

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

In re: SALVADOR GODINEZ and )  
JERRY BUSCHER ) OEIG Case: 11-01738

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received a final report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General and to Salvador Godinez and Jerry Buscher at their last known addresses.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

FINAL REPORT

**I. Allegation and Summary**

The OEIG self-initiated this investigation in response to information it obtained that the Illinois Department of Corrections (“IDOC”) hired a politically-connected, but otherwise unqualified, person as [a senior prison position], namely [employee 1].

The investigation revealed that the [identifying information redacted] is a “*Rutan-exempt*” position, and therefore it would not have been improper for the IDOC to hire [employee 1] for that position based, in part, on political affiliation. However, the investigation further revealed that the IDOC violated its own policy by hiring [employee 1], because [employee 1’s] educational background and work history did not meet the written requirements for the [redacted] position, as set out in the position description.

## II. Background

### A. ***Rutan* Hiring Procedures, Illinois Personnel Code Merit Selection Provisions, and Other Applicable Hiring Policies**

In 1990, the United States Supreme Court held in *Rutan v. Republican Party of Illinois*<sup>1</sup> that public officials could not use political affiliation and support as a basis for hiring, promotion, transfer, or recall decisions for non policy-making positions. Policy-making positions for which consideration of political affiliation is permitted have come to be known as “*Rutan*-exempt.” In Illinois, in order to determine whether a position is *Rutan*-exempt, the Department of Central Management Services (“CMS”) conducts a technical review of each position description.<sup>2</sup> CMS and the Civil Service Commission also review position descriptions to determine whether a position contains policy-making responsibilities such that the position should be exempt from the merit selection provisions of the Personnel Code.<sup>3</sup>

Positions that are both *Rutan*-exempt and exempt from the merit selection provisions of the Personnel Code are referred to as “double-exempt.” Under the CMS *Personnel Transactions Manual*, certain double-exempt positions are filled using a transaction called an “exempt appointment.”<sup>4</sup> Because such double-exempt positions are exempt from the merit and fitness section of the Personnel Code, prospective employees are not evaluated by CMS before being eligible for hire. Instead, the *Personnel Transactions Manual* provides that before making an exempt appointment, the hiring agency, such as IDOC, “is responsible for ensuring the candidate meets the minimum training and experience qualifications for the position” as outlined in the position description.<sup>5</sup> An agency may also have additional internal policies regarding position qualifications or requirements. For example, IDOC has an internal policy that further provides that applicants for employment with the Department must, among other things, “[m]eet the educational and experience requirements of the position for which applying.”<sup>6</sup> The IDOC policy does not waive that requirement with regard to exempt or double-exempt positions.<sup>7</sup>

### B. **Executive Inspectors General Review of State Hiring Practices**

In 2009, the General Assembly amended the State Officials and Employees Ethics Act<sup>8</sup> (“Ethics Act”) and, among other things, expanded the duties of Executive Inspectors General to include the following duty:

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<sup>1</sup> 497 U.S. 62 (1990).

<sup>2</sup> See Administrative Order No. 1 (1990).

<sup>3</sup> 20 ILCS 415/4d.

<sup>4</sup> CMS *Personnel Transactions Manual*, Section 2, p. 21.

<sup>5</sup> *Id.*

<sup>6</sup> IDOC Administrative Directive 03.02.106, II.H.1.c. (Effective 1/1/2002).

<sup>7</sup> The IDOC policy does provide that the process of “[i]nterviewing and selection of applicants for exempt positions shall be conducted as determined necessary by the [Director].” IDOC Administrative Directive 03.02.106, II. H.3. (Effective 1/1/2002).

<sup>8</sup> 5 ILCS 430/1-1 *et seq.*

To review hiring and employment files of each State agency within the Executive Inspector General's jurisdiction to ensure compliance with *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), and with all applicable employment laws.<sup>9</sup>

As a result of this amendment to the Ethics Act, the Executive Inspector General for the Agencies of the Illinois Governor has reviewed various State agency hiring practices, including the practices set forth in this report.

### **C. [Redacted] Correctional Center**

[This section identifies and describes the prison to which employee 1 was assigned and its personnel structure].<sup>10</sup>

### **D. Position Description for [Employee 1's position].**

According to the established position description, the [redacted] is a double-exempt position charged with "formulating, organizing, and directing the overall Program Services" for [redacted]. The [redacted] position is "administratively responsible and accountable for execution of policies and procedures in management of the institution while serving as Duty Warden" and is expected to conduct "daily routine inspection tours of the institution for security, safety, and sanitation."

IDOC's [redacted] position description contains a list of six specialized skills and knowledge "necessary for the successful performance of the work of th[e] position." The first two relate to education and work experience, and the last four pertain generally to knowledge of prison administration. The six specialized skills and knowledge in the position description are:<sup>11</sup>

1. Requires knowledge, skill and mental development equivalent to completion of four years college supplemented by a Master's degree in public or business administration, sociology, penology, behavioral sciences or a related field.
2. Requires at least two years professional supervisory experience in a correctional facility, public or private service, or social welfare organization.
3. Requires thorough knowledge of the methods of prison or institution administration.
4. Requires thorough knowledge of the principles and practices of penal administration and criminology.
5. Requires thorough knowledge of the methods and techniques of developing and conducting programs.
6. Requires thorough knowledge of the attitudes, problems and behavior of residents under restraint.

### **E. [Employee 1's] Educational Background and Employment History**

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<sup>9</sup> 5 ILCS 430/20-20(9).

<sup>10</sup> [Redacted].

<sup>11</sup> The requirements are not numbered in the position description, but are here for ease of reference.

*i. Education*

[Redacted]. [Employee 1's] application materials, wherein he listed the number of semester hours completed in various fields of study, did not reveal any coursework in criminal justice, criminology, business administration, penology, behavioral sciences, or public administration. [Employee 1's] application materials reveal that he completed six hours of coursework in sociology.

*ii. Work Experience*

[Employee 1's] work experience, according to his resume, included positions:

- teaching theatre;
- managing the campaign office for his father's campaign, [redacted];<sup>12</sup> and
- managing a movie store.

[Redacted].

### **III. Investigation**

#### **A. Interview of [Employee 1]**

On January 5, 2012, investigators interviewed [employee 1]. [Employee 1] stated that in the summer of 2011 he was looking for new employment because of threats of layoff from his position with [redacted]. After learning about the [redacted] vacancy from a family friend, [employee 1] applied and was interviewed in August 2011 by IDOC Director Salvador Godinez, Executive Chief to the Director Jerry Buscher, and a third IDOC employee whose name [employee 1] could not recall.<sup>13</sup>

[Employee 1] said that he believed he would be a good fit as [redacted] because of his experience at [redacted]. In that position, he taught a substance abuse prevention course to junior high students, young people who had dropped out of high school, and juveniles on probation. He also oversaw summer youth programs, which included assessing operational needs, including staffing and budget issues. [Employee 1] also thought his personal skill set, being a big picture thinker, and having good people skills, would also lend itself well to the position.

[Employee 1] was shown a copy of the [redacted] position description and asked whether his education and experience met the six requirements. [Employee 1] said that he did not meet the third, fourth, or sixth requirements. With respect to the first requirement, [employee 1] stated that his degrees were not directly related to the degrees listed in the first requirement, but said his coursework involved public speaking and communication. [Employee 1] also said that his acting

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<sup>12</sup> [Redacted].

<sup>13</sup> Investigators determined that the third IDOC employee in [employee 1's] interview was [redacted]. [Redacted] informed investigators that he did not have any input into [employee 1's] hiring.

classes were related to behavioral sciences. [Employee 1] said that he did not meet the second requirement because he did not have two years supervisory experience in a correctional facility, public or private service, or social welfare organization. He noted, however, that he had supervisory experience as Assistant Manager at a movie store and as Office Manager for his father's campaign. Finally, [employee 1] stated that although he did not have knowledge on the methods and techniques of *developing* programs as stated in the fifth requirement, he did implement curriculum for nearly five years while working at [redacted].

[Employee 1] said that during the interview and selection process, he raised the issue that he had no correctional experience and was assured that he would receive training once hired. After he was hired, IDOC employee [employee 2], provided [employee 1] with an extensive list of objectives designed to "establish the groundwork upon which [his] success and effectiveness as an [redacted] will depend." The objectives would essentially bring [employee 1] up to speed with the operations of the institution and program areas. The objectives were to be completed within [employee 1's] first 90 days on the job.

#### **B. Interview of [Employee 1's former employer]**

On August 22, 2012, investigators interviewed [employee 1's former employer]. The [employer] said that as a[n employee], [employee 1's] duties included teaching State curriculum to students in grades four through seven or eight. The [employer] further stated that [employee 1] did not have any supervisory responsibilities.

When asked whether [employee 1] would have gained any knowledge of (a) methods of prison or institution administration or (b) principles and practices of penal administration and criminology, the [employer] responded, "Absolutely not." The [employer] also stated that as an employee in the [redacted], [employee 1] did not have any interaction with criminal offenders or any type of residents under restraint.<sup>14</sup> According to the [employer], [employee 1] did gain knowledge and experience related to conducting programs, but that he did not develop any programs while employed at [redacted].

#### **C. Interview of IDOC Executive Chief to the Director Jerry Buscher**

On February 15, 2012, investigators interviewed Jerry Buscher, Executive Chief to the Director. Mr. Buscher stated that he has seen position descriptions for an [redacted] position in the past, but that he has never used a position description to assess whether an applicant is qualified. Mr. Buscher stated that he knows what qualifications are required for the positions because of his extensive 23-year career at IDOC. Mr. Buscher said that he does not know if written requirements of a position are compared to an applicant's resume prior to filling the position.

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<sup>14</sup> The [employer] stated that [employer] does not house residents under restraint; however, [employer] does have a contract with Sheridan Correctional Center to house electronically monitored offenders. IDOC monitors the offenders, and [employer] provides the treatment. However, [redacted] did not have any interaction with any [employer] criminal offender.

Mr. Buscher stated that exempt positions are not *Rutan*-covered, and the Director can hire [redacted] in such a position if he wants. When asked whether he was aware of *any* limitations on appointments to these positions, Mr. Buscher replied that common sense drives the selection process and the interviewers try to match up the applicant's skill set with the facility. For instance, Mr. Buscher said that he would not send an applicant who does not have a corrections background to a high security facility. Mr. Buscher stated that IDOC is absolutely less concerned with an applicant for an [redacted] position having prior correctional experience than an applicant for an Assistant Warden of Operations position.

Mr. Buscher stated that he participated in [employee 1's] interview for the [redacted] position at [redacted]. Although Mr. Buscher did not specifically recall [employee 1's] background or interview, Mr. Buscher said that [employee 1] was [redacted]. For example, IDOC has employed former educators as Assistant Wardens of Programs, and many of them had done very well.

#### **D. Interview of IDOC Director Salvador Godinez**

On May 30, 2012, investigators interviewed IDOC Director Salvador Godinez. Since becoming Director, Director Godinez conducts interviews for exempt positions, including the majority, if not all, interviews for Assistant Warden positions. Director Godinez said that [redacted] positions are difficult to fill, and he selects applicants based on a combination of the applicant's resume and performance in the interview.

Director Godinez said that he interviewed and selected [employee 1] for the [redacted] position because [redacted] is a [redacted] facility that needs program creativity to engage inmates. Director Godinez stated that he was aware that there were written requirements for the [redacted] position, but had not seen them. Nonetheless, Director Godinez said that he was knowledgeable about what was required of the position because he served as a [redacted] during his career. Director Godinez stated that while education is important, he looks primarily to intangibles like energy and thought process when filling [redacted] positions.

Director Godinez said that though it is not related to any of the fields outlined in the first requirement in the position description, [employee 1's] [redacted] degree fits with what is required of the position and could lend itself well to a [redacted] prison like [redacted]. Director Godinez pointed to [employee 1's] experience at [redacted] as meeting the requirement that an applicant possess knowledge of the methods and techniques of developing and conducting programs. Director Godinez confirmed, however, that [redacted] did not meet any of the remaining requirements outlined in the job description.

Director Godinez said that the requirement outlined in the position description that an applicant has thorough knowledge of the principles and practices of penal administration and criminology is absolutely important, because when acting as [redacted], an [redacted] would be in charge of the entire facility during an emergency situation. However, Director Godinez stated that all new [redacted] receive [redacted] training to ensure they are competent to be in charge if the need arises. Director Godinez said that he would not have hired [employee 1] for a position at a [redacted] security facility due to his lack of correctional experience, but said that [redacted]

security facilities do not have many emergency situations during which [employee 1] could be responsible as [redacted].

Director Godinez was shown IDOC Administrative Directive 03.02.106. Director Godinez stated that he was not aware that the administrative directive required that an applicant “meet the educational and experience requirements for the position for which applying.” Director Godinez said that based on the written requirements for the position, [employee 1] was not qualified for the position; however, Director Godinez said that, in his opinion, [employee 1] was qualified to perform the job duties of an [redacted].

#### IV. Analysis

Under IDOC policy, the Director is empowered to determine the manner in which IDOC conducts interviews and selection for exempt positions. IDOC Administrative Directive 03.02.106, II.H.3. In particular, IDOC policy states that an applicant for employment with the Department must, among other things, “[m]eet the educational and experience requirements of the position for which applying.” IDOC Administrative Directive 03.02.106, II.H.1(c). In addition, according to CMS guidelines, the agency is responsible for ensuring that the applicant meets the minimum educational, training, and experience requirements for the position. CMS *Personnel Transactions Manual*, Section 2, p. 21.

[Employee 1] and IDOC officials who interviewed him for the [redacted] position all confirmed that [employee 1’s] education and experience did not meet the minimum requirements of the established position description. Director Godinez specifically noted the importance of correctional experience and knowledge of principles and practices of penal institutions because the incumbent, acting as [redacted], would be in charge of the institution in an emergency situation. Nevertheless, Director Godinez authorized the hiring of [employee 1], who did not meet the written requirements for the [redacted] position as set forth in the position description.

In addition, neither Director Godinez nor Mr. Buscher reviewed the position description prior to interviewing or selecting [employee 1] to familiarize themselves with the written requirements of the position as set forth in the position description before assessing whether [employee 1] was qualified. In fact, Director Godinez confirmed not having seen the position description, although he knew written position requirements existed.<sup>15</sup> Director Godinez indicated that he relied on his prior experience working in a similar position to determine whether an applicant was qualified. Mr. Buscher understood that there were no hiring limitations for double-exempt positions. Moreover, according to Mr. Buscher, the limitations or lack thereof in the hiring of double-exempt employees with no correctional experience was not limited to [employee 1].

Hiring [employee 1] as [redacted], a position for which he did not meet the educational or experience requirements as set forth in the existing position description, violated IDOC policy

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<sup>15</sup> Notably, position descriptions are used not only to determine whether the position is exempt from *Rutan* procedures and Personnel Code provisions, but also to determine the appropriate level of pay commensurate with the requirements and responsibilities. See 20 ILCS 415/8a(2); 80 Ill. Adm. Code §301.10.

and contravened CMS guidelines. Therefore, the allegation that IDOC improperly hired [redacted] is **FOUNDED**.

**V. Recommendations**

Following due investigation, the OEIG issues this finding:

- **FOUNDED** –IDOC violated agency policy when hiring [employee 1] as [redacted].

The OEIG recommends that the Governor’s Office take appropriate action with regard to the hiring of [employee 1] as [redacted] in light of the fact that he did not meet all of the written employment requirements as set forth in the position description.

The OEIG also recommends that the Governor’s Office ensure IDOC take appropriate action to prevent the future hiring of individuals who do not meet all of the employment requirements.

No further investigative action is needed, and this case is considered closed.

Date: August 31, 2012

Office of Executive Inspector General  
for the Agencies of the Illinois Governor  
607 East Adams, 14<sup>th</sup> Floor  
Springfield, IL 62701

**Sarah R. Kerley**  
Assistant Inspector General

**Kasey Cook**  
Investigator # 119





STATE OF ILLINOIS  
**OFFICE OF THE GOVERNOR**  
SPRINGFIELD, ILLINOIS 62706

**Pat Quinn**  
GOVERNOR

**CONFIDENTIAL**

VIA U.S. MAIL AND E-MAIL

September 27, 2012

Mr. Neil P. Olson  
Deputy Inspector General and Chief of Springfield Division  
Office of the Executive Inspector General  
607 East Adams, 14<sup>th</sup> Floor  
Springfield, IL 62701-1634

**Re: Response to Final Report in OEIG Case No. 11-01738**

Dear Mr. Olson:

Please be advised that the Office of the Governor ("OOG") is in the process of finalizing its response to the Office of the Executive Inspector General's ("OEIG") Final Report in Case No. 11-01738. The OOG will provide a written response by Thursday October 4, 2012.

Please let us know if you have any questions or if we can provide any additional information.

~~Sincerely,~~

~~John F. Schomberg~~  
~~General Counsel~~

Cc: Jack Lavin, Chief of Staff, OOG (via email, w/ encl.)



STATE OF ILLINOIS  
**OFFICE OF THE GOVERNOR**  
SPRINGFIELD, ILLINOIS 62706

**Pat Quinn**  
GOVERNOR

**CONFIDENTIAL**

VIA U.S. MAIL AND E-MAIL

October 4, 2012

Mr. Neil P. Olson  
Deputy Inspector General and Chief of Springfield Division  
Office of the Executive Inspector General  
607 East Adams, 14<sup>th</sup> Floor  
Springfield, IL 62701-1634

**Re: Response to Final Report in OEIG Case No. 11-01738**

Dear Mr. Olson:

Enclosed please find the response of the Office of the Governor ("OOG") to the Office of the Executive Inspector General's ("OEIG") Final Report in Case No. 11-01738.

Please let us know if you have any questions or if we can provide any additional information.

Sincerely,

John F. Schomberg  
General Counsel

Enclosures

Cc: Jack Lavin, Chief of Staff, OOG (via email, w/ encl.)



**OFFICE OF EXECUTIVE INSPECTOR GENERAL  
FOR THE AGENCIES OF THE ILLINOIS GOVERNOR**

32 WEST RANDOLPH STREET, SUITE 1900  
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(312) 814-5600

**OEIG RESPONSE FORM**

Case Number:  
11-01738

Return By:  
20 Days After Receipt of Report

Please check the box that applies.

- We have implemented all of the OEIG recommendations.  
(Provide details regarding action taken.)

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- We will implement all of the OEIG recommendations but will require additional time.  
We will report to OEIG within 30 days from the original return date.  
(Provide details regarding action planned / taken.)

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(over)

We are implementing one or more of the OEIG recommendations, however, we plan to depart from other OEIG recommendations.

(Provide details regarding action planned / taken and any alternate plan(s).)

See attached.

We do not wish to implement any of the OEIG recommendations.  
(Explain in detail why and provide details of any alternate plan(s).)

Signature

*John Schomberg*

Print Name

*Office of the Governor/Grand Jury*

Print Agency and Job Title

Date

*10/4/12*

**ADDENDUM TO OEIG RESPONSE FORM IN CASE NO. 11-01738**

The Office of the Governor (OOG) has the following responses to the Office of the Executive Inspector General's (OEIG) recommendations in the OEIG's Final Report in Case No. 11-01738:

1. OEIG Recommendation: For the Governor's Office to "take appropriate action with regard to the hiring of Correctional Center in light of the fact that he did not meet all of the written employment requirements as set forth in the position description."

OOG Response: The OOG asked CMS's Bureau of Personnel's Examining and Counseling Division to review [redacted] background against the written employment requirements, although such analysis is not required for positions that are both Rutan exempt and partially exempt from the Personnel Code. CMS's Examining and Counseling Division determined that [redacted] has achieved the requisite education and employment experience equivalent to the written requirements for the [redacted] position.

2. OEIG Recommendation: For the Governor's Office to "ensure IDOC take appropriate steps to prevent the future hiring of individuals who do not meet all of the employment requirements."

OOG Response: The OOG will work with the Department of Corrections (the "Department") to ensure that all senior staff members are counseled on the appropriate steps that must be taken prior to hiring a candidate for employment. The OOG will also work with the Department to ensure that appropriate processes and controls are in place to ensure that the relevant written employment requirements are reviewed and considered prior to the Department hiring a candidate for employment.

If you have any questions, please feel free to call Office of the Governor General Counsel John Schomberg, at [redacted]