
MEMORANDUM

TO: KBA Board of Directors
KBA Appointing Authorities

FROM: Dan Watkins, KBA Chair

SUBJECT: BKD Supplement to Forensic Audit of KBA

DATE: February 7, 2012

The attached supplemental report and exhibits at www.kansasbioauthority.org from BKD present analysis of issues which have been raised since the submission of BKD's Forensic Audit report on January 23 and BKD's recommendation that the forensic audit be concluded. BKD addresses the following issues in their supplemental report:

1. **Computer forensics work**

BKD provides an in-depth analysis of the forensic work performed on Tom Thornton's laptop computer. BKD's formal Forensic Examiner Report in Exhibit B has been provided to the Johnson County District Attorney.

BKD states the following regarding Tom Thornton's email:

- "The email accounts of Tom Thornton, both from his laptop hard drive and from off-site storage were acquired, reviewed and analyzed as part of the Forensic Audit which culminated in the issuance of the BKD report. ... The Thornton email activity (and email files of other KBA personnel) have been subjected to intense and broad analysis including data analytics and keyword searches. The results were disclosed in the 150 page narrative Forensic Audit Report (with 600 exhibits) we submitted. Since the issuance of our report we reconfirmed our results and scope of coverage. ..."

BKD's supplemental report confirms:

- "the forensic analysis described on p. 10 of the Forensic Audit Report included forensic analysis and examination of all e-mail containers from the Thornton laptop computer and comparison of that content to the other Thornton e-mail database obtained from offsite storage."
- "There is no second Thornton hard drive containing information that could be relevant to the Forensic Audit which was missed or overlooked."

- “the (Audit report’s) findings and conclusions with respect to the scrubbing/wiping activities of Mr. Thornton.”
- that “with respect to the differences in the Thornton OST and PST [email] containers ... the absence of any gap in the scope of our searches and our computer forensics analysis.”
- that BKD has “performed a comprehensive ground up review and re-review of our entire computer forensics process and analysis.”
- that BKD has “not been made aware of any fragment, document, e-mail archive or any other scrap of computer evidence that in any manner changes any of the findings and conclusions we have stated in our original report. We have confidence in the breadth, scope and findings in our computer forensics analysis.”

2. Supplemental data integrity procedures

In response to questions raised by some legislators during committee hearings the week of January 23, BKD expanded procedures “to examine the underlying integrity of some of the key business systems at the KBA including the Accounting System and the Biztrakker system.”

The BKD supplemental report confirms the integrity of both systems.

3. Supplemental information regarding KBA Board actions with respect to the Clay Blair investigation in 2006.

The Forensic Audit discussed an investigation relating to disputes between Clay Blair and Tom Thornton. Exhibit 26 in the Forensic Audit had a series of emails from KBA Board member Sandra Lawrence and others, including Tom Thornton, related to the issues investigated by Ms. Lawrence and others, on behalf of the KBA Board.

Exhibit D of BKD’s supplemental report includes email messages BKD found from all the various e-mail accounts related to this investigation.

4. Issues related to alleged inaccuracies in the Forensic Audit report which BKD found to be unmerited.

Two individuals came forward with claims about inaccuracies in the wording of BKD’s report:

- Angela Kreps disputed the BKD finding that her voting on the KBA’s fiscal 2008 and fiscal 2009 annual operating plans “may have been a technical violation of statute and KBA Conflict of Interest policy.”
- Dan Schmisser disputed BKD’s finding that he contacted Angela Kreps to report possible ethics violations involving Clay Blair.

BKD provides additional information in its report supplement relating to its analysis and resolution of those issues and stands by the findings and conclusions set out in its Forensic Audit report.

5. Information regarding resolution of pending issues.

After January 23, questions arose regarding the amount and scope of BKD professional time expended prior to discussion on December 7 of the final DRAFT Forensic Audit report with the Governor's and KBA representatives and the scope of issues and time spent on the audit subsequent to December 7.

In Exhibit F BKD sets out 1) the open issues addressed between December 7 and the issuance of the Forensic Audit; 2) the expanded issues and procedures raised since January 23; and 3) BKD professional hours by month from April 2011 through January, 2012.

The open issues addressed in December were:

- Development of information relating to reimbursement of expenses to KBA by Legislators.
- Inclusion of additional relationship charts for the appendix to Forensic Audit report.
- Presentation of information pertaining to Janice Katterhenry's departure from the KBA.

The issues raised and expanded procedures performed since January 23 were:

- Delivery of Tom Thornton's computer to Johnson County District Attorney Steve Howe and discussion of computer forensics work with the District Attorney.
- Further consideration of issues relating to the finding that Ms. Kreps may have been in technical violation of conflict of interest policy or statute.
- Further consideration of a statement in the Forensic Audit report stating that Dan Schmisser reported a possible ethics violation to Angela Kreps involving Clay Blair.
- Providing information on the professional hours by the BKD Forensic Audit team before December 7, 2011, and after December 7, 2011.
- Further evaluation of issues pertaining to integrity of KBA core business systems including accounting and Biztrakker systems.
- Further review and explanation of computer forensics procedures which were summarized in the Forensic Audit report.
- Further interview with Senator Wagle.

BKD's professional hours devoted to the Audit by month are set out in charts in Exhibit F. They show that BKD's hours in December after the December 7 DRAFT report discussion with the Governor's representatives total less than 100 hours, not the 1,000 hours speculated by some. The Governor's office has requested the detailed billings of BKD by each professional and KBA has provided this billing information.

6. Follow-up meeting with Sen. Wagle in Topeka.

BKD met with Sen. Wagle to make certain she was provided a full opportunity to provide information and input regarding the forensic investigation. BKD's supplemental report discusses the issues raised by Sen. Wagle and BKD's statement that it believes all issues presented to them by Sen. Wagle have been investigated.

7. Conclusion

BKD concludes its report with the following statement: "In our professional judgment, continuation of the investigation is not likely to lead to any information which will change findings and conclusions in any material way, if at all. In addition, we believe the investment of additional time, effort and expense is not a wise or efficient use of resources. We believe we are obligated to report these judgments to you as part of our overall responsibilities under the Canon of Ethics of the Association of Certified Fraud Examiners."

BKD's professional time on this audit now exceeds 3,150 hours at a cost of approximately \$880,000. The CIBOR audit brings total forensic audit expenditures to over \$1 million. These audits have unquestionably been comprehensive investigations into a very broad scope of issues, looking at a complete spectrum of KBA expenditures, investments and activities since its inception as well as questions raised on numerous other matters.

BKD's reports identified issues which the KBA board takes seriously. We have addressed some of those issues as noted in an attachment to this memo and intend to make sure our governance practices live up to the highest standards.

The KBA is posting BKD's supplemental report and exhibits on its website together with this memo to the KBA Board and KBA appointing authorities.

I do not plan to request or authorize further work by BKD on forensic audit matters but stand ready to discuss BKD's findings and conclusions with the Board, KBA appointing authorities and other members of the legislature.

Reporting unethical, illegal, or irresponsible behavior

In early 2011, the KBA contracted with the Network, Inc., to provide an anonymous reporting hotline for employees who are uncomfortable reporting issues to their supervisors. The service allows employees to report any activity through a web-based form or through an interview with a trained reporting specialist. All reports go directly to the chair of the KBA board's governance committee and to the KBA's general counsel.

Demand for return of inappropriate payments and inadvertent double payments

The BKD audit identified \$1,539.95 in inappropriate payments to former president and CEO Tom Thornton and eight instances of inadvertent double reimbursements, totaling \$4,292.04, to Thornton and four other former employees and board members. In December 2011, the KBA requested repayment from those persons; to date, four of them have remitted payments totaling \$5,522.99, including Thornton, who reimbursed the KBA the full \$4,679.88 demanded of him. One former employee has not yet reimbursed an inadvertent double payment of expenses in the amount of \$309.

Revision of executive assistant's job description

The auditors noted that Thornton used his KBA executive assistant for personal tasks such as paying his bills from his personal accounts and arranging for household services. The assistant's job description included these responsibilities, and the assistant estimated that she spent three or four hours a week on these tasks. BKD recommended that the board review the appropriateness of this work. KBA management believes that any such use of the executive assistant's time is inappropriate and has removed from the job description any responsibility for personal tasks of the CEO or other executives.

Use of executive session and holding meetings outside Kansas

BKD recommended that the KBA seek and abide by an opinion from the office of the Kansas Attorney General regarding the board's use of executive session and the propriety of holding meetings outside Kansas. KBA committed to do so. It has since been learned that the AG issued such an opinion late in 2011 that supports the practices as undertaken by the KBA.

Company credit cards

Noting that former employees had occasionally used company credit cards for personal purchases for which the KBA was then reimbursed, BKD recommended that management "ensure that KBA staff know the requirements for the use of the cards and enforce those requirements." KBA management has taken the recommendation a step further: Under current policy, only the president and either the CFO or the director of accounting may hold a company credit card, and the policy forbidding the cards' use for personal purchases is enforced.

HBV advisory board

BKD recommended that the KBA remove from its website information about the HBV advisory board as it appeared that the board either had been disbanded or was completely inactive. The KBA has removed that information from its website.

Other recommendations

KBA management and board have agreed to consider and if appropriate act on BKD's recommendations concerning:

- Outcomes tracking and reporting
- Notifying staff of new client information
- Deal flow meetings
- Documentation and practices for contracts
- Policy governing personal relationships
- Potential civil action against Thornton for violating his employment contract
- Documentation and procedures for reimbursing business-related expenses