



Gannaway/BKD Investigation for City of Denton

The City's Relationship with
the Denton Parks Foundation

Scope Period: October 1, 2012 through September 30, 2017

Background

- Concerns raised from a tip received from the City's anonymous hotline
 - Investigated by the City's Fraud, Waste & Abuse Committee about the relationship between the City of Denton Parks Department (Parks) and the Denton Park Foundation (Foundation)
- Questions had been raised about amounts City had sent to Foundation and whether the Foundation had a duty to return any of the funds
- Facility User Agreements – Fees assessed by City and given to Foundation
- Foundation selling advertisements to entities on City property
- Foundation usage of City staff and resources

Investigation Team

- Julia Gannaway, Attorney
 - Partner in law firm which specializes in municipal employment law
 - Over 24 years of legal experience working with state and local governmental entities
 - Conducted investigations for employers assessing legal exposure
- Todd Burchett, Partner
 - BKD's Forensics & Valuation Services, South Region Leader
 - CPA, CFF, CFE
 - Over 15 years of experience in investigations and litigated matters
 - Experience in dealing with media driven or citizen driven complaints
 - Case studies: OKC Disaster Relief Fund and City of Port Arthur, Texas
 - Expert witness experience

Everyone needs a trusted advisor. Who's yours?

BKD

Investigation Team

- Julia Mast, Director
 - BKD's Forensics & Valuation Services
 - CPA, CFE
 - 12 years of experience in investigations and litigated matters
 - Experience in dealing with media driven or citizen driven complaints
 - Case studies: City of Port Arthur, Texas and Junction City, Kansas
 - Former City Treasurer and elected City Council Member for Pleasant Valley, Missouri
 - Expert witness experience
- Keith P. Seiffert, Managing Consultant
 - BKD's Forensics & Valuation Services
 - CPA, CFE
 - Over 6 years of experience in detailed financial analytics and vouching of general ledger amounts
 - Experience in dealing with preparing accounting evidence for use in arbitration, mediation and trial
 - Expert witness experience

Everyone needs a trusted advisor. Who's yours?

BKD

Scope of Work Requested – 1st Phase

- Assess the City's Internal Auditor's working papers and files
 - Read and analyzed documentation pulled by Internal Auditor and other members of Fraud, Waste and Abuse Committee, which included items such as:
 - Interview notes of City employees
 - Lighthouse Reports, included Lighthouse Reports not related to BKD investigation
 - Agreements between the City and the Foundation, Youth Sports Association
 - Various documents regarding the Foundation Morale Fund account, Eureka 2 project, Youth Sports Association Enhancement Fees
 - Email correspondence between City employees and Foundation

Scope of Work Requested – 1st Phase, cont'd

- Interviews of the City management to understand background on investigation and known progress as of date Lynn, Ross & Gannaway, LLP and BKD were engaged
- Evaluation of potential procedures to perform in additional phases
- Discussions with legal counsel

Scope of Work Requested – 2nd Phase

- Scope Period – October 1, 2012 to September 30, 2017
- Conduct interviews of City and Foundation personnel
- Obtain financial information and document the interactions between the Parties
- Analyze books, journal entries, transactions between parties, noting:
 - Potential conflicts of interest
 - Sources of Foundation revenue

Scope of Work Requested – 2nd Phase

- Obtain and read:
 - Policies and procedures
 - Minutes of City and Foundation
- Follow up on any open matters discovered by Fraud, Waste & Abuse Committee, and
 - Address areas of concerns raised

Scope of Work Requested – 1st & 2nd Phases

- The scope of our work did not include a full accounting of the City of Denton Parks Department or of the Denton Parks Foundation, nor did we perform a compilation, review or audit of financial statements.

Timeline

- On or about September 12, 2017, the City received an anonymous complaint related to the Foundation not reimbursing the City for costs on the Eureka 2 park project that the caller believed were owed to the City.
- In the days that followed, the City's Fraud, Waste & Abuse Committee began conducting an investigation and received several comments regarding the relationship between the City Parks Department and the Foundation.
- On October 4, 2017, the City sent a letter to the Foundation (the October 4 Letter) notifying them to temporarily suspend fundraising efforts on behalf of the City until a review was conducted. This letter was leaked by an unknown source to the news media. The determination of the source of the information was beyond the scope of our work.

Timeline, continued

- On October 13, 2017, the City released a statement to the public clarifying the October 4 Letter and communicating about the status of the City's Fraud, Waste & Abuse Committee work.
- On October 16, 2017, the City's Internal Auditor resigned for unknown reasons.
- On October 20, 2017, BKD was retained to initially assess the Internal Auditor's work and provide feedback to the City on potential next steps.
- In early November, BKD was retained through, and we have worked with the City's outside legal counsel, Julia Gannaway, to conduct the work we have performed, which is the subject of our report.

Concerns that were investigated

- Have the City Parks Department and Foundation representatives fairly represented the nature and amounts of transactions to the City Council?
- Does the City have a written policy that clearly defines how it was to conduct business with the Foundation?
- Should the City have been reimbursed for the two expenditures paid for the Eureka 2 project?
- Was the Mayor and City Council properly informed about their ROI in June 2016? Or, at any point before and after?

Concerns that were investigated

- Were there payments to City vendors who were also Foundation employees, and vice versa?
- What is the condition of the books and records of the Foundation?
- Did the Foundation comply with contractual obligations? (Legal)
- Were any violations of City's Fraud Directive uncovered? (Legal)
- Did City Council authorize the Foundation to place signage on City property? (Legal)
- Did the City Council authorize assessing Field Enhancement Fees and remitting those to the Foundation? (Legal)

Methods Used

- Analysis of information from a wide range of sources
 - Interviews
 - Analysis of applicable policies and procedures
 - City and Foundation accounting records
 - Internal memoranda
 - Minutes of City Council meetings
 - Minutes of Parks Foundation meetings

Methods Used

- Interviews

- Marc Culp, Foundation President – Interviewed cooperatively without condition.
- Simone Royster, Foundation Treasurer – Declined to participate in a face-to-face interview.
- Molly Tampke, Executive Director – Interviewed with her attorney present; was cooperative.
- Foundation Administrative Staff – Interviewed; was cooperative.
- City employees – Interviewed; were cooperative.

Cooperation Received from the City

- We asked for:
 - Full and complete access to personnel, books, records and documents.
 - A “let the chips fall where they may” investigation.
 - We would include areas that are warranted based upon the evidence that we uncovered during the investigation.
- We received a high level of cooperation from City personnel and officials.

Cooperation Received from the Foundation, continued

- We asked for:
 - Information from the Foundation pursuant to the City's contract with the Foundation.
 - Adequate records to establish that the City funds are used for the purposes authorized by the agreement between the parties.
 - Access to Foundation's books.
- We received:
 - The initial requests for information from the Foundation were provided.
 - A second request for additional information was resisted by the Foundation President.
 - The Foundation President was concerned that he did not know what the nature of our investigation was. We told him that we were working under the contract that the City had with the Foundation and that the Foundation was required to provide us access to their books and records.
 - Ultimately, the Foundation complied.

Cooperation Received from the Foundation, continued

- In written correspondence dated December 11, 2017, the Foundation President stated that it was unfair to conduct interviews without us offering more information about the nature of our investigation.
 - He stated that he would interview with us “without condition”.
 - He stated that he believed the entire process to be unfair, including whether any of the interviewees might want to consult with their legal counsel before submitting to our process.
- Two Foundation witnesses obtained legal counsel and resisted being interviewed without making demands for certain concessions from us.
 - These demands included a list of areas of inquiry, a list of questions to be answered, a statement from BKD, LRG and the City that our investigation would not involve anything for which violations of the penal code may be brought; insisting that responses would be provided only in writing, and, ultimately refusing to engage in a personal interview.
 - We interviewed one of these witnesses with her attorney present. We did not reach an agreement to interview the other witness, the Foundation Treasurer.

Conclusions

- Legal counsel did not uncover a violation of Fraud Directive
- Legal counsel found the parties complied with their contractual obligations
- Legal counsel found that City Council did not authorize the Foundation to place signage on City property
- Legal counsel found that City Council had not authorized assessment of Field Enhancement Fees
- These statements are based on the information that we were able to gather considering the scope and the limitations imposed by those we were not able to interview.

Conclusions

- The City did not have a written policy on how it was to conduct business with the Foundation.
- From time to time, City Council minutes provide information on the intent of a particular project or transaction. But other than those minutes and the 2017 Service Agreement, which was signed in February of 2017, there were not any communications that established a clear operating relationship between the City/Parks and the Foundation.
- The 2017 Agreement expired on September 30, 2017.

Conclusions

- Most interviewees noted that there were concerns regarding “blurred lines” between the two entities.
 - City/Parks employees were used on Eureka 2, including maintenance and marketing.
 - City/Parks employees were diverted for months from their typical work to assist with the Eureka 2 project.
 - City/Parks employees were requested to design and/or print off flyers promoting Foundation activities/events.
- From our analysis of the City Council minutes, our assessment is that the City Council did not know the full scope of the assistance and the amount of City time that went into a Foundation project.
- During much of the Scope Period, a City/Parks employee was tasked with keeping the Foundation books on a current basis and periodically reconciling with the official books kept by the Foundation Treasurer.

Conclusions

- In interviews with the City/Parks (former) Director, he:
 - Stated that the line has always been blurred, but Eureka 2 assistance required by the City helped expose this even further, “mainly due to the time crunch.”
 - Stated that he would tell potential donors to send donations through the Foundation because “it was easier to expend dollars,” expenses don’t have to go to bid, and “he could select” what projects he would want to do and how the money was spent. We have not found any evidence that the City management had any knowledge of this or gave approval or instructions to do this.
 - He indicated that he had influence on spending at the Foundation.
 - The Foundation has no written controls surrounding procurement. So, he had the ability to avoid the City’s restrictions on procurement by running purchases/expenses through the Foundation. In addition, we noted that there is no formal conflict of interest policy in place at the Foundation that we were provided.

Conclusions

- The usage of City/Parks personnel and the providing of other City resources to support the Eureka 2 project was far more than the \$173,828 amount identified in the payroll records incurred by maintenance employees. Interviewees indicated that the Foundation became accustomed to using City/Parks staff for certain administrative functions, and this caused frustration by City/Parks staff after the Eureka 2 project was finished.

Conclusions

- There is an ongoing disagreement between the City and the Foundation regarding two Eureka 2 expenditures that the City paid when the Foundation was building that project. At the time, the Foundation did not have the funds to cover the amounts that were due. The payments were for:
 - Playground equipment of \$95,000 on November 10, 2015
 - Pour and play of \$85,000 on March 1, 2016

Conclusions

- We find the PD Staff Report presented to the Mayor and City Council was inaccurate:
 - ROI calculation inputs and assumptions
 - Amounts raised by the Foundation
 - Not accounting for the additional investments by the City for office space, personnel, etc.

Conclusions

- The Foundation signed a signage “Sponsorship” agreement with an outside company, S&B Visionary, for a campaign to advertise on City Property for \$40,000. Twenty-five percent of the proceeds were to go to S&B Visionary as a fee for promoting the sponsorships. This was done without City management approval.
- Interviewees had noticed other commercial advertising at the pool and baseball facilities, including a bank sign on the Eureka 2 playground equipment.
- The City’s agreement with the Foundation does not address the Foundation selling advertising on its property.

Conclusions

- The City/Parks department has an agreement with the Youth Sports Association (Association) for collection of an “Enhancement Fee” of \$5 per registered player. The payments are made payable to the Foundation who is not a party to the agreement.
 - The Foundation’s records indicate that from October 2012 to September 2017, the Foundation collected \$48,450 from the Association. The records we analyzed indicated that the Foundation holds the funds and remits them back to the Association for field enhancement projects. Expenditures were \$54,675 for this fund during the same period.
 - Due to the Scope Period being measured, it appears the Foundation expended more than it brought in. Presumably, the Foundation had received funds in prior periods and disbursed them during our Scope Period.

Recommendations – Assuming Parties Move Forward Together

Agreement with the Foundation/Clarification of Boundaries

- Evaluate periodically the City's arrangements with the Foundation and determine whether it is in the City's interest to continue the relationship/arrangement for a given time period.
- Develop a memorandum of understanding which sets out the understanding of the relationship between the Foundation and the City, clearly defining roles and expectations between both, benchmarks to achieve, and expected flow of money. In addition, develop policies for City employees for guidance with their interactions with the Foundation.
- Develop policies and procedures around the interactions between the City and the Foundation, related to:
 - generally and specifically related to monies that flow from one entity to the other;
 - related to employees of either entity;
- Define how the ROI calculation should be computed and any other metrics of measuring the success of the Foundation by the City.
- Define a reporting mechanism for the Executive Director of the Foundation to report to someone at the City, other than the City/Parks Director to provide a control.

Recommendations – YSA Fees

Accounting for Youth Sports Association fees

- Payments should be remitted to the City of Denton under the current agreement. The City would then be responsible for administering those funds.
- Alternatively, the City could terminate its agreement with the Youth Sports Association and develop a new arrangement for supporting the organization.
- The City should ask the Foundation to provide its own accounting of the funds collected and disbursed for these purposes.

Recommendations

City Operations

- Implement a Code of Conduct policy.
- Perform annual conflict of interest disclosures for City Council and department heads that identify business relationships and family. The focus should be about transparency regarding with whom the City does business.
- Require that any receipt of money donated to the City or for its use be documented through written Donor Agreements.

Recommendations

Foundation Operations

- Implement control processes similar to the City for cash handling and procurement. This should reduce the temptation for individuals to direct activities towards a certain vendor.
- Develop of a Conflicts of Interest policy and a Code of Conduct policy to assist them with identification of potential conflicts of interest.
- Have more timely entry of financial transactions (within one to two weeks) in its bookkeeping records so that more accurate reports can be provided, both internally, to the Foundation's Board, and to the City.
- Set up procedures to ensure the recording and tracking of pledges, preferably by utilizing the accounting software.
- Enter the addresses of its vendors in its accounting software program to further help identify potential conflicts of interest.

Questions?

Thank You!