

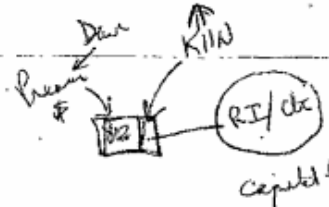
Multi-million dollar WSU lawsuit could hinge on 'handshake' agreement with former president

mydaytondailynews.com/news/wsu-lawsuit-could-hinge-handshake-agreement/F7s7fabbW9PRuvuB4dSoVO/

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Ron Wine

From: Ron Wine [rdw@ronwine.com]
Sent: Friday, September 18, 2009 5:02 PM
To: 's.narayanan@wright.edu'
Subject: Follow Up
Attachments: Draft Consulting Agreement (091709).DOC



Narayanan-

Enjoyed our lunch meeting yesterday and very much look forward to working with you in the months ahead! I think our focus on developing and funding a new Research Institute facility and growing your business base through industrial and WPAFB relationships is a sound concept and a great place to start working together. It was good to hear about your successes to date and your energy and optimism about the future of the Research Institute. It is certainly consistent with the previous conversations that President Hopkins and I have had about his vision for your organization and the university.

As you requested, I have attached a standard services contract that I use with my clients. I know that WSU usually adds additional requirements onto it, but it can be the basis for moving forward. The incentive/bonus piece will be the most challenging as law precludes universities from paying performance bonuses on raising state funds. But I am sure there are ways to figure out an appropriate and legal incentive package down the road. The primary areas we will need to work through are the two attachments on services/outcomes and the compensation. I have jotted down some suggestions to get us started for your review.

I will look forward to getting whatever form of NDA you need me to approve to allow us to get together to discuss your current and planned initiatives. Tyhanks again for lunch, and I will look forward to hearing from you soon. Enjoy your weekend!

Cheers,

Ron

Ronald D. Wine
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(937) 620-2554 - mobile

- Narayanan*
- 1) retainers ↑ or bonus (do within weekend)
 - 2) structure of WSU/RI
 - profit
 - wage
 - public
 - 3) Revenue & output/layten
- Bldg / office 10-15 yr

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10/5/2009



Former Wright State University consultant Ron Wine had a “handshake agreement” with WSU’s president to pay Wine millions of dollars in performance bonuses for securing state and federal research contracts for the university, according to depositions in Wine’s lawsuit that seeks \$4.5 million from the school.

The depositions raise questions about how vigilant the university was in overseeing the payment arrangement between Wine and the school and whether the details of the agreement could cost the already cash-strapped school millions more in a legal settlement.

TIMELINE: Wright State’s controversial multi-million dollar consultant

Wine’s multi-million dollar lawsuit comes as the university fights to keep financial woes from dragging it into fiscal watch, a designation used by the state to identify schools in crisis.

Ryan Fendley, former CEO of the Wright State Applied Research Corporation, said in a November 2017 deposition that WSU paid Wine under a deal with then-president David Hopkins that Wine would get 5 percent of the research dollars Wine brought in to WSU.

Wine’s attorney, Kenneth Ignozzi, said in a statement to the Daily News this week that the court testimony bolsters his client’s claim. Wine says he brought in at least \$134.7 million — \$69.5 million in federal funding and \$65.2 million in state funding — but was only paid \$2.2 million of the \$6.7 million he was owed when his work was terminated in 2016.

“Former President Hopkins told Mr. Wine that although he wanted to bring his company back to work in 2016, and realized that he was owed money from the agreement, that the WSU Board of Trustees forbid him from doing so,” Ignozzi said. “Therefore, Mr. Wine was left with no choice other than to take legal action against the university for the deferred compensation owed to his firm.”

Hopkins has said under oath that he made no deal to pay Wine a performance-based bonus. He expressed concerns that such an arrangement would be improper, or even illegal.

The 5 percent agreement appears nowhere in Wine’s written contracts, though emails recently obtained by the Daily News show Wine discussed it privately with senior WSU administrators multiple times over the years.

Ignozzi said Wine worked and invoiced WSU however he was told, and he doesn’t know why the agreement was never put in writing or called a commission.

“The WSU directed-pay agreement was their creation,” Ignozzi said. “Mr. Wine would have been happy to be paid a strict commission. If he would have been paid that way, he would have no reason for litigation.”

Wine wrote about a performance-based pay structure in an email to former provost Sundaram Narayanan in September 2009 when Wine first started working with WSU.

“The incentive bonus piece will be the most challenging as law precludes universities from paying performance bonuses on raising state funds,” the email says.

EXCERPT FROM EMAIL

Ignozzi said that the email referred to a prohibition against registered lobbyists being paid a commission, but since Wine never worked as a registered lobbyist, it was never an issue.

'This is not a commission'

The compensation agreement between Wine and the university was known to very few outside the university's top offices.

In a June 2013 email to Narayanan marked "private" and "for your and Dave's eyes only" Wine wrote that, "You, Dave (Hopkins) and Ryan (Fendley) have been true to your word in honoring our verbal agreements which I very much appreciate and respect."

EXCERPT FROM EMAIL

That email then breaks down how Wine billed for 5 percent of various awards. It also asked the group to "consider bumping my incentive pay up to 10 percent" and provide him with an on-campus office.

The Dayton Daily News began requesting records on Wine's work for WSU in early 2015, and emails between Wine and Hopkins around that time indicate there were questions among board of trustee members about the Wine contract as well.

"I hope the board understands that this is not a commission but rather a performance based workload parameter that we informally agreed to sometime ago," Wine wrote in a July 2015 email to Hopkins. He wrote that his firm, Ron Wine Consulting Group, would grow its business relationship with WSU as money came in, and would not be paid "directly based on sales or revenue generated."

EXCERPT FROM EMAIL:

Hopkins has consistently argued that Wine's pay was in no way related to how much money he brought into the university.

"No," Hopkins told this newspaper in October 2015. "Read the contract. It does not say that. I'm confident it doesn't say that because that's not the way we work."

AUDIO FROM HOPKINS INTERVIEW:

Hopkins on Wine contract

Yet in his lawsuit, Wine says he is owed money based on revenue he helped generate, appearing to contradict his previous statements.

JANUARY 2016 INTERVIEW WITH RON WINE:

Wine on Wine contract

Fendley appears to back up Wine in this regard, saying in his deposition that Hopkins and Wine entered into a "handshake agreement" that Wine would get 5 percent of the contract revenue he brought into WSU.

Fendley, who has not granted interviews to the media since he was fired in 2015, said in his deposition that he calculated the payments to Wine based on this agreement and created reports he shared with Narayanan and Hopkins before Wine was paid.

His understanding, he testified, was that Wine was entitled to 5 percent of every contract he helped bring in, even if he did no work on it after it was awarded. He said Wine, who was not a Wright State employee, had “unfettered” access to the university president.

An attorney for Fendley declined to make his client available for an interview for this story.

Wright State officials also declined to comment, citing pending litigation, while Hopkins couldn’t be reached.

‘Wrongful act or omission?’

Hopkins’ tenure at Wright State, particular in the last several years, was turbulent. He left early from his planned retirement date, stepping down last March (though his retirement only became official on Jan. 31). Narayanan has been on paid leave since mid-2015 amid an ongoing federal investigation into possible misuse of temporary work visas.

The Wine contract also attracted the attention of outside investigators.

In a December 2017 report on its review of the Wine contract, the Ohio Inspector General’s office questioned \$1.8 million of the \$2.3 million it says Wright State paid Wine since he started working with WSU in 2009.

RELATED: Report questions \$1.8 million paid by WSU to consultant

Some of the questionable payments, according to the OIG, stemmed from the funding source Wright State tapped to pay its consultant. That funding source, the state’s Workforce Development Fund, was created by the Ohio General Assembly for worker training and job creation; the OIG concluded that wasn’t the type of work Wine was doing.

“From interviews conducted and documents reviewed by investigators, it appeared that Ron Wine Consulting Group was not involved in any work specified by the Workforce Development Fund,” the OIG report says. “Instead, it appeared that Wine was solely providing grant finding and lobbying services to secure additional state and federal funds for WSARC (Wright State’s research arm run by Fendley) and WSU.”

A “wrongful act or omission occurred” with these payments, the inspector general concluded in its report, which was referred to Ohio Auditor Dave Yost’s office as well as Greene County Prosecutor Ron Haller to decide if further action should be taken.

Haller wrote Yost a letter Dec. 14 saying if the state conducts an audit or special investigation “my office will assist and cooperate to the extent of our limited resources.”

“If, after investigation, a criminal prosecution is warranted, I will request the assistance of a special prosecutor from your Public Integrity Assurance Team,” the letter states.

Yost’s office would neither confirm or deny whether it is reviewing the matter.

'I was told we couldn't do it'

The legal issue over whether Wine's contract with Wright State amounted to a commission or not is not entirely clear. Both the auditor's office and the Ohio Department of Education told this newspaper there is no explicit prohibition against a public entity or university entering into a performance-based contract, as long as the person getting paid isn't a lobbyist.

But the Workforce Development Fund's source of funding — casino licensing fees — was a factor in how the payment arrangement was structured, Hopkins told OIG investigators in May 2016.

"I was told we couldn't do it," Hopkins said, according to a transcript of his testimony. "First of all, the source of some of the money we had was state money. Was coming from the casino licensing money ... (and) our understanding was that was not appropriate."

OIG INVESTIGATION:

In his sworn deposition in the Wine lawsuit, Hopkins said he never agreed to paying Wine a performance bonus.

"I think, Ron proposed, and Dr. Narayanan talked to me about it, a 5 percent workload, work share that he wanted to put in place," Hopkins testified. "I remember saying to Dr. Narayanan that I'm fine with that as long as it's appropriate, it's legal, it isn't violating any guidelines of the federal or state contracts that we were receiving."

Wine did work for the university from 2009 until his contract was suspended in January 2016.

'Very effective'

In his deposition, Hopkins said Wine was "very effective" in his role as a rainmaker for Wright State.

"He was part of a team. It was still very competitive," Hopkins said. "We had to compete for those grants, so it was our scientific team was crucial, but Ron was great at connecting industry partners. He was great at finding opportunities."

Wine says he brought in at least \$134.7 million in various research awards, including \$12.5 million in federal remotely piloted aircraft research and \$16 million awarded to state defense aerospace research. The largest of the awards — \$25 million — was put into the state budget in 2015 for a university-based Federal Research Network.

RELATED: The Rainmaker of Wright State

Rep. Rick Perales, R-Beavercreek, who advocated for the research network in the state budget, said this month he supports the research network — an initiative to build a statewide university-based network of scientists to attract federal research dollars — as "an idea whose time has come."

But Perales said he was surprised and concerned that the university would pay a consultant \$1 million of that just to secure state funds.

"We're well aware that there were required administrative costs in this endeavor," he said. "We just weren't aware of who it was going to and how much."

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