SUMMARY FINDINGS IN THE INVESTIGATION OF ATTORNEY GENERAL JOHN E. SWALLOW

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I. SUMMARY

In his 2012 Candidate Financial Disclosure or Conflict of Interest forms, John Swallow failed to disclose several entities from which he had received more than $5,000 in income during the previous year or for which he filled roles reasonably construed as owner, officer, or formal advisor. This non-disclosure was planned and deliberate and was executed in two separate filings, one on March 9, 2012 and the second on March 15, 2012. As the Chief Civil Deputy Attorney General and a candidate for the Utah State Attorney General, Swallow did not read or analyze the governing disclosure statutes to inform himself about what financial or conflict of interest disclosures were required. Instead, Swallow consulted with an estate planning lawyer who had no experience in election law and who also had not read or analyzed the governing disclosure statutes. Together, they relied on nuances from the law of estate tax and creditor protection to determine what was legally required by the Election Code. Despite these and other justifications Swallow has offered for his non-disclosure, the evidence developed through this investigation, most of which Swallow has admitted, is sufficient to establish probable cause that Swallow violated the finance disclosure and conflict of interest provisions of Utah Code Annotated section 76-8-109(4)(b) in the ways described in section II, below.

Swallow's explanations for his non-disclosure, when considered in light of internal inconsistencies and conflicting evidence, raise numerous questions of credibility that should be assessed by a finder of fact when applying the applicable law. Whether these and other facts constitute a violation of any of the relevant Utah statutes, including Utah Code Annotated ("UCA") §76-8-109, which governs Candidate Financial Disclosure or Conflict of Interest

forms, further will depend on how liberally or narrowly the Court construes the relevant statutes. If the Court construes the statutes liberally to carry out the intent of the Election Code (as directed by UCA §20A-1-401(1)) and looks to the practical realities of Swallow's conduct, it reasonably should find him to be in violation of law.

Pursuant to UCA section 20A-1-703(3), special counsel to the Lieutenant Governor in this investigation finds that "sufficient evidence is obtainable to show that there is probable cause to believe that a violation has occurred." Therefore, special counsel should commence additional proceedings under sections 20A-1-703(3) and (4).

II. APPLICABLE STATUTES AND RULES OF STATUTORY CONSTRUCTION

Subsections (4)(b)(i)-(xiv) of UCA section 76-8-109, incorporated into the Election Code by sections 20A-9-201(3)(a)(v) and 20A-11-1603, lists the various points of information that must be disclosed on a Candidate Financial Disclosure or Conflict of Interest Form. The points pertinent to this investigation include the following:

(ii) the filer's primary employer;

(iv) each entity in which the filer is an owner or an officer;

(v) each entity that has paid $5,000 or more in income to the filer within the one-year period ending immediately before the date of the disclosure form;

(vii) each entity not listed above in which the filer serves on the board of directors or in any other type of formal advisory capacity;

(x) a brief description of the employment and occupation of the filer's spouse.

In addition, both the existence and absence of defined terms in section 76-8-109 are important to consider. The key defined term is for income. "'Income' means earnings, compensation, or any other payment made to an individual for gain, regardless of source, whether denominated as wages, salary, commission, pay, bonus, severance pay, incentive pay, contract payment, interest, per diem, expenses, reimbursement, dividends, or otherwise." By contrast, terms like owner, officer, any other type of formal advisory capacity, employment, and occupation are not defined and therefore must be given their ordinary meaning.

The provisions of Title 20A, which incorporate by reference section 76-8-109, must be construed liberally, not strictly: "[c]ourts and election officers shall construe the provisions of this title liberally to carry out the intent of this title." §20A-1-401(1).

III. ANALYSIS

Through the special investigation, sufficient evidence has been obtained to show probable cause that Swallow violated his disclosure obligations as described in subsections A through E.

A. Check City and Softwise

Swallow reasonably should have disclosed Check City and Softwise, two entities owned by Richard Rawle, for paying Swallow income of $17,000 between June 2011 and February 2012 via a series of deposits on a prepaid Netspend debit card, which Swallow used for personal expenses like gas and meals. The $17,000, according to Swallow, was in exchange for 12 gold coins Swallow sold to Richard Rawle at various times between June 2011 and February 2012.

Rawle previously had given the 12 gold coins to Swallow in or before 2009. The sales price was supposed to be $1,300 per coin, or a total of $15,600, not the $17,000 Swallow received. Swallow reported the sum $15,600, on his 2012 tax returns, which were prepared in 2013 (although he did not report any of the income on his 2011 tax returns when he received most of the $17,000). Swallow testified that he intended to repay Check City and Softwise for the amount he received over and above the sales price, which was $1,400. No repayment has been made. Under subsection (4)(b)(v), this reasonably constitutes income to Swallow.

B. P-Solutions LLC

Swallow reasonably should have disclosed P-Solutions, a company he formed, managed, and operated within a grantor trust he established. First, Swallow received more than $5,000 in income from P-Solutions in the year prior to his financial disclosure. On March 30, 2011, Swallow wrote a check on behalf of P-Solutions for $5,917 to Suzanne Swallow, with a memo handwritten by Swallow indicating the payment was for "taxes & Sep IRA contribution." The same amount was deposited into the Swallow joint account on the next day, March 31, 2011 and "used for taxes." Similarly, on May 10, 2011, Swallow wrote another check on behalf of P-Solutions paying Suzanne Swallow $13,200. The same amount was deposited into the John and Suzanne Swallow joint account on the same day and was used for joint family and household expenses. This reasonably constitutes income to Swallow under subsection (4)(b)(v).

Second, Swallow acted as an owner, officer, board member, and/or formal advisor of P-Solutions from its formation in late 2010 through at least 2012. Swallow formed P-Solutions to provide consulting services with respect to a cement project in Nevada known as Chaparral.

Swallow himself was the only person available to and capable of performing the consulting services. He in fact did perform consulting services on the Chaparral project and he directed payment for his services to be made to P-Solutions rather than to himself. He kept the checkbook and ledger and made financial decisions for P-Solutions even after he was removed as manager and even though his wife, who replaced him as manager, kept the checkbook and ledger for the family finances. He personally paid income taxes on the money received by P-Solutions for the consulting work. He was the sole manager of P-Solutions until the very day of his second Financial Disclosure or Conflict of Interest form. Even after withdrawal, he continued to perform the same functions in the same way. This reasonably constitutes activities by Swallow as an owner, officer, board member, or formal advisor under subsections (4)(b)(iv) or (vii).

Third, when substituted in place of Swallow as manager on March 15, 2012, Suzanne Swallow became the sole manager of P-Solutions and theoretically responsible for all of its activities, including the management of its finances and bank account. Although Swallow does not appear to have relinquished any control of P-Solutions to his wife as the new manager, to the extent she in fact was the manager of the company she reasonably should be construed as having employment or occupation with that company, which reasonably should have been disclosed as employment or occupation by Suzanne Swallow in response to subsection (4)(b)(x).

C. SSV Management

Swallow reasonably should have disclosed SSV Management for the same reasons he should have disclosed P-Solutions. He was identically situated with SSV Management as the sole manager until March 15, 2012, and he was the only person performing any functions for

SSV Management, including managing and controlling the SSV Management bank accounts, check books, and ledgers even after his withdrawal as manager. This reasonably constitutes activities by Swallow as an owner, officer, board member, or formal advisor under subsection (4)(b)(iv) or (vii).

D. Guidant Strategies

Swallow reasonably should have disclosed Guidant Strategies under subsection (4)(b)(v). In May 2011, within the year prior to the filing of Swallow's Financial Disclosure or Conflict of Interest forms, P-Solutions received $7,000 from Jason Powers or his company, Guidant Strategies. This $7,000 was money Swallow personally earned for consulting services he provided to Guidant Strategies in or before 2009. Swallow carried a receivable for these earnings and arranged for Guidant to pay it in May 2011. Swallow personally paid income taxes on the $7,000. In fact, he amended his returns for 2011 specifically because he had omitted the $7,000 from Guidant Strategies on his first filing. Swallow directed Powers to pay the money to P-Solutions rather than to himself through an oral assignment from Swallow as the person who earned the money to Swallow as the sole manager and employee of P-Solutions. This purported assignment from Swallow to himself reasonably should be considered a sham. The money was used for Swallow's personal purposes. This reasonably constitutes income to Swallow.

E. RMR Consulting/Richard Rawle/Chaparral

Swallow reasonably should have disclosed some combination of RMR Consulting/Richard Rawle/Chaparral under subsections (4)(b)(v) or (vii). Swallow performed what he described as consulting work for Richard Rawle and the Chaparral cement project. At

Swallow's direction, Rawle, through RMR Consulting, paid P-Solutions for Swallow's consulting services in two checks totaling $23,500. One of RMR's checks to P-Solutions for $15,000 was written on April 8, 2011, within the one-year period prior to Swallow's Financial Disclosure or Conflict of Interest forms. Rawle paid the money to P-Solutions rather than Swallow personally because Swallow asked him to do so. Swallow personally paid income taxes on the payments from RMR. On behalf of P-Solutions, Swallow wrote a check to his wife, Suzanne, for $13,200 of the $15,000 paid by RMR. Suzanne immediately transferred the $13,200 to their joint account and the money was used for joint family and household expenses, including to pay dues for Swallow's membership in a charitable organization. This reasonably constitutes income to Swallow.

In addition to receiving income from RMR for his services on the Chaparral project, Swallow was the only individual performing the consulting services. He was promised a portion of the equity of Chaparral, if successful, and he was paid a partial hourly rate for his services, which he directed be paid to P-Solutions. As the sole consulting service provider, Swallow reasonably should be considered a formal advisor of RMR Consulting/Rawle/Chaparral entities before and after filing The Financial Disclosure or Conflict of Interest forms in March 2012. Swallow was a consultant by his own designation and he performed services, prepared invoices, and received payment for his work.

IV. CONCLUSION

Through this investigation, we have obtained sufficient evidence to establish probable cause to believe that Swallow violated one or more provisions of section 76-8-109(4)(b).

Check City and Softwise reasonably should have been disclosed under subsection (4)(b)(v).

P-Solutions reasonably should have been disclosed under subsections (4)(b)(iv), (v), (vii) and/or (x).

SSV Management reasonably should have been disclosed under subsections (4)(b)(iv), (vii), or (x).

Guidant Strategies reasonably should have been disclosed under subsection (4)(b)(v).

RMR Consulting/Richard Rawle/Chaparral Limestone & Cement Company reasonably should have been disclosed under subsections (4)(b)(v) and (vii).

Accordingly, we recommend the Lieutenant Governor follow the procedures of UCA section 20A-1-703(3)(b) and (i) grant leave to bring the proceeding and (ii) direct special counsel to conduct the proceeding in accordance with sections 20A-1-703 and 704.

DATED this 22 day of November, 2013.

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