



**STATE OF KANSAS
Tenth Judicial District
Steve Howe, District Attorney
PRESS RELEASE - FOR IMMEDIATE RELEASE**

FROM: District Attorney Steve Howe
RE: Overland Park Police Officers Foundation Investigation
DATE: October 17, 2023

On May 6, 2022, the Overland Park Police Department requested assistance from the Johnson County District Attorney's Office to investigate allegations of potential criminal conduct related to the Overland Park Police Officers Foundation (Foundation), a 501(c)(3) Kansas nonprofit corporation.

The allegations included that Overland Park Police Officers Brandon Faber, Brad Heater, Rachel Scattergood, and Tim Tinnin misused funds while acting as Foundation Board members. The allegations primarily focused on these officers' receipt of funds related to scholarships, out-of-state travel and "officer assistance" disbursements.

After a complex and multi-faceted investigation, my office is declining to file criminal charges in this matter. Although these previous Board members repeatedly disregarded the Foundation's bylaws, a violation of bylaws does not necessarily equate to a violation of criminal laws.

My office's investigatory process and findings are set forth in-depth below.

Overland Park Police Officers Foundation Formation and Bylaws

Following the deaths of two Topeka police officers, the Kansas State Fraternal Order of Police Lodge recommended local Fraternal Order of Police (FOP) lodges establish a charitable foundation to enable local FOP lodges to accept contributions.

In May of 2016, the Overland Park Police Officers Foundation was established as a charitable organization in Kansas. At that time, Officer Mike Mosher was President of the Overland Park Police Fraternal Order of Police Lodge 21. The Foundation is a separate entity from the Overland Park Fraternal Order of Police. The Foundation and the FOP are separate entities from the City of Overland Park or the Overland Park Police Department. Members of the FOP act as the Board for the Foundation, which was created as a means of assisting FOP members in need.

The Foundation's first Board of Directors consisted of Officer Mosher, president; Officer Brandon Faber, treasurer; and Officer Tim Tinnin, secretary. Officer Mosher remained Foundation president until his tragic death on May 3, 2020. Officer Faber served on the Board as treasurer from the Foundation's inception in 2016 through January 26, 2021, when he was elected president. He remained president until stepping down on January 18, 2022. Officer Tinnin served as Board secretary from January 13, 2015, until September 27, 2018.

Officer Rachel Scattergood followed Officer Tinnin as the Foundation Board secretary from September 27, 2018, until December 14, 2021. Officer Brad Heater initially served as president after Officer Mosher's death and then later as treasurer from May 4, 2020, until December 14, 2021.

Bylaws for the Foundation were adopted the same day the articles of incorporation were filed. The Foundation's bylaws specify the purposes of the Foundation, which include, "without limitation, those purposes necessary to assist law enforcement officers and their families in financial distress following catastrophic injury or death and pursuing educational opportunities." Foundation bylaws Section 3.01 (emphasis added). The bylaws further define that the Foundation's only members will be the self-perpetuating Board of Directors (Board). Foundation bylaws Section 4.01. The Foundation's Board is composed of the duly elected president, secretary, and treasurer of the FOP. Foundation bylaws Section 5.01.

The Foundation Board engaged Outreach Marketing of Tempe, Arizona, in July of 2016, to provide fundraising services. The Foundation received approximately \$2.1 million in charitable donations from 2016 through the end of 2021 through local fundraising and solicitations, and as the result of Outreach Marketing's services.

Following the allegations of misconduct by the Board, a new Board assumed office in January of 2022. Although the Foundation's bylaws dictate that records of the Foundation are to be maintained at the location registered with the Secretary of State, and maintain minutes and records of meetings, the new Board could find no minutes of any business meetings of the Foundation. The lack of minutes leads to the presumption that they do not exist. The absence of minutes or any other similar business records made it difficult for the new Board to ascertain how the previous Board made decisions relating to the expenditure of Foundation funds.

The bylaws also required an annual audit of the Foundation's finances by the FOP Trustee, but prior to December 2021, the Foundation's Board had never provided the FOP Trustee with the required records or even informed the FOP Trustee of this requirement. The FOP Trustee had never been provided a copy of the Foundation bylaws or records. The current Trustee contacted the attorney for the FOP in December 2021, who provided him with a copy of the Foundation's bylaws, making him aware that he should have been conducting an annual audit of the Foundation's finances. Foundation bylaws Section 5.14.

Following the installation of new officers on the FOP Board of Directors in January 2022, the Foundation's Board also changed according to the self-perpetuating guidelines of the Foundation bylaws. Aware of the actions of the previous Board and possible inconsistencies with the Foundation bylaws, the new Board engaged the services of Financial Forensics on January 27, 2022, to conduct an audit of the Foundation's finances.

District Attorney's Investigation

The new FOP Board notified the Overland Park Police Department of their concerns and provided a copy of the audit report and Foundation bylaws. Because of the obvious conflict of interest for the Overland Park Police Department, my office accepted their request to handle the investigation. In May of 2022, the Overland Park Police Department provided this office a copy of the articles of incorporation of the Foundation as well as a copy of the forensic audit ordered by the new Foundation Board. The audit covered a period of time from May of 2016 through January 2022.

Over the course of my office's investigation, **53** interviews were conducted, **26** of which were with police personnel. **Thirty-two** subpoenas were issued, including **15** to banking

institutions which covered multiple years of financial records for numerous bank accounts. Additionally, several search warrants for electronic data were executed.

Through our investigation, we learned that the past Board members each had electronic devices issued to them to manage the affairs of the Foundation. The past Board members turned over those devices to current Foundation Board members in January of 2022. Those devices were turned over to my office in May of 2022, and a consent to search was obtained for those devices on July 26, 2022. During our interviews with current Board members, we were told that past Board members had wiped their electronic devices clean of any data. The current Board president was told that this wiping was done because of the presence of personal information on the electronic devices.

On July 29, 2022, four laptops, three cell phones, and one iPad were provided to the Federal Bureau of Investigation (FBI) for transfer to the Regional Computer Forensic Laboratory (RCFL) for examination. On some occasions wiped data can be recovered. It was the hope that some, if not all, of the data could be recovered. The RCFL handles a significant number of investigations across the Midwest including crimes against children, homicides, crimes of violence, and white-collar crimes. Because of the large number of electronic devices they receive, their agency must prioritize cases, which can impact the timing of when they complete their work. On June 29, 2023, after nearly a year, the examination report from the RCFL was received. The report confirmed the devices had been wiped and no data was able to be recovered.

This office also obtained records from financial institutions. This process generally takes months, as it did in this investigation, to request and obtain records. In November of 2022, the original investigator assigned to this case retired and the case was reassigned.

Despite a thorough search, including the issuance of search warrants for various records,

at no point during this investigation was this office able to locate any documentation of Foundation Board minutes, nor any documentation of Foundation Board decisions related to expenditure of funds. The lack of these records was a substantial hinderance to the investigation. As a result, we took investigative steps to obtain electronic data from 14 separate iCloud accounts. The amount of data received from these accounts was extensive and required sorting through large amounts of data in the hopes of finding relevant pieces of evidence. Despite these efforts, only limited helpful data related to the investigation was uncovered. Limited text messages between past Board members were the only information we gained to attempt to establish what the procedure was for distributing Foundation funds.

Ultimately, after all data was collected and reviewed, we were unable to locate any formal documentation of the meeting minutes from the inception of the Foundation in May 2016 through December 2021, nor did we locate documentation of the decision-making process behind the distribution of Foundation proceeds to benefactors.

Investigative Findings

Our investigation focused on three areas of reported concern relating to the conduct of the previous Board members: (1) payments of scholarship assistance to active Board members; (2) payments of “officer assistance” including those to active Board members; and (3) participation in out-of-state trips. The previous Board members in question received a total of \$15,540.81 in scholarships and for “officer assistance.” These expenditures were the focus of this investigation.

I. Scholarships

The investigation revealed that prior to the Foundation’s creation, the FOP membership discussed the possibility of granting members and members’ family members scholarships to

pursue higher education. After Officer Mosher became president of the FOP, a scholarship program was established. The Foundation ultimately operated the scholarship program, as it was one of the stated purposes of the Foundation. The Foundation awarded scholarships beginning in 2017. The program initially only awarded scholarships for children of FOP members for undergraduate education. This program was later expanded to include eligibility for FOP members and scholarships for graduate education.

The Foundation utilized a separate committee to review the applications for scholarships. During my office's interviews with Scholarship Committee members, we learned that they used a rubric that assigned points for different categories of consideration such as grade point average (GPA), participation in extra-curricular activities, years of family FOP membership, participation in FOP activities, and other specified criteria. The rubric included a provision that an applicant's GPA would be used as a tiebreaker if necessary. Scholarships were then awarded based on the total score of the applicant. Foundation Board members also submitted their scholarship applications through this committee. There were limited records associated with the submissions and findings by that committee.

The bylaws restrict Board committees from authorizing any distribution of funds to a Director (a member of the Board). "...a Committee of the Board shall not: (1) authorize distributions to Directors, Officers, agents or employees except in exchange for value received;" Foundation bylaws Section 5.12. The Scholarship Committee, however, awarded scholarships in 2021 to Officer Faber and Officer Scattergood while they served as members of the Foundation Board in violation of this Section of the bylaws. Through our investigation, we determined that Scholarship Committee members were not aware of this Section of the bylaws and thus were not aware they were committing any violations.

A review of the scholarships awarded in 2021 revealed a discrepancy as the funds awarded did not match the amount of funds that were distributed. While the resolution of this discrepancy is not documented in any official Board minutes or business records, a review of text messages of the past Board members, obtained pursuant to a search warrant, revealed a discussion of how additional funding had become available after the amount for the scholarships was originally established. The previous Foundation Board decided to apply the additional funding to the scholarships that had already been awarded. This modification did not alter Officer Faber's award but did increase Officer Scattergood's award based on her ranking in the scholarship rubric.

Additionally, the scholarships were typically paid directly to the educational institution, but both Officer Faber and Officer Scattergood were paid directly by the Foundation. Text messages between past Board members revealed a discussion that indicated if it was easier to write the check to the officers individually then it was approved for them to do. The investigation determined through subpoenas that both Officer Faber and Officer Scattergood were enrolled in graduate studies in 2021.

II. "Officer Assistance"

The Foundation's other stated purpose is to support law enforcement officers and their families in financial distress following "catastrophic injury or death." Foundation bylaws Section 3.01. No officers associated with the Overland Park Police Department met this criterion at the time of the Foundation's creation or shortly after.

In November 2016, the Foundation began granting financial awards to FOP members for "officer assistance" in situations other than catastrophic injury or death. The amounts awarded to officers typically ranged from \$500.00 to \$3,500.00. This assistance included supporting

officers or family members dealing with medical bills, dental bills, and veterinarian bills. There were numerous payments related to these expenses made to FOP members by the Foundation Board.

The scope of the assistance offered by the Board could be deemed to fall outside the parameters of allowable donations as contemplated by the bylaws. The bylaws, however, are broadly written. While the use of funds for these purposes may have violated the spirit of the purpose of the Foundation, they may not technically violate the bylaws as written given the inclusion of the term “without limitation” when describing the scope of the Foundation’s purpose. If the use of the funds for “officer assistance” exceeds the scope of authority of the Foundation Board as designated in the bylaws, that is a purely civil matter that is not addressed by this investigation and review.

The Foundation’s bylaws do set limitations on who may receive Foundation funds. “No Director, Officer, or employee or agent of the Foundation, nor any member of a committee, or any other person connected with the Foundation, nor any other private individual shall receive at any time any of the net earnings or pecuniary profit from the Foundation’s operations, provided that this shall not prevent the payment to any such person of such reasonable compensation as shall be fixed by the Board for services rendered to or for the Foundation: and no such person or persons shall be entitled to share in the distribution of any of the corporate assets upon the Foundation’s dissolution.” Foundation bylaws Section 12.05(c). This bylaw provision appears to be an attempt at preventing self-dealing and self-enrichment by Board members.

Soon after its creation, the Foundation began to expand the use of funds, including granting “officer assistance” to FOP Board members beginning in 2018. Officer Mosher issued the first such check to Officer Faber for \$1,000.00. This award was presumably authorized by

Officer Mosher and Officer Tinnin. This is only a presumption as the approval is required by the bylaws, but the lack of records makes confirmation of this step impossible. Subsequent “officer assistance” payments do have some accompanying text messages, which indicated requests for “officer assistance” by a Board member were discussed and approved by the other two Board members, all via text message. This practice of Board members receiving “officer assistance” occurred with regularity on multiple occasions throughout the life of the Foundation.

While serving on the Foundation Board, Officer Faber received \$3,000 in “officer assistance” in addition to a \$1,000.00 scholarship. Officer Scattergood received \$4,540.81 in “officer assistance,” including \$1,040.81 for a veterinarian bill. She also received a \$2,000.00 scholarship. Officer Heater received \$4,000.00 in “officer assistance.” Officer Tinnin received \$1,000.00 in “officer assistance.”

When complaints of the practice of awarding “officer assistance” to Board members arose, text messages of the former Board members revealed discussions that they believed they were only receiving payments for things that all FOP members, including themselves, were eligible to receive, and therefore they believed there was no wrongdoing on their part.

III. Out-of-State Trips

Complaints were made by FOP members regarding out-of-state trips by the Board members. My office focused on three specific trips.

The first area of concern was related to Board members working with SWEL (Surf Waves Enjoy Life). SWEL’s bylaws describe the entity as a charitable organization dedicated to providing support to military members and first responders by allowing them to “decompress, disconnect and re-invigorate through the sport of surfing, meditation and yoga.” Board members attended functions that were paid for by SWEL, but it is unclear from the records reviewed in

this investigation if Foundation funds were used for the SWEL trips. Ultimately, the Foundation made three \$1,000.00 contributions to SWEL and conducted some joint fundraisers, for which they split the receipts equally. There is no documentation related to the decisions or purpose behind the donations to SWEL or whether Foundation funds were used on SWEL trips.

A second concern centered around the 2021 National Peace Officers Memorial Day remembrance in Washington, D.C. A number of OPPD staff attended this event to honor the passing of Officer Mosher. There were some indications that fundraising by the Foundation occurred to help cover expenses for this trip. Exactly how the Foundation received these funds is unclear because of the deficiencies in their record keeping. However, FOP meeting minutes confirmed the Foundation transferred money to the FOP to cover these expenses. Members of the FOP and the Foundation Board traveled to this event. There were additional complaints made regarding the selection process for determining which officers and support personnel would travel to Washington, D.C. to witness the addition of Officer Mike Mosher's name to the National Law Enforcement Officers Memorial during the event. The selection process was an internal matter of the FOP and the Foundation and was not a consideration of this investigation. The costs associated with this trip are directly related to the stated purpose of the Foundation and no violations of Foundation bylaws occurred in this regard.

The third travel-related concern involved an invitation to a charity golf tournament that was extended to the Foundation Board by Outreach Marketing for an event hosted by another Outreach Marketing client. Outreach Marketing covered most of the expenses of this trip. Records obtained during this investigation led to the conclusion that this trip was related to the operation of the Foundation and consistent with maintaining and strengthening business ties with partners. Incidental expenses of such trips are costs the Foundation would be liable to pay for or

reimburse. Foundation bylaws Section 5.08 states, “Directors shall not receive any compensation for their services. However, the Board may approve the reimbursement of a Director’s actual and necessary expenses incurred in the conduct of the Foundation’s business.”

Section 5.08 of the bylaws permits the Foundation to cover expenses and reimbursement of expenses incurred in conducting Foundation business. This vague language invites a broad interpretation as to what constitutes Foundation “business.” Each of these specific trips could be found to be directly or indirectly associated with the business of the Foundation. For that reason, and the reasons set forth above, a definitive determination cannot be made as to whether the expenditures related to these three trips fell outside the scope of expenses permitted by the bylaws.

Legal Analysis

It is impossible to begin an analysis of the legal questions implicated in this investigation without first highlighting the lack of minutes of Foundation meetings or any other substantive documentation or business records outlining the deliberative process of the Foundation Board. The lack of these records makes analysis of motivation and intent difficult, if not impossible, to ascertain. Repeated disregard of the bylaws and inconsistent interpretations of what constitutes a permitted expenditure by the original Board members essentially began immediately after the creation of the Foundation. For purposes of this aspect of the analysis, we will start with an analysis of criminal liability followed by civil liability.

I. Criminal Liability

By accepting payouts of Foundation funds, the evidence is clear that the four Foundation Board members in question (Scattergood, Faber, Heater, Tinnin) violated the provision of the

bylaws that prohibited self-dealing and self-enrichment. What is less clear is whether the payment requests were for purposes that fall outside the scope of the bylaws. Both of these considerations are crucial in determining whether there is any potential criminal liability for these acts. When it comes to a legal analysis, it must be made clear that a violation of bylaws does not necessarily equate to a violation of criminal laws.

As previously stated, the lack of any formal meeting minutes or records of the Foundation posed a significant, if not insurmountable, hinderance to this criminal investigation. We were left to determine whether the lack of records, in conjunction with potential violations of the bylaws by these Board members, were efforts to hide criminal conduct or, instead, amount to gross incompetence and ineptness that may equate to civil violations of the Kansas Charitable Organizations and Solicitations Act, K.S.A. 17-1759 et seq.

To charge the Board members with theft, this office would have to prove, by the standard of beyond a reasonable doubt, that the past Board members either *knowingly* obtained the money by *deceptive means*, or *knowingly* exerted *unauthorized control* over Foundation funds. As a result of this investigation, my office has concluded that we cannot charge the four Board members in question under either theory for the reasons set forth below.

a. Theft by Unauthorized Control

The first Board, almost immediately upon the inception of the Foundation, normalized the behavior of awarding “officer assistance” for something less than death or catastrophic injury, as the bylaws required. They also, almost immediately, normalized the behavior of including Board members in the group of FOP members eligible to receive assistance, in violation of the bylaws. While he never personally benefited from this practice, Officer Mosher expressed his view in text messages recovered. He noted in one particular string of text

messages, when considering another Board member's request for assistance due to unexpected dental bills, that as long as the Foundation has the money to fund requests, the Foundation has an obligation to help. In practice, by allowing for a more liberal disbursement of Foundation funds, the Foundation Board unofficially amended the bylaws. This was evident from the Board members' actions, starting from the top down. Board members acquiesced to this practice after witnessing funds being disbursed to themselves and others for a whole host of purposes that at first seemed to fall outside of the scope of the bylaws but then became part of a historically approved series of expenditures.

The first issue in prosecuting theft by unauthorized control is created by the Foundation Board's approval of, and normalizing, payments for things less than catastrophic injury or death, which began early in the Foundation's existence. Prosecution of theft under this theory is nearly impossible due to the language found in Section 3.01 of the bylaws, when it states, "**without limitation.**" This open-ended phrase, without defining it, leaves one to question the intent and scope of its meaning. The understanding of some of the Board members in question as it relates to this provision is highlighted by their text exchanges when complaints arose. Those previous Board members opined they believed they were not receiving anything any other FOP member was not entitled to receive. From text messages recovered, we determined that when Board members were the benefactors of the proceeds, they were excluded from the voting that led to those disbursements.

The use of the phrase "**without limitation**" in Section 3.01 creates an open-ended and undecipherable quagmire for trying to prove unauthorized control. Without further definitions, such language invites the use of Foundation funds for a variety of purposes. This seemingly limitless ability to disburse funds was exhibited by the Board from day one of the Foundation in

their payments to FOP members. Similar payments to Foundation Board members began in 2018. This behavior by the Board, in conjunction with the lack of further definitions and clarity in the Foundation bylaws, inhibits our ability to prove the past Board members **knowingly** exerted unauthorized control over the foundation monies, a necessary element in proving theft under this theory.

The second issue in prosecuting theft by unauthorized control is created by the prior Foundation Board members' approval of, and normalizing, payouts of Foundation funds to Foundation Board members. As stated before, this repeated practice appears to be in direct violation of Section 12.05(c) of the bylaws. While Financial Forensics notes that the provisions in Section 12.05(c) relate to a prohibition of self-dealing, the terms "self-dealing" and "self-enrichment" are not defined anywhere in the bylaws. While an accountant or attorney may understand the legalese of Section 12.05(c), there is a question as to whether a volunteer would understand the significance of that language without receiving training and guidance by an attorney or someone familiar with the administration of charitable foundations.

The routine practice of authorizing payments of Foundation funds to Board members, which was generally done with approval from other Board members, poses the most difficulty in prosecuting the Board members for accepting these funds. Once the practice of paying funds out to Board members was initiated and approved by members of the original Board, the rest of the Board seemingly acquiesced. Because of that top-down authorization and approval of those practices, we cannot prove, much less beyond a reasonable doubt, that the four Board members in question exerted *unauthorized* control when these payments were always approved and authorized by other Board members. This practice was historically carried out by the Board members for years with each other's approval, an issue which is only compounded by the lack of

records or meeting minutes to show why certain decisions were made and who was involved in making those decisions. For these reasons, we cannot prosecute the four Board members in question for theft by unauthorized control.

b. Theft by Deception

During the financial audit of the Foundation, Financial Forensics utilized a simplified accounting system categorizing the expenses and entering all the reported revenues and expenses from May 2016 through January 2022 into the simplified system. Financial Forensics had to mostly rely on the description for the expenses previously entered into QuickBooks, as few receipts were available during their audit. In comparing the results of Financial Forensics' simplified accounting to the QuickBooks accounting, as well as reconciling both with the bank records, reports from Outreach Marketing, and tax records, Financial Forensics determined that the QuickBooks records fairly reflect the results of the operations of the Foundation for each of the periods examined.

While errors were found, Financial Forensics' conclusion is based on the accounting concept of materiality – financial statements can contain errors and still give a substantially accurate picture of Foundation operations. Financial Forensics found that the Foundation's financial reports contain errors that are cumulatively immaterial. There were no inaccuracies or inconsistencies with the recording of payments or categorization of payments that would lead to the belief that there was an intent to hide anything. There was no deception in the accounting documents by the past Board that shows an intent to defraud. Therefore, we cannot prove, beyond a reasonable doubt or otherwise, that the four Board members in question committed the crime of theft by deception.

II. Civil Liability

The Foundation was created with the assistance of the FOP attorney, but there is nothing to suggest that the Board retained the services of an attorney, or any other professional with operational experience of a charitable foundation, at any point after the Foundation's initial creation. The volunteers themselves chose to be responsible for the operation and accounting of the Foundation.

The evidence is clear that the Foundation Board did not have the training and experience to maintain the legally required documentation for a charitable foundation. Board members failed to maintain minutes of meetings which would have documented decisions of the Board and approval of expenditures. While revenue and expenditures were entered into a QuickBooks accounting program the Foundation utilized, receipts were not maintained, making verification of the purpose of the expenditures difficult to verify.

The available evidence, however, does support the belief that a violation or violations of the Kansas Charitable Organizations and Solicitations Act occurred. All of the former Board members may have civil liability as a result of these violations. This office will cooperate with the Kansas Attorney General's Office's investigation of the Foundation for these potential civil violations.

Conclusion

There is no question that the practices of the Foundation from its inception in 2016 were lacking in professional administration and record keeping. There was a history of normalizing payments to Board members and providing assistance to all FOP members, including Foundation

Board members, for a wide variety of reasons, seemingly in contradiction of the bylaws. This behavior amounted to an informal and unspoken amendment to the bylaws, behavior which was approved by the Board from the top down and acquiesced to by all Board members. This behavior remained unchecked until January of 2022. The lack of concise language in the bylaws, as noted above, also created uncertainty in determining what were considered permissible expenditures. These uncertainties created evidentiary and legal issues that inhibit our ability to file criminal charges against the aforementioned Board members.

Financial Forensics made recommendations to the new Board regarding the Foundation's accounting which should be implemented going forward, along with training as to the responsibilities of Board members, training which should include a legally complete explanation of the responsibilities and limitations imposed upon Board members by the Foundation's bylaws.

There can be little argument that the actions the former Board members took were questionable and breached the trust of both the public and the patrons they solicited from. The available evidence, however, does not support prosecution for theft beyond a reasonable doubt for the reasons outlined in this report. This finding does not address the potential civil liabilities or violations under the Kansas laws regarding charitable organizations.