

STATE OF WEST VIRGINIA

AUDIT REPORT

OF

CONSOLIDATED PUBLIC RETIREMENT BOARD

WEST VIRGINIA JUDGES' RETIREMENT SYSTEM

FOR THE PERIOD

JULY 1, 2002 - JUNE 30, 2004



OFFICE OF THE LEGISLATIVE AUDITOR
CAPITOL BUILDING
CHARLESTON, WEST VIRGINIA 25305-0610

CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA JUDGES' RETIREMENT SYSTEM
FOR THE PERIOD
JULY 1, 2002 - JUNE 30, 2004

WEST VIRGINIA LEGISLATURE

Joint Committee on Government and Finance

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To the Joint Committee on Government and Finance:

In compliance with the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, we have examined the Judges' Retirement System as administered by the Consolidated Public Retirement Board (CPRB).

Our examination covers the period July 1, 2002 through June 30, 2004. The results of this examination are set forth on the following pages of this report.

Respectfully submitted,

A handwritten signature in black ink that reads "Theford L. Shanklin".

Theford L. Shanklin, CPA, Director
Legislative Post Audit Division

TLS/ela,gkc

CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA JUDGES' RETIREMENT SYSTEM

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CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA JUDGES' RETIREMENT SYSTEM
EXIT CONFERENCE

We held an exit conference on December 16, 2004 with the Executive Director and other representatives of the Consolidated Public Retirement Board (CPRB) and all findings and recommendations were reviewed and discussed. The agency's responses are included in bold and italics in the Summary of Findings, Recommendations and Responses and after our findings in the General Remarks section of this report.

CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA JUDGES' RETIREMENT SYSTEM

INTRODUCTION

Consolidated Public Retirement Board

Effective July 1, 1991, Chapter 5, Article 10D of the West Virginia Code created the Consolidated Public Retirement Board (CPRB). The Board's duties are to administer all State Retirement Systems. It shall have all the powers, duties, responsibilities and liabilities of the Public Employees Retirement System (PERS); the Teachers Retirement System (TRS); the Teachers' Defined Contribution Retirement System (TDCRS or TDC Plan); the Death, Disability and Retirement System (Plan A) of the Division of Public Safety; and the Judges' Retirement System (JRS). Subsequent to July 1, 1991, the Board also began administering (in addition to the aforementioned retirement systems) the West Virginia State Police Retirement System (Plan B) on March 12, 1994 and the Death, Disability and Retirement Fund for Deputy Sheriffs on July 1, 1998. Additionally, the Board is responsible for administering a 457 Deferred Compensation Plan, which members of the other State Retirement Systems can utilize to supplement their regular retirement.

The Board consists of 14 members as follows: the Governor; State Treasurer; State Auditor; Secretary of the Department of Administration; four residents of the State who are not members, retirants or beneficiaries of any of the retirement systems; a member, annuitant or retirant of the Public Employees Retirement System who is or was a State employee; a member, annuitant or retirant of the Public Employees Retirement System who is not or was not a State employee; a member, annuitant or retirant of the Teachers Retirement System; a member,

annuitant or retirant of the Division of Public Safety Death, Disability and Retirement System; a member, annuitant or retirant of the Deputy Sheriff's Death, Disability and Retirement System; and, a member, annuitant or retirant of the Teachers' Defined Contribution Retirement System.

The Board elects from its own number a chairman and vice chairman. The Board is granted the authority under State law to appoint an executive director to be the chief administrative officer of all of the retirement systems. The executive director is responsible for employing, with the Board's approval, such administrative, technical and clerical employees as are required in the proper operation of the retirement systems. Also, the Board is authorized by State law to employ a state retirement actuary or actuarial firm and be represented by an attorney who is licensed to practice law in the state of West Virginia who is not a member of any of the retirement systems administered by the Board.

The Board is required by law to meet at least once every three months, with seven voting members constituting a quorum. All board meetings must be public. Members serve without compensation for their services, provided that each member is reimbursed, upon Board approval, for any necessary expenses incurred by them in carrying out their duties. No public employee member may suffer any loss of salary or wages on account of their service as a trustee.

West Virginia Judges' Retirement System

The West Virginia Judges' Retirement System was created by an Act of the 1949 Legislature to provide for the retirement of judges of courts of record. Under the provisions of this legislation, every judge of any court of record is eligible to participate in the retirement system. Members also have the option of electing not to participate. When a judge begins employment, he or she may elect to participate in either the Judges' Retirement System (JRS) or

the Public Employees Retirement System (PERS). Judges participating in PERS may at any time thereafter elect to transfer their membership to JRS. A judge who elects to transfer eligible service under PERS to JRS will be required to pay into JRS all contributions he or she would have been required to pay into the retirement system, plus interest, had he or she previously elected to participate in JRS.

The Judges' Retirement System funding policy provides for member contributions based on nine percent (9%) of their annual earnings. This policy also provides for periodic employer contributions at varying amounts appropriated annually by the State Legislature, which are actuarially determined. However, annual appropriations are determined in consideration of the most recent actuarial valuation. Any participant who terminates before becoming eligible for benefits may elect to withdraw his or her contributions without interest.

A member is eligible for normal retirement benefits upon completion of 16 years of service as a judge and attainment of age 65, or upon completion of 24 years of service as a judge, regardless of age. Additionally, any member who has served as a judge for a period of not less than eight full years after attaining age 65 is eligible to retire and receive retirement benefits. The annual pension benefit to be paid to a member is 75% of the highest annual salary of the office from which the member retired, with surviving beneficiaries receiving an annual benefit of 40% of the retiree's annual salary. Benefits of retirees and beneficiaries are adjusted in proportion to salary increases given to current judges. A member is eligible for deferred benefit upon termination of service prior to normal retirement provided the member completes 16 years of service, including 12 years of service as a sitting judge of any court of record. The Judges' Retirement System also includes provisions for disability benefits.

Any member seeking to retire and who meets the appropriate eligibility criteria must first tender his or her resignation to the Governor. The Governor will then undertake an investigation to determine whether the member is entitled to receive retirement benefits. Once the Governor is satisfied the retiring member qualifies for retirement, he will issue a written order certifying the criteria making the member eligible for retirement as well as the amount of retirement benefits to be paid to said member. A copy of the Governor's written order is then forwarded to the Consolidated Public Retirement Board for purposes of processing the retiring member's annuity. As of June 30, 2004, there were 58 judges and justices actively contributing to the Judges' Retirement System and 58 retirees and beneficiaries receiving pension benefits from the Judges' Retirement System.

CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA JUDGES' RETIREMENT SYSTEM

CONSOLIDATED PUBLIC RETIREMENT BOARD MEMBERS AND STAFF

AS OF JUNE 30, 2004

Governor Bob Wise	Ex Officio
Tom Susman, Acting Secretary of Department of Administration	Ex Officio
Glen B. Gainer, III, State Auditor	Vice Chairman - Ex Officio
John Perdue, Treasurer	Ex Officio
William McGinley	State Resident
Janet Wilson	State Resident
David Wyant	Chairman - State Resident
Carl Guthrie	State Resident
Francis A. Hughes	State Employee Member Public Employees Retirement System
Jerry A. Weaver	Non-State Employee Member Public Employees Retirement System
E. Gene Davis	Teachers Retirement System Member
David Anderson	Teachers' Defined Contribution Retirement System Member
F. Douglas Beasley	Division of Public Safety's Death, Disability and Retirement Fund Member
Donald T. Murray	Deputy Sheriff's Death, Disability and Retirement Fund Member

STAFF

Joseph J. Jankowski, Jr. Executive Director
Teresa Miller Deputy Director
Karen Copeland Manager of Membership Section
Lisa Trump Retirement Advisor
Angie Lowe Accounting Technician III
Harry Mandel Board Actuary
Lori Cottrill Accounting Manager
Cynthia Boyd Internal Auditor

CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA JUDGES' RETIREMENT SYSTEM
SUMMARY OF FINDINGS, RECOMMENDATIONS AND RESPONSES

System of Internal Control

1. During the course of our audit, it became apparent to us, based on the observed noncompliance with the West Virginia Code, the Consolidated Public Retirement Board did not have an effective system of internal controls in place to ensure compliance with applicable State laws, rules and regulations. Chapter 5A, Article 8, Section 9 of the West Virginia Code requires the agency head to have in place an effective system of internal controls in the form of policies and procedures set up to ensure the agency operates in compliance with the laws, rules and regulations which govern it.

Auditors' Recommendation

We recommend the CPRB comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code, as amended, and establish a system of internal controls.

Agency's Response

CPRB believes that it has a very effective system of internal controls in place to ensure compliance with applicable state laws, rules and regulations and so would disagree with your general statement on page one (1) of your report that it does not have such a system. (See pages 12 and 13.)

Purchase of Additional Year of Service Credit by Retiree Subsequent to Retirement

2. A circuit court judge retired effective January 2001. Subsequent to his retirement in December 2002, we noted the CPRB allowed this judge to purchase an additional year of

service credit (previously refunded from PERS) in order to receive a lower PEIA health insurance premium based on total years of credited service. The CPRB assessed him a cost of \$5,522.69 to reinstate this service to the Judges' Retirement System for which payment was remitted by the judge at the end of December 2002.

Auditors' Recommendation

We recommend the CPRB comply with the provisions of Chapter 5, Article 10, Section 18(a) of the West Virginia Code, as amended.

Agency's Response

CPRB would point out that the Post-Audit Division appears to have confused the JRS statutes with the Public Employees Retirement System (PERS) statutes on page six (6) of your report. The appropriate statute is W. Va. Code §51-9-4 and that statute contains no provisions preventing a retired judge from purchasing as many years of service credit as he is entitled to claim. (See pages 13 - 18.)

Unfunded Liability of Judges' Retirement System

3. As of June 30, 2003, the Judges' Retirement System had an unfunded accrued liability amounting to \$43,929,628.00. This amount is based on the most recent actuarial valuation report prepared in December 2003 by the outside actuarial firm of Mellon Human Resources and Investor Solutions. The next available actuarial report on the Judges' Retirement System is due to be released in January 2005.

Agency's Response

*CPRB is unable to find a conclusion or recommendation in the section labeled **Unfunded Liability of Judges' Retirement System** beginning on page seven (7) to which it should respond.* (See pages 18 and 19.)

Ineligibility to Receive Pension Benefits

4. The CPRB does not have a procedure in place to detect whether JRS retirees are engaged in activities which would preclude them from receiving pension benefits.

Auditors' Recommendation

We recommend the CPRB comply with the provisions of Chapter 51, Article 9, Section 7 of the West Virginia Code, as amended, by developing a procedure to monitor the activities of retired judges to ensure these retirees are not engaged in such activities which would preclude them from receiving pension benefits.

Agency's Response

CPRB does not agree that it has the primary responsibility to monitor JRS retirees to determine where they are engaged in activities that preclude them from receiving benefits. (See pages 19 and 20.)

**Wrong Amount of Federal and State Withholding Taxes
Withheld from Surviving Spouse's First Annuity Payment**

5. There was one instance where an additional \$1,500.00 of federal withholding taxes and \$500.00 of state withholding taxes were not withheld from the first annuity payment made to the surviving spouse of a deceased retiree.

Auditors' Recommendation

We recommend the CPRB comply with the withholding forms completed by annuitants when determining the amounts of federal and state withholding taxes to withhold from an annuitant's monthly annuity payment.

Agency's Response

The CPRB agrees with this finding. (See pages 21 - 23.)

CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA JUDGES' RETIREMENT SYSTEM

GENERAL REMARKS

INTRODUCTION

We have completed a post audit of the Judges' Retirement System as administered by the Consolidated Public Retirement Board. The audit covered the period July 1, 2002 through June 30, 2004.

SPECIAL REVENUE ACCOUNT

During the audit period, the CPRB maintained a special revenue account to contain the retirement contributions received and to account for all expenditures related to the operation of the Judges' Retirement System as required by law. Monies collected were deposited with the State Treasurer in the following special revenue account:

<u>Account Number</u>	<u>Description</u>
2140.....	Judges' Retirement System Account Contributions, interest and appropriations for payment of retirement benefits to eligible judges.

COMPLIANCE MATTERS

Chapter 51, Article 9 of the West Virginia Code generally governs the administration of the Judges' Retirement System. We tested applicable sections of the above plus other applicable chapters, articles, and sections of the West Virginia Code as they pertain to financial matters. Our findings are discussed below.

System of Internal Control

During the course of our audit, it became apparent to us, based on the observed noncompliance with the West Virginia Code, the Consolidated Public Retirement Board did not have an effective system of internal controls in place to ensure compliance with applicable State laws, rules and regulations. Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended, states in part:

“The head of each agency shall: . . . (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities. . . .”

This law requires the agency head to have in place an effective system of internal controls in the form of policies and procedures set up to ensure the agency operates in compliance with the laws, rules and regulations which govern it.

During our audit of the Judges’ Retirement System as administered by the Consolidated Public Retirement Board, we found the following noncompliance with State laws or other rules and regulations: **(1)** A circuit court judge retired effective January 2001. Subsequent to his retirement in December 2002, we noted the CPRB allowed this judge to purchase an additional year of service credit (previously refunded from PERS) in order to receive a lower PEIA health insurance premium based on total years of credited service. The CPRB assessed him a cost of \$5,522.69 to reinstate this service to the Judges’ Retirement System for which payment was remitted by the judge at the end of December 2002. **(2)** The CPRB does not have a procedure in place to detect whether JRS retirees are engaged in activities which would preclude them from receiving pension benefits. **(3)** There was one instance where an additional

\$1,500.00 of Federal withholding taxes and \$500.00 of State withholding taxes were not withheld from the first annuity payment made to the surviving spouse of a deceased retiree.

We recommend the CPRB comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code, as amended, and establish a system of internal controls.

Agency's Response

CPRB believes that it has a very effective system of internal controls in place to ensure compliance with applicable state laws, rules and regulations and so would disagree with your general statement on page one (1) of your report that it does not have such a system. However, all systems can be improved and I appreciate your suggestions. Your report lists three items that you consider CPRB in non-compliance with applicable state laws, rules and regulations, and for clarity, I would like to address each one individually.

Purchase of Additional Year of Service Credit by Retiree Subsequent to Retirement

A circuit court judge retired effective January 2001. Subsequent to his retirement in December 2002, we noted the CPRB allowed this judge to purchase an additional year of service credit (previously refunded from PERS) in order to receive a lower PEIA health insurance premium based on total years of credited service. The CPRB assessed him a cost of \$5,522.69 to reinstate this service to the Judges' Retirement System for which payment was remitted by the judge at the end of December 2002.

Effective January 2001, the Governor issued an executive order approving the retirement of this circuit court judge based on 24 years of credited service. At the time of his application for retirement, the judge had 20 years ten months of judicial service and three years of military service for a total of 23 years ten months of credited service. He also had to his credit

nine years seven months of PERS service credit. This service credit was attained from service as a former county prosecutor. In accordance with State law, the judge transferred two months of this qualified service credit from PERS to the Judges' Retirement System (JRS) in order to attain the 24 years of credited service needed to retire.

Since this judge was prohibited by §51-9-5(b) of the West Virginia Code from receiving a retirement annuity from both PERS and JRS, he applied to the CPRB for a refund of his remaining accumulated contributions on deposit with PERS. Chapter 51, Article 9, Section 5(b) of the West Virginia Code, as amended, states:

“(b) There may be transfers of service credit on proper basis between the judges' retirement system and the public employees retirement system, where such service credit constitutes qualified and eligible credit under the recipient system's statutes, in order to allow full flexibility of choice of option by a judge or judicial member; but in no case shall benefits be receivable from more than one of such state retirement systems, nor shall any service credit be usable more than once and then only in the finally chosen state retirement system.”

The CPRB processed his refund application and subsequently issued him a refund check for \$3,122.21 during February 2001. However, upon review of the judge's retirement file we noted he was only issued a refund for the monies he contributed to PERS and did not include any accrued interest. Agency records indicate that at the time of his withdrawal he had credited to his PERS account accrued interest amounting to \$6,129.14. Upon bringing this discrepancy to the attention of the deputy director, she told us the judge should have received the amount of accrued interest as part of his refund but that the omission was an oversight on the part of agency personnel. She further stated the CPRB would rectify this error as soon as possible and issue the retired judge another refund check for the appropriate amount of accrued interest.

Subsequent to his retirement in September 2002, the retired judge contacted the CPRB by letter to inquire as to the reason the PEIA health insurance premium being withheld from his monthly annuity was based on a retiree with 20 to 24 years of service and not 25 or more years of service. He believed that he had over 33 years of credited service (24 years used to retire plus nine years five months of remaining prosecuting attorney service credit) at retirement. Based on this belief, he thought the health insurance premium being withheld from his monthly annuity should be the premium based on 25 or more years of service credit rather than the premium based on 20 to 24 years of service credit. The health insurance premium assessed monthly to retirees is based on total years of service credit. Thus, the more years of service credit, the lower the monthly premium. However, CPRB personnel explained in a written response to the retired judge that he did not qualify for the health insurance premium for 25 or more years of service credit since he did not transfer the remaining nine years five months of prosecuting attorney service credit to JRS prior to retirement but instead received a refund from PERS for this service credit.

The CPRB further researched the West Virginia Code on the retired judge's behalf to determine whether there was any statute precluding the judge from reinstating to JRS one year of the prosecuting attorney service credit previously refunded in order to attain 25 years of service credit. Having found no statute which precluded the retiree from reinstating this service credit, the CPRB allowed him to reinstate one year of the previously refunded PERS service credit to JRS at a cost of \$5,522.69. The purpose of allowing the retired judge to purchase this additional year of service credit was simply to enable him to receive a lower health insurance premium and not to affect the amount of his monthly annuity.

Starting January 2003, the CPRB began withholding the PEIA health insurance premium amount for retirees with over 25 years of service credit from the monthly retirement annuity of this retired judge rather than the PEIA health insurance premium amount for retirees with 20 to 24 years of service. Due to this adjustment in premium amounts being withheld from the retired judge's annuity, the retiree benefitted from a savings of \$1,764.00 in health insurance premium costs between January 2003 and June 2004.

According to the deputy director, the retired judge became concerned when his insurance premium skyrocketed during the summer of 2002 and contacted the CPRB. He had been advised by the CPRB that he only needed two months of his prosecuting attorney service credit to retire. This was correct, but the deputy director told us when advising the judge the CPRB had not considered that transferring one more year of his service would lower his insurance premium with PEIA. Referring to §51-9-4(f) of the West Virginia Code, she stated that she did not see anything in the State code that would not allow a retired judge to purchase an additional year of service credit. Chapter 51, Article 9, Section 4(f) of the West Virginia Code, as amended, states:

“(f) Any judge holding office as such on the effective date of the amendments to this article adopted by the Legislature at its regular session in the year one thousand nine hundred eighty-seven, who seeks to qualify service as a prosecuting attorney as credited service, which service credit must have been earned prior to the year one thousand nine hundred eighty-seven, shall be required to pay into the judges' retirement fund nine percent of the annual salary which was actually received by such person as prosecuting attorney during the time such prosecutorial service was rendered prior to the year one thousand nine hundred eighty-seven, and for which credited service is being sought, together with applicable interest.”

However, Chapter 5, Article 10, Section 18(a) of the West Virginia Code, as amended, states:

“(a) When a member of the retirement system retires or dies, he or she ceases to be a member. When a member leaves the employ of a participating public employer for any other reason, he or she ceases to be a member and forfeits service credited to him or her at that time. If he or she becomes reemployed by a participating public employer he or she shall be reinstated as a member of the retirement system and his or her credited service last forfeited by him or her shall be restored to his or her credit: Provided, That he or she must be reemployed for a period of one year or longer to have the service restored: Provided, however, That he or she returns to the members’ deposit fund the amount, if any, he or she withdrew from the fund, together with regular interest on the withdrawn amount from the date of withdrawal to the date of repayment, and that the repayment begins within two years of the return to employment and that the full amount is repaid within five years of the return to employment.”

Based on this statute, we believe this retired judge should not have been allowed to reinstate part of his previously withdrawn PERS service credit since he did not meet the reinstatement criteria set forth in this statute. The retiree ceased to be a member of PERS when he withdrew his contributions from PERS. Before the CPRB could have allowed him to purchase an additional year of JRS service credit, we believe he would have been required to meet the following criteria under the preceding statute: (1) become re-employed with a participating public employer in PERS; (2) be re-employed for a period of one year or longer; and (3) repay to PERS the total amount of accumulated contributions he withdrew from PERS together with regular interest on the withdrawn amount from the date of withdrawal to the date of repayment.

We recommend the CPRB comply with the provisions of Chapter 5, Article 10, Section 18(a) of the West Virginia Code, as amended.

Agency’s Response

CPRB would point out that the Post-Audit Division appears to have confused the JRS statutes with the Public Employees Retirement System (PERS) statutes on page six (6) of your report. As the retired judge referenced in this issue did not reinstate service in PERS, W Va. Code §5-10-18(a) is not applicable. The appropriate statute is W. Va. Code §51-9-4 and that statute contains no provisions preventing a retired judge from purchasing as many years of service credit as he is entitled to claim.

Unfunded Liability of Judges' Retirement System

As of June 30, 2003, the Judges' Retirement System had an unfunded accrued liability amounting to \$43,929,628.00. This amount is based on the most recent actuarial valuation report prepared in December 2003 by the outside actuarial firm of Mellon Human Resources and Investor Solutions. The next available actuarial report on the Judges' Retirement System is due to be released in January 2005.

The Judges' Retirement System is funded through member contributions of nine percent of payroll and employer contributions as appropriated by the State Legislature upon consideration of the actuary's recommendation. Effective July 1, 1988 the amount appropriated by the State each year, combined with member contributions, is targeted to fund the annual normal cost plus amortize the unfunded accrued liability over a 30-year period ending June 30, 2018. As of July 1, 2003, fifteen years remain on the amortization period of the unfunded accrued liability. The following table details the funding progress of the unfunded accrued liability for the five fiscal years prior to July 1, 2003:

<u>Actuarial Valuation Date</u>	<u>Actuarial Value of Assets (a)</u>	<u>Actuarial Accrued Liability (AL) - Entry Age (b)</u>	<u>Unfunded Accrued Liability (UAL) (b-a)</u>	<u>Funded Ratio (a/b)</u>	<u>Covered Payroll (c)</u>	<u>UAL as a % of Covered Payroll (b-a)/(c)</u>
6/30/1999	\$37,980,540	\$78,598,266	\$40,617,726	48.3%	\$5,965,000	680.9%
6/30/2000	\$43,779,000	\$83,982,415	\$40,203,415	52.1%	\$6,055,000	664.0%
6/30/2001	\$46,635,000	\$84,790,973	\$38,155,973	55.0%	\$6,325,000	603.3%
6/30/2002	\$47,620,000	\$92,215,324	\$44,595,324	51.6%	\$6,325,000	705.1%
6/30/2003	\$52,779,000	\$96,708,628	\$43,929,628	54.6%	\$6,325,000	694.5%

Source: Actuarial Valuation Report as of July 1, 2003 prepared in December 2003 by actuarial firm of Mellon Human Resources and Investor Solutions.

Based on this schedule, the funded ratio of plan assets to the actuarial accrued liability of the retirement system has increased by 6.3% over the last five fiscal years.

Ineligibility to Receive Pension Benefits

The CPRB does not have a procedure in place to monitor JRS retirees in such a manner as to ensure these retirees are not engaged in activities which would preclude them from receiving pension benefits. Under State law, pension benefits will be suspended during any period in which (1) a member receiving disability benefits from the retirement system is engaged in the practice of law, or (2) a retired member holds any public office or trust for which he or she receives compensation from the State of West Virginia. Currently, there are no disability retirees receiving benefits from the Judges' Retirement System. This same finding was reported in the previous audit.

Chapter 51, Article 9, Section 7 of the West Virginia Code, as amended, states:

“A judge who retires under the provisions of any section of this article and accepts the pay or benefits payable under this article shall not, while receiving said pay or benefits, be permitted to hold any public office or trust for which he receives compensation from the State of West Virginia. If, after retirement under the provisions of this article, he shall be elected or appointed to any public office

or trust for which he receives any salary or other compensation from the State of West Virginia, his pay or benefits under this article shall be suspended for such time only as he shall occupy such office or trust.

A judge who retires because of disability and accepts the pay or benefits payable under this article because of his disability shall not, while receiving said pay or benefits because of his disability, be permitted to practice law. If, after disability retirement under the provisions of this article and while receiving pay or benefits payable under said article because of his disability, he shall enter the practice of law, his pay or benefits under this article because of his disability shall be suspended for such time only as he shall be engaged in the practice of law.”

The lack of a procedure in place to monitor the activities of retired judges could result in some retirees receiving pension benefits to which they are not entitled. These retirees could simultaneously be engaged in the practice of law or receiving compensation from the State of West Virginia through the holding of a public office or trust. The manager of the CPRB’s Membership Section told us that the CPRB relies on the administration of the Supreme Court of Appeals to inform the agency of such occurrences.

We recommend the CPRB comply with the provisions of Chapter 51, Article 9, Section 7 of the West Virginia Code, as amended, by developing a procedure to monitor the activities of retired judges to ensure these retirees are not engaged in such activities which would preclude them from receiving pension benefits.

Agency’s Response

CPRB does not agree that it has the primary responsibility to monitor JRS retirees to determine where they are engaged in activities that preclude them from receiving benefits. However, it has begun the process of exploring with the West Virginia Supreme Court of Appeals the feasibility of establishing a process.

I would also note that Post Audit Division's citation to W. Va. Code §5-10-7 in the discussion on this issue is probably not the intended reference as that section deals with vacancies on the PERS Board.

**Wrong Amount of Federal and State Withholding Taxes
Withheld from Surviving Spouse's First Annuity Payment**

During our review of retirement annuities processed by the CPRB during the period July 1, 2002 through June 30, 2004, we noted one instance where an additional \$1,500.00 of Federal withholding taxes and \$500.00 of State withholding taxes were not withheld from the first annuity payment made to the surviving spouse of a deceased retiree. The annuitant completed and submitted a W-4P Form to the CPRB authorizing the CPRB to withhold a total of \$1,500.00 in Federal withholding taxes from each monthly annuity payment. An IT-104 Form was also completed and submitted by the annuitant to the CPRB authorizing the CPRB to withhold a total of \$500.00 in State withholding taxes from each monthly annuity payment. Agency personnel determined the gross annuity amount due and payable to the annuitant each month to be \$3,000.00. We noted the gross pay amount of the first annuity payment issued to the annuitant amounted to \$6,000.00 due to this payment represented payment for two months. Based on the Federal and State tax withholding forms completed by the annuitant, a total of \$3,000.00 in Federal withholding taxes and \$1,000.00 in State withholding taxes should have been withheld from this gross payment amount. However, the CPRB only withheld \$1,500.00 in Federal withholding taxes and \$500.00 in State withholding taxes.

The instructions for completing the W-4P Withholding Certificate for Pension or Annuity Payments state in part:

“Purpose. This form is for U.S. citizens, resident aliens, or their estates who are recipients of pensions, annuities, including

commercial annuities, and certain other deferred compensation. Use this form to tell payers the correct amount of Federal income tax to withhold from your payment(s). You also may use this form to choose **(a)** not to have any income tax withheld from the payment (except for eligible rollover distributions or payments to U.S. citizens delivered outside the United States or its possessions) or **(b)** to have an additional amount of tax withheld. . . .”

In addition, Section 9 of the West Virginia Employer’s Withholding Instructions Manual for State tax states in part,

“9. VOLUNTARY WITHHOLDING ON PENSIONS AND ANNUITIES

The State of West Virginia has entered into an agreement with the West Virginia Teachers Retirement Board, the West Virginia Public Employees Retirement Board, and the United States Department of Defense on behalf of Uniformed Services for the voluntary withholding of state income tax on pensions and annuities.

Retirement boards or agencies may begin withholding taxes from recipients’ checks on receipt of a fully executed Employee’s Withholding Exemption Certificate, WV/IT-104. . . .”

Withholding the incorrect amount of taxes as requested by the annuitant may result in the annuitant underpaying or overpaying the appropriate amount of withholding taxes. The first annuity payment paid to new retirees or surviving spouses is required to be issued through a supplemental payroll before such annuitants are added to the regular monthly payroll. Due to this requirement, the payroll deductions for the annuitant’s first annuity payment must be manually entered into the CPRB’s computer system. As a result, data entry errors will occasionally occur.

According to the CPRB employee responsible for processing this annuitant’s first annuity payment, the wrong amount of Federal and State withholding taxes withheld was the

result of an oversight. Specifically, when determining the appropriate amount of Federal and State withholding taxes to withhold she did not take into account that the annuity payment represented payment for two months and not just one month. Based on our review, we believe this instance to be an isolated incident.

We recommend the CPRB comply with the withholding forms completed by annuitants when determining the amounts of Federal and State withholding taxes to withhold from an annuitant's monthly annuity payment.

Agency's Response

CPRB agrees that it made an error in terms of the appropriate withholding amount for taxes for one individual and also agrees with Post Audit Division's conclusion that this was an isolated instance.

INDEPENDENT AUDITORS' OPINION

The Joint Committee on Government and Finance:

We have audited the statement of cash receipts, disbursements and changes in cash balance of the Judges' Retirement System as administered by the West Virginia Consolidated Public Retirement Board (the "Board") for the years ended June 30, 2004 and June 30, 2003. The financial statement is the responsibility of the management of the West Virginia Consolidated Public Retirement Board. Our responsibility is to express an opinion on the financial statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in Note A, the financial statement was prepared on the cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.

In our opinion, the financial statement referred to above presents fairly, in all material respects, the revenues collected and expenses paid of the Judges' Retirement System as administered by the Consolidated Public Retirement Board for the years ended June 30, 2004 and June 30, 2003, on the basis of accounting described in Note A.

Respectfully submitted,



Ford L. Shanklin, CPA, Director

December 6, 2004

Auditors: Ethelbert Scott, CPA, Supervisor
Neil M. McEachron, Jr., CPA, Auditor-in-Charge
Bonita P. Compton
Brandy L. McNabb

CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA JUDGES' RETIREMENT SYSTEM
STATEMENT OF CASH RECEIPTS, DISBURSEMENTS
AND CHANGES IN CASH BALANCE

	<u>Year Ended June 30,</u>	
	<u>2004</u>	<u>2003</u>
Cash Receipts:		
Member Contributions	\$ 471,194.99	\$ 484,839.39
Less: Revenue Refunds	<u>675.00</u>	<u>0.00</u>
	470,519.99	484,839.39
Employer Contributions	5,329,500.00	5,500,000.00
Operating Funds Transfer	88,911.74	58,881.40
Transfers from Investment Management Board	3,265,000.00	3,190,000.00
Investment Earnings	<u>7,464,132.63</u>	<u>643,640.97</u>
	16,618,064.36	9,877,361.76
Disbursements:		
Fund Transfers	4,165.00	4,200.00
Pension Benefits	<u>3,281,772.27</u>	<u>3,496,709.76</u>
	<u>3,285,937.27</u>	<u>3,500,909.76</u>
Cash Receipts Over Disbursements	13,332,127.09	6,376,452.00
Beginning Balance	54.99	443.96
Transfers to Investment Management Board	<u>(13,312,542.63)</u>	<u>(6,376,840.97)</u>
Ending Balance	<u>\$ 19,639.45</u>	<u>\$ 54.99</u>

See Notes to Financial Statement

CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA JUDGES' RETIREMENT SYSTEM
NOTES TO FINANCIAL STATEMENT

Note A - Accounting Policy

Accounting Method: The cash basis of accounting was followed for all accounts. Therefore, certain revenues and the related assets are recognized when received rather than when earned and certain expenses are recognized when paid rather than when the obligation is incurred. Accordingly, the financial statement is not intended to present financial position and results of operations in conformity with generally accepted accounting principles.

Note B - Unfunded Liability

The Judges' Retirement System had an unfunded accrued liability of \$43,929,628.00 and \$44,595,324.00 for the years ending June 30, 2003 and 2002, respectively. This amount is based on the most recent actuarial valuation report prepared in December 2003 by the outside actuarial firm of Mellon Human Resources and Investor Solutions. The next available actuarial report on the Judges' Retirement System is due to be released in January 2005.

Effective July 1, 1988 the amount appropriated by the State each year, combined with member contributions, is targeted to fund the annual normal cost plus amortize the unfunded accrued liability over a 30-year period ending June 30, 2018. As of July 1, 2003, fifteen years remain on the amortization period of the unfunded accrued liability. The following table details the funding progress of the unfunded accrued liability for the five fiscal years prior to July 1, 2003:

Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AL) - Entry Age (b)	Unfunded Accrued Liability (UAL) (b-a)	Funded Ratio (a/b)	Covered Payroll (c)	UAL as a % of Covered Payroll (b-a)/(c)
6/30/1999	\$37,980,540	\$78,598,266	\$40,617,726	48.3%	\$5,965,000	680.9%
6/30/2000	\$43,779,000	\$83,982,415	\$40,203,415	52.1%	\$6,055,000	664.0%
6/30/2001	\$46,635,000	\$84,790,973	\$38,155,973	55.0%	\$6,325,000	603.3%
6/30/2002	\$47,620,000	\$92,215,324	\$44,595,324	51.6%	\$6,325,000	705.1%
6/30/2003	\$52,779,000	\$96,708,628	\$43,929,628	54.6%	\$6,325,000	694.5%

Source: Actuarial Valuation Report as of July 1, 2003 prepared in December 2003 by actuarial firm of Mellon Human Resources and Investor Solutions.

Note C - Investments

The following table details the investment holdings of the Judges' Retirement System held in trust for pension benefits by the West Virginia Investment Management Board as of June 30, 2004 and 2003:

<u>Investment Pool</u>	Fair Market Value of Investments as of <u>June 30, 2004</u>	Fair Market Value of Investments as of <u>June 30, 2003</u>
Large Cap Equity	\$15,483,052.92	\$12,940,099.57
Non-Large Cap Equity	10,577,020.41	9,805,031.63
International Equity	13,145,421.92	9,700,583.25
Fixed Income	23,946,269.57	19,935,221.19
Short-Term Fixed Income	<u>387,784.61</u>	<u>397,672.39</u>
Total	<u>\$63,539,549.43</u>	<u>\$52,778,608.03</u>

SUPPLEMENTAL INFORMATION

CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA JUDGES' RETIREMENT SYSTEM
STATEMENT OF CASH RECEIPTS, DISBURSEMENTS
AND CHANGES IN CASH BALANCE
SPECIAL REVENUE

	<u>Year Ended June 30,</u>	
	<u>2004</u>	<u>2003</u>
<u>Judges' Retirement System Account -</u>		
<u>Account 2140-099/523/640</u>		
Cash Receipts:		
Member Contributions	\$ 471,194.99	\$ 484,839.39
Less: Revenue Refunds	<u>675.00</u>	<u>0.00</u>
	470,519.99	484,839.39
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Beginning Balance	54.99	443.96
Transfers to Investment Management Board	<u>(13,312,542.63)</u>	<u>(6,376,840.97)</u>
Ending Balance	<u>\$ 19,639.45</u>	<u>\$ 54.99</u>

OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:

I, Thedford L. Shanklin, CPA, Director of the Legislative Post Audit Division, do hereby certify that the report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this 10th day of January 2005



Thedford L. Shanklin, CPA, Director

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the Consolidated Public Retirement Board; Governor; Attorney General; State Auditor; and, Director of Finance Division, Department of Administration.

