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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
CIVIL DEPARTMENT

LUKE GANNON, By his next
friends and guardians, et al.,
Plaintiffs,

vs.

Case No. 10-C-1569

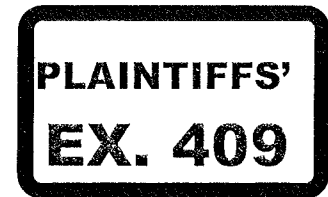
STATE OF KANSAS,
Defendant.

VIDEOTAPED DEPOSITION OF
DUANE GOOSSEN,

taken on behalf of the Plaintiffs, pursuant to
Notice to Take Deposition, beginning at 8:54 a.m.
on the 16th day of May, 2011, at the office of
Appino & Biggs Reporting Service, Inc., 5111
Southwest 21st Street, in the City of Topeka,
County of Shawnee, and State of Kansas, before
Lora J. Appino, RPR-RMR, Certified Shorthand
Reporter.

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12 ALSO PRESENT:

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14 Ms. Nahivi Fraga, Videographer

15 .

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1 THE VIDEOGRAPHER: Today is the 16th day
 2 of May of 2011, and the time is approximately 8:54
 3 a.m. We are in the office of Appino & Biggs
 4 Reporting Services to take the deposition of Duane
 5 Goossen in the matter of Luke Gannon, by his Next
 6 Friend and Guardians, et al, vs. State of Kansas,
 7 Case No. 10-C-1569.

8 Would the counsel please state your
 9 appearance for the record?

10 MR. RUPE: Alan Rupe for the plaintiffs.

11 MR. CHALMERS: Art Chalmers for the
 12 defendant, State of Kansas.

13 DUANE GOOSSEN,
 14 called as a witness on behalf of the Plaintiffs,
 15 was sworn and testifies as follows:

16 DIRECT-EXAMINATION

17 BY MR. RUPE:

18 Q. Tell the court your name and the city in
 19 which you live.

20 A. My name is Duane Goossen. I live in
 21 Topeka, Kansas.

22 Q. Mr. Goossen, what is your current
 23 employment?

24 A. I currently work for the Kansas Health
 25 Institute. My title there is vice president for



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1 fiscal and health policy.

2 Q. Have you ever had your deposition taken
3 before?

4 A. No.

5 Q. Well, I'm Alan Rupe and I represent the
6 plaintiffs in a lawsuit that was filed in Shawnee
7 County District Court against the State of Kansas.
8 Do you understand who I am and who I represent?

9 A. I do.

10 Q. Seated to your left is the attorney for
11 the State of Kansas, and we'll get into this in a
12 minute, but I understand you have some role in the
13 budgeting process that we are going to ask you
14 about.

15 The court reporter is seated to my left, the
16 videographer is across the table from us. Do you
17 now know who everybody in the room is?

18 A. I do.

19 Q. With regard to this deposition, do you
20 have an understanding as to the purpose of the
21 deposition?

22 A. I do.

23 Q. What's your understanding?

24 A. My understanding is that there is a case
25 that has been filed and that I'm visiting with you

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1 about that case.

2 Q. Okay. From time to time, I may ask
3 confusing questions. And if I do, I'd like you to
4 stop me and tell me you don't understand my
5 question and I'll back up and try again. Okay?

6 A. That's fine.

7 Q. And if -- if you don't stop me, can we
8 assume that you understood my question?

9 A. Yes.

10 Q. With regard to the deposition, of course,
11 if you choose to testify at the time of trial or
12 subpoenaed to testify at the time of trial and
13 your testimony is different than your deposition
14 testimony, you understand I can point those
15 differences out to the judge?

16 A. I do.

17 Q. With regard to motions that we file with
18 the court or citations to your deposition, we can
19 provide those to the court for a whole host of
20 reasons. Given all that, it's important that you
21 stop me if you don't understand the question.
22 Okay?

23 A. Okay.

24 Q. Were you employed by the State of Kansas
25 for a period of time?

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1 A. I was.

2 Q. And what was your employment dates?

3 A. Well, the employment that would be
4 connected with, I guess, with this case was from
5 1998 until December of 2010, I was the Director of
6 the Kansas Division of the Budget. And from 2005
7 to December of 2010, I was also the Kansas
8 Secretary of Administration. I held both
9 positions simultaneously for a time.

10 Q. Okay. When you -- was your position in
11 1998 an appointed position?

12 A. Yes, appointed by the Governor. At that
13 time it was Governor Bill Graves.

14 Q. Okay.

15 A. I was then reappointed by Governor
16 Sebelius, and, I guess, by Governor Parkinson,
17 too.

18 Q. All right. Was there a formal
19 appointment by Parkinson?

20 A. Not that I recall. I mean, he just --
21 (paused)

22 Q. And the dates of the Secretary of
23 Administration was from '05 to when you left?

24 A. Yes. Now, I couldn't cite you the exact,
25 exact month that I began as Secretary of

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1 Administration. I was appointed to that by
2 Governor Sebelius.

3 Q. Okay. You answered my question.

4 Prior to 1998, what was your employment?

5 A. I was in the -- from 1983 until 19 --
6 January of 1997, I was in the -- I served in the
7 Kansas legislature in the house of
8 representatives, I represented District 70. And
9 at that -- at the same time as being in the house,
10 the legislature was a part-time legislature, I
11 also ran a construction business in Goessel,
12 Kansas. I left the legislature in 1997 and
13 returned to school to -- and I received a Master's
14 of Public Administration from the Kennedy School
15 of Government at Harvard University in 1998.

16 Q. Okay.

17 A. So --

18 Q. Educational background, briefly?

19 A. I have a Bachelor of Arts degree from
20 Bethel College in North Newton, Kansas, and a
21 Masters of Public Administration from the Kennedy
22 School of Government, Harvard University. That's
23 June of 1998.

24 Q. Okay. Were you raised in the Goessel
25 area?

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1 A. I graduated from high school there.

2 Q. Okay.

3 A. I did not grow up in Goessel.

4 Q. Where did you grow up?

5 A. Hillsboro, which is actually not far, so
6 that area.

7 Q. Would you give me a job description for
8 the Director of the Division of Budget for the
9 State of Kansas?

10 A. Well, there is probably two. The
11 Division of the Budget is about a 20-person
12 operation, which has a variety of duties
13 statutorily assigned to it. And part of the job
14 description is to direct those folks who are in
15 that division and to perform those statutory
16 duties, but it's also very clear that as an
17 appointment to the Governor that -- as an
18 appointment by the Governor, the Director of the
19 Budget is a, in essence, a financial, state
20 financial advisor to the Governor and helps the
21 Governor prepare a budget recommendation for the
22 Kansas legislature and advises the Governor on any
23 kind of budget and financial matters that the
24 state has.

25 Q. So, I'm trying to get a handle on what

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1 you started that answer with, which is, quote,
2 there is probably two, unquote. One is just
3 supervising the folks in the budget division and
4 the other is as you've explained?

5 A. Uh-huh.

6 Q. Okay. Your answer is yes?

7 A. Yes.

8 Q. We've got to do audible here.

9 A. Okay. Sorry, yes.

10 Q. And is there any -- in the second part of
11 it, not the supervision of employees, but in the
12 other part of the director job, is there any
13 discretion that you exercise as part of that job?

14 A. I think you maybe have to be more
15 specific in terms of what kinds of discretion
16 you're --

17 Q. Well, let me ask the question this way:
18 Are there any occasions that once the budget has
19 been adopted, that as the Director of Budget you
20 have discretion to change it?

21 A. I would answer that question as no. Once
22 a budget is legally adopted, and by that I mean
23 passed by -- a budget is adopted by the
24 legislature, passed by the legislature and signed
25 by the Governor, the budget director does not have

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1 discretion to change it. The budget director has
2 responsibilities to help implement it, but not to
3 change it.

4 Q. Does any -- I'm sorry. Does anyone have
5 the ability to change it?

6 MR. CHALMERS: As it's phrased, it calls
7 for a legal conclusion. There may be a way to
8 rephrase that, Mr. Rupe. But, I think you're
9 asking this witness to say something that a judge
10 needs to rule on.

11 BY MR. RUPE:

12 Q. You're not a lawyer, are you?

13 A. No, I'm not.

14 Q. Okay. Well, I'm not asking you a legal
15 question. I'm asking you a Director of Budget
16 question.

17 From your standpoint and experience as the
18 Director of Budget who had the authority, if you
19 know, to alter the budget once it had been
20 adopted, passed and signed by the Governor?

21 A. The only real instance in which I'm aware
22 that a budget that has been legally adopted by the
23 legislature, signed by the Governor that can be
24 changed, other than by the legislature revising --
25 legislature revising it and the Governor signing

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1 it, is that it can be changed through the
2 allotment process in which a legally-adopted
3 budget can be reduced under certain circumstances.

4 Q. Okay. What are the circumstances in
5 which a legally-adopted budget can be reduced
6 through the allotment process?

7 A. The basic circumstance is that the state
8 would have to be shown or clear that the state
9 general fund did not have the resources to
10 implement -- that the resources -- that there were
11 not -- there would not be enough resources in the
12 state general fund to implement the budget that
13 had been adopted. In that instance, in order to
14 keep the state general fund balance above zero,
15 the allotment process can be triggered.

16 Q. Okay. So, that allotment process is sort
17 of a trump card that can be played?

18 A. Yes.

19 Q. With regard to that trump card, are there
20 any occasions in which the trump card cannot
21 legally be applied or used?

22 MR. CHALMERS: Again, maybe I could just
23 have a running objection because I gather you're
24 asking questions to him as his understanding as
25 the budget director and not for legal conclusions?

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1 MR. RUPE: That's true.

2 MR. CHALMERS: If I can just recognize
3 that that objection is raised for the record,
4 that's fine, or I can do it each time.

5 MR. RUPE: Well, I'm glad to stipulate it
6 however you want it. My understanding is he's not
7 a lawyer. I'm not asking you for a legal
8 conclusion, I'm asking you how it works.

9 MR. CHALMERS: Okay.

10 BY MR. RUPE:

11 Q. All right.

12 A. In practice, the allotment process allows
13 for a pretty, in my understanding of it, very
14 broad discretion to reduce activities,
15 appropriations in whatever manner necessary or
16 chosen to make the state general fund balance.

17 Q. Help me understand what a demand transfer
18 is.

19 A. Well, again, that would probably be --
20 there's a legal understanding of a demand
21 transfer, and I don't know that I'm qualified to,
22 or without some research into how the statutes
23 read, testify on that. I'm -- I might give you my
24 understanding of it.

25 Q. As the Director of Budget, I think that's

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1 an important understanding. Why don't you give it
2 to us.

3 A. A demand transfer is a situation where,
4 in essence, something is placed in the Kansas
5 statutes that if certain things occur or, by
6 formula, money is to be transferred, if those
7 things occur, money is to be transferred from the
8 state general fund to someplace else.

9 Q. Okay. And here is the question on your
10 experience as Director of Budget. Does the
11 allotment trump the demand transfer?

12 A. My understanding would be yes, and it has
13 been used to do that.

14 Q. Okay. On what occasions has an allotment
15 been used to reduce a demand transfer?

16 A. Oh, I could remember several. The
17 allotment process was used -- I mean, I don't know
18 if I'm remembering everything here, but in my
19 tenure as budget director, the allotment process
20 was used in the Governor -- in Governor Graves'
21 administration towards the end of it, it was used
22 twice, and the demand transfers for the -- there
23 was a demand -- two demand transfers, to the local
24 ad valorem tax reduction fund and to the
25 city/county revenue sharing fund were both reduced

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1 as part of the allotment process. And that would
2 have been, let me think here, I guess that would
3 have been 2002, probably November 2002. I'm not
4 sure of the -- I have to make sure I'm getting my
5 dates right, but right at the tail end of Bill
6 Graves' administration he triggered the allotment
7 process and those two demand transfers were cut.
8 During the Sebelius administration, the Health
9 Care Stabilization Fund transfer was reduced. We
10 get into -- we get into kind of a somewhat
11 confusing area here because I'm not sure if you
12 want a long answer here, but --

13 Q. I want a full explanation.

14 A. Okay. Earlier, the State of Kansas used
15 to use -- there used to be more things that were
16 called demand transfers than there are now, and
17 many of what -- many of the transfers which used
18 to be referred to as demand transfers were
19 switched over to be called revenue transfers.
20 In terms of how those transfers affect the bottom
21 line of state finances, in essence, there is
22 really no difference, but a demand transfer is
23 recorded as an expense and listed as an
24 expenditure item. A revenue transfer is listed as
25 a reduction to income, but not as an expense.

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1 So, when you go back and look at the Kansas books,
2 a revenue transfer would not appear as an
3 expenditure item, but rather in a year or at a
4 time when a revenue transfer was done, a revenue
5 transfer would be -- would reduce the amount of
6 income that came in.

7 Those items were -- that was a political
8 decision to switch many of those items. That
9 process started, I think that started someplace in
10 the Graves administration. I couldn't tell you
11 the exact times. And I believe, probably, that
12 that was a legislative initiative to switch many
13 of those. The reason they were -- many of them
14 were originally switched was because Kansas had an
15 ending balance law which required that the state
16 keep an ending balance equal to seven and a half
17 percent of expenditures. And if you had fewer
18 expenditures, you could have a lower ending
19 balance. And some of those demand transfers,
20 especially some of them to local governments, were
21 quite large. And if those were then switched to
22 be called revenue transfers, it meant that the
23 seven and a half percent ending balance did not
24 apply to those particular expenditures and the
25 ending balance could be lower. The transfers were

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1 still made. They were deducted from income, from
2 revenue, but they were not listed as expenditures.

3 Q. This --

4 A. So, many of those were switched from
5 demand transfers to revenue transfers.
6 Practically, they are the same thing, but -- so, I
7 answer long on that because in the last allotments
8 that -- those done both by Governor Sebelius and
9 by Governor Parkinson, there were quite a number
10 of revenue transfers which were affected. And
11 they are in many ways like a demand transfer, but
12 they are called something a little different.

13 Q. Okay. You said that was a political
14 decision. Was it a decision that was adopted as a
15 law by the legislature?

16 A. Yes, those would have been switched
17 statutorily as part of an appropriations bill.

18 Q. Okay. So, the --

19 A. There would be language someplace that
20 would say such and such is either now a revenue
21 transfer or something like that.

22 Q. Okay.

23 A. Or there could be language -- I don't
24 know, someone -- I am not -- I could not
25 definitively tell you all the changes that were

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1 made. It could be that there would be language
2 that says notwithstanding K.S.A., whatever the
3 demand transfer cite is, there could be language
4 that said notwithstanding that statute, something
5 else would happen for this year. That's a common
6 appropriation phrase.

7 Q. With regard to your best recollection,
8 this occurred at some point in the Graves
9 administration when the -- the concept of revenue
10 versus demand transfer was developed?

11 A. Yes, it would have been in the recession
12 -- in one of years surrounding the recession
13 before the current recession that we've just come
14 out of. So, it would have been around 2001 to
15 2003, in that time frame, approximately.

16 Q. Okay. With regard to the local ad
17 valorem situation you mentioned in the Graves
18 administration and the city/county revenue fund
19 that you mentioned in the Graves administration,
20 were those revenue transfers or demand transfers?

21 A. At the time that they were allotted?

22 Q. Yes.

23 A. I'm not sure I can say definitively
24 either way.

25 Q. Okay.

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1 A. It would have been my belief that they --
2 well, I'm just not sure.

3 Q. With regard to the Health Fund
4 Stabilization situation, was that -- in the
5 Sebelius administration, was that a demand
6 transfer or a revenue transfer that was allotted
7 at the time of the allotment?

8 A. Again, legally, someone else would have
9 to look at the language to see exactly what that
10 was.

11 Q. Is that --

12 A. It was a transfer.

13 Q. Is that another I don't know?

14 A. That's an I don't know.

15 Q. Okay.

16 A. I believe it to be -- I believe all these
17 to be on -- in the Kansas statutes as demand
18 transfers. The city/county revenue sharing
19 transfer, the local ad valorem tax reduction
20 transfer, the Health Care Stabilization transfer,
21 all of those would have a base cite and would be
22 part of the Kansas statutes as demand transfers.
23 It's possible that there is appropriations
24 language that converts them temporarily to -- and
25 calls them revenue transfers. I -- I can't say

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1 for sure what's there.

2 Q. The -- we'll get to this in a little bit,
3 but the 2009 capital outlay equalization that was
4 adopted by the Kansas legislature, was that a
5 demand transfer or a revenue transfer?

6 A. Again, I'm -- I'm not sure that I could
7 -- I could say for sure.

8 Q. Okay. Does the term --

9 A. It's a transfer.

10 Q. Okay.

11 A. And it would be listed in the list of
12 transfers that we keep and watch. It's a
13 deduction. I can't say for sure which legally --
14 which for legal purposes would apply.

15 Q. Did you ever obtain any -- let me pose
16 the question this way: Did you ever direct a
17 question to the Governor's attorney or the
18 Attorney General or any other attorney concerning
19 whether the allotment can trump demand transfers
20 or revenue transfers?

21 A. Is there a time frame to your question?

22 Q. Any time since 2000.

23 A. Yes. I do not remember definitive, any
24 kind of definitive request, but I'm certain that
25 in the allotment that Governor Graves was

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1 responsible for that allotted the transfer from
2 the city/county revenue sharing fund and local ad
3 valorem tax reduction fund that, that there would
4 have been discussion between the budget office and
5 the chief counsel for the Department of
6 Administration over that question. I do not
7 recall if there was discussion with the Governor's
8 counsel or not.

9 Q. Do you recall any --

10 A. And, in fact, I believe that -- well,
11 I'll just leave it there.

12 Q. Go ahead. That's fine.

13 A. There was a, a legal proceeding over
14 that, over that, that particular action, which I
15 do not recall -- I can't recall all the details to
16 that. I was never involved in any kind of court
17 proceedings, although there was a filing.

18 Q. The legal proceeding you're talking about
19 is on the Kansas Health Care Stabilization Fund?

20 A. No. Earlier than that with, with --

21 Q. In the Graves administration?

22 A. In the Graves administration with the
23 city/county revenue sharing fund and the local ad
24 valorem tax reduction fund. I can't tell you how
25 that came out or exactly how that transpired. But

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1 certainly as that -- as that action took place,
2 the local units of government were unhappy with
3 that -- with that action.

4 Q. Why?

5 A. Why were the local governments unhappy?
6 Because it reduced the transfer that went to them.

7 Q. It affected how much money they got?

8 A. Yes.

9 Q. Not through legislative action, but
10 through an allotment process?

11 A. That's correct.

12 Q. Would you explain to us how that
13 allotment process works? Who plays that trump
14 card and how do they determine the amount of the
15 allotment?

16 A. There are several steps to it. The first
17 step is that the Director of the Budget has to
18 make a certification that the state and the state
19 general fund is indeed in a condition that the
20 allotment -- that an allotment can be triggered.
21 The Director of Budget has to make a finding that,
22 given the demands on the state general fund and
23 the expected resources or revenues that will come
24 in or are expected to come in, that the state
25 general fund does not have the resources to

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1 implement or handle the budget that has been
2 approved. That finding has to occur first.

3 Q. Okay. And is that a certification, like,
4 signed under penalty of perjury kind of thing?

5 A. No, it's -- I don't -- I never thought of
6 it quite like that. It was a certification --
7 when I did that, it was a simple -- I mean, there
8 was the finding, but the finding and that
9 certification, if you will, was placed in a memo
10 that was then submitted or made part of public
11 record and was something that I signed as Director
12 of the Budget.

13 Q. Okay. So, once that certification
14 occurs, what's the next step in the allotment
15 process?

16 A. Well, there are probably kind of two
17 tracks here. One is a legal step. Technically,
18 the allotment, the first step is for the Director
19 of Budget to make a certification or a finding,
20 but the next step is that the Secretary of
21 Administration essentially does the allotment and
22 makes a determination of -- of what -- what items
23 will be reduced. That's really the legal step.
24 But practically, it's the Governor that makes
25 those determinations, and the Secretary of

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1 Administration is appointed by the Governor and I
2 suppose it would be possible for -- legally for
3 the Secretary of Administration to operate without
4 the Governor's knowledge on such a matter and
5 could legally just do it. Certainly, when I was
6 Secretary of Administration I didn't operate
7 without consultation, direct consultation with the
8 Governor. And really, publicly, practically these
9 are -- when an allotment decision is -- is taken,
10 the Governor announces it and it becomes known as
11 the Governor's allotment or the Governor -- the
12 Governor's decisions on what should be reduced.
13 So, practically, it's the Governor makes a
14 decision about what should be reduced and the
15 Secretary of Administration then, in essence,
16 implements that -- that decision. But statutorily
17 there is, once the Director of Budget makes a
18 finding, then that finding goes to the Secretary
19 of Administration, and the Secretary of
20 Administration then implements the procedure. But
21 there is a step, there is a practical step in
22 between there where the Governor and Governor's
23 staff are consulted, and really the Governor makes
24 the decision and then the Secretary of
25 Administration implements, although that

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1 consultation with the Governor isn't laid out in
2 the statute.

3 Q. If I'm on track, then, the Governor is
4 not needed in the process for the Secretary of
5 Administration to play the trump card?

6 A. I guess you're asking me a legal question
7 there which --

8 Q. No, I'm asking your understanding. I
9 mean, your understanding may be legal, it may not
10 be legal. I don't know.

11 A. No, the Governor is needed.

12 Q. So, the Governor plays a role, in your
13 experience --

14 A. Yes.

15 Q. -- in the allotment?

16 A. Yes.

17 Q. In fact, is the allotment called the
18 Governor's allotment?

19 A. Yes. Generally as a convention, it is.

20 Q. Okay. And the -- we are not talking
21 about two separate allotments, one being by the
22 Secretary of Administration and the other by the
23 Governor, are we?

24 A. No.

25 Q. Okay. But in terms of what you

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1 understand to be the statutory authority, that is
2 in the hands of the Secretary of Administration to
3 play that trump card, not the Director of Budget?

4 A. That's correct.

5 Q. But from '05 to when you left office, you
6 occupied both slots?

7 A. That's correct.

8 Q. Okay. Would you explain generally, and
9 then we're going to drill down on education, but
10 would you explain generally how the budget process
11 works?

12 A. The state budget process is a cycle --
13 first of all, the state operates on a fiscal year
14 of July 1 to June 30. The budget process
15 essentially begins one year before a budget, a
16 fiscal year would actually begin. So, one year
17 before a fiscal year, the Division of Budget sends
18 instructions about how to prepare a budget request
19 to all state agencies. That happens in mid
20 summer, about July 1, a year before the budget
21 would actually be -- budget period would actually
22 begin. Agencies prepare budget requests over the
23 remaining part of the summer and submit budget
24 requests, their budget requests to the Division of
25 the Budget on September 15.

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1 That budget request that state agencies submit is
2 a public record, it goes to the budget office, it
3 also goes to the Kansas Department of Legislative
4 Research. Any -- any citizen can request a copy.

5 The Division of Budget then takes those
6 agency budget requests and from September 15th
7 through November, about November 10, analyzes and
8 works over those budget requests and comes up with
9 a Division of Budget recommendation for what an
10 agency's budget ought to be for the upcoming
11 fiscal year. That recommendation made by the
12 Division of Budget is then given back to state
13 agencies on November the 10th. At that point, at
14 least the way it worked practically, the Governor
15 and Governor's staff had not seen anything yet.
16 It was purely a Division of Budget recommendation.
17 That would go back to state agencies November 10.
18 State agencies had 10 days to look that over, and
19 then agencies could submit what we called an
20 appeal to the Division of Budget's recommendation
21 by November the 20th. They could submit that
22 appeal in writing or they could also come and
23 visit with us in person.

24 Generally, once those appeals were submitted,
25 an agency would start to come back to visit in

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1 person. It used to be that the Governor would sit
2 and hear those appeals, but Bill Graves was the
3 last Governor to do that. Governor Sebelius and
4 Governor Parkinson did not ever sit personally to
5 hear the appeals, but some of their staff did.
6 And they would hear the appeals. And once that
7 appeal process -- appeal process is what we called
8 it, but it's not really. It's really probably a
9 -- not a perfect word for that. It's more of a
10 discussion about what the Division of Budget had
11 recommended and it allowed agencies to react to
12 it.

13 Once -- once that process had taken place,
14 which usually was done by Thanksgiving or late
15 November, then the Division of Budget and the
16 Governor and the Governor's staff would sit down
17 in early December and spend a lot of time
18 together, probably -- I mean, it generally took
19 full time for a week to two weeks of work between
20 Division of Budget staff and Governor's staff and
21 Governor to go through all of the different budget
22 items and prepare a budget recommendation that
23 would then be submitted to the legislature in
24 January at the start of the legislative session.
25 Usually the Governor would have made all of his or

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1 her decisions by, basically, mid December. And
2 once those budget decisions were completed, then
3 it was the task of the Division of Budget to
4 essentially write that up in a document, assemble
5 it all and the schedules and narrative and produce
6 a budget report that was then printed and used by
7 the Governor to submit to the legislature in
8 January.

9 **Q. And that becomes the Governor's Budget**
10 **Report?**

11 A. It becomes the Governor's Budget Report,
12 and it's the Governor's recommendation to the
13 legislature. At that point, that budget is a
14 recommendation. It has no force of law, but it is
15 the Governor's recommendation, and the convention
16 in Kansas is that that is then the starting point
17 for discussions in the legislature. And the
18 legislature then works, generally works from that
19 document to either add or subtract items, and they
20 spend the legislative session working that over.
21 They come up with their own version of the budget.
22 By the end of the legislative session, that gets
23 passed through both houses of the legislature and
24 then goes back to the Governor for either
25 signature or line item vetoes and signature.

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1 Q. At the time of the Governor's State of
2 the State, has the Director of Budget submitted a
3 final recommendation on a budget report to the
4 Governor?

5 A. Sure. I mean, we would have handled all
6 those final recommendations. All of those
7 decisions would have been hammered out in
8 December.

9 Q. Okay. And by the State of the State,
10 then, the actual budget is published?

11 A. Generally, it's released the day after.
12 The practice is to release it -- it has been to
13 release it the morning after the State of the
14 State address --

15 Q. Okay. But if --

16 A. -- or on the day of the State of the
17 State address. But, yes, the decisions have been
18 made. Those decisions have been assembled and put
19 into a document, and that document is then
20 publicly released in connection with the State of
21 the State address.

22 Q. With regard to your role as the Director
23 of Budget or the Director of Administration, did
24 your role in the budgeting process change at any
25 time between '05 and '10?

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1 A. No.

2 Q. Let me ask you if -- who was the chief
3 counsel for the Department of Administration in
4 '05 to '10?

5 A. Oh, would have been different people.

6 Q. Tell me the ones you remember.

7 A. When I started as Director of the Budget,
8 would have been Art Griggs, and I don't recall
9 when he would have left.

10 Q. Who was --

11 A. I did have consultations with Art Griggs
12 about some of these matters when you asked earlier
13 about whether discussions were held about -- about
14 demand transfers or the possibility of allotting
15 demand transfers. Those discussions would have
16 been held when Art was the chief counsel of the
17 Department of Administration.

18 Q. Okay. Do you know who replaced Art?

19 A. I'm not sure I have exact recollection of
20 that because he would have been replaced -- when
21 Bill Graves' administration was over and Governor
22 Sebelius took over, at that point she appointed --
23 at the start of her administration she appointed
24 Howard Fricke as Secretary of Administration, and
25 he brought a chief counsel, who I do not recall

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1 their name, and I did not have direct dealings
2 with them.

3 Q. And then after Howard Fricke?

4 A. Well, Howard wasn't chief counsel, but he
5 was Secretary of Administration.

6 Q. After his --

7 A. When Howard left, then I became Secretary
8 of Administration, and let me think. I did not
9 appoint anybody. I believe by that time Amy
10 Bertrand was the chief counsel, and I don't recall
11 whether she was there as Howard left and I came in
12 or soon after. I'm not sure of the exact timing.
13 Amy Bertrand was the next one that I dealt with
14 who I remember. And then following Amy, Patrick
15 Hurley.

16 Q. And was --

17 A. And then following Patrick, we had kind
18 of a hybrid situation where we had sort of
19 co-chief counsels until the end of my tenure, and
20 those co-chief -- those co-counsels were Shelley
21 King and Lane Hemsley, both of whom I believe are
22 still with the Department of Administration,
23 although not as chief counsels. So I am
24 uncertain. Between the period of Art Griggs and
25 Amy Bertrand, I'm a little fuzzy there.

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1 Q. All right. Is -- where is Patrick Hurley
2 now, if you know?

3 A. I do not know. He left, he left -- I
4 don't know where he is right now. He had -- he
5 had several -- he became the Governor's counsel
6 towards the end of the Parkinson administration
7 and then went to the Attorney General's office
8 from there working for Steven Six. And then after
9 the elections and the transfer from Six to
10 Attorney General Schmidt, Patrick Hurley left and
11 I do not know where he is now.

12 Q. Okay. Now, with regard to this business
13 of revenue versus demand transfer that we were
14 discussing, is there a reason that -- let me ask
15 the question another way.
16 Did you take that question to the Attorney
17 General's office at any time?

18 A. Revenue to demand transfers?

19 Q. Yeah, the difference between the two or
20 the -- the notion of whether you can use the
21 allotment to trump a demand transfer, those
22 issues. Did you ever go to the Attorney General?

23 A. In my recollection, we did not initiate
24 anything with the Attorney General. However, in
25 the allotments done more recently to -- I mean,

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1 not the Bill Graves', Bill Graves' allotments, but
2 in the more recent set that go with the current
3 recession, there was a question that arose on one
4 allotment item for the Health Care Stabilization
5 Fund and they went to the Attorney General and
6 asked for an opinion.

7 Q. The Health Care Stabilization Fund did?

8 A. Yes.

9 Q. Okay.

10 A. And in connection with their request for
11 an opinion, the attorneys -- Attorney General's
12 office contacted us and had -- or contacted the
13 Division of the Budget and the chief counsel for
14 the Department of Administration and had
15 conversations with us in their -- in their efforts
16 to form an opinion, but we didn't initiate it.

17 Q. Okay. Do you recall what the opinion
18 was?

19 A. The opinion was that it was fine to do
20 what we did.

21 Q. And what was fine?

22 A. To allot, to make the allotment or to
23 reduce the transfer from the general fund to the
24 Health Care Stabilization Fund.

25 Q. And again, the Health Care Stabilization

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1 Fund, was that a revenue transfer or a demand
2 transfer?

3 A. I'm unsure how -- how --

4 Q. Okay. Does the phrase Witt/writ mean
5 anything to you?

6 A. Yes.

7 Q. What is a Witt/writ?

8 A. A Witt/writ is not something that would
9 be defined statutorily, but something referred to
10 in the offices of the Division of the Budget and
11 the Kansas Legislative Research Department, and it
12 wouldn't be defined anyplace legally. But what it
13 refers to, one of the -- I'm not sure of her
14 title, but Witt, the Witt portion of that refers
15 to Annette Witt who is an employee of the Division
16 of Accounts and Reports within the Department of
17 Administration. And occasionally after an
18 appropriations bill would be passed, there would
19 be some item that for some reason there just
20 wouldn't be clarity on it, perhaps -- perhaps it
21 was unclear in the way it was written up or
22 perhaps -- perhaps there was a mistake that
23 everybody understood or some -- some -- some miss
24 in how the appropriations language was written
25 that needed to be clarified. Often when the

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1 legislature does the very last appropriations
2 bill, the omnibus appropriations bill, it's done
3 at the tail, tail end of the session and there're
4 -- the conference committee, to get agreement
5 between house and senate on the budget, operates
6 at night at all hours. There is, there is a lot
7 of negotiations, the legislature is trying to get
8 out of town, complete business. The conference
9 committee on the budget is kind of generally the
10 last conference committee that has to wrap up.
11 It's very detailed. There's a lot of stuff that
12 goes into that last budget -- budget bill, that
13 last appropriations bill.

14 And once the conference committees reach
15 agreement, that all has to be written up into
16 legal language and put in a bill so that both
17 house and senate can vote on it. And there's lots
18 of pressure for the legislature to go, to quit, to
19 finish. And so once the conference committee
20 reaches agreement, legislative staff scramble to
21 write the agreement up and put it in the form of
22 an appropriations bill. And, I mean, that can
23 happen -- I mean, sometimes -- I mean, there have
24 been instances where a conference committee would
25 wrap up at three in the morning, you know, or some

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1 such thing and the drafting of the -- of the bill
2 then would begin immediately and the legislature
3 would then be voting on that draft the next day,
4 you know, just as soon as it could be delivered.
5 And as a result, when things are being written
6 that fast and -- and prepared that quickly,
7 sometimes either mistakes or drafting errors or
8 things can occur that weren't really intended to
9 occur. And when that happens or if it can be
10 determined that that has -- something like that
11 has happened and there isn't clarity or there is
12 some kind of an error, we had a process so that --
13 we called it informally a Witt/writ so that as
14 Annette Witt, who would in the Division of
15 Accounts and Reports, was trying to put the legal
16 language of the appropriations bill into the chart
17 of accounts and know what to put in there, and if
18 she came upon a situation where there wasn't
19 clarity or where we knew there was some kind of a
20 drafting error or something that just didn't quite
21 line up, then sometimes we went through this
22 little process we called a Witt/writ where both
23 Alan Conroy, who was the Director of the Kansas
24 Legislative Research Department, and I, as
25 Director of the Budget, would sign a memo that

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1 clarified the situation. And Annette Witt would
2 then use that memo as the clarifying guidance for
3 what to include in the chart of accounts for that
4 particular item of appropriation.

5 She would not do that unless both Alan, on
6 behalf of the legislature, and I, on behalf of the
7 executive branch, would sign the memo, and which,
8 in essence, meant that both the Legislative
9 Research Department and the Division of the Budget
10 had to come to a consensus that, yes, this was a
11 matter that had to be or could be clarified by
12 some consensus that this is -- that it took place
13 in a particular manner.

14 Q. So, I guess it could have been --

15 A. There were -- there were times where we
16 -- where Alan and I, Alan Conroy and I discussed
17 possibly doing a Witt/writ, but agreed that it was
18 not appropriate; that it wasn't really a
19 clarification; that we didn't think -- it was not
20 used -- it was used as a way to clarify what
21 something was or, I mean, if -- if -- if -- if it
22 was quite clear, I mean, how an appropriation was
23 written, a Witt/writ wasn't used to undo what was
24 clearly placed in law. That had to be, can only
25 be undone by the legislature. It was used as a

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1 clarifying process.

2 Q. You jumped in with an answer before I
3 really had the question, but what your explanation
4 just was, was that, quote, Alan Conroy and I
5 discussed possibly doing a Witt/writ, but agreed
6 that it was not appropriate. Did that have
7 reference to the capital outlay equalization?

8 A. No, that was a general comment. I mean,
9 there were -- in any -- any given year, I don't
10 know, there might be two, three, four Witt/writs
11 on different items to get that kind of a
12 clarification.

13 Q. Let me get to the point. Do you recall
14 having any discussion or consideration of a
15 Witt/writ with regard to the '09-'10 capital
16 outlay equalization money?

17 A. I do not recall any direct discussion
18 with Alan Conroy on that.

19 Q. And I appreciate that information. My
20 question wasn't direct discussion, my question
21 was: Do you recall having any discussion directly
22 or indirectly?

23 A. I believe that there would have been
24 staff within the Division of the Budget who
25 discussed that with staff within the Legislative

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1 Research Department as a possibility of a way to
2 deal with that capital outlay situation. Which we
3 haven't really gotten to yet in this deposition.

4 Q. Okay.

5 A. But --

6 Q. Okay.

7 A. Referring to something we haven't yet
8 talked about, I believe there was -- there was
9 discussion among our staff as is that a possible
10 option of a way to deal with that issue? But it
11 never got to the point where Alan and I, at least
12 I have no recollection -- I do not have
13 recollection of talking to Alan directly about --
14 about doing such a thing. I think that was
15 considered -- that situation, which we have not
16 yet discussed, did not seem really appropriate for
17 -- maybe beyond the scope of what a Witt/writ
18 ought to do.

19 Q. Okay. Now, back to the budgeting
20 process.

21 With regard to that budget, how persuasive is the
22 Governor's budget in determining how much money is
23 actually budgeted by the legislature?

24 MR. CHALMERS: Object to the form. You
25 can go ahead and answer. I'm just making an

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1 objection for the record.

2 A. I mean, that's a matter of opinion on
3 whether it's persuasive. It's generally the
4 starting point.

5 BY MR. RUPE:

6 Q. Okay.

7 A. And what the Governor recommends is
8 never, ever in whole what is adopted. The
9 legislature always makes changes, and some years
10 they make more changes and some years they make
11 less.

12 Q. Does the Governor have any power to get
13 the legislature to comply with the recommendation?

14 A. What do you mean by power?

15 Q. Any tools of the trade that the Governor
16 can access to force the legislature to adopt his
17 or her recommendations?

18 A. You could answer that question as well as
19 I. I mean, the Governor is a powerful person with
20 influence and -- and depending on relationships
21 and -- and political standings, I mean, the
22 Governor -- the Governor recommends and certainly
23 encourages the legislature to adopt what -- what
24 has been recommended. But in terms of legal
25 power, you know, forcing the legislature to do

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1 such a thing, no.

2 Q. What about the -- during the period of
3 time you occupied the office, the Director of
4 Administration or the Director of Budget, did they
5 have -- did that position have any tools to force
6 the legislature to adopt the recommendations?

7 A. No.

8 Q. You saw the budget then as the starting
9 point for the legislative discussion and action?

10 A. Yes.

11 Q. As the Director of Administration or the
12 Director of Budget, at any time -- well, let's go
13 back. During the entire time you were either the
14 Director of Administration or the Director of
15 Budget, at any time during your tenure did you
16 ever provide information directly to the
17 legislature?

18 A. Directly to legislators, directly to
19 committees, yes. I would do that on behalf of the
20 administration, though. I think that it was
21 generally understood that if I testified before,
22 let's say, the ways -- House Ways and Means
23 Committee or the senate -- or before the Senate
24 Ways and Means or House Appropriations Committee,
25 that I was there speaking on behalf of the

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1 Governor or the -- the administration. I
2 certainly understood it that way.

3 Q. With regard to the testimony -- or strike
4 that.

5 With regard to talking to committees, you
6 would do that in the form of testimony to the
7 committee?

8 A. Yes, but if, if a legislator or -- asked
9 for information, and that was not often because
10 legislators have their own staff who they can ask,
11 to whom they can make information requests, but if
12 a legislator asked a question about the budget
13 directly to the Division of the Budget or to me,
14 we would make every effort to answer it.

15 Q. Okay. In the time frame '05 to '10, do
16 you recall having any one-on-one discussions with
17 any legislator concerning the budget as it
18 pertained to education?

19 A. Well, certainly, I would have had
20 discussions with a variety of legislators about
21 the topic of the education budget.

22 Q. I'm excluding committee testimony. I'm
23 talking about somebody calling you on the phone or
24 --

25 A. Sure.

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1 Q. -- coming into your office or -- can you
2 tell me --

3 A. I attended most of the Senate Ways and
4 Means and House Appropriations Committee hearings
5 that -- certainly, if they seemed to have some
6 import, I tried to be there and was generally
7 available in the hallways before and after
8 meetings or -- I mean, there were lots of chances
9 for informal one-on-one discussions that pertained
10 to all kinds of topics.

11 Q. All right. What I'm -- what I'm trying
12 to focus on is your best recollection of
13 conversations in the '05-'10 time frame that you
14 had with individual legislators concerning the
15 education budget. Do you recall any
16 conversations?

17 A. Well, that's a hard question because, I
18 mean, I would say -- I mean, I don't just -- there
19 isn't one conversation that just sticks out to me
20 as that's my conversation on education. I mean, I
21 would have had lots of conversations on all
22 aspects of education funding with a whole variety
23 of legislators. I mean, I --

24 Q. And my question is: Do you have a
25 recollection, can you tell me the names or name of

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1 any legislator that you have a recollection of
2 having a conversation with about education budget?

3 A. Well, I guess if I sat here and thought
4 about it and we had a lot of time, I could start
5 -- and we went down through a list of legislators
6 to help jog memories, I could probably think about
7 conversations that I had, but -- I mean, education
8 funding takes up half the state general fund
9 budget and that was just a common conversation.
10 Any kind of conversation about the state budget
11 that I would have with a legislator could have
12 easily gone to the education topic over the course
13 of many years. So, I mean, it's not like there's
14 one conversation. I mean, I might have had, I
15 mean, literally, I mean, there might have been
16 hundreds of conversations over the course of that
17 time.

18 Q. Okay. Is the State Board of Education an
19 agency?

20 A. Yes, I would think of it as an agency.

21 Q. Okay.

22 A. Whether that has a legal definition or
23 not, I don't know.

24 Q. And the Department of Education, is that
25 an agency?

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1 A. I think of it as an agency.

2 Q. Okay. And would they -- would the
3 Department of Education submit budget
4 recommendations different than the State Board of
5 Education?

6 A. No. The Department of Education would
7 submit budget recommendations on behalf of the
8 State Board.

9 Q. All right. And with regard to the
10 budgeting process that you explained, was there
11 anything different about the State Board of
12 Education, Department of Education's
13 recommendations than the other governmental
14 agencies?

15 A. No. I mean, they submitted -- they
16 submitted the same kind of information, same
17 forms, same instructions.

18 Q. Do you know what Governor Parkinson's
19 considerations for education were in terms of
20 priority?

21 A. Can you narrow that question down a
22 little bit to a time frame --

23 Q. Sure.

24 A. -- perhaps or --

25 Q. Well, my time frame with you is '05 to

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1 '10 when Governor Parkinson was the Governor.

2 A. Well, that would have been really one
3 budget, in essence, sort of one and a half.

4 Q. Okay. So the question is: Do you know
5 what Governor Parkinson's considerations for
6 education were in terms of priority?

7 MR. CHALMERS: I think I have to pose an
8 objection, and I think maybe that was part of why
9 the witness was pausing to the breadth of the
10 question in that I think that it can be phrased
11 where it's a legitimate question, but if what
12 you're trying to do is get at the communications
13 that --

14 MR. RUPE: Counsel, don't give a -- don't
15 give a rambling, long objection. You either got
16 an objection to the form or not.

17 MR. CHALMERS: Well, it's a privilege
18 objection, so I think I have to give a rambling.

19 MR. RUPE: Well, are you instructing him
20 not to answer?

21 MR. CHALMERS: No, but if you want to
22 take a break, we can talk about it. For the
23 record, let me complete my record, which is that I
24 think that the way the question is phrased it
25 talks about what might have been publicly stated

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1 and what might have also been imparted as -- as
2 the -- in executive nature as part of the mental
3 deliberative processes of the Governor and his
4 staff.

5 If you can break the question out in a
6 different way, that's fine. If you want me to
7 visit with him and find out if that's really a
8 problem so he can answer, that's fine, too.
9 However you want to handle it.

10 MR. RUPE: Well, let's limit the
11 question. I didn't appreciate there might be some
12 duplicitous action here.

13 MR. CHALMERS: I don't think it's
14 duplicitous.

15 BY MR. RUPE:

16 Q. With regard to the Governor's expression
17 of education as a priority, what did the Governor
18 Parkinson tell you in private?

19 A. I would not feel comfortable answering
20 for the record what Governor Parkinson's
21 priorities were. That's something that I think
22 you would have to get from Governor Parkinson. I
23 would prefer that if somebody's priorities are
24 being placed into the legal record, that they
25 answer them. I can answer perhaps how I

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1 understood them.

2 Q. Do that.

3 A. But would not make a claim that they were
4 his priorities.

5 Q. Okay. Tell me what you understood his
6 priority to be.

7 A. I'll state that by saying I believe there
8 were two important priorities that, as we put a
9 budget together and as we tried to manage things,
10 that I understood them to be. Certainly, one of
11 the priorities was that the budget had to balance
12 and that we had to stay financially solvent. I
13 think that -- I think that would be well
14 understood almost anyplace and that was a very key
15 consideration.

16 And second, after that, is that in that
17 process of trying to make the budget balance and
18 to stay financially solvent within a very
19 difficult financial situation, within a very
20 difficult financial situation, probably the most
21 difficult that the state had faced in many, many
22 years, that the Governor's priority was to keep as
23 much money flowing to education and to public
24 education as possible.

25 Q. Okay. Do you have any knowledge of Sam

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1 Brownback's, Governor Brownback's priorities to
2 education?

3 A. Only as a citizen observing, observing
4 the budget that he put forward to the Kansas
5 legislature this last January.

6 Q. Okay. I'm going to --

7 A. I do not have special knowledge.

8 Q. I'm going to give you a quote from
9 Governor Brownback and I'm going to ask you to
10 tell me how Governor Brownback's position compared
11 to Governor Parkinson's position.

12 The quote is: Brownback called education,
13 quote, the state's primary function, as important
14 to Kansas as defense is to the nation, unquote.
15 Compare that position on education to what you
16 understood Governor Parkinson's position to be?

17 MR. CHALMERS: Object to the form.

18 A. And those -- that's a question that I
19 really can't answer.

20 BY MR. RUPE:

21 Q. I'd have to talk to Parkinson?

22 A. (Nods head up and down.)

23 Q. Your answer is yes? Your answer is yes?

24 Audible.

25 A. That you'd have to talk to Parkinson?

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1 Q. Yes.

2 A. Yes.

3 Q. All right. Okay. Now, the information
4 that you gave to the Governor on your
5 recommendations -- and I'm speaking to you as
6 Director of Administration, when you were that,
7 and Director of Budget, when you were that. The
8 recommendations you made to the Governor
9 concerning education, where did you get your
10 information?

11 A. Well, certainly there were analysts
12 within the Division of the Budget who worked
13 directly on education issues. So personally, as
14 Director of the Budget, information would come up
15 through them, but together, speaking broadly, not
16 just me personally, but the Division of the Budget
17 received lots of information directly from the
18 Department of Education.

19 Q. Who were the analysts that worked on
20 education within the Department of Administration?

21 A. That changed from time to time over the
22 course of my tenure. In the last years, key
23 people within the Division of the Budget were Jeff
24 Arpin, A-R-P-I-N. He was a principal or still is
25 a principal analyst who covered education. And

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1 Elaine Frisbie, who in the last several years of
2 my time in the Division of the Budget was the
3 Deputy Director, and still is now.

4 But before Jeff Arpin had primary responsibilities
5 for education analysis, she had that education
6 analysis responsibility. And then -- and then as
7 Deputy Director, she also would have been heavily
8 involved in any discussions on public education
9 that we would have had within the division.

10 (THEREUPON, Goossen Deposition Exhibit
11 No 1¹ and No 2² were marked for identification.)

12 BY MR. RUPE:

13 Q. I'm going to hand you Exhibit 1¹ to the
14 deposition here and just ask you did you bring any
15 documents with you in response to your request to
16 be here, or do you have any documents in your
17 care, custody or control that any way, anyhow
18 relate to matters of education finance?

19 A. I do not. I left all documents that I
20 would have had either responsibility for or
21 anything -- anything -- any association with those
22 would all be in the hands of the State of Kansas.
23 And I no longer am employed by the State of
24 Kansas, and so don't have direct access or access
25 other than as a Kansas citizen.

1. Trial Exhibit 395.
2. Trial Exhibit 396.

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1 (THEREUPON, Goossen Deposition Exhibit
2 No 3¹ was marked for identification.)

3 BY MR. RUPE:

4 Q. I'm going to hand you what has been
5 marked Exhibit 3¹ and it's a fairly thick document.
6 I don't want to go through it at all, except to
7 ask you to look at it and do you recognize the
8 initials LPA?

9 A. Yes.

10 Q. Have you ever seen Exhibit 3¹ before?

11 A. I've seen it.

12 Q. When you made budget recommendations to
13 the Governor and, in turn, to the legislature, did
14 you rely on anything in Exhibit 3¹?

15 A. Well, I haven't reviewed this. I'd have
16 to think back on that. Let me describe it this
17 way: The -- the Court case that moved through the
18 Kansas court system, I do not know -- I mean, you
19 -- you're far more familiar with the exact dates
20 than I, but that system which essentially yielded
21 a, the way I would describe it, yielded a one-year
22 plan first with -- a one-year plan that the
23 legislature passed and the Governor signed to deal
24 with school finance, and then following that
25 one-year plan it yielded a three-year plan that,

1. Trial Exhibit 198.

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1 the way I understood this, essentially, I'm not
2 sure what the right legal term here would be,
3 resolved the court case.

4 That one-year plan and that three-year plan,
5 when we made budgets and tried to determine what
6 the Governor would recommend, we did try to take
7 into account what was statutorily required or what
8 the -- what amounts would be required in order to
9 fulfill that agreement, if you will. I'm not sure
10 if agreement is the right word, but what was -- we
11 did try to determine what was required in the
12 budget in order to maintain or fulfill that
13 agreement and that plan and tried to then advise
14 the Governor on those amounts.

15 Q. And did --

16 A. And to do that, to advise the Governor
17 and to understand those amounts --

18 Q. Call it Exhibit 3¹.

19 A. -- I would not say that we used Exhibit 3¹
20 directly. I know that Exhibit 3¹ was part of the
21 larger discussion and conversation in connection
22 with all of that, but I would say we thought of
23 that probably in a more general way as the
24 legislature passed something, the legislature put
25 something into statute on -- for a plan for how to

1. Trial Exhibit 198.

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1 proceed, and we tried to understand what that was
2 and what was required in order to meet that. And
3 our -- our effort at understanding that would have
4 relied fairly heavily on advice that we would have
5 received from the Department of Education, and to
6 some degree would have relied on, also on the
7 Kansas Legislative Research Department. We were
8 -- we had a practice of twice a year where the
9 Legislative Research Department, the Division of
10 the Budget and the Department of Education would
11 come together and we would do what is called a
12 school finance consensus estimate or a school
13 finance consensus agreement. I don't think that's
14 new information to anybody. It's not a
15 statutorily required process, but something that
16 we commonly did. And we generally did it twice a
17 year, once in November and once in April, to, to
18 -- to coincide with revenue, tax revenue consensus
19 estimate that Legislative Research and the
20 Division of the Budget also did and agreed upon.

21 **Q. Were minutes made of that school finance**
22 **consensus agreement meeting?**

23 A. Not in the sense that there would have
24 been a narrative set of minutes issued, but there
25 would have been an Excel spreadsheet which would

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1 have been produced, which would have had some
2 length, which would have outlined -- in essence,
3 what it would have shown is or what it does show
4 is the amount appropriated from the previous year
5 or the amount appropriated in a given year. There
6 would have been discussion of what had changed,
7 had enrollment -- I mean, let's say we were doing
8 that discussion, the November discussion. So, in
9 November we'd be three, four months into a fiscal
10 year and we would discuss both the budget that was
11 in place for that fiscal year, already passed,
12 legally adopted, and also would discuss the budget
13 for the upcoming fiscal year that we were about to
14 budget for. And we would have discussed anything
15 like changes in enrollment, changes in property
16 tax collections, and that kind of thing which
17 would affect the amount of money and the way money
18 flowed in a given fiscal year or in that current
19 fiscal year, discussed any revisions that needed
20 or should take place in order to meet what had
21 been intended by the legislature, and then we
22 would have also discussed what was required to
23 meet the obligations of the agreement for the
24 coming fiscal year.

25 Q. What do you mean the agreement for the

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1 coming fiscal year?

2 A. The three-year plan for funding
3 education.

4 Q. That was adopted?

5 A. That was adopted.

6 Q. Okay.

7 A. We would have had a fairly detailed
8 discussion about what was required in order to
9 meet that.

10 Q. Okay. In terms of Exhibit --

11 A. In November before -- before the Governor
12 would have made budget decisions, and it's really
13 -- I'm still trying to answer your previous
14 question. It's -- it's really out of that
15 discussion that we would have formed a definitive
16 opinion of what's required going forward to meet
17 the obligations of the statute and the agreement,
18 and we would have advised the Governor that here
19 is the consensus view, a consensus between
20 Legislative Research, Division of Budget and the
21 Department of Education. That is the consensus
22 view of what is required. And so the Governor
23 would have had that, that advice, but the
24 legislature would have had that advice as well.
25 The Legislative Research Department would have

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1 taken that same set of numbers to the legislature
2 and would have advised them that -- on those same
3 amounts.

4 (THEREUPON, Goossen Deposition Exhibit
5 No 4¹ was marked for identification.)

6 BY MR. RUPE:

7 Q. I'm going to hand you Exhibit 4¹ to add
8 with Exhibit 3², and that is a document from LPA
9 dated August 14, 2008, and my question to you is:
10 With regard to the time frame of this school
11 finance consensus agreement meeting, what were the
12 years that you presented to the legislature this
13 Excel spreadsheet or Legislative Research and the
14 Governor, what years did you present this
15 spreadsheet that you referenced?

16 A. I'm not sure I would use the word
17 present.

18 Q. Give.

19 A. We had it.

20 Q. Okay.

21 A. I mean, there was not a formal process
22 where we sent it to them.

23 Q. Okay.

24 A. I mean, it was available. I mean, it's
25 not a -- there was no -- certainly no secret or

1. Trial Exhibit 176
2. Trial Exhibit 198.



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1 anything like that.

2 Q. Do you know if the Governor ever saw it?

3 A. Oh, no, the Governor would have never
4 seen the actual spreadsheet.

5 Q. Okay.

6 A. We would not have sent it to him. We
7 would have -- we would have said, Governor, this
8 is what's required or this is what -- what we need
9 to do budgetarily. We would have interpreted it
10 for him or her.

11 Q. Did this process ever -- did you ever
12 follow this process with Governor Sebelius?

13 A. Sure.

14 Q. Okay. And then the years that Governor
15 Parkinson was Governor?

16 A. We did this every year that I was the
17 Director of the Budget. We would have met twice a
18 year in basically November and April to do this
19 very thing from the time I began in 1998 until the
20 time I left.

21 Q. Okay.

22 A. We did not always -- in these last years,
23 we did not always do one of these meetings in
24 April. We always did one in November ahead of
25 putting the Governor's budget together. It had

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1 been our normal practice to also have such a
 2 meeting in April, but in the last few years we
 3 didn't always do that, just because we didn't
 4 believe it would be helpful or necessary.

5 Q. With regard to Exhibit 3¹ and 4², did you
 6 ever present those to the Governor as part of your
 7 school finance consensus meeting?

8 A. I don't recall that we did.

9 Q. Okay.

10 A. If I had to answer yes or no, I would say
 11 we did not, but --

12 Q. Okay. Let's ask the same --

13 A. But I don't recall.

14 Q. -- questions with regard to what I'm
 15 going to hand you.

16 (THEREUPON, Goossen Deposition Exhibit
 17 No 5 was marked for identification.)

18 BY MR. RUPE:

19 Q. Have you seen Exhibit 5³ before?

20 A. Yes, I have.

21 Q. Do you know what this is?

22 A. Yes. It's a study by Augenblick and
 23 Myers that was done -- it's dated May 2002. It's
 24 a study that the legislature commissioned the firm
 25 of Augenblick and Myers to do to study what it

1. Trial Exhibit 198
2. Trial Exhibit 176
3. Trial Exhibit 203

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1 costs to produce a suitable education in Kansas.

2 Q. Let me ask this question in terms of
3 Director of Administration, Director of Budget.
4 Did you, in that role, ever request or otherwise
5 cause a study to be conducted regarding the actual
6 cost of education in Kansas?

7 A. No.

8 Q. Did you present Exhibit 5¹ at any time as
9 part of the budgeting process while you were
10 either Director of Administration or Director of
11 Budget?

12 A. No. I have no recollection that we ever
13 would have presented this to the Governor,
14 although the Augenblick and Myer study was well
15 discussed across many, many -- between many
16 parties. It was heavily, heavily used and talked
17 about. We never -- I have no recollection that we
18 ever had this document and laid it in front of the
19 Governor.

20 Q. Okay. Did you --

21 A. It could have come up in conversations
22 about what to include in a budget. That's
23 possible.

24 Q. Do you have any recollection of ever
25 reading it?

1. Trial Exhibit 203.

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1 A. I don't have recollection of ever reading
2 it from page 1 to the end. I have recollection of
3 opening the document and looking at various parts
4 of it.

5 Q. Okay. In terms of the Court case you
6 mentioned and the one and three-year plans, did
7 you ever provide information to either the
8 Governor or the legislature concerning the
9 Augenblick and Myer cost study that you recall?

10 A. I do not recall any -- any such
11 presentation.

12 (THEREUPON, Goossen deposition Exhibit
13 No 6¹ was marked for identification.)

14 BY MR. RUPE:

15 Q. Okay. I'm going to hand you what has
16 been marked as Exhibit 6¹ and ask you if you can --
17 sorry, I have two -- do you recognize what Exhibit
18 6 is?

19 A. Not immediately.

20 Q. It's a report by the 2010 Commission.
21 Have you seen this before?

22 A. I'm aware of it. I don't believe I've
23 read it.

24 Q. Did you ever present any of its findings
25 to either the Governor or the legislature, to your

1. Trial Exhibit 397.

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1 recollection?

2 A. Not to my recollection.

3 Q. There's a statement in here by the 2010
4 Commission that says in the first paragraph, quote
5 -- in the middle of the summary of the reports,
6 Conclusions and Recommendations, that first
7 paragraph. Quote, we found a strong association
8 between the amounts districts spend and the
9 outcomes they achieve, unquote.
10 First of all, do you agree with that?

11 MR. CHALMERS: Object. Lack of
12 foundation, to the extent you're asking for an
13 opinion.

14 BY MR. RUPE:

15 Q. I want to find out if you have an
16 opinion, and then I'll ask you whether you -- the
17 basis for your opinion. With regard to that
18 statement, do you agree with it?

19 MR. CHALMERS: Same objection.

20 BY MR. RUPE:

21 Q. Subject to the same objection.

22 A. I do not have an opinion on that
23 statement.

24 Q. Just out of curiosity, do you think the
25 Director of Administration or the Director of

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1 Budget, playing the role that you did in the
2 formation of over one-half the state's overall
3 budget adopted by the legislature, do you think
4 it's important to know what effect the money spent
5 might have on education of Kansas kids?

6 MR. CHALMERS: It's argumentative.

7 BY MR. RUPE:

8 Q. He's making his objection for the record.
9 Do you have an answer?

10 A. Can you restate the question?

11 Q. Sure. Just out of curiosity, do you
12 think the Director of Administration, the Director
13 of Budget, playing the role you did in the
14 formation of over one-half the state's overall
15 budget adopted by the legislature, do you think
16 it's important to know what effect the money spent
17 might have on education of Kansas kids?

18 A. I do.

19 Q. Okay. Did you ever investigate that to
20 determine --

21 A. How would you define investigate? What
22 -- what does that include?

23 Q. Did you ever take a look-see --

24 A. Does that mean --

25 Q. -- at any information to decide whether

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1 money spent made a difference in Kansas kids'
2 education?

3 A. Well, there have been -- I mean, I'm not
4 prepared to cite studies, but there have been
5 varying efforts to try to measure that or to -- to
6 determine whether there is a direct correlation
7 between money spent and outcomes. And I --
8 without reviewing all of those studies in recent
9 days, I can't -- I can't cite particular studies,
10 but I don't know that -- my sense is that not all
11 of those studies are conclusive or reach the same
12 conclusion.

13 We certainly would have, and I would have
14 wanted to know what information like that is out
15 there. We did not, in the Division of Budget,
16 initiate any, any direct efforts to study that
17 kind of thing, except for one, which was initiated
18 under the Sebelius administration where a contract
19 was made with Standard and Poor's to look at
20 Kansas education data and financial data to try to
21 determine which school districts were delivering
22 the most efficient product and what it was costing
23 them.

24 Q. Okay. And with regard to your thought
25 process when you made recommendations as part of

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1 the budgeting process for educational dollars, did
2 you operate under the assumption in your own mind
3 that the money spent had a positive impact on
4 Kansas kids?

5 A. We operated -- I operated at the Division
6 of the Budget with that mind-set on all
7 appropriations; that the money that we were
8 advising and helping the Governor decide how to
9 spend was having a positive effect on Kansas
10 citizens. If we determined that it was not having
11 a positive effect, then we tried not to spend it.

12 Q. Okay. And that would include Kansas kids
13 and education dollars?

14 A. (Nods head up and down.)

15 Q. Your answer is yes?

16 A. Yes.

17 Q. Thank you.

18 (THEREUPON, Goossen Deposition Exhibit
19 No 7¹ was marked for identification.)

20 BY MR. RUPE:

21 Q. Okay. Let me hand you Exhibit 7¹ and ask
22 you to identify this, please.

23 A. This is the State's application for State
24 Fiscal Stabilization Fund funds from the federal
25 government. These funds were available through

1. Trial Exhibit 398.

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1 the what was called the American Recovery &
2 Reinvestment Act.

3 Q. Okay.

4 A. And --

5 Q. Look at -- I'm sorry.

6 A. This is the State's application.

7 Q. With regard to the lower right-hand
8 number, there are what I call them Bates numbers.
9 I don't know what anybody else calls them, but
10 LEG003389.

11 A. Okay.

12 Q. If you would turn to the one that says
13 LEG003391, the question is: Is that your signature
14 that you signed on May 26th, 2009?

15 A. That is mine.

16 Q. Okay. And is that your handwriting on
17 the date as well?

18 A. Yes.

19 Q. And it says you are the authorized
20 representative of the Governor, and then two
21 lines, three lines up it says, quote, "To the best
22 of my knowledge and belief all the information and
23 data in this application are true and correct."
24 Is that what it says?

25 A. That's what it says.

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1 Q. And did you understand that when you
2 signed it?

3 A. Yes.

4 Q. Were ARRA funds to be a supplement to
5 state funds?

6 A. That question could be interpreted as a
7 legal question, and I can tell you my
8 understanding of it. I cannot interpret what
9 would be in federal law. There might be -- I
10 mean, the ARRA funds were made available through a
11 federal act with multitudinous rules, regulations
12 and things that surrounded them. And in terms of
13 intent and what was required, I can answer based
14 on my understandings of that and based on --

15 Q. Please do.

16 A. But it's not necessarily the
17 understanding of someone who is a lawyer or an
18 interpreter of federal statutes.

19 Q. Okay. Tell me what your understanding
20 was with regard to AR --

21 A. My understanding is that the federal
22 government made this money available and that it
23 could be used to enhance what states already were
24 doing on education funding, but also could be used
25 in a way to make up for budget reductions in

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1 education that states felt it was necessary to --
2 to impose in order to stay financially solvent.

3 Q. So --

4 A. The key, the key thing in interpreting
5 how the money was to be used was a, essentially, a
6 maintenance of effort. There was a level at which
7 state funds were not allowed to go -- you could
8 not have state funds drop below a certain level
9 and receive the federal dollars. And in our
10 implementation of -- in our administration of --
11 of this money coming to Kansas, we tried to be
12 very careful that -- that we maintained that
13 minimum level of state effort.

14 Q. So, your understanding was that ARRA
15 funds could be used to supplement state dollars?

16 MR. CHALMERS: Objection.

17 BY MR. RUPE:

18 Q. And to supplant state dollars?

19 MR. CHALMERS: It's been asked and
20 answered.

21 A. Supplement and supplant are your key
22 words in that question. I would not use those
23 words, but, rather, say it was possible for this
24 money to be used to make up for reductions in
25 education funding that were imposed or were put in

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1 place in order to balance the state budget, which
2 is different than the words you used.

3 BY MR. RUPE:

4 Q. Well, I don't want to get into a
5 semantical discussion, but with regard to the term
6 supplant, what do you understand that to mean?

7 MR. CHALMERS: That's argumentative.
8 It's been asked and answered.

9 MR. RUPE: No, I haven't asked him.

10 BY MR. RUPE:

11 Q. What do you understand the term supplant
12 to mean? It may be another Witt/writ kind of
13 deal, I don't know.

14 A. Supplant, to me, means you trade out the
15 federal dollars for state dollars, and the state
16 dollars would then be used for something else.

17 Q. And how is that different than if the
18 state chooses not to fund education to a certain
19 level and use the federal dollars to plug into
20 that amount to --

21 A. The difference is that the state reduced
22 education in order to balance, to make the budget
23 balance.

24 Q. Okay. Speaking of reducing, I want to go
25 back to the allotment process and kind of drill

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1 down on Governor's Parkinson's --

2 MR. CHALMERS: Does it make sense to take
3 a break? We've been going for about an hour and a
4 half or actually about an hour and 45 minutes. If
5 this is a good place.

6 MR. RUPE: Any time is a good place, Art.

7 THE VIDEOGRAPHER: It is now 10:40 and we
8 are now off the record.

9 (THEREUPON, a recess was taken.)

10 THE VIDEOGRAPHER: It is now 10:48 and we
11 are now back on the record.

12 BY MR. RUPE:

13 Q. Are you aware that Governor Parkinson
14 approved a budget allotment on or about July 2nd,
15 2009?

16 A. Yes.

17 Q. And did it cut \$39,327,580 from the
18 school funding formula?

19 A. That sounds approximately right.

20 Q. Do you know what the initials BSAPP stand
21 for?

22 A. Base state aid per pupil.

23 Q. And did you understand that funding
24 reduction to cut \$62 from the BSAPP?

25 A. I can't remember the exact amount that

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1 was involved.

2 Q. Okay. With regard to that particular
3 allotment process, what was your role?

4 A. My role would have been to advise the
5 Governor on possible items to include in the
6 allotment. And then once those decisions were
7 made on what to include, to implement the
8 allotment.

9 (THEREUPON, Goossen Deposition Exhibit
10 No 8ⁱ was marked for identification.)

11 BY MR. RUPE:

12 Q. Okay. Let me hand you Exhibit 8ⁱ and ask
13 you if you can identify this document?

14 A. It's the basic documents that went with
15 that allotment. There is the initial, the initial
16 finding, then there is a what we call a state
17 general fund outlook or a presentation of the
18 basic summary numbers of the state general fund,
19 and then a list of allotments.

20 Q. Okay. If you would, go to the, oh, four,
21 five pages down there's a Bates number at the
22 bottom, A1833. It's a letter signed by you.

23 A. A -- okay.

24 Q. What is this December 23, 2009 letter
25 from you to Kent Olson?

1. Trial Exhibit 353, 359, 373.

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1 A. This would be the letter certifying the
2 exact budget units that need to be adjusted in
3 order to implement, not the July 2 allotment
4 that's part of this Exhibit 8^d, but the later
5 allotment that would have been included in
6 November -- Governor Parkinson did two allotments,
7 one in July and one in November.

8 Q. Okay. So, the December 23 letter has to
9 do with the November allotment?

10 A. I believe so, yes.

11 Q. And would there have been a similar
12 letter for the July allotment?

13 A. I assume so, yes.

14 Q. Okay. Turn back a couple of pages to
15 GOV002927, a letter to Kent Olson from Steven J.
16 Anderson. What's that letter?

17 A. Looks like a cover letter for a similar
18 kind of thing that went with the allotment that
19 was announced by Governor Brownback.

20 Q. In '11?

21 A. Uh-huh. I haven't seen that before.

22 Q. Okay. With regard to the November 23,
23 2009 budget allotment, did it cut 134,355,363 from
24 school funding?

25 A. I do not recall the exact amount. That's

1. Trial Exhibit 353, 359, 373.

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1 possible.

2 Q. Okay. \$206 from the base, if you recall?

3 A. That's also possible. I do not remember
4 the exact amount.

5 Q. Would you -- what was your role in the
6 November allotment process?

7 A. Same as July.

8 Q. With regard to what Governor Parkinson
9 relied on to make the July 2nd, 2009 allotment, do
10 you know what Governor Parkinson, with regard to
11 education funding, relied on in approving that
12 allotment?

13 A. I don't recall all of the discussions
14 that we had. I do remember that we brought a list
15 of possibilities to the Governor of things that
16 could be done. There were several meetings to
17 discuss how to proceed and the Governor made
18 decisions.

19 Q. Was there ever a discussion of whether or
20 not education could be the subject of the
21 allotment?

22 A. You mean whether it was legally possible?

23 Q. Yeah.

24 A. I don't recall any discussions like that.

25 Q. Same question with regard to November, do

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1 you know what the Governor relied on in terms of
2 education and approving the allotment?

3 A. The answer would be the same.

4 Q. And I take it from your remark that you
5 had not seen that April 2011 letter that you have
6 no knowledge of what Governor Brownback considered
7 when he made allotments?

8 A. That's correct.

9 Q. Do you have a recollection that the base
10 state aid per pupil for 2009-2010 was \$4,492?

11 A. That sounds right.

12 Q. Are you aware the Kansas State Board of
13 Education at its July 15, 2009 meeting recommended
14 that the legislature return the base state aid per
15 pupil to its statutory level of 4,492?

16 A. It could have happened. I don't have
17 recollection of that specifically.

18 Q. While you may not have a recollection of
19 the exact amount, do you recall the State Board of
20 Education taking action to recommend to the
21 legislature that the BSAPP return to its statutory
22 level?

23 A. Vaguely. I mean, that's -- that's a
24 common thing that the Board would do.

25 Q. Well, I can tell you, and you probably

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1 recall, that the State Board of Education
2 requested an increase of \$281,780,223 in
3 educational funding in July of 2009. My question
4 to you is: As the Director of Administration and
5 the Director of Budget, what did you do with that
6 information?

7 A. You're talking about the formal budget
8 request?

9 Q. Yes.

10 A. That information would have been relayed
11 on to the Governor. We would have understood that
12 information, that that's their request, as we
13 understood all, all agencies were then making
14 requests, and agencies have the ability to request
15 as much as they think they need. That's -- under
16 Kansas statute they can do that, and we would have
17 understood that that's what the Board of Education
18 really thinks they ought to have if finances were
19 no issue.

20 Q. Now, does that come to your attention in
21 the form of a budget or just a flat recommendation
22 for dollars?

23 A. There is a set of forms that each agency
24 fills out.

25 Q. Okay. So, so, in terms of the requested

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1 increase by the State Board, it would have been
2 justified by filling out the form that is required
3 by your office in order to make an increase?

4 A. Yes, there would have been a set of
5 numbers and also a narrative, a written narrative
6 that would have explained and justified their
7 request.

8 Q. Are you familiar with how the school
9 funding formula works? And particularly, I want
10 to focus on the pupil weights, the weighting
11 system.

12 A. I would not hold myself out to be an
13 expert, but I have general knowledge of it, yes.

14 Q. In your experience in putting together
15 budget recommendations through the years, have you
16 become aware that there are some kids that, by
17 reason of their circumstance or their
18 disabilities, cost more to educate than other
19 kids?

20 A. Yes.

21 MR. CHALMERS: Lack of foundation.

22 BY MR. RUPE:

23 Q. Did you ever pass judgment, either by a
24 contrary recommendation or by any recommendation,
25 to the -- to the Governor or to the legislature,

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1 did you ever express an opinion that the pupil
2 weighting system was not accurate?

3 A. No, I don't recall any -- any judgments
4 like that.

5 Q. I'm going to assume this by your actions,
6 and if your actions are otherwise, tell me, but I
7 assume by the fact you didn't offer up any
8 criticism of the weighting factors, that you, in
9 the budgeting process, accepted those weighting
10 factors?

11 A. The weighting factors are part of Kansas
12 statute.

13 Q. So, you accepted them?

14 A. Generally, the budget office tries to
15 accept Kansas statutes.

16 Q. Okay. And -- and I know the budget
17 office has done this before, and my question is:
18 Did you do it with regard to the pupil weighting
19 factors, any recommendations to the legislature to
20 change those factors?

21 A. I don't recall any.

22 Q. But you know from the school finance
23 formula that the districts obtain their money in
24 those school districts that receive weighted
25 enrollment dollars, that those districts multiply

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1 the total weighted enrollment by the base state
2 aid. That's how it works?

3 A. I understand.

4 Q. So -- this is an arithmetic question.
5 Because of the weighting system, do school
6 districts with higher weighted enrollment take a
7 higher per actual pupil cut than those school
8 districts with lower weighted enrollment --

9 MR. CHALMERS: Incomplete hypothetical.

10 BY MR. RUPE:

11 Q. -- when the Governor's allotment is
12 applied?

13 MR. CHALMERS: Same objection.

14 MR. RUPE: There is nothing technical
15 about this. It's pure arithmetic.

16 MR. CHALMERS: In which case you need to
17 ask the question, Counsel.

18 MR. RUPE: Well, if you'll stipulate to
19 that fact, I'll move on.

20 A. I'll say this: The Department of
21 Education has a procedure that they use in cases
22 where an appropriation is not -- where an
23 appropriation is made, but not fully delivered.
24 They have a -- they have some kind of a
25 proportional way to apply the reduction.

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1 BY MR. RUPE:

2 Q. Do they have statutory authority to do
3 that?

4 A. I don't know.

5 Q. But setting that mechanism aside,
6 whatever it is, if the allotment is applied across
7 the board because of the weighting system, do
8 school districts with higher weighted enrollment
9 take a higher per actual pupil cut than those
10 districts with lower weighted enrollment?

11 MR. CHALMERS: Incomplete hypothetical.

12 A. Well, it's the same question as before,
13 and I think -- I mean, that's a question that
14 ought to be directed to the Department of
15 Education. They would have been the ones
16 administering that.

17 BY MR. RUPE:

18 Q. Are you aware of a fund through the
19 Department of Education that offsets the cuts to
20 school districts with weighted enrollment?

21 A. Not as you've described it just now.

22 Q. Well, what do you understand the
23 mechanism to be that the Department of Education
24 uses in offsetting that cut?

25 A. I don't know what you mean by offsetting.

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1 I mean, if --

2 Q. Well, explain to me what you meant when
3 you said there was a mechanism in the Department
4 of Education?

5 A. If an amount has been appropriated for
6 schools for general state aid for whatever part of
7 the school finance formula, if an amount has been
8 appropriated and the department has given
9 information to school districts on what they
10 should expect and then an allotment or some
11 reduction is put into place, then the full amount
12 that was to be distributed can't be distributed
13 because the department doesn't have the money or
14 doesn't have the funds to distribute it and they
15 have to have some kind of a mechanism then to --
16 to proportion the reduction out to school
17 districts, and that's something that the
18 department did. We did not -- the Division of
19 Budget did not impose or direct or in any way try
20 to influence that. That was a department
21 decision.

22 Q. But statutorily, the Department of
23 Education can't change those weighted formulas any
24 more than the Director of Administration can?

25 MR. CHALMERS: Asked and answered. Calls

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1 for a legal conclusion.

2 A. The Department of Education is in charge
3 of distributing the money that flows to them.

4 BY MR. RUPE:

5 Q. And I appreciate that information. My
6 question was: They don't have any ability legally
7 to change the weighting factors any more than the
8 Director of Administration, do they?

9 A. I don't know the --

10 MR. CHALMERS: Same objection.

11 A. I don't know the legal issues involved in
12 that.

13 BY MR. RUPE:

14 Q. Assume with me for the purpose of this
15 question nobody, no how, no way except the
16 legislature can change the weighted pupil.
17 Without a change in the weighted amounts, because
18 of the weighting system, school districts with
19 higher weighted enrollment take a higher per
20 actual pupil cut than districts with lower
21 weighted enrollment, true?

22 MR. CHALMERS: Incomplete hypothetical,
23 also vague.

24 A. I don't have an opinion on the question.

25 BY MR. RUPE:

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1 Q. Are you aware that the BSAPP was reduced
2 to \$4,012 for the 2010-'11 fiscal year?

3 A. Yes.

4 Q. Are you familiar with Senate Bill 23
5 enacted in 2009?

6 A. Yes, but whether I could remember all of
7 the details or all of the things that went with
8 it, that's more questionable, but, yes, I
9 understand the basic bill.

10 Q. Let me see if I can refresh your
11 recollection with this information. Are you aware
12 that Senate Bill 23 cut \$33 from the base state
13 aid per pupil lowering it from 4,433 to \$4,400?

14 A. That sounds about right.

15 Q. And do you recall it reduced special
16 education funding by one percent?

17 A. That sounds also correct.

18 Q. And reduced the statewide educational
19 funding by \$25,345,039 for fiscal year 2009?

20 A. Again, that sounds correct. It's been
21 some time since I have reviewed that in any
22 detail.

23 Q. Okay. But in terms of 2009, are you
24 familiar with House Bill 2354 that cut \$33 more
25 from the base, lowering it from 4,400 to 4,367?

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1 A. Yes.

2 Q. And cut one percent from special
3 education funding?

4 A. Yes.

5 Q. And reduced the statewide educational
6 funding by \$27,009,474?

7 A. I recall the bill and the general
8 approach.

9 Q. And also, House Bill 2373 enacted in 2009
10 that cut \$87 from the base state aid per pupil,
11 lowering it from 4,367 to 4,280?

12 A. Yes.

13 Q. And reduced statewide educational funding
14 by the amount of if \$54,630,111?

15 A. Yes. Again, I have not reviewed those in
16 some time, but I recall the general bill?

17 (THEREUPON, Goossen Deposition Exhibit
18 No 9¹ and No 10² were marked for identification.)

19 BY MR. RUPE:

20 Q. I want you to take a look at Exhibit 9¹
21 and 10. What is Exhibit -- I know 10² is a press
22 release. We'll get to that in a minute. I just
23 want to ask you about a quote in that, but on
24 Exhibit 9¹, what is Exhibit 9¹?

25 A. It's the Journal of the House from March

- 1. Trial Exhibit 364.
- 2. Trial Exhibit 399.



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1 30, 2005.

2 Q. Turn to the second page of that exhibit
3 that has a Bates number LEG003094.

4 A. Uh-huh.

5 Q. And look at the quote in the third
6 paragraph, quote, "Finally, HB 2247 is a quick
7 fix, not a long-term solution. It proposes to
8 spend money we will not have." Do you see that?

9 A. Are you still on --

10 Q. Yeah, Exhibit 9¹ is the Journal of the
11 House and we pulled one page, 603, and there is a
12 comment that says, "Finally HB 2247" --

13 A. Okay, I see it now.

14 Q. Okay. And my question is: Do you agree
15 with that?

16 A. That's a statement made in 2005.

17 Q. Well, let me ask you this: Is it normal
18 for the Kansas legislature to pass legislation to
19 spend money the state doesn't have?

20 A. My sense is what they were referring to
21 is that if the school, and I have not studied this
22 or reviewed it, but my sense is that they were --
23 that the legislators inserting this language in
24 the Journal were indicating that in order to
25 fulfill the legislation that was put in place, the

1. Trial Exhibit 304.

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1 multi-year plan, that the revenue to fund that
2 might not materialize, enough revenue may not
3 materialize in order to do that.

4 Q. Okay. And if you look at Exhibit 10,¹
5 which is an article. What I want to ask you
6 about, if you agree with, is the last paragraph on
7 the first page of Exhibit 10: "In fact, the school
8 finance bill that will become law, which is
9 similar to many others contemplated by lawmakers
10 during the session, is projected to leave the
11 state with a 422 million budget deficit by mid
12 2008." Do you see that?

13 A. Yeah.

14 Q. Now, does that refresh -- do these two
15 items refresh your recollection that at the time
16 House Bill 2247 was adopted, the notion was that
17 there may not be sufficient revenue to pay for it?

18 MR. CHALMERS: Object. The question is
19 vague as to notion. Upon whose part?

20 MR. RUPE: On the part of the
21 legislature.

22 MR. CHALMERS: Well, are you suggesting
23 that these reflect the legislature's notion
24 because I'm not sure how the Journal --

25 MR. RUPE: I appreciate your comments,

1. Trial Exhibit 399.

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1 Counsel. Let's -- let's hear what the witness has
2 to say.

3 MR. CHALMERS: Well, I object to the form
4 of the question, I guess, to the extent that it's
5 presuming things that are not in evidence.

6 BY MR. RUPE:

7 Q. Well, let me ask you. In 2005, when
8 House Bill 2247 was adopted, did you have concerns
9 that there was going to be a budget deficit that
10 wouldn't pay for what was being adopted?

11 A. When budgets are adopted, they are a
12 current year budget as revised and a new budget is
13 passed for the upcoming budget year -- fiscal year
14 that hasn't actually started yet. And in those
15 years, for both the current year that the state is
16 currently operating under and in the fiscal year
17 to come, there is an official consensus revenue
18 estimate of how much money will most likely come
19 into the state and the budget is built around that
20 estimate. And in fact, that estimate determines
21 whether a budget can be implemented or not.

22 So, generally, the state will only pass a budget
23 or only should pass a budget when it is believed,
24 as a result of that consensus revenue estimate,
25 that -- that the budget that's being passed can

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1 actually be funded within the estimate. Now, when
2 you go beyond that into years beyond what's
3 actually being budgeted for, if you're putting a
4 multi-year program into place, and there are many
5 examples of where the state does that, there's
6 multi-year program in school finance, there's
7 multi-year transportation programs, there's other
8 kinds of multi-year programs where plans are made
9 to spend something, but the spending is not
10 actually legally put in place. It's just planned
11 for. But when you lay out that planned -- that
12 planned spending and put it into future years,
13 there are a variety of ways you can speculate, and
14 people do speculate, on whether the state can
15 afford it or not, but all of that speculation is
16 based on assumptions. There is not a consensus
17 revenue estimate that guides that. And the
18 consensus revenue estimate, an official estimate
19 guides the budget that's actually being produced.
20 But when you get into the topic of can the state
21 afford this in the years beyond what's being
22 budgeted for, that then becomes speculation.

23 Q. And I appreciate that explanation. My
24 question is: Did you offer an opinion in 2005
25 concerning the affordability to the State of 2247

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1 in the out years?

2 A. Not as such.

3 Q. What do you recall doing?

4 A. Apparently, what you have given me in
5 Exhibit 9¹ includes a state general fund report
6 where the legislators who are involved in making
7 the statement that you referenced also inserted
8 that state general fund report into the record.

9 Q. Okay.

10 A. And without reviewing it, I -- I mean,
11 the state general fund reports are something that
12 the Division of Budget produces on a relatively
13 regular basis. The columns that show fiscal
14 years, if a fiscal year has actually happened,
15 that column or -- has already been completed, that
16 column would show what actually happened. But if
17 there are fiscal years on that report that go into
18 the future beyond years where the legislature is
19 actually budgeting, those columns then contain
20 assumptions about revenue and about spending which
21 may or may not happen. And -- and those kinds of
22 reports were produced with a variety of
23 assumptions as a way of discussing what might
24 happen in the future, but it may or may not
25 happen. No one really truly knows that, but it's

1. Trial Exhibit 304.

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1 a way of having a -- having a document for
2 discussion about future planning. It's different
3 than an opinion.

4 Q. Okay. So, can we agree --

5 A. It's sort of a what if scenario if
6 certain things occur.

7 Q. So, can we agree that based on Exhibit 9,
8 Exhibit 10 you can at least say the legislature
9 seemed to indicate or some members of the
10 legislature seemed to indicate that this
11 multi-year plan could not be funded?

12 MR. CHALMERS: Object. The document
13 speaks for itself. And you don't even have the
14 entire document and you're asking him to comment.

15 BY MR. RUPE:

16 Q. Go ahead.

17 A. I agree with that. I think the document
18 speaks for itself.

19 Q. Okay. And if that's what the document
20 says, you can't disagree with that, can you?

21 A. It's the Journal of the House.

22 Q. Okay. Let me hand you Exhibit -- well,
23 let me ask you something first. What is capital
24 outlay equalization?

25 A. It's funding provided by the state to

1. Trial Exhibit 364.

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1 help certain school districts fund capital outlay.
2 It's provided on a formula basis to help equalize
3 the -- to help equalize the funding power or the
4 funding availability between school districts of
5 different wealth.

6 Q. Okay. And when you say it's the funding
7 provided by the state to help certain school
8 districts, would you agree that the help to
9 certain school districts is as the result of the
10 district's property wealth?

11 A. Yes. That's why it was set up or how
12 it's set up.

13 Q. Okay. So, the capital outlay
14 equalization money helps districts with lower
15 property wealth?

16 A. I'd say that's basically accurate, yeah.

17 Q. And do you know what percentage of school
18 districts in 2009 and '10 received capital outlay
19 equalization money?

20 A. I don't know that.

21 Q. Do you know whether they received it in
22 2009 and '10?

23 A. In fiscal years 2009 and '10? I believe
24 they would have received it in 2009, but not in
25 2010.

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1 Q. Do you know why they didn't receive it in
2 2010?

3 A. They did not receive it in 2010, in my
4 view, because the legislature chose not to give
5 it.

6 Q. They received it in '08-'09, didn't they?

7 A. I think so, yes.

8 Q. Was there anything that removed capital
9 outlay equalization from the law in '09 and '10?

10 A. The legislature chose not to fund capital
11 outlay, and they essentially made a choice between
12 putting monies into general state aid or into
13 capital outlay, and chose general state aid as the
14 more important place to place the funds.

15 Q. And was that done by law, by enacting the
16 law?

17 A. I would say yes, but as I'm sure you're
18 going to ask, there was some confusion about how
19 that was put in place.

20 Q. Is that another way of saying there was
21 discussion about doing it, but it never made it to
22 the paper that was adopted as the law?

23 A. I wouldn't phrase it that way.

24 Q. How would you phrase it?

25 A. I would phrase it that the legislature

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1 intended to do it that way. There was some
2 confusion and -- and perhaps inaccurate drafting
3 of the bill which furthered confusion, but in the
4 end the -- the confusion was clarified and
5 ultimately cleared up through the Governor's
6 allotment process and legally was taken care of
7 and made clear.

8 Q. By the legislature or by the Governor?

9 A. The ultimate clarification came through
10 the allotment process, so it would have been
11 clarified by the Governor or by that process.

12 Q. And that was Governor Parkinson?

13 A. Yes.

14 (THEREUPON, Goossen Deposition Exhibit
15 No 11¹ was marked for identification.)

16 BY MR. RUPE:

17 Q. I'm going to hand you Exhibit 11¹. What
18 is Exhibit 11¹?

19 A. I'm not sure that I know. I don't
20 believe I have seen this before. It's titled
21 Capital Outlay Fund Guidelines.

22 Q. Okay. Have you ever seen this document
23 before?

24 A. Not to my knowledge.

25 Q. With regard to Bates number KSDE000856, I

1. Trial Exhibit 351.

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1 want to call your attention to the paragraph
2 marked Eligible Expenditures, and this is a
3 Department of Education publication, but this is a
4 question to you on how capital outlay money can be
5 utilized, and KSDE says, "In our opinion, subject
6 to the conditions noted in certain instances, all
7 of the following items could properly be charged
8 against the capital outlay fund," and then it has
9 capital items listed. And my only question to
10 you, is that your understanding of the use of
11 capital outlay dollars?

12 A. I have not seen this document before.

13 Q. But in terms of your knowledge of the
14 dollars as included in budget recommendations, do
15 you have knowledge that these are the items that
16 capital outlay money can be spent on?

17 A. My understanding, this looks plausible.

18 Q. And certainly, these things would be
19 important to school districts, wouldn't they?

20 A. I would assume so.

21 (THEREUPON, Goossen Deposition Exhibit
22 No 12¹ was marked for identification.)

23 BY MR. RUPE:

24 Q. Let me hand you Exhibit 12¹. Turn to
25 Bates No. A0825. First of all, do you recognize

1. Trial Exhibit 357.

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1 what Exhibit 12¹ is?

2 A. It's a page from the Governor's -- either
3 the Governor's Budget Report or from the something
4 called the comparison report. I'm not sure which.

5 Q. Okay. Both from the Governor's office?

6 A. Uh-huh, or from the Division of Budget.

7 Q. Okay. Then turn to A0825, upper
8 left-hand corner, capital outlay state aid demand
9 transfer.

10 A. Uh-huh.

11 Q. First of all, what's the -- what's the --
12 I asked you what capital outlay equalization was,
13 and you explained it to me. But is the purpose of
14 capital outlay equalization money to school
15 districts in the state that don't have a great
16 deal of property wealth, is the purpose to bring
17 them up in terms of purchasing power to compete
18 with districts that have considerable property
19 wealth?

20 MR. CHALMERS: Lack of foundation.

21 BY MR. RUPE:

22 Q. If you know.

23 A. I don't know the intent.

24 Q. Did you author the paragraph on Exhibit
25 12, A0825, captioned -- upper left-hand corner,

1. Trial Exhibit 35-1.

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1 that paragraph captioned Capital Outlay State Aid
2 Demand Transfer?

3 A. These budget reports don't have authors.

4 Q. Okay. Who would have authored it?
5 Somebody had to write that down.

6 A. It would have been, first, drafted by the
7 budget analyst responsible for drafting this
8 section of the report, it would have been reviewed
9 by several different people, edited in the
10 process.

11 Q. In your role, did you have any input into
12 that paragraph?

13 A. I don't recall having any input into this
14 paragraph. I would have had high level input into
15 the final report.

16 Q. And I assume your high level input would
17 have been that you read the report?

18 A. Yes.

19 Q. And if you didn't agree with something in
20 the report, what's the process for calling it to
21 somebody's attention?

22 A. Marking it.

23 Q. Okay. And do you give push-back from
24 time to time?

25 A. Yes.

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1 Q. Do you have a recollection of reading
2 that paragraph that I just indicated to you before
3 just now?

4 A. Give me just a moment to actually just
5 sit here and read it.

6 Q. Sure.

7 A. (Witness reading.) I have read it.

8 Q. Do you agree with it?

9 A. I would have signed off on this.

10 Q. Does that mean when you signed off on it
11 you would have agreed with it?

12 A. I would have agreed that it should go in
13 the report.

14 Q. So, you would have agreed it was part of
15 your recommendations?

16 A. Well, this isn't really a recommendation,
17 this is a --

18 Q. Statement of fact.

19 A. It's not even a statement -- well, there
20 are some facts in there, but it's -- it's a
21 descriptive paragraph.

22 Q. Okay. Do you concur with the
23 description?

24 A. Yes.

25 Q. And it would have been part of a report

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1 that you signed off on?

2 A. Signed off on in the sense I didn't sign
3 the report, but would have agreed to its
4 publication and would have been part of the
5 editing process at some level.

6 Q. Well, and in terms of recommendations to
7 the Governor, the buck stopped with you, right?

8 A. Yes. In terms of budget recommendations
9 to the Governor?

10 Q. Yes.

11 A. Yes.

12 Q. What is the -- and you touched on this in
13 just a little bit ago, but what is the mechanism
14 that whomever with the state goes through to
15 actually cut checks concerning capital outlay
16 equalization to the school districts?

17 A. I'm not sure I can even tell you the
18 exact mechanism.

19 Q. Okay. Based on --

20 A. I'm not sure --

21 Q. Based on that previous exhibit, let's
22 assume that the capital outlay equalization is a
23 demand transfer, and assume with me that the
24 legislature provides for capital outlay
25 equalization in statute, school districts that

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1 have low property wealth are entitled to a payment
2 for capital outlay equalization. What I'm asking
3 you is, as a matter of mechanics, how does that
4 work to get the money from the legislature into
5 the hands of the school district?

6 A. The Division of Budget is not involved in
7 that. It would be basically a, I guess you'd say
8 a certification that would come from the
9 Department of Education to the Division of
10 Accounts and Reports saying how much should go to
11 each school district. And assuming that there is
12 money in the fund, the Division of Accounts and
13 Reports would then implement the process of paying
14 out or making checks or producing the -- producing
15 the -- doing the mechanical work to produce the
16 checks or the transfers to those school districts.
17 If there isn't money in the fund, then, of course,
18 it can't go, the checks can't go, and Accounts and
19 Reports wouldn't do anything or wouldn't make any
20 -- wouldn't cut any checks. If a certification
21 came for more money than what was in the fund, I
22 am uncertain what would happen, whether -- whether
23 Accounts and Reports would prorate or whether they
24 would wait for a different certification. I'm
25 unsure of that. But assuming -- assuming that

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1 there's money in the fund and the certification
2 came and the appropriations bill had authorized
3 the transfer or there weren't other obstacles or
4 allotments or anything else in place, then
5 Accounts and Reports would write the checks.

6 Q. And, so we're all on the same page, this
7 payment that comes from the Division of Accounts
8 and Reports goes to those school districts
9 entitled to capital outlay equalization?

10 A. Yes.

11 Q. And it would have gone to all school
12 districts entitled to it had it been issued in
13 2009-2010?

14 A. Yes.

15 Q. And with regard to the fund you
16 mentioned, when you say if there's enough money in
17 the fund, it's a demand transfer, so we're talking
18 about the general fund?

19 MR. CHALMERS: Object to the form of the
20 question. It's vague as to time.

21 BY MR. RUPE:

22 Q. In 2009-2010.

23 MR. CHALMERS: No, it wasn't a demand
24 transfer then. You know that, Alan. It's a
25 revenue transfer by statute.

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1 MR. RUPE: That was after this year, Art,
2 if you'd look at your facts.

3 MR. CHALMERS: No.

4 BY MR. RUPE:

5 Q. In 2009 and '10 with regard to the
6 cutting of the checks, assume with me that it was
7 a demand transfer from the general fund. The fund
8 you're talking about not having the money would be
9 the general fund, true?

10 MR. CHALMERS: It's an invalid
11 assumption. Go ahead and answer if you can.

12 A. I'm not sure if that's true at all. I
13 don't know the -- I don't know the mechanical --
14 there may be -- I am not certain of the -- of the
15 legal guidelines for that. The way you're stating
16 that, I am not certain that is true.

17 BY MR. RUPE:

18 Q. Okay. With regard to the budgeting for
19 '09 and '10, when was that done?

20 A. Well, okay, that would have been in the
21 year leading up to the beginning of the fiscal
22 year. So, fiscal year 2009 began in -- began in
23 --

24 Q. July 1?

25 A. July 1 of 2008.

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1 Q. Okay. When you mentioned if there's
2 money in the fund a few minutes ago, before I
3 jumped in and said it must be the general fund,
4 what fund were you referencing?

5 A. I believe there's a school capital outlay
6 fund or a --

7 Q. Was that the case in '09-'10?

8 A. I -- I assume so. It's not more than
9 assumption, though. I mean, I can't legally
10 verify that at this meeting.

11 Q. If the money were to come from a demand
12 transfer from the general fund in '09 and '10 to
13 those school districts entitled to capital outlay
14 equalization, are you telling us that the only way
15 the checks could not have been cut, if they were
16 properly certified by the State Board of
17 Education, was if there wasn't enough money in the
18 general fund?

19 MR. CHALMERS: You're calling for a legal
20 conclusion, and you're also premising your
21 question on things that are legally not -- well,
22 they are just incorrect. You can go ahead and
23 answer if you can.

24 A. Funding wasn't included for that by the
25 legislature.

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1 BY MR. RUPE:

2 Q. Funding for capital outlay equalization?

3 A. Capital outlay.

4 Q. For the '09-'10 year?

5 A. (Nods head up and down.)

6 Q. And what do you point to? Where is it in
7 the law where they subtracted that out?

8 A. The -- the course of events, as I recall
9 them, the -- the ending of that session which
10 would have been the -- these dates somehow aren't
11 lining up for me right now. I'm not certain we
12 are in sync here. I mean, we're talking about the
13 2010 fiscal year. Are we talking -- let's --
14 let's get clear here on what.

15 Q. The fiscal year for '09-'10.

16 A. Okay. That's the 2010 fiscal year.

17 Q. Call it what you want, but it's for the
18 period of time --

19 A. That would have been the session two
20 years ago. It would have been the 2009
21 legislative session. That session ended, the
22 budget in that session ended in an unusual way.
23 Normally, what happens when a budget is produced
24 the house passes a version, the senate passes a
25 version and there's a conference committee which

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1 meets to work out the differences between the two
2 versions. Then once the differences have been
3 worked out, it goes back to each house for a vote
4 on the common version. In that session of the
5 legislature, both the senate and the house passed
6 a version, but the way things ended up the senate
7 version was put into a house bill, and the house
8 bill, the house then -- a motion was made to
9 concur in the senate amendments to the house bill,
10 and that motion passed, which essentially adopted
11 the senate version of the budget and bypassed the
12 conference committee.

13 Q. And when did that happen?

14 A. I don't remember the exact dates. You
15 could find that in the legal record.

16 Q. Give me a month and a year.

17 A. April 2009. As the vote was being taken
18 in the house, there were questions as to how the
19 money that was in the senate version of the budget
20 was distributed between capital outlay and general
21 state aid. The question was not about the total
22 amount. There was very clear agreement on the
23 total amount that that was not in question at all.

24 Q. The total amount of what?

25 A. The total amount of money going to

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1 education, to the school finance formula, but
2 there was disagreement and -- not disagreement,
3 I'm not sure that that's the right word, some
4 confusion, I guess, around whether the senate had
5 intended for all of the money or for the money
6 that they had put into education to be all
7 directed through general state aid or whether a
8 portion of it was to be for capital outlay. And
9 it was the belief of virtually everyone that I
10 talked to at that time that the senate had
11 intended for the money to be going -- to go
12 through the general state aid line, but that when
13 the staff of Legislative Research had written up
14 the senate version of the budget they had not
15 drafted it in a way for that to happen as
16 intended; that they had misdrafted, made a
17 mistake, however you want to say that, and not
18 captured the intent of what the senate intended.

19 Q. Not removed the capital outlay
20 equalization?

21 A. I don't know the specifics of the
22 drafting.

23 Q. But this is what you said earlier was
24 cleared up in the Governor's allotment?

25 A. Yes, the -- the intent was there, and the

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1 drafting didn't match the intent. Normally, that
2 kind of thing would get worked out in a conference
3 committee. The senate had -- nobody really
4 concerned themselves too much with it at the time
5 that that happened and passed through the senate
6 because everyone believed that's headed for a
7 conference committee. That's the normal -- would
8 have been the normal course of events. And then
9 you get the house version and the senate version
10 set up against each other and the senators can sit
11 there on the conference committee and say this is
12 what we intended; we know it's not written quite
13 like that, but it was intended that way, and the
14 conference committee would have worked -- would
15 have worked with each other based on intent, not
16 on what was actually drafted. If the conference
17 committee process had proceeded, it would have
18 been the senate intent that would have been at
19 stake in the conference committee process.

20 Q. But the conference committee did not --

21 A. But the conference committee did not
22 proceed.

23 Q. What happened instead?

24 A. Instead, a motion was made, as I said, in
25 the house to con -- the senate version of the

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1 budget was placed into a house bill in order to
2 make it possible for the house to make a motion --
3 in order for a house member to make a motion to
4 concur in the senate amendments to house bill
5 whatever the number was, and that motion was
6 placed and voted upon and passed. And at that
7 point, the senate version of the budget as drafted
8 was placed -- was passed and went on to the
9 Governor.

10 Q. And the senate version did not have a
11 provision to remove the capital outlay
12 equalization dollars. Is that correct?

13 A. I do not exactly -- I have not reviewed
14 the language. I did not review it in detail at
15 the time. I was simply advised that there was
16 confusion over the drafting and that -- that it
17 was not believed that the drafting captured the
18 intent of the senate.

19 Q. And --

20 A. And that question came up because as the
21 house was voting on the issue, there were house
22 members asking the question which -- what are we
23 voting on? Is the money -- there wasn't a
24 question, again, about the total dollars, but
25 there was question about they think the amount in

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1 question for capital outlay might have been around
2 25,000,000. I can't remember the exact amount.
3 But is that 25,000,000 in capital outlay or is it
4 in general state aid? It was not a question of
5 should the state save 25,000,000 or put it into
6 capital outlay. That was never there. It was a
7 question of should this 25,000,000 be in capital
8 outlay or should it be in general state aid. The
9 state was going to spend the money, that was
10 clear. I don't think there was any disagreement
11 about that. I don't think there was any
12 misunderstanding about that; it was just a
13 question of where it was going to be done.

14 Q. Okay. With regard to who advised you
15 concerning this confusion you've described, who
16 was that?

17 A. Oh, I don't recall all the discussions,
18 but I had discussions with my staff in the
19 Division of Budget; I had discussions with
20 Legislative Research; I would have checked that
21 with a couple of senators, I checked intent; I
22 would have had conversations with the Governor's
23 staff.

24 Q. And when you had these conversations, did
25 it focus on whether the language removing capital

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1 outlay equalization was in or out of the statute
2 or the senate bill?

3 A. It focused on whether the statutory --
4 whether the language in the senate bill adequately
5 captured the senate intent.

6 Q. And what language in the senate bill?

7 A. The language surrounding capital outlay
8 and general state aid.

9 (THEREUPON, Goossen Deposition Exhibit
10 No 13¹ was marked for identification.)

11 BY MR. RUPE:

12 Q. Okay. Take a look at Exhibit 13¹, if you
13 would. Who is Jo Ann Remp?

14 A. She's an employee, or at least was an
15 employee of the Division of Accounts and Reports.
16 I believe she still works there, but I'm not
17 certain.

18 Q. Look at the last page of that, Kevin
19 Mercer's e-mail to a number of people. Who is
20 Kevin Mercer?

21 A. Where are you now?

22 Q. Last page of the exhibit, G0200.

23 A. I don't immediately know who Kevin Mercer
24 is. He signed in as somebody from school finance
25 in the Kansas Department of Education. I don't

1. Trial Exhibit 309-71.

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1 know him.

2 Q. When it says down here voucher number and
3 then says fund, what does the fund have reference
4 to?

5 A. The fund within the state general fund
6 that would be used to pay capital outlay state
7 aid.

8 Q. It says in the e-mail above from Randy
9 Kennedy, do you know who that is?

10 A. He works for the Division of Accounts and
11 Reports. I don't know him personally.

12 Q. Says the "transaction will not hit the
13 bank until March 3rd. I failed to communicate the
14 need to establish the appropriation balance. The
15 STARS transaction will post tonight, February
16 27th." What is STARS?

17 A. It's the state's -- it was the state's
18 accounting system. It's been replaced.

19 Q. Okay. What is the second page, Demand
20 Transfer Notification Form, what is that, second
21 page of Exhibit 13?

22 A. I'm not immediately familiar with that
23 form. It's not one that I dealt with on any kind
24 of regular basis, but probably a form coming from
25 Accounts and Reports indicating that a transfer

1. Trial Exhibit 369-71.

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1 was about to take place.

2 Q. Do you know if the State Board of
3 Education has certified the funds as required by
4 statute for 2009 and '10?

5 A. It's my understanding that they submitted
6 a certification sometime after the fiscal year had
7 ended.

8 Q. And when did it end?

9 A. June 30.

10 Q. Of what year?

11 A. 2010.

12 Q. Do you know why they did that?

13 A. No.

14 Q. In response to their certification, did
15 anyone cut checks to the school districts entitled
16 to capital outlay equalization money for the
17 '09-'10 year?

18 A. No.

19 MR. CHALMERS: Object to the form of the
20 question.

21 (THEREUPON, Goossen Deposition Exhibit
22 No 14¹ was marked for identification.)

23 BY MR. RUPE:

24 Q. Do you know what Exhibit 14¹ is?

25 A. Looks like a statute.

Trial Exhibit 400

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1 Q. Do you know if -- well, it's a statute
2 that deals with the capital outlay levy fund and
3 bond, true?

4 A. That's what it appears.

5 Q. Deals with state aid entitlement by the
6 districts entitled to capital outlay equalization,
7 true?

8 A. Yes.

9 Q. And this statute requires the State Board
10 to certify and transfer funds, correct?

11 A. I haven't read the statute in detail
12 here. I mean -- (paused)

13 Q. Do you have a --

14 A. That's the topic that it's dealing with.

15 Q. Do you have a recollection of this
16 statute when you were Director of Administration,
17 Director of Revenue?

18 A. I'm sure that it exists. I don't recall
19 reviewing it.

20 Q. Well, the State Board certifies those
21 funds to the Director of Accounts and Reports,
22 correct?

23 A. Again, I'm -- if you're asking a legal
24 question --

25 Q. I'm not. I'm asking your knowledge of

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1 this particular --

2 A. My knowledge is that's how it works
3 mechanically.

4 Q. Okay. What is -- when you were Director
5 of Administration and Director of Revenue, what
6 was the relationship of you to the Director of
7 Accounts and Reports?

8 A. The Director of Accounts and Reports
9 would have reported to me.

10 Q. Okay. So, was he, Kent Olson, the
11 Director of Accounts and Reports for the years
12 '08, '09 and '10?

13 A. Yes.

14 Q. Down here on the second page of this
15 exhibit it says, in paragraph small D, as in dog,
16 "The State Board of Education shall certify to the
17 Director of Accounts and Reports the amount due
18 each school district entitled to payment from the
19 fund, and the Director of Accounts and Reports
20 shall draw a warrant on the state treasurer
21 payable to the treasurer of the school district."
22 That would be Mr. Olson, right?

23 A. Yes. Well, no, he's not the state
24 treasurer. That's a separate state treasurer.
25 He's the Director of Accounts and Reports.

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1 Q. He draws the warrant?

2 A. He draws the warrant, yes.

3 Q. Do you know why Mr. Olson did not draw
4 the warrant after the State Board of Education
5 certified the funds for the '09-'10 capital outlay
6 equalization?

7 A. The certification from the State Board of
8 Education came after the fiscal year was over. At
9 that point, it was already clear that there was no
10 money in capital outlay, in the capital outlay
11 fund to distribute, and that the decision had been
12 clearly made to put that amount of money through
13 the general state aid line rather than capital
14 outlay. By that time, the confusion had been --
15 any confusion that there was over the intent and
16 over what actually should happen had been cleared
17 up.

18 Q. Through the Governor's allotment?

19 A. Yes.

20 (THEREUPON, Goossen Deposition Exhibit
21 No 15¹ was marked for identification.)

22 BY MR. RUPE:

23 Q. Let me hand you Exhibit 15¹ because I want
24 to refer to a letter that's the first two pages of
25 Exhibit 15¹. On KSBE000785, the second page of

1. Trial Exhibit 240.

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1 Exhibit 15, there is a paragraph and a letter
2 signed by Mark Ferguson, quote, "I am writing to
3 advise that the KSDE has certified the school
4 district capital outlay state aid funds for
5 2009-'10 school year. Attached please find a copy
6 of the '09-'10 certification documentation. As a
7 result, the KSBE and the KSDE have satisfied the
8 limited statutory obligation it has in this
9 regard." Have you seen this letter before?

10 A. No.

11 Q. Have you seen the attached letter dated
12 September 22nd, 2010 from Dale Dennis certifying
13 the funds?

14 A. I don't recall seeing the actual letter.
15 I do know that such a certification was done.

16 Q. Was there discussion in your -- by your
17 staff of using the Witt/writ in connection with
18 the confusion that you've described in the senate
19 bill?

20 A. Yes, to the extent that that was
21 discussed as one option. I'm not even sure if I
22 should say option, but it was discussed as we
23 tried to determine possible ways that any
24 confusion surrounding that could be cleared up.
25 And we discussed the option of using a Witt/writ,

1. Trial Exhibit 240.

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1 but never implemented that or never did it.

2 Q. And if you recall, what was the reason
3 that you decided not to use the Witt/writ?

4 A. I think in discussion with Legislative
5 Research, we determined -- I don't recall all of
6 this exactly, but determined that basically that
7 may be stretching what a Witt/writ ought to be
8 used for.

9 Q. With regard to the September 22nd, 2010
10 Dale Dennis letter, as of the date of that letter,
11 had the school districts, to your knowledge, been
12 notified in any way that there was no money in the
13 capital outlay fund to distribute?

14 A. I assume that they had been notified. I
15 don't know for a fact that they had.

16 Q. Did your office notify anybody in the
17 school districts?

18 A. Not to my knowledge.

19 Q. When you say I assume it's been done, who
20 do you assume did it?

21 A. The Department of Education.

22 Q. Were you ever present during any
23 testimony in '09 or preparing for the '09-'10
24 budget, were you ever present for any testimony by
25 Dale Dennis?

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1 A. I'm sure that I was.

2 Q. In the '09-'10 school year -- I'm sorry,
3 in the '09-'10 fiscal year, were you present for
4 any testimony before either the house or the
5 senate by Mr. Dennis?

6 A. I'm sure that I was. That's a relatively
7 common occurrence.

8 Q. Do you recall testimony which Mr. Dennis
9 was pressed by legislators when he was questioned
10 about where savings could be had and that he
11 mentioned capital outlay equalization?

12 A. I don't recall that specifically.

13 Q. Do you recall it generally?

14 A. I don't recall it. I mean, I don't --

15 Q. Okay.

16 A. It's entirely possible that I could have
17 been at such a session, but I do not recall. If
18 we could take a very short break.

19 Q. Sure.

20 THE VIDEOGRAPHER: It is 12:06 and we are
21 now off the record.

22 (THEREUPON, a recess was taken;
23 WHEREUPON, Goossen Deposition Exhibit No 16¹ was
24 marked for identification.)

25 THE VIDEOGRAPHER: It is 12:12 p.m. and

1. Trial Exhibit 401.

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1 we are now back on the record.

2 BY MR. RUPE:

3 Q. Okay. Let me hand you Exhibit 16¹, and I
4 will tell you this is written responses to written
5 questions that were submitted by the attorney for
6 the State in this case, and what I want to ask you
7 about is Interrogatory No. 2. The question to the
8 State of Kansas was: "Please state whether you've
9 complied with 72-8814 for fiscal year '09 and '10.
10 In doing so, please identify any statutory duties
11 required of you under 72-8814; whether those
12 duties have been fulfilled; and if not, an
13 explanation of why such duties -- why such duty
14 has not been fulfilled."

15 My question to you is with regard to the
16 answer, if you agree with that answer?

17 A. Yeah. Yes.

18 Q. And the same question with regard to No.
19 3 and the answer, which is none?

20 A. I agree.

21 Q. And 4, question and answer?

22 A. I agree.

23 (THEREUPON, Goossen Deposition Exhibit
24 No 17² was marked for identification.)

25 BY MR. RUPE:

1. Trial Exhibit 401.
2. Trial Exhibit 350.

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1 Q. I'm going to hand you Exhibit 17¹. Who is
2 Linda Jones, if you know?

3 A. I don't. I don't even know what AMAC is.

4 Q. Okay. Well, I want to -- you know who
5 Dale Dennis is?

6 A. I do.

7 Q. Okay. That's what I want to ask you
8 about. It says in this e-mail from Linda Jones to
9 a list of people, "Dale Dennis says they won't be
10 paying us the capital outlay state aid for the
11 last year because the Governor cut it with the
12 allotment made last December." Is that an
13 accurate statement?

14 MR. CHALMERS: It's accurate -- well,
15 object to the form. Accurate with respect to
16 what?

17 BY MR. RUPE:

18 Q. Well, it's accurate because I read it the
19 way it appears on the paper. My question is --

20 MR. CHALMERS: I don't know if you're
21 asking whether that's what Dale Dennis said or
22 whether what it's reported he said is accurate or
23 not.

24 BY MR. RUPE:

25 Q. Whether he said it or not or it is

1. Trial Exhibit 350.

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1 attributed to him, my question is: Is what Linda
2 Jones says that Dale Dennis said as an explanation
3 for why the capital outlay state aid was not paid,
4 is that accurate?

5 A. Are you asking whether the explanation is
6 accurate?

7 Q. Right.

8 A. It's not inaccurate, but it does not tell
9 the whole story.

10 Q. You saw the Governor's allotment as a
11 clarification of legislative intent?

12 A. Yes.

13 Q. Do you know, absent this clarification,
14 whether the Governor had any statutory authority
15 to cut capital outlay state aid in an allotment?

16 A. You're asking a legal question there
17 which --

18 Q. As a matter of practice, again, your
19 knowledge --

20 A. As a matter of practice, demand transfers
21 and revenue transfers had been reduced or cut by
22 allotments on multiple occasions.

23 Q. And previously you told me the ones you
24 recall. Have you recalled any since then?

25 A. (Shakes head from side to side.)

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1 (THEREUPON, Goossen Deposition Exhibit
2 No 18¹ was marked for identification.)

3 BY MR. RUPE:

4 Q. Have you ever seen Exhibit 18¹ before?

5 A. Yes.

6 Q. What was the circumstance where you saw
7 Exhibit 18¹?

8 A. I would have seen this as part of a
9 discussion probably in 2002 over whether the
10 transfer to cities and counties for the local ad
11 valorem tax reduction fund and city/county revenue
12 sharing fund, could be -- whether those transfers
13 could be allotted.

14 Q. Do you know what effect an Attorney
15 General's opinion has on a state agency?

16 A. My understanding is that this is an
17 opinion.

18 Q. Is that another way of saying that you
19 thought at the time it didn't have an effect or a
20 binding effect on you as Director of
21 Administration, Director of Budget?

22 A. I guess so. I mean, it's an opinion.
23 It's an interpretation of a statute, and there are
24 perhaps a variety of ways to interpret. And an
25 Attorney General's opinion, in my understanding,

1. Trial Exhibit 372.

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1 is a way for the Attorney General, whoever that is
2 at the time, to provide their opinion on an
3 interpretation, but it is not -- I don't
4 understand it to be binding.

5 Q. You would agree with me that this opinion
6 says demand transfers can't be cut in allotments?

7 A. Oh, it's been a long time since I looked
8 at this or read it.

9 Q. Well, let me --

10 A. I think -- I believe that that's the
11 general tone of this, yes.

12 Q. Okay. If you look at page 9, the third
13 paragraph down, I think it pretty much lays it out
14 there. But if you agree that's what it says, then
15 let's move on. Do you agree that's what it says?

16 A. (Nods head up and down.)

17 Q. Your answer is yes?

18 A. Yes, from what I remember. Yes, from
19 what I remember.

20 (THEREUPON, Goossen Deposition Exhibit
21 No 19¹ was marked for identification.)

22 BY MR. RUPE:

23 Q. Okay. Let me hand you Exhibit 19¹ and
24 take a minute and look at these e-mails that
25 involve you.

1. Trial Exhibit 308.

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1 A. (Witness reading.)

2 Q. Again, who is Jeff Arpin?

3 A. He's a principal analyst in the Division
4 of the Budget. His -- one of his primary
5 responsibilities is the education -- his analysis
6 of the education budget.

7 Q. Okay. The second paragraph on the first
8 page says, "Roger doesn't think we can do an
9 executive directive." Who is Roger?

10 A. That would be Roger Basinger, who is an
11 employee of the Kansas Division of Accounts and
12 Reports.

13 Q. And what is an executive directive?

14 A. Basically, a directive from the Governor
15 saying do something in a certain way. It's powers
16 given to the Governor by statutory -- Governors
17 can do certain things by executive directive.

18 Q. And you agree --

19 A. For instance, set up a federal fund in
20 order to receive federal dollars into the state
21 treasury.

22 Q. And did you agree with Roger that an
23 executive directive was not a tool that could be
24 used in this situation?

25 A. From my recollection, yes. I mean, this

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1 is part of the larger discussions that I was
2 referring to earlier about what the options might
3 be to clarify the intent and actual implementation
4 of that capital outlay aid. And when you discuss
5 options, a variety of things come up as
6 possibilities and they're discussed about whether
7 they would work or wouldn't work.

8 Q. Okay. Look at Jeff's October 30, 2009
9 e-mail to you and Elaine Frisbie on capital outlay
10 aid demand transfer, and it says, "Roger Basinger
11 is looking into what we need to do in order to
12 stop the 25.6 million in FY 2010 that would
13 normally be spent as capital outlay aid as a
14 demand transfer." Now, does that refresh your
15 recollection of whether at the time these
16 discussions were occurring, the capital outlay
17 equalization aid was a revenue transfer or a
18 demand transfer?

19 A. No.

20 Q. Okay.

21 A. Those -- those terms were not used with a
22 whole lot of precision in our -- in our
23 discussions.

24 Q. Would Jeff Arpin have been in a position
25 to know whether it was a demand transfer or a

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1 revenue transfer?

2 A. He might have known or might have been in
3 a position to know, yes.

4 Q. Do you agree with the consequences
5 described by Jeff in the third paragraph of his
6 October 30 e-mail: "It is important that this
7 transfer does not occur. Otherwise, general state
8 aid will be 25.6 million short in the current
9 year."

10 A. In essence, yes, because that goes back
11 to what I was trying to explain earlier that, as
12 this was being debated, it was never a question of
13 confusion over the total amount being available
14 for education, but how it would be allocated
15 between general state aid and capital outlay, and
16 it was one or the other. So, if -- if the capital
17 outlay -- if the money was put through the capital
18 outlay fund, then that meant that state general
19 fund would get \$25,000,000 less. This was not a
20 question of should the state or could the state or
21 would the state save \$25,000,000 and hold it for
22 some other non-education spending or for balances
23 or for whatever, but it was a question of -- of
24 the total amount that we're going to spend on
25 education, how will it be spent?

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1 Q. In other words, does it go to all school
2 districts or does it go to those school districts
3 with poor property wealth?

4 MR. CHALMERS: Object to the form of the
5 question.

6 BY MR. RUPE:

7 Q. I mean, that's essentially what the two
8 categories were, weren't they?

9 MR. CHALMERS: Object to the form of the
10 question.

11 A. I'm not going to comment on that.

12 BY MR. RUPE:

13 Q. Well, if it didn't go to capital outlay
14 equalization to those poorer school districts that
15 we talked about, where would it go?

16 A. It would have gone through the general
17 state aid.

18 Q. And where does the general state aid go?

19 A. It goes to all school districts.

20 (THEREUPON, Goossen Deposition Exhibit
21 No 20¹ was marked for identification.)

22 BY MR. RUPE:

23 Q. Let me hand you Exhibit 20¹. And this is
24 an e-mail, again, from Jeff to you and others. I
25 guess you're copied on it. It's to who is Reagan

1. Trial Exhibit 402.

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1 --

2 A. Cussimanio.

3 Q. Cussimanio, who is that?

4 A. She's an analyst, or I guess that's her
5 title, analyst in the Kansas Legislative Research
6 Department.

7 Q. Okay. And Jeff says in the last
8 paragraph, and my question to you is, do you agree
9 with this: "So, technically, the November
10 allotment did not make the changes necessary for
11 general state aid to reflect the transfer from
12 capital outlay aid. However, the policy was
13 adopted during the 2009 legislative session."

14 A. It says "did make the changes," you had a
15 "not" in there.

16 Q. Oh, I'm sorry. "So, technically, the
17 November allotment did make the changes,"
18 referring to the Governor's allotment --

19 A. Uh-huh.

20 Q. -- "necessary for general state aid to
21 reflect the transfer from the capital outlay aid.
22 However, the policy was adopted during the 2009
23 legislative session?"

24 A. I would agree with that, yes.

25 Q. Then it talks about -- Reagan e-mails

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1 back to Jeff, I guess this is the earlier e-mail,
2 but Reagan to Jeff: "Alan" -- who is Alan?

3 A. Alan Conroy, the Director of the
4 Legislative Research.

5 Q. "Was reading the GBR," what's that?

6 A. Governor's Budget Report.

7 Q. "And reported that the GBR says the
8 legislature deleted capital outlay funding, but
9 according to your docs," I think that's documents.
10 Is that right?

11 A. Yeah.

12 Q. "It came out during the November
13 allotment." Do you agree with that?

14 A. You need to understand that this exchange
15 is between two analysts, and one of the analysts
16 is the one who essentially did not draft the
17 legislation in terms of what was considered the
18 legislative intent. And as part of the kind of
19 back and forth on this on how to -- how to -- I
20 mean, on clarifying this, I mean, you've got both
21 the intent and what is technically happening,
22 which is the allotment, and it would have been my
23 understanding and the view of the Division of the
24 Budget that it was the intent of the legislature
25 not to fund capital outlay but to fund -- fund

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1 general state aid, and that that's where the
2 decision was really made, but it didn't get
3 written up correctly and so it needed to be
4 clarified. And so how do you say that? I mean,
5 it would -- it would certainly definitely be the
6 opinion that the Division of the Budget and how we
7 would have reported it in the Governor's Budget
8 Reports that this is a decision the legislature
9 made because that's how we understood it, but
10 technically to clarify everything and make sure
11 that the legal language matched the intent, we had
12 to fix that up through the allotment. And this is
13 a discussion that kind of transpires out of that
14 situation.

15 Q. Do you recall the Governor's allotment
16 addressing general state -- strike that.
17 Do you recall the Governor's allotment addressing
18 capital outlay equalization aid?

19 A. Yes, it did. It made the change in one
20 of the documents that you've sent by us here
21 accounts for that.

22 (THEREUPON, Goossen Deposition Exhibit
23 No 21 was marked for identification.)

24 BY MR. RUPE:

25 Q. Okay. What is Exhibit 21? Go back to --

1. Trial Exhibit 362.

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1 you have the exhibits in front of you. I do want
2 you to locate that document that shows the
3 Governor's allotment specifically addressed
4 capital outlay equalization.

5 A. Do you want me to do that now?

6 Q. Yes, please. Just identify it by exhibit
7 number and by Bates number, please. And if you'll
8 tell me which one you are looking at, maybe Art
9 and I can help you --

10 A. Exhibit 8ⁱ, A1835, very last page of
11 Exhibit 8ⁱ.

12 Q. And which page did you say?

13 A. The very last one, A1835.

14 Q. And which line item, supplemental general
15 state aid, is that what you're referring to?

16 A. Actually, yes -- no, not supplemental,
17 but it would be under Department of Education,
18 general state aid, and then there is an asterisk
19 by that. And then the general state aid has a
20 10.4 million dollar number as to the allotment
21 reduction, but then there's an asterisk and it
22 refers to a line down below.

23 Q. Okay. And the asterisk says, "Amount
24 allotted from general state aid is reduced
25 \$25,600,000 to reflect savings from not making the

1. Trial Exhibit 353, 359, 373.

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1 capital outlay aid transfer."

2 A. Uh-huh.

3 Q. Your answer is yes?

4 A. Uh-huh.

5 Q. And that capital outlay state aid
6 transfer would have come from the legislature?

7 A. This is what changed the -- the Governor
8 -- the Governor -- the legislature's intent to not
9 fund capital outlay would have been expressed and
10 discussed during the legislative session. This
11 allotment was put in place in November --
12 actually, this would have been the actual detail
13 of it would have been certified or sent over to
14 Accounts and Reports in December of 2009. The
15 Governor's allotment was to take 35 or \$36,000,000
16 out of education, and 10,000,000 of that came from
17 -- from general state aid and 25.6 million of it
18 came from capital outlay, and together that's the
19 \$36,000,000 that went out of education or was
20 allotted out of education, and the combination of
21 that then was intended to clarify the -- the
22 capital outlay issue.

23 Q. Who drafted, if you know, the -- this
24 \$25,000,000 asterisk here on A1835?

25 A. This would have been prepared either by

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1 Elaine -- the larger document, this list of
2 things, A1834 and A1835 would have been drafted by
3 Elaine Frisbie, the Deputy Director of the Budget.

4 Q. And, obviously, the Governor --

5 A. And she may have had input into this from
6 -- in this from Jeff.

7 Q. And would this -- would this language
8 have passed your muster? Would you have looked
9 through it?

10 A. I would have submitted this to the
11 Director of Accounts and Reports. In fact, the
12 transmittal letter submitting that is attached and
13 is part of this -- is part of Exhibit 8ⁱ.

14 Q. Did you change the language in the
15 \$26,000,000 asterisk?

16 A. No. I took what had been drafted as
17 here's the things that we need to do in order to
18 implement the Governor's -- the Governor's intent
19 on the allotment and this is what we need to send
20 on to Accounts and Reports to mechanically get
21 this done.

22 Q. Can we agree this asterisk says the
23 savings were made by not making the transfer?

24 A. The wording is that it reflects savings
25 from not making the capital outlay state aid

i. Trial Exhibit 353, 359, 373

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1 transfer.

2 Q. Great. Does it say the transfer doesn't
3 need to be made?

4 A. Read it. It says what it says.

5 Q. And my question to you is: When you read
6 it, does it say the transfer does not need to be
7 made?

8 A. It does not say that.

9 Q. With regard to Exhibit 21, I will
10 represent to you this is house bill --

11 A. I'm going to change that answer. I mean,
12 I think -- I'm going to say, rather, that it
13 reflects -- it does not -- it does not say exactly
14 the words that you said.

15 Q. I agree with that. Look at 21, which is
16 House Bill 2354.

17 A. Excuse me, which exhibit?

18 Q. 21.

19 A. Okay.

20 Q. Look at the second page, LEG003182. Can
21 we agree that House Bill 2354 appropriates capital
22 outlay equalization state aid?

23 A. Where are you here?

24 Q. Second page down at the bottom, there's a
25 list that includes school district capital outlay

1. Trial Exhibit 362.

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1 state aid fund.

2 A. Says no limit.

3 Q. No limit. Can we agree?

4 A. No.

5 Q. Okay. What does no limit mean?

6 A. It means there isn't a limit on the
7 spending from that fund. It doesn't -- it doesn't
8 mean -- there may be no money in the fund, in
9 which case no money would transfer.

10 Q. So, no limit can mean --

11 A. It can possibly appropriate something,
12 but it doesn't necessarily appropriate something.

13 Q. So, no limit can mean none?

14 A. Yes.

15 (THEREUPON, Goossen Deposition Exhibit
16 No 22¹ was marked for identification.)

17 BY MR. RUPE:

18 Q. What is Exhibit 22¹, please?

19 A. I'm not sure.

20 Q. It looks like Item 2 says suspended
21 transfer for capital outlay state aid 25,600,000
22 on the second item.

23 A. Yeah, but I don't know what the document
24 is.

25 Q. Okay. But in terms of the language

Trial Exhibit 358.

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1 "suspend transfer," that's the same language that
2 we saw in the \$25,000,000 asterisk, right, in
3 Exhibit 8?

4 A. I better go back and read it. No, it's
5 not the same language.

6 Q. Well, the language of the asterisk is to
7 reflect savings from not making the capital outlay
8 state aid transfer?

9 A. Right.

10 Q. Okay.

11 A. The word suspend isn't used. I'm not
12 quite sure what you're -- what you're after here.

13 Q. Here's what I'm after: In order to
14 suspend the transfer of the money or to not make
15 it, wouldn't there have to be money in there?

16 A. Not necessarily.

17 Q. Well, in terms of suspending the
18 transfer, how do you suspend the transfer? Why
19 didn't they just say there's no money in the
20 capital state aid fund?

21 MR. CHALMERS: The question is
22 argumentative.

23 A. I don't know.

24 BY MR. RUPE:

25 Q. Would the parenthesis of \$25,600,000, the
i. Trial Exhibit 353, 359, 313

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1 parenthesis around there, indicate that the money
2 was suspended?

3 MR. CHALMERS: Lack of foundation.

4 BY MR. RUPE:

5 Q. If you know?

6 A. I don't even know what this document is.

7 Q. Okay.

8 A. I mean, there's no title to it. It's
9 just a -- it's a chart and I don't recognize it.

10 (THEREUPON, Goossen Deposition Exhibit
11 No 23¹ was marked for identification.)

12 BY MR. RUPE:

13 Q. I'm going to hand you Exhibit 23¹ and ask
14 if you've ever seen this publication or
15 correspondence from Dale Dennis? Have you seen
16 this before?

17 A. I might have, but I don't specifically
18 remember it.

19 Q. With regard to the reference to capital
20 outlay state aid, what it was in '08-'09 and what
21 it was with the senate substitute for House Bill
22 2373, do you agree that there is a zero under
23 capital outlay state aid for 2009-'10?

24 MR. CHALMERS: The document speaks for
25 itself.

1. Trial Exhibit 24b.

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1 MR. RUPE: I know.

2 A. I agree.

3 BY MR. RUPE:

4 Q. All right, thank you.

5 A. The document speaks for itself.

6 Q. So, is there a reason you don't want to
7 just say, yeah, it says zero?

8 A. I don't know.

9 (THEREUPON, Goossen Deposition Exhibit
10 No 24¹ was marked for identification.)

11 BY MR. RUPE:

12 Q. Okay. With regard to Exhibit -- let's
13 get this in the record, Exhibit 24¹, what is
14 Exhibit 24¹?

15 A. Senate substitute for House Bill 2373.

16 Q. And this is the senate bill we've been
17 talking about?

18 A. I believe it is.

19 (THEREUPON, Goossen Deposition Exhibit
20 No 25² was marked for identification.)

21 BY MR. RUPE:

22 Q. All right. What is Exhibit 25¹, please?

23 A. Well, it appears to be an e-mail exchange
24 between Elaine Frisbie and Jeff Arpin in September
25 of 2009.

1. Trial Exhibit 361.
2. Trial Exhibit 365.

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1 Q. Okay. It starts with Elaine saying, "I'm
2 going through the shift check sheet." What is
3 that?

4 A. Shift would sometimes -- another word for
5 shift would be reappropriation, money which had
6 been authorized -- a shift or a reappropriation
7 would be money that was authorized to have been
8 spent in a fiscal year, but after the fiscal year
9 is over that money -- several things can happen to
10 that money. It can lapse or it can -- if money
11 was unspent, if it was appropriated but unspent,
12 it can either shift or reappropriate forward, or
13 it can lapse, or there is sometime some other
14 things that can happen to it as well.

15 Q. Okay. And then Jeff comes back with the
16 explanation about 2010 capital outlay equalization
17 as a negative legislative adjustment. What I'm
18 curious about is, and I may have to ask Elaine,
19 but what does Elaine's top e-mail there, her
20 response to Jeff say? Interpret that for me.

21 A. Well, what the effort that would be going
22 on here is an attempt to reconcile our
23 understanding of the budget and how items are
24 handled with the understanding from Kansas
25 Legislative Research. We do a process of trying

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1 to reconcile shifts, reappropriations with them so
2 that we come to a common understanding of what has
3 actually happened, and there is give and take on
4 that. They would put down their understanding and
5 keep a record of what -- what is shifting forward
6 and what is now legally spendable or not legally
7 spendable in the coming year. On shifts and
8 reappropriations, that process would normally be
9 occurring right at this time, the end of August,
10 beginning of September, and this would be an
11 attempt where I'm sure that Elaine is trying to
12 work with Legislative Research to reconcile or
13 clarify their understanding, their -- their
14 spreadsheets with what the Division of Budget is
15 keeping. And she's coming up with some
16 discrepancies, and one discrepancy is over this
17 25.6 million dollars and how you handle or record
18 that and so she's asking Jeff about it and they're
19 having a discussion about that before they attempt
20 to negotiate that difference out with Legislative
21 Research. This is sort of in-house record
22 keeping, if you will. These aren't legal
23 documents -

24 Q. I understand.

25 A. -- these shift sheets.

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1 Q. Do you remember there being, in 2009,
2 April, a consensus revenue report that issued
3 indicating that there was an additional
4 \$100,000,000 that needed to be cut in the veto
5 session?

6 A. This would have been in --

7 Q. '09.

8 A. '09? Yes.

9 Q. Now, focus your attention on that time
10 frame. Did you hear any testimony from Dale
11 Dennis to the legislature?

12 A. I could have.

13 Q. Any committee reports by Dale?

14 A. I could have.

15 Q. Did you --

16 A. I could have been in the room when he
17 testified. Whether I heard it or not, I can't re
18 -- I don't recall anything specific.

19 Q. Do you recall, and I'm going to try to
20 refresh your recollection, do you recall an
21 occasion then in April of '09 when Dale Dennis
22 suggested that if you cut the base \$87 -- \$87,
23 that would give you about \$70,000,000 in capital
24 outlay state aid would be the other 25,000,000?

25 A. I don't have specific recollection of

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1 that. It could have happened. I wouldn't -- I
2 wouldn't -- I -- I would have been in a lot of
3 meetings where those kind of topics were discussed
4 and where Dale could have been present, but I do
5 not remember.

6 (THEREUPON, Goossen Deposition Exhibit
7 No 26 was marked for identification.)

8 BY MR. RUPE:

9 Q. Okay. Let me hand you Exhibit 26,
10 please.

11 A. That's a big exhibit.

12 Q. Yeah, but it gets me closer to the end
13 faster. What is Exhibit 26' --

14 A. It appears to be -- it appears to be a
15 copy of the Governor's Budget Report, Volume 1.
16 I'm not sure what all is here. It's more than
17 probably Volume 1, but at least the cover says
18 Volume 1, Fiscal Year 2010.

19 Q. Okay. And this would have been the
20 budget that started the discussion that occurred
21 in the adoption of the '09-'10 budget?

22 A. Yes. This would have been given to the
23 legislature in January of 2009.

24 (THEREUPON, Goossen Deposition Exhibit
25 No 27² was marked for identification.)

1. Trial Exhibit 403.

2. Trial Exhibit 404

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1 BY MR. RUPE:

2 Q. Let me hand you Exhibit 27¹ and ask if
3 you've ever seen this document before?

4 A. I think that I have. I'm not absolutely
5 certain.

6 Q. Just discuss with me, if you would, look
7 at on the first page it talks about cut one, cut
8 two, cut three, cut four, cut five?

9 A. Uh-huh.

10 Q. Were those the cuts -- I think we talked
11 about all of them -- were those the cuts that you
12 recall that occurred in '09? And I'm talking about
13 cuts to education.

14 A. Yeah. Yes, I believe those are the ones
15 that would have occurred.

16 Q. Okay.

17 A. At least the labels. I -- I mean, I have
18 not analyzed what's down below here in terms of
19 numbers. I don't know that these numbers are at
20 all correct --

21 Q. I understand.

22 A. -- but the labeling seems all right.

23 Q. We can authenticate the numbers, but with
24 regard to the cuts, are there any additional cuts
25 that you recall other than these five in '09?

1. Trial Exhibit 404.

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1 A. I don't immediately recall any others,
2 but there -- we've been through a tough set of
3 years.

4 (THEREUPON, Goossen Deposition Exhibit
5 No 28¹ was marked for identification.)

6 BY MR. RUPE:

7 Q. Let me hand you 28¹ and ask if you can
8 identify -- if you can, if you can't, that's fine,
9 but I want you to identify the spending from the
10 general -- from the state general fund in terms of
11 base state aid per pupil and the state general
12 fund over the period of years indicated?

13 A. Kind of hard to read. There's a line
14 that says general state aid.

15 Q. Does the Division of the Budget produce
16 information along this line?

17 A. Well, it's possible. I don't recognize
18 this.

19 (THEREUPON, Goossen Deposition Exhibit
20 No 29² was marked for identification.)

21 BY MR. RUPE:

22 Q. Okay. Let's move on. In terms of
23 Division of Budget publications, I'm going to hand
24 you Exhibit 29² and ask if you can authenticate
25 that for me as a publication of the Division of

1. Trial Exhibit 405.
2. Trial Exhibit 406.

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1 Budget with state general fund expenditures for
2 K-12 education?

3 A. Well, this front page says Division of
4 Budget at the bottom of it. But again, I don't --
5 I don't recognize -- well, there's a date on here.
6 It says January 5, 2011. I was no longer with the
7 Division of the Budget at that point, so that's
8 why I wouldn't recognize it.

9 (THEREUPON, Goossen Deposition Exhibit
10 No 30¹ was marked for identification.)

11 BY MR. RUPE:

12 Q. Okay. Thank you. Let me hand you
13 Exhibit 30¹, which is a publication from the Kansas
14 Association of School Boards, and I can tell you
15 what was purported to be done in this document was
16 to list those school districts entitled to the
17 state equalization aid for '09 and '10. And my
18 question to you is: Can you identify the school
19 districts that received or were to receive state
20 equalization aid for that time frame?

21 A. I'm not sure I understand.

22 Q. I'm trying to --

23 A. Can I personally identify?

24 Q. Yeah. Can you tell me these are the
25 districts that received it, or I don't know or

1. Trial Exhibit 407.

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1 take issue with any of these districts as to
2 whether or not --

3 A. For '08-'09?

4 Q. For '08-'09 -- well --

5 A. As we discussed in '09 and '10 there was
6 no capital outlay paid out.

7 Q. Okay. For the school year '08-'09?

8 A. I do not know. I mean, the Division of
9 Budget didn't personally -- did not calculate
10 that. Whether -- I mean, this could be right, I
11 do not know.

12 Q. Okay. Do you know who Jim Hays is?

13 A. I know who he is, yes.

14 Q. Who is he?

15 A. He's somebody who works for the Kansas
16 Association of School Boards, I believe. I'm not
17 sure if he still works there or not, but he did at
18 one time.

19 (THEREUPON, Goossen Deposition Exhibit
20 No 31¹ was marked for identification.)

21 BY MR. RUPE:

22 Q. Uh-huh. All right. I'm going to hand
23 you Exhibit 31¹ and ask you to look at that for a
24 moment. Did the Division of Budget ever prepare a
25 document that listed, at the request of any

1. Trial Exhibit 314-15.

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1 legislator, requested the tax cuts since 2005 and
2 the effect of those tax cuts?

3 A. I don't recall that we ever did.

4 Q. Is that something --

5 A. At one time we prepared a -- we used to
6 keep a chart under the Graves administration of
7 the cost of tax cuts that had been enacted, but
8 quit doing that at some point.

9 Q. Why?

10 A. Because there weren't really lots more
11 further tax cuts. I mean, there were quite a
12 number that occurred in the sort of 1997 to, you
13 know, sort of the years right then there were a
14 number of tax cuts and we tracked those for a
15 time.

16 Q. Was it at somebody's request that you
17 stopped doing it?

18 A. I don't recall that it was. I think we
19 just probably thought it was no longer a useful or
20 a document that -- I don't recall anybody
21 requesting us to stop. I think we just stopped,
22 and I don't recognize this document. This looks
23 more like something that Legislative Research
24 would have put out.

25 (THEREUPON, Goossen Deposition Exhibit

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1 No 32 was marked for identification.)

2 BY MR. RUPE:

3 Q. Okay. We're getting down to the bottom
4 on the stack of exhibits and my questions, but I
5 want to call your attention to Exhibit 32¹. I may
6 have handed you the wrong one. Here, trade me, if
7 you would. Thank you. Sara Barnes again is who?

8 A. I don't know Sara Barnes.

9 Q. Okay. On October 27th, Elaine Frisbie
10 tells the people that she addresses the e-mail to
11 "We will release the capital improvement aid on
12 time, just not general state aid. Duane will sign
13 a letter for that piece on Thursday." Do you know
14 what the letter you were going to sign for that
15 piece on Thursday was?

16 A. Just a minute. I've got -- you're in the
17 middle e-mail there? These e-mails refer to a
18 cash flow situation in which the state did not
19 have adequate cash in the bank to make school
20 payments in their normal -- at their normal time.

21 Q. Okay.

22 A. And the way we managed -- the way cash
23 flow is managed, the -- really, the one tool that
24 we effectively have, the most effective tool to
25 manage cash is that the Director of the Budget

1. Trial Exhibit 367.

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1 statutorily must sign a release letter before
2 school aid payments go out. That normally happens
3 on a monthly basis, but it's not a process where
4 Accounts and Reports will just automatically
5 release school aid payments, but they will only do
6 that after the Director of the Budget signs a
7 form.

8 In a normal year when cash flow is not a
9 problem, where bank balances and cash balances are
10 fine, that's a routine thing that nobody thinks
11 much about. But in a year when cash is an issue,
12 as it was at this point in time when the e-mails
13 were written, this just simply means that the
14 capital improvement aid, that portion of it, that
15 much that was due for capital improvement aid was
16 being released as appropriated and that the
17 general state aid would come on Thursday, because
18 we would have expected that we would have had
19 enough money in the bank by Thursday to do it. It
20 doesn't reflect at all on whether those kinds of
21 payments should or shouldn't be made, it just
22 reflects on whether there's money in the bank to
23 make them.

24 Q. So, is that a situation where the school
25 district actually receives the money in the

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1 following year but books it in the previous year?

2 A. No, this was in October. I mean, they
3 would -- school districts would have been due by
4 -- through the budget that had been passed and
5 implemented, school districts would have been due
6 a certain amount of capital improvement aid and
7 would have been due general state aid payments,
8 and our normal schedule of making those slipped or
9 couldn't -- didn't have enough money in the bank
10 to make the payment. I mean, it's not a question
11 -- money would be coming later as tax receipts
12 came in, but state general fund receipts are
13 back-loaded in the fiscal year. More -- a greater
14 percentage of the money comes at the end of the
15 fiscal year or toward the end of the fiscal year
16 than at the beginning.

17 Q. All right.

18 A. So there are cash flow problems
19 sometimes.

20 (THEREUPON, Goossen Deposition Exhibit
21 No 33¹ was marked for identification.)

22 BY MR. RUPE:

23 Q. Let's look at Exhibit 33¹. I want to look
24 at the e-mail between Elaine Frisbie and Jeff
25 Arpin where it says Dale suggested going ahead.

1. Trial Exhibit 367.

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1 Who is Dale?

2 A. Dale Dennis.

3 Q. Okay. Do these e-mails address the same
4 explanation that you were just giving with regard
5 to Exhibit 32?

6 A. Yes, and I'm sure that what would have
7 happened is that Dale would have -- there would
8 have been a discussion on which was more important
9 given the amount of money that we had, which --
10 whether it was more important to do capital outlay
11 or general state aid.

12 (THEREUPON, Goossen Deposition Exhibit
13 No 34¹ was marked for identification.)

14 BY MR. RUPE:

15 Q. All right. Let me hand you Exhibit 34.
16 What is Exhibit 34?

17 A. It's a series of e-mails, it looks like,
18 between Elaine Frisbie from the Division of Budget
19 and Diane Goddard from -- I believe she's at -- I
20 don't know her, but I believe she's at KU. Yeah,
21 that's her e-mail address.

22 Q. And what do these e-mails address, the
23 same situation --

24 A. The same situation. The Board of Regents
25 and universities make payroll with both state

1. Trial Exhibit 367.

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1 general fund and with other funds. And when we're
2 in a cash flow crunch, from time to time the
3 Division of Budget asks them to do it all from --
4 from other non state and general fund sources in
5 order to save the state general fund cash.
6 Ultimately, the right amount of state general fund
7 and other funds are used, but it's just a cash
8 flow situation.

9 (THEREUPON, Goossen Deposition Exhibit
10 No 35¹ was marked for identification.)

11 BY MR. RUPE:

12 Q. Let me hand you Exhibit 35¹. I think this
13 is in the same vein, but what is Exhibit 35¹?

14 A. Another e-mail exchange that's got Elaine
15 Frisbie, Jeff Arpin. Again, it's cash flow.
16 Again, it's discussing -- it's just discussing the
17 cash flow situation.

18 Q. Well, and I think Jeff Arpin in that
19 e-mail at the bottom of the first page passes
20 along that at least the Buhler School District
21 indicated that they were hurting and they could
22 get through to December 15th, but would be in a
23 dire situation for cash after that. Do you have
24 any reason to dispute that?

25 A. No. I mean, we were -- we were in a

1. Trial Exhibit 368

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1 situation at that point in time where payments
2 were being made late because of cash issues.

3 Q. Okay.

4 A. Which meant -- which meant that school
5 districts did not receive money at the time that
6 they had planned to receive it.

7 Q. Okay. This is my only chance to have a
8 conversation with you concerning this situation
9 with the '09-'10 capital outlay equalization, and
10 I think I've understood your testimony with regard
11 to the Governor's allotment and what effect it had
12 on that money. And my question to you is, and
13 take your time to look through all the exhibits
14 and we can even take a break and you can come
15 back, if you want, but is the only place that the
16 Governor's allotment addresses the capital outlay
17 equalization funds is in Exhibit 8¹, particularly
18 that asterisk that we talked about?

19 A. Is that the question?

20 Q. Yes.

21 A. Or is there a follow-up?

22 Q. No, that's the question.

23 A. And address in what sense? I mean,
24 legally or on -- on --

25 Q. You have testified --

1. Trial Exhibit 353, 359, 313.

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1 A. -- put it to paper or --

2 Q. You have testified a number of times that
3 the Governor's allotment clarified the situation
4 or took care of the situation, or whatever words
5 you used, and my question to you is: With regard
6 to the Governor's allotment, is that the only
7 place it addresses the clarification is in the
8 \$24,000,000 asterisk?

9 A. This question seems to have some import.
10 I'm not quite sure why.

11 Q. No --

12 A. Why don't we take a break and give me a
13 chance to discuss it.

14 Q. Before we take our break, and we're going
15 to let you discuss it with your lawyer, but what
16 I'm asking you is from the documents that are in
17 front of you or any other documents that you may
18 know of, are there any other documents that
19 address that clarification other than what we've
20 covered in this deposition which is that asterisk
21 in Exhibit 8?

22 A. I think I understand the question.

23 Q. Before we take our break and you can
24 change your answer or add to it or clarify it

25 after the break, are you aware of any others at

1. Trial Exhibit 363, 369, 373.

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1 this time?

2 A. I'd like to take the break and touch base
3 with my counsel.

4 MR. RUPE: I think I'm entitled to an
5 answer, Art, before he takes the break and then he
6 can change his answer or amend it or whatever you
7 want to do.

8 BY MR RUPE:

9 Q. But as of this moment, are you aware of
10 any?

11 MR. CHALMERS: Well, my concern is, and
12 where his reticence may be, is that if he's
13 thinking there were things that he would be asked
14 to disclose that would fall in a category of
15 privilege, then he needs to talk to me about that.
16 I don't know what his concern is. If he's asking
17 are there additional documents and asking for my
18 help on that, I'm going to tell him just tell him
19 what he thinks.

20 MR. RUPE: All right. I'll live with
21 that clarification.

22 BY MR. RUPE:

23 Q. In terms of the documents, we'll ask more
24 after the break, but in terms of the documents,
25 are you aware of anywhere else it addresses it?

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1 A. No.

2 MR. RUPE: Okay. Let's take a break.

3 A. In terms of documents.

4 BY MR. RUPE:

5 Q. Okay. Then come back and we'll talk
6 about conversations.

7 THE VIDEOGRAPHER: It is 1:13 p.m. and we
8 are now off the record.

9 (THEREUPON, a recess was taken.)

10 THE VIDEOGRAPHER: It is 1:20 p.m. and we
11 are now back on the record.

12 BY MR. RUPE:

13 Q. Okay. Before we stopped so you could
14 talk to Mr. Chalmers, I'd asked you a question
15 about in terms of the documentation of the
16 Governor's allotment for '09-'10 fiscal year that
17 affected capital outlay equalization, whether that
18 Exhibit 8¹ and the asterisk was the only thing that
19 referred to that. My question to you is: After
20 the break, have you realized, recognized,
21 discovered any other documentation?

22 A. No.

23 Q. With regard to conversations with the
24 Governor concerning this topic, do you have any
25 recollection of any conversations you had with the
i. Trial Exhibit 353, 35A, 373.

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1 Governor?

2 A. On this topic?

3 Q. Yes.

4 A. Apart from the documents and -- no, I
5 mean.

6 Q. What about with the Governor's staff, did
7 you have any conversation about this capital
8 outlay equalization situation in '09-'10?

9 A. I don't remember specific conversations,
10 but I'm sure that there would have been
11 conversations explaining how this was being
12 handled and that there was some confusion over the
13 issue that needed to be clarified and that that's
14 how we were proceeding.

15 MR. RUPE: I don't have any other
16 questions.

17 MR. CHALMERS: I will save any questions
18 I have until the time of trial.

19 MR. RUPE: We'd ask you to read and sign.

20 MR. CHALMERS: I think that's his call.
21 I don't think he wants to do that.

22 THE WITNESS: I will waive that.

23 MR. RUPE: Okay, that's fine.

24 THE VIDEOGRAPHER: It is 1:22 and we are
25 now off the record.

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1 (THEREUPON, the deposition concluded at

2 1:22 p.m.)

3 .

4 (WAIVED)

5 DUANE GOOSSEN

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11

was reported by stenographic means, which

12

matter was held on the date, and the time

13

and place set out on the title page hereof

14

and that the foregoing constitutes a true

15

and accurate transcript of the same.

16

I further certify that I am not related

17

to any of the parties, nor am I an employee

18

of or related to any of the attorneys

19

representing the parties, and I have no

20

financial interest in the outcome of this

21

matter.

22

Given under my hand and seal this

23

day of _____, 2011.

24

25

Lora J. Appino, C.S.R. No. 0602

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