

January 25, 2024

TO: Requesting Legislator

FROM: Judy Randall, Legislative Auditor



SUBJECT: Preliminary Assessment of the Process the Office of the Governor and Lieutenant Governor Followed When Appointing Erin Dupree as Director of the Office of Cannabis Management and Closing the Inquiry

CC: Members, Legislative Audit Commission

Background

On September 21, 2023, Governor Walz announced the appointment of Erin Dupree as the first Director of Minnesota's new Office of Cannabis Management (OCM).¹ On September 22, 2023, Ms. Dupree stepped down from the director role amid news reports that she had unpaid tax liens and outstanding court judgments, among other concerns.²

On September 25, 2023, the Office of the Legislative Auditor (OLA) received your request to conduct a special review to examine the due diligence and background checks the Office of the Governor and Lieutenant Governor conducted during the process that resulted in the appointment of Ms. Dupree. Minnesota statutes authorize OLA to conduct a special review under certain circumstances, including to "respond to a legislative request for a review of an organization or program subject to audit by the legislative auditor..."³ The Office of the Governor and Lieutenant Governor is subject to audit by OLA.⁴

Summary of Process

In determining whether to conduct a special review, OLA first conducted a "preliminary assessment" of your concerns. As part of this preliminary assessment, OLA staff reviewed the Minnesota Constitution and statutes, the Office of the Governor and Lieutenant Governor's standard operating procedures for making appointments, application scoring materials for the OCM Director position, select application materials provided by the finalists for the OCM Director position, and background check information for the finalists for the position. OLA also met with staff from the Office of the Governor and Lieutenant Governor who were responsible for overseeing the appointment process.

¹ *Laws of Minnesota 2023*, Chapter 63, codified as *Minnesota Statutes 2023*, Chapter 342, established Minnesota's Office of Cannabis Management.

² Ryan Faircloth, "Minnesota cannabis director steps down after one day amid report she sold illegal products," *Star Tribune*, September 22, 2023, <https://www.startribune.com/minnesotas-new-cannabis-regulator-sold-noncompliant-products-at-hemp-shop-marijuana-pot-thc-dupree/600306818/>, accessed October 30, 2023; and Brian Bakst and Matt Sepic, "Minnesota cannabis boss quits after questions raised about her background," *Minnesota Public Radio*, September 22, 2023, <https://www.mprnews.org/story/2023/09/22/potent-hemp-products-unpaid-bills-raise-questions-about-new-minnesota-cannabis-czar>, accessed October 30, 2023.

³ *Minnesota Statutes 2023*, 3.971, subd. 8a.

⁴ *Minnesota Statutes 2023*, 3.972, subd. 2.

Conclusion

The Office of the Governor and Lieutenant Governor departed from its Standard Operating Procedure for Executive Director Appointments in its process for selecting Erin Dupree as the Director of the Office of Cannabis Management. Three differences from the Standard Operating Procedure, in particular—all related to the background check—contributed to Governor Walz appointing Ms. Dupree as Director of the Office of Cannabis Management without having full and complete information.

OLA considers this matter closed and will not conduct a special review.

Governor's Authority to Appoint

The Minnesota Constitution establishes broad appointment authority for the Governor. Specifically, the Minnesota Constitution states:

With the advice and consent of the senate he may appoint notaries public and other officers provided by law. He may appoint commissioners to take the acknowledgment of deeds or other instruments in writing to be used in the state. He shall take care that the laws be faithfully executed. He shall fill any vacancy that may occur in the offices of secretary of state, auditor, attorney general and the other state and district offices hereafter created by law until the end of the term for which the person who had vacated the office was elected or the first Monday in January following the next general election, whichever is sooner, and until a successor is chosen and qualified.⁵

Minnesota statutes similarly reinforce the Governor's broad appointment authority:

The governor shall appoint and when necessary commission all officers and employees of the state whose selection is not otherwise provided for by law and, at pleasure, may remove any such appointee whose term of service is not by law prescribed. The governor shall exercise such powers of appointment, suspension, and removal in respect of other officials as are conferred by law.⁶

Minnesota statutes do not require the Governor to utilize any specific selection processes. With respect to gubernatorial appointees, Minnesota statutes *permit*, but do not *require*, the Governor's Office to request a criminal history check through systems maintained by the departments of Public Safety and Corrections, as well as through information maintained by the Federal Bureau of Investigation.⁷

Governor's Office Standard Operating Procedures for Appointments

While neither the Minnesota Constitution nor Minnesota statutes establishes requirements for the Governor's appointment process, the Governor's Office has established several standard operating procedures for making appointments. These procedures include one for gubernatorial appointments to boards and commissions; one for appointments of commissioners; and one for the appointments of

⁵ *Minnesota Constitution*, art. V, sec. 3.

⁶ *Minnesota Statutes* 2023, 4.04, subd. 1.

⁷ *Minnesota Statutes* 2023, 4.055.

executive directors. Each procedure outlines roles and responsibilities of staff within the Governor's Office. Each procedure also outlines the general hiring process for each type of appointment, including posting or announcing the opportunity, reviewing applications, and conducting background checks. For the appointments of commissioners and executive directors, the procedures also include interviews by a panel.

The Standard Operating Procedure for Executive Director Appointments is the procedure the Governor's Office uses for filling "sensitive" positions, such as the executive directors for the Gambling Control Board and the Minnesota Lottery. This is also the procedure that applied to the appointment of the Director of the Office of Cannabis Management.

Hiring Process for the Director of the Office of Cannabis Management (OCM)

On June 30, 2023, the Office of the Governor and Lieutenant Governor publicized the opening for the OCM Director. By the time the job posting closed on July 31, 2023, 150 individuals had applied for the position.

According to staff from the Governor's Office who oversaw the hiring process, human resources staff from the Minnesota Department of Agriculture reviewed the application materials and determined which candidates met the minimum and preferred qualifications. In total, 25 candidates met the minimum qualifications, and 10 of those 25 also met at least five of the eight preferred qualifications. Ultimately, 12 candidates were offered first-round interviews—the 10 identified through the review of minimum and preferred qualifications, and 2 additional candidates who were "recently separated veterans."⁸

A panel composed of seven senior staff from the Office of the Governor and Lieutenant Governor, the Minnesota Department of Agriculture, Minnesota Management and Budget, and the Office of Cannabis Management conducted the first round of interviews. Based on the interviews, the panel forwarded the five top-scoring candidates to the second round. One of the five candidates withdrew, and therefore four candidates moved forward to the second round of interviews. The second-round interviews were conducted by five senior staff (again from the Governor's Office, Minnesota Department of Agriculture, and the Office of Cannabis Management), three of whom had also been on the interview panel for the first round of interviews. In addition to the interview, candidates who participated in the second round were asked to deliver a presentation highlighting their anticipated milestones and challenges during their first year in the role.

The panel advanced the three top-scoring candidates to the third round. One of the three candidates withdrew, and therefore, two candidates moved forward to the final round of interviews. The final interview panel included Governor Walz, Lieutenant Governor Flanagan, five members of the Office of the Governor and Lieutenant Governor (two of whom had served on the previous interview panels), and the Interim Director of the Office of Cannabis Management (who had moderated the first two interview panels).

⁸ *Minnesota Statutes* 2023, 43A.11, subd. 7, defines "recently separated veteran" as "a veteran...who has served in active military service, at any time on or after September 11, 2001, and who has been honorably discharged from active service...." This section of law also states, "Each recently separated veteran who meets minimum qualifications for a vacant position and has claimed a veterans or disabled veterans preference must be considered for the position. The top five recently separated veterans must be granted an interview for the position by the hiring authority."

Background Checks for the Final Candidates Considered for the OCM Director Position

Consistent with its Standard Operating Procedure for Executive Director Appointments, the Office of the Governor and Lieutenant Governor initiated background checks for the final candidates being considered for the OCM Director position. As part of the Governor's Office's procedures, the final candidates—including Ms. Dupree—signed consent forms authorizing the Department of Public Safety and the Department of Revenue to conduct checks of their data systems for information relevant to the potential appointment to the role of Director of the Office of Cannabis Management.⁹

Ms. Dupree signed these forms on August 22, 2023, and the Office of the Governor and Lieutenant Governor forwarded them to the Department of Public Safety that same day.

At this point, the process for conducting the preappointment background check for the position of OCM Director departed from the Governor's Office's standard background check process in three important ways:

1. The Bureau of Criminal Apprehension (BCA) conducted the background check largely without the involvement of the Alcohol and Gambling Enforcement Division (AGED), which was typically involved in these types of background checks on behalf of the Governor's Office.
2. The Governor's Office sent the signed release forms to BCA and assumed that BCA would work directly with the Department of Revenue. This is in contrast to the office's Standard Operating Procedure, which directs the Governor's Office to send the signed release forms directly to the Department of Revenue.
3. BCA conducted the financial background checks of the candidates using information and systems separate from the Department of Revenue. As a result, BCA did not review information maintained by the Department of Revenue.

We discuss each of these process changes in more detail, below.

Bureau of Criminal Apprehension Conducted the Background Check

For the OCM Director position, the Governor's Office intended to follow its background check procedures for filling other "sensitive" positions, such as the executive directors of the Gambling Control Board, Minnesota Lottery, and Minnesota Racing Commission. These procedures require final candidates to submit to a full background study conducted by BCA, and Governor's Office staff told us these background studies are "generally performed" at the direction of AGED. However, Governor's Office staff told us that because "AGED did not have statutory authority to perform the background study for the Office of Cannabis Management, BCA performed the background study instead," and the Governor's Office worked directly with BCA.¹⁰

⁹ One consent form authorized the Department of Public Safety to conduct a check of criminal history information maintained by the departments of Public Safety and Corrections, as well as the Federal Bureau of Investigation. The other consent form authorized the release of "information relating to the filing of Minnesota individual income tax returns for the preceding six years" and "information relating to any outstanding liability for tax or other debt(s) administered or collected by the Department of Revenue."

¹⁰ Letter from Mary Fee, General Counsel and Deputy Chief of Staff, Office of the Governor and Lieutenant Governor, to Judy Randall, Legislative Auditor, October 20, 2023, p. 8. *Minnesota Statutes* 2023, 299L.02, subs. 1-3, require the Alcohol and Gambling Enforcement Division to conduct background checks on (1) employees of the Lottery, (2) certain applicants for licensing by the Gambling Control Board, and (3) applicants for licenses issued by the Minnesota Racing Commission.

According to Governor's Office staff, BCA consulted with AGED to ensure that its process was consistent with past practice. However, they noted that BCA had never performed a background study for the Governor's Office. As a result, it is possible that some assumptions the Governor's Office made about the background checks—such as assuming that BCA was reviewing Department of Revenue information—were incorrect.

Signed Release Form Sent to BCA, Rather than the Department of Revenue

The Office of the Governor and Lieutenant Governor's Standard Operating Procedure for Executive Director Appointments requires the Governor's Office to send the signed release form directly to the Department of Revenue. The Department of Revenue would then submit its results directly to the Governor's Office, which would review the results and information.

Contrary to its standard operating procedure, however, the Governor's Office sent the signed release form to BCA, rather than directly to the Department of Revenue. According to staff at the Governor's Office, they believed that BCA would coordinate with the Department of Revenue as part of the background check process.

Department of Revenue Check Not Conducted

Among other things, BCA's background check included a review of criminal history, driving records, civil judgments, and employment history. It also included a review of credit reports and net worth. It did not include a review of all information maintained by the Department of Revenue. As a result, the BCA background check did not identify any unpaid tax liens.

Governor's Office Relied on Summary, Rather than Full Background Report

Having completed its background check, BCA produced a "summary report for the pre-employment background for the position of Director for the OCM..." on September 5, 2023. The summary report did not identify the issues reported by media outlets on September 22, 2023, referenced above. Rather, the summary background report stated that the candidate did not have any noteworthy financial obligations or debts.

Similar to past practice, the Governor's Office relied on the summary background report, rather than waiting to review the full background report. According to Governor's Office staff, they have never received a full background report from AGED; rather, they have always relied on the summary report prepared by agency staff. As a result, they said, their decision to rely on the BCA summary background report was not an effort to hasten the process, but rather a reasonable approach that relied on agency staff expertise. In the end, Governor's Office staff said they believed that they had the full and complete background information for Ms. Dupree when the Governor appointed her to be Director of the Office of Cannabis Management.

Staff from the Governor's Office did not realize that BCA had not reviewed Department of Revenue information until they reviewed BCA's full background report, which was produced on October 4, 2023—after Ms. Dupree had stepped down from the position. The full background report identified what information the agency reviewed as part of its background check. A close examination of this report would have revealed that the BCA did not review information maintained by the Department of Revenue; it also would have revealed that the summary report did not include all relevant information from the full report.

Recommendations for Improvement to Background Check Process

The Governor is responsible for appointing more than 300 individuals each year to state agencies, boards, commissions, and other positions. According to the Governor's Office, the Governor made more than 750 such appointments in 2023. Some are subject to the advice and consent of the Senate, and the vast majority are not controversial. However, a small number of appointments are especially sensitive and subject to additional scrutiny; this was the case for the OCM Director position.

The Office of the Governor and Lieutenant Governor has detailed procedures for its appointment process. However, the appointment and subsequent withdrawal of Ms. Dupree as the OCM Director highlighted some opportunities for improvement in the hiring process.

Understanding that the Governor has broad discretion over the appointment process, we make the following recommendations for improvement.

1. The Office of the Governor and Lieutenant Governor should independently confirm that any background check conducted of potential appointees for sensitive positions includes, at a minimum, a review of the following:
 - a. Individual and business tax information from the Department of Revenue.
 - b. Criminal history records, using systems maintained by the departments of Public Safety and Corrections and, when warranted for the position, the Federal Bureau of Investigation.
 - c. Outstanding court judgments.
2. The Governor should wait to make an appointment to a sensitive position until the Office of the Governor and Lieutenant Governor has reviewed the complete background check report and made an independent determination of the suitability of the candidate for the position.



STATE OF MINNESOTA

Office of Governor Tim Walz
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January 22, 2024

Judy Randall
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Dear Auditor Randall:

Thank you for the opportunity to review and comment on your final memorandum summarizing the review of the appointment process for the Director of the Office of Cannabis Management (DOCM).

Because this position included new requirements established by the legislature, the Governor's Office opted to complete a *more* rigorous process than the standard background checks for other high-level government positions. Administration staff drew from similar positions' (executive directors, commissioners) existing standard operating procedures to develop a process that was intensive, involving multiple levels of review and interviews.

Career agency HR staff and administration officials screened, vetted, and interviewed applicants. The Governor's Office conducts background checks on all candidates for appointment by the Office, but the finalists for this position were subject to a much higher bar: a comprehensive Bureau of Criminal Apprehension (BCA) background study, the same background review that BCA conducts on its own prospective agents. This background study is rigorous and takes weeks to complete.

However, there were several issues identified subsequently that were not included in the BCA review, and the Office was unaware that it lacked full information.

We appreciate and value the thorough and professional review conducted by the OLA and believe that our processes could always improve. Immediately following the DOCM appointment, the Governor's Office reviewed its processes and implemented changes, including, among others, the recommendations listed in your memorandum. We've also increased Governor's Office capacity for research about potential appointments.

The Governor's Office strives to go above and beyond to ensure quality appointments and we will continue that work. We appreciate the OLA's collaboration to identify opportunities to improve.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Fee".

Mary Fee
General Counsel