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Lana Gordon, Secretary

Bradley R. Burke
Deputy Secretary and Chief Attorney

Sam Brownback, Governor

To: The Joint Committee on State Building Construction, Kansas Legislature

Re: *Update on KDOL Property Located at 427 SW Topeka Blvd., Topeka, Kansas*

From: Brad Burke, KDOL Deputy Secretary and Chief Attorney

Date: November 21, 2013

Members of the Committee:

The following is a brief update to help provide additional information to the Kansas legislature on several points of interest concerning the Kansas Department of Labor (KDOL) property located at 427 SW Topeka Blvd., in Topeka, Kansas. Several of the points below address questions posed by members of the Legislature concerning KDOL's efforts to dispose of the property.

This summary is intended to supplement the correspondence (Attachment A) that was communicated to the Committee on November 7, 2013.

Summary of additional information:

- USDOL has declined our request for USDOL to take possession of the property.

- USDOL has declined our request to assist in paying to raze the facility.

- USDOL has declined our request to waive their equity interest in the land and facility.

- KDOL's appraisal documents value the land and building at $89,000, which USDOL agrees is the fair market value. USDOL also states that they will not be bound by future appraisals that may value the property at a significantly lesser value.

- Of the $89,000 appraised value, 91.09% or $81,070.10, is considered "federal equity," and must be transferred to a fund within KDOL (3336 Sale of Building Fund). Those funds can be used for any expenses that our UI Administrative grant may be used for, such as staff salaries and other costs of administering the employment security act.

- Additionally, 5.81% or $5,170.90, is considered state equity, but it must be transferred to the state Penalty and Interest fund (2120 Special Employment Security Fund) because of federal regulations, and it will be used to pay for expenses surrounding collection of overpayments.

- The remaining 3.1% or $2,759.00, is also considered state equity, but it must be deposited into the U.S. Treasury in Kansas' unemployment benefit account because of federal regulations. These funds will be used to pay Kansas unemployment benefits.

- These transactions will complete KDOL's obligation to repay the equity for the 427 Topeka Blvd. property.

- None of the $89,000 will be paid to the federal government, but it will satisfy their equity interest if allocated as described above.

- The final percents and figures have been updated since the budget was completed due to additional information received from USDOL. The 2014 budget reflects that KDOL will use $83,320 from SGF to satisfy the federal equity in the property. Now, based on the final correspondence that we received this week from USDOL, KDOL must also direct the 5.81% or $5,170.90, to the state Penalty and Interest fund instead of being able to freely spend the funds as we previously understood.

I hope this information is useful and responsive to the committee. Please do not hesitate to let me know if there are any further questions or requests.

Sincerely,

Bradley R. Burke
Deputy Secretary and Chief Attorney
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Lana Gordon, Secretary

Sam Brownback, Governor

November 7, 2013

EXHIBIT
A

Representative Steve Brunk
Chairman, Joint Committee on State Building Construction
State Capitol, Room 149-S
Topeka, Kansas 66612

Dear Chairman Brunk:

This correspondence is to help provide additional information to the Kansas legislature regarding the process that is required by federal rules and regulations in order for the Kansas Department of Labor (KDOL) to dispose of the KDOL property located at 427 SW Topeka Blvd., in Topeka, Kansas, and to help address concerns raised in your letter to Senator Wagle dated October 14, 2013.

Background:

In July 2011, the Kansas Department of Labor concluded that property located at 427 SW Topeka Blvd. was no longer suitable as state employment agency workspace, so the Department sought permission from the State Judicial Administrator, pursuant to K.S.A. 75-3043a, to appoint three appraisers to determine the market value of the property. Three appraisers, Robin T. Hannigan, Timothy J. Keller and Joseph A. Roth, were appointed by the Judicial Administrator in July 2011, and the property was evaluated by the appraisers on August 26, 2011. A report was submitted on December 1, 2011, that appraised the property at $89,000.

On October 29, 2012, the Secretary of Labor requested that the Governor declare the property located at 427 SW Topeka Blvd. as surplus property, pursuant to K.S.A. 75-6609. The request was granted and KDOL was granted permission by the Governor to attempt to sell the property.

April 3, 2013, the USDOL formally granted KDOL permission to attempt to sell the property.

A public auction was held on June 25, 2013, and received no bids for the property.

The Department of Administration conducted a cursory walkthrough of the property on July 1, 2013. A great number of significant deficiencies were identified such as: exterior of the facility is asbestos transite siding; there is significant wood rot present throughout the facility; significant masonry and stone deficiencies are present; there is significant settling of the foundation, particularly in the northwest corner; there are water intrusions into the basement, and the basement is wet on a regular basis; the facility is not ADA accessible; plaster is cracking and falling off walls and ceilings in many locations; the piping to the radiators that provide heat to the facility is corroded, leaking and in need of replacement; carpet and paint needs replaced throughout the entire facility; wood flooring is warped.and in poor condition in some locations; the attic has several holes that allow air, water and wildlife infiltration; and there is no fire detection and notification system. It should be noted that KDOL staff that previously worked in the facility report that the aforementioned deficiencies were present in 2011 during the previous appraisal.

Federal Equity in 427 SW Topeka Blvd. Property:

The USDOL has a legal equity interest in the property even though the title to the property is vested with KDOL. Title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively. (See, 29 CFR 97.31(a)). So in the case of 427 SW Topeka Blvd, title to the property has vested with the State of Kansas Department of Labor. However, the amortization of Reed Act expenditures for the acquisition of real property and capital improvements with grant funds creates Federal equity in the property. "Federal equity" means the Federal government owns a share of the fair market value of the real property. Therefore, when the property ceases to be used for employment security purposes, USDOL recaptures the Federal equity. (See, UIPL 39-97 Attachment 1, p 17).

Federal Requirements for Disposition of the Property:

When real property acquired with Reed Act funds, and wholly or partially amortized with grant funds, is no longer needed for its originally authorized employment security purposes, it must be sold, exchanged for replacement property, or otherwise disposed of as directed by USDOL disposition instructions. (See, 29 CFR 97.31(c)).

The action that is required of KDOL once it is determined that the property is no longer usable, is found in 29 CFR 97.31(c), which states:

> When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency.
>
> The instructions will provide for one of the following alternatives:
>
> (1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a thirdparty designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

In this case, KDOL had permission from USDOL to sell the property, but no bids were received during the public auction. Therefore, the remaining options for KDOL are to retain the property and use it without restriction after compensating the federal government for the equity they have in the property, or for KDOL to transfer the title of the property to the USDOL or a third party designated by the USDOL which will result in USDOL paying KDOL a percentage for the property. KDOL is currently requesting permission from USDOL for KDOL to retain the title of the property with the intent to raze the facility.

KDOL has been advised by USDOL that if the Kansas legislature decides to order a new appraisal of 427 SW Topeka Blvd., then USDOL will average the new appraisal with the December 2011 appraisal in order to establish the new fair market value. USDOL will also require copies of any new appraisal to be sent to USDOL for review.

<u>Other Issues to Consider:</u>

- KDOL utilities cost approximately $3800 per year for water, sewer, gas and electric to keep 427 SW Topeka Blvd. in a mothball state.
- KDOL has not budgeted any funds for new appraisals.
- In the FY 14 budget, KDOL was appropriated $83,320 in SGF to reimburse the Employment Security Trust Fund to satisfy the federal equity in the property. The Federal equity in the property will go into the trust fund to be used by unemployed Kansas workers. The funds will not go to the federal government directly.
- In the FY 15 budget, KDOL was budgeted $100,000 in SGF to raze the facility.

- The USDOL advises that they know that the USDOL has not waived its equity interest in a property since 1994, and they cannot find a record of it happening before 1994 either.

Conclusion:

I hope this letter helps answer some of the questions that you may have concerning the KDOL property located at 427 SW Topeka Blvd. I also hope this information helps explain the reasoning behind my decision to proceed with our request to raze the facility. Please do not hesitate to contact me with any additional questions, comments or concerns.

Sincerely,

Lana Gordon

Lana Gordon
Secretary of Labor

cc: Sen. Susan Wagle, Chairperson , Legislative Coordinating Council
Kansas House Speaker Ray Merrick
Members of the Joint Committee on State Building Construction
Jill Wolters, Office of Revisor of Statutes
Shirley Morrow, Kansas Legislative Research Department