised as the process is developed and implemented.

We look forward to your prompt assistance and response.

Sincerely,



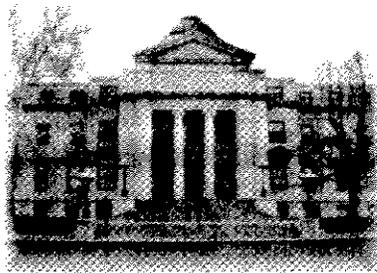
William P. Angrick II

WPA/BD/kfh

cc: Teresa Wahlert, President Pro Tem, Board of Regents
Amir Arbisser, Board of Regents
Mary Ellen Becker, Board of Regents
Jenny Connolly, Board of Regents
Robert Downer, Board of Regents
Ruth Harkin, Board of Regents
Rose Vazquez, Board of Regents
Gary Steinke, Executive Director, Board of Regents

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February 9, 2007

Dr. David Johnsen, Chair
Presidential Search Committee
The University of Iowa
N308 Dental Science Building
Iowa City, IA 52242-1010

Subject: Presidential search

Dear Dr. Johnsen:

Let me begin this letter by congratulating you on your appointment to chairman of the University of Iowa presidential search committee.

This letter follows my recent correspondence with the Iowa Board of Regents, of whom I have asked many questions regarding the process by which a new president would be chosen. As the process is now largely under your committee's control, I direct my latest questions to you.

Regarding the issue of closed-session interviews, I would like to know whether the search committee will endeavor to determine, in the case of each applicant who requests confidentiality, whether a closed meeting will be "necessary to prevent needless and irreparable injury to that individual's reputation," as required by Iowa Code 21.5(1)(i). If your response is "yes," please explain what process you will employ to make that determination.

If the committee ultimately determines that closed-session evaluations or interviews of some candidates are necessary, I would like to know, specifically, what facts or factors the committee considered in making those individual determinations.

I would also like a copy of the form or letter that the committee sent to applicants on the confidentiality question.

The questions I pose to both your committee and the Regents are in the interest of the letter and spirit of Iowa's Open Meetings law, which was promulgated "to assure ... that the basis and rationale of governmental decisions, as well as the decisions themselves, are

easily accessible to the people” (Iowa Code section 21.2). Maintaining transparency in the selection process will foster confidence and effectiveness in this most important task.

If I can provide you with some clarity on my request, or if you have other concerns, please do not hesitate to call me or my staff.

I look forward to your reply.

Sincerely,

A handwritten signature in black ink, appearing to read 'WPA', with a stylized flourish extending to the right.

William P. Angrick II

WPA/BD/ans

Cc: Michael Gartner, President, Board of Regents
Gary Steinke, Executive Director, Board of Regents
Diane Stahle, Assistant Attorney General

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