

CREATING THE OPPORTUNITY FOR CONTESTABLE ADVICE

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Study on the Creation of an Accountability Office within the Legislature*

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“The same prudence which in private life would forbid our paying our own money for unexplained projects, forbids it in the dispensation of the public moneys.”

—Thomas Jefferson, letter to Shelton Gilliam, June 19, 1808

The American system of government is based on the concept of a republic, and it relies on a separation of powers and functions between the legislature and the executive. This separation was intended by the Framers of the Constitution to create checks and balances that would prevent abuse of power. However, if the legislative branch is dependent on the executive branch for all the information it needs to fulfill its role in governmental oversight, then the system of checks and balances is weakened.

Ensuring the integrity of this system and securing the public trust would be helped by providing lawmakers with an independent source of advice on spending, taxation, and the performance of government programs. Today, hardly a single consumer in America buys a product without first using technology to check its price, performance, and reputation. The guardians of the public’s money should exercise the same cautions with regard to public spending.

The idea of “contestable advice” (having more than one source of advice) is hard to oppose since better-informed legislators are more likely to make better decisions regarding the public’s money and freedoms. Making decisions based on one stream of advice is risky and ignorant, and it is most likely to lead to the wrong answer to a policy query. It is much better to have two or even three streams of advice, so more of the potential policy options will be identified and vetted, providing a better chance of making a good decision.

While much of the thought and discussion about the proposal to create an accountability office within the legislature in Oklahoma will focus on fiscal and budgetary matters, equal or even greater focus should be placed on the ability to critique agency performance or results of executive or legislative activities. Government agencies are normally good at accounting for how money is spent. However, they are frequently less capable of accounting for *what was achieved* with those expenditures. A source of independent analysis of the effectiveness of a program in solving societal problems would be extremely valuable to policymakers.

For more information or to meet with the scholar, contact
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The ideas presented in this document do not represent official positions of the Mercatus Center or George Mason University.

As you consider developing a new source of information for the legislature, I advise that this entity be given a high degree of independence. Otherwise, it risks having its reputation compromised and the value of its advice diminished in the eyes of the citizenry.

Oklahoma is not the only state that has been wrestling with this problem recently. To assist you with your deliberations, I present the courses pursued by three different jurisdictions, designed for slightly different reasons and having slightly different results: the states of Pennsylvania and Indiana in the United States, and Ireland overseas. There are many more examples than those I cite today, but these will give you an idea of what is possible.

PENNSYLVANIA

In 2011 the Pennsylvania legislature created a new body called the “Independent Fiscal Office” (IFO). The legislature did so to address the continuing disputes it had with the governor’s administration over access to financial information and presentation of that information to the legislature by the administration. A particular contention involved access to the data that were used to make projections of future revenue and spending outcomes. There are similar entities in other states. This is just an example with which I am familiar. The mission statement of the IFO is as follows:

The Independent Fiscal Office (IFO) provides revenue projections for use in the state budget process along with impartial and timely analysis of fiscal, economic and budgetary issues to assist Commonwealth residents and the General Assembly in their evaluation of policy decisions. In that capacity, the IFO does not support or oppose any policy it analyzes, and will disclose the methodologies, data sources and assumptions used in published reports and estimates. The IFO will seek to establish collaborative relationships with the General Assembly, executive agencies and various non-governmental organizations that have an interest in the policy making process.¹

INDIANA

The Indiana Office of Management and Budget was created by Governor Mitch Daniels in 2005. Learning from his experience as director of the US Office of Management and Budget (OMB), he sought a more cohesive government in Indiana, rather than a set of siloed departments that in some cases behaved more like isolated fiefdoms. He wanted a system wherein all departments shared the same priorities and the same vision, so he created the Indiana Office of Management and Budget. The purpose here is different from the IFO in Pennsylvania in that the Indiana body was created by the administration, whereas the Pennsylvania body was created by the legislature. On its website’s home page, the Indiana Office of Management and Budget says, “The state’s long-term economic health requires that we continue our commitment to fiscal discipline. Government must continue to spend the taxpayer’s money more efficiently, so ultimately the State needs less of it. The Office of Management & Budget (OMB) brings together the financial and auditing functions of our state in order to serve these goals.”²

The website also lists the state agencies that comprise the Office of Management and Budget:

Department of Revenue: Administers the tax laws of the State of Indiana in an equitable and courteous manner to promote the highest degree of public trust and voluntary compliance.

Indiana Office of Technology: IOT provides measurable, secure, consistent, reliable enterprise-technology services at cost-effective prices to our partner agencies so they can better serve our mutual customer, the Hoosier taxpayer.

Department of Local Government Finance: Protects the interests of all Indiana property-tax payers by assuring uniform and equitable assessments and by providing oversight of the budgets of all local governmental units in the state.

Management Performance Hub: MPH provides analytics solutions tailored to address complex management and policy questions enabling improved outcomes for Hoosiers.

Distressed Unit Appeal Board: DUAB receives petitions from both distressed political subdivisions and school corporations in need of relief.

Indiana Board of Tax Review: A bipartisan appeals board that reviews determinations by local/county assessment officials concerning the assessed value of tangible property, property tax deductions, or property tax exemptions. Also reviews assessment determinations made by the Department of Local Government Finance.

Indiana Finance Authority: Oversees state debt issuance and provides efficient and effective financing solutions for state, local and business investment in Indiana. For example, they will lead the \$1 billion stadium and convention center expansion.

Indiana Public Retirement System: Advances the achievement of retirement security for current and future retirees and beneficiaries through delivery of operational and investment excellence, exemplary customer service and trusted stakeholder communication.

State Board of Accounts: Perform audits of state and local governments, prescribe uniform accounting standards, and train public officials and employees.

State Budget Agency: Serves as fiscal analyst, administrative budget officer, fiscal forecaster and fiscal policy adviser to the Governor.

Office of State-Based Initiatives: OSBI's mission is to take the lead in pushing back against federal mandates and regulations that undermine state sovereignty.³

IRISH FISCAL ADVISORY COUNCIL

I am including this example because this initiative came not from the legislature or from the executive, but is totally independent from those two bodies. The Irish Fiscal Advisory Council (IFAC) arose from public anger that the Government of Ireland had managed the effect of the Great Recession upon its people very badly, and the public did not want a repeat of that behavior. IFAC is required by statute to monitor the decisions made by the government and report to the general public on whether it is making responsible or irresponsible decisions.

IFAC is an independent statutory body established as part of a wider agenda of reform of Ireland's budgetary architecture.

Its mandate is as follows:

- Assess and endorse, as we consider appropriate, the Government's official macroeconomic forecasts.

- Assess the budgetary forecasts.
- Assess the broader fiscal stance.
- Monitor compliance with legislated fiscal rules.⁴

I include this example because the idea that some capable body will critique proposed government actions before those actions are final is appealing. IFAC provides prospective review as well as retrospective review of proposals. It has the capability to provide a significant cautionary effect on government decision-making.

CONCLUSION

I believe the Oklahoma Legislature is thinking forward in setting up the opportunity to provide itself with contestable advice. There is value in this process even if the two streams of advice come to identical conclusions because it provides greater certainty that the advice is correct. In reality, achieving unanimity or consensus in advice is unlikely, and that makes the initiative even more valuable.

Sincerely,

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¹ Independent Fiscal Office, "About IFO," accessed October 25, 2018, <http://www.ifo.state.pa.us/about.cfm>.

² Indiana Office of Management and Budget, Indiana Office of Management and Budget home page, accessed October 25, 2018, <https://www.in.gov/omb/>.

³ Indiana Office of Management and Budget, "About Us," accessed October 25, 2018, <https://www.in.gov/omb/2348.htm>.

⁴ Irish Fiscal Advisory Council, Irish Fiscal Advisory Council home page, accessed October 25, 2018, <https://www.fiscalcouncil.ie>.