

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
INVESTIGATION NO. 11-02**

**INVESTIGATION OF DEPARTMENT OF AGRICULTURE'S  
HIRING OF TWO ASSISTANT DIRECTORS  
PETITION FILED BY LARRY GILLIS**

**REPORT AND RECOMMENDATION**

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**BACKGROUND**

This matter was initiated when Larry Gillis filed a request for investigation with the Personnel Board on May 5, 2011. Mr. Gillis requested the Personnel Board investigate the Department of Agriculture (hereinafter KDA) and its filling of two Assistant Director positions. He alleged KDA violated KRS 18A.0751(4)(f) and 101 KAR 1:400 by failing to consider the required criteria in filling the two Assistant Director positions. He alleged KDA instead chose to place two Division Directors into the Assistant Director positions. He alleged pre-selection and an attempt to burrow these two non-merit employees into the merit system.

In support of his petition, Mr. Gillis submitted an 8-page statement outlining what had occurred and stating why he believed this matter should be investigated. In addition, he enclosed 26 exhibits consisting of responses from open records requests, statutory provisions, and other relevant documents. At the June 2011 meeting, the Personnel Board voted to accept the request for investigation. (Minutes of the June 10, 2011 Personnel Board meeting, pp. 3-5).

Mr. Gillis made a statement to the Board in support of his request for investigation. KDA responded through its attorney, Hon. Nicole Liberto, who had previously filed a written response on behalf of KDA. Mr. Gillis announced prior to discussing his request for investigation that he would recuse himself from participating in discussion and vote on this issue.

The Board's executive director was asked to report to the Board at its July 2011 meeting regarding a plan for how to proceed with the investigation. Executive Director Mark Sipek advised that requests for documents were ready to be sent to the Personnel Cabinet and KDA. Once responses were received, Mr. Sipek stated he would be ready to interview relevant witnesses.

The Hon. Nicole Liberto also appeared before the Board at the July meeting advising that both Ms. Danita Fentress-Laird and Ms. Kathryn Willis had resigned their Assistant Director positions effective July 7, 2011. She reported that Commissioner Farmer had reappointed them to Director positions. Further, Ms. Liberto stated that Ms. Fentress-Laird and Ms. Alisa Edwards will attend two training courses offered by Governmental Services Center—"Overview of the Merit System" and "Structured Behavioral Interviewing." Liberto stated the assistant director positions would be filled following the appropriate process. (Minutes of July 8, 2011 Personnel Board meeting, pp. 3-4.) In support of KDA's position that an investigation was not necessary, Liberto advised that the Personnel Cabinet had approved the appointments after conducting its own investigation.

The Hon. Dinah Bevington, Executive Director for the Office of Legal Services for the Personnel Cabinet, also addressed the Board. She confirmed the Personnel Cabinet sent a letter of inquiry to KDA; however, they never conducted an investigation. Bevington stated she received a response from Liberto addressing the Cabinet's concerns and indicating the statutory and regulatory requirements were met. There-after, Bevington reported the Cabinet processed the appointments.

## SUMMARY OF EVIDENCE

### 1. LARRY GILLIS – PETITION AND INTERVIEW

In his petition for investigation, Mr. Gillis stated KDA submitted requests on September 27, 2010, to establish two Assistant Director positions. A copy of the Petition for Investigation is attached to this Report and Recommendation as **Attachment A**. These new positions were advertised on the Personnel Cabinet’s Career Opportunities website as “competitive.” Because they were posted as “competitive,” they were open to both internal mobility and outside candidates. The assistant director positions were grade 17.

The first day these positions were posted, Gillis e-mailed Alisa Edwards, who was listed as agency contact on the job posting. Gillis asked where the two positions were located and what would be some of the job duties. Gillis reported he was taken aback when Ms. Edwards gave a vague response the following day. Gillis reported that it took a second e-mail to Ms. Edwards to learn which position was in personnel and which was in information technology. (Exhibit 3)

Two days later, Gillis e-mailed Danita Fentress-Laird about the position in personnel. (Exhibit 4) He assumed the Assistant Director in personnel would report to Fentress-Laird, who was the Director. Gillis reported he felt the response was vague. He got the feeling he should not apply for this position; that it was intended for someone else. At that point, Gillis looked at the Position Descriptions for the two positions and learned they were written exactly the same—even though one was in personnel and the other in information technology. Both positions listed the same main function on their respective Position Description: “Provides administrative support to the Director.” Both Position Descriptions listed the same two primary duties as “Provides support to the Division Director,” and “Provides management assistance to branches and sections within the division, makes recommendations to the Director, performs duties of the Director in the Director’s absence, attends professional meetings and updates staff.” [70%] “Other duties as assigned.” [30%] (Exhibits 5 and 6)

The Position Descriptions also listed that the assistant directors would supervise the exact same employees who were currently being supervised by the division directors. Both assistant directors were set up to report to Steve Kelly, the Executive Director for the Office for Strategic Planning and Administration. Mr. Gillis pointed out this was unusual—to have assistant directors, whose main function would be to assist the director, reporting to the executive director.

Mr. Gillis questioned the need for the assistant directors and wondered if KDA had sufficient funds for these positions. He estimated each assistant director (with benefits included) would cost approximately \$80,000. He commented it appeared there was never any intention to pick anyone other than the directors for the assistant director positions, and then simply not fill the director positions.

Mr. Gillis applied for the assistant director position in personnel, but because he was unsure which position was which, he submitted an application for both positions. He sent an e-mail to Fentress-Laird and told her he had applied. He attached a document summarizing his work experience. Gillis noted Fentress-Laird read the e-mail, but she did not respond. (Exhibits 8-10)

Mr. Gillis e-mailed Steve Kelly on November 8, 2010, with the same information. He did not receive a response. He followed up on November 17 and received what he described as a generic reply. Kelly's response, in part, was "[I] appreciate your interest in the position and will carefully consider each applicant for the position." (Exhibit 14).

Mr. Gillis reported that on December 22, 2010, Agriculture entered personnel actions to resign Ms. Fentress-Laird and Ms. Willis from their division director positions effective close of business December 26, 2010, and appoint them to assistant director positions on December 27, 2010. Gillis commented it was unusual for merit positions to be appointed on a date other than the first or sixteenth (start of the pay period). Gillis opined the reason was to make sure these two employees were off initial probation by the time a new Commissioner of Agriculture would take office in January 2012. Gillis pointed out that House Bill 149 (passed in 2010) amended KRS 18A.111 such that the initial probationary period of non-merit employees who take merit

system jobs would be 12 months instead of the normal 6-month probationary period (if they did not have previous merit system service). Gillis stated that neither Fentress-Laird nor Willis had merit system experience that would exclude them from this provision, and that they would be subject to the 12-month probationary period.

In his petition, Gillis reported he learned his Division Director, Mary Elizabeth Harrod, had a conversation with Fentress-Laird about House Bill 149 (and who it applied to) in the fall of 2010. Gillis stated that his review of this information led him to believe there was an appearance of pre-selection. He stated a merit position should be filled after looking at all the candidates and their qualifications, and considering the criteria required by law. He did not believe KDA did that with respect to these two assistant director positions.

Gillis also submitted a series of open records requests prior to submitting his petition to the Personnel Board. He asked for a copy of Fentress-Laird's personnel file. After review of her file, he felt that he was more qualified for the assistant director's position. Gillis stated, "[T]here is absolutely no reason why I should not have received an interview, especially considering I expressed interest on at least three occasions, once to Danita Fentress-Laird and twice to Steve Kelly."

In response to a later open records request, Gillis felt he was being stonewalled. (Exhibit 18) He was informed that "[A]ll inter agency communication regarding the establishment, posting, and filling of the positions transpired via face-to-face or through telephone conversations; therefore, no such documents exist." He was provided with correspondence, which he already had. He was informed no such document existed when he asked for the names of the members of the interview panel and any training they would have received. He was informed that no such document existed when he requested the number of inquiries received via e-mail or phone concerning the posted position and, of those who inquired, how many were interviewed. In response to a question regarding interview questions, notes, or e-mails regarding the interview process, he received a copy of interview questions. He asked for any written documents concerning the need for filling the assistant director positions and the budget impact justification and cost for establishing these positions. He also requested information regarding

the two division director positions which were vacated and any justification for back filling these positions. He was informed no such documents existed. Gillis also asked for a breakdown of the type of employees on the requisition (Internal Mobility, Competitive – Veterans). Although he received a copy of requisitions, he did not learn how many of each category were interviewed. Gillis felt this was important because it appeared that only veterans were interviewed in addition to the division directors who were placed in the positions.

Mr. Gillis reported he learned there were only three questions for the assistant director of personnel position. He commented these questions were so basic in nature the questions could have been answered by anyone with any knowledge of state personnel.

Mr. Gillis submitted an open records request to the Personnel Cabinet. He learned there were 250 applicants for the assistant director (personnel) position; only 6 were offered interviews and 2 declined. There were 16 veterans on the requisition. Gillis stated that pursuant to KRS 18A.150(7)(b) at least 5 veterans must be offered an interview; therefore, it appeared the only individuals offered interviews were the 5 required veterans and Ms. Fentress-Laird. He noted there were 92 internal mobility candidates on the requisition, and it appeared none were interviewed. Similarly, with respect to the assistant director position of IT, Gillis reported there were 221 applicants of which 92 were internal mobility, and 14 were veterans. Only 6 applicants were offered interviews. He wondered if this meant that only 5 veterans and Kathryn Willis were interviewed for this position.

Mr. Gillis noted that Fentress-Laird was listed as needing access to both requisitions. He felt this was improper since she was applying for the position, and Edwards should have removed her access. Gillis identified this as a conflict of interest. He verified (through his open records request to the Personnel Cabinet) that the access for Fentress-Laird was never asked to be removed.

At the conclusion of his petition, Gillis stated, as follows, “[I] respectfully submit this request. Although this request is being made by myself, this request is on behalf of the merit employees and applicants for state government positions that expect fair treatment when

applying for employment. To further show this investigation is on behalf of all applicants, and not just myself, I pledge to not be a candidate for these positions if they are vacated and subsequently re-advertised.”

Larry Gillis was interviewed on July 29, 2011.<sup>1</sup> He affirmed the statements in his Petition for Investigation. He stated he was an assistant director in the Division of Employee Management within the Personnel Cabinet. Gillis stated that when he made the open records requests regarding filling of these positions, he was interested in discovering what the process was. He stated he did not mind not receiving the position, but he wanted to know the process was fair and that good candidates were interviewed and selected. He stated he was surprised when he received responses to e-mails that the agency did not save anything and that very few things were put on paper. He also stated he did not believe the agency when they said they had only received his e-mails with respect to this entire process. He also stated he found it hard to believe there were only three interview questions for the assistant director for personnel. He also felt these questions were easily answered by anyone with any knowledge of the personnel system.

Gillis pointed out in his testimony that the November 2010 newsletter from the Personnel Cabinet contained an item entitled “Applying for your Own Req” (Requisition). Employees were encouraged to have their agency assign another employee to have access to the register if they are applying for the open position. The newsletter stated, “[C]ompliance in this matter will help ensure integrity of the selection process and the merit system.”

## 2. DEPARTMENT OF AGRICULTURE RESPONSE

In response to the original Petition to Investigate, KDA submitted a Statement for Consideration on June 3, 2011, from legal counsel Nicole T. Liberto. (A copy of this Statement for Consideration is attached to this Report and Recommendation as **Attachment B**). In her response, she stated the Personnel Cabinet contacted KDA on December 27, 2010, regarding the appointments. She stated the Personnel Cabinet conducted an internal review and detailed

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<sup>1</sup> All interviews were conducted by Mark A. Sipek, Executive Director, Kentucky Personnel Board.

concerns with both pending appointments with regard to the establishment of the positions and selection method. Liberto stated that on January 7, 2011, she responded to each concern. On January 12, 2011, Liberto stated she was contacted by the Personnel Cabinet and advised the pending appointments would be processed with an effective date of January 16, 2011. On behalf of KDA, Liberto stated, “[A]fter responding to the concerns of the Personnel Cabinet, if at any time the Department of Agriculture had been directed to correct, repeat, or expand upon a step in the appointment process, the department would have readily complied. The department was prepared to take whatever steps the Personnel Cabinet deemed appropriate.” KDA took the position the matter had been fully investigated by the Personnel Cabinet, who did not find the actions were improper, and there was no need for the Personnel Board to undertake another investigation regarding these appointments.

The Hon. Dinah Bevington, on behalf of the Personnel Cabinet, in her letter to Ms. Liberto addressed concerns regarding the position establishments and the selection method. (Attached as **Attachment C** to this Report and Recommendation.) The concerns raised include the fact that both newly created assistant director positions report to the non-merit division director, however, the supervisor is listed as the executive director. In addition, the employees who currently report to the division director will now report to the new assistant director position.

The Personnel Cabinet wrote, “[m]ost questionable of which is that the current division directors are the individuals who are the pending appointments to each new assistant director position.”

In its response, KDA, through the Hon. Nicole Liberto, stated the reporting structure may be changed when directors are appointed. (Attached as **Attachment D** to this Report and Recommendation.)



With respect to the selection method, the Personnel Cabinet stated that when making a merit appointment, the statutory and regulatory requirements must be considered. With respect to the assistant director for personnel and budget, four interviews were conducted and two interviews declined. The two who declined were veteran applicants and two of the conducted interviews satisfied the veterans preference requirements. The other individuals were the division director and an outside applicant. No current state employees were interviewed other than the current division director. For the IT position, five interviews were conducted and one interview declined. The declined interview was a veteran applicant, and three of the five satisfied the veterans' preference. Only one of the veterans was not also considered for the personnel position. The other applicants who were interviewed or declined were also considered for the personnel position except for the division director ultimately selected. Again, no current state employees were interviewed other than the division director.

The Personnel Cabinet also noted that while the two positions were different, the same people (four out of six) were interviewed for both. It also appeared consideration was made at the same time for both positions. The same individuals were checked for minimum qualifications review, with only one difference. As a result of this review, the Personnel Cabinet questioned whether KDA adhered to the selection criteria.

In her response on behalf of KDA, Liberto stated that “[I]n response, the KDA states that although there were numerous applications made by current and non-current state employees to the position postings, there were extremely few that met the minimum qualifications for the positions. Of those state employees that may have met the minimum qualifications, none exhibited an acceptable combination of the requisite skills sets critical to the positions, i.e. proven conflict resolution and leadership skills, mediation experience, familiarity and experience with the progressive discipline process, neutrality and a professional demeanor, contract negotiation skills; and unique to the IT position is the additional ability to otherwise interpret IT concepts and designs to management staff.” In response to the concern that a number of people were interviewed for both positions, KDA’s response was, “[T]hough the duties of the two assistant director positions are very different, the necessary skills to perform the duties are substantially similar, therefore overlap, though unintentional, was unavoidable.”

In an e-mail dated January 12, 2011, Dinah Bevington, on behalf of the Personnel Cabinet, informed Liberto that the Division of Employee Management would process the pending appointments with an effective date of January 16, 2011.

3. **TINA GOODMAN**

Ms. Goodman was interviewed on August 1, 2011. She is a Personnel Consultant with the Personnel Cabinet and her working title is Innovation Consultant. She has been employed with state government for twenty-four years.

Goodmann became aware of the openings for Assistant Director when she received an e-mail from the COS system. She sent an e-mail to Danita Fentress-Laird asking if either of these positions were under her supervision. She learned one of the positions was in Personnel and one in IT. Goodmann was not sure which one was which, so she applied for both positions.

Goodmann stated that she had served as the furlough liaison for several agencies including KDA. In this capacity, she worked with Danita Fentress-Laird. She felt that Fentress-Laird was very professional, and she thought this would be a good place to work. She submitted her application for these positions. The assistant director position would have been a promotion for Goodmann. She was a grade 16 (as a Personnel Consultant) and the assistant director's position is a grade 17.

Goodmann was asked about the qualities that KDA claimed it was looking for in selecting someone for these assistant director positions. (**See Attachment D.**) Goodmann acknowledged that she had proven conflict resolution and leadership skills. She stated she had been a KEAP counselor, had worked with the leadership institute, and served as a division director. In all these capacities, she stated she needed to resolve conflict and demonstrate leadership. With respect to mediation experience, Goodmann was involved in starting the mediation program known as KEMP. Goodmann has experience working with progressive discipline based on the four years she served with the Personnel Board. She has had

opportunities to demonstrate neutrality and professional demeanor. In addition to her regular duties with the Personnel Cabinet, she served as Chair of the Personnel Board for one year and Vice-Chair for two years. She added that she did not have contract negotiation skills, except that she has worked with vendors on the newsletter and benefits guide for the Personnel Cabinet. She acknowledged that she was not interested in the assistant director position in IT.

4. **ALISA EDWARDS**

Ms. Edwards, a Human Resources Branch Manager (Grade 16) with the Department of Agriculture, was interviewed on August 4, 2011.<sup>2</sup> She stated that in this capacity, she is part of the Division of Personnel and Budget, and Danita Fentress-Laird is her first-line supervisor. She is also part of the Office of Strategic Planning and Administration and Executive Director Steve Kelly is her second-line supervisor. She has worked with the Department of Agriculture for over twenty-five years.

Edwards testified that she accessed the personnel system and established the two Assistant Director positions in Personnel and IT. She was instructed to do this by Danita Fentress-Laird. Edwards was not involved in the decision to establish the positions, she merely carried out what she was asked to do. She had not heard about these assistant director positions being considered before the directive from Fentress-Laird. Edwards testified that she did not ask any questions, was not provided any additional information, and went about establishing and posting the positions on her own.

Edwards testified the first step was to put position descriptions into the system. She did not have any guidance as to what to put on the position descriptions and she made them generic, as is her usual practice. Edwards testified that she relied on the class specification for assistant director, as well as the position description for the director of IT in preparing these documents. She stated that there was a relatively recent PD for the Director of IT. The PD for the Director of Personnel and Budget dated back to 2000. Edwards made a number of decisions while preparing these documents.

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<sup>2</sup> Hon. Clint Quarles, counsel for KDA, was present for Edwards' interviews.

Edwards acknowledged the main function of the job and the primary tasks and duties were taken almost verbatim from the class specifications for assistant director. Both assistant director positions listed as the main function “provides administrative support to the director.” For both positions, the primary tasks and duties were listed as “provide support to division director. Provides management assistance to branches and sections within the division. Makes recommendations to director. Performs duties of director in the director’s absence. Attend professional meetings and updates staff.” This duty was listed as seventy percent of the time. Thirty percent of the time was assigned to “other duties as assigned.”

Edwards prepared both position descriptions to supervise the staff that the division directors were supervising at the time the PD was prepared. She stated that no one told her to do this; she just assumed that assistant directors would perform these supervisory duties.

On the last page of the PD inquiry, Edwards listed Steve Kelly, Executive Director, as the supervisor of both assistant directors. She testified this was a mistake and the supervisor should have been the director. She stated she made this mistake because of the fact that she was “cutting and pasting.” The director’s PD that she used showed Steve Kelly as the supervisor.

She did not discuss this information with Steve Kelly even though the PD includes a statement saying “Supervisor – I certify that the information listed is, to the best of my knowledge, complete and accurate, and if the position is filled, the employee has reviewed the information contained herein.” The PD also contains a statement saying that if it is submitted electronically, the typed name serves as a signature. Both position descriptions were prepared on September 27, 2010.

Edwards stated that this is her usual practice of putting a supervisor in the PD. She stated that she usually prepares these documents and does not talk to the supervisor. She stated that no one told her to prepare this one in that way and as far as she knows, no one else within KDA looked at the position descriptions.

At the time she was preparing these position descriptions, Edwards said that no one told her the directors would apply for these positions. She stated she assumed they would. She stated she would have if she were in their positions in order to be under the merit system. Edwards was asked if she thought about applying for the position. She stated that she did not and was not interested in the position. She did not know if anyone else from KDA would apply.

Edwards testified that she looked at the master position list in order to figure out who the division directors supervised. After submitting these position descriptions, they were approved by Myrissa Patton, of the Personnel Cabinet.

Edwards stated that she did not discuss the budgetary impact of establishing these positions with anyone. She stated that was not her area and, as far as she knew, that had already been approved.

Once the positions were established, Edwards' next task was to post the positions. Edwards stated that for both postings she was the requisition creator and the agency approver. Her e-mail address was listed as the agency contact. The register team included Danita Fentress-Laird, Amanda Cloyd, and herself. She stated all of these things were standard within KDA. These were the listings for almost all postings. Edwards stated that she listed both jobs as competitive. She stated the normal practice within KDA was to post a job as competitive, unless she was specifically instructed to list it as internal mobility only. Over ninety percent of their jobs are listed as competitive. The only jobs that are listed as internal mobility are positions like Pesticide Inspections Supervisor where they are looking for something very specific. Edwards stated that she did not use any preferred skills question. She stated when the career opportunity system first started they used some Preferred Skills Questions (PSQs). She stated KDA no longer uses this option. Other than the request number, both announcements were identical and did not in any way identify what the position was assistant director for.

Edwards was not sure when she became aware Ms. Fentress-Laird had applied for the positions. She stated she did not think anything about it; however, in retrospect she should have made sure Fentress-Laird was removed from the register team once she became a candidate. Edwards submitted the posting on October 15, 2010. It was approved by the Personnel Cabinet, and the postings appeared in the COS system on October 19, 2010. At that time, Edwards began receiving inquiries about the position. The postings ended on October 28, 2010.

When the register was received by KDA, there was a reemployment candidate on the register.

Edwards stated that she did not receive any additional instructions while the position was posted. She understood it was also her responsibility to review the registers, decide who to interview, and make a recommendation. She was asked why she did not ask for others to assist her with this process. She stated she did not think it was necessary.

Edwards stated she had not done a lot of interviews recently. The last time she did interview, she was part of a panel. She stated she might have interviewed for positions in the past by herself, but she could not recall specifically.

Edwards agreed the decision of who would be interviewed was one of the most important decisions in the process. She understood her duties as being to interview, make recommendations, and report to Fentress-Laird regarding both positions. She stated in reviewing the applicants for these positions, she reviewed the applications. She stated when she reviewed the applications, she was looking for individuals with experience in personnel and budgeting for that position, and with computer experience for the IT position. She said she also looked at things like whether or not the employees jumped around a lot and why they left their previous position. She also read through the duties to see what they had done in their previous jobs. She noted that a majority of the applicants applied for both positions. She was aware that she had received e-mails with résumés and other documents. Although Edwards stated she generally looked only at the applications, she did not view an e-mail expressing interest in the position as anything other than neutral as far as reviewing candidates.

Edwards stated that she looked at the applicants for both positions as a part of one process. In addition to reviewing the applicants in general, she also reviewed the veterans and chose those to interview.

Edwards did not recall how long the process took. She stated she reviewed the applications on her computer screen and printed out those she selected to interview. She does not recall taking any notes, although she might have jotted down the names of those she decided to interview. She used a filter to look at veterans. First she stated she called individuals to set up the interviews, then she stated that she first sent the candidates to the Personnel Cabinet for MQR (Minimum Qualifications Review); this was done by e-mail.

Edwards acknowledged the applicants she asked to be looked at through the MQR process for the Personnel and Budget position were five veterans, plus Ms. Fentress-Laird and Ms. Willis. For the IT position, she requested five veterans (four of whom were the same, as for the Personnel and Budget position), as well as Ms. Fentress-Laird and Ms. Willis.

Edwards was asked how after reviewing over 200 applicants for each position she decided that the best seven for both positions included six who were on both lists. She stated the first five on the list are veterans. She stated they did not necessarily have the background she was looking for; however, she was required to interview five veterans. As far as the other two are concerned, Fentress-Laird and Willis, she stated they did have the background. Specifically, she stated they had agricultural backgrounds and were aware of the systems and programs in place within the KDA. She stated this was a huge plus. Edwards stated she knew them and considered that also.

When asked why she requested MQR on Willis for the personnel and budget position, she did not know. She stated there was nothing in Willis' application that would indicate she could perform the duties in personnel and budget. She stated she did not know why she put Fentress-Laird up for minimum qualifications review for the IT position. She stated she was doing both positions at the same time and this was an error on her part.

When it came to reviewing potential candidates for the personnel and budget position, she meant to interview Fentress-Laird and five veterans. She felt Fentress-Laird had the background for the position, including knowledge of KDA (where she had worked for seven years). She acknowledged performing the actual personnel functions are not different in other agencies; however, knowing the people was crucial to Edwards. She stated Fentress-Laird knew the ongoing conflicts, knew the situation dealing with the employees over the years, and had knowledge of budgeting.

Edwards stated she knew a couple of the other applicants from having worked with them on various projects over the years. She stated she knew Larry Gillis from work on an employee suggestion committee, as well as at various personnel functions over the years. She did not believe he would have been a good fit for their division. She stated he would have been a terrible choice to be assistant director. As far as his personal characteristics, Edwards described Gillis as arrogant and said his attitude is “it is his way or no way.” She stated if she did not know him and had merely reviewed his application, she probably would have interviewed him. She was aware it would be a lateral transfer for him and wondered why he would want to leave his agency.<sup>3</sup>

Edwards stated she was also familiar with Tina Goodmann, who she had seen in numerous meetings. When asked about Ms. Goodmann as a candidate, Edwards stated that the Division of Personnel has a laid-back atmosphere. She did not think Goodmann would fit into this type of workplace. She felt Goodmann seemed more comfortable in a strait-laced, business-type atmosphere. She did not find anything in particular lacking in Goodmann, but just did not feel she would be a good fit for their office.

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<sup>3</sup> At this point, there was a brief off-the-record discussion with Clint Quarles, counsel for KDA. On the record, the investigator stated to Edwards that Quarles wanted to make clear that he was present for this interview as counsel for KDA, and not as her personal legal counsel. He asked the investigator to make clear to Edwards that she had the right to have her own attorney, and Edwards acknowledged that she was aware of that right. She stated she did not think she needed an attorney and did not think she had done anything wrong. She became upset; however, her interview continued after a short break.



At that point, Edwards pointed out that both Gillis and Goodmann lacked experience with KDA. Edwards could not recall any other strong candidates for these positions.

Edwards testified that she did not prepare interview questions for these positions. She stated that she obtained questions from Fentress-Laird for the personnel position and Ms. Willis for the IT position. For the candidates that were involved in both positions, she stated she combined the process in one interview. She had two candidates who declined interviews. One indicated he applied by mistake and had no human resource experience. One candidate sent an e-mail on the morning of the interview and stated he would not be able to make the interview that morning because something had come up with his youngest daughter and he could not possibly get there on time. He apologized for the last minute notification, stated he had never missed an interview before, and stated if she was able to reschedule, he would be happy to come in. Edwards stated she reviewed this veteran's application and did not reschedule because there was nothing particularly strong in his background for either position.

Edwards stated she obtained three questions for the personnel position from Fentress-Laird. (**Attachment E**) She had seven questions she obtained from Willis for the IT position. (**Attachment F**) When asked why she conducted interviews for two positions, this different at the same time, she stated she did not enjoy doing interviews, so she combined them. She stated there were two questions that Willis gave her for the IT position that also applied to the personnel position.

Edwards stated she did not interview Fentress-Laird. She did not feel the need to because she had worked with her for seven years, knew her strengths, and did not see anything to gain by interviewing her. She also pointed out that Fentress-Laird was on vacation at the time she interviewed the other candidates.

Edwards stated Willis sat down and went over the questions with her. She did not think it was unusual at all to review with Willis the questions Willis had provided for the interview. Edwards stated she had never interviewed candidates before for a higher position. When asked if she felt this process was fair to the other candidates, she stated she did not think about it either way. Looking back, she stated people might perceive a problem. When asked if she saw this only as a problem of perception, she stated yes. She stated she needed questions and she asked Willis for them.

When asked if this process was not entirely unfair to Edwards, Edwards stated, “[I] shouldn’t have been asked to interview.” She felt the perception would be all wrong. She went ahead and performed these interviews because she felt it was part of her duties as branch manager. She again repeated she had no guidance from anyone on how to conduct this process. With respect to Fentress-Laird, she stated none of the other candidates had a background in agriculture. She stated she did not believe there was anything the other candidates could have said that would have changed the outcome.

Edwards was shown the application of an individual who was a state employee, who was a veteran, and had years of IT and supervisory experience. She stated she tried to look at all the applications, but she could not answer why this individual was not interviewed. Upon reviewing his application, Edwards stated he should have been interviewed.

She stated she did not recall receiving anything from Fentress-Laird or Steve Kelly about the applicants. Specifically, she stated she had not seen the e-mails or attachments from Larry Gills. She acknowledged Gillis did e-mail her; however, there was no attachment with that e-mail.

The first day of the interview was concluded at this time and Ms. Edwards agreed to obtain copies of the e-mails she had regarding this process and bring them with her the following day.

Ms. Edwards' interview was continued on August 5, 2011. She brought with her the e-mails she had on her computer regarding the two assistant director positions. Edwards was listed on the posting as the agency contact. Specifically, her e-mail address was given for contacting her. The e-mails she produced showed that beginning at 7:19 a.m. on October 19, 2010 (the first date the position was posted), she began receiving e-mails from individuals interested in these two positions. Many of the applicants specifically discussed their qualifications. Several candidates specifically requested to interview for one or both positions. Many applicants requested information regarding the positions since the postings did not indicate anything about the positions other than they were assistant directors within KDA. One interested state employee with personnel experience sent an e-mail that read in part, "[I] am very interested in the two assistant director positions that you have advertised. Please give me some specific information as to what areas these two positions will work with; Is agricultural experience preferred? Are you looking for experience in any specific field? Do you have strong internal candidates?" In response, Edwards stated, "[T]he positions are in information technology and human resources. We probably will have some internal candidates apply." Despite this response, Edwards testified as she started looking through the applicants, she decided KDA experience was a huge factor.

Other individuals who asked the same question about obtaining additional information regarding the two assistant director vacancies received the following response, "[T]hese positions are under the Office of Strategic Planning and Administration which deals with personnel, budget, information technology, and public relations." Another state employee with information technology experience expressed an interest in the assistant director position in that field. He requested an interview and attached an introductory letter highlighting his experience. This individual was also a veteran. When shown a copy of this e-mail, Edwards said that she did not see this e-mail. She stated that she routinely put e-mails she received regarding these and other positions in a folder. She read some, but not others; she responded to some, but not others. She stated she did not know any particular reason why she responded to some and not others. In her words, "[T]here was no rhyme or reason."

She stated there was an unwritten practice to interview individuals that worked for KDA. Despite this fact, there was an individual who applied for the position from within KDA who was not selected for an interview. Edwards acknowledged that the three questions for the personnel and budget position were not sufficient. She stated that looking back there were no questions about budgeting and that should not have been the case.

Edwards acknowledged that the individual from KDA and the veteran with IT experience should have been interviewed. She insisted, however, that she did review the applications and could not explain how she missed these individuals.

Edwards stated that as she went through the process, she weighed KDA experience more. She did not discuss this with anyone. At the end of the process, Edwards told Fentress-Laird that she and Kathryn Willis would be recommended for the positions. She does not know what happened from there, although she assumes Fentress-Laird had the recommendation approved through the Commissioner's office. Edwards was informed to prepare the P1s, which she did. She stated that at some point she was aware the P1s were held up. She could not remember if Ms. Liberto asked her for any information. She does believe she spoke to Liberto at some point.

With respect to the appointment date of December 27, 2011, Edwards could not recall if that was the original appointment date. She stated, "[T]hey gave me a date, and I processed it." When specifically asked, she stated that Fentress-Laird determined the appointment date. Edwards acknowledged that the majority of appointments (over 90 percent) are done on the first and sixteenth. No one stated why these appointments were to be effective December 27. Originally, Edwards felt Willis would have a six-month probationary period and Fentress-Laird would have one year. This was because Willis had prior merit experience and had attained status. Edwards stated she was informed by Paula Round of the Personnel Cabinet that the documents would have to be changed to reflect a one-year probationary period for both individuals.

With respect to selecting individuals for positions, Edwards stated that she had not had training in the last 15 years. She stated she was aware that Larry Gillis filed an open records request. Again, she did not remember specifically discussing this matter with Nicole Liberto.

She never informed anyone that mediation experience was a requirement for the position. She was not looking for someone with neutrality. She was not looking for contract negotiation skills in filling either position.

With respect to the IT position, Edwards stated that, if not for Ms. Willis, she does not know what she would have done. She stated she did not believe she was qualified to determine if someone would be a good candidate for the assistant director for information technology. She stated she did not ask anyone for help and none was offered.

When asked if she felt the positions were more similar or different, she stated she thought the positions were more different. She did not agree with the statement that few of the applicants met the minimum qualifications for the position. She stated she never expressed this to anyone, and she was the only one who looked at the applications as far as she knows. No one asked her what she was specifically looking for in reviewing these applications, and she did not tell anyone.

When asked about a number of state employees with personnel experience, she did not specifically remember looking at their applications and did not know them.

With respect to Larry Gillis and Tina Goodmann, she stated that she mentioned to Fentress-Laird that they had applied for the positions. Edwards was asked about denying an interview to Tina Goodmann because Edwards thought she was too strait-laced for their agency, despite the importance of these interviews to merit employees. At that point, Edwards spontaneously stated she should not have been doing the interviews. She was not sure how long it took her to review the applications and decide who to interview. She stated she was given a job to do and she did it. She felt someone else should have done the interviews. She felt this was part of her duties, so she tried her best to perform the duties. She stated she did not have the

technical knowledge to select someone for the IT position. She also stated she should not have been asked to conduct interviews for positions that were above her position. When asked if she applied the promotional criteria in reviewing the applicants, she stated she was not aware of the promotional criteria or that they applied in this situation. She was unaware KDA had certified to the Personnel Cabinet that they had reviewed the appropriate promotional criteria.

5. **STEVE KELLY**

On August 4, 2011, Steve Kelly was interviewed.<sup>4</sup> He is the Executive Director for the Office of Strategic Planning and Administration within the Department of Agriculture. He has held that position for three years. His office includes the Division of Personnel and Budget and the Division of Information Technology. He is the first-line supervisor of Danita Fentress-Laird and Kathryn Willis. Kelly reports directly to Commissioner Farmer.

Mr. Kelly was not involved in the establishment of the two assistant director positions in 2010. No one asked for his approval. He stated he was informed after the decision had been made to create the positions. Kelly stated that after the jobs had been posted for nearly a week, Fentress-Laird stated she would apply for the position. He stated he believed she told him just for his information. She did not ask that he do anything about this process. To the best of Kelly's recollection, Kathryn Willis never told him that she was applying for the position.

Kelly stated he was not involved in the selection process. He did not give Alisa Edwards any oversight in this process. He stated this was not unusual, despite the fact that the Division of Personnel was under his office, he was generally not involved in personnel transactions. He did not believe there was any reason to insert himself in this process. He was primarily the budget director for KDA. In his role as budget director, he testified there was enough money for the two assistant director positions because of a number of vacancies which they had.

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<sup>4</sup> Hon. Clint Quarles was present for this interview.

When asked about the Position Descriptions for the two assistant director positions, he stated he never saw these documents until they were received from the Personnel Board when the investigation had been requested. He was not aware that he had been listed as the supervisor for the assistant directors. It is not uncommon for executive directors to supervise assistant directors. He stated it is uncommon, however, if there is a director in between. He agreed that if the primary duty for the position was to report to the director, you would expect the director to be the supervisor.

As it turned out when Willis and Fentress-Laird were appointed to the assistant director positions, Kelly was their supervisor. He did not hear anything about the selection process that Fentress-Laird and Willis would be chosen for the positions. Normally, the personnel director met directly with the Commissioner who would approve or deny the first choice.

With respect to the e-mail he received from Larry Gillis expressing an interest in the position, he was not sure why it was sent to him. When the second e-mail was sent, he took it to Danita Fentress-Laird, and she told him that Alisa Edwards was handling this matter. Both said they had seen the e-mail, and Kelly did not pursue the matter any further.

With regard to the decision to resign from their assistant director positions, Kelly stated they were not asked to. He stated he did talk to the Commissioner about reappointing Fentress-Laird and Willis to the director positions. He stated it was the Commissioner's decision to reappoint them. He stated this had already been discussed when the actual resignation letters were submitted. He stated Willis's letter was directed to him, but not Fentress-Laird's.

In Kelly's opinion, the assistant directors are still valuable positions. He stated the positions would not be abolished; however, he was not sure if they would be filled or if they would be left to the discretion of the next Commissioner. He felt that if the right person were in the positions, they could be valuable. He stated that merit employees can be very helpful, especially during a transition. He remarked that when Commissioner Farmer's administration took over, there was nothing left and they had to start from scratch in many areas.

With respect to the report that Fentress-Laird and Edwards would attend training, Kelly stated he recommended this and that Commissioner Farmer agreed.

In retrospect, Kelly stated this situation should have been handled differently. He was not sure if there was a lack of knowledge or bad judgment and intent. In any event, he felt that training would help the situation. He stated he felt Alisa Edwards was perfectly capable of performing these duties; however, she should not have been asked to perform them alone, and there should have been a committee. He felt that it might have even been appropriate to get individuals outside KDA since one of the positions involved the director of personnel applying for a new position. Kelly stated he did not question Edwards' integrity or knowledge. He felt she had been placed in a bad situation.

6. **DANITA FENTRESS-LAIRD**

Danita Fentress-Laird was interviewed on August 8, 2011.<sup>5</sup> She is the Director of the Division of Personnel and Budget for KDA. She has served in that position since February 16, 2005, except for the brief period when she was assistant director. She stated the first discussions about establishing assistant director positions in personnel and budget, and IT came up in a meeting in the Commissioner's office. She stated that more staff was needed because of the added responsibility due to the implementation of the KHRIS system. She stated that she knows this discussion occurred in a meeting with Commissioner Farmer and she is not sure if anyone else was present. When she left the meeting, she was waiting to hear back from the Commissioner, who continued to think about this matter. A couple of weeks later he said to establish both positions. At that time, Fentress-Laird conveyed the directive to Alisa Edwards.

Fentress-Laird stated she told Willis that the Commissioner was looking into this idea. She does not recall having a discussion with the Commissioner about money, and that usually the Commissioner would speak directly to Mr. Kelly about whether there was sufficient funding for something like this. She stated she is confident there was not a problem with funding due to the

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<sup>5</sup> Hon. Clint Quarles was present during this interview.



fact KDA was over 60 positions under their cap. Their cap was 319 and they had about 250 employees.

Fentress-Laird told Edwards to establish one assistant director in IT and one assistant director in personnel and budget. She did not provide Edwards much information and went with generic information regarding the position. She instructed Edwards to use the class specification in preparing the Position Description.

When Fentress-Laird was asked whether she knew the Position Description said that the assistant director would be supervised by the executive director, she said that they made a mistake. She said it should have been set up to report to the director. Fentress-Laird said it was her fault and that she should have looked at it. Fentress-Laird instructed Edwards that the assistant director would supervise those supervised by the director previously. Edwards did not come up with that on her own. This was true in both IT and personnel and budget.

Fentress-Laird received an e-mail notification of the posting. At that time, there was approximately 24 hours before it was actually on-line. She stated she talked to her people (meaning Tina Keane, Alisa Edwards, and Amanda Cloyd) and none were interested in the position. She said this probably occurred during the 24-hour window before the posting was on the Personnel Cabinet's website. None of her employees had any interest in either position. She stated that Amanda Cloyd may have mentioned that Fentress-Laird should apply for the position. She stated she and Ms. Cloyd had a close relationship. She stated she had not thought about it before.

Fentress-Laird said that she worked in a very supportive office and there was a close bond with her employees. The thought of leaving at the end of the administration was unsettling.

When asked when she decided to apply for the assistant director position, Fentress-Laird said she decided after Mr. Gillis contacted her. She stated that if someone like him was going to apply for the position, she did not see anything wrong with applying for it herself. When asked to clarify what she meant by this, Fentress-Laird said she thinks Larry does a good job where he

is at; however, he has forgotten that in order to perform their function, they need to deal directly with people. She thinks Gillis is more focused on policies and procedures, and has forgotten there are people involved in what they do. She stated she did not like the thought of Gillis coming into KDA.

Fentress-Laird testified that Tina Goodmann was the only other candidate that she remembers hearing from. She responded to Goodmann's e-mail and "did not think anymore about it." She stated she had worked well with Goodmann in the past. Goodmann was the furlough liaison for KDA. She had no issues with Goodmann and felt she was wonderful to work with.

Fentress-Laird talked to Commissioner Farmer and informed him she would like to apply for this position. She stated she also informed Steve Kelly. Fentress-Laird knew she would have to stay out of the selection process because she was an applicant. She stated it was an oversight that she did not remove herself from the register team. She admits she made an error with respect to this; however, she stated she made a conscious decision not to look at the register. Fentress-Laird was clear that if she had not been a candidate for the position, she would have taken charge of this entire process.

Fentress-Laird put her name on both registers because she did not want to look at anything associated with the registers. She talked to Willis after the position had closed and learned that Willis had also applied. Fentress-Laird stated she was friends with Willis and she decided to stay out of the process with respect to both positions.

Fentress-Laird told Edwards to handle the selection process for both positions. Fentress-Laird stayed out of the process. She did not look at the registers and left everything in Edwards' hands. In retrospect, she realized that was not fair to Edwards. Fentress-Laird stated she had been overseeing most of the interview process within KDA. She feels she let Edwards down by putting her in charge by herself of both positions. She did not view her decision that Edwards would be in charge of both positions as making herself part of the process. She did not provide

any guidance to Edwards. Edwards did not come to her to discuss who to interview or how many. Fentress-Laird stated it was rare for one person to conduct the interviews by themselves.

Fentress-Laird reviewed the three questions which were asked by Edwards during the interview for the position of assistant director for personnel and budget. She stated she could see where these came from—the initial discussion she had with Edwards about what the position would involve. She believed Edwards wrote these questions. When asked if these were adequate questions for the position, she stated she would have added a lot more.

When asked if she interviewed for the position, Fentress-Laird said she discussed the position with Edwards. She did not recall when. She stated nothing was formal and nothing was scheduled. She stated she was out of the office on vacation when others were interviewed. She stated she was interested in the position because none of her staff was. She expressed that she wanted to stay with KDA. She stated Edwards did not ask any questions. Eventually after discussing the process, Fentress-Laird stated it was not what she would formally call an interview. Later, Edwards informed her that she had been chosen for the position.

When asked whether or not this process was fair to the other candidates, Fentress-Laird stated it probably was not. She stated, however, that people in the department knew what she brought to the table including her work ethic, her attendance, and the things she had done. She stated it was no big secret the job she had done. She stated she was available by phone at all times. She arrived early and worked at home when necessary. She considered herself a known entity. She acknowledged, however, that the process was not fair to others who might have had similar experience with other employers.

Upon reflecting on this matter, Fentress-Laird again repeated that she let Edwards down. She was unaware that Edwards had asked Willis for interview questions for the IT position, although she was not surprised. She thought that Edwards would go to the executive director, Mr. Kelly, and work with him.

Fentress-Laird stated that in approximately August of 2010, she did ask Mary Elizabeth Harrod about two executive directors in KDA who were concerned about their reversion rights in light of HB 149. She stated the question had nothing to do with herself, but had to do with two executive directors—one who had reversion rights, and another who obtained 16 years while in a non-merit position. She stated that after she asked the question after training in a large conference room, Harrod went upstairs to check on HB 149, came back downstairs, and reported that the two individuals would serve a 6-month probationary period, if they were appointed to merit positions. She stated her inquiry had nothing to do with her own situation and that Mr. Gillis was not present.

Fentress-Laird described her relationship with Mr. Gillis as “tenuous.” In her opinion, Gillis thinks that she is too outspoken and asks too many questions. She discussed Mr. Gillis with Ms. Edwards following an incident in training (in 2008) when she became frustrated with dealing with him. She felt he was not listening to her, as she was trying to find out when training would be available. She stated she described Gillis to Edwards as an “arrogant snot.” She stated she felt he was full of himself and did not listen to other people’s concerns. She was also aware that Edwards did not care for Gillis.

Fentress-Laird did not consider Gillis a strong candidate for the position. Nevertheless, when she learned he was applying for the position, Fentress-Laird became interested in applying herself. She stated that Gillis was already an assistant director, and what did he have to gain? She felt that some people at the Personnel Cabinet have lost touch with people. She stated that Gillis could not listen to her; therefore, she did not see how he could listen to KDA employees who have questions. She stated Edwards met with her and told her that she was her choice for assistant director for personnel and budget. Edwards also informed her that Willis was the choice for the assistant director for IT. Fentress-Laird discussed these matters with Commissioner Farmer, who approved the selections.

In May 2011 (when the request for investigation was filed with the Personnel Board), Fentress-Laird stated she offered to vacate her assistant director position, allow it to be posted again, and do it over. She stated Mr. Kelly discouraged her. She felt this would be best for KDA. She had no problem providing reports to either the Personnel Board or the Personnel Cabinet. At one point, she stated she was willing to say she would not reapply. The way things have gone since then, she would not say the same thing at this point.

Fentress-Laird acknowledged there were mistakes in the process. She stated things were not done the way she would have done them. However, she stated that she has not looked into them. She stated she was not aware Edwards used experience with KDA as one of her considerations. She agreed this was an extremely exclusive criteria. When informed that Edwards had missed an employee from KDA, as well as a veteran with years of IT experience, Fentress-Laird stated it is difficult to view registers, and it is easy to miss people. She stated Edwards is honest and ethical, and wonderful to work with.

If she had it to do over again, she believes she should have stayed out of the process; however, Edwards should have had Mr. Kelly's help and possibly the help of another executive director from KDA. She stated she was not aware that Edwards did not look at cover letters and e-mails from people expressing interest; however, she stated when positions come open, they are inundated with e-mails. She stated that obviously everyone cannot get an interview, although she acknowledged that deciding who to interview sometimes was the most important decision.

Fentress-Laird acknowledged that she told Edwards to put in the paperwork for a start date of December 27. She did not think the appointment date was that big of a deal. She did not think she would be able to get off probation without being reviewed by the new administration. She felt by December (following the election), the transition team would be making decisions as to who stays or goes. She felt her job would be in jeopardy whether the appointment date was January 1 or December 27. She told Willis that her appointment was being put in for the 27<sup>th</sup> and Willis agreed to do the same. Fentress-Laird stated she thought Willis would be under a six-month probationary period because she had previously attained status in the merit system.

Fentress-Laird acknowledged that Nicole Liberto discussed with her the Personnel Cabinet's inquiry. Fentress-Laird provided general information and explained the process. She also directed Ms. Liberto to Ms. Edwards, although she is not sure if they spoke. She stated she saw the January 7 letter from Ms. Liberto to Ms. Bevington; however, she is not sure when she saw the letter. She stated some of the things in the letter may have come from her discussion with Liberto. She stated she probably pointed out that other assistant directors sometimes report to executive directors. She acknowledged that she did not tell Liberto that this entry in the Position Description was a mistake. She stated she probably told Liberto that conflict resolution and leadership skills were critical to the position. She also probably told her mediation experience would be helpful, as well as familiarity and experience with progressive discipline. She did not discuss neutrality, professional demeanor, or contract skills. She did not have any discussion about the skills unique to the IT position. While she did not claim to have told Liberto about the reasons for the overlap of candidates, she agreed that many of the qualities that make a good manager would apply to either IT or personnel.

As a condition of accepting her reappointment following her resignation from her merit position, Fentress-Laird understood she was to attend training. She had this discussion with Mr. Kelly. She understood it to be legal training involving the overview of the merit system and behavioral interviewing. She voluntarily agreed to the training; however, she acknowledged she did not quite understand why she was being asked to attend. She relayed the information to Edwards about her need to attend the training.

Fentress-Laird stated the assistant director position was vacant, but it was her understanding it would be filled in the near future.

In summary, Fentress-Laird stated things could have been done better throughout this process. She did not believe anything was malicious. She stated she has been an at-will employee her entire career and that she cares about the people she worked with.

In response to statements from Mr. Gillis about only eight appeals involving KDA, she stated that in their personnel office they have dealt with a number of issues which never came to the Board. She stated they were involved in 12 dismissals—7 for cause. She stated only one appealed to the Board. She felt this was evidence that they were doing something right. She also stated they dealt with issues involving sexual harassment, drunk driving, an alleged rape by one of their employees, and an employee suicide. She stated she also had a rough year herself, including health issues, but she continued to work every day despite receiving treatment.

She felt this became a personal issue between Mr. Gillis and herself or the department. She felt he went out of his way to make this as public of a spectacle as possible. Fentress-Laird stated that although Gillis had stated at the July 8 Personnel Board meeting that he would not interfere in this matter, he held up Willis' resignation because it was not on the same date as hers. She felt this was completely inappropriate. She also stated there were Facebook postings by Gillis about the June Personnel Board meeting which, although not inappropriate, she felt were unprofessional.

She stated she has dealt with a lot of issues; however, she is tired of this issue and wishes for it to be over. She stated she believes her future employment opportunities have been impacted by this situation. She stated she voluntarily resigned from her merit position to be reappointed. She also stated that while in the merit position, she voluntarily agreed to the 12-month probationary period, although she discussed this with an attorney who felt that it may be subject to attack because the class specifications have not been changed.

7. **MARY ELIZABETH HARROD**

Mary Elizabeth Harrod was interviewed on August 19, 2011.<sup>6</sup> She is the Director of Employee Management with the Personnel Cabinet. The division is responsible for reviewing agency actions when positions are established. She specifically stated her division reviews the organizational structure, position description, and now (under the KHRIS System) also looks at the “reports to” for each position. She stated this is performed by the Classification and

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<sup>6</sup> Hon. Dinah Bevington was present during this interview.

Compensation Branch within her division. When reviewing a position that is being established, they review the class specification, the agency cap, the position description to see if it fits within the class specification, and work structure. The old system (prior to KHRIS) was known as Legacy, and it did not have a “reports to” feature.

Ms. Harrod testified that she is aware agencies are now establishing positions within their human resources branch as a result of additional work requirements brought on by KHRIS. She stated she has noticed this trend for the first time in June and July 2011. She did not think it was wise, as she thinks once the KHRIS System has been around for a while, there will be no additional work. With respect to IT, Harrod believed it would have the opposite result and reduce workload by having a single source system for all state government to use for these personnel functions.

Specifically, with respect to the two assistant director positions in KDA, no one from KDA discussed with the Personnel Cabinet that they were creating positions because of added requirements brought on by KHRIS.

Harrod recalled having a conversation with Fentress-Laird in the summer of 2010 regarding HB 149. She stated it was not unlike a number of other conversations she had with other agency HR people. She described it as a brief conversation that occurred at the time of one of the meetings. She stated that she recalled Fentress-Laird asking about two directors who did not have previous classified service, and wanted to know how HB 149 would apply to them. Harrod stated she responded in general by discussing HB 149 and its impact.

With respect to appointments to a position, Harrod stated her division gets involved when an action is submitted. Her Personnel Administration Branch reviews the action to make sure the salary is within grade and that the position matches the duties. She stated they are consultants assigned to specific agencies. The consultant assigned to KDA was Paula Round. Harrod was aware this appointment had stopped when there was an Office of Legal Services inquiry.



Harrod stated that as these two positions went through the process, she was aware of concerns brought to her by Larry Gillis. She stated that part of his duties include quality assurance to make sure the Personnel Cabinet is conducting its duties appropriately and that the agencies are following the appropriate procedures in filling positions. As a result of these concerns, she was aware there were some questions regarding the assistant director positions, and she notified the Office of Legal Services. There were many things about these appointments that caught her attention, including the appointment dates being on December 27, the fact that assistant directors were reporting to an executive director and not a director, and that the incumbents in the director positions were being appointed to these positions. She was aware the Personnel Cabinet's legal office sent a letter to KDA and received a response.

When she reviewed the response, she felt the concerns she had regarding the position description and the fact the assistant director would report to the executive director, had not been addressed at all. When she was informed that witnesses for KDA in this investigation had stated that it was a mistake, she said she had never heard anyone say it was a mistake. She also stated that if someone's name was listed as the supervisor for the position, that person should have been aware of it and should have been involved in the creation of the position description. She stated it is appropriate for HR administrators to be involved in the processing of PDs, but creation of PDs should only be done in consultation with the supervisor. In addition, she stated that even though there is an electronic version that is submitted, the agency should have a paper copy with the supervisor's signature.

With respect to Willis' resignation, Harrod was clear that it should have been accepted regardless of the date. Nonetheless, she explained this occurred on a date when she was not in the workplace, and one of her staff went to Larry Gillis in her absence with a question regarding the resignation. Mr. Gillis rejected the resignation because the date was alleged to be inconsistent with the date stated at the Personnel Board's meeting. Harrod disagreed with this action and said the resignation should not have been rejected. She did state, however, that Gillis had the authority to do this. The resignation was eventually approved as submitted.

With respect to the assistant director in personnel and budget, Harrod felt that Gillis would be an excellent candidate. She did not feel he was arrogant, but that he was confident. Upon questioning, Harrod acknowledged that five other candidates she was aware of would have made good candidates for the personnel and budget position. **(See Attachment G)** She also stated that another individual would have been an excellent candidate for the IT position, especially in light of the statement from KDA that they were creating these positions as a result of added requirements because of KHRIS. **(See Attachment H)** She also felt that if KHRIS requirements caused them to create the positions, Gillis should have been considered an excellent candidate as well.

Harrod stated, with respect to the two appointments, she felt it was the totality of the events which made them questionable. She stated she felt the Personnel Cabinet acted correctly. She wished that her analysts who reviewed the initial position description, had asked more questions about the fact that the assistant director was reporting to the executive director. She stated this is required and would occur automatically now that the matter is submitted through KHRIS.

8. **AMANDA CLOYD**

Amanda Cloyd was interviewed on August 26, 2011.<sup>7</sup> She was employed as a Human Resources Administrator with KDA from September 2005 through May 16, 2011. Her position was a Grade 15. On May 16, 2011, she transferred and promoted to the Administrative Office of the Courts as a Classification and Compensation Administrator. She is a manager over a division. She had a total of 12 years with KDA.

With respect to the two assistant director positions, she stated she was not involved in any way with the establishment of these positions or the interview and selection process. She indicated this was not unusual and that Ms. Edwards was usually the one involved in establishing positions.

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<sup>7</sup> Hon. Clint Quarles was present during this interview.

Cloyd testified she believed she first was aware there was an opening for an assistant director in personnel and budget when she received a call from someone asking about the position. She stated she probably answered the call or referred it to Ms. Edwards, either of which would have been a normal practice. She does not recall if anyone asked her if she was interested in applying for the position, although she had no interest. Cloyd stated she knew that Fentress-Laird would be applying for the position. She felt Fentress-Laird was a very good boss, whom she had learned a lot from. She felt that Fentress-Laird would be the best fit for assistant director. She stated she asked Fentress-Laird if she had applied for the position, and Ms. Cloyd learned she had.

Cloyd was not involved in preparing the position descriptions for the assistant director positions.

In 2010, Cloyd did not necessarily notice there was an increased workload because of KHRIS requirements, but she did say that priorities had shifted, and there was much work going on involving investigations and discipline of employees.

Cloyd stated she was part of the register team, which always included herself, Edwards, and Fentress-Laird. This did not necessarily mean that the three of them would work on the register. Being part of the register team, she had access to the system. In this instance, Cloyd did not access either assistant director register.

With respect to the assistant director position in personnel and budget, Cloyd assumed Fentress-Laird would get the job. She had a lot of respect for her, and stated she had dealt with some very difficult situations, including an employee suicide.

Cloyd stated she did not know that Edwards was in charge of the selection process. She was pleased Fentress-Laird got the job. She stated they were a small agency and she liked the idea of having Fentress-Laird around. She stated it was important to have institutional knowledge. She did not recall how she found out Fentress-Laird and Willis were selected for the

assistant director positions. She stated she was out of the office performing some duties during this time.

When asked if she recalled any discussion of Larry Gillis being a candidate for the assistant director position in personnel, she stated she recalled hearing about this around the time he was making open records requests. She stated that at that time she learned he was not selected for an interview because the people in the personnel office of KDA had not had a good experience working with him during KHRIS implementation. She stated Gillis was not people-friendly, and she could not imagine him working in a small agency like KDA. She stated she heard from Fentress-Laird and Edwards that was the reason he was not selected for an interview.

Cloyd agreed with that assessment and felt like Gillis and others from the Personnel Cabinet had not been receptive to agency concerns during KHRIS implementation. She gave the example that trainers would say they welcomed feedback; however, based on their body language and response, she felt like they really did not want feedback. She did not think the concerns of KDA were adequately addressed, and she was not impressed with Gillis through this process.

9. **KATHRYN WILLIS**

Kathryn Willis is the Director of the Division of Information Technology in KDA. She was interviewed on September 7, 2011.<sup>8</sup> She first obtained that position in 2003 or 2004. She has a total of 29 years with state government, 15 of those with KDA. She retired in 2008 and returned 10 months later. She currently has a total of eight employees in her division. The remainder of her division is made up of merit employees.

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<sup>8</sup> Hon. Clint Quarles was present on behalf of KDA for this interview. Hon. William Johnson and Hon. William Ayer appeared as counsel for Ms. Willis.

Ms. Willis said she was not involved in the establishment of the assistant director position for IT in 2010. She stated she had talked with Commissioner Farmer about creating an assistant director position beginning in 2005. At that time, she was concerned that her three most valuable merit employees were at the highest positions she had and she felt that KDA might not be able to retain them. She made a formal written proposal in 2005 which was considered by Commissioner Farmer. She did not hear back.

In 2006, the Commissioner considered a separate plan which was to create two branches and have two branch managers. While these positions would not have been promotions for her staff, Willis thought they might be entitled to raises because they would have supervisory duties. This proposal was considered by Commissioner but never acted on. Willis submitted another proposal after the election in 2007, which again was under consideration by the Commissioner.

In the fall of 2010, she did not have a formal request for an assistant director position, and she was not involved in the discussions. She stated she was told by Commissioner Farmer that they would be creating a position for assistant director. She stated that apparently she had a look of surprise on her face, and Commissioner Farmer asked her if she would apply for the position. At that time, she stated no.

Willis was not told why the assistant director position was approved in 2010. She was not told that it had anything to do with extra duties as a result of the KHRIS project. Willis did state that KHRIS had put added responsibilities on her office, although she had not requested a new position as a result. As far as she knew when the position was established, she had no reason to doubt there were enough funds to add an assistant director.

At the time she learned that the position had been established, she started working on a Position Description. Willis looked at the class specifications and checked the salary level. When she checked mid-point, she saw that it was considerably more than she was making. As a result, she made the decision to apply. Willis stopped work on the Position Description at that time. When she compared the assistant director salary with her own, she was considering mid-point. She stated that in the IT branch, they had always started individuals at mid-point, and she

had no reason to think that would not remain the same. The next time she met with the Commissioner on another matter, she mentioned offhandedly that she was going to apply for the position.

When Willis decided to apply for the job, she took herself completely out of the process and she had no input or knowledge as to who would be put in charge of interviewing and recommending someone for this position. She stated that normally if she had not been an applicant for a position in her division, she would write the Position Description, do the interviewing, and make a recommendation. When she took herself out of the process, she felt the people in the personnel division would do what they needed to do.

On October 19, 2010, Willis went into the COS system and applied for the assistant director position. She stated that she did not intend to apply for both IT and personnel; however, the records reflected that she did. Willis stated that she must not have been able to tell which position was which and in order to make sure she applied for the correct position, she applied for both.

Willis stated Ms. Edwards asked her for any information that she might have to assist her in preparing interview questions. Edwards stated she had worked on interviews before with Willis, liked the way she did things, and was looking for some help. Willis supplied her with some generic IT skill-set information, which she thought was helpful. After going over the information with Edwards, they determined it was too technical and detailed for Edwards. Willis volunteered to prepare some questions and answers for Edwards' review.

They met on a later date and reviewed the questions and answers. Willis stated she went over the questions and what she thought would be good answers. She did not think of herself as preparing the questions for her own interview for the position. She saw herself as providing assistance to Edwards.

It was her understanding that Edwards would be involved in the interview process, although she did not know if this would be alone or as part of a panel. Willis was never contacted again for an interview, and she later determined that her meeting with Edwards was her interview.

When this position was announced, she did not discuss the matter with anyone else in her division. She stated none of her employees asked her about the position. In addition, no one contacted her about this position which she felt was somewhat unusual. She did think that one programmer in her division would have been a good candidate for the job, however, she did not apply. The other two candidates who she was concerned about leaving when she proposed the assistant director position in 2005, had since left the division.

She stated that when she was first asked by the Commissioner if she would apply for the position, she was not interested because she did not want to have to train a new director. When she was appointed assistant director, she assumed the director position would be filled almost immediately.

With respect to her application, Willis stated that when she was filling out the application, she had to put an end date in for her current job; it would not allow her to state until the present. For this reason, when she filled out her application on October 19, 2010, she put her ending date for her job (as director) as October 31, 2010. She also stated that under "reason for leaving," she stated "merit position/more money" because that was the reason she was considering leaving.

She stated she resigned from her position as assistant director because she thought that was the request from Larry Gillis. She thought she would rather voluntarily resign the position than be forced to resign. She talked to Steve Kelly about being reinstated as director if she resigned. Mr. Kelly asked the Commissioner, who responded he would reinstate her as a director. She did not think the assistant director position would be filled while this investigation was pending.

Based on her years of experience in personnel, Willis felt that Ms. Edwards was qualified to select an assistant director for IT. However, she stated she would have preferred someone with an IT background. Willis stated she has conducted interviews by herself, but prefers when interviews are conducted by a team.

When asked if she had anything to add, Willis stated that she was an applicant and felt she had been treated unfairly in this process. She stated she had nothing to do with creating or filling the position other than applying for it. She thought her situation was different than the situation in personnel. She was also very critical of Larry Gillis's role in not accepting her resignation. She felt this was uncalled for and inappropriate.

10. **KAREN MIXSON**

Karen Mixson is the acting Director of the Division of Career Opportunity in the Personnel Cabinet. Her branch deals with agencies posting vacancies on the Personnel Cabinet's website and applicants applying for these vacancies. During her interview on September 12, 2011, she reviewed the announcements for the assistant director positions in personnel and budget and information technology. She stated "assistant director" is a generic class title. In reviewing the two job announcements, she said they looked the same. She said agencies are encouraged to be specific and to customize these announcements. She stated by not taking advantage of this opportunity, agencies may encourage people to apply for jobs they are not interested in or make their own tasks more difficult, as they have to sort through applications for people who would not have been interested in the position had they received more information.

She stated listing a name and e-mail address is optional under agency contact. If an agency lists someone, however, they should provide information and acknowledge people who have sent them e-mails and inquiries.



These announcements were open from October 19, 2010 through October 28, 2010. There was a reemployment candidate on the register which was ready on November 1, 2010. The reemployment candidate took another position on November 16, 2010. While this candidate was on the register her name appeared first on the register, followed by all the internal mobility candidates. During the period of time that there was a reemployment candidate on the register, the agency was not able to see competitive applicants.

Based on the e-mails she reviewed, the competitive candidates for the assistant director for personnel and budget were provided to KDA for the first time on November 17 at 3:07 p.m. The competitive candidates for the assistant director of IT were provided to KDA for the first time on November 17 at 3:15 p.m. (E-mails from Katherine Barber to Alisa Edwards, provided by Personnel Cabinet). On November 18, at 12:09 p.m., Alisa Edwards selected seven candidates on each register for MQR. (E-mail from Alisa Edwards to PERS MQR, provided by Personnel Cabinet). All of the candidates who were sent by KDA to the Personnel Cabinet for MQR were from the competitive register. Of the seven MQR candidates, the Personnel Cabinet records showed that four were veterans. (A fifth candidate turned out to be a veteran and was approved by the Personnel Cabinet; however, the information that established his status as a veteran came after the register was finalized.) Because the agency was viewed by the Personnel Cabinet as only requesting information on four veterans, the Personnel Cabinet conducted MQR on all the veteran candidates. This information was made available to the agency.

Mixson was not involved in the review by the Personnel Cabinet of the KDA's appointment of the two assistant directors. From a best practices standpoint, she stated that Fentress-Laird should not have remained on the register team since she was a candidate.

## **FINDINGS OF FACT**

1. In 2010, the KDA established two assistant director positions: one in the Division of Personnel and Budget, and the other in the Division of Information Technology. The first discussions about establishing these two assistant director positions occurred in a meeting in Commissioner Farmer's office, with Director of Personnel and Budget, Danita Fentress-Laird. The reason for the need for the two assistant directors was stated to be the added responsibility due to the implementation of the KHRIS system. Approximately two weeks later, Ms. Fentress-Laird heard from Commissioner Farmer that he agreed to establish both positions. (Testimony of Danita Fentress-Laird.)

2. Kathryn Willis, the Director of the Division of Information Technology was not involved in these discussions. She was never told the implementation of the KHRIS system was the reason for the creation of an assistant director's position. She was not told the position was created until after-the-fact. The first question asked of her by Commissioner Farmer, when he informed her the position had been established, was "[A]re you going to apply?". Ms. Willis had submitted detailed plans to the Commissioner since 2005 to create an assistant director's position in her division or other positions which provided additional opportunities to her top staff. She was concerned about retention of her top three employees since 2005. By the time the assistant director position was established in 2010, two of the three employees had moved on—the third staff member did not apply when the assistant director's position came open. (Testimony of Kathryn Willis.)

3. Steve Kelly, the Executive Director of the Office of Strategic Planning and Administration, was also not involved in the decision to establish the two positions. He did not know about the decision to establish these positions until after-the-fact. No one asked him if there was enough money in the budget to establish these positions. (Testimony of Steve Kelly.)

4. Several witnesses expressed a desire to have continuity within the KDA when the new administration took over. Mr. Kelly, in discussing the value of the assistant directors, stated that merit employees can be especially helpful during a transition. He noted the difficulty Commissioner Farmer's administration had when they took over and had to start from scratch in many areas. Ms. Cloyd talked about the importance of institutional knowledge that someone like Ms. Fentress-Laird would have. Ms. Fentress-Laird talked about the close bond she had with her employees and the unsettling thoughts she had about leaving at the end of the administration. (Testimony of Steve Kelly, Amanda Cloyd, and Danita Fentress-Laird).

5. The decision was made to establish these positions. Ms. Fentress-Laird assigned Ms. Edwards the task of preparing the position descriptions. Much of the content in the position descriptions for the two positions was identical. Ms. Edwards followed her usual practice of preparing very generic position descriptions using the class specifications. The assistant directors were to provide administrative support to their directors, provide management assistance, make recommendations to the director, perform duties of the director in the director's absence, attend professional meetings, and update staff. The assistant directors were to supervise everyone the division director had previously supervised. The assistant directors were to be supervised by executive director Steve Kelly. Ms. Edwards stated she obtained this information because she used the position description for the director of IT in preparing these position descriptions. Executive Director Kelly was not told about the position descriptions and did not have any input in this process. He did not know that he was set up to be the supervisor of the assistant directors. (Testimony of Danita Fentress-Laird, Alisa Edwards, and Steve Kelly; Position descriptions for two assistant director positions, position description for director of IT, and class specifications for assistant director.)

6. Both Ms. Edwards and Ms. Fentress-Laird testified that the fact the position descriptions stated the assistant directors were to be supervised by the executive director was a mistake. Both stated these two positions should have been supervised by their division directors. Nonetheless, the KDA's response to the Personnel Cabinet's inquiry regarding these positions made no mention of a mistake. KDA stated, "[T]he reporting structure is not static; it may be

modified or changed when directors are appointed.” (Testimony of Danita Fentress-Laird and Alisa Edwards; Attachment D).

7. Once Kathryn Willis learned about the decision to establish an assistant director position for IT, she started working on a position description. While working on the PD, she reviewed the class specifications for assistant director. When she noticed the mid-point of the pay range for this classification, she decided to apply. Mid-point for the assistant director was considerably more than Ms. Willis was making as a director. Ms. Willis told Commissioner Farmer about her decision to apply for the job, and she stayed out of the process after that point. (Testimony of Kathryn Willis).

8. Once the decision was made to establish these positions, the entire process was left largely in the hands of Alisa Edwards. Ms. Edwards is a Human Resources Branch Manager (Grade 16) with KDA. In addition to preparing the position descriptions, she submitted them to the Personnel Cabinet and obtained approval to establish the positions. She then prepared the job announcements for the two positions. On both announcements, Ms. Edwards was listed as the requisition creator, the agency approver; her e-mail address was listed as the agency contact, and she was part of the register team along with Danita Fentress-Laird and Amanda Cloyd. Much like the position descriptions, the job announcements were extremely generic providing no specific information about the job. The two announcements were also identical, except for the auto-req ID, the agency request number, and the position number. Neither announcement contained any preferred skills questions. (Testimony of Alisa Edwards, Danita Fentress-Laird, and Karen Mixson; Job announcements.)

9. The job announcements posted on October 19, 2010 and closed on October 28, 2010. Once the job announcements were on the Personnel Cabinet’s website, people started to apply. In addition, Ms. Edwards began to receive e-mail inquiries from employees. Many employees asked what divisions the assistant director positions would be in. In addition, those who found out the positions were in Personnel and Budget and IT, asked which was which. There appeared to be quite a bit of confusion because the job announcements were almost identical and provided no information about what division the position was in or any other

specifics. Several e-mails asked Ms. Edwards if there were any strong internal candidates. Ms. Edwards replied there would probably be some internal candidates to apply. In one e-mail, she was asked if she was looking for experience in any specific field. She did not respond to this question. Edwards stated she received several e-mails, which she moved to a folder on her computer but did not open or read. She stated there was no rhyme or reason to the e-mails she opened, read, and responded to and those she simply moved to the folder. Ms. Fentress-Laird also received e-mail inquiries from two employees (Larry Gillis and Tina Goodmann). Ms. Willis stated she did not receive any e-mails or other requests for information about the job openings, and none of the employees on her staff applied. (Testimony of Alisa Edwards, Danita Fentress-Laird, Kathryn Willis, Larry Gillis, and Tina Goodmann; E-mails provided by Alisa Edwards, Larry Gillis, and Tina Goodmann.)

10. Ms. Fentress-Laird stated that when she received the e-mails from Mr. Gillis expressing interest in the assistant director position, she decided she should apply for the assistant director in personnel and budget. Fentress-Laird did not believe Gillis would be a good fit for assistant director for KDA. She felt he was more of a policies and procedures person, and less of a people person. Although she did not consider him a strong candidate, she claimed when he expressed interest in the position, she decided to apply because if someone like Gillis could apply, so could she. She was not sure which assistant director position was which, so she applied for both. Ms. Willis had done the same when she applied. (Testimony of Danita Fentress-Laird and Kathryn Willis).

11. Ms. Edwards received the certified registers from the Personnel Cabinet on November 1. There was a reemployment candidate at the top of both registers. Because both registers contained reemployment candidates, the first registers received by KDA contained only the reemployment candidate and all internal mobility candidates. No competitive candidates (e.g. Fentress-Laird or Willis) were on the initial registers. Ms. Edwards requested a minimum qualifications review of the reemployment candidate for both registers on November 16. Around the same time, the reemployment candidate accepted a position with another state agency. (Testimony of Alisa Edwards; E-mails and registers provided by the Personnel Cabinet.)

12. On November 17 at 3:07 and 3:15 p.m., certified registers with no re-employment candidates was sent by e-mail to Ms. Edwards for the two assistant director positions. This was the first time registers with all candidates (including competitive candidates) were available to KDA. The register for the assistant director in personnel and budget contained 250 applicants. 92 were internal mobility candidates and 158 were competitive candidates. Of these, 16 were veterans. The register for the assistant director for IT contained 221 applicants. 92 were internal mobility and 129 were competitive. Of these candidates, 14 were veterans. There was a great deal of overlap between the registers for these two positions. (E-mails and registers provided by the Personnel Cabinet, and Attachment A.)

13. Ms. Edwards (by herself) reviewed the applications of people of the register and decided who should be interviewed. She stated she viewed the applications on her computer screen. She stated she was looking for applicants with personnel experience (for the personnel and budget assistant director), and applicants with IT experience (for the IT assistant director position). She stated that as she started to review the applications, she decided that experience with KDA was also a requirement she was looking for. (Testimony of Alisa Edwards.)

14. From her review of the non-veterans for the personnel and budget position, Edwards selected only Fentress-Laird and Willis to be sent to the Personnel Cabinet for minimum qualifications review. Edwards acknowledged that Willis did not have any personnel experience and should not have been sent for minimum qualifications review for this position. She stated this was a mistake. (Testimony of Alisa Edwards; Application and personnel file of Kathryn Willis, and E-mails from the Personnel Cabinet.)

15. Edwards selected only Willis and Fentress-Laird among the non-veteran candidates to be sent for minimum qualifications review for the assistant director position in IT. Fentress-Laird did not have any IT experience. Edwards selected the names of five veterans to be sent to the Personnel Cabinet for minimum qualifications for each assistant director position. Four of the veterans were the same for the two positions. None of the veterans selected for MQR had personnel or IT experience. All of the candidates sent to the Personnel Cabinet for MQR were from the competitive registers, which were only available to Ms. Edwards on November

17, 2010, at 3:07 and 3:15 p.m. The MQR requests were sent in one e-mail on November 18, 2010, at 12:09 p.m. (Testimony of Alisa Edwards; Application and personnel file of Danita Fentress-Laird, E-mails from Personnel Cabinet, and applications for veterans.)

16. Ms. Edwards considered these candidates veterans based on their answer on the application that they had military service. The Personnel Cabinet only considers an applicant a veteran if they have submitted documentation to support this answer. As a result, the Personnel Cabinet assumed KDA had only identified four veterans for each position and automatically conducted a MQR review of the remaining veterans for each position. The fifth veteran had submitted sufficient documentation to attain veteran status, however, it was not reflected in the paperwork at the time of this process. Ms. Edwards did not select to interview an applicant who was a veteran (a current state employee) with years of IT experience. Upon reviewing his application during her interview, Edwards acknowledged she should have interviewed this applicant. (Testimony of Alisa Edwards and Karen Mixson; E-mails and applications from Personnel Cabinet.)

17. Edwards stated there was an unwritten practice to interview applicants from KDA. Upon reviewing another application, she acknowledged she missed a current KDA employee who had applied for these positions. (Testimony of Alisa Edwards; Application from Personnel Cabinet.)

18. Edwards acknowledged reviewing the applications of Larry Gillis and Tina Goodmann. She stated that she was familiar with Mr. Gillis and did not select him for an interview because she felt he was too arrogant. She stated that in just reviewing his application, had she not known him, she probably would have requested an interview. Edwards stated she did not select Ms. Goodmann for an interview because she felt she was too strait-laced for the personnel office in KDA and would not be a good fit as assistant director. (Testimony of Alisa Edwards.)

19. Whatever review Ms. Edwards conducted of the applications, it appears to have been done between 3:07 p.m., November 17, 2010, when she received the certified register (without the names of reemployment candidates, but listing all competitive candidates), and 12:09 p.m. November 18, 2010, when she requested MQR for seven individuals for each register. Ms. Edwards did not describe a two step process where she would have first reviewed internal mobility candidates and then competitive candidates, so it is likely that all applications were reviewed during this short period of time. (Testimony of Alisa Edwards; E-mails from Personnel Cabinet.)

20. In reviewing the applications and deciding who to interview, Ms. Edwards did not consider the promotional factors of seniority qualifications, record of performance, performance evaluation, and conduct, as she did not know they applied in this instance. The assistant director positions would have been promotions for a number of candidates on the register. (Testimony of Alisa Edwards and Tina Goodmann; Applications from the Personnel Cabinet.)

21. According to the testimony of Mary Elizabeth Harrod of the Personnel Cabinet, there were at least five other candidates who would have been good candidates for the personnel and budget position. There was another individual who would have been an excellent candidate for the IT position (separate from the veteran with IT experience). This IT candidate, as well as Mr. Gillis, had extensive KHRIS experience. If the added requirements of KHRIS were the reason for creating these positions, it is hard to understand why these two individuals would not have been interviewed. (Testimony of Mary Elizabeth Harrod.)

22. Edwards stated she obtained three questions from Fentress-Laird to ask during the assistant director for personnel and budget interview. These questions are attached as Attachment E. These questions are basic and are not adequate to determine whether an individual is a good candidate for assistant director of personnel and budget. (Testimony of Alisa Edwards and Danita Fentress-Laird.)



23. Ms. Edwards did not know what questions to ask for the IT assistant director. Edwards went to Willis, who provided her with questions and what she should look for in the answers. (Testimony of Alisa Edwards and Kathryn Willis; Attachment F.)

24. The investigator finds that Ms. Edwards did not interview either Fentress-Laird or Willis. (Testimony of Alisa Edwards, Danita Fentress-Laird, and Kathryn Willis.)

25. For the two assistant director positions, a total of six veterans were offered interviews. The one veteran who only applied for the assistant director of personnel and budget declined the interview. Another individual who applied for both positions declined both interviews. A third veteran was scheduled to interview for both positions, but e-mailed Ms. Edwards the morning of his interview (December 2, 2010), and stated something unexpected had come up with his youngest daughter and he could not attend the interview. He asked to reschedule, if possible. Ms. Edwards reviewed his application, saw he did not have relevant experience, and decided not to interview him. Two veterans were interviewed for both positions. Edwards conducted the interviews at the same time. She asked the seven IT and three personnel questions during this process. Another veteran was interviewed only for the IT position. (Testimony of Alisa Edwards.)

26. Edwards reported to Fentress-Laird that her choices were Ms. Fentress-Laird (for the assistant director of personnel and budget) and Ms. Willis (for the assistant director of IT). Fentress-Laird submitted the recommendations to Commissioner Farmer, who approved the decision to appoint Fentress-Laird and Willis.

(Testimony of Alisa Edwards and Danita Fentress-Laird.)

27. Ms. Edwards was instructed to submit the appointments in the form of a personnel action to the Personnel Cabinet with an effective date of December 27, 2010. Fentress-Laird stated she did not think this was any big deal, and she suggested that Willis request the same appointment date. (Testimony of Alisa Edwards and Danita Fentress-Laird.)

28. Upon receipt of these proposed personnel actions by the Personnel Cabinet, they were sent to the Office of Legal Services for review. On behalf of that office, the Hon. Dinah Bevington initiated an inquiry regarding the pending assistant director appointments. She directed a letter to the Hon. Nicole Liberto at KDA listing her concerns. The Personnel Cabinet was concerned with both the position establishments and the selection method. (See Attachment C.)

29. KDA responded to the Personnel Cabinet on January 7, 2011, in a letter from the Hon. Nicole Liberto to the Hon. Dinah Bevington. (See Attachment D.) With respect to the position establishments, KDA stated that the reporting structure and who the assistant directors would supervise might be changed or modified when directors are appointed. Ms. Harrod (of the Personnel Cabinet) stated this part of the response did not address the concerns. With respect to concerns about the selection method, KDA stated that few employees met the minimum qualifications for the position. Ms. Edwards—the only employee from KDA known to have reviewed the applications--stated this was not an accurate statement. KDA went on to state that of those state employees who may have met the minimum qualifications, none exhibited an acceptable combination of the skills they were looking for, including conflict resolution and leadership skills, mediation experience, familiarity and experience with the progressive discipline system, neutrality, and a professional demeanor, and contract negotiation skill. Edwards stated she was not looking for any of these skills when she reviewed the applications. KDA stated that with respect to the IT position, they were also looking for the additional ability to interpret IT concepts and designs to management staff. Edwards denied that this was a criteria used in her selection process. KDA also responded to concerns about the appearance that the interview field was limited and consideration was given at the same time for both positions. KDA stated that there was an extremely limited number of individuals with an acceptable combination of skill sets and requisite experience from which to interview. The individuals interviewed had no experience in personnel or IT. KDA went on to state that although the duties of the two assistant director positions are different, the necessary skills to perform them are substantially similar and, therefore, overlap was unavoidable. Edwards denied this statement. (Testimony of Alisa Edwards and Mary Elizabeth Harrod; Attachment D).

30. On January 12, the Personnel Cabinet decided to process the two pending assistant director appointments, with an effective date of January 16, 2011. (Attachment B).

31. Larry Gillis submitted this request for investigation on May 5, 2011. The Personnel Board voted to initiate this investigation on June 10, 2011. (Attachment A and minutes of the June 10, 2011 Personnel Board meeting, pp. 3-5.)

32. On July 6, 2011, Ms. Willis submitted her resignation as Assistant Director of Information Technology effective close of business July 8, 2011, contingent upon her appointment as Division Director of the Division of Information Technology effective July 9, 2011. She was appointed back to her director's position. (Testimony of Kathryn Willis).

33. In a letter dated July 6, 2011, Ms. Danita Fentress-Laird resigned her position as Assistant Director with KDA pending appointment as director on July 7, 2011. Fentress-Laird was appointed director. (Testimony of Danita Fentress-Laird.)

34. The assistant director positions have not been filled since these resignations. (Testimony of Steve Kelly.)

35. KDA conceded through its witnesses that Alisa Edwards should not have been assigned to fill these assistant director positions on her own. (Testimony of Steve Kelly, Danita Fentress-Laird, and Alisa Edwards.)

## CONCLUSIONS OF LAW

1. KDA did not follow the statutory or regulatory provisions of KRS 18A.0751(4)(f) and 101 KAR 1:400 in filling the two assistant director positions. KDA did not give appropriate consideration to the applicants' seniority, qualifications, record of performance, performance evaluations, and conduct in filling these positions. Ms. Edwards, the only person involved in reviewing the candidates, stated she was not aware that she had to consider these five factors in this process. Her description of the process she used clearly demonstrates she did not give appropriate consideration to these factors. The provisions of the statute and regulation cited above apply because this position would have been a promotion to several candidates on each register.

2. The selection process in this case did not comply with KRS 18A.010 that "[A]ll appointments shall be made solely on the basis of merit and fitness." There was no meaningful process to review all the candidates in this case and, therefore, the appointments were not based on merit and fitness.

3. The Investigator concludes that KDA did not comply with KRS 18A.0751(4)(f) and 101 KAR 1:400 in its screening process of deciding which candidates would be interviewed. The Board dealt with the issue of what level of consideration needed to be given to these five factors in the screening process in the case of Terry Wayne Mitchell vs. Justice and Public Safety Cabinet, Department of Corrections and Richard Lacefield, Appeal No. 2003-286. In the Mitchell case, the Department of Corrections was filling a Production Coordinator position within Kentucky Correctional Industries. The evidence established that Corrections received a register with 29 names on it. They were able to reduce this number to eight individuals who would be interviewed by reviewing applications and looking at education, background in fabrication, conduct, and experience in security. The Board found the Department of Corrections gave appropriate consideration during this process. In Conclusions of Law 2 and 3 in this case, the Board stated, as follows:

2. The Personnel Board concludes that “appropriate consideration” may consist of looking at only the information on the application involving qualifications and seniority at this early stage of the process. The Personnel Board concludes that the Appellee did so in this case. The Appellant was given appropriate consideration and has not established that he has been penalized by the process used by the Appellee. The Appellant makes no argument that he was more qualified for the position than Lacefield, the individual selected for the Production Coordinator position.

3. The Appellee could also have met this requirement by asking the candidates to fill out an internal mobility form. The Personnel Board does not believe that it is necessary in this instance to physically review personnel files and personnel evaluations in order to comply with the statute and regulation.

The Personnel Board’s decision in Mitchell was affirmed on appeal by both the Franklin Circuit Court (Civil Action No. 04-CI-01650) and by the Court of Appeals (2006-CA-000054-MR). There is no evidence in this case that KDA attempted to review any of the five factors in the screening process. The Mitchell case allows the agency a great deal of leeway in screening candidates to decide who to interview. Nonetheless, the Mitchell case holds that an agency must conduct some type of meaningful process applying some subset of the five promotional factors in deciding which candidates to interview. KDA did not do so in these instances.

4. The investigator concludes the selection process utilized by KDA in this case was totally arbitrary. The stated reason for the establishment of the assistant director positions was the added work requirements caused by the implementation of KHRIS. Despite this fact, this reason for establishing the positions was never communicated to Kathryn Willis, the Division Director of IT, or Alisa Edwards, the only KDA employee who actually reviewed the qualifications of the various candidates. In addition, KDA did not interview two candidates, one for each position, who had extensive KHRIS experience. Further, at every step in this process, KDA used the most generic information available to describe the duties and requirements for the two assistant director positions. This can be seen clearly in the position descriptions, the job

announcements, and the e-mail responses to applicants and potential applicants inquiring about the positions. Even so, when the time came to screen the applicants on the register for interviews, KDA applied the most exclusive and limiting criteria, that being previous experience and knowledge of the operations of KDA. Finally, the fact that a veteran with years of IT experience, as well as several years of seniority with state government was not granted an interview, while five other veterans with no experience in IT were granted an interview demonstrates the fact this entire process was arbitrary.

5. While KDA barely complied with the letter of KRS 18A.150(7), by offering an interview to no fewer than five veteran applicants for each of these positions, it did not comply with the spirit of the law.

(a) One of the five veterans interviewed by KDA was not listed as a veteran on the register transmitted to the agency. The agency relied on the applicant's answer to the question and, unknown to the agency, the individual was determined to be a veteran through a separate process by the Personnel Cabinet.

(b) One of the veterans who was interviewing for both assistant director positions who was offered an interview (and actually scheduled an interview), was not allowed to reschedule his interview when something came up with respect to his child on the morning of his interview. Because Ms. Edwards did all the interviewing, it is clear she could have rescheduled with this applicant.

(c) KDA did not comply with the spirit of KRS 18A.150(7) by offering an interview to veterans with no experience in personnel or IT, and ignoring a veteran with years of experience in IT.

6. In order to conduct a fair process and to comply with the appropriate statutes and regulations in a situation where division directors were applying for assistant director positions in their own divisions required some special efforts by the agency. The decision in this case to turn the entire process over to Alisa Edwards was unfair to her, as well as all the applicants. While there is not an exclusive way to conduct such a process, it is clear that some effort had to be taken to ensure a fair process that complied with the law. KDA witnesses suggested alternatives such as enlisting the assistance of Executive Director Steve Kelly or others within KDA, or seeking help from outside the agency.

7. KDA's practice of preparing position descriptions with generic information regarding the duties and responsibilities does not comply with 101 KAR 2:020, Section 1(6). Likewise, the practice of preparing position descriptions without input or knowledge from the supervisor violates this same provision.

8. Ms. Fentress-Laird's attempt to assign an appointment date of December 27, 2010, to her own appointment was an attempt to circumvent the provisions of KRS 18A.111(7), and burrow into the merit system. No good reason was asserted why the appointment should be effective on December 27 other than to ensure that she would gain status before the term of the current commissioner ended. Contrary to Fentress-Laird's testimony, there is no legal support for the position that employment decisions would be made by the Transition Team. The investigator is aware of no provision of law which would allow the Commissioner-elect (or anyone else) the right to hire or fire unless they were granted appointing authority. [See KRS 18A.005(1)]

9. Ms. Willis' status, with respect to KRS 18A.111(7), is less certain. Clearly, she had previously attained status in the classified service, but has since retired. The Personnel Cabinet took the position that the provisions of KRS 18A.111(7) applied, and she would have to serve an initial probationary period of 12 months.

10. KDA's response to the Personnel Cabinet (Attachment D) was itself a violation of KRS 18A.145 in that this response contains false statements with regard to an appointment made under the provisions of KRS 18A.005 to 18A.200. The portion of the letter that defends the KDA's selection method by stating "the KDA states that although there were numerous applications made by current and non-current state employees to the posted position, there were extremely few that met the minimum qualifications for the positions" is false. In addition, it was a false statement to state individuals were not interviewed because they lacked the requisite skills set critical to the positions, which are then listed. These skill sets were not utilized by Alisa Edwards, the only individual within KDA who reviewed the applications, decided who to interview, conducted the interviews, and made recommendations which were accepted for the appointments.<sup>9</sup>

### **RECOMMENDATIONS**

The investigator recommends that the Personnel Board:

1. Order KDA to submit proof that Alisa Edwards and Danita Fentress-Laird attended the training sessions: "Overview of the Merit System" and "Structured Behavioral Interviewing" offered by the Governmental Services Center.
2. Order KDA to make arrangements with the Personnel Cabinet to receive training on how to properly prepare position descriptions.
3. Order KDA to make arrangements with the Personnel Cabinet for the KDA personnel staff to receive training on appropriate procedures for preparing job announcements which provide interested persons relevant information about the job. The training should include information on the appropriate use of preferred skills questions.

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<sup>9</sup> The investigator does not mean to suggest the author of the letter violated this statute; just that KDA as an agency did, based on its response to the legitimate inquiry of the Personnel Cabinet.



## **RESPONSES TO REPORT AND RECOMMENDATION**

This matter is on the agenda for the Board's January 2012 meeting. It is recommended that all parties who have received a copy of this report file any written response they wish the Board to review by **January 6, 2012**, and any requests to appear and address the Board be filed by that same date.

So **ISSUED** at the direction of the Executive Director this \_\_\_\_ day of December, 2011.

### **KENTUCKY PERSONNEL BOARD**

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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Board Members  
Hon. Nicole Liberto  
Hon. Dinah Bevington  
Commissioner Richie Farmer  
Danita Fentress-Laird  
Kathryn Willis  
Larry Gillis