



STATE OF MINNESOTA

Office of Governor Mark Dayton

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

March 14, 2014

Mr. James R. Nobles
Legislative Auditor
Office of the Legislative Auditor
658 Cedar Street, Room 140
Saint Paul, Minnesota 55155

Dear Mr. Nobles:

This letter responds to your Evaluation Report on the Council on Asian-Pacific Minnesotans (CAPM), Council on Black Minnesotans (COBM), Chicano Latino Affairs Council (CLAC), and Minnesota Indian Affairs Council (MIAC).

Governor Dayton's Office makes about 350 appointments each year. We are committed to making all of them in a timely manner and ensuring that they adhere to statutory requirements. Each appointment is made after thoughtful consideration and careful due diligence, to ensure that councils maintain the high standards Minnesotans expect. However, despite our best efforts, appointments are frequently delayed and complicated by a scarcity of applicants, excessive statutory restrictions, and the frequent withdrawals of qualified candidates.

Scarcity of Applicants

Frequently, the Governor's Office receives only a very small number of applicants for council vacancies. Although we are not required to do so, we address this problem by recruiting applicants, including contacting legislators and other community leaders for their input, and seeking assistance from the councils themselves.

In addition, before appointments are made, Governor's Office staff perform extensive due diligence on all candidates. During this process, apparently qualified applicants are often removed from consideration for a number of reasons, which may include a lack of willingness to fulfill the duties required by the appointment, a conflict of interest, or substandard reviews by council members, legislators, or other stakeholders. No applicant is appointed to a council simply because he or she is statutorily qualified to serve. The Governor's main objective is to appoint excellent members who will make positive contributions to the councils.

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Excessive Statutory Restrictions

The Legislature's micromanagement of appointments, through its detailed description in statute of the different qualifications required for each appointment, limits the number of applicants; often causes there to be no applicants; becomes outdated and thus is no longer reflective of new trends in Minnesota's diversity; and makes appointments difficult and time-consuming.

For example, the Governor appoints 19 members of CAPM, but according to Minnesota Statutes, sec. 3.9226, subd. 1, each Asian-Pacific ethnic community can be represented by no more than one council member. An individual who is interested in advancing the mission of CAPM may not be eligible to serve, simply because he or she represents the same ethnic community as a current member or applicant.

Incidentally, this practice by the Legislature of micromanaging executive branch appointments is by no means limited to these councils. For example, an individual recently applied for appointment to the Board of Accountancy. He was an experienced, highly regarded Certified Public Accountant. He appeared well-qualified in every respect – except his firm had over ten Certified Public Accountants. The statute required less than ten.

Withdrawals of Qualified Candidates

After Governor's Office staff perform time consuming, comprehensive due diligence for each applicant, many applicants withdraw their names. For example, between February and June 2012, six finalists were selected for appointment to COBM, but four withdrew their names during the due diligence process. Withdrawals during the final stages of due diligence are responsible for many of the delays in appointments, noted in your audit.

Specific Findings Regarding Appointments

Your Report finds that there have been lengthy delays in appointments since 2003. We do not question your findings from 2003-2010; but we note for the record that they occurred during a previous administration. We believe that the overall timeliness of appointments has improved significantly, since Governor Dayton took office.

With regard to these councils, since 2011, the average time between a vacancy and appointment has been 114 days for CLAC; 178 days for COBM; and 301 days for CAPM. Regarding the 301 days for CAPM, the statutory "ethnic community" requirement explained above, as well as a lack of applicants, has made these appointments especially challenging. We agree that 301 days is unacceptable; however, we note that it is a big improvement from the 26 month average indicated in your Report.

Similarly, according to your Report, from 2003-2013, reappointments to CAPM took an average of nine months. It states further, "Of the 18 CAPM members reappointed since 2003, only 9

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were appointed within six months of their terms' expiration dates." We note that Governor Dayton made all nine of those appointments.

Regarding CAPM's current composition, your Report states that, while statutes limit representation to one member per ethnic community, four of the Council's ten members in 2013 were Asian Indian, three of whom were appointed in 2011. The term "ethnic community" is not defined in the CAPM statute, and as you note, CAPM has not adopted rules to define the term. Prior to making the three Asian Indian appointments, we consulted with CAPM's former executive director who had recommended them. She explained that although the three individuals were from the same country, they represented different ethnic communities.

Removal of Members

As noted in your Report, it has three times been alleged to our office that a council member had missed more than three meetings. In every instance, we asked the executive director of the affected council to document the missed meetings in writing. However, we did not receive any written assertion or documentation of those allegedly missed absences.

Thank you for giving us the opportunity to respond in writing to your Report. In summary, we maintain that we have done our very best, often in very challenging situations, to comply with applicable law, to follow the frequently proscriptive requirements for each appointment, and to make them all on a timely basis.

Very truly yours,


Jaime Tincher
Chief of Staff