

STATE OF WEST VIRGINIA

**SPECIAL REPORT
ATTORNEY GENERAL'S OFFICE**

Deficiencies in Internal Control Within
the Office of the Attorney General Create
a Lack of Overall Accounting Integrity

The Attorney General's Office has Encountered
Problems with Statewide Purchasing Card Usage

The Attorney General's Office Disregarded
Executive Proposal and Legislative Intentions by
Rejecting Across-the-Board Pay Raises for
All Employees

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
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February 2001

PE00-40-198

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February 2001

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John Sylvia
Director

February 11, 2001

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Special Report on *the Attorney General's Office*, which will be presented to the Joint Committee on Government Operations on Sunday, February 11, 2001. The issues covered herein are "*Deficiencies in Internal Control Within the Office of the Attorney General Create a Lack of Overall Accounting Integrity; The Attorney General's Office has Encountered Problems with Statewide Purchasing Card Usage; and The Attorney General's Office Disregarded Executive Proposal and Legislative Intentions by Rejecting Across-the-Board Pay Raises for All Employees.*"

We conducted an exit conference with the *Attorney General's Office* on February 5, 2001. We received a revised response on February 8, 2001.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

JS/wsc

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Executive Summary

Issue Area 1: Deficiencies in Internal Control within the Office of the Attorney General Create a Lack of Overall Accounting Integrity Due to One Individual Controlling Most Accounting Functions.

The accounting functions of the Office of the Attorney General (AG's Office) rely too heavily upon one individual: its controller. A component of generally accepted accounting principles is that internal controls should provide adequate internal control structure and design, appropriate segregation of duties, appropriate reviews and approvals, and provisions for the safeguarding of assets.

The controls in place within the AG's Office are largely dependent upon one individual and correspondingly, upon the integrity of that individual. Interviews with the controller show that he is the person responsible for administering Accounts Receivable, preparing invoices, preparing vouchers (for payment) and verifying documentation, and distributing special-handled checks. The effects and risks of the lack of controls and over-reliance on one individual can be revealed by a number of instances including documents having only the controller's signature on invoices and purchase order agreements, vendors payments which exceed \$10,000 in value without going through the competitive bid process, and rejection rates on invoices of 7% to 9% which are considerably higher than the average rejection rates for all state agencies.

The controller does have three (3) employees assigned to that office who perform many of the data entry transactions. This segregation of duties certainly helps in high risk areas such as billing and accounts payable. However, the mitigating factor concerning these employees is that they are still under the "control" of the controller.

Internal control inadequacies have allowed for a vulnerability of state assets. That is, state funds could be misused due to the lack of proper internal controls within the AG's Office.

Recommendation 1:

The AG's Office needs to implement a better system of internal controls whereby there is a segregation of duties within the system of accounting, especially with high risk areas such as purchasing and accounts payable and invoicing and accounts receivable.

Recommendation 2:

Managing Deputies should begin to sign off on all transactions thus creating a level of accountability above the Controller and should also alternate signature responsibilities after certain specified periods of time.

Issue Area 2: The Attorney General's Office has Encountered Problems with Statewide Purchasing Card Usage according to the Guidelines Established by the WV Auditor's Office.

The AG's Office has been cited for numerous findings by the State Auditor's Office for its misuse of the statewide Purchasing Card Program (P-card). The State Auditor's Office has performed two audits of the AG's Office and findings were severe enough to place the office on probation. Some of the findings noted were late payments, cardholders not reconciling, individual log sheets not being kept, invoices not itemized, and stringing of invoices. The Post-Audit staff has systematically reduced the number of P-cards available to the AG's Office from six (6) cards down to three (3) and has drastically reduced the agency's credit limit from \$100,000 down to \$13,000. The AG's Office is in jeopardy of losing P-card usage entirely if it does not adhere to the established rules for usage. This would result in increased expense to the State of West Virginia if the cost-savings produced by the P-card are disallowed due to cancellation. However, new procedures have been implemented by the AG's Office which should alleviate many of the problems if they are enforced correctly.

Recommendation 3:

The controls in place relating to use and administration of the statewide Purchasing Card Program should be followed and adhered to more strictly by the Attorney General's Office.

Issue Area 3: The Attorney General's Office Disregarded Executive Proposal and Legislative Intentions by Rejecting Across-the-Board Pay Raises for All Employees for FY 2001. However, The AG's Office Did Give Pay Raises to Certain Individuals.

During the 2000 Regular Session, the Governor submitted his proposed budget for FY 2001. In the Budget, the Governor included an ACROSS-THE-BOARD SALARY INCREASE for all full-time state employees. The Office of the Attorney General, against the recommendation of the Governor and the Legislature, opted to decline the \$756 pay raise for many of its employees. The Attorney General's Office did grant the pay raise to certain individuals working in their office. However, the AG's Office did not provide the across-the-board pay raise for ALL employees as recommended by the Governor and the Legislature. As of December 31, 2000, there were still thirty-nine (39) employees who have not received any additional pay for this fiscal year. This shows a total disregard for the intent of the Governor and the Legislature.

Recommendation 4:

The Office of the Attorney General should comply with the across-the-board pay raises consistent with Executive and Legislative intentions.

Review Objective, Scope and Methodology

This report on the Office of the Attorney General (AG's Office) was conducted in accordance with WVC §4-2-5 outlining the powers of the Legislative Auditor. This audit was performed to provide an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of this governmental unit in order to provide information to improve public accountability and facilitate decision-making by parties with responsibility to oversee or initiate corrective action.

Objective

The objective of this report is to determine if the Office of the Attorney General is:

1. Maintaining adequate internal controls to ensure integrity and protection of public funds.
2. Following established policies and procedures for usage of the statewide Purchasing Card.
3. Adhering to the Governor's and Legislature's intentions relating to the across-the-board pay raise for FY 2001.

Scope

The scope of this internal control review focuses on examining numerous aspects and documents which relate to an overall proper accounting system, specifically relating to the internal controls in place by the Office of the Attorney General.

The scope of the Purchasing Card usage primarily centered on the Policies and Procedures Manual provided by the WV State Auditor's Office and how closely the use of this card by the AG's Office followed those established guidelines.

The scope of the pay raise issue included examining whether the AG's Office has complied with the Governor's Executive Proposal concerning the budget implementation.

Methodology

The methodology included conducting interviews with representatives of the Attorney General's Office, obtaining information from the AG's Office and other state agencies, examining the WV Code and other pertinent publications such as the *Statements on Auditing Standards* (SAS), and searching the on-line financial information found on WVFIMS.

Every aspect of this evaluation complied with Generally Accepted Government Auditing Standards.

Issue Area 1: Deficiencies in Internal Control within the Office of the Attorney General Create a Lack of Overall Accounting Integrity Due to One Individual Controlling Most Accounting Functions.

The accounting functions of the AG's Office rely too heavily on one individual: its controller.¹ Although it is the nature of any controller position to oversee all accounting functions, it is not the ideal situation for any one person to control all financial operations of an agency or constitutional body. With the spending authority of the AG's Office in excess of \$7.1 million, there should be better segregation of duties within that office to ensure more effective control procedures. That is, the Attorney General should adequately design and implement an overall internal control structure which is more dependent on other individuals to fulfill the responsibilities inherent within a proper accounting system.

CRITERIA FOR INTERNAL CONTROLS

According to the *Codification of Statements on Auditing Standards* issued by the American Institute of Certified Public Accountants which is in accordance with generally accepted accounting principles, deficiencies in internal control structure are defined as:

- inadequate overall internal control structure design,
- absence of appropriate segregation of duties consistent with appropriate control objectives,
- absence of appropriate reviews and approvals of transactions, accounting entries, or systems output, and
- inadequate provisions for the safeguarding of assets.

In conjunction with the above reference, the WV State Code cites the following in §5A-2-24:

“It is the intent of this section to establish a centralized accounting system for ... each spending unit of state government to ... increase public accountability.

Notwithstanding any provision of this code to the contrary, the secretary [of Administration] shall develop and implement a new centralized accounting system for the planning, reporting and **control of state expenditures in accordance with generally accepted accounting principles** to be used by ... all spending units. **The accounting system shall provide for adequate internal controls, accounting procedures, ...”**

[Emphasis added].

¹ *It is not the intent of the Legislative Auditor to question the integrity of the Attorney General's controller, but merely to question the overall adequacy of the internal controls which rely, in many respects, solely on one individual.*

The underlying theory behind the concept of segregation of duties is that it forces collusion between two or more persons which is believed to decrease the probability of impropriety due to two or more individuals being forced to conspire between themselves. That is, it is believed that individuals are less likely to commit any type of intentional misrepresentation when they are forced to conspire with another individual or individuals in order to do so.

Thus, for an accounting system to be “adequate,” it should contain some segregation of duties for certain accounting functions such as purchasing and accounts payable. Hypothetically, the consequences are that an individual could order something, then pay for it and no one else would know about the transaction. Likewise, it should also stand to reason that the person who bills an agency should not be the person who receives the payment for that billing. The consequences are that someone could not record an invoice in Accounts Receivable and then receive the payment for it without anyone having knowledge of the transaction.

LACK OF CONTROLS

The controls in place within the AG’s Office are largely dependent upon one individual and, correspondingly, upon the integrity of that individual. Although it is inherent within any controller position to oversee the accounting functions, the AG’s controller oversees almost the entire accounting process personally, including purchasing, billing, accounts receivable, payroll, accounts payable and, in part, the mailing of special handled checks. The controller does have three (3) employees assigned to that office who perform many of the data entry transactions. This segregation of duties certainly helps in high risk areas such as billing and accounts payable. However, the mitigating factor concerning these employees is that they are still under the “control” of the controller. Therefore, this tightly controlled system alone must draw a red flag due to the fact that one individual administers and performs most facets of the accounting process.

Interviews with the controller show that he is the person responsible for administering Accounts Receivable, preparing invoices, preparing vouchers (for payment) and verifying documentation, and distributing special-handled checks. The controller further concedes that he is the person chiefly responsible for making purchasing decisions and for administering Accounts Payable. **Documents furnished by the State Auditor’s Office show the controller being the only signature appearing on the invoice and on the purchase order agreement.**

The cause of these lack of controls and dependence upon one individual is uncertain. Management mentions a lack of budgetary spending ability (i.e., shortage of funds) for this governmental unit but, with a total budget exceeding \$7.1 million, it appears that either management is unwilling to delegate any accounting responsibility to others or management completely believes and relies on the sole integrity of its controller.

EFFECTS OF INADEQUATE CONTROLS

The effects and risks of the lack of controls and over-reliance on one individual within the AG’s Office can be revealed by a number of instances. For example, the Purchasing Card program within the State Auditor’s Office has reported problems with the AG’s use of the Purchasing Card

(this is discussed further in Issue Area 2). Reportable findings include stringing purchases to circumvent the Purchasing Card transaction limit, invoices which are not itemized, allowing the card to be used by someone in the office other than the cardholder, and questionable purchases that are either prohibited or are not business related.

Additionally, the State Auditor's Auditing Division which deals with contracts reports problems regarding invoices from vendors that exceed \$10,000 in value. According to West Virginia Code and Purchasing Guidelines, contracts that exceed the value of \$10,000 must go through the Purchasing Division and they must go through a competitive bid process. Five of the AG's vendors received payments in excess of \$10,000--with one vendor receiving over \$38,000--without going through the Purchasing Division's bid process. This sample of five vendors had payments in excess of \$102,000. The obvious problem with circumventing the competitive bid process is that the State may have been able to acquire those services at a lower cost, and there is the risk that the vendors were chosen because of a pre-existing relationship in which there is some financial gain to staff of the AG's office.

Other problems cited are invoices which do not reference against a statewide contract and invoices which reference no purchase order. These types of violations require the State Auditor's Office to reject these invoices by sending them back to the agency for corrections and re-submission. In fact, the AG's office has a rejection rate on invoices of 7% to 9% per month. This is considerably higher than the average rejection rate for all state agencies. For example, in the months of April, June and July, 2000, the AG's Office had a rejection rate of 9.4%, 9.0% and 7.3%, respectively, compared to 3.0%, 4.1% and 3.0%, respectively, for the other state agencies. The Auditor's Office has also cited problems with obtaining information when the AG's controller is out of the office.

OTHER REASONS FOR CONCERN

The Attorney General's Office also serves as a trustee for certain funds: *the Anti-Trust Enforcement Fund, the Consumer Protection Recovery Fund, the Preneed Burial Contract Regulation Fund, the Preneed Funeral Guarantee Fund, and the AG of West Virginia - Sears Roebuck Settlement 97-C-1941*. These fund balances change periodically through funds received and disbursed. These funds have never been audited, and there are no financial statements. Adequate internal controls would justify independent audits on such funds and financial statements, particularly since some of these funds are held in trust for citizens of the State. The Legislative Auditor does, however, intend to perform an audit of these funds.

CONCLUSION

Internal control inadequacies have allowed for a vulnerability of state assets. That is, state funds could be misused due to the lack of proper internal controls within the AG's Office. It can certainly be concluded that several control mechanisms in place by the State Auditor's Office are being either abused or ignored by the AG's Office. At the very least, the tight span of control within the AG's Office should be a cause for alarm.

Recommendation 1:

The AG's Office needs to implement a better system of internal controls whereby there is a segregation of duties within the system of accounting, especially with high risk areas such as purchasing and accounts payable and invoicing and accounts receivable.

Recommendation 2:

Managing Deputies should begin to sign off on all transactions thus creating a level of accountability above the Controller and should also alternate signature responsibilities after certain specified periods of time.

Issue Area 2: The Attorney General's Office has Encountered Problems with Statewide Purchasing Card Usage according to the Guidelines Established by the WV Auditor's Office.

The Attorney General's Office has been cited twice, in October 1999 and in March 2000, for numerous findings by the State Auditor's Office for its misuse of the statewide Purchasing Card Program (P-card). In fact, the AG's Office is in jeopardy of losing usage of the P-card entirely due to its continued problems with the program and for failure to adhere to the guidelines established by the State Auditor's Office and the Purchasing Division.

The State Auditor's Office has performed two audits of the AG's Office. The purpose in performing these audits was to determine if the Purchasing Card was being used to acquire resources effectively and efficiently, and to determine if the Purchasing Card Policies and Procedures were being followed. The findings of the audits were severe enough to place the office on probation. Furthermore, the State Auditor's Office has systematically reduced the number of P-cards made available to the AG's Office from six to three, including taking away the card from the Purchasing Card coordinator, who also is the controller.

The AG's Office has implemented new written procedures concerning P-card usage since their last audit. These new procedures, if followed correctly, should alleviate many of the AG's P-card problems.

PURCHASING CARD POST-AUDIT FINDINGS

The Purchasing Card Post-Audit staff of the State Auditor's Office cited numerous findings in its two audits which the Post-Audit staff termed as "severe." Some of the findings noted were the following:

- Late Payments - consistently late payments with delinquent payments over 60 days twice and over 30 days twelve times.
- Cardholders Not Reconciling - individual cardholders did not reconcile their statements.
- Individual Log Sheets not being kept - cardholders not keeping their own log sheets.
- Invoices not itemized - invoices do not show individual items with quantities and price, invoices hand-written by cardholder or invoice missing altogether.
- Tax being charged - sales tax being charged for tax-exempt purchases.
- Stringing of invoices - invoices being "split" (i.e., amount cut in half) and processed as two separate invoices (to apparently circumvent transaction limit).
- Card Security violations - more than one person authorizing transactions using the same P-card (i.e., loaning one's card to another individual).
- Questionable Purchases - purchasing items which were either prohibited or which were questionable in regards to being business related.

The Post-Audit staff has systematically reduced the number of P-cards available to the AG's Office from six (6) cards down to three (3) and has drastically reduced the agency's credit limit from \$100,000 down to \$13,000. In fact, the AG's Card Coordinator--who is also its controller--does not have a card now although he is still the coordinator.

CONCLUSION

The Attorney General's Office has had a number of conflicts with the Post-Audit staff of the State Auditor's Office concerning its inappropriate usage of the Purchasing Card. Although systematic steps have been taken to rectify the problem, the AG's Office continues to have problems with proper usage and administration of the card. The causes of these violations are in part the result of inadequate controls and, also in part, guidelines not being followed. Use of the P-card is purportedly a cost-saving system whereby governmental agencies can process small dollar amounts more efficiently. The AG's Office may be in jeopardy of losing usage of the P-card entirely if it does not adhere to the established rules as specified in the *Purchasing Card Policies and Procedures* manual. This would result in increased expense to the State of West Virginia if the cost-savings produced by the P-card are disallowed due to cancellation. However, the new procedures implemented by the AG's Office should alleviate many of the problems if they are enforced correctly.

Recommendation 3:

The controls in place relating to use and administration of the statewide Purchasing Card Program should be followed and adhered to more strictly by the Attorney General's Office.

Issue Area 3: The Attorney General's Office Disregarded Executive Proposal and Legislative Intentions by Rejecting Across-the-Board Pay Raises for All Employees for FY 2001. However, The AG's Office Did Give Pay Raises to Certain Individuals.

The fiscal year 2001 budget proposed by the Governor included a \$756 pay increase for all full-time employees. The Governor's proposal required most executive spending units, including the Office of the Attorney General, to absorb the pay increases from elsewhere in their budgets. The WV Legislature did not deviate from the Executive's proposal, except for the addition of a line item for the Board of Risk and Insurance Management (BRIM) Premium in each spending unit's account. Thus, it can be reasonably concluded that the Legislature intended for the Attorney General to make the \$756 ACROSS-THE-BOARD pay raise per employee. However, the Attorney General's Office chose not to comply with the Legislature's recommendation for the \$756 pay raise per employee but did increase the pay for forty-four (44) individuals on July 1, 2000, who were contracted to a particular agency. Meanwhile, the remaining one hundred twenty-eight (128) employees, roughly 74 percent, on the AG's Office payroll did not receive the raise at that time. Subsequent to that time, the AG's Office did grant raises to additional personnel. That notwithstanding, as of December, 31, 2000, the AG's Office still had thirty-nine employees not receiving any additional remuneration for the current fiscal year. This action goes against the intent of the Legislature and creates an inequity for some of the Attorney General's employees.

GOVERNOR'S EXECUTIVE PROPOSAL

During the 2000 Regular Session, the Governor submitted his proposed budget for FY 2001. In the Budget, the Governor included an ACROSS-THE-BOARD SALARY INCREASE for all full-time state employees. This increase was to be financed by increased funding from the line items Personal Services (001) and Employee Benefits (010). However, the Governor did not include any "new" money for this pay raise; the money was to come from the Unclassified line item (099). The Governor submitted this proposal to the Legislature for approval. The WV Legislature approved the Governor's Executive Proposal for the FY 2001 budget with one exception.

ATTORNEY GENERAL'S OFFICE REJECTS PAY INCREASE

The Office of the Attorney General, against the recommendation of the Governor and the Legislature, opted to decline the \$756 pay raise for many of its employees. In a written statement to the House Committee on Finance, dated June 22, 2000, the Attorney General's Controller wrote:

At this time, the Office of the Attorney General does not plan to provide the \$756 across-the-board raise to our employees. However, subsequent to the filing of our expenditure schedule, 44 of our employees working for the Bureau of Employment Programs have been approved for the across-the-board and about \$12,000 of merit increases by our client. Other agency clients have not been contacted in regards to the funding of additional raises yet.

The Attorney General's Office did, therefore, grant the pay raise to certain individuals working in their office—more specifically, those individuals working for the Bureau of Employment Programs. However, the AG's Office did not provide the across-the-board pay raise for ALL employees as recommended by the Governor and the Legislature.

According to the AG's controller, the Attorney General's rationale for not providing its pay raises to all employees was their contention that adequate funding was not available in the budget. That is, they believed that the AG's Office needed the money left in the Unclassified (099) account for other expenditures which made a pay raise prohibitive if money was to be used from that account. For this reason, the AG's Office, according to the Controller, requested that the appropriations for pay raises be reversed back into the Unclassified account. In this conversation, the controller did acknowledge that the pay raises for certain individuals was strictly a "management decision" in relation to who would receive the raises.

In the Legislative Auditor's opinion, the funds transfer from the Unclassified (099) account to the Personal Services (001) account and Employee Benefits (010) account were adequate to fund the additional pay raise for the other employees in the AG's Office. The additional money funded to the AG's Office for this pay raise was only for seventy-four employees (\$55,944/\$756=74). Presumably, additional funding for other personnel was not provided since many employees have all (or most) of their salaries reimbursed from other agencies. However, if this transfer left a shortage within the Unclassified account, the AG did have other options: namely, to request an "Additional Funds Transfer" or to increase billings for the other employees.

CONCLUSION

The Executive proposal authorized by the Governor concerning the across-the-board pay increase was part of a statewide raise intended for all state employees. The Legislature concurred with this increase without exception (other than noted above). Therefore, it can be concluded that West Virginia's executive and legislative branches did indeed deem this pay raise fiscally responsible for all employees and deserved by all employees without exception. To disallow this raise to some personnel creates an unfair distribution to many employees. It also shows a total disregard for the intent of the Governor and the Legislature.

Recommendation 4:

The Office of the Attorney General should comply with the across-the-board pay raises consistent with Executive and Legislative intentions.

APPENDIX A

Transmittal Letters to Agency

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
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John Sylvia
Director

January 29, 2001

Ms. Barbara Allen, Managing Director
Office of the Attorney General
Building 1, Room E-26
1900 Kanawha Blvd., East
Charleston, WV 25305-0220

Dear Ms. Allen:

Enclosed is the draft report, scheduled to be presented at the February Legislative Interims on February 11-13. Please review and we will contact you to schedule an exit conference for either Thursday or Friday of this week. At that time, you will have the opportunity to discuss any concerns or disputes regarding the report. If you would like your written response to be included as part of the final report, please submit it to our office by Monday, February 5, 2001.

If you have any questions, please contact me or Joe Gray, Research Analyst.

Sincerely,

A handwritten signature in cursive script that reads "Brian Armentrout".

Brian Armentrout
Research Manager

BA/jg

Joint Committee on Government and Finance

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
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John Sylvia
Director

February 6, 2001

Ms. Barbara Allen, Managing Director
Office of the Attorney General
Building 1, Room E-26
1900 Kanawha Blvd., East
Charleston, WV 25305-0220

Dear Ms. Allen:

Enclosed is the revised draft report, scheduled to be presented at the meeting of the Joint Committee on Government Operations on Sunday, February 11, 2001 at 4:00 PM in the House Government Organization room. After our meeting of Monday, February 5, we have taken consideration of the various issues brought up about the report. After doing so, we have made editorial changes in the report that have done the following:

1. In Issue Area 1 (p. 10), we now mention the three employees assigned to the controller who help in segregating accounting duties.
2. In Issue Area 1, Recommendation 3 was eliminated and reference to a future audit of various trust funds was made in the text (p.11).
3. In Issue Area 2, the words "misuse and abuse" were taken out of the title and replaced with "encountered problems" (p.13).
4. In Issue Area 2, there is now mention made of new P-card procedures and that they should alleviate past problems (p.13).
5. In Issue Area 2, Recommendation 5 has been eliminated.
6. In Issue Area 3, we now mention that additional employees were given raises subsequent to July 1, 2000 and that 39 employees did not receive any raises for the current fiscal year (p.15).

Joint Committee on Government and Finance

In regards to Issue Area 2, we believe that this issue should still be in the report because it is still fairly recent and it is our responsibility that the Legislature be made aware of it. The information you provided us pertaining to Issue Area 3 was reviewed, however, some of pay increases listed occurred prior to July 1, 2000 and would have been part of the previous fiscal year's budget and not for FY 2001. Therefore, we couldn't include those increases.

We appreciate your input at the exit conference and hope that the changes that were made to the report are sufficient in alleviating some of your concerns. However, we are aware that we were unable to entertain all of your requests. We hope you understand our reasons why we could not do so. If you would like a revised response to be printed in the report, please get it to us by noon on Thursday, February 8.

If you have any questions, please contact me or Joe Gray.

Sincerely,



Brian Armentrout
Research Manager

BA/jg

APPENDIX B
Agency Response



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL

(304) 554-2021
FAX (304) 554-0140

February 8, 2001

Mr. Brian Armentrout
Research Manager
West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610

Dear Mr. Armentrout:

Enclosed is our written response to the audit team's final report. We respectfully request that this response be submitted to the Legislature as part of, or together with, your report.

We appreciate the opportunity we had to meet with you and other members of the audit team. We felt that the meeting was very productive and that plenty of light resulted from the heat!

With kindest regards, I remain

Very truly yours,

A handwritten signature in black ink that reads "Barbara H. Allen".

BARBARA H. ALLEN
MANAGING DEPUTY ATTORNEY GENERAL

BHA/jy
Enclosure

**RESPONSE OF THE ATTORNEY GENERAL'S OFFICE
TO REPORT OF THE WEST VIRGINIA LEGISLATURE'S
PERFORMANCE EVALUATION AND RESEARCH DIVISION**

Issue Area 1: Deficiencies in Internal Control within the Office of the Attorney General Create a Lack of Overall Accounting Integrity Due to One Individual Controlling Most Accounting Functions.

The problems recited in the legislative audit report are primarily matters of form rather than substance. Our accounting functions and duties are in fact divided among four individuals, although only our controller, Michael Proops, signs off on most documentation. Thus, the problem seems to be that our system, which can fairly be characterized as "at least two people look at everything," is not apparent from the paperwork.

Further, the auditors' concerns about our purchasing practices are not well founded. The vast majority of our expenditures are fixed or case-related; this is a law office that must pay for rent, books, computer research resources, copiers, law office supplies, court reporter charges and the like, and many of the vendors for these law related expenditures are sole source vendors. Michael Proops has very limited purchasing authority; he can authorize discretionary, special need purchases of \$100.00 or less, although in fact he consults with a Managing Deputy Attorney General on almost every discretionary purchase, regardless of amount, and our discretionary purchases are very few. The only sizeable expenditure over which Mr. Proops has authority is computer support services, and in this regard he is uniquely qualified to make expenditure decisions since he is knowledgeable about computers and functions as our in-house repairman and troubleshooter. This extra job is a major headache for which Mr. Proops receives no additional pay. We are generations behind the curve in computer technology and have no money for upgrades, let alone a computer specialist.

We have investigated the circumstances surrounding the five vendors whose invoices exceeded \$10,000.00 in fiscal year 2000, and have learned that the vendors in question are Pitney Bowes, Barrister Information Systems, West Publishing, Lexis Law Publishing and Dominion Systems.

(1) With respect to Pitney Bowes, this Office has three different sites for which mailing equipment and meters are necessary, and none of the Pitney Bowes invoices exceeded \$10,000.00.

(2) Barrister Information Systems was the sole-source for upgrading our timekeeping software, and again, none of its invoices exceeded \$10,000.00.

(3) From the formation of the Office of the Attorney General until recently, the Office has *never* needed a purchase order for legal books for our library. However, the Auditor's Office has now "interpreted" the State's rules to require purchase orders, and we are in compliance. West Publishing, the sole-source and copyright holder of the key numbering system utilized in legal research materials, now has a purchase order to account for our purchases of law books.

(4) Likewise, Lexis Law Publishing, the copyright holder of the annotated version of the West Virginia Code, now has a purchase order to account for our book purchases.

(5) In 1998, Mike Proops received an award from the Governor's Office of Technology for utilizing new technology in state government. The adoption of this technology was reviewed and approved by IS&C. Dominion Systems of Bluefield, West Virginia is the only in-state vendor certified by the manufacturer to install this technology.

We note your criticism that our Auditor rejection rate exceeds that of other state agencies. (Interestingly, most of our rejection problems have been with travel invoices,

which are processed by an employee other than Mr. Proops; also, a large percentage of our June and July, 2000 rejections were "automatic" in that paperwork had to be changed to reflect that a new fiscal year had begun.) We will try to be more careful to reference statewide contracts and/or purchase orders on our invoices.

Recommendation No. 1: We believe that our system of internal controls is adequate, although we acknowledge that the division of accounting duties, and Managing Deputies' oversight of expenditures, is not readily apparent from our paperwork.

Recommendation No. 2: We will have a Managing Deputy sign off on all transactions, although we believe that this is extremely cost-inefficient.¹

Issue Area 2: The Attorney General's Office has Encountered Problems with Statewide Purchasing Card usage according to the Guidelines Established by the WV Auditor's Office.

The problems identified by the State Auditor with respect to our participation in the statewide purchasing card program were addressed and corrected before this legislative audit even began. As noted, we have implemented new written procedures governing usage of purchasing cards; further, we will be re-assigning the duties of purchasing card coordinator.

Recommendation No. 1: We believe that any issues concerning our usage of the purchasing card are moot.

¹Because our office is underfunded, Managing Deputies carry a full case load in addition to their supervisory and administrative responsibilities.

Issue Area 3: The Attorney General's Office Disregarded Executive Proposal and Legislative Intentions by Rejecting Across-the-Board Pay Raises for all Employees for FY 2001. However, The AG's Office Did Give Pay Raises to Certain Individuals.

Although the Governor's proposed budget for fiscal year 2001 included a \$756.00 pay increase for all full-time employees, the funds to actually implement the pay raise were not provided. It was, and still is, categorically and absolutely impossible for us to transfer money from our Unclassified account (099) into Personal Services (001) and Employee Benefits (010) because of ongoing expenses which must be paid from the Unclassified account. Had such a transfer taken place, this Office would not have been able to fulfill its constitutional and statutory mandate to provide legal services to officials and agencies of State government, to enforce the Consumer Protection Act, to enforce antitrust laws, to supervise and enforce pre-need burial laws, to represent the Human Rights Commission, and to represent the State in criminal appeals, all state court habeas corpus appeals and all federal court habeas corpus actions at every level. Rent, office supplies, computer-related expenses, telephone service, Westlaw research, and copier costs are non-discretionary and non-negotiable. In cases involving consumer law, antitrust law and pre-need enforcement, we have no client to pay case-related expenses; we pay them ourselves.

The long and short of it from a financial standpoint is that the Office of the Attorney General did not have adequate funding to provide an across-the-boards pay raise for fiscal year 2001. The raises which were given to all but 39 employees during fiscal year 2001 were funded either by client agencies or through the painful expedient of not filling vacant positions. (For example, in our Tax, Revenue, Education, Arts & Transportation Division,

we did not replace a secretary who resigned; instead, we distributed her work among the remaining employees and used what would have been her salary money to fund raises for those employees.)² Further, we are curious as to your assertion that we could have requested an “Additional funds Transfer,” since there is no reason for us to believe that the Legislature would have been responsive to such a request. Finally, if we attempt to solve our financial problems by increasing our billings—your final suggestion—your report to the Legislature should include a proposal for additional funding for our client agencies, earmarked for payment of their legal expenses.³

In any event, we dispute the Governor’s authority to determine which of our employees do or do not merit salary increases. The Attorney General is a constitutional officer with duties and responsibilities wholly separate from those of the Governor, and only the Attorney General’s supervisory personnel can responsibly determine appropriate salary increases for his employees.

We further dispute the Legislature’s authority to determine which of our employees do or do not merit salary increases. The Attorney General is a constitutional officer in the executive branch of government, and the separation of powers doctrine would prohibit legislative usurpation of his inter-office supervisory and management duties.

²Twenty-six (26) of the 39 employees who did not receive salary increases in fiscal year 2001 were passed over because they had received raises earlier in the calendar year, i.e., between January 1, 2000 and June 30, 2000.

³Our billing rates are extremely low. If we increase them, however, our client agencies may well refuse to pay on the ground that their appropriations are insufficient to cover increased legal costs.

Recommendation No. 1: We respectfully dispute the authority of either the Governor or the Legislature to direct the Attorney General's division of his personnel appropriation. Our compliance with the Governor's or the Legislature's "intentions" as to across-the-boards raises will be governed by (a) our ability to comply, and (b) our independent assessment of how and where our personnel dollars are best, and most fairly, spent.

Conclusion

We understand that the legislative audit process is limited in scope, and therefore the audit report does not address the issue of our performance as the "State's law firm." We nonetheless hope that the Legislature will consider the following.

The overriding purpose of the Office of the Attorney General is to provide top-quality legal services for the State and, in the areas of consumer protection, antitrust enforcement and pre-need burial oversight, for West Virginia citizens and businesses. We believe that our performance rates an A+ in carrying out this purpose; in the last fiscal year we handled more than 14,000 cases, handled legal matters which resulted in millions of dollars of savings for the State, brought more than \$72,000,000.00 into the State's treasury, and won more than \$10,000,000.00 in refunds, restitution and compensation for West Virginia consumers. We did this on a budget that is woefully inadequate to meet our needs. We don't have enough attorneys,⁴ and the ones we do have are underpaid; we don't have adequate support staff; our computer system is so out of date that we should take it to the

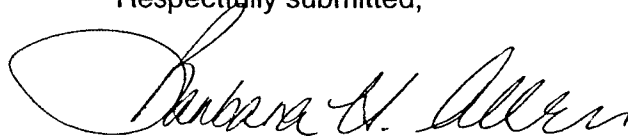
⁴The undersigned Managing Deputy Attorneys General carry heavy case loads in addition to their full plate of administrative and supervisory duties, in order to assist in the bottom line task of *getting the legal work done*.

Antiques Road Show. Our billing rates to state agency clients are so low as to be laughable. We have no money to fund our cases. The vast majority of our costs are fixed and/or case related, and therefore we have no fiscal flexibility—we can't decide to jettison computer research, computers, copiers, office supplies and National Association of Attorneys General support services, we can't decide not to pay rent for our off-campus facility at the L&S Building in Charleston, we can't ignore bills from court reporters, we can't ignore hearings set in outlying counties.

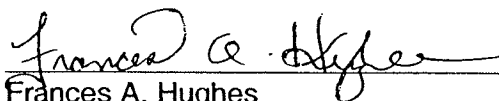
In short, our primary purpose and goal is not to see that all non-case related paperwork conforms to some ideal standard, although we do our level best to follow the State's "paperwork rules" in processing our payroll, purchasing and expense vouchers. We acknowledge our occasional deficiencies in this regard and, as noted in this response, will attempt to satisfy the legislative auditors' concerns by taking prompt corrective action.

We stand ready to supply any additional information the Legislature may need.

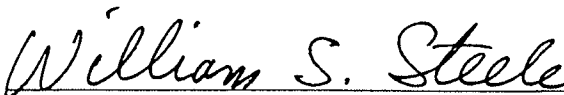
Respectfully submitted,



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