

Schmidt, Kelly L.

From: Schmidt, Kelly L.
Sent: Thursday, April 17, 2014 4:18 PM
To: Murtha, Janilyn K.
Subject: RE: Draft email to Barkan

Looks good to me.... A often tease...it's a good thing you Lawyers are not paid by the word! lol

Kelly Schmidt
Treasurer
State of North Dakota

*"The most practical kind of politics is the politics of decency."
Theodore Roosevelt*

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From: Murtha, Janilyn K.
Sent: Thursday, April 17, 2014 4:07 PM
To: Schmidt, Kelly L.
Subject: Draft email to Barkan

For your review and comment. Note I have to include a disclaimer at the bottom of everything I didn't look at. Also let me know if you want to discuss or have any concerns regarding any steps that may need to be taken if the NDSIB were to consider a business arrangement with KKR in the future.

Dear Mr. Barkan,

Please accept this email in response to your request for confirmation of my opinion as legal counsel to the North Dakota State Investment Board (hereinafter "NDSIB") that acceptance of a ride on a plane owned or chartered by KKR on April 29, 2014 from Watford City, North Dakota to Bismarck, North Dakota by a board member of the North Dakota State Investment Board, in this instance Treasurer Schmidt, does not present a conflict of interest or a violation of a fiduciary duty as board member of the NDSIB at this time.

The facts as I understand them and upon which this opinion is based are as follows: the Treasurer will be attending, unrelated to her duties as a NDSIB board member, an event in Watford City on April 29, 2011 at which General Patraeus will be present. The attendance of General Patraeus at this event is being facilitated by KKR. Travel from the event in Watford City to Bismarck by plane is being arranged for the convenience of General Patraeus and KKR personnel and not for the benefit of the Treasurer (i.e. the flight would happen regardless of whether she is present on the plane). The Treasurer has been invited to return to Bismarck (near her home in Mandan, North Dakota) from Watford City after the

event on this flight at no cost to her. KKR does not currently have a business relationship with the NDSIB, nor is discussion of a future business relationship pending before the board.

NDCC § 21-10-01(1) designates the state treasurer as a member of the NDSIB. NDCC § 21-10-02 indicates that the NDSIB is responsible for the investment of certain funds on behalf of the state. NDCC § 21-10-09 prohibits any board member from profiting in any manner from transactions on behalf of the funds. Furthermore, the NDSIB has adopted a governance manual elaborating on the board's responsibilities and containing a code of conduct applicable to board members (NDSIB Governance Manual E-1 through E-3, B-8). The responsibilities of the NDSIB board members include the hiring and termination of money managers, custodians, and consultants. The code of conflict defines a "conflict of interest" as a situation in which a board member has a direct and substantial personal or financial interest in a matter which also involves the member's fiduciary responsibility. Conflicts of interest include "receiving consideration for advice given to a person concerning any matter over which the board member has any direct or indirect control". The code of conflict also requires the board member to disclose conflicts of interest to the NDSIB and abstain from those situations where the board member is faced with taking some official action regarding property or a contract in which the board member has a personal interest.

Given that KKR does not have any current or pending business relationship with the NDSIB the conflict of interest provisions of the aforementioned code of conduct and associated fiduciary responsibilities are not implicated by the benefit described herein. If in the future the NDSIB considers entering into a business relationship with KKR, and Treasurer Schmidt is then an acting board member, she may bring the prior contact with KKR to the attention of both the board and legal counsel and determine at that time if a conflict exists/ and/or the appropriateness of an abstaining vote.

Please also note that while the code of conduct states that NDSIB members are expected to fulfill their responsibilities in accord with the intent of all applicable laws and regulations, the scope of this opinion is limited to a review of the North Dakota state laws and policies specifically applicable to board members of the NDSIB and does not address potentially applicable federal law or state law applicable to elected officials or the State Treasurer specifically in her role as treasurer or as a member of any other board or entity.

Please let me know if you have any other questions of concerns.