



January 2012
PE 11-21-510

SPECIAL REPORT

INTERNAL CONTROLS WITHIN THE PURCHASING DIVISION AND CONSOLIDATED PUBLIC RETIREMENT BOARD

AUDIT OVERVIEW

The Legislative Auditor Is Concerned That the Sole-Source Contract Between Former Governor Joe Manchin's Office and Smith Personnel Consulting, LLC Exercises a Loophole Allowing A Retired State Employee to Be Paid \$74,000 Yearly While Receiving His Full Retirement Annuity



WEST VIRGINIA LEGISLATIVE AUDITOR

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WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

Aaron Allred
Legislative Auditor

John Sylvia
Director

Denny Rhodes
Research Manager

Sam Calvert
Senior Research Analyst

Jill Mooney
Referencer

CONTENTS

Executive Summary	5
Issue 1: The Legislative Auditor Is Concerned That the Sole-Source Contract Between Former Governor Joe Manchin’s Office and Smith Personnel Consulting, LLC Exercises a Loophole Allowing A Retired State Employee to Be Paid \$74,000 Yearly While Receiving His Full Retirement Annuity.....	7
List of Tables	
Table 1: Joe Smith Compensation Breakdown	10
Table 2: Number and Amount of Excess Annuity Payments Based on Consulting Contract Pay Only	18
List of Figures	
Figure 1: Joe Smith Post-Employment Timeline	9
Figure 2: CPRB Flow Chart.....	14
List of Appendices	
Appendix A: Transmittal Letter to Agency	21
Appendix B: Objective, Scope and Methodology	23
Appendix C: Official Governor’s Office Staff Photographs Including Mr. Joe Smith	25
Appendix D: Excerpts From Various Emails to and From Mr. Joe Smith	27
Appendix E: Agency Response.....	31

EXECUTIVE SUMMARY

This Special Report on the internal control issues within the Purchasing Division and the Consolidated Public Retirement Board is authorized by West Virginia Code §4-2-5. West Virginia Code §5-10-48 addresses the purpose of limiting an individual's income from the state regarding reemployment after retirement and the options available for those individuals who wish to return to work for a participating member of the Public Employees Retirement System. This report examines a contract arrangement for consulting services between the Governor's Office and Smith Personnel Consulting, LLC and contains the following issue.

Report Highlights:

The Legislative Auditor Is Concerned That the Sole-Source Contract Between Former Governor Joe Manchin's Office and Smith Personnel Consulting, LLC Exercises a Loophole Allowing A Retired State Employee to Be Paid \$74,000 Yearly While Receiving His Full Retirement Annuity.

- It is the position of the Legislative Auditor that although Mr. Joe Smith signed a sole-source consulting contract rather than returning to work for the state as an employee, the amount of pay he received and the nature of the work he performed at a minimum violated the intention of the Legislature to limit pay for retired individuals returning to work for the sake of an actuarially sound retirement system. Mr. Smith's average yearly compensation plus his annuity from the state was \$125,013 and totaled \$750,078 for the six fiscal years examined.
- The Legislative Auditor found that there were two causes as a result of failure in internal controls allowing this loophole to be exercised: 1) the Purchasing Division approved the agreement without verifying that Mr. Smith was the only qualified individual and the work could not be performed by another vendor, and 2) the Consolidated Public Retirement Board does not investigate contract relationships with regard to retirement annuities beyond determining contractor status.
- Although Mr. Smith was technically a vendor, he was essentially acting as a state employee considering the privileges and authority associated with his work. The Legislative Auditor is of the opinion that even though the Governor's Office and the Department of Administration have stated repeatedly that Mr. Smith had no authority or approval power, sufficient and appropriate evidence exists that suggests he did in fact have these powers. Furthermore, the Legislative Auditor believes that decisions and job duties such as these should not be carried out by an independent contractor.

Recommendation

1. *The Legislative Auditor recommends the following options as an opportunity for the Legislature to clarify its intent regarding the pay of retired state employees:*
 - *eliminate limitations for all retired state employees,*
 - *disallow retired state employees drawing an annuity to contract with the state,*
 - *amend West Virginia Code to specifically limit contracted retired state employees, or*
 - *require the CPRB to investigate contractor relationships.*

ISSUE 1

The Legislative Auditor Is Concerned That the Sole-Source Contract Between Former Governor Joe Manchin’s Office and Smith Personnel Consulting, LLC Exercises a Loophole Allowing A Retired State Employee to Be Paid \$74,000 Yearly While Receiving His Full Retirement Annuity.

Issue Summary

West Virginia Code established limits for retired state employees returning to work for the state in the best interest of maintaining a sound retirement system. Since retiring in 2001, Mr. Joe Smith has received a sole source consulting contract from the Governor’s office, established Smith Personnel Consulting, LLC, and became Commissioner of the West Virginia Racing Commission. This allowed Mr. Smith to receive three incomes from the state averaging \$125,000 per year. This was possible in part due to a lack of internal controls by the Purchasing Division and Consolidated Public Retirement Board regarding the request by the Governor’s Office. Also, the Legislature is clear in its intent to limit the income of retired state employees who return to work for a contributing member, but does not address retired state employees who contract with the state. Therefore, the Legislature should consider the following options: eliminate need to create a contract relationship to avoid earning limits by removing the earning limitations for all retired state employees, disallow retired state employees drawing an annuity to contract with the state, amend West Virginia Code to specifically limit contracted retired state employees, or require the CPRB to investigate contractor relationships.

West Virginia Code §5-10-48 addresses the purpose of limiting an individual’s income from the State regarding reemployment after retirement and the options available for those individuals who wish to return to work for a participating member of the Public Employees Retirement System (PERS).

West Virginia Code Limits the Amount Retired State Employees May Receive From the State If Reemployed for the Purpose of Maintaining an Actuarially Sound Retirement System

West Virginia Code §5-10-48 addresses the purpose of limiting an individual’s income from the State regarding reemployment after retirement and the options available for those individuals who wish to return to work for a participating member of the Public Employees Retirement System (PERS). Aside from outlining under what circumstances must be present for an individual to return to work and maintain their annuity,

subsection (a) states in part that:

The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual's ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system.

The limitations discussed in this section are further addressed by WVC §5-10-48(c) which outlines the following options for reemployment after retirement:

- **Regularly employed on a full-time basis** – His or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system
- **Temporary full-time or temporary part-time** – May be accepted without suspending his or her retirement annuity so long as he or she does not receive annual compensation in excess of \$15,000.
- **Legislative per diem basis** – May be employed on a per diem basis without suspension of the retirement annuity if the retirant's annual compensation from the Legislature does not exceed \$20,000.
- **Retired former legislative employee** – The limitation on compensation does not apply to the reemployed former employee of the Legislature.

The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual's ability to retire from the system and to then later return to state employment.

A Retired Acting Director of The Division of Personnel Entered Into a Sole Source Contract With the Governor's Office to Consult on Personnel Matters While Receiving His Full Retirement Annuity

Prior to entering into the sole source agreement with the Governor's Office, Mr. Joe Smith¹ was employed by the West Virginia Division of Personnel (DOP) where he twice served as the Acting Director of Personnel. The first instance occurred while holding the title of Administrative Services Manager 3 and lasted for just over one

¹ It is usually a policy of the Legislative Auditor to omit names from audit reports, but this case is specific to this individual and his company.

month, June 1, 1997 to July 7, 1997. The second tenure as Acting Director began January 29, 1999 and ended on April 1, 2001. During this time period, Mr. Smith held the position of Administrative Services Manager 4. Shortly thereafter, Mr. Smith retired on July 1, 2001.

Since retiring in 2001, Mr. Smith has received a sole source contract from the Governor’s office, established Smith Personnel Consulting LLC, and became Commissioner of the West Virginia Racing Commission. Figure 1 shows a general post-employment timeline for Mr. Smith. Please note that Smith Personnel Consulting, LLC was issued its Certificate of a Limited Liability Company from the Secretary of State on May 12, 2005. **The Legislative Auditor is of the opinion that since the contract with Smith Personnel Consulting, LLC was signed on April 25, 2005, that the State both contracted with and paid for services from a company that did not exist.**

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Figure 1: Joe Smith Post-Employment Timeline

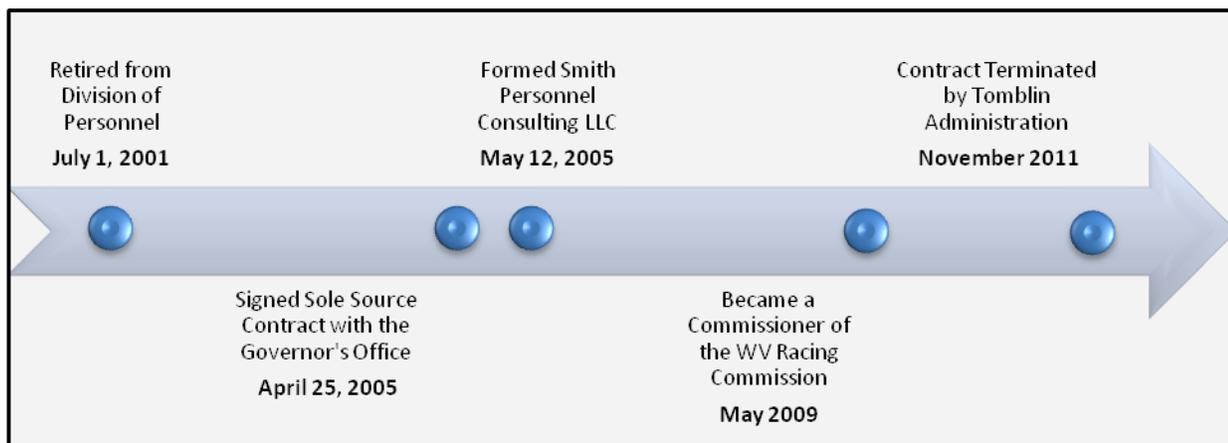


Figure 1 illustrates that Mr. Smith was first retired and receiving his retirement annuity, then received a sole source contract with the Governor’s Office, and finally became a Commissioner of the West Virginia Racing Commission². With this arrangement, Mr. Smith concurrently received payment from three separate state government sources. Table 1 shows a breakdown of Mr. Smith’s compensation each fiscal year dating back to FY 2006. The table also contains the amount Mr. Smith has been reimbursed for travel relating to his position with the WV Racing Commission.

With this arrangement, Mr. Smith concurrently received payment from three separate state government sources.

² State employees cannot be on the Racing Commission

Table 1
Joe Smith Compensation Breakdown

Year	Consulting Contract	Racing Pay	Racing Travel	Retirement Annuity	Total Comp plus Annuity
FY 2006	\$ 73,425	\$ -	\$ 565	\$ 46,123	\$ 120,113
FY 2007	70,620	-	-	46,123	116,743
FY 2008	78,030	-	-	46,123	124,153
FY 2009	68,090	1,000	-	46,123	115,213
FY 2010	80,470	12,000	1,952	46,123	140,545
FY 2011	74,280	12,000	908	46,123	133,311
Total	\$ 444,915	\$ 25,000	\$ 3,425	\$ 276,738	\$ 750,078

Source: Legislative Auditor's Office Post Audit Division Calculations 8/19/11 (unaudited)

It is the position of the Legislative Auditor that although Mr. Smith signed a sole source consulting contract rather than returning to work for the state as an employee, the amount of pay he received and the nature of the work he performed at a minimum violated the intention of the Legislature to limit pay for retired individuals returning to work for the sake of an actuarially sound retirement system. Furthermore, the Legislative Auditor is of the opinion that this type of relationship is precisely what the Legislature sought to restrict with WVC §5-10-48. If Mr. Smith's contract is legal, then using the sole-source contract relationship rather than any form of employment creates a loophole that allows a retired state employee to maintain a full annuity.

If Mr. Smith's contract is legal, then using the sole-source contract relationship rather than any form of employment creates a loophole that allows a retired state employee to maintain a full annuity.

As shown in the table, Mr. Smith's average yearly compensation plus his annuity from the state was \$125,013 and totaled \$750,080 for the six fiscal years examined. This situation appears to run counter to the intent of the Legislature in that a retired state employee is receiving his full retirement annuity as well as compensation over the \$15,000 limit put in place for part-time employees. **The Legislative Auditor found that there were two causes as a result of failure in internal controls allowing this loophole to be exercised:**

- The Purchasing Division approved the agreement without verifying that Mr. Smith was the only qualified individual and the work could not be performed by another vendor, and
- The Consolidated Public Retirement Board does not investigate contract relationships with regard to retirement annuities beyond determining contractor status.

The Purchasing Division approved the agreement without verifying that Mr. Smith was the only qualified individual and the work to be performed could not be done by an employee of any kind

Mr. Smith's sole source contract with the Governor's Office was signed on April 25, 2005. The purpose of this contract was to act as a consultant on personnel matters. The Legislative Auditor analyzed the agreement and found that it was vague in a number of areas. The contract does not contain information such as hours to be worked or many specific job duties. The WV-48 contract agreement referenced above provided the following with regard to Mr. Smith's services to be performed.

Review personnel action recommendations made to and by the Governor's Office in order to assure procedures followed are in compliance with public policy, state and federal personnel laws. Research and apply current personnel law and conduct administrative investigations as needed to assess risk to the State and the public it serves.

The Legislative Auditor is not clear why this contract was necessary since these are similar duties of the Division of Personnel which also falls under the authority of the Governor's Office. According to the Agreement Questionnaire that accompanied the WV-48, Mr. Smith was chosen for this contract because of his knowledge and experience. The questionnaire asked for what specialized or professional skill will be provided that is not available within your own or some other agency, to which Governor Manchin's Office stated:

Joe Smith, Smith Personnel Consulting, offers an in-depth knowledge (with 30 years experience) of State of West Virginia personnel laws, rules and regulations, case history relating to State of WV employment law, and extraordinary mediation and human resource skills.

Finally, the questionnaire asked what other consultants were considered for this work, and to explain why this particular consultant was selected over those considered, to which Governor Manchin's Office stated:

This Office believes Mr. Smith's knowledge, skills and ability to be unique in this field. We believe there are no other viable candidates who possess the required level of expertise and experience relating specifically to our needs available in the current workforce.

The Legislative Auditor is not clear why this contract was necessary since these are similar duties of the Division of Personnel which also falls under the authority of the Governor's Office.

Based on Governor Manchin's Office's answers to the agreement questionnaire, having worked for the Division of Personnel for some time, knowledge of West Virginia employment laws, etc. uniquely qualified Mr. Smith for this work. **The Legislative Auditor finds that the above traits are not in fact unique to Mr. Smith.** At the time Mr. Smith's contract was approved by the Purchasing Division in 2005, two other individuals had served as either an Acting Director or the Director of Personnel since 2001, the acting director held the title of Administrative Services Manager 4, which was Mr. Smith's highest position with the DOP. Had there been an open process, it is possible that one or more of these individuals would have expressed interest in the position. Furthermore, five individuals held the position of Director or Acting Director since Mr. Smith's retirement in 2001 and could have been considered prior to the initial contract or prior to any of the subsequent yearly extensions.

In a letter to the Director of the Purchasing Division, the Legislative Auditor asked if any of the previously mentioned individuals had been contacted or considered. The Director of Purchasing stated in part that:

The Purchasing Division received the request to award a sole source contract from the Governor's Office with their assertion that Smith was the only consultant who could meet their needs. Not being experts in capabilities, skills and experience required by the Governor's Office or possessed or not possessed by those mentioned in your letter, we had no reason to believe the request and documentation was anything but appropriate and true.

Based on Governor Manchin's Office's answers to the agreement questionnaire, having worked for the Division of Personnel for some time, knowledge of West Virginia employment laws, etc. uniquely qualified Mr. Smith for this work. The Legislative Auditor finds that the above traits are not in fact unique to Mr. Smith.

However, in a follow-up correspondence, the Purchasing Division provided that it cannot assure that Mr. Smith was the only qualified individual that could perform the work. The Director stated:

We can't. The complexities of the goods and services required often necessitate that the Purchasing Division rely on the expertise of the agency requesting the sole source procurement.

When asked if the Purchasing Division consulted with the Division of Personnel because of its "lack of expertise in capabilities, skills and experience" as it is related to personnel matters, the Purchasing Director stated:

No. The Purchasing Division is not required by law or rule to consult with other agencies within the Department of Administration before awarding sole source contracts. We do not know if the Division of Personnel can be considered experts in this matter.

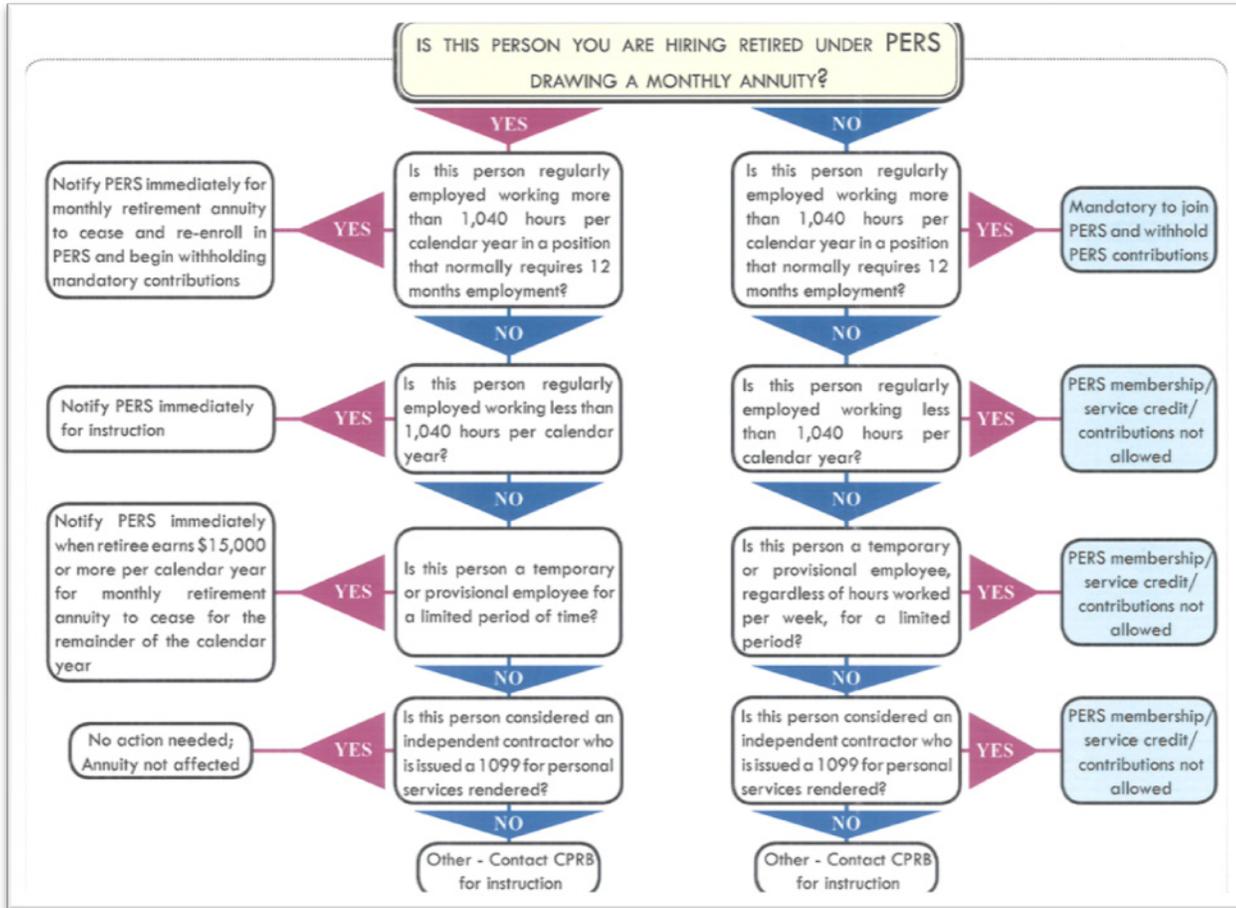
The Legislative Auditor is of the opinion that the Purchasing Division accepting the Governor’s Office’s sole source contract request without exploring other options demonstrates a lack of internal controls. Allowing former retired state employees to form a limited liability corporation only to contract with the State to perform work that could be handled by an employee creates the opportunity to essentially work for the State at a higher rate while drawing a full retirement annuity and may set an unfavorable precedence. Neither the Purchasing Division nor the Governor’s Office engaged in best practices by contacting the Division of Personnel or the like to determine if Mr. Smith was the only vendor capable of fulfilling the required duties. Furthermore, given the apparent necessity for this position, having an individual on staff with consistent work hours, job duties, etc. may be favorable over an outside consultant. The Governor’s Office had authority to hire anyone for a non-classified position. However, the Governor’s Office did not have authority to contract with whoever it wishes. There are two distinct sets of legal requirements for these two actions.

Allowing former retired state employees to form a limited liability corporation only to contract with the State to perform work that could be handled by an employee creates the opportunity to essentially work for the State at a higher rate while drawing a full retirement annuity and may set an unfavorable precedence.

The Consolidated Public Retirement Board does not investigate contract relationships with regard to retirement annuities beyond verifying contractor status

Subsequent to determining the specifics of the sole source contract relationship between Mr. Smith and the Governor’s Office, the Legislative Auditor then questioned whether the CPRB could or should have questioned this arrangement on the basis that an individual was performing state work while receiving a full retirement annuity. Currently, the CPRB provides agency payroll clerks a flow chart to determine the proper course of action when an individual’s status with the PERS system is in question. This flow chart is titled “is this person you are hiring retired under the PERS drawing a monthly annuity?” Yes and no paths show corresponding criteria and suggested actions. In this case, since Mr. Smith was drawing a monthly annuity, CPRB’s logical progression can be seen down the left side of Figure 2.

Figure 2: CPRB Flow Chart



This flow chart is provided to payroll clerks to assist them in determining whether contributions should be withheld. Payroll clerks are also provided seminars annually to train and educate them on the rules and regulations for all of the different employment categories. As shown in Figure 2, once an individual has been determined to be a contractor, no more action is needed and the annuity is not affected. Thus, if an agency and the Purchasing Division agree that a contract relationship is appropriate, the CPRB has no recourse on the matter. It is the opinion of the Legislative Auditor that this demonstrates a lack of internal controls to ensure that the monetary limits established in WVC §5-10-48 are being adhered to for the interest of an actuarially sound retirement system.

Once an individual has been determined to be a contractor, no more action is needed and the annuity is not affected. Thus, if an agency and the Purchasing Division agree that a contract relationship is appropriate, the CPRB has no recourse on the matter.

Although Mr. Smith Was Technically a Vendor, He Was Essentially Acting as a State Employee Considering the Privileges and Authority Associated With His Work

Throughout the Legislative Auditor's examination of Mr. Smith's contract relationship with the Governor's Office, questions arose as to his employment status. For example, Mr. Smith is present in numerous official staff photographs that appeared on the Governor's Office website (see Appendix C). Also, certain privileges afforded to Mr. Smith mimic those of a state employee, while certain job duties appear to be, and possibly should have been carried out by an employee of the state. Among the privileges afforded to Mr. Smith, he was provided with the use of:

- office space,
- meeting rooms,
- computer,
- office supplies,
- printers and copiers,
- local area network access, and
- telephone.

As well as the following which were assigned to him personally:

- telephone number,
- voicemail,
- state phone directory listing,
- email address (.gov),
- parking space (paid for by Mr. Smith),
- security building access card (temporary employee personnel type), and a
- key to the Governor's Executive Offices.

Certain duties performed by Mr. Smith, evidenced by numerous personnel documents and email correspondence, lead the Legislative Auditor to believe that Mr. Smith was acting as an employee rather than a contractor. With regard to personnel documents, the Legislative Auditor obtained numerous WV-11 personnel forms from the Division of Highways bearing Mr. Smith's signature. The very presence of Mr. Smith's signature on official personnel documents infers some level of approval was required. In response to a letter asking what authority a non-state employee has to sign and approve official Division of Personnel

With regard to personnel documents, the Legislative Auditor obtained numerous WV-11 personnel forms from the Division of Highways bearing Mr. Smith's signature. The very presence of Mr. Smith's signature on official personnel documents infers some level of approval was required.

documents, the Cabinet Secretary of the Department of Administration stated that:

The Department of Administration knows of no authority under which a non-state employee may sign and approve official Division of Personnel documents, such as WV-11s

Email messages to and from Mr. Smith that further illustrate this point were obtained from the Department of Administration. Many of these messages appear to be directly seeking Mr. Smith's approval for personnel transactions. These messages come from and are sent to state employees at various levels, including the Director of the Division of Personnel and other Department of Administration and Governor's Office employees. For example, below is an email from Sara Walker, Director of the DOP, to Mr. Smith:

Left you a voice mail, the WV-11 for [name redacted] was approved at the Governor's office. I didn't know if you were still the one actually approving.

Thus, it could be inferred that Mr. Smith – a contractor – had some level of authority over the Director of the Division of Personnel – a state employee.

Thus, it could be inferred that Mr. Smith – a contractor – had some level of authority over the Director of the Division of Personnel – a state employee. More examples of email correspondence obtained by the Legislative Auditor that appear to exhibit Mr. Smith had some level of authority or power of approval can be found below as well as in Appendix D:

To Mr. Smith:

- From: Sara Walker (6-15-2011)

I got the following message and was asked to ask you to approve. ... If you could process this it would be appreciated.

- From: Sara Walker (6-7-2011)

Last week you approved a DEP WV-11 that included an equity increase and left it up to us to deny, which we did. I put a WV-11 in for [name redacted] that had been through the Secretary's office as well as Class and Comp, but you had not signed off on it. I need to bring the paper work to you for your signature and return to Class and Comp

From Mr. Smith:

- To: Robin Purdue c: Sara Walker (4-9-2010)

Approved. Thanks

- To: Joyce Jones c: Sara Walker et.al. (1-27-2010)

I approve but it has to be in the computerize (sic) system before Personnel will create the job posting.

The Legislative Auditor is of the opinion that even though the Governor's Office and the Department of Administration have stated repeatedly that Mr. Smith had no authority or approval power, sufficient and appropriate evidence exists that suggests he did in fact have these powers. Furthermore, the Legislative Auditor believes that decisions and job duties such as these should not be carried out by an independent contractor.

The Legislative Auditor is Concerned That Sole Source Contracts Can be Exploited, Costing the State and the Retirement System

The Legislative Auditor is concerned that as long as a retired state employee can establish his or her own company, a contract relationship can be created to circumvent the compensation limitations created by the Legislature to maintain a stable retirement system. In the case of Mr. Smith, the Legislative Auditor believes that his position could have been filled by an employee of the state in some form, including Mr. Smith, himself. Had the position been filled with an individual bound to the \$15,000 limit, 51 fewer annuity payments would have been made. Table 2 shows the number of excess annuity payments and corresponding amounts for calendar years 2005-2011.

The Legislative Auditor is of the opinion that even though the Governor's Office and the Department of Administration have stated repeatedly that Mr. Smith had no authority or approval power, sufficient and appropriate evidence exists that suggests he did in fact have these powers.

The Legislative Auditor is concerned that as long as a retired state employee can establish his or her own company, a contract relationship can be created to circumvent the compensation limitations created by the Legislature to maintain a stable retirement system.

Table 2 Number and Amount of Excess Annuity Payments Based on Consulting Contract Pay Only		
Calendar Year	Number of Improper Annuity Payments	Amount of Overpayment*
2005	3	\$ 11,531
2006	9	34,593
2007	9	34,593
2008	9	34,593
2009	9	34,593
2010	9	34,593
2011	3	11,531
Total	51	\$ 196,027
* = Excludes a prorated amount for the month where the \$15,000 threshold was initially exceeded		
Source: Post Audit Division Calculations 8/12/11 (unaudited)		

As shown in Table 2, paying Mr. Smith his entire annuity regardless of his year to date earnings has cost the state at least \$196,027 since 2005. The calculations in Table 2 exclude any income from the Racing Commission, as well as a prorated amount of overpayment for the month the overage occurred that the CPRB would calculate. Thus the overpayment to Mr. Smith would exceed the total of \$196,027 listed in Table 2.

Under these criteria, there is nothing preventing future retired state employees with any kind of specialized knowledge from creating a company only to offer said knowledge back to the state at an increased cost.

The contractor relationship between Mr. Smith and the Governor's Office is an example of how a retired individual can legally receive multiple incomes from the state, in excess of limits put in place to maintain a sound retirement system, while collecting the entire amount of his/her retirement annuity. Under these criteria, there is nothing preventing future retired state employees with any kind of specialized knowledge from creating a company only to offer said knowledge back to the state at an increased cost. **As long as the individual(s) sign a contract with the state agency, the Purchasing Division approves it, and the CPRB clearly views it as a contract relationship, multiple incomes from state sources can be obtained without statutory limitations.**

For this reason the Legislative Auditor offers the following options as an opportunity for the Legislature to clarify its intent regarding retired state employees:

- 1) Eliminate limitations for all retired state employees – By eliminating all of the restrictions outlined in WVC §5-10-48, all

ambiguity regarding employment status and earning limitations is removed. This would expressly allow the practice known as double dipping.

- 2) Disallow retired state employees drawing an annuity to contract with the state – Removing retired state employees drawing an annuity from those eligible to contract with the state eliminates the possibility of double dipping in this manner.
- 3) Amend West Virginia Code to specifically limit contracted retired state employees – Adding contractors drawing a state annuity to the list of employment statuses and corresponding limitations regarding work hours and earning limits would provide clarity to situations such as Mr. Smith's.
- 4) Require the CPRB to investigate contractor relationships – Requiring the CPRB to investigate contractor relationships such as Mr. Smith's beyond verifying that he is a contracted employee would allow for further analysis. This analysis could include determining whether work could or should be done by an individual of a different employment status and what corresponding action should be taken regarding the individual's retirement annuity.

Although the Code does not limit the income of contract employees, the Legislative Auditor believes that this is the kind of activity that was meant to be curtailed and there were no mechanisms in place to prevent it.

Conclusion

The West Virginia Legislature specified in Code that it was in the best interest of the state and a sound retirement system to address the issue of retired employees returning to work while receiving a retirement annuity. Through the lack of internal controls on behalf of the Governor's Office, Purchasing Division, and Consolidated Public Retirement Board, a retired state employee has received a yearly income from three state sources averaging \$125,000. Although the Code does not limit the income of contract employees, the Legislative Auditor believes that this is the kind of activity that was meant to be curtailed and there were no mechanisms in place to prevent it. This situation may set an unwanted precedent in that any retired state employee may form a company, only to contract with the state, while receiving a full retirement annuity. Had this work been done by an employee of the state, either the individual would have been limited to the maximum income of \$15,000 for a part-time employee or been paid a full-time salary and again become a contributing member of PERS. Therefore, the Legislature should consider clarifying its intent as to the restrictions placed on retired individuals returning to work for or contract with the state.

Recommendation

- 1) *The Legislative Auditor recommends the following options as an opportunity for the Legislature to clarify its intent regarding the pay of retired state employees:*
- *eliminate limitations for all retired state employees,*
 - *disallow retired state employees drawing an annuity to contract with the state,*
 - *amend West Virginia Code to specifically limit contracted retired state employees,*
 - *require the CPRB to investigate contractor relationships.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division



Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

December 29, 2011

Robert W. Ferguson, Jr.
Cabinet Secretary
Department of Administration
State Capitol Complex, Room E-119
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Dear Secretary Ferguson:

This is to transmit a draft copy of the Special Report on the sole source contract with Smith Personnel Consulting, LLC. This report is scheduled to be presented on January 9, 2012 to the Joint Committee on Government Operations and the Joint Committee on Government Organization in the House Chamber from 4:00PM to 6:00PM. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us as soon as possible. We need your written response by noon on Wednesday, January 4, 2012 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, January 5, 2012 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,


John Sylvia

c: David Tincher, Director
Purchasing Division

Joint Committee on Government and Finance

Appendix B: Objective, Scope and Methodology

This Special Report on the Internal Control Issues within the Purchasing Division and the Consolidated Public Retirement Board is authorized by West Virginia Code §4-2-5.

Objective

The objective of this report was to examine the sole source consulting contract between the Governor's Office during the Joe Manchin Administration and Smith Personnel Consulting, LLC to determine whether the arrangement was congruent with the Legislature's intent regarding the maintenance of an actuarially sound retirement system.

Scope

This report examined the 2005 consulting contract with Smith Personnel Consulting, LLC, the employment history and timeline of Mr. Joe Smith, and his compensation from three state sources. This review utilizes information from Mr. Smith's retirement from the Division of Personnel in 2001 through December 2011.

Methodology

The Legislative Auditor utilized information from a number of sources in this review including the sole source consulting agreement between the Governor's Office and Smith Personnel Consulting, LLC provided by the Purchasing Division, personnel documents from the Division of Highways, various email correspondence between Department of Administration staff and Mr. Smith, as well as numerous correspondence between the Legislative Auditor, the Department of Administration, Division of Personnel, Purchasing Division, and the Governor's Office. The Legislative Auditor's Post Audit Division provided reports of payment data collected from the state's financial system.

Appendix C: Official Governor's Office Staff Photographs Including Mr. Joe Smith



Appendix D: Excerpts From Various Emails to and From Mr. Joe Smith

1. Email dated September 27, 2010

From: Sara Walker
To: Joe Smith

Essentially, with your approval, we would only receive this as information.

2. Email dated October 29, 2009

From: Joe Smith
To: Sara Walker

The following are revisions you may wish to consider but do not send out until advised.

3. Email dated November 2, 2009

From: Joe Smith
To: Sara Walker

You may run the following by Dr. Slemm and Secretary Hardy. If any changes are made, please clear the changes with Matt Turner and me. Thanks.

4. Email dated November 24, 2009

From: Joe Smith
To: Adam Higginbotham

Whether exempt, you must receive our approval to fill any vacancy. To receive approval to fill such vacancy, you must, to our satisfaction, establish that the position is critical to your operations. Thanks.

5. Email dated January 13, 2010

From: Tari Crouse
To: Joe Smith

(DHHR will) ...be processing approximately 1,100 WV-11's to reflect the pay equity increases...Do you want these to come through the Governor's Office?

6. Email dated May 12, 2010

From: Joe Smith
To: Sara Walker

Thanks. Debbie should not fill this position without the concurrence of David Oliverio.

7. Email dated December 13, 2010

From: Sherri Forman
To: Joe Smith

She asked me where the other WV 11 was and I told her you may have it.

8. Email dated June 7, 2011

From: Sara Walker
To: Joe Smith

Last week you approved a DEP WV-11 that included an equity increase and left it up to us to deny, which we did. I put a WV-11 in for [name redacted] that had been through the Secretary's office as well as Class and Comp, but you had not signed off on it. I need to bring the paper work to you for your signature and return to Class and Comp.

9. Email dated August 19, 2010

Series of email exchanges between DOP employee Debbie Anderson, Joe Smith, and Carol Cummings

Request from Debbie Anderson:

Per DOP's conversation with Carol Cummings, WDA, regarding their issues yesterday (8/18), I need your approval to use one of their covered vacant positions to post for a covered part-time Engineer.

Joe Smith responded:

Harry and I approve.

Debbie Anderson sent the following to Carol Cummings

The Governor's Office approved the request...

10. Email dated March 3, 2010

From: Erica Mani, Department of Revenue
To: Kathy Damron, Office of the Insurance Commissioner

Personnel request from the Office of the Insurance Commissioner

He can let us know if you (Kathy Damron) or he (Joe Smith) should make the initial contact at DOP.

Joe Smith's response:

By copying Sara Walker she will be aware of action and can call me for details if needed.

11. Email dated February 24, 2010

From: Joe Smith
To: Sandy Kee
c: Sara Walker

*Considering that our revenues have not improved over last year, we will **likely** follow that same procedures as last year though the number of interns may change. Obviously everything will based on the State's finances.*

12. Email dated March 17, 2010

From: Joe Smith
To: Sara Walker

Would YOU PLEASE HAVE SOME TO REVIEW QUICKLY TO SEE IF INDIVIDUAL QUALIFIES FOR REALTY MANAGER AND AT WHAT SALARY LEVEL.

13. Email dated May 25, 2010

From: Joe Smith
To: Sara Walker

Would you please send me a register for Chief Administrative Judge? Could we have a copy of the application on which the person's rating was determine, as well? Thanks

14. Email dated December 27, 2010

From: Carol Nichols
To: Erica Mani
c: Tari Crouse

...Sherri and Joe worked with me last week so that I could do the approvals while Sherri is out. I will, of course, be approving them once Joe Smith has given his go-ahead.

15. Email dated November 24, 2009

From: Joe Smith
To: Adam Higginbotham

Whether exempt, you must receive our approval to fill any vacancy. To receive approval to fill such vacancy, you must, to our satisfaction, establish that the position is critical to your operations. Thanks.

16. Email dated January 10, 2011

From: Sara Walker
To: Joe Smith

...Your initials are on the form, want to confirm that you approved the additional amount.

Appendix E: Agency Response

The Department of Administration chose not to respond.



WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | www.legis.state.wv.us/Joint/PERD/perd.cfm | fax: 1-304-347-4939