OLA
OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

Regent Candidate Advisory Council

Special Review

July 23, 2015

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OLA
OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA • James Nobles, Legislative Auditor

July 23, 2015

Members of the Legislative Audit Commission:

In response to a request from a legislator, the Office of the Legislative Auditor reviewed certain actions by Margaret Carlson, a member of the Regent Candidate Advisory Council (RCAC). The legislator alleged that Ms. Carlson acted beyond her authority and the authority of the RCAC and inappropriately disclosed private information when she conducted a reference check of Darrin Rosha, a candidate for a seat on the Board of Regents in 2015.

We confirmed the allegations, but we also found that ambiguities in state law contributed to what occurred. As a result, we recommend that the Legislature clarify the authority and responsibility of the RCAC.

Ms. Carlson and others involved in the Darrin Rosha reference checking issue cooperated fully with our review. A letter from Ms. Carlson and another RCAC member, James Erickson, are included with this report.*

Sincerely,

James Nobles
Legislative Auditor

cc: Members of the House Higher Education Policy and Finance Committee
Members of the Senate Higher Education and Workforce Development Budget Division
Members of the Regent Candidate Advisory Council

* After this report was released, we received a response letter from Ardell Brede, Chair of the RCAC. We have included his letter in this reissue of the report.

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INTRODUCTION

The Office of the Legislative Auditor (OLA) conducted this special review in response to a legislator's request. The legislator asked OLA to investigate whether Margaret Carlson, a member of the Regent Candidate Advisory Council (RCAC or Council), violated privacy laws while checking references for Darrin Rosha, a candidate for the University of Minnesota Board of Regents.

The legislator alleged that Ms. Carlson disclosed private information Mr. Rosha was required to submit as part of his application to the RCAC. The legislator also alleged that Ms. Carlson acted without authorization and in an apparent attempt to damage Mr. Rosha's chances for a seat on the Board of Regents. According to the legislator, "Such action on the part of Ms. Carlson, and the RCAC, raises serious questions about the integrity of the regent election process."

To address these allegations, we did the following:

- Interviewed Margaret Carlson under oath on May 5, 2015, and obtained written submissions from her attorney, Thomas L. Johnson.

- Interviewed and obtained a written submission from James C. Erickson, a member of the Council and the person who asked Ms. Carlson to check Darrin Rosha's references.

- Discussed our review with Regent Darrin Rosha.

- Discussed our review with Sally Olson, an employee of the Legislative Coordinating Commission who provides staff support to the Council.

- Reviewed the statutory responsibilities of the Council and various documents related to the Council's policies and procedures.

CONCLUSION

Margaret Carlson inappropriately disclosed private information Darrin Rosha was required to include on his application to the Regent Candidate Advisory Council. In addition, fellow Council member James Erickson, who asked Ms. Carlson to check Mr. Rosha's references, disclosed Mr. Rosha's private information to people not authorized to see it. Whether these actions violated Minnesota's Government Data Practices Act is unclear. But the disclosures did violate an expectation created by the Council that it would not disclose an applicant's private information to anyone other than Council members and staff.

Mr. Erickson and Ms. Carlson initiated the reference checking of Darrin Rosha without explicit authorization from the RCAC or its chair, and their actions may have gone beyond the Council's statutorily defined duties and authority. Ms. Carlson did inform the Council staff, chair, and some other Council members that she was checking Mr. Rosha's

references and was not told to stop. Ms. Carlson did stop after being challenged by a legislator who was not a member of the RCAC.

Mr. Erickson and Ms. Carlson both acknowledge that given the expectation of privacy created by the RCAC application form, they should not have disclosed the private information in Mr. Rosha's application to people who were not members of the RCAC. However, they both believe that Ms. Carlson's reference checking was within the RCAC's statutory purpose and intended to be of service to the Legislature.

BACKGROUND

The University of Minnesota is governed by a 12-member Board of Regents elected by a Joint Convention of the Minnesota Senate and House of Representatives. Board members serve six-year terms, and state law requires that there must be a regent from each congressional district, with the remaining members elected at-large (and one at-large regent must be a student at the University when elected).

The Legislature created the Regent Candidate Advisory Council (RCAC) in 1988 to recommend candidates to fill vacancies on the Board of Regents. By law, the Council must provide its recommendations to the Joint House and Senate Higher Education Committee no later than January 15 of each odd-numbered year.[1]

Margaret Carlson has a long and close association with the University of Minnesota. She was the executive director of the University's Alumni Association for 25 years, having retired in 2010. In that position, she not only interacted extensively with alumni but also with University officials, regents, and a wide range of individuals and groups interested in the University. Although Ms. Carlson is no longer a University employee, she is still involved with issues related to the University of Minnesota and higher education generally. Ms. Carlson was first appointed to the RCAC in 2010 by the Minnesota Senate to complete the unexpired term of a member who left the Council. The Senate appointed her again to a full six-year term on the Council in November 2014.

On December 5, 2014, Darrin Rosha applied to fill the two years remaining on the term of Regent David Larson, who died while serving on the Board of Regents from the Third Congressional District. Mr. Rosha had previously been elected in May 1989 to the board as a "student regent" and served a six-year term in an at-large seat. Mr. Rosha holds three degrees from the University of Minnesota (B.S., B.A., and J.D.) and is currently a practicing attorney.

Ms. Carlson told us that because Darrin Rosha had been a regent during her time at the University, she was aware that some people had "concerns" about his previous term on the board. Ms. Carlson did not offer specifics at the Council meeting; she simply indicated that if

[1] *Minnesota Statutes* 2014, 137.0245.

members selected Mr. Rosha for an interview, the Council should have a member check references related to his previous service on the Board of Regents.

According to the RCAC's policy, an applicant's references are checked only if the applicant is selected for an interview. The policy also indicates that designation of a Council member to check references "should be done by the RCAC chair." Since Mr. Rosha did not advance to an interview, Mr. Rosha's references were not checked.

The RCAC interviewed four applicants for the open Third Congressional District seat and, on January 8, 2015, recommended Paula Prahl and Michael Belzer to fill Regent Larson's unexpired term. On February 6, 2015, however, a delegation of legislators from the Third Congressional District endorsed Mr. Rosha to fill the seat. Later that day, RCAC member James Erickson e-mailed the news of Mr. Rosha's endorsement to Regent Richard Beeson and Regent Thomas Devine with Mr. Rosha's application attached. Mr. Erickson sent a copy of the e-mail to Ms. Carlson.

In her interview with us, Ms. Carlson said the following:

> I got a copy of an e-mail from…Jim Erickson. It was addressed to Regent Beeson and Regent Devine…[and] Darrin Rosha's application was attached…. I think it said, Darrin Rosha has been…endorsed by the Third Congressional District. There was a note [on the e-mail which said], Margaret, do you know who served as regent with him at that time?
>
> And so the next morning [February 7, 2015] I get a call from Jim. And Jim says, Margaret, you know, at the committee meeting that we had, you said Rosha's references should be checked. He's made it through the process; I think you should do that checking.
>
> Now, what is Jim's role? Jim is chair of one of those committees that you talked about, the regent orientation committee. He also is in the inner circle of the people that are working on this and he's at the capitol and so forth.
>
> And so I said to him, well, why doesn't a number of people do this so I don't have to do it? And he said, Margaret, we've only got about 48 hours because they are going to go into the Joint House and Senate Higher Education Committee where they're going to discuss this. And so I said, well, I probably am the only person that former regents would see my name and call me back, particularly since this is going to have to be done on a weekend. And so I also thought it was the right thing to do because the vetting of candidates is very important, and so that's how I got involved in the process.

Ms. Carlson told us she first contacted several former regents and board staff about their experiences with Mr. Rosha. From those contacts, she said she received "a wide range of

views," and decided to check the four references Mr. Rosha listed on his application and received only one response.[2]

When she contacted people by e-mail, Ms. Carlson attached Mr. Rosha's RCAC application, which contained the following private information: his phone number and e-mail address, the names, phone numbers, e-mail addresses of his references, and Mr. Rosha's relationship to the individual references.

On February 9, 2015, a state senator sent Ms. Carlson an e-mail challenging her authority to check Mr. Rosha's references. Ms. Carlson told the senator that she had not been directed by the RCAC or a legislator to check Mr. Rosha's references. She said: "As a private citizen and RCAC member, I conducted these reference checks as a courtesy to legislators since I understand that Rosha might appear before the Joint Higher Education Committee." In a second e-mail to Ms. Carlson, the senator characterized her efforts as inappropriate and said, "…if any legislator wishes to perform...[reference checks], we have a number of full-time staff to complete this." In response to the second e-mail, Ms. Carlson stopped contacting people about Mr. Rosha and did not convey the results of her reference checks to legislators.

On February 10, 2015, the Joint Committee on Higher Education met to consider candidates for the Board of Regents. For the Third Congressional District seat, in addition to the two candidates recommended by the RCAC, Paula Prahl and Michael Belzer, legislators nominated Darrin Rosha and William Luther for consideration. The Joint Committee decided to recommend Michael Belzer and Paula Prahl to the Joint Convention of the House and Senate.[3]

At a Joint Convention of the House and Senate on March 4, 2015, legislators again nominated Darrin Rosha and William Luther for consideration, as well as the two candidates recommended by the RCAC and the Joint Higher Education Committee. After three ballots, Darrin Rosha was elected.

DISCUSSION

The following is a discussion of the two key questions we addressed in our review.

Did the disclosure of Darrin Rosha's Regent Candidate Advisory Council application violate the Minnesota Government Data Practices Act?

In a memo dated August 9, 2012, Matt Gehring and Mark Shepard at the House Research Department advised Sally Olson, RCAC staff, that the legal status of the Council under

[2] This may have resulted from the fact that, according to Mr. Rosha, he told his references the Council would not be contacting them because the Council did not select him for an interview.

[3] The Joint Rule 4.02 of the Minnesota House and Senate provide for the Legislature to elect regents at a Joint Convention of the House and Senate. At the Joint Convention, the people recommended by the Joint Higher Education Committee are considered but legislators may nominate other candidates.

Minnesota Statutes, Chapter 13, the Minnesota Government Data Practices Act (MGDPA), was "unclear." However, they also said: "Because of the sensitive personal nature of some data that an applicant may choose to submit, the best practice may be to err on the side of choosing to protect the application data to the extent permitted under [the Act]."

Following that advice, the RCAC's application form says the information applicants provide will be classified according to *Minnesota Statutes*, 13.601.[4] The form indicates how the Council will classify the following information:

- Name, city of residence, education and training, employment history, volunteer work, awards and honors, prior government service, and veteran status are public.
- Phone and e-mail contact information are private and made public only if the applicant consents.
- Answers to the essay questions are private and made public only if the applicant consents.
- Information about references is private.

The RCAC's application form clearly creates an expectation that the Council and its members will treat applicant information consistent with the Minnesota Government Data Practices Act, and that private information submitted to the RCAC will only be available to Council members and its staff.

James Erickson's Disclosure of Mr. Rosha's Private Information

The primary focus of our review was on Ms. Carlson's disclosure of Mr. Rosha's private information as she conducted reference checks. However, the initial disclosure occurred when James Erickson attached Mr. Rosha's RCAC application to the e-mail he sent Regent Richard Beeson and Regent Thomas Devine on February 6, 2015.

During an interview with us, Mr. Erickson indicated that he knows both regents and sent them the e-mail simply to keep them informed about what had occurred relative to Mr. Rosha's candidacy. He emphasized that he had no intention of getting them involved in the election of a regent from the Third Congressional District.[5]

Mr. Erickson said he could not recall attaching Mr. Rosha's RCAC application to the e-mail he sent the two regents, but acknowledged that if the record shows that he did, it was an inadvertent mistake. He said, "I just didn't pay enough attention; it was not willful." After reviewing with

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[4] *Minnesota Statutes* 2014, 13.601, is part of the *Minnesota Government Data Practices Act* and governs "data about applicants for appointment to a public body collected by a government entity as a result of the applicant's application for appointment to the public body."

[5] In the 2015 regent selection process, Regent Beeson was seeking a second term on the Board from the Fourth Congressional District.

us the information on an RCAC application that is private, Mr. Erickson said that he did not think disclosing the information should be a serious concern but that if he did disclose information on Mr. Rosha's application that is classified as private, he should not have; it was a "mistake."

Margaret Carlson's Disclosure of Mr. Rosha's Private Information

In an interview with us, Ms. Carlson acknowledged that when she contacted Mr. Rosha's references and others by e-mail, she attached his application form. In his follow-up letter, Ms. Carlson's attorney, Thomas Johnson, said: "The people who received a copy of the application were the four references listed by Mr. Rosha, four former Regents who had served with Mr. Rosha or had knowledge of his service, and four University administrators who had interacted with Mr. Rosha when he was a student Regent."

Mr. Johnson also said that Ms. Carlson provided Mr. Rosha's application form to these people because it "included responses to questions regarding his service as a student Regent, and Ms. Carlson thought the application would help provide the context for the reference checks." Nevertheless, Mr. Johnson acknowledged that Ms. Carlson "made an inadvertent mistake" when she attached Mr. Rosha's application in the e-mail she sent people, and added: "However, whether her actions violated the MGDPA is a different question."

Mr. Johnson's Arguments and OLA's Response

Mr. Johnson makes the following three arguments for why Ms. Carlson did not violate the Minnesota Government Data Practices Act: (1) almost all the information on Darrin Rosha's application form was public by one means or another; (2) Ms. Carlson acted in "good faith" and did not willfully violate the Act; and (3) Ms. Carlson did not violate the Act because she was acting as an individual and without authorization from the Council. We briefly present each argument below, followed by OLA's response.

Mr. Johnson's Argument: Almost all of the information was public[6]

Mr. Johnson asserts that Ms. Carlson did not violate the law because almost all of the information included in Mr. Rosha's application was either designated as public under the MGDPA (including his employment history, governing board experience, and education experience) or explicitly designated as public by Mr. Rosha. According to Mr. Johnson, the only data relating to Mr. Rosha that was private was his full address, e-mail address, and telephone number, which Mr. Johnson argues is publicly available elsewhere. Based on this, Mr. Johnson concluded: "When information is readily available to the public, it would take an untenable and unfair legal fiction to render it private."

[6] In his May 14, 2015, letter, Mr. Johnson argued that "all of the information" on Mr. Rosha's application was by one means or another public. In a later submission, he modified his argument to "almost all of the information" was by one means or another public.

OLA Response

The fact that Mr. Rosha's address, e-mail address, and telephone number were available online or elsewhere is irrelevant to how they are classified as government data and, therefore, whether they can be made public from a government source. In addition, Mr. Johnson does not acknowledge Ms. Carlson's disclosure of the information Mr. Rosha provided the Council about his references, which is clearly marked private on the Council's application form.

Mr. Johnson's Argument: Ms. Carlson acted in "good faith" and "best interests" of the Council

In his May 14, 2015, letter, Mr. Johnson said:

> Ms. Carlson at all times acted in good faith, believing she was carrying out the purposes of the RCAC and gathering information that the RCAC members of the Joint Legislative Committee would find helpful in selecting a Regent candidate…. As stated previously, Ms. Carlson initially acted pursuant to the request of [Jim Erickson] the chair of the RCAC's Orientation Committee. She then notified several other members during the process of reference checking. As a consequence, she believed in good faith that she was acting in the best interests of the RCAC and in furtherance of its statutory duty to vet and assess the qualifications of Regent candidates.

OLA Response

In our interview, we gained a clear impression that Ms. Carlson has a deep loyalty to the University and strong feelings about the qualities needed to be a "good" regent. She also told us that during her time as executive director of the University Alumni Association, the association took an active role in trying to influence the selection of regents. In addition, she told us that she thought the Legislature should give strong consideration to filling the Third Congressional District seat in 2015 with a person with a medical background and a woman. In that context, Ms. Carlson's actions could be interpreted as an effort to negatively affect Mr. Rosha's candidacy. Nevertheless, we accept that Ms. Carlson sincerely thought she could—and should—provide legislators with information about Mr. Rosha, particularly information about his past performance as a regent.

Mr. Johnson's Argument: Ms. Carlson is neither civilly or criminally responsible for a violation of the Government Data Practices Act

In his May 14, 2015, letter, Mr. Johnson said: "[Ms. Carlson] was acting in the best interests of the RCAC and in furtherance of its statutory duty to vet and assess the qualifications of Regent candidates. However, she was not acting at the direction of the RCAC as a whole, nor was she given the task of checking Mr. Rosha's references at an RCAC meeting. Accordingly, she was not acting on behalf of a government entity."

Mr. Johnson argues further that the Government Data Practices Act "…generally applies to 'government entities' and, although Ms. Carlson believed in good faith she was acting on behalf of the Council (a government entity), in fact she was not because she did not have the formal

authorization from the Council. Because she was not acting on behalf of a government entity, she cannot be civilly responsible for a violation of the Act. Also, …Ms. Carlson cannot be criminally responsible for a violation of the Act because she did not act willfully."

OLA Response

We do not accept Mr. Johnson's argument. While Ms. Carlson did not have authority from the Council or its chair, she told the people she contacted that she was acting in her capacity as an RCAC member and on "behalf of the RCAC." In effect, she used her position as a member of a government entity—the RCAC—to enhance her ability to gather information about Mr. Rosha with the intent of proving the information to the chairs of the House and Senate Higher Education Committees (who are also members of the RCAC).

In addition, while Ms. Carlson's disclosure of Mr. Rosha's RCAC application may not have been "willful" in the context of the criminal law, her reference checking was clearly "willful" in that it was purposeful and deliberate. Indeed, by her own account she took the initiative to gather information about Mr. Rosha at the suggestion of fellow RCAC member, James Erickson, and because she agreed that she was the best person for the task. Moreover, she not only contacted people Mr. Rosha listed as references, she also contacted former regents and University administrators who served during Mr. Rosha's term on the Board of Regents.

While we disagree with Mr. Johnson's argument, we again acknowledge that whether the Government Data Practices Act applies to the Council and its members is uncertain.

Was the reference checking of Darrin Rosha by Council member Margaret Carlson within the Council's statutory duties and authority?

State law requires the Council to make its recommendations to the Joint Higher Education Committee no later than January 15 of each odd-numbered year.[7] Therefore, by a strict interpretation of the law, the RCAC's authority to participate in the Legislature's election of a person to fill the Third Congressional District regent seat ended on January 8, 2015, when the Council recommended two people to the Joint Committee.

The legislator who requested this review clearly felt the Council and its members should have ended their involvement in the legislative process to elect regents once the Council made its recommendations to the Joint Legislative Committee. Generally, other legislators and legislative staff we talked with agreed and said that the vetting of candidates who emerge without a Council review or recommendation should be left to legislators.

In addition, in a February 8, 2015, e-mail exchange, Sally Olson, the Legislative Coordinating Commission staff person for the RCAC, advised Ms. Carlson that she was not sure how

[7] *Minnesota Statutes* 2014, 137.0245, subd. 4.

reference checks should be handled after the RCAC has made its recommendations to the Joint Committee. Ms. Olson said: "I would probably need to look into that with counsel."

Ms. Carlson proceeded without benefit of advice from counsel and without obtaining authorization from the RCAC's chair Ardell Brede. She did, however, notify chair Brede in an e-mail on the evening of February 8, 2015. She said:

> Because I have a first-hand recall of Rosha's service on the board of Regents, I feel a responsibility to take independent action in checking Rosha's references. As such, I have been calling those who also observed/interacted with him as a regent. Four calls are complete, and other calls are pending. By tomorrow at noon, I will call [Senator] Terri Bonoff and share the reference checks with her….
>
> I wanted to inform you of my advocacy because I feel that there is relevant information to be shared relative to Rosha's past service as a regent.

In an e-mail message to us, James Erickson also argued that the RCAC should continue to be involved in checking references for regent candidates even after it has made its recommendations. In his May 13, 2015, e-mail, Mr. Erickson said:

> The Regent Candidate Advisory Council (RCAC) is statutorily created and charged with recommending the most qualified candidates to the Legislature for election to the University of Minnesota Board of Regents. In my time on the RCAC, all members have worked very hard and devoted a great deal of time to doing so. Our work most importantly involves an extensive process of candidate vetting, background checking, interviews and intense and thoughtful discussion of each of the candidates the RCAC chooses to interview and ultimately formally recommends to the Legislature.
>
> An integral part of our recommendation process is the significant and meaningful vetting of all applicants chosen to be interviewed for a Regent position, including a robust personal history and background check. The extensive information gained in that background and reference checking process is naturally a vital and absolutely required element of arriving at an RCAC recommended roster of Regent candidates to forward to the Legislature. I believe that most legislators would expect that the RCAC would have done so with all Regent candidates that choose to remain in the active candidate pool during the legislative phase of the election process.
>
> This year one successful applicant, Mr. Darrin Rosha, did not undergo the very necessary and appropriate additional scrutiny of the interview process and further discussion of his background. Mr. Rosha chose to continue his candidacy without either an RCAC interview or recommendation….
>
> The fact that the RCAC elects to NOT move an applicant on to the interview stage is, in my judgment, carefully considered and significant. I would hope that that decision would be taken seriously and respected by the applicants and the Legislature alike.

Clearly, Mr. Erickson believes that the Legislature should defer to the RCAC's judgments in electing regents and, generally, it has. However, the election of a regent to fill the Third Congressional District seat shows that there have been—and will likely continue to be—exceptions.

In addition, the case of Darrin Rosha illustrates that questions can arise if a member of the RCAC Council becomes involved in vetting a candidate after the Council has finished its statutory duty of recommending candidates to the Joint Higher Education Committee. In fact, we think those questions probably would have arisen even if the Council had met and formally authorized Ms. Carlson to gather information about Mr. Rosha.

We think the Legislature should clarify whether the Council has a role in checking references of candidates that were not checked during the Council screening and selection process. If the Legislature decides the Council should not be involved, we think it should establish some other mechanism to ensure that candidates have their references and backgrounds checked.

RECOMMENDATIONS

To help prevent a reoccurrence of a situation like the one addressed in this review, we make the following recommendations:

1. The Legislature should clarify in law that members of the Regent Candidate Advisory Council must protect private information submitted to the Council from unlawful disclosure or be subject to the remedies and penalties provided in *Minnesota Statutes* 2014, 13.08 and 13.09.

2. The Legislature should clarify in law whether the Regent Candidate Advisory Council or its members have authority to check references of a regent candidate or engage in other activities to affect the election of regents after the Council has submitted its recommendations to the Joint Higher Education Committee.

3. If the Legislature determines that the Regent Candidate Advisory Council and its members are not to be involved in checking references of regent candidates after the Council makes its recommendations, the Legislature should establish another mechanism to ensure that all candidates being considered for election to the University Board of Regents have had their backgrounds thoroughly and objectively examined.

MARGARET SUGHRUE CARLSON

July 20, 2015

Mr. James Nobles
Office of the Legislative Auditor
140 Centennial Office Building, 658 Cedar Street
St. Paul, MN 55155

Dear Mr. Nobles:

Thank you for the opportunity to respond to the Special Review of the Regent Candidate Advisory Council, to be released by your office on July 23, 2015.

Based on my three decades of experience with the regent selection process, I wholeheartedly support the recommendations in your report. I believe they will provide much needed clarity about the role of the Regent Candidate Advisory Council ("RCAC"), particularly in checking and vetting references of regent candidates. Speaking only for myself, I believe these recommendations will help ensure that the best possible candidates apply for and are selected by the state legislature for service on the University of Minnesota's Board of Regents.

For 25 years, I served as the head of the University of Minnesota Alumni Association ("UMAA"), first as executive director and later as CEO. In my role with the UMAA, I worked closely with the Board of Regents, which I believe is the most important volunteer governance body in Minnesota. The UMAA has been actively involved in the regent recruitment and selection process, and during my tenure, the UMAA established the blue-ribbon committee that recommended the creation of the RCAC in 1988. After I retired from the UMAA in 2010, I applied to become a member of the RCAC because of my deep commitment to the University and my belief in the critical importance of the Board of Regents.

Currently, there is no established process for determining the qualifications of regent candidates who are not vetted by the RCAC. Because of this, during the last regent selection process, I was placed in a situation in which quick decisions had to be made to ensure that all regent candidates considered by the state legislature were evaluated thoroughly and fairly when Mr. Darrin Rosha continued his quest to become a regent after failing to be interviewed by the RCAC. At the request of another RCAC member, I undertook a reference check of Mr. Rosha. In doing so, I forwarded Mr. Rosha's application to his four references and to some of the Board of Regents members and staff that interacted with Mr. Rosha when he served as student regent from 1989-1995. I inadvertently and mistakenly assumed that Darrin Rosha's application was public when he was endorsed by the 3rd Congressional District.

Throughout my efforts, I kept the RCAC chair and staff apprised of the reference checks. By gathering reference information about Mr. Rosha in a transparent manner, I believed that I was acting in the best interests of not only the RCAC's mission, but also the legislators who ultimately select the Board of Regents. During the process, my integrity and actions were challenged by Minnesota State Senator David Osmek, SD 33. Consequently, the reference check information that I had collected to that point was not given to the two state legislators who serve on both the RCAC and the Higher Education Joint Legislative Committee nor to anyone else. After Mr. Rosha was selected as a regent, a state legislator, whose name has not been disclosed to me, filed a complaint with your office. To avoid similar situations arising in the future, I believe clarifications in the law are necessary to preserve the RCAC's integrity as well as the personal and professional integrity of all those who have been caught up in this unfortunate situation, including Mr. Rosha, Mr. Erickson, myself and others on the RCAC.

Toward this end, I agree with the Regent Candidate Advisory Council Special Review that the Legislature should establish a process to "thoroughly and objectively examine" the backgrounds of all regent candidates. The process should also be as rigorous, transparent and non-partisan as possible. Such changes are critical to recruiting and selecting dedicated citizens with the exemplary governance experience and relevant professional expertise needed to lead Minnesota's flagship higher education institution.

Sincerely,

Margaret Carlson

Margaret Sughrue Carlson
CEO Emeritus, University of Minnesota Alumni Association, 1985-2010
Member, Regent Candidate Advisory Council, 2010-2020

JAMES C. ERICKSON

July 14, 2015

Mr. James Nobles
Legislative Auditor

Mr. Nobles,
Thank you for the opportunity to engage in a personal interview with your office on July 2, 2015 and to comment on the Revised Draft of the OLA Special Review, dated July 7, 2015.

I strongly believe that the Regent Candidate Advisory Council (RCAC) plays a vital role in the very important constitutional and statutory process of electing the most qualified citizens to the University of Minnesota Board of Regents from the applications submitted. I have repeatedly been told that the many hours the dedicated members of the RCAC spend every election cycle in doing so, and doing so well, is very much appreciated by many members of the Legislature and public. No good could come from not having the RCAC continue to do this important job. And, as noted in the draft, the tools the Legislature gives the RCAC to do so can be strengthened.

In every cycle, the RCAC recommendation and legislative election process is both praised and condemned. There are some who believe it is "too political"; and those who believe it "not political enough." It does seem that very Regent election cycle produces evidence that supports both views.

My understanding is that the RCAC role is to thoroughly vet the applicants and **recommend** the names of those most qualified (in the RCAC's wisdom and view) for **election** by the Legislature. And beyond simple qualifications, it is my observation that RCAC members look to recommend applicants that are most likely to be effective and positive contributors to the Board of Regent. I believe the RCAC did so honorably and well in its careful and well-supported decision to forward the ten candidate names to the Legislature this past session.

The problematic exception to the recent intense process is that one applicant continued to pursue his candidacy without being subjected to the same scrutiny that the ten recommended candidates received. It is now clearly unfortunate that that candidate did not receive enough votes from the initial review by the RCAC members to be interviewed, and thus have his references, background and qualifications checked in the same manner as the others.

That applicant was Mr. Darrin Rosha, who the Legislature chose to elect a Regent despite that omission. Congratulations to Mr. Rosha for overcoming this exception. It apparently represented no handicap to his candidacy. The record shows that at least 98 honorable legislators did not think the situation disqualifying. The state Constitution certainly gives them the right to do so.

Your draft Special Review report recommends that there should be a mechanism to ensure that all candidates being considered for election to the University Board of Regents have had their backgrounds thoroughly and objectively examined.

I agree. It would be my hope that the RCAC itself take this situation as a learning experience and amend its own adopted procedures, within the statutory framework, to address the issues you have raised. And the Legislature certainly has the right and responsibility to do so, or otherwise, if it so chooses to act.

The initial issue that triggered one legislator's request for your Special Review is the allegation of disclosure of certain "private" information on Mr. Rosha's application. The RCAC's application form states that the Council classifies an applicant's phone and e-mail contact, essay question answers and references as "private".

I did pass on Mr. Rosha's entire application, including the noted information, to two sitting members of the Board of Regents. If Mr. Rosha or the requesting legislator was offended or concerned about that limited disclosure, I hereby apologize on the record, and will seek the opportunity do so in person with both. I consider the matter closed, and hope Regent Rosha does as well.

Going forward, I also believe the RCAC rules characterizing this information as "private" are inappropriate for any applicant who is recommended by the RCAC, or who chooses to pursue an active candidacy without RCAC recommendation. Anyone submitting themselves for this high public office should have no qualms about these matters being available to at least the Legislature after the RCAC recommendation and during the legislative election process. They should have no objection to their entire background and resume being a part of their candidacy at that stage. Legislators so submit themselves to the public when they run for office. Recommended and/or continuing active candidates for the Board of Regents should expect to do no less.

To amend Mr. Bumble's famous aphorism, "If the (rule) supposes that, the (rule) is an ass…" (Charles Dickens)

Respectfully submitted,

JIM ERICKSON

July 28, 2015

Mr. James Nobles, Legislative Auditor
Office of the Legislative Auditor
Room 140 Centennial Building
658 Cedar Street
St. Paul, MN 55155

Dear Mr. Nobles,

I am responding to the publication of your review of the Regent Candidate Advisory Council issued July 23, 2015. We welcome this review of the process in which candidates for the Board of Regents of the University of Minnesota are recruited, interviewed, vetted and then elected by the Minnesota Legislature. Our Council, consisting of 24 members appointed by legislative leadership, believes this carefully designed process in which the Legislature elects the governing body of the state's flagship university, is one of the most important duties of the Minnesota Legislature.

As such, we welcome your review and your suggestions. I particularly look forward to a discussion with legislators and the policy committees regarding the review process that should be employed for Board of Regents candidates who have not been vetted by the Regent Candidate Advisory Council. I fully acknowledge that the law and the understanding about that part of our otherwise well-developed process is not clear.

I also want to point out two parts of your report with which I disagree:

1. On page 1, the last sentence under conclusion states "Ms. Carlson did inform the Council staff, chair and some other Council members she was checking Mr. Rosha's references and was not told to stop." On Sunday, February 8, 2015, Ms. Carlson sent an email to me and Council staff indicating she had "a responsibility to take independent action in checking Mr. Rosha's references" and had been checking references on Mr. Rosha. Ms. Carlson then sent an additional e-mail, which showed she distributed Mr. Rosha's application while contacting references.

   Later that same day, Council staff reviewed Ms. Carlson's emails, and advised her to not distribute Mr. Rosha's resume with private data. She also advised Ms. Carlson that staff would need to check with counsel about the authority of the Council members to conduct reference checks for a candidate not recommended by the Council, and after the Council had completed its work.

   The next morning, Monday, February 9, 2015, approximately 18 hours after receiving Ms. Carlson's email, Council staff advised her to stop conducting reference checks on Mr. Rosha.

2. In Ms. Carlson's July 20th letter to the Legislative Auditor, she indicates "Throughout my efforts, I kept the RCAC chair and staff apprised of the reference checks." The Council chair and staff were unaware of Ms. Carlson's actions until her Sunday, February 8, 2015 email. Indeed, in that email, Ms. Carlson refers to her "independent action" to check Mr. Rosha's references. By the time we received that email, Ms. Carlson had already distributed Mr. Rosha's resume, completed four calls and had other calls pending.

   I neither condone nor condemn Ms. Carlson's efforts. However, they were not endorsed by the Council, nor were they coordinated with the Chair or staff.

We want to thank you for reviewing these events of earlier this year. The process of electing Regents is a critical and important part of the work of the Legislature, and we all want it to be an effective and thorough process.

I also acknowledge and appreciate your meeting with staff to discuss your report on July 23, 2015.

I request that this letter be included in the official record of your review.

Sincerely,

Ardell F. Brede

Ardell F. Brede
Chair
Regent Candidate Advisory Council