

Financial Audit Division Report

Secretary of State Mark Ritchie
Investigation: Use of Contact Information



Financial Audit Division

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OLA's Financial Audit Division annually audits the state's financial statements and, on a rotating schedule, audits agencies in the executive and judicial branches of state government, three metropolitan agencies, and several "semi-state" organizations. The division also investigates allegations that state resources have been used inappropriately.

The division has a staff of approximately forty auditors, most of whom are CPAs. The division conducts audits in accordance with standards established by the American Institute of Certified Public Accountants and the Comptroller General of the United States.

Consistent with OLA's mission, the Financial Audit Division works to:

- Promote Accountability,
- Strengthen Legislative Oversight, and
- Support Good Financial Management.

Through its Program Evaluation Division, OLA conducts several evaluations each year.

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OFFICE OF THE LEGISLATIVE AUDITOR

State of Minnesota • James Nobles, Legislative Auditor

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January 8, 2008

08-01

FINANCIAL AUDIT DIVISION

Centennial Building – Suite 140

658 Cedar Street – Saint Paul, MN 55155

Telephone: 651-296-4708 • Fax: 651-296-4712

E-mail: auditor@state.mn.us • Web site: <http://www.auditor.leg.state.mn.us>

Through Minnesota Relay: 1-800-627-3529 or 7-1-1

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Secretary of State Mark Ritchie

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Report Summary

Conclusions:

- Secretary of State Mark Ritchie did not misuse state resources when he organized civic education events and collected contact information from the participants. The events were appropriate activities of the Secretary of State's office, and the contact information fulfilled a public purpose.
- Secretary of State Mark Ritchie did not violate Minnesota law when he provided the contact information to his campaign since the information is "public data" under Minnesota law.
- Secretary of State Mark Ritchie did not fulfill his legal obligation to make a full and timely response to a request for information from the Legislative Auditor.

Background:

The Office of the Legislative Auditor investigated an allegation that Secretary of State Mark Ritchie improperly used information gathered through the Secretary of State's civic education and engagement initiative. The complaint alleged that Mr. Ritchie "used his capacity as Secretary of State to collect information from prospective donors and transferred that information to his campaign."

Our investigation involved a review of documents and interviews under oath with Secretary of State Ritchie and three members of his staff.



OFFICE OF THE LEGISLATIVE AUDITOR
State of Minnesota • James Nobles, Legislative Auditor

January 8, 2008

Representative Rick Hansen, Chair
Legislative Audit Commission

Members of the Legislative Audit Commission

The Honorable Mark Ritchie, Secretary of State
State of Minnesota

On October 29, 2007, the Office of the Legislative Auditor (OLA) received a complaint from Mark Giga and John Tomczak¹ alleging that Secretary of State Mark Ritchie improperly used information gathered through the Secretary of State's civic education and engagement initiative. Specifically, the complaint stated:

It is our belief that Mr. Ritchie used his capacity as Secretary of State to collect information from prospective donors and transferred that information to his campaign. We believe that this is an unwarranted use of government resources and an abuse of his position of chief elections officer.

The complaint urged action by OLA, "as the agency responsible for the investigation of misuse of state resources and violations of the state code of conduct for the employees of the Executive Branch of state government."

On November 2, we delivered a letter to Secretary of State Ritchie requesting information about his civic education initiative and the contact information referenced in the allegation. We asked for a response by November 12 and received a written response from the Secretary of State's office on November 9. However, on November 20, we received an e-mail from Mr. Ritchie with important information not disclosed in the November 9 letter. Because of inconsistencies between the November 9 and November 20 responses, we informed Mr. Ritchie on November 26 that we would continue our investigation by taking statements under oath from Mr. Ritchie and selected members of his staff.

¹ Since the complainants made themselves and their complaint known through the media, and did not request confidentiality from us, they are named in this report.

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Objective

The objective of our investigation was to answer the following questions:

1. Did Secretary of State Mark Ritchie misuse public resources when he organized civic education events and gathered contact information from participants?
2. Did Secretary of State Mark Ritchie act improperly when he provided his campaign with contact information gathered at the civic education events?
3. Did Secretary of State Mark Ritchie fulfill his legal obligation to make a full and timely response to a request for information from the Legislative Auditor?

To answer these questions, we reviewed relevant documents and laws and interviewed under oath the following people in the Secretary of State's office: Mark Ritchie, Secretary of State; Elizabeth Fraser, Deputy Secretary of State; Catherine Mohn, Administrative Assistant; and Bert Black, Legal Advisor and Data Practices Compliance Officer.

Summary of Conclusions

Secretary of State Mark Ritchie did not misuse state resources when he organized civic education events and collected contact information from the participants. The events were appropriate activities of the Secretary of State's office, and the contact information fulfilled a public purpose. He did not violate Minnesota law when he provided the contact information to his campaign since the information is "public data" under Minnesota law. However, Mr. Ritchie did not fulfill his legal obligation to make a full and timely response to a request for information from the Legislative Auditor.

Background

On March 20, 2007, Secretary of State Ritchie sent an e-mail to numerous individuals and organizations indicating that he wanted to hold "occasional roundtable discussions where those of us concerned with expanding civic education in Minnesota have the opportunity to inform each other of our current activities and plans."

To date, twelve roundtables have been held: the first on April 2; the most recent on November 8. Five were held in a legislative hearing room in the State Office Building, five were held at the Retirement Systems of Minnesota Building in Saint Paul, one at the Minnesota Landscape Arboretum Meeting Center in Chanhassen, and one at the League of Minnesota Cities offices in Saint Paul. Examples of the topics discussed at the roundtables include: the civic education curriculum in K-12 schools, recruitment of election judges, and efforts to increase civic education and engagement among adults. Examples of the groups and individuals who participated include: representatives from the Citizens League, League of

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Women Voters, city governments, Minnesota Bar Association, Sesquicentennial Commission, various civic, educational, and political organizations, as well as unaffiliated individuals.

Mr. Ritchie told us that he intended to use the Secretary of State's office only to bring people together and did not intend for the office to provide long-term administrative or policy support for a civic education and engagement program. In fact, he said his plan was to have the people he brought together form a "nonprofit, nonpartisan" organization outside of government to encourage and support civic education and engagement. A discussion about forming such an organization was the stated purpose of the roundtable held on October 5.

In a March 22 e-mail, before the first roundtable meeting, the Secretary of State's office indicated it would compile a directory of people and organizations interested in civic education and engagement. The office obtained contact information for the directory through e-mails and by asking roundtable participants to sign an attendance list.

Conclusions

1. Secretary of State Ritchie did not misuse public resources.

We came to this conclusion by applying the standard set forth in *Minnesota Statutes* 43A.38, the law referenced in the complainants' allegation against Secretary of State Ritchie.² *Minnesota Statutes* 43A.38, titled "Code of Ethics for the Employees of the Executive Branch," has several provisions, but one common purpose: to prohibit state employees from using public resources or their official position to achieve private benefits for themselves. Generally, "private" benefits are defined as benefits that are not available to the general public. Although *Minnesota Statutes* 43A.38 does not explicitly prohibit the use of government office resources for political or campaign activities, it is reasonable to interpret the law as prohibiting these types of activities because they are attempts to achieve benefits—such as campaign contributions—for a private individual or organization.

We found no evidence that the Secretary of State's civic education initiative was designed to achieve a private or partisan benefit. The roundtables' content, where and how they were conducted, and who was invited to participate, all support the position taken by the Secretary of State and his staff that the roundtables were an effort to bring together people involved in civic education for discussion and networking. The office often stated that it wanted the events to be "...as diverse as possible, including all points of view and perspectives."

² Because the law references "employees," some people question whether *Minnesota Statutes* 43A.38 applies to the state's five constitutional officials. While the question has not been resolved in a court case or legislative action, we think legal research and analysis supports its applicability to these officials (and there has never been any question that it applies to all of the employees of their offices). We asked Mr. Ritchie whether he accepted the applicability of *Minnesota Statutes* 43A.38 to the Secretary of State, and he said "yes" as a matter of principal, but added that his opinion was not based on his own legal analysis or advice from counsel.

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In our opinion, Mr. Ritchie's civic education initiative is an appropriate activity for the Secretary of State's office to pursue, given the Secretary of State's statutory responsibilities to administer and supervise elections, which are the ultimate form of civic engagement. More specifically, *Minnesota Statutes* 2007, 204B.27, subd. 6, says: "The secretary of state may sponsor or participate in nonpartisan activities to promote voter participation in Minnesota elections and in efforts to increase voter registration and voter turnout." In addition, Mr. Ritchie's involvement with civic education is consistent with the activities of previous Minnesota secretaries of state, who made frequent visits to schools and community organizations to promote civic education and engagement.

2. Secretary of State Ritchie did not violate Minnesota law when he provided his campaign with information from the Secretary of State's office.

We came to this conclusion by applying the relevant provision of the *Minnesota Government Data Practices Act*, *Minnesota Statutes* 2007, 13.03, subd. 1, which says in part: "All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential." As "public data," the civic education contact information collected by the Secretary of State's office must be made available to any person for any purpose.

We also note that the Secretary of State's office was not required by the *Government Data Practices Act* to provide people supplying contact information with a formal notice of how the information would be used. This formal notice, commonly called the "Tennessee Warning," is only required when the data being obtained is classified as "private" or "confidential" (*Minnesota Statutes* 2007, 13.04, subd. 2). In that situation, the government agency must explicitly tell the individual the intended use of the data, as well as whether the individual is legally required to provide the data, any known consequences of giving or withholding the data, and which other agencies or persons are authorized by law to receive the data.

At the most, it could be argued that when Mr. Ritchie gave his campaign the contact information collected by the Secretary of State's office, he violated an implicit—but not legally binding—expectation that the contact information would only be used for the stated nonpartisan purpose of bringing together people from all points of view to discuss civic education and engagement. Indeed, Mr. Ritchie acknowledged in an e-mail to Mark Brunswick, a reporter for the *StarTribune* and to us in an interview that, as a matter of "courtesy," his campaign "should have checked with the groups and individuals who listed themselves in this public directory to make sure they wanted to receive my [campaign organization's] civic engagement newsletter."

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3. Secretary of State Ritchie did not fulfill his legal obligation to make a full and timely response to a request for information from the Legislative Auditor.

On October 29, 2007, the same day OLA received the complaint against Mr. Ritchie, an article in the *StarTribune* reported: “[Secretary of State Mark Ritchie] said he did not authorize use of the civic engagement sign-up sheet for campaign contributions but emphasized that the names of the 600 people are public information.”

On November 2, 2007, we sent a letter to Secretary of State Ritchie requesting information about his civic education roundtables and the contact information gathered during those events. We specifically asked Mr. Ritchie for:

An explanation of how contact information about Mark Giga and John Tomczak was obtained from the Secretary of State’s office by any organization or person who used the information to solicit contributions for your campaign fund from Mark Giga and John Tomczak.

The response we received on November 9 was signed by Bert Black, Legal Advisor and Data Practices Compliance Officer for the Office of the Secretary of State. To explain how contact information about the complainants was obtained and used to solicit contributions for the Mark Ritchie campaign, Mr. Black’s letter said:

A printed copy of the directory/contact list of organizations and individuals involved in civic education and engagement, a public document, was provided to everyone who attended the [civic education and engagement] meeting on June 22 as they registered. It was also e-mailed to over 400 people after that meeting and handed out at the Minnesota State Fair. It is my understanding that this is how the directory/contact list was obtained.

We were never given any indication by anyone at the Secretary of State’s office that additional information would be forthcoming. In fact, we were told specifically that the November 9 letter contained “all of the information that is known by the Secretary of State’s office.” However, on November 20, Mr. Ritchie sent the Legislative Auditor an e-mail which said:

[The] directory was distributed to all participants in the June 22nd meeting on civic education and engagement..., including me. I provided this directory to my campaign and requested that listed groups get a copy of the campaign’s civic engagement newsletter.

On the same day, Mr. Ritchie sent a similar statement to Mark Brunswick, a reporter for the *StarTribune*, and on November 21, an article by Mr. Brunswick said: “Minnesota Secretary of State Mark Ritchie now says that he personally gave his campaign a list of participants in a state-sponsored ‘civic education’ program so it could send them a campaign newsletter that asked for a political contribution.”

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The fact that Mr. Ritchie did not acknowledge his action in the written response we received on November 9 created suspicion and led to our decision to require Mr. Ritchie and his staff to be interviewed under oath. We think it is a serious breach of responsibility for a public official not to fully and promptly respond to a request for information from the Office of the Legislative Auditor. OLA is the investigative office of the Minnesota Legislature, with responsibility to “see that all provisions of law respecting the appropriate and economic use of public funds are complied with...,” and authority to “investigate allegations of noncompliance by employees of departments and agencies of the state government....”

During our interview with Mr. Ritchie, we asked several questions about the November 9 and November 20 responses. Mr. Ritchie acknowledged that he was aware that the request for information from the Legislative Auditor was part of an investigative process and that he had a legal obligation to respond.³ He acknowledged knowing that the information was due by November 12 and reviewing drafts of Mr. Black’s response before it was sent to us.

During their interviews, both Mr. Ritchie and Mr. Black told us there were two responses because they thought both “the office” and “the campaign” needed to respond to the Legislative Auditor’s request. But, as noted above, this rationale was not presented in the November 9 letter, or at any other time before we interviewed Mr. Ritchie and his staff. Moreover, Mr. Ritchie never provided us with a convincing explanation as to why he waited eleven days after the formal written response was delivered (and eight days after the deadline) to OLA to acknowledge that he personally provided the civic education information to his campaign.

Except for his failure to provide a complete and timely response to our original request for information, Secretary of State Ritchie cooperated with our investigation, as did his staff. We thank them for their assistance.

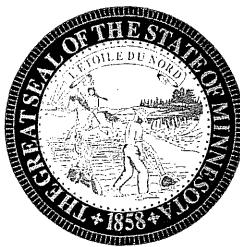
/s/ James R. Nobles

James R. Nobles
Legislative Auditor

/s/ Cecile M. Ferkul

Cecile M. Ferkul, CPA
Deputy Legislative Auditor

³ Our letter to Mr. Ritchie specifically cited *Minnesota Statutes* 2007, 3.978, subd. 2, which says: “All public officials and their deputies and employees, and all corporations, firms, and individuals having business involving the receipt, disbursement, or custody of public funds shall at all times afford reasonable facilities for examinations by the legislative auditor, make returns and reports required by the legislative auditor, attend and answer under oath the legislative auditor’s lawful inquiries, produce and exhibit all books, accounts, documents, data of any classification, and property that the legislative auditor may need to inspect, and in all things aid the legislative auditor in the performance of [the legislative auditor’s] duties.”



MINNESOTA SECRETARY OF STATE OFFICE

Mark Ritchie, Secretary of State

Mr. James Nobles
Legislative Auditor
140 Centennial Building
658 Cedar Street
Saint Paul, MN 55155

January 4, 2008

Mr. Nobles:

Thank you for providing the Office of the Secretary of State the opportunity to comment on your final report on the complaint filed against this office by two individuals regarding the public directory of civic engagement participants. We appreciate the careful attention and time commitment you and your office have given in reviewing and providing a conclusion to this matter.

We agree with your conclusion that there was no misuse of state resources when the Office of the Secretary of State organized civic education and engagement events. As you correctly note, our office has the authority to sponsor and participate in activities that promote citizen participation in government.

We also agree with your conclusion that our office did not violate Minnesota law when creating and distributing the 2007 Directory of Civic Education and Engagement Groups and that this information is public data.

I respectfully disagree with your opinion that our office did not provide a full and timely response to your request for information. The Office of the Secretary of State received your letter of November 2 requesting a response to your questions by November 12. This office responded quickly, truthfully, and completely to those questions on November 9.

In addition, I provided information to your office on November 20 in response to one question that dealt in part with the activities of my volunteer campaign committee. The Office of the Secretary of State is separate from my campaign activities, making it inappropriate for OSS staff to answer your questions on behalf of the campaign. This information was accurate, supplemental to the comprehensive responses provided by the OSS staff, and was in no way inconsistent with the November 9 response.

Again, I very much appreciate the opportunity to comment on your report. The Office of the Secretary of State thanks you and your office for bringing this matter to a close.

Sincerely,

A handwritten signature in black ink that reads "Mark Ritchie".

Mark Ritchie
Secretary of State