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Lawyers loomed large on Rauner's transition team

By **ANDREW MALONEY**
LAW BULLETIN STAFF WRITER

There's a paragraph in Illinois law that spells out what to do during a transition between governors.

Authored in 1961, the state's Governor Transition Act says the outgoing official has to do two things: Give the incoming person some office space "for not more than five persons" within two weeks after the election and provide any assistance "that may be reasonably requested."

The governor-elect, on the other hand, is encouraged to "acquire a working knowledge" of state government and study the budget plans for the current and ensuing "biennium" — the term harkening to an era when lawmakers passed budgets for two years at a time rather than one.

The law hardly paints a complete picture.

So that's why when Gov. Bruce Rauner was transitioning into office, he relied on lawyers like Peter M. Friedman of Holland & Knight LLP, sole practitioner William J. Cadigan and Richard W. Porter of Kirkland & Ellis LLP to help connect the rest of the dots.

Porter had known Rauner for years and helped him assemble his transition team after he won election in November.

Porter knew Cadigan previously and found Friedman by doing some research into lawyers who were well-versed in government issues.

"We were having conversations on election night immediately after the results became clear, and the day after the election we were on board," said Friedman, who heads Holland & Knight's real estate and government law practice.



Peter M. Friedman



Richard W. Porter



William J. Cadigan


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He became the chief ethics officer on the team, teaching senior staff members about the Freedom of Information Act, open meetings requirements and disclosure and procurement rules.

Rauner's transition team would ultimately include more than 40 business and public leaders from around the state, including former Gov. Jim Edgar, former White House chief of staff Bill Daley and RTA Chairman and former Sen. Kirk W. Dillard among many others.

But if there were purely legal issues to deal with "Peter and Bill were the key guys driving the transition legal team," Porter said. "They both bring a wealth of experience and expertise in areas of government operation and law."

Friedman also wound up negotiating a lease for an office in the Wrigley Building to be used by the transition team between the election and Rauner's inauguration in January.

"The governor-elect's senior staff secured offices in that space for the transition, and Richard, Bill and I had regular office hours at those offices," Friedman said. "Between myself and my co-counsel, one of us was always at the office, every day. And even if we were not at the office ... all of these legal issues were very fluid and fast-moving, and we were available on-call all the time leading up to the governor's swearing-in."

A vacancy and a trust

One such issue the team had to deal with was the unexpected death of comptroller Judy Baar Topinka.

"That was, first of all, a personal loss for everybody involved. And everyone knew or had worked with and felt a great deal of affection for comptroller Topinka," Cadigan said. "So the personal sense of loss weighed heavily at the transition office."

Because she died after she was re-elected but before she'd been officially sworn in for another term, there was controversy about whether there should be a special election to fill her spot or if Rauner could choose a replacement who would stay in office all four years.

While Democrats such as outgoing Gov. Patrick J. Quinn called for a law to create a special election in 2016, Rauner and legislative Republicans said that would be unconstitutional.

Section 2 of the Executive Article, they said, specifies statewide officeholders "shall hold office for four years ... until their successors are qualified" and "shall be elected at the general election in 1978 and every four years thereafter."

Section 7 of the same article also says a governor "shall fill [a vacant office] by appointment" — and that appointee shall "hold office until the elected officer qualifies or until a successor is elected and qualified as may be provided by law."

Although the second phrase could be seen as allowing lawmakers to change the election schedule by statute, the Republicans argued that the phrase "as may be provided by law" refers only to someone's qualifications — not the method or point in time they could be elected.

Still, on a party-line vote, legislators passed a special-election bill, and Quinn signed it before leaving office. Rauner eventually appointed Leslie Munger, a business executive who had been beaten for a state House seat to be comptroller.

Porter said although he doesn't deal with the state constitution regularly, he felt it was straightforward on the issue.

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"If I were a judge and I heard a case on this question, the better reading of the constitution as a whole is that the appointed officer's term is coterminous with the governor that appointed her," he said. "The legislature can adjust qualifications for office but not the term."

Rauner's team was also ready to go to court if Quinn had appointed a replacement who intended to remain in office after the transition. But that didn't materialize.

Another legal issue the team researched was how to address Rauner's financial investments, which he said before his inauguration he would put into a "blind trust" in order to eliminate potential conflicts of interest.

The term typically refers to a shield between the asset-holder and knowledge or decisions about his or her investments.

However, Illinois ethics laws require officeholders to have some knowledge about their finances in order to disclose them on annual statements. So Rauner entered into an arrangement in which a financial adviser at a private firm was given the power to make investment decisions for him.

Rauner did not technically relinquish ownership of the assets as would be required under what some would consider a true "blind trust" arrangement.

His vow to forego information about his investments was also not legally binding.

Friedman, though, said he's convinced the setup was the best way for Rauner to deliver on his pledge to avoid conflicts of interest while adhering to state disclosure law.

"We had to balance those two things. The governor rightly didn't want a blind trust set up that would result in him not being able to make the extensive type of public disclosure that he had committed to and that the people would expect him to make under statute," Friedman said.

'Out in the crowd'

Inauguration Day in Illinois was Jan. 12, and there were some legal nuances to the ceremony in Springfield in which all the statewide officeholders were sworn in.

Rauner was sworn into office by U.S. District Judge Sharon Johnson Coleman, a Rauner family friend. Coleman's status as a former Cook County circuit judge and 1st District appellate justice allowed her to administer the oath.

Under Illinois law, federal court judges don't have the authority to swear in a constitutional officer, Cadigan said.

As a result, since Coleman had served as a judge in a state judicial office, she could legally swear Rauner into office.

Cadigan also wrote out a specific script for when it came time for Rauner to officially appoint Munger as comptroller.

"I wrote out the text," Cadigan said. "He, one, declared the vacancy; two, appointed Leslie Munger to fill the vacancy; and three, asked Leslie Munger to come up and accept the appointment.

"It was certainly out of the ordinary," Cadigan said.

For that part of the ceremony, he and Friedman found some remote seats in the audience at the Prairie Capital Convention Center in downtown Springfield where the ceremony was held to view the scene.

"We'd been backstage the entire time, but for that, we wanted to be out in the crowd and experience it the way other people were," Cadigan said.

For a lawyer who has represented municipalities and state agencies, Friedman said he was humbled by the experience working on Rauner's transition.

"To provide that level of legal services on such a broad range of issues to the incoming administration and to the governor-elect was extremely challenging and very rewarding," he said.

Cadigan said it was thrilling to be part of a history that will endure for a long time.

"I've put together thousands of legal documents in my career, and some of them, you know, get tucked in a file and never looked at again," he said.

But the oath of office he prepared for Rauner, which Coleman attested and which they both signed in the basement of the convention center, "will be in the archive for as long as the state of Illinois exists. And I hope that if historians or anyone else looks at it, it marks a time that there was a change for the better."

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