



Kansas NG9-1-1 Special Council Meeting Minutes

Web Conference, Friday, June 22, 2018

1 Call To Order

The Kansas 911 Coordinating Council ("Council") special meeting was called to order at 10:00 a.m. by Michele Abbott, delegated by Chairman Heitschmidt.

2 Roll Call

Council Members in Attendance

Mike Albers, Troy Briggs, Robert Cooper, David Cowan, Jerry Daniels, Marci Francisco, Adam Geffert, Michael Leiker, Sherry Massey, Kerry McCue, Rob McDonald, Robert McLemore, Josh Michaelis, Melanie Mills-Bergers, Ken Nelson, Sara Spinks, Ellen Wernicke, and Jonathan York.

Council Members Absent

John Alcala, Rick Billinger, John Fox, Dick Heitschmidt, Kyle Hoffman, and Kathy Kuenstler.

Also in Attendance

Michele Abbott, Lori Alexander, Kathleen Becker, Scott Ekberg, Ed Klumpp, Angela Murphy, Gayle Schwarzrock, and Randall White.

3 PSAP Expenditure Policy and Procedure

Michele Abbott reminded the Council the purpose of this meeting was to discuss the tabled topic of the PSAP expenditure policy and procedure, from the June 8, 2018 meeting.

At the June 8, 2018 meeting, Sheriff Troy Briggs offered up consideration for modification to the proposed policy and procedure, which Michele believes that Scott Ekberg, 911 Administrator, was able to capture in a revision that was sent out to Council members prior to today's meeting.

3.1 Kansas Open Meetings Act

Sheriff Briggs voiced concern regarding whether the e-mail chain could be considered a Kansas Open Meeting Act (KOMA) violation with how the Expenditure Review Committee is set up since it would basically be an open meeting. Scott Ekberg advised that there was not a quorum of the voting members represented on the Expenditure Review Committee.

3.2 Subscriber Radio Equipment

Michele Abbott advised the Council that the Council had received a letter from the Kansas Association of Chiefs of Police (KACP) which was distributed prior to today's meeting¹. Sheriff Briggs voiced concern that the Council follow Statute. For example, the policy regarding portable radios. They are not an allowed expense which is very specific in the Statute. However, portable radio maintenance is not

¹ Letter "Proposed PSAP Expenditure Process and Procedure," Jennifer Duffy, KACP, June 21, 2018.



suggested anywhere in Statute, and the Council needs to follow Statute as closely as possible. To this point, Scott advised that since 2012 the position of the Council has been that the language in the Kansas 911 Act regarding the purchase, upgrade, maintenance of subscriber radios:

- K.S.A. 12-5365. 911 Federal Grant Fund
- K.S.A. 12-5366. 911 State Maintenance Fund
- K.S.A. 12-5368. 911 State Fund and 911 State Grant Fund

Consequently, the maintenance, upgrade, or purchases of subscriber radios has never been allowed. This includes portable radios that are used as a back-up to the radio console in the PSAP. Although it would be a legitimate use of a portable radio for 911 purposes, it has not been an allowable expense by the Council since the first expenditure reporting. Sheriff Briggs advised they agree strongly that subscriber radios are a forbidden expense but advised that the Statute doesn't actually state that. While there was, and is, an interpretation by the Council, "subscriber radios" is not explicitly mentioned in the Statute.

Scott advised that there have been occasions when a decision was reversed and an expenditure is now allowable. Many times that is caused by the way technologies have changed, and the way they are applied to 911 services. The Council has tried to remain consistent every year and not make changes. To allow radio maintenance after six (6) years would be a major shift in position. Sheriff Briggs doesn't feel they would disagree with that, but looking at the basis of the Statute, they want to ensure that the policy and procedure are following Statute to prevent any further issues.

Ed Klumpp, lobbyist for law enforcement matters representing the KACP, the Kansas Sheriff's Association (KSA) and the Kansas Peace Officers Association (KPOA) shared that law enforcement organizations are not advocating that money should be spent on "maintenance of subscriber radios." The concern is that the Council doesn't have the authority to expand the prohibitions that are in the Statute. The prohibition that Scott discussed where it talks about maintenance and replacement is all in the 911 State Maintenance Fund paragraph of the Statute. However, when you get to these funds, the Statute is very specific and only says "purchase." When an Act is passed and there is a set of words used one way in one area and another way in another area, those are generally interpreted to be a different intent by the Legislature. He feels that this is a concern that needs a more thorough discussion rather than be a part of the Expenditure Process and Procedure.

3.3 Pagers

The same concern would be with pagers. The Council, in its Expenditure Policy, included pagers as subscriber radios. The law enforcement organizations do not feel pagers fit the statutory definition of subscriber radios. The concern is that a lot of firefighters use a pager system as a notification system. The Council's position that pagers are not allowed in any form seems to be inconsistent with the Council's position on the public warning sirens where they are not allowed if their intent is to warn the public. But could be allowed in circumstances where they are the notification system for firefighters to respond to a call. It would seem that pagers fall into the same class and category. The law enforcement organizations do not feel that pagers would fit any allowable expenses for purposes other than similar to what is stated for the outside warning system. If that is the system that alerts firefighters, and even EMS, then it seems that they should be considered on a case-by-case basis, dependent on how they are intended to be used. The main point in the KACP letter is that the procedure for the expenditure process is that the Council is extending their authority beyond what they have the statutory right to do.



3.4 Training

Ed Klumpp advised another area of concern is the topic of training addressed on page 6, last paragraph “PSAP Expenditure Process and Procedure.” The document states that if training is part of a conference package presented by APCO or NENA, then it is allowed. The inquiry was why it would be allowed if APCO or NENA presented it, but not if someone else presented it, as long as the content is relevant to training of 911 services. The law enforcement organizations suggest that the part about APCO or NENA be stricken so as not to restrict training to just those entities.

In regard to the training concern, Josh Michaelis stated that his interpretation was that 911 funds were allowable for memberships to APCO and NENA because of the free training that is included as a benefit to the memberships. Ed Klumpp advised that the expenditure policy draft and Council philosophy statement do not address membership dues. Rather, they talk specifically that if training is part of a conference package, then the registration fees, meals, mileage, and room are allowed. It doesn’t say anything about membership to the organizations. Ed suggested again to just strike reference to APCO and NENA. **ACTION** Scott agreed to strike the APCO and NENA reference.

Robert Cooper agrees about striking the APCO and NENA conferences. He referenced K.S.A. 12-5368 which states that the Council should be developing curriculum or criteria depending on the grant application and the final decision will be determined and funding provided based on that criteria. We should be providing that funding when the applicant meets the specific criteria. We should not be including funds in the curriculum or criteria based on subscriber’s equipment. That could be interpretable as well and that should be clarified as to what it means and who has authority.

3.5 Background

Scott Ekberg provided background that since 2012 the Council has been charged with doing expenditure reviews every year. The reports are due by Statute on March 1st. The reports tend to trickle in from March 1st until January of the following year. The Council is obligated by the Statute to review every expenditure of 911 funds that is made by every PSAP in the state. The process that has been used in the past is the expenditure reports that come in from the different PSAP’s.

1. They are compiled into a single list. All of the identifying information is removed, leaving just the vendor, the amount, the description, and the comments for each item.
2. That information is put into a spreadsheet that is then e-mailed to the Expenditure Review Committee, a subcommittee of the Operations Committee. Each member of the Expenditure Review Committee evaluates the list. Any expenditures that are questionable are marked.
3. There is a meeting either face-to-face or in a conference call to review all of the questionable expenditures. Members state their reasons for marking an item questionable, and in most cases, they contact the PSAP and request further clarification of the purpose for the expenditure. By far, the most common occurrence is expenditures to a radio vendor for “radio maintenance.”
4. We go back to the PSAP and inquire what radios are being maintained with the expenditure. They advise the control station radios in the PSAP and those are then marked approved.

In the last Legislative Post Audit (LPA) 2016, it was identified by the LPA auditor that the Council should be doing more than just taking the PSAP’s word for expenditures. They suggested that we collect random invoices to verify expenditures. We accepted that guidance and for the last two (2) years we have randomly selected five (5) of the expenditures for each PSAP and requested that they upload the invoice that supports each select expenditure. If there are less than five (5) expenditures in a year for a given PSAP, then all of their expenditures would be selected for invoice submittal.



5. Once the information is received from the PSAP with further clarification, we provide that information to the Expenditure Review Committee members for reevaluation.
6. We have another meeting and review the list again and identify, based on the PSAP's response, whether it is an allowable or unallowable expenditure. If the expenditure is found unallowable, we contact the PSAP and advise them that we found the expenditure unallowable and give them the opportunity to reimburse their 911 account. If they take that opportunity, then it is as if the expenditure never happened. If they disagree with the finding, then they can file a Notice of Appeal and we will begin the appeal process. This is an extra step that was inserted. In about 85% or more of the cases that we go back and mark as an unallowable expenditure, the PSAP explains that the expenditure was miscoded and they didn't mean to pay for the item using 911 funds. In such cases, they reimburse the 911 account and the investigation is closed. If we follow the Statute to the letter as written, when we find an unallowable expenditure, it would automatically go into the appeal process. We would issue a demand letter for repayment of the expenditure, plus 10% to the grant fund, and if the transaction was miscoded, the PSAP is obligated to pay the amount of the expenditure plus 10% to the grant fund because there is no basis for an appeal; it was an honest mistake. We don't want to set up a situation where we are penalizing the PSAP because they made an honest mistake. That is why we inserted the extra step where they are allowed to reimburse their account and treat the expenditure as if it never happened.

During the legislative process in the last session, it was pointed out that Kansas Association of Counties (KAC), KSA, and KACP felt that the decision of allowability or non-allowability should not be made by the Expenditure Review Committee, but rather should be made by the full Council. That discussion prompted this policy and change, so that the determination of allowability is made by the full Council rather than the Expenditure Review Committee.

Josh Michaelis stated when the process was first developed, the KAC was the Local Collection Point Administrator (LCPA). He inquired if they ever expressed any concerns with the process that had been used since 2012 until the legislation opened up earlier this year? Scott advised they had not and that this was the first time anyone had complained about the process. Josh reiterated that complaint includes the KAC, but they had no qualms about it when they were the LCPA. Scott confirmed. Michele recalled that when the process was first started, the Council was told by the KAC that although they were not our legal advisor, they gave recommendations and would support or not support our direction. The KAC had direct input on it [the expenditure policy] and assisted in the original process. She also advised that in the past the committee has always created a final list of the items they felt were not allowable with a total list of dollars spent. That was brought to the full Council and always on file and given in full Council meetings. No one at that time questioned any of those either. So while adding the formal vote of the Council as a technical piece to this policy and procedure, it has always been very transparent to the full Council on which items were being asked for reimbursement.

Lori Alexander, 911 Liaison, stated that she has a good relationship with the PSAP's. She receives questions all of the time and she responds promptly to all inquiries. If she cannot answer a question directly, then she brings inquiry back to the Operations Committee for their consideration.

Michele advised that based on the conversation today and the recommendations from the KACP, she invited the Council members to either make a decision by Motion to accept the procedures and guidelines presented, or to table a decision. If tabled, then **ACTION** a second meeting is needed as soon as possible in order for Lori, Scott, and the Operations Committee to move forward with the expenditure review.



Mike Albers stated that he thinks that the Legislature never intended to micromanage expenditures, which is why originally a committee was formed and guidelines established. He believes that the process is just an extension of what they have been doing. With that said, there are a few things that have been discussed that need to be changed, and he doesn't feel it is appropriate to approve a document that is not in the final form with all of the discussion that has taken place. Mike motioned to table the matter; seconded by Sherry Massey. Josh Michaelis agreed with tabling the matter. He feels that so much is being requested to be changed that we would never get a document approved or direction given to the Expenditure Review Committee until the legislation changes. He inquired how we can feasibly meet the requirements of the annual reporting and proceed from here today until there are legislative changes. He doesn't feel we can hold off and not approve a document or process. He feels that what is being asked by the KACP, KSA, and KAC are fair, but the process cannot be put on hold until all the questions that have been asked are addressed and corrected.

Randall White advised that he and Scott had a discussion with the Governor's office about the distinction of statute and by-laws. They learned that legislation is intended to be relatively generic in nature, and the statute is not meant to be all things to all people. The Governor's Office said the way that is handled within a particular agency or pseudo-agency is they construct by-laws that address the particulars which is acceptable, as long as the by-laws do not contradict the Statute itself. Randall believes the Council may want to consider by-laws to augment legislative process. It does not solve the dilemma that Scott and Lori have.

Sherry Massey stated we are trying to document the very policy [and process] that we have been acting on by general understanding since the beginning. There are always times when you have to validate the legality of what is being said. There have been some specific questions brought up about KOMA and compliance with KOMA within this process that need to be resolved. She doesn't feel all of the procedural questions need to be settled to everyone's satisfaction, but certainly the legal ones do, and **ACTION** ensure that our legal counsel agrees we are within the bounds of the Statute.

Ed Klumpp advised that he feels that the law enforcement organizations that he represents would be satisfied in knowing that the Council was going to go back and review their policy statement. Their main concern in the document is the procedural suggestions on the pre-approval process. An example, if the 911 Liaison says, "It has previously been determined that this expense is not..." then, in their opinion, the procedure does not address whether that decision can then be appealed to the Expenditure Review Committee or not. Ed asked that the Council consider those procedural clarifications in the process. If the Motion passes to table this, **ACTION** they would be satisfied with having their suggestions reviewed and see if the Council agrees on clarification being added to the proposal to address the steps in that pre-approval process.

Senator Marci Francisco advised that if a Motion is made to table, **ACTION** it needs to be set on date certain, so that it is not just tabled and no plan is made to bring it back. Ed Klumpp added that the Motion to table that has been presented would require a majority vote of the Council to pull it off the table. If it is tabled to a date certain, then you do not need to take that formal action. It comes off the table at that date.

Michele reminded the Council they have a Motion to table by Mike Albers; seconded by Sherry Massey. Michele inquired if Mike would like to modify his Motion. Mike inquired if a date is set, will there be enough time for legal to review it prior to the next meeting? Scott advised that legal review and guidance is imminent. He added that rapid resolution of expenditure policy is critical, because there cannot be two (2) expenditure years open at the same time. The expenditure reports from two years ago were just finished February, 2018, and then there was the March 1st deadline for submitting last year's expenditure reports. There would be entirely too much confusion in having two expenditure



years open coincidentally. We need to have something in place [by July 13] so we can finish last year's reporting by March 1st of next year.

Sherry Massey asked if there is any reason why the committee cannot continue working as they have the past on the expenditures that are coming in, until this document is complete. Scott advised that can be done, as long as everyone is willing to say that once the policy is passed it will not take effect until next year's reporting period, because it changes the review process, in that it changes the structure of the Expenditure Review Committee. Sherry inquired if there was anyone who disagreed [with following status quo if the proposed process and procedure is approved and applied to next year's activity]. Ed Klumpp advised that in the letter from the KACP, they feel strongly that changes to the process should not be applied retroactively to expenditures made in the past. The KACP agrees that there is no reason the existing process cannot continue to be used for the 2017 review, and then use the new policy for the 2018 expenditures.

Michele advised that her modification to Mike's Motion recommendation would be to modify with a date of July 13, 2018 at 10:00 a.m. If no response is received by legal by that time, **ACTION** then we would move that date again. Mike agreed. Senator Francisco advised that if the date is certain, then it is off the table. If there is no meeting, no action would need to be taken. It would be on the table as soon as we would meet again. Ed agreed.

Senator Francisco voiced her concern that the Council has been notified that we need to handle this procedure differently. Therefore, she is concerned with the suggestion of putting off the new policy until next year. She feels the concern that the handling of the policy needs to be addressed. Sherry inquired of Senator Francisco if she would agree that if the legal opinion states there is nothing in the policy as such that violates current Statute, that we can continue to operate with the current policy and put this new policy in place next year? Or, if Senator Francisco feels we need to put something in place this year and used retroactively against previous expenses? Senator Francisco advised her understanding is something needs to be put into place this year because they have been told that it is incorrect, and that the legal counsel comments we are seeking pertain to open meetings and making sure this new policy follows guidelines.

Michele asked Scott to clarify what opinion he is waiting for. Scott advised the attorney is researching the Statute and how the policy as it is drafted now fits into the Statute and if we can proceed. The policy as it is written now incorporates what we have done historically. That is the review we are wanting: can we keep the extra piece that we added [where we allow PSAP's to refund their 911 account] is within the statutory framework? If this is passed today we can move forward, then if it needed modified after we receive the legal opinion, we can do that. But this way we can continue moving forward to get this review done before next year's opens up.

Michele asked for further discussion or comments. None were had. She confirmed with Mike he has a Motion with a second from Sherry. He confirmed that is correct, to table the matter to July 13, 2018. Sherry confirmed her second. No further discussion. All in favor. Motion carried. **ACTION** Special meeting set for July 13, 2018 at 10:00 a.m.

4 New Business

Michele reminded the Council about the August 10, 2018 Council meeting that will include introduction of new Council members, Council orientation and refresher for new and current members, some new training such as Kansas Open Meetings Act (KOMA), as well as Old and New Business.



5 Adjournment

Sheriff Briggs motioned to adjourn; seconded by Mike Albers. All in favor. The meeting adjourned at about 11:00 a.m.

Submitted by:

Scott Ekberg
NG911 Administrator