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2 IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS

3 CIVIL DEPARTMENT

4 .

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

8 .

9 vs. Case No. 10-C-1569

10 .

11 STATE OF KANSAS,  
12 Defendant.

13 .

14 .

15 VIDEOTAPED DEPOSITION OF

16 KENT OLSON,

17 taken on behalf of the Plaintiffs, pursuant to  
18 Notice to Take Deposition, beginning at 1:35 p.m.  
19 on the 16th day of May, 2011, at the office of  
20 Appino & Biggs Reporting Service, Inc., 5111  
21 Southwest 21st Street, in the City of Topeka,  
22 County of Shawnee, and State of Kansas, before  
23 Lora J. Appino, RPR-RMR, Certified Shorthand  
24 Reporter.

25 .



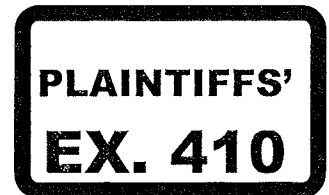
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1 APPEARANCES

2 .

3 .

4 ON BEHALF OF THE PLAINTIFFS:

5 .

6 Mr. Alan L. Rupe

7 Kutak Rock, LLP

8 1605 N. Waterfront Parkway

9 Suite 150

10 Wichita, Kansas 67206

11 316-609-7900

12 Alan.Rupe@KutakRock.com

13 .

14 Ms. Jessica L. Garner

15 (Participating via Internet Realtime)

16 Kutak Rock, LLP

17 1605 N. Waterfront Parkway

18 Suite 150

19 Wichita, Kansas 67206

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1 ON BEHALF OF THE DEFENDANT:

2 .

3 Mr. Arthur S. Chalmers  
 4 Hite, Fanning & Honeyman  
 5 100 North Broadway  
 6 Suite 950  
 7 Wichita, Kansas 67202  
 8 316-265-7741  
 9 chalmers@hitefanning.com

10 .

11 .

12 ALSO PRESENT:

13 .

14 Ms. Nahivi Fraga, Videographer

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1 INDEX

2 .

3 .

4 Certificate ----- 52

5 .

6 .

7 WITNESS

8 ON BEHALF OF PLAINTIFFS: PAGE

9 KENT OLSON

10 Direct-Examination by Mr. Rupe 5

11 Cross-Examination by Mr. Chalmers 49

12 Redirect-Examination by Mr. Rupe 50

13 .

14 .

15 EXHIBITS

16 OLSON DEPO EXHIBIT NO.: MARKED

17 No 36 Information attached to the  
18 12-13-10 e-mail from Roger Basinger to  
19 Shelley King claimed as privileged 17

20 .

21 .

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1 THE VIDEOGRAPHER: Today is the 16th day  
2 of May of 2011, and the time is approximately 1:35  
3 p.m. We are at the office of Appino & Biggs  
4 Reporting Service to take the deposition of Kent  
5 Olson 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 counsel please state your appearance  
9 for the record?

10 MR. RUPE: For the plaintiffs, Alan Rupe.

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

13 KENT OLSON,  
14 called as a witness on behalf of the Defendant,  
15 was sworn and testified as follows:

16 DIRECT-EXAMINATION

17 BY MR. RUPE:

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

20 A. Kent Olson. I live in Topeka, Kansas.

21 Q. Mr. Olson, my name is Alan Rupe and I  
22 represent the plaintiffs in this lawsuit against  
23 the State of Kansas. Do you understand who I am  
24 and who I represent?

25 A. Yes, sir.

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1 Q. With regard to the folks in the room, to  
2 your left is the State's lawyer, Art Chalmers, the  
3 court reporter is seated to my left, and to my far  
4 right is the videographer. Do you now know who  
5 everybody in the room is?

6 A. Yes, sir.

7 Q. With regard to the purpose of this  
8 deposition, do you have an understanding as to the  
9 purpose?

10 A. Yes, sir.

11 Q. What do you understand the purpose to be?

12 A. Just to obtain information, get  
13 clarification.

14 Q. Okay. With regard to the format here,  
15 you understand I ask the questions, you're under  
16 oath and you give answers truthfully?

17 A. Yes, sir.

18 Q. With regard to the purposes to which the  
19 deposition can be put, it can be used for  
20 cross-examination. If at the time of trial you  
21 testify and your testimony is different than it is  
22 today, I can point out those differences to the  
23 judges. Do you understand that?

24 A. Yes, sir.

25 Q. With regard to filings that we have with

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1 the judges in this case, we may refer to your  
2 deposition testimony or excerpts from it as part  
3 of those motions. Do you understand that?

4 A. Yes.

5 Q. Given the very important purposes for  
6 which this deposition can be used, it's going to  
7 be important that you understand my testimony and  
8 not answer any questions that you don't  
9 understand. So, if -- and count on it, I'll ask  
10 questions from time to time that may not make any  
11 sense. And if I do, will you stop me and tell me  
12 you don't understand it so I can back up and try  
13 again?

14 A. Yes.

15 Q. And can the judges assume that you  
16 understood my question if, in fact, you go ahead  
17 and give an answer without stopping me?

18 A. Yes.

19 Q. Okay. What did you do to prepare for  
20 this deposition?

21 A. Reviewed some allotment letters, also  
22 some of the certifications from Department of Ed.

23 Q. Okay. When you say allotment letters,  
24 tell me what you recall reviewing.

25 A. I recall reviewing a July 2009 allotment

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1 and then a November allotment letter.

2 Q. November '09?

3 A. Yes, sir.

4 Q. Okay. And then I think you also said  
5 that you reviewed some certifications. What  
6 certifications did you review?

7 A. A September 2010 letter from the  
8 Department of Education and then a March 2011  
9 letter from Department of Education.

10 Q. Okay. What is your current employment?  
11 Let me -- I've got a catchall question before I go  
12 on. Anything else you reviewed besides the  
13 allotment letters and the certifications?

14 A. Effectively, just those documents.

15 Q. And, you know, every time a witness says  
16 effectively or generally that's what I reviewed,  
17 every lawyer is going to do a follow-up question.  
18 Was there anything else that you reviewed?

19 A. Some e-mail which I believe has been  
20 provided to you.

21 Q. Okay. And that would be e-mail between  
22 whom?

23 A. Generally, between the budget office and  
24 my office. Information that would have been  
25 provided in response to legal requests.

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1 Q. Okay. Anything else?

2 A. That's it.

3 Q. Now, what is your current employment?

4 A. I'm the Director of the Division of  
5 Accounts and Reports within the Department of  
6 Administration.

7 Q. And when did you -- is that an appointed  
8 position?

9 A. Yes, sir.

10 Q. Who appoints you?

11 A. It's the Governor's appointment, but with  
12 me reporting to the Secretary of Administration,  
13 and -- and at the time also a Deputy Director of  
14 the Department of Administration, Deputy Secretary  
15 of the Department of Administration.

16 Q. When were you first appointed to that  
17 position?

18 A. I began service in January of 2007.

19 Q. Okay. And who appointed you?

20 A. The appointment letter was from Governor  
21 Sebelius.

22 Q. And did Governor Parkinson reappoint you?

23 A. The appointment continued without a  
24 reappointment.

25 Q. I guess he didn't unappoint you?

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1 A. Correct. Yes, sir.

2 Q. Okay. What about Governor Brownback, did  
3 he appoint you?

4 A. Same. Did not unappoint me, as you  
5 described.

6 Q. Okay. What was your employment before  
7 January of 2007?

8 A. I was -- well, in January of 2007, I was  
9 appointed as the Deputy Director of the Division  
10 of Accounts and Reports, and then it was that June  
11 of 2007 that I became the Director of the Division  
12 of Accounts and Reports.

13 Q. Okay. Prior to being appointed as the  
14 Deputy in January of 2007, what was your  
15 employment?

16 A. I was the Director of Accounting and  
17 Administrative Operations for Social &  
18 Rehabilitation Services.

19 Q. Okay. And how long had you been with  
20 SRS?

21 A. I believe my service at SRS began in 2000  
22 -- or 1996, excuse me.

23 Q. And prior to 1996, what was your  
24 employment?

25 A. Department of Transportation.

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1 Q. Okay. What -- what years were you at the  
2 DOT?

3 A. Began service at DOT in January of 2002  
4 until that 2006 date.

5 Q. Okay. I'm confused on your dates.  
6 January '07 you were appointed Deputy. Before  
7 that, you were at SRS or before that you were at  
8 DOT?

9 A. Began state service in 1992 at DOT.

10 Q. Okay. And I think you answered the  
11 question, but that's KDOT?

12 A. Yes, sir.

13 Q. As opposed to U.S. Department of  
14 Transportation.

15 A. Yes.

16 Q. So, when did you leave Kansas Department  
17 of Transportation?

18 A. In 1996.

19 Q. Okay. I think when you look at this  
20 deposition you may have got 2002 instead of 1992.

21 A. '02 instead of 1992, yes.

22 Q. All right. Now, we are on track. So, in  
23 1996 you moved to SRS and stayed there until you  
24 moved to the Deputy position. Is that correct?

25 A. In 2007?

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1 Q. I'm sorry, January of 2007.

2 A. Correct.

3 Q. Okay. What's your educational  
4 background?

5 A. BS in finance from Kansas State  
6 University.

7 Q. What year?

8 A. 1986, December of 1986.

9 Q. Okay. I want to focus on the time when  
10 you became Director of Accounts and Reports in  
11 June 2007 to current. So, that's the time frame  
12 we are going to be talking about.

13 A. Yes.

14 Q. And if you would, from that stack in  
15 front of you, pull Exhibit 8. Did you find it?

16 A. Yes.

17 Q. Okay. I also want you to pull Exhibit 19  
18 and 20.

19 A. I have those documents.

20 Q. Did you bring with you, by any chance,  
21 the e-mails and the letters of certification that  
22 you reviewed?

23 A. It was -- the allotment was this document  
24 I have in front of me.

25 Q. The one with the 8 on it, Exhibit 8?

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1 A. Yes, sir.

2 Q. Okay. And then the e-mails, are those  
3 what are contained in 19 and 20?

4 A. No, I have not seen, I don't believe --  
5 just on a quick glance, I don't believe I have  
6 seen 20.

7 Q. Okay. What about 19?

8 A. No, I have not seen 19.

9 Q. Okay. Well, keep them out. What were  
10 the e-mails that you reviewed, between whom? The  
11 ones you reviewed in preparation for this  
12 deposition, is what I'm talking about.

13 A. They were generally regarding the  
14 allotments, I'm recalling, those transactions  
15 would have been processed.

16 Q. And was your name on the e-mails?

17 A. Yes.

18 Q. As a recipient or a sender or both?

19 A. I believe a mixture, cc, to and from, but  
20 generally informing me of these transactions.

21 Q. And were the e-mails you reviewed in the  
22 2009 time frame?

23 A. Yes, I believe so.

24 MR. RUPE: Art, if you could show me what  
25 he reviewed, that might speed things along to

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1 locate the exhibit number.

2 MR. CHALMERS: I don't know that I know  
3 exactly what he reviewed, but let me --

4 A. And it is information, although it was  
5 for these transactions processed, the e-mails may  
6 have been later dates, but it contained these  
7 documents.

8 BY MR. RUPE:

9 Q. Okay. When you say these documents --

10 A. The two allotments in particular and --

11 Q. Exhibit 8?

12 A. Yes, 8 was one of those, and also a  
13 November --

14 MR. CHALMERS: How about that?

15 A. Yeah, it was I just believe later. It  
16 was information that was provided that had these  
17 attachments, I believe, generally in what was  
18 provided to you, but relating back to these -- to  
19 this correspondence from 2009.

20 BY MR. RUPE:

21 Q. So, it was an e-mail -- I'm trying to  
22 identify the e-mail. I want to get it in front of  
23 you. The e-mail that you're talking about was one  
24 that transmitted Exhibit 8 to you?

25 A. No, it was information provided later as

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1 part of sharing information, but not necessarily  
2 e-mail written in 2009. It had this 2009  
3 correspondence in it.

4 Q. Was it e-mail transmission between you  
5 and Mr. Chalmers?

6 A. I think from Shelley King to Mr.  
7 Chalmers.

8 MR. CHALMERS: Shelley King, as you  
9 remember, Alan, is in-house counsel, but it may be  
10 attorney/client privilege. Do you want to us take  
11 a quick break and we can sort out what it is --

12 MR. RUPE: Yeah, and come back and let me  
13 know. What I'm going to be interested in I want  
14 to get it in front of him and if it's  
15 attorney/client communication, tell me that.

16 MR. CHALMERS: Or, at least, identify it.

17 MR. RUPE: Yeah.

18 THE VIDEOGRAPHER: The time is 1:52 and  
19 we are now off the record.

20 (THEREUPON, a recess was taken.)

21 THE VIDEOGRAPHER: It is now 1:55 and we  
22 are back on the record.

23 MR. CHALMERS: The e-mail that he  
24 references is an e-mail from a Roger Basinger to  
25 Shelley King, a copy of it went to Kent Olson and

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1 to Martin Eckhardt, E-C-K-H-A-R-D-T, dated  
2 December 13, 2010 after this lawsuit was filed.  
3 It is a e-mail to Shelley, who is counsel, that  
4 attaches a number of documents and I think  
5 probably comes under the -- or the category of  
6 attorney/client communications. The documents  
7 that are attached, however, are not privileged and  
8 I can tell you what those are. They are, for the  
9 record, they are the -- or I can show you a copy  
10 of them, whichever you want to do. Do you want to  
11 look at them and make your own record as to what  
12 they are, Alan?

13 MR. RUPE: Why don't you just pull off  
14 the top sheet and --

15 MR. CHALMERS: I'll do that.

16 MR. RUPE: Is there a Bates number on  
17 your --

18 MR. CHALMERS: No.

19 MR. RUPE: -- letter you're claiming  
20 privilege?

21 MR. CHALMERS: No, there is no -- this  
22 isn't -- I would have -- it's dated maybe after it  
23 was actually -- perhaps not. Here is what the  
24 attachments were.

25 MR. RUPE: Okay. Counsel, with your

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1 permission, I'll ask the court reporter to mark  
2 this as Exhibit 35 (sic).

3 MR. CHALMERS: That's fine. I think you  
4 are going to find those duplicate things that have  
5 already been marked.

6 MR. RUPE: I think so, too, but just to  
7 be safe.

8 (THEREUPON, Olson Deposition Exhibit  
9 No 36<sup>1</sup> was marked for identification by the  
10 reporter.)

11 BY MR. RUPE:

12 Q. Okay. I'm going to lay in front of you  
13 Exhibit 36<sup>1</sup>, and that's the information without the  
14 e-mail that's claimed as privilege that you  
15 reviewed --

16 A. Yes.

17 Q. -- in preparation for this deposition?

18 A. Yes.

19 Q. Okay. Describe for me the -- oh, one  
20 other thing, just to get it out of the way.  
21 Exhibit 1 is a notice to take your deposition.  
22 Did you bring any documents independently of  
23 anything that was produced --

24 A. No.

25 Q. -- to counsel?

1. Trial Exhibit 408

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1 A. No.

2 Q. All right. Now, give me the job  
3 description for the Director of Accounts and  
4 Reports.

5 A. The director manages the finance and  
6 accounting systems, as well as the payroll systems  
7 used to record transactions in Kansas government.

8 Q. And you report to the Director of  
9 Administration or the -- somebody else?

10 A. At this time, to the Deputy Secretary of  
11 Administration and then to the Secretary of  
12 Administration.

13 Q. In the time frame of '09-'10 budgeting  
14 process and budget year, who did you report to?

15 A. Deputy Secretary of Administration.

16 Q. And who was that?

17 A. Carol Foreman.

18 Q. Is that K-A-R-O-L?

19 A. C-A-R-O-L.

20 Q. And last name what?

21 A. F-O-R-E-M-A-N.

22 Q. And who did she report to?

23 A. Secretary of Administration.

24 Q. Who was Mr. Goossen?

25 A. Correct.

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1 Q. Does the Director of Accounts and Reports  
2 have any statutory authority or any authority, to  
3 your knowledge, to reverse legislative action?

4 A. I don't know if I can legally answer  
5 that. But the - in statute, the Director does  
6 have statutory responsibilities. With respect to  
7 what you described, I don't know that I can  
8 necessarily speak to that.

9 Q. Okay. In your experience as the Director  
10 of Accounts and Reports, are there any occasions  
11 in which you exercised any authority to reverse  
12 legislative action?

13 A. Not that I recall, no.

14 Q. And certainly if the legislature had  
15 enacted a statute for one purpose or another and  
16 you had decided to countermand that, that would be  
17 the kind of thing you would remember?

18 A. Yes.

19 Q. As the Director of Accounts and Reports,  
20 do you have a function in the budgeting process?

21 A. No, only with respect to entering  
22 appropriations and limitations as determined by  
23 the legislature.

24 Q. Explain that to me. What is your  
25 function with regard to entering appropriations

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1 and limitations as determined by the legislature?

2 A. Generally, as the Division of Budget and  
3 the Governor and the legislature would work on or  
4 establish appropriations, limitations, budgets,  
5 then my office would enter transactions into the  
6 systems to establish those budgetary controls.

7 Q. And describe that mechanism. How does  
8 that work?

9 A. Generally, the Division of Budget will  
10 review the legislation and then advise my office  
11 of those transactions to be entered.

12 Q. And how do you go about entering the  
13 transactions?

14 A. With the system, the accounting system  
15 that the state had at the time. Appropriations,  
16 for example, are entered in an amount equal to the  
17 amount as established in legislation with respect  
18 to the state general fund.

19 Q. And then from there, where -- what  
20 happens after its entered into the state general  
21 fund?

22 A. As agencies or as transactions would be  
23 processed against those appropriations, for  
24 example, then those expenditures would reduce the  
25 remaining spending authority that an agency would

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1 have.

2 Q. Do you know what the capital outlay  
3 equalization money is?

4 A. Department of Education money that is  
5 certified for the sake of the calculation. I'm  
6 not familiar with the calculation.

7 Q. Okay. But you know generally it's a  
8 state aid to school districts that have lower  
9 property wealth than other school districts?

10 A. Not even to that level of detail, but  
11 just generally it's capital outlay to school  
12 districts.

13 Q. You know it's money that goes to school  
14 districts?

15 A. Yes, sir.

16 Q. And it doesn't go to all school  
17 districts, it just goes to some?

18 A. My only familiarity was just in having  
19 seen the September document to see the amounts  
20 that were listed on that document, but I'm not  
21 familiar with whether that included all school  
22 districts or not.

23 Q. Okay. For '09-'10 fiscal year, my  
24 question to you is: Earlier, you explained when I  
25 asked you how do you go about entering the

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1 transaction, your answer was with the system, the  
2 accounting system that the state had at the time.  
3 Appropriations, for example, are entered into an  
4 amount equal to the amount as established in the  
5 legislation with respect to the state general  
6 fund.

7 My question, with particular reference to the  
8 '09-'10 fiscal year, is whether or not an  
9 appropriation for capital outlay equalization was  
10 entered in your system?

11 A. Not in that '09 period. I'm sorry, the  
12 '09-'10 period that would have ended June 30,  
13 2010.

14 Q. And do you know why it wasn't?

15 A. I do not know why it wasn't.

16 Q. Who directs you to enter them in the  
17 system?

18 A. I don't -- normally, the Department of  
19 Education, I believe, processes those  
20 transactions. In the September letter, it was for  
21 the '09-'10 year and it did list those amounts.

22 Q. Looking at Exhibit 8, and refer to the  
23 letter you're talking about, please. Direct me to  
24 it.

25 A. Yes.

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1 Q. Which letter are you talking about?

2 A. On 8. I'm looking at Exhibit 36<sup>1</sup>.

3 Q. Oh, okay. I don't have a copy. Show me  
4 what you're talking about. You're talking about  
5 the letter from Kent Olson to Dale Dennis dated  
6 September 22nd?

7 A. Correct.

8 Q. What did you do when you received that  
9 September 22nd letter?

10 A. There was legislation that didn't provide  
11 for any transactions to be processed in the --  
12 during the fiscal years ending June 30, 2011 and  
13 June 30, 2012 --

14 Q. But that -- but that letter certified the  
15 funds for '09-'10, correct?

16 A. The transaction would have processed in  
17 the fiscal year ending June 30, 2011.

18 Q. So, back to my question. Why wasn't that  
19 entered in the system?

20 A. We had -- I didn't understand any  
21 authority to process this transaction.

22 Q. Okay. Did you go to anybody and ask them  
23 what you should do?

24 A. Division of Budget, I believe, would have  
25 been aware.

1. Trial Exhibit 408

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1 Q. But I'm asking about your action.

2 A. No.

3 Q. Did you go to anybody and say am I  
4 supposed to distribute these funds or not?

5 A. This isn't the normal process that would  
6 have been followed, so -- and then the  
7 transactions would have come prior to June 30 of  
8 other years. That did not happen in this year or  
9 for this period.

10 Q. And I understand that. My question was,  
11 did you go to anybody and have a discussion with  
12 them about whether or not the check should issue?

13 A. I did not. I don't know whether my staff  
14 did or not.

15 Q. Okay. Were you told by somebody we can't  
16 cut the checks?

17 A. I -- I don't recall. I -- (paused)

18 Q. I'm trying to decide what your decision  
19 making was with regard to that letter from Dale  
20 Dennis when you got it. Did you say to yourself  
21 alone this can't happen because it's outside the  
22 normal process, or did you seek some assistance  
23 and guidance from somebody on what you should do?

24 A. I believe our counsel would have known at  
25 that time and other discussions would have

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1 occurred.

2 Q. Shelley King, is that who you're talking  
3 about?

4 A. Yes.

5 Q. Do you recall who you talked to about it,  
6 other than Shelley King?

7 A. I believe Mr. Dennis visited first with  
8 Shelley King, so -- for any discussions she may  
9 have had with others, I'm not familiar with those  
10 discussions.

11 Q. So, there was a conversation between Dale  
12 and Shelley?

13 A. I believe Dale delivered the letter to  
14 Shelley.

15 Q. Okay. And as far as you --

16 A. Whether electronically or in person, but  
17 I believe he communicated with Shelley.

18 Q. Do you know if there were conversations  
19 between them, either electronically or in person,  
20 about the contents of the September letter?

21 A. No, I don't. I don't know the depth of  
22 their discussion. I was not present.

23 Q. Did you become -- how did you become  
24 aware that they had talked about it?

25 A. Shelley advised me.

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1 Q. Other than your conversations with  
2 Shelley King, did you have conversations with  
3 anybody else about whether or not, in response to  
4 the September 2009 letter from Dale Dennis,  
5 distribution should be made?

6 A. I -- I'm sure my staff would possibly  
7 have communicated with Budget.

8 Q. And who among your staff would you have  
9 talked to?

10 A. Well, the two individuals working in that  
11 group would have been Roger Basinger, as mentioned  
12 earlier, and then Martin Eckhardt.

13 Q. Eckhardt?

14 A. E-C-K-H-A-R-D-T.

15 Q. Okay. Had the funds been certified --  
16 well, let me ask the question this way. What  
17 would have been the appropriate procedure with  
18 regard to that capital outlay equalization money  
19 that would have caused you to distribute the money  
20 to the school districts entitled to it in '09 and  
21 '10?

22 MR. CHALMERS: Incomplete hypothetical.

23 BY MR. RUPE:

24 Q. Do you understand my question? You said  
25 that when you got the September 10 letter from

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1 Dale that that was outside the normal process, and  
2 you have outlined what your response was in regard  
3 to that. My question is: What if you had  
4 received the certification within the time frame  
5 that was appropriate, what would have been your  
6 conduct at that point, subject to Art's objection?

7 MR. CHALMERS: Well, I think I also have  
8 to add lack of foundation, but go ahead. You can  
9 answer if you can. There is no judge here to  
10 rule. So if you understand the question, give him  
11 the best answer you can.

12 A. I could only speak historically what may  
13 have happened, and that provided authority was  
14 there, appropriation was there, then the districts  
15 could have been paid.

16 BY MR. RUPE:

17 Q. Okay. And when you say that provided  
18 authority was there, you mean the certification of  
19 the funds by the State Board of Education?

20 MR. CHALMERS: Objection to form. Go  
21 ahead.

22 A. Appropriation authority was there and  
23 then no language preventing the transactions being  
24 processed prior to June 30, 2010.

25 BY MR. RUPE:

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1 Q. Explain to me what you mean by, quote,  
2 appropriation authority was there and then no  
3 language preventing the transactions being  
4 processed prior to June 30, 2010?

5 A. If resources were available in that  
6 appropriation, then those payments could have been  
7 made to the school districts.

8 Q. Could those payments have been made  
9 without the State Board certification?

10 MR. CHALMERS: It calls for a legal  
11 conclusion.

12 A. I'm not familiar enough with the process  
13 to respond to that question.

14 BY MR. RUPE:

15 Q. Historically, was there always a  
16 certification by the State Board of Education  
17 before those capital outlay equalization funds  
18 were distributed?

19 A. Procedurally, I'm not familiar with that  
20 process.

21 Q. Well, who would be?

22 A. I believe it would be through any  
23 coordination between Department of Education,  
24 Division of Budget and my office.

25 Q. Well, let's focus on what you just said.

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1 If there had been capital outlay equalization  
2 money available, would it have been distributed to  
3 the schools in '09-'10?

4 MR. CHALMERS: Incomplete hypothetical.

5 A. I would only be -- for the business  
6 process that was used in the years when  
7 transactions were processed would be the only  
8 historical basis, and I'm not familiar with that,  
9 completely familiar with that process.

10 BY MR. RUPE:

11 Q. With regard to capital outlay  
12 equalization in years before '09 and '10, did your  
13 department pay the districts entitled to capital  
14 outlay equalization?

15 A. I'm not familiar with who entered those  
16 transactions, whether it was Department of  
17 Education or my office.

18 Q. Would you -- do you know who actually  
19 cuts the checks? Is it your department or the  
20 Department of Ed?

21 A. My department cuts the checks.

22 Q. Okay.

23 A. The payments.

24 Q. Actually, it's not a check, it's just a  
25 demand transfer, isn't it?

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1 MR. CHALMERS: Object to the form as  
2 being vague in time.

3 BY MR. RUPE:

4 Q. In '09-'10.

5 MR. CHALMERS: Object to form. Lack of  
6 foundation. It's also inconsistent with the  
7 statute, as you know, Counsel, as you said you  
8 did.

9 BY MR. RUPE:

10 Q. Go ahead and answer.

11 A. Payments were processed. I don't know in  
12 what form those payments were received by the  
13 school districts.

14 Q. As you go to work every day, do you see a  
15 difference or understand any difference between  
16 revenue transfers and demand transfers?

17 A. Only for the sake of how those are  
18 recorded in the state accounting system.

19 Q. Explain to me the difference in terms of  
20 recording.

21 A. Revenue transfers process as a revenue  
22 transaction, demand transfers process as an  
23 expenditure transaction.

24 Q. Do you know if that's a legal difference?

25 A. I believe -- I'm only aware of it with

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1 respect to accounting practice.

2 Q. In '09-'10, what was capital outlay  
3 equalization in terms of accounting practice, a  
4 revenue transfer or demand transfer?

5 MR. CHALMERS: Lack of foundation. Calls  
6 for a legal conclusion.

7 A. I don't know.

8 BY MR. RUPE:

9 Q. Reviewing the documents, did that refresh  
10 your recollection? Getting ready for this  
11 deposition, did you see anything that would  
12 refresh your recollection on which it was?

13 A. No.

14 Q. Do you have any role in the preparation  
15 of the education portion of the recommendations to  
16 the Governor --

17 A. No.

18 Q. -- for the Governor's budget?

19 A. No, sir.

20 Q. How does the allotment process work?

21 A. With respect to the two allotments that I  
22 reviewed?

23 Q. Let's go back to just generally. Explain  
24 what the allotment process is. Governor's  
25 allotment is what I'm talking about.

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1           A.    I believe the Secretary of  
2   Administration, Governor -- the Secretary of  
3   Administration, Secretary Goossen, as budget  
4   director, would work with the Governor on those --  
5   any allotments that were to be made.

6           Q.    Do you have any role in recommendations  
7   to the Governor or to the Director of  
8   Administration concerning allotments?

9           A.    Not to the Governor, to the Director of  
10  Administration or the budget, Secretary of  
11  Administration or the budget director.

12          Q.    So none of the above?

13          A.    No, sir.

14          Q.    We both said a negative.  You do not --  
15  is it a correct statement that you don't have any  
16  input in allotments to the Governor, the Secretary  
17  of Administration or the budget director?

18          A.    That is correct.

19          Q.    You come in after the allotment is made  
20  to reduce the transfers that may be affected by  
21  the allotment, if I'm understanding you?

22          A.    To reduce the appropriations or, as I  
23  think some of the documentation discussed, to  
24  maybe not make transfers if there were any.

25          Q.    Okay.  Now, I want to focus on the

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1 capital outlay equalization for '09-'10.

2 Did you receive any direction to not make the  
3 transfer from anybody?

4 A. I'm -- that's not communication I  
5 reviewed, only beyond Miss King, Shelley King and  
6 discussions that may have been had in that  
7 respect.

8 Q. Okay. So, the reason that you didn't  
9 make the transfer was because of your conversation  
10 with Miss King?

11 A. And interactions she had with others.

12 Q. And do you know who she talked to?

13 A. I don't recall.

14 Q. Other than Dale Dennis?

15 A. I don't recall who within the Department  
16 of Administration. I'm not familiar with any --  
17 the conversations she had had.

18 Q. Did you ask for a legal opinion from  
19 other -- from anyone other than your conversations  
20 with Ms. King? For example, the Attorney General?

21 A. I didn't personally with the Attorney  
22 General.

23 Q. Do you know if anybody did?

24 A. I -- I don't recall. I did not review  
25 the correspondence that happened at that time when

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1 Dale Dennis delivered the letter. I just haven't  
2 reviewed any conversations or documentation that I  
3 had or didn't --

4 Q. Okay. Let's go before Dale Dennis  
5 delivered the letter, before September of 2009 --  
6 I'm sorry, 2010. It is 2010, isn't it?

7 A. Yes, sir.

8 MR. CHALMERS: Yes.

9 BY MR. RUPE:

10 Q. Okay. Go back before then. During the  
11 2009-2010 fiscal year, explain to the judge why  
12 you did not distribute capital outlay equalization  
13 fund money to the districts that were entitled to  
14 it?

15 MR. CHALMERS: Object to the form. If he  
16 can answer your questions, go ahead. I think he  
17 wants you to answer a question.

18 BY MR. RUPE:

19 Q. I want an explanation, is what I want.

20 MR. CHALMERS: Well, then, ask a  
21 question.

22 MR. RUPE: I did.

23 BY MR. RUPE:

24 Q. Go ahead.

25 A. I'm not familiar with the process that

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1 would have been used at that time. I only became  
2 aware with the September documentation. It is not  
3 a tracking I would have done at that time, nor  
4 been familiar with the process itself.

5 Q. We just took Mr. Goossen's deposition,  
6 and if you'll look at Exhibit 8, I asked him a  
7 number of times to tell me where in the government  
8 -- Governor's allotment there was any reference to  
9 capital outlay equalization money not being paid,  
10 and I direct your attention to Exhibit 8, Bates  
11 No. down here, these little numbers, A1835. Do  
12 you see that?

13 A. Yes, sir.

14 Q. And there is an asterisk on general state  
15 aid, Agency 652, Department of Education, budget  
16 unit 0820 general state aid asterisk, do you see  
17 that?

18 A. Yes.

19 Q. And then at the bottom, the asterisk  
20 says: "Amount allotted from general state aid is  
21 reduced \$25,600,000 to reflect savings from not  
22 making the capital outlay aid transfer." Do you  
23 see that in the footnote?

24 A. I see that.

25 Q. Do you have an explanation as to why that

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1 transfer was not made?

2 MR. CHALMERS: Object to the form. Lack  
3 of foundation.

4 A. No, only other than recalling some  
5 documentation about what I discussed earlier being  
6 appropriation reductions or transfers not being  
7 made.

8 BY MR. RUPE:

9 Q. What do you mean appropriation reductions  
10 or transfers not being made?

11 A. This allotment letter that you are  
12 mentioning is -- is the allotment letter with the  
13 reductions that we received from the Division of  
14 Budget.

15 Q. Okay. So, now I'm with you. So, you're  
16 saying the appropriation was not made or -- go  
17 back. The checks weren't cut, or the equivalent,  
18 because of this Governor's allotment we are  
19 referring to?

20 A. Yes. And if you'll look on A1833 at the  
21 bottom, in that first paragraph it talks about,  
22 "In addition to the allotment reductions in the  
23 accounts, a few that fall into the category of  
24 revenue transfers."

25 Q. Okay. You're talking about Mr. Goossen's

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1 letter December 23, '09?

2 A. Yes.

3 Q. The paragraph that says: "Please note  
4 that, in addition to the allotment reductions in  
5 the accounts, a few that fall into the category of  
6 revenue transfers constitute a shortage of  
7 transfers from the state general fund. For  
8 accounting purposes, these items are included with  
9 the SGF reductions on the attached spreadsheet."

10 A. Correct.

11 Q. That's what you're referring to?

12 A. Yes.

13 Q. Up to the date of this letter, December  
14 23, 2009, do you have an explanation as to why the  
15 checks weren't cut or the equivalent?

16 A. No, I don't.

17 Q. Historically, when was the capital outlay  
18 equalization money distributed to the school  
19 districts? A time frame.

20 A. I don't know historically.

21 Q. Did you consider the capital outlay  
22 equalization money for '09-'10 to fall in the  
23 category of a revenue transfer constituting a  
24 stoppage of transfers from the state general fund?

25 A. I -- I don't know on that. Generally, we

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1 would only act on, for the sake of allotments,  
2 what the budget would have provided to us for any  
3 adjustments in the accounting system.

4 Q. From your experience, can you recall any  
5 situation in which a Governor's allotment stopped  
6 or reduced a demand transfer?

7 A. I don't recall.

8 Q. Is that the kind of thing you would  
9 remember?

10 A. No, I wouldn't normally work with that.

11 Q. Okay. Okay. So, your decision not to  
12 make the capital outlay aid transfer was as the  
13 result of this Governor's allotment in December  
14 2009 and your conversations with Ms. King?

15 A. And any discussions she may have had with  
16 others.

17 Q. Okay. But as far as what she discussed  
18 with others, your decision not to make the  
19 transfer was based on what she told you?

20 A. And I believe Division of Budget would  
21 have been involved in that discussion.

22 Q. Okay. So, your answer is yes, and the  
23 Division of Budget discussion?

24 A. It would be through coordination with  
25 other offices that decision was made.

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1 Q. And do you remember who you talked to in  
2 the Division of Budget about this?

3 A. I don't recall. I didn't review the  
4 communication that had happened at that time.

5 Q. Do you remember discussion at the time  
6 about a Witt/writ?

7 A. Not at that time, no.

8 Q. About a executive directive, do you  
9 recall discussion about an executive directive in  
10 this time frame?

11 A. No, sir.

12 Q. Take a look at these e-mails that I  
13 handed to you, which were Exhibits 19 and 20. Do  
14 you see the discussion, at least on the first page  
15 of Exhibit 19, about "Roger doesn't think we can  
16 do an executive directive." That would be the  
17 second page -- or second paragraph on Exhibit 19.  
18 Do you know what an executive directive is?

19 A. Not with respect to this. And this is  
20 the first time I'm looking at this communication,  
21 so not -- not in the context of how it maybe is  
22 written here.

23 Q. Is there a difference between the  
24 stoppage of a transfer as opposed to an allotment  
25 reduction?

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1 A. I'm -- I'm not familiar, just only with  
2 respect to the -- what was written on the letter,  
3 the allotment letter that we just reviewed.

4 Q. That -- are you talking about the  
5 footnote?

6 A. No, the cover letter dated December 23.

7 Q. Okay.

8 A. And I'm not familiar with where that  
9 applies even with respect to the footnote.

10 Q. Okay. Back to my question then.  
11 Other than your conversations with Ms. King and  
12 the Director of Administration or somebody in that  
13 department, is there anyone else you talked to  
14 before you decided not to make the distribution?

15 A. I didn't review any communication that  
16 was happening at that time. I just recall Dale  
17 Dennis having contacted Shelley King, but I didn't  
18 review any communication that was happening after  
19 that point.

20 Q. Okay. So, what I'm trying to -- what I'm  
21 trying to isolate and understand is what was your  
22 thought process when you decided these districts  
23 are not going to get the checks cut or the  
24 equivalent for the capital outlay equalization  
25 money. And as I understand it, your thought

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1 process was dictated by conversations with Shelley  
2 King and input from the Director of Administration  
3 or his staff?

4 A. Ultimately, we would have looked for  
5 guidance from the Director of Budget, Secretary of  
6 Administration.

7 Q. Okay. And my question then is a catchall  
8 question. Is there anybody else that you talked  
9 to, anything else that you reviewed before you  
10 made the decision not to cut the checks or the  
11 equivalent?

12 A. No. Generally, we would have looked for  
13 guidance from the budget office.

14 Q. Do you interact -- interact with Dale  
15 Dennis at any time for any reason?

16 A. Not on -- not for any recurring reason.

17 Q. Did you have conversations with Dale  
18 Dennis about this situation involving the capital  
19 outlay aid demand transfer in 2009?

20 A. No, only -- only the letter that was  
21 delivered.

22 Q. It looks like Mr. Arpin, on Exhibit 19,  
23 first page, looks like Mr. Arpin contacted Elaine  
24 Frisbie and Duane Goossen on October 30, and the  
25 reference is capital outlay aid demand transfer.

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1 Do you see that?

2 A. Which paragraph?

3 Q. It's the subject line of the e-mail.

4 A. Oh, yes.

5 Q. Is that a correct characterization of the  
6 capital outlay aid, that being a demand transfer?

7 MR. CHALMERS: Object. Lack of  
8 foundation. It's inconsistent with the law, and  
9 you know that, Counsel, and you said you did.  
10 It's not fair and it's not a proper question to  
11 try to assert something that you know is not  
12 proper, Mr. Rupe, and I wish you would quit doing  
13 that.

14 BY MR. RUPE:

15 Q. Is that a fair characterization,  
16 understanding you work from accounting principles  
17 and not the law?

18 MR. CHALMERS: It calls for a legal  
19 conclusion. You're asking --

20 MR. RUPE: You made your objection.

21 MR. CHALMERS: I think you've got an  
22 ethical obligation to not mislead the witness.

23 MR. RUPE: Counsel --

24 MR. CHALMERS: Substitute for Senate  
25 Bill, House Bill 2354, Section 130 states that it

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1 is a revenue transfer.

2 MR. RUPE: Counsel, we are going to stop  
3 this deposition if you keep giving this witness  
4 answers when he has an answer himself based on  
5 accounting principles and I've excluded the legal  
6 conclusion from this.

7 MR. CHALMERS: We can stop the deposition  
8 if you'd like and you can explain to the three  
9 judge panel why you're misrepresenting the law or  
10 trying to with this particular witness.

11 BY MR. RUPE:

12 Q. Based on accounting principles that you  
13 have explained, is demand transfer an accurate  
14 explanation of capital outlay -- outlay aid in  
15 October 2009?

16 MR. CHALMERS: Lack of foundation and for  
17 the other reasons.

18 MR. RUPE: Subject to your litany of  
19 objections.

20 BY MR. RUPE:

21 Q. Go ahead and answer.

22 A. Both types of transactions could be  
23 entered in the accounting system and may relate to  
24 the way agency budgets are --

25 Q. Explain that to me.

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1           A.    The way the budget would have been  
2 developed with respect to revenues and  
3 expenditures.

4           Q.    So, it could have been either -- entered  
5 either as a demand transfer or a revenue transfer?

6           A.    Yes.

7           Q.    How does Jeff Arpin or you go about  
8 deciding which to enter it?

9           A.    I -- I -- I don't know that I'm in a  
10 position to answer that without, you know,  
11 looking.

12          Q.    What would you look at to decide whether  
13 to make your entry as a demand transfer or a  
14 revenue transfer?

15          A.    The budget and then the appropriate  
16 accounting classification of those transactions.

17          Q.    And where would you get the appropriate  
18 accounting classification of those transactions?  
19 From where?

20          A.    We would need to understand the type of  
21 transactions.

22          Q.    And where would you get that  
23 understanding?

24          A.    Through consultation with Division of  
25 Budget, with auditors.

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1 Q. And who are the auditors?

2 A. At the time, Allen, Gibbs & Houlik.

3 Q. Was there an audit report issued on the  
4 transfers through Allen, Gibbs & Houlik?

5 A. There was a comprehensive --

6 THE REPORTER: I'm sorry, one more time.  
7 I just lost it in my head.

8 A. Comprehensive Annual Financial Report.

9 BY MR. RUPE:

10 Q. And it would have characterized the  
11 capital outlay equalization as either a demand  
12 transfer or a revenue transfer?

13 A. I didn't review that document.

14 Q. Okay. Is that where you would typically  
15 look to understand the difference?

16 A. Those transactions, as recorded in the  
17 accounting system, would have been presented in  
18 that financial statement.

19 Q. And who -- who would I ask to get a copy  
20 of that financial report?

21 A. The financial report's available online  
22 through the department's website.

23 Q. The -- which department?

24 A. Department of Administration.

25 MR. RUPE: Did you produce that to us,

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1 Counsel?

2 MR. CHALMERS: I don't think so. I don't  
3 know.

4 MR. RUPE: Well, that's two answers, but  
5 thanks for both.

6 MR. CHALMERS: I produced a lot of stuff.  
7 I can't say whether I produced it or not. I  
8 wouldn't have thought to produce it, maybe  
9 somebody else did.

10 BY MR. RUPE:

11 Q. Do you recall in '09 time frame accessing  
12 the audit report from Allen, Gibbs & Houlik on  
13 this topic?

14 A. No.

15 Q. Again, for the umpteenth time, you recall  
16 talking to Shelley King and somebody from the  
17 Department of Administration?

18 A. Shelley King within the Department of  
19 Administration.

20 Q. Did you talk to anybody other than  
21 Shelley King?

22 A. I didn't review --

23 Q. Is that an I don't recall?

24 A. I don't recall.

25 Q. Okay. With regard to this capital outlay

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1 equalization situation in '09, do you recall  
2 having any conversations with anybody else about  
3 that situation that you have not described here?

4 A. I don't recall.

5 MR. RUPE: I want to take a break. I  
6 think I may be close to done.

7 MR. CHALMERS: That's fine.

8 THE VIDEOGRAPHER: It is 1:48. We are  
9 now off the record -- it's 2:48.

10 (THEREUPON, a recess was taken.)

11 THE VIDEOGRAPHER: It is 2:56 and we are  
12 back on the record.

13 BY MR. RUPE:

14 Q. I'm going to wrap up here with a couple  
15 of different areas, but -- and some of this ground  
16 I may have plowed before, but I just want to get a  
17 clear understanding from you.

18 As a matter of accounting in how you do your job,  
19 what is the difference between a revenue transfer  
20 and a demand transfer?

21 A. For the sake of accounting, the state  
22 accounting system would record a revenue transfer  
23 as -- as a revenue transaction, and a demand  
24 transfer would be recorded as an expenditure  
25 transaction.

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1 Q. And who decides how it should be booked?

2 A. It then would be in discussion with the  
3 Division of Budget, and then the auditors for the  
4 sake of presentation in the annual financial  
5 report.

6 Q. Okay. With regard to this capital outlay  
7 equalization situation in '09-'10, in terms of  
8 your understanding of the capital outlay  
9 equalization money, was there a distinction  
10 between a demand transfer and a revenue transfer?

11 A. I don't recall with respect to the why it  
12 was -- would have been recorded one way or the  
13 other. I was not involved in any discussions in  
14 that respect.

15 Q. Okay. Regardless of whether it was a  
16 revenue transfer or a demand transfer, are you  
17 aware of any document that indicates the capital  
18 outlay state aid for '09-'10 should not occur, not  
19 be paid?

20 A. It would be part of those discussions. I  
21 do not recall, but part of those discussions would  
22 have occurred with Miss King. And --

23 Q. Okay. And -- and with regard to  
24 discussions, we have talked about those. I'm  
25 asking you are you aware of any document?

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1           A.    No.  You showed a couple exhibits that  
2           were, I believe, in the October 2009 period.  I  
3           was not included on those e-mail documents.

4           Q.    So, back to my question.  Are you aware  
5           of any document that, whether it's -- whether it's  
6           revenue transfer or demand transfer, that says the  
7           capital outlay state aid should not occur?

8           A.    I'm not recalling any document.

9           MR. RUPE:  That's all the questions I  
10          have.

11          CROSS-EXAMINATION

12          BY MR. CHALMERS:

13          Q.    I just have one follow-up question for  
14          clarification.  And off record we were looking at  
15          the -- the Comprehensive Annual Report for the  
16          fiscal year 2010.  I've got a copy of it up on the  
17          screen, but that report is actually prepared and  
18          issued, what, at the end of 2010?

19          A.    Yes, that's correct.

20          Q.    Okay.  So, if we were looking to see how  
21          the capital outlay fund was treated for that  
22          fiscal year and if there had been an allotment  
23          removing any funding for capital outlay, would it  
24          be included before December of 2010?  Would it be  
25          in this report?

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1           A.    The annual financial report is published  
2    about the end of the calendar year for the fiscal  
3    year ending June 30 of that calendar year.

4           **Q.    It may or may not show anything?**

5           A.    I'm -- I'm not familiar with any  
6    information in the CAFR with respect to the  
7    subject.

8           MR. CHALMERS:  I don't have anything  
9    else.

10          REDIRECT-EXAMINATION

11          BY MR. RUPE:

12          **Q.    When you say you're not familiar with any**  
13    **information, you're talking about the Allen, Gibbs**  
14    **& Houlik audit?**

15          A.    The state's Comprehensive Annual  
16    Financial Report.

17          MR. RUPE:  Okay.  That's all I have.  Do  
18    you want to read and sign or do you want to waive,  
19    Counsel?

20          MR. CHALMERS:  It's your call.  You can  
21    either rely on what the court reporter takes down  
22    or you can read and sign it.  It's been a short  
23    deposition.  I don't have any good reason for you  
24    to read and sign it, but it's solely your  
25    decision.

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1 MR. OLSON: I'm fine with it as written.

2 MR. CHALMERS: Do you want to read -- or  
3 waive?

4 THE WITNESS: Okay.

5 MR. RUPE: Show it waived. Thank you.

6 THE VIDEOGRAPHER: The time is 1:01 --  
7 I'm sorry, the time is 3:02 and we are now off the  
8 record.

9 (THEREUPON, the deposition concluded at  
10 3:02 p.m.)

11 .

12 (WAIVED)

13 KENT OLSON

14 .

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CERTIFICATE

STATE OF KANSAS

ss:

COUNTY OF SHAWNEE

I, Lora J. Appino, a Certified Shorthand Reporter, commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A. 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Lora J. Appino, C.S.R. No. 0602



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