

REPORT OF PRELIMINARY INQUIRY

OIGC COMPLAINT NO. 2009-016

AUGUST 9, 2010



STATE UNIVERSITY SYSTEM OF FLORIDA
BOARD OF GOVERNORS

Prepared by

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TABLE OF CONTENTS

PREFACE	2
EXECUTIVE SUMMARY	3
RELATED STATUTES, REGULATIONS, AND POLICIES	4
I. INTRODUCTION	5
A. Statement of Facts	5
B. Scope and Methodology of Review	8
II. THE EXIDE ENDOWED PROFESSORSHIP AGREEMENT	10
<i>A. Did USF objectively review the allegation that the University breached a legally binding agreement when it failed to establish an “Eminent Scholar Chair in Business Ethics” contrary to the intent of the donor Exide?</i>	10
<i>B. Did USF objectively review the allegation that the failure to obtain the signature of Exide to the proposed agreement violated applicable regulations, policies, or procedures?</i>	11
III. THE USF MATCHING GIFT REQUEST	14
<i>Did USF objectively review the allegation that because the University failed to establish an Exide endowed professorship in business ethics it improperly applied for and received state matching funds?</i>	14
IV. CONCLUSIONS	14

PREFACE

Pursuant to the *Audit and Compliance Committee Charter* (Charter)¹ of the State University System of Florida Board of Governors (Board) and applicable law,² the Office of Inspector General and Director of Compliance (Inspector General) reviewed Complaint No. 2009-016 (the Complaint).³ The Complaint alleged, among other things, that the University of South Florida (USF or University), a member of the State University System, was unable or unwilling to resolve allegations that actions taken by University staff violated statutes, regulations, policies or procedures or otherwise amounted to misconduct.

The Board has delegated to its Audit and Compliance Committee (Audit Committee) the authority to direct the Inspector General to conduct an investigation if it is determined there exists reasonable cause to believe a university board of trustees is unable or unwilling to provide for an objective investigation of credible allegations of fraud or other substantial impropriety. To assist in making this determination, the Audit Committee Chair, with the concurrence of the Chancellor for the State University System (Chancellor), directed the Inspector General to conduct a preliminary inquiry of the University's response to the allegations in the Complaint and make a recommendation whether further Board action is warranted.⁴ In accordance with the Charter, the Inspector General submits its Report of Preliminary Inquiry regarding this Complaint.

EXECUTIVE SUMMARY

As detailed in this Report of Preliminary Inquiry, which included a careful examination of all pertinent documents, interviews with the respective parties, and consultation with Board staff, the Inspector General concludes the University of South Florida Board of Trustees (University Board of Trustees) appropriately addressed all allegations contained in Complaint No. 2009-016 and recommends that the Board take no further action on this matter. All remaining issues or disputes between the parties, including the Complainants' continued disagreement with the results of the University of South Florida's (USF or University) internal investigation, raise claims that are subject to legal and administrative proceedings clearly within the powers and duties delegated by the Board to the University Board of Trustees and USF.

The Complaint, filed by two current faculty members, alleges USF and the University of South Florida Foundation (the Foundation) breached a contract with the Exide Corporation (Exide or Company) when the University established an endowed professorship in business ethics rather than an "eminent scholar chair" with the proceeds of a \$1.25 million dollar gift. Furthermore, it was alleged USF faculty and staff failed to comply with University regulations and internal policies. For all of the foregoing reasons, it was alleged USF's application and receipt of state matching funds in the amount of \$937,500 was improper.

The University's internal investigation concluded that no breach of contract occurred since no legally binding written agreement was ever executed by Exide. In addition, the investigation concluded all expenditures of the proceeds or dividends from the Exide gift were for the primary benefit of the library, instruction, or research and were otherwise in compliance with all statutes, regulations, and internal policies. The University's Board of Trustees ratified the decision by University senior staff that the complainants' allegations were fully reviewed and without merit.

RELATED STATUTES, REGULATIONS, AND POLICIES

I. Statutes

1. Section 240.2605, Florida Statutes, Trust Fund for Major Gifts
2. Section 1011.94, Florida Statutes, University Major Gifts Program
3. Section 20.055, Florida Statutes, Agency Inspectors General
4. Section 20.155, Florida Statutes, Board of Governors Office of the Inspector General

II. Regulations

1. BOG Regulation 9.019 (formerly FAC 6C-9019), University Major Gifts Challenge Grant Program
2. USF Regulation 11.002 (formerly FAC 6C4-11.002), Florida Endowment Trust Funds for Eminent Scholars and Challenge Grants

III. Policies

1. USF Policy 0-219, Eminent Scholars Endowed Chair and Challenge Grants
2. USF Policy Outline for Endowed Chairs, Professors, and Scholars, March 2000

I. INTRODUCTION

A. Statement of Facts

On May 26, 1999, Florida's Attorney General (Attorney General or AG) announced the settlement of a legal action brought by the State against Exide Corporation (Exide or Company) for alleged violations of the state's consumer protection act. As part of the settlement agreement, Exide agreed to pay the state \$2.75 million dollars. It was announced that of that amount, \$1.25 million dollars was to go to USF to "establish an eminent scholar in business ethics."⁵

On March 1, 2000, USF's College of Business Dean wrote a letter to the AG's office summarizing a meeting and discussion between the Dean of USF's College of Business (Dean) and a deputy attorney general about using the Exide gift to establish "the Exide professorship in business ethics."⁶ USF's "Policy Outline for Endowed Chairs, Professors, and Scholars," March 2000, stated that:

I. Definitions

A. "Endowed Chair" means a position in an academic unit at the University of South Florida that is funded at a level of \$4 million or more and held by a ranked faculty member.

B. "Endowed Professorship" means a position in an academic unit at the University of South Florida that is funded at a level of at least \$500,000 and held by a ranked faculty member.

The March 1, 2000, letter cited the benefits such an approach would have for the University and how proceeding in this manner eliminated the necessity to raise the additional funds necessary to establish an eminent scholar chair. In addition, the letter summarized the contents of a March 1, 2000, facsimile from the AG to the Dean. The facsimile included changes to the proposed gift agreement, the most significant of which was the deletion of the AG as the grantor and the substitution of Exide as the donor.⁷

Several weeks later, on March 24, 2000, a University of South Florida Foundation (the Foundation) staff member sent the Dean a short memorandum regarding the "Exide Gift Agreement" and requesting he obtain Exide's signature on the proposed gift agreement titled, "Exide Professorship in Business Ethics." That document bore the signatures of the Foundation President and Executive Vice President, and the signatures of USF's interim President, and the Dean and was "Approved as to Form and Legality" by USF's attorney.⁸ No copy

of the proposed agreement executed by Exide or its representative was ever located.⁹

At a point in time after April 2000, but no later than June 6, 2000, USF received from Exide Invoice No. 28002500426 and a check dated April 1, 2000, in the amount of \$1.25 million dollars and made payable to the Foundation for an "Eminent Scholar Chair in Business Ethics."¹⁰ In a letter dated June 6, 2000, to the Foundation, the Dean acknowledged receipt of the funds and that it was the University's intent to establish an endowed professorship in business ethics. In addition, the Dean requested the Foundation's approval to make application to the Florida Board of Regents (BOR) for a matching trust fund grant.¹¹ On June 29, 2000, USF submitted a formal application to the BOR for a 75% state matching grant to the Exide gift.¹² In response to the request for state matching funds, the BOR sent a letter dated August 8, 2000, to notify USF its application was placed on a priority list with other similar requests to be reconsidered when sufficient trust funds were available.¹³

From 2001 to 2004, USF made expenditures from the dividends of the Exide gift to cover costs related to libraries, instruction, and research programs benefiting the Exide endowed professorship.¹⁴ On March 30, 2001, the Dean received a memorandum from Foundation staff. The memorandum summarized a request for information from the AG's office about the "Chair of Business Ethics," including questions about whether the business chair had been established and if the program had proven successful.¹⁵

On March 10, 2004, USF received a letter from the Chancellor for the Board of Governors that contained a check for \$2.8 million dollars in state matching funds for the "Major Gift Endowment." Of this amount, \$937,500 represented a 75% match of the Exide gift.¹⁶ The University added these funds to the Exide endowment account. From 2004-2009, the University used dividends from the Exide endowment to fund faculty salaries, symposiums, instructional expenses, scholarships, and other costs associated with the Exide professorship.¹⁷

On July 13, 2009, two USF faculty members filed a complaint with the office of University Audit and Compliance (UAC) entitled, "Compliance with USF Policy #0-024" that alleged USF's failure to establish an eminent scholar in business ethics breached its contract with Exide. In addition, it was alleged that USF, the Foundation and University staff violated applicable regulations, internal policies, and procedures by creating the Exide professorship rather than conducting a national search to hire an eminent scholar in business ethics. Furthermore, it was alleged the University's actions were contrary to the clear intent of the donor, Exide, as evidenced by the provisions of the written

agreement. The Complainants provided UAC their contact information and agreed to cooperate with the investigation.¹⁸

UAC investigated the allegations and on October 16, 2009, issued a report of investigation. At the outset, the UAC report noted that the Complainants had declined the investigator's request for interviews. The UAC concluded the allegation USF or the Foundation's actions breached a contract was unfounded since no written agreement signed by Exide existed. In addition, the UAC concluded the establishment of the endowed Professorship in Business Ethics and expenditure of dividends from the endowed gift complied with all applicable statutes, regulations, and internal university policies. As part of its investigation, UAC reviewed all expenditures from 2000 through August 2009, confirming that the gift and state match benefited the University in its primary objective of providing financial support for libraries and instruction and research programs.¹⁹

The Complainants strongly disagreed with the findings and conclusions of the UAC investigation. Several weeks later, they filed a complaint with the Attorney General restating their claims USF breached a legally binding contract with Exide when it failed to establish an eminent scholar chair. In addition, they alleged USF's receipt of state matching funds was improper and asked the AG's office to intervene. During this same period, the Complainants contacted Exide's general counsel's office and asked the Company to take action to enforce the agreement.²⁰

On November 20, 2009, the AG notified the Complainants it had reviewed the matter and concluded that the University's actions "would not appear to be within the direct jurisdiction of this office absent fraud." The AG suggested that if the Complainants wanted to pursue their claim of fraudulent activity, they should contact the State Attorney or the Office of Statewide Prosecutor.²¹

In an email message dated December 19, 2009, Exide's General Counsel informed the Complainants Exide was unable to locate a signed Exide Professorship Agreement and that the Company had no interest in pursuing any legal action against USF. The attorney stated Exide had fulfilled its obligation under the settlement agreement with the state of Florida, which did not specify a use for the funds. In addition, she stated USF's use of the funds was "purely an internal matter to be determined by the University." In late December 2009, the Complainants contacted the Board of Governors General Counsel, and the matter was referred to the Inspector General. At the Inspector General's request, the Complainants provided a written summary of their concerns and additional documents for review.²²

On January 29, 2010, the Complainants submitted a letter to all members of the University Board of Trustees reasserting the allegations made in their original complaint and requesting a review of the University's decision to reject their claims that the use of the Exide gift violated a legally binding agreement.²³ On March 25, 2010, the University Board of Trustees, through USF's General Counsel, informed the Complainants it had reviewed the University's handling of the matter and concurred in the decision that the allegations in their complaint were without merit.²⁴

On June 2, 2010, the Inspector General conducted a follow up interview with the Complainants to discuss the UBOT's decision and to determine if they had any additional information or concerns. The Complainants reasserted their earlier allegations and their strong disagreement with the decision of the University Board of Trustees. They continued to assert USF breached a legally binding agreement when it failed to establish an eminent scholar chair. Furthermore, they repeated their claim the University failed to comply with its internal regulations and policies. They asked the Inspector General to review all of the information and seek a final determination from the Board whether it would take any further action.²⁵

B. Scope and Methodology of Review

The Board of Governors is a corporate body established by the Florida Constitution to "operate, regulate, control, and be fully responsible for the management" of the State University System comprised of all public universities.²⁶ The Board has delegated to the board of trustees of each university all the powers and duties necessary for the "direction, operation, management, and accountability" for each member of the State University System including being responsible for compliance with all applicable laws, regulations and requirements.²⁷ The Board reserves the fiduciary responsibility and is accountable for the overall operations of the State University System. At its discretion, the Board exercises that authority by promulgating regulations consistent with the inherent authority granted by the Constitution.²⁸

In addition, the Board established the Audit Committee to serve as the central point for demonstrating its firm commitment to "accountability, financial integrity, and efficiency in the operations of the State University System." The Audit Committee, among other duties and responsibilities set forth in its Charter, is responsible for making a determination if a university has adequately provided for responses to internal or external audits of its finances and operations and, in case of allegations of fraud, waste, abuse, or misconduct, may direct:

the Inspector General to conduct an inquiry or investigation if the Audit Committee has reasonable cause to believe that a University Board of Trustees is unwilling or unable to provide for objective investigation of credible allegations of fraud or other substantial financial impropriety. . . .²⁹

Section 20.155, Florida Statutes, as amended in 2007 provides that the Board in exercising its constitutional and statutory authority do so in a manner that supports, promotes, and enhances fiscal responsibility and accountability. This statute also created within the Board of Governors the Office of Inspector General to “promote accountability, efficiency, and effectiveness” and “to detect fraud and abuse within state universities.” At the same time, the Florida Inspectors General Act, section 20.055, Florida Statutes, which establishes the powers and duties of agency inspectors general, was amended to make the provisions of that statute applicable to the Board of Governors and its Inspector General.³⁰

It is not the responsibility of the Board to receive, process, or monitor all allegations of fraud, misconduct, or violations of law made against members of the State University System of Florida. The Board delegated to the university boards of trustees responsibility for the day-to-day operation, management, and administration of the university including responding to and investigating such complaints. Under this governance structure, the university, its President, or appropriate senior staff who report to and are under the direction of the university board of trustees must first address allegations and complaints.³¹

In response to a complaint alleging that a university is unwilling or unable to address credible allegations, the Audit Committee may direct the Inspector General to conduct a preliminary inquiry that typically includes interviewing the complainant and university staff, reviewing pertinent documents obtained from the complainant or the institution, and assessing the investigative process undertaken by the university. Based upon this review, the Inspector General makes a recommendation to the Audit Committee Chair and the Chancellor, whether Board action is appropriate. It is the Board’s responsibility, delegated to the Audit Committee, to make the final determination.³²

In conducting this Preliminary Inquiry of the Complaint regarding the Exide gift, the Inspector General:

- reviewed numerous documents submitted by the Complainants in support of their allegations and various claims;
- reviewed the UAC investigative report and additional documents provided by the University at our request;

- examined records maintained by the Board in the original Board of Regents' Exide Matching Gift file;
- conducted a series of telephone interviews with the Complainants to obtain additional information and clarification about their issues and concerns;
- held several teleconferences with University staff from the office of the General Counsel, UAC, and the legal Counsel for the Foundation;
- discussed with the Deputy Attorney for the Office of the Attorney General his response to the allegations in the Complaint;
- conferred with the Board's General Counsel on several legal issues related to the Complaint and consulted with Board staff regarding the administration of the Matching Gift program;
- reviewed all applicable statutes, regulations and policies applicable to the facts and circumstances of this matter.

Our review, assessment, and analysis of the issues raised by this complaint were not an investigation as defined or proscribed by applicable professional standards.³³ Nor was it our intent to conduct a de novo review of the actions taken by the University for the purpose of substituting our judgment for that of the university Board of Trustees. Instead, our objective was to demonstrate that in conducting this review the Inspector General exercised a measure of due diligence sufficient to lend validity to the conclusions and recommendations contained in this Report as to what actions, if any, the Board should take in response to the Complaint.

II. THE EXIDE ENDOWED PROFESSORSHIP AGREEMENT

A. Did USF objectively review the allegation that the University breached a legally binding agreement when it failed to establish an "Eminent Scholar Chair in Business Ethics" contrary to the intent of the donor Exide?

The Complainants allege that USF and the Foundation were bound by several verbal statements made by the parties and the acceptance of the \$1.25 million dollar check from Exide that contained the notation "Exide Eminent Chair in Business Ethics" to establish a professorship in business ethics. They argue the fact the proposed gift agreement was apparently never executed by Exide is irrelevant since the facts and circumstances are sufficient to establish legally binding oral, unilateral, or implied in fact contract.³⁴

The UAC report concluded no contract existed since the proposed agreement was never signed by Exide. During its investigation, UAC consulted with University and Foundation attorneys. In the opinion of legal counsel, in the absence

of a written agreement signed by all parties, no legally binding agreement existed and therefore a breach of contract could not have occurred. In addition, even if a legal theory existed for alleging the University's actions were contrary to the donor's intent, the Complainants lacked standing to bring such an action.³⁵

The University Board of Trustees reviewed the conclusions reached in the UAC report and the University's reliance upon that assessment in rejecting the Complainants' claims. The University Board of Trustees ratified this decision and through legal counsel, informed the Complainants no further action would be taken on this matter.³⁶

In the course of our inquiry, we reviewed all of the documents the Complainants relied upon to support their allegations. In addition, we requested and received clarification from members of the UAC, the University's lawyers and the Foundation's General Counsel on the factual and legal basis for their conclusions. Our review included consulting with Board counsel about case law relevant to this issue. We submit it is beyond the scope of our inquiry to evaluate the merits of the parties' legal theories and unnecessary for us to do so.³⁷

We conclude the University and the University Board of Trustees' review of this allegation was consistent with the powers and duties delegated by the Board. The University Board of Trustees reviewed the Complaint and the actions by University staff to investigate this allegation, and ratified the decision the assertions were unfounded. The University conducted a competent investigation consistent with applicable professional standards. We recommend the Board take no further action as it relates to this allegation.

B. Did USF objectively review the allegation that the failure to obtain the signature of Exide to the proposed agreement violated applicable regulations, policies, or procedures?

The Complainants alleged the University's failure to obtain the signature of Exide on the proposed agreement was intentional. The Complaint states:

"When Kasey Shimberg Kelly instructed the then Business college Dean Robert Anderson, to obtain the necessary signatures from USF officials and the Exide Corporation on the Agreement before returning it to the USF Foundation for processing, one of two things may have happened: (1) the dean did obtain the signatures and somewhere an Agreement signed by all parties exists; or (2) the dean did not obtain Exide's signature and did not follow the instructions specifically mandated by the USF Foundation, and yet the USF Foundation accepted the Agreement against its own stated policies."³⁸

The compliance matrix in the year 2000 included state statutes, BOR regulations, and USF regulations, policies, and guidelines. The UAC investigation carefully considered the requirements of all relevant legal or regulatory authority along with an extensive review of the financial transactions associated with funding legitimate activities which supported the libraries and instruction and research programs of the University related to the Exide professorship. There is no serious dispute USF's expenditure of funds was properly accounted for and supported the University's mission.³⁹

However, the parties strongly disagree on two points. First, the Complainants assert that even though the University was legally bound to hire an eminent scholar, it ignored the intent of the donor and created a "professorship." The University countered that its communications with the AG and annual reports to Exide demonstrate there was no objection from either to utilizing the funds for a professorship.

The response of the Attorney General and Exide's General Counsel to the Complaint supports USF's position. The Attorney General concluded this allegation was a private matter between Exide and USF. Absent evidence of fraud that would have to be investigated by other state officials – the Statewide Prosecutor or the State Attorney – the Attorney General concluded it had no jurisdiction to intervene.⁴⁰

In her response to this allegation, Exide's General Counsel stated the Company had fulfilled its obligations under the settlement agreement with the state of Florida. In addition, Exide was unable to locate the proposed gift agreement in its files. Finally, she stated Exide had no interest in pursuing the matter further and considered it closed.⁴¹

Second, the Complainants assert the University and the Foundation violated internal policies when it failed to obtain Exide's signature after the proposed agreement was executed by all USF officials. The UAC investigation reviewed all applicable legal authority and University policies. The UAC concluded the University complied with the relevant provisions of all legal or administrative authority.

In our review, we noted the proposed agreement's use of the term "professorship" was consistent with relevant legal authority and USF policies and written communications with the Attorney General's office that occurred prior to the expenditure of any funds. This is a critical point since the Complaint alleges the intent of the donor was not followed. We conclude that had Exide signed the proposed agreement, the University's subsequent handling of the gift was consistent with those provisions that evidence the donor's intent. While a signed agreement

has to this day not been located, there is no evidence the University did not adhere to the letter and intent expressed in the unsigned document.

In comparing the legal authority applicable in 2000 with that in place today, we did identify one matter that warrants comment. USF Policy Number 0-219, "Eminent Scholar Endowed Chair and Challenge Grants" was in effect in the year 2000 and at all times material to this matter. Section V. of USF Policy Number 0-219 states in pertinent part:

V. Record Keeping and Reporting

The Development Research Office shall maintain a file on each Endowment Challenge Grant fund including, but not limited to, the following items:

1. Call reports.
2. All related correspondence.
3. Copies of all cancelled checks making payment of the gift.
4. **Copies of the appropriate agreement and other related legal documents. At least one Endowment Agreement with original signatures shall be maintained by the University's Office of the General Counsel.** (Emphasis added)⁴²

BOG Regulation 9.019, Subsection (6) "Documentation of Receipt of Gifts and Donations," contains language that suggests in certain situations a university should prepare and retain a written gift agreement. Risk is defined as "The possibility of an event occurring that will have an impact on the achievement of objectives. Risk is measured in terms of impact and likelihood." See *"International Standards for the Professional Practice of Internal Auditing" as published by the Institute of Internal Auditors.*

We submit that from a risk perspective, there is minimal difference between record keeping for an eminent scholar gift and endowed professorship as those terms and programs are currently administered. We suggest the University review the current relevant authority to determine if, at a minimum, best practices would indicate a signed donor agreement be executed by all parties and maintained as a permanent record.

We conclude the University objectively reviewed this allegation and that the University Board of Trustees reviewed and ratified the decision made by University staff. Based upon our review, we recommend the Board take no further action on this allegation.

III. THE USF MATCHING GIFT REQUEST

Did USF objectively review the allegation that because the University failed to establish an Exide endowed professorship in business ethics it improperly applied for and received state matching funds?

The Complainants allege USF's breach of its legal obligation to Exide was contrary to applicable statutes and the University's own internal regulations and policies. Under these circumstances, they assert USF's application for and receipt of \$937,500 from the Trust Funds for Matching Gifts was improper and perhaps fraudulent. This allegation was not specifically articulated in the July version of the complaint investigated by the UAC. However, during the course of this inquiry, the allegation was reviewed by appropriate University staff and the University Board of Trustees. USF concluded this allegation was without merit, a decision ratified by the University Board of Trustees.

In the course of this review, we examined applicable statutory and regulatory policies in effect from 2000 to 2004 and the Board's matching gift file. In addition, we reviewed current applicable legal authority and conferred with appropriate Board staff familiar with the administration of the matching gift program within the current governance framework.

We conclude USF's application and receipt of the state match did not violate Board of Regents regulations (or applicable statutory provisions) in effect at the time material to this matter. In our examination of the pertinent provisions, we could find no specific language that required the University to obtain and submit a written signed gift agreement that memorialized the donor's intent. The University's expenditure of the state matching funds was legitimate, and consistent with the endowed professorship program outlined in the original request for state matching funds. There is no reasonable cause to suspect that USF's application for state matching funds was improper or in any way intended to circumvent existing legal requirements. We conclude that the University Board of Trustees objectively reviewed this allegation.

We recommend the Board take no further action on this allegation.

IV. CONCLUSIONS

The allegations in Complaint No. 2009-016 were investigated by USF and the University's decision to reject the Complainants' claims ratified by the University Board of Trustees in accordance with its fiduciary responsibility and the powers and duties delegated by the Board. We

recommend the Board take no further action as it relates to the allegations contained in this Complaint.

END NOTES

¹ The Audit Committee was established by the Board of Governors to demonstrate its firm commitment to accountability and in furtherance of its fiduciary responsibility for the overall management of the state university system. The *Audit and Compliance Committee Charter* articulates the powers and duties of the Audit Committee and establishes clear lines of authority, responsibility, and expectations related to the Office of Inspector General and Director of Compliance.

² The Board of Governors was established in Section 7 Article IX of the Florida Constitution. The Board is responsible for operating, regulating, controlling, and being fully responsible for the management of the whole university system. The Board's responsibilities include, but are not limited to, defining the distinctive mission of each university and its articulation with public schools and community colleges, ensuring the well-planned coordination and operation of the system, and avoiding wasteful duplication of facilities or programs. In addition, Section 7 further created a "single state university system comprised of all public universities" and provides for a board of trustees to administer each public university, and for the Board of Governors to govern the system and establish the powers and duties of the trustees. The Board's management of the state university system is subject to the Legislature's power to appropriate for the expenditure of funds, which the Board must account for as provided by law.

³ **EXHIBIT 1:** The Complaint is comprised of three documents submitted to the Inspector General by two University of South Florida faculty members, Professors Marvin Karlins and Robert F. Welker: a July 13, 2009, Memorandum to the USF's Office of University Audit and Compliance; 2. a December 21, 2009, electronic message to the Inspector General; 3. a letter dated January 29, 2010, to the USF Board of Trustees.

⁴ The Audit Committee's duties relative to the State University System include:

- acting as a liaison with the University Boards of Trustees audit committee;
- receiving and reviewing university independent audited financial statement reports;
- receiving and reviewing university internal audit reports;
- identifying trends in all such reports and confirming that adverse trends are being addressed by the universities;
- initiating inquiries if the Audit Committee has reasonable cause to believe that a university is not providing for appropriate response to significant audit findings;
- **directing the Inspector General to conduct an inquiry or investigation if the Audit Committee has reasonable cause to believe that a University Board of Trustees is unwilling or unable to provide for objective investigation of credible allegations of fraud or other substantial financial impropriety; and**
- working collaboratively with the universities to develop resources that will support sound audit and financial compliance practices. (Emphasis added) *Audit and Compliance Committee Charter* p. 3.

⁵ **EXHIBIT 2:** May 26, 1999, "Attorney General Bob Butterworth News Release."

⁶ **EXHIBIT 5:** March 1, 2000, Letter from Dean Robert L. Anderson to George Sheldon Special Counsel, Office of the Attorney General.

⁷ **Exhibit 4:** March 1, 2000, "Fax Transmission George Sheldon to Dean Anderson" Attached to the fax message were two documents, a "DRAFT UNIVERSITY OF SOUTH FLORIDA FOUNDATION INC. ENDOWED PROFESSORSHIP AGREEMENT" and a February 9, 2000, email from the Dean to Sheldon that stated:

George, I thought that I should give you and the Attorney General a preliminary plan of how the funds from the endowment would be used. In all of the activities I believe the Attorney General's staff should be involved and that we consider the activities to be for the benefit of the entire state. The resources of the Chair/Professorship will be used to develop materials for classroom use, sponsor speakers at symposia on business ethics (partnering with the private sector) and sponsoring an ethics paper competition among the business schools of the State University system. I am excited about the proposed activities and the involvement of the Attorney General's office in these activities. Bob Anderson

⁸ **EXHIBIT 6:** March 24, 2004, Memorandum from K. Shimberg Kelly to Dean Anderson RE: Enclosed Gift Agreement.

⁹ **EXHIBIT 14:** October 14, 2009, University Audit and Compliance Report of Investigation, (UAC Report 10-26) page 7. The UAC report stated:

On March 24, 2000, a memo (Re: The Enclosed Gift Agreement) from the USF Campaign for University Advancement to the former dean included an endowed professorship agreement that incorporated the changes proposed by the Office of the Attorney General, plus some additional wording changes, including clarification that the endowed professorship should be within the College of Business Administration. This agreement was signed by the USF Interim President, USFF President and Vice President, approved by USF General Counsel, and acknowledged by the former dean; however, the agreement was not signed by the donor. An attached memo requested the former dean to have the donor add information into the blanks on pages 1 and 2 and sign page 4. **UAC does not have any evidence which indicates that Exide ever added the information or signed a gift agreement.**
[emphasis added]

¹⁰ **EXHIBIT 7:** Invoice No. 03/23/00, dated April 1, 2000, with Check No. 2800250426, made payable to "UNIV. SOUTH FLORIDA FOUNDATION EMINENT SCHOLAR CHAIR IN BUSINESS ETHICS" signed by Thomas O'Neil.

¹¹ **EXHIBIT 8:** June 6, 2000, Letter from Dean Anderson to V. Mitchell, Interim Vice President for Advancement/ Alumni Affairs.

¹² **EXHIBIT 9:** June 29, 2000, Letter from Gay Salinas to Judy Hample, Vice Chair Planning & Analysis, Florida Board of Regents.

¹³ **EXHIBIT 10:** August 8, 2000, Letter from Judy Hample, Board of Regents to Vicki Mitchell, Associate Vice President for Development, USF.

¹⁴ UAC Investigation Report, pp. 5-6.

¹⁵ **EXHIBIT 11:** March 30 2001, Memorandum from Karen to Dean Anderson regarding the "Business Ethics Chair."

¹⁶ **EXHIBIT 12:** March 10 2004, Letter from the Board of Governors Chancellor to USF's President forwarding state matching funds for the "Major Gift Endowment" including \$937,500 for the "Exide Professorship in Business Ethics."

¹⁷ **EXHIBIT 14:** UAC Report, p. 5.

¹⁸ **EXHIBIT 1:** Complaint No. 2009-016, July 13, 2009.

¹⁹ **EXHIBIT 14:** UAC Report, pp. 5, 7-15.

²⁰ **EXHIBIT 1:** Complaint No. 2009-16, December 21, 2009.

²¹ **EXHIBIT 15:** November 20, 2009, Letter from K Perez, Associate General Counsel, Office of the Attorney General to Professors Welker and Karlins.

²² **EXHIBIT 1:** Complaint No 2009-016, December 21, 2009.

²³ **EXHIBIT 1:** Complaint No 2009-016, January 29, 2010.

²⁴ **EXHIBIT 19:** March 25, 2010, Letter from USF's General Counsel to Professors Karlins and Welker.

²⁵ **EXHIBIT 1:** Complaint No. 2009-016.

²⁶ Florida Constitution, Article IX, Section 7(d).

²⁷ Board of Governors Regulation 1.001, University Board of Trustees, Subsections (1) and (8)(e)

²⁸ Florida Constitution, Article IX, Section 7.

²⁹ *Audit and Compliance Committee Charter*, p. 1 and 4. Also see, *Office of Inspector General and Director of Compliance Charter*, adopted June 18, 2009, p. 5.

³⁰ Sections 20.055 and 20.155, Florida Statutes.

³¹Board of Governors Regulation 1.001(8)(e).

³²*Audit and Compliance Committee Charter*, p. 5.

³³ The Inspector General must “Comply with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.” Sections 20.055 (2) (j). In pertinent part the Standards state:

Normally, investigations focus on obtaining sufficient factual evidence for use in determining whether criminal, civil, or administrative actions should be initiated against the specific parties for their actions or lack of actions. May 2004 Revision.

³⁴ **EXHIBIT 1:** Complaint, January 29, 2010.

³⁵ It is USF’s position that it is well settled Florida law that a governmental entity of the State of Florida is not subject to suit for a breach of contract except on terms to which it has expressly agreed to in writing (Pan-Am Tobacco Corp. v. D.O.C., 471 So. 2d 4 Fla. 1985) (“We would also emphasize that our holding here is applicable only to [breach of contract] suits on express, written contracts into which the state agency has statutory authority to enter”).

³⁶ **EXHIBIT 19:** March 25, 2010, Letter to Professors Karlins and Welker.

³⁷ *Audit and Compliance Committee Charter*, pp. 2 - 4.

³⁸ **EXHIBIT 1:** Complaint, January 29, 2010.

³⁹ **EXHIBIT 14:** UAC Report pp. 13 - 15.

⁴⁰ **EXHIBIT 15:** November 20, 2009, Letter from K. Perez, Associate General Counsel, Office of the Attorney General to Professors Welker and Karlins.

⁴¹ **EXHIBIT 1:** Complaint, December 21, 2009.

⁴² **EXHIBIT 17:** USF Policy Number 0-219.