

Testimony before the  
Senate Ways and Committee

**SB 305 - Transferring functions of the Kansas Bioscience Authority to the  
department of commerce.**

by  
Jim Oldebeken

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Mr. Chair and Members of the Committee:

SB 305 provides for the dissolution of the KBA and the transfer of its powers, functions, assets and liabilities to the department of commerce.

My purpose is to provide helpful information from public documents that may assist the committee and the legislature as they decide the fate of SB 305.

From the outset I wish for the committee to understand that I am here only as a citizen and taxpayer, as well as a former patient of the University of Kansas Hospital. I do not represent any business or nonprofit interest in submitting this testimony. In the past I have been employed as a nonprofit executive for over 30 years, including eight years with patient advocacy groups such as the American Diabetes Association and the Arthritis Foundation.

My intention is not to criticize or find fault, since I deeply appreciate the efforts of the KBA, the Kansas bioscience industry, and its industry organizations. Rather I aspire to help find quicker and more efficient ways to find new cures and treatments, improve and expand healthcare and to create new jobs. I have sought to be as objective and accurate as I can be. No one is perfect, if I have unintentionally misstated some matter I welcome rebuttal.

My comments with focus on information from public documents related to the KBA's involvement with nonprofit, the Kansas Bioscience Organization, dba "BioKansas" (although formerly operated as "KansasBio").

## **BACKGROUND**

BioKansas received its 501c3 “public charity” determination from the IRS in 2004. This organization’s articles of incorporation and bylaws were drafted in whole or in part by the law firm then known as Polsinelli Shalton & Welte who also served as their registered agent at the law firm’s Overland Park address.

KBA has been involved with BioKansas in the following ways:

- KBA's chief executives have held positions on the BioKansas board of director dating back to 2006 (nine years). Also serving on the BioKansas Board are officials from: University of Kansas, Kansas State University, Wichita State University, and University of Kansas Medical Center.
- KBA has provided funding to BioKansas in the form of grants and membership dues
- Angela Kreps, BioKansas’ chief staff executives has served on the KBA Board of Directors
- BioKansas, through its staff, directors, officers and members has lobbied on behalf of the KBA.

The Polsinelli law firm and/or its attorneys have been involved with BioKansas and the KBA in the following ways:

- Preparing and filing founding documents of BioKansas
- A Polsinelli attorney, Kevin Sweeney, has served simultaneously in the following leadership roles: member of the board of directors, member of the executive committee, officer position of vice president, chair of the public policy committee, and outside counsel.
- A Polsinelli attorney assisted in drafting portions of the KEGA legislation that created KBA
- According to news reports, Polsinelli has customers who are applicants and recipients of KBA funds, some of whom are also members and board members of BioKansas.

## **POSSIBLE QUESTIONS FOR THE COMMITTEE**

I have carefully reviewed scores of KBA and BioKansas public documents including IRS filings, nonprofit tax returns, board minutes, as well as websites and audits. I believe the following issues are noteworthy and worthy of further investigation for this committee as they consider SB 305.

## **Governance**

BioKansas founding bylaws appear to:

- Establish permanent positions on their Board of Directors.
- Prohibit voting privileges of their dues-paying members who are not already members of their board
- Prohibit any means for their dues-paying members to withdraw or impeach their Board of Directors in whole or in part

Does BioKansas governance structure reflect democratic principles?

## **Nonprofit Status as a “Public Charity”**

Although BioKansas convinced the IRS to grant them 501C3 “public charity” status, the organization appears to operate more like a 501c6 “business league” according to its website and 990 returns. According to tax returns, all other “Bio” state organizations are 501c6 “business leagues.”

Has BioKansas put their nonprofit status at risk including possible tax liabilities should it be revoked by the IRS?

Have five State employees fulfilled their fiduciary duty in their roles as Board members of BioKansas?

It is noteworthy that the attorney whose name appears on some founding documents is that of Thomas J. Schenkelberg who is chair of the Polsinelli Nonprofit Organizations practice which makes the claim on their website “Our team literally wrote the book on tax-exempt and nonprofit law.”

## **Professional Ethics**

BioKansas’ website on May 18, 2015 lists Polsinelli attorney, Kevin Sweeney, as holding the positions of Board member, Executive Committee member and the officer position of vice president. Also on May 18, Mr. Sweeney’s bio page on the Polsinelli website state that he has served as the “Outside Legal Counsel” of “Kansas Bio.” Does Mr. Sweeney have now or have had in the past a professional conflict of interest through serving in multiple roles?

### **Forensic Audit**

This audit questioned a KBA board member not recusing herself when she voted for a grant to be awarded to her organization. The minutes of that meeting indicated that Polsinelli attorneys, Frank Ross and Geoffrey Fasel, were present at that meeting. The audit indicates that Polsinelli was KBA's outside counsel at the time of that meeting. Why did Mr. Ross and Mr. Fasel, in their roles as attorneys for KBA's outside law firm, not advise this board member to recuse herself to ensure the Board's compliance with K.S.A. 74-99b04? Again it should be noted that Polsinelli attorney Korb Maxwell website bio states that he assisted with drafting portions of the KEGA Act.

I hope this information has been helpful. Please contact me if I can be of further assistance.

Respectfully,

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