

MINNESOTA SENATE

SUBCOMMITTEE ON ETHICAL CONDUCT OF THE COMMITTEE ON RULES AND ADMINISTRATION

ADVISORY OPINION
ISSUED TO, AND AT THE REQUEST OF,
SENATOR DALLAS SAMS

JANUARY 29, 1999

The Senate Subcommittee on Ethical Conduct, in response to a written request for an advisory opinion submitted by Senator Dallas Sams on December 1, 1998, met on December 16, 1998, and January 12, 1999, to consider whether Senator Sams's work as a consultant for Media Integrated Training Services (MITS), as part of a contract between MITS and the University of Minnesota College of Agricultural, Food, and Environmental Sciences (COAFES), constituted a conflict of interest. (Exhibit 1: letter from Senator Sams to Senator Ember Reichgott Junge, December 1, 1998) After hearing and considering the sworn testimony and supplementary documentation, the subcommittee issues the following findings of fact, conclusions, recommendations, and advice.

FINDINGS OF FACT

1. Senator Sams, during the 1997 legislation session, was the chief Senate author of Senate File No. 1592, a bill to revive agricultural education in the state. The substance of the bill was proposed by the Minnesota Vocational Agricultural Instructors Association because of a decline in agriculture education at the University of Minnesota and a resulting demand for, and shortage of, agriculture instructors in the state. The association worked primarily with the House authors in having the bill drafted. Later, the association asked Senator Sams to be the chief Senate author. The bill achieved two purposes. First, it established the Minnesota Agriculture Education Leadership Council (MAELC). Second, it appropriated money to the university to pay the costs of the council and to enable it to make grants for secondary and post-secondary agricultural education programs. At least initially, the university—and, specifically, COAFES and its then dean, Michael Martin—opposed the bill because agriculture education was a College of Education function and not a COAFES program. S.F. No. 1592 was not enacted, but its substance was incorporated into S.F. No. 1888, the omnibus higher education appropriation bill. Senator Sams was not an author of the latter bill, nor was he a member of the conference committee that reconciled differences between it and its counterpart in the House of Representatives. In incorporating the substance of S.F. No. 1592 into S.F. No. 1888, the conference committee included a provision removed from the Senate version, but retained by the House, that made the chairs of the Senate Committee on Agriculture and Rural Development and the House Committee on Agriculture cochairs of the council. Senator Sams was then, and is now, chair of the Senate committee.

2. As cochair of MAELC, Senator Sams began in July of 1997 to spend time helping to establish its office, take steps to hire an executive director, and begin its programs. Between early July and the end of the year, he spent 50 days on MAELC business. For that work, he was compensated at the rate authorized in the MAELC legislation: \$55 a day, for a total of \$2,750. He also was reimbursed for \$1,620 in expenses, which was also authorized by the legislation. In total, he received \$4,370 for work related to MAELC. The legislation did not follow the standard practice of having legislators serve as nonvoting members of external, executive-type councils. In addition, per diem payments to legislators for MAELC work were paid under contract by the university from the MAELC appropriation rather than using the standard procedure of having legislative per diems paid by the Legislative Coordinating Commission.

3. In August 1997, Dr. Martin proposed to Senator Sams “an arrangement where by (sic) you would provide assistance to this College and the University in revitalizing and redirecting our program in agricultural education.” (Exhibit 2: memorandum from Dr. Martin to Senator Sams, August 27, 1997) Senator Sams was qualified to provide that service since he is an agricultural education graduate of the University of Minnesota, has taught agriculture and farm management on the secondary and post-secondary levels, and is a farmer. Upon passage of S.F. No. 1888, Dr. Martin said, he had begun asking persons in the agricultural education community to recommend someone who could help him on a short-term basis to implement the provision giving his college new responsibility for agriculture education. Many of those consulted, he said, recommended Senator Sams. The arrangement proposed by Dr. Martin in the August memorandum was to extend from September 15, 1997, to December 15, 1997, and total compensation for Senator Sams was to be \$12,500. On September 11, 1997, Senator Sams signed a contract for that amount, prepared by COAFES, but the contract was never executed by the university. (Exhibit 3: contract for professional services, No. 55022199) Dr. Martin later told university auditors that he did not go forward with the contract because he had been warned that contracting directly with Senator Sams, while legal, might be publicly perceived as improper. (Exhibit 4: memorandum to university President Mark Yudof from Gail L. Klatt, associate vice president-internal audit, and Mark B. Rotenberg, general counsel, October 5, 1998, page 3 {*hereafter* “audit report”}) Dr. Martin also told the auditors that he had told Senator Sams that he nonetheless wanted him to provide services to COAFES and would work through MITS to compensate the senator for his efforts. (*Id.*) Senator Sams began providing the requested services during the autumn of 1997. Neither the memorandum from Dr. Martin to Senator Sams nor the unexecuted contract contains any reference to what both testified was an understanding from the beginning that Senator Sams was to be paid from non-state funds. According to the testimony of several witnesses, including Dr. Martin; Shelly Diment, Dr. Martin’s assistant; and Dr. Roland Peterson, head of the agriculture education program education at the university, Senator Sams performed valuable work for both MAELC and the university. Dr. Peterson specifically identified a number of outcomes resulting from Senator Sams’s work.

4. On February 17, 1998, Dr. Martin, on behalf of the university, entered into a \$13,500 contract with MITS under which MITS was to provide consulting services and advice relevant to the development of CD-ROM agricultural education programs, to provide the programs to the university, and to identify potential users of the programs. Thomas Powell, sole proprietor of MITS, testified that his understanding with Dr. Martin was that Senator Sams was to be paid \$12,500 of the \$13,500 paid to MITS. Senator Sams, however, was not a party to the contract, nor was he mentioned in it. (Exhibit 5: contract for professional services, No. 55024284) The contract between the university and MITS never required Senator Sams to account for his time or to document his work. Moreover, the contract between the university and MITS was drafted and executed after Senator Sams had provided the desired services.
5. In a May 6, 1998, telephone conversation with Ms. Diment, Dr. Martin said he used a third-party arrangement to pay Senator Sams because Senator Roger D. Moe, the Senate majority leader, advised against a direct payment. "Roger Moe just absolutely told [Senator Sams] flat out not to have it direct," he said in the conversation, which was taped by Ms. Diment. (Exhibit 6, transcript of May 6, 1998, telephone conversation). In a September 18, 1997, letter to Senator Sams, a copy of which he furnished to the subcommittee, Senator Moe advised Senator Sams to "terminate [his] relationship with the University." (Exhibit 7, September 18, 1997, letter) In a cover memorandum to the subcommittee, Senator Moe further stated: "I did not know of, nor would I have condoned, any third-party arrangement between Senator Sams and the University of Minnesota." (Exhibit 8, January 11, 1999, memorandum)
6. On February 27, 1998, MITS sent the university an invoice requesting payment of \$13,500, and a check for that amount was issued to MITS on March 9, 1998. The payment was apparently issued before MITS had delivered any CD-ROM programs to the university. The two sets of programs that were eventually delivered were available on the open market for \$500 a set. The payment to MITS was made from a \$200,000 appropriation to the university for agricultural education under the 1997 omnibus higher education bill discussed in finding No. 1, *supra*. Later in March, MITS paid Senator Sams \$12,500.
7. In his testimony of December 16, Senator Sams said Dr. Martin had told him that his payment would come from non-state funds, but "[w]hether in fact they did or in fact they did not I am in no position whatsoever to respond to that." Later on that date, he said he did not learn the source of the funds until after Ms. Diment had raised the issue with Dr. Martin. On May 8, 1998, Senator Sams had a telephone conversation with Ms. Diment, Dr. Martin's assistant, which Ms. Diment taped. During the conversation, Senator Sams asked whether his payment came from the MAELC program budget or from the agriculture education program budget, both of which were appropriated to the university by Senate File No. 1888. Ms. Diment told him that the money came from the latter budget. In the conversation, Senator Sams repeatedly expressed concern about who would know about his payment from the university through MITS. (Exhibit 9: transcript of May 8, 1998, telephone conversation) Senator Sams

testified on January 12 that Dr. Martin had told him the previous day that the payment had come from state funds.

8. Both Ms. Diment and Monica Siems, a program assistant in Dr. Martin's office, testified on December 16. Ms. Diment said then that Dr. Martin had told her in the autumn of 1997 that he intended to pay Senator Sams for his services to COAFES through a third party, and that she advised him then that he should instead pay him directly. Ms. Siems testified that in April of 1998, while reviewing March expenditures from the agriculture education budget, she came across the \$13,500 payment to MITS and questioned it because she was unaware of any arrangement between the college and MITS. She said she asked Ms. Diment, her supervisor, and Dr. Peterson, head of the agriculture education program, about the payment, and both said they knew nothing about it. Subsequently, Ms. Siems said, she learned that the MITS contract had been the vehicle through which Senator Sams was paid. She also testified that she knew of no other instance in fiscal 1998 in which Dr. Martin "authorized an expense from [the agriculture education] budget of which neither Shelly, Roland, nor I had any knowledge." Both Ms. Diment and Ms. Siems said they spoke with Dr. Martin, questioning the appropriateness of the payment to Senator Sams through MITS. One reason for their concern, they said, was the question of whether Senator Sams was compensated twice for the same work: once through MAELC per-diem payments, and again through the MITS contract.
9. Dr. Martin and Senator Sams testified, both on December 16 and January 12, that the intention always was that Senator Sams would be paid from non-state funds. Dr. Martin said that he paid MITS in March of 1998 from state funds because the non-state account from which he intended to make the payment was depleted. His plan, he said, was to avoid interest charges by paying MITS from state funds, then to transfer money to cover the payment when a gift to the non-state account, which he expected later in the year, was received. The university development office, however, in a letter provided to the subcommittee by university auditors, stated that the gift was committed to the university in March 1998, when MITS and, through it, Senator Sams was paid. The money was not available, however, until August. University sources also noted that the procedure followed by Dr. Martin would not have avoided payment of interest.
10. On May 6, 1998, Ms. Diment tape recorded a telephone conversation with Dr. Martin expressing her discomfort with the indirect payment to Senator Sams. (Exhibit 6) On May 8, she tape recorded a telephone conversation with Senator Sams in which she again expressed her concerns about the payment. Shortly thereafter, in a May 11, 1998, e-mail to Ms. Diment, a copy of which Ms. Diment furnished to the subcommittee, Dr. Martin informed her that "we've shifted the entire MITS contract payment to none (sic) state funds. . . . So I think any question about appropriateness has been resolved." He further said, "We still have an issue about trust, communication, and assignments that require resolution." (Exhibit 10, e-mail). Ms. Diment testified on January 12 that, to the best of her knowledge, the decision to cover the payment with non-state funds was made in May of 1998, after she and Ms. Siems had questioned the MITS payment. Money was transferred from non-state funds later in

May, although Dr. Martin testified that the non-state fund from which he intended to pay MITS would be depleted until an expected gift was received, and money from the gift was not yet available in May.

11. In mid-May of 1998, Ms. Diment and Ms. Siems approached the university Department of Audits with their concerns about the MITS contract, and the department began an investigation of the matter. Dr. Martin testified repeatedly on December 16 that he had initiated the investigation, but the audit report substantiates that it was initiated after the Department of Audits had heard from Ms. Diment and Ms. Siems. (Audit report, page 1) Mr. Rotenberg, the university's general counsel, discussed the audit in testimony on December 16. He said that a direct contract between the university and Senator Sams would have been legal, whether the payment under the contract came from state or non-state funds. He also pointed out that the auditors concluded that an indirect payment to Senator Sams through MITS was not unlawful, so long as the university received commensurate value from both the senator and MITS. In exchange for the \$13,500 paid to MITS, the auditors further noted, the university received CD-ROM sets worth \$1,000 and what Dr. Martin "considers to be \$12,500 worth of consulting services from Senator Sams." (Audit report, page 9) "While we lack objective means of measuring the value of Sams's work for the University, we do not have adequate basis for questioning the Dean's judgment. Because the University paid money to MITS and, ultimately, Sams for products and services whose value, in Martin's opinion, is equal to the payment, the payment was neither a bribe of a public official nor payment of a false claim under the Minnesota Criminal Code, nor was the payment a prohibited gift under the Regent's (sic) Gift Policy." (*Id.*) Nonetheless, the auditors noted, the arrangement with MITS and, through it, Senator Sams, "constituted poor business practice." (*Id.*)
12. The auditors also concluded that, while it was difficult to separate the work done by Senator Sams for which he was compensated by MAELC per-diem payments and the work for which he was compensated through the MITS contract, "Sams performed work for both the University and the Council, and . . . separate payments for the two types of work was not improper." (Audit report, page 8)
13. On June 23, 1998 during the preparation of the audit, university auditors received a faxed copy of a "letter of agreement" between Mr. Powell of MITS and Senator Sams (Exhibit 11, letter of agreement). Mr. Powell's signature was dated September 25, 1997, and Senator Sams's signature was dated October 1, 1997. In the agreement, Senator Sams committed himself to providing services to MITS for \$400 a day, similar, but not identical, to those outlined in the September 11, 1997, unexecuted contract between him and COAFES. (Exhibit 3) Neither Ms. Diment nor Ms. Siems knew anything about this letter of agreement before the audit.
14. On December 16, Dr. Martin testified that he "drafted most of" the September 25, 1997 letter of agreement between Mr. Powell of MITS and Senator Sams, and implied that it was in the

file given to the auditors when they began their investigation. In contrast, on January 12, he said Mr. Powell drafted the agreement. Mr. Powell, however, said on that same date that "Dr. Martin drafted it."

15. Mr. Powell first testified on January 12 that he did not receive a draft of the letter of agreement until "after the first of the year": some time in early 1998. He said he dated his signature September 25, 1997, at Dr. Martin's direction. Later in the January 12 hearing, after checking dates with his secretary, Mr. Powell said his office received the draft from Dr. Martin and entered it on the office computer on June 18, 1998, and sent it to Senator Sams for his signature on June 22, 1998. (Those dates were later confirmed in a letter to the subcommittee counsel from Joan Schoepke, the secretary who prepared the letters of agreement and provided the information to Mr. Powell on January 12.) University auditors received a copy with both Mr. Powell's and Senator Sams's signatures on June 23, 1998.
16. On December 16, Senator Sams testified that he signed the letter of agreement on October 1, 1997. On January 12, however, he testified that he signed it after October 1, but sometime in the autumn of 1997. The work under the agreement, he said, "was in process at that time." He also said that he "worked into January" under the agreement. According to that testimony, work "in process" did not extend beyond January of 1998. Senator Sams also said on January 12 that he thought it acceptable to back-date his signature because he had begun performing the work covered by the letter of agreement on October 1, 1997.
17. In the preparation of the university audit, auditors were unaware that the letter of agreement dated September 25 and October 1, 1997, and received on June 23, 1998, had been drafted in June of 1998. They also were not provided copies of the telephone conversations taped by Shelly Diment.

CONCLUSIONS

The subcommittee concludes from clear and convincing evidence that Senator Sams's work for the University of Minnesota did not constitute a conflict of interest. No testimony was presented suggesting that he sponsored the MAELC legislation in return for a promise of employment or a consulting contract. In fact, the initiative for the legislation came from the Minnesota Vocational Agriculture Instructors Association, and the bill was drafted under the direction of the chief House author. The subcommittee also concludes, as did the university auditors, that Senator Sams performed work, and achieved significant results, for both MAELC and the university that justified separate payments from both entities and that he was not paid twice for the same work. While he was not, ultimately, paid from state-appropriated funds, it would not have been illegal had he been paid from that source.

In reaching those conclusions, however, subcommittee member felt obligated to consider the manner in which the payment from the university was handled and the testimony it heard with respect

to that matter. Having done so, the subcommittee further concludes from clear and convincing evidence that:

- Dr. Michael Martin, who at the time of events under scrutiny was not only a dean, but a vice president of the University of Minnesota, entered into an inappropriately written and executed third-party contract with MITS in an effort to conceal a payment to Senator Sams;
- Dr. Martin, while testifying that he always intended to pay Senator Sams out of non-state funds, failed to do so until directly pressured by Ms. Diment and Ms. Siems;
- Dr. Martin drafted the letter of agreement between MITS and Senator Sams in June of 1998, after the audit had been commenced and the work performed, and then directed Mr. Powell, a party to the agreement, to back-date his signature to September 25, 1997;
- the letter of agreement, which Dr. Martin implied was in the files given to the university auditors at the start of their audit, was actually provided to them on June 23, 1998, either by Dr. Martin or, at his direction, by Mr. Powell;
- Dr. Martin, under oath, gave false and misleading testimony to the subcommittee with respect to several matters, including his sworn testimony that he had initiated the university audit and that Mr. Powell had drafted the letter of agreement between MITS and Senator Sams;
- Dr. Martin gave additional conflicting and confusing testimony under oath about documents he personally prepared, the contents of the file provided to the university auditors, and the transfer of funds to cover the university payment to MITS;
- although a direct payment from state-appropriated funds to Senator Sams would not have been illegal, unethical, or a conflict of interest, it is the subcommittee's belief that Senator Sams was concerned enough about potentially negative political perceptions that he knowingly engaged in collective efforts with Dr. Martin to conceal his payment and to prevent disclosure of it;
- Senator Sams's actions were contrary to the advice he received from Senator Roger D. Moe and were motivated by a desire to conceal his actions from Senator Moe and avoid the negative political implications of which Senator Moe had warned;
- Senator Sams knew on May 7 or 8, 1998, that his payment from MITS originally came from state-appropriated funds;
- on or about June 22, 1998, after the university audit commenced, Senator Sams signed the letter of agreement with MITS, backdating his signature to October 1, 1997;

- Senator Sams, who is not an attorney, testified on January 12 that he had dated his signature on the letter of agreement as of October 1, 1997, “since he had begun work under the agreement on that date”;
- Senator Sams gave conflicting and confusing testimony with respect to when he knew that his payment had come from state-appropriated funds and when he signed his letter of agreement with MITS;
- Senator Sams’s conduct in attempting to conceal the payment to avoid negative political perceptions was unethical and improper and brought disrepute to the Minnesota Senate; and
- Senator Sams’s testimony to the subcommittee failed to meet the level of candor, thoroughness, and accuracy expected of a state senator.

RECOMMENDATIONS

- That Senator Sams be reprimanded by the Minnesota Senate.
- That Senator Sams be ordered to issue a public apology to the Minnesota Senate, his constituents, and the public.
- That Senator Sams be removed as member and vice-chair of the Human Resources Finance Committee.

ADVICE

In an advisory opinion issued nearly three years ago, this subcommittee noted the following:

Minnesota has long valued its tradition of a part-time Legislature consisting of men and women who not only make laws, but also spend most of their time working in a wide range of occupations, under the laws that they have made. Citizen-legislators bring experience and knowledge to the Capitol that full-time lawmakers would lack. Their involvement in a life outside the Legislature, however, means that citizen-legislators will inevitably face situations that pose a potential for conflicts of interest. For them, the task of assuring that their private interests do not affect their public duties is especially challenging.

The subcommittee recognizes that the perception of impropriety can be as damaging as actual impropriety. Consequently, the subcommittee advises that in the future . . . members of the Senate carefully consider the potential not only for actual conflict of interest, but also the perception of conflict.

In the present instance, to avoid this perception of conflict of interest, Senator Sams would have been wise to follow the subcommittee's recommendations. Further, he would have been wise to follow Senator Roger D. Moe's advice and to withdraw from any financial involvement with the university. Without question, Senator Sams should have refused to be drawn into Dr. Martin's efforts to press on with that involvement and then to conceal it from both university auditors and, more importantly, the public.

The subcommittee further advises that the law establishing the Minnesota Agricultural Education Leadership Council be amended during the current legislative session. Current law makes legislators full, voting members of an executive council that, among other powers, has the authority to make grants. That provision is not only contrary to the usual Senate practice, but also violates the Minnesota Constitution's ban on legislators holding "any other office under the authority of the United States or the state of Minnesota, except that of postmaster or of notary public." Minnesota Constitution, article IV, section 5. The law should be changed so that legislators, if they are to serve on the council at all, do so only as non-voting advisory members.

In addition, current law has legislative members of council, along with those who are not legislators, paid per diem allowances and expense reimbursements under Minnesota Statutes, section 15.0575. Payment under that authority is appropriate for non-legislative members of multi-member agencies; legislative members, however, should be compensated through the Legislative Coordinating Commission, as they are for all other activities related to their capacity as legislators.

Approved on a vote of 4-0 by the Senate Subcommittee on Ethical Conduct.

Senator Ember Reichgott Junge, Chair
Senator Dennis R. Frederickson, Co-chair
Senator Steven G. Novak
Senator Roy Terwilliger

Date January 29, 1999



EXHIBITS

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 Fax: (612) 296-6511
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 Staples, MN 56479
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 Fax: (218) 894-3029
 Internet E-Mail:
 sen.dallas.sams@senate.leg.state.mn.us



Senate

State of Minnesota

December 1, 1998

Senator Ember Reichgott Junge
 Chair of the Senate Ethical Conduct Subcommittee
 205 State Capitol Building
 St. Paul, MN 55155-1606

Dear Senator Reichgott Junge:

As you are aware, concerns have been raised about my connection with the contract between the University of Minnesota and Media Integrated Services that resulted in an audit critical of the University's internal handling of the matter.

Prior to signing a contractual agreement, I had asked Senate Counsel to review the arrangement. Consequently, I received assurances that my role was proper, and free from any potential conflict of interest. Had I thought my involvement could in any way prompt even the appearance of a conflict of interest, I would have immediately declined the offer.

Improper internal procedures at the University, unknown to me at the time, were exposed in the subsequent investigation. While I am thankful that the audit report has fully cleared me of any wrongdoing, it has been troubling to find my name linked to publicity surrounding the internal audit's findings.

I would like to take this opportunity to fully clear my name in the eyes of my colleagues and the public. With that goal in mind, I ask you, as chair of the Senate Ethical Conduct Subcommittee, to review the facts and provide an advisory opinion on any alleged conflict of interest under the rules of the Minnesota Senate. I am pursuing this course of action with the highest regard for the Senate process, and full confidence in the considered judgment of my peers.

Thank you for your consideration.

Sincerely,

DALLAS SAMS
 STATE SENATOR
 DISTRICT #11



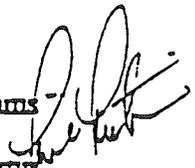
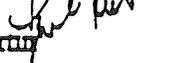
UNIVERSITY OF MINNESOTA

Twin Cities Campus

Office of the Deans
College of Agricultural, Food,
and Environmental Sciences

277 Coffey Hall
1420 Eckles Avenue
St. Paul, MN 55108-1030
612-624-3009
Fax: 612-625-1260

August 27, 1997

TO: Dallas Sams 
FROM: Mike Martin 
RE: Short Term Assistance

AD
5/5

Dallas, this is to propose an arrangement where by you would provide assistance to this College and the University in revitalizing and redirecting our program in agricultural education. Your background and experience in agricultural education as well as your familiarity with the University make you very well suited to this challenge. As I see it this assignment would include, but not be limited to, the following tasks:

- provide review, comment and practical input on curriculum development and change.
- provide advice regarding, and input in establishing, workable partnerships with selected MnSCU institution.
- work in collaboration with the dean of CEHD and COAFES in defining workable and accountable organizational relationships.
- assist in developing a recruiting and public information strategy.
- participate in the process of establishing the MAELC presence and processes on the St. Paul campus.

I propose an assignment period from September 15, 1997 to December 15, 1997. Your compensation for this undertaking will be the responsibility of COAFES and will total \$12,500. We will provide appropriate office space and clerical support. Thank you in advance for considering this important assignment.

MVM:ec

cc: Shelley Diment
Milly Theis
Bev Durgan
Phil Larsen
Alan Hunter
Roland Peterson

UNIVERSITY OF MINNESOTA

Contract For Professional Services

Contract Number
 417 55022199
 Area

Section A - Tax Information

- 1. Individual Soc Sec Nbr
- 2. Sole Proprietor 771-68-0821
- 3. Partnership Federal ID Nbr
- 4. Corporation Federal ID Nbr Charter/ File

Section B - Accounting Information

- 1. Encumber Yes No 78
- 2. Vendor Number _____ (Assigned by Purchasing)
- 3. ILOC Code _____ (Required for encumbrance)
- 4. Sponsored funds Non-Sponsored Funds

3 Area	4 Org	2Sub Org	4 Obj	2Sub Obj	14 Amount
417	1012		7200	30	12,500.00

Department Contact Jodi Fritsche Phone 624-9768

Section C - Contract Information - To be completed for all contracts

This contract hereby entered into between the Regents of the University of Minnesota acting through its:

University Department 1a. COAFES (hereinafter UNIVERSITY)
 University Address 1b. 277 Coffey Hall, St. Paul Campus and
 Name (Individual or Company): 2a. Dallas Sams (hereinafter CONTRACTOR)

as follows:
 CONTRACTOR represents that it is duly qualified and willing to perform the services set forth herein as an independent contractor. (See definition on reverse of page 1). All payments hereunder should be made to:

2b. Name (Individual or Company) Dallas e Sams 2c. Phone (inc. Area Code) (218) 284-3029
 2d. Street Address 141 Box 204 2e. City, State, Zip Staple, MN 56479
 If CONTRACTOR is either an individual or sole proprietor, please provide the following information when applicable:
 3a. If Foreign National - County _____ 3b. Visa Type _____

4. For Individual CONTRACTORS Only:
 Your qualifications/background for this project (Please include professional certifications):

5. CONTRACTOR'S Duties: Detail the service to be delivered. Include milestones, reports, work products, or other results to be delivered to the University. Attach a copy of the CONTRACTOR'S proposal if applicable including basis for cost estimate.
- provide review, comment and practical input on curriculum development and change.
 - provide advice regarding, and input in establishing, workable partnerships with selected MnSCU institution.
 - work in collaboration with the dean of CEHD and COAFES in defining workable and accountable organizational relationships.
 - assist in developing a recruiting and public information strategy.
 - participate in the process of establishing the MAELC presence and processes on the St. Paul Campus.

Contract For Professional Services

6. **Consideration:** Consideration for all services performed and goods or materials supplied by CONTRACTOR pursuant to the contract shall be paid by the UNIVERSITY upon satisfactory provision of services and/or work product as follows:
 A. Fee: \$ 12,500.00 B. Expenses \$ _____ C. Total \$ _____

NOTE: To Individual, Sole Proprietor, and Partnership: UNIVERSITY will report total on Form 1099-Misc

D. Terms of Payment: Payments shall be made by the UNIVERSITY after CONTRACTOR'S presentation of invoices for services performed and acceptance of such services by the UNIVERSITY'S Contract Administrator pursuant to Nbr 4 CONTRACTOR'S Duties. Invoices shall be submitted in a form prescribed by the UNIVERSITY and according to the following schedule: (list amounts and dates).

7. **Dates:** This contract shall be effective on the date of the last signature appearing below (at numbers 8, 9 and 10) or upon such date as is duly executed and CONTRACTOR shall complete all CONTRACTOR'S duties as set forth in Nbr 4 on or before Sept 15-Dec 15, 1 and this contract shall terminate. Time is of the essence in the performance of this contract.

The parties signing below agree to all terms and conditions contained in this Agreement, including those on the reverse side, and warrant that they have full authority to execute this agreement and perform their respective obligations.

8a. **Certification:** - Under penalties of perjury, I, the CONTRACTOR certify that:
 1. The number shown on page one of this form is my correct taxpayer identification number (TIN); and
 2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.
Certification Instructions - You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because of under reporting interest or dividends on your tax return.

8b. CONTRACTOR Walter E. Sons 8c. Date 9/11/57

RECOMMENDED	APPROVED (under \$2,001) or Recommended (\$2,001 and up)
9a. Contract Administrator/Dept Head	9b. Dean/Department Head
Date _____	Date _____
X _____	X _____

10a. REGENTS OF THE UNIVERSITY OF MINNESOTA (\$2,001 and up) ORTTA-Sponsored Program	10b. REGENTS OF THE UNIVERSITY OF MINNESOTA (\$2,001 and up) Non-Sponsored Program
Date _____	Date _____
X _____	X _____
Title _____	Title _____

NOTICE TO CONTRACTOR: Section 6109 requires you to furnish your correct TIN to persons who must file information returns with the IRS to report other income paid to you. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 31% of taxable other payments to a payee who does not furnish a TIN to a payer. Certain penalties may also apply.

PENALTIES:
Failure to Furnish TIN - If you fail to furnish your correct TIN to a requester, you are subject to a penalty of 50% for each such failure unless your failure is due to reasonable cause and not to willful neglect.
Civil Penalty for False Information With Respect to Withholding - If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

UNIVERSITY OF MINNESOTA

Office of the General Counsel

325 Morrill Hall
100 Church Street S.E.
Minneapolis, MN 55455
612-624-4100
Fax: 612-626-9624

October 5, 1998

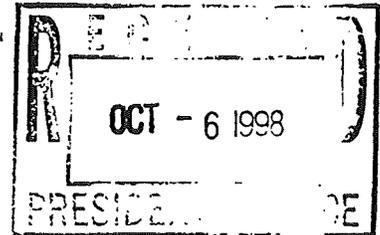
MEMORANDUM

TO: Mark G. Yudof
President

FROM: Gail L. Klatt *Gail Klatt*
Associate Vice President - Internal Audit

Mark B. Rotenberg *MBR*
General Counsel *by MK*

RE: *Review of contract for agricultural program development*



In February 1998 Michael Martin, Dean of the College of Agricultural, Food, and Environmental Sciences (COAFES) and Vice President for Agricultural Policy, executed a \$13,500 contract on behalf of the University with Media Integrated Services (MITS), a Twin Cities sole proprietorship. Most of the amount the University paid to MITS in turn was paid by MITS to State Senator Dallas Sams, who was under a consulting agreement with MITS. This report summarizes the results of our review of the MITS contract and the University's indirect payment to Senator Sams.

I. REPORT GIVING RISE TO THIS INVESTIGATION.

In mid-May 1998, two COAFES employees contacted the Department of Audits with concerns related to a February 1998 contract executed by Dean Martin with MITS. Although not named in the MITS contract with the University, Senator Sams had an agreement with MITS to provide consulting services related to agricultural education.

At the same time, Senator Sams also served as co-chair of the newly established Minnesota Agricultural Leadership Council (MAELC or Council), a state entity created pursuant to legislation sponsored by Senator Sams. During the same general period as that covered by the MITS contract, Senator Sams received per diem and expense compensation of \$4,370 for his Council work.

The two COAFES employees questioned whether Sams was being paid twice for the same work, and whether the MITS contract was in reality a disguised vehicle for facilitating an improper payment to Senator Sams. In addition, the employees questioned the appropriateness of an indirect payment by the University to Senator

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Sams. Finally, the employees expressed concern that the University never received the materials called for in the contract with MITS.

II. BACKGROUND.

The Minnesota Agriculture Education Leadership Council (MAELC).

The MAELC was established in 1997 by the Minnesota Legislature. A primary objective of the MAELC is to encourage the development of agricultural education programs, including secondary and post-secondary programs. See Minn. Stat. §§ 41D.01 *et seq.* (Supp. 1997). Senator Sams co-sponsored the legislation establishing the Council and, as Senate Agriculture Committee chair, serves as co-chair of the 16-member Council. Other Council members include officials from the University of Minnesota, officials from the Minnesota State Colleges and Universities System (MnSCU), and other government and community representatives.

The legislation establishing the MAELC appropriated \$300,000 annually to the Council. In addition, the legislation appropriated \$200,000 to the University to revitalize its agricultural education program. Both amounts are administered by the University in separate accounts through its accounting system. The executive director of MAELC is housed on the University's Saint Paul campus and is paid through University payroll.

During the late summer and fall of 1997, when the MAELC was being set up, the Council had no executive director. (The first executive director was hired in the spring of 1998.) The persons interviewed generally confirmed that Senator Sams invested time and effort in launching the Council and was the person primarily responsible for getting the Council up and running.

Unexecuted Agreement Between the University and Sams.

In August 1997, Dean Martin proposed entering into a contract with Senator Sams. His proposal called for Sams "to provide assistance to [COAFES] and the University in revitalizing and redirecting our program in agricultural education." See Attachment A. Sams' assignment was to include a number of tasks, including proposing curriculum change, establishing partnerships between the University with MnSCU, working with COAFES and the College of Education and Human Development (CEHD) as they established a new dual department agricultural education program, and developing a recruiting and public information strategy. In addition, Senator Sams was to "participate in the process of establishing the MAELC

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presence and processes on the St. Paul campus." *Id.* In exchange, the University was to pay Senator Sams \$12,500. The assignment was to run from September 15 to December 15, 1997.

A contract between the University and Sams was drafted and signed by Sams on September 11. *See* Attachment B. This document, however, was never signed by Dean Martin or anyone else at the University. Dean Martin told us that he decided not to go forward with the contract because he had received feedback that contracting directly with Senator Sams, while legal, was not advisable from a public perception point of view. Dean Martin withdrew the contract and told Senator Sams that he still wanted the work done and would work through MITS to get the payment to Sams.

Agreement Between MITS and Sams.

Tom Powell, sole proprietor of MITS, provided us with a "Letter of Agreement" between MITS and Sams, dated September 25, 1997, which outlined nine tasks Sams was to perform during the late summer and fall of 1997. *See* Attachment C. Several of the tasks were similar to those outlined in Dean Martin's original (but later withdrawn) offer to Sams, including identifying programmatic partners within MnSCU and advising on curriculum and program delivery for farm and agribusiness management programs. In addition, the Letter of Agreement called for Sams to "[p]rovide advice on the development of a plan for an extension program to serve farmers and agribusiness leaders (now in rough draft)," and for Sams to "[w]ork through M.I.T.S. to identify appropriate educational applications of interactive CD-ROM technologies." *Id.* In contrast to Martin's earlier proposed contract, which included a duty that Sams participate in establishing the MAELC's presence on the Saint Paul campus, the Letter of Agreement provided that Sams' work under the consulting agreement "must be independent of Mr. [Sams'] role as [MAELC] co-chair and related specifically to program planning and development for COAFES." *Id.*

Under the Letter of Agreement, MITS was to compensate Sams at a rate of \$400 a day. The agreement called for Sams to submit an invoice to MITS upon the completion of his services. The agreement did not call for Sams to document time spent in performing his services, but required him to apprise MITS of time expended on a weekly basis. The University was not a party to the Letter of Agreement.

Ultimately, Senator Sams was compensated by MITS for his work. While neither Tom Powell of MITS nor Senator Sams would confirm the exact amount

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Sams was paid by MITS, other information indicates that Sams received approximately (if not exactly) \$12,500.

Sams' Work at the University.

Senator Sams had an office on the Saint Paul campus and worked with University staff on both Council business and matters related to agricultural education, including discussions on the development of partnering arrangements with MnSCU. Sams also visited other higher education institutions around Minnesota and neighboring states with University employees. Sams and Martin both also state that they worked together on developing a draft extension education plan.

Contract Between the University and MITS.

In February 1998, Dean Martin entered into a contract on behalf of the University with MITS. See Attachment D. The contract outlined three duties that MITS was to perform:

1. Providing consulting services and advice, as well as access to facilities and technology for the development of CD-ROM agricultural training materials and programs.
2. Provide CD-ROM training materials, fully developed, regarding "Using Basis", "Speculation", "Predicting Commodity Prices", and "Using Futures Markets".
3. Work with the Agricultural education program development team in identifying distance delivery program audiences and clientele needs.

Id. The contract called for the University to pay MITS \$13,500 upon the delivery to the University of CD-ROM educational materials. The contract stated that the work was to be completed by February 28, 1998. Senator Sams was not a party to the contract, nor was he mentioned in it. Dean Martin told us that most of the work under the contract actually had been performed during September - December 1997, but that he had been too busy to draft the contract earlier.

Invoice for Contract Payment.

Shortly after execution of the contract, MITS sent the University an invoice dated February 27, 1998, requesting payment of the \$13,500 contract amount. See Attachment E. The invoice read, "Please remit \$13,500 as per contract agreement for development of and consultation on four CD-ROM distance delivery learning packages, entitled *Understanding Basis, Technical Analysis, Speculation, and Using the Futures Market.*" Because COAFES employees were not aware of the CD-ROMs called for by the contract, the invoice was given to Dean Martin, who approved it for payment.

Payment of the MITS Contract.

The \$13,500 check was issued to MITS on March 9, 1998, and was paid out of the \$200,000 appropriation to the University for agricultural education. The report of the expenditure prompted some COAFES employees to question the payment. In response, Dean Martin wrote a memorandum, dated May 19, 1998, explaining the arrangements that had been made with Senator Sams and MITS. See Attachment F. At the same time, Martin moved the \$13,500 expense from the originally charged University account to a different, University Foundation account. See Attachment G. The reason given by Martin was that the outcomes from the MITS contract were greater than just those relating to the agricultural education initiative, and thus a non-state source should be charged.

Per Diem Compensation of Senator Sams.

As administrator of the MAELC financial account, the University processed the documents for approved per diem and expense compensation for Council members. During the period September 2 through December 4, 1997 (roughly the same period that Sams provided consulting service for MITS), Sams claimed and collected \$4,370 for 50 days of per diems at \$55 a day (\$2,750) plus expenses (\$1,620). This compensation was paid from the Council's account. Sams' per diem and expense reimbursement requests are included in this report as Attachment I.

III. ISSUES AND ANALYSIS.

A. Was Senator Sams Compensated Twice for the Same Work?

As noted above, a question was raised in this investigation whether Senator Sams appropriately collected both (1) per diem and expense compensation from the MAELC, and (2) consulting fees from MITS (and, ultimately, the University). The

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reporting employees questioned whether Sams was being paid twice for the same work.

All members of the MAELC, including co-chair Sams, are entitled to compensation for their Council activities. Minn. Stat. § 41D.01, subd. 3(b) (Supp. 1997). By law, members of the Council must be compensated "at the rate of \$55 a day spent on board activities," plus authorized expenses. Minn. Stat. § 15.0575, subd. 3 (1996). Compensation for Council work is paid from the Council's budget, which is administered by the University. Council members submit itemized per diem and expense requests for approval by a Council co-chair. Upon approval, the requests are processed by University staff and payment is made. In September/October 1997, a total of \$9,200 was encumbered for possible Council compensation for Sams for FY 1997-98. In November 1997, that encumbrance was increased to a total of \$11,000. During the period September 2 to December 4, 1997, Sams claimed a total of \$4,370 Council compensation from the encumbrance. That amount represented per diem compensation for 50 days over that 14-week period, plus expenses. Sams' requests for compensation were approved by co-chair Stephen Wenzel.

We sought to confirm whether Sams performed separate work for the Council and the University, justifying the two types of compensation paid him for his activities in the late summer and fall of 1997. The persons interviewed generally agreed that Sams worked for both the University and the MAELC — or at least that his work benefited both organizations. Because the MAELC and the University agricultural education program share similar missions, it was difficult for persons interviewed definitively to separate Council work from University work. Moreover, because much of the consulting work and Council work performed by Sams was intangible, and because Sams provided no time sheets or other records to document time worked, it is difficult to assign a specific dollar value to each type of work and to distinguish the work in that manner. Senator Sams agreed that it was often difficult to distinguish between the types of work.

Dean Martin and Senator Sams state that Sams' primary work for the University was working with the Dean on a 13-point report entitled, "A Plan for the Delivery of Farmer and Farm Management Education Programs." See Attachment H. According to Martin, the Plan lays out 13 points crucial to the development of an improved agricultural education program. The Plan lists both Sams and Martin as co-authors. Martin told us that the first draft of the Plan was completed in October 1997 and he and Sams have added to it since then. Sams told us that a lot of brainstorming went into the development of the Plan. The Plan remains in draft form. One of the reporting employees told us of hearing Martin discuss the 13 points prior to the fall of 1997. Sams, Martin, and Tom Powell characterized the

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Plan as Sams' major work product for the University. It is the only written product of Sams' work that we were provided.

In addition to the Plan, persons interviewed described other work performed by Senator Sams that could be considered University work or work under the MITS contract. Roland Peterson, head of the new dual department agricultural education program, said that Sams worked many days with the agricultural education group, and that Sams, as a former agriculture teacher, was able to provide valuable insight and perspective on the direction of the new program. Tom Powell of MITS said that Sams worked with him and Martin in "brainstorming" for ideas related to outreach education. Powell said that he met with Sams twice and spoke by phone with him twice, and that their discussions centered around Sams' knowledge of teaching agricultural education in high school and included topics such as distance learning, linking with vo-ag professors to use CD-ROMs or telecommunications technology to teach high school students in their classrooms, how to encourage high school students to take agriculture-related courses, the marketing of CD-ROMs to vo-ag teachers, and other topics. Powell said he also had Sams review two new CD-ROMs that MITS was developing to determine the likelihood of their use. Senator Sams said that his work for the University (via MITS) included working with Martin, looking at Powell's CD-ROMs, and providing consulting advice to Powell on how the CD-ROMs could be used in educating modern farm managers.

Besides the 13-point Plan, Senator Sams did not produce any written record of his consulting work (e.g., time sheets, consultant's report, etc.). As discussed below, better documentation of Sams' work should have been required. Based on our interviews, however, we conclude that Sams did perform consulting services for the University. Dean Martin believes Senator Sams' work for the University to have been worth at least \$12,500, and we have no adequate basis for questioning his judgment.

As for his Council reimbursement, Senator Sams submitted itemized claims for \$4,370 in per diem and travel reimbursement during the relevant time period. Sams told us that the work he performed on behalf of the Council consisted mostly of developing relationships with others in higher education throughout the state. This work involved traveling to various locations and meeting with groups from those institutions, including MnSCU colleges and universities, as well as trips to South Dakota State University - Brookings and UW-River Falls. Sams said they especially were trying to promote the "2+2" program, which would involve students interested in agricultural education to take two years of classes at MnSCU (or other post-secondary schools) and then transfer to the University to complete their 4-year degree. Sams also described as a Council activity his involvement in the

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change at the University to make the agricultural education program a dual department function — a change he thought was crucial to improving agricultural education at the University. Senator Sams said his per diem and expense compensation related to his Council work.

Council co-chair Stephen Wenzel told us he did not have any reason to question Sams' per diem and expense requests before approving them, as he knew Sams was putting in a lot of hours related to MAELC business and thus felt confident the requests were proper. In general, the persons interviewed agreed that Sams was primarily responsible for launching the Council and that he put substantial time and effort in Council activities in early fall 1997. Although we do not have documentation (such as time sheets) to corroborate Senator Sams' claims, information received from University staff confirmed that Sams performed Council activities on many of the days for which he claimed reimbursement, and we have no adequate basis for questioning the validity of the remaining claims.

The circumstances behind the indirect contract with Senator Sams gave rise to the question of whether he was being paid twice for the same work. Several individuals interviewed, including Senator Sams, said that in the fall of 1997 there was discussion about having the Council hire Sams as acting executive director. Senator Sams says he received advice from a state senator that, while the Council was not prohibited from hiring him in that capacity, there might be a problem with public perception. Because of this public perception issue, Sams did not pursue being hired as the Council's executive director. Dean Martin says that he withdrew the proposed direct contract between the University and Senator Sams for the same public perception reason. The reporting employees said they concluded from these events that there was an actual prohibition against the University paying Sams at all. The employees reported conversations that they thought demonstrated that Sams was not performing two different jobs, but rather was being compensated twice for the same job, contrary to what they thought was a legal or ethical bar. They indicated that they thought their suspicions were validated by the indirect manner of paying Senator Sams through the contract with MITS.

However, we conclude that Sams performed work for both the University and the Council, and that separate payment for the two types of work was not improper. The Letter of Agreement between MITS and Senator Sams provided that Sams' work for MITS (and therefore for the University) "must be independent of Mr. [Sams'] role as [MAELC] co-chair and related specifically to program planning and development for COAFES." See Attachment B. Although we do not have time sheets or other documentation clearly to distinguish between Sams' Council and University work, the evidence does not support the conclusion that Sams failed to

comply with the Letter of Agreement provision that he keep his two types of work separate for compensation purposes. We also note that Senator Sams actually claimed less Council compensation than originally encumbered for him.

B. Was the Contract Arrangement with MITS and Senator Sams Appropriate?

We turn next to the question of the appropriateness of the MITS contract and the indirect payment arrangement with Senator Sams. As described below, we conclude that while the arrangement was not unlawful, it constituted poor business practice.

1. The Payment to MITS and Senator Sams Was Not Unlawful.

As long as Senator Sams and MITS actually provided service to the University, there was no legal barrier to paying either Sams or MITS, directly or indirectly, for their service. In exchange for \$13,500, the University received two sets of CD-ROMs valued at \$1,000.¹ In addition, the University received what Dean Martin considers to be \$12,500 worth of consulting services from Senator Sams. While we lack objective means of measuring the value of Sams' work for the University, we do not have adequate basis for questioning the Dean's judgment. Because the University paid money to MITS and, ultimately, Sams for products and services whose value, in Martin's opinion, is equal to the payment, the payment was neither a bribe of a public official nor payment of a false claim under the Minnesota Criminal Code, nor was the payment a prohibited gift to a public official under the Regent's Gift Policy.

2. The Contract Did Not Describe Accurately the Product and Services to be Purchased.

The MITS contract plainly fails to describe accurately the product and services to be purchased by the University. The majority of the \$13,500 contract amount was paid to Senator Sams for services he performed before the contract was executed. Senator Sams was not mentioned in the contract, nor was the Letter of Agreement under which he was operating — which described more fully his duties — mentioned in the contract. Dean Martin explained to us that he contracted with Senator Sams through MITS in order to establish a working relationship between

¹ We received conflicting information as to when the CD-ROMs actually were delivered, but COAFES in fact now has two complete sets.

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Sams and MITS, which he felt would benefit the University's agricultural education program. Dean Martin explained that combining Tom Powell's background in both technology and agricultural education and Sams' background as a farmer, agricultural education graduate, and agricultural education teacher would provide benefits to agricultural education in the future. Regardless of the merits of such a combination, however, the MITS contract should have — and easily could have — accurately described the contributions required of both Powell and Sams. In essence, the MITS contract was executed primarily to facilitate a payment to Sams for work he performed for the University well before the contract was written. Since this was the purpose of the contract, Martin should have included Sams' role in the contract or, even more appropriately, contracted directly with Sams for his work. Moreover, since the contract was written after the work was completed, it would seem reasonable to expect that the contract would reflect clearly the work to be performed and the deliverables received.

A review of the three deliverables shows that they do not accurately reflect the substance of the contract. The first deliverable references "consulting services and advice" and "access to facilities and technology for the development of CD-ROM agricultural training materials and programs." As for consulting services and advice, it is clear that Tom Powell provided little service in this area, and that the bulk of the consulting was provided by Sams. This is consistent with the ultimate payment to Sams. Martin told us that Powell worked with him and Sams to develop the 13-point plan, but acknowledged that Powell's main contribution consisted of the CD-ROMs. Thus, while most of the consulting services and advice were furnished by Sams, the contract does not even mention him.

In addition, we can find no evidence that the University received "access to facilities and technology for the development of CD-ROM agricultural training materials and programs." After the contract was paid, the University received CD-ROMs from MITS. This software can be purchased "off the shelf" by the general public directly from the software's Canadian marketing company, Keystone Marketing. No CD-ROMs were received that were developed exclusively for the University or the agricultural education program. Powell told us that MITS provided technical assistance to Keystone for the CD-ROMs, but that was not a service provided to the University.

The second deliverable requires the delivery of "fully developed" CD-ROM training materials. Keystone officials told us that development of the CD-ROMs started around March 1997, and that Powell had been involved in their production. Powell's main contribution was digitizing existing and new video material into the CD-ROM format. Powell also told us that he was paid by Keystone for these services

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(although he would not say how much), and that he receives a commission on copies of the software sold in the United States. A price list received from Keystone showed that the University could have purchased each set of four CD-ROMs directly for \$500. The software was not developed for the exclusive use of the University, and the University has no ownership interests or licensing rights related to the software. In sum, the CD-ROMs were not specific to the University and were worth at most \$1,000 of the \$13,500 contract. Tom Powell confirmed to us that MITS kept only \$1,000 of the contract payment to pay for the CD-ROMs.

The third deliverable calls for MITS to "work with the Agricultural education program development team in identifying distance delivery program audiences and clientele needs." The University apparently received little value from Powell related to this deliverable. Powell stated that his involvement in this area mostly would have been discussing matters with Martin and Gerald Miller, Associate Dean for Extension. Miller, however, said that he recalled only one meeting with Powell, during which they discussed the use of software by extension educators. Powell stated he had not worked with Shelley Diment or Roland Peterson, COAFES employees who are involved with the agricultural education initiative. Again, the service under this deliverable apparently was performed not by MITS, but by Senator Sams. As described above, the Letter of Agreement called for Sams to work (presumably with the University) on program delivery and distance delivery technologies for MITS. Program staff acknowledge that Sams worked with them to promote changes along these lines. Because Sams, not MITS, was responsible for this deliverable, his participation should have been included in the contract.

In sum, the MITS contract and the subsequent invoice are written with a heavy emphasis on the CD-ROMs. In fact, the CD-ROMs accounted for a small part of the contract. Most of the money paid MITS under the contract in fact was for Senator Sams' services already specified under a Letter of Agreement that was not even attached to the University's contract. The University's contract form requires the contracting parties to "[d]etail the service to be delivered." A contract that does not specify accurately the products and services to be performed cannot be enforced in the event of breach. In addition, the genesis of this contract suggests that the contract purposely was designed to avoid openly compensating Senator Sams. This is not a valid justification for this arrangement. Dean Martin now states that if he were to do it over again, he would contract directly with Senator Sams. That would have been a more appropriate course of action.

3. The Contract Should Have Included Better Measures of Accountability.

The contract should have required some specific accountability for the services to be provided. The University's contract form calls for the contracting parties to "[i]nclude milestones, reports, work products, or other results to be delivered to the University." With the exception of the CD-ROMs, the contract included no objective means to evaluate the product and services to be provided to the University. As a matter of proper business practice, the contract should have included some means to ensure accountability for Senator Sams' services — a consultant's report, an account of time spent, a plan of action, etc. — so the University could know whether it received full value under the contract. Better measures of accountability were especially necessary in this case in light of the difficulty in distinguishing between University and Council work and the requirement that Sams receive only one form of compensation for each type of work.

4. The Contract Should Have Preceded the Start of Services.

The contract between MITS and the University was not signed by the contractor until February 9, 1998, and it was not approved by the University until February 27, 1998. By all accounts, virtually all work that was performed was done during the last four to five months of calendar year 1997, and the contract even required that all work be performed by February 28, 1998 (about two weeks after the contract was signed by MITS). Dean Martin acknowledged that the contract was done after the work was performed, and stated he was simply too busy to put it together any sooner. University practice is to prepare and approve contracts when the arrangement is agreed to and before work begins.

5. Payment Should Not Have Been Made Until All Conditions For Payment Had Been Met.

The MITS contract called for payment of the full \$13,500 contract amount "[u]pon delivery of the CD-ROM educational materials." The invoice from MITS was dated February 28, 1998, and it was approved for payment on March 2, 1998. The check was printed on March 9, 1998. Although reports of the dates of delivery of the CD-ROMs are conflicting, it appears that payment was approved before all CD-ROMs were received. This is contrary to University guidelines and good business practice, as advance payments are discouraged.

IV. CONCLUSIONS.

Based on the information gathered and the interviews conducted, we drew the following conclusions:

1. The Letter of Agreement between MITS and Senator Sams, under which Sams was to provide consulting services to the University, required that Sams' consulting work for the University be independent of his work as co-chair of the MAELC. The evidence does not support the conclusion that Sams violated this provision and collected both consulting fees and Council compensation for the same work. We conclude that Sams did perform consulting work for the University, and that the evidence does not provide an objective basis to question Dean Martin's judgment that Sams' work was worth \$12,500. In addition, Senator Sams unquestionably devoted time and effort to Council activities, and the evidence does not support the conclusion that his requests for per diem and expense compensation, which were approved by the Council's co-chair, were inappropriate.
2. Because the University received services and product from Senator Sams and MITS, the University's contractual arrangement with, and payments to, Senator Sams and MITS were lawful and did not violate the Regents' Gift Policy.
3. Nevertheless, the contractual arrangement with MITS, and indirectly with Senator Sams, did not conform with good business practices, as follows:
 - a. The MITS contract did not reflect accurately the work purchased. The contract could lead readers to believe that the development and delivery of CD-ROM technology was the primary deliverable, when in fact payment for consulting work to be performed by Senator Sams was the main purpose of the contract. Because Senator Sams was to furnish the consulting services that accounted for most of the value of the contract, Dean Martin either should have included Sams in the MITS contract or, preferably, contracted with Sams directly, as Dean Martin originally intended to do.
 - b. The contract should have included some means to ensure accountability for Senator Sams' services.

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- c. The contract should have been executed before the services were performed, not after.
- d. Payment should not have been made to MITS until all conditions for payment had been met.

List of Individuals Interviewed During the Review

Michael Martin, Dean of COAFES and Vice President for Agricultural Policy

Gerald Miller, Associate Dean for Extension - COAFES

Milly Theis, Fiscal Officer - COAFES

Roland Peterson, Head - Division of Agricultural, Food and Environmental Ed.

Shelley Diment, Associate to the Dean - COAFES

Monica Siems, Program Staff - Agricultural Education and MAELC

Donna Peterson, Director of State Relations

Tom Powell, Media Integrated Training Services (MITS)

Patrick Plonski, Executive Director - MAELC

Dallas Sams, State Senator and Co-Chair of MAELC

Dahl at Keystone Marketing Services

William P. Donohue, Deputy General Counsel

Stephen Wenzel, State Representative and Co-Chair of MAELC

Vic Moore, Chief of Staff for State Senator Roger Moe

UNIVERSITY OF MINNESOTA

Contract Number 417 Area 55024284

Contract For Professional Services

Section A - Tax Information

- 1. Individual Soc Sec Nbr 476 - 40 - 5187
- 2. Sole Proprietor
- 3. Partnership Federal ID Nbr _____
- 4. Corporation Federal ID Nbr _____ Charter/ File _____

Section B - Accounting Information

- 1. Encumber Yes No
- 2. Vendor Number _____ (Assigned by Purchasing)
- 3. ILCC Code _____ (Required for encumbrance)
- 4. Sponsored funds Non-Sponsored Funds

APL
3/20
1/-

3	1	2 Sub	1	2 Sub	13
Area	Org	Org	Obj	Obj	Amount
377	3965		7200	30	\$13,500.00

Department Contact Jodi Fritsche Phone 624-9768

Section C - Contract Information - To be completed for all contracts

This contract hereby entered into between the Regents of the University of Minnesota acting through its: Administration (hereinafter UNIVERSITY)

University Department 1a. College of Agricultural, Food, & Environmental Sciences

University Address 1b. 277 Coffey Hall, 1420 Eckles Avenue St. Paul, MN 55108 and

Name (Individual or Company): 2a. Media ~~Integrated~~ Training Services, Thomas Powell (hereinafter CONTRACTOR)

agrees as follows:
 CONTRACTOR represents that it is duly qualified and willing to perform the services set forth herein as an independent contractor. (See definition on reverse of page 1). All payments hereunder should be made to:

2b. Name (Individual or Company) Media Integrated Training Services (MITS) 2c. Phone (inc. Area Code) 612-642-1151

2d. Street Address 970 Raymond Avenue, Suite 101 2e. City, State, Zip St. Paul, MN 55114

If CONTRACTOR is either an individual or sole proprietor, please provide the following information when applicable:

3a. If Foreign National - Country _____ 3b. Visa Type _____

- 4. For Individual CONTRACTORS Only:
 Your qualifications/background for this project (Please include professional certifications):
A company specializing in instructional design and multi-media educational resources development.
- 5. CONTRACTOR'S Duties: Detail the service to be delivered. Include milestones, reports, work products, or other results to be delivered to the University. Attach a copy of the CONTRACTOR'S proposal if applicable including basis for cost estimate.
Provide consulting services and advice, as well as access to facilities and technology for the development of CD-RCM agricultural training materials and programs. Provide CD-RCM training materials, fully developed, regarding "Using Basis", "Speculation", "Predicting Commodity Prices", and "Using Futures Markets". Work with the Agricultural education program development team in identifying distance delivery program audiences and clientele needs.

Contract For Professional Services

6. **Consideration:** Consideration for all services performed and goods or materials supplied by CONTRACTOR pursuant to the contract shall be paid by the UNIVERSITY upon satisfactory provision of services and/or work product as follows:
- A. Fee: \$ 13,500.00 B. Expenses \$ _____ C. Total \$ 13,500.00

NOTE: To Individual, Sole Proprietor, and Partnership: UNIVERSITY will report total on Form 1099-Misc

D. Terms of Payment: Payments shall be made by the UNIVERSITY after CONTRACTOR'S presentation of invoices for services performed and acceptance of such services by the UNIVERSITY'S Contract Administrator pursuant to Nbr 4 CONTRACTOR'S Duties. Invoices shall be submitted in a form prescribed by the UNIVERSITY and according to the following schedule: (list amounts and dates).
Upon delivery of CD-ROM educational materials.

*APL
5/20/98*

7. **Dates:** This contract shall be effective on the date of the last signature appearing below (at numbers 8, 9 and 10) or upon such date as it is duly executed and CONTRACTOR shall complete all CONTRACTOR'S duties as set forth in Nbr 4 on or before 2/28/98 and this contract shall terminate. Time is of the essence in the performance of this contract.

The parties signing below agree to all terms and conditions contained in this Agreement, including those on the reverse side, and warrant that they have full authority to execute this agreement and perform their respective obligations.

8a. Certification: - Under penalties of perjury, I, the CONTRACTOR certify that:

1. The number shown on page one of this form is my correct taxpayer identification number (TIN); and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

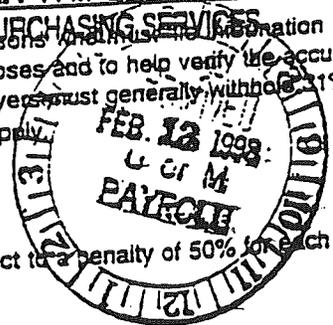
Certification Instructions - You must cross out item (2) above if you have been notified by the IRS that you are currently subject to backup withholding because of under reporting interest or dividends on your tax return.

8b. CONTRACTOR Thomas A. Powell Medical Integrated Training Services 2/9/98

RECOMMENDED	APPROVED (under \$2,001) or Recommended (\$2,001 and up)
9a. Contract Administrator/Dept Head	9b. Chair/Department Head
Date	Date
X <u>[Signature]</u>	X <u>[Signature]</u>

10a. REGENTS OF THE UNIVERSITY OF MINNESOTA (\$2,001 and up) ORTTA-Sponsored Program	10b. REGENTS OF THE UNIVERSITY OF MINNESOTA (\$2,001 and up) Non-Sponsored Program
Date	Date
X _____	X <u>[Signature]</u> <u>2/17/98</u>
Title	Title KAREN TRIPLETT

NOTICE TO CONTRACTOR: Section 6109 requires you to furnish your correct TIN to persons who request information returns with the IRS to report other income paid to you. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 31% of taxable other payments to a payee who does not furnish a TIN to a payer. Certain penalties may also apply.



PENALTIES:

Failure to Furnish TIN - If you fail to furnish your correct TIN to a requester, you are subject to a penalty of 50% for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil Penalty for False Information With Respect to Withholding - If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

NOTE: Department attach Consulting and Professional Worksheet - Route all copies to Central Payroll

INSTRUCTIONS :

Complete only if contracting with an individual or sole proprietorship. If you are hiring an individual or sole proprietorship, it is important to establish that the nature of the service does not constitute employee/employer relationship. The following factors are critical and may be enough to establish independent contractor status.

If the answer to any of the following questions is "YES", you may need to consider hiring the individual as an employee. The more "YES" responses there are to these critical questions, the more likely it is that the individual should be hired as an employee. Fill in the form completely, no question should be left unanswered.

When contracting with an individual or sole proprietorship, this form must be routed to Central Payroll with "Contract For Professional Services" (Form BA1384) or "Payment Authorization for Service PVC (Form BA1382) payment requests when a contract is not required.

APW
5/20/98
3/3

Individual Sole Proprietor

Soc Sec Nbr 1417161-14101-151118171

Payee Name Thomas Powell, Media Integrated Training Services

Address 970 Raymond Avenue, Suite 101

City, State, Zip St. Paul, MN 55114

If Foreign National - Country _____

Visa Type _____

- Yes No 1. Is the individual working exclusively for the University of Minnesota?
- Yes No 2. Are the services of the individual integrated into your organization? For example, are you hiring someone to teach for credit?
- Yes No 3. Are you providing any assistance to the individual such as additional personnel support, supplies, equipment, etc.
- Yes No 4. Are you providing on-going training and direction concerning how to complete the task? That is, are you giving more than general directions and the objectives of the task?
- Yes No 5. Does the individual report to a UM staff member who has the right to change HOW the individual does their work?
- Yes No 6. Is there a regular or on-going relationship with the individual? For example, are you hiring the individual for more than a one-time task?
- Yes No 7. Is the individual using experience or expertise gained as a current or previous employee of the University of Minnesota including the Hospital to provide the service?
- Yes No 8. Can the contractor quit prior to completion of the project without incurring any legal liability?

Prepared By Jodi Fritsche	Phone 624-9768	Date 02/04/98
Department Name College of Agricultural, Food, & Environmental Sciences		
Department Address 277 Coffey Hall, 1420 Eckles Avenue St. Paul, MN 55108		

Conversation 1: Mike Martin & Shelley Diment – May 6, 1998

...

DIMENT: ...the whole notion of compensation to Dallas through that third party agreement, you know, do we...I guess...I've been thinking and thinking and trying to think if you have any other way. I feel that it leaves you vulnerable to have a third party agreement. Um...we had talked about that before. I just think it's stronger if we say he deserves this money and we're gonna pay him for the work he's done.

MARTIN: Well, we already have, and, quite frankly, I've tried to do it that way, but this is the only way he felt he could do it.

DIMENT: Okay, 'cause he just doesn't feel he can...

MARTIN: Yeah, he said...

DIMENT: ...hold out before the ethics committee.

MARTIN: ...Roger Moe just absolutely told him flat out not to have it direct.

DIMENT: But he deserves to be...

MARTIN: I know.

DIMENT: ...paid for what he did. He did great work for us.

MARTIN: And he has been compensated now.

DIMENT: Okay. Well...let me just be honest with you. It's sort of...it's hard for me, Mike. It's just hard for me because it's something I wouldn't quite have chosen...

MARTIN: Well...

DIMENT: ...to do that way, and so I don't quite know...you know...just personally, inside my job, I feel a little bit over the line of what I'm really comfortable with. At the same time, I know exactly where you are coming from. You want to pay the man for the good work he's done. So...I don't know.

MARTIN: Well, it was a tricky one, and Dallas and I spent a lot of time talking about it, and...and I was...I'm not entirely comfortable with it, but on the other hand, I think Dallas has done us a great deal of service and put a lot...

DIMENT: He has...

MARTIN: ...of heart into thing.

DIMENT: And it's really clear, too, that...

MARTIN: And he got well into...

DIMENT: ...it was never the intention of the bill to...you know...to hire Dallas or anything. That wasn't the plan that he had in mind at all.

MARTIN: Once he got into it, he'd already invested time when Roger told him he could not take it directly.

DIMENT: Yeah. Those rules are too stringent.

MARTIN: Well, I know they are. Did you see the article in the paper about he can't legally accept his wedding ring?

DIMENT: You're kidding.

MARTIN: No. His wife's a lobbyist. She gave him a 3000 dollar...she's giving him a 3000 dollar wedding ring. Technically, he can't accept it.

DIMENT: Oh, that's ridiculous.

MARTIN: Yeah. I mean, he's gonna do it, and it just made the St. Paul Ledger.

DIMENT: Well, the good thing about that is I think that people will read that and say that's ridiculous.

MARTIN: Well, people know it, but if he was joking...he called me last night 'cause he sent me a copy of the article, and he said it was the only way for him to take it on.

DIMENT: What do you mean? What did he do to take it on?

MARTIN: He went public with it...

DIMENT: Oh, he did...

MARTIN: Yeah. I mean...

DIMENT: Oh, cool.

MARTIN: There was a cover article about it in the St. Paul Ledger, which covers the legislature,

about he's technically in violation and no one seems to be willing to prosecute him, because his wife is a registered...his fiancée, who he's marrying on Sunday, is a registered lobbyist, and she gave him a 3000 dollar wedding ring. He can give her a wedding ring, but not vice versa.

DIMENT: But she can't...is she allowed to marry him? *laughs*

MARTIN: Yeah, and they threw a big party...

DIMENT: Yeah, he had invited me to that, and I couldn't get there.

MARTIN: ...at a lobbyist's house, and then, in the end, he had to pay for it all.

DIMENT: Got it.

MARTIN: So, we are in a tricky area, and I wrestle with it too. On the other hand, you know, I also wrestle with what's fair, and whether...

DIMENT: Yeah.

MARTIN: ...or not, you know...the same thing happened, you may know, with Noetzel. Noetzel retired. We wanted to hire him to teach at Crookston. We couldn't pay him with public funds, because he was a federal retiree.

DIMENT: Oh, because he's federal....okay.

MARTIN: So, I hired him through a consulting firm.

DIMENT: Got it. I don't think that these rules are working well.

MARTIN: No.

DIMENT: You know, they force good people...

MARTIN: They force them all into...

DIMENT: ...to make bad choices.

MARTIN: ...very uncomfortable situations.

DIMENT: Yeah. Well, Mike...all right. I might...

MARTIN: Well, I hear your concern, and uh...and I'm not comfortable with it, but I'm willing to take the heat if it comes down...

DIMENT: Okay.

MARTIN: ...because I think it's the right thing to do.

DIMENT: Okay. That works for me. I...you know, I really...I can't think of an alternative. That's what I've been...

MARTIN: He and I tried a lot of things...

DIMENT: ...trying to think of for a long time.

MARTIN: ...and we talked to...and I talked to the legal counsel over there, and we were trying to come up with a way to do it, and it really had nothing...quite frankly, it wasn't even legal. It was Roger Moe's decision that it would look politically incorrect, and...you know...we said, lookit for Christ sakes...???? is receiving 78,000 dollars a year to direct AURI, on which he votes.

DIMENT: Yeah. Exactly.

MARTIN: But...you know, for whatever reason, this was not one that, at the moment, Roger is comfortable with.

DIMENT: Yeah.

MARTIN: Now, right at this moment, Roger may be comfortable with it, because they're afraid that Dallas may leave the Senate and go to work for Agrogrow, and they don't want to lose him.

DIMENT: Yeah. So...but I suppose it...it's too late to sort of set the record straight.

MARTIN: Yeah, we might be able to at some point, but I think the best thing is to hope that it all...you know, and Dallas might talk to ????'cause he's most at risk.

DIMENT: Yes, he is. And he's a good senator.

MARTIN: Yeah.

DIMENT: I mean, he's working really hard. The work he did this summer and fall was remarkable...

MARTIN: Yeah.

DIMENT: ...for the program, so...

MARTIN: On his own.

DIMENT: Yup.

MARTIN: You know, when you make 29 grand a year...

DIMENT: I know.

MARTIN: ...it's real hard to throw yourself...

DIMENT: That's another whole issue.

MARTIN: I know.

DIMENT: You know...so...well, I really wish we could have just stood up on our tables and shouted that he deserved to be paid through the...

MARTIN: Yeah, me too.

DIMENT: ...proper channels.

MARTIN: And the problem is that the person we had to show it to simply wouldn't listen. And I understand Roger's concern. I mean, Roger has...you know, Roger was dealing with politics. But I thought that it was a really...kind of a tiny way to behave. It wasn't all that much money. It wasn't like he was going to get rich on it.

DIMENT: Right. It was a small amount...

MARTIN: Well, but Moe flat chewed him out about it. Poor Dallas was then kind of stuck because he'd already invested a lot of time, and a lot of his own expense.

DIMENT: Right.

MARTIN: With the expectation he was going to get paid.

DIMENT: Right.

MARTIN: So, he and I had quite a discussion, and we figured this was our only way out.

DIMENT: Okay...got it. Well...got it. You know, I don't understand it, politics. I don't claim to understand politics.

MARTIN: If you try, it only makes you get a little dizzy, makes your eyes hurt, and your...

DIMENT: Well, it doesn't. It makes my stomach hurt, you know, and I suppose I feel a little embarrassed saying that to you, but it's the truth. I'm...it's upsetting to me.

MARTIN: Yeah.

DIMENT: And, well...there it is. So...but I also certainly don't want you or Dallas to become...you know, ever in a vulnerable place, because it seems like you both should have been able to just...

MARTIN: Yeah.

DIMENT: ...stand up and say exactly what was going on.

MARTIN: Oh, I know it.

DIMENT: Alrighty, Mike. Okay...Crookston and Dallas.

MARTIN: I'll get on tomorrow...

DIMENT: That's all I have.

MARTIN: Well, I'll get on the Crookston thing tomorrow.

DIMENT: Okay, I will too.

MARTIN: Let me know if you hear anything...

...

ROGER D. MOE
MAJORITY LEADER
Senator 2nd District
Route #3, Box 86A
Erskine, Minnesota 56535
Phone: 218/574-2216

Room 208, State Capitol
75 Constitution Avenue
St. Paul, Minnesota 55155-1606
Phone: 612/296-2577
Fax: 612/297-5479
sen.roger.moe@senate.leg.state.mn.us



Senate

State of Minnesota

September 18, 1997

Senator Dallas Sams
328 Capitol
St. Paul, Mn. 55105

Dear Senator Sams:

I am writing to express concern over your potential employment with the University of Minnesota. While I understand that a Senator's job is part time and that other employment is often times necessary, I also know that we live and work in a political environment that allows little tolerance for even the slightest appearance of conflict.

It is my advice that you error on the side of caution and terminate your relationship with the University.

I will help in any way I can to find you another part time job.

Thanks for your serious attention to this letter.

Sincerely,

A handwritten signature in cursive script that reads "Roger D. Moe".

Roger D. Moe
Senate Majority Leader



ROGER D. MOE
MAJORITY LEADER

Senator 2nd District
Route #3, Box 86A
Erskine, Minnesota 56535
Phone: (218) 574-2216

Room 208, State Capitol
75 Constitution Avenue
St. Paul, MN 55155-1606
Phone: (612) 296-2577



Senate

State of Minnesota

January 11, 1999

TO: The Subcommittee on Ethical Conduct:

Senator Ember Junge
Senator Steve Novak
Senator Dennis Frederickson
Senator Roy Terwilliger
George McCormick, Senate Counsel

FROM: Roger D. Moe, Senate Majority Leader

A handwritten signature in black ink, appearing to read 'RDMoe', written over the printed name of Roger D. Moe.

RE: Senator Dallas Sams

The purpose of this memorandum is to clarify my role in Senator Dallas Sams' contractual arrangement with the University of Minnesota or any other third party.

Enclosed is a letter which I sent to Senator Sams on September 18, 1997, expressing my concern over his potential employment with the University of Minnesota. My advice to Senator Sams was to terminate his relationship with the University. I did not know of, nor would I have condoned, any third party arrangement between Senator Sams and the University of Minnesota.

I am bringing this matter to your attention since a taped phone conversation between Dr. Michael Martin and Ms. Shelly Diment infers that, while I opposed a direct contractual arrangement, some other indirect relationship would meet with my approval. That inference is wrong. Again, I did not know of any third party arrangement, and had I known, I would have advised against it.

I hope this helps to set the record straight.

RDM:ld/enc

cc: Senator Dallas Sams

Conversation 2: Dallas Sams & Shelley Diment - May 8, 1998

DIMENT: Hi, this is Shelley.

SAMS: Hi, Shelley. Dallas here.

DIMENT: Hey, hi Dallas. Thanks for calling.

SAMS: You're not feeling good, huh?

DIMENT: No, I'm not at all. Ugh. Yuk. Hey, how are you?

SAMS: I'm good.

DIMENT: Are you up and ready for the weekend?

SAMS: I am.

DIMENT: Good for you.

SAMS: I am.

DIMENT: Is your wedding on Sunday?

SAMS: Sunday morning, yup.

DIMENT: Well, congratulations. That's great.

SAMS: So we're ready to go.

DIMENT: Good for you.

SAMS: I was gonna...the reason I called is I was gonna talk to you on our way to Mankato the other day when you asked me about the payment?

DIMENT: Oh, yeah...I talked...yeah...I talked with Mike yesterday. Did he call you?

SAMS: Well, the reason I didn't say...I mean, I just skipped over it is because I didn't know if...I didn't think Pat knew anything about the arrangement. Does he?

DIMENT: I think so...I honestly don't know.

SAMS: Uh huh...

DIMENT: I honestly don't know if Pat knows anything.

SAMS: That's why I just acknowledged (???) it. You know, I was going to talk to you and tell you about it...what we did...how did...

DIMENT: I didn't know anything about it that day that I asked you on the way to Mankato either.

SAMS: Yeah.

DIMENT: When, um...I don't know...just shortly thereafter, it came up on a budget statement.

SAMS: Yeah, what's the budget statement say?

DIMENT: The budget shows a payment to the software group. I think it's a...I haven't actually seen it, but it's like 13,500 or something there, so...

SAMS: 12,500.

DIMENT: Got it. So, when that came in...when I...I don't know if it was then or when, but sometime I came into my office with a copy and Pete and Monica asked me if I knew what it was...you know what that was about. So, that was when I first saw it, and then...um...you know, then we talked with Mike, and...

SAMS: Did he (???)

DIMENT: ...Monica or Pete, I think. See I don't really do the budget pieces (???) stuff. But...

SAMS: So that came out of MAELC's program budget, then, of the 200,000.

DIMENT: Mmm...no. Out of the 200,000 of the AgEd program budget, so...

SAMS: Where the executive director dollars would come out of?

DIMENT: No, out of...actually out of...it's not it that same pot. You know, there's...and I don't know exactly why. It's in my side of it. You know, the AgEd program that's in...and there's the MAELC money, too, so no, it's not in that one.

SAMS: So, it's not out of the dollars that Pat would normally be responsible for.

DIMENT: Right.

SAMS: Okay, so he probably doesn't know about it.

DIMENT: He probably doesn't know about it.

SAMS: Well, see...early on I told Mike, I said, nah just forget it. I said, you know...I'll just do the per diem thing and the milage, and he said no, we appreciate your doing this, and we'll just do it and you and I will know about it and Millie and that'll be it. And, so I thought, well...okay, fine. You know, if you want to do it, Mike, you know, that's fine. But I didn't anticipate it coming through where Pete would see it and Monica and I just, you know...

DIMENT: Yeah.

SAMS: ...I didn't...but...

DIMENT: Yeah...I think that it's a...I just...I talked with Mike yesterday. He may have called you, and I'm guessing that you guys have talked...

SAMS: Yeah.

DIMENT: ...so, I talked with Mike because early on, there was a lot of question around, and I heard question from people at MAELC meetings or whatever, you know, kind of the rumbly stuff, saying are they going to pay Dallas, and I was, like, well I sure hope we'll be able to pay Dallas because he's doing great work kind of thing. You know, and then the whole ethics thing, and...

SAMS: Right.

DIMENT: ...um...I talked with Mike yesterday because when I look at it, I feel that there's...it's...it probably leaves Mike vulnerable if it comes...if it is known to anybody because of the way it is positioned through a software company, I feel that it leaves Mike vulnerable. So, I had suggested to him that I thought it would be better if he could just stand up and say we need to pay Dallas, he's done great work, or run it though the contract...you know, pay you through the per diem contract for the full amount of your work. You know, the full 12-5 layer of...level of your work, because you did an awful lot of work for us.

SAMS: Yeah.

DIMENT: And we didn't pay you through there, and it would be a very appropriate place to pay you, I think.

SAMS: Although, I don't know how you'd justify it because per diem's based on daily work.

DIMENT: It wouldn't be enough to fulfill the contract that you and Mike had agreed upon before you ever found out that someone might be upset if you...

SAMS: Yeah.

DIMENT: ...were paid for the work. I see what you're saying.

SAMS: Now, who would question it?

DIMENT: Who would question it...

SAMS: Yeah. The budget. The way it's been done now. I mean, is Monica going to question it or is Pete?

DIMENT: To tell you the truth, Dallas, that's the most tricky question you could ask me right now...

SAMS: Uh huh.

DIMENT: ...and I'm trying to find out if I have a right to answer your question. I have a confidential request in to someone to find out if I have...if I...Mike asked me that same question, and I said, Mike, I honestly don't know that I'm at liberty to say, and I apologize. That's a weird response. I'm not comfortable with it. But, I'm trying to get a little bit of insight...and I honestly don't know that anyone will question it. Personally, I'm not happy with it, but I wouldn't question it. You know, my role, as I see it, is to advise Mike to be in a solid place, and I know...I know what went on. You and I worked together.

SAMS: Mmm hmm.

DIMENT: And...um...I know that you did...you know, I know what work was done. I know that you deserve to be paid for the work you did. So, I mean, I'm not upset with the payment to you at all. I just...um...the rumblings have always continued, and I tend to be the sort who advises Mike to stay in a very clean place, you know...

SAMS: Mmm hmm.

DIMENT: ...so that if anything were to come, he would not be vulnerable, and as my boss, I called him and have had...and have advised him that I think that the way it's handled right now, he could be questioned and could be vulnerable. So...and I don't know if that's even true or not, frankly. I mean, I think it is, but it's my opinion. You know what I mean?

SAMS: What's Monica's attitude towards it?

DIMENT: My understanding is that Monica is not very happy with it...

SAMS: Mmm hmm.

DIMENT: ...and my understanding is that Pete is not very happy with it, and there are others who are unhappy as well.

SAMS: And others know about it?

DIMENT: Um...I don't know the full extent. I have not shared it with others, but some...there seems to be some knowledge about it. Dallas, what can I...I'm being too obscure there for fairness...um...

SAMS: Well, it wasn't supposed to get the...it wasn't supposed to be like this.

DIMENT: Right.

SAMS: I'm a little bit upset, too.

DIMENT: If we...would you be willing for us to change the paperwork? Or do you think it's just too...too late to do that?

SAMS: Well, I think if it's to this point, I should just give it back and say that's it and forget it. I mean...you know, I don't know if we can retrace or retrack and get out of this thing or what...at this point. It's certainly not worth it to me to risk anything.

DIMENT: If Mike gave you the impression that he could only pay with only Millie and himself knowing, that simply isn't really the case.

SAMS: Mmm hmm. Well, he said you provide the services, and we'll...um...you know.

DIMENT: Exactly. You've provided the services and I honestly...

SAMS: I didn't expect it to go where Monica was going to see it. I didn't...you know, I didn't care if you saw it or not, but I certainly didn't know Monica was going to see it.

DIMENT: Well, I...frankly, I'm not...I'm not happy with the method of payment. I want to be clear with you on that. I think Mike made a poor choice. I always wanted him to pay you, but had I been the only one to see it, I would have questioned Mike, and advised him to change it...

SAMS: Yeah.

DIMENT: ...in very much the very same way that I am now, because he's...it's just not a real solid place to leave it. You know, he...I've continually said to him that he should just stand up to Roger Moe and say you have every right to be paid, and I guess I'm naive, Dallas. That's just still where I see it. You have every right to have been paid for the work you did for us, and so, it doesn't seem right for you to need to be in a position to not be paid, where you would need to return payment or something seems...but...it needs to be a direct payment I think for...or...I don't know. I think Mike should seek advice from someone who understands these things better than me. Maybe at the U.

SAMS: If you think somebody's upset enough they might challenge it...

DIMENT: I think it's real possible.

SAMS: Mmm hmm.

DIMENT: You know, I don't have a crystal ball.

SAMS: Mmm hmm.

DIMENT: I'm sorry. That's...you know, I guess that's the best answer I can give either of us.

SAMS: Yeah. Okay. Well, that's what I need to know. I mean, I need to know how critical this thing is or where it's at, so...okeedoke. Well, we'll talk to you again. I just got paged. I gotta get back to the office, but...

DIMENT: You shouldn't be working this day.

SAMS: I'm not really.

DIMENT: You should be getting your hair cut or something.

SAMS: Okay, well...

DIMENT: Okay.

SAMS: Let me know what...if...you know, you hear anything else.

DIMENT: Well...I will. I will. And I imagine you're going to be out of touch for a while, but...

SAMS: Yeah, for three weeks, so...

DIMENT: Okay.

SAMS: Hopefully, nobody will do anything before that, but...

DIMENT: Got it.

SAMS: Okay, thanks, Shelley.

DIMENT: All right, Dallas. Thanks. Bye.

SAMS: Bye.

From: "Mike Martin" <marti053@maroon.tc.umn.edu>
Send reply to: "Mike Martin" <marti053@maroon.tc.umn.edu>
To: Shelley S Diment <dimen001@tc.umn.edu>
Subject: Funding
Date sent: Mon, 11 May 98 09:56:07 -0500

Shelley, we've shifted the entire MITS contract payment to none state funds. I have a deans discretionary account which will cover it as program development. So I think any question about appropriateness has been resolved. We still have an issue about trust, communications and assignments that requires resolution. We should talk soon

Mike

Mike Martin, Dean
College of Agricultural, Food,
and Environmental Sciences
277 Coffey Hall
1420 Eckles Avenue
St. Paul, MN 55108
612-624-5387 (Phone)
612-625-1260 (Fax)

Letter of Agreement

This document is to serve as a letter of agreement for consulting services between Media Integrated Training Services (M.I.T.S.) and Dallas Sams.

ADW
6/24/97

Tasks

Mr. Sams agrees to utilize his expertise and time to complete the following tasks:

1. Assist in identifying prospective programmatic partners among the Minnesota state college and university institutions
2. Provide assistance in developing partnership agreements with appropriate institutions
3. Provide assistance in reviewing existing curriculum and program delivery approaches for farm and agribusiness management programs
4. Assess the viability of alternative distance delivery technologies
5. Help to identify long-term educational needs for farmers and agribusiness decision-makers
6. Work through M.I.T.S. to identify appropriate educational applications of interactive CD-ROM technologies
7. Provide advice on the development of a plan for an extension program to serve farmers and agribusiness leaders (now in rough draft)
8. Serve as a liaison with farm management institutions and others
9. Assess the various audiences' needs for farm management education

Conditions

Conditions for the services to be provided are as follows:

- ◆ All work must be completed during late summer and fall of 1997.
- ◆ This work must be independent of Mr. Sam's role as MAGLC co-chair and related specifically to program planning and development for COAFES.

Terms

Upon receipt of an invoice, to be tendered upon completion of his services, M.I.T.S. agrees to reimburse Mr. Sams at a rate of \$400 per day for his time spent on this project. Mr. Sams agrees to these conditions and further agrees to apprise M.I.T.S. of time expended on a weekly basis so that funds available for his services may be kept within budget.

Signed Tom Powell
Tom Powell, M.I.T.S.

Signed Dallas C. Sams
Dallas Sams, Consultant

Date 9/25/97

Date Oct 1, 1997

1 A Senate resolution

2 relating to ethical conduct; conduct of Senator Dallas
3 C. Sams.

4 WHEREAS, the Subcommittee on Ethical Conduct of the
5 Committee on Rules and Administration, in response to a written
6 request for an advisory opinion submitted by Senator Dallas C.
7 Sams on December 1, 1998, met on December 16, 1998, and January
8 12, 1999, to consider whether Senator Sams' work as a consultant
9 for Media Integrated Training Services (MITS), as part of a
10 contract between MITS and the University of Minnesota College of
11 Agricultural, Food, and Environmental Sciences (COAFES),
12 constituted a conflict of interest.

13 AND WHEREAS, the Subcommittee on Ethical Conduct, based on
14 clear and convincing evidence, has made the following findings
15 of fact:

16 1. Senator Sams, during the 1997 legislative session, was
17 the chief Senate author of S.F. No. 1592, a bill to revive
18 agricultural education in the state. The substance of the bill
19 was proposed by the Minnesota Vocational Agricultural
20 Instructors Association because of a decline in agriculture
21 education at the University of Minnesota and a resulting demand
22 for, and shortage of, agriculture instructors in the state. The
23 association worked primarily with the House authors in having
24 the bill drafted. Later, the association asked Senator Sams to
25 be the chief Senate author. The bill achieved two purposes.
26 First, it established the Minnesota Agriculture Education
27 Leadership Council (MAELC). Second, it appropriated money to
28 the university to pay the costs of the council and to enable it
29 to make grants for secondary and post-secondary agricultural
30 education programs. At least initially, the university--and,
31 specifically, COAFES and its then dean, Michael Martin--opposed
32 the bill because agriculture education was a College of
33 Education function and not a COAFES program. S.F. No. 1592 was
34 not enacted, but its substance was incorporated into S.F. No.
35 1888, the omnibus higher education appropriation bill. Senator
36 Sams was not an author of the latter bill, nor was he a member

1 of the conference committee that reconciled differences between
2 it and its counterpart in the House of Representatives. In
3 incorporating the substance of S.F. No. 1592 into S.F. No. 1888,
4 the conference committee included a provision removed from the
5 Senate version, but retained by the House, that made the chairs
6 of the Senate Committee on Agriculture and Rural Development and
7 the House Committee on Agriculture co-chairs of the council.
8 Senator Sams was then, and is now, chair of the Senate committee.

9 2. As co-chair of MAELC, Senator Sams began in July of 1997
10 to spend time helping to establish its office, take steps to
11 hire an executive director, and begin its programs. Between
12 early July and the end of the year, he spent 50 days on MAELC
13 business. For that work, he was compensated at the rate
14 authorized in the MAELC legislation: \$55 a day, for a total of
15 \$2,750. He also was reimbursed for \$1,620 in expenses, which
16 was also authorized by the legislation. In total, he received
17 \$4,370 for work related to MAELC. The legislation did not
18 follow the standard practice of having legislators serve as
19 nonvoting members of external, executive-type councils. In
20 addition, per diem payments to legislators for MAELC work were
21 paid under contract by the university from the MAELC
22 appropriation rather than using the standard procedure of having
23 legislative per diems paid by the Legislative Coordinating
24 Commission.

25 3. In August 1997, Dr. Martin proposed to Senator Sams "an
26 arrangement where by (sic) you would provide assistance to this
27 College and the University in revitalizing and redirecting our
28 program in agricultural education." Senator Sams was qualified
29 to provide that service since he is an agricultural education
30 graduate of the University of Minnesota, has taught agriculture
31 and farm management on the secondary and post-secondary levels,
32 and is a farmer. Upon passage of S.F. No. 1888, Dr. Martin
33 said, he had begun asking persons in the agricultural education
34 community to recommend someone who could help him on a
35 short-term basis to implement the provision giving his college
36 new responsibility for agriculture education. Many of those

1 consulted, he said, recommended Senator Sams. The arrangement
2 proposed by Dr. Martin in the August memorandum was to extend
3 from September 15, 1997, to December 15, 1997, and total
4 compensation for Senator Sams was to be \$12,500. On September
5 11, 1997, Senator Sams signed a contract for that amount,
6 prepared by COAFES, but the contract was never executed by the
7 university. Dr. Martin later told university auditors that he
8 did not go forward with the contract because he had been warned
9 that contracting directly with Senator Sams, while legal, might
10 be publicly perceived as improper. Dr. Martin also told the
11 auditors that he had told Senator Sams that he nonetheless
12 wanted him to provide services to COAFES and would work through
13 MITS to compensate the senator for his efforts. Senator Sams
14 began providing the requested services during the autumn of
15 1997. Neither the memorandum from Dr. Martin to Senator Sams
16 nor the unexecuted contract contains any reference to what both
17 testified was an understanding from the beginning that Senator
18 Sams was to be paid from nonstate funds. According to the
19 testimony of several witnesses, including Dr. Martin; Shelly
20 Diment, Dr. Martin's assistant; and Dr. Roland Peterson, head of
21 the agriculture education program at the university, Senator
22 Sams performed valuable work for both MAELC and the university.
23 Dr. Peterson specifically identified a number of outcomes
24 resulting from Senator Sams' work.

25 4. On February 17, 1998, Dr. Martin, on behalf of the
26 university, entered into a \$13,500 contract with MITS under
27 which MITS was to provide consulting services and advice
28 relevant to the development of CD-ROM agricultural education
29 programs, to provide the programs to the university, and to
30 identify potential users of the programs. Thomas Powell, sole
31 proprietor of MITS, testified that his understanding with Dr.
32 Martin was that Senator Sams was to be paid \$12,500 of the
33 \$13,500 paid to MITS. Senator Sams, however, was not a party to
34 the contract, nor was he mentioned in it. The contract between
35 the university and MITS never required Senator Sams to account
36 for his time or to document his work. Moreover, the contract

1 between the university and MITS was drafted and executed after
2 Senator Sams had provided the desired services.

3 5. In a May 6, 1998, telephone conversation with Ms.
4 Diment, Dr. Martin said he used a third-party arrangement to pay
5 Senator Sams because Senator Roger D. Moe, the Senate majority
6 leader, advised against a direct payment. "Roger Moe just
7 absolutely told [Senator Sams] flat out not to have it direct,"
8 he said in the conversation, which was taped by Ms. Diment. In
9 a September 18, 1997, letter to Senator Sams, a copy of which he
10 furnished to the subcommittee, Senator Moe advised Senator Sams
11 to "terminate [his] relationship with the University." In a
12 cover memorandum to the subcommittee, Senator Moe further
13 stated: "I did not know of, nor would I have condoned, any
14 third-party arrangement between Senator Sams and the University
15 of Minnesota."

16 6. On February 27, 1998, MITS sent the university an
17 invoice requesting payment of \$13,500, and a check for that
18 amount was issued to MITS on March 9, 1998. The payment was
19 apparently issued before MITS had delivered any CD-ROM programs
20 to the university. The two sets of programs that were
21 eventually delivered were available on the open market for \$500
22 a set. The payment to MITS was made from a \$200,000
23 appropriation to the university for agricultural education under
24 the 1997 omnibus higher education bill discussed in finding No.
25 1. Later in March, MITS paid Senator Sams \$12,500.

26 7. In his testimony of December 16, 1998, Senator Sams said
27 Dr. Martin had told him that his payment would come from
28 nonstate funds, but "[w]hether in fact they did or in fact they
29 did not I am in no position whatsoever to respond to that."
30 Later on that date, he said he did not learn the source of the
31 funds until after Ms. Diment had raised the issue with Dr.
32 Martin. On May 8, 1998, Senator Sams had a telephone
33 conversation with Ms. Diment, Dr. Martin's assistant, which Ms.
34 Diment taped. During the conversation, Senator Sams asked
35 whether his payment came from the MAELC program budget or from
36 the agriculture education program budget, both of which were

1 appropriated to the university by S.F. No. 1888. Ms. Diment
2 told him that the money came from the latter budget. In the
3 conversation, Senator Sams repeatedly expressed concern about
4 who would know about his payment from the university through
5 MITS. Senator Sams testified on January 12, 1999, that Dr.
6 Martin had told him the previous day that the payment had come
7 from state funds.

8 8. Both Ms. Diment and Monica Siems, a program assistant in
9 Dr. Martin's office, testified on December 16, 1998. Ms. Diment
10 said then that Dr. Martin had told her in the autumn of 1997
11 that he intended to pay Senator Sams for his services to COAFES
12 through a third party, and that she advised him then that he
13 should instead pay him directly. Ms. Siems testified that in
14 April of 1998, while reviewing March expenditures from the
15 agriculture education budget, she came across the \$13,500
16 payment to MITS and questioned it because she was unaware of any
17 arrangement between the college and MITS. She said she asked Ms.
18 Diment, her supervisor, and Dr. Peterson, head of the
19 agriculture education program, about the payment, and both said
20 they knew nothing about it. Subsequently, Ms. Siems said, she
21 learned that the MITS contract had been the vehicle through
22 which Senator Sams was paid. She also testified that she knew
23 of no other instance in fiscal 1998 in which Dr. Martin
24 "authorized an expense from [the agriculture education] budget
25 of which neither Shelly, Roland, nor I had any knowledge." Both
26 Ms. Diment and Ms. Siems said they spoke with Dr. Martin,
27 questioning the appropriateness of the payment to Senator Sams
28 through MITS. One reason for their concern, they said, was the
29 question of whether Senator Sams was compensated twice for the
30 same work: once through MAELC per diem payments, and again
31 through the MITS contract.

32 9. Dr. Martin and Senator Sams testified, both on December
33 16 and January 12, that the intention always was that Senator
34 Sams would be paid from nonstate funds. Dr. Martin said that he
35 paid MITS in March of 1998 from state funds because the nonstate
36 account from which he intended to make the payment was

1 depleted. His plan, he said, was to avoid interest charges by
2 paying MITS from state funds, then to transfer money to cover
3 the payment when a gift to the nonstate account, which he
4 expected later in the year, was received. The university
5 development office, however, in a letter provided to the
6 subcommittee by university auditors, stated that the gift was
7 committed to the university in March 1998, when MITS and,
8 through it, Senator Sams was paid. The money was not available,
9 however, until August. University sources also noted that the
10 procedure followed by Dr. Martin would not have avoided payment
11 of interest.

12 10. On May 6, 1998, Ms. Diment tape recorded a telephone
13 conversation with Dr. Martin expressing her discomfort with the
14 indirect payment to Senator Sams. On May 8, she tape recorded a
15 telephone conversation with Senator Sams in which she again
16 expressed her concerns about the payment. Shortly thereafter,
17 in a May 11, 1998, e-mail to Ms. Diment, a copy of which Ms.
18 Diment furnished to the subcommittee, Dr. Martin informed her
19 that "we've shifted the entire MITS contract payment to none
20 (sic) state funds. . . . So I think any question about
21 appropriateness has been resolved." He further said, "We still
22 have an issue about trust, communication, and assignments that
23 require resolution." Ms. Diment testified on January 12, 1999,
24 that, to the best of her knowledge, the decision to cover the
25 payment with nonstate funds was made in May of 1998, after she
26 and Ms. Siems had questioned the MITS payment. Money was
27 transferred from nonstate funds later in May, although Dr.
28 Martin testified that the nonstate fund from which he intended
29 to pay MITS would be depleted until an expected gift was
30 received, and money from the gift was not yet available in May.

31 11. In mid-May of 1998, Ms. Diment and Ms. Siems approached
32 the university Department of Audits with their concerns about
33 the MITS contract, and the department began an investigation of
34 the matter. Dr. Martin testified repeatedly on December 16,
35 1998, that he had initiated the investigation, but the audit
36 report substantiates that it was initiated after the Department

1 of Audits had heard from Ms. Diment and Ms. Siems. Mr.
2 Rotenberg, the university's general counsel, discussed the audit
3 in testimony on December 16. He said that a direct contract
4 between the university and Senator Sams would have been legal,
5 whether the payment under the contract came from state or
6 nonstate funds. He also pointed out that the auditors concluded
7 that an indirect payment to Senator Sams through MITS was not
8 unlawful, so long as the university received commensurate value
9 from both the senator and MITS. In exchange for the \$13,500
10 paid to MITS, the auditors further noted, the university
11 received CD-ROM sets worth \$1,000 and what Dr. Martin "considers
12 to be \$12,500 worth of consulting services from Senator Sams."
13 "While we lack objective means of measuring the value of Sams'
14 work for the University, we do not have adequate basis for
15 questioning the Dean's judgment. Because the University paid
16 money to MITS and, ultimately, Sams for products and services
17 whose value, in Martin's opinion, is equal to the payment, the
18 payment was neither a bribe of a public official nor payment of
19 a false claim under the Minnesota Criminal Code, nor was the
20 payment a prohibited gift under the Regent's (sic) Gift Policy."
21 Nonetheless, the auditors noted, the arrangement with MITS and,
22 through it, Senator Sams, "constituted poor business practice."

23 12. The auditors also concluded that, while it was
24 difficult to separate the work done by Senator Sams for which he
25 was compensated by MAELC per diem payments and the work for
26 which he was compensated through the MITS contract, "Sams
27 performed work for both the University and the Council, and . .
28 . separate payments for the two types of work was not improper."

29 13. On June 23, 1998, during the preparation of the audit,
30 university auditors received a faxed copy of a "letter of
31 agreement" between Mr. Powell of MITS and Senator Sams. Mr.
32 Powell's signature was dated September 25, 1997, and Senator
33 Sams' signature was dated October 1, 1997. In the agreement,
34 Senator Sams committed himself to providing services to MITS for
35 \$400 a day, similar, but not identical, to those outlined in the
36 September 11, 1997, unexecuted contract between him and COAFES.

1 Neither Ms. Diment nor Ms. Siems knew anything about this letter
2 of agreement before the audit.

3 14. On December 16, 1998, Dr. Martin testified that he
4 "drafted most of" the September 25, 1997, letter of agreement
5 between Mr. Powell of MITS and Senator Sams, and implied that it
6 was in the file given to the auditors when they began their
7 investigation. In contrast, on January 12, 1999, he said Mr.
8 Powell drafted the agreement. Mr. Powell, however, said on that
9 same date that "Dr. Martin drafted it."

10 15. Mr. Powell first testified on January 12, 1999, that he
11 did not receive a draft of the letter of agreement until "after
12 the first of the year" some time in early 1998. He said he
13 dated his signature September 25, 1997, at Dr. Martin's
14 direction. Later in the January 12 hearing, after checking
15 dates with his secretary, Mr. Powell said his office received
16 the draft from Dr. Martin and entered it on the office computer
17 on June 18, 1998, and sent it to Senator Sams for his signature
18 on June 22, 1998. (Those dates were later confirmed in a letter
19 to the subcommittee counsel from Joan Schoepke, the secretary
20 who prepared the letters of agreement and provided the
21 information to Mr. Powell on January 12.) University auditors
22 received a copy with both Mr. Powell's and Senator Sams'
23 signatures on June 23, 1998.

24 16. On December 16, 1998, Senator Sams testified that he
25 signed the letter of agreement on October 1, 1997. On January
26 12, 1999, however, he testified that he signed it after October
27 1, but sometime in the autumn of 1997. The work under the
28 agreement, he said, "was in process at that time." He also said
29 that he "worked into January" under the agreement. According to
30 that testimony, work "in process" did not extend beyond January
31 of 1998. Senator Sams also said on January 12 that he thought
32 it acceptable to backdate his signature because he had begun
33 performing the work covered by the letter of agreement on
34 October 1, 1997.

35 17. In the preparation of the university audit, auditors
36 were unaware that the letter of agreement dated September 25 and

1 October 1, 1997, and received on June 23, 1998, had been drafted
2 in June of 1998. They also were not provided copies of the
3 telephone conversations taped by Shelly Diment.

4 AND WHEREAS, the Subcommittee on Ethical Conduct, based on
5 clear and convincing evidence, has drawn the following
6 conclusions:

7 1. Senator Sams' work for the University of Minnesota did
8 not constitute a conflict of interest. No testimony was
9 presented suggesting that he sponsored the MAELC legislation in
10 return for a promise of employment or a consulting contract. In
11 fact, the initiative for the legislation came from the Minnesota
12 Vocational Agriculture Instructors Association, and the bill was
13 drafted under the direction of the chief House author.

14 2. The subcommittee also concluded, as did the university
15 auditors, that Senator Sams performed work, and achieved
16 significant results, for both MAELC and the university that
17 justified separate payments from both entities and that he was
18 not paid twice for the same work. While he was not, ultimately,
19 paid from state-appropriated funds, it would not have been
20 illegal had he been paid from that source.

21 In reaching those conclusions, however, subcommittee
22 members felt obligated to consider the manner in which the
23 payment from the university was handled and the testimony it
24 heard with respect to that matter. Having done so, the
25 subcommittee further concluded from clear and convincing
26 evidence that:

27 3. Dr. Michael Martin, who at the time of events under
28 scrutiny was not only a dean, but a vice president of the
29 University of Minnesota, entered into an inappropriately written
30 and executed third-party contract with MITS in an effort to
31 conceal a payment to Senator Sams.

32 4. Dr. Martin, while testifying that he always intended to
33 pay Senator Sams out of nonstate funds, failed to do so until
34 directly pressured by Ms. Diment and Ms. Siems.

35 5. Dr. Martin drafted the letter of agreement between MITS
36 and Senator Sams in June of 1998, after the audit had been

1 commenced and the work performed, and then directed Mr. Powell,
2 a party to the agreement, to backdate his signature to September
3 25, 1997.

4 6. The letter of agreement, which Dr. Martin implied was in
5 the files given to the university auditors at the start of their
6 audit, was actually provided to them on June 23, 1998, either by
7 Dr. Martin or, at his direction, by Mr. Powell.

8 7. Dr. Martin, under oath, gave false and misleading
9 testimony to the subcommittee with respect to several matters,
10 including his sworn testimony that he had initiated the
11 university audit and that Mr. Powell had drafted the letter of
12 agreement between MITS and Senator Sams.

13 8. Dr. Martin gave additional conflicting and confusing
14 testimony under oath about documents he personally prepared, the
15 contents of the file provided to the university auditors, and
16 the transfer of funds to cover the university payment to MITS.

17 9. Although a direct payment from state-appropriated funds
18 to Senator Sams would not have been illegal, unethical, or a
19 conflict of interest, it is the subcommittee's belief that
20 Senator Sams was concerned enough about potentially negative
21 political perceptions that he knowingly engaged in collective
22 efforts with Dr. Martin to conceal his payment and to prevent
23 disclosure of it.

24 10. Senator Sams' actions were contrary to the advice he
25 received from Senator Roger D. Moe and were motivated by a
26 desire to conceal his actions from Senator Moe and avoid the
27 negative political implications of which Senator Moe had warned.

28 11. Senator Sams knew on May 7 or 8, 1998, that his payment
29 from MITS originally came from state-appropriated funds.

30 12. On or about June 22, 1998, after the university audit
31 commenced, Senator Sams signed the letter of agreement with
32 MITS, backdating his signature to October 1, 1997.

33 13. Senator Sams, who is not an attorney, testified on
34 January 12 that he had dated his signature on the letter of
35 agreement as of October 1, 1997, "since he had begun work under
36 the agreement on that date."

1 14. Senator Sams gave conflicting and confusing testimony
2 with respect to when he knew that his payment had come from
3 state-appropriated funds and when he signed his letter of
4 agreement with MITS.

5 15. Senator Sams' conduct in attempting to conceal the
6 payment to avoid negative political perceptions was unethical
7 and improper and brought disrepute to the Minnesota Senate.

8 16. Senator Sams' testimony to the subcommittee failed to
9 meet the level of candor, thoroughness, and accuracy expected of
10 a state senator.

11 NOW, THEREFORE,

12 BE IT RESOLVED, by the Senate of the State of Minnesota:

13 1. Senator Dallas C. Sams is reprimanded.

14 2. Senator Dallas C. Sams shall make a public apology to
15 the Minnesota Senate, his constituents, and the public.

16 3. Senator Dallas C. Sams is removed as a member and
17 vice-chair of the Human Resources Finance Committee.