Senator Cavanaugh:

And I was like, "They are blackmailing us."

Benjamin Eikey:

Yeah. I'd be like, "Well."

Senator Cavanaugh:

Or a ransom. I don't know how you want to describe it, but it's not good.

Benjamin Eikey:

Welcome to Oversight Matters, a podcast that gives you a behind the scenes look at legislative investigations around the country and the people involved. This is Ben Eikey, and I am your host. This podcast is brought to you by the Levin Center at Wayne Law in Detroit. On this episode of Oversight Matters, I am joined by State Senator Machaela Cavanaugh from Nebraska. Senator Cavanaugh has been a leader on legislative oversight in the Nebraska unicameral. This is a unique legislature with only one chamber and nonpartisan elected state senators. Today, we focus on a child foster care contract in Nebraska. The oversight of this contract was conducted by Senator Cavanaugh and a team of other concerned senators and staff. Our conversation takes several twists and turns, from initial concerns about the contract to embezzlement to what might happen next to better ensure children in need can receive essential care and support. Senator Cavanaugh, welcome to Oversight Matters. So, Senator Cavanaugh and I started with the normal chit chat, but then she immediately described the investigation. Let's listen in.

Senator Cavanaugh:

Yeah. So, I am starting my third year in the legislature, and I think it was about 10 years ago that the Nebraska legislature and administration decided to try privatization of child welfare in Nebraska. And it very quickly came to light that that was not feasible at that time for the state to do, that we didn't have the infrastructure within child welfare to privatize it. And so they quickly brought it back in house into the state, except for the Eastern Service Area, which is Omaha, mostly, and Omaha is the largest city in Nebraska. And so they left the Eastern Service Area privatized, and it's been a decade of ebbing and flowing issues. It was a pilot program, and the contract for the pilot program was coming to an end. Well, they had an emergency extension a couple years ago, but the emergency extension was coming to an end, and they bid out the RFP in February 2019, and ultimately awarded the contract to St. Francis Ministries in June 2019.

Senator Cavanaugh:

And that kind of started this journey, I guess we'll call it. So, it was previously run by Promise Ship, which was an entity that was created to be the Eastern Service Area. So, it wasn't an entity that had previously existed. It was created specifically for Eastern Service Area. And they were not re-awarded the contract at the end of the [inaudible 00:03:06]. They were given an emergency extension because there was nobody else that had applied for the contract previously. And so then we went through this new process, and St. Francis Ministry underbid the contract by 60%, and that was the start of pretty much everyone's universal concern, was that the state had awarded a contract for child and welfare, which is expensive to an out-of-state entity that had 60% lower cost. And to have 60% lower cost in child welfare did not seem feasible to anyone except for the people awarding the contract.

Benjamin Eikey:

Was there any avenue to be able to say, from the word "go," that perhaps this money doesn't really add up, or was there attempts to try to maybe not award it to St. Francis?

Senator Cavanaugh:

So, Promise Ship initiated a lawsuit because they felt that the bid was not appropriate, and that it was awarded purely based on the fiscal amount. And so the scoring for our procurement process was heavily weighted in favor of St. Francis Ministries because of the cost that they bid out, and because of that, they were awarded the contract because they got more points purely because of that. They scored lower on everything else. So, all other aspects of their application were-

Benjamin Eikey:

But the cost was so low that that overrode the concerns in the other parts?

Senator Cavanaugh:

Well, I wouldn't say it overrode the concerns. It overrode the math. That's part of what we don't really know is, what were the concerns of those that were awarding the contract? Did they have those concerns? And we haven't really gotten any straight answers. As far as the CEO of the Health Department of Health and Human Services here in Nebraska has testified in front of my committee and stated that she took them at their word. They said they could deliver the services for the amount of the contract, and she took them at their word. I don't think anyone should do that. I disagree with that approach to child welfare, and in looking at the contract further, or the scoring further, and the financial piece, I found that not only did they underbid the contract by 60%, they actually underbid the direct services portion of the contract, which is the most expensive thing by 92%.

Benjamin Eikey:

There's almost nothing left at that point.

Senator Cavanaugh:

Mm-hmm (affirmative).

Benjamin Eikey:

92%.

Senator Cavanaugh:

That means that they have higher administrative costs.

Benjamin Eikey:

Were there sort of mechanisms in place that the legislature could have used at this early of a stage, or do we just kind of have to wait for the train to fall off the track before things could really be done in an oversight capacity?

Senator Cavanaugh:

At that point, we were no longer in session. We had ended our session for the year. So, I suppose we could have had a special session, but the mechanism to enact a special session, that threshold is pretty high unless the Governor calls us back into session, which he was not going to do. We did have a briefing with St. Francis Ministries and the Department of Health and Human services in front of our committee during our interim session where they came in to sort of talk through how this was all going to work, et cetera. At that point in time, myself and several other members of the committee expressed some very serious concerns about the contract, including the fact that the bid for the contract was not compliant with state statute because we have in statute case ratios, and part of their savings was that they were going to have higher case ratios, which is not, by state statute, is not legal. And so that was a problem. This whole thing is a really big problem.

Benjamin Eikey:

No. It certainly sounds like one.

Senator Cavanaugh:

So, it gets worse.

Benjamin Eikey:

Don't worry.

Senator Cavanaugh:

It only gets worse from here. I don't know how much you have followed this, but I will-

Benjamin Eikey:

A few articles here and there. I know it was an issue that has been a priority for you and your office and so I wanted to make sure I at least had an elementary knowledge on what had happened here prior to this, but I'm learning and [crosstalk 00:07:50].

Senator Cavanaugh:

Well, get ready for a fun story.

Benjamin Eikey:

I'm ready to go. I'm buckled in.

Senator Cavanaugh:

I don't know if you are. So, we fast forward to October 2020. And so it's a year later. They've been doing this for a year, unfortunately, and we get an email. The committee gets an email from HHS saying that the President and CEO of St. Francis Ministries have been removed from their position. So, the very Reverend Bobby Smith, who was the president of the St. Francis Ministries, or maybe he was the CEO and the other guy was the president, not entirely clear. We were like, "Well, why were they removed?" And all they could say is, "There seems to be some financial malfeasance." Great, can't wait.

Benjamin Eikey:

Who were "they," that said that?

Senator Cavanaugh:

I couldn't even begin to have come up in my mind with the financial malfeasances that we then later came to find.

Benjamin Eikey:

Was that from the Department? Was that from St. Francis? Who used that?

Senator Cavanaugh:

The Department told us it was financial malfeasance on the part of St. Francis Ministries. So, St. Francis ministries is based in Kansas, and apparently... Not "apparently"... You can Google them. And there's just a long, long list of news articles over a decade about how poorly run they are, and issues that they have financially in Kansas, with the state of Kansas. So, we come to find that the Reverend Bobby Smith embezzled $11 million for some computer thing with a friend. And then there was another account now, quite remember the amount of money that he invested in his wife's super food project in Ecuador, or maybe El Salvador. I'm sorry. I can't keep those two straight. And then there was all the other just expenses, always upgrading flights to first class, staying in five star hotels, very expensive dinners. And the weirdest thing in my mind... It's all weird... But the weirdest thing was that he purchased, St. Francis Ministries, purchased $80,000 worth of Cubs tickets, and he literally stated it was to scalp them as a fundraising opportunity. Told you, you weren't ready for this story.

Benjamin Eikey:

Indeed, I was not ready for this story, nor for how child foster care contracts would become of significant oversight interest to me. Since the recording of this podcast, we have heard even more about child foster care contract oversight being conducted by state legislators. People like Senator Cavanaugh, all across the nation, are conducting oversight and revealing tragic facts on how vulnerable children are treated by some child foster care contractors. I admire their investigations and hope state oversight efforts will lead to needed improvements. Now, back to Senator Cavanaugh and her fascinating story.

Senator Cavanaugh:

So, we find all of this out because there was a whistle blower. This woman was hired to be, I think, the CFO in September 2020, and by October 2020, she's become a whistle blower.

Benjamin Eikey:

A month.

Senator Cavanaugh:

Well, there's two different things at play here. There's the financial malfeasance. Well, all of it is financial malfeasance, but there's the criminal activity of the President and then there is the distortion of the work. So, they have at least one case worker, but possibly many more, that were basically fabricating their reports on their work with children and families in Kansas because their caseloads were so high that they couldn't do all of the check-ins and all the things that they were supposed to be doing. So, they would just forge that they were happening. And it was 160 incidences of forged caseloads.

Senator Cavanaugh:

So, that triggered a big issue in the state of Kansas, and this is all happening at the same time as they're supposedly doing our case work. And as we're starting to find these things out, and still, I would say, in November, we don't know. We know that something happened with Father Bobby. We don't know what happened to Father Bobby yet. It's November and we still don't know. Early December rolls around, and a journalist in Kansas, Sherman Smith from the Kansas Spectator, he broke all of this story, and he published some articles about all of it online. He's the one that found out about the whistleblower and all of these things. And then we were supposed to have a briefing with St. Francis Ministries and the Health and Human Services Committee in Nebraska. And it was supposed to be on December 16th, and on December 14th, our state agency refused to come in front of the committee for the briefing, and directed, though they say they did not direct, but they did direct St. Francis Ministries to also not attend the briefing. That has never happened.

Benjamin Eikey:

The briefing has not happened yet?

Senator Cavanaugh:

No. I mean a state agency [crosstalk 00:13:46].

Benjamin Eikey:

That had not happened prior?

Senator Cavanaugh:

That's never happened. In recent history, at least, that has never happened. That is not a thing that happens.

Benjamin Eikey:

So, they were called to testify to this Senate briefing and the Department said no.

Senator Cavanaugh:

And it was scheduled around them.

Benjamin Eikey:

And the Department said no, and they told St. Francis?

Senator Cavanaugh:

Two days before they said, "We're not coming."

Benjamin Eikey:

Two days, and they said, "We're not doing this." What happened next?

Senator Cavanaugh:

So, our current chair of HHS was term limited, and her term ended at the end of the year, and she did contemplate subpoenaing them to come because we can, as a committee, subpoena them, but ultimately decided that, with the limited number of days she had left in her term, starting a new session, et cetera, that she would not do that. She pressed upon our committee that she thought this was really significant and important and we needed to follow it, follow up on it. So, our committee this year scheduled a briefing with them on January 14th, which they declined to attend because of snow. We could have done it virtually, but so they put it off for another week. So, then we had it on December or January, I think it was 21st or 22nd, whatever the Friday is that week of January.

Senator Cavanaugh:

And they came, and I said, "I can go into some of that," but ultimately, what we found out at that briefing... It wasn't a hearing was just a briefing... From St. Francis Ministries after our own state agency testified and left... They did not stay for the other testimony... St. Francis Ministries informed us that they would no longer be financially solvent by February 12th unless we renegotiated our contract with them.

Benjamin Eikey:

So, they had weeks, barely plural, weeks, and they came in.

Senator Cavanaugh:

They needed a new contract signed by January 29th.

Benjamin Eikey:

Did they at least try to explain fixing the problems?

Senator Cavanaugh:

And they knew this. They knew this, and our state agency knew this, back in December when they skipped our briefing in December.

Benjamin Eikey:

And here we are in late January.

Senator Cavanaugh:

And they told us after bill introduction, and the Nebraska legislature had ended.

Benjamin Eikey:

Did they talk about anything related to the contract, and trying to improve any of the services that they are obligated to deliver, or was it a financial conversation?

Senator Cavanaugh:

So, the contract that they signed increased the amount that the state was giving them so that we are now giving them the same amount that we were giving Promise Ship previously. They still aren't in compliance with caseloads. They aren't in compliance with almost anything. Additionally, we gave them $10 million to backfill their budget to pay back the State of Kansas, the money that they owed them. We paid a ransom.

Benjamin Eikey:

Have you had any conversations with any state legislative leaders in Kansas on this? Are they facing the same sorts of situation. Are they responding?

Senator Cavanaugh:

So, I haven't yet spoken with members of the Kansas legislature, though I did watch the Kansas... I think it was their Health and Human Services Committee... Questioning St. Francis the week after our hearing with St. Francis, but before our contract was signed with them, so a couple of days before that, and St. Francis Ministries told them that they would walk away from Nebraska if Nebraska didn't pay what they asked for. And I was like, "They are blackmailing us."

Benjamin Eikey:

Yeah. I'd be like, "Well."

Senator Cavanaugh:

Or a ransom. I don't know how you want to describe it, but it's not good. So, that was the day that I-

Benjamin Eikey:

How much longer is this contract live?

Senator Cavanaugh:

Sorry?

Benjamin Eikey:

How much longer is this contract live? I mean, is this-

Senator Cavanaugh:

So, it's now a 25 month contract, and we're one month in, so there's 24 months left, so it's still February 28th, 2023. I don't know if anybody thinks that it's going to last that long. So, my LR, I had put my LR in before the end. So, in Nebraska, you have 10 days to introduce those, the first 10 days of session out of the 90 day session. And so I put my LR in before that 10 days ended, and when St. Francis Ministries went in front of Kansas and said what they said, they went to our Executive Board that would hear my resolution, and I said, "You need to schedule my resolution. This is what's happening." They scheduled it. And now I am working with the Speaker and the Executive Board to get my resolution moved out of the committee and then we would have to vote on it on the floor. I would need 25 votes out of 49 and then it would be enacted. In my resolution, do you want me to tell you about the resolution?

Benjamin Eikey:

Yeah. We're all ears. I mean, you're-

Senator Cavanaugh:

I mean, I'm telling you a whole lot of this. I told you it's a journey.

Benjamin Eikey:

I know. I'm super curious to hear kind of what the way you're approaching this from the solution, from a legislative standpoint, and then also I think just a reflection on what worked here. What were you able to do just with the powers in the office and being a Senator where you are, what you could do to be able to gather the facts that you needed to be able to have some positives come out of this? I'd love to hear your thoughts on that because that's, I'm imagining, other elected officials across the country. I'm imagining staffers listening to this conversation, and going, "Yeah. I got something really weird and really messed up going on in my state too. I would really like to understand. How did you do it?" I think it would be a really beneficial thing to share.

Senator Cavanaugh:

Well, I'll tell you about the LR and then I'll tell you about all of that next. So, the resolution, it seeks to create a special investigative oversight committee with subpoena power. And the reason to do that, instead of just having my own committee do an investigation on it, is that it's going to include members from multiple committee. So, it's basically creating a special committee out of the expertise of different committees, including Appropriations, Government Affairs, because our Government Affairs Committee handles procurement issues, Health and Human Services. There's one of [inaudible 00:20:48] six. I can't remember. Judiciary, Crimes.

Senator Cavanaugh:

So, it's going to be a nine person committee, hopefully, and I am not a lawyer. So, I am one of eight children and I have three siblings that are lawyers and a lot of family members that are lawyers. I myself am not a lawyer. So, I really want to have somebody on there that's a lawyer, hopefully a prosecutor, because I think that's going to be really essential to getting at some of the unanswered questions that we still have. So, the investigative committee would be tasked with looking into, "How did we get here? How did we go through this procurement process and still accept a fraudulent bid that was clearly fraudulent? How did that happen? Was it the rules of our procurement, that they had to take the bid because of the scoring system?" And so part of it is seeking what, legislatively, do we need to change in our statute to make sure that something like this doesn't happen again, because when it comes to roads, maybe it makes sense to go with the lowest bid, but when it comes to children, that doesn't make sense.

Senator Cavanaugh:

So, that's one intention behind it. The other intention is, "Was there malfeasance on the part of anyone involved on our side of things? And if there was, how did that happen and where do we need to make those changes?" And then just fact finding. "What are all the pieces at play here, and what can we just do better in the future?" So, how I got to the place where I am today, it started in 2019 when the bid was first awarded. I had been a State Senator for, I think, seven months, and was trying to quickly learn all I could about Health and Human Services, child welfare, and it just struck me, as a person with a background in public administration, that this seemed off, and that services for children cost a lot of money and this seemed off, and why would we make this change?

Senator Cavanaugh:

And I never was able to get any answers to any of my questions from the state agency. So, I just kept asking them every opportunity I had, and kept not getting answers, which made me suspicious. So, after Sherman Smith's articles came to light, he reached out to the chair of HHS, former Senator Sarah Howard and myself. And so then I started talking to him and learning about what he had learned in Kansas. And so just through learning what had happened in Kansas from him, and he had FOIAed a lot of documents from the state, that's when I started making my own requests here in Nebraska. And I started submitting requests to our state agency, asking for information around specific things around the contract.

Senator Cavanaugh:

And then I reached out to the lawyer who was in charge of the lawsuit when Promise Ship sued the state because they thought it was a fraudulent contract bid. And he shared with me the documentation from that lawsuit, and that had a wealth of information in it. I have three very large binders over on my shelf that are this thick each, full of documentation from that lawsuit. It was like an onion. You [inaudible 00:24:46] a thread. You just keep pulling at it, and I mean, I trusted my gut. I felt like something was wrong. And so I just kept asking questions and pushing for it and then reaching out to stakeholders, reaching out to the foster care community. There's been a lot of press around this and my name has been in the press and so a lot of people have reached out to me.

Senator Cavanaugh:

I have had parents of children that have been in the system reach out to me. I have had workers reach out to me. I have had several spouses of workers reach out to me because their spouse is struggling emotionally with a lot things happening.

Benjamin Eikey:

Spouses of workers.

Senator Cavanaugh:

Legislators really need to be accessible to the citizens. And that's how you find out the most.

Benjamin Eikey:

While this story is not yet over, Oversight here has uncovered facts that will help shape a better future for children in the foster care system. When wrapping up my time with Senator Cavanaugh, I asked her why oversight matters. I enjoyed her answer. So, the name of the podcast is Oversight Matters. So, Senator Cavanaugh, to you, why does oversight matter? What is it about this type of work that really makes it valued, makes it important?

Senator Cavanaugh:

Well, I think the most important role for government is to be transparent. Government is funded by the citizens' tax dollars, and it's our job to be good stewards of tax dollars, but also it's our job to serve the people. And if we are doing things in secrecy and behind closed doors, then how are we serving the people that we're elected to serve? And so I think that oversight is the most important role that a state legislature can play in government and ensuring that things are happening effectively.

Benjamin Eikey:

Hi, everyone. Today is December 15th, 2021. Yesterday, it was announced that the St. Francis contract has been terminated in Nebraska. As you just heard, the road to today has been full of uncovering facts, leveraging the power of the legislative office, and maintaining consistent expectations of transparency. Thank you to the legislative leaders and staff in Nebraska for all of the oversight work, digging through documents, research, and organizing hearings. Results like this are exactly why oversight matters. Thanks again, everyone, for listening. We hope you can join us next time on Oversight Matters.