

# Information Network of Kansas Board Meeting Minutes

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## May 2019 Board Meeting May 2, 2019

### Opening

A meeting of the INK Board was called to order at 10:13 a.m., Thursday, May 2, 2019 at Kansas Information Consortium Office, 534 S. Kansas Avenue, Suite 1210, Topeka, Kansas by Chair Aaron Kite, representing the Kansas Bar Association, with the following members present:

Lucas Goff, representing the Kansas Association of Counties (Board Secretary)

Jennifer Cook, representing the Kansas Secretary of State

Gregg Wamsley, representing the Kansas Library Association (Board Treasurer)

Glen Yancey, CIO, Kansas Department of Health and Environment, representing the Executive Branch Chief Information Technology Officer

### Others Present

John Yeary, INK Board Counsel, Department of Administration; Duncan Friend, Information Network of Kansas; Nolan Jones, Kansas Information Consortium, LLC.

## Consent Agenda

The consent agenda for the meeting included the draft April 2019 INK Board minutes, the April 2019 INK Network Manager report, and over-the-counter service (KanPay Counter) contracts for the cities of Goodland, Miltonvale, and Moundridge.

**Action Taken:** Cook moved to accept the Consent Agenda as presented. Yancey seconded. No further discussion. The motion was approved unanimously.

## Action Agenda

### Regular Business

#### 1) INK Executive Director Position Hiring Committee Report

On behalf of the committee, Yancey reported that they would like the Board to go into Executive Session to discuss a personnel matter.

**Action Taken:** At 10:15 am, Kite moved that the meeting of the Information Network of Kansas be recessed for a closed executive meeting for the purpose of reviewing the Executive Director Position Committee report that fall under statutory exemption pursuant to K.S.A. § 75-4319 (1) to discuss personnel matters of nonelected personnel and that the Information Network of Kansas resume the open meeting at 10:30 am at 534 S. Kansas Avenue, Suite 1210, Topeka, Kansas and that this motion, if adopted, be recorded in the minutes of the Information Network of Kansas and be maintained as a part of the permanent records of the Board and that all the Board members in attendance, along with Mr. Yeary, Board Counsel, participate. Seconded by Wamsley. No further discussion. The motion was approved unanimously.

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The Board meeting reconvened at 10:30 am. Kite asked whether a member of the Executive Director Position committee wished to make a motion.

**Action Taken:** Yancey moved that the Board accept the recommendation of the selection committee that Chair of the Board enter into negotiations with Duncan Friend to hire him for the position of Executive Director of the Information Network of Kansas. Seconded by Goff. No further discussion. The motion was approved unanimously.

## 2) Network Manager Report

Jones briefed the members about the “Scrap Metal” bill in the Legislature and its possible implications for INK with regard to a potential grant request and application development opportunity. At the Board’s request, Jones provided a general explanation of the planned general operation of the application as it stood presently. Customers bringing in scrap to a yard would have information collected by the scrapyards, some of which is uploaded centrally to the application. Data resale or sharing is prohibited as the legislation is currently written. The estimate being discussed was approximately \$60,000 to build and ongoing fees for maintenance. Kite noted that the INK statute was about making information available, so that issue would have to be addressed in any grant request where information access would be restricted. Cook pointed out that there are law enforcement grants available. Friend contributed that, historically, the Board seldom gave a grant to an agency that would go to paying their partner, KIC. So, if the board ended up thinking it was something they wanted KIC to do through an amendment to the business plan instead of a grant, things are still back to the situation where they need to figure out how it would break-even on return on investment. Jones stated that they had not been out trying to sell an INK solution. Kite contributed that insurance adjusters use a similar application. Friend asked how soon they would be planning to implement that. Jones said one part was July 1, another January 1, but there is still negotiation. There was a question about who the champions were for the bill and Jones confirmed it was the larger telecommunications providers and power companies, along with municipalities, given their losses to theft. Another thing Jones found and would like to implement, regardless of whether the bill passes, is the need for some kind of broadcast communication, such as via a listserv, between the KBI and scrapyards for information and warnings, which the scrapyards support. Kite asked when Jones expected a grant request if there is one and he guessed June 1, given the deadlines. Friend noted that there was some history of INK bidding on this, and Nolan recapped that from 2015 – it was not the origin of the cost estimate.

Jones then briefed the Board on his plan for INK to apply for a Center for Digital Government award and noted that they planned to launch a new website for the state in the next few hours. It is very competitive, and Kansas has not applied in a few years.

Noting that taxes had been due on April 15, he informed the Board that they received about 700 surveys from the option available at the end of the filing process in the KDOR application. While there were the general criticisms of taxes overall, there were positive statements about the improved usability of the application. Friend asked him to talk about Agent Kay, the chatbot. Jones confirmed that traffic was light this year, but they think it’s the future. Kansas was the first state to offer that. It was a separate instance just for tax. He closed by summarizing a STEM event KIC participated in with the Girl Scouts, partnering with NIC.

**Action Taken:** None.

### 3) Requests for Waiver of INK Subscriber Fee by Government organizations

Friend opened by explaining the INK subscriber fee and how it related to INK services. In some cases it is required, in others optional to perform the service. Friend referenced two governmental organizations that had recently requested a waiver of the fee, the Governmental Ethics Commission and an investigative arm of the federal Office of Personnel Management. Neither provided specific details of what records they were wanting to use. Friend had asked Jones to research the current status and history – what kind of revenue was involved, did government entities have waivers now? It didn't appear they did, although in Friend's previous experience there used to be no charge for government agencies.

Jones began by noting that there were fees separate from the subscriber fees that agencies may charge for a record and neither INK nor they may be able to waive. As best he could tell, the Board has not approved a waiver for the subscriber fee in at least three years. Friend and Jones agreed that a legislator had asked for this in the past as well but wouldn't clarify use. Jones is still getting information from Corporate on this, but the best guess is that there are 10 or less who were "grandfathered in" with no fee. Friend noted that he impressed on those requesting a waiver that they still may have to pay a fee at the agency level that they won't waive – and Jones said the agency also had to determine they had access to it.

Kite asked if the "legacy" agencies were law enforcement and Jones responded that he didn't think so. They were just grandfathered in. Friend noted that there was no existing policy, just a "practice". Jones continued that it was not a complex change to accomplish. Kite offered that if INK were going to allow the practice of waiving the fee to continue for those existing agencies, there should be a policy developed to support what is being done. Friend confirmed what had been said and asked if it should be applied retroactively – like, if Law Enforcement were determined to be exempt, should they go back and contact all who might still be paying it or wait and let them know when they were up for renewal? Yancey stated that to start he would like to see who is not paying today and understand what the rationale for that is. Kite asked if Jones could have that by the time of the next meeting. Jones responded that he would provide all the information he had access to by the next meeting. Yancey also asked him to research whether another NIC affiliate had a policy around this topic that INK could model. Jones agreed.

**Action Taken:** None.

### 4) INK Grant Policy and Procedures Review

Friend presented an overview of the questions he'd asked Board Counsel (in attendance) about the current grant policy and overall program. These included the continuum of conditions under which INK statutory exemption from state procurement laws applied – when INK bought something, when INK purchased something to benefit multiple state agencies, or when INK awarded a grant to an agency to purchase something. There were also questions on whether or not awards should include a caveat "if funds are available" for multi-year grants (Yeary determined that, as long as the money was set aside, this was not needed), and various questions about the status of grant requests with regard to open records. After a review of the document and these questions, Friend briefly went over where the changes were in the edits made the current policy that he was proposing for approval. He asked the Board about the provisions regarding conflict of interest and provisions about discouragement of lobbying the INK Board. He didn't know if the

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applicants knew it was there. Kite asked when the policy had been developed – Friend thought the early 2000’s. He noted that sometimes there was high interaction between members of the Board - say, like in the case of the Broadband grant – meeting offline and talking about how they could get the grant done. He didn’t know the origin, he just wanted to make sure the members knew about it

Yeary said that his feeling was that the board very well might want to leave this provision in, but if there is nothing else at all about conflict of interest, maybe the Board should develop a separate policy that’s broader than just the grant policy and use it to cover this. Kite agreed the Board should have one. Even for a federal tax exemption, while they don’t require it, they strongly encourage it and it’s a very simple thing to do. He then asked to confirm that this was just contained within their granting policy. Friend said yes – there is not a standalone policy. The Board did work on this in the past, so he thinks he can find something that had been in the works before from a previous counsel. The other question was, whether doing that, the Board wanted to just strike all of this language out of the grant policy as it stood. Yeary added that it occurred to him that one benefit of leaving it in is that it would inform the people filling out the grant application and put them on notice about it. As it stands, Friend left it there. Yancey stated that he felt that until there was an overall policy, they should leave this provision in place. Friend agreed he would leave it there.

Friend then talked about the policy provision that said payments would be made to agencies, versus vendors, unless there was an assignment. He indicated that what he had inherited and been doing was paying vendors directly, with agencies attesting that the work had been performed. But, over time, he came to see that could be problematic, because he didn’t have any understanding that they did procurement correctly. His example was with Department of Revenue’s revenue estimating software – it was a big grant, like over \$800,000. They would send an invoice – they did appear to buy it from a contract – and would say it was “ok to pay”, so he would just cut the check directly, which he assumed qualified as this “assignment” referred to in the policy came in. Friend said he wasn’t sure why he couldn’t pay it directly to the agency. Yancey pointed out that KDOR might have to turn that back into the state treasury as found funds – Friend noted that it is possible they might not even have the authority to spend it. Friend indicated he didn’t want to get too lost in the details, but there could be a case – and they do have a case now that basically the agency that INK gave a grant to did not go through the procurement process – where an agency doesn’t contract with a vendor, and INK is still making payments to that vendor, but OK’d by the agency. So, this language was an attempt to address that.

Yancey stated that, in theory, the purchasing authority ought to be a separate track from how it is funded. It can be funded through agency funds, state general funds, INK funds. That is somewhat immaterial to who owns the procurement and that has to be above board. Friend agreed and said that was what the additional provision was attempting to accomplish. To receive the disbursement, the grantee has to show it complies with applicable procurement laws in their jurisdiction. Kite noted that it struck him that dovetails with the scrap metal discussion that there is legislation out there that is going to require procurement and there are people out there counting on funds from INK. Would a granting policy that requires exhaustion of other sources of revenue make sense for INK? It doesn’t have to be that harsh, but it would require a demonstration of efforts at least to try to fund it from more traditional methods of funding before they came to INK. He is just throwing it out there – It troubles him that people are beginning to... Yancey interjected “seeking funding authority without having any funding and then saying “Hey, by the way...you’re going to be getting my request.” Kite noted, following up on a remark from Cook, that if funding were being received from other sources, that should also be disclosed.

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Yancey said his thoughts were that he didn't like the wording of it, but he did think there needed to be something in the policy related to this. It ought to describe the default that grant funds shall be paid directly to the requestor unless some other official process that has been approved has been determined to be appropriate. (*Friend left the meeting temporarily*) He continued that he did think that the Board needed to be protected against the case that "I haven't followed any procurement policies, but it doesn't matter because I'm not going to be involved in the transaction – I'm just going to saying to go ahead and pay." What if the guy set up a shadow company and claims to have awarded him a contract, got the grant approved and then they have INK pay them directly, there's no audit process at INK that would detect that other than a person going back to see if the work was actually delivered.

Goff noted that, for auditing purposes, at least on a local level, they still have to indicate where the revenue came from, and if it was a grant, what type of grant, so it should hit their books to show a revenue to offset an expense, because the contract is not between INK and the vendor. So he thinks it should be required to go to the agency requesting it. And, they should have the requirement of fiduciary requirements of managing it. Jones noted that there may be some elected officials with different processes. Yancey responded that he felt they could have an exception process, but not as a general rule. Kite asked what the situation would be that an agency would request INK pay a third party directly. Yancey thought it might be the fiscal process necessary to absorb grant funds and agencies find it is less work to approve payment of the bill and then INK just pays it. Yearly stated that even through the state budget process, there can be some restrictions on even the ability to accept funds sometimes – one is required to go through that process to accept grant funds. So, if they haven't done that in time – it may happen a lot, as they're on a shorter cycle than that time frame, so that might be a reason someone would ask for that. Kite asked if the members thought that was an action item.

[Yearly left the meeting. The board suspended further discussion on this item until Friend returned from addressing issues with the delivery of lunch for the Board. He returned shortly and the discussion continued.]

Kite summarized the discussion in Friend's absence. The board liked the concept of the procurement requirements but didn't like the language. However, they hadn't yet drafted any. The thought was that if INK was issuing a grant, it needed to go directly to the requesting authority, although they want to give them the opportunity to make a legitimate request for an exception to that and justify that. Friend noted that was good in that, for example, he'd heard that the Legislature didn't have any receipt accounts, so that would have needed to have been paid directly. Friend asked if they wanted him to work on the language for the next meeting. Kite indicated the language should follow the intent, shorthand, "The checks go to the person requesting the grant unless they can demonstrate a legitimate reason why payment should be handled another way." Exceptions to that could be made, but it needs to be cleared up front. They felt the procurement language was okay to keep. Friend asked if they wanted to approve it contingent on those changes – there is a policy out there, but it only includes the change that Secretary Schwab requested about whether funding had been sought through the legislative process.

Kite asked the members if they wished to approve the policy changes contingent upon having that change made.

**Action Taken:** Wamsley moved to approve the changes to the Granting Policy and Procedures that were presented along with the changes to the language suggested. Seconded by Kite. No further discussion. The motion was approved unanimously.

### 5) INK Finance Committee Update

Wamsley began the update, indicating the committee had met the previous day and spent some time clarifying its charge, then discussed a variety of topics around that. He asked Friend to summarize where things had been left. The charge had been not necessarily to go out and get bids, but they wanted to propose a grant pool amount – as that is part of the calculation to determine what is remaining for investment – and to propose how much might be invested and generally how. And, if that general direction was okay with the Board, then they would go back and he would put together a little more detailed cash flow figures and then they would look at potential investments – the kind that were appropriate under the statutes governing the Board. Friend then handed out the worksheet he had used for discussion with the committee on where things stood with INK finances.

Friend walked through the worksheet and discussed the overall amount of funds in the bank for INK, accounts receivable, obligations for grants, the Kansas Business Center, leaving an amount available for operating expenditures. He then talked through the planned operating expenditures for 2019. He then covered the planned revenue for INK for the year based on their share of the monthly revenue, added in the planned interest from Kaw Valley and arrived at an amount that was the “estimated annual excess of revenue over budget”. With the present budget, they are running a surplus of around \$875,000 per year. In turn, there could be services lost – the board has seen that recently, which would reduce that surplus – and, to the good - the current year budget has some items in it that will come in significantly lower.

Kite asked what the committee’s thoughts were. Goff and Wamsley said that their thoughts were that 60% would be invested into grants, leave roughly \$250,000 for the Board to do internal improvements such as strategic planning and outreach, for example; then they would propose investing \$1,000,000 in some kind of investment strategy for the longer term, and then short term, maybe a million or million and a half for short-term until they get the strategic plan completed and things in line to know where they want to be. The short-term could ideally be six months where they could kind of force themselves to be proactive and be aggressive to get that done. So, this first round, there would be a little bit of a remainder. They would lock everything down for the six months that they could to be as aggressive as possible in bringing revenue in from idle funds. Then, once the Board would get the strategic plan and goals in place, get a good 60% of the income out every year to reinvest into applications that come to the Board for grants.

Goff then continued that the question was open as to how the Board wants to pursue the investments. If the Board is happy with this approach generally, they will go back and get some quotes and look at some investment strategies. The committee also talked briefly about the benefit, or lack thereof, of having multiple banks that they’re working with. After the investments are lined up, is it advantageous to consolidate into one or two banks. Friend added that INK was tied into two of these banks intimately as part of the processes with KIC and NIC, so there would be an extra step there to address that – it is a commercial account for them, payments move through them. Goff said the first step would be to work on investments and the second step would be to go back and reevaluate the banking relationships. The past issues seem to be rectified with the current bank, so they could look at the interest revenue first, then look at the next part.

Kite summarized Goff’s comments. Friend read back his notes from the meeting – he understood then it was investing \$2MM - \$1MM in a one-year CD, \$1M in a six-month investment. This would leave them with a balance of around \$700,000 after they’d paid the commitments. Then, they would recommend a grant pool for this first year of \$720,000 (two rounds) which is the 60%. This would be \$360,000 for the May round and \$360,000 for the November round. Yancey added – then, annually, a similar amount, using a percent,

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based on current revenue. So, the only change Friend had from his notes to what had been stated was that it was an overall \$2MM investment vs. \$2.5MM. And, it had that idea of the 60% grant pool. So, even prior to doing all this, the Board could set that amount as the grant pool. Then, there would be some funds available for using for Board purposes. It wouldn't be part of the 60%, because the Board may have some initiatives of their own they would like to invest in – it could always be repurposed for grants if not used.

Kite stated that what he thought should be done is to develop a policy – he liked what had been suggested as it was cautious enough but in line with their purpose. He said that if Friend wanted to work with the committee and develop a policy and present it to the Board, then they could pass a motion approving the policy and authorizing the placement of the investments. Goff asked if anyone had any concerns with the idea. No concerns were expressed. So, what they would then have was an investment policy and an authorizing resolution of the Board to go out and make the investments. He wasn't sure if they would be in a position at that point to identify banks. Friend would defer to the committee on that.

**Action Taken:** None

### 6) INK “System Information” Contract Language Status (Escrow)

Friend explained that Jones had given him proposed language for an amendment to the contract related to escrow. The language is good but there are still some outstanding things to figure out about who is going to perform the escrow service and how frequently. Jones has also provided some examples of contract language from other states and Friend has reviewed them. However, he has not yet given this to Board Counsel because he had some questions. The way what's provided works is that one has all the “code” for the applications (Software), then what is called in the contract “Electronic Services”. That is the code and supporting software for administrative or ancillary services like credit card processing or billing that INK would need to run the portal. And, in retrospect, today, one could say this is a shared service for KIC/INK now. However, in the organic contract, INK owned it as this was the only portal. If they moved it up to Olathe (NIC) and used it, that may be fine, but the thinking is that they still owe INK the billing software to support the operation of the portal. And then, there is third party software, say, Oracle. The contract says to try their best to get that software in INK's name.

Friend continued that Jones was going back to confirm whether the Electronic Services were being provided on the tape now. Friend always understood that they did. And, if not, it is an issue, as it says in the contract that INK does. And then, for third party software, they have discussed how it works. The current contract says that INK gets that third-party software – he understands there's some complexity to that – but Jones is looking into that as well as the current proposed language excludes it. So, they will work together on it to come to agreement. Friend said that he had talked to OITS about language for escrow, but they did not have any examples/references on that or escrow companies on contract, so he went to the state contracts list.

Yancey stated that, typically in the relationships he has had in this area, escrow account maintenance has always been a component of the vendor's solution that they then had oversight over. So, he would tell Jones to go find it and contract for it. INK must agree to it (and, Jones said, sign it). KIC is doing it, but in a way that the parties both agree is on INK's behalf. Friend said he had been looking for an example to make sure that INK's rights were protected. Jones reemphasized that INK already has in the contract that if they kick KIC out, they already have the right to everything and to do all that. This is that if it blows up and INK then had to go run it. And, it was separate from their disaster recovery. Yancey referred to it as “our backup for a relationship that is no longer tenable. That's really all it is.” Jones said there is another agreement that

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would be entered into that gives a direction to the escrow company to say that under specified conditions, hand it over to INK. Kite noted that normally that was provided by the escrow service. They have not seen other states being able to modify that very much.

Friend then said that there was another contract modification in play as well for the cloud. And, as has been discussed, it isn't as if they were going to back up the cloud and put it in the "bucket". So, there is also the fact that once modification of the contract is made, it isn't like an instance of AWS is suddenly going to be copied into their escrow account. So, that part has to be resolved as well.

Kite asked if the lawyers couldn't do this. Friend noted he could give it to the Board Counsel, Yancey offered to review any of the IT-related things Friend wanted him to validate. Friend will move forward working with Jones and the Board Counsel to resolve these items.

**Action Taken:** None

### **7) Overview: INK Application / Revenue Portfolio**

Jones went verbally over the attached presentation without distributing it to the members (see copy attached).

### **New Business**

There was no new business discussed.

### **Adjournment**

Motion to adjourn at 12:15 pm by Goff. Seconded by Kite. Approved unanimously.

**Minutes submitted by:** Duncan Friend