



## INSPECTOR GENERAL REPORT

2013-10-0208

November 14, 2013

### APPOINTMENT OF SPECIAL INSPECTOR GENERAL

*Inspector General David O. Thomas reports as follows:*

This report reflects the appointment of a Special Inspector General to investigate a particular case within the jurisdiction of the Office of Inspector General (OIG). The case involves Ivy Tech and the former Director of the Indiana Department of Natural Resources (Director).

There has been a friendship between the Inspector General and Director for at least the past 20 years. This includes serving together as elected county officials in the same county. This relationship makes an objective review of the allegations difficult, if not impossible. Under these circumstances, any associated decisions could make the determinations appear to be suspect.

The following findings are therefore made.

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In the Executive Branch of state government, a person with a "financial interest"<sup>1</sup>

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<sup>1</sup> IC 4-2-6-1(a)(11) defines a "financial interest" as an interest:

- (A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or
- (B) involving property or services.

1

is required to receive a screen from the State Ethics Commission when making decisions in their official capacity. IC 4-2-6-9. In this case, there is no “financial interest” under the statute, making action by the State Ethics Commission outside its jurisdiction.

2

However under the above circumstances, there could be an appearance of impropriety. The Inspector General, an attorney as required in IC 4-2-7-2(c)(3), is also subject to the Rules of Professional Conduct.

3

Other than the above screening procedure in IC 4-2-6-9 when there is a “financial interest,” we are unable to find another statutory appointment procedure for these circumstances.

Other branches of state government have a statutory remedy in these circumstances. For example, a Legislator may abstain from a vote, a Prosecuting Attorney may request a Special Prosecuting Attorney,<sup>2</sup> and a Judge may recuse herself and seek a Special Judge.<sup>3</sup>

Although it is tempting to attempt to imitate one of these statutory procedures, there are two hurdles. First, this would be outside the statutory OIG authority. Second, this would be outside those statutory authorities.

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The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

<sup>2</sup> IC 33-39-1-6.

<sup>3</sup> Ind.T.R. 76(B).

There remains a remedy under the current inspector general enabling statute. The inspector general is authorized to appoint. IC 4-2-7-2(a).<sup>4</sup>

A Special Inspector General outside the OIG will be selected by the Inspector General to process this case. The appointment will be for one year, subject to renewal, authorizing the Special Inspector General the authority to act fully as the Inspector General. This includes, upon the choice of the Special Inspector General, the option to utilize existing inspector general staff and resources. However, all interaction with the Inspector General will be strictly prohibited, with all activity screened from access and viewing, both through internal controls and through the charge to the Special Inspector General.

Posey County Chief Deputy Prosecuting Attorney Jonathan Parkhurst has agreed to accept this appointment and is hereby appointed.

Although this assignment is not specifically required to be made in a public disclosure, this is being done through the publication of this report.<sup>5</sup>

/s/ David O. Thomas, Inspector General

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<sup>4</sup> IC 4-2-7-2 states:

Inspector general; powers and duties; appointment and removal; reappointment; compensation

(a) There is established the office of the inspector general. The office of the inspector general consists of the inspector general, who is the director of the office, and an additional staff of deputy inspectors general, investigators, auditors, and clerical employees appointed by the inspector general as necessary to carry out the duties of the inspector general.

<sup>5</sup> Although the reason for the necessity of another inspector general is disclosed in this report, none of the above comparable positions appear to require the disclosure of a reason in seeking recusal from the action. *See e.g.* IC 33-39-1-6 (Prosecuting Attorney filing requirements); Ind.T.R. 76(B)(Judges not required to disclose reason of conflict).

## APPOINTMENT OF SPECIAL INSPECTOR GENERAL

The intent of this document is to reflect the appointment of Jonathan Parkhurst as Special Inspector General in a matter involving the investigation and Inspector General review of a matter involving allegations with regard to Ivy Tech and the last past Director of the Indiana Department of Natural Resources.

Whereas, David O. Thomas as Inspector General, has offered this appointment to Jonathan Parkhurst, currently Chief Deputy Prosecuting Attorney of Posey County, Indiana, as Special Inspector General under the Inspector General's appointment procedure in IC 4-2-7-2(a), said appointment to begin November 14, 2013;

Whereas, Jonathan Parkhurst has indicated that he will accept this appointment and perform in this case as Inspector General under IC 4-2-7, IC 4-2-6 and Indiana law;

Whereas, it is the intent of both persons to comply with the Code of Professional Responsibility and the Indiana Code of Ethics, in that there may be an appearance of impropriety without such an appointment;

Therefore, the parties agree as follows:

1. Duration of appointment: The duration of this appointment shall be for one year, subject to renewal.
2. Amount of compensation: Special Inspector General Jonathan Parkhurst shall be compensated as permitted by Indiana law, which shall include all necessary mileage and other incidental expenses as necessary to perform these duties.
3. Scope of employment: Jonathan Parkhurst shall perform as Special Inspector General on this case until final resolution under Indiana law. Upon his election, staff and resources and all statutory authority within the Indiana Inspector General's Office shall be within his authority with regard to this particular case.
4. Limitation of employment: David O. Thomas as Inspector General from this date forward shall in no way be involved in the administration, decision making, investigation, advancement or reporting in this case. All potential access to computers, documents or any matter related to this case shall be screened from David O. Thomas, with this screen to be additionally imposed by all Inspector General staff to the exclusion of David O. Thomas.

The intent of this appointment is to enable the Special Inspector General to control this investigation and resolution with all access and authority removed from David O. Thomas.

Special Inspector General Jonathan Parkhurst accepts these terms by commencing action regarding this case and as he deems proper.

Dated this 14<sup>th</sup> day of November, 2013.

  
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David O. Thomas, Inspector General

