



State of Louisiana

**OFFICE OF  
STATE INSPECTOR GENERAL**

**OGDEN MUSEUM OF SOUTHERN ART**

**Report by**

**Whitman J. Kling, Jr.**

**Prepared for**

**Governor Kathleen Babineaux Blanco**

**September 24, 2004**

**File No. 1-04-0012**



State of Louisiana

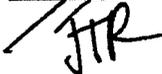
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**June 10, 2004**

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# Ogden Museum of Southern Art

The University of New Orleans under the direction of former Chancellor Gregory O'Brien has undertaken the development of a museum located near Lee Circle in New Orleans. The museum has been an ongoing project for the past 10 years involving the Louisiana State University System, UNO, the University of New Orleans Foundation, Inc., the Ogden Museum of Southern Art, Inc. and Roger Ogden.

A review of the museum project has revealed several problems including:

- Former Commissioner of Administration Mark Drennen improperly created a \$535,000 surplus in the capital outlay project for the construction of Goldring Hall, and without authority gave the \$535,000 to the UNO Foundation.
- By giving the \$535,000 to the UNO Foundation, Commissioner Drennen contravened former Governor Foster's orders and violated the State Constitution.
- The UNO Foundation completed construction on Goldring Hall without authority.
- The State of Louisiana has spent in excess of \$12 million to construct Goldring Hall, a state owned building, and to develop and operate the Ogden Museum of Southern Art within Goldring Hall to primarily exhibit Roger Ogden's works of art. The Ogden works of art are to be the centerpiece of the museum. However, the state has failed to obtain an agreement ensuring Mr. Ogden's works of art would be available for exhibition for a sufficient period of time to achieve the envisioned educational and economic benefits.
- Chancellor O'Brien, without authority, executed an Act of Donation and an Act of Acceptance binding UNO to certain Initial and all Surviving Conditions.
- UNO has spent or caused the expenditure of approximately \$12 million in state funds in violation of the State Constitution as it has not entered into the appropriate written agreements such as cooperative endeavors.
- Mr. Ogden may have violated the State Code of Ethics. This is a matter to be determined by the Board of Ethics.

This report is not a review of all problems and questionable actions related to the construction and operation of Goldring Hall.

## Background

Prior to 1994, then University of New Orleans Chancellor O'Brien, approached Mr. Ogden, a New Orleans area attorney and businessman, with a proposal to exhibit Mr. Ogden's collection of southern art in a museum on the UNO campus. Mr. Ogden declined the UNO campus site because of his concern of a lack of public access to the lakefront area.

As a result of several conversations with Mr. Ogden, Chancellor O'Brien spoke to Patrick Taylor, a New Orleans area businessman, about property owned by Mr. Taylor located in the Lee Circle area of New Orleans, which could be used for a museum. In December of 1994, Mr. Taylor sold several real estate parcels including the Patrick Taylor Library to the UNO Foundation. This acquisition along with the construction of a state building is the core facility for the housing of an art complex.

The UNO Foundation is a private nonprofit corporation established to promote the well-being and advancement of UNO. The UNO Foundation accepts donations of all types which can be used for a variety of purposes including, research, instructional activities and scholarships.

Mr. Ogden agreed in principal to donate a substantial portion of his art collection to the UNO Foundation.

Mr. Ogden has been a member of the Board of Supervisors, of Louisiana State University since April 16, 1991, and has served as board chairman since the 2002-2003 academic year. The Board is the management body for the LSU System of which UNO is a part.

In July, 1995, UNO hired two employees for the purpose of working on the museum complex. Approximately \$200,000 of the annual UNO appropriated budget was used at that time. Currently, about \$228,000 of the UNO budget is used to fund positions dedicated to the museum project.

In early 1999, the state approved contracts for the construction of a state building at 925 Camp Street, near Lee Circle in New Orleans, to be known as Goldring Hall. The land for the building was donated by the UNO Foundation to UNO. The donated land was part of the UNO Foundation's acquisition from Patrick Taylor.

State Funding for the construction of Goldring Hall totaled \$10,063,000 as follows:

- \$2,418,000 - donated to the project by the Foundation in 1999.
- \$6,500,000 - from state bond sale in 2000.
- \$610,000 - from interest earnings on bond proceeds in 1999 and 2002.
- \$535,000 - from surplus bond proceeds of a non-related project in 2003.

The Goldring Hall building was accepted as completed in 2003 with the museum opening in August, 2003. The museum is known as "The Ogden Museum of Southern Art." At that time, UNO and the UNO Foundation employees operated the museum with proceeds going to the Ogden Museum of Southern Art, Inc.

The Ogden Museum of Southern Art, Inc. is a private nonprofit corporation established in part to promote the well-being and advancement of the Ogden Museum of Southern Art. In addition, the articles of incorporation state the corporation can receive, retain and disburse revenue generated by or in connection with the operation of the Ogden Museum of Southern Art. Its registered address is 925 Camp Street, which is the same as Goldring Hall.

There are plans to open the Patrick Taylor Library as part of the museum complex in 2004.

Currently Goldring Hall, a state owned building, is the only portion of the museum complex which is open to the public.

### \$535,000 of State Funds Improperly Given to the UNO Foundation

Under orders of former Commissioner of Administration Mark Drennen, Facility Planning and Control improperly created a \$535,000 surplus in the Goldring Hall project, a part of the Ogden Museum of Southern Art complex. Commissioner Drennen gave the \$535,000 to the UNO Foundation, a private entity, in violation of the State Constitution. The UNO Foundation acquired furniture and performed construction on Goldring Hall outside public bid law which may not have been possible if the funds remained with Facility Planning and Control.

The Capital Outlay Act of 1996 authorized \$6.5 million in funding from bond proceeds for construction of Goldring Hall. The State Bond Commission granted a line of credit for the \$6.5 million at its Nov. 21, 1996, meeting. The \$6.5 million line of credit was funded in a later bond sale. In addition to the \$6.5 million of bond proceeds, \$1,145,000 of state funds consisting of \$610,000 of capital outlay interest earnings and \$535,000 of bond proceeds reallocated from another capital outlay project were added to the project.

On Feb. 11, 1999, a donation of \$2.4 million was wired by the UNO Foundation, from a UNO Foundation account, to Facility Planning and Control for the construction of Goldring Hall. Neither a written Act of Donation, nor an Act of Acceptance were prepared to document, restrict the donation or require the return of any surplus funds.

The Facility Planning and Control Construction Program for Goldring Hall specifically did not include furnishings and equipment. The UNO Foundation had anticipated funding furnishings and equipment from non-state sources.

### **1. Transfer of Bond Proceeds**

Commissioner Drennen instructed Facility Planning and Control staff to find funds for transfer to the Goldring Hall project. However, according to Facility Planning and Control officials additional funding was not required by Facility Planning and Control to complete construction of Goldring Hall.

In the 2002 Capital Outlay Act, \$535,000 was designated as supplemental funding to the Goldring Hall project. The \$535,000 was made available to the project on March 18, 2003, through the transfer of surplus bond proceeds.

In an email to Facility Planning and Control dated March 27, 2003, Patrick Gibbs, President of the UNO Foundation, formally requested the return to the UNO Foundation \$535,000 in "unspent donated funds." However, without the transfer of surplus bond proceeds from another project, it is questionable if the Goldring Hall project had a surplus of uncommitted funds at the time of the request.

James Purpera, Facility Planning Capital Outlay Coordinator, said no funds were budgeted in the Goldring Hall project for furnishings and equipment. He said the UNO Foundation asked Commissioner Drennen for over \$2 million in state funds for furnishings and equipment. Mr. Purpera said Commissioner Drennen instructed him to look for money left over from another capital outlay project to use for furnishings and equipment for Goldring Hall. Mr. Purpera said he found \$535,000 in surplus bond proceeds in another project.

Commissioner Drennen authorized an amendment to the 2002 Capital Outlay Bill, which was adopted on June 5, 2002, to transfer the surplus found by Mr. Purpera as supplemental funding to the Goldring Hall project.

The 2002 Capital Outlay Act describes the \$535,000 transfer as "Supplemental Funding" for the Ogden Museum of Southern Art. The \$535,000 in supplemental funding provided for in the Capital Outlay Act of 2002 was for acquisition, planning and construction of the museum by Facility Planning and Control. The Construction Program did not include furnishings and equipment for Goldring Hall. There were no amendments for furnishings and equipment to the Construction Program.

Matt Lancon, Facility Planning Project Manager for Goldring Hall, said the \$535,000 was added to the project to replenish funds that were given to the UNO Foundation to buy equipment. Mr. Lancon said that at the time the \$535,000 was transferred to the project, he was not projecting a shortage of funds.

Roy Brown, Facility Planning Fiscal Section Accountant Administrator, said at the time the \$535,000 of surplus bond proceeds were requested he was not projecting a surplus and he does not remember anyone coming to him and saying they were expecting a shortage of money for the project.

## **2. Lack of Authority to Give \$535,000 to the UNO Foundation**

By check dated April 23, 2003, \$535,000 was given to the UNO Foundation in violation of the State Constitution.

Article VII, Section 14, of the Louisiana Constitution states "funds, credit, property, or things of value of the state or any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private."

Commissioner Drennen directed Jerry Jones, Director of Facility Planning and Control, to send \$535,000 of the Goldring Hall project funds to the UNO Foundation. The instruction was given by Commissioner Drennen in spite of Governor Foster's order that no funds be remitted to the UNO Foundation.

In an e-mail dated June 26, 2003, to Mr. Brown, Mr. Jones said Commissioner Drennen authorized giving \$535,000 to the UNO Foundation.

Commissioner Drennen did not have a legal requirement or authority to give \$535,000 of Goldring Hall funding to the UNO Foundation.

In an interview, Mr. Jones said Commissioner Drennen verbally directed him to send \$535,000 to the UNO Foundation. He said he asked Commissioner Drennen not to send the money. Mr. Jones said he told Commissioner Drennen the project was ongoing and Facility Planning and Control was in a dispute with the contractor, and that Facility Planning and Control may need the money. Mr. Jones said he does not know of legal authority to send the money to the UNO Foundation.

Commissioner Drennen said he did not think it was proper for the state to retain surplus donated funds. Nevertheless, Commissioner Drennen said he thought the \$535,000 was sent to UNO rather than the UNO Foundation. Division of Administration records clearly show the \$535,000 was given to the UNO Foundation.

Commissioner Drennen said that he misunderstood a conversation with Bernard E. Boudreaux, Jr., former Executive Counsel to Governor Foster. In an email dated June 26, 2003, from Commissioner Drennen to Mr. Boudreaux, Commissioner Drennen said, "Apparently I misunderstood a conversation we had last April....as a result I gave \$535,000 of private funds that had been raised back to the UNO Foundation April 25."

Mr. Boudreaux said he did not tell Commissioner Drennen funds could be given to the UNO Foundation. He said the only conversation he had with Commissioner Drennen concerning the \$535,000 was in the presence of Governor Foster where Commissioner Drennen was told not to transfer any money to the UNO Foundation. Mr. Boudreaux stated he was not aware until after the fact that Commissioner Drennen had given the money to the UNO Foundation.

Commissioner Drennen's statement that he thought the \$535,000 was sent to UNO is inconsistent with his statements, (1) he did not think it was proper to retain surplus donated funds and, (2) his statement in his e-mail of June 26, 2003 to Mr. Boudreaux, - "as a result I gave \$535,000 of private funds that had been raised back to the UNO Foundation April 25."

### **3. Lack of UNO Foundation Construction Authority**

Without authority from or a cooperative endeavor with Facility Planning and Control, the UNO Foundation completed construction and acquired and installed furnishings and equipment in Goldring Hall, a state owned building.

Facility Planning and Control was aware the UNO Foundation planned to complete construction activities and install furnishings and equipment in Goldring Hall. However, Facility Planning and Control officials said they were not notified when the work started.

In a letter dated Sept. 25, 2003, to Mr. Jones, Mr. Gibbs detailed the UNO Foundation spending on construction and furnishings of \$559,655 on Goldring Hall. Mr. Gibbs stated in the letter, the UNO Foundation had spent several million dollars of private funds to finish Goldring Hall and indicated the \$535,000 of funds remitted by Facility Planning and Control were spent as part of the following:

Building Completion (terrace, stairwell, reception desk, art vault)	Construction South	\$ 218,019
Additional Design Services	Baron Toups	\$ 5,015
Museum Shop Fixtures	Crestia Staub	\$ 31,411
Exhibition Casework	Sunshine Services	\$ 130,350
Security System	Alarm Protection Services	<u>\$ 174,860</u>
	Total	<u>\$ 559,655</u>

When shown a copy of Mr. Gibbs' letter of September, 2003, Mr. Jones said the reception desk and art vault is considered furnishings and equipment. He said some of the design fees could be considered furnishings and equipment if the designer was working on things pertaining to furnishings and equipment. He said Mr. Gibbs would have to explain why the terrace and stairwell was done with money intended for furnishings and equipment.

Mr. Jones said in general, once the building is turned over to an agency, it can make changes to the building as long as it has proper approvals. He said the agency should go to the building code review agencies and should get authorization from Facility Planning. He said if not done properly code problems could arise. He said the agency should at least go to Facility Planning to make sure it does not violate the codes.

Maureen Clairy, the UNO Foundation Director of Real Estate Services, said the state was having problems with Goldring Hall. She said the building was two years late and the contractor would not give a reasonable price for change orders. Ms. Clairy said Gus Cantrell, UNO Project Representative, and Facility Planning decided to remove items from the contractor and accept Goldring Hall as complete. Ms. Clairy further stated that Mr. Jones and Mr. Gibbs decided in order to finish Goldring Hall in time for the scheduled August, 2003, opening, the state would return part of the UNO Foundation donation and allow the UNO Foundation to complete the building.

Project Manager Matt Lancon said he was told by UNO about the work to be done on the stairway and terrace, but was told the work was going to be done later. He said he was not told the UNO Foundation would use part of the \$535,000 that was given to the UNO Foundation to do this work. Mr. Lancon said had he known the UNO Foundation was going to use the money for construction he would have told the UNO Foundation they could not use the money for this purpose.

Mr. Cantrell said the UNO Foundation performed construction without his supervision. He said he did not interface much with the UNO Foundation on the construction. He said his staff could have done the construction but could not have done it as well because UNO would have to go through the state bid process which would have slowed things down.

Mr. Cantrell said he was not aware of any cooperative endeavor agreement between UNO and the UNO Foundation for the Foundation to work on Goldring Hall. There is no cooperative endeavor agreement between Facility Planning and Control and the UNO Foundation for the Foundation to work on Goldring Hall.

Conclusions:

1. Commissioner Drennen's instruction to Mr. Jones to give \$535,000 to the UNO Foundation, a private entity, contravened the Governor's orders and violated the State Constitution.
2. Commissioner Drennen instructed Facility Planning and Control staff to find additional funds to transfer to the Goldring Hall project. The transfer of \$535,000 in bond proceeds to the Goldring Hall project improperly created a surplus in the project.
3. The UNO Foundation completed construction and installed furnishings and equipment in Goldring Hall without authority, namely entering into a cooperative endeavor agreement.
4. Facility Planning and Control failed to require the UNO Foundation to enter into a cooperative endeavor agreement prior to the UNO Foundation completing construction and installation of furnishings and equipment in Goldring Hall.

### Recommendations:

1. Facility Planning and Control should ensure that the required cooperative endeavor agreement is in place prior to work being performed by a non-state entity, such as the UNO Foundation, on a capital outlay project administered by Facility Planning and Control.
2. Facility Planning and Control should review all work on Goldring Hall by the UNO Foundation to insure all building code requirements have been met.
3. Refer this report to the proper authorities.

### No Written Donation of Art

Although various documents, including two labeled an Act of Donation, have been confected by various principals, there has been no complete written donation of works of art by Mr. Ogden to the UNO Foundation, UNO or the LSU System.

Despite the lack of donation or any other written agreement between Mr. Ogden and the UNO Foundation, or between Mr. Ogden and UNO or the LSU System, works of art owned by Mr. Ogden have been sent to Goldring Hall.

Former UNO Chancellor O'Brien signed the initial Act of Donation and the related Act of Acceptance, thereby obligating UNO. There is no LSU Board of Supervisors resolution or other authority given to Chancellor O'Brien for this action.

The State of Louisiana has spent in excess of \$12 million to construct Goldring Hall, a state owned building, and to develop and operate the Ogden Museum of Southern Art within Goldring Hall to primarily exhibit Roger Ogden's works of art. The Ogden works of art are to be the centerpiece of the museum. However, the state has failed to obtain an agreement ensuring Mr. Ogden's works of art would be available for exhibition for a sufficient period of time to achieve the envisioned educational and economic benefits.

#### 1. 1996 Act of Donation and Act of Acceptance Void

In November and December, 1996, Mr. Ogden and the UNO Foundation executed an Act of Donation and an Act of Acceptance of works of art personally owned by Mr. Ogden.

The Acts included the donation of 263 "Core Works" and a pledge to donate 337 "Additional Works" of art to be exhibited in Goldring Hall, which is owned by UNO. We have found no listing of the composition of the 263 Core Works or the 337 Additional Works of art included in the documents.

The donation by Mr. Ogden to the UNO Foundation was not a straightforward transfer of ownership. The donation was subject to both initial and surviving conditions detailed in an Act of Acceptance signed simultaneously with the Act of Donation. Using Civil Code terminology, this was an onerous donation subject to both suspensive and resolutive conditions. The "Initial Conditions" are suspensive in that the donation may not be enforced unless all conditions were met by Jan. 1, 1999. Not only were these conditions not met by the cut-off date, many remain unsatisfied. The resolutive conditions are listed as "Surviving Conditions" in the Acceptance. The Acceptance provides for these surviving conditions to be binding in perpetuity, where a future violation, if not cured, would give rise to circumstances mandating that the UNO Foundation return the entire art collection.

The Acceptance states, if all the Initial Conditions shall not have been satisfied or waived in writing before Jan. 1, 1999, then the donation shall be resolved and the UNO Foundation, upon request of Mr. Ogden or his representative, shall return to Mr. Ogden any items in the collection that shall have been delivered to the UNO Foundation.

Mr. Ogden said he orally waived the conditions annually and that it has always been his intention to donate the art to the UNO Foundation. However, Mr. Ogden has not executed written waivers as required by the Acceptance.

Patrick Gibbs, Chief Executive Officer of the UNO Foundation, stated there are no records to indicate the donation was actually completed.

Since all "Initial Conditions" have neither been satisfied by Jan. 1, 1999, nor waived in writing by Mr. Ogden and all "Surviving Conditions" have not been met, the donation and acceptance have not been consummated.

Chancellor O'Brien improperly executed the Act of Donation and Act of Acceptance on behalf of UNO. In the Acceptance, Chancellor O'Brien bound UNO with the UNO Foundation to obtain funds of not less than \$11 million for the museum facilities. In addition, Chancellor O'Brien's signature committed UNO to all Surviving Conditions.

Chancellor O'Brien had no authority to bind UNO. There is no LSU Board resolution or other authority given to Chancellor O'Brien for this action. LSU System President William Jenkins said Chancellor O'Brien did not have the authority to sign the Acts.

## **2. New Act of Donation – Not Executed by the UNO Foundation**

In October, 2003, Mr. Ogden executed a new Act of Donation to the UNO Foundation for works of art. The new Donation specifically states that it supercedes the Act of Donation and Act of Acceptance executed in November and December, 1996. The new Act includes the donation of 604 works of art to the UNO Foundation, loans of 157 works of art to the UNO Foundation and states that Mr. Ogden intends to donate the loaned works and other additional works of art to the UNO Foundation in the future upon satisfaction of certain "Initial Conditions." These works of art are thought to be some if not all of the art referenced in the void 1996 Act of Donation.

The "Initial Conditions" in the new donation must be satisfied before Jan. 1, 2006, unless compliance is waived in writing by Mr. Ogden.

The "Initial Conditions" are:

1. The UNO Foundation shall have perfected all necessary rights to the permanent use of the Connection, a passageway between Goldring Hall and the Taylor Library.
2. The renovation of the Taylor Library and the Clementine Hunter Education Wing and the construction of the Connection (collectively, "the Work") shall be of a quality appropriate for a fine arts museum (including without limitation a floor plan, display plan, lighting design, signage and graphics suitable for the proper display of art throughout the museum) and shall be in conformity with the existing plan by Concordia/Barron Troups.
3. The renovation of the Taylor Library and the construction of the Connection shall be substantially complete and the museum buildings, including the Connection, shall be open to the public. The space dedicated to the exclusive use of the museum shall include without limitation the entirety of the Taylor Library, the Clementine Hunter Education Wing, the connection and Goldring Hall.
4. The UNO Foundation shall have provided or arranged for not less than one hundred parking spaces dedicated to the exclusive use of, and reasonably approximate to, the museum, with appropriate signage.
5. The UNO Foundation shall not be in violation of any of the Surviving Conditions.

The UNO Foundation has no authority or right to obligate the use of a state owned building such as Goldring Hall, as cited in above item number three.

In addition to the "Initial Conditions," the donation includes "Surviving Conditions," which survive in perpetuity. These "Surviving Conditions" are generally similar to those contained in the 1996 Act of Acceptance.

If all "Initial Conditions" included in the proposed donation are not satisfied or waived in writing before Jan. 1, 2006, Mr. Ogden has the right, in addition to all other remedies, to require that the UNO Foundation, (a) deliver the loaned works to Mr. Ogden; (b) transfer ownership of the donated works to the Ogden Foundation; and (c) lease the Taylor Library, the Clementine Hunter Education Wing, and the Connection to the Ogden Foundation for a term of not less than ninety-nine years, at a net rental of one dollar (\$1.00) per year.

The new Act of Donation is as onerous as the first Act of Donation.

Mr. Ogden has signed the new Act of Donation however; to date the UNO Foundation has neither executed the Act of Donation nor satisfied the stipulated conditions of the new Act of Donation.

### Conclusions:

1. The UNO Foundation defaulted on the conditions of the 1996 Acceptance, which had to be met before the donation became effective.
2. Mr. Ogden was aware of the default of the Acceptance by the UNO Foundation; however, he did not place the UNO Foundation in default or waive the default in writing as required by the Act of Acceptance.
3. Chancellor O'Brien, without authority, signed the 1996 Donation and the 1996 Acceptance binding UNO to certain Initial and all Surviving conditions.
4. The 2003 Act of Donation has not been executed by the UNO Foundation.
5. There is no executed agreement between Mr. Ogden and the UNO Foundation, UNO, or between Mr. Ogden and UNO or the LSU System to exhibit or house Mr. Ogden's works of art in Goldring Hall, a state owned building or to donate Mr. Ogden's art to any entity.

6. The State of Louisiana has spent in excess of \$12 million to construct Goldring Hall, a state owned building, and to develop and operate the Ogden Museum of Southern Art within Goldring Hall to primarily exhibit Roger Ogden's works of art. The Ogden works of art are to be the centerpiece of the museum. However, the state has failed to obtain an agreement ensuring Mr. Ogden's works of art would be available for exhibition for a sufficient period of time to achieve the envisioned educational and economic benefits.

### Recommendations:

1. The State should obtain an agreement to ensure Mr. Ogden's works of art will be available for exhibition for a sufficient period of time to achieve the envisioned educational and economic benefits.
2. To avoid future complications regarding ownership, UNO or the UNO Foundation should obtain a straightforward donation of art from Mr. Ogden with no suspensive or resolutive conditions.
3. The LSU Board should determine its rights and obligations regarding the Ogden art in Goldring Hall and take immediate steps to ensure all LSU rules and regulations and the state constitution and statutes are followed.
4. The LSU Board should ensure its bylaws and procedures clarify the authority of chancellors to bind the LSU System, and ensure all chancellors are aware of these rules.

### Cooperative Endeavors

UNO and the LSU System erred by expending approximately \$12 million of state funds without proper cooperative endeavor agreements to protect the state's interest in the museum project. An effort was made to execute a cooperative endeavor agreement for the operation of the museum but failed.

Cooperative endeavors are required because:

- Article VII, Section 14 of the Louisiana Constitution prohibits the loan, pledge or donation of state property, with certain exceptions. The Constitution allows the state and its political subdivisions or political corporations to engage in cooperative endeavors with each other, with the United States or its agencies,

or with any public or private association, corporation, or individual if it is for a public purpose.

- Cooperative endeavors record the historical and precise understanding as well as the detail requirements of all parties, thus protecting the assets of the state and opens the agreement to public scrutiny.

In its haste to create a museum complex, UNO failed to safeguard the state's interest in a project using state and private assets jointly. One way to safeguard the state's interest would have been for UNO to secure cooperative endeavor agreements with the affected parties. Problems created include:

1. More than \$1.75 million of UNO funds were expended for employees performing work for the museum project. In addition, UNO expended approximately \$71,000 for utilities and \$65,000 for insurance premiums on buildings owned by the UNO Foundation.
2. The state spent approximately \$10 million to construct a building for the purpose of housing an art museum without securing a cooperative endeavor from an entity or individual with nonrestrictive rights to the art collection which is the centerpiece of the museum.
3. In 2002, UNO presented, through the LSU System, a cooperative endeavor to the Board of Supervisors of Louisiana State University which did not meet state constitutional requirements according to the state Attorney General.
4. UNO, the UNO Foundation, and the Ogden Museum of Southern Art, Inc., continue to engage in a project to operate the Ogden Museum of Southern Art in violation of the State Constitution as there is no cooperative endeavor agreement or agreements to define the rights, relationships, interest and obligations of the parties.

### **1. University Employees, Utilities, Insurance Premiums**

By not securing the required cooperative endeavor, UNO violated the Louisiana Constitution, Article VII, Section 14 since 1995 by spending more than \$1.8 million to subsidize the development and operation of the Ogden Museum of Southern Art.

From July, 1995, through June, 2003, UNO spent approximately \$1.75 million for employee salaries and related expenses in support of the UNO Foundation and the Ogden

Museum of Southern Art, Inc. In addition, UNO paid \$71,000 for utilities and \$65,000 for insurance premiums attributable to buildings owned by the UNO Foundation.

UNO did not enter into a cooperative endeavor agreement with the UNO Foundation, Mr. Ogden or the Ogden Museum of Southern Art, Inc.

### *Salaries and Related Expenses*

UNO has expended approximately \$1.75 million from July, 1995, to June, 2003, for salaries and related expenditures of individuals assigned to the creation of the Ogden museum complex. An undetermined portion of the salaries and related expenditures were for non-state related duties and activities.

Since fiscal year 1995-1996, UNO has included in its operating budget approximately \$200,000 for salaries and related expenditures of individuals assigned to the creation of the Ogden Museum.

UNO created four unclassified state positions to support and coordinate the development of the art complex. The positions are listed as being within the UNO Ogden Museum of Southern Art section. The four positions include the director, associate director, assistant to the associate director and the coordinator of special projects and public information.

The duties of the initial director of the UNO Ogden Museum of Southern Art, Randolph Delehanty, included but were not limited to, developing strategic and action plans for the museum complex. In addition, Mr. Delehanty was to oversee the restoration of the Taylor Library, a building owned by the UNO Foundation. One of the initial conditions in the "Act of Acceptance" of the Ogden art collection, as specified by Mr. Ogden, was the offering of the director's position to Mr. Delehanty at an annual salary of not less than \$60,000.

Chancellor O'Brien stated Mr. Delehanty primarily reported to him while working with the art and design of the museum complex.

Elizabeth Williams, former UNO Foundation President, stated the UNO Ogden Museum of Southern Art associate director worked very closely with the UNO Foundation's fund raising committee.

Robert Brown, UNO Vice Chancellor for Governmental Affairs, Mr. Delehanty's supervisor, stated his role in supervising Mr. Delehanty and the Ogden Museum of Southern Art staff was minimal. Mr. Brown said his supervision primarily related to administrative functions such as signing job descriptions and personnel action forms. Mr.

Brown said he attended meetings with Chancellor O'Brien, UNO Foundation staff and Mr. Delehanty at which time the museum project was discussed.

Mr. Brown further stated donations generated for the museum by the UNO staff were directed to the UNO Foundation.

The current director, Richard Gruber, began work in September, 1999, with basically the same job description as Mr. Delehanty with the additional duty of establishing and maintaining an appropriate endowment for the museum.

Mr. Gruber's job description also includes oversight of the restoration of the Taylor Library, design of a new contemporary art gallery, identify and obtain external resources to support the museum's operational budget.

According to Mr. Gruber, donations received for the museum are directed to the UNO Foundation.

### Utility Expenses

Since 1995, UNO has improperly paid approximately \$71,000 for utility expenses of buildings owned by the UNO Foundation. The buildings include:

1. 615 Howard Avenue, the Patrick Taylor Library
2. 1012 St. Charles Avenue, former American Bank Building
3. 1018 St. Charles Avenue, former American Bank Building

Utility expenses include electricity, gas, water and sewerage fees.

We found no documents which would support a benefit to UNO for these expenses. The only explanation to date given by UNO finance staff for paying these expenses are the buildings will become a part of the Ogden Museum of Southern Art.

### Insurance Premiums

Insurance coverage for buildings owned by the UNO Foundation is improperly paid by UNO to the state's Office of Risk Management insurance program. Premiums for the insurance are included in the UNO operating budget and paid by UNO to Risk Management. UNO is not reimbursed by the Foundation for this expenditure. Since July, 1997, Risk Management has calculated approximately \$65,000 for insurance premiums coverage on Foundation owned buildings associated with the museum project.

For fiscal year 2003-2004, UNO paid approximately \$10,000 of a \$14,000 premium on behalf of the UNO Foundation for insurance coverage on two UNO Foundation owned buildings, the Patrick Taylor Library and the Confederate Museum. The remaining \$4,000 was absorbed by Risk Management. The Patrick Taylor Library is insured for about \$7 million and the Confederate Museum for about \$938,000.

Risk Management calculates premiums for each line of insurance based on past experience and exposure. However, in the budget process these figures are often reduced as was the case in fiscal year 2003-2004.

Both UNO and UNO Foundation officials have acknowledged that UNO is not reimbursed for premiums paid for insurance coverage on the Foundation owned buildings.

## **2. \$10 Million Construction**

The state spent \$10 million of state capital outlay funds for the construction of a building designed to house the Ogden Museum of Southern Art without securing a cooperative endeavor which would guarantee that the centerpiece art collection would permanently be displayed as part of the museum.

The state with UNO as the user agency commenced and completed the construction of Goldring Hall located near Lee Circle in New Orleans. The primary function of the building is to house the Ogden Museum of Southern Art of which an art collection of Roger Ogden is the core for the museum display. Without Mr. Ogden's collection, Goldring Hall would house a museum void of the major attraction and it is doubtful the museum would be as successful attracting visitors, donations and endowments.

As a result, the state invested \$10 million in a building with no guarantee that its assets would be used for the stated and intended purpose.

In order to execute a cooperative endeavor, the entity or individual contracting with UNO would need unrestrictive rights to Mr. Ogden's collection so it could insure the university that the collection will remain a permanent part of the museum.

While no entity currently has the unrestrictive ownership of the Ogden art collection, Mr. Ogden stated it is his intent to donate his art collection to the UNO Foundation.

### **3. Failed Cooperative Endeavor**

In 2002, UNO submitted to the LSU System a proposed cooperative endeavor between UNO, the UNO Foundation, and the Ogden Museum of Southern Art, Inc., to jointly operate, manage, occupy and otherwise use the Ogden Museum of Southern Art.

The proposed agreement was changed at the LSU System office before being submitted to the LSU Board of Supervisors. The agreement given to the Board contained language which the Louisiana Attorney General has opined as unconstitutional.

The proposed cooperative endeavor established the roles of museum partners, UNO, the UNO Foundation and the Ogden Museum of Southern Art, Inc. The agreement proposed by UNO stated in part:

- The University will donate the use of Goldring Hall, a state owned building along with the annual payment of \$425,000 to the University of New Orleans Foundation for support and operations of a museum. Operations of the museum include construction, renovation, expansion, debt service or other appropriate expenses of the museum.
- The UNO Foundation will place art in the museum with an estimated value of \$30 million and provide the Taylor Library building for the placement of art.
- The Ogden Museum of Southern Art, Inc., will provide the day-to-day management of the museum and pay expenses from revenues generated by the museum.

The UNO proposed agreement was to begin on July 1, 2002, and terminate on June 30, 2032, resulting in thirty years of annual payments by UNO to the UNO Foundation for a total of \$12.75 million.

At some point between the transmittal of the UNO proposed cooperative endeavor to the LSU System office and the presentation of the instrument at the July 12, 2002, LSU Board meeting, changes were made which included an additional \$425,000 annual payment by UNO in support of the museum.

The revised cooperative endeavor agreement included the following:

- The Foundation shall place the art in the museum and provide the library for the placement of art.

- UNO shall provide Goldring Hall for the placement of art and provide \$425,000 to the Foundation for capital support of the museum including construction, renovation, expansion, debt service or other appropriate expenses. In addition, UNO shall provide annual operating support to the museum in the form of salaries, benefits, utilities, security, maintenance or other appropriate expenditures in the amount of not less than \$425,000 per year.

Neither the original UNO cooperative endeavor nor the amended document provided UNO with a means to stop the annual payments if the museum proved to be self-sufficient, nor did it indicate the economic value UNO was to receive from the transaction. Additionally, neither of the cooperative endeavors addressed the possibility of additional funds being required in the event the museum operates at a deficit.

The LSU Board of Supervisors, Property and Facilities committee reviewed the amended cooperative endeavor on July 12, 2002, and recorded in an executive summary the following:

- The UNO Foundation will finance the remaining \$6.2 million needed to construct and furnish the museum complex, provide the art and make the privately financed library building available.
- The Museum Foundation (Ogden Museum of Southern Art, Inc.) will manage the museum complex including the collection and management of museum revenues.
- The University of New Orleans will make Goldring Hall available to the museum along with annual payments of \$425,000 for capital support of Goldring Hall and the museum including construction, renovation, expansion and debt service of the museum. In addition, UNO will provide \$425,000 annual payments for operating support to the museum in the form of salaries, benefits, utilities, security and maintenance.
- The committee recommended that the LSU Board of Supervisors adopt a resolution authorizing William Jenkins, President, LSU System, to enter into a cooperative endeavor agreement with the University of New Orleans Foundation and the Ogden Museum of Southern Art, Inc.

At the July 12, 2002 meeting, the LSU System Board of Supervisors passed a resolution authorizing President Jenkins to execute and approve such other documents necessary to accomplish the cooperative endeavor, and other documents to include terms and conditions as President Jenkins deems to be in the best interest of the Board.

Deliberations at the July 12, 2002, Board meeting cannot be verified due to a malfunction of the tape recorder.

Attorney General opinion number 03-0111 dated March 17, 2003, advises the revised cooperative endeavor as written contains terms and conditions that if implemented would violate the Constitution of the State of Louisiana.

The Attorney General opinion states, in order for UNO's cooperative endeavor to meet the requirements of the Louisiana Constitution, Art. VII, section 14, the following conditions must be met.

- Support must be sanctioned or authorized by law or given in furtherance of the University's constitutional or legal duties,
- Support must be directed to a public purpose,
- The cooperative endeavor must create or enhance a public benefit or a value proportionate to the cost.

The Attorney General opined the first two conditions are met by UNO as authorized by the constitution and statutory authorities. However, the Attorney General stated UNO cannot provide funds for the payment of salaries for a private corporation's employees. In addition, public funds can only be used for ordinary operating expenses of maintaining the public building. UNO cannot contribute funds for debt service of a private entity or to renovate buildings owned by a private entity.

Neither the original nor the revised cooperative endeavor has been executed.

#### **4. Lack of a Cooperative Endeavor**

UNO is conducting business with two private entities without an appropriate written agreement such as a cooperative endeavor.

Currently, the Ogden Museum of Southern Art is being operated by UNO and UNO Foundation employees. Monies generated by the museum are being deposited to the bank account of the Ogden Museum of Southern Art, Inc., a private entity.

UNO is providing the use of three of its employees, a state owned building and paying utility expenses for the museum project. Two of the employees are the museum director and associate director. In addition, the state provides insurance coverage for the museum complex including non-state owned buildings and works of art. The estimated premium for the three buildings, Goldring Hall, Confederate Museum and Patrick Taylor Library,

based on fiscal year 2003-2004 premium rates is approximately \$31,000. UNO will also pay the insurance premium for the art at an estimated cost of \$32,500. The Foundation values the Ogden art at approximately \$8.8 million and other donated art at \$9.8 million.

Because both the UNO Foundation and the Ogden Museum of Southern Art, Inc., are private corporations doing business with a state institution that involves state assets or expenditures, a written agreement such as an appropriate cooperative endeavor is required.

Currently, the LSU System on behalf of UNO has entered into a written agreement entitled "Provisional Agreement" with the UNO Foundation. The agreement allows the Foundation to use the majority of Goldring Hall for the placement of art and objects to facilitate its use as a museum. The agreement requires UNO to provide operating support in the form of utilities, insurance, and personnel as determined by UNO to be necessary to operate Goldring Hall. The agreement does not include or mention the Ogden Museum of Southern Art, Inc.

This agreement does not meet the needs a cooperative endeavor agreement under existing circumstances. Goldring Hall was built primarily for use as a museum from capital outlay funding for the Ogden Museum of Southern Art. As this is a long-term expenditure for a specific use facility, it would be reasonable for any related cooperative endeavor to be of a long term and between all involved entities. By contrast, the provisional agreement does not include or mention the Ogden Museum of Southern Art, Inc. and terminates June 30, 2004, unless extended for one more year by joint consent.

### Conclusions:

1. Prior to its opening UNO spent in excess of \$1.8 million for development and operations of the Ogden museum in violation of the State Constitution. This amount includes salaries, utilities and insurance premiums.
2. \$10 million of state funds was spent constructing Goldring Hall for the purpose of housing the Ogden Museum of Southern Art without contractually obligating the art collection owned by Roger Ogden which is the centerpiece of the museum, to be permanently displayed.
3. A proposed cooperative endeavor approved by the LSU System Board contains provisions which the Louisiana Attorney General has opined to be unconstitutional.

4. Without the appropriate written agreements between UNO, the UNO Foundation, and the Ogden Museum of Southern Art, Inc., UNO is using state assets to provide operating support to the Ogden museum in violation of the State Constitution.

Recommendations:

1. The LSU System should take immediate steps to insure the Ogden museum project meets the requirements of the State Constitution.
2. UNO should seek recovery of the state funds paid on behalf of UNO Foundation buildings.

Ethics Board Referral

Mr. Ogden has served as Chairman of the Board for the LSU Board of Supervisors since the 2002-2003 academic year and has been a board member since 1991. Mr. Ogden served on the LSU Board of Supervisors and simultaneously:

1. held a full or reversionary ownership interest in works of art valued in millions of dollars to be located in a state owned, LSU System building (Goldring Hall) built from a capital outlay appropriation for the Ogden Museum of Southern Art.
2. attended the Board's July 12, 2002 meeting where direct action was taken concerning the Ogden Museum.

Conclusion:

1. This is a matter to be determined by the Board of Ethics and not this office.

Recommendation:

1. This report should be sent to the Board of Ethics.

Management Response:

See attached.

IG Comment :

Respondents assert the Office of Inspector General lacks authority to review facts surrounding the Ogden Museum of Southern Art, the construction of a state building (Goldring Hall), and the action of all related parties, including the LSU Board of Supervisor, LSU System, and the University of New Orleans.

While the questioning parties refer to executive orders (which we agree are “void and of no effect”), the Louisiana First Circuit Court of Appeal ruled twice on this issue. *Roemer v. Guillot*, 616 So.2d 711 (La. App. 1 Cir. 11/2/92) and *Edwards v. Board of Trustees of the State Employees Group Benefits Program, et al.*, 644 So.2d 776 (La. App. 1 Cir. 10/7/94). These rulings concerned the governor’s authority enumerated by the Louisiana Constitution and the Governor’s ability to delegate such authority. *Roemer* held there is both constitutional and statutory authority, apart from any executive order, for the Inspector General to do his delegated duties. Additionally, the *Roemer* court affirmed the district court ruling supporting the Inspector General’s authority as the Governor’s designee under LSA-R.S. 49:212.

The Department of Education is the agency through which the state administers the LSU Board of Supervisors under LSA-R.S. 36:642 and Education is specifically placed in the executive branch of state government under LSA-R.S. 36:4, which applies to both constitutionally and statutorily created boards, agencies and instrumentalities. Nevertheless, counsel for LSU questions the Governor’s authority to investigate and make recommendations with respect to constitutionally established agencies (the Board). To follow this reasoning, one would have to believe the Board is a “4<sup>th</sup> branch” of government instead of part of the executive branch within the Department of Education.

The Office of Inspector General has not been presented with an fully executed document which would convey straightforward ownership of Mr. Ogden’s art without any suspensive and resolatory conditions.

While the report questions the activities of certain faculty members performing services for the creation of the Ogden museum complex while being paid by UNO, the report states an undetermined portion of the salaries and related expenditures were for non-related state duties and activities. One respondent basically implies these individuals were mostly UNO instructors and in addition to those duties raised funds for the

operation of the Museum. Information provided to this office by an UNO official in the College of Liberal Arts show UNO records from the Fall of 1995 to the Spring of 2004 provides documentation that one faculty member taught one course in the Spring 2000, Fall 2000, and Spring 2001; another faculty member taught one course in the Spring 2000, Fall 2000 and Spring 2004; for the third faculty member involved, the individual was not listed as a course instructor in any of the semesters searched.

The respondents were given the opportunity to provide documentation which would support changes to draft reports. The Office of Inspector General feels this report is an accurate account of past occurrences.

File No. 1-04-0012

WJK/lr

# **Response**

Louisiana State University System



Louisiana State University System

3810 West Lakeshore Drive

Baton Rouge, Louisiana 70808

General Counsel

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*Hand-Delivered*

May 26, 2004

Mr. Kenneth J. Alvarez  
Assistant State Audit Director  
Office of State Inspector General  
222 Florida Street, Suite 303

Re: Your file No. 1-04-0012; your letter of May 19, 2004

Dear Mr. Alvarez:

Thank you for the opportunity to comment upon the "substantial changes" you indicate were made to your initial draft report of December 5, 2003. Since the two reports appear to overlap to a great extent, we incorporate our prior response of December 18, 2003 (attached for your convenience). We do ask that this response (and attachment) be made a part of any final report to better place the matters asserted in your latest draft report in a more complete perspective.

**1. Authority or Jurisdiction of the Office of Inspector General Over  
Constitutional Management Board Matters.**

A threshold issue insofar as the Board of Supervisors of the Louisiana State University is concerned is whether it is within the scope of authority of your office to make *official* recommendations and conclusions regarding the operations of the constitutionally-created Board.

As you well know, the Office of Inspector General was created in 1988 by then-Governor Roemer (Executive Order BR-88-10). The only continuing express authority found by me for the continuation of the Office is Executive Order EWE-92-59 (August 20, 1992).

That executive order is clearly directed to “each covered agency of the Governor’s office,” and addresses agencies which “come under the authority of the governor.” Consistent with that basic limitation, Section 6 B of the executive order expressly provides: “The area of authority for the state inspector general shall *not* include the state universities and colleges, or other statewide elected officials” (emphasis added). This express exclusion is consistent with the constitutional definition of executive branch agencies and the authority of the Governor in connection therewith. See *e.g.*, Article IV, Section 1, Louisiana *Constitution*. There appears to be no express act of any subsequent governor to attempt to delete that long-standing exclusion. Moreover, that executive order may, as a legal matter, be “void and of no effect.” See La. R.S. 49:215, which provides, in part, that any executive branch agency created by executive order, “shall terminate sixty days following adjournment *sine die* of the regular session of the legislature after the issuing governor leaves office.” La. R.S. 49:215 was enacted by the legislature and signed by the Governor, effective August 2, 1982.

While the Office of Governor (of which the Office of Inspector General is a part) may have *inherent* authority to investigate and make related recommendations with respect to executive branch agencies within the Governor’s express constitutional authority, such inherent authority is not clear with respect to constitutionally-established agencies, specifically higher education management boards (or elected state-wide offices). The First Circuit Court of Appeal, recently recounted well-known history with respect to the independent constitutional status of boards of higher education institutions.

“In his 1940 message to the Legislature, the Governor of Louisiana recommended legislation . . . (footnote omitted)

To carry out this recommendation, four members of the Senate introduced a Joint Resolution amending Article XII, Section 7 of the Constitution vesting the ‘direction, control, supervision and management’ of the affairs of the University in the Board of Supervisors. Adopted by the legislature as Act 397 of 1940, this amendment to our Constitution was ratified by the People in general election. It is quite clear that the purpose of this amending, in keeping with the executive recommendation, was to remove the administration of the daily affairs of the University from both the Governor and Legislature and place them under a non-political board.” *LPFA v. All Taxpayers, etc., et. al*, 868 So. 2d 124, 135 (La. 1 Cir. 2003), *writs denied*, 869 So. 2d 801 (La. 2004).

This is not to suggest that constructive evaluation of a constitutionally-established board or agency is not appropriate or, indeed, welcome from *any* person or entity. It is to suggest that the Office of Inspector General appears to lack official right or authority, or even color of law, to make *formal* recommendations with respect to higher education management boards. In light of the clear history set forth above, that limitation should not be lightly dismissed. It is therefore respectfully suggested that the formal recommendations be limited to those directly affecting the Division of Administration, an agency within the constitutional structure of the Office of Governor. If that is done, of course, we will continue to consider and acknowledge your recommendations in the draft report as informal recommendations.

With that perspective, we offer the following comments (in addition to those of our prior response) upon selected specific matters addressed in your latest draft report.

**2. The Purported Failure Of The State And LSU To Assure That The Donated Art Will Be “Available For Exhibition For A Sufficient Period Of Time To Achieve The Envisioned Educational And Economic Benefits”**

The contention that because of complexities of the donation and related transactions there is no assurance that the donated art will be available for the purpose of educational and economic benefits engages in the often-human failing of “not being able to see the forest for the trees.” Added to that is the human aggrandizement of “20/20 Hindsight.” This is a false issue.

Mr. Ogden, through his very able counsel, has expressly informed your office by no later than letter of January 5, 2004, that “... Mr. Ogden has now irrevocably donated the Donated Works...” (p.9). It is clear that Mr. Ogden has no claim to the art.

In addition, by a supplemental Act of Donation dated and signed by Mr. Ogden by authentic act on September 25, 2003, which was initiated by LSU to clarify matters, not only did Mr. Ogden acknowledge that he had no right to get the Donated Art back, he agreed to give LSU a property interest in the art that would survive *any* contingency. The *Stipulation Pour Autrui* (third-party beneficiary) expressly provides as follows:

14. *Stipulation Pour Autrui*. Recognizing the educational value of the Museum and art, the Donated Works ***shall not be removed from Goldring Hall without the prior written consent of the University of New Orleans (“UNO”)***, except that Donated Works may be removed from Goldring Hall without the prior written consent of UNO (a) for temporary loans of works to other institutions . . . This provision shall be deemed to be a *stipulation pour autrui* in favor of UNO, as third-party beneficiary, which UNO may enforce by specific performance or other equitable remedies without the necessity of a showing of irreparable harm or the unavailability of another remedy. Any obligation or need for UNO to manifest its intention to avail itself of the benefits of this paragraph is waived by the parties hereto, and such shall have the same effect as if there were a formal manifestation. The provisions of this paragraphs shall be enforced without reference to the ownership or right of possession of the Donated Works and in recognition of the irrevocable donation set forth in paragraph 13 hereof. (emphasis added)

The failure of the UNO Foundation to formally (again) accept the Donation does not, in our view and in Mr. Ogden's view as acknowledged by his lawyer, affect the property rights of LSU/UNO (through the affiliated Foundation and independently) in the donated art.

We would advise you that, at this point in time, there are continuing efforts to modify the September 25th Act of Donation between Ogden and the UNO Foundation to resolve the remaining narrow issue—which in no way relates to who owns the donated art or the state's right to continue to possess and show the donated art in Goldring Hall. Moreover, the *initial* Acts of Donation were formally accepted by the UNO Foundation. As recounted to your office previously, it is LSU's view that, based solely on that original donation, the state and LSU have property interests in the donated art—which we intend to enforce if necessary (which does not appear to be the case in light of the position of the donor and his counsel).

We agree that the initial transactions which began as early as 1996 could have been crafted differently and better, but for your office to continue to suggest that the art will not be available for its originally-stated educational and development purposes is to ignore the obvious reality.

Therefore, it is suggested that statements based upon this fundamental erroneous premise be corrected. Such statements are as follows:

Page 1       “However, the state has failed to obtain an agreement ensuring Mr. Ogden's works of art would be available for exhibition for a sufficient period of time to achieve the envisioned educational and economic benefits.”

Page 9       “...there has been no completed written donation of works of art by Mr. Ogden to the UNO Foundation, UNO or the LSU System.”

Page 9       “...the state has failed to obtain an agreement ensuring Mr. Ogden's works of art would be available for exhibition for a sufficient period of time to achieve the envisioned educational and economic benefits.”

Page 12      “However, the state has failed to obtain an agreement ensuring Mr. Ogden's works of art would be available for exhibition for a sufficient period of time to achieve the envisioned educational and economic benefits.”

Exception is also taken to a related statement as a heading on page 9, "1. 1996 Act of Donation and Act of Acceptance Void." That statement, of course, is a *conclusion of law* beyond the competence or authority of the Office of Inspector General, even with respect to agencies clearly within the executive branch and subject to the authority of the Governor. Moreover, it is clearly inappropriate because no one involved in the transaction has taken the position that the donation is void. To the contrary, LSU has consistently taken the position, that while certain incidental provisions of the donation might have been unwise or problematic, the donation itself has always been deemed to be enforceable under the facts of this matter. It is not apparent why your office would take a position which is neither in the interests of LSU, the state, nor taken by any of the parties—who are the only ones who would have juridical standing to challenge the donation on the grounds upon which you rely. Again, LSU believes the original donation is enforceable as to the ownership of the art being in either the UNO Foundation, holding on behalf of LSU/UNO and the state, and/or in LSU/UNO itself.

**3. Your Contention That "The UNO Foundation Completed Construction On (sic) Goldring Hall Without Authority".**

The notion that you continue to espouse that there was construction on Goldring Hall without authority was addressed in our prior response, and is incorporated by reference.

**3. Your Contention That UNO Has Spent Or Caused The Expenditure Of Approximately \$12 Million In State Funds In Violation Of The State Constitution As It Has Not Entered Into The Appropriate Written Agreements Such As Cooperative Endeavors.**

This contention has also been addressed in our prior response. You state on page 13, "UNO and the LSU System erred by expending approximately \$12 million of state funds without proper cooperative endeavor agreements to protect the state's interest in the museum project." This statement not only lacks a legal or factual basis, but is inconsistent with the position you take earlier in the report (at page 6) when you recognize that the Division of Administration was responsible for building the state-owned building, Goldring Hall. Again, it is respectfully suggested that the legal conclusions your office takes on complex contractual, factual and constitutional

issues are beyond the authority granted your office--even with respect to agencies under executive branch authority.

This lack of authority of your office to express legal opinions is obfuscated (intentionally or not) by reference to and distortion of an Attorney General's opinion. Your persistent attempt to have the reader infer that an Attorney General's Opinion is the reason that a final cooperative endeavor agreement was not signed by LSU—even though the Board of Supervisors has authorized an appropriate agreement to be signed by the President--is unfounded. Your investigators were fully informed, and the facts fully reflect that the decision to not sign a *proposed* draft cooperative endeavor agreement was related to policy issues wholly unrelated to whether there should and would be a final, formal cooperative endeavor agreement—or ownership of the art. At the time the Attorney General was preparing his opinion, his staff was fully informed that the *proposed* agreement would not be signed, and that the decision to do so was made even before a request was made of the Attorney General by third-parties. To suggest that the Attorney General's opinion caused LSU not to sign the proposed cooperative endeavor agreement is wholly inappropriate and unfounded.

To further suggest that the "Provisional Agreement" is insufficient under the circumstances, while there has been constant effort to resolve the many issues in this matter (which date back to 1996) is overly simplistic and unfair. If the criticism is intended to direct itself to matters that took place or should have taken place in 1996, then that position should be made clear.

We again express our appreciation for the opportunity to comment upon your latest draft report. As indicated above, we will not burden you by restating our prior comments to your earlier draft report which are incorporated by reference. We will, however, repeat our prior statement that we recognize that the complexity, non-routine and even less-than-exemplary formality of some of these transactions dating back to 1996, and involving multiple parties, make an understanding of the overall situation difficult and an evaluation of it complex. The laudatory goal of improving the administration of state agencies and their transactions should not be a substitute for fair and accurate reporting and characterization of the transactions.

**For UNO (and the LSU System as applicable):**



P. Raymond Lamonica  
General Counsel, LSU System,  
J.B. Nachman Professor of Law



Louisiana State University System

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December 18, 2003 (hand delivery)

Mr. Bill Lynch  
Inspector General  
State of Louisiana  
Division of Administration  
P. O. Box 94095  
Baton Rouge, LA 70804-9095

RE: Your December 5, 2003, Draft Report File 1-04-001

Dear Mr. Lynch:

We are in receipt of your draft report of December 5, 2003, concerning file 1-04-001. Because this matter has been ongoing since 1996 and involves both facts and legal conclusions about which President Jenkins could not have personal knowledge, President Jenkins is not in a position to respond properly. Please consider this the invited response on behalf of UNO (and the LSU System of which it is a part, as applicable) developed after review of the facts and law.

Many facts in the report with respect to the University of New Orleans (UNO) (as a part of the LSU System) are plainly in error. While we recognize the difficulty of obtaining correct facts dating as far back as 1996 and involving complex and non-routine transactions, we are disappointed with the pervasive factual errors which we believe taint the entire report. We are particularly disappointed in light of the fact that various UNO and LSU representatives met with and talked to representatives of the Office of the Inspector General on numerous occasions and provided documents and accurate facts.

Although we disagree with your assessment with respect to the funds returned to the UNO Foundation by the Division of Administration and your characterization that such was in violation of the law, we leave those *fundamental issues of proper fiscal administration* (rather than legal issues) to the Division of Administration for response. However, your assertion that the UNO Foundation completed construction and installed furnishings and equipment in Goldring Hall "without authority" is clearly false and misleading. The report alleges that such completion of construction would have required a cooperative endeavor agreement. To the contrary, there is no legal requirement that a cooperative endeavor

agreement be in place in order for a private entity to spend private monies improving a public building. The work clearly was done with the full knowledge and approval of Office of Facility Planning and the University. Moreover, the decision to allow the completion by the Foundation was a decision by the Office of Facility Planning--which it had full authority to make. The fact that your office might believe there is a more prudent way to handle such transactions is not a proper subject for a report in the tone presented.

With respect to the remainder of the report, we call the following factual errors and erroneous legal conclusions to your attention for correction:

A. DONATION OF ART.

Repeatedly the report asserts that no donation has been granted by Roger Ogden to the UNO Foundation. This statement is incorrect. The donation of the art by Mr. Ogden was accepted in the "Act of Donation" by Roger Houston Ogden to the University of New Orleans Foundation, Inc., executed in late 1996. That Act contained a clear acceptance by the Foundation in paragraph 2, and *thereby transferred title of the art to the Foundation*. However, even if the "Act of Acceptance" executed around the same time is read in conjunction with the Act of Donation, there is no evidence that Mr. Ogden has ever exercised *any* rights under the Act of Acceptance including any rights to resolve (or terminate) the donation. To the contrary, Mr. Ogden informed the Inspector General's Office that he had waived conditions as they occurred. Regardless, the donation was clearly accepted by the University of New Orleans Foundation, Inc., and nothing has occurred that would resolve (or terminate) that donation. In September of 2003, when Mr. Ogden confirmed the earlier donation through a second Act of Donation containing less onerous conditions, the earlier acceptance of a more onerous donation continued and title to the art continues to be in the University of New Orleans Foundation, Inc., with ancillary property rights pursuant to the *stipulation pour autri* in UNO. Statements that Mr. Ogden could retrieve his art from Goldring Hall are false and misleading. The confirming 2003 donation clearly states that ownership of the donated works can never be returned to Mr. Ogden; instead, in the event of a default, title to the donated works would transfer to the Museum Foundation, and the Museum Foundation would continue to lease the Taylor Library, the Clementine Hunter Education wing and the Connection for 99 years, resulting in the art's remaining in the current location. Please observe that the recent Act of Donation contains a *Stipulation Pour Autri* in favor of UNO, as a third party beneficiary which creates a unique property right in the art in UNO. Pursuant to that stipulation, the donated works shall not be removed from Goldring Hall without the prior written consent of UNO, other than for temporary loans or for preservation or conservation.

Additionally, the report's concentration on the original Act of Donation is misplaced because of the language in the new confirming donation which states unequivocally that Mr. Ogden has no ability to retrieve the donated art. We also note that your discussion of Dr. O'Brien's signature on the original act of acceptance is

meaningless and irrelevant. UNO did not need to be a party to the Donation and Acceptance, so Dr. O'Brien's signature was unnecessary and gratuitous. Representatives of LSU pointed out that fact to your representatives. There certainly is no need to repeat such in the report or to suggest that corrective action is necessary. Any needed action has been taken.

The draft report alleges on page 14 that there is "no executed agreement between Mr. Ogden and the UNO Foundation, UNO or the LSU System to exhibit or house Mr. Ogden's personally owned art in Goldring Hall, a state-owned building." There are numerous inaccuracies in that single statement. First, Mr. Ogden has already donated the specified art to the UNO Foundation. Therefore, there is no need for an agreement between Mr. Ogden and the Foundation with respect to exhibiting or housing the donated art. In fact, as discussed below, there is an agreement in place between the Foundation and the University with respect to the exhibiting or housing of that art. Furthermore, the donated art is not Mr. Ogden's "personally owned art" and therefore there is no need for an agreement with respect thereto. The only "personally owned art" involved here that Mr. Ogden owns is the *loaned* (rather than donated) art as defined in the 2003 donation (which, of course, is an "agreement") which does stipulate conditions with respect to the exhibiting and housing of the loaned art. Only Mr. Ogden's loaned art can be returned to him.

As to the recommendations on page 15, we respond that the UNO Foundation has, in fact and in law, obtained a donation of art from Mr. Ogden. That donation contains terms negotiated between the Foundation and Mr. Ogden. Absent some prejudice to the state, which is not specified, it is not the State's concern as to what conditions that donation may include.

The LSU Board is clearly aware of its rights and obligations regarding the art as set forth in the Provisional Agreement, and it is unclear what "liability of the State" you would seek for us to minimize. We would disagree with the report's general and vague mischaracterization of and assumptions made about the Board's by-laws and procedures, and compliance therewith.

## B. COOPERATIVE ENDEAVOR.

Any suggestion that UNO (and the LSU System) spent \$12 million of State funds without executing cooperative endeavor agreements is *totally* false and misleading. The State of Louisiana, Division of Administration, through the capital outlay process received legislative approval for the construction *by Facility Planning and Control* of a state building for UNO. None of the expenditures for capital outlay are University expenditures under any circumstances. No cooperative endeavor is required for Capital Outlay construction of a state building for state use. The donated art has been placed into the State's building, and the State's building is being used as a museum by UNO for the benefit of UNO and the State. The 2003 donation by Mr. Ogden made it clear that, regardless of any "conditions," the donated art would remain

in the complex. UNO has expended funds for employees to support UNO's museum project. UNO also has expended monies for utilities and insurance premiums for a State building. There is no need for a cooperative endeavor to authorize expenditures of state money on a state building or for a public purpose which is a direct benefit to UNO and the State of Louisiana.

- (1) UNIVERSITY EMPLOYEES, UTILITIES, INSURANCE PREMIUMS. Allegations that UNO spent money for salaries and expenditures which were non-state related duties and activities are false. There are no non-state related duties and activities with respect to the operation of a UNO museum for the benefit of UNO and the State. Furthermore, the fact that UNO does not own the art is irrelevant to the issue of the importance of the museum to UNO's mission and programs. It is common for a museum to display exhibits belonging to others and therefore to provide utilities and personnel in support thereof. As indicated above, the money spent by UNO has been spent for UNO purposes, UNO employees, UNO functions and UNO missions. All the money has been spent on a State project for State benefit in a State building. It is hard to see how this is a state support of anything other than UNO. With respect to the matter of insurance premiums. In our experience, the Office of Risk Management often insures buildings not owned by the State but which are used by the State or title to which will come to the State at some further point. Furthermore, ORM as you well know, has long provided insurance for university-related foundations. We see no issue with respect to the insurance by ORM of the buildings housing UNO's museum.

With respect to the assertion that UNO has paid utility expenses for certain foundation-owned buildings, we have been advised that the UNO museum staff was occupying those buildings for a number of years, and that parts of the buildings were used for UNO museum-related storage.

The UNO Foundation has the right of occupancy of certain parts of Goldring Hall pursuant to the Provisional Agreement, and the responsibility to cover certain costs and provide certain services. This right of occupancy gives them the right to receive funds in connection with that occupancy to cover their associated costs. Nothing is received by the Foundation not connected with their occupancy and providing of services related thereto.

- (2) \$10 MILLION CONSTRUCTION. There is no real issue presented here, only a distortion of the true facts, and, significantly, a disagreement over policies assigned to other governmental entities, including the Legislature and Division of Administration--not the Office of Inspector General. The State spent \$10 million in Capital Outlay funds to construct a building to house the Ogden Museum of Southern Art. The museum is open and available to the University and to the public of Louisiana. The confirmation of the donation by Mr. Ogden made clear that, regardless of failure by the Foundation to meet conditions, the art will remain in the complex and the museum will be an economic, educational and cultural plus for that area of New Orleans. The State invested in an economic development project, invested in higher education, invested in the City of New Orleans, and the investments are well justified. We would also note that there are inaccurate statements in this section, but, due to the irrelevance of the issue, we will not address those inaccuracies point-by-point. We believe the entire section should be deleted.
- (3) "FAILED" COOPERATIVE ENDEAVOR. Many pages in the report are filled with a description of an early draft of a cooperative endeavor that was not finalized. Any discussion of an early draft of a cooperative endeavor that was not executed (by LSU's decision long before your investigation) is not relevant to any matter at issue in your report. We would also note the inaccuracy of many of the statements in this section, but, due to their irrelevance, we will not address those irrelevant inaccuracies point by point. We believe the entire section should be deleted.
- (4) LACK OF A COOPERATIVE ENDEAVOR. Although the relationship between UNO and the UNO Foundation does not require a formal cooperative endeavor agreement, such an agreement, in effect, is already in place. The University and the Foundation have executed a Provisional Agreement which authorizes the placement of the art in Goldring Hall and dictates the use of parts of Goldring Hall. As indicated above, this is UNO's museum, and, in the Provisional Agreement, UNO agrees as to certain matters involving the operation of the museum and the placement of the art. There is no need for "recovery of state funds" because UNO's expenditures have been for the benefit of UNO, UNO's mission and UNO's museum, all as contemplated since 1996.

D. ROGER OGDEN'S ALLEGED CONFLICT OF INTEREST.

We would first respectfully, but strongly, suggest that an Inspector General's Report is not the appropriate place to publicly speculate about alleged violations of complex ethics laws and related facts and, even worse, to suggest conclusion about them. As you well know and acknowledge, the responsibility of investigation of ethics law violations is exclusively with the Board of Ethics. That Board has in place specific protections required by the legislature to assure that facts are properly developed and that rights of the person being investigated are protected. **Our comments here also should be considered *non-public and investigative* in light of the nature of the Ethics Law and enforcement procedures.** See e.g. La. R.S. 42:1141. We offer them only for any assistance they may provide in connection with your factual investigation

We believe it is speculative to suggest that Mr. Ogden has a personal, substantial economic interest, as contemplated by the ethics laws, in the donated arts. The art was originally donated many years ago, and that donation has recently been confirmed. Ogden has no ability to retrieve the donated art. As determined by your investigators, Ogden did not even take a tax deduction for the art and, in fact, the donation of the art greatly depleted his estate. Furthermore, the Ethics Code provides an exception in La. R.S. 42:1123(30) for donations by public servants. It is our understanding that Mr. Ogden is no longer a member of the Board of Trustees of the Ogden Museum of Southern Art, Inc., although participation in the affairs of charitable, religious, non-profit, educational, public service or civic organization where no compensation is received is permitted by the Ethics Code. La. R.S. 42:1123(1). Mr. Ogden does not retain legal ownership or control of the donated art. Furthermore, Mr. Ogden needs no cooperative endeavor to "use" Goldring Hall. He is not so using it. The donated art, which belongs to the Foundation, is located in Goldring Hall, as well as is the loaned art which is under the custody and control of the Foundation and subject to the Provisional Agreement with the University. It all is being held for the benefit of the University and public, as was the original intent.

E. COMPLEX NAME IN VIOLATION OF STATE LAW.

The *only State building* involved in the transaction is *Goldring Hall*, which is named appropriately, "Goldring Hall." The designation of the Ogden Museum of Southern Art is a designation of an enterprise, function or program. A "museum" is not a building and the "Ogden Museum of Southern Art" is not the name of a particular building. The property located at 925 Camp Street is named "Goldring Hall" and it is not named after any living being. The museum is not a building or a complex of buildings. There is no intent to name a state building as the "museum." La. R.S. 14:316 is a criminal provision which everyone knows must be strictly construed. The "spirit" of it plays no role in determining what the law is even if the "spirit" of a criminal statute could be determined.

We recognize that the complexity and non-routine nature of some of these transactions and that the less-than-textbook (with hindsight) manner in which some of the transactions have been administered at times have contributed to the difficulty of understanding and the misstatements of fact contained in your report. However, we also believe that, any further dissemination of incorrect information in that draft would be unfair to the parties criticized, inappropriately hold them in a false light and be in disregard of the truth. We are certainly willing to continue to work with you and your staff to develop the correct facts, correct legal analysis and to learn from the past experiences to meet our common goal of improving administrative matters that affect UNO, and the State and LSU System.

**For UNO (and the LSU System, as applicable):**



P. Raymond Lamonica  
General Counsel LSU System

Nancy C. Dougherty  
Taylor, Porter, Brooks & Phillips, L.L.P.

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# **Response**

Roger Ogden

by Stone Pigman Walther Whitman, attorneys

STONE PIGMAN WALTHER WITTMANN L.L.C.

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61,737

June 1, 2004

VIA FACSIMILE & U.S. MAIL

Mr. Kenneth Albarez  
Office of State Inspector General  
P.O. Box 94095  
224 Florida Street, Suite 303  
Baton Rouge, Louisiana 70804-9095

**Re: Ogden Museum of Southern Art; File No. 1-04-0012**

Dear Mr. Albarez:

We are in receipt of your May 18, 2004 letter, which attached a revised draft Report on the Ogden Museum of Southern Art. While we appreciate the opportunity to comment on your draft, we maintain and reiterate the arguments made in our January 5, 2004 and April 21, 2004 letters to your office and reiterate the concerns expressed in those letters.

We are particularly concerned because, as former Governor Mike Foster pointed out in his letter of April 19 to Mr. Berthelot, he never requested the Office of the State Inspector General to initiate any investigation, much less an investigation of Mr. Ogden over whom your office has no jurisdiction. I refer you to Mr. Lamonica's letter to you of May 26, 2004 for a more detailed discussion of the lack of official right or authority, or even color of law, to make formal recommendations with respect to Mr. Ogden in his capacity as chairman of the Board of Supervisors of the Louisiana State University.

That having been said, I would call your attention to a number of errors on the first page of your draft report. In your fourth bullet point, you state that the State of Louisiana has spent in excess of \$12 million to construct Goldring Hall. That is incorrect. The State has spent approximately \$7 million, which was matched by \$5 million in private funds. Moreover, the museum was not developed and operated "to primarily exhibit Roger Ogden's works of art" as you state. It was built to house works of art of the American South, of which the Ogden collection is the Founding Donation. Moreover, the statement that the State has failed to obtain an agreement insuring that Mr. Ogden's donated works would be available for a sufficient period of time to achieve the envisioned benefits is simply untrue. The UNO Foundation has a complete and fully executed 1996 donation, which was augmented by a supplemental donation in

2003, making the donation irrevocable. Moreover, Mr. Ogden donated another \$20 million in art to the UNO Foundation in 2003.

Your sixth bullet point on page 1 is also erroneous because of the erroneous \$12 million figure.

Your seventh bullet point, suggesting that Mr. Ogden may have violated the State Code of Ethics, is simply outrageous given the lack of standing of your office to opine on ethics at all. Mr. Ogden has met with representatives of the Board of Ethics and we expect to hear from the Board in June. As you know, at this point the proceedings before the Board of Ethics are confidential and any publication by the Office of the Inspector General alleging potential violations of the State Code of Ethics would be defamatory.

You might consider pointing out on page one of your report that the UNO Foundation and the Ogden Museum Foundation have raised over \$3 million in addition to the \$5 million raised for construction of Goldring Hall, to cover the library and museum operations.

#### BACKGROUND

Moving to page two of your draft, in the first paragraph your last sentence is not accurate. Mr. Ogden declined a proposal to exhibit his collection on the UNO campus due to a concern of a lack of public access in the Lakefront area.

The sixth paragraph on that page is also inaccurate. The \$228,000 referred to is not money taken from the UNO budget. That money is found in a separate line item in the State budget dedicated to the museum and those funds are not taken from the UNO budget.

The final paragraph on page two is also incorrect since the \$2,418,000 donated to the project by the UNO Foundation is not "State Funding" but money received from a non-profit corporation.

On page three, you erroneously state that the Ogden Museum of Southern Art is currently operated by UNO and UNO Foundation employees. That is incorrect. There are no UNO Foundation employees operating the museum. The museum is operated by Ogden Museum employees. The museum is operated pursuant to an operating agreement between the Ogden Museum of Southern Art, Inc. and the University of New Orleans.

#### LACK OF UNO FOUNDATION CONSTRUCTION AUTHORITY

Your claim that construction of Goldring Hall was without authority because of the lack of a cooperative endeavor agreement misses the point. There was no need for a cooperative endeavor agreement in order for a private entity to spend private monies improving a public building. All of this was pointed out earlier in Mr. Lamonica's letter to Mr. Lynch of December 18, 2003. That same error is repeated several times on page eight of your draft.

#### NO WRITTEN DONATION OF ART

I am at a loss to understand how your office contends that there has been no written donation of Mr. Ogden's art. Indeed, there have been two written donations and the

donations are now irrevocable. Your further statement on page 9 that the 1996 Act of Donation and Act of Acceptance are void is simply untrue. Who says that it's void? Neither the donor nor the donee contend that the donation is void. Your contention on the following page (page 10) that Mr. Ogden has not executed written waivers is incomplete at best. What he has done is to triple his donation of art to the UNO Foundation and has not placed the UNO Foundation in default for failure to complete its responsibilities it assumed in 1996.

#### SALARIES AND RELATED EXPENSES

Your statement in the first paragraph on page 15 that salaries and related expenditures have been made for non-state related duties and activities is simply false. The expenditures to which you refer are a specific line item in the legislative appropriations and are over and above the UNO operating budget. Moreover, both Mr. Delehante and Mr. Gruber were and are faculty members at the University of New Orleans, have taught courses at UNO and have, in addition, raised funds for operation of the Ogden Museum of Southern Art. Other members of the Ogden staff have also taught courses at UNO.

#### FAILED COOPERATIVE ENDEAVOR

Your paragraph three beginning on page 17 should simply be eliminated. The cooperative endeavor agreement is not going to be implemented so the entire discussion on page 17, 18 and 19 and part of page 20 should simply be eliminated as should your paragraph four referring to a lack of a cooperative endeavor agreement.

#### ROGER OGDEN CONFLICT OF INTEREST

The entirety of page 22 of your draft should be rejected. The Office of the State Inspector General has no authority to opine on the State Board of Ethics and the rules of the Board mandate a private inquiry before publication of any ethics charges. That private inquiry has been conducted with representatives of the State Board of Ethics and, as noted earlier, we expect a report sometime in June. The Office of the State Inspector General has no basis for suggesting any conflict of interest on the part of Mr. Ogden and I want to put you on notice that any such publication by the Inspector General will be considered defamatory and we believe will have been made with actual malice given the complete explanation that you have been afforded by both the Office of General Counsel for the Louisiana State University System and the undersigned.

Please feel free to contact us if you would like to discuss this matter further. We appreciate your cooperation and courtesies in this matter in the past and hope that, insofar as Mr. Ogden is concerned, your office will discontinue this investigation.

Sincerely,

A handwritten signature in black ink that reads "Phil Wittmann". The signature is written in a cursive, slightly slanted style.

Phillip A. Wittmann

PAW:dlm

cc: Mr. Roger Ogden

STONE PIGMAN WALTHER WITTMANN L.L.C.

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OUR FILE NUMBER

61,737

January 5, 2004

VIA FACSIMILE & U.S. MAIL

Mr. Bill Lynch  
State Inspector General  
Office of State Inspector General  
P.O. Box 94095  
224 Florida Street, Suite 303  
Baton Rouge, Louisiana 70804-9095

**Re: Ogden Museum of Southern Art; File No. 1-04-0012**

Dear Mr. Lynch:

We represent Roger Ogden, and we are writing to respond to the unfounded allegations contained in the draft Report on the Ogden Museum of Southern Art that was sent to Mr. Ogden on December 5, 2003.

Before addressing a preliminary jurisdictional issue and responding to the Report's specific allegations against Mr. Ogden, a few general observations are in order. Mr. Ogden wishes to express his disbelief at the tone and tenor of the draft Report and its attack upon him. It is almost inconceivable that such criticism and vilification should be Mr. Ogden's reward for his efforts to donate a magnificent art collection for the public benefit.

The Inspector General appears oblivious to the central realities surrounding the Ogden Museum project and, in particular, to Mr. Ogden's charitable efforts to bestow a culturally and economically valuable gift upon both the UNO Foundation and the citizens of the City of New Orleans and the State of Louisiana. Amazingly, the draft Report leaves the strong impression that the Inspector General's investigation has found self-dealing, undue influence and other forms of misconduct in connection with this project when nothing could be further from the truth. The truth is that Mr. Ogden has not derived and will not derive any economic benefit from the actions that are the subject of the draft Report, and that his only interest is in donating art valued on the order of \$30 million under conditions assuring that it will be perpetually accessible to members of the public for viewing in an appropriate environment.

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Release of the Report as presently drafted, with its suggestions of misconduct and illegality, risks damage to the reputation of a man seeking to make a bequest that enriches this State and its citizens. Publication of the inaccuracies contained in the Report by the Inspector General not only would be morally reprehensible, but also would be legally actionable. Furthermore, it would send a strong negative message to other philanthropists that they should expect hostility toward attempts to exercise benevolence for the benefit of the citizens of this State.

**A. The Inspector General Does Not Have Jurisdiction To Investigate Or Report On The Actions of State Universities Or Mr. Ogden.**

The Office of the Inspector General was established by Governor Roemer through Executive Order BR 88-10. Governor Edwards maintained the establishment of the Office through Executive Order EWE 92-59. Governor Edwards' Executive Order was the last executive order regarding the establishment and jurisdiction of the Office of the Inspector General.<sup>1</sup>

Section 6 of that Order sets forth the "area of authority" over which the Inspector General is empowered to exercise his duties:

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<sup>1</sup> As noted in the text, the last executive order to establish the Inspector General's office and its duties and authority was issued by Governor Edwards. Governor Foster has not issued a comparable executive order, although a representative in the Inspector General's office has asserted to us during a telephone inquiry that Governor Foster has renewed, without modification, the terms of EWE 92-59. Otherwise, in the absence of a valid renewal, EWE 92-59 expired soon after Governor Edwards left office in or about 1996, pursuant to La. R.S. 49:215, which provides: "C. Each executive order ... shall terminate and shall be void and of no effect on such date as shall be provided in the executive order or a subsequent executive order. If no such termination date is provided by executive order, the order shall terminate sixty days following adjournment *sine die* of the regular session of the legislature after the issuing governor leaves office. D. The governor may establish executive branch agencies by executive order. Any agency so created shall terminate on such date as is provided in the executive order or by subsequent executive order, which termination date shall be within one year of the date of issuance of the order, unless the agency is, within such period, statutorily created or terminated by the legislature." If the Order expired, then the Investigator General has *no* authority to conduct *any* activities, even those not excluded by EWE 92-59.

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Section 6: Area of Authority

- A. All departments, agencies, boards, commissions, authorities, task forces, and divisions of the Governor's Office are covered by provisions of this order.
- B. The area of authority for the state inspector general shall not include the state universities and colleges, or other statewide elected officials.<sup>2</sup>

The Order clearly precludes the Inspector General from reviewing the actions of state universities. Mr. Ogden is a member of the Board of Supervisors of Louisiana State University. That Board supervises and manages the Louisiana State University system,<sup>3</sup> and is established pursuant to Article VIII, Section 7 of the Louisiana Constitution of 1974. As such, actions of the University Board, and Mr. Ogden's actions as a member of that board, are not subject to the Inspector General's scrutiny. Similarly, because the University of New Orleans is part of the Louisiana university system,<sup>4</sup> the Inspector General has no authority to review the actions of UNO or of Mr. Ogden as a member of the Board of Supervisors. Specifically, the Inspector General only can review the actions of the departments, agencies, boards, commissions, authorities, task forces and divisions of the Governor's Office. Clearly, Mr. Ogden's private actions, including his charitable donations to the UNO Foundation, as well as the actions of the private UNO Foundation corporation, do not fall under the Inspector General's area of authority.

In light of the foregoing, the Inspector General has improperly exceeded his authority by investigating and reporting upon the actions of the following university and/or private actors: Roger Ogden, the Board of Supervisors of LSU, the UNO Foundation and UNO.

Either because of Governor Foster's failure to authorize the existence of the Inspector General's office, or because of the express terms of the allegedly-renewed Executive Order EWE 92-59, the Inspector General has no jurisdiction to review the actions of Mr. Ogden, the Board of Supervisors of LSU, the UNO Foundation or UNO. Accordingly, the Inspector General has expended the resources of the State to conduct an extensive investigation that he has no legal authority to conduct. Moreover, if the Inspector General publishes the Report or issues recommendations to the Board of Ethics, the Inspector General will have further exposed himself and the State of Louisiana to potential legal liability.

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<sup>2</sup> Executive Order EWE 92-59, Section 6.

<sup>3</sup> La. R.S. 17:3215.

<sup>4</sup> La. R.S. 17:1551.

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Notwithstanding the Inspector General's lack of authority to review Mr. Ogden's actions, Mr. Ogden feels compelled to respond to the sections of the Report entitled "Roger Ogden Conflict of Interest",<sup>5</sup> "Complex Name in Violation of State Law"<sup>6</sup> and "Cooperative Endeavors",<sup>7</sup> as well as to the Report's conclusions regarding Mr. Ogden's donation of art to the UNO Foundation. These Report sections contain direct and inaccurate accusations regarding Mr. Ogden, and are accordingly appropriate subjects of Mr. Ogden's response to the Report. No conclusions or inferences should be drawn regarding this document's silence regarding other portions of the Report or as to the Report's conclusions regarding persons or entities other than Mr. Ogden.

**B. No Conflicts of Interest Exist For Mr. Ogden**

**1. The False Premise Underlying the Inspector General's Finding of a Conflict.**

The Report section entitled "Roger Ogden Conflict of Interest" rests on the false premise that Mr. Ogden has a "personal substantial economic interest" in the art collection. [Report at p. 25.] Since 1996, when Mr. Ogden executed an Act of Donation and Act of Acceptance, Mr. Ogden has continuously acted under the premise that he intends to divest himself of title to the Donated Works. Mr. Ogden's donative intent is evidenced by the fact that he has turned over possession of the Donated Works to the UNO Foundation and has consistently offered to enter into a new donation of the Donated Works to replace the 1996 Act of Donation, whose terms were not met by the UNO Foundation.

Mr. Ogden's continued efforts to perfect his donative intent finally came to fruition in October of this year when officers representing the UNO Foundation orally agreed upon the terms of the donation. The 2003 donation executed by Mr. Ogden is attached hereto as Exhibit "A." Although the UNO Foundation has since improperly and unilaterally attempted to renegotiate certain terms of the agreed donation and refused to sign the Act of Donation, the Foundation's oral assent thereto and its retention of possession of the Donated Works constituted acceptance and consummated the donation. La. C.C. art. 1541.

Mr. Ogden's intent to divest himself irrevocably of ownership of the Donated Works is demonstrated by the terms of the 2003 Act of Donation. Although that document sets forth basic conditions of the donation, Mr. Ogden agreed he will never again obtain title in the Donated Works even if the conditions are not fulfilled. Specifically, Section 5 of the Act of

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<sup>5</sup> Report at pp. 25-28.

<sup>6</sup> Report at pp. 28-30.

<sup>7</sup> Report at pp. 15-25.

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Donation contains "Initial Conditions." If the UNO Foundation does not fulfill those conditions, the Act permits the transfer of ownership of the Donated Works from the UNO Foundation to the Museum Foundation. [2003 Act of Donation, § 5.] Moreover, although Section 6 of the Act of Donation enumerates "Surviving Conditions", the Act states that the "Donation of the Donated Works under this act is irrevocable. Notwithstanding any provision of this instrument, including without limitation the provisions of Sections 5 and 6 above, Ogden shall not be entitled to resolve the donation or to recover ownership of the Donated Works." [*Id.*, §§ 6, 13.]

Further, the 2003 Act of Donation contains a *stipulation pour autrui* in favor of the University of New Orleans: "The Donated Works shall not be removed from Goldring Hall without the prior consent of UNO, except that Donated Works may be removed from Goldring Hall without the prior consent of UNO (a) for temporary loans of works to other institutions or (b) for preservation or conservation of the works or for other purposes customary in the operation of museums. This provision is a *stipulation pour autrui* in favor of UNO, as a third-party beneficiary, which UNO may enforce by specific performance." [*Id.*, § 14.]

For approximately seven years, since 1996, Mr. Ogden has consistently acted to ensure that the Donated Works were irrevocably transferred to the UNO Foundation. Throughout that period it remained only for the UNO Foundation to fulfill the Initial Conditions of the 1996 Donation or agree to the revised terms proposed by Mr. Ogden after the 1996 Donation expired when the Initial Conditions were not fulfilled. For the Inspector General to focus on legal technicalities in the face of this seven-year history is to promote the hollow victory of form over substance, and to risk defeat of Mr. Ogden's charitable endeavors. Moreover, the donation has now been perfected by the UNO Foundation's oral acceptance and retention of possession of the Donated Works. Under Louisiana Law, an *inter vivos* donation, such as Mr. Ogden's donation to the UNO Foundation, is effective from the date of acceptance. La. C.C. art. 1540. Now that title has been relinquished through the irrevocable donation provided for in the 2003 Act of Donation, there can be no argument that Mr. Ogden has a "personal substantial economic interest" in the Donated Works. Any perceived conflict that is based on the alleged premise that Mr. Ogden has a "personal substantial economic interest" in the Donated Works must fail.

In addition, the first paragraph of the Report's conflict of interest section states that "Mr. Ogden has an inherent conflict of interest because the LSU System Board of Supervisors, of which he is a member, has been and will be called upon to engage in transactions affecting the collection and its housing." [Report at p. 25.] Because no specific "transactions" are identified, this amorphous allegation cannot be responded to with any particularity. Suffice it to say that Mr. Ogden has consistently done all that is reasonably within his power to ensure that he legally has divested himself of title in the Donated Works. Now that this has been

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accomplished, any technical basis for any perceived conflict arising from his ownership no longer exists.

**2. Mr. Ogden Has No Economic Interest in the Ogden Museum of Southern Art, Inc.**

The Report asserts that "Mr. Ogden has a continuing conflict of interest as a member of the LSU Board and having personal substantial economic interest in the Ogden Museum of Southern Art, Inc., which administers or is otherwise affiliated with the Ogden Museum of Southern Art located in Goldring Hall." [Report at p. 25.] The conflict-of-interest conclusion is erroneous for at least two reasons. First, the conclusion is premised on the incorrect, unsubstantiated assertion that Mr. Ogden has a "personal substantial economic interest in the Ogden Museum of Southern Art, Inc." [*Id.*] Mr. Ogden has *no* economic interest in the Ogden Museum of Southern Art, Inc., which is a *non-profit* educational corporation that uses all money that it receives for the benefit of the Museum. Mr. Ogden receives absolutely no money or other economic benefit, directly or indirectly, from the Ogden Museum of Southern Art, Inc., and his financial position is not affected by anything that happens to that entity.

Second, even if one were to assume that Mr. Ogden had a personal substantial economic interest in that non-profit educational corporation, the conflict would be waived pursuant to La. R.S. 42:1123(1), which states: "This Part shall not preclude: (1) Participation in the affairs of charitable, religious, nonprofit educational, public service, or civic organizations, bona fide organized public volunteer fire departments when no compensation is received, or the activities of political parties not proscribed by law." La. R.S. 42:1123(1).

Mr. Ogden no longer holds any position with the Ogden Museum of Southern Art, Inc., having resigned his position as of September, 2003. Prior to that time, he was one of twenty-nine uncompensated trustees of the Ogden Museum of Southern Art, Inc.,<sup>8</sup> and as such he

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<sup>8</sup> Page 26 of the Report contains a one-paragraph section entitled "Ogden Museum of Southern Art, Inc." The paragraph contains no specific allegation of conflict, and appears to exist solely to establish that Mr. Ogden was a trustee of that non-profit corporation, and that neither UNO nor the UNO Foundation will administer the Ogden Museum of Southern Art. Mr. Ogden is no longer a trustee of the Museum corporation but he does not dispute that he was a trustee at one time and that neither UNO nor the UNO Foundation administers the Museum. However, as is explained in the body of this response, because Mr. Ogden was an unpaid trustee of the Ogden Museum of Southern Art, Inc., La. R.S. 42:1123(1) obviates any conflicts that are alleged to have arisen by virtue of Mr. Ogden's position on the LSU Board.

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was not confronted with a conflict of interest. Recent opinions issued by the Louisiana Board of Ethics establish that a state employee may serve on the board of a non-profit or charitable corporation even if that corporation has or seeks a relationship with the very state entity for whom the individual serves. For example, in Ethics Board Docket No. 98-645 (attached hereto as Exhibit "B"), the Board considered the propriety of the Dean of the LSU Medical School serving on the board of directors of a charitable corporation, Children's Hospital. The Dean received no compensation for his service on the board of directors, other than reimbursement for out-of-pocket expenses. *Id.*

The Board concluded that even though Children's Hospital had contracts with LSU Medical School, Section 1123(1) permits the Dean of the Medical School to serve on Children's Hospital's Board:

Section 1123(1) of the Code of Governmental Ethics would allow the Dean of the Medical School to serve on the board of directors you described. Because Children's Hospital is a charitable organization, the Dean is allowed to participate as a member of its board even though Children's Hospital has contracts with the LSU Medical School. The Dean is not allowed to receive compensation for his service on the Children's Hospital board of directors, but may receive reimbursement for documented out-of-pocket expenses. [*Id.*]

A similar interpretation of Section 1123(1) is found in Ethics Board Docket No. 2000-238 (attached hereto as Exhibit "C"). That opinion addressed an entity named Green Thumb, a nonprofit organization whose mission is to provide employment and training services to older and disadvantaged workers. *Id.* The issue was whether employees or directors of Green Thumb could serve on a local Workforce Investment Board ("WIB"), despite the fact that Green Thumb sought a business, financial and/or contractual relationship with that WIB. The Ethics Board concluded that so long as the employee or director was not compensated by Green Thumb, no conflict of interest would exist in light of 1123(1):

Sections 1111C(2)(d) and 1112B(3) of the Code of Governmental Ethics would be violated if a *compensated* employee of Green Thumb serves on a WIB and Green Thumb seeks a business, financial or contractual relationship with that WIB. However, the exception contained in Section 1123(1) of the Code would allow a non-compensated director of Green Thumb to serve as a WIB member, even if Green Thumb seeks a relationship with that WIB. [*Id.* (emphasis added).]

Given these opinions and the plain language of Section 1123(1), even if the Inspector General maintains his position that Mr. Ogden has a "personal substantial economic interest in the Ogden Museum of Southern Art, Inc.", that interest would be permissible given the fact that Mr. Ogden is no longer a trustee and in the past was an uncompensated trustee of that non-profit corporation.

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Section 1123(1) also undermines another Report conclusion for the same reasons. Specifically, the Report erroneously states that Mr. Ogden's "serving as a trustee of the Ogden Museum of Southern Art, Inc., and as an owner of substantial works of art<sup>9</sup> stored and maintained in Goldring Hall, has conflicting and/or opposing purposes and agendas with his position on the LSU Board." [Report at 26.] Again, Mr. Ogden was an unpaid trustee of the Ogden Museum and is no longer a trustee. Accordingly, based on the Children's Hospital and Green Thumb Ethics Opinions discussed above, there was and is no conflict by virtue of Section 1123(1).

3. **Allegations Contained Under the "Involvement of Mr. Ogden" Subheading.**

Mr. Ogden agrees that he has served on the LSU Board since 1991 and has been Board Chairman since 2002. Even though he was a board member when the legislature appropriated funds for the planning and construction of Goldring Hall, that money was appropriated by the legislature, not by the LSU Board.

With respect to the alleged conversation between Mr. Ogden and Chancellor O'Brien regarding the \$850,000 annual support for the museum, that conversation was not improper. The Report mischaracterizes Mr. Ogden's comment on that occasion by suggesting that he urged Chancellor O'Brien to place a higher priority on the Museum than on other University activities. In fact, Mr. Ogden's comments referred to the Chancellor's duty to raise funds for the University generally and the need to accord that function its appropriate priority among the Chancellor's other responsibilities. Throughout the time he served on the LSU Board, Mr. Ogden was UNO's "go-to" person on the Board when the University sought support for a number of other community partnerships and initiatives, such as the Research and Technology Park and the Teleplex project. Moreover, on more than one occasion from 1996 forward, Mr. Ogden made it clear to Chancellor O'Brien that he believed certain of these other projects should be given priority over the Museum, if necessary.<sup>10</sup> In any case, conversations between university officials are not subject to the Inspector General's jurisdiction under Executive Order EWE 92-59.

With respect to Mr. Ogden's abstention from the LSU Board's July 12, 2002, vote on a cooperative endeavor agreement, the agreement proposed at that meeting was not

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<sup>9</sup> As previously shown, for years Mr. Ogden has taken all reasonable steps to attempt to divest himself of ownership of the Donated Works and now has succeeded in doing so; any conflict conclusion based on an assertion to the contrary is erroneous.

<sup>10</sup> Chancellor O'Brien concurs with the statements contained in this paragraph.

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executed.<sup>11</sup> Accordingly, regardless of whether Mr. Ogden was able to abstain from such a vote, the issue is moot because the agreement never came into being. Moreover, because Mr. Ogden has now irrevocably donated the Donated Works, there can be no argument that he has any financial interest in any cooperative endeavor agreements that the LSU Board might vote on in the future, although, as discussed below, no such additional agreements will be required.

It is unclear what impropriety the Inspector General contends arises from Mr. Ogden's having allegedly discussed the cooperative endeavor agreement or other issues with Mr. Gibbs, Chancellor O'Brien or President Jenkins. It is inconceivable that there would have been no discussions between Mr. Ogden and University, Foundation and LSU System officials regarding a \$30 million donation that benefited each of those institutions, and it is reprehensible to suggest that such conversations were in any way improper. Mr. Ogden donated the Donated Works to a private, non-profit corporation, as he clearly had a right to do.

**4. Allegations Contained Under the "Additional Issues" Subheading.**

The money that UNO and the State have spent on the development and operation of the Ogden Museum does not create a conflict of interest. As noted previously, since the 1996 Act of Donation, Mr. Ogden acted under the consistent premise that he intended to part with title to the Donated Works, and he now has done so. Accordingly, his relationship with the Ogden Museum is that of a former unpaid trustee of the non-profit entity that operates the Museum. As shown by the Children's Hospital and Green Thumb Ethics Opinions discussed above, any alleged conflict during the time he was on the board would be pretermitted by 1123(1).

With respect to the absence of a cooperative endeavor agreement for the use of Goldring Hall, a separate portion of this response notes that partial formal and full de facto arrangements are in place and only one additional written agreement remains to be executed in order for a comprehensive cooperative endeavor arrangement to be fully formalized, which will not require any involvement by Mr. Ogden.

**5. Allegations Contained Under the "Code of Governmental Ethics" Subheading.**

This section of the Report that focuses on actions of the LSU Board (an improper subject of analysis for the Inspector General under EWE 92-59 in any case)<sup>12</sup> typifies the illogic

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<sup>11</sup> This is the same issue addressed in Conclusion No. 1 on page 28 of the Report.

<sup>12</sup> The issue of whether the Code of Governmental Ethics permits an LSU Board member to disqualify himself from participating in certain transactions is discussed in the preceding  
*(continued on next page)*

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and misunderstanding found throughout the draft Report. The Report begins with the proposition that the Code of Ethics permits a member of a State board to donate movable property to his agency. It then points out that Mr. Ogden did not donate any movable property to the LSU Board. From these premises, the Report appears to urge the entirely absurd conclusion that Mr. Ogden's donation therefore was improper.

Mr. Ogden donated his art to a *private*, non-profit entity, the UNO Foundation. Nothing in the Ethics Code, or any other law, precludes an individual from donating his property to a private foundation. The fact that the Ethics Code would allow a donation by Mr. Ogden to the LSU System, if anything, establishes *a fortiori* the propriety of a donation to an entirely separate, private entity. That the Code does not expressly permit or address the donation Mr. Ogden did make is not surprising and is totally irrelevant to whether that donation was proper.

**6. Allegations Contained Under the "Conclusions" Subheading.**

The first conclusion stated on page 28 of the Report has already been addressed. With respect to the second and third conclusions, no "additional conflicts of interest" will arise because Mr. Ogden no longer has title to or a reversionary interest in the Donated Works. Accordingly, his position on the LSU Board creates no conflict.

The fourth conclusion states that Mr. Ogden "may have violated the state Code of Ethics," and the Report recommends that the Board of Ethics should resolve that issue. Interestingly, however, the entire Ethics section of the Inspector General's Report seems to be based on the Inspector General's interpretation of the Code of Ethics. If the Inspector believes that violations of the Code of Ethics should be determined by the Board of Ethics, then Mr. Ogden respectfully represents that *all* conclusions regarding alleged ethics violations should be reserved if and until the Board of Ethics *independently* analyzes these issues. Again, because the Inspector General has no jurisdiction to review the actions of Mr. Ogden, the Inspector General has no jurisdiction to recommend that the Board of Ethics review Mr. Ogden's actions.

In any event, because the Inspector General believes that violations of the Louisiana Code of Ethics should be "determined by the Board of Ethics",<sup>13</sup> it is particularly improper for the Inspector General to make public any conclusions regarding the alleged ethical impropriety of Mr. Ogden's actions. Specifically, the Code of Ethics states that it is a misdemeanor for a member of the Board of Ethics "to make any public statement or give out any

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section. Moreover, as set forth previously, Mr. Ogden does not have a "personal substantial interest" in the Donated Works.

<sup>13</sup> Report at p. 28.

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information concerning a private investigation or private hearing of the board without the written request of the public servant or other person investigated."<sup>14</sup> These same privacy requirements should govern in the instant case. This is particularly true in light of the potential damage to Mr. Ogden's reputation stemming from these conclusions and the Inspector General's total lack of jurisdiction regarding these issues.

**C. No Public Building Is Named After A Living Person.**

No public building was named after Mr. Ogden, and as such there has been no violation of La. R.S. 14:316. That statute provides:

No public *building*, public bridge, public park, public fish or game preserve, or public wildlife refuge built, constructed, and maintained in whole or in part with public funds and title to which stands in the name of the state ... shall be named in honor of any living person. ... [La. R.S. 14:316 (emphasis added).]

The statute forbids only the naming of a *building* after a living person. The building at issue is named Goldring Hall. The museum within that building, which also will occupy other privately-owned buildings in the planned museum complex, is named after Mr. Ogden, and as such the statute has not been violated. The Attorney General has repeatedly stated that La. R.S. 14:316 is a "criminal statute and as such must be *strictly construed*." La. Atty. Gen. Op. No. 1986-814 (emphasis added).<sup>15</sup> Based on the strict construction of that statute, the Louisiana attorney general in that opinion held that a portion of a public building, such as a library within a school building, can be named after a living person without violating the statute.

The name of the building in this case is Goldring Hall. The museum is located in the building, and the *museum* is named after Mr. Ogden. Strictly construed, the criminal statute does not forbid the naming of a museum or other activity operating in a state-owned building after a living person, especially since the building that houses the museum is named after a deceased person. The attorney general opinion cited in the draft Report [La. Att. Gen. Op. 03-0111] concedes that only a loose (as opposed to a strict) reading of the statute could lead to the finding of an arguable violation: "the fact that the building is designated as 'Goldring Hall' ... is a distinction without a difference." [Report at 29.] That simply is not true. The attorney general acknowledges that the building is named "Goldring Hall", and as such there is no violation. In

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<sup>14</sup> La. R.S. 42:1141(E)(13)(a).

<sup>15</sup> "R.S. 14:316 is a criminal statute which must be strictly construed." La. Atty. Gen. Op. No. 1988-324 (holding that there "is no prohibition against a memorial being named for a living person when it is just a portion of a larger complex").

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fact, the 1996 Act of Acceptance quoted in the Report confirms that only the "name of the *Museum* shall be the 'Roger Houston Ogden Museum of Southern Art.'" [*Id.* (emphasis added).]

There has been no statutory violation, and any conclusion to the contrary will not withstand judicial scrutiny.

**D. The Cooperative Endeavor Agreed To By The Parties Is Clearly Constitutional.**

**1. The 2003 Act of Donation Irrevocably Divests Roger Ogden of Title to the Donated Art.**

The Section of the draft Report entitled "No Actual Donation of Art" states that the Initial Conditions of the 1996 Act of Donation and Act of Acceptance were not satisfied, that the new Act of Donation executed by Mr. Ogden in 2003 has not been executed by the UNO Foundation and concludes that Mr. Ogden has not donated any works of art to UNO or the UNO Foundation. [Report at pp. 10-14.] Moreover, the Report recommends that "to avoid future complications regarding ownership, UNO or the UNO Foundation should obtain a straightforward donation of art from Mr. Ogden with no suspensive or resolutive conditions." [Report at p. 15.]

Despite the failure of the UNO Foundation to satisfy the Initial Conditions of the 1996 donation, Mr. Ogden consistently demonstrated his continuing intention to donate his art collection to the UNO Foundation. As discussed above, Mr. Ogden and the UNO Foundation negotiated a new Act of Donation that was accepted by the Foundation in October, 2003. That donation increases dramatically the number of works donated from 263 works in the 1996 donation to 604 works in the 2003 Act. Moreover, the 2003 Act specifically extends the time allotted to the UNO Foundation to satisfy the Initial Conditions and substantially reduces the obligations of the Foundation.

When the original donation and acceptance were executed in 1996, it was anticipated that all of the Initial Conditions provided in those instruments would be satisfied concurrently and within the agreed time limits. As circumstances developed, including unanticipated litigation in connection with the Confederate Museum property, certain aspects of the project – in particular, the completion of Goldring Hall – were realized before others, such as the renovation of the Taylor Library and the completion of the Connection between the buildings. Mr. Ogden, in all good faith, has continued to cooperate, adapt and compromise in an effort to accommodate the changed circumstances. This is illustrated by the terms of the 2003 Donation, which are substantially revised in favor of the Foundation from those of the 1996 donation.

Two highly significant provisions in the 2003 Act of Donation eliminate the need for the Report's recommended measure that there be a "straightforward" donation with no suspensive or resolutive conditions. Paragraph 13 of the 2003 Donation provides:

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The Donation of the Donated Works under this Act is irrevocable. Notwithstanding any provision of this instrument, including without limitation the provisions of the Sections 5 and 6 above, Ogden shall not be entitled to resolve the donation or to recover ownership of the Donated Works.

Under the current donation, the only circumstance under which the UNO Foundation's ownership of the Donated Works can be divested is if the Initial Conditions are not met by January 1, 2006. However, if this occurs, ownership does not revert to Mr. Ogden. Rather, ownership is transferred to the Museum Foundation and, by virtue of the *stipulation pour autrui* in favor of UNO in Paragraph 14 of the 2003 Act of Donation, the Donated Works may never be removed from Goldring Hall without the prior consent of UNO. Thus, if the Initial Conditions are not satisfied, the works of art will be owned by the Museum Foundation and will remain in Goldring Hall. Likewise, any breach of the Surviving Conditions could not result in the removal of the Donated Works from Goldring Hall unless UNO wishes such removal to occur.

Thus, the permanent benefit to UNO and to the public from the donation is assured. Now that the 2003 Act of Donation has become effective, the concerns voiced and recommendations made in this section of the Report with respect to the donation, to the extent they ever had any validity given Mr. Ogden's consistent expression of his donative intent, are moot.

## **2. The Cooperative Endeavor.**

The arrangements that have been contemplated by the parties from the early planning stages of the Museum project constitute a classic cooperative endeavor among public and private entities for the benefit of the public. Based upon opinions expressed in Attorney General Opinion 03-0111, the draft Report concludes that the written cooperative endeavor agreement among the parties proposed in 2002 included certain provisions that are unconstitutional and recommends that "the LSU System should take immediate steps to insure the Ogden Museum project meets the requirements of the State Constitution." [Report, p. 25.] Mr. Ogden strongly disagrees with this conclusion and recommendation, as well as the Report's recommendation that UNO should seek recovery of state funds "paid on behalf of buildings" in the planned museum complex owned by the UNO Foundation. However, before analyzing the constitutional issues and addressing the substantive arguments regarding the nature of permissible provisions in cooperative endeavor agreements, Mr. Ogden wishes to address the Report's assumption that the absence of a single, comprehensive written cooperative endeavor agreement among all of the parties taints the prior activities undertaken in planning and implementing the Museum project.

There is no constitutional or statutory requirement that cooperative endeavor agreements between public agencies or between public agencies and private parties be in writing.

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A number of Attorney General opinions express no concern that the undertakings of the parties participating in cooperative endeavors are not specifically committed to writing. *See, e.g.*, La. Att. Gen. Op. Nos. 94-232, 94-494. More recent Attorney General opinions have occasionally stated a preference that the parties commit their agreement to writing or "strongly recommended" that they do so. *See, e.g.*, La. Att. Gen. Op. No. 97-550. While such a writing is not a legal requirement, this approach certainly is preferable and Mr. Ogden fully supports the proposition that there be such a written agreement or agreements in connection with this endeavor. However, there are a number of factors mitigating the absence of a single written agreement here. First, the parties have been operating under a *de facto* cooperative endeavor agreement for many years. Moreover, the 1996 Donation, the 2003 Donation, the Provisional Agreement between UNO and the UNO Foundation, and the Articles of Incorporation of the UNO Foundation and the Ogden Museum of Southern Art, Inc., all written documents, largely embody the terms of the cooperative endeavor. Now that the UNO Foundation has accepted the 2003 Act of Donation, it remains only for the UNO Foundation and the Ogden Museum, Inc. to execute an agreement, which will be the final element of a definitive and comprehensive cooperative endeavor arrangement.

Mr. Ogden submits that La. Att. Gen. Op. No. 03-0111 (March 17, 2003), which concludes that certain provisions of the proposed 2003 cooperative endeavor agreement regarding the Ogden Museum are unconstitutional, is erroneous based upon judicial precedent, prior attorney general opinions, and Louisiana constitutional and statutory provisions. In addition, it appears that portions of that Opinion were based upon an erroneous understanding of the relationships among and undertakings of the parties.

The constitutional norm for the lawful use of public funds and property is found in La. Const. Art. VII, Section 14. Paragraph (A) of Section 14 generally prohibits the loan, pledge or donation of public funds. Paragraph (C), however, authorizes the State and its agencies and political subdivisions, including the LSU Board of Supervisors/UNO, to enter into cooperative endeavors for a public purpose with other governmental agencies, public or private corporations, or individuals. The Louisiana Supreme Court has ruled that Paragraph 14(C) is not an exception to Paragraph 14(A) and that all cooperative endeavors must also meet the general standard for the non-gratuitous alienation of public funds or property established by Section 14(A). *City of Port Allen v. Louisiana Risk Management, et al.*, 439 So. 2d 399 (La. 1983).

Attorney General opinions have established three criteria for a valid cooperative endeavor. First, the transfer of funds must be required by a valid "legal obligation" on the part of the particular state entity involved. La. Att. Gen. Op. No. 92-722. The second requirement for a constitutionally-sanctioned cooperative endeavor is that the expenditure must be for a public purpose. La. Att. Gen. Op. Nos. 93-164, 93-787. The third and final requirement is that the expenditure must create a public benefit proportionate to the cost to the State. *Id.* A review of

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Attorney General opinions issued over the last fifteen years regarding cooperative endeavors indicates that if the first requirement, "legal obligation," is met, the second and third requirements almost always have been found to be met as well.

The "legal obligation" requirement has been construed by the Attorney General to be a requirement that the purpose and power for a particular expenditure of public funds be "sanctioned" or "authorized by law" or in the "discharge of a legal duty." La. Att. Gen. Op. Nos. 93-787, 92-204. Attorney General opinions also refer to the requirement as "an underlying legal obligation or authority" for the transfer of public funds. La. Att. Gen. Op. Nos. 92-543, 92-494, 92-402, 92-204. Thus, if the objective of a cooperative endeavor is an end that the involved public agency is authorized to pursue, the "legal obligation" requirement has been met.

For instance, it was permissible for the Office of Alcohol and Drug Abuse of the Department of Health and Hospitals to provide funding to the City of Bunkie for renovation of a city-owned building to be utilized as an alcohol/drug abuse treatment facility and meeting room because the Office of Alcohol and Drug Abuse was authorized by law to "administer residential and outpatient care facilities. . . ." La. Att. Gen. Op. No. 97-550. On the other hand, the Pointe Coupee Parish School Board could not engage in a joint endeavor with the police jury whereby school board property would have been utilized for housing community centers because the operation of community centers is not within the constitutional or statutory authority of the School Board. La. Att. Gen. Op. No. 93-130.

In *Guste v. Nicholls College Foundation*, 564 So. 2d 682 (1990), the Supreme Court held that a transfer made in the discharge of a public entity's constitutional or legal duties that is accepted by the transferee with a commitment to assist the public entity in carrying out its constitutional and legal duties is a permissible cooperative endeavor. *See also* La. Att. Gen. Op. No. 93-130. The *Guste* case has been cited in subsequent Attorney General opinions recognizing that cooperative endeavors are appropriate when property is transferred from one public entity to another or from a public entity to a private entity or individual and the transferee agrees to perform on behalf of the transferor legal or statutory obligations or functions of the transferor. *See e.g.*, La. Att. Gen. Op. No. 93-453, 93-766.

*Guste* is particularly germane here. That case involved the transfer of public funds from a public entity affiliated with Nicholls State University (the Alumni Federation) to a private foundation (very much like the UNO Foundation), formed to support and promote the University.<sup>16</sup> Significantly, the Supreme Court was willing to assume there, without specifically

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<sup>16</sup> The Articles of Incorporation of the UNO Foundation, attached hereto as Exhibit "D", establish as purposes and functions of the Foundation the following:

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inquiring into the nature of the use of the public funds transferred, that the transfer was for the purpose of carrying out functions of the University that were constitutionally and statutorily authorized. The Court stated:

Because the central purpose of both organizations is to promote the University, it can be presumed that the transfer was in furtherance of the respective groups' purposes, and not an impermissible donation of public funds. We can, therefore, assume that the transmission from the Federation to the Foundation was in furtherance of the Federation's discharge of its constitutional or legal duties of furthering public education; *i.e.*, it must have been given by the Federation in pursuit of the Federation's legally endowed goals. . . . The transaction between the Federation and the Foundation constitutes a transfer of public funds (rather than simply a donation, which is prohibited by Louisiana Constitution Art. 7, Sec. 14(A)). . . . Because the objectives of the Federation, the Foundation and the University coincide in the furtherance of a governmental purpose, and because a simple donation would be illegal under La. Const. Art. 7, Sec. 14(A), we find that the money was given and accepted "under authority of the Constitution and the laws of this state" in furtherance of a governmental purpose. It was not a donation in the sense contemplated by La. Const. Art. 7, Sec. 14(A). 564 So. 2d at 688.

A similar conclusion applies here with respect to public funds transferred from UNO to the UNO Foundation, given the perfect symmetry in the missions of UNO and the UNO Foundation.

The Attorney General's Opinion issued in connection with the proposed Ogden Museum cooperative endeavor agreement recognized that the purpose sought to be furthered by the endeavor is clearly within the constitutional and statutory authority of the L.S.U. Board and UNO. *See* Att. Gen. Op. 03-0111, at 10; La. Const. Art. VIII, Sec. 7; and La. Rev. Stat. 17:3351. Thus, the "legal obligation" requisite for a cooperative endeavor obviously has been met.

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To promote the well-being and advancement of the University of New Orleans and all the colleges, schools, departments and divisions comprising it . . . and to develop, expand, and improve the University's curricula, programs, and facilities so as to provide greater educational advantages and opportunities; encourage teaching, research, scholarship, and service, and increase the University's benefits to the citizens of the State of Louisiana and the United States of America.

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However, the Opinion, apparently still in the process of conducting the "legal obligation" inquiry, proceeded to analyze the specific terms and conditions of the proposed cooperative endeavor agreement and, without authority or explanation, appears to opine that the nature of these terms somehow impacts whether the LSU Board/UNO is "legally authorized" to pursue the goals of the cooperative endeavor, *i.e.*, the creation and operation of a museum, with all of the educational benefits that flow from it. This approach is illogical and unprecedented.

It should be noted initially that a number of the terms and conditions considered by the Attorney General are no longer encompassed within the cooperative endeavor, as demonstrated by the differences between the 1996 Acts of Donation and Acceptance and the 2003 Act of Donation. Also, the Attorney General appears to have misunderstood, or perhaps to have been furnished with erroneous information regarding, the terms of the cooperative endeavor. For instance, the Opinion states that the Ogden Museum of Southern Art, Inc. (the Ogden Museum Foundation) "makes no obligation or contribution to the agreement and retains, by way of original donation, the right to rescind the donation of the artwork. . . ." [Opinion No. 03-0111, p. 11] In actuality, the Museum Foundation will be obligated to operate the Museum; moreover, it never has had the right to rescind the donation.<sup>17</sup>

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<sup>17</sup> The Report and Attorney General Opinion 03-0111 reflect a basic lack of knowledge regarding the nature, purpose and control of The Ogden Museum of Southern Art, Inc., sometimes referred to as the Ogden Museum Foundation. As shown by its Articles of Incorporation, a copy of which is attached hereto as Exhibit "E", this entity is a non-profit association governed by a large board of trustees. Mr. Ogden was never an officer of the board, but at one time was one of twenty-nine uncompensated board members. Mr. Ogden resigned from the Museum Board of Trustees as of September 2003. The Museum Foundation does not own the art donated by Mr. Ogden, but is charged with operating the Museum. Its purposes include the following:

A. To promote the well-being and advancement of the Roger Houston Ogden Museum of Southern Art (hereinafter referred to as "OMSA") and to develop, expand, improve, manage and operate OMSA's activities, facilities and programs so as to provide greater educational advantages and opportunities; encourage public service, research, scholarship and teaching; and to increase OMSA's benefits to the citizens of the state of Louisiana and the United States of America.

B. To communicate, interpret, document and preserve the story of the culture, evolution and history of visual arts in the American South through

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Returning to the flawed "legal obligation" analysis employed in Opinion No. 03-0111, the Attorney General there further opined that any expenditures of funds "for salaries of the Ogden Museum Foundation or the UNO Foundation is prohibited." In support, the Opinion cites La. Att. Gen. Op. No. 93-164. [Opinion No. 03-0111, p. 11.] However, Opinion 93-164 does not state that public funds may not be used to pay salaries benefiting a private corporation. So long as the function being pursued is within the authority of the public agency and constitutes a public purpose, and the public benefit is proportional, payment of salaries is allowed. If public funds can be transferred from a public entity to a private entity without limitation on the use of those funds, except that they must be used by the private entity to carry out some of the public entity's responsibilities, the direct payment of salaries or the furnishing of employees for those same purposes certainly is allowed. *See e.g.*, La. Att. Gen. Op. No. 78-1609 (State universities in Shreveport area permitted to contribute to salaries of employees of a consortium composed of those universities and a private entity, Centenary College); La. Att. Gen. Op. No. 81-1204 (Police jury allowed to provide employees to work at site owned by volunteer fire department); La. Att. Gen. Op. No. 94-615 (Thibodeaux General Hospital allowed to contribute \$60,000 to Nichols State University for the purpose of establishing an endowed chair in oncology nursing); La. Att. Gen. Op. No. 98-410 (City of New Orleans allowed to transfer funds to Orleans Parish School Board to supplement teachers' salaries); La. Att. Gen. Op. No. 96-414 (Police jury could provide services of employees for purposes of hauling and spreading dirt at a privately owned park).

The salaries in question here are those of persons involved in operating the Museum. Clearly, payment of their salaries is a permitted transfer of state funds pursuant to a cooperative endeavor.

Apparently continuing to analyze the "legal obligation" requirement, the Attorney General next criticized the provisions in the 1996 Donation requiring that a particular individual, if available, be hired as the Museum's first director at a set salary, as well as provisions allowing Mr. Ogden's input regarding the construction, plans and property development of the Museum

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the following outreach activities and programs through sponsorship of exhibits, lectures and publications, loans of portions of the collection, and touring exhibitions of the collection; development of collaborations with educational institutions, providing for visiting artists and scholars; and creating, maintaining and preserving archives and a library for scholars and others for information, publications and research related to Southern visual arts.

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complex. The Opinion, however, fails to explain how these terms have any impact upon the "legal obligation" test and obliquely argues that "these terms are not 'terms most favorable to the college' as required under R.S. 17:3353 therefore any agreement containing them would not be valid." [La. Att. Gen. Op. No. 03-0111, p. 11] La. R.S. 17:3353 addresses cooperation between the LSU Board and other public agencies, and is clearly inapplicable to the Museum project. Moreover, Section 3353 says nothing about "terms most favorable to the college." Another statutory provision which does address "terms most favorable to the college or university" is La. R.S. 17:3355. However, that Section relates to "purchases, contracts and other business transactions entered by college and university boards." That section also requires competitive bidding and letting of contracts. It is clear from the jurisprudence and prior Attorney General opinions that such statutes do not apply to cooperative endeavors that are authorized by the constitution and with respect to which competitive bidding is not applicable. *See, e.g.*, La. Att. Gen. Op. No. 97-386. Indeed, the analog for "terms most favorable" in the cooperative endeavor context is the third requirement mentioned above, that the public benefit received be proportional to the public resources expended. Thus, Mr. Ogden submits that Opinion No. 03-0111 is erroneous in finding that the first requirement for a legitimate cooperative endeavor has not been met.

Next, the Attorney General considered the second factor, that the support be directed to a public purpose. [La. Att. Gen. Op. No. 03-0111, pp. 11-12] Initially, the Opinion appears to recognize that the LSU Board's support of the Museum is clearly for a public purpose and even that this purpose "is lawful and laudable." However, as with the first factor, the Opinion goes on to opine that this purpose is somehow undermined because the cooperative endeavor is not "on terms most favorable" to UNO and does not comply with the public bid laws, again citing La. R.S. 17:3353. *Id.* The Attorney General cites terms and conditions in the 1996 donation establishing minimum funding limits, minimum space allocation in the Museum, rights of review and approval of design (none of which appear in the 2003 Act of Donation). It is submitted that under the principles established by the jurisprudence and prior attorney general opinions, the specific terms and conditions of the transfer are as irrelevant to the question of whether the transaction is in furtherance of a public purpose as they are to the "legal obligation" inquiry. The Attorney General's Opinion is clearly erroneous on this point.

Finally, the Attorney General's Opinion considered the third factor, whether the public benefit derived from the endeavor is equal to or greater than the public funds or property to be utilized. It is submitted that it is only in connection with this third requirement of proportionality that the specific reciprocal terms and conditions of the cooperative endeavor could appropriately be considered. Ultimately, however, the Opinion concludes that this is "a fact-sensitive inquiry" and the Attorney General declines to provide an opinion on the proportionate value issue. The Attorney General does indicate that his greatest concern "under

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the facts known" is that the donation of artwork could be rescinded. As discussed above, this is not true under the 2003 Donation.

The Attorney General did not find that the public benefit was not proportionate to the state's contribution. It is submitted that this cooperative endeavor clearly would pass the proportionate benefit test, particularly given that it will afford the public access to a \$30,000,000 collection of art and the numerous educational opportunities provided by the Museum. Moreover, it is by virtue of the overall cooperative endeavor that millions of dollars were donated by private parties to help construct Goldring Hall, a building owned by the State, and that other buildings that are privately owned have been dedicated to the Museum's use.

Finally, in answer to another question posed to the Attorney General, he opined that the state could not pay UNO Foundation's debt service in connection with the Museum or the cost of renovating the privately-owned Patrick F. Taylor Library and constructing a privately-owned parking garage. The opinion does not discuss in detail the reason for these conclusions, but they are presumably based upon the premises discussed above. Once again, so long as these activities are undertaken in furtherance of the LSU Board/UNO's authorized powers to construct and operate a museum and, considered in the context of the entire transaction, they constitute proportionate value, these are appropriate elements of a cooperative endeavor for that purpose. *See, e.g.*, La. Att. Gen. Op. No. 97-555 (Office of Alcohol and Drug Abuse of the Department of Health and Hospitals could provide funding to the city of Bunkie for renovation of a city-owned building); La. Att. Gen. Op. No. 96-414 (West Carroll police jury could perform work at privately-owned park); La. Att. Gen. Op. No. 96-291 (Village of Robeline could provide funds to refurbish a gymnasium not owned by the village); La. Att. Gen. Op. No. 96-185 (the town of Olla could make improvements to an existing ball field owned by a recreation district).

Attorney General Opinion No. 03-0111 does not address certain other expenditures of state funds that the Report states or suggests are improper. These include the payment by UNO of utility expenses and insurance premiums on buildings owned by the UNO Foundation that are to be part of the Museum complex. Once again, it is clear that such expenditures are appropriate elements of the cooperative endeavor arrangement for the development and operation of the Museum. These expenditures are permissible under the principles and authorities cited above.

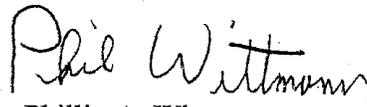
#### **E. Conclusion.**

The Inspector General has abused his authority by investigating the activities of Roger Ogden, the Board of Supervisors of LSU, the UNO Foundation and UNO. These are all private and/or university actors over whom the Inspector General has no jurisdiction. As such, there is no basis for the issuance of the Report. In any event, the allegations contained in the Report are inaccurate and are potentially damaging to Mr. Ogden's reputation. Publication of the Report, as drafted, would mislead the public and would undermine the integrity of an extremely

January 5, 2004

worthwhile and valuable project that is a tremendous asset to the State of Louisiana, its educational system and its citizens. It is the height of irony that Mr. Ogden should be criticized and maligned for attempting to donate art work valued at \$30 million, conditioned only so as to ensure that it will be available for public appreciation and study in an environment conducive to those goals. It is strongly urged that the draft Report not be issued and that the Inspector General recognize that the Report's subject matter is outside his authority and that its reasoning and findings are flawed.

Sincerely,

A handwritten signature in cursive script that reads "Phil Wittmann".

Phillip A. Wittmann

PAW:af

## **Response**

Mark Drennen,

former Commissioner of Administration



State of Louisiana  
DIVISION OF ADMINISTRATION  
OFFICE OF THE COMMISSIONER

M. J. "MIKE" FOSTER, JR.  
GOVERNOR

MARK C. DRENNEN  
COMMISSIONER OF ADMINISTRATION

December 19, 2003

Bill Lynch  
Inspector General  
224 Florida Boulevard  
3<sup>rd</sup> Floor  
Baton Rouge, Louisiana 70802

Dear Mr. Lynch:

Your second draft concerning the Ogden Museum contains numerous allegations that are not supported by facts or state law. In addition to my earlier correspondence that provided legal documentation to support this statement, I offer the following.

**Point 1**

You allege that I ordered the Office of Facility Planning and Control (OFPC) to artificially create a \$535,000 surplus in the project. Nothing could be further from the truth. The University of New Orleans Foundation formerly requested \$2.1 million from the State to complete the Ogden Museum. While we did not support the total request, I directed OFPC to identify funds that might be left in another completed Capital Outlay project that could be reallocated to this project by the Legislature. The failure to complete the project would have jeopardized our ability to receive the art pursuant to the agreement with Mr. Ogden.

OFPC staff was able to identify a \$535,000 balance in a road project in Monroe. In accordance with procedures, an amendment was adopted by the Senate Revenue and Fiscal Affairs Committee and the Legislature to the Capital Outlay Bill and became part of State law. This same procedure has been used hundreds of times to transfer dollars from projects where they are not needed to projects where they are needed.

There can be no disagreement over these facts as they are available to anyone as public records. There is no individual in the Division of Administration who disagrees with these facts.

Page 2  
Inspector General  
December 18, 2003

**Point 2**

You allege that the \$535,000 was not "fees and self-generated" revenues and that therefore I had no authority to return it to the University of New Orleans Foundation to complete the Ogden Museum.

The Capital Outlay Bill specifically labels the funds received from the University of New Orleans and appropriated to this project as "fees and self-generated" revenue. The Treasurer also classifies them as such. Your office has no authority to change this Act of the legislature! Nor do I.

You cite the directions for filling out the Capital Outlay Bill as proof that these funds are not really what State law says they are. We are not aware of any State law or court decision that give directions to fill out forms precedence over State law.

My response to you on 10/22/03 should have been sufficient. State accounting records clearly show that private donations were returned to the University of New Orleans Foundation.

**Point 3**

You allege that I had no authority to return this \$535,000 to the University of New Orleans Foundation, yet you readily admit that it is standard practice for the State to return "fees and self-generated" funds. This view is consistent with advice I have received from OFPC staff that it is the long-standing practice of OFPC to return all surplus self-generated funds to the source from which it was received. This is based on staff's view that it is the intent of Section 8 of the Capital Outlay Act to effectuate this return of surplus monies. As noted above, the monies in question were classified as "Fees and Self-Generated" by the Legislature and the Treasurer. (See **Point 2** above.)

**Point 4**

You allege that OFPC said no funds were needed to complete Goldring Hall. To reach this conclusion you really had to stretch the OFPC response. OFPC may have said no funds were needed to complete the shell of the building, but has repeatedly said that more funds were needed to complete the project. These facts cannot be disputed.

**Point 5**

You allege that it is questionable whether the project had a surplus on 3/27/03. This is another statement that totally ignores facts that have been presented to you. In fact, even today the project has a surplus.

**Point 6**

You allege that I violated Article 7, Section 14 of the Constitution. Case law indicated that three requirements must be met to insure that a transfer does not violate this Section: the expenditure must be for a public purpose, it must be made pursuant to a legal obligation, and the public benefit must be commensurate with the expenditure. All three requirements were clearly met.

**Point 7**

You allege that Governor Foster told me not to give the money back. You left out a relevant and important part of his directive to me, which was "until the donation issue is worked out".

**Point 8**

You allege that I said Mr. Boudreaux told me to give the money back. I never stated this, and you are trying to create a conflict between us that does not exist. I have always said that I interpreted a conversation between Mr. Boudreaux and myself as meaning that the donation issue had been resolved. I therefore returned the money.

This is a personal issue between Governor Foster, Mr. Boudreaux and myself and is irrelevant to your report.

Page 4  
Inspector General  
December 18, 2003

**Point 9**

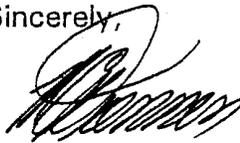
You allege that \$10,063,000 in State funds were allocated; only \$7,645,000 in state funds were used.

**Point 10**

You allege that public bid law was avoided. The State had an option to either furnish the museum with low bid items or return private funds to the University of New Orleans Foundation so they could furnish the museum. We chose the latter course. Simply because you disagree with this option does not make it wrong.

In summary, the Legislature appropriated an additional \$535,000 towards completion of the Ogden Museum and that is exactly what the funds were used for. As a result, the State of Louisiana now owns one of the premier art museums in America.

Sincerely,



Mark C. Drennen  
Commissioner of Administration

MCD/kaw

## **Response**

Jerry Jones, Director of Facility Planning and  
Control



State of Louisiana  
DIVISION OF ADMINISTRATION

FACILITY PLANNING AND CONTROL

Kathleen Babineaux Blanco  
GOVERNOR

Jerry Luke LeBlanc  
COMMISSIONER OF ADMINISTRATION

May 19, 2004

Mr. William Lynch  
Division of Administration  
Office of the Inspector General  
P. O. Box 94095  
Baton Rouge, LA 70804

**Re: Inspector General Review of  
University of New Orleans  
Ogden Museum of Southern Art**

Dear Mr. Lynch:

I am in receipt of your letter dated December 5, 2003 and the subsequent letter from Mr. Kenneth Albarez dated May 18, 2004 in which you have invited my response to one section of a draft report concerning your review of the Ogden Museum of Southern Art and the University of New Orleans (UNO), which contains findings pertaining to the Office of Facility Planning and Control.

The first paragraph in your draft may be a little inflammatory. I do not believe Commissioner Drennen purposefully ordered Facility Planning and Control (FP & C) to artificially create a \$535,000.00 surplus in the Goldring Hall / Ogden Museum project.

As you are aware, Facility Planning and Control administered the design and construction of the building. The building project did not include Fixtures, Furnishing and Equipment, (FF&E) which are necessary for the successful opening of a new building. Because FF&E was not included, FP&C did not administer the purchase and installation of FF&E. The overall project needed FF &E that were not included in the original funding for the project but were necessary in order to successfully open the facility. It is my opinion the Commissioner directed \$535,000.00 to be added to the project to provide funding for FF&E to allow the project to open when construction was completed. In my opinion, the Commissioner did not "plot" to create a surplus and then return that surplus to the UNO Foundation. These funds were added to the project while the return of self generated revenues occurred almost a year later.

Mr. Purpera may have made a mistake in the capitol outlay bill when the \$535,000.00 was added to the project from No Required Priority (NRP) funds by not indicating that the funds were to be used for FF &E for the Ogden Museum project. Instead, the funds were added to the construction project, which as you indicate did not include FF&E. I am confident Commissioner Drennen thought, at the time, he was providing funding for FF &E when these funds were added to the project. In order to insure that these funds would be used for the purpose UNO was pushing for, (FF&E), Commissioner Drennen returned the funds to the UNO Foundation as a return of their donated dollars.

**Finding Number 3**  
**Lack of UNO Foundation Construction Authority**

Other than the letter received from Pat Gibbs dated September 25, 2003, this office had no knowledge of the use of the funds returned by Commissioner Drennen to the UNO Foundation for construction purposes. The statements by Maureen Clairy that Mr. Jones and Mr. Gibbs decided in order to finish Goldring Hall in time of the scheduled August 2003 opening, the state would return part of the UNO Foundation donation and allow the UNO Foundation to complete the building are incorrect. I have absolutely no recollection of such a conversation. Mr. Gibbs may have had that conversation with someone else but did not, to my recollection, have any such conversation with me. In fact, when Commissioner Drennen directed me to return the funds, I pleaded with him not to do so due to the fact that the project was ongoing.

To my knowledge, this office was not aware of construction work undertaken by the UNO Foundation to "complete" the project until Mr. Gibbs September 25, 2003 letter as is evidenced by the statements provided to your investigative staff in the conduct of this investigation wherein Mr. Lancon, FP&C Project Manger indicated that he was not aware of construction work performed by the UNO Foundation. Since the Capitol Outlay project did not fund FF&E, Mr. Lancon assumed that these funds would be used for these unfunded facility needs.

1. Facility Planning and Control should ensure that the required cooperative endeavor agreement is in place prior to work being performed by a non-state entity, such as the UNO Foundation, on a capital outlay project administered by Facility Planning & Control.

**Response:** *As previously indicated, this office was not aware of the Foundation performing construction work on this facility other than Furniture, Fixtures and Equipment that was not part of the construction contract documents nor funded in the Capitol Outlay Bill. Had the project manager been made aware that this was occurring we would have issued a cease and desist notice to the Foundation to stop this work without the required Cooperative Endeavor Agreement.*

*This office will take the appropriate steps to notify Non-State Entities involved with state projects that such work will not be allowed without a duly authorized Cooperative Endeavor Agreement in place prior to execution of any work.*

Inspector General Lynch

Page -3-

May 19, 2004

2. Facility Planning and Control should review all work on Goldring Hall by the UNO Foundation to insure all building code requirements have been met.

**Response:** *I am directing my staff to immediately review and inspect the facility to determine if non-conforming conditions exist in the work performed by the UNO Foundation and will immediately order the correction of non-conforming work. It is my understanding that the Fire Marshal has already inspected the facility and has deemed the building acceptable for occupancy. Our inspection of work performed by the UNO Foundation will be to verify compliance with the Standard Building Code as published by the Southern Building Code Congress International, the code applicable to the subject facility as well as compliance with the plans and specifications for this project.*

If you should have further questions or need additional clarifications, please feel free to contact this office.

Sincerely



Jerry W. Jones, Director  
Facility Planning and Control

JWJ:cn

## **Response**

Gregory O'Brien, former chancellor of the  
University of New Orleans

**Gregory M. St. L. O'Brien**  
2468 Lark St.  
New Orleans LA 70122  
(Tel) 504 288-4878 (Fax) 504 288-4997  
(Cell) 504 460-4734 E-mail [gregoryobrien@att.net](mailto:gregoryobrien@att.net)

December 26, 2003

Mr. Bill Lynch  
State Inspector General  
224 Florida Street, Suite 303  
Baton Rouge LA 70804-9095

Re; File1-04-0012

(By Fax: 225-342 6761, and Mail)

Dear Inspector General Lynch;

Thank you for providing me a copy of your draft report regarding the Ogden Museum of Southern Art. Unfortunately I did not receive this copy until December 24, 2003 as I was out of town and not working from the office to which the document was sent. Knowing that you want the report to be as accurate as possible, I hope you will accept the input below that clarifies several of the issues in the report. I assume that others with responsibility for their institutions and offices are providing similarly clarifying information in those areas. I shall provide clarification on two items that refer to me specifically and shall provide you sources to verify the information.

The Initial Gift.

In 1994 Mr. Ogden did provide a most generous pledge of the core of his art collection to form a University of New Orleans museum. I immediately informed the President of the LSU System, at that time Dr. Allen Copping, (as President Jenkins was not appointed for several years after that time). Dr. Copping instructed me to brief the Board of Supervisors at their next meeting, which I did. As part of the "President's Report" of various informational items I outlined the nature of the gift, that it would be held by the UNO Foundation for and on behalf of the University of New Orleans, and that to achieve the gift a building complex would have to be developed by UNO and the UNO Foundation, including several of the properties the UNO Foundation acquired from Mr. Taylor. The Board members were very supportive of this donation and this project and instructed me to bring to them for action the needed steps of state construction of the Goldring Hall building, the creation of the appropriate cooperative endeavor agreements, etc. as they were ready for board review and the fund-raising progressed. I subsequently made updates at most LSU Board meetings during the following year. I followed the procedures as I understood them to be in effect in 1994, which would have required submission to the Board of cooperative endeavor agreements, requests for capital construction, etc. as they were ready to be implemented. UNO submitted such proposals for Board action accordingly.

You may verify this by discussing the 1994 announcements, actions and instructions with then-President Allen Copping, and persons who were on the Board of Supervisors at that time. I might suggest Mr. Charles Cusimano, Mr. Victor Bussie, and Mr. Milton Womack, whom I believe chaired the Board of Supervisors during that time. These individuals might have a better recollection of the actions and information at the time than the current leaders of the LSU System, who were not involved at the System level at that time.

Mr. Bill Lynch  
December 26, 2003  
Page 2

The Level of Funding of the Cooperative Endeavor Agreement.

There were extensive conversations with LSU System Board members Charles Cusimano, (who did not attend the Board meeting); Mr. Stanley Jacobs, now a member of the Board of Regents; and Mr. Rod West, the several days before the Board meeting where the cooperative endeavor agreement was discussed. You may verify with them that – the night before the Board meeting and again at the Board meeting that I said it *was only with President Jenkins' assurance that the LSU System would see to it that the extra needed funds to achieve the higher level of support for the Museum proposed by the LSU System would be provided through the LSU System and not UNO's operating budget, that I could support the resolution. I prepared written notes for my comments at that meeting to remind myself to say that precisely. I did indicate that UNO could only afford the higher level of funding that was being proposed by the System office, if the LSU System and President Jenkins could provide that extra support.*

I know that when the tape of that meeting is found my words regarding will prove to be exactly as stated above; and that Mr. Jacobs and Mr. West will verify that I informed them that it was on this basis that I would no longer object to the LSU System modification of the UNO submitted cooperative endeavor agreement, which originally reflected the lower level of funding for which UNO had been budgeting. I respected the right of the System to raise the level of support for the museum and was comfortable in supporting that higher level based solely on President Jenkins assurance that the LSU System would see that the extra support was provided.

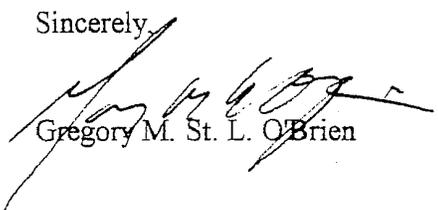
In subsequent meetings with many people, including other Board members, such as Messrs. Cusimano, Jacobs and West, I indicated that without that extra support being provided by the LSU System, UNO could only afford the funding it was currently providing the Museum project, including the funds specifically allocated for it by the Louisiana Legislature in 1995 and thereafter.

I hope these clarifications are helpful and I know that the additional persons as sources of information and the audio tape of the LSU Board meeting will verify the accuracy of my statement here and at that time.

I sincerely believe that all persons involved in creating this museum have undertaken their efforts with the best interest of the University of New Orleans and the State of Louisiana in mind; and did so with their best knowledge of requirements of proper action at that time. Louisiana has a national asset that could have been lost to it but instead is providing millions of dollars of revenue to the state's economy, strong academic enhancement to the state's second largest university, and important educational opportunities for thousands of visitors. In your final report please recall the importance of this project for the state and its people.

Thank you for the opportunity to provide this input before you prepare any final report.

Sincerely,



Gregory M. St. L. O'Brien

# **Response**

William Goldring

# MAGNOLIA MARKETING COMPANY

809 JEFFERSON HIGHWAY P.O. BOX 53333 NEW ORLEANS, LA 70153 PHONE (504) 837-1500 FAX (504) 849-6510

December 12, 2003

Mr. Gordon Devall  
Office of the State Inspector General  
Post Office Box 94095  
Baton Rouge, Louisiana 70804-9095

Dear Mr. Devall:

First of all, let me express my thanks for listening to my comments today by phone. Also, I would like to punctuate those comments in this letter in hopes we can move forward.

I am Chairman of the Board of the Sazerac Company and Magnolia Marketing Company, two of Louisiana's largest corporations. In addition, I am Chairman of the Goldring and Woldenberg charitable foundations, which, I believe, are the largest charitable foundations in the state.

About seven to eight years ago, I accepted the task of becoming Chairman of the Ogden Museum of Southern Art. I did so because of my trust in Roger Ogden, knowing his integrity and what he has given back to the community over many, many years. The donation of art to the museum from Roger exceeds two-thirds of his net worth or over \$30 million. In addition, my donation is at \$3 million as Chairman.

The first phase of the museum has been a labor of love for the past seven years. I would classify the museum to be the Guggenheim of the South, and the publicity the museum has received from around the world during the opening week is second to none.

Honestly, I have been appalled at certain individuals' taking potshots at Roger Ogden, who has given so much over so many years. The key individuals who have worked so hard to make this project successful have done so with integrity, and have done something very special for the State of Louisiana for no other reason. If, for some reason, every "t" has not been crossed, nor every "i" dotted, then it needs to happen.

Mr. Gordon Devall  
December 12, 2003  
Page 2

We still have the second phase of the museum to open; and, with continued good publicity, I know most of the funds will come through the private sector because of what has been achieved so far.

With best regards.

Sincerely,

MAGNOLIA MARKETING COMPANY

A handwritten signature in cursive script that reads "Bill Goldring".

William Goldring  
Chairman

WG:cg