



Administration Department

DATE: March 26, 2024

FROM: Jason Tomanek, City Administrator

ITEM: City Commission Fact Finding Subcommittee Recommendation

REQUEST:

Continued discussion and final decision regarding the final recommendation from the City Commission Fact-Finding Subcommittee relating to the performance issues of Charlie Jeske, Event Center Director, and recommendations regarding the appropriate actions to take to address any necessary employee discipline and changes to Event Center operations.

BACKGROUND INFORMATION:

At the February 27, 2024, Commission meeting, the Commission decided to continue the discussion of this item to its meeting on March 12, 2024. At the November 28, 2023, special meeting of the Board of City Commissioners, a motion was passed to create a fact-finding subcommittee consisting of two commissioners and Gordy Smith, whom Mayor Schmitz appointed, with direction to report back to the Commission on progress moving forward with Mr. Jeske's performance and a plan to implement checks and balances relating to business practices and contract management. Since that time, the subcommittee has met eight times.

RECOMMENDED CITY COMMISSION ACTION:

Continue discussion and make a final decision regarding the final recommendation from the City Commission Fact-Finding Subcommittee relating to the performance issues of Charlie Jeske, Event Center Director, and recommendations regarding the appropriate actions to take to address any necessary employee discipline and changes to Event Center operations.

STAFF CONTACT INFORMATION:

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ATTACHMENTS:

1. Fact-Finding Subcommittee Report and Findings

CITY COMMISSION FACT-FINDING SUBCOMMITTEE FINDINGS

The Fact-Finding Subcommittee was created by the City Commission at its November 28, 2023, meeting, which consisted of Commissioners Cleary and Connelly and Gordy Smith (appointed by Mayor Schmitz). We met several times and gathered knowledge through information reviews, interviews, observation, data collection, and analysis. The following is a summary of the subcommittee's findings and recommendations.

1. CONFLICT OF INTEREST

In 2015, Mr. Jeske took a trip paid for by a bidder (ETIX) prior to a ticketing bid being awarded. Other vendors were not provided with the same opportunity.

- The City's Principles of Ethical Conduct state, "...each City of Bismarck employee shall respect and adhere to the fundamental principles of ethical service as implemented in the regulations promulgated under this policy."
- They further state, "An employee shall not, except pursuant to such reasonable exceptions as provided by regulation, solicit, or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's department, or whose interests may be substantially affected by the performance or non-performance of the employee's duties."
- In addition, they state, "Employees shall act impartially and not give preferential treatment to any private organization or individual."
- They further state, "Employees must avoid any actions which are or may be perceived as a conflict of interest between their personal interests and the City's interests."
- Finally, they state, "Employees must avoid any actions that may involve, or that could be reasonably construed to involve, a conflict of interest with the City of Bismarck job responsibilities."

FINDING: The Fact-Finding Subcommittee concludes that Charlie Jeske violated the conflict-of-interest sections of the City's Principles of Ethical Conduct by accepting the 2015 trip paid for by ETIX prior to the awarding of the ticketing bid as all other bidders were not provided that opportunity.

2. LEADERSHIP AND MANAGEMENT

A. ALCOHOL SALES

- The 2016 request for proposal (RFP) for alcohol sales did not have a contract signed by both parties setting forth the terms of the agreement and incorporating the relevant portions of the RFP. Instead, for seven years, the BEC and the vendor used the RFP as the contract. As the department head, Mr. Jeske was responsible for securing a contract signed by both parties.
- The RFP states, “The manager shall issue reasonable rules and regulations consistent with policies adopted by the Event Center for the operations of the Alcohol Beverage Catering Services, and the Alcoholic Beverage Caterer shall operate in accordance with such rules and regulations.”
- The BEC’s manager’s job description states, “Develops policies and procedures to ensure the efficiency and effectiveness of department operations...”
- At the beginning of the Subcommittee’s review, the internal controls surrounding alcohol sales were seriously deficient. The cash-only process included counting cups at the beginning and end of the event and the number of flats (empty 18 packs and case boxes) to determine the number of beer/drinks sold and recording the number on an Alcohol Settlement Sheet. These numbers were then multiplied by the price of the beer/drink and totaled, and a representative of the vendor and BEC signed off on the form. Cash received during the event was placed in empty beer boxes. The vendor then removed the money from the BEC, and the BEC used the Alcohol Settlement Sheet to bill the vendor for its share of the proceeds (48% from 2016-2023).
- The most glaring internal control weaknesses in such a system include cash is not recorded immediately upon receipt; cash is never counted and reconciled at the end of the event; using cups and flats as means of determining sales can easily be circumvented; and cash-only sales present more opportunities for misuse than using a point-of-sale system allowing credit and debit card purchases.
- I used analytical review procedures to compare total alcohol sales for 2021, 2022, and 2023. Analyzing data such as attendance and number of events, it appeared that 2023 total sales were low. I reviewed the alcohol sales ledger maintained in the business office, reviewed monthly data for 2023, and found a \$106,658 error in the October 2023

data. The ledger is essentially an Excel spreadsheet, and the formula for totaling the month's sales was wrong; therefore, the monthly and yearly total was understated by \$106,658.

- I looked at individual Alcohol Settlement Sheets and judgmentally grabbed the Hairball Concert sheets from 2019, 2021, 2022, and 2023 (the 2020 concert wasn't held due to Covid). The 2022 Alcohol Settlement Sheet contained a serious mathematical error, which resulted in \$9,268 in alcohol revenue not being recorded on the sheet, which meant the vendor removed that revenue from the BEC without the BEC receiving its share.
- When looking at the comparative data on the Alcohol Settlement Sheets for the Hairball Concert sheets (see below) for 2019, 2021, 2022, and 2023, another anomaly becomes obvious. Attendance from 2022 to 2023 increased by 7.7%, while the number of beers sold decreased by 28%. This seems unusual. Both concerts were held on Saturday nights, so that was not a factor. If the same number of beers had been sold in 2023 as had been sold in 2022 (despite a 7.7% increase in attendance), there would have been \$14,058 in additional revenue collected. Once again, this is evidence of a serious lack of oversight surrounding the sale of alcohol.

Hairball Concert						
Comparison Data						
2019, 2021, 2022 and 2023						
		2019	2021	2022		2023
Beer Cups Sold		7,636	5,572	5,562		4,000
Mixed Drinks Sold		328	1,704	1,750		1,746
Attendance		3,171	2,776	3,256		3,509
Gross Alcohol Revenue		\$ 55,748	\$ 58,208	\$58,496*		\$ 51,714
Price Per Beer		\$ 7.00	\$ 8.00	\$ 8.00		\$ 9.00
* This is a corrected figure.						
In 2023, attendance was up 7.7% and number of beer cups sold was down 28%.						
If there were as many beer cups sold as in 2022 the alcohol revenue would be \$14,058 higher.						

- As a result of this error, I requested all Alcohol Settlement Sheets for 2021, 2022 and 2023. I selected some of the larger events and recalculated the amount of alcohol determined sold as well as the mathematical determination of alcohol sold multiplied by the sales price. In other cases, I did a cursory review just mentally doing those calculations. I found two additional mathematical errors calculating the amount of alcohol sold that together resulted in the vendor removing \$1,304 of alcohol proceeds from the building without BEC receiving its share. In addition, another serious concern is that I found 13 instances where the sheet containing the calculation of alcohol sold was missing from the Alcohol Settlement Sheet. I gave the Business Manager and the Food and Beverage Manager several days to locate these, but they couldn't find them. Since I uncovered three math errors totaling \$10,572, it is a serious problem that supporting documents are missing.
- During interviews with current and former employees, an employee reported finding a large bag of cash after an event and stated they turned it into their boss's office, who returned it to the alcohol vendor. A former employee confirmed this to me during their interview.
- As a result of the weaknesses in internal controls that have existed for many years and the results of the very basic testing, I was able to perform, I have very low assurance the BEC has received all the proceeds from alcohol that it should have since the time these poor internal controls have been in place. The findings I have listed reveal a serious lack of oversight of the sale of alcohol at BEC.
- Since our initial fact-finding process started, the BEC and the vendor have taken steps to improve the internal controls surrounding alcohol sales. Cash registers are now used to record cash immediately upon receipt, and the cash register tapes are now reconciled to the counts on the Alcohol Settlement Sheets. This is a positive step. However, to my knowledge, cash is still not counted and reconciled to the cash register tape. In addition, I still had issues reconciling the numbers used to determine alcohol sold on the sheet provided to me using the new system (the first day of the state pool tournament on February 15, 2024).

B. WORK ENVIRONMENT

- Interviews with current and prior employees revealed serious personnel issues with some employees of BEC. There were constant references to the differences in the treatment of employees in the “front and back of the house.” The “front of the house” refers to employees in the Food and Beverage Department, the Marketing and Sales Department, and the Business Department. The “back of the house” refers to the Operations Department.
- Criticisms of the manager included poor communication, failure to treat all employees fairly and equally, failure to consistently enforce policies for employees in the “front and back of the house,” and instances where employees witnessed unprofessional behavior. Several individuals interviewed stated they feared retaliation or retribution from the manager.
- Some employees expressed a great deal of skepticism as to whether the current manager would be able to resolve the current personnel issues, and they don’t believe the BEC would grow towards its potential if the current operating style and practices remain in place.
- Finally, some employees and former employees said the manager gave preferential treatment to certain vendors.

C. CONTRACTS

- There were several instances where contracts with entertainment/vendors were not being signed until shortly before the events were to take place. NOTE: Since the start of the Fact-Finding Subcommittee’s work, the BEC has implemented the use of Docu-Sign, which allows for electronic signatures, and while there have been some initial challenges, it is hoped this will help resolve this issue.
- There is no consistent, documented, detailed system used by management to determine the likelihood of profitability for events scheduled by BEC. While the manager and others cited certain research and an approach used for large events, there was no consistent, detailed, documented system available to measure the success/failure of any approach used by management. A detailed documented system (especially for large events to start with) to analyze the potential profitability of events prior to scheduling them would provide BEC with a tool to enhance their efforts at success. An analysis of the actual success of events scheduled vs. the system prediction model would enable BEC to judge the reliability of the

system and modify it to improve it. As time passes and the system improves, it should be used for more events prior to scheduling them.

D. LACK OF COMPREHENSIVE PLAN

- The BEC's audited financial statements for the years 2018-2022 show operating losses of between \$1.63-\$2.83 million per year.
- Using BEC data and its 2018 strategic plan, from 2015 to 2023, the number of events at BEC grew from 651 in 2015 to 773 in 2023 (18.7% increase). However, the attendance went from 475,454 in 2015 to 341,954 in 2023 (28.5% decrease).
- BEC has been able to weather these losses in part due to \$3.3 million in COVID relief funds received from the federal government. However, those funds are essentially gone as of the end of 2023.
- Falling attendance despite an increase in the number of events suggests that an evaluation of the strategy used to schedule events would be prudent. Some type of documented research and analysis would enable the management team to evaluate if a significant change in the type or timing of entertainment scheduled is necessary.
- A detailed documented system to evaluate the likelihood of the profitability of events, as discussed in C, should also improve the chances of scheduling more events that make profits for BEC.
- The manager's job description states "...conducts operational and financial performance evaluations...". However, when asked about this during his interview. The manager did not seem familiar with these types of evaluations. He discussed meeting with his operational supervisors and was informed they have talked to their full time and changeover crew about operations procedures. He further discussed that from a financial standpoint, he monitors the budget. When prompted by his attorney, he stated he has not been given any formal evaluative criteria or expectations relating to this aspect of his job description. The manager stated the Budget Committee and portfolio holder have acknowledged the BEC does not make money but should try to get as close to zero as possible. He also stated, "We always rely on the enterprise fund, which is actually the bed and booze tax, to be our safety net." This statement is puzzling since it is my understanding that the bed and booze tax is essentially restricted to capital improvements and not BEC operations, so it is not a safety net.
- Even if the BEC manager has not received any direction from his supervisors on the expectations of the nature and operational and financial evaluations called for in his job descriptions, as the BEC

department head, he should have sought this information from his supervisors during his 15-year tenure. The fact they are called for in his job description illustrates his supervisors consider them important to the position.

- An example of an operational evaluation may be a coordinated review of the processes used to host events and transition to subsequent events. This would include the sales staff as well as the operations staff and would involve an analysis of the timing of the events, labor requirements of the full-time operations staff, sustainability of the current system, consideration of alternative methods and ways of measuring the effectiveness of both the current and alternative systems proposed. For example, would hiring more part-time staff to relieve pressure on the full-time Operations staff during exceptionally busy times be more cost-effective and provide the sales staff with insight as to the critical nature of the accuracy and sufficiency of pre-event information?
- An example of a financial evaluation may be a consistent measurement of the profitability of scheduled events accumulated on an annual basis measured against the pro forma model discussed in the CONTRACTS section above. Another example of a financial evaluation would be the consideration of a documented analysis of the most/least popular and most/least profitable items sold in the concessions area and a rotation of those products. It could also include considering an expansion of the number of concessions offered after considering a more efficient use of space. (For example, would a food court in the north lobby be worth the cost of refurbishing it?)

E. WRITTEN POLICIES

- I reviewed a manual I received from the Business Manager. He stated all department heads have this manual. The manual contains information such as evacuation plans, the most recent strategic plan, and BEC policies.
- During the fact-finding process, I noted the absence of formal policies for certain areas that may prove useful for BEC department heads and staff. These include:
 1. Formal policies for authorization for distribution of complimentary tickets (current system appeared sufficient).
 2. Authorization for who can negotiate rates for space and services.

3. Authorization and guidance on what qualifies as a write-off of an account (the current system includes too many entries that do not qualify as a write-off).
4. Establishing of internal controls for the sale of alcohol and retention of the related supporting documents.
5. Establishing the internal controls over concession stand sales (which appeared very good based upon my walk-through).
6. Documenting the internal procedures surrounding the receipt of payments in the Business Office.

F. VENDORS AND BIDS

- Several vendors were interviewed as part of the fact-finding process. Many indicated they were pleased with the BEC Marketing and Sales manager and staff they dealt with. However, a few indicated they were frustrated dealing with the BEC manager. One stated he had been unprofessional to their staff.
- A vendor indicated that they signed a long-term contract with the BEC but would not do so again because many of the opportunities they were promised to help recover their investment have not been realized. While they were satisfied dealing with the Marketing and Sales staff, they specifically indicated they felt the manager “brought nothing to the table” and they hadn’t met with him in several years. The vendor said they had put a significant amount of money into the BEC. Their contract is up in a year or two, but they have not been contacted by BEC to discuss continuing the business relationship or to improve or increase their opportunities.
- A couple of vendors indicated they felt they were treated unprofessionally by the Food and Beverage Manager and staff.
- Two vendors who were unsuccessful bidders for the 2024 alcohol bid were extremely unhappy, and both felt the process was not fair and equitable to all bidders. One indicated they felt the process was fixed from the beginning.
- I reviewed the bidding process relating to the 2024 alcohol contract, and I have some concerns regarding the scoring of the bids. One concern related to the fact that the 5 individual scorers were allowed to keep their scores for each bid anonymous. In other words, the scores were turned in and accumulated, but no one knew which scores belonged to which scorer. Per discussion with the current City Administrator, this is common practice for all city departments. This was not the practice at the State Auditor’s Office, and honestly, I don’t

see its benefits. In fact, I believe this part of the process may allow a scorer to display a bias. One of the reasons I bring it forward is that in one case, the successful bidder got a perfect 45 from one scorer (a top score of 5 in all 9 categories). I have a fair amount of experience scoring bids from professional CPA firms. One of the categories to be scored asked how many people the bidder could bring to the job at a time. This is understandably important because the BEC could be hosting multiple events and require multiple bars at more than one event. The successful bidder indicated they could bring 50 people to the job on any given date and received a high score of 5 points from this scorer. Another bidder indicated they could bring 60 people to the job on any given date, and this same scorer awarded them 3 points. Finally, another bidder stated that they could bring 80 people to the job on any given date, and the same scorer awarded them 4 points. I do not believe any amount of logic or reasoning could justify those scores for those bidders from the same individual.

- In comparing other scores in different categories, I noted some additional concerning items. Some of these items may be attributable to the relative inexperience of the scorers in the process. But I also feel having the scorers “own” their scores by having them identified also reduces the chances of bias entering the process. However, the winning bidder did have the most professional bid submitted and did address all the items requested in the RFP. In my judgment, I have serious doubts whether another set of scorers would have reached a different conclusion in awarding the bid. However, I am convinced the final decision would have been closer than it was. I bring this information to the attention of the City Commission to illustrate the issue of allowing scorers on bids to remain anonymous.

FINDING

The Fact-Finding Subcommittee concludes that manager Charlie Jeske has demonstrated a lack of leadership, questionable judgment, and poor management for failing to address the issues cited above sufficiently. The poor internal controls surrounding the sale of alcohol were allowed to continue throughout his entire BEC career despite clear direction in his job description to establish policies and procedures to ensure the efficiency and effectiveness of department operations. It’s likely that because of the weak controls, the BEC has not received all the money from the sale of alcohol as it should have during his tenure.

Despite continued decreases in attendance and consistent financial losses, Mr. Jeske failed to develop a formal, comprehensive plan to explore potential strategies to address either situation. The falling attendance comes despite an increase in the number of events hosted by BEC. This would suggest that documented research and analysis of alternative methods of targeting and scheduling events would be prudent management.

The BEC was able to sustain continued operational losses due to over \$3.3 million of federal funds (Sheltered Venues Operating Grant) received in 2021. However, these funds are essentially gone, and the manager should have used his experience and expertise, in addition to input from his management team, to develop a documented formula to assist in targeting and scheduling entertainment, which has a higher likelihood of profitability. While these types of venues typically operate at a loss, successful pro forma tools help reduce that loss. In addition, if this had been done years ago, the formula could have been refined. It could also have been used comparatively for a post-event analysis on a year-over-year basis to show progress.

Employee and former employee interviews revealed significant issues that have existed for many years. Employees cited poor communication from the manager, failure to consistently treat employees fairly and equally, failure to enforce policies for employees in the front and the back of the house, unprofessional behavior, and fear of retribution and retaliation from the manager. When interviewed and asked about the employees' work environment, Mr. Jeske replied, "I thought we got along. To this day, I still think we get along quite well..." Later in the interview, he acknowledged that in the industry, "...the front of the house creates a headache for the back of the house to handle.." However, he went on to complain about his operations manager rather than accept any responsibility. The BEC manager's job description clearly calls for him to supervise the staff, and these unresolved personnel issues clearly indicate he has not sufficiently fulfilled that requirement.

Contract management issues appear to have started to be addressed only when the subcommittee's work began. There is still more work to be done relating to designing and documenting the pro forma analysis (as discussed above) prior to signing contracts.

While most vendors interviewed were very happy with the BEC Marketing and Sales Manager and staff, some were not pleased with the BEC manager.

As a result of these issues, which have existed for years in some cases, and the first finding above, the Fact-Finding Subcommittee feels it is neither reasonable

nor prudent to retain Charlie Jeske as BEC manager. Therefore, it is the Fact-Finding Subcommittee's recommendation that his employment be terminated.

3. SECONDARY RECOMMENDATIONS

- A. The City Commission consider approval of BEC securing a point of sale (POS) system for use for the sale of alcohol. The errors found, and the fact a POS system will reduce the amount of cash involved make such an investment worth it. If the BEC needs to be rewired to accomplish this—the rewiring is going to have to be done at some point in the future anyway and will most likely significantly improve technology usage by BEC staff.
- B. The City Commission consider requiring the BEC to institute a policy of having 360-degree evaluations at least once every two years. These evaluations should be developed by the City HR department and be mailed to the employee's home address and returned directly to the City HR department. They should include an evaluation of each employee's direct supervisor, department head, and the BEC manager.
- C. The City Commission consider hiring a firm to conduct a risk assessment of the BEC. Considering the age of the building and the equipment (boilers, etc.), as well as the number of events and the public attendance, it would be prudent to identify the largest risks to the public and the employees. This would also provide the commission with a basis to prioritize funding for capital improvements.
- D. The City Commission should consider modifying its contract with the CPA firm conducting the audit of the city to include an agreed-upon procedure. The CPA firm uses materiality to determine how much time and work it spends on each aspect of the City of Bismarck audit. It does very limited work at the BEC. An agreed-upon procedure would require the firm to conduct certain work (agreed on between the client and the firm) at BEC. This could be anything the Commission feels it wants to be examined. Considering what the employees have been through the last several months, I would suggest holding off on implementing this recommendation for at least one audit cycle.