



August 19, 2004

James G Chandler  
Designated Agency Ethics Official  
International Joint Commission  
Suite 100  
1250 23<sup>rd</sup> Street, NW  
Washington, DC 20440

Dear Mr Chandler

The Office of Government Ethics (OGE) recently completed its review of the ethics program at the U S section of the International Joint Commission (IJC)<sup>1</sup> This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act) Our objective was to determine the ethics program's compliance with applicable statutes and regulations We also evaluated IJC's systems and procedures for ensuring that ethics violations do not occur This review was conducted in June and July 2004

#### HIGHLIGHTS

Although a number of improvements are necessary, IJC's ethics program is basically sound The education and training you provide is especially good However, you have overlooked other areas such as the requirement to issue a supplemental standards of conduct regulation if IJC imposes any additional ethics rules, the administration of the ethics program for the International Boundary Commission (IBC), the acceptance of travel payments from non-Federal sources, and the need to have written financial disclosure procedures We commend you for taking steps during our review to correct these problems In order to bring IJC's ethics program fully into compliance with the applicable statutes and regulations, we recommend that you either issue a supplemental standards of conduct regulation or cease requiring employees to obtain prior approval to participate in certain outside activities

#### PROGRAM STRUCTURE

IJC is an independent binational organization tasked with managing and protecting boundary waters between the United States and Canada IJC is headed by three Presidentially-appointed, Senate-confirmed (PAS) commissioners from the U S and an equal number from Canada Each country has its own section and there is a regional office located in Windsor, Ontario The U S section has approximately 10 employees in its Washington, DC office These employees, along with five U S employees in the regional office, one employee located in

<sup>1</sup> Unless otherwise noted, in this report IJC refers only to the U S section of the International Joint Commission

Mr James G Chandler

Page 2

Buffalo, New York, one employee in Lansing, Michigan, and the U S commissioners are U S Government employees subject to the executive branch ethics rules

As IJC's Legal Advisor and sole attorney, you devote approximately five percent of your time to your role as Designated Agency Ethics Official (DAEO) During pre-review, we discussed the benefits of having an Alternate DAEO who could serve as your back-up You immediately took action to identify an appropriate individual, and on June 22, 2004 Frank L Bevacqua, IJC's Public Information Officer, was appointed Alternate DAEO

#### INTERNATIONAL BOUNDARY COMMISSION

In addition to your duties at IJC, you serve as IBC's DAEO as well, under an agreement you made approximately 10 years ago with the Deputy Commissioner at IBC IBC is a separate bilateral organization, its mission is to keep the U S -Canadian border clear and visible It has one U S commissioner (who is currently also the IJC's Chairman) and its U S office is located in the same building as IJC, although it has only one staff employee there Additionally, there is one employee in each of three field offices

While we commend you for your initiative in assuming DAEO duties for IBC, the small size of IBC has led you to overlook some of these duties For instance, two field office employees were hired within the last year and you were unaware of this until, during our review, you broached the subject with the Deputy Commissioner Additionally, you have not been submitting semiannual reports to OGE of IBC acceptances of travel payments from non-Federal sources under 31 U S C § 1353 More importantly, during our review, you realized that the Deputy Commissioner at IBC should be filing a confidential financial disclosure report On a positive note, you do generally provide annual ethics training to IBC employees, although you stated that you did not do this last year

Since you have already taken action to address these oversights and ensure they do not recur, we are not making a formal recommendation on this issue You recently met with IBC's Deputy Commissioner to discuss coordination on the ethics program As soon as the two new IBC employees return from working in the field, you intend to send them the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) to satisfy their initial ethics orientation requirement Although IBC's Deputy Commissioner assured you that IBC never has and never would accept any travel payments under 31 U S C § 1353, you have promised to note the absence of such payments on IJC's semiannual reports to OGE Further, you assured us that IBC's Deputy Commissioner will shortly be filing a new entrant confidential report and will file an annual report in October His requirement to file has been memorialized in IJC's financial disclosure procedures

#### AGENCY-SPECIFIC ETHICS PROHIBITIONS, RESTRICTIONS, AND REQUIREMENTS

IJC's requirement for prior approval of outside activities is unenforceable, with respect to U S employees, since IJC has not issued a supplemental standards of conduct regulation in accordance with 5 C F R §§ 2635 105 and 2635 803 On February 10, 2004, both Canadian and U S commissioners approved the new IJC Policy on Conflict of Interest from Outside Activities,

applicable to both countries' employees. However, as this requirement is more stringent than the Standards allow, it could only be enforced if IJC issued a supplemental agency regulation with OGE's concurrence and co-signature.

Since issuing a supplemental regulation can be a time-consuming process, we urge you to reconsider whether this policy is necessary, or whether there are other means of achieving your goal of preventing conflicts of interest relating to an employee's outside activities. Many agencies choose merely to strongly encourage employees to seek advice from ethics officials before engaging in outside activities. This policy can be strengthened by careful attention to outside activities listed on employees' financial disclosure forms. IJC may even decide to expand the number of confidential financial disclosure filers in order to check whether conflicts exist for a larger number of employees. Finally, additional training on the issue can make employees more aware of potential conflicts and the consequences of violating ethics statutes and regulations.

#### TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

IJC did not have any procedures in place for identifying and conducting conflicts analyses of travel payments from non-Federal sources under 31 U.S.C. § 1353. You have been submitting negative semiannual reports to OGE because you did not believe that any acceptances would have exceeded the \$250 reporting threshold. However, you admitted that you would not necessarily even be aware if an employee accepted payments under this authority and that no conflicts analysis has been performed on any acceptances, including those under \$250 of which you were aware.

During our review, you agreed to develop written procedures and amend IJC's Travel Request Form to include a question as to whether any expenses are being paid for by a non-Federal source. Within a matter of days you had done this. The new procedures provide for the Travel Manager to forward any Travel Request Forms to you for a conflicts analysis and provide you with the necessary information to compile the semiannual reports to OGE. During our exit conference, you noted that commissioners do not complete the Travel Request Form, but schedule all their travel directly through the Travel Manager. You plan to make the commissioners aware of the need to obtain a conflicts analysis and approval before accepting travel payments from non-Federal sources and to periodically remind the Travel Manager of this requirement.

#### ENFORCEMENT

IJC does not have an inspector general, but you advised us that you would likely receive any ethics allegations and conduct any necessary investigations. You have never received an allegation of a criminal conflict of interest violation and, consequently, never made such a referral to the Department of Justice. However, one commissioner did commit a non-criminal ethics violation in 2003.

The commissioner accepted \$200, which he subsequently donated to charity, for writing an op-ed article relating to his official duties. Right before publication, an IJC employee alerted you of this outside activity. You immediately spoke with the commissioner and told him that as

a full-time Presidential appointee he was barred by Section 102(a) of Executive Order 12674, as modified, from accepting any earned income, correctly noting that his donation of the money did not impact upon this prohibition. Unfortunately, by that time the article had already been published. Ten days after publication you issued a written memorandum to the commissioner reiterating this advice. The commissioner then spoke with the White House ethics office, which concurred with your advice and recommended an immediate ethics refresher training course. A month later, you officially closed the matter, confident that the violation was unintentional and would not happen again. Shortly thereafter, an OGE Desk Officer presented annual ethics training to IJC public filers that focused on this issue, misuse of position, and the prohibition on teaching, speaking, and writing related to one's official duties.

We appreciate your prompt action in ensuring that the commissioner understood the prohibition on Presidential appointees receiving outside earned income. However, we are concerned that your advice did not touch on misuse of position and the prohibition on teaching, speaking, and writing related to one's official duties, provisions of the Standards that the commissioner may also have violated. We understand that the absence of these topics in your written advice was due to the need to quickly provide counsel and resolve the issue. While we strongly encourage you to thoroughly cover all aspects of a matter in any advice you issue, we believe that the subsequent training sufficiently covered these topics.

#### ADVICE AND COUNSELING

Since the aforementioned piece of advice and a general reminder about the Hatch Act are the only written pieces of advice we were able to examine, we cannot make an informed evaluation of the quality of advice. You stated that you receive about one inquiry per month and dispense most advice verbally. We encourage you to maintain a written record of advice given, so that advice cannot be questioned later. In addition, in the event your new Alternate DAEO must dispense advice in your absence, he could refer to this body of written advice for examples, we also encourage him to consult with IJC's OGE Desk Officer.

You provide post-employment counseling to commissioners and the Executive Secretary. Commissioners receive both a verbal briefing and OGE's DAEOgram on post-employment restrictions when they out-process through you. You also brief a departing Executive Secretary verbally, but to a lesser extent than commissioners. After some discussion, you are considering expanding the scope of your post-employment program to at least include all filers.

#### ETHICS AGREEMENTS

Two commissioners have ethics agreements in the form of disqualifications and, while you assured us there was little likelihood of noncompliance, certain information in your screening arrangements was not current. Both commissioners took the necessary actions timely and OGE was timely notified of compliance. The previous Executive Secretary had been designated as their screener. However, the Executive Secretary position is now occupied by another individual and she was not informed of her screening duty until we brought the matter up at the time of our review. We urge you to periodically review the screening arrangements to determine whether a new screener needs to be designated or they otherwise need to be updated. IJC does not have any other ethics agreements, nor any 18 U.S.C. § 208(b)(1) or (b)(3) waivers.

## FINANCIAL DISCLOSURE

IJC's financial disclosure system is sound and well described in the written procedures you developed in response to our review. Currently, the only filers are the three commissioners, the Executive Secretary, one Schedule C employee, and you, all of whom file public reports<sup>2</sup>. At the time of our review, one PAS employee and one other filer had received extensions and, consequently, had not yet submitted their reports<sup>3</sup>. We reviewed the other reports covering calendar year 2003, as well as the previous year's reports for those two filers, and found that all reports were filed, reviewed, certified, and, as appropriate, forwarded to OGE timely. Our review of reports revealed only one problem: one filer's report was missing Schedule B. You do not believe the filer has anything to report on this schedule, but you promised to clear up the matter.

## EDUCATION AND TRAINING

IJC has an excellent training program, meeting OGE's requirements in the areas of both initial ethics orientation and annual ethics training. You are aware of any new employees at IJC and you personally give them the Standards when they in-process in Washington, DC. There had not been any new employees recently, but you assured me that all three commissioners received an initial ethics orientation within 30 days of assuming their positions.

All IJC employees received verbal 2003 annual ethics training. Public filers received in-person training from an OGE Desk Officer, except for the Schedule C employee in Lansing, who viewed the State Department's "On the Couch" video. Other employees, including the ones in the Windsor office, also viewed this video. You tracked completion using sign-in sheets and having Windsor office employees e-mail you. The one employee located in Buffalo completed a computer-based ethics module on misuse of position.

Since this year is an election year, you plan to have all employees complete the U.S. Department of Agriculture's computer-based ethics modules on the Hatch Act, post-employment, and seeking employment. We remind you that a qualified instructor needs to be available to answer any questions during and immediately after each employee's completion of such training. In addition to computer-based training, you intend to hold a conference call with the OGE Desk Officer and commissioners to discuss any specific concerns they have.

## RECOMMENDATION

We recommend that you

Issue a supplemental standards of conduct regulation or cease requiring employees to obtain prior approval to participate in certain outside activities

---

<sup>2</sup> The Director of the Windsor, Ontario regional office alternates between an American and a Canadian, currently the Director is Canadian. When filled by an American, the position requires the filing of a confidential financial disclosure report.

<sup>3</sup> These reports were subsequently filed on time.

Mr James G Chandler  
Page 6

In closing, I wish to thank you for all of your efforts on behalf of the ethics program. Please advise me within 60 days of the specific actions planned or taken concerning the recommendation in our report. A follow-up review will be scheduled approximately six months from the date of this report. In view of the corrective action authority vested with the Director of OGE under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C F R part 2638, it is important that you take actions to correct these deficiencies in a timely manner. Please contact Christelle Klovers at 202-482-9255 if we may be of further assistance.

Sincerely,



Jack Covalleski  
Deputy Director  
Office of Agency Programs

Report Number 04- 017