

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Susan Wagle at 8:15 a.m. on April 1, 2011, in Room 548-S of the Capitol.

All members were present except:
Senator Emler - excused

Committee staff present:
Ms. Margaret Cianciarulo, Committee Assistant
Mr. Ken Wilke, Kansas Legislative Research Department
Mr. Reed Holwegner, Office of the Revisor of Statutes
Ms. Dorothy Noblitt, Office of the Revisor of Statutes

Conferees appearing before the Committee:

Others attending:
See attached list.

Continued overview of the Kansas Bioscience Authority

Upon calling the meeting to order, Chairperson Wagle said that they have had several meetings asking questions of the KBA. Yesterday we sent each Committee member a packet from the KBA with some answers to some recent questions. We have had some discussion in this Committee about a Post Audit and about the possibility of a forensic audit and the first document before them is a Scope Statement that we will get to later. She said she has found some information that alarms her and would like to walk the Committee through some documents she has brought here today.

1.) The first document is 76-99b02, the law when we enacted the Bioscience Authority. (5) describes its mission, which "is to make Kansas the most desirable state in which to conduct, facilitate, support, fund and perform bioscience research development and commercialization, to make Kansas a national leader in bioscience, to create new jobs, foster economic growth, advance scientific knowledge and improve the quality of life for the citizens of the state of Kansas." Regarding (6), she said at the time it was the legislature's desire to give tremendous freedom to the Bioscience Authority and make it independent of scrutiny from the legislature in order to grow Kansas jobs.

2.) The second are two bios, the first is Mr. Thornton's bio from the Bioscience Authority's website. He earned a bachelor degree at the University of Wisconsin. His second bio shows he earned a double major in Political Science and History and he worked for the former Speaker of the House, Representative Dennis Hassert as mentioned in the last meeting, and certainly that opened doors for the KBA as we were trying to acquire NBAF. She is discerned, and this is not validated, Mr. Thornton took a job with former Representative Hassert upon graduating from college and before Mr. Hassert was Speaker of the House.

3.) The third is a document she just pulled off the internet, showing a number of business interests that Mr. Thornton has been involved with in the State of Illinois before he came to Kansas. Referring to the second page of this document, she said you will see he has been in a managing position for divine inter Ventures, Inc. so, he certainly has a tremendous background from the state of Illinois with a number of companies.

4.) The next document is from the state of Illinois, dated November, 2010 and is the appointment of the Governor to the Illinois Science and Technology Committee, which was formed to create jobs in the state of Illinois. Referring to the second page of the report, it lists Mr. Thornton's name. The Chair said that she has asked her Research staff to call the state of Illinois to verify that he is still sitting on the Committee, but we have not been able to discern that. This November, 2010 date apparently is the appointment process in Illinois and does not have that ending date you are appointed.

5.) The next document you can find on the Illinois Board of Elections and is a PAC showing Mr. Thornton as Chairman to promote technology in the state of Illinois. I do not know how active this PAC is. It appears to be a current PAC.

CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 8:15 a.m. on April 1, 2011, in Room 548-S of the Capitol.

6.) Because she did not have access to the bankruptcy documents that are public in the system, she has asked a bankruptcy attorney about the document she handed out earlier stating that Mr. Thornton was involved with the divine interVentures and she asked someone to look at the chain of bankruptcy documents of that company from Illinois and how it is working its way through the system. This document has a number of places where the public can go to learn about this bankruptcy for example, Business Weekly, but it does not have all of the official filings for the court. You will find though, on page 3 of the document referred to in #3, it reads "Tom's direction of the company resulted in a loss of \$421M in less than 18 months which resulted in the chapter 11 filing. You have to string together the pieces and "follow the money" but what you find is that Tom was deeply involved with both management companies," she guesses divine became Enivid which is devine spelled backwards, "and now according to the Massachusetts court Bankruptcy Court in Massachusetts considered the Enivid bankruptcy a deepening insolvency which equates to fraudulent prolongation of a corporation's like beyond insolvency." A deepening insolvency is where someone went out and asked for more money to be invested in the company knowing that company was not going to succeed and was going to go through bankruptcy. She understands there is a current investigation at the SEC that is yet to be determined.

7.) However, she would like to point out the LexisNexis document which is one of the bankruptcy documents that have been filed. On the front page is the name Jude Sullivan who is also named in this Enivid bankruptcy. She referred the Committee to page 14, left hand column, the second paragraph, which she thinks Mr. Sullivan was asking to be released from his involvement in this deepening insolvency. It reads, "Although Sullivan is mentioned less frequently than the other Defendants in the Complaint; the Plaintiff has adequately alleged that Sullivan was privy to the same negative information possessed by the other Defendants which should have caused him, as general counsel to the Company, to advise the Board of the re-class course the Company was pursuing. Days before the completion of the RoweCom transaction, Sullivan sent a detailed e-mail to the other Defendants and members of management which highlighted and predicted all of the problems the acquisition of RoweCom would create for Divine. Yet he remained silent at a Board meeting the following day at which the acquisition was approved. Likewise, he had information about the faulty financial projections which, in a statement attributed to Sullivan by the Plaintiff, were dictated by Filipowski over the objections of Humenasky and other officers to secure the desired Board vote..." Id. at P90. Sullivan's position is further compromised by the fact that he was not merely silent while in the possession of material negative information, but he allegedly led the efforts to create a business judgment defense while aware of that information. See Id. At P200. Although there are fewer references to Sullivan than the other Defendants in the Complaint, the overall theme is the same: that Filipowski so dominated the members of the inner circle that each failed to exercise his business judgment before the Board by keeping their misgivings secret."

8.) The next two documents are about Mr. Sullivan. The first is his web page showing he works for K&L Gates. The second sheet is one of the pages of the handout the Committee was given in their March 4, 2011 Committee meeting. She wanted to point out that K&L Gates has been paid to advise the KBA, \$42,257 in 2010 and \$11,482 as of 1-31-11. And in communications she has had with employees at the KBA, there are numerous conference calls with Jude Sullivan.

9.) The next two documents show where Mr. Thornton is a paid Director for an Illinois company called Advanced Life Sciences. He sits on the audit and nominating committees. She did not bring his payroll, but that is available. The Chair stated her concern, and the Committee is probably wondering, is this a conflict of interest for Kansas when we are trying to grow jobs in Kansas? She went on to say, this is a new document off of the Securities & Exchange Commission website because this company, where Mr. Thornton currently sits and is being paid, is going into default. They have had a reverse 3-to-1 stock split. As far as she knows, she is not verifying that, because Mr. Thornton is not here. He is still the Director of this company.

10.) The next concern she would like to bring before the Committee's attention, and knows some of you have been going through books and have concerns to, was the Cydex grant from the KBA of \$195.2K in 2009. The former President of Cydex is Mr. Theron Odlaug, who serves with Mr. Thornton on the Board of Directors at Advanced Life Sciences Holdings, Inc. The Chair said she cannot find the meeting minutes where it was his conflict of interest he shared with the Board, yet this company received \$195.2K.

CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 8:15 a.m. on April 1, 2011, in Room 548-S of the Capitol.

11.) She is concerned about another conflict of interest as shown in the next two documents regarding Mr. Terry Osborn. The first document, which is a salary sheet given to the Committee at the February 21, 2011 Committee meeting, showed he served on the Heartland BioVentures staff. According to this sheet, his base salary is \$150K and insurance compensation is \$24K. She is hoping the Board can verify. As shown on the second document, Mr. Osborn also has two other full-time jobs. He is a resident of Illinois and sits on the Board of Directors of Advanced Life Sciences in Illinois. The Chair stated everything to her, appears not to be pro-Kansas and was hoping the Bioscience Authority would hire Kansans and grow jobs in Kansas.

12.) Of the next two documents, the first is from the website of the KBA, an article about the \$50M that is committed to be invested. Not all of it is invested, because it does require matching funds but the venture capital investments to be committed of \$50M of withholding tax, is taken from the Kansas taxpayers. She referred them to the bottom of page 1 and top of page 2, where it lists the companies that have had these pre-commitments for money and would like the Committee to take note that seven of these commitments are from outside of Kansas. Of special concern with her, is with one of these commitments which is with Midwest Venture Partners from Chicago. She would like to show the Committee their website and referring to the second document, she said she has talked to some bioscience professionals about this company and has been told there is no venture fund in this company. I am still trying to validate that and cannot validate without Mr. Thornton being here. Regarding Mr. Thornton and Mr. Thomas Churchwell's friendship, they used to meet every Monday for coffee, I have been told, and meet with bio-professionals in Chicago. Mr. Churchwell is a managing partner in this company.

She went on to say, she knows she has given the Committee a lot of information very quickly and it certainly concerns me. Everything we are looking at would need to be validated further, but what I have presented here should lead to more questions and further validation of exactly how monies are spent at the KBA.

14.) The next document is an article dated January 10, 2007 entitled, "New effort to boost startups." This came out and Mr. Thornton was the acting CEO, he took over in 2006. The article was from the Lawrence Journal World how KBA was going to start a new effort called Heartland BioEnterprise and is sure it is something we all supported because it was going to lend a helping hand to Kansas companies. Helping them raise capital, give them advice, and get their feet on the ground. That is what she understood the goal of this company was. She referred them to the second paragraph at the bottom of page one, which read, "The model comes from Cleveland BioEnterprise, which started six years ago and attracted less than \$5M in venture capital during its first year. In 2006, working with a \$3.3M operating budget – the programs' companies attracted \$175M in venture capital." The last sentence on page one read, "We're talking about growing our own here." Mr. Thornton said.

She referred the Committee to page 2, saying she wanted to share with them an article from the Cleveland, Ohio newspaper dated February 4, 2007. It is an article about how Kansas was going to start the Heartland BioEnterprise, including:

A.) In the first column, paragraph 3, she read, "There will be no official connection between the two organizations, but both will benefit from the informal partnership, according to BioEnterprise president Baiju Shah." She said it explains the Ohio organization.

B.) Referring them to column 2, it says, "By contrast, the state of Kansas has just two venture capital funds, according to Mr. Tom Thornton, President and CEO of Kansas Bioscience Authority." "We have a lack of early-stage capital, Mr. Thornton said."

C.) "BioEnterprise," which the Chair understands is a company out of Ohio, "is receiving "a modest consulting fee" to advise officials in Kansas on how to set up their operation. She read, "Once Heartland BioEnterprise becomes active, the organizations plans to help each other find venture capital, technology, talent and information in their respective regions," Mr. Shah said."

D.) What concerns the Chair with Mr. Shah, she referred the Committee to column 3, paragraph 3 which reads, "Though Kansas is not yet brimming with venture capital, it is already a source of other resources.

CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 8:15 a.m. on April 1, 2011, in Room 548-S of the Capitol.

For instance, through the Cleveland area is active in biopharmaceutical research, Kansas is a good source of pharmaceutical entrepreneurs who could help launch companies in Ohio, Mr. Shah said.”

15.) The next document comes from yesterday's folder, page 3, number 5, at the bottom of the page, because it follows up on Mr. Shah. “The total paid to BioEnterprise was \$200,000.” The Chair wonders if this is a conflict of interest?

16.) This document she received from a business man in her community, who took a project to the KBA. What this individual person was concerned about is in the second paragraph. Reading, “During a recent meeting with members of the KBA's Heartland BioVentures, we were informed of certain “invitation only” programs that were not publicly available to all companies.” The Chair said she thinks the Committee needs to ask questions about what is available for Kansas investors and if there are other programs and how they discern how they allocate monies to different Kansas companies.

17.) Regarding the third paragraph of an email she received regarding the KBA's investment in Novita Therapeutics, it has spun off two companies. One was a medical device which was Flow Forward and the other was an internet tax company and none of these details are available publicly. But this person is wondering if “spinning out companies so early could easily dilute the KBA investment. Also, one has to wonder, how the creation of an internet tax credit trading company fits within” the goal of growing bioscience companies in Kansas.”

18.) The last handout are pictures on Facebook of a party and if you look at sheet two, it shows a \$100 bill that was given out at the KBA staff holiday luncheon where we were charged \$1,103. She referred the Committee to the third sheet that listed “Meeting and Travel Expenditures” from the KBA's February 21, 2011 booklet. She went on to say, they have had testimony about bonus checks and we are sitting here cutting our budget significantly. We are not overseeing how money is being spent at the KBA, not overseeing any conflict of interest. Some individuals who work there, brought me \$100 bills that were at the tables. It had a new picture in the center of the bill. A picture of Tom Thornton was replacing Ben Franklin.

A copy of the above handouts are (Attachment 1) attached and incorporated into the Minutes as referenced. A copy of the KBA's responses referred to in paragraph 1 on page 1 of today's Minutes, is (Attachment 2) attached and incorporated into the Minutes as referenced, with the exception of the KBA, Revised CEO Compensation Analysis dated May 10, 2010, marked CONFIDENTIAL – draft for discussion, which can be found in Senator Wagle's office.

The Chair said she wanted to give the KBA a chance, I know that the Committee has just been given these documents and I know that the KBA can't respond to this and I will give them that chance to talk.

She recognized Senator Masterson who had some questions off of the original answers to our questions, including, there were a few companies who took KBA investment that appears no longer to be in the state of Kansas, what checks do you have in place to get the money back? He said the first one was ANOxA and there was a commitment to them for \$300K. They paid back \$120K, that still leaves \$180K out there. We were getting seven new employees relocating to Kansas, \$6M in equity financing and the answer to the question that arose was, what was the current operating status of the investment? The answer that came back was ANOxA out-licensed its technology, its U.S. sales and marketing is located in Overland Park, Kansas and the product is in a development phase, awaiting approval of clinical trial plans by the FDA. He went on to say he went to the Kansas Secretary of State website and did a search on ANOxA and according to them they don't even have a copy of their license in Kansas back in August of 2009 and it had a mailing address in Reno. The only thing he could find to tie to Kansas, is an attorney listed as resident agent residing in Leawood. So what was the current status of the money that was spent or committed, the status of that particular company right now, is it Overland Park, Kansas or Reno, Nevada, or forfeit? (Governor Carlin said David Vranicar and Jan Katterhenry are here today and said there are a lot of things they can respond to today and would suggest from a format point of view, if this could have been distributed a little bit in advance, we might have been able to answer some more questions. Jan Katterhenry said she can tell the Committee, they currently have ANOxA under review. We are trying to get more information. We did send out the license. Her understanding was they did have an employee working at this company in Overland Park. She called on Mr. David Vranicar, who introduced himself,

CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 8:15 a.m. on April 1, 2011, in Room 548-S of the Capitol.

saying he was the President of Heartland Bioscience, and this company is not the company that is based in Overland Park. They licensed their technology to a company called Becker and Becker Products.) But ANOxA received the KBA funds. (Ms. Katterhenry said we are currently in the process of attempting to obtain new information from ANOxA as to their exact status, particularly given the fact that they have not licensed their technology. Do you have the ability within your agreements to recover that money? (If a company moves away from the state of Kansas within 10 years of funding, KBA may require the funding that KBA has provided, be returned to the KBA.) One of the companies that jumped out at me was Cydex. They got \$195K and they were bought out by Ligand in California. If you have a company that is bought out, there is this receipt of cash.

Are there any parameters that allow for that? And also, be recovered if you have a large company? (Mr. Vranicar said, it would apply in the same way. But in this case Cydex is not moving and ownership is changing so they will be owned by a much larger pharmaceutical company in San Diego. But Cydex, the operation, and business remain here.) Also, ANOxA appears to have moved to Nebraska? (ANOxA is one that was, for all intensive purposes, a business failure. It was a start-up company that had an interesting technology they were pursuing and in the end, the business model did not work successfully. So they reorganized the company, essentially they dissolved the company in Kansas and reorganized the company with new investors in Omaha. The KBA as an earlier investor, was given an opportunity to invest more money into the company as part of the reorganization but chose not to. So KBA no longer has an interest in this company.) So that was just a loss for us? (That's correct.)

The Chair asked Governor Carlin, I don't know if you know about any of these situations with Mr. Jude Sullivan or Mid-West Venture Partners, do you know about the \$5M investment? (Mr. Vranicar answered this. He said the KBA made an initial commitment to Mid-West Venture Partners as well as with seven other firms. And there were a number of requirements which KBA specified in their response that we provided to you, that defined the terms under which they had to meet before KBA would invest. He referred the Committee to page 4, number 7 of the response to the questions sheet of the March 17, 2011 meeting. In the case of Mid-West Venture Partners, they did not successfully raise funding for their investment fund and so the KBA has not made any investment into that fund.) What information did they give you that would make you think that they even would grow Kansas jobs? If there was no venture capital fund existing, why did they tell your Board this is such a great deal for Kansas and we are going to give them \$5M when they get their matching funds? (The challenge in Kansas was lack of capital. So the KBA had a strong desire to increase the amount of venture capital that would be available for merging companies in Kansas. One of the requirements in the terms, was that the firm had to set up an operation in Kansas. And the reason there is only one firm on there that was in Kansas is because there are no other bioscience firms in the state of Kansas, so there could not be any others that we invested in that were already here. KBA engaged in an outside consultant with particular expertise in the evaluation of venture firms, to have an external review for their Board of all the firms that applied, and out of that came the eight to which they made commitments. The expectations were, we hoped, they would be successful after KBA's conditional commitment to them and help them become successful. However, at that time it was a significantly bad time for venture capital firms to be raising money in the micro environment.) Who was the firm that KBA hired? (Ennis Knupp and it is now called Hewitt Ennis Knupp.)

The Chair said if we are overseeing funds here, is that money being invested, bringing back an adequate return and truly growing jobs in Kansas? (The strategy of this venture fund, approved with the KBA, was not to create jobs. Venture companies do not hire lots of people, but it would bring capital to invest in emerging bioscience companies in the state of Kansas who in turn, over time, create capital investment to attract other equity dollars. He went on to give some history of MPM, including starting a new animal health company in Kansas that has attracted commitments of \$20M in equity funding.) Do you have statistics on how many other venture capital investments have succeeded? (Don't know off the top of his head. We can look that up for you.) Would like statistics on both the companies and the firms. (On the firms, there will be out of 10 investments, several that will fail or succeed, one or more will return tremendous return through acquisitions, public offerings, etc. and in between you have several modest ventures. Venture capital usually succeeds on the big hits. He does not know the statistics specifically. We can get some more here and distribute.) That would probably be very important to the Committee.

The Chair recognized Senator Lynn who asked what is the time frame once the investment is made for that to translate, when do we see results? (Generally, venture firms are set up to be 10 year terms, 10 year horizons and typically from the time they are taking their money with capital to invest, they will invest most of their money in the first portion of their life cycle of 10 years. Maybe into the third year, there will

CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 8:15 a.m. on April 1, 2011, in Room 548-S of the Capitol.

be new investments. Typically, they hold money in reserve for follow-up investments, and they may do some new investments to deals they had done earlier in the years 4, 5, 6, maybe even 7. Then in the final years, maybe 6 or 7 through 10, they are in the harvest mode where they are trying to cut their investments, exit in some way so they get their cash back. Investors hold limited partnership interest in those funds and so the investors earn their returns as the fund generates its cash flow. KBA had already received proceeds from a sale, our pro rate share of our investment in that fund.) What was the amount of the proceeds? (I don't remember, it was significant on the basis of how much money we had in.) Regarding Innovia, that was discussed earlier, a \$650K equity investment that KS Inc. did a review on. Yet in the packet you gave us on February 21, 2011, Innovia was not listed as a delinquent company but there was information in this report that in the jobs traced back, there was \$3.1M they were getting back in equity. Now that they are in Omaha, what happened to the \$3.1M? (Ms. Katterhenry answered, we no longer show any outcomes so when the jobs decrease, we take the jobs off.) So did we loose on that deal? (\$650K.) So the \$3.1M was based on the equity back? (Mr. Vranicar wanted to know when was that one invested because, he would like to look that one up and maybe be able to clarify this for you. Do you know a date? (Ms. Katterhenry said it was in July, 2007.) Senator Lynn said she thinks the Committee would like some clarification on what happened with Innovia. (Ms. Katterhenry said the bank basically called in the note for \$200K and so a company was found in Nebraska and purchased the note from the bank for that amount, the bank would not foreclose on Innovia.)

The Chair recognized Senator Steineger who said his foundation of concern is based on:

- 1.) KPERs investments, the net loss was \$194M
- 2.) The DOT com bust in the stock market, people can be fooled by hype.
- 3.) The past months, he has read over court documents, bank documents etc. and the case has had publicity. There has been an amazing number of individuals from Kansas City all the way back to Chicago who are supplying a lot of information regarding Tom Thornton about his background and history that is proven factual and documented. He compared the article on Ms. Karen Plentz from the Kansas City Star and saying the two were eerily similar. There are a lot of problems with this agency including discrepancies between KBA's booklets versus the audit and financial statements provided by Allen, Gibb & Hewitt.

(Governor Carlin said he feels compelled to respond at this point because what the Senator just said represents some of your concerns and in thinking, we need to get to the bottom of this and quickly. First of all, when you present this to us as we arrived, it is rather difficult for us to respond and answer your questions. It is a lot easier for Senator Steineger to walk out of here and have a press conference and make all these charges when we haven't had a chance to respond. It is very unfortunate we have gotten into this pattern, but we will do the best we can. We want charge by charge to be raised here now, so we can respond in terms of what we can today. You talk about Ms. Lynch, it is a personnel matter. We regret having to get into it but, you are on the wrong side of that, let me tell you. If she is one of your credible sources, you are making a mistake. I would also say, and respectfully request, I have been the Chair for a while and you nor any member of the Committee has ever come to me and said, we need to sit down and talk, we have got concerns. Why weren't we as a Board contacted? The Board has and continues to be actively involved. We stand behind what we have done. We understand that when you make investments, some don't work out. But the genius of your 2004 legislation, gave us huge opportunities and we are about to blow that by raising questions, if legitimate, that should be handled appropriately, not in a public setting where the desire is a press conference after this is over. We welcome the opportunity to discuss anything you have found. If there are concerns and legitimate ones, let us handle it professionally. We can meet in private. A lot of this involves personnel and client privilege we can't talk openly about some of these companies. We are not concerned about anything you have shared.) The Chair thanked him for his statement saying, her only concern is that they are the only taxpayer funded entity that is not brought under the scrutiny of the Ways and Means Committee on how the money is being spent and that's highly unusual. The crafters of this Legislation didn't want to tie your hands and wanted to give the Authority the ability to invest and grow jobs in Kansas. What she laid out today are concerns she has about conflict of interest. Why can't we hire law firms in Kansas instead of K&L Gates in Chicago? (All the firms in Kansas had conflicts. We had to get somebody who was outside, who could advise us who did not have a specific conflict.) And so you chose Mr. Thornton's partner at Enivid? (We made that decision because it was a sound recommendation supported by consultants we had hired to advise us.) And who is that? (Ms. Katterhenry said it is not our legal counsel.) How was K&L hired, was that through your consultant or was that a suggestion through Tom Thornton? (Ms. Katterhenry said that was a suggestion. Governor

CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 8:15 a.m. on April 1, 2011, in Room 548-S of the Capitol.

Carlin said it would be kind of surprising if the CEO we hired, didn't occasionally have suggestions for us on how to proceed.) He brought in a guy from Ohio whose job is to grow jobs in Ohio. (Who is the guy he brought in from Ohio to grow jobs in Ohio?) Mr. Shah, which you have shown here today received \$200K. (To grow jobs in Ohio?) But consult for Kansas, and what if he takes our information back to Ohio? (Well, may I respectfully share with you, all of this is relatively new for Kansas. The whole venture capital area, we were basically zero. We had never done anything sophisticated in terms of really growing the economy until you wisely created this legislation. So it was all new, and for us to say we were not going to talk to anybody across the country or partner with anybody across the country, we are only going to use Kansas talent, would be a rather guaranteed set of steps to fail. We didn't have the experience or talent here and let me tell you, when it comes to venture capital, in a lot of these projects, collaborating and working with others, is one of the keys for us to succeed.) The Chair said she has no problem with you working with professionals, what I do have is a problem making sure every dollar isn't spent wisely in trying to grow Kansas. (Let me go back a little while ago when you talked about this was the only entity that was not under annual appropriations or this Committee. That was the way it was designed. That's one of the reasons it is so successful or potentially great and why other states are looking at it as a model. It was set up to minimize politics and to have stability so that we couldn't make multimillion dollars a year commitments.) How are we minimizing politics when we have your top CEO, who has a degree in political science and history, taking taxpayer money, making about \$450K a year, and hiring companies to tell him what they should make, going to Christmas parties at the taxpayer's dollar, giving out bonus checks and \$100 bill with his picture on it. (Well, I wasn't at that party. Ms. Katterhenry said those were not bonus checks, it was a joke. Governor Carlin said that's a joke or I assume it was a joke.) Well, it was a joke on the taxpayers of Kansas. (Well.)

The Chair recognized Senator Steineger who said he regrets that they only got this information today. We only got it last night. He would say, there were several times the KBA showed up and gave us a big packet of stuff at the beginning of the Committee meeting. He then said he would give him some questions and please answer or bring the answers.

1.) He would like to know about the Enlaped investment and Michael Beckloff. He would like to know about Tom and Michael's relationship. They both served on the Board of the Enterprise Center of Johnson County and was this disclosed per KDA rules?

2.) He would like to know a little more about Cydex and Theron Odlaug. He and Tom serve on a Board of Advanced Sciences holdings back in Illinois, one of the companies that went bankrupt and Mr. Odlaug received a grant from KBA for Cydex. Was that relationship disclosed to the Board, did the Board know about that?

3.) He would like to know more about the Enivid case and Tom claims to have worked for this company for several years. He claims in his bio that was on line, that he managed a \$120M investment portfolio.

This is the company that has gone bankrupt. It is also the company where he and Judy Sullivan apparently did business together. It is U.S. Bankruptcy court for the District of Massachusetts, case #03-11472. The Chair said she wonders if they should write the questions down. Governor Carlin said if you could submit them in writing we will respond. Senator Steineger said we will.

4.) He would also like to know about Terry Osborn who served on the same Board as Mr. Odlaug and Mr. Thornton and now, or did work for the KBA and apparently lives in Chicago. I am not sure if he is still working there or not.

5.) To Ms. Katterhenry, would like to know about case #08-2344 involving Epic systems. If you are the same Jan Katterhenry that was involved in that case, that involved illegally altering stocks and certificates and back dated them, settled out of court, SEC. The Chair said they would write the questions down and asked what does the Governor think of that idea? (Very definitely with a list like that, we will need the list and we will have to go back and respond.)

The Chair recognized Senator Longbine who said he is a little uncomfortable about the way we have been progressing. This is our third meeting and in each, we have had accusations, innuendos of impropriety done at KBA. But we have not had one person step up to the microphone and make those accusations. I don't know if they are unavailable, unwilling or they do not exist. If there are accusations or concerns, I would request that they stand at the microphone and make those accusations so the Committee can act upon them. But this hearsay back and forth, I am really uncomfortable with. So is it possible to have

CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 8:15 a.m. on April 1, 2011, in Room 548-S of the Capitol.

those that are accusing the bioscience of misdoing, to stand at the microphone and make those accusations?

The Chair said, she is willing to share at this time, she has talked to a number of individuals who work at the KBA and I have told them that when they share with her the information, all of which I have not shared here today, that they would receive by statute, whistle-blower protection and they cannot be fired and of course everyone of them is worried about being fired. And of course, when they sit down at lunches with Mr. Thornton and his new wife and talk about doing a recall with Susan Wagle and Susan is going to lose her job too. I don't think your employees should be called into meetings, asked to say things unwillingly, and be put under pressure to think that they are going to lose their job if they talk to a legislator. We have a very clear whistle-blower statute that covers agencies and authorities. (Governor Carlin said he simply requests, as Chairman of the Board, that he have a little bit of communication from you so I know what I need to address.)

The Chair said she would like to start with the communication of hiring of people from Chicago. (Are you talking about Terry Osborn?) Terry Osborn, Jude Sullivan, I am very concerned and one reason I held this meeting today is because our post audit committee is meeting on the 24th and if we want them to do a forensic audit, we have to take to them the question and have the post audit committee authorize that a forensic audit is done at the KBA. And this Committee has to vote on that and take the question before post audit then we will have a forensic post audit done at the KBA. (And why the forensic audit?) To look at how money is being spent there, to see if it meets number five's goal, which is growing jobs in Kansas. (And the audit that was done by Kansas Inc. didn't follow that pattern?) That was done a few years ago. (They didn't do a forensic audit, they did a program audit.) Right and you have some Allen, Gibbs and Houlik's audits in here that don't reflect the numbers you are giving us in your books. I can't tract your money. (So you are accusing a certified audit firm out of Wichita, that they are not doing their job?) I don't want to accuse anybody. I think this is taxpayer money. (We have had a clean bill of health from them for several years.)

The Chair said the only reason we are here is to see if money is being spent wisely. Let me explain this further. We have a bill in my Committee which reorganizes KTECH and moves it under the Department of Commerce where they have oversight of taxpayer dollars and this Committee has to decide before we adjourn this session, if we want the KBA to continue as an independent authority that has no legislative oversight or whether or not we want them to have financial oversight of the legislature and that bill has not been worked yet. (Governor Carlin – I just hope if you proceed in that direction, you understand the risk, because the benefits of what you did in 2004 will be lost. We won't have the private sector involvement. We won't be able to do projects like NBAF and we will probably lose NBAF.) NBAF is federal money and there is no money in KBA for NBAF. (That is correct. We are involved, yes. But for you to blamely say we are not going to, regardless of what we do in Kansas, is very unrealistic and scary.) I don't know what grounds you have in saying that. (We communicate and work with the folks back there and there is real concern. They follow the activities of this Committee and they were willing to do the project because there was some stability, some continuity that would go through the time frame of building that facility.) And what we want as an oversight agency of all funds spent, is to make sure that NBAF is successful and if we have someone at the helm who has a history of taking money, (We will check into all of those specifics.) then we have a problem. (I am just saying, as long as we deal with our differences in a very public manner on personnel issues as well as dealing with companies that have protections that are built in, we are running a real risk of damaging the progress we have made. That is all I am respectfully asking.) So let's make an agreement. Let' have a meeting on the first day of veto. I won't throw anything out and you can respond to questions. (We request the questions in advance so we will have the right people with the right answers, specifically to give you what your are asking.) We are concerned about the \$5M venture capital commitment, how that was approved to the company in Illinois, and the individual who worked with Mr. Thornton. (Again, why don't you put those specifically in writing so there is no miscommunication, so as not to be dependent on my memory to what we are to come back with.) We are going to do that. Senator Merrick offered the same. The Chair said they would give their questions to Mr. Reed Holwegner, Kansas Legislative Research Department, and he will forward them to the agency, since the legislature won't be here for three weeks and we will get the questions answered when they come back.

CONTINUATION SHEET

The minutes of the Senate Commerce Committee at 8:15 a.m. on April 1, 2011, in Room 548-S of the Capitol.

Adjournment

As the Senate Judiciary Committee was getting ready to meet, the meeting was adjourned. The time was 9:30 a.m.

The next meeting is scheduled for April 28, 2001.