

Audubon Area Community Service, Inc.
Audit Review Committee Meeting
MINUTES
March 30, 2009

Board Chair Hon. Reid Haire called the March 30^h, 2009 meeting of the Audit Review Committee of the AACCS, Inc. Board of Directors to order at 10:55 a.m.

Members Present:

Rev. David Combs
Hon. Reid Haire

Ms. Daisy James
Mr. Jerry Manning

Mr. M. Douglas Smith
Hon. Larry Whitaker

Alternate Present with Member:

Mr. Frank Craig

Staff Present (4):

Mr. Ronald Logsdon, Executive Director
Ms. Denise Marcum, Executive Assistant
Mr. Byron Mayes, Chief Financial Officer
Mr. Brad Trivett, Internal Auditor

Guests Present:

Mr. Tony Byrne, CPA, Alexander & Company — *by conference phone*
Ms. Jennifer Estes, CPA, Alexander & Company — *by conference phone*
Mr. Jesse T. Mountjoy, Sullivan Mountjoy Stainback & Miller

PRIOR MEETING MINUTES

The minutes of the Committee's February 12th meeting minutes were provided to the members in a Committee handout packet.

Mr. Smith made a motion to approve the minutes from the February 12, 2009 Audit Review Committee meeting. Ms. James seconded the motion. Motion approved.

NEW BUSINESS

General Summary on FY2008 Audit Progress. The Audit Review and Risk Management Committee meeting had been called this date on the advice of Alexander & Company's assurance that the FY2008 organization-wide audit would then be available for review with the Committee. However, the auditors did not attend the meeting, so a call was placed to them to inquire about the audit's status. Mr. Mayes called Mr. Byrne and Ms. Estes on the conference phone before the Committee members to ascertain the audit status and how the meeting should proceed.

Status Review with the Independent Auditors. Judge Haire asked Mr. Byrne if the FY2008 Audit was close to being completed. Mr. Byrne stated yes, and there was no reason why it shouldn't be finished in a couple of days. Judge Haire asked if he would be finished by Wednesday of the current week and if there was still a need to interact with BKD. Mr. Byrne assured that the audit could be completed by that day and further stated that BKD was then out of the picture.

Judge Haire asked if the auditors were yet at their *schedule of findings* or if that was still yet to be done. Mr. Byrne said it was still yet to be done. Judge Haire then asked if Mr. Byrne yet knew if there would be further items or issues that the Board and the auditors would need to address together. Mr. Byrne said no, he didn't think there will be anything that anyone was not already aware of. Before the audit is finished, he said, Mr. Logsdon and Mr. Mayes would need to review and offer Management Responses.

Mr. Logsdon stated he had asked the auditors for a *draft* audit the previous week to review. He also stated he would still like to review a draft review and talk with the auditors about any issues, resolve those that could be resolved, have the auditors issue the final audit and then call a Committee meeting to review the final FY2008 audit. Judge Haire asked about having the draft audit finished by noon on Wednesday so Mr. Logsdon and Mr. Mayes could have the document in their hands. Mr. Byrne said his firm would have it finished by the close of business day on Wednesday.

Mr. Mayes asked Mr. Byrne if he has everything he needs from him and if there was anything outstanding. Mr. Byrne said he had everything he needed. Judge Haire asked if there were any questions from the Committee members.

Mr. Logsdon advised Mr. Byrne that he still didn't have a Letter of Engagement for the FY2009 audit, which should have already been submitted to the Kentucky Cabinet for Health and Families. Mr. Byrne said that he was aware Mr. Logsdon has definitely not yet received it. Judge Haire thanked Mr. Byrne and Ms. Estes and the conference call ended.

Judge Haire suggested that the Committee's objective was to try to get the audit finished by the close of business on Wednesday and have it reviewed on Thursday morning. Could it be circulated electronically? Mr. Logsdon said the reports are usually received electronically from the auditors. Judge Haire asked Mr. Mayes to cut the schedule of findings out and e-mail to the Committee members and Mr. Mountjoy. That is the piece that is important, he said. If there are any issues that Committee members have with the audit, then a Committee meeting can be scheduled. Mr. Smith noted that the Investment/Oversight Committee would be reconvening in two weeks and, if need be, the Audit Review and Risk Management Committee could also meet then.

Judge Haire asked Mr. Mayes if the CPA's have everything they need. Mr. Mayes said yes and apparently there was some confusion of the roles and responsibility as to who was to contact BKD and plan out their report write up. The report write up should have been done late last year; but with the tax season commencing after the new year and staffing concerns at BKD, the staff to write up the report just were not available. AACS signed a release with BKD and acquired the materials (financial schedules and electronic files) on Thursday of the previous week. Ms. Estes came in Friday and she and Mr. Mayes prepared most of the schedules. Mr. Mayes also stated that he has asked twice for a status statement to be sent to Mr. Logsdon from Alexander & Company over the weekend, but Mr. Logsdon stated he had not received anything from Ms. Estes or Mr. Byrne.

Mr. M. Douglas Smith asked, since BKD was finally out of the auditing picture, should there be any disconnect? Mr. Mayes said no, the audit report was solely in Alexander & Company's hands and they were close to having it done. He thought it was just basically a matter of Alexander & Company's auditors double-checking their numbers.

Mr. M Douglas Smith asked if the agency's *Logos* accounting system was yet where it could now be used more effectively. Mr. Mayes said no, but he hoped to finish exploring that system's capabilities to serve AACS' needs and to refine its support functions and processes over the next couple of months. AACS will adopt the *Logos* report writing capability for purposes of the FY2009 audit, he assured, and that will enable the agency and its auditors get books closed and a completed audit by the October deadline.

Judge Haire suggested having adjustments from the FY2008 audit made to start off the FY2009 audit with good solid numbers. Mr. Mayes informed the Committee that when he goes back into *Logos* to modify there will need to be the creation of some separate new funds, such as fixed assets and depreciation. These are separate *Logos* software modules, he said. Thus, it will need to be a bit more of a long-term proposition, plus the agency needs to focus first on having really good closing figures.

Judge Haire told the members that Mr. Mayes would e-mail to the members the schedule of findings from the FY2008 audit review and that if any member had a concern about those findings that they should please contact him.

Risk Management Meeting. Mr. Logsdon advised the Committee that the next Committee agenda item was the Administration for Children and Families (ACF) Risk Management telephone conference that would be held at 9:30 a.m. (CDT) on Wednesday. There is a letter in the packet stating the pass code to enter for any member to call in and participate. The members are welcome to gather in the board room if need be.

Mr. Logsdon referenced the Department of Health and Human Services (DHHS) on AACS. The report is a public internal review that the ACF Regional Office does for each of its grantee agencies. One thing the review states is that AACS is now considered a “moderate risk” grantee. Mr. Logsdon stated that as far as he knows in the history of AACS, the agency has never before been anything other than a *low risk grantee*. When asked, Mr. Logsdon said that the DHHS had been notified of the former CFO’s fraud, dismissal and ensuing investigation via certified mail, returned receipt requested. Another serious issue was that the final SF-269 financial report for FY2008 got in late. The report was due by December 29, 2008, but it was not submitted until January 24, 2009. AACS now has new people in its Finance Department and they now know the schedule and how to do the report.

Mr. Smith suggested that it would be good for Committee members and staff to be together for the telephone conference. Mr. Logsdon said that the Owensboro end of the conference would occur in the Board Room. As those members at the meeting the last time can attest, it was nothing but accolades. Mr. Logsdon said, though, he anticipated the 2009 conference to not be that way. This risk management “meeting” between ACF and the agency is held every year now. Mr. Logsdon said, everyone was invited to come in to the AACS Board Room to participate.

Ms. James informed the Committee members that her Child and Family Committee had been preparing for weeks with prompting questions — and if anyone is interested, there is a list. Mr. Logsdon said that the list is for the upcoming in-depth triennial federal review which was to be taking place from April 26 – May 1. There will be an introductory meeting when the review team arrives on April 26th. The financial people may arrive on Saturday. The team will finish its work by Wednesday; the last two days the team will spend just writing its report. AACS has had to submit a “ton” of information to them already, he said. AACS was unable to give them full financial information due to the FY2008 audit not yet being finished. The agency’s FY2007 audit report states the audit found one non-monetary finding, which was the reconciliations from last year. There was also an issue site in the internal report on AACS’ adequate segregation of duties.

Ms. James asked how long it might take to fully restore AACS’ previous standing with ACF. Mr. Logsdon stated probably two to three years.

FRAUD INDICTMENT SETTLEMENT OFFER

Terry L. Payne Fraud Indictment Review. Mr. Logsdon introduced Daviess County’s Commonwealth’s Attorney Bruce Kuegel everyone to and the Committee members to Mr. Kuegel. Judge Haire noted to Mr. Kuegel that the members were from Daviess and other Green River Area counties. He asked for an update on the status of Mr. Payne’s fraud case.

Commonwealth's Attorney's Review and "Diversion" Inquiry. Mr. Kuegel told the Committee there had been an admission of guilt as far as the fraud against AACS were concerned. He then asked Mr. Mountjoy to quote the exact amount that might be involved for a "diversion" settlement offer to Mr. Payne's attorney.

Mr. Mountjoy informed Committee members that he had set that sum forth in a letter to Mr. Kuegel. The professional services sum expended was \$31,845.90. That was for a fraud audit (\$23,392.40 — Alexander & Company, Owensboro), a forensic audit (\$4,635.00 — Chilton and Medley, Louisville), and legal (\$3,827.50 — Sullivan, Mountjoy, Stainback and Miller, PSC) expenses. That sum is *plus* the balance of \$7,747.34 Mr. Payne had stolen but not yet repaid the agency. Altogether, that's a grand total of **\$39,602.24** of agency money spent as a result of the former CFO's fraudulent activity. Mr. Kuegel said he conveyed that information to Mr. Pat Flaherty, Mr. Payne's attorney.

If AACS entered into any type of negotiations as far as a plea agreement and diversion offer, said Mr. Kuegel, there were a couple of things that the agency could do. Obviously with this type of case, the Grand Jury has spoken and an indictment has been returned. The Commonwealth's Attorney's Office is going to proceed with the prosecution of the case. If this goes to trial, Mr. Payne would be charged with a Class D felony, which is a non-violent offense that serves up to five years in the penitentiary, maximum. Mr. Payne has no prior felony convictions, so he would be eligible for parole in nine months. The only thing that he would possibly be required to repay at the time would be the amount he stole \$7,747.34, for which restitution has not yet been made. The other fees Mr. Mountjoy outlined would be subject to the court's approval, but unlikely to be ordered.

Mr. Kuegel said he was speaking very realistically and very candidly before the Committee and that was the purpose why he was present. However, Mr. Kuegel said, if, through his attorney, I offered Mr. Payne a "diversion" — a diversion is a delayed dismissal — other conditions could be asserted (and different requirements can be attached). One of those could be that Mr. Payne had to pay the entire amount of nearly \$40,000 related to his financial improprieties over the period of the diversion.

At the conclusion of the diversion period, his record would be expunged and it would be as if it never occurred. That's what the effect of the expungement has, said Mr. Kuegel. Mr. Payne would be able to fill out any resume, any place and if they asked him if he has ever been convicted of a felony, a misdemeanor, and he could say no, and all the records are sealed. They can't be opened. Our case against him is about as close to a lock as you can get because we do have the admissions and proof through the forensic accounting as well (what the auditors did on AACS' behalf) that Mr. Payne took the money. Mr. Kuegel said he was trying to be consistent with other case practice and standards since he had taken over the position of Commonwealth Attorney.

Mr. Kuegel explained that he had a similar case just within the past month and there was an accountant found guilty of taking money. An indictment was returned. There was a diversion offered and the accountant had repaid the money, so at the end of the diversion period, it would be as if it never happened. Mr. Kuegel stated he doesn't like using his office as a "collection type of entity," but in this particular case, it may be the best route to take.

If the jury convicts Mr. Payne, it could come back and give him a year in prison, and that's *a two month parole eligibility*. Mr. Kuegel said he is trying to save the taxpayers money as far as having Mr. Payne go through trial — and he anticipates this to be a lengthy trial anytime that you're dealing with financial issues, the amount of monies that are overseen and are given to AACS. It is sizeable and everyone has to account for that.

Mr. Kuegel went on to say that from a defense standpoint he could see Mr. Payne's attorney coming up and casting aspersions where "there needs to be finger pointing someplace else." In Mr. Kuegel's opinion, this would be a consistent way we would handle cases in the past and here in Daviess County. It would be an offer that he would be willing to at least enter into a negotiation with Mr. Flaherty, keeping in mind that while \$40,000 is the amount, there may be a lesser amount that would ultimately be negotiated. Mr. Payne would be "buying his freedom" and he's also buying his way out of this.

During the expungement period, Mr. Kuegel said he thought AACS could make this a condition. Mr. Byrne had informed the State Accounting Board that his firm was involved in an investigation where a CFO, who is a CPA, had committed fraud. Mr. Kuegel read a sentence from a letter that Mr. Byrne had e-mailed him, "Evidently by what we have heard, he has committed fraud in prior jobs and was never prosecuted." "The Commonwealth Attorney does not necessarily want to offer the deal, but our client wants to be able to recover the amount that was lost plus the additional accounting and attorney fees," notes Mr. Byrne. Then the Commonwealth Attorney says that if this case goes to trial, our client, which is AACS, would only be able to recover the amount that was stolen and remains unpaid.

Mr. Kuegel read the response from Mr. Dick Carroll, Executive Director of the Kentucky State Board of Accountancy: "Your email was forwarded to me for a response. I'm sorry for delaying in getting back to you but I was out of town most of last week. The expungement of the criminal record will make it more difficult for the Board to take action against his license. Currently, we have a provision in the law that allows the Board to take action if the CPA pleads guilty to any felony or a misdemeanor that involves fraud or dishonesty. Typically in those situations we simply enter a copy of a guilty plea into the record and have the CPA try to show to the Board why they should not take action against the license based upon the guilty plea. However, if there is no guilty plea to use, we would have to prove fraud charges independent of the criminal conviction. This process is more difficult than using a guilty plea but not impossible. To make this allegation and prove it in a hearing, I would have to have a complaint in writing from someone familiar with the case that also includes documents that substantiate the fraud allegation. In addition, may need to have someone to testify at the hearing against the CPA if he/she refuses to settle the case with the Board prior to the hearing."

Mr. Kuegel's said his position is, whether Mr. Payne has a license to practice as a CPA or not, this does not enter into the criminal charges nor does it enter into his election to prosecute or to operate a diversion to Mr. Payne. Mr. Kuegel said again that he is trying to be consistent and take into consideration the fact that there was a *breach of public trust* as well as a breach of trust with this Committee and the Board of Directors.

Mr. Kuegel said he was present to ask the Committee for some direction how it would prefer or suggest that he proceed. Judge Haire advised that if any member of the Committee had any questions for Mr. Kuegel, please ask and then the Committee will deliberate on how Mr. Kuegel can proceed.

Mr. Smith expressed his concern that if AACS actually goes into court, this could create more "stink" than what the agency wants to stir up, if it can be avoided. Mr. Kuegel said that is something that he was alluding to. Mr. Kuegel said he was not suggesting anything, but he could see that if he were defending Mr. Payne he would certainly be pointing fingers in every direction that he possibly could. He added that the case was set for pre-trial hearing the following week.

Rev. Combs asked if the agency could make the forfeiture of Mr. Payne's CPA license as part of that agreement. Mr. Kuegel said only during the diversionary period and that's going to be up to the State Accountancy Board. Mr. Kuegel said AACS could make that a condition, but to be quite honest that might be something that he would be hesitant in doing as far as making that a condition of the plea. Mr. Kuegel said he thinks the State Accountancy Board will take its own independent action. Remember,

during the time between the entry of the plea and the time that the diversion expires, Mr. Payne *is* a convicted felon, and is in violation of state and federal charges as if he possesses a handgun and all of the things associated with being a convicted felon, and the right to vote. In any type of action by the “CPA board,” all of that comes into play. That is something for the AACCS Committee to consider, but it’s not something that is going to be subject to the prosecution of the case.

Rev. Combs said his concern was that somebody passed this man off to this agency, in the sense that that some general knowledge about his past history had not made known. If we settle with this, yes, we’ll probably save ourselves some stuff, but we’re passing Mr. Payne off to someone else, he said. Mr. Smith said that during those five years of the “diversion,” as he understands it, Mr. Payne will be treated as a convicted felon and he won’t be able to present a clean slate. But in six years, he might be back at another firm, said Rev. Combs. Mr. Logsdon said the only difference that he can say to that is it has already been published in the newspaper and it’s widely known around town about the incident here. Whereas with the now alleged previous cases, they were not published, they were handled very quietly.

Mr. Manning asked if AACCS agrees to settle for the money, is that something Mr. Payne can come up with immediately or is this something that will be prolonged? Mr. Kuegel said to the defense attorney, he would probably put the clause in the settlement agreement. Mr. Kuegel also said he wanted the Committee to consider that most times in these types of cases he puts in an “escape clause.” In other words, that proposed five-year time frame can be lessened if the “convicted felon” goes on and pays the money owed. Mr. Kuegel stated what he would probably do in this particular case the diversion period would be for a five year period. However, if Mr. Payne paid the money immediately or within a short period of time upon a motion filed by his attorney, he would reduce the time from five years to three.

It works two ways: 1) giving Mr. Payne the incentive to get the money paid, but at the same time, 2) he does not buy his way out of the situation immediately. He is going to suffer the consequences for a period of time. Mr. Kuegel stressed that he is looking at the whole picture and placing himself in the same or similar situation if it were him or if it were anyone in this room. AACCS is the victim and this is the same conversation he would be having with a victim or victims in a similar situation.

Judge Haire asked if there were any other questions for Mr. Kuegel. Mr. Mountjoy said he wanted to make a point with the Committee. Assume some type of settlement or resolution is met, is there anything to prevent the Board on its own at a later time in going to the Board of Accountancy and “raising Cain” about Mr. Payne? It would be at the agency’s expense and would not be much of a “slam dunk” as a non-expunged guilty plea, but AACCS could, if it wanted to be pro-active, go the board and say, “We’re going to bring our accountant and want to prove that this man breached a public trust.” Mr. Manning said that Mr. Flaherty could put in there as part of the settlement plea to not do that. Judge Haire added that the Board of Accountancy says that it can be done, but it would be difficult. Mr. Smith said if Mr. Payne goes on and agrees to this, and if we’re called as a Board to testify to the “CPA board,” then AACCS would still be able to state what he actually did.

Mr. Kuegel said whenever he is entering into these negotiations he does so with good faith, so he would *not* want to find himself entering into this type of agreement, then have the AACCS Board “slipped shut” (in farm terms).

Judge Haire asked Mr. Kuegel to leave the room so the Committee could discuss and make a decision on how to pursue Mr. Payne’s settlement. Mr. Kuegel left the room.

Judge Haire told the Committee that the direction is pretty clear. AACCS gets the money back and Mr. Payne gets a five-year moratorium and time for paying AACCS its money back. AACCS must assume that it’s asking for *all* of the money it is due, and that’s the position the Board goes for. The defense attorney is going to come back and say, “Well, ok, instead of \$40,000, will you take \$20,000?” So that’s where the negotiation is and we have to be very clear as to what we offer or tell the attorney to do. If we just say

Mr. Payne committed the crime, he needs to pay the price, then we'll take the \$7,747.34, and we'll have to take our chance on the other \$33,000. We've heard what the Commonwealth Attorney had to say and his inclination on it.

Mr. Mountjoy said it's a difficult area to deal with when you get down to the specifics because, number one, he was somewhat surprised that the criminal court only has jurisdiction to make Mr. Payne pay back \$7,747.34. The jury and the criminal court proceedings itself, that's the only power they have, and Mr. Flaherty knows that. Mr. Mountjoy also said he advised Mr. Kuegel and he thinks it would be very important for the Board to go on record at some point to give Mr. Kuegel an indication that there is nothing to inhibit AACS from bringing a civil collection suit against Mr. Payne, but to the extent that you are not paying back something we have lost, we can always sue you in civil litigation. Now, am I saying that we should do that, Mr. Mountjoy says. No. Mr. Mountjoy stated he is simply saying that AACS should advise Mr. Kuegel in his negotiations that he is going to sue him anyway to the extent that there is not a criminal settlement reached and maybe that will force the issue and cause Mr. Flaherty to go higher.

Mr. Logsdon stated that in his opinion there simply was "no choice." AACS needs to get back its money that this fraud has cost. Mr. Logsdon said he's looking at the \$40,000. It just seems to be in the best interest of the agency to be made financially whole, he said, and that what the agency has paid this year concerning the fraud. Mr. Logsdon stated he was not vindictive toward Mr. Payne.

Mr. Mountjoy said if the Board elected to go to trial, the Board and the Commonwealth Attorney will have to pay his firm and Mr. Byrne's firm a good deal of additional fees. Because when you get into a trial, that expert witness will be called, whether it be Chilton and Medley or Mr. Byrne, and that will cost AACS more money.

Mr. Smith made a motion to recommend that Mr. Kuegel to negotiate for the settlement in full of \$40,000 — actually \$39,602.24 lost — and anything less than that amount that the Board wishes him to pursue criminal prosecution which includes the expenditures that AACS was out. AACS asks for the full amount of the money anything less than that AACS will pursue criminal prosecution and if they can do that in a reasonable amount of time, AACS will agree for the State to offer to reduce the diversion from five years to three years upon full repayment. Rev. David Combs seconded the motion. Motion accepted.

Mr. Kuegel came back into the room.

Judge Haire advised Mr. Kuegel that the Committee asks that Mr. Kuegel pursue payment in full of the expenditures that AACS has incurred with regard of the former CFO's fraud and that includes not only the money Mr. Payne took from AACS but also the accompanying costs, to total nearly \$40,000. AACS wants repayment in full of those total costs or AACS will pursue criminal prosecution to the full extent of the law. If the defense attorney wants any negotiation, then it shall be that if they're able to pay the sums incurred within a reasonable period of time that the AACS, the offended party, is willing for the Commonwealth's Attorney to negotiate downward from five years down to three years as a period of diversion.

Mr. Kuegel said he would convey that to Mr. Flaherty. Mr. Kuegel also pointed out, though, that it was he that ultimately had the decision as to what to offer or agree to during the negotiation with the defense attorney. It will lie with him alone the amount or time period(s) within a "diversion" offer, but he just wanted some guidance from the Committee. In the event that this does go to trial and Mr. Payne is convicted, AACS gets just the restitution for the amount that's owed. Mr. Kuegel said, though, that he does not believe that there would be anything that would prevent a civil action from being filed by AACS. Mr. Mountjoy said the total is \$7747.34 plus the \$31,845.90. Judge Haire also added that is the dollar amount that the Committee anticipates to make AACS whole. And if AACS had a negotiating tool it was that the "diversion" would be to cut from five years to three years.

Mr. Kuegel stated that in the event that Mr. Payne says that is more than what he's willing to pay, whom would he need to contact whether AACCS accept a lesser amount. Judge Haire advised Mr. Kuegel to contact Mr. Mountjoy and the Committee might then have to meet again, because the members were pretty solid on their \$40,000 decision.

Mr. Kuegel said if the question arises, he will assure the defense attorney that AACCS will not file a complaint against Mr. Payne.

Mr. Mountjoy suggested to the Committee that they're being Board members, they should henceforth beyond the Committee meeting stay away from the situation and agree that no comments are to be made by them in relation to the fraud matter.

Mr. Kuegel stated he would put the Committee's decision (offer) in letter form and get it sent to Mr. Payne's attorney right away.

ADJOURNMENT.

There being no further business,

The meeting was adjourned at 12:10 p.m.

Hon. Reid Haire
Committee Chairperson