

March 20, 2007

Representative Paul Luebke  
NC House of Representatives  
300 N. Salisbury Street, Room 529  
Raleigh, NC 27603-5925

Dear Representative Luebke:

Thank you for your letter to Attorney General Roy Cooper requesting that the State Bureau of Investigation initiate a criminal investigation into activity by Aero Contractors, a federal contractor with business contacts in North Carolina. Your letter followed a similar request sent to SBI Director Robin Pendergraft. The Attorney General has asked me to research this matter and respond.

The Attorney General stands with you in your belief that crimes committed in North Carolina need to be investigated thoroughly and effectively. In particular, investigating corruption and conspiracy cases involving government officials and contractors has been a high priority for the Attorney General and the SBI.

During the past five years, Bureau agents, with the support of the Director and the Attorney General, worked more than 250 investigations involving public corruption. The Attorney General approved the appointment of attorneys from our office to prosecute approximately 100 cases of public corruption. Last year the Attorney General proposed a plan to help law enforcement better investigate and prosecute complex public corruption and conspiracy cases. Our office does not shy away from difficult and controversial criminal cases when there is credible evidence to support an investigation.

However, before starting a criminal case we must determine if there is legal authority for the SBI to initiate an investigation. This is what the Director referred to as "jurisdiction" in her previous response to you. For example, without such legal authority, evidence that is gathered would be potentially inadmissible in any subsequent prosecution.

When we get requests for investigations we attempt to determine if there is legal authority for the SBI to initiate a criminal investigation. If there appears to be no legal

basis for SBI involvement, we attempt to have the request sent to the agency that is likely to have the appropriate authority and resources to review and act, when warranted, on the request.

With your request, the Director followed this procedure. She determined that the most appropriate agency with the legal authority and resources to initiate an investigation concerning an alleged international criminal conspiracy is the Federal Bureau of Investigation. She personally delivered to the FBI the material you sent. The Attorney General and the SBI stand ready to assist the FBI in any criminal investigation they seek our assistance in if resources are available.

Using federal law enforcement agencies in complex and multi-jurisdictional criminal corruption and conspiracy cases is critical for at least three other reasons.

First, these complex cases require significant resources. Partnering with federal authorities is one way to make sure the State's crime fighting resources are used effectively.

Second, the specialization of expertise is valuable in understanding, assessing and tracking evidence. For example, Special Agent Randy Myers of the SBI recently testified about the investigation that led to charges against Dr. Jim Black. Agent Myers' initial investigation was placed on a high priority by the Attorney General and the Director after a request by the State Board of Elections, which is authorized by law to request SBI investigations. Agent Myers testified that he led a team of four SBI Agents and worked with federal authorities including Internal Revenue Service investigators, U.S. Postal investigators and FBI agents. This partnership was able to gather and analyze leads and evidence that resulted, to date, in both state and federal guilty pleas.

Third, federal law gives federal law enforcement and prosecutors better tools than state law gives to state authorities. As mentioned earlier, Attorney General Cooper advocates changes to strengthen these state laws. Specifically, federal law makes it illegal to lie to an FBI agent in the course of an investigation. No such law exists in North Carolina for SBI agents. In conspiracy cases, this tool often is effective in breaking the conspiracy. Similarly, limited use of investigative grand juries by State prosecutors could lead to less reliance on federal authorities for certain corruption and conspiracy matters and could make our investigations more efficient.

Again, the Attorney General thanks you for your continued interest and support in fighting crime and corruption in North Carolina. For the reasons I have explained in this letter, we believe that the FBI is the appropriate agency to review this matter. Our SBI would stand ready to assist the FBI if that agency deemed appropriate.

Our agency's referral to the FBI is a result of your vigilance and interest in this matter. You may reach the FBI by contacting Mark Rick at (704) 377-9200. If you have any questions about the information contained in this letter, please call me at (919) 716-6400.

Thank you again for bringing this important matter to our attention.

With warm regards, I am

Very truly yours,

JB Kelly  
General Counsel  
North Carolina Attorney General's Office