



STATE OF SOUTH DAKOTA  
DENNIS DAUGAARD, GOVERNOR

September 22, 2014

Tim Flannery  
Department of Legislative Audit  
427 South Chapelle  
Pierre, SD 57501

Dear Mr. Flannery,

Enclosed are my answers to the questions Senator Tidemann submitted to me on September 17, 2014.

Since I first brought this matter to light, I have released all the information that I can to the public, and provided answers to every question the legislature has posed. Likewise, I have answered these questions to the extent of my knowledge. Some of these questions assume facts that I do not know to be true, or deal with matters of which I have no first-hand knowledge, and in those instances, I have so noted.

Sincerely,

Dennis Daugaard

DD:nn

Enclosure

1. In regard to subparts (a)-(g), these questions are best directed to state officials who were involved at that time. As the Darley lawsuit is being defended by the Board of Regents, questions about that lawsuit are best directed to the Regents' general counsel.

In regard to subpart (h), the first two questions are best directed to state officials who were involved at that time. In regard to the third question, following the termination of the SDRC management contract, GOED received records from SDRC relating to SDRC's administration of the EB-5 program and individual investors that applied for EB-5 visas. SDRC has stated that these were all of the records it had under its control.

In regard to subpart (i), this question is best directed to state officials who were involved at that time.

In regard to subpart (j), I am aware generally that foreign investors under the federal EB-5 program are required to make investments of a certain size under certain terms. I believe the reports submitted to the United States Citizenship and Immigration Service (USCIS) by SDRC would reflect the estimated number of jobs projected to be created by each EB-5 project.

In regard to subpart (k): The 2009 agreement between the state and SDRC did not entitle the state to receive fees. The only funds the state received were through Indemnification Fund One and the Expense Fund. More information about those funds is available in the management contract and in the Department of Legislative Audit's audit report, which was submitted to GOAC during the legislative session.

Questions about SDRC's business relationships with individual investors are best directed to SDRC officers.

In regard to subpart (l), this contract was negotiated by a Board of Regents employee, and the Darley lawsuit is being defended by the Board of Regents. I do not recall being aware of this contract prior to recent press reports.

2. In regard to subparts (a)-(c), these questions are best directed to state officials who were involved at that time. As the Darley lawsuit is being defended by the Board of Regents, questions about that lawsuit are best directed to the Regents' general counsel.

In regard to subpart (d), I know that, in 2012, GOED Commissioner Pat Costello became increasingly concerned with SDRC's administration of EB-5 under the management contract, and took steps to remedy those issues. This culminated with our termination of the SDRC contract in 2013, following a briefing from the attorney general about the progress of his investigation. I am not aware that Rich Williams raised any issues, as you referenced in the second question.

In regard to subpart (e), I have had no personal participation in recruiting EB-5 investors.

3-4. I was not aware of the Darley litigation until I took office as governor in 2011. After taking office, I was briefed on the litigation, but I do not specifically remember when that was.

5. As I understand it, the fees that SDRC is collecting result from private business relationships the company has with EB-5 investors and projects. According to state attorneys, the state cannot rescind SDRC's ability to continue these private business relationships.

6. No.

7. The Darley lawsuit has been disclosed to GOAC at least twice, in the state's annual audit reports for Fiscal Years 2010 and 2011. For those who have been following this matter in the media, reporters have written about the Darley lawsuit in November 2013 and again in April 2014.

At the GOAC hearing, Commissioner Costello fielded a question about pending litigation involving EB-5. He understood this question to be about pending lawsuits against GOED, of which there are none. The Darley matter had already been disclosed in the audit reports, and as the Board of Regents is handling this matter, I would direct questions about that status of the case to the Regents general counsel.

8. My request to Attorney General Jackley was to investigate allegations of wrongdoing against Richard Benda. I would refer you to the attorney general for questions about his investigation.

9. I would refer you to my answer to question #5.