

How Independent Are Florida Inspectors General?

by Cecil T. Bragg, CPA

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An Office of Inspector General (IG) was established in each state agency, pursuant to Ch. 20.055 Florida Statutes, to "...promote accountability, integrity and efficiency in government." To be objective and effective, an IG must have sufficient independence from those they are directed to review and evaluate. Independence is an important, if not the most important, attribute needed by an IG to be successful.

The Florida Legislature intended IGs to be independent as the statutes require IGs to be appointed without regard to political affiliation; to distinguish them from an administration's other appointees. The statutes also prohibit an agency head or staff from interfering with any IG audit or investigation. However, while Florida Inspectors General have been provided some degree of independence in the current statute, more independence is needed if the IG function is to achieve its intended purpose.

IGs are the internal monitor or "watchdog" of the public resources in an agency. This puts IGs in a unique and often difficult position of being a member of agency management, while required to review and report objectively to management and the taxpayers on agency programs and operations. An ongoing question has been "Can an IG really be objective if they

are subject to removal at the pleasure of the agency head?" This question has received renewed interest partly due to the removal of several experienced and respected Inspectors General, as summarized in a July 2009 Florida Trend magazine article.

Background

Inspectors General have long served both the military and civilian agencies. Inspectors General exist at Federal, State and Local government levels. The Federal Inspector General Act was passed in 1978 and updated in 2008. The 1978 Federal IG Act was passed over the unanimous objection of the agency heads. This objection was an early indication of the inherent conflict that may exist between the expectations of agency management and the duties of an IG. The Federal IG Act was used as the model to establish similar offices in Florida. In 1994 the Florida Legislature revised Ch. 20.055 Florida Statutes, to establish IGs in each state agency to "...promote accountability, integrity and efficiency in government."

The Florida IG Act included many of the provisions of the Federal IG Act. This included having both audit and investigative functions, following professional standards and reporting directly to the agency head.

To help IGs independence, the Federal IG Act requires IGs to be appointed by the President and confirmed with the advice and consent of the Senate. The Federal IG Act also provides for dual reporting to both the executive and legislative branches. Florida's IG Act, however, provides only for appointment by and reporting to the executive branch.

The predecessor organization to TaxWatch published a research paper in 1983 that recommended the establishment of agency internal auditors. This research paper helped lead to the passage of the Chief Internal Auditor Act in 1986, the original version of Ch. 20.055 Florida Statutes. The need for internal auditor independence was a concern at that time and TaxWatch's recommendation was for internal auditors to report to both the agency head and to an audit committee. This dual reporting responsibility was recognized then as a way to help ensure the internal auditor's independence. However, the dual reporting responsibility was not included in the Chief Internal Auditor Act or its successor, the current revision of the Florida IG Act.

Research

Offices of Inspector General have been established nationwide at all levels of government including Federal, State and Local. The duties, authority and independence of IGs vary. At the Federal level, as in Florida, there is legislative authority for IGs in all agencies. In other States and at the Local level it is different. Rather than having an IG in each agency, there is often one IG to cover all agencies or there is an IG only in selected larger agencies like corrections, family services and transportation.

Regardless of whether an IG is at the Federal, State or Local level, independence is critical. The IG community's national association, the Association of Inspectors General, publishes professional standards that are followed nationwide. In these standards, Statement of Principles for Offices of Inspector General, the issue of independence is addressed. The standards state the IG statute "... should contain provisions to help establish and maintain the independence of

the inspector general and the OIG." The standards recommend several ways to enhance independence including having IGs appointed for a fixed term and removed only for cause.

The 2008 revision to the Federal IG Act did not include fixed terms, but enhanced the dual reporting responsibility of IGs to both the executive and legislative branches. The revision also strengthened the requirements for removing an IG to include "If an Inspector General is removed from office ... the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer."

At the State and Local government level there are many examples of IGs being appointed for fixed terms, being removed only for cause or with the legislative or similar approval, or a combination thereof. For example, in Ohio the State Inspector General is appointed to a fixed term and may removed only after written notice and providing the IG with an opportunity to show cause why they should not be removed. In Texas, the Department of Criminal Justice Inspector General is appointed by the agency's external Board and may only be removed with the approval of that external Board. In California the State IG is appointed for a 6-year term and may only be removed for cause. New Jersey has a State IG with a 5-year appointment and may be removed only for cause upon notice and an opportunity to be heard.

At the local government level Florida's own Miami-Dade County has an IG with more independence. The IG is screened and selected by a committee comprised of external specialists, subject to approval by a majority of the Board of County Commissioners. The IG is appointed to a fixed term and may be reappointed, or not, to another term. The IG otherwise "...may be removed from the office only upon the affirmative vote of two-thirds (2/3) of the whole number of members of the Board of County Commissioners."

At the State level in Florida, IGs are appointed by and removed by the agency head as are other Senior

Management Service (SMS) employees. Unlike other SMS employees, there is a requirement for a seven-day advance notification to the Governor of the intent to terminate the IG. However, there is not a requirement for an explanation of the reasons for or approval of the termination by the Governor or by an external entity such as an agency's commission or a committee of the legislature. As a result an agency IG runs the risk of being terminated, without cause or recourse, at the discretion of agency management.

As described in an article in the July 2009 edition of Florida Trend, Florida IGs not only run the risk of but also actually have been terminated for doing their job and doing it perhaps too well. In the article are specific examples of IGs being removed by agency management for expressing opinions and pursuing audits and investigations that management did not fully support. The agencies were major ones and include Corrections, Health Care Administration and Transportation, as well as Florida A&M University. The departure of these IGs should have raised questions as to the reasons why. This is especially true since the IGs involved were experienced, productive and non-political. However, since it appeared to many that they merely "resigned" the removals received little attention.

Perhaps the most egregious example of an IG being removed for doing their job was the removal of the IG at the Department of Corrections. This IG was removed by the new agency head, James Crosby, and was told he was being removed in part because he had investigated one of Crosby's closest associates, AC Clark. Today both Crosby and Clark are in federal prison for taking kickbacks from department vendors and contractors.

Conclusion

The initial question was "How Independent Are Florida Inspectors General?" It appears the answer is they are as independent as agency management allows. While compared to other Inspectors General nationwide, Florida IGs benefit by having their offices and authority provided for in law, rather than an

agency policy. However, their independence is weaker than many of their peers as they serve at the pleasure of agency management and may be removed without explanation. To be able to adequately perform their legislatively intended function as watchdogs of public resources, more independence is needed than is provided in current legislation.

Current legislation should be amended to provide IGs more independence. However, there needs to be a balance to also allow IGs to be a part of the agency and responsive to its needs. A number of options are available to increase independence so IGs can objectively express their opinion and report the facts as they see them, without fear of removal for doing so.

Recommendations/Options

IG appointment and removal by the Governor with concurrence of a joint legislative committee or a properly formed and qualified audit committee.

IG appointments for fixed longer terms (more than four years) and not consecutive with the term of the Governor.

IG removal for cause and basis for removal clearly stated in writing.

IG recruitment and recommendation by someone other than agency management.

IG required to report any interference with their audits or investigations to the Governor and joint legislative committee.

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