

**ATTORNEY GENERAL
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June 5, 2018

Senate President Charles Morse
New Hampshire State Senate
107 North Main Street
Concord, NH 03301

Re: Investigation Completed Regarding a 2013 Payment to a New Hampshire State Senate Staff Member.

Dear Senator Morse:

I am writing to inform you of the conclusion of this office's investigation into the allegation that in 2013 a New Hampshire State Senate intern received a job in the Senate Clerk's Office as well as cash in exchange for the intern's silence regarding an inappropriate comment made to the intern by State Senator Andy Sanborn. As you are aware, your office informed the Office of the Attorney General of the substance of this allegation and requested that the matter be investigated.

As provided in RSA 7:6, the Attorney General is the State's chief law enforcement officer. The Attorney General has the responsibility to investigate allegations of illegal conduct committed by State officials acting in their official capacity. Here, this investigation focused on whether there was evidence that would substantiate the allegations and thus whether any individual involved committed violations of the criminal code in connection with these incidents. Specifically, the investigation considered whether the alleged conduct constituted criminal acts under RSA 640:2 (bribery in official and political matters), RSA 640:3 (improper influence), RSA 641:5 (tampering with witnesses and informants), RSA 642:5 (compounding), and/or RSA 643:1 (official oppression).¹

The investigation conducted by this office entailed the audio-recorded interviews of 18 witnesses, including current and former State Senate employees as well as current and former state senators, the subpoena and review of State Senate records, to include correspondence as well as employment and financial records, and the summons of witnesses before an investigative grand jury. All witnesses were cooperative with our investigation. I cannot provide you with

¹ As discussed, the Attorney General's investigation was solely focused on whether any individual committed any criminal acts, therefore it did not consider whether any acts would constitute violations of the legislative ethics rules under RSA chapter 14-B.

any information that was provided to the grand jury because that information is confidential. *See* N.H. Supreme Court Rule 52; N.H. Rule of Criminal Procedure 8(b)(6). Nevertheless, the information provided to the grand jury was evaluated in making credibility determinations and in reaching the ultimate conclusions in this investigation which are discussed in more detail below.

The investigation substantiated that an inappropriate comment was made by Senator Sanborn to the intern on February 20, 2013. The investigation also substantiated that the intern was hired on a part-time, temporary basis in the Senate Clerk's Office beginning in May of 2013, and that his employment with the State Senate concluded in the fall of 2013. In addition, the investigation substantiated that shortly after the intern began working in the Senate Clerk's Office he was given an envelope containing cash by former Senate Chief of Staff Jay Flanders. Importantly, however, the investigation discovered no credible evidence that there was any connection between the inappropriate comment made to the intern and the later job and cash that were provided to the intern.

It is important to note that while the comment made by Senator Sanborn was contemporaneously investigated, at the time in 2013 there was no allegation that the intern had been hired in exchange for his silence or received money from Mr. Flanders for the same purpose. As you are aware, these allegations only surfaced recently. Our investigation discovered no credible evidence that the job for which the intern was hired in the Senate Clerk's Office or the money he was given by Mr. Flanders were a reward for declining to file a complaint against Senator Sanborn or an inducement to refrain from filing such a complaint in the future.

Specifically, no party to the hiring of the intern stated that they received explicit or implicit direction to hire the intern because he had been on the receiving end of an inappropriate comment by Senator Sanborn. To the contrary, the evidence established that a concerted effort was made to ensure that the intern was neither given an advantage in the hiring process nor penalized because of the incident with Senator Sanborn. By almost all accounts the intern was talented and qualified for the job, and also available and willing to take on the part-time, temporary position. In addition, the evidence established that the intern later applied for a full-time position in the Senate Clerk's Office but was not hired. Were the employment of the intern truly in exchange for his silence concerning the comment made by Senator Sanborn, it would logically follow that he would be hired to the full-time position, thus assuring his continued silence. Instead, that full-time position was given to a more qualified candidate.

The lack of any connection between these events is further illustrated by the fact that there is no evidence that any individual communicated to the intern in any manner that he was being given the job in the Senate Clerk's Office in exchange for his silence. This lack of connection is also supported by the timeline of these events. The comment made by Senator Sanborn occurred approximately three months prior to the intern's hiring and his receipt of the money from Mr. Flanders. By that time the incident with Senator Sanborn had already been investigated by Senate legal counsel and the matter concluded with no formal complaint being filed. Thus, no proceeding or investigation was pending at the time the intern was hired and received the money. While you also initiated a subsequent review of the incident by outside legal counsel once you became Senate President, the intern had been hired and given the money

by Mr. Flanders in the interim period when no proceeding was ongoing.² In the absence of any evidence to the contrary, there is no logical rationale for these alleged “pay-offs” to be provided when the matter of Senator Sanborn’s comment was not being actively investigated.

In terms of the cash given to the intern, accounts differed as to the nature of the money, that is, whether it was a gift or a loan, and the timeframe in which the intern returned the money to Mr. Flanders, although all witnesses with direct knowledge of the transaction were consistent in stating that the money was returned to Mr. Flanders. Mr. Flanders for his part stated that the money was from his own personal funds and was expressly given to the intern as a loan, because he had been told that the intern needed money for food and gas and had no income because he had not yet received his first paycheck from his job in the Senate Clerk’s Office. There is no evidence that Mr. Flanders communicated to the intern in any manner that he was being given money in exchange for his silence concerning Senator Sanborn’s comment.

In addition and as discussed, financial records were examined and there is no evidence that the money came from any public funds or from any source other than Mr. Flanders. Mr. Flanders stated that he gave the intern no more than \$200.00. While rumors abounded as to the sum of money given to the intern, there is no credible evidence that contradicts this amount. Mr. Flanders also stated that the intern paid the money back as soon as he received his first paycheck. While this account is contradicted by witnesses who stated that the intern expressed that he was uncomfortable with the transaction and did not know why he had been given the money and therefore returned it to Mr. Flanders the following day, these inconsistencies do not establish that there was any connection to the incident with Senator Sanborn.

Accordingly, because there is no credible evidence of a connection between the inappropriate comment made by Senator Sanborn to the intern and the later job and cash provided to the intern, there is no evidence here that any criminal acts were committed. As such, this office will take no further action in this matter.

Thank you for the time and attention you have given this matter and please feel free to contact me if you have any questions or wish to discuss further.

Sincerely,



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² As you are aware, that review by outside legal counsel also found that the intern had not wanted to initiate any formal complaint concerning the comment made by Senator Sanborn.

Senate President Charles Morse
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Copy to: Attorney General Gordon J. MacDonald
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