



PERFORMANCE AUDIT REPORT

**Reviewing State Agencies' Adherence to
State Laws and Policies for Grants and Contracts**

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
August 2000**



Legislative Post Audit Committee

Legislative Division of Post Audit

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August 4, 2000

To: Members, Legislative Post Audit Committee

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This report contains the findings, conclusions, and recommendations from our completed performance audit, *Reviewing State Agencies' Adherence to State Laws and Policies for Grants and Contracts*.

The report includes several recommendations for improving State employee's awareness and understanding of the applicable laws and policies, through brochures, memoranda and training. We also recommended steps to ensure that the Division of Purchases publishes a complete manual, and has adequate staff to provide contract administration services.

We would be happy to discuss these recommendations or any other items in the report with any legislative committees, individual legislators, or other State officials.

Barbara J. Hinton
Legislative Post Auditor

EXECUTIVE SUMMARY
LEGISLATIVE DIVISION OF POST AUDIT

**Question 1: Have the Department on Aging and Other State Agencies
Inappropriately Procured Services or Tangible Assets
Through Grants Instead of Contracts?**

State agencies should issue a contract instead of a grant when acquiring goods or a direct service. page 3
Grants aren't required to go through the Division of Purchases for review, or to be competitively awarded. As a result, agencies may have an incentive to issue grants, when a contract is appropriate, because they require less scrutiny, and generally can be issued in less time. The Division of Purchases has provided State agencies with guidelines for making determinations about whether to award a grant or contract. A grant may be awarded in cases where the disbursing agency receives no direct service or tangible asset, otherwise the agency should issue a contract.

We found only one grant that should have been issued as a contract. page 4
Out of a sample of 144 grant payments State agencies made in fiscal year 1999, the grant issued by the Department on Aging to its former Deputy Secretary, Terry Glasscock, was the only one that should have been issued as a contract.

Improvements could be made to minimize the risk that contracts will be inappropriately awarded as grants. page 5
These improvements fall into the two following areas:

The Division of Purchases could provide further clarification regarding the distinction between a grant and contract. Even though the 2000 Legislature defined what a grant was in law, Division officials told us there was still some misunderstanding among State agencies.

State agencies could adopt procedures that would help ensure purchasing requirements are met. Of 122 State agencies we surveyed, only a handful had procedures to ensure that grants are awarded appropriately. State agencies that issue grants should include procedures in their purchasing manuals that spell out when a grant or contract should be used. They should also require a top-level manager who understands this distinction to review and sign off on all grants and contracts issued.

Question 1 Conclusion: . . . page 6

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Question 2: Are Agencies' Employees Who Helped Develop Grants or Contracts Receiving Those Grants or Contracts Or Going to Work for An Entity That Did?

State ethics laws generally don't allow State employees to benefit from contracts they've participated in developing or awarding. page 8
State agencies often contract with their former employees and, in many cases, there are legitimate reasons to do so. However, with some exceptions, the State ethics law limits situations in which a State employee can sign a contract with the State. According to the law, a State employee who has participated in making a contract can't receive that contract or go to work for the vendor who was awarded the contract for a period of 2 years after terminating employment with the State agency, or 2 years after the contract has been completed, whichever is sooner. For such circumstances to constitute a violation of the law, there is an intent component that must be met. The Ethics Commission determines whether an employee intentionally violated the law through its hearing process.

We reviewed one contract where the Ethics Commission determined an employee violated the law, and identified 2 situations for the Commission to review. . . . page 10
We reviewed 91 grants and contracts involving former employees, including the grant agreement between the Department on Aging and the former Deputy Secretary, Terry Glasscock. The Ethics Commission had already found that arrangement violated the ethics laws. We also identified 2 cases where State employees appeared to have participated in the making of the contract, and subsequently received that contract or went to work for the vendor who received the contract within 2 years. We saw no evidence that either party intended to violate the law, but we'll refer these cases to the Ethics Commission for review. We also found a number of payments to former State employees for services that were ongoing and should have been based on a written contract, but weren't.

State agencies could strengthen their procedures to minimize the risk of violating the ethics laws. . . . page 12
According to our survey of executive agencies, and the results of our file review, very few agencies have taken steps to ensure that the ethics laws are followed. Although we didn't find many instances in which contracts with former employees violated the State's ethics laws, agencies still could take steps to ensure that these laws are followed.

Question 2 Conclusion: . . . page 13

Question 2 Recommendations: . . . page 13

**Question 3: How Did the Agreement with Mr. Glasscock Come About
and What Work Did He Accomplish?**

The agreement with Mr. Glasscock originated from early work he did to prepare the Department for the baby boom generation. . . . page 14
Mr. Glasscock began working for the Department in 1997, and began to look into "re-engineering" its processes. He made several presentations to the Legislature about the need for the Department to revamp its ways to prepare for the aging baby-boomer generation. In Spring 1999, Mr. Glasscock announced he was moving out of State. Former Secretary Gordon reportedly approached Mr. Glasscock about continuing his re-engineering work on a contractual basis.

Originally the agreement was going to be a contract, but it was changed to a grant after the Department's attorney pointed out the ethics laws. . . . page 15
At first, the parties discussed entering a contract for these services. However, the Department's attorney pointed out several ethics laws that may apply to the situation. After that, the parties agreed to pursue a grant instead. The attorney reasoned that a grant was appropriate because Mr. Glasscock's work would be benefitting the future customers of the Department. Mr. Glasscock was awarded a 3-year grant in June 1999, and was paid \$135,000 for the first year on June 23, 1999.

The Ethics commission has ruled that this arrangement violated the State's ethics laws. . . . page 16
In its hearing on April 20, 2000, the Commission ruled that Mr. Glasscock violated the State's ethics laws by participating in the "making of a contract" between the Department and himself. The Commission imposed a civil fine of \$500, and Mr. Glasscock is appealing that decision.

In reviewing the grant and the process for issuing it, we noted several additional areas of concern. . . . page 17
The Department's decision to award Mr. Glasscock a grant rather than a contract meant the agreement didn't receive any outside scrutiny. Grants aren't required to be reviewed by the Division of Purchases or be competitively bid. The Department on Aging and Mr. Glasscock didn't follow normal internal procedures in awarding this grant. The grant agreement wasn't routed through normal Department review channels, and Mr. Glasscock didn't submit a grant proposal in advance and never submitted a detailed project budget, like other

grantees are required. Given the nature of work to be performed in the first year of the grant, \$135,000 seemed high to us. Much of the work the first year was preliminary in nature, and some of it had already been started before he left the Department.

Mr. Glasscock was allowed to keep \$45,000 of the original grant based on the work he'd completed through October 1999. . . . page 22
The Governor cancelled the grant on November 1, 1999. The Department's attorney, at the request of the Governor, had to quickly determine the amount owed Mr. Glasscock. This amount was based on the number of tasks he'd completed. The attorney identified 9 tasks due in year 1, and determined that Mr. Glasscock had completed 3. Therefore, Mr. Glasscock was allowed to keep one-third of the \$135,000. Although the calculation was cursory, good information doesn't exist that would allow someone to independently determine the relative "value" of the work completed versus work not completed.

Question 3 Conclusion: . . . page 25

Question 4: To What Extent has the Division of Purchases Implemented the Recommendations Made in the 1996 Contracting Audit To Improve the State's Contracting Procedures?

Our 1996 audit made recommendations in 6 main areas. . . . page 26
The Division hasn't implemented 2 of 6 major recommendations. The 2 recommendations yet to be implemented are the development of a policy manual and increased efforts in contract monitoring and contract management.

The Division still hasn't issued a policy manual, and hasn't had one since 1993. . . . page 26
Before May 1993, the Division had an extensive set of purchasing policies for agencies to follow. The Division subsequently rescinded the manual because the policies were becoming outdated, and Division officials thought that if the policies weren't followed, the State's liability would increase in the event of a lawsuit. At the time of the 1996 audit, the Director of Purchases was working on a new policy manual, but as of June 2000 the manual was still in draft form. Without a Statewide policies and procedures manual, there's no uniform, up-to-date, centralized guidance for agencies to follow.

The Division hasn't provided increased guidance to State agencies in the areas of contract monitoring and contract management. . . . page 28
At the time of our fieldwork, the Division had no policies and procedures in its draft manual on contract-management issues. The draft policy manual had a section entitled contract management, but it was entirely blank, so we had nothing to review. Division officials told us that they would assist agencies on contract management issues if asked to do so.

Division officials cited a lack of staff as the reason for the delay in implementing the recommendations from our 1996 audit. . . . page 29
According to Division officials, a staffing level decrease from 37 to 26 over the last five years only allows the Division Director to work on the policy manual in his spare time. Also, the lack of staff precludes the Division from providing proactive contract monitoring services.

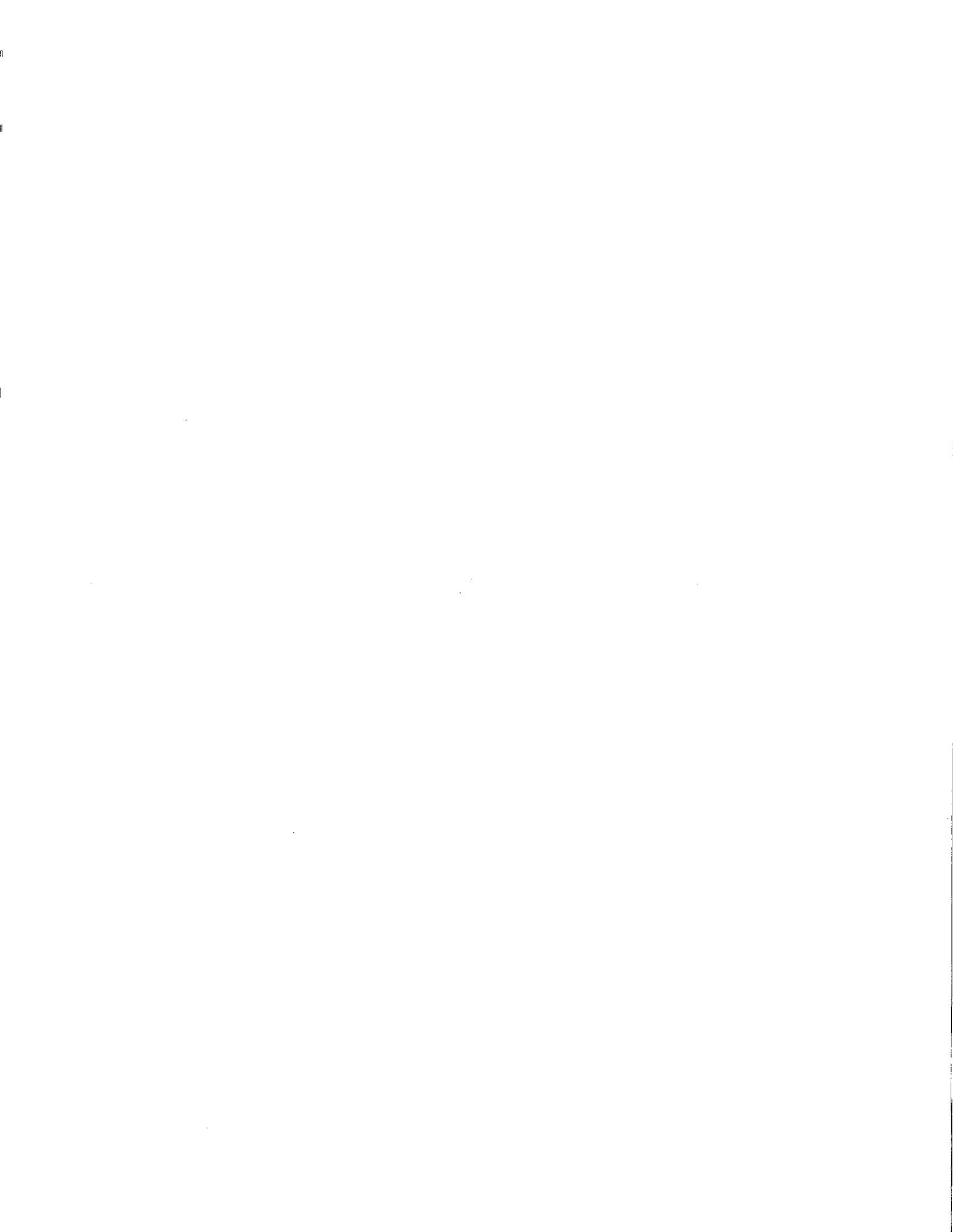
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This audit was conducted by Chris Clarke, Katrin Osterhaus, Kate Watson, and Scott Frank. Leo Hafner was the audit manager. If you need any additional information about the audit's findings, please contact Ms. Clarke at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call us at (785) 296-3792, or contact us via the Internet at LPA@lpa.state.ks.us.



Reviewing State Agencies' Adherence to State Laws and Policies for Grants and Contracts

In October 1999, the media reported on a questionable non-competitive "fellowship" grant for \$135,000 that the Secretary of the Department on Aging had awarded to the former Deputy Secretary to "re-engineer" the agency.

Department of Administration officials have stated that the grant should have been awarded as a contract and followed the State's purchasing laws. The Governor canceled the grant award and asked for the unused portion (\$90,000) of it to be returned. In addition, because of questions about whether the Deputy Secretary helped write the grant - which would have been a violation of the State's ethics laws - the Governmental Ethics Commission was asked to investigate the situation and determine whether the State's ethics laws were violated.

As a result, legislative questions were raised about whether grants the Department on Aging and other State agencies have awarded have complied with the State's purchasing laws, and whether ethics laws were followed when non-competitive grants or contracts were awarded to former State employees. Questions also were raised about the extent to which the Division of Purchases implemented the recommendations made in the previous audit to improve the State's contracting procedures.

This performance audit answers the following questions:

- 1. Have the Department on Aging and other State agencies inappropriately procured services or tangible assets through grants instead of contracts that must comply with the State's purchasing laws?**
- 2. Have agencies followed applicable State laws in awarding grants or contracts to former State employees?**
- 3. To what extent has the Division of Purchases**

implemented the recommendations made in the 1996 contracting audit to improve the State's contracting procedures?

4. Are State employees complying with applicable travel requirements for out-of-State travel?

A copy of the scope statement for this audit approved by the Legislative Post Audit Committee is included in Appendix A. The question relating to travel will be addressed in a separate audit report. We noted the Ethics laws have 2 parts relating to former State employees, so we've expanded Question 2 to include both parts. Also, for reporting purposes, we've reworded the questions slightly, and discuss the grant with Mr. Glasscock as a separate question.

To answer these questions, we reviewed applicable statutes, Ethics Commission opinions, records from the Division of Accounts and Reports, and other documents. We reviewed a sample of 235 grants and contracts issued by State agencies, including 12 issued by the Department on Aging, to determine whether any purchasing requirements or Ethics laws had been violated. We also interviewed officials at the Division of Purchases, Department on Aging, and the Governmental Ethics Commission, as well as a number of officials from various other agencies. In addition, we surveyed all State agencies about what controls and procedures they have in place to ensure compliance with purchasing requirements and ethics laws.

In conducting this audit, we followed the applicable government auditing standards set forth by the U.S. General Accounting Office. However, because of time constraints we did no systematic testwork of the computer data provided by the Division of Accounts and Reports regarding payments recorded in the STARS accounting system. This system is reviewed as part of the Statewide audit. We detected some inaccuracies in the data, such as duplicate entries and miscoded transactions. Our sample was drawn from these data. Thus, the reader should be aware that there may have been transactions that should have been in the data, and we wouldn't know of them or be able to sample from them. Our findings begin on page 3.

Question 1: Have the Department on Aging and Other State Agencies Inappropriately Procured Services or Tangible Assets Through Grants Instead of Contracts?

According to the Division of Purchases, State agencies should use a contract rather than a grant whenever it's acquiring goods or direct services. The Department on Aging inappropriately used a grant instead of a contract during fiscal year 1999 when it hired a consultant to formulate a plan to "re-engineer" the Department. Our review of a sample of 135 grant payments from 13 other agencies revealed no other instances where grants appeared to be used when a contract was appropriate. However, improvements still could be made to ensure that grants are awarded appropriately. These and related findings are discussed in more detail in the sections that follow.

State Agencies Should Issue A Contract Instead of a Grant When Acquiring Goods or a Direct Service

In March 1996, we issued an audit of the State's contracting procedures for professional services. The audit pointed out that there were no State guidelines for when agencies should use contracts rather than grants. Both can be used to acquire professional services, and both generally involve contractual agreements. But unlike contracts, grants aren't required to go through the Division of Purchases for review, or to be competitively awarded. Agencies may have an incentive to issue grants, because they require less scrutiny, and generally can be issued in less time.

Since that audit, the Division of Purchases has provided State agencies with guidelines for making determinations about whether to procure professional services by awarding a grant or contract. Circular 583 was issued in 1997 to help agencies distinguish between grants and contracts. It says, "A grant is a disbursement made from federal and/or State funds to individuals, schools, State agencies, non-State organizations, and political subdivision where **the disbursing agency receives no direct service or tangible asset.**"

***We Found Only One Grant
That Should Have Been
Issued as a Contract***

To determine whether State agencies are appropriately awarding grants, we reviewed a sample of 144 grants payments State agencies made in fiscal year 1999. For our sample, we selected the 10 largest grant payments made during the year and a random sample of 125 grant payments greater than \$1,000. In addition, we reviewed 9 grants from the Department on Aging. To ensure that we reviewed grants related to legislative concerns, we excluded certain categories of grants, such as scholarship payments made by Board of Regents institutions to individual students.

The grant issued by the Department on Aging to its former Deputy Secretary, Terry Glasscock, was the only one in our sample that should have been issued as a contract. The agreement between the Department and Mr. Glasscock fit the criteria for a contract, not a grant, because the Department essentially was receiving direct consulting services. Mr. Glasscock was going to help the Department re-engineer to gear up for the needs of the baby boom generation, as it ages.

Division of Purchases officials concur that this grant should have been awarded as a contract because the Department received the "direct service." Governmental Ethics Commission officials also ruled that the arrangement met the definition of a contract.

Department on Aging officials continue to maintain that it was appropriate to issue a grant instead of a contract, because the baby boom generation was the ultimate beneficiary. Agency officials we spoke with cited the following reasons for their decision to issue a grant:

- The Department wasn't the beneficiary of the agreement, rather the aging Baby Boomers were the beneficiaries.
- It was a State-funded grant, which the Secretary has authority to issue.
- There were no statutes or regulations governing grants issued by State agencies and the Division of Purchases hadn't been granted authority over grants issued by other State agencies.

Other agencies in our sample appeared to follow the Division of Purchases' guidelines relating to grants and contracts. We reviewed 135 grants from 13 other agencies and found no other

Samples of Grants Issued by State Agencies

Agency Awarding Grant	Grant Recipient	Purpose of the Grant	Amount Awarded
Department of Social & Rehabilitation Services	Shawnee Community Mental Health Center	To provide clients with severe and persistent mental illness with supported employment services.	\$108,047
Department of Health & Environment	YWCA of Topeka	To provide teen pregnancy reduction and education services to pre-teens, teens, and families who are parenting pre-teens and teens.	\$62,200
Department on Aging	Meals on Wheels	To deliver nutritional meals to the elderly in their homes.	\$28,288
Department of Commerce & Housing	The Hanna Company	To help introduce small Kansas companies to foreign markets through the participation in trade shows.	\$1,193

instances where grants appeared to be used when a contract would have been appropriate. Samples of the types of grants we reviewed are shown in the box above. Each of these grants is made to an entity that's providing direct services to a third party, rather than to the agency making the grant.

Improvements Still Could Be Made To Minimize the Risk That Contracts Will Be Inappropriately Awarded as Grants

These improvements fall into two areas: having the Division of Purchases provide further clarification regarding the distinction between a grant and a contract, and having agencies adopt certain procedures that would help ensure purchasing requirements are met.

State agencies may need further guidance regarding the distinction between a grant and a contract. Until recently, the Division of Purchases' informational circular provided the only guidance to State agencies about the distinction between a grant and a contract. In 2000, however, the Legislature defined what a grant was in law. The law essentially codified the definition outlined in the Division's circular.

In our opinion, this definition is fairly clear and straightforward. Further, 3 of 5 states we reviewed had statutory definitions of grants that were very similar to the Kansas definition. (The other 2 states didn't make a distinction between grants and contracts in law.) Nonetheless, there's still a risk that Kansas agencies could misinterpret the definitions as they currently exist. For example, Division of Purchases officials told us there was some misunderstanding among State agencies about the meaning of

“direct service.” Some examples of direct services are provided in the box below.

Direct Services that Benefit the Agency	Direct Services that <i>Don't</i> Benefit the Agency
The agency uses State funds to hire an outside contractor to redesign agency offices.	The Department of Health and Environment provides State funds to rural water districts to install water lines.
The agency receives federal funds to install a new computer system and uses those funds to hire an outside contractor to install the system.	The Department of Wildlife and Parks provides a grant to a State university to study of elk ranges in Kansas.
The agency hires a consultant to analyze the agency's organization in order to improve personnel problems.	The Department on Aging provides State funds to local organizations to provide a Meals on Wheels program.

Department on Aging officials also told us they thought the definition needed to be clarified. In a recent report, the Kansas Performance Review Board recommended that the Legislature should clearly define what a grant is. The Board's report stated that, if

properly drafted, the legislation would eliminate confusion and decrease incidents where “grants” or “fellowships” are used to circumvent the normal procurement process.

State agencies could adopt certain procedures that would help ensure purchasing requirements are met. These would include spelling out in their own purchasing manuals when a grant should be used and when a contract should be used, and requiring a top-level manager who understands this distinction to review and sign off on all grants and contracts issued.

When we surveyed 122 State agencies about what steps they take to ensure that grants are awarded appropriately, few agencies indicated they had such procedures. Agency officials did indicate they took other steps to help control for this, including sending their staff to training provided by the Division of Purchases. Nonetheless, these additional procedures could further minimize the risk of grants being issued when a contract would be appropriate.

CONCLUSION While most State agencies appear to be issuing grants appropriately, there is an inherent risk for misuse, and perhaps abuse, when guidelines are unclear. Further clarification of when grants and contracts should be used can help agency officials understand the difference, and may help prevent unintentional misuse of grants. However, nothing short of requiring all grants

and contracts to be reviewed by the Division of Purchases can completely prevent agency officials from circumventing the purchasing process if they are inclined to do so. Given the lack of abuse we found, that would be an unnecessary burden to place on the Division.

RECOMMENDATIONS

1. To help minimize the risk that agencies issue grants when contracts would be appropriate, the Department of Administration should write clarifying language on the difference between grants and contracts, including examples, and send it to all State agencies for inclusion in their policy and procedure manuals.

Question 2: Are Agencies' Employees Who Helped Develop Grants or Contracts Receiving Those Grants or Contracts Or Going to Work for an Entity That Did?

State ethics laws say an employee generally can't participate in developing or awarding a contract and then be given that contract or go to work for the contractor. During this audit, we reviewed one situation the Ethics Commission has determined violated the law. We also identified 2 situations that appeared to meet the definition of prohibited conduct under the law. However, for either situation to constitute a violation of law, the Commission would have to determine that the employees acted with specific intent. We also noted a few instances where payments are being made to former State employees without the benefit of a contract, when it appears a contract would be appropriate. Finally, we found that agencies could improve their procedures to provide better assurance that the State's ethics laws aren't being violated. These and related findings are discussed in more detail in the sections that follow.

State Ethics Laws Generally Don't Allow State Employees To Benefit from Contracts They've Participated in Developing or Awarding

State agencies often contract with their former employees and, in many cases, there are legitimate reasons to do so. For example, if an employee develops important expertise during his or her employment and that expertise is needed a later date, the agency may want to contract with the former employee. Also, former employees often can fill positions within an agency on a temporary basis until permanent replacements can be hired and trained. However, it's important that the transactions remain at arms length.

The State ethics law, K.S.A. 46-233, prohibits certain acts by State employees who have been involved in making contracts. According to the law, a State employee who has participated in making a contract can't receive that contract or go to work for the vendor who was awarded the contract for 2 years after leaving the State agency or 2 years after the contract has been completed, whichever is sooner. The exceptions to this rule are:

- cases where an employee's position is eliminated because an agency closes or downsizes
- cases where the contract is competitively bid
- cases where the price of the contract is fixed by law

**The Ethics Commission Defines
"Participation In the Making of a Contract"
Through Its Opinions**

K.S.A. 46-233 defines participation in the making of a contract as having either "approved or disapproved a contract or having provided significant factual or specific information or advice or recommendations in relation to the negotiated terms of the contract." Employees who may be interested in contracting with the State often ask the Commission for an opinion in advance to ensure that their participation doesn't violate the law. Here are examples of opinions the Commission has issued that help define what does and doesn't constitute participation in the making of a contract.

- **Preparing a request-for-proposal, constitutes participation**—An employee of the Kansas Lottery who helped prepare a request-for-proposal was advised not to work for the firm that won the contract because his work on the request provided significant information that was used in writing the contract (1998-1).
- **Working on the same project as a contractor doesn't necessarily constitute participation**—A project manager for the Department of Administration was advised that he could accept a position with the architectural firm that was working on two of his projects because he didn't have a role in creating or awarding any contracts to that firm (1992-23).
- **Involvement in the contracting process in a supporting role doesn't necessarily constitute participation**—An SRS manager helped teams that were responsible for reviewing bids for a new Medicaid Management Information System. He stored and organized evaluation materials for the teams. The Commission advised him that he was free to work for Blue Cross/Blue Shield, the winner of the contract, because he didn't participate directly in any of the teams' selection activities (1995-19).

The law defines 'participating in the making of a contract' as having either "approved or disapproved a contract or having provided significant factual or specific information or advice or recommendations in relation to the negotiated terms of the contract."

Under the ethics law, for such circumstances to constitute a violation of law, there is an intent component that must be met. The law speaks of acts or conduct being "intentionally violative" of the law. This determination is made by the Ethics Commission through its hearing process. According to the Commission's attorney, the Commissioners have been wrestling with the definition of intent.

The Kansas Governmental Ethics Commission enforces these laws.

The Commission, a bipartisan, 9-member board comprised of prominent community leaders and business professionals from around

the State, can rule on violations of the law and impose civil fines of up to \$5,000 for an employee's first violation. The Commission generally provides guidance on what activities are allowed and not allowed through the official opinions it writes and issues. The profile box above provides several examples of how the Commission has ruled on issues relating to State employees' participation in making contracts.

***We Reviewed One Contract
Where the Commission
Determined an Employee
Violated the Law, and
Identified 2 Situations for
the Commission To Review***

To determine whether agencies were awarding contracts to employees who helped develop them, we matched former employees in the State's personnel/payroll system (SHARP) against the list of payments made to vendors during fiscal year 1999. From this group, we eliminated a number of grants and contracts that obviously wouldn't violate the ethics laws, such as tuition grants to graduate teaching assistants employed by the State's universities. From the remainder, we reviewed all grants or contracts that involved total payments of \$1,000 or more during fiscal year 1999.

We also surveyed the heads of all agencies and asked about contracts they'd signed with businesses that either were owned by or employed someone who'd previously been on their agency's payroll. Finally, we reviewed recent newspaper articles that cited instances of agencies contracting with former employees. We reviewed a sample of these situations, and in all, we reviewed 91 cases.

We found one situation the Ethics Commission has determined to be a violation of the ethics laws, as follows:

- In a hearing on April 20, 2000, the Ethics Commission ruled that the former Deputy Secretary of the Department on Aging, Terry Glasscock, violated the ethics law when he signed a \$135,000 grant agreement between the Department and himself. The Commission ruled that he had participated in his role as Deputy Secretary in the making of a contract between the Department and himself, and found he had acted with the required specific intent. Mr. Glasscock is currently appealing the Commission's ruling. More detail about this situation is presented in question 3 of this audit.

We also identified 2 situations that appeared to meet the definition of prohibited conduct in K.S.A. 46-233. As described below, in these 2 cases it appears that State employees participated in the making of a contract, and subsequently received that contract or went to work for the vendor who received the contract within 2 years:

- An employee of the Department on Aging reportedly defined the scope of work and specified the payment amount (\$1,100 per month for 6 months) for a contract to perform web maintenance services for the agency. These terms then were written into the

contract. Shortly after leaving the Department in May 1999, this person was awarded the contract to perform those services. The Department received sole-source approval for this contract.

- In July 1997, an employee of the State Fair reached a verbal agreement with a local company to provide trash receptacles to the Fair. (A verbal agreement can be considered to be a contract.) The company agreed to provide the receptacles for free in exchange for the right to sell advertising space on them. After leaving the agency, the employee was hired on a contractual basis by the company to sell advertising on the trash receptacles.

As noted earlier, in order for either situation to constitute a violation of the ethics laws, there has to be intent. Specific intent can be hard to determine, and the Ethics Commission has struggled with this in the past. We saw no evidence that either party intended to violate the law. However, the Ethics Commission is responsible for determining whether their conduct is indeed prohibited, and whether they acted with the required intent. As specified in the Scope Statement of this audit, we will refer these cases to the Ethics Commission for further review.

We found a number of payments to former State employees in our file review that weren't associated with a written grant or contract. This doesn't appear to be a problem when the payment is for a one-time expense, such as when a former employee consults with the agency on a legal case. On the other hand, we saw a number of arrangements for services that were ongoing and probably should have been based on a written contract. For example, Pittsburg State University had an agreement with a former counselor to provide its students with emergency mental health services whenever the need arose, until a permanent contractor could be found.

The table on page 12 more fully describes the types of arrangements we found that weren't based on a written agreement. Such arrangements are problematic for several reasons:

- **A verbal contract could be used to circumvent the Division of Purchases' controls.** An agency could reach a verbal agreement with a vendor to provide certain services. If the total amount paid under the agreement was significant, but none of the individual payments was very large, the payments wouldn't have

to be approved by the Division of Purchases. For example, one former employee of the Department of Wildlife and Parks was paid more than \$10,000 in fiscal year 1999 for ongoing boat repairs. There wasn't a written contract and none of the payments were for more than \$1,500. We couldn't determine if the Division had a verbal agreement with the former employee, but we do know that the individual payments were never reviewed by the Division of Purchases.

- **Verbal arrangements can result in a contract.** Both written and verbal contracts are subject to the ethics laws.
- **Verbal arrangements don't involve competitive bids.** There may be other vendors who could provide the same services at less cost.

**Payments Made to Former Employees
That Weren't Based on a Written Agreement**

Agency	Work Performed	Total Payments
Dept. of Wildlife & Parks	A former temporary employee received numerous payments for motor boat repairs, and farming services.	\$10,169
Wheat Commission	A former commissioner was paid to mediate a staffing issue.	\$4,119
Dept. of Wildlife & Parks	Unknown. A payment was made to a former part-time summer employee. Agency officials told us they didn't know what this payment was for.	\$3,590
Pittsburg State University	A former counselor was paid for providing mental health services to students on an as-needed basis until a permanent contractor could be found.	\$2,790
Dept. of Health and Environment	A former employee was paid to visit and evaluate a family planning program.	\$1,637
Wichita State University	The former producer of a television program was paid to assist with production when the program became short staffed.	\$1,400
Dept. of Wildlife & Parks	A business owned by a former temporary employee was paid to construct a fence around a lagoon.	\$1,300
Dept. of Human Resources	A former employee was paid to provide lawn care services.	\$1,150

State Agencies Could Strengthen Their Procedures To Minimize the Risk of Violating the Ethics Laws

Although we didn't find many instances in which contracts with former employees did or may have violated the State's ethics laws, agencies still could take steps to better ensure that the laws are followed. Among the types of things agencies could do to strengthen their procedures:

- ensure that all employees are aware of the legal requirements
- require employees who participate in making contracts to sign a statement that certifies they understand the law
- require vendors that contract with the State to make a positive statement of disclosure that they understand the requirements of the law and meet those requirements

According to our survey of executive agencies and the results of our file review, few agencies have taken such steps to ensure that the ethics laws are followed. As a result, there's an increased risk that contracts with former employees may violate these laws.

CONCLUSION

State employees can sometimes be in a position to use their role as an employee to benefit personally at the expense of the State. To avoid these types of situations, the Legislature has adopted ethics laws that limit the situations in which an employee can benefit from a contract with the State. Applying these laws to actual cases often is very complex, partially because of the specific intent component of the law. Agencies can do little to systematically prevent the willful violation of the ethics laws. On the other hand, agencies could do more to ensure that their employees are familiar with those legal requirements.

RECOMMENDATIONS

1. To help minimize the risk that State employees violate the State's ethics laws related to contracting with the State, the Ethics Commission should periodically provide brochures or a memorandum to all State agencies explaining in plain language the prohibitions. This information also should include a recommendation that agency staff contact the Ethics Commission for any questions.
2. The Secretary of Administration should direct State agencies to include informational circulars or packets from the Ethics Commission with information provided to new employees, and to periodically review ethics requirements with their staff.

Question 3: How Did the Agreement with Mr. Glasscock Come About, And What Work Did He Accomplish?

The agreement with Mr. Glasscock originated from earlier work he'd done to help prepare the Department for the aging baby-boom population. When he announced he was leaving, the Secretary approached him about continuing his work on a contractual basis. The resulting agreement originally was going to be a contract, but was changed to a grant after the Department attorney noted the ethics laws may apply to the situation. The Ethics Commission has since ruled this arrangement still violated the State's ethics laws. We noted several additional concerns, including the fact that the grant didn't go through the normal channels within the Department, and the 1st year of the 3-year grant involved mostly preliminary work, raising questions about the amount of compensation initially offered for this work.

Before the grant was cancelled, Mr. Glasscock completed work on opening an "idea" room—a place where staff could generate and record their ideas for change, finished a plan for re-prioritizing the Department's budget process to focus on priority outcomes, and wrote text to be inserted in the Department's budget request, including a discussion of the changes the Department intended to make to its budget in the future. Mr. Glasscock got to keep \$45,000 for this work. The method used to calculate this figure was cursory, but there's little information to independently determine the "value" of the work provided compared with the work left to be done. These and other findings are discussed in the sections that follow.

The Agreement With Mr. Glasscock Originated From Early Work He Did to Prepare the Department for the Baby Boom Generation

Mr. Glasscock began working for the Department on Aging in August 1997. At that time, the Department was going through a major transition because duties and programs were being transferred to it from the Department of Social and Rehabilitation Services.

During his time at the Department, Mr. Glasscock began to look into "re-engineering" the Department, and made presentations to the Legislature about the need for the Department to revamp its ways to prepare for the aging baby-boomer generation. The 1999

Legislature authorized the Department to use about \$192,000 in money carried over from the Kansas Savings Incentive Program to be used for re-engineering purposes.

In Spring 1999, Mr. Glasscock announced he was leaving the Department and moving out of State. His last day was to be May 28, 1999. Secretary Gordon reportedly wanted to keep the momentum of re-engineering going, and approached Mr. Glasscock about continuing his work on a contractual basis.

***Originally the Agreement
Was Going To Be a
Contract, But It Was
Changed to a Grant After
the Department's Attorney
Pointed Out the
Ethics Laws***

In early May, Secretary Gordon suggested that Mr. Glasscock meet with the Department's attorney about the idea of contracting with Mr. Glasscock after he left. According to the attorney, two days later he photocopied the ethics statutes and wrote a note to Mr. Glasscock indicating the ethics laws may apply to this situation, and recommending that he get an Ethics Commission opinion before pursuing this contract with the Department.

As noted earlier, the ethics law says a State employee can't be substantially involved in the preparation of or participate in the making of a contract with any person or business in which the employee has a substantial interest. According to Ethics Commission staff, Mr. Glasscock never contacted them.

The Department's attorney later was told to draft a grant agreement between the Department and Mr. Glasscock, instead of a contract. The attorney said he researched this approach and determined Secretary Gordon could issue a State-funded grant for this purpose. Part of his reasoning that a grant was appropriate, was the belief that Mr. Glasscock's work would be benefitting the future customers of the Department. The attorney thought grants could be used to deliver services that benefit people outside the agency.

The Department awarded Mr. Glasscock a 3-year "Fellowship for Innovation in Government Grant" in June 1999. This grant program was intended to bring in experts from outside State government to help develop effective public policies, identify and resolve aging issues, and to help the State prepare for necessary changes in programs, services, service delivery systems, or management systems.

Requirements of the 3-year grant the Department on Aging awarded to Mr. Glasscock

- **Understand and plan for the changing “landscape”** of the aging baby-boom generation by reviewing ongoing studies, inviting authorities to prepare papers on specified topics, and helping put on a conference to discuss these issues.
- **Develop a priority outcomes budget** that would use an outcomes-based methodology in the Department’s budget process.
- **Develop performance indicators, establish benchmarks** based on those indicators, and implement a system to measure the efficiency and effectiveness of the Department’s programs and administrative activities.
- **Develop and help implement a system of strategic outcomes** which would provide “broad long-term societal measurements of success.”
- **Develop and help implement a complete reorganization of the Department**, including developing vision and mission statements, redefining programs, products, and operating systems, revising the organizational structure, and enhancing the organizational “culture” to help sustain these major changes.
- **Develop a system of internal performance reviews** for management teams that would provide reliable indicators of professional achievement.
- **Help design new programs and administrative processes** that are responsive to the changes brought about by the new vision and mission statements and other organizational changes.
- **Design a system to “amplify” management** by using highly skilled volunteers in the Department’s management processes.
- **Design and help implement a dynamic planning process** that would ensure continuous improvement of all Department functions.

The grant agreement signed by the Secretary and Mr. Glasscock noted that, “with the assistance of the Grantee, the department has conceptualized several elements that will be involved in this massive re-engineering process.” In brief, the grant envisioned Mr. Glasscock being involved in bringing in nationwide experts to help identify what services baby-boomers would need or want, the best way to deliver those services, and ways to change the current system. The full scope of the 3-year grant project is summarized in the box at left.

The grant agreement spelled out various goals for the overall grant project, tied to the requirements shown in the box. Specific performance indicators and deadlines were listed for the first and second years of the grant. For the third year, an amendment was to be prepared if the grant were approved and funded that year.

Mr. Glasscock was to be paid \$135,000 for the first year of the grant. The amounts he’d receive for years 2 and 3 would be determined later by the Secretary, based on “a number of factors,” including the availability of funding. Mr. Glasscock was paid a lump sum payment for year 1, on June 23, 1999.

The Ethics Commission Has Ruled that This Arrangement Violated the State’s Ethics Laws

In its hearing on April 20, 2000, the Governmental Ethics Commission ruled that Mr. Glasscock violated the State’s ethics laws by participating in his capacity as Deputy Secretary of the Department in the “making of a contract” between the Department and himself as a sole proprietor. The Commission determined that Mr. Glasscock’s acted with the required intent.

In its ruling, the Commission noted that the ethics laws applied even though the agreement was called a grant. Ethics laws define a contract as any agreement for the performance of services.

The Commission unanimously imposed a civil fine of \$500 pursuant to K.S.A. 46-288. The fine amount was set at a low level due to several mitigating factors, including the fact that the contract at issue didn't appear to be detrimental to the State, and the fact that Mr. Glasscock was cooperative. Mr. Glasscock is currently appealing the Ethics Commission decision.

***In Reviewing the Grant
and the Process for
Issuing it, We Noted
Several Additional
Areas of Concern***

Our primary concerns fell into 3 categories:

- the Department's decision to award Mr. Glasscock a grant rather than a contract meant the agreement didn't receive any scrutiny outside the Department
- the Department and Mr. Glasscock didn't follow normal procedures in awarding this grant
- the amount of Mr. Glasscock's award for the 1st year of the 3-year grant appeared high to us, given the nature of the work to be performed during that first year

Each area is discussed more fully below.

The Department's decision to award Mr. Glasscock a grant rather than a contract meant the agreement didn't receive any outside scrutiny. In general, State agencies that want to purchase goods or services must use a competitive bidding process or must obtain approval in advance from the Division of Purchases for a non-competitive purchase, such as a "sole-source" contract. As noted earlier, grants aren't required to go through the Division or to be competitively bid.

At the April 2000 Ethics Commission hearing for Mr. Glasscock, the Department's attorney contended the agreement with Mr. Glasscock was issued as a grant to avoid the time delays of going through the Division of Purchases. He noted that the competitive bidding process can take a long time, and that Secretary Gordon had told him time was important.

The amount of time involved in issuing requests for proposals and taking bids through the Division of Purchases would have delayed signing an agreement by several months, at most, which is a relatively short time given the overall time horizon for re-engineering the Department. Further, if the Department had

submitted a request for a sole-source contract with Mr. Glasscock—and if the Division of Purchases had approved it—the delay would have been considerably shorter.

In either event, the agreement would have been reviewed by an outside party. Given the attorney's initial advice to Mr. Glasscock to seek guidance on whether the State's ethics laws applied in this situation, an outside review would have provided the Department with greater assurance that it was handling the agreement properly and that all applicable laws and regulations were being complied with.

The Department on Aging and Mr. Glasscock didn't follow normal internal procedures in awarding this grant. The Department has 2 sets of standardized procedures—one for regular grants and one for special-project grants. This grant would have been considered a special-project grant.

According to the Department's Commissioner for Administrative Services, the normal process for a special-project grant generally involved the following:

- the applicant would submit an unsolicited grant proposal, or submit a proposal and detailed project budget in response to a Department request
- these documents would be forwarded to the Senior Services Commission for review and approval (this Commission includes various program managers within the Department)
- the Commission would forward the approved grant proposal to the Fiscal Services Unit for its review and to issue the recipient a notification of the grant award
- the Department's legal division would prepare a binding agreement awarding the grant

The agreement with Mr. Glasscock didn't go through these normal channels. Mr. Glasscock didn't submit a grant proposal in advance, and he never submitted a detailed project budget. He did submit a statement of work to be performed around the end of May, but that was after the decision had been made to hire him and a contractual agreement was being drafted. Although the grant agreement was reviewed by several high-ranking officials, it was never routed through the channels spelled out above.

The amount of Mr. Glasscock's award for the 1st year of the 3-year grant appeared high to us, given the nature of the

work to be performed during that first year. That first year, Mr. Glasscock was supposed to complete a number of individual tasks grouped under 5 “performance indicators.” We’ve summarized those tasks as follows:

- review and evaluate a study being done by the University of Kansas Medical Center about the demographics of the aging population, and assess how those findings would impact the Department
- write a vision statement for the Department
- assist Department staff in coordinating a conference
- redesign the budget process to focus on priority outcomes, and prepare language for the Department’s budget request
- develop an “idea” room—a place where staff could generate and record their ideas for change
- develop a “Social Incubation Center”
- amend the goals and performance indicators specified for year 2 of the grant, if needed.

The box on the following 2 pages lists the 5 performance indicators and the tasks associated with each one, summarizes what was envisioned and by when, and shows what tasks Mr. Glasscock had completed when the agreement was cancelled on November 1, 1999. (The last 2 tasks weren’t part of the original agreement. In a subsequent letter, the Secretary had asked Mr. Glasscock to perform this work for no additional compensation.)

In addition, Mr. Glasscock was to make several presentations to various groups in Kansas, including Area Agencies on Aging, the Kansas Society of Certified Public Managers, and Kansas Workforce Investment Partnership Council.

Because the grant agreement wasn’t competitively bid, it’s difficult to know what others may have charged for this work. However, \$135,000 seemed high to us for the following reasons:

- Much of the work Mr. Glasscock was asked to do during the first year of the grant was very preliminary. As summarized in the table on page 16, the scope of the 3-year grant project was very broad. Eventually, Mr. Glasscock was to develop and help implement such things as systems of performance indicators, benchmarks, and strategic outcomes, a comprehensive reorganization plan for the Department, and a system of internal performance reviews. Very little of the substantive work was to be completed in the first year of the grant - much of it was to be done in the 2nd year of the grant, or didn’t have a specified completion date.

Performance Indicator	Task	Description	Explanation	Due Date	Work Completed by Mr. Glasscock by 11/1/99
1- IMPACT Study	1	Grantee prepares and submits a written preliminary evaluation of the IMPACT findings and a draft Vision Statement to the Secretary of Aging.	The Department contracted with the University of Kansas Medical Center for \$75,000 to conduct research on the aging population and demographics. This IMPACT study is currently on-going.	08/01/00	
	2	Grantee delivers the final written draft containing Grantee's findings from the IMPACT initiative and other pertinent national, regional and state studies profiling the influence of aging "Baby Boom" generation on governmental services.	Mr. Glasscock was supposed to review and summarize this study and other studies, and draw conclusions.	10/01/00	
	3	Grantee assists Department staff in completing final recommended plans for IMPACT conference to be held later in calendar year 2000.	Mr. Glasscock was going to help Department staff plan and coordinate a conference centered on the results of the IMPACT study.	04/01/00	
2 - Budget Process	1	Grantee delivers a document outlining and explaining in detail a redesigned Department budget process which reflects Priority Outcome Budget methodologies recommended by the Grantee and satisfies Division of Budget requirements.	Mr. Glasscock was going to prepare a document explaining differences between the existing budget process and the new process, and explaining to staff how to implement the new budget process.	07/15/99	The "Priority Outcomes Budgeting" document prepared by Mr. Glasscock contains the required elements.
	2	Grantee will assist Department staff in implementing Phase One of the new budget process for the FY 2001 budget request.	According to the terms of the grant, phase one consists of gathering ideas from staff, re-prioritizing programs and activities within the Department, and assessing the financial impact on the Department's budget. The Department began collecting input from staff, including Mr. Glasscock in March 1999.	n/a	While still employed, and after he left the Department, Mr. Glasscock collected input from staff. Mr. Glasscock then re-prioritized programs and activities.
3 - Innovation Center		Grantee will develop written guidelines for use of the Innovation Center, open the Center, and train Department staff in its use.	The Innovation Center was to be an "idea" room where staff could go to generate ideas on how to improve the Department. Mr. Glasscock began working on the concept of the Innovation Center a few months before he left the Department.	11/01/99	The Innovation Center was opened in August, 1999 in Mr. Glasscock's former office within the Department. He supplied books for the room, wrote instructions for its use, and trained staff on how to use the room.

Performance Indicator	Task	Description	Explanation	Due Date	Work Completed by Mr. Glasscock by 11/1/99
4 - Social Incubation Center	1	Grantee designs and prepares a plan to establish a Social Incubation Center with the Department.	The agreement defines it as a mechanism within the Department to encourage worthy Statewide community empowerment programs and assist with their creation and provide temporary support that will allow the program to find support from elsewhere in the state community.	02/01/00	
	2	Grantee helps Department staff begin implementing the Social Incubation Center.		05/01/00	
5 - Amend Year 2		Grantee delivers any new or amended Grant Project Goals and proposed Performance Indicators for a Second Grant Year.	The agreement already listed goals for the project and several detailed performance indicators for year 2. If Mr. Glasscock determined no changes were necessary, he could do nothing and complete this task.	04/30/00	
additional work requested in a letter from Secretary Gordon	1	Draft text which describes future changes which the Department intends to make to the Priority Outcomes Budget.	Prepare a rough draft of text to be included in the Department's budget submission. This draft was going to be edited by the Secretary.	09/07/99	see below
	2	Prepare final edited text for insertion into the revised FY 2000 revised budget and FY 2001 budget request.	Prepare a final version of the text for inclusion in the budget.	10/01/99	Mr. Glasscock prepared and delivered a document entitled "Futures" which outlined these changes and was included in the Department's budget.

- In general, Mr. Glasscock wasn't required to collect or analyze data himself. Instead, Mr. Glasscock was to review and evaluate the results of research done by the Kassebaum Center for Gerontology at the University of Kansas Medical Center on demographics and the aging population (IMPACT), and assess how these findings might impact the Department.
- Some of the tasks Mr. Glasscock was supposed to complete—such as writing a vision statement, helping plan a conference, and developing language for the budget request—are things other State employees do as part of their regular jobs.
- While he was Deputy Secretary, Mr. Glasscock had already begun work on some of the tasks called for in the first year of the agreement—such as the idea for an Innovation Center and re-prioritizing the Department's budget.
- Presumably, if he had stayed at the Department, Mr. Glasscock could have completed some of the same work for a salary of about \$74,000 a year.

We also noted that some of the tasks to be performed under the grant weren't adequately addressed. For example, the "goals" and "performance indicators" spelled out in the agreement—for which Mr. Glasscock was to be held accountable—don't address some of the major elements of the overall grant project, including reorganizing the Department's operations.

Other tasks were poorly defined and therefore were difficult to measure. For example, the grant required Mr. Glasscock to design a "Social Incubation Center." There's nothing specific in writing about this Center, and the language in the grant agreement is vague and open-ended. As a result, it would be difficult for the Department to measure Mr. Glasscock's performance in this area.

Mr. Glasscock Was Allowed To Keep \$45,000 of the Original Grant Based on the Work He'd Completed Through October 1999

On November 1, 1999, the Governor instructed the Department to terminate the grant agreement after newspaper articles had raised questions about the appropriateness of the grant. He also indicated that Mr. Glasscock should be paid for the work he'd already completed, but that the Department should recover the rest of the \$135,000 payment.

The agreement specified that if the grant were terminated before Mr. Glasscock achieved all the required performance indicators for that grant year, he would be required to repay a "pro rata portion of the grant funds...based on a comparison of what grantee was to have achieved and what grantee actually achieved." The Secretary or the Secretary's designee was to

determine what pro rata portion of grant funds must be repaid, but no further guidance was provided.

As described earlier, during the 1st grant year Mr. Glasscock was required to achieve 5 performance indicators—several of which included multiple tasks. The Secretary also had asked him to prepare some additional budgetary language, but for no additional money. And some of the tasks had due dates that went beyond the Year 1 time frame. Thus, there could be different ways of determining whether Mr. Glasscock had “achieved” all he was required to.

The amount Mr. Glasscock could keep was based on the number of tasks he’d completed. The Department attorney was asked to compute the amount owed to Mr. Glasscock. He told us he was given less than 4 hours to make the determination. Given this short time frame, he didn’t have time to thoroughly review the work submitted by Mr. Glasscock. The attorney identified 9 separate tasks Mr. Glasscock was required to complete during the grants’ first year, and concluded that Mr. Glasscock had completed 3 of those tasks. The completed tasks were:

- Write guidelines for, train staff on, and open an Innovation Center within the Department. The Center was opened in August 1999 and was located in Mr. Glasscock’s former office. It was an office-size room with a bulletin board, a chalk board, a computer, some book shelves with about 90 books, a couch, and a table and chairs. According to a Department official, “Staff were to come into this room, and get involved in thinking of ways to do business better. Staff were to write their ideas on the bulletin board, and then form teams to implement new initiatives.” (According to Department officials, the room was used somewhat but has since been dismantled. It’s been converted back to an office for Department staff.)
- Redesign the Department’s budget process and assist in its implementation. Mr. Glasscock and other Department employees began work on re-prioritizing the Department’s budget during several conferences beginning in Spring 1999. Mr. Glasscock delivered a document that explained the new budget process, and how it differed from the old budget. He also drafted some language that appeared in the Department’s budget request.
- Additional work requested by Secretary Gordon for inclusion in the Department’s budget request for 2001. Mr. Glasscock prepared

and delivered 2 documents, which outlined future changes the Department intended to make. One was a 2 page document called "Futures" which was incorporated into the Department's budget request.

Because Mr. Glasscock had completed one-third of the tasks required, the attorney concluded he was entitled to keep one-third of the \$135,000 grant amount, or \$45,000. Mr. Glasscock was required to return the remaining \$90,000 to the Department, which he did.

Good information doesn't exist that would allow someone to independently determine the relative "value" of the work Mr. Glasscock completed versus what he didn't complete. In an earlier section of this report, we questioned the overall compensation for the 1st year of this grant, given the nature of the work involved. However, given that amount, it's difficult to say whether Mr. Glasscock should have been paid more or less for the actual work he accomplished.

In order to make a more sophisticated determination, information regarding the relative importance, amount of work expected, or some other notion would be needed for each performance indicator or task. Without this kind of information, the "pro rata portion" of the amount to be repaid could be computed based on the relative "weight" or importance of the tasks completed. In addition, the completed product should be compared to the agency's expectations.

The grant agreement the Department signed with Mr. Glasscock didn't differentiate between tasks. Thus, although some tasks may appear on their face to be easier or less important than others, there's no contractual basis for evaluating them. It's also impossible to know the amount of work it would take to complete all the tasks.

Finally, the Department's attorney told us that, to his knowledge, no one at the Department had reviewed Mr. Glasscock's work, except perhaps Secretary Gordon.

CONCLUSION For us, this situation highlights the risks involved when an agency head is willing to circumvent established procedures—both internal and external—to make something happen. Regardless of the merits of the 3-year agreement with Mr. Glasscock, the former Secretary appears to have gone to great lengths to ensure that he got it. The Department also appears to have fallen down in its responsibility to ensure that appropriate Division of Purchases policies regarding State contracts were followed. Had this transaction been handled as a contract, as it should have been, the State would have had a much better basis for knowing whether the amount being paid for this work was reasonable. That's something that really can't be determined at this point.

Question 4: To What Extent has the Division of Purchases Implemented the Recommendations Made in the 1996 Contracting Audit To Improve the State's Contracting Procedures?

The Division hasn't implemented 2 of 6 major recommendations made in the 1996 contracting audit. The Division has yet to produce a policy manual, and it hasn't increased its efforts in contract monitoring and contract management. Division officials say a lack of staff contributed to both of these recommendations not being completed. These and other findings are discussed in the sections that follow.

Our 1996 Audit Made Recommendations In 6 Main Areas

In 1996, Legislative Post Audit completed a performance audit entitled, *Reviewing State Contracting for Consultants and Other Professional and Technical Services*. The report contained a number of recommendations for the Division of Purchases to improve the process for contracting for professional services. The chart on the next page summarizes those recommendations and shows to what extent they've been implemented. As the chart shows, 2 areas still are incomplete.

The Division Still Hasn't Issued a Policy Manual, And Hasn't Had One Since 1993

Before May 1993, the Division had an extensive set of purchasing policies for agencies to follow. This manual included such things as descriptions of the different procurement methods available and when each should be used, procedures for Division and agency staff to follow under each method, guidelines for contracting for professional services, and ethical considerations.

In May 1993, the Division rescinded the manual because the policies were becoming outdated, and Division officials thought that if the policies weren't followed, the State's liability would increase in the event of a lawsuit. At the time of the 1996 audit, the Director of Purchases was working on a new policy manual and expected it to be completed in late 1996. As of June 2000, the manual was still in draft form and had complete sections that were still blank.

Because there's no manual, State agencies have little guidance. Without a Statewide policies and procedures manual, there's no uniform, up-to-date, centralized guidance for agencies to follow. This raises the risk that employees won't follow good

Recommendations From the 1996 Post Audit Contracting Report

Recommendation from the 1996 Report (paraphrased)	Completed? Y/N	Explanation
1. The Division should continue to develop its new, written policy manual , which should include:	N	As of June 2000, the manual was still in draft form and incomplete.
a. current informal policies and procedures concerning the State's purchasing processes.	Y	The draft manual lists policies and procedures related to the purchasing process
b. current information about laws, regulations, or other requirements relating to State agency purchasing practices.	N	The draft manual doesn't include specific information about construction contracts, and it doesn't address the ethics problems from Question 2 of this audit.
c. information about "best practices" for all phases of the purchasing process. (guidelines and pointers to help agencies get the best results from the purchasing process)	N	Best practices aren't included in the draft manual
d. a new policy restricting vendors from starting work on a project before a contract is signed.	Y	This is specifically prohibited in the draft manual.
● The Division should continue to offer training classes to State agencies on the contracting process.	Y	The Division continues to offer training to State agencies and publishes coming training opportunities through memos, circulars, and on-line.
3a The Division should consider reviewing the wording in all the larger, more complex, or more troublesome types of contracts, including for sole-source contracts.	Y	For all sole-source contracts for \$100,000 or more, and other contracts, the Division reviews the actual contract language.
3b The Division should review agencies' requests for proposals and contracts to ensure they include enforcement clauses when appropriate.	Y	The Division reviews contract language, and according to Division officials, agencies have become more careful about using enforceable contract language.
4a The Division should provide greater guidance to agencies on monitoring activities and contract management . This guidance could include writing new policies and procedures on these issues.	N	The draft manual had a section titled Contract Administration, but at the time of our fieldwork, this section was blank.
4b Guidance could include offering more technical advice and consulting services to agencies for larger, more complex, or more troublesome contracts after they are signed.	N	Division officials claim a lack of staff prevents them from doing more contract monitoring. Division staff will get involved if agencies ask for help.
5a The Division should ensure that State agencies are made aware of the training that is offered, and of the staff's availability for providing technical services in all aspects of the purchasing and contracting processes.	Y	The Division has conducted several training sessions over the years. However, we noted that more people sign up for the training than slots are available.
5b The Division should assess whether it can focus more of its direct-assistance efforts on contracts that are larger or riskier, based on past experience. The Division should consider increasing the level of delegated purchasing authority for most agencies up to the currently allowable \$10,000.	Y	The 1998 Legislature increased the purchasing authority from \$10,000 to \$25,000. The Division notified State agencies of this change and their right to request increased delegated amounts. Not many agencies made such a request.
6a The Division should work with the Department of Administration's legal counsel to develop written guidance for State agencies that specifies when those agencies should award grants and when they should award purchase contracts	Y	The Division sent out Circular 583 which attempted to distinguish between grants and contracts. Executive Order 99-9 specifies that grants to an individual or for-profit entity that provide direct services need to go through the States' procurement process. HB 2627, passed in 2000, codifies Circular 583.
6b The Division should ensure that the Division of Accounts and Reports' accounting guidance is consistent with its own guidance.	Y	The Director said that Accounts and Reports signed off on Circular 583 before it was sent out.

practices consistently. We found that some agencies have their own manual, and some rely on the rescinded manual.

In its May 2000 report on the Division of Purchases, the Kansas Performance Review Board also recognized the need for a manual and stated "A new policy and procedures manual must be published immediately including applicable information that is now contained in various circulars. A copy of this manual should be provided to all State agencies and posted to the Internet (or Intranet) so that all State of Kansas employees involved with purchasing or contracts can readily find the information they need."

The Division Hasn't Provided Increased Guidance To State Agencies in the Areas of Contract Monitoring And Contract Management

At the time of our fieldwork, the Division had no policies and procedures in its draft manual on contract-management issues. The draft policy manual had a section entitled contract management, but it was entirely blank, so we had nothing to review. Division officials told us that they would assist agencies on contract management issues if asked to do so.

The Division Currently Establishes Policies Through Informational Circulars

Without a policy manual, the Division has been operating recently by issuing circulars to all State agencies. For instance, Circular 583 issued in May 1997 was the only reference which assisted agencies in distinguishing a grant from a contract. In January 2000, the Division issued Circular 599 which mandated that agencies submit certain contracts to the Division for review.

There are several problems with this approach to providing guidance. Some State agency officials we talked with during this audit were unaware of certain circulars. Also, because the circulars don't carry the weight of a statute or regulation, it's unlikely they are enforceable, according to a recent Supreme Court decision. In its recent report on the Division of Purchasing, the Kansas Performance Review Board also noted that:

"the Division of Purchases currently relies upon a number of "Circulars" that have been issued over the years. These "Circulars" are advisory, not mandatory. Few personnel in using agencies are even aware of their existence....It is difficult for users to comply with policies and procedures that are not published and which they cannot understand. Indeed, many using agencies cited this as the most critical problem with the current purchasing process."

In its recent report, the Kansas Performance Review Board made a recommendation similar to our earlier one. The Board recommended that the Division of Purchases establish and maintain a contract administration section for the purpose of thorough contract management. The Board estimated adding contract administration responsibility to the Division of Purchases would require additional funding and 6 full-time positions.

Division Officials Cited a Lack of Staff as the Reason for the Delay in Implementing the Recommendations from Our 1996 Audit

According to Division officials, staffing levels have decreased from 37 to 26 over the last five years. The Division Director is working on the policy manual, but says he only does so in his spare time. He said that the Division isn't able to provide proactive contract monitoring services (technical advice, consulting, continuous oversight) to all agencies with the Division's current staffing level.

CONCLUSION

After 4 years, there's still significant work to be done to implement the recommendations of our 1996 report. One of the key things that still remains is the development and adoption of a purchasing manual. Without such a manual, State agencies lack the guidance they need to be able to consistently conform to the State's purchasing requirements.

RECOMMENDATIONS

1. To ensure that State agencies have uniform, accurate, and up-to-date guidance about purchasing requirements and practices, and to increase the likelihood those procedures will be consistently followed, the Division of Purchases should do the following by December 2000:
 - a. finalize its policy and procedures manual and hire consulting staff, if necessary, to do so.
 - b. make the manual available to all State agencies.
2. To ensure the manual is comprehensive and gives sufficient guidance to State agencies, at minimum it should include the following:
 - a. the current informal policies and procedures concerning the State's purchasing processes
 - b. current information about laws, regulations, or best practices relating to State agency purchases
 - c. a section on contract management practices
 - d. all informational circulars and memos containing pertinent procurement policies or pointers that have been distributed by the Division and that are still in effect.
3. The Division should continue to offer training classes to State agencies, and should do the following:

- a. solicit feedback from State agency officials about what areas of training are needed.
 - b. ensure that enough training slots are offered to meet the demand for any particular seminar, or that seminars are offered at multiple dates to allow more State employees' to attend.
4. To ensure that the Division has adequate staff to provide contract administration services for larger or more complex contracts (such as offering more technical advice and consulting services and providing continuous oversight), the Director of Purchases should ask the 2001 Legislature to create and fund a contract administration section within the Division of Purchases.

APPENDIX A

Scope Statement

This appendix contains the scope statement approved by the Legislative Post Audit Committee for this audit on December 15, 1999. The audit was requested by the Legislative Coordinating Council.

APPROVED SCOPE STATEMENT

Reviewing State Agencies' Adherence to State Laws and Policies for Grants and Contracts

In March 1996, Legislative Post Audit issued an audit of the State's contracting procedures for professional services. Among other things, the audit found that agencies hadn't complied with all State purchasing laws or good contracting practices for 9 of 32 contracts reviewed. For example, in 4 contracts agencies hadn't gotten competitive bids when they should have. In another, the agency had awarded the contract after the work had been completed. In all, 8 of the 9 problem contracts hadn't gone through the Division of Purchases because they were statutorily "exempt" or had been approved as "sole-source" contracts.

Although the audit didn't specifically look at grants, it pointed out there were no State guidelines for when agencies should use contracts rather than grants. Both can be used to acquire professional services, and both generally involve contractual agreements. But unlike most contracts, grants aren't required to go through the Division of Purchases for review, they aren't required to be competitively awarded, and the vendor can receive payment up-front before providing any services. Previous audits have shown that, given a choice between awarding a contract or a grant, State agencies often awarded grants, thus bypassing State purchasing laws and the oversight procedures built into them.

That audit made numerous recommendations for improving State contracting procedures. It also recommended that the Division of Purchases develop written guidance for awarding contracts or grants. Regarding this latter point, the Division informed all agencies in May 1997 that they were required to follow State purchasing laws (in other words, use contracts) whenever they would receive a "tangible asset" or a "direct benefit" from the services being acquired.

This whole issue generated renewed interest in recent weeks when the Secretary of Aging resigned after questions were raised about several State-paid trips she took, and about the propriety of a \$135,000 non-competitive "fellowship" grant she awarded to her former Deputy Secretary to "provide a blueprint on how to overhaul the agency." This arrangement apparently didn't go through the Division of Purchases. The Governor has since canceled the grant award and asked for the "unused" portion of it back (\$90,000). Also, because of questions about whether the Deputy Secretary helped write the grant, the Governmental Ethics Commission has been asked to assess whether there was a possible violation of the State's ethics laws.

Legislative questions have been raised about whether grants the Department on Aging and other State agencies have awarded have complied with the State's purchasing laws, and whether those laws were followed when non-competitive grants or contracts were awarded to former State employees. Questions also have been raised about the extent to which the Division of Purchases implemented the recommendations made in the previous audit to improve the State's contracting procedures. A performance audit in this area would address the following questions:

- 1. Have the Department on Aging and other State agencies inappropriately procured services or tangible assets through grants instead of contracts that must comply with the State's purchasing laws?** To answer this question, we'd obtain information from the Division of Accounts and Reports, from the Department on Aging, and from other State agencies about the grants they awarded in fiscal year 1999 that appeared to provide a "direct benefit or tangible asset" to the agency issuing the grant. For all Department on Aging grants and for a sample of other agency grants that fit this description, we'd assess whether any purchasing laws or

guidelines were violated in procuring these services. That assessment would include such things as determining whether they should have been awarded as contracts instead of grants, how and why they were handled as grants, and any potential negative impacts from awarding them as grants.

- 2. Have agencies followed applicable State laws in awarding grants or contracts to former State employees?** In answering this question, we'd obtain information from the Division of Accounts and Reports and from State agencies as needed to identify those grants or contracts that were awarded to former State employees in fiscal year 1999. We'd review and analyze documentation for a sample of those contracts and grants and interview agency officials to try to determine whether all laws were followed in procuring these services. If the available documentation suggests any of these awards might not have followed the State's ethics laws, we'd pass that information on to the Governmental Ethics Commission for further review. As part of this question, we'd specifically look at what circumstances led to the contract with the former Deputy Secretary of Aging being developed and awarded, whether allowable funds were used to pay for it, and what services were provided to justify him keeping \$45,000 of the amount awarded. As applicable, we'd make recommendations to improve procedures or help prevent such problems from occurring in the future.
- 3. To what extent has the Division of Purchases implemented the recommendations made in the 1996 contracting audit to improve the State's contracting procedures?** To answer this question, we'd review the Division's policy and procedure manual and relevant documentation showing the changes made to those procedures since the previous audit, and interview Department and agency officials as needed. We'd also assess whether current written policies and procedures appeared to be adequate to address the types of problems previously identified with State agency contracts. Based on that review, we'd make additional recommendations as needed.
- 4. Are State employees complying with applicable travel requirements for out-of-State travel?** In answering this question, we'd focus on the Department on Aging, but we'd also include a sample of other agencies from all three branches of government—executive, legislative, and judicial. (For independence reasons, we'd have to contract with an outside firm to audit travel within the legislative branch.) From each selected agency, we'd review and analyze a sample of employees' travel records and supporting documentation for the past year, and determine whether they complied with all applicable statutory or regulatory travel requirements. Our audit work would include such things as the purpose of and authorization for the travel, whether all lodging, meals, and other reimbursed expenses appeared to be reasonable and directly related to the purpose of the travel, whether any personal travel costs were inappropriately reimbursed, and the like.

Estimated audit time: 8-12 weeks, depending on the availability of information

APPENDIX B

Audit Responses

On July 7, we provided Terry Glasscock with a copy of that part of our draft report dealing with his grant agreement with the Department on Aging. On July 14, we provided copies of the full draft audit report to the Governmental Ethics Commission, the Department of Administration, and the Department on Aging. All 4 responses are included in this appendix.

The Department on Aging's response included several lengthy attachments. To minimize the costs associated with reproducing this report, we didn't include those attachments. However, copies are available at our offices and will be provided to anyone upon request.

The Department on Aging's response discusses in some detail why it concluded the grant agreement with Mr. Glasscock was legal and didn't need to go through the Division of Purchases. In this report, we don't say this grant was illegal, or that grants need to go through the Division. However, we do point out that—according to Division guidance—this agreement should have been handled as a contract, not a grant. That guidance says a grant should not be used when an agency is acquiring a direct service or tangible asset or receiving a direct benefit.

The Department's attorney contends Mr. Glasscock's services weren't being provided to benefit the Department, but instead benefitted the baby boom generation. In this situation, however, we think it's clear the Department was contracting with Mr. Glasscock for a direct service—to help it restructure its way of doing business. Further, Mr. Glasscock himself responded that this agreement hadn't gone through an internal Department commission for approval because that commission didn't handle grants “for services supplied to the Department.”

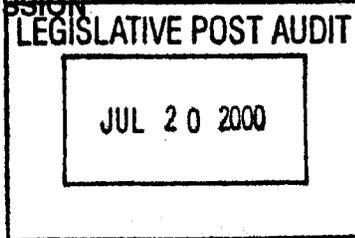
Finally, in response to our finding that a contractual arrangement with another former employee may have violated the ethics laws, the Department notes it obtained “sole source” purchasing authority from the Division of Purchases, which exempted the contract from competitive bidding requirements. However, such authorization doesn't exempt the employee from complying with the State ethics laws.

Administration of
Campaign Finance,
Conflict of Interest
& Lobbying Laws



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GOVERNMENTAL ETHICS COMMISSION



July 20, 2000

Barbara J. Hinton, Legislative Post Auditor
Legislative Division of Post Audit
800 S.W. Jackson Street, Suite 1200
Topeka, Kansas 66612

Dear Ms. Hinton:

Thank you for allowing me the opportunity to respond to the completed performance audit, *Reviewing State Agencies' Adherence to State Laws and Policies for Grants and Contracts*. It appears Post Audit has made a comprehensive review of the grants and contracts awarded by State agencies in FY 1999.

The audit report makes a recommendation that the Governmental Ethics Commission periodically provide brochures or a memorandum to all State agencies explaining the prohibitions in the State's ethics laws relating to contracting with the State. At its August 17, 2000 meeting, Commissioners will receive a copy of the performance audit for their review. I will recommend to Commissioners that the agency produce a publication highlighting the conflict of interest provisions that relate to contracting with the State for distribution to State agencies.

The Commission currently distributes brochures to State employees to explain other specific provision of the Governmental Ethics Laws. For the past two years, Commission staff has participated in the Department of Administration's new employee orientation sessions. The prohibitions in the State's ethics laws relating to contracting with the State are currently covered at these orientation sessions and will be emphasized in the future. The Commission's advisory opinions are available on the agency's web site. Agencies are encouraged to periodically review new opinions rendered by the Commission concerning the State's conflict of interest statutes.

The goal of Commission staff in FY 2001 is to meet with employees of as many state agencies as possible to review the State's conflict of interest statutes.

Sincerely,

Carol E. Williams
Executive Director

STATE OF KANSAS



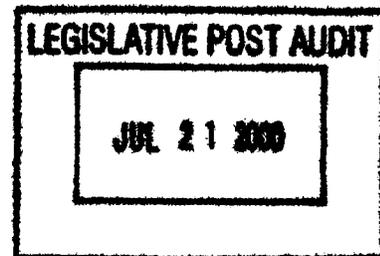
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DAN STANLEY, *Secretary*

BILL GRAVES, *Governor*

July 21, 2000

Barbara J. Hinton
Legislative Post Auditor
800 SW Jackson St. Suite 1200
Topeka, KS 66612-2212



Dear Ms. Hinton:

This will acknowledge receipt of the completed performance audit, *Reviewing State Agencies' Adherence to State Laws and Policies for Grants and Contracts*. In general, we concur with the recommendations of the Legislative Division of Post Audit. The Department of Administration has implemented four of the six recommendations of the 1996 performance audit, and continues to work towards implementation of the remaining items.

The majority of your recommendations relate to the completion of a Policy and Procedures Manual (PPM). This manual will be completed and should be available to all agencies by December 2000. It will contain the information recommended by the Division of Post Audit, including:

- an explanation of the difference between grants and contracts,
- information relating to State ethics laws related to contracting with the State,
- current informal policies and procedures concerning the State's purchasing process,
- current information about laws, regulations or best practices relating to State agency purchases,
- a section on contract management practices, and
- informational circulars and memos containing pertinent procurement policies.

It is important to note that the delegated authority for State agencies to purchase goods and services only extends to sealed bid procedures. These procedures are relatively simple and are prescribed by state statute. The PPM, while helpful, is not as critical as the audit indicates.

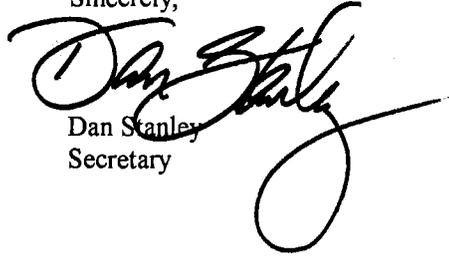
The Division of Purchases currently offers several training opportunities throughout the year, and will continue to do so. In an effort to address some of the concerns raised about contract administration, we are in the planning stages of a new training program that will be aimed at certification for agency officials in the area of contract management. We hope that this

Barbara J. Hinton
July 21, 2000
Page 2

type of process will not only be informative, but also eliminate the need for additional Division staff to provide contract administration. It is our belief that while there are some problems with a few contracts, most agency staff do a good job at administering the contract once it is signed.

We appreciate the professionalism shown by your staff and thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Stanley", written in a cursive style. The signature is positioned above the printed name and title.

Dan Stanley
Secretary

DS:DN:tb

STATE OF KANSAS



KANSAS DEPARTMENT ON AGING

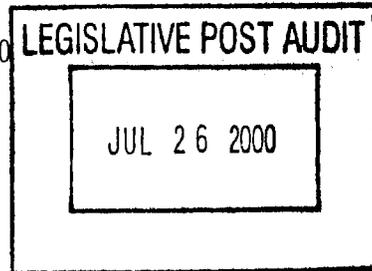
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BILL GRAVES
Governor

Connie Hubbell
Secretary of Aging

July 26, 2000



Barbara J. Hinton
Legislative Post Auditor
Legislative Division of Post Audit
800 S.W. Jackson, Suite 1200
Topeka, KS 66612

RE: Response to July 14, 2000 Draft of Completed Performance Audit Entitled "Reviewing State Agencies' Adherence to State Laws and Policies for Grants and Contracts."

Dear Ms. Hinton:

I received your cover letter dated July 14, 2000, enclosing a draft copy of the performance audit report entitled "Reviewing State Agencies' Adherence to State Laws and Policies for Grants and Contracts." Thank you for the opportunity to respond to the Draft Report.

As you know, I was appointed Secretary of the Kansas Department on Aging (KDOA) on November 12, 1999 by Governor Graves. Because I arrived at KDOA after former Secretary Thelma Hunter Gordon had made the grant to Mr. Terry Glasscock and the website contract with another former employee, I asked Dan Gronniger, KDOA's chief attorney, to prepare a response to the draft audit report. Mr. Gronniger is familiar with the facts and the decisions involved in the two KDOA transactions discussed in the report as well as the state of the law in May-June, 1999. Mr. Gronniger also solicited input from other employees of KDOA. The response, together with the documents incorporated into that response, are enclosed with this letter.

Even though none of the recommendations in the Draft Report is addressed specifically to KDOA, I have responded below to recommendations under Questions 1 and 2 and to a conclusion under Question 3:

Letter to Barbara J. Hinton
July 26, 2000
Page 2

Response to Recommendation 1 of Question 1: KDOA concurs with this recommendation, with the following observations:

- (1) State agencies would benefit from statutes or regulations which define the terms in Section 8 of Chapter 124 of the 2000 Kansas Session Laws; and
- (2) State agencies would also benefit from examples of grants and contracts which satisfy the new statute and any implementing regulations.

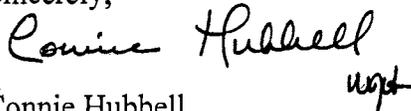
Response to Recommendation 2 of Question 2: KDOA concurs with this recommendation. KDOA will include in its orientation packet for new employees brochures and memorandums issued by the Ethics Commission. KDOA will also review the same information with all employees annually through an all-staff meeting.

Response to Conclusion of Question 3: KDOA disagrees with the auditor's conclusion that the Department "appears to have fallen down in its responsibility to ensure that appropriate Division of Purchases policies regarding State contracts were followed." (Please see the enclosed detailed response at pages 3 to 6.)

KDOA does not respond to the recommendations in Question 4.

Thank you for the courteous and professional demeanor of your auditors while they conducted their audit.

Sincerely,

 *Connie Hubbell*

Connie Hubbell
Secretary

CH:DJG:mjh

Enclosure

c: Dan Gronniger
Alice Knatt
Mike Hammond

(wdg0117.doc;072600)

STATE OF KANSAS



KANSAS DEPARTMENT ON AGING

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July 26, 2000

Barbara J. Hinton
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Legislature of Kansas
Legislative Division of Post Audit
Mercantile Bank Tower
800 Southwest Jackson Street, Suite 1200
Topeka, KS 66612-2212

Re: Response to July 14 Draft of Completed Performance Audit Entitled *Reviewing State Agencies' Adherence to State Laws and Policies for Grants and Contracts*.

Dear Ms. Hinton:

Secretary Hubbell asked me to prepare the Department on Aging's response to the auditors' completed performance audit report entitled *Reviewing State Agencies' Adherence to State Laws and Policies for Grants and Contracts* because of my familiarity with the facts and issues involved. I have prepared a detailed response to the Draft Report's finding on page 12 (under Question 1) that the grant issued to Terry Glasscock should have been issued as a contract and a response to the findings on pages 10-11 (under Question 2) relating to a contract with a former employee.

Finding under Question 1 and Conclusion under Question 2:

The grant to Mr. Glasscock was not illegal, was appropriate under the Post Audit's 1997 suggested guidelines, and was within the former Secretary's discretion to make.

One purpose of this performance audit was to look for state agencies' compliance with "State Laws and Policies for Grants and Contracts." That task is identified in the December 15, 1999 "Approved Scope Statement" for this audit. (See LEGIS. DIV. OF POST AUDIT, DRAFT PERFORMANCE AUDIT REPORT: REVIEWING STATE AGENCIES' ADHERENCE TO STATE LAWS AND POLICIES FOR GRANTS AND CONTRACTS, APPENDIX A (No. _____, August 2000) (delivered to the Department on Aging with cover letter dated July 14, 2000).) Although no statutes, regulations, or policies are identified as the "State Laws and Policies" which were to serve as the audit's

performance or compliance standard, the text following Question 1 in the Draft Report reads, in part: “[W]e’d assess whether any purchasing laws or guidelines were violated in procuring these services.”

On May 5, 2000, in response to an offer made by the Audit Manager during the April 25, 2000 “entrance interview” to answer any questions from the agency, I sent a written list of questions to learn, among other things, those laws and policies to be used by the auditors to determine the Department’s performance and compliance. The Audit Manager answered questions 1 through 12 and their subparts, but did not answer questions 13 through 25. (See “Questions for the Legislative Post Audit Team” dated May 5, 2000; Leo Hafner’s Letter to Dan Gronniger dated May 8, 2000, and Audit’s “Response to Questions,” copies of all of which are attached to and incorporated into this Letter as “ATTACHMENT A.”) *In response to Question 12, the Audit Manager did note the auditors had no statute defining “grants,” so they would “be applying criteria established by the Department of Administration’s Division of Purchases.”* (See ATTACHMENT A, Response to Questions, Question 12 (third page).)

It appears the auditors relied upon the Department of Administration Division of Purchases Information Circular 583 issued May 30, 1997 as the standard for compliance for this audit. (A copy of Information Circular 583 is attached to and incorporated into this Letter as “ATTACHMENT B.”) The Director of Purchases issued Information Circular 583 in response to a recommendation from the Post Auditor in a 1996 performance audit report on State contracting practices and at the urging of an audit manager in a March 28, 1997 letter.

In March 1996, the Post Auditor looked at the contracting practices of several State agencies and, in doing so, reviewed some State agency grants and granting practices. The Post Audit Report includes this section on grants issued by State agencies outside of the Division of Purchases’ competitive purchase statutes:

“When a State Agency Purchases Services by Awarding a Grant Rather Than a Contract, There Is a Greater Risk Of the Agency Not Getting the Services Desired

“During both this audit and previous performance and financial-compliance audits, we’ve noted that State agencies have two major options for procuring professional services—awarding a contract or awarding a grant. Some grants are very much like a regular contract for professional services, in that they are used to purchase a specific service, such as substance abuse treatment.

“Although both methods of procurement generally involve a contractual agreement between the agency and the party providing the service, there are key differences that tend to affect the risk of the agency not getting the services it wants. Unlike most regular contracts, grants aren’t required to go through the Division of Purchases for review, or to be competitively awarded. Even more importantly, the

vendor often doesn't need to provide a certain level of services before receiving payment. This arrangement can result in the State paying for inferior services, or for services that haven't been provided.

"While this audit didn't identify specific examples of problems in this area, there is a definite risk associated with not having Statewide guidelines for grants. ***Previous audits found that, given a choice between procuring a service through a contract or a grant, State agencies often will choose to award a grant, thereby avoiding the State's procedures for purchasing services.*** While such a decision may eliminate some 'red tape,' it also means the agency doesn't get the benefit of the Division of Purchases' review and assistance."

LEGIS. DIV. OF POST AUDIT, PERFORMANCE AUDIT REPORT: REVIEWING STATE CONTRACTING FOR CONSULTANTS AND OTHER PROFESSIONAL AND TECHNICAL SERVICES 23 (No. 96-38, March 1996)(bold, italicized emphasis added in text, original bold emphasis in heading)(hereafter referred to as, the "1996 State Contracting Audit Report")(a copy of excerpts from the 1996 State Contracting Audit Report is incorporated into this Letter and attached as "**ATTACHMENT C**").

Despite its concerns with how State agency grants were issued, the Division of Post Audit did not conclude that such grants were illegally issued if issued outside the competitive purchase statutes and did not recommend any legislation to require agency grants to be issued through the competitive purchase statutes. (See ATTACHMENT A, Audit Response to Questions, Question 5d (second page).) However, the Division of Post Audit did include a recommendation in that 1996 State Contracting Audit Report that Division of Purchases should "develop written guidance for State agencies that specifies when those agencies should award grants and when they should award purchase contracts." (See 1996 State Contracting Audit Report, at 27 (Recommendation 7.a.)) This recommendation provided the impetus for Informational Circular 583.

Apparently as a follow-up to Recommendation 7.a. in the 1996 State Contracting Audit Report, Audit Manager Randy Tongier wrote Director of Purchases John Houlihan a letter dated March 28, 1997. The letter includes attachments offered by Mr. Tongier as help in "developing guidelines for State agencies." (See Letter dated March 28, 1997 from Audit Manager Randy Tongier to Director of Purchases John Houlihan and its attachments, a copy of which is incorporated into this Letter and attached as "**ATTACHMENT D**.") The Director of Purchases then issued Informational Circular 583 on May 30, 1997.

There are some real or potential problems with either a State agency (during 1997-1999) or the Division of Legislative Post Audit (in 2000 reviewing a 1999 grant) relying on Information Circular 583 as a standard for performance or compliance. These problems include the following:

- (1) Information Circular 583 covers State-funded grants issued by agencies other than the Department of Administration. Unfortunately, in May of 1997, the Division of

Purchases had no authority to exercise any control over State-funded grants issued by other State agencies. That authority came more than two years later. The Division of Purchases never had any authority over any type of State-funded grants issued by other executive branch State agencies until the Governor issued Executive Order 99-9 on November 1, 1999. (See EXEC. ORD. NO. 99-9 (“Concerning Grants and Fellowships of State Agencies”), *reprinted in* 18 KAN. REG. 1710 (Nov. 11, 1999)(a copy of which is attached to and incorporated into this letter as “ATTACHMENT E”).) The Kansas Legislature never gave the Division of Purchases any authority over the process for issuing any type of State-funded grants until it passed the Senate Substitute for House Bill 2627 during the 2000 legislative session. (See 2000 KAN. SESS. L. ch. 124, § 8.)

Under the rulings of the Kansas Supreme Court, a State agency has only those powers and may exercise only that authority granted to it by the legislature; state agencies have no common-law powers. (See *Pork Motel, Corp. v. Kansas Department of Health & Environment*, 234 Kan. 375, 378 (1983); *Woods v. Midwest Conveyor Co., Inc.*, 231 Kan. 763, 770 (1982).) An act by a State administrative agency that is outside of its statutory authority is without authority and void. (See *Olathe Community Hospital v. Kansas Corporation Commission*, 232 Kan.161, 167 (1982).) Under the Kansas common law in effect in May 1997, a State agency could not assume and exercise authority over a subject matter simply because the agency decided to do so or because it was doing so as a reaction to a Division of Post Audit recommendation. Having been given no authority by the legislature (or by the Governor) over other State agencies’ grants, any attempt by the Division of Purchases in 1997 to exercise control over such grants would be without authority and void.

- (2) *Even if* some statute had given the Division of Purchases some authority over other State agencies’ grants in May 1999, Information Circular 583 would still be unenforceable under Kansas Supreme Court rulings. *If there were a supporting statute*, Information Circular 583 would then have been a policy of general application — applicable to all State agencies and to all potential grantees — adopted to control the administration of legislation, but a policy which was not adopted through the statutory process required for valid regulations. Because of that, it would be a nullity and of no force and effect. (See *Bruns v. Kan. State Bd. of Technical Professions*, 255 KAN. 728, 728 Syl. ¶¶ 1-3, 735-37 (1994); see also LEGIS. DIV. OF POST AUDIT, DRAFT PERFORMANCE AUDIT REPORT: REVIEWING STATE AGENCIES’ ADHERENCE TO STATE LAWS AND POLICIES FOR GRANTS AND CONTRACTS at 28 (July 14, 2000 draft)(Box, second paragraph: “Also, because the circulars don’t carry the weight of a statute or regulation, it’s unlikely they are enforceable, according to a recent Supreme Court decision”).)
- (3) Informational Circular 583 does not require any State agency to submit a potential grant to the Division of Purchases for review and/or approval and it doesn’t require any State agency to use a competitive process (including the Division of Purchases statutory

competitive process) to issue a grant. It leaves the discretion to decide whether to issue a grant or a contract and under what circumstances to issue a grant entirely with the State agency. It concludes with: "If you have questions as to whether a disbursement is a grant or a contract for service, contact the Division of Purchases." Conversely, if a State agency had no question as to whether a disbursement was a grant or a contract for service, it need not have contacted the Division of Purchases.

During the May-June 1999 time frame, there was no statute or regulation which defined what a State-funded grant was or when it could be issued; there was LPA Report Number 96-38 which found nothing illegal about State agencies issuing grants outside of the Division of Purchases' competitive bid process; there was no State statute or regulation which gave the Director of Purchases any authority over the process by which State agencies issued grants; and there was no State statute or regulation which required State agency grants to be issued through the statutory competitive bid process for State contracts. Statutory authority for the Director of Purchases to exercise some control over some types of State agency grants didn't come about until July 1, 2000, when the Senate Substitute for House Bill 2627 became law as Chapter 124 of the 2000 Kansas Session Laws. Section 8 of that legislation requires state agencies using grants "to purchase good or services for which the state agency receives a direct service or a tangible asset" to go through the competitive purchase statutes administered by the Director of Purchases. While this statute stops short of defining "a direct service" and "a tangible asset," it at least vests authority in the Director of Purchases over some types of State agency grants and will allow the Director to define "direct service" and "tangible asset" in legally binding regulations. The Director of Purchases now has the authority and opportunity to issue regulations to help State agencies deal with grant issues.

In May 1999 when I was asked if a grant was legal for the baby-boomer re-engineering, I did not know about Informational Circular 583 or if I had been made aware of it before then, I didn't remember it. However, I did know about and recall the 1996 State Contracting Audit Report and the March 28, 1997 letter (with attachments) from an audit manager, Randy Tongier, to the Director of Purchases, John Houlihan. I applied the principles in the 1996 State Contracting Audit Report and in the attachments to Mr. Tongier's letter to determine that the Secretary of Aging could legally issue a grant for the baby-boomer re-engineering. The reasons for that conclusion were:

- (1) The Post Auditor had concluded in 1996 that State agencies could issue grants outside of the competitive bid process;
- (2) As far as I knew, the law hadn't changed between 1996 and 1999 to bring State agency grants under the Division of Purchases' competitive bid process;
- (3) There was no binding criteria for State agencies to follow in issuing State-funded grants, but the closest thing to it was Mr. Tongier's material offered to Mr. Houlihan as help in developing guidelines for State agencies;
- (4) My main inquiry was: "Who will receive the benefit of the services provided

under the grant?" My inquiry corresponds to the first question on Mr. Tongier's decision-making flow chart: "Is the acquisition of property or services FOR THE DIRECT BENEFIT OR USE OF THE GOVERNMENT the principal purpose of the transaction?" [Although Mr. Tongier's flow chart included the three types of transactions created by Federal law, I considered Kansas as having only two types, contracts and grants. Therefore, I lumped the first two types in Mr. Tongier's chart together as "contracts" and concluded that a prudent State agency should always be substantially involved in managing transactions, whether contracts or grants.]

- (5) I concluded, and still conclude, that the principal purpose of the transaction was to provide services for the direct benefit of the baby boomers, the agency's future customers because the grant's services would:
- (a) determine what services the baby boomers needed or wanted (and whether or not those services would ever be provided to the baby boomers would depend on what the legislature did with appropriations and statutes);
 - (b) determine what would be an appropriate service delivery system for services for the baby boomers; and
 - (c) re-engineer the entire State government system (not just the Department on Aging, although the process would start with the Department on Aging) to better provide government services to the baby boomers (*e.g.*, representatives from the legislature and other State agencies were invited to attend and, many did attend, meetings on re-engineering in early 1999).

I also believe the 1999 Kansas Legislature, or certainly some members of it, had concluded that the Department on Aging was pursuing re-engineering for the benefit of the maturing baby-boomers. Members of the House of Representatives wrote:

"The House Budget Committee concurs with the Governor's recommendation with the following exceptions and comments:

- "4. Adds \$192,297 State General Fund from the Kansas Savings Incentive Program (KSIP) for the re-engineering project the agency has undertaken *to prepare for the expanded customer base as the baby boomers age. The agency is looking at the contrasts between the requirements of current customers and the anticipated needs, desires and expectations of those who will soon be seniors.* The project began during FY 1999 and will continue through FY 2000."

H. R. BUDGET COMM., HOUSE BUDGET COMMITTEE REPORT 2 (Feb. 19, 1999)(House Budget Committee Recommendation ¶ 4)(emphasis added).

- "11. The Budget Committee wishes to commend the Department on Aging for its foresight in convening the re-engineering project.

The need to prepare for the influx of persons requesting the agency's services over the next few decades, is evident, as Kansas has seven of the 15 'oldest' counties in the nation. In fact, Smith County is the oldest in the nation. In light of this information, the Budget Committee commends the agency for its proactive approach in dealing with the looming problem."

H. R. BUDGET COMM., HOUSE BUDGET COMMITTEE REPORT 3 (Feb. 19, 1999)(House Budget Committee Recommendation ¶ 11)(emphasis added). (A copy of the February 19, 1999 House Budget Committee Recommendations are attached to and incorporated into this Letter as "ATTACHMENT F.")

In the future, the Governor's Executive Order No. 99-9 and Section 8 of Chapter 124 of the 2000 Session Laws should preclude executive branch agencies from issuing grants, without the review and assistance of the Division of Purchases, for projects when the recipient or beneficiary of the grant services may be unclear. The Executive Order makes all grants made by any executive branch agency to an individual or a for-profit corporation for direct services to the State agency subject to the State's competitive purchase statutes and a State agency is required to notify and confer with the Director of Purchases before making a final decision to issue a grant. Section 8 of Chapter 124 makes all State agency grants to purchase goods or services for which the State agency receives a direct service or a tangible asset subject to the State's competitive purchase statutes. State agency grants to purchase goods or services which are not direct services to the State agency or are not for a tangible asset to the State agency remain outside of the State competitive purchase statutes. Division of Purchases' regulations which define the terms in Section 8 would be helpful to State agencies trying to decide if a proposed grant is within or outside of the competitive purchase statutes.

Finding under Question 2: Contract with former employee for interim website services.

In the Draft Report on the possible violation of K.S.A. 46-233 by the former employee who, after she resigned and moved to Ohio, contracted to perform website maintenance for the Department until the Department could recruit and hire someone to fill her vacant position, the auditor did not note:

- (1) K.S.A. 46-233(d)(1) contains an exception for agreements between State agencies and State employees negotiated through the competitive bid process;
- (2) The State's competitive bid process is contained in K.S.A. 75-3739 and 75-37,102;
- (3) The Department requested and received "sole source authority" from the Director of Purchases, issued pursuant to his authority under K.S.A. 75-3739, to contract with the former employee, who was identified as a former employee in the request for sole source authority (a redacted copy of the "Prior Authorization Form" approved June 1, 1999 is incorporated in and attached to this Letter as "ATTACHMENT G"); and

- (4) When a State agency receives "sole source authority" from the Director of Purchases, it means the Director, who is solely responsible for administering the competitive bid statutes for all State agencies, has:
- (a) considered whether the requested services should be purchased through a competitive bid process; and
 - (b) determined that, because one of the exceptions listed in K.S.A. 75-3739 applies, contracting with the proposed contractor without advertising for bids is preferable to obtaining the services through the competitive bid process.

The public policies served by K.S.A. 46-233 are not at issue when services are obtained from former employees through contracts which are approved by the Director of Purchases as "sole source purchases," which are exceptions to the competitive bid process, which, in turn, includes the advertisement/bids exception to K.S.A. 46-233. (Cf. LEGIS. DIV. OF POST AUDIT, DRAFT PERFORMANCE AUDIT REPORT: REVIEWING STATE AGENCIES' ADHERENCE TO STATE LAWS AND POLICIES FOR GRANTS AND CONTRACTS at 17-18 (No. _____, August 2000) (July 14, 2000 draft)(auditor's discussion of the Department's failure to request sole source authority from the Division of Purchases for the Glasscock grant).) This contract had the oversight of the Division of Purchases which the auditor finds lacking in the grant to Mr. Glasscock.

Please consider including those points in the final report for balance, contrast, and perspective. Thank you for the opportunity to respond to the draft performance audit report. The auditors who conducted this audit did so in a very patient, courteous, and professional manner.

Respectfully submitted,



Daniel J. Gronniger
Chief Counsel

DJG:djg

Attachments: A (10 pages), B (1 page), C (7 pages), D (12 pages), E (3 pages), F (5 pages), and G (1 page).

c: Secretary Connie Hubbell
Commissioner Alice Knatt
Mike Hammond

(H:dg1155.wpd;072600)

RESPONSE TO FINDINGS OF THE LEGISLATIVE AUDIT
JULY, 2000

Submitted by
Terrance L. Glasscock
July 12, 2000

With due respect for the work done by the Legislative audit team, I submit the following information which I believe elucidates aspects of this transaction that seem unclear in the report. In some cases my views represent mere clarification and in others a dissenting opinion to the findings. For convenience I will attempt to follow the pattern of the audit team's report in this reply.

GENESIS OF THE GRANT: Approximately May 3, 1999, I informed the Secretary that I was officially terminating my employment with the department on May 28, 1999. The Secretary asked if it would be possible for me to continue the work already begun on transforming the department's systems and operating structure. She first asked if I would consider continuing in my position as Deputy Secretary. I responded that it would not be financially possible to maintain a residence in two locations and absorb the costs of a 1500-mile commute and that it did not seem effectual to attempt such an arrangement. The Secretary then suggested that as an alternative she would like the Department offer me a contract to complete the work. She requested that I meet with Dan Gronniger, chief attorney for the Department, to determine how this could be done. I met with Mr. Gronniger and inquired as to the legal and ethical propriety of such a contract. Mr. Gronniger wrote a memo on May 5, 1999 stating that, because of legal ambiguities associated with a contract as had been suggested by the Secretary, I might wish to have the matter reviewed by the Governmental Ethics Commission. As a result of this advice and interpreting the memo to mean that there might be questions raised regarding the appropriateness of a contract with the department, I concluded that we should let the matter drop. However, the Secretary renewed her request to have me complete the work already planned. She viewed both the completed work and the future plans as critical to the Department. She was not alone in this belief, others in the Department agreed that the planned effort would not only be valuable to the KDOA but to other Departments in Kansas government as well. And, the Secretary voiced her belief that no one could accomplish the quality of result for the department that I was capable of producing.

Within a few days the Secretary suggested to me the possibility of the department offering a grant rather than a contract. I was aware of a precedent for this action, inasmuch as the Secretary had offered a grant to a departing employee, Mr. Richard Saffle, the previous year for work to be continued after his departure. I had neither negotiated nor drafted this agreement, but was aware of the matter as I had been asked to execute the grant on behalf of the Secretary due to her absence. Inasmuch as there had been no objection to this arrangement from the Ethics Commission (and still has been none), no concern expressed by the Department of

Administration, and no objection expressed by any legislative body (including Legislative Post Audit), I assumed the grant process was not only acceptable and appropriate but also customary. Moreover Chief Counsel for the KDOA, Mr. Gronniger informed me, and I understand he remains fully satisfied, that the KDOA possessed clear legal authority to offer and administer a grant in the manner represented by the grant proposed. Inasmuch as I was assured by both the Secretary and Mr. Gronniger that the grant was a legal and proper alternative to a contract, and that I was aware the Department had issued a grant in exactly the same manner the previous year, and no objections had arisen from any source regarding that grant, I was satisfied with this solution and agreed I would accept such an agreement if the department desired.

AVOIDING TIME DELAY: Contrary to the audit team's report, the issue of selecting a grant as a mechanism for continuing my assistance to the Department had nothing to do with the proposed work schedule. As the Secretary explained to me, it was a simple matter of budgetary timing. The Secretary wished to use FY1999 budget savings to fund the first year of the grant. In order to do this, she indicated that it was necessary to complete the grant transaction before the end of June 1999. Unfortunately, the report indicates that the "re-engineering" process was to occur over a period of ten years. At no time while I was with the department, nor when the grant was offered to me, nor while I was performing under the grant was there any discussion of a ten-year timeframe. From the initial stages of this work it was agreed that the work must be completed by the end of 2002, the Secretary's term of office. Waiting ten years to implement changes would be disastrous as well evidenced by the mass of scholarly information on the consequence of an aging society. What's more no effort at systemic or structural transformation could possibly succeed if it were to be accomplished over such a long period of time. More change would occur during such a lengthy implementation than would be accommodated in the transformation. I can only think that there has been some misunderstanding of the process by some staff members not intimately involved with the actual process or by the audit team in its assessment of the grant information.

NOT FOLLOWING "NORMAL" GRANT PROCEDURES: I was not involved in the process of determining what procedures should or should not be followed in developing the grant; to the best of my knowledge those decisions were made exclusively by the Secretary and Mr. Gronniger. However, I am aware of some information that conflicts with the findings of the audit team. During the process of drafting the grant in June 1999, Mr. Gronniger sent various revisions of the grant document to me via email as a courtesy. These revisions were circulated to the Secretary, the Commissioner of Administration, the Budget Director, and the chief accountant for the department (the individual who administers the financial side of grants). In each instance Mr. Gronniger asked those individuals for suggestions and comments on the grant document and process. Also as a courtesy, these same individuals copied me with their suggestions when replying to Mr. Gronniger. So, even though I was not directly involved, I am aware that there was significant contribution from several pertinent staff members in development of the grant. As to the matter regarding, the Senior Services Commission not being involved, it simply was not a grant that fell within their purview of expertise. That commission administers grants to organizations providing services directly to elderly citizens, not for services supplied to the department.

As to the issue of no grant proposal being offered by me as grantee, there are numerous circumstances that made this impractical. To begin, the grant was to continue work already planned and designed by the Department; the Department was proposing the work to me, not the other way round. It made no sense for the Department to spend tax money to write a Request for Proposal outlining what was already well known to both the grantor and the grantee, and then have the grantee write a proposal delineating the very same information in return. Therefore, in lieu of a grant proposal the Department asked me to supply a statement of the "scope of work", based on the plans developed by the department. Common sense dictated that this would be a more efficient and effective means of defining what was to be accomplished. I responded by providing this document as requested.

Criticism has also been made of the lack of a grant budget. Although, I volunteered to provide a budget, the Secretary had already determined the amount (a matter I'll address more completely in a moment) and wished to base the funding on specific performance rather than on a pre-determined monthly budget. The grant was written with specific performance requirements and authority rested with the department to determine what grant money was "earned" by each performance indicator. In other words, the issue of budget was resolved completely in favor of the department. This is demonstrated clearly by the procedure followed when the grant was terminated; the Department exclusively determined what grant money had been earned at termination. The amount was significantly less than the personally budgeted amounts and expenditures I reported on a monthly basis as grantee. In other words, rather than grant expenditure being determined by monthly budget binding the Department to specific payments, the Department exercised the right to make that determination based solely on their evaluation of performance of the grantee. I'm quite sure that the State would welcome the same arrangement on all government contracts and grants.

COMPENSATION AMOUNT: I differ with the report's suggestion that the grant amount was in any way excessive or inappropriate. When the Secretary asked me how much I felt it would cost to do the work during the first year as outlined, I gave three responses.

Along with Patsy Samson of the Department I had earlier met with an associate with the Mackenzie Center for Change, one of the most respected change-consulting firms in the world. We asked him to give us some estimate of consulting cost for the kind of change the Department was contemplating. He indicated that inasmuch as government is not notorious for wanting to change, much less hiring experts to help them do so, he was aware of only one instance where his company worked with government on this type of project. That contract was with the City of New York and involved three consultants for which the firm charged \$300,000 a month (obviously, \$100,000 per month per person). Ms. Samson and I realized that it was completely beyond the realm of possibility to engage such high-level consulting assistance.

As an alternative I asked individuals at various conferences to give me a ballpark estimate for what individual consultants in change management would charge for the effort contemplated by the department and universally received an answer of \$1500 a day plus expenses. For a full time effort this amounted to well in excess of \$300,000 a year, again not a figure that was likely to be approved.

With this as background, when the Secretary asked me what funding I would need in order to devote my one year of effort, I took another approach. I used my then current salary and merely added the expense necessary to conduct the work by commuting from Boston. In this manner I simply offered to continue on the same pay basis with which I had already been working for the department. In any case, the amount was significantly less than responses from all other inquiries that had been made.

NATURE OF WORK: With due respect for the need for brevity in the audit report, I believe the auditor's description of the work to be performed under the grant is significantly misleading by its incomplete status. I realize that a detailed review of the work in this response would not be welcome (because of its required length). Therefore, with the few exceptions that follow, I simply refer the legislature to the grant document itself and to the work product completed before the grant was terminated.

This having been noted, it is critically important that the reader understand the nature of the effort undertaken by the department. The change initiated by the Department was not merely a strategic planning effort but rather a complete transformation of its vision, mission, programs, systems, structure and organizational culture. The department believed that nothing less than a revolution in the scope of its focus, its organizational culture, its programming, its system of employee recognition and reward, its management techniques, its service delivery systems and its internal structure was necessary to effectively meet the demand of the next decade and beyond.

This conclusion was a result of two significant factors. The first was a realization that while society has changed dramatically over that past century the systems of bureaucratic administration which serves society has changed very little. Moreover, the dramatic demographic change that will occur over the next three decades as a result of an aging baby boom generation makes visionary preparation by all governmental functions imperative. By any definition societal needs, demands, and expectations have evolved much more rapidly than have the governmental systems required to serve them. Moreover, no area of governance will be so greatly affected in the years to come as departments engaged in delivery of services to the elderly. Peter Peterson is a former Secretary of Commerce, advisor to four U.S. Presidents and perhaps the foremost expert on the effect that an aging society will have on government. He warns that unless the "pay-as-you-go" benefit systems on which the U.S. public depends are changed significantly and soon government will experience a "guaranteed economic meltdown." This fact is just as true for state government as for the federal government. Therefore, the issues of change that must be addressed by government, and particularly by state departments on aging, are crucial. It was with this frightening premise that the department's transformation was initiated.

Since the audit-report comments on some of work plan contained in the grant and not on others, I will confine myself to explanations I believe are necessary for clarification. Nonetheless, I would once more refer the reader to the grant document and to work product for a much more exacting understanding of those elements not discussed below.

IMPACT INITIATIVE: Specific mention was made of the IMPACT initiative and the

respective roles of the University of Kansas Medical Center and the grantee. There seems to be a noteworthy and unfortunate misunderstanding of the scope of this work. The IMPACT study by K.U. was to gather extant data on trends that were deemed pertinent to the changing nature of society due to an unprecedented aging phenomenon. This raw data, together with opinions expressed by scholars who gather it, was to be compiled and provided to the grantee. As grantee, I was to study this data, seek expert opinions from national sources, seek collaborative or conflicting findings, and then use the resulting information to develop a vision of what demands would be placed on government over the next twenty to thirty years. My role was not merely to develop financial forecasts but overlay this information onto all the extant programs and systems of Kansas government. I was then to evaluate which programs would be effected and what the fiscal and social impact would be on each program. What's more, I was to recommend alterations to programs, elimination of programs, creation of programs, and/or changes to outcome objectives for each program based on the findings. Moreover, I was to advise the department on desirable changes to administrative operating systems that would most likely be affected by this demographic and social phenomenon.

In addition, as grantee I was to plan, organize and facilitate a national conference to be held in the state to share the findings of the Kansas IMPACT study, my conclusions, the opinions of invited national experts and the Department's resulting decisions. In fact, of the entire IMPACT initiative the portion funded by a grant of \$74,000 to the K.U. Medical Center was the least demanding. In any case, this portion of the grant was considerably more challenging than the language of the audit report as follows: *"Mr. Glasscock was simply going to review and evaluate the results of this study and assess how the findings impacted the Department."*

VISION STATEMENT: The audit seems to assume that the "vision statement" referenced in the grant is the typically useless "mission statement" that, indeed, *"are things that other State employees do as part of their regular jobs"* (as stated in the audit report). The vision statement contemplated in the grant had nothing in common with this annual waste of time. The vision statement document was contemplated as a detailed, lengthy, informed and decisive narrative, not merely a one-sentence or one-paragraph mission statement as is standard in government agencies. The statement was to be nothing less than a portrayal of the social, economic, and demographic landscape, or "vision", of Kansas over the next thirty years. Moreover, as indicated above, the vision statement was to conclude with specific recommendations for integrating these findings into government by altering programs, bureaucratic systems and organizational structure. There obviously been a complete misunderstanding of the very nature of the "vision statement"; completion of such a document would take months of intensive work to complete.

SOCIAL INCUBATOR PROJECT: The audit team has requested I provide a brief explanation of this project, which is as follows:

Many of the government programs developed over the years are better accomplished by organizations outside of government. In some cases private enterprise can perform more effectively and more efficiently than can government, in other cases not-for-profit organizations closer to the "problem" than is state government can be more competent. The latter is particularly the case where services require individual attention and provide little profit incentive

for private enterprise. However, the very nature of not-for-profit organizations limits their financial ability to initiate such programs. Moreover, in some cases the intricate regulations attached to social services is difficult to understand.

As a part of KDOA's transformation the Department established a goal of visiting all its programmatic functions and determining which could better be accomplished by organizations outside government. It was the Department's desire to find suitable non-governmental organizations to accomplish these tasks and assist them in understanding the regulatory requirements for providing the service. Then, with appropriate authority, the Department would assist the not-for-profit organization with the initial cost of assuming responsibility for those programs. The goal was to establish "stand-alone" operations in future years, i.e. organizations operating without the use of tax money. This comprised the basis for constructing a system of organizational incubation, much like business incubators, which are funded both by private and public funds.

Without having developed a process for accomplishing such an outcome, the Department recognized a need and was highly successful in initiating just such a result with the Mentoring Works program in 1998 and 1999. After I conceived and defined the idea, department staff designed the program, assessed the geographic need, and searched for an appropriate not-for-profit organization to administer the program. The program consisted of using retired elderly workers to mentor welfare clients in Kansas into the workforce. The program was so successful that to date it has won one national award ("Architect of Change Award") for innovation in government and an international award for its exceptionally high degree of customer service in government. What's more, I understand the program is now considered a national model and is being implemented nationwide. The Social Incubator project simply was to formalize intensive process for evaluating KDOA programs, determining which were better accomplished outside of government, identifying appropriate organizations and generally for repeating the success of the Mentoring Works program.

ETHICS COMMISSION FINDINGS: In appealing the findings of the Ethics Commission; I do not believe any violation of ethics laws occurred inasmuch as both Mr. Gronniger and I testified that at no time did I act in my capacity as a state employee on any matter relative to the grant. Moreover, the grant was not authored and executed until late June, three weeks after I left the department. Nonetheless, since mention was made of the commission's finding in the audit report, I feel it is important to review the findings of the commission that are pertinent to, though omitted from, the audit report. However, it should be noted that the findings of the commission are still subject to judicial review through appeal. The findings which follow are copied verbatim from the Ethic's Commission report:

"The contract at issue does not appear to be detrimental to the State of Kansas. Therefore, it does not appear that the State has suffered any actual harm as a result of this contract."

"It appears that Mr. Glasscock was well qualified to perform the tasks undertaken."

"In order to assist in our investigation Mr. Glasscock voluntarily waived any privilege he may

have had which attached to the documents in the possession of the Kansas Department on Aging.”

“There was no attempt by Mr. Glasscock to hide the existence of the contract at issue.”

“Mr. Glasscock cooperated fully with our investigator and staff.”

Taken as a whole, these findings of the commission represent the spirit in which the grant was accepted and respected by the grantee.

I thank the audit team for providing me an opportunity to clarify the issues reviewed in their report.

Terrance L. Glasscock

