

## **FINAL REPORT TO**

**James P. Pottorff  
General Counsel  
University of Kansas**

## **INTRODUCTION**

This Report was prepared in response to a request by Athletic Director Lew Perkins (hereinafter “Perkins”) to Chancellor Bernadette Gray-Little (hereinafter “The Chancellor”) for an investigation involving personnel in the Williams Fund and the Athletic Ticket Office regarding an alleged ticket selling scam. The Chancellor granted that request and ordered the investigation.

The Chancellor authorized her counsel, James P. Pottorff, Jr., to conduct an investigation and advise her of what legal action she should anticipate. Her authorization included permission to employ such consultants as necessary to develop a full understanding of the problems in the Athletic Department.

James Pottorff employed the law firm of Foulston Siefkin LLP and authorized it to engage an appropriate firm to conduct a forensic audit. The accounting firm of BKD was selected. Both Foulston Siefkin and BKD were to prepare a report of their findings and recommendations.

## **EXECUTIVE SUMMARY OF FOULSTON SIEFKIN AND BKD REPORTS**

A summary of the Reports of both Foulston Siefkin and BKD follows.

The Report details the background information received by Athletic Department personnel from federal authorities which led to the request for an investigation. That investigation was designed to cover both the human factors and the forensic evidence and counsel was directed to fully report their findings.

The Report details the study of the policies and systems in place to determine whether they are adequate for the purposes represented in their public publications. The programs studied include the Donor Advantage, Williams Fund, Select-A-Seat, Priority Seating, Ticket Turnback, and Jayhawk Ticket Marketplace. Also studied was the software program, known as Paciolan, and all its subsets utilized by Kansas Athletics to manage its ticketing program.

The Report determines that the programs, if run correctly and as conceived, would produce the desired results. However, it was found that abuse of the internal controls occurred contributing to the cover up of many of the problems discussed. It was found that human factors, probably motivated by a desire to deceive, helped keep secret some of the abuses uncovered.

The Report names the persons responsible for losses to the University and details some of the evidence, both obtained from interviews and forensic examination of computers and text mail which leads to the conclusions set out in the Report. These individuals include some of the

“leadership of Kansas Athletics Inc.,” including the Associate Athletic Director in charge of Development; the Assistant Athletic Director in charge of the Williams Fund; the former Associate Athletic Director in charge of the Ticket Office; her husband, who was a “consultant” to the Ticket Office; a former Assistant Athletics Director of Sales & Marketing, and an Associate Ticket Manager. All of those named terminated employment with Kansas Athletics at some time during the pendency of the federal and internal investigation.

The Report details the cooperation and/or lack of cooperation of personnel who were interviewed or declined the invitation to participate in solving the problems presented by the investigation.

The Report details the findings and conclusions that led the internal investigative team to the conclusion that all of the named individuals, individually and in concert with one or more of the other individuals, violated the Code of Ethical Conduct of the Athletic Department and participated in conduct that caused substantial financial loss to the University. Additional findings are set forth as to the efforts to hide and disguise the improper conduct from the eyes of auditors and others. The findings show that two of the superior leaders in the chain of command, the Assistant Athletic Director in charge of Development and the Associate Athletic Director in charge of the Ticket Office, created and maintained improper activity in the Athletic Department that needed to be eliminated. They further created a culture of fear of retaliation for reporting suspected wrongdoing to higher authority.

The Report finds that the face value of the KU Men’s Basketball and Football tickets identified as having been sold to ticket brokers is approximately \$1 million over the five year period from 2005 to present. The portion of the \$1 million face value of tickets inappropriately sold directly to brokers by Kansas Athletics Incorporated (“KAI”) employees cannot definitely be determined. The distribution of some of these tickets to brokers appears to have been disguised by various KAI development and ticketing personnel who caused them to be recorded as complimentary tickets, tickets in inventory, and other general categories of tickets with limited accountability.

Complimentary tickets are generally authorized by written policy for purposes including development of donors to KAI, for specified limited use by employees, and for community use when seats would not otherwise be filled at games. Deficiencies in the accuracy and completeness of data entered into the Paciolan system for ticket transactions prevent BKD from concluding whether additional tickets in excess of the \$1 million identified as being sold to brokers have been misused by KAI staff.

Finally, the Report recommends some internal and external action which includes:

- Forwarding the Report to the appropriate law enforcement authorities for whatever action they deem proper;
- Continued cooperation with federal authorities;
- In the event of a conviction of any person connected with the schemes studied, the University should stand ready to provide appropriate information to the court which might order restitution;

- Consider making demand for restitution of purloined assets including filing civil suits against all who participated in or violated KAI policy (Code of Conduct) in the unauthorized sales of tickets by brokers;
- File and process all appropriate claims with insurance carriers;
- The institution of a hot line to report suspected wrongdoing outside the chain of command of KAI, in such offices as Office of Internal Audit, the Office of General Counsel for the University of Kansas, or the office of Corporate Counsel for KAI;
- Study and consider, through appropriate offices of the University, the recommendations for remedial action contained in the BKD Report which states:

“Lastly, BKD has concluded that the internal controls related to complimentary tickets need significant improvements and those recommended improvements are detailed in the body of this Report. To supplement internal controls, BKD also recommends that the KAI Code of Conduct include specific instruction to employees about the organization’s expectations for employee behavior as it relates to complimentary tickets for employees and outsiders, and other internal control and ethics policy important to the organization. Further, the objectives of the entire Code of Conduct and all policies, procedures and internal controls should be supported by the initiation of a confidential reporting hotline service as an avenue for employees to anonymously report concerns that cannot be resolved through the chain of command.”

### **BACKGROUND LEADING TO A REQUEST FOR FORMAL INVESTIGATION**

The involvement of Foulston Siefkin LLP (hereinafter “FS”) in the investigation of tickets allegedly being sold to brokers began in December 2009. Counsel for KAI sought legal advice over how to proceed given that the FBI and IRS had called on Perkins. The federal investigators were checking allegations involving Rodney Jones and Rajeeb Hossain, employees of KAI. The information had been provided to the investigators by Dave Freeman. Mr. Freeman had plead guilty in federal court to a conspiracy to bribe a Junction City official and was doing everything he could to assist himself with the federal judge at sentencing.

Initially, in the November-December 2009 time frame, the federal investigators told Perkins that they were interested in the years 2001-2003. At that time Rodney Jones (“Jones”), was in charge of the Ticket Office. The investigators said they were interested in two KAI employees, Jones and and Rajeeb Hossain (they also called him Jeeb) (“Hossain” or “Rajeeb”). The investigators said they had information that the two KAI employees would take tickets and sell them to brokers who would sell them at a premium and split the profits with Jones and Rajeeb. Jones and/or Hossain would then pay the Athletic Department the face amount of the tickets and pocket the profits.

During the December meeting with the investigators, Perkins expressed his disgust and frustration that such things might have occurred. He inquired of the agents how he could change the system to guarantee that such things could not occur. One of the agents responded that no matter how perfect the system, people who desired to cheat could figure a way to defeat the system.

FS counseled KAI to do a test check of the records available to KAI to determine if they could see where tickets were going. It also suggested that there be an exit interview of Hossain who was leaving the employ of Kansas University. That interview did not occur.

Charlette Blubaugh, Associate Athletic Director in charge of the Ticket Office and IT, was informed of the federal inquiry in December 2009. Because she was the one most familiar with the software utilized for ticketing (Paciolan), Ms. Blubaugh ("Blubaugh") was thought to be the most knowledgeable person to research the system in order to furnish the information sought by the government. It is unknown whether she did the test check recommended by FS in December.

IRS agents requested copies of the outside income report filled out yearly by all KAI employees as required by the NCAA rules. Employees are required to list any income received from sources other than the Athletic Department. As requested, the reports for Jones and Rajeeb were furnished to the IRS agents in December 2009.

Blubaugh turned in her resignation from KAI on February 3, 2010, referencing a conversation with Perkins in January 2010. Her last day of work was February 12, 2010. Her stated reason for departing was to return to Oklahoma where she had two children living with an ex-husband. Her payroll records reveal she took a job with a college or university in Edmond, Oklahoma. Blubaugh was asked to return to KAI in a consulting capacity to work on the requests of the federal authorities.

In March 2010, the agents contacted Nicole Corcoran, Chief of Staff for Athletic Director Perkins, and told her that the IRS was focusing on one person and that person was Jones. The time frame in which they professed interest was 2006 to the present. They were looking at men's basketball and football individual and season tickets. From what Blubaugh had initially told Ms. Corcoran ("Corcoran"), the items on the spreadsheets furnished by the IRS looked like they involved complimentary tickets and Community Care tickets. Blubaugh told Corcoran that these were the type of tickets that were used for public relations or donor development.

During the week of March 3, 2010, IRS investigators gave Blubaugh a spreadsheet that represented tickets sold to brokers. Blubaugh was assigned to work on supplying the information requested by the agents. Corcoran reported to Judith Pottorff, Corporate Counsel for KAI, that she had been told that the tickets on the spreadsheet were from brokers' records. The IRS told Corcoran that they were looking for five to ten names listed as having tickets, and that they wanted to talk further with those people. The agents said they would build their case from there.

Blubaugh reported that she received a call on March 2, 2010 from an investigator who said that he was hired by an attorney representing Jones. Blubaugh called Corcoran who notified

Perkins who then talked with Blubaugh. Blubaugh reported that the investigator said there were several people involved and that they needed to work together. Blubaugh professed fear for her own safety and said she had hired an attorney.

The IRS agents talked to Judith Pottorff about Blubaugh's disclosure that a private investigator had called her. The investigator, Denny Conway, told Blubaugh that he was hired by Mr. Gerald Handley, Jones' attorney. The private investigator told Blubaugh that Jones was concerned about Ben Kirtland, Kassie Liebsch, and Blubaugh. The investigator wanted to work together with all of them so that they could "just be on the same sheet of music."

In early March 2010 Ben Kirtland ("Kirtland"), Associate Athletic Director of Development, began to feel the pressure building and had a conversation with Perkins and Corcoran. Kirtland told them that Jones had been talking to him the previous few days. In Kirtland's words, Jones wanted to "throw Kassie Liebsch ("Liebsch") under the bus." Jones wanted Kirtland to agree to say "Liebsch misused the tickets and took the tickets herself;" "Kassie Liebsch was young – she was only 27, she didn't have family, she had her whole life in front of her."

Kirtland further said that "Jones carries a big wad of money and likes to flash it around." Kirtland, who was Jones' supervisor, admitted he borrowed \$20,000 from Jones a few years previously, even though Jones earned about \$40,000 less a year than Kirtland. Kirtland said he paid back \$10,000 of the \$20,000 which would have left him in debt to Jones.

Kirtland indicated Jones was always looking for development tickets from Blubaugh and Liebsch. Kirtland said he thought Jones was selling the tickets. In the March meetings, Kirtland told Perkins that he thought Jones could have earned a potential of \$75,000 - \$100,000 extra per year if he took 100 extra tickets for each game and sold them. Kirtland also said that Jones told him he made \$25,000 on the Final Four in either 2001 or 2002.

A day or so after these revelations to Perkins, Kirtland told Judith Pottorff ("Pottorff") and Corcoran that Jones said that he was going to implicate Kirtland - that Kirtland was also guilty and was dirty. Jones asked if Kirtland remembered three years ago when there were 25 tickets that they procured for donors who were only entitled to buy 6 tickets. Kirtland said he and Jones took the 25 tickets and sold them to donors who wanted additional tickets to which they were not entitled. The donors wrote out checks directly to Kirtland, not to Jones or to the Kansas Athletic Department. Kirtland cashed the checks, gave Jones one-half the money, and kept the other one-half of the money.

At this point, Pottorff told Kirtland to cease talking and that she did not want to hear anymore. She told him, "You need to talk to an attorney about this. We don't want to go any further. You've just indicated to me that there could be some crimes involved in this and you need to discuss this with an attorney."

With this information in hand and Blubaugh's expressed fear of Jones, Pottorff called Jack Focht of FS for advice. It was agreed that Jones should immediately be put on administrative leave with instructions not to contact any other staff members. It was further

agreed that potentially involved members of the staff needed to have independent legal counsel for advice.

It was anticipated that cooperation with legal counsel would be possible if a staff member was not involved in conduct detrimental to KAI. Arrangements were made for counsel to represent Blubaugh, Liebsch, and Kirtland. No such arrangement was made for Jones; in fact, at a later time KAI refused the request by Jones' attorney that KAI pay his fees.

On March 4, 2010, Jack Focht ("Focht") made a telephone call to the IRS investigator to tell him that the interviews he had scheduled for the next day at KAI would have to be cleared with the attorneys for Blubaugh, Liebsch, and Kirtland.

On March 8, 2010, one of the IRS investigators expressed concern about Blubaugh working on the spreadsheets furnished by the IRS because he said Jones might start accusing her of misconduct. KAI personnel replied they were confident that Blubaugh was not involved or she would not have been brought back to work on the ticket request information for the government requests.<sup>1</sup>

Pottorff and Focht conferred. What had been done, who was involved, and what had transpired was unclear. What was clear was that interviews of a number of employees would be required as well as an analysis of the policies and procedures of both the Williams Fund and the Kansas Athletic office. Both a manual and forensic examination of selected records of ticket orders, sales, email, and correspondence would be necessary to determine what the facts were and who was involved.

As discussion ensued regarding a formal investigation and as records were being pulled and examined, another KAI employee, Brandon Simmons came forward. He had recently left his position in the Ticket Office to become Assistant Athletic Director of Sales and Marketing. Brandon Simmons ("Simmons") reported to Corcoran.

On March 12, 2010, in a discussion with Corcoran, Simmons admitted receiving more than the two complimentary tickets to which all KAI personnel are entitled. While working in the Ticket Office, Simmons had been given tickets by Blubaugh, who had been his supervisor, as "additional compensation" because she could not pay him what he was worth. Pottorff was summoned to discuss the matter. Simmons brought along a written talking point statement which he turned over to Pottorff.<sup>2</sup> He was assisted in getting counsel and he was requested to obtain records of tickets he sold to a broker.<sup>3</sup>

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<sup>1</sup> That confidence was later determined to be misplaced as the investigation by FS began to evolve. The reasons for the loss of confidence become clear later in this report.

<sup>2</sup> Simmons' initial report sounded fairly innocuous. He described obtaining "a few tickets." Later investigation indicated that was quite an understatement and his initial report include his complicity with Jason Jeffries. His report is attached hereto marked Exhibit A.

<sup>3</sup> This turned out to be one of the turning points in the investigation. Simmons' attorney forwarded a list of tickets sold to "Totally Tickets" in Norman, Oklahoma. Later forensic examination of the computers at KAI confirmed the existence of the invoices for tickets improperly sold. These invoices and a letter from Simmons' attorney explaining the amount received for the tickets sold are attached as Exhibit B to this report.

It was then determined that a formal investigation needed to be launched. The purpose would be to determine what were the facts; what the involvement of KAI personnel might be; to study the systems to determine what improvements might be made; to determine whether litigation should be instituted and against whom; and to discover the damage caused by conduct detrimental to the University of Kansas or KAI.

### **FORMAL REQUEST FOR INVESTIGATION**

Following a meeting in Wichita later in March 2010, between members of FS, Counsel for the University of Kansas, and KAI, it was determined that there was a clear need for a formal investigation. Thereafter, on March 22, 2010, Perkins wrote a letter to the Chancellor which said in part:

It has come to my attention that we may have an issue with our Williams Fund and Ticket Office.

Due to the serious nature of these concerns and to protect KU's reputation, I request that you initiate and direct a thorough investigation into this matter. Given the limited information we have to date, such a review would include a forensic audit of the Williams Fund and the Ticket Office at Kansas Athletics as well as a review of personnel in these departments who may have been involved.

The Chancellor responded to Perkins' request by writing to University counsel, James P. Pottorff, Jr.:

I request your advice on this matter, including an analysis of the factual situation and any risk for the athletics program or the University. Please inform me if we should anticipate litigation in the event of any loss to the University and whether the University may be the potential focus for any other litigation initiated by any source in connection with this matter. You are authorized to engage appropriate consultants as necessary to develop an understanding of the situation and your recommendations to me.

Thereafter, James Pottorff wrote to Focht of FS:

Serious concerns have been raised regarding operations of the Williams Fund and the Ticket Office at Kansas Athletics. Athletics Director Perkins has requested that Chancellor Gray-Little direct an independent review of these matters. Consequently, the Chancellor has requested my advice on this matter, including whether we should anticipate litigation in the event of loss to the University or to Athletics and whether the University or Athletics may be the potential focus for any other litigation initiated by any entity or individual in connection with this matter.

I am contacting you to request that you engage an appropriate firm to conduct

a forensic audit of the Williams Fund and the Athletics Ticket Office. I understand the BKD firm may be an appropriate organization for this purpose. Further, I request that your firm undertake a personnel audit of the same offices. Please provide the reports from both firms directly to me, along with your analysis.”

In addition to granting authority to hire counsel for employees, Judith Pottorff penned the following letter:

I wish to retain you and your firm's services to represent Kansas Athletics. As a part of that engagement I am authorizing your firm to engage independent outside counsel for several employees and a former employee. The engagement of outside counsel by you would be in the nature of third-party payment of fees in accordance with the Rules of Professional Conduct 1.8 and 1.6. The employee or former employee will be the outside counsel's client and we request that your firm pay for his/her representation. In turn, Kansas Athletics would reimburse you for these charges. Kansas Athletics, however, reserves the right to end payments should the employee be indicted or be found guilty of a charge, or if Kansas Athletics discovers clear and convincing evidence that the employee or former employee engaged in wrong-doing to the detriment of Kansas Athletics. The employees that Kansas Athletics wishes to assist in retaining outside counsel at this time are Charlette Blubaugh, Ben Kirtland, Kassie Liebsch and Brandon Simmons.

Analysis then began of known or suspected facts, the marshalling of available information, and the selection of an auditing firm capable of conducting the requested forensic audit. After a search for and reference check of suggested firms, BKD, a nationally known accounting firm, was engaged.

During the process of engagement of BKD, communications were had with a number of BKD personnel to determine what personnel would best be equipped to carry out the mission of a forensic audit and what that might entail. Conflicts checks were made into both Williams Fund and KAI personnel to ensure that no on-going or previous engagement by BKD would be in conflict with the proposed engagement.

BKD recommended BKD personnel, Don Wengler and Shauna Woody-Coussens, and their resumes were forwarded to Focht. Copies of those resumes are attached as Exhibit C to this Report.

Don Wengler (“Wengler”) is a Wharton graduate, a certified fraud examiner, and has worked on large investigations including the University of Colorado Football Program and BKD's recent work with the Kansas Board of Regents.

Shauna Woody-Coussens (“Woody-Coussens”) is a certified fraud examiner and has worked as lead investigator on many large investigations in her career, including the Junction City investigation involving bribery of an official by Dave Freeman and the investigation at Kansas State University.



BKD reported that in addition to previous work at the University of Kansas, Kansas State University, and the University of Colorado, they have conducted an investigation regarding a football ticket scheme at the University of Nebraska and have performed investigations at University of Indiana and University of Kentucky, among others.

After discussion of the scope of the assignment and fees involved and negotiations over the terms of engagement were completed, the terms were agreed to and a formal engagement letter was entered into.

While the forensic audit team was being assembled and briefed, the FS investigation team was already at work. A team of lawyer-investigators was selected from the employment team; they were briefed on the known or suspected facts, on employees to interview, and a plan of investigation was discussed and settled on. The members of the FS team were Focht (Special Counsel), Holly Dyer (Partner), Trish Thelen (Partner), Jeff Hurt (Special Counsel), and Edward Watson (Partner). A resume for each of these FS team members is attached as Exhibit D.

Arrangements for payment of attorney fees by KAI were agreed to by the attorneys representing Blubaugh, Kirtland, Liebsch, and Simmons. It was deemed important to the internal investigation that cooperation of witnesses be as complete as possible, recognizing that if there was incriminating evidence revealed by a witness, it would have to be done only after advice from an attorney not employed in connection with the investigation. With that in mind, engagement letters with the attorneys representing the employees and former employees contained the following provisions:

... Because of the nature of this engagement as a third-party fee arrangement, [employee] must consent to this arrangement and agreement. Since he is still employed by Kansas Athletics, we expect his full cooperation in our own internal investigation. Obviously, you will advise him regarding what he must do in connection with our investigation and he will retain all legal and constitutional privileges, including the right to consent to any attorney-client privileged disclosures to us or Kansas Athletics. We expect you to work with us in a cooperative manner when that cooperation does not interfere with your duties to [employee].

We reserve the right to terminate and cancel this agreement at any time we or Kansas Athletics discovers clear and convincing evidence that your client has engaged in wrongdoing to the detriment of Kansas Athletics or is indicted or found guilty of any criminal conduct. Should that occur, and we exercise our option to cancel, we would not be responsible for any fees or expenses incurred thereafter.<sup>4</sup>

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<sup>4</sup> Excerpt from engagement letter for Ben Kirtland. Similar provisions were contained in the letter for counsel for Simmons, Liebsch and Blubaugh. As noted previously, although Blubaugh left full-time employment with Kansas Athletics in February 2010, she was asked to return when IRS inquiries required her expertise with the Paciolan system which "in theory" would record all destinations for all tickets to football and basketball. As was discovered during the investigation, this theoretical principle was often not true.

A line of communication was established with these employees' attorneys to arrange for the interview of their clients by the investigative team. The success of this stratagem resulted in obtaining valuable information critical to the findings and conclusions of the investigation in most cases.<sup>5</sup>

Although the progress of the investigation required that KAI cease paying for attorneys for certain employees when certain conditions were met, the value of the cooperation of those who submitted to interviews and voluntarily turned over documents cannot be emphasized enough. Without that cooperation and voluntarily disclosure, essential information would not have been marshaled.

### **IMPEDIMENTS, LIMITATIONS AND DISCLAIMERS**

Several factors make it necessary to advise that this Report is not complete and is subject to change if additional facts come to light. Those factors include the demand for a quick review of facts spanning several years;<sup>6</sup> the need to make personnel changes based on facts that were uncovered; a lack of subpoena power or civil discovery methods; and a parallel investigation by federal authorities.<sup>7</sup> Even as this Report is being written, new information is being discovered which casts a shadow on several former employees discussed in this Report. We have identified in this Report only those employees of KAI whom we feel satisfy the standard of clear and convincing evidence of conduct detrimental to either the University of Kansas or KAI. We do not wish to disparage any other employees nor do we by failing to mention names, indicate that all conduct we analyzed was appropriate. As mentioned in the Report, some of the employees got free tickets when they should not have; others failed to report their suspicions and concerns to higher authority. That conduct does not rise to the level expected of employees of KAI.

### **POLICIES AND SYSTEMS EXAMINED AND ANALYZED**

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<sup>5</sup> In all instances, except as to Liebsch, the reservation of the right to terminate the agreement was exercised. In the case of Kirtland, when he refused, through his attorney, to appear for a scheduled interview, choosing instead to resign from KAI, his attorney was informed that KAUC was terminating payment for further services. As to Blubaugh and Simmons, when the investigation reached the stage that the investigative team believed that there was sufficient clear and convincing evidence that Simmons and Blubaugh engaged in wrongdoing to the detriment of KAI, letters were sent to their attorneys stating: "Our investigation convinces us that your client has been guilty of violating this provision and therefore forfeits any right to ongoing fee payment."

<sup>6</sup> In part, the demand for a quick review of the facts stems from a desire to "clean house" of all employees who might be guilty of conduct detrimental to the interests of the University of Kansas and the KAI and to take whatever remedial action is necessary to cure the problems created by such employees and/or faulty systems.

<sup>7</sup> The federal investigation on at least two occasions caused employees (now former employees) to cancel interviews scheduled with the FS investigative team. Although failure to cooperate led to cancellation of payment of their attorney fees and eventually to loss of employment, the investigative team lost the opportunity to develop facts primarily, if not solely, within the knowledge of these witnesses. Whether they have given information to government investigative teams is unknown. These witnesses include Kirtland and Blubaugh.

At the beginning of the investigation, both FS and BKD investigative teams requested and received KAI policies as they related to complimentary tickets. The policies were carefully scrutinized to attempt to determine if they had been followed or were inherently inadequate.

Of particular interest was the policy entitled “*TICKET OFFICE: COMPLIMENTARY TICKETS*” updated several times.<sup>8</sup> All three updates contain similar language to the effect:

Kansas Athletics is committed to allocating and distributing complimentary admissions to athletic events in a fair and equitable manner. All policies and procedures are consistent with University, Big Twelve Conference and NCAA rules and regulations.

When used properly, complimentary tickets are an excellent public relations and recruiting tool; however, misuse can result in extensive loss of revenues, as well as administrative and NCAA sanctions. Therefore, it is essential that Kansas Athletics staff be knowledgeable of all constraints placed on the distribution of complimentary admissions and be sensitive to the dollar amount involved in their allocation. Any exceptions to established policies must be approved in writing by the Director of Athletics.

Complimentary tickets for revenue sports are allocated by the Director of Athletics on an annual basis. The Director of Ticket Operations is responsible for the accounting and distribution of all complimentary tickets and for ensuring that each individual requesting complimentary tickets understands and abides by the rules and regulations of the Big Twelve Conference and the NCAA.

Prior to the most recent update, the policies contained this language:

#### **Athletics Staff Complimentary Tickets – Home Events**

Complimentary tickets may be issued to Athletics staff members. Staff members are given the opportunity, prior to the start of each season, to sign up for and receive a maximum of two (2) complimentary season tickets to football and men’s basketball.

Additionally, staff members will receive complimentary entrance to all other intercollegiate events for themselves and up to three additional guests.

The value of all complimentary tickets for staff members is added to their annual taxable income. **The transfer or resale of complimentary tickets is prohibited**

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<sup>8</sup> The updated policies for 07/05, 07/07, and 11/09 are included as Exhibit E to this Report.

**The value of complimentary tickets to all away events will be added to the staff member's annual taxable income. The transfer or resale of complimentary tickets is prohibited.**

(Emphasis Added)

Prior to the November 2009 update, there seemed to be no written policy to allow KAI staff members to receive any special treatment such as allocation or receipt of tickets on any kind of a preferred basis. There was, however, an amendment to the policy in November 2009 authored by Blubaugh. That change, which after delineating certain rights to complimentary tickets either by contract or position to team coaches and staff, stated as to football:

All other full-time Athletics Department staff may receive up to 2 complimentary season tickets or 1 family zone ticket for personal use. Seating location will be determined by the Director of Athletics and the Director of Ticket Operations. Employees will not be guaranteed the same seat location each season. *Employees who are members of the Williams Educational Fund will receive preferred treatment in determining seating location. Complimentary season tickets will be considered taxable income.*

(Emphasis Added)

The policy is slightly different as to Men's Basketball. It reads:

All other full-time Athletics Department staff may receive up to 2 complimentary season tickets for personal use. Seating location will be determined by the Director of Athletics and the Director of Ticket Operations. Employees will not be guaranteed the same seat location each season. *Employees who are members of the Williams Educational Fund will receive preferred treatment in seating location.* Complimentary season tickets will be considered taxable income.

(Emphasis Added)

These policies are important in determining whether there is conduct detrimental to the University of Kansas and to KAI. It should be noted that during the course of this fairly short investigation, members of the FS team were contacted by ticket holders who complained about a change of seat locations without adequate explanation for the change. There was a repeated complaint that neighboring seats held different fans at almost every game. The suspicion was voiced that the neighboring seat holders were not members of the Williams Fund as the complaining fans were, and in some instances, not even fans of the University of Kansas.

Many of those complaints could be explained, but the fact remains that transparency did not appear to be in place so as to satisfy the fans who complained. In some instances, there was justification for the complaints. It would appear that some seats that should have been available to Williams Fund members ended up in the hands of brokers. This should not have happened, except on that rare occasion when a season ticketholder might have disposed of a ticket.

However, occasionally a seat that should have been available to a Williams Fund member during the Select-a-Seat reservation period was not. When the reason did not appear to be justified, but in fact appeared to be inappropriate, something was amiss. This occurred occasionally and the software package, Paciolan did not have appropriate information to justify the occurrence.

If, in fact, members of the University family took undue advantage of their official position in violation of a written policy it becomes difficult to explain, much less justify.<sup>9</sup> If preferred treatment is to be offered as a reward for service or as an inducement to employment with KAI, it should be spelled out for all to see. For example, coaches' contracts spell out the agreements entered into with coaches for seats.

During the course of both the personnel and the forensic audit, it became necessary for both teams (BKD & FS) to become acquainted with and analyze systems central to the function of tickets operations. This included Donor Advantage, the Williams Educational Fund # ("Williams Fund"), Priority Points, Select-a-Seat and Paciolan. As subsets of some of those functions, the teams looked at the functions of each to see whether the system lent itself to misuse.

### **THE WILLIAMS FUND**

In its official website, the KAI describes the Williams Fund as:

The University of Kansas and its athletics programs have enjoyed a long, proud tradition. Athletics play a key role in the total experience of university life. Due to their high visibility, athletics serve the university as a rallying point for students, faculty, alumni and fans. In order to continue the proud tradition that is Kansas Athletics, we need your support!

Long regarded as one of the finest athletic fund-raising programs in the country, the Williams Educational Fund is made up of alumni, friends and fans of Kansas Athletics. Comprised of more than 4,200 members who contribute more than \$8 million annually, the Williams Educational Fund provides the necessary funding to compete athletically at the national level and also helps attract and retain the finest coaches and student-athletes to the University of Kansas. Kansas athletics relies on private support to fund all scholarship costs, so your involvement is paramount to our success.

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<sup>9</sup> This report should not be read as an exercise in naiveté. It is recognized that there must be certain uneven treatment in the course of serving the higher cause. Funds are raised by athletics which inure to the greater good of the University. Those funds are primarily raised by donors who care for the University and are willing to give of their worldly goods to support athletic and scholastic activity. People should be encouraged and honored for such benevolence. Cultivation and explanation of the good to be served is part of the function of staff members of the Williams Fund. It should not be discouraged. Tickets to athletic events are not *quid pro quo* but services offered to a donor as a time-tested way to say "Thank you" and to encourage participation in University life, including following the athletic teams. This report should not be seen as critical of that process nor is it intended to indict those employees who faithfully carry out their duties in adherence to the purposes and goals of the described programs and have done nothing wrong.

More than 550 student-athletes benefit from your participation in the Williams Educational Fund. As a Williams Educational Fund member, you will enjoy unique benefits, fellowship and the pride that goes along with supporting a KU student-athlete with a quality education and the opportunity to compete on a national level. To ensure that KU's tradition of excellence not only lives on but also continues to grow, we encourage you to support the Williams Educational Fund at the highest possible level. On behalf of the University of Kansas and its student-athletes and administration, we thank you for your support.<sup>10</sup>

The methodology for Williams Club members to participate in obtaining tickets to University of Kansas is described in the same document. It states:

### **SELECT-A-SEAT**

The Williams Educational Fund and the Athletics Ticket Office will organize Select-A-Seat events. All donors will be given a specific date and time in which they or their representative can come and “select-their-seats.” For patrons who do not live locally, or cannot attend due to a scheduling conflict, we will be happy to contact you by telephone at your scheduled appointment time. A confirmation letter will be sent to all current donors listing their specific date and time for selection of seats. All appointments will be scheduled in priority points order... .

### **SEATING**

Current members of the Williams Educational Fund (minimum donation of \$100 per year) will be given first priority to purchase tickets. Points will be activated only for current members of the Williams Educational Fund. Being a member, however, does not guarantee the right to obtain tickets. In an effort to allow Williams Educational Fund members the opportunity to improve their seating annually, venues will be reseated each year. Reseating allows for equitable distribution of available seats. The “sit-by” option for seating will be available only by attending a Select-A-Seat event with the patron who has the lowest point total in your group (see next page). Please notify the Athletics Ticket Office if you are considering this option.

### **TICKET TURNBACK PROGRAM**

Donors may turn back their men’s basketball tickets if they are unable to attend a game. All tickets must be turned back by noon on the day of the game or Friday by noon if it is for a weekend game. This may be accomplished by registering them online ([www.kuathletics.com/tickets/kan-ticket-return.html](http://www.kuathletics.com/tickets/kan-ticket-return.html)) or by calling the Williams Educational Fund office at 785-864-3946. All paper tickets must be returned to the Williams Educational Fund no later than two weeks after the game in order to be eligible for a tax

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<sup>10</sup> <http://www.kuathletics.com/williamsfund/kan-williamsfund.html>

credit. After the applicable tax year, you will be sent a letter stating the total number of tickets turned back and the amount of which is eligible for tax credit. **No priority points are awarded for tickets turned back to the Williams Educational Fund.** Once you have processed your ticket turnback, your original tickets are no longer valid and cannot be used for admission.

### **NEW-AND-IMPROVED JAYHAWK TICKET MARKETPLACE**

For several years we have provided a secure online site in which you could offer tickets for resale at face value when you are unable to attend. This year, you'll have the opportunity to offer your tickets to other Jayhawk fans safely and securely at fair market value. For information, please contact the Kansas Athletics Ticket Office at 785-864-3141 or kutickets@ku.edu.

All of the described programs are designed to be fair and to recognize the priority point system utilized to reward those who have accumulated the highest number of points under the system described on the website and in the official publications. These publications are produced yearly in connection with the offering of athletic tickets to interested donors.

Properly administered, these programs have successfully produced increased revenue for the University of Kansas. That increase has allowed for improved facilities and greatly increased the ability of Kansas athletes to compete with the best in the nation.

When the administration of those programs breaks down through human failure, either deliberate or through incompetence, the entire purpose of the programs is called into question by the very same people they are designed to serve.

In a greatly simplified explanation the system is designed to be utilized as follows:

1. There are certain reservations which are required by contract and otherwise prior to the utilization of the "Select-a-Seat" program. Those reservations, whether they be for visiting coaches, students, coaches, donor incentive plans, faculty member, player's family or any other legitimate reservation included under the Complimentary Ticket Policy are to be entered into the Paciolan system.

2. The "Select-a-Seat" procedure should then be followed with all reservations placed into Paciolan. All of that described above are sent to the printer via the "print a tape" process which is currently done. The printer is sent the necessary information to mail tickets to season ticket holders who have qualified for their seats and made the necessary financial arrangement. Those entitled to complimentary tickets should either be a part of the "print a tape" procedure or returned to the Ticket Office where they are distributed to those entitled to them. There should be an entry into Paciolan immediately in order to track the tickets and to make it easy to see what tickets are not sold and are available for individual sales or for use under the "Community Care" program.

KAI utilizes a software package called Paciolan. The components part of the Paciolan package KAI uses are: *tRes*, *eVenue*, *Access Management*, *Ticket Marketplace*, *Group Ticket*

*Window, Group Ticket Window, Fundraiser's Advantage, tFund and PACMail.* The various components used by KAI are described below.<sup>11</sup>

tRes is described as a “reserved-seat ticket processing software solution that enables you to manage your ticket sales and service customers more efficiently.”

eVenue is described as “an online box office that allows your customers to buy tickets from your best available inventory anytime.”

Access Management is described as “enables your customers to bypass will call, and quickly enter the venue with print-at-home tickets or magnetic stripe cards. Meanwhile, Access Management tracks real-time attendance while catching fraudulent tickets upon entrance.”

Ticket Marketplace is described as an “online market for customers and season ticket holders to buy and sell unused tickets. Ticket holders earn credits; venues acquire new customers and generate revenue.”

Group Ticket Window overview is described as an “online group ticket manager that encourages organizations and their members to easily purchase and participate in group events.”

Fundraiser's Advantage “enables you to maximize donor communications and productivity, and provides an online module for donor contributions, with an easy-to-use set of tools that integrates seamlessly with your ticketing system.”

tFund “enables you to accept and process donations efficiently while strengthening your donor relationships.”

PACMail is described as “your Internet-based email marketing solution that enables you to quickly and easily send targeted, personalized messages to your customers to drive ticket sales and strengthen relationships.”<sup>12</sup>

This software is more than adequate for the tasks outlined provided it is properly utilized. As BKD notes in its Report, it is useless if the correct information is not input into the system.

It is clear from the interviews with employees that such was not the case. As noted in the BKD Report:

Accounts are established in Paciolan to indicate the name of the purchaser of season tickets or donors receiving tickets. However, more than a dozen general accounts were established in Paciolan and many of these accounts were used to record the issuance of tickets for use as complimentary tickets

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<sup>11</sup> Downloads from the Website for Paciolan located at [WWW.paciolan.com](http://WWW.paciolan.com) are included as Exhibit F to this report.

<sup>12</sup> All descriptions taken from website [WWW.paciolan.com](http://WWW.paciolan.com) which describes its products as “For over 30 years Paciolan has provided sports and entertainment venues with the software needed to facilitate automated ticketing. Today, we offer a fully integrated ticketing, marketing, and development solution that allows venues to manage their customer relationships, brand and revenues. Paciolan helps venues to fill empty seats, capture unrealized revenues, strengthen their brands and foster intimate and profitable customer relationships.”



without identifying who was receiving each complimentary ticket. These accounts included names like “DD” for Donor Discretionary and “RJDD” for Jones Donor Discretionary. A “Special” field was sometimes used under some general account to identify who received the ticket, but much of the time the “Special” field was not used. When a general account is used to record the issuance of tickets, and the “Special” field is not used to identify the recipient of tickets, then the ability to track who received the ticket is lost. The list of tickets sold by insiders to ticket brokers was recorded in Paciolan under general accounts where the “Special” field was left blank.

BKD Report p. 13. (Exhibit O)

3. Requests for additional tickets by staff or otherwise should be documented through the required available documents and instantly entered into Paciolan.<sup>13</sup>

4. Those tickets which are used for “Community Care” need to be carefully documented and accounted for at all times. Community Care tickets are those tickets which are not sold as either season tickets or single game tickets prior to a certain date and time before a game. These tickets serve two purposes: to give to charitable organizations as a philanthropic endeavor and to ensure full houses at home games. Recipients included church groups, Boys and Girls Club, special needs groups, and the local children’s home.

Several different systems were utilized for delivery of these tickets during the relevant time period. The better system was that designed and carried out by the Marketing Department under Andrew Steinberg and Matt Baty, former employees of the Marketing Department. That system, designed in conjunction with the Associate Athletic Directors in charge of compliance, served to ensure that no violation of NCAA rules could occur. As will be explained, the later change in the system made it easier for tickets to get into the hands of brokers.

5. The “Discrepancy Report” system which is designed to be prepared at the end of each basketball or football game should be carefully assembled. It needs to be compared to the reports available from the scanning of tickets. This can be used to determine if there is any significant difference or to determine if any trends can be detected.

6. The yearly clean up report should accurately reflect what is contained in Paciolan and not be made up or disguised. It is a requirement of the auditing team charged with the responsibility to audit the finances of KAI that there be such a cleanup report.

The FS team interviewed, both formally in person and telephonically, over 40 witnesses, communicated with attorneys for both the University of Kansas and KAI, and had meetings and communications with personnel from BKD and concerned citizens. In addition, records numbering in the thousands were examined and studied. BKD attached to their Report the number of computers that were searched at the request of the FS team and with the permission of counsel for the University and KAI. Both the Chancellor and the Athletic Director were consulted and authorized the important forensic work.

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<sup>13</sup> A sample of the present form which is used is marked Exhibit G.

An interim report was delivered to Counsel for the University of Kansas on April 22, 2010, which stated in part:

We have discovered significant instances of conduct detrimental to the University of Kansas by current and former employees. Our investigation has revealed that Kirtland and Jones abused their positions of trust and utilized their positions to improperly dispose of tickets to University of Kansas athletic events, in some instances to their own profit. These employees have resigned and will not be cooperating with further investigative efforts.

Blubaugh used her position to improperly direct tickets to subordinates, specifically at this point, to Simmons and Jason Jeffries (“Jeffries”), so that they could be sold to ticket brokers and the proceeds kept by the two men. We have also discovered a “fake account” for the “sale” of season tickets that appear were mailed to Blubaugh’s former addresses. It does not appear that payment for these tickets was received by Kansas Athletics. Blubaugh has resigned and, although her counsel initially indicated her desire to cooperate in our investigation, has now decided not to submit to an interview by me.

Simmons and Jeffries have been cooperative, but their interviews reveal that they split significant sums of money by selling season tickets to brokers. These tickets were, according to them, additional compensation that was approved by Blubaugh. Both men also admit to receiving cash from Blubaugh on five to seven occasions as a “thank you for a job well done” for performing duties for which they were already compensated through their salaries with Kansas Athletics.

Following the receipt of the interim report and following certain recommended disciplinary actions, KAI reaffirmed the task in a letter to Focht who was heading the investigation for FS. That letter said in part:

I have reviewed your interim report of April 22, 2010, regarding your findings concerning the actions of certain personnel employed by Kansas Athletics. I appreciate the information you provided in the interim report, and as a consequence of this information, I would like to ask that your final report cover several items in addition to the forensic audit we have already requested.

Given your conclusion that Kansas Athletics has suffered financial losses as a result of the activities of the individuals you identified in your interim report, I request that you identify those persons you believe may be appropriate subjects or targets for affirmative claims and litigation to recoup the losses. I also request that you also provide an estimate of the losses sustained. Further, please give us your advice on our possible courses of action and the likelihood of recovery of the losses involved.

As you would expect, this information will be critical to our ability to make a reasoned decision as to whether pursuing claims and litigation and/or claims against the Kansas Athletics insurance policy will be appropriate.

We now make these final findings and recommendations in response to that inquiry.

### **FINDINGS AND CONCLUSIONS**

After reviewing all the witness interviews, the electronic discovery from computers and iPhones, many records produced from the files and records contained at KAI, and asking many questions of staff and others, there is probable cause to believe that the following facts may be found and culpability can be established against the following people.

1. **Kirtland** violated the trust placed in him as the Associate Athletic Director in charge of Development. Kirtland was the head of fund raising for KAI and was the highest-ranking official working directly with the Williams Fund. In that position of trust, he owed the greatest degree of fidelity to his employer and to his direct supervisor Athletic Director Lew Perkins.

Kirtland helped create in his subordinates an atmosphere similar to a worker in a candy store who regards the candy as a free commodity for the employees. It was only after the federal authorities began to ask questions that Kirtland began to reveal facts he knew about Jones and expressed his belief that Jones was selling tickets and could be making as much as \$75,000 to \$100,000 a year in additional income. Kirtland was the direct supervisor of Jones and had done nothing about his beliefs - much less pass them on to his supervisor.

Kirtland finally admitted to his own culpability in the selling of tickets. He admitted to Pottorff that he and Jones had not only violated the rules pertaining to the number of tickets available to donors, they had personally kept the money from selling tickets to them. This admission concerned an event which had transpired, according to Kirtland, some three years earlier. He further claimed that Jones was always on the lookout for development tickets which he suspected Jones was selling.

Kirtland had allowed Jones to continue to operate when he had direct knowledge of his own and Jones' wrongdoing in taking money which belonged to the University of Kansas. His deceit and complicity made it easier for others to operate in a similar fashion.

The investigation revealed that Blubaugh told Simmons and Jeffries that certain records necessary for yearly clean up for the 2008-2009 basketball ticket sale could not be reconciled and that they should be moved to the football stadium. She said that she, Kirtland and Tom Blubaugh would destroy them on a weekend and when the records could not be found, blame it on construction at the stadium. The records are missing.

It only came to light on May 13, 2010, while preparing this Report that Kirtland had been authorizing payment for "consulting services" for Tom Blubaugh, with the last authorization initialed by Kirtland on January 6, 2010. It will be a subject discussed in the recommendations for further action, inasmuch as Perkins did not know that Tom Blubaugh had been on the payroll from August 2007 until January 2010 at a cost to KAI of \$115,000. Tom

Blubaugh had been hired as a consultant, but further research must be done to see what, if anything he was doing in 2009 and 2010 (years that Perkins and Pottoroff were unaware he was still on the payroll).

Simmons further indicts the actions of Kirtland when he explained to investigators that Kirtland had requested that Simmons use cash from the sale of women's basketball tickets to cash some checks made payable to Kansas Athletics. Kirtland wanted the cash given to him but Simmons claimed not to have sufficient cash to complete the requested transaction. When Simmons reported this request to his supervisor, Blubaugh, she admitted that she had cashed checks in response to a similar request from Kirtland in the past.

Following his admissions, and once the formal investigation began, Kirtland was provided the services of an attorney to advise him and to appear with him at an interview with FS investigators scheduled for April, 4, 2010. It was anticipated that Kirtland could shed greater light on his own and others' involvement in the scam. His attorney telephoned Focht as Focht was driving to Lawrence to conduct the interview, to inform him that Kirtland would not give an interview and was resigning his position. Kirtland's attorney was informed that KAI would no longer pay for attorney services given his lack of cooperation and the information that had been otherwise gathered.

2. **Jones** resigned from his position as Assistant Athletic Director for the Williams Fund. He was given the opportunity to speak to FS investigators but instead resigned. Jones did so on April 15, 2010, after deciding not to be interviewed. He was not offered an attorney at the beginning of the investigation nor was his attorney paid for by KAI.

It is amazing that many of the employees who were interviewed shared the impression that Jones had the reputation in his community of being the man to see if you wanted a free ticket to athletic events. Employees described him as handing out tickets to his softball teammates and always being on the lookout for available tickets at KAI. Kirtland, his boss, knew of his misconduct in part, because they had shared in the profits netted through abuse of position.

Jones admitted to Kirtland that he had been selling tickets and making a lot of money. Fellow employees described his lifestyle as one far beyond what he was paid in his position at KAI. Liebsch, who now is in charge of ticket operations, was told by Blubaugh to never tell Kirtland or Jones "no" when they were searching for extra tickets. Liebsch received two additional complimentary tickets which she gave to Jones; she never used her tickets as she was working in the Ticket Office on game days.

Research on the spreadsheets furnished by federal investigators of tickets sold to brokers showed a large percentage were listed as RJDD which stands for Jones, Donor Development. Although this internal investigation lacks authority or power to question the brokers, it is known that Dave Freeman told the federal agents that the source of the tickets was Jones. If in fact the information furnished to KAI is correct, his complicity in arranging for tickets to get in the hands of brokers appears clear - whether it was done by him personally or through the assistance of unknown others. Only the power of subpoena and follow-up investigation can clarify exactly why so many tickets assigned to Jones ended up in the hands of brokers. This is an appropriate area to leave to federal law enforcement personnel.

Information developed during the witnesses interviews of fellow employees painted a picture of a selfish person who mistreated employees who were not in his favor. Further evidence was developed that Jones had lived in an apartment for several years at a reduced rate. The owner contacted KAI to inquire about the “priority points” he was promised by Jones. The quid pro quo for the favorable rent was supposed to be priority points. The landlord was informed that Jones no longer worked at KAI and that he had not been given the priority points.

3. **Blubaugh and Tom Blubaugh.** The Blubaughs are listed together because recent events and information link them together in several matters. One has been previously described - the destruction of records vital to a reconciliation of basketball ticket sales.

When Blubaugh applied for a position with the University of Kansas, she claimed in her letter to Jones, in support of her application:

I am writing to you regarding the position of Associate Ticket Manager for the University of Kansas. I am very interested in this position with your organization. For the past two and a half years I have been employed as the Operations Manager for the University of Oklahoma Athletics Ticket office and my responsibilities include but are not limited to the day-to-day management of all internal ticket operations for the University. I have had 6 years of Paciolan software experience including 3 years experience with the installation and maintenance of E-Venue - Paciolan’s internet based sales software package. I am also responsible for the management of all internet “on-sales”.

In addition to ticket operation functions, I am responsible for the set-up, implementation and processing of all donor acknowledgements and fund drive receipt processing. I have worked extensively on the University of Oklahoma’s current priority point program and am well versed in Paciolan’s t.Fund (donor) software program.

I have had over 14 years of experience in a Division 1 Intercollegiate Athletics program and look forward to hearing from you in regards to the position of Associate Ticket Manager at your institution.<sup>14</sup>

Her experience seemed to qualify her to operate all the software packages used at KAI inasmuch both Universities utilized the Paciolan system. It has recently come to light that some of the accounts that appear to have been “parking places” for tickets not paid for but sold to brokers or others, were accessed by Mr. Blubaugh. This will be discussed in greater detail later.

Blubaugh, along with all other Support Staff, Coaches and Administrators sign a yearly “A Code of Ethical Conduct.” That Code provides in part:

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<sup>14</sup> The letter is Exhibit H to this report. It was signed by Charlette Stuart. When Charlette Stuart was hired at KAI, she was not yet married to Tom Blubaugh. Tom Blubaugh was the Director of Athletic Ticket Operations at the University of Oklahoma. Charlette and Tom Blubaugh were married August 8, 2004. Ms. Blubaugh was a new hire at the KAI, commencing April 15, 2004.

1. Be accountable to the highest standard of honesty and integrity. All activities should be consistent with the educational purpose of University and within the rules of a particular sport.  
...
7. Adhere to the rules and regulations of the University of Kansas, Kansas Athletics, the Big Twelve Conference and the National Collegiate Athletic Association while avoiding actions that violate the legal and/or civil rights of others.  
...
10. Perform his/her duties on the basis of careful preparation, ensuring that their instruction is current and accurate. Use practices for which they are qualified as a result of continual acquisition of new knowledge and skills.  
...
14. Honor all professional relationships with student-athletes, colleagues, officials, media, and the public. Avoid conflicts of interest and exploitation of those relationships, especially by outside parties.

(See Exhibit I)

If the witnesses interviewed are to be believed, and the files and records examined correct, then Blubaugh did not honor this pledge and keep this code.

Blubaugh seems to be directly responsible for creating the climate of an ice cream store where the employees feel free to sample the wares without paying for them. She fostered and participated in a variety of ways in conduct that is detrimental to the University of Kansas and to KAI.

A simple illustration was described by subordinate employees, Liebsch, Simmons, and Jeffries and bolstered by physical facts. The witnesses described conduct that occurred at the Sweet 16 Regional Tournament in Indianapolis, Indiana in 2009. Kansas lost to Michigan State in the Sweet 16 and, therefore, had tickets available for the Elite 8. Two ticket offices were opened - one run by Liebsch and the second by Blubaugh. Jeffries was sent out on the floor to announce that KU had tickets on sale at the windows.

The tickets were sold and Liebsch brought back to the University of Kansas a bag containing \$3,400 cash, which represented the tickets sold at her ticket station. She waited for Blubaugh to turn in her half of the cash. She did not.

On a number of occasions, Liebsch reminded Blubaugh that she had not brought the money in. Blubaugh continued to say she would bring it in, but never did. It was only after this investigation began that Liebsch moved the money from the cabinet in her office and secured it in the vault. It can only be estimated the amount of cash that Blubaugh seems to have misappropriated, but if it is anywhere near that which Liebsch turned in, there was approximately

\$3,400 unaccounted for.

Allowing employees to freely take tickets for resale, as is outlined below, is inexcusable. Simmons and Jeffries sold over \$200,000 worth of tickets through brokers with Blubaugh's knowledge and consent. In part, that happened because Blubaugh and her husband were the only employees allowed to handle the tickets that were returned to KAI by the printer after mailing out the season tickets ordered and paid for to patrons. No one else, according to the witnesses, was allowed to open the boxes containing the bulk inventory of these returned tickets. Jeffries explained that Blubaugh handed him in the vault, the 56 tickets for men's basketball that he and Simmons sold for the 2009 season. Not only do those tickets show up on the federal spreadsheets as sold to brokers, but they were apparently assigned to phony accounts in Paciolan - either, according to the reports, by Tom Blubaugh or by Jeffries

The yearly clean-up was equally false. Employees report that at the end of the season, at the direction of Blubaugh, a random assignment of seat locations was made on a bulk basis rather than input the correct information in Paciolan. The accurate information as to what seats were assigned to people who called in and got additional tickets was supposed to be entered on paper records at the time of granting the requests. However, since there was not a simultaneous entry in Paciolan, the computer did not have that information. This omission was justified because Blubaugh said she did not want to waste valuable time that would be necessary for recording accurate information in the computer system

One of the employees reported that this system would make it possible for someone to take good tickets and distribute them outside of the official process without the danger of being detected. Blubaugh directed one of the employees to assign tickets which did not have an "owner" (according to Paciolan) to one of the "inventory accounts."<sup>15</sup> Following her instructions, tracking many of the tickets became almost impossible.

Another simple example of abuse of her position and failure to follow the ethics code was discovered in the forensic audit. Blubaugh's next-door neighbor inquired, by email, about the possibility of acquiring tickets to the Kansas University – Kansas State game. As her response made clear, she gave him tickets for free. This was, of course, at the expense of the University of Kansas. Those email entries are made Exhibit J to this Report.

Present and former employees of KAI Marketing Department complained of what they described as a "power grab" by Blubaugh when she was given the additional responsibility of running the Marketing Department. Several current and former employees expressed concern about her dissatisfaction with the Community Care tickets. As mentioned, Community Care tickets are those tickets which are available for any game due to lack of demand. She didn't like the lines people lined up at the field house or the stadium to get Community Care tickets. Of course, that was necessary to keep careful track of the tickets. The system was designed and overseen by Andrew Steinberg and Matt Baty to see that tickets couldn't get in the wrong hands or be resold.

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<sup>15</sup> The following were the inventory accounts to which Blubaugh instructed employees to assign tickets: 1-2) Administrative accounts controlled by Blubaugh (Account Nos. 300-301); 3) TIO-SG sales. These are tickets assigned to the visiting teams which are not used (Account No. 500079); 4) Donor Discretionary tickets assigned to Jones (Account No. 505810); and 5) Donor problem tickets assigned to Kirtland.

Compliance with NCAA and Big 12 Rules was ensured because the physical tickets distributed through the Community Care program showed a dollar value and the tickets were not issued to the organizations in advance of the game. The individual group members could not pick them up at the Will-Call window outside of the stadium. Instead, the individual groups were required to come to the entry gate as a group and submit the name of the organization. The tickets given to each individual as they came through the entry gate were torn in half, and individuals were prohibited from leaving the stadium prior to the ticket being torn to prohibit them from being transferred to others. Of equal importance, this required those seeking a free ticket that were in the age group of 13-24 to go through a sign-up process, greatly diminishing the possibility of a ticket falling into the hands of a prospective athlete or recruit.

The system underwent changes under the leadership of Blubaugh. Those changes led to the potential for both sales abuse to brokers and endangering the University as being non-compliant with NCAA rules.

Blubaugh's changes in the system allowed staff officials to get large numbers of Community Care tickets ostensibly to give to prospective donors. The leading contenders for these tickets were Kirtland and Jones. Some of the witnesses listed comments such as "does anyone have any tickets for Rodney's hip pocket." The fact that some of these tickets appear on the IRS spreadsheet of tickets sold to brokers indicates that the change made misuse of the tickets more likely.

Blubaugh fostered an atmosphere in the workplace such that employees who suspected inappropriate activity by Kirtland, Jones and Blubaugh were afraid to report their suspicions. A number of employees mentioned that because Blubaugh, Kirtland and Jones all seemed to be involved, there was nowhere they felt comfortable reporting their concerns to without fear of invoking the wrath of their superiors. Many employees expressed concern that inappropriate activity was going on but were fearful of retaliation and loss of employment if they said anything.

4. **Simmons and Jeffries.**<sup>16</sup> Of even greater significance is the manner in which Blubaugh infected her subordinates, Simmons and Jeffries, who held positions as assistants to Blubaugh in the Ticket Office. Both men described the same facts, although their memories differed somewhat.

Simmons has admitted to the abuse of his position and downright theft of money which rightfully belongs to the University of Kansas. His attorney has turned over the description of the seats sold and the amount of money paid to Simmons.

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<sup>16</sup> Both Simmons and Jeffries were furnished attorneys and, prior to interviews with FS investigators, signed acknowledgments indicating that while the interview was protected by attorney/client privilege, the privilege belonged to University of Kansas Athletics and that privilege could be waived and the information furnished to anyone including the government. The acknowledgments are attached as Exhibit K to this Report. Indeed, without the cooperation of these men and their attorneys, it would have been much more difficult to get copies of records of tickets sold and the amounts paid to the employees—all of which was a loss to the University of Kansas.



As Simmons explained it, he was recruited from the Ticket Office at the University of Oklahoma where both Blubaugh and Tom Blubaugh had previously worked. When first interviewed for employment at the University of Kansas, Blubaugh told him that she would not be able to pay him enough money commensurate with the work that he would be doing and the position that he held, so she would supplement his income with tickets<sup>17</sup>. He explained that he knew “that was the way it was done at the University of Oklahoma” where both he and Blubaugh had previously been employed.

When queried by the FS investigator as to whether he had even seen money change hands in that fashion in Norman, Oklahoma, Simmons said that he had seen an Assistant Athletic Director and Tom Blubaugh, (Charlette’s husband) passing money back and forth when Tom Blubaugh was the manager of tickets at the University of Oklahoma. Whether that activity represented improper conduct is purely conjecture.

The first year that Simmons was employed at Kansas University, he knew that he was entitled to two free tickets. He explained that he was surprised when he opened the envelope containing his tickets to discover that rather than two tickets, there were six. He reported this back to Blubaugh, who told him that the four were extra compensation and he was free to use them anyway he chose; he could give them to friends, relatives, or sell them.

Since he had a high school friend (Shawn Norman) involved in the broker business at Totally Tickets in Norman, Oklahoma, Simmons began what became a habitual yearly exercise of selling tickets through Totally Tickets. A ticket broker is different than a ticket scalper.

Ticket scalpers work outside events, often showing up with unsold tickets from brokers' offices on a consignment basis or showing up with no tickets at all and buying extra tickets from fans at, or below face value, with their own money on a speculative basis hoping to resell them at a profit. There are many full-time scalpers who are regulars at particular venues and even have a pool of loyal buyers. These full-time scalpers are often sought out by fans hoping for a last minute deal and are comfortable buying from a familiar face, expecting that they are less likely to be ripped off (i.e., with counterfeit or stolen tickets) than they would be by a stranger.

Ticket brokers operate out of offices, and use the internet and telephone call-centers to conduct their business. They are different from scalpers in that they offer a consumer a storefront to return to if there is any problem with their transaction. The majority of transactions that occur are via credit card, over the phone or internet. Some brokers host their own websites and interact directly with customers. These brokers are often able to offer additional services such as hotel accommodation and airfare to events and provide additional service guarantees about the authenticity of tickets purchased through their networks.

It is unclear from the records available whether or not the tickets that Simmons sold to Totally Tickets were sold only for the face value or whether there was a partnership

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<sup>17</sup> At the time Simmons was hired at KAI, he was employed at Oklahoma University working with Tom Blubaugh, Charlette Blubaugh’s husband.

between Shawn Norman and Simmons. An examination of emails and text messages between Norman and Simmons certainly would support at least the idea that there was a discussion of sharing. BKD comments on this possibility in their Report.<sup>18</sup> Further support is the difference in the value reported by his attorney and that shown on the invoices found on his computer.

Simmons, however, did not act alone. Complicit in his activities were Jeffries and Blubaugh. Blubaugh made the process available and planted the idea of tickets as additional compensation and, at least in some instances, make phony inventory accounts available to hide the improper ticket transactions.

Jeffries described his involvement during the interview in the presence of his attorney. Jeffries said in the year of 2005-2006, he got his regular two tickets plus four more. In 2006-2007, he got his regular two tickets plus four, and the same was true in 2007-2008. He said he did not sell any of those.<sup>19</sup>

Jeffries said he believed it was in 2008 that Blubaugh came to him and said, “You guys work too hard; why don’t you select some complimentary seats and mark them off the chart.” He did mark them off the erase board which the Ticket Office utilizes to keep track of seats that had been reserved prior to the Select-a-Seat program taking place for the Williams Fund Donors.

At first, Jeffries indicated that he took a total of 20-some seats, and then he changed that to 20-30 seats. He said he did it when people weren’t looking and he just kind of kept in mind to which accounts the tickets were charged. He said he thinks Blubaugh charged them to the Kansas City Women’s Clinic or what he said was the Harridan Consulting Company.<sup>20</sup>

In 2008 and 2009, Jeffries was given permission by Blubaugh to take more tickets and she told him that she would like to be able to ask for a raise for him but this is the way she would have to do it instead.

The last few years, Jeffries marked off 56 tickets, which he gave to Simmons to sell for him through his broker friend in Norman, Oklahoma. He said Blubaugh got them out of the vault saying, “these are yours,” and he specifically asked her, “are you good with this” and she responded in the affirmative.

Jeffries, by changing the erase board that listed ticket reservations, removed

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<sup>18</sup> Some of those email communications are attached as Exhibit L to this report.

<sup>19</sup> The fact that his recollection changed from time to time is noted but was reported as how he told it.

<sup>20</sup> An examination of records available in report form from Paciolan, prepared at the request of FS investigators, revealed that there were indeed such phony accounts where tickets had been reserved but never paid for. Interesting enough, the addresses attributable to both the Kansas City Women’s Clinic and Harridan Consulting were addresses where Mr. and Ms. Blubaugh resided at one time. Kansas City Women’s Clinic address was 23970 W 112<sup>th</sup> Terr, Olathe, KS 66061 and the address for Harridan Consulting was 5208 Campbell Pl, Lawrence, KS 66049. No such business operates at either address. (See Exhibit M)

certain seats from those available for the public under the Select-A-Seat program. Reserving the tickets, not in his name, but in the name of one of the accounts that Blubaugh had established, disguised the nature of the transaction.

Jeffries and Simmons agreed to split the profits, but not always exactly evenly. Jeffries told Simmons how much he wanted and Simmons would pay him that amount. At the time of his first interview, Jeffries acknowledged that he still had \$39,000 in cash from the improper transactions that had occurred.

The number of tickets they had taken had escalated over the years from six the first year to a total of 56 the last two years.<sup>21</sup> An analysis by BKD of the financial impact to the University of Kansas in losses from these transactions is set forth later in this Report. Jeffries acknowledged that on several occasions he checked with Blubaugh to be sure that their activities were “Okay with her.”

Not only did Simmons and Jeffries profit from the improper sale of tickets, Blubaugh gave them \$200 - \$600 in cash on five or six occasions when they were selling the tickets at athletic events. The source of that cash is unknown and it is also unknown whether anyone else profited from Blubaugh’s largess.

### **BKD’S FORENSIC REPORT AND RECOMMENDATION**

In accordance with our engagement by the University of Kansas, FS engaged BKD to perform a forensic audit and make recommendations in the following areas:

1. Digital analysis of communications by employees of KAI.
2. Analysis of KU student athletics events tickets sold to third party ticket brokers by employees of KAI.
3. Analysis and recommendations related to KAI internal controls related to student athletics events ticketing at KAI.

BKD technicians continue to address this task as they have issued what is called a “final report.” A caveat exists: their Report, as ours, is based on facts discovered to date. They are not as exhaustive or as complete as would be possible if time and resources were unimportant. They are what they are - Reports based on available facts which have been uncovered to date. BKD’s Report speaks for itself as do their recommendations.

The BKD Report is attached hereto as Exhibit O.

### **FINAL OBSERVATIONS AND RECOMMENDATION**

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<sup>21</sup> Simmon’s lawyer, by letter, informed the FS investigator that the amount that Simmons received from the sale of tickets to Shawn Norman of Totally Tickets in Norman, Oklahoma for the years from 2007 to and including 2010 totaled \$212, 480. A copy of that letter is made Exhibit N to this report.

No lawyer ever thinks that everything that can be done has been done. There is always more to do and this investigation is no exception. However, with the caveat that the Report is based on the present knowledge and state of affairs here are our additional observations and recommendations. We recommend that:

1. This Report be forwarded to the Douglas County Attorney, the Attorney General of the State of Kansas and the United States Attorney's Office for the District of Kansas for such use as those offices deem appropriate.

2. The University of Kansas and KAI continue to cooperate in an ongoing investigation by the United States Attorney's office commensurate with your legal rights and responsibilities.

3. Your office should consider taking independent civil legal action against all persons identified in this Report who have caused losses of the University of Kansas and/or KAI. Such action may lead to discovery of other persons, not formally connected with the University of Kansas who aided, abetted or assisted people identified in these Reports (BKD & FS) with knowledge of improper conduct. Unfortunately, we cannot quantify the amount of the loss except to say that it seems clear to exceed the one million plus identified in the BKD Report. A reasonable expectation is that it might be as much as three times that amount given the period of time and the number of people involved. Since information relating to Tom Blubaugh's continuing "consultation" long after those other than Kirtland knew he was receiving a "consulting fee," it is recommended that further study be conducted in this area. (See Exhibit P).

4. Appropriate measures should be taken to complete the filing of insurance claims with all insurance carriers who insure you against commercial crimes. That also may mean some amount of your loss may be repaid, but the insurance company may be subrogated to your rights to recover from the wrongdoers by virtue of the provisions of your policies.

5. Forward the attached Report of BKD to the appropriate University personnel for study and recommendation for remedial action. The Report makes a number of recommendations for analysis and action concerning KAI internal controls as those controls relate to student athletics events ticketing at KAI. A task force might be formed to determine the best course of action for the University to follow, given the recommendation for action by BKD.

6. We are making an independent recommendation for the establishment of a "hot line" within the University structure which will be independent of KAI administration. This could be housed in the office of KAI Corporate Counsel; in the office of General Counsel to the University or perhaps most appropriately assigned to the Kansas University office of Internal Audit.

7. In the event action is taken against anyone who caused a financial loss to the University of Kansas, your office should stand ready to submit the necessary information to the court or courts involved so that appropriate restitution may be ordered.

8. We endorse the idea of impressing on all employees of the University of Kansas that the policies of KAI apply to everyone. Everyone needs to understand the establishments of the various systems discussed in this Report are designed to not only convey transparency but to

guarantee fair treatment as spelled out in the formal communications of the Athletic Department. It is important to the success of the University Athletic program that the program of ticketing not only be fair, but be seen as fair.

### **CONCLUSION**

At an early point in the initial meetings with federal investigators, Mr. Perkins asked what he could do to change the system so that this kind of action would never replicate. BKD has recognized the same principles enunciated by the federal investigator regarding recommendations for changes in procedures. There is nothing inherently wrong with any of the systems being utilized but they can be made better. The human beings who are called on to adhere to a Code of Ethics must buy off on the idea that they are here to serve and not to be served. The public for whom this system is designed must be allowed to see that it can and will work. It is only then that the University will receive value in return for this Report.

Respectfully submitted,

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