

# STATE OF RHODE ISLAND

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### **REPORT ON THE INVESTIGATION OF GOVERNOR DANIEL J. MCKEE IN CONNECTION WITH THE AWARD OF THE SCHOOL REOPENING CONTRACT TO THE ILO GROUP, LLC**

In September 2021, the Rhode Island State Police (“RISP”) began an investigation into the circumstances surrounding the award of a government consulting contract, commonly referred to as the “School Reopening Contract” to the ILO Group, LLC (“ILO”). This Office joined the RISP investigation in October 2021. The contract was in the amount of \$5,170,828.81, which came from the federal government’s Elementary and Secondary School Emergency Relief (“ESSER”) funds awarded to the state to assist with its response to the Covid-19 pandemic. The state investigation, undertaken in two parts and now complete, was conducted by Rhode Island State Police detectives and prosecutors from this Office’s Public Integrity Unit. There was a pause in the state-led investigation from February of 2022 until mid-2023. The state-led investigation resumed in mid-2023 and continued through mid-2024. This report pertains solely to the state’s investigation and to this Office’s assessment of the evidence gathered during that investigation.

The primary focus of the state investigation was whether the circumstances of the ILO contract award violated the state bribery statute, R.I. Gen. Laws § 11-7-3. As the investigation progressed, the State Police and this Office also considered potential violations of Rhode Island campaign finance laws, R.I. Gen. Laws § 17-25-10.1(a)(1), *et seq.* and the Rhode Island Code of Ethics, R.I. Gen. Laws § 36-14-5, *et seq.* For the reasons set forth in this report, we conclude that, after a thorough review of all the evidence collected during the investigation, there is insufficient evidence to support the criminal prosecution of Governor Daniel J. McKee (“Governor McKee”) or any other person for these offenses. While the investigation revealed that, in awarding the contract to ILO, Governor McKee and his administration ignored the findings of a state review team and failed to comply with state regulations regarding the contract procurement process, more is needed for criminal prosecution. Failure to abide by state procurement regulations is not in and of itself a criminal offense.<sup>1</sup> Likewise, that an official action may have been influenced or informed by personal relationships does not violate state criminal law. At the end of the day, to bring a criminal bribery case this Office needs clear evidence, beyond inferences and suppositions, that Governor McKee awarded the state contract to ILO *in exchange for* a direct, *personal* benefit to the Governor. And, as set forth below, the evidence developed here does not establish that point beyond a reasonable doubt.

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<sup>1</sup> Violations of state procurement laws by state officials could expose the state to civil liability. Private parties (typically the losing bidder) could bring a bid-protest action against the state. See R.I. Gen. Laws §§ 37-2-9 and 37-2-3 and related state procurement regulations.

The State Police and prosecutors reviewed thousands of records obtained through court-authorized search warrants, other legal process, or in response to public records requests, and conducted interviews of more than 25 witnesses - both state officials as well as officers and employees of two principal entities, Chiefs for Change and SKDK — for reasons described below. Governor McKee, his former Chief of Staff Anthony Silva, current Chief of Staff Antonio Afonso, and Julia Rafal-Baer, the Chief Executive Officer of ILO and an officer of Chiefs for Change, all refused to be interviewed by investigators (as was their right in a criminal investigation). A factual summary of the pertinent evidence obtained during the investigation is detailed in the Investigation Narrative of the Rhode Island State Police (hereafter “RISP Narrative”), and it is on that report and its supporting materials that this Office’s legal analysis relies. We do not recount all that evidence here, and some of the information obtained during the investigation cannot be publicly disclosed in accordance with applicable laws and court rules and orders.

Nevertheless, as this is a matter of great public interest, we believe it is important to explain, to the extent we can, the extensive scope of our investigation and the basis for our conclusion that criminal charges are unavailing. And as the public has the right to and will have access to much of the information on which this report is based,<sup>2</sup> we believe that we have an obligation, as the only Rhode Island felony prosecuting authority, to apply our singular expertise and put that information in appropriate context.

## **I. THE BRIBERY OFFENSE**

To convict a public official of acceptance of a bribe, the state must prove beyond a reasonable doubt that the public official: (1) corruptly accepted or obtained; (2) any gift or valuable consideration; (3) as an inducement or reward for doing or having done; (4) any act in relation to the business of the state, city, or town of which he or she is an official. In other words, to convict a public official of acceptance of a bribe, this Office must establish a “*quid pro quo*” – an exchange of this for that – between the person offering the bribe and the public official. *See generally DiPrete v. Morsilli*, 635 A.2d 1155, 1166 (R.I. 1994) (finding that a general expectation of campaign contributions is insufficient, but that some evidence of a *quid pro quo* is necessary to demonstrate that an understanding existed between the Governor and a business associate that campaign contributions would result in a contract award); *McDonnell v. United States*, 579 U.S. 550, 578-580 (2016) (conviction of the former Governor of Virginia overturned where evidence established that the former Governor had accepted loans and gifts from a Virginia businessman, but that the Governor’s acts of setting up a meeting, talking to another official, or organizing an event or agreeing to do so, without more, did not fit the

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<sup>2</sup> *See, e.g.*, the Rhode Island Access to Public Record Act (R.I. Gen. Laws § 38-2-2(4)(d)) (providing that investigative records of law enforcement agencies are exempt from the definition of public records where disclosure, among other things, would “interfere with investigations of criminal activity or with enforcement proceedings,” “deprive a person of a right to a fair trial or an impartial adjudication,” or “constitute an unwarranted invasion of personal privacy.”) The first two factors mentioned are not at issue here as this investigation is closed and no individuals were charged, or can be charged, in connection with this matter. In previous findings issued by this Office, we have held that in determining whether materials may be withheld on privacy grounds alone, we are required to employ a balancing test whereby we must consider the “public interest” versus the “privacy interest.” *See, e.g., Gregg v. Office of the Governor*, PR 23-50; *Lyssikatos v. Narragansett Police Department*, PR 21-12; *see also Providence J. Co. v. U.S. Dep’t of Army*, 981 F.2d 552, 568 (1st Cir. 1992) (“The higher the rank of the public official alleged to have engaged in misconduct, the greater the legitimate public interest in disclosure is likely to be.”) (citations omitted).

definition of “official act,” for purposes of the federal bribery statute.) As these cases demonstrate, the legal bar for establishing a corrupt “this for that” exchange between a public official and a private person or entity is high. Simply put, the prosecution must establish, beyond a reasonable doubt, that the public official received a personal benefit (as opposed to a benefit to the government generally) in exchange for an official act benefiting someone else.

Accordingly, the critical question is whether Governor McKee steered a multi-million-dollar, federally-funded state contract to Julia Rafal-Baer’s ILO Group *in exchange for* Chiefs for Change, led by Rafal-Baer and close McKee associate Dr. Michael C. Magee (“Magee”), paying national political and communications firm SKDK to provide services to Governor McKee that benefitted the Governor *personally*. Again, it is not enough to establish that the Governor violated state procurement regulations. We must show, beyond a reasonable doubt, that Governor McKee awarded the ILO contract *in exchange for a personal benefit*, that is, a benefit to his campaign as opposed to his work in his capacity as governor. *McCormick v. United States*, 500 U.S. 257, 273 (1991) (receipt of a campaign contribution by a member of the West Virginia House of Delegates violated the federal extortion statute only if the government could prove an *explicit* quid pro quo – that is, “only if the payments are made in return for an explicit promise or undertaking by the official to perform or not perform an official act.”)

The investigation focused on several interrelated entities. As noted, SKDK is a national public affairs firm. One of its specialties is consulting with candidates on political campaigns. They also work with political and advocacy groups. Devon Puglia and Alex Bloom are SKDK executives, who worked with both the McKee Administration and the McKee gubernatorial campaign from January 2021 until at least June 2021. Magee was a long-time informal advisor to and supporter of Governor McKee. They had previously worked together on education-related projects, such as the Office of Children, Youth, and Learning for the Town of Cumberland and the Rhode Island Mayoral Academies, which were publicly-funded charter schools. In 2021, Magee served as Chief Executive Officer at Chiefs for Change (“CFC”), a non-profit education network comprised of leaders of state and district education systems. Rafal-Baer served as the Chief Operating Officer of CFC and was a close associate of Magee. CFC worked with SKDK on education-related projects in Rhode Island in 2020. In addition to being an officer of CFC, Rafal-Baer had her own separate education consulting businesses, including Hope Street Consulting and, beginning in March 2021, ILO.

As detailed in the RISP Narrative and described below, the investigation established that Governor McKee took steps to ensure that the School Reopening Contract would be awarded to ILO against the findings of state contracting authorities *and* that he accepted communications services from SKDK that he did not pay for. This much is clear from the evidence and cannot be seriously disputed. As a prosecutorial matter, however, two problems remain. First, the evidence fell short of proving the required nexus between the two acts. In other words, while the awarding of the ILO contract and the arrangement for the Governor’s receipt of the SKDK services both occurred within the same six month period and the existence of close relationships between the players involved in ILO and the arrangement for the services from SKDK warranted close scrutiny by the State Police and this Office, in the end, there is insufficient evidence to establish beyond a reasonable doubt that Governor McKee steered the contract to ILO in exchange for the SKDK

communication and political services he received. Second, while SKDK's services were purportedly provided to assist Lt. Governor McKee's transition to the governorship, that is his official duties, at least some of these services benefited both his work as governor and his 2022 gubernatorial campaign. In other words, the CFC paid-for SKDK communications services served a dual purpose: to assist the new McKee Administration *and* to assist Governor McKee in the early stages of his candidacy for election as governor in 2022. SKDK and CFC principals claimed that SKDK was paid for the former work (the official side), but not the latter (the political side). The investigation's inability to refute these assertions and get to the bottom of this critical issue is discussed in greater detail below.

#### A. The "Official Act" – The Award of the School Reopening Contract to ILO

As noted, to prove a bribery charge against Governor McKee beyond a reasonable doubt, we must establish that he took an "official act" benefitting a third party in exchange for a personal benefit. *McDonnell*, 579 U.S. 550, 578-580. Accordingly, we examined whether Governor McKee and members of his administration took official action directing the award of the School Reopening Contract to ILO, notwithstanding that the selection process was cast to the public as competitive, objective, and independent. The evidence collected by the State Police, as set forth in the RISP Narrative, shows that Governor McKee and individuals close to Governor McKee, including his then-Deputy Chief of Staff Antonio Afonso, sought to influence the selection of Rafal-Baer's newly formed firm, ILO, for the federally-funded, multi-million-dollar School Reopening Contract. Indeed, the evidence developed established that Governor McKee personally and directly intervened on ILO's behalf when a draft Final Evaluation Memo prepared by a state review team selected a consultant other than ILO for the School Reopening Contract. The details follow.

The investigation revealed that the very idea of a federally-funded School Reopening Contract originated not with the Governor or his staff, but with Magee and the contract's eventual principal beneficiary and his colleague at CFC, Rafal-Baer. RISP Narrative, pg. 8. The investigation showed that Magee was involved behind the scenes during much of the procurement process. Emails obtained by the State Police through state court-authorized search warrants show that, as of late February 2021, Magee raised the possibility of bringing on Rafal-Baer as a school reopening consultant in an email to then-Lt. Governor McKee. RISP Narrative, pg. 8. By February 2021, Lt. Governor McKee was already familiar with Rafal-Baer. That is because she and Magee, as officers of CFC, had already agreed to assist Lt. Governor McKee with his transition by providing him with communications services by SKDK at no cost. RISP Narrative, pgs. 13-16. *See* Section I.B. below.

On February 23, 2021, Magee sent an email to then-Lt. Governor McKee's Chief of Staff Anthony Silva, at his personal email, introducing Rafal-Baer as an expert on COVID-19 school reopening and advocated for bringing her on as a consultant to assist with school reopening. RISP Narrative, pg. 8. On February 28, 2021, Magee emailed a draft scope for a consulting contract, authored by him and Rafal-Baer, to Lt. Governor McKee, Silva and Christopher Farrell, who became Senior Advisor to Governor McKee, using their personal email accounts. Magee wrote that "if this looks right and feasible I can have Julia [Rafal-Baer] price it and we can discuss how a contract might be swiftly executed so

Julia and her team can get to work.” Magee also wrote that this “would be a contract in the many millions of dollars.” On March 1, 2021, Magee sent another email with a cost proposal of \$12 million over two years. In that email, Magee advocated for the state to hire Rafal-Baer through an “emergency contract” or a “very fast RFP.” RISP Narrative, pg. 8.

The evidence developed by the State Police established that on March 3, 2021, Governor McKee, Tom McCarthy, a former RIDE and RIDOH employee, and Magee had a Zoom call to discuss an “RFI (Request for Information) for School Reopening.” The Zoom call was followed by an email from Magee to Governor McKee, Silva, and Farrell, again using their personal email accounts. Attached to the Magee email was a six-page document that contained similar language and concepts to the School Reopening RFP later posted by the state Department of Administration (“DOA”) on March 23, 2021. RISP Narrative, pg. 8. For instance, the ultimate RFP included the requirement that firms have qualifications and experience in healthcare consulting and education consulting, as well as project coordination experience in multiple states. The document Magee sent to Governor McKee contained similar qualifications. Further, the RFP was for consulting services related to the reopening of schools. Components of the project in the RFP included COVID testing, supporting the Governor’s Office, Department of Health, and Department of Education, addressing learning loss, developing municipal learning programs, and conducting equity reviews. The document sent by Magee also included the same objectives for the vendor to achieve through the consulting work, which were later contained in the state RFP presented to prospective bidders and the public.

Magee continued to communicate with Governor McKee, his senior staff, Director of Administration James Thorsen and Purchasing Agent Nancy McIntyre regarding his proposed RFP in the days that followed. On March 5, 2021, Governor McKee convened a Zoom meeting with Magee, Silva, Thorsen, and McIntyre. Governor McKee stated that children had experienced learning loss and needed to get back to school. Governor McKee stressed the need to put services in place quickly. McIntyre responded, “RFP . . . this is what we need to do.” According to McIntyre, Governor McKee looked to her at that point “for direction.” She provided him with her professional opinion as the Purchasing Agent that an RFP was what the Governor should implement. When Governor McKee raised the prospect of a single source contract, McIntyre said, “no, you should do a procurement.” RISP Narrative, pg. 9.

The email exchanges among the involved parties demonstrate that Magee was intent on narrowing the field of qualified firms to Rafal-Baer’s newly created ILO. For instance, in an email to Thorsen and McIntyre, sent on March 5, 2021, Magee wrote, “I personally think ‘qualified’ should be defined as a firm whose partners have worked ... in at least 15 large school districts and at least 6 states.” RISP Narrative, pg. 9. Additionally, he wrote, “we want one vendor with the capacity to oversee, manage and deliver on all of this work.” Magee wrote that “we’re looking at about \$12-\$15 million worth of work over two years.” He again proposed a short turn-around for the procurement process, stating “7 day turn around would be ideal.” Importantly, in contrast to the emails and communications Magee had with Governor McKee and his senior staff, Magee did not identify Rafal-Baer by name in his communications with Thorsen and McIntyre. RISP Narrative, pg. 9.

Under state procurement laws and regulations, the state is permitted to engage in a “sole source” or “emergency contract” award under certain limited circumstances and direct the award to a particular vendor. R.I. Gen. Laws § 37-2-9(b)(5). Here, however, the state Department of Administration – McIntyre – told Governor McKee and his advisors that the administration needed to engage in a competitive procurement process. State procurement laws and regulations are clear: they significantly restrict the ability of state officials to communicate with bidders regarding an RFP when competitive procurement takes place. R.I. Gen. Laws § 37-2-9(b)(7).

On March 23, 2021, the Governor’s office formally initiated a competitive procurement process through the DOA by posting a Request for Proposals from potential vendors/consultants. As noted above, the state RFP had similar language to the draft RFI document proposed by Magee to Governor McKee on March 3, 2021. RISP Narrative, pgs. 8-9.

An email sent by Rafal-Baer on the same day that the School Reopening RFP was posted by DOA further supports the conclusion that the procurement process was manipulated from the outset. When an out-of-state consulting colleague inquired with Rafal-Baer about the RFP, she responded in the below email, “It’s a fixed RFP but luckily I know the person it’s fixed for [winky face emoji].” RISP Narrative, pg. 10.

**Subject:** Re: Solicitation Create Notification from State of Rhode Island: RFP21000563 K-12 School and Higher Education Reopening Plan...  
**From:** Julia Rafal-Baer [REDACTED]  
**Date:** 3/23/2021, 10:48 PM  
**To:** David Irwin [REDACTED]

Hi!

It’s a fixed RFP but luckily I know the person it’s fixed for 😏

Already talked with Avossa about us all partnering on this one.

Will circle back but think it should be smooth!

Once DOA started the purportedly competitive procurement process for the contract, the investigation established that Governor McKee himself and senior members of his administration interfered in the competitive process. With a Department of Administration review team in place to assess and rank qualified bidders, then Deputy Chief of Staff, Tony Afonso, tried to influence one of the review team members, Tom McCarthy. McCarthy, a RIDE and RIDOH official, told investigators that Afonso cautioned McCarthy not to embarrass the Governor by picking the “wrong firm” and that the only suitable company was ILO. RISP Narrative, pg. 12. McCarthy told the State Police that he felt pressured to select ILO. RISP Narrative, pg. 12.

The DOA review team that evaluated the bids also included Dan Majcher (“Majcher”), a DOA attorney who was experienced in government procurement. According to Majcher, ILO and another education consultant, WestEd, emerged as the two leading candidates for the RFP. As described in the RISP Narrative, Majcher completed a draft of a “Final Evaluation Memo,” on May 7, 2021. The memo ranked and

set forth the scores of the various bidders as determined by the review team’s technical review and cost review. The memo recommended the selection of WestEd over ILO based on WestEd’s overall higher score.

James Thorsen, Director of DOA, told State Police investigators that he informed Governor McKee of the draft Final Evaluation Memo awarding the contract to WestEd on the same day, May 7, 2021. RISP Narrative, pg. 13. Governor McKee told Thorsen in a text obtained by the State Police from Thorsen that he wanted to “speak to whoever made the final decision.” Thorsen told investigators that he dropped off a hard copy of the memo to Governor McKee’s house in Cumberland the next morning, Saturday, May 8, 2021. That evening, Governor McKee texted Thorsen about flaws the Governor perceived in the memo awarding the School Reopening Contract to WestEd. Thorsen told the State Police that Governor McKee instructed him not to send out a notice of bid award to WestEd, and that he complied with the Governor’s directive. RISP Narrative, pg. 13. Accordingly, the May 7, 2021 draft Final Evaluation Memo awarding the contract to WestEd was not finalized nor issued. When asked by the State Police whether Governor McKee influenced the procurement process, Director Thorsen initially wavered in his response, but eventually acknowledged that Governor McKee did personally influence the contract award process. RISP Narrative, pg. 13.

The investigation revealed that, subsequently, between May 10 and May 12, 2021, DOA officials began discussing placing the two top ranked bidders, WestEd and ILO, on a Master Price Agreement. On May 28, 2021, Majcher disseminated a new draft Final Evaluation Memo. It recommended placing both WestEd and ILO on a Master Price Agreement. Emails obtained by the State Police showed that Afonso continued to communicate with Magee after ILO was selected as one of the two MPA vendors to determine the scope of work. RISP Narrative, pgs. 11-12. Following these communications with Magee, the state apportioned the lion’s share of work to ILO. The state awarded consulting contracts to ILO in the amount of \$5,170,828.81 and WestEd in the amount of \$962,163. RISP Narrative, pg. 12.

In sum, the evidence developed by the State Police leaves little doubt that Governor McKee and members of his senior staff, in their official capacities, steered the award of the School Reopening Contract to Rafal-Baer’s ILO group. Accordingly, the “official act” element of a bribery charge is satisfied here.

Yet this, as we have discussed, is not the end of the required legal analysis. And so, we turn to whether Governor McKee received a *personal* – as opposed to an official capacity – benefit, in exchange for steering the School Reopening Contract to ILO. The relevant benefit here is the services provided by SKDK, arranged by Magee and Rafal-Baer and paid for by Chiefs for Change, provided at no cost to the Governor. The relevant question is whether those CFC paid-for SKDK services benefitted the Governor’s campaign for re-election in 2022 – a *personal* benefit – or benefitted the Governor in his official capacity. We turn to this critical question now.

## B. The “Personal Benefit” – Did SKDK Provide CFC Paid-For Services to Governor McKee’s 2022 Campaign?

SKDK provided services to Governor McKee while he was still Lt. Governor through his first few months as Governor, from January of 2021 through at least June of 2021.<sup>3</sup> How these SKDK services were put into place, and who paid for them, is important to our “personal benefit” analysis.

In late December 2020, amid growing speculation that then Governor Gina M. Raimondo would be appointed to President-elect Biden’s cabinet, Lt. Governor McKee began preparing to succeed her as governor. At around that time, Magee told Lt. Governor McKee that CFC could fund communications work for his transition through philanthropic sources. Magee informed Lt. Governor McKee of CFC’s existing contract with SKDK to provide communications services to RIDE and introduced Lt. Governor McKee to Devon Puglia (“Puglia”) of SKDK.

As detailed in the RISP Narrative, in December of 2020, Magee and Rafal-Baer, in their capacity as executives for CFC, worked with Puglia to craft a “Transition Communications Memo” for Lt. Governor McKee. Their feedback on this proposed communications work was not limited to education policy. For example, Magee noted in an email to Rafal-Baer and Puglia that the memo should include “how we should deal with this potential drama around whether Dan [McKee] gets to appoint the LG.” The draft Transition Communications Memo also included a recommendation of a “political outreach program behind the scenes” and directly linked Governor McKee’s management of the Covid-19 pandemic to “our long-term political success.” Magee sent a revised draft “Transition Communications Memo” to Lt. Governor McKee on January 3, 2021, using McKee’s personal email address. In the cover email to Lt. Governor McKee, Magee discussed political and campaign-related issues including now-Congressman Seth Magaziner’s campaign for governor and the goal of setting up Lt. Governor McKee to run for governor in 2022 as “a true incumbent.” Magee and Lt. Governor McKee used their personal email accounts to communicate regarding the engagement of Puglia and SKDK. RISP Narrative, pgs. 15-16.

The evidence established that then Lt. Governor McKee readily accepted Magee’s offer of help. Lt. Governor McKee subsequently connected Michael Trainor (“Trainor”) with SKDK’s Puglia. Trainor headed Lt. Governor McKee’s transition team at the time, and later ran his 2022 gubernatorial campaign. Lt. Governor McKee also arranged for Puglia’s introduction to Andrea Palagi, who served as Lt. Governor, and later Governor, McKee’s Communications Director. In his interview with the State Police, Trainor acknowledged that there were no state funds to pay for SKDK’s communications work. He told the State Police that Governor McKee told him that Magee would make SKDK available for the transition, and Trainor referred to SKDK’s Puglia and Bloom as “loaned executives.” RISP Narrative, pg. 16. At no time did the State of Rhode Island execute a contract with SKDK or CFC for the provision of services to Governor McKee.

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<sup>3</sup> The McKee Campaign hired SKDK as a political consultant in April of 2021, but SKDK was never compensated for consulting services under this contract. The only payment to SKDK the McKee campaign publicly reported was \$6,200 for a campaign website.



As detailed in the RISP Narrative, the evidence establishes that CFC paid for SKDK's communications work for McKee as Lt. Governor and Governor. In a series of emails obtained by State Police search warrant and that culminate on January 18, 2021, Rafal-Baer requested that City Fund (another education nonprofit) provide: "Jan 1 - June 30: \$25k/ month for SKDK to support the RI communications and strategy work." City Fund eventually agreed to fund a grant to pay CFC for SKDK's "RI communications and strategy work" at \$15,000 a month. On January 20, 2021, Puglia and Bloom sent Rafal-Baer a proposal for communications services. In the proposal, Puglia wrote, "The future of the education ecosystem and McKee are directly linked." The proposal also touted "SKDK's political track record." In the budget section, one option for a retainer was as follows:

"For a full-year engagement, SKDK would charge \$15,000 per month for transition support, initial brand building, long-term outside communications support, and long-term political advice for the education ecosystem."

Rafal-Baer and Puglia continued to exchange emails about the proposed communications and strategy contract into March of 2021. RISP Narrative, pg. 17.

Lt. Governor McKee's transition ended on March 2, 2021, when he was sworn in as governor. At that point, Trainor moved from chairing Lt. Governor McKee's transition team to chairing Governor McKee's 2022 gubernatorial campaign. According to Trainor, he brought SKDK along to be part of the campaign team and provide communications advice. RISP Narrative, pg. 18. At that time, the campaign did not have a contract with SKDK and there was no written agreement with the campaign as to the scope of services SKDK provided or what they would be paid for those services. RISP Narrative, pgs. 18-20.

In his interview with the State Police, Puglia stated that Rafal-Baer told him that the contract as initially proposed by Puglia would "look like a gift" and that CFC could not execute it in that form. Puglia further stated that Rafal-Baer requested that Puglia send her something different. Rafal-Baer told him to remove from the contract any reference to Governor McKee or work related to Governor McKee. According to Puglia, Rafal-Baer told him that the scope of the contract could be different on paper than it was in practice. RISP Narrative, pgs. 18-19.

The State Police, by search warrant, obtained emails that corroborate Puglia's account. On March 8 and 9, 2021, Cerena Figueroa, a CFC employee, reviewed SKDK's proposed "RI Communications Support Contract" at Rafal-Baer's request. In an email chain, Rafal-Baer requested that Figueroa "be sure there is nothing sketchy or illegal in this" and "make sure nothing in the scope would be construed as lobbying or gifts." Of note, although Figueroa and Rafal-Baer were working on this issue on behalf of CFC, Rafal-Baer had incorporated ILO on March 4, 2021, and was also acting as ILO's managing partner at the time.<sup>4</sup> The investigation revealed that the early versions of the

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<sup>4</sup> By April 12, 2021, Figueroa submitted a vendor certification form as part of ILO's bid. The form listed Figueroa as a partner and Rafal-Baer as the managing partner of ILO.

“RI Communications Support Contract” included references to the “McKee team” and SKDK providing “long-term political advice.”

Although, consistent with what Puglia told the State Police, *on paper* SKDK’s work under the “RI Communications Support Contract” was supposed to focus solely on education-related issues, the evidence revealed that, *in practice*, SKDK’s work for Governor McKee included some work that can only be characterized as political. Records obtained by State Police search warrants show that SKDK’s reports to CFC about their work for Governor McKee included updates regarding campaign/political work. For example, on January 5, 2021, SKDK’s Bloom emailed fundraising totals for potential 2022 candidates for governor to Puglia, his SKDK colleague. This information was then forwarded by Puglia to CFC’s Rafal-Baer. RISP Narrative, pg. 19. SKDK’s Action Report to CFC for January 2021 included a section on “Gubernatorial Leadership Transition.” RISP Narrative, pg. 20. The Action Report by SKDK for February 2021 informed CFC that SKDK joined “daily communications calls” to “strategically outline priorities.” They conducted “in-depth media training” with Trainor and Lt. Governor McKee. And they “monitored relevant campaign finance reporting.” RISP Narrative, pg. 20. At the same time, reports submitted by SKDK also concerned “COVID-19 Communications” and “Efforts to Improve Education and Protect Charter Schools.” RISP Narrative, pg. 20. Plainly, SKDK’s work included both campaign-side and official-side work benefitting Governor McKee. The key issue is whether Governor McKee received *paid-for* services on the campaign-side. And it is here that the evidence is decidedly mixed.

When questioned by the State Police about how SKDK separated their political work for Governor McKee’s campaign from their official-side work for Governor McKee’s transition team and state education policy work, the relevant witnesses gave varied responses. According to CFC’s Magee, he was told there would be a “Chinese wall” (his words) in place between campaign work and official-side assistance to the Governor’s communications office. Magee claimed that he told either Rafal-Baer or Trainor that CFC’s funds (used to pay SKDK) could not be used to support the McKee campaign. Magee claimed that it was Puglia’s responsibility to ensure separation between SKDK’s campaign work and official-side work for McKee. RISP Narrative, pg. 20.

When questioned by the State Police, SKDK’s Bloom acknowledged that SKDK’s work for the McKee campaign and its work for the McKee transition and administration should have been kept separate. According to Bloom, education reform efforts and the McKee campaign were separate but related streams of work, and they never should have included summaries of both in one report to CFC. RISP Narrative, pg. 20.

According to Bloom and Puglia, SKDK provided consulting services to Governor McKee on the campaign-side for free with the expectation (or perhaps hope) that Governor McKee would hire them to do media work for the campaign. RISP Narrative, pg. 19. SKDK employees told State Police investigators that this expectation did not fully materialize and, as a result, they were never compensated for the campaign-side consulting work. RISP Narrative, pg. 19.

The blended nature of the work SKDK provided to Governor McKee in his official capacity on the one hand and to his campaign on the other makes it all but impossible to prove beyond a reasonable doubt that, contrary to these witnesses’ accounts, some of the

CFC paid-for services SKDK provided were in fact for Governor McKee's campaign and thus constituted a *personal* benefit to him. A person or entity can donate goods or services to the government without violating the bribery statute, as long as there is no personal benefit to the public official. In that circumstance, the public official would not be accepting a gift "for himself" but for the benefit of the public.

And so, the evidentiary trail leads to this.

There is no question that Governor McKee received free services from SKDK, in no small amounts, and benefited from those services. These services were intended to benefit the Governor in his official capacity, *and*, at least to some extent, as a political candidate. The key question, however, is whether CFC compensated SKDK for the *political* services SKDK provided to the Governor. Yet, we cannot definitively answer that question, because, as described above, the investigative record is replete with conflicting witness accounts, emails and other documents that cut both ways. In the end, we do not believe that, on this record, we can establish beyond a reasonable doubt that SKDK provided CFC paid-for political services to the McKee campaign, and, accordingly, we cannot establish the "personal benefit" that bribery law requires.

### C. Insufficient Evidence of a *Quid Pro Quo*

Finally, even if we could establish beyond a reasonable doubt a "personal" as opposed to an official benefit to Governor McKee from SKDK's CFC paid-for communication services, the investigation did not find sufficient evidence of a link between such benefit and the official act taken by the Governor and members of his administration to steer the School Reopening Contract to ILO. The strongest evidence of linkage between the *quid* and the *quo* was timing: SKDK began working for Governor McKee in January 2021 (when he was still Lt. Governor) and continued that work through June 2021 – at no cost to the state or to the Governor's campaign. The ILO contract was awarded in May 2021. Further linking these two acts are the individuals involved: Magee and Rafal-Baer of CFC and ILO, on the one hand, and Governor McKee, his top advisors, and Trainor, his campaign chairman, on the other.

While this confluence of timing and players warranted close investigative and prosecutorial scrutiny regarding whether Governor McKee steered the School Reopening Contract to ILO either as a reward for CFC's provision of SKDK's services, or in anticipation of future assistance, any inference arising from said confluence alone is not sufficient to support a criminal prosecution. We need evidence. And there were no explicit, or implicit, references in the communications (emails, text messages) that we reviewed, or in the information provided during multiple witness interviews that such an understanding was in place. For example, in Governor McKee's communications surrounding the RFP and the evaluation process, the investigation found no direct evidence that he steered the contract to ILO in expectation of or in exchange for something of value, namely campaign consulting services or any other gifts or benefits for that matter. Without such direct evidence, a prosecution for the bribery offense would have to rely on a patchwork of circumstantial evidence and inferences surrounding the award of the contract to ILO and the receipt of SKDK's services. That is insufficient to meet our heavy burden of proof – beyond a reasonable doubt – in a criminal case.

## **II. THE OFFENSE OF ACCEPTING CONTRIBUTIONS IN EXCESS OF \$1,000**

The State Police and this Office also considered whether Governor McKee committed a campaign finance misdemeanor when he received SKDK's services in January through June of 2021. The allegation, broadly, is that Governor McKee accepted in-kind contributions in the form of SKDK's political consulting services in 2021 in excess of the \$1,000 limit. See R.I.G.L. § 17-25-10.1(a)(1).

Rhode Island General Laws § 17-25-10.1(a)(1) makes it unlawful for a candidate to accept a campaign contribution exceeding \$1,000 within a calendar year. "Candidate" is defined in pertinent part as "any individual who receives a contribution . . . with a view to bringing about his or her nomination or election to any public office . . . whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at that time." R.I. Gen. Laws § 17-25-3(2).

Using a slightly different lens than for the bribery offense, the investigative team sought to determine whether Governor McKee was the recipient of unlawful contributions in the form of services rendered by SKDK to the McKee gubernatorial campaign in 2021. As distinct from monetary contributions to a candidate, the applicable section of the campaign finance statute defines "contributions" as "paid personal services, or other thing of value to or by any candidate." R.I. Gen. Laws § 17-25-3(4). Under R.I. Gen. Laws § 17-25-3(8), "In-kind contributions" means "the monetary value of other things of value or paid personal services donated to, or benefiting, any person required to file reports with the board of elections."

To sustain a misdemeanor violation of the statute by Governor McKee, the State would have to prove the following: (1) the monetary value of the services exceeded \$1,000; (2) these were paid personal services provided to Governor McKee; (3) SKDK rendered services that benefited the McKee campaign; and (4) Governor McKee knowingly and willfully accepted these in-kind contributions.

While, as noted, the evidence establishes that CFC paid for work that SKDK performed for Governor McKee, we must focus on a more specific question: whether there is proof beyond a reasonable doubt that CFC paid specifically for SKDK's campaign work – as opposed to official side work – for Governor McKee, and that such campaign work could be valued at \$1,000 or more. R.I. Gen. Laws § 17-25-10.1(a)(1).

The investigation established that the McKee campaign did not compensate SKDK for their services during the pertinent time period of January - June 2021, with the exception of a one-time payment of \$6,200 for the creation of the campaign website. The absence of such payments was notable particularly as both Puglia and Bloom told investigators that they provided consulting services to the campaign with the hope and anticipation of being hired to perform additional, paid work for the campaign in the future. However, as already noted, the investigation could not conclusively establish that CFC paid SKDK for this campaign consulting work. Magee told investigators that CFC paid for SKDK's communications work for Lt. Governor McKee's transition, but it prohibited SKDK from providing campaign-related services with CFC's grant money. Puglia and Bloom likewise denied that they were paid for any campaign work for Governor McKee. According to them, they were only paid by CFC for education policy and education reform work. As previously discussed, the investigation was unable to parse CFC's payments to SKDK for their various work streams – at least beyond a

reasonable doubt. While the accounts of the CFC and SKDK principals may have been self-serving, the investigation failed to produce evidence sufficient to disprove them.

### **III. THE RHODE ISLAND CODE OF ETHICS**

As an elected State official, Governor McKee is subject to the Rhode Island Code of Ethics. R.I. Gen. Laws § 36-14-4. We examined whether Governor McKee's actions violated a provision of the Code, R.I. Gen. Laws § 36-14-5(d), which makes it unlawful for a person to use his public office or confidential information received through holding public office to obtain financial gain for a business associate. The Code defines "business associate" as a "person joined together with another person to achieve a common financial objective." R.I. Gen. Laws § 36-14-2(3).

Some of the evidence discussed above satisfies the first and second elements of the Ethics violation. Governor McKee used confidential information he received throughout the procurement process for the School Reopening Contract to financially benefit Rafal-Baer and ILO. The lynchpin to sharing that confidential information was Magee, a confidant and supporter of the Governor and a close associate of Rafal-Baer. As described above, Magee had a hand in drafting the RFP in a way that would directly benefit Rafal-Baer and ILO, and he forcefully lobbied the Governor and his staff to engage Rafal-Baer. Rafal-Baer knew that this RFP was coming, and the firm qualifications and scope of work were tailored specifically to ensure that ILO qualified for the solicitation. Further, the evidence is clear that Governor McKee, having learned that the DOA may not award the contract to ILO after all, took steps to avert that result by directing the Director of Administration not to release the selection of a winning bid, which resulted in the refashioning of the bid from a competitive RFP to a master-price-agreement where ILO could be awarded the lions-share of the work.

But there is no proof of the third element. The State would have to show that Rafal-Baer, or at a minimum Magee, were business associates of Governor McKee to sustain this charge. There is no such evidence. Governor McKee was not a business associate of either Magee or Rafal-Baer. We considered whether the fact that Rafal-Baer secured funding for SKDK to provide communications services to Governor McKee could satisfy this element. We concluded that such a relationship was too tenuous and could find no legal precedent to support characterizing their relationship as that of "business associates." And as already discussed in the previous section, both CFC and SKDK denied that CFC paid for SKDK's campaign work for McKee, further undermining proof of this element.

### **CONCLUSION**

Governor McKee's interference in what he and his administration purported to be a competitive and fair procurement process for the School Reopening Contract caused this Office, the Rhode Island State Police, and the public to question whether the award of the School Reopening Contract to ILO was done properly or otherwise. The Governor and his administration did not follow state procurement rules and regulations – the evidence of that is plain and cannot be seriously disputed. But enforcing state procurement rules is not within this Office's responsibilities. Our job is to determine whether crimes were committed. To that end, the evidentiary trail here was complicated, and understanding its threads and weaving them into apparent truth took considerable time.

But we are comfortable with the ultimate conclusion. And that is this:

Yes, Governor McKee intentionally and against the findings of an independent state review team steered a lucrative, federally-funded state contract to a company formed for that purpose by Magee's close associate, Rafal-Baer. Yes, Rafal-Baer, along with Magee, himself a close advisor to Governor McKee, arranged to have SKDK provide communication services to the Governor free of charge. That said, the evidence does not establish beyond a reasonable doubt that the former was in exchange for the latter. Nor does it establish beyond a reasonable doubt that the CFC paid-for services SKDK provided to Governor McKee free of charge were for his political, personal benefit rather than for his benefit as holder of government office. The evidence is cloudy and contradictory in places, especially regarding the critical issue of the political versus governmental nature of the services SKDK provided the Governor, paid for by Chiefs for Change. But cloudy and contradictory evidence rarely if ever justifies a prosecution, and seldom leads to a successful one. We choose not to bring one here.

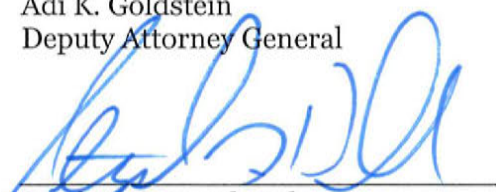
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