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Sent: 2/22/2010 5:35:31 P.M. Eastern Standard Time
Subj: A Request For Legislative Inquiry Into Ponzi Scheme Process

We are sending this request to all NH House Representatives due to the importance of the matter, and our concern about the process. We feel this is our responsibility.

February 22, 2010

To:
Terie Norelli
Speaker, New Hampshire House of Representative

From:
Jim Splaine
Paul McEachern
NH State Representatives
Rockingham District 16, Portsmouth & Newington

Subject:
Request For Immediate Legislative Inquiry Concerning The Process Behind Ponzi Scheme Relating To Finance Resources Mortgage, Inc.

We ask you to authorize the House Commerce Committee to begin a formal inquiry into the process of the inner workings of state government that allowed the situation of a Ponzi Scheme relating to Finance Resources Mortgage, Inc., to evolve. As an alternative, we would suggest you create a special bipartisan legislative committee to undertake the inquiry.

Of interest to all of us should be how our regulatory system worked or did not, and what statutory changes need to be considered to make sure that all of our citizens are protected from future such financial schemes. The economy of our state is at stake, since businesses rely on our regulatory oversight to protect their financial stability, and our citizens rely on regulated businesses to provide many of our jobs.

We make no inference that anyone has anything to hide, but to protect all officials who had any role during the past decade on his matter, and to assure that we can determine what we need to do to protect New Hampshire citizens and businesses in the future, we need an independent, open, and public inquiry into the process.

Of special note are six developments or comments made since we offered our initial request a week ago that the Legislative Branch undertake an inquiry into the process, and not leave it up to the Executive Branch:

1. First is the release of a letter that was sent to the Attorney General's Office on June 17th, 2003 by the Office of Secretary of State's Bureau of Securities Regulation, requesting that the AG "freeze" the assets of Financial Resources Mortgage, Inc. That was positive action by the Securities Bureau seven years ago that if done apparently would have prevented the Ponzi Scheme from evolving to the point that it had last year. There had also been 15 other complaints made about Financial Resources Mortgage, Inc., that were forwarded by the Consumer Protection Bureau to the Banking Department, but went no where. Securities Director Mark Connolly has been publicly explaining the proper role of his department during the past several years, and the unexplained resistance he has been facing. He has also publicly supported our call for an open Legislative Branch inquiry about the process.

2. Second is the comment by a member of the Attorney General's Office, as reported by the New Hampshire Business Review on February 12th, that "...there is not enough of a conflict of interest to warrant a third-party investigation in the matter..." Not "enough of a conflict of interest?" That

department did not act positively on the June 17th, 2003 letter. A conflict obviously exists by any read of the information already made publicly available, and that alone is reason for an independent Legislative Branch review, without delay. This is not a matter of trusting, or not, any individual or individuals or state agencies or departments -- it is a matter of making sure that our state government itself can be trusted to do what it should.

3. Third is the indication that this matter is being investigated either in-house by the Attorney General's Office, or that an outside "independent" investigator or firm will be reviewing the matter, reporting to the Attorney General's Office. Worse is a comment by a member of the Attorney General's Office that their investigation will take "at least" 6-8 weeks. That is an unacceptable delay. There again, since a conflict dating to 2003 may well exist, they should not be the venue for an inquiry. The Executive Branch cannot review itself if it may in fact be so clearly conflicted. The Legislative Branch must be involved, without delay. The reputations of all state officials can be questioned if a cover-up or stonewalling occurs, and that can happen with the currently planned review. **IF NOTHING IS DONE THIS LEGISLATIVE SESSION TO ADDRESS THESE CONCERNS, IT WILL NOT BE BEFORE 2011 THAT WE CAN IMPLEMENT STATUTORY REFORM. THAT IS UNFORGIVABLE.**

4. The individual currently slated to head up the investigation from the AG's office was head of the Consumer Protection Bureau in 2003 and until recently, when these complaints came in. That is another conflict that to protect the Attorney General's Office, and the credibility and integrity of the review process, an AG review should not occur. No one should be in the position he is being put in. IF there were decisions in the Attorney General's Office made in 2003, which was then under different leadership than it is now, which kept the assets of Financial Resources Mortgage, Inc. from being frozen as requested by the Office of Secretary of State's Securities Division, then we must determine that by independent means.

5. As reported in The Concord Monitor, and supported in an editorial written in that newspaper on January 5th, the Office of Secretary of State's Securities Division Director Mark Connolly has observed that in light of the Financial Resources Mortgage, Inc. situation, state consumer protection laws need to be revamped. He fought for weeks to have document-sharing between agencies involved in matters like this, and finally succeeded in his effort. His public call for that sharing to be uniform and subject to legislative oversight is something we should guarantee in law. Mr. Connolly has also pointed out that commercial mortgages currently have no state regulation, and we need to look at this area for possible regulatory oversight, as well as transparency in terms of lobbyist activity before state agencies. We cannot wait "at least 6-8 weeks" to do that, or we will ensure little if any regulatory scrutiny will take place for the balance of 2010, well into 2011 until changes are made.

6. In the New Hampshire Business Review story of February 12th, the attorney general is quoted as saying that the state "has not identified anything that would suggest liability, but we are always mindful of that, since one of our responsibilities is to defend the state against such suits." This statement demonstrates that the Attorney General's Office simply cannot be impartial in their review -- and impartiality is important because many of our citizens' interests are at stake, and a biased review will put our state at even more risk.

Our concern here, and the direction of any legislative inquiry that is undertaken, is not to place blame on any agency, or any person. What we feel is most needed is to protect the integrity of the state, and the credibility of any inquiry into what happened. We have to determine who did or did not do what when, and why. And the process of that inquiry should be in full public view from Day One. We must have sunlight on this matter, so that the public's right-to-know will be assured. We cannot allow an inquiry process to be undertaken that could possibly lead to a cover-up of any information, or a stonewalling of the public availability of that information.

We use those words carefully, and we do not suggest that any cover-up or stonewalling has occurred. But to protect all state officials involved in this matter, we want to make sure that we do not begin a process that could indeed lead to a cover-up or stonewalling of information. New Hampshire does not need its own episode of Watergate. Let's remember that the Executive Branch trying to "manage" that crisis, and thus contribute to the delay of the dissimulation of information relating to it, is what caused so much grief in the early and mid 1970s.

With that in mind, we refer to dictionary definitions of the classic meanings of those words -- "cover-up" and "stonewalling." We'll add the dictionary definition of "whitewash," which we hope we will not ever see occur. We think that the legislature and state officials have a small window of opportunity to avoid any of this from happening on this matter. We cannot allow a branch of government to try to "manage" this matter. It needs full public review from a separate branch:

(From Merriam-Webster Dictionary)

Cover-Up: a device or stratagem for masking or concealing; a usually concerted effort to keep an illegal or unethical act or situation from being made public.

To Stonewall: to engage in obstructive parliamentary debate or delaying tactics; to be uncooperative, obstructive, or evasive.

To Whitewash: to gloss over or cover up (as vices or crimes); to exonerate by means of a perfunctory investigation or through biased presentation of data.

So far, we don't think New Hampshire state officials have crossed the line to engage in a cover-up, or in stonewalling or whitewashing techniques. But before officials dismiss our call for a public inquiry by the Legislature, we should all consider these definitions. Good people are involved in state government, and they have good intentions. However appearances do matter, and to engage in cover-up, stonewalling, or whitewashing in the context of the definitions we mention is improper. We should stop before we start. The credibility of the state's regulatory process is at stake, since businesses which rely on regulatory oversight to protect their business, and the lives of many people, hang in the balance.

Having an "internal" investigation into this matter in an effort to supposedly gather the facts or manage the information in any way -- or cause delay ("...6-8 weeks..." ?) of the full dissimulation of that information for public view -- is a cover-up of this matter. That cannot be tolerated. By its very nature, an internal investigation done by the branch of government wherein the responsibility for the errors that allowed this Ponzi Scheme to occur without remedy means control of information and facts.

Sunlight and sunshine on a matter such as this, which goes to the core of trust of state government and the integrity of the process of government, requires the full public's right-to-know. To do anything else means cover-up, stonewalling, and whitewashing. We cannot allow that to happen.

Especially applicable here is a recent decision of the New Hampshire Supreme Court on another matter of public access of information, which read in part, as reported in The Concord Monitor in a story a few weeks ago, "***Public access can expose corruption, incompetence, inefficiency, prejudice and favoritism,***" the decision reads. " . . . ***In short, knowing how a public body is spending taxpayer money in conducting public business is essential to the transparency of government, the very purpose underlying the Right-to-Know Law.***"

Let's do an open, public, Legislative inquiry into the process. The "criminal investigation" is separate and apart from the matter most of concern to state government - - which is WHAT happened, WHO did or did not do what, WHEN, WHY, and HOW TO PREVENT possible similar situations from occurring again. To do this other than in full public view by the Legislative Branch could allow for stonewalling, cover-up, and whitewash. We must do this inquiry ethically and above-board. That is our task. Only then can we be sure that such incidents don't occur again in the future, and that our citizens are protected from those who would exploit them.

This is not a problem that can be "managed" within state government; it is a problem that must be solved by public exposure and discussion by a branch of government not so closely involved in the creation of the problem. Our job is to make sure that transparency and the public's right-to-know is guaranteed. This is clearly a matter for the Legislative Branch, since we are ultimately responsible for all operations of state government. If the Executive Branch is conflicted - - which we believe it is -- it is our duty to make legislative inquiry into the process. We must assure trust in the way that any inquiry will be undertaken, from Day One.

Respectfully,

Jim Splaine

Paul McEachern

NH State Representatives

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