

Master

STATE OF WEST VIRGINIA
AUDIT REPORT
OF

**WEST VIRGINIA OFFICE OF MINERS' HEALTH
SAFETY AND TRAINING
FOR THE PERIOD
OCTOBER 15, 1991 - JUNE 30, 1995**



OFFICE OF LEGISLATIVE AUDITOR
CAPITOL BUILDING
CHARLESTON, WEST VIRGINIA 25305

**WEST VIRGINIA OFFICE OF MINERS' HEALTH,
SAFETY AND TRAINING
FOR THE PERIOD
OCTOBER 15, 1991 - JUNE 30, 1995**

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance



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CHARLESTON, WEST VIRGINIA 25305

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 accounts of the West Virginia Office of Miners' Health, Safety and Training.

Our examination covers the period October 1, 1992 through June 30, 1995. The results of this examination are set forth on the following pages of this report.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Theodore L. Shanklin".

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

TLS/tnt

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SAFETY AND TRAINING
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WEST VIRGINIA OFFICE OF MINERS' HEALTH,
SAFETY AND TRAINING
EXIT CONFERENCE

We held an exit conference on March 4, 1996 with the Commissioner and the Director of Accounting of the West Virginia Office of Miners' Health, Safety and Training and all findings and recommendations were reviewed and discussed. The above officials' responses are included in italics in the Summary of Findings, Recommendations and Responses and after our recommendations in the General Remarks sections of this report.

**WEST VIRGINIA OFFICE OF MINERS' HEALTH,
SAFETY AND TRAINING
INTRODUCTION**

The Office of Miners' Health, Safety and Training was created by Chapter 15, Acts of the Legislature, Second Extraordinary Session of 1991, effective October 16, 1991. The Office became a separate office within the Department of Commerce, Labor and Environmental Resources.

The Director of the Office of Miners' Health, Safety and Training is empowered to administer and enforce such provisions of Chapter 22A of the West Virginia Code, as amended, relating to health and safety inspections and enforcement and training in surface and underground coal mines, underground clay mines, open pit mines, cement manufacturing plants and underground limestone and sandstone mines. Prime consideration is given to the protection of the safety and health of persons employed within or at the mines of the state. In addition, the Office protects and preserves mining property and property used in connection with mining activities.

The Office has five regional offices throughout the state located in: Buckhannon, Chapmanville, Fairmont, Oak Hill and Welch. All mine inspectors are assigned to specific mines and are required to do inspection as follows: Underground - at least four times a year at each site, electrical - at least once a year at each site and surface - at least twice a year at each site. Accident prevention and resolution of safety issues involve both

management and labor. The goal of the Office is to reduce fatalities, serious accidents, lost-time accidents and no lost-time accidents by carrying out statutory mandates with regard to enforcement.

**WEST VIRGINIA OFFICE OF MINERS' HEALTH,
SAFETY AND TRAINING
ADMINISTRATIVE OFFICERS AND STAFF**

Stephen F. Webber Director
Kathy J. Sloan Administrative Aide
J. Douglas Conaway Administrator of Enforcement
and Safety
William Willis Administrator of Mine
Rescues and Training
Robert Beatty Director of Legal Services
(9/16/94 - Present)
Chris Quasebarth Director of Legal Services
(8/3/92 - 7/29/94)
Arthur Shumate Administrator of Finance
and Personnel
(4/16/95 - Present)
Judy Welch Administrator of Finance
and Personnel
(10/1/91 - 3/22/95)
Randall Kidd Assessment Officer

WEST VIRGINIA OFFICE OF MINERS' HEALTH,
SAFETY AND TRAINING
SUMMARY OF FINDINGS, RECOMMENDATIONS AND RESPONSES

Collection of Assessments

1. Amounts recorded on the Office of Miners' Health, Safety and Training (OMHST) record of assessment deposits did not trace to the Auditor's Office Account Status Report in 50 of the 54 deposits examined. In fiscal year 1993, we noted 14 deposits totaling \$6,811.85 recorded on the OMHST receipt ledger that we were unable to trace to the Auditor's Account Status Report. We were also unable to trace nine deposits for \$12,452.91 recorded in the Auditor's Account Status report to the OMHST receipt ledger.

We recommend the OMHST comply with Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended. We also recommend the OMHST develop an internal control system that will effectively document all paid assessments.

Agency's Response

Although we feel that adequate internal control exists to safeguard the collection and deposit of the assessments, we recognize that the deposits were not being properly reconciled. We have implemented a process of reconciling the OMHST records of assessment deposits to the FIMS deposit cover sheet. (See pages 15-18.)

Workers' Compensation - Account in Default

2. According to a letter from the Workers' Compensation Legal Service Division, the OMHST owes the Workers' Compensation Division \$214,410.38 in premiums and interest.

We recommend the OMHST comply with Chapter 23, Article 2, Section 5 of the West Virginia Code.

Agency's Response

Senate Bill 567 directs the Auditor to pay the Worker's Compensation Fund \$121,736.11 from the general fund for the delinquent premiums. The remaining accrued interest of \$50,971.63 will be paid by the OMHST to Worker's Compensation through a repayment agreement. (See pages 18-21.)

Workers' Compensation - Temporary Total Disability

3. We noted seven employees received temporary total disability while drawing sick leave benefits. Also, two of these employees were not charged for sick leave during the time period of their injury, although they received their regular salary while collecting Workers' Compensation benefits.

We recommend the OMHST comply with Chapter 23, Article 4, Section 1 of the West Virginia Code. We also recommend the OMHST collect \$9,721.72 for the buy back of sick leave benefits. We recommend the OMHST adjust employee's sick and annual leave balances as required. We suggest the West Virginia Legislature review the referenced Code for possible

amendment to include total reimbursement of the State's outlay for restoration of sick leave benefits.

Agency's Response

We agree the Policy issued by the Division of Personnel regarding Worker's Compensation/Sick Leave was not enforced by the previous Administrator of Finance. Currently, all Worker's Compensation claims are being carefully reviewed and the policy is being strictly enforced. (See pages 21-25.)

Overtime Approval

4. All overtime worked by the OMHST employees must be approved by the Director. We noted one employee was paid overtime without the Director's approval. We also noted the OMHST's daily time record did not agree with the sick, vacation and annual leave record concerning hours worked for this employee.

We recommend the OMHST comply with Chapter 21, Article 3, Section 13 of the West Virginia Code. We also recommend the OMHST strengthen internal controls in the area of overtime pay.

Agency's Response

We will comply with this audit recommendation. (See pages 25-27.)

Overtime Calculation

5. The OMHST employees receives a one hour lunch period. The employees are paid for 30 minutes of the lunch period. Consequently, the OMHST paid overtime to employees that exceeded 37.5 hours of actual work time per week. We calculated approximately \$1,146.27 in overtime pay was due to the one-half hour of the lunch period being treated as time worked.

We recommend the OMHST comply with Chapter 21, Article 5C, Section 3, Subsection (a) of the West Virginia Code. We also recommend the OMHST comply with Title 42, Series 8, Section 9 of the Department of Labor Legislative Rules in determining hours worked.

Agency's Response

The Agency follows the Division of Personnel's position that employee's on their one-half hour paid lunch break are subject to being called back to work, hence the one-half hour is considered work time. (See pages 27-29.)

Annual Report

6. The OMHST submits annual reports to the Governor and the Legislature that are prepared on a calendar year basis. We noted the reports do not identify the sources of funds, the expenditures not do they include the beginning and ending balances of the office.

We recommend the OMHST comply with Chapter 22A, Article 1, Section 4, Subsection (b) of the West Virginia Code.

Agency's Response

We will comply with this audit recommendation. (See pages 30-31.)

Leave Usage

7. We noted the OMHST has not defined sick leave abuse as set out in the West Virginia Division of Personnel Administrative Rules. We believe the lack of a definition of sick leave abuse may permit extravagant use of sick leave.

We recommend the OMHST define what a pattern of sick leave abuse means in the West Virginia Division of Personnel Administrative Rules in order to minimize any extravagant use of sick leave and to avoid any misunderstandings of sick leave abuse.

Agency's Response

We will comply with this audit recommendation. (See pages 31-37.)

Equipment Inventory

8. We noted six items of equipment totaling \$5,187.90 during FY 1995 which were not added to the agency's inventory listing. We also noted the OMHST has not filed the required annual inventory with the Director of the Purchasing Division of the West Virginia Department of Administration.

We recommend the OMHST comply with Chapter 5A, Article 3, Section 36 of the West Virginia Code and update the inventory to the current status. We also recommend the OMHST comply with Chapter 5A, Article 3, Section 35 of the West Virginia Code.

Agency's Response

We will comply with this audit recommendation. (See pages 37-38.)

Late Deposits

9. A total of 65 of the 120 deposits tested were not deposited within 24 hours. Applying the results of our test of the entire population, we estimate the State of West Virginia lost approximately \$4,000.00 in interest because of late deposits.

We recommend the OMHST comply with Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended.

Agency's Response

We will comply with this audit recommendation. (See pages 38-40.)

Safety Instructors

10. The OMHST did not employ 11 safety instructors as required by the West Virginia Code during Fiscal Years 92-95. Agency personnel stated the OMHST has been unable to acquire federal funding necessary to employ 11 safety instructors.

We recommend the OMHST comply with Chapter 22, Article 1, Section 9 of the West Virginia Code. We also recommend the OMHST comply with Chapter 22A, Article 7, Section 6 of the West Virginia Code.

Agency's Response

The Agency employs nine full time mine safety instructors and one full time mine foreman examiner who certifies mine foreman/fire bosses, assistant mine foremen, underground and surface foremen, surface construction supervisors and certification changes. Also, the Administrator of Training and Mine Rescue conducts hands-on training as well as supervising the mine safety instructors. We feel the inclusion of the Training Administrator and the State Mine Foreman examiner complies with the Code requirement. (See pages 40-42.)

Annual Increment

11. We noted three employees whose years of service were not calculated correctly for annual increment payment. Consequently, we believe one employee was underpaid \$144.00 and another employee was underpaid \$72.00. We believe a third employee whose time of service did not qualify the employee for annual increment received \$108.00 in annual increment pay.

We recommend the OMHST comply with Chapter 5, Article 5, Section 2 of the West Virginia Code, as amended. Also, we recommend the OMHST compensate the employees \$144.00 and

\$72.00, respectively, for accrued annual increment underpayments. We recommend the OMHST attempt to collect \$108.00 for the ineligible increment payment.

Agency's Response

We will comply with this audit recommendation. (See pages 42-44.)

Board Members - Per Diem Travel Reimbursement

12. We noted the OMHST paid two members of the Board of Miner Training, Education and Certification for travel reimbursements of \$45.50 and \$27.36, respectively, in excess of the \$85.00 a day limit set by the West Virginia Code.

We recommend the OMHST comply with Chapter 22A, Article 7, Section 4 and Chapter 4, Article 2A, Section 7 of the West Virginia Code, as amended. Also, we recommend the OMHST obtain reimbursement of \$45.50 and \$27.36, respectively, from the two board members.

Agency's Response

We will comply with this audit recommendation. (See pages 44-46.)

STRENGTHEN INTERNAL CONTROL OVER COMPLIANCE

We believe the OMHST should strengthen internal controls in the area of compliance with the West Virginia Code and various rules and regulations which control the OMHST's operations.

We recommend the OMHST strengthen or establish the necessary internal controls to better ensure compliance with the West Virginia Code and other administrative rules and regulations which govern the operations of the OMHST.

Agency's Response

No response by the Agency. (See pages 46-48.)

**WEST VIRGINIA OFFICE OF MINERS' HEALTH,
SAFETY AND TRAINING
GENERAL REMARKS**

INTRODUCTION

We have completed a post audit of the West Virginia Office of Miners' Health, Safety and Training. The audit covered the period October 1, 1992 through June 30, 1995.

GENERAL REVENUE ACCOUNTS

The following accounts were maintained by the West Virginia Office of Miners' Health, Safety and Training:

<u>FUND NUMBER</u>	<u>OLD ACCOUNT NUMBER</u>	<u>DESCRIPTION</u>
0277-001	4780-00	Personal Services
0277-004	4780-66	Annual Increment
0277-010	4780-35	Employee Benefits
0277-099	4780-17	Unclassified
0277-545	4780-83	Operating Permit Fees

FEDERALLY FUNDED ACCOUNTS

The West Virginia Office of Miners' Health, Safety and Training maintained the following accounts which were funded from Federal sources:

<u>FUND NUMBER</u>	<u>OLD ACCOUNT NUMBER</u>	<u>DESCRIPTION</u>
8709-096	7868-17	Unclassified
8709-700	7868-99	Consolidated Federal Funds General Administration Fund

SPECIAL REVENUE ACCOUNTS

The West Virginia Office of Miners' Health, Safety and Training maintained the following special revenue accounts. These

accounts represent funds from specific activities as required by law or administrative regulations. These funds were deposited with the State Treasurer in the following special revenue accounts.

<u>FUND NUMBER</u>	<u>OLD ACCOUNT NUMBER</u>	<u>DESCRIPTION</u>
3350-099	8345-26	Unclassified
3350-640	8345-26	Test Fees Fund
3351-099	8345-28	Unclassified
3351-553	8345-28	Statutory Transfers
3351-640	8345-28	Miners' Health, Safety and Training Fund
3352-099	8345-77	Unclassified
3352-640	8345-77	Payroll Clearing Fund

Effective January 3, 1994, the Office of Miners' Health, Safety and Training utilized the following Surface Reclamation Bonds Mine Openings Fund.

3353-099	8345-30	Unclassified
3353-553	8345-30	Statutory Transfers
3353-640	8345-30	Surface Reclamation Bonds Mine Openings Fund

COMPLIANCE MATTERS

Chapter 22A of the West Virginia Code generally governs the West Virginia Office of Miners' Health, Safety and Training (OMHST). We tested applicable sections of the above, plus general State regulations and other applicable chapters, articles and sections, of the West Virginia Code as they pertain to fiscal matters. Our findings are discussed below.

Collection of Assessments

Chapter 12, Article 2, Section 2 of the West Virginia Code states in part:

"All officials and employees of the state authorized by statute to accept moneys due the state of West Virginia shall keep a daily itemized record of such moneys so received for deposit in the state treasury..."

We examined 54 assessment deposits made by the OMHST. We noted 50 of the 54 deposit amounts did not trace to the State Auditor's Office Account Status Report. The following schedule details our examination.

<u>FISCAL YEAR</u>	<u>OMHST DEPOSIT AMOUNT</u>	<u>AUDITOR'S OFFICE AMOUNT</u>	<u>OMHST (UNDERSTATED) OVERSTATED</u>
1992	\$87,667.24	\$95,899.19	(\$8,231.95)
1993	\$469,018.80	\$477,407.93	(\$8,389.13)
1994	\$145,912.00	\$155,512.25	(\$9,600.25)
1995	<u>\$83,830.00</u>	<u>\$83,846.00</u>	<u>(\$16.00)</u>
	<u>\$786,428.00</u>	<u>\$812,665.40</u>	<u>(\$26,237.30)</u>

In fiscal year 1992, the differences in deposits traced to the State Auditor's Office records ranged from an \$800.39 overstatement to \$2,707.80 understatement in the OMHST's books. In fiscal year 1993, the differences ranged from an overstatement of \$3,786.00 to an understatement of \$4,445.00. From our examination in fiscal year 1994, the differences ranged from a \$50.00 understatement to a \$5,832.00 understatement on the OMHST's ledger, and in fiscal year 1995, we noted differences from a \$2,659.00 overstatement to a \$1,502.00 understatement on the OMHST ledger records.

We believe the differences were caused by omitted entries, input errors, and not reconciling the receipt ledger to the deposits. The OMHST's internal control system is weak in the

area of assessment collections. With these weaknesses the OMHST may not be able to identify all assessments that were actually paid, therefore not giving proper credit to all paid assessments. We requested the OMHST reconcile 13 deposits taken from our examination to their assessment ledger. However, they were only able to reconcile one deposit.

In fiscal year 1993, we noted 14 deposits totaling \$6,811.85 recorded in the OMHST's receipt ledger that we were unable to trace to the Auditor's Account Status Report. We were also unable to trace nine deposits for \$12,452.91 recorded in the Auditor's Account Status Report to the OMHST's receipt ledger.

We noted ten OMHST deposit listings amounts differed from the OMHST assessment ledger for a total of \$8,519.75. Further, these deposit listings differed from the Auditor's Account Status Report for a net total of \$3,812.30.

We recommend the OMHST comply with Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended. We also recommend the OMHST develop an internal control system that will effectively document all paid assessments.

Agency's Response

Response:

Although we feel that adequate internal control exists to safeguard the collection and deposit of the assessments, we recognize that the deposits were not being properly reconciled.

Corrective Action:

(1) A copy of all payments and the assessment deposit from the assessment unit are being attached to and reconciled with the FIMS deposit cover sheet by the fiscal unit. The assessment deposit number is also cross references on the cover sheet.

(2) Also the assessment unit was recording partial payments to the total payment field making it difficult to reconcile back to a deposit, the Safety Information System allows for recording partial payments which we are now utilizing.

Workers' Compensation - Account in Default

According to a letter from the Workers' Compensation Legal Service Division, dated November 30, 1995, the OMHST account is in default. Chapter 23, Article 2, Section 5 of the West Virginia Code states in part:

"... For the purpose of creating a workers' compensation fund, each employer who is required to subscribe to the fund or who elects to subscribe to the fund shall pay premiums calculated as a percentage of the employer's payroll at the rate determined by the commissioner and then in effect....

(1) Thereafter, premiums shall be paid quarterly on or before the last day of the month following the end of the quarter, and shall be the prescribed percentage of the total earnings of all employees during the preceding quarter.

(2) At the time each premium is paid, every subscribing employer shall make a payroll report to the commissioner for the preceding quarter."

We noted in the letter from the Workers' Compensation Legal Service Division, the OMHST failed to file quarterly reports for the period ending March 30, 1992 through December 31, 1993;

June 30, 1994 through December 31, 1994; and according to the letter the OMHST failed to remit the required premium timely for the period ending December 31, 1991.

It appears as a result of the delinquencies the OMHST owes premiums of \$124,413.88 and interest of \$89,996.50 for a total of \$214,410.38, according to the November 30, 1995 notice. These payments will bring the OMHST to its required account deposit balance of \$29,399.48. We believe the interest will continue to accrue until the delinquent premiums and interest are paid in full. As of the date of this report, the Workers' Compensation Division is preparing the necessary documentation to file in the Court of Claims against the OMHST.

It appears the delinquencies were caused by weak internal control procedures in the OMHST. The employee receiving the delinquency reports is no longer employed by the OMHST.

We recommend the OMHST comply with Chapter 23, Article 2, Section 5 of the West Virginia Code.

Agency's Response

Response:

The former finance administrator responsible for filing quarterly reports also was receiving all correspondence and delinquency notices from Worker's Compensation and failed to notify the Director of the problem.

It was only after the Worker's Compensation staff conducted an audit in February of 1995 that the Director was

informed that the agency was in default and owed \$329,568.00 in past due premiums, interest, and penalties.

The Director immediately began negotiating a repayment plan with Worker's Compensation and requested the finance administrator's resignation.

A new finance administrator was hired in April of 1995 and quarterly reports and premiums due for fiscal year 1995 were processed reducing the outstanding premium due to \$121,229.70.

Sufficient funds had been appropriated by the Legislature in fiscal years, 1992, 1993, and 1994 to pay the premiums due, however due to the failure of the former finance administrator to pay the premiums, these appropriated funds were expired and returned to the general fund.

Since budgeted funds had been expired, staff from MHS&T and Worker's Compensation agreed that the most expeditious method to discharge this obligation would be to submit a claim to the Court of Claims.

Accordingly, staff from MHS&T, Worker's Compensation, and the Attorney General's Office negotiated an Agreed Upon Order which the Court of Claims reported to the Governor for submission to the Legislature.

Senate Bill 567 directs the Auditor to pay the Worker's Compensation Fund \$121,736.11 from the general fund for the delinquent premiums.

The remaining accrued interest of \$50,971.63 will be paid by MHS&T to Worker's Compensation through a repayment agreement.

Corrective Action:

Quarterly reports are being prepared by the Administrator of Finance and the Director will sign the report to insure their timely submission.

Workers' Compensation - Temporary Total Disability

During our test of sick leave, we noted seven employees received temporary total disability Workers' Compensation benefits while drawing sick leave benefits. We were unable to find any evidence of the employees reimbursing the OMHST. If the OMHST follows the statute and accepts only the amount of the temporary total disability as repayment of the sick leave taken, the amounts reimbursed will be less than the State's cost of the sick leave.

Chapter 23, Article 4, Section 1 of the West Virginia Code states in part:

"Subject to the provisions and limitations elsewhere in this chapter set forth, the commissioner shall disburse the workers' compensation fund to the employees of employers subject to this chapter, which employees have received personal injuries in the course of and resulting from their covered employment... Provided, That in the case of any employees of the state and its political subdivisions, including... who have received personal injuries in the course of and resulting from their covered employment, such employees are ineligible to receive compensation while such are at the same time and for the same reason drawing sick leave benefits. Such state employees may only use sick leave for non-job related absences consistent with sick leave utilization, and may draw workers' compensation benefits only where there is a job related injury.... That in the event an employee is injured in the course of and resulting from covered employment and such injury results in lost time from work, and such employee for whatever

reason uses or obtains sick leave benefits and subsequently receives temporary total disability for the same time period, such employee may be restored sick leave time taken by him or her as a result of the compensable injury by paying to his or her employer the temporary total benefits received or an amount equal to the temporary total benefits received.... Such employee shall be restored sick leave time on a day for day basis which corresponds to temporary total disability benefits paid to the employer:... That the intent of this paragraph is to prevent an employee of the state or any of its political subdivisions from collecting both temporary total disability benefits and sick leave benefits for the same time period,..."

As stated above, sick leave may be restored to an employee upon payment to the employer the benefits received or an amount equal to the benefits. Listed below are the results of the aforementioned practices:

<u>EMPLOYEE</u>	<u>WORKERS' COMPENSATION BENEFITS PAID</u>	<u>EMPLOYEE'S BUY BACK OF SICK LEAVE</u>	<u>COMPENSATION OVER (UNDER) BUY BACK</u>	<u>OMHST'S SALARY COST OF SICK LEAVE</u>	<u>COMPENSATION OVER (UNDER) COST OF SICK LEAVE</u>
#1	\$ 60.44	\$0.00	\$ 60.44	\$ 121.70	\$ (61.26)
#2	\$ 752.96	\$0.00	\$ 752.96	\$ 1,068.00	\$ (315.04)
#3	\$3,384.80	\$0.00	\$3,384.80	\$ 2,218.57	\$ (1,704.29)
#4	\$ 60.05	\$0.00	\$ 60.05	\$ 123.41	\$ (63.36)
#5	\$4,286.08	\$0.00	\$4,286.08	\$ 6,787.50	\$ (2,501.42)
#6	\$1,061.55	\$0.00	\$1,061.55	\$ 1,753.50	\$ (691.95)
#7	\$ 115.84	\$0.00	\$ 115.84	\$ 258.58	\$ (142.74)
Total	<u>\$9,721.72</u>	<u>\$0.00</u>	<u>\$9,721.72</u>	<u>\$15,201.78</u>	<u>\$ (5,480.06)</u>

The first column, Workers' Compensation Benefits Paid, represents the amount of the temporary total disability benefits received by the employee during the time the employee was off on sick leave. The second column, Employee's Buy Back of Sick Leave, represents the amount paid to the OMHST by the employee for

restoration of sick leave benefits. The third column is the difference in the amount of Workers' Compensation benefits received and the amount the employee paid to the OMHST for restoration of sick leave used. The OMHST should have been paid a total of \$9,721.72 for the restoration of the employee's sick leave. The fourth column represents the cost to the OMHST, based on the employees's salary, of the sick leave used by the employee. The last column shows the amount the State loses under the current statute which permits the buy back of sick leave benefits in an amount equal to the temporary total disability benefits received. For the seven employees listed above, the State will lose a total of \$5,480.06 if the employees reimburse only the temporary total disability benefits.

We noted employees #6 and #7 were not charged for sick leave during the time period of their injury, although they received their regular salary while collecting Workers' Compensation benefits.

Section 15.03. Subsection (f) of the Division of Personnel Administrative Rules states in part:

"... Annual leave does not accrue after the effective date of separation...."

Section 15.04. (e) of the Administrative Rules states in part:

"... Sick leave does not accrue after the effective date of separation...."

Employee #6 collected temporary total disability from January 25, 1993 to February 14, 1993. According to the sick and annual leave records, the employee accrued 1.25 days of annual

leave and 1.50 days of sick leave during this period. The OMHST paid the employee for 15 work days, however the days were not charged against the employee's sick leave balance. We believe the balance should be adjusted to reflect the time paid, but not worked by the employee. We also believe the days of annual leave and sick leave accruals should be deducted from the employees leave balances.

We noted employee #7 was paid for two days of work by the OMHST without charging the two days of sick leave. We believe two days should have been deducted from the employee's sick leave balance.

We recommend the OMHST comply with Chapter 23, Article 4, Section 1 of the West Virginia Code. We also recommend the OMHST collect \$9,721.72 for the buy back of sick leave benefits. We recommend the OMHST adjust the employee's sick and annual leave balances as required. We suggest to the West Virginia Legislature the Code referenced be reviewed for possible amendment to include total reimbursement of the State's outlay for restoration of sick leave benefits.

Agency's Response

Response:

The policy issued by the Division of Personnel regarding Workers' Compensation/Sick Leave was not enforced by the previous Administrator of Finance. In most instances an election of option form was not completed, a medical leave of absence was not requested and the employee submitted a sick leave request. We are

requesting advice from Workers' Compensation staff on how to resolve each case.

Corrective Action:

All Workers' Compensation claims are being carefully reviewed and the policy is being strictly enforced. As evidenced by two recent requests to TTD benefits.

Also, the Workers Compensation Fund has instituted a policy prohibiting the processing of TTD benefit payments until a election of options form is received.

Overtime Approval

All overtime worked by the OMHST employees must be approved by the Director. We noted one employee was paid for overtime without the Director's approval.

Chapter 12, Article 3, Section 13 of the West Virginia Code states:

"No money shall be drawn from the treasury to pay the salary of any officer or employee before his services have been rendered."

The OMHST maintains a daily time record as well as a sick, vacation and annual leave records to document the number of hours worked by an employee. We noted the hours worked recorded on these records for this employee did not agree for the period May 1993 through November 1994.

There appears to have been an internal control weakness in the system that allowed the discrepancy in the records. The sick, vacation, and annual leave records documents the employee's annual and sick leave taken and the number of hours worked. This

record was signed by the employee and the Director of the OMHST. The number of hours worked each day was also recorded on the daily time record. The daily time record was signed only by the OMHST Administrator of Finance and Personnel.

The OMHST Administrator would send a copy of the signed daily time record to the Division of Natural Resources when overtime was worked by an employee. The Division of Natural Resources prepared the payrolls and submitted them to the State Auditor's Office for the OMHST during this period. The daily time record was not reviewed by the Director.

The following schedule details our examination of overtime recorded on the daily time records and the sick, vacation and annual leave records:

<u>FISCAL YEAR</u>	<u>DAILY TIME RECORD</u>	<u>SICK, VACATION, ANNUAL LEAVE RECORD</u>	<u>DAILY TIME RECORD OVER (UNDER) SICK, VACATION, ANNUAL LEAVE RECORD</u>	<u>OVERTIME AMOUNT PAID EMPLOYEE</u>
1993	31.00	23.00	8.00	\$ 532.88
1994	158.50	0.00	158.50	\$2,736.54
1995	<u>50.00</u>	<u>2.50</u>	<u>47.50</u>	<u>\$ 979.49</u>
	<u>239.50</u>	<u>25.50</u>	<u>214.00</u>	<u>\$4,248.91</u>

From the documentation we were provided, the schedule shows the employee was paid \$4,248.91 for 239.50 hours of overtime. However, we noted only 25.50 hours were signed by the Director.

We noted the employee refunded the OMHST \$1,893.40. The employee was paid \$2,355.51 for overtime that was not approved by the Director. We were told by agency staff this amount was agreed upon by both parties. We were unable to determine the proper

amount of overtime worked or the proper amount for the refund. The employee was terminated on January 4, 1995.

We recommend the OMHST comply with Chapter 12, Article 3, Section 13, of the West Virginia Code. We also recommend the OMHST strengthen internal controls in the area of overtime pay.

Agency's Response

Response:

All overtime must be approved by the Director. The employee in question was dismissed.

Corrective Action:

A payroll clerk has been hired and carefully reviews requests for overtime to insure that proper approval was received.

Overtime Calculation

Chapter 21, Article 5C, Section 3 of the West Virginia Code states in part:

"(a) On and after the first day of July, one thousand nine hundred eighty, no employer shall employ any of his employees for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which he is employed...."

We noted the OMHST paid overtime to employees after 37.5 hours per week during the period January 1, 1993 through June 30, 1995. Title 42, Series 8, Sections 9.2 and 9.3 of the Division of Labor's Legislative Rules define work and nonwork time as follows.

"9.2. Nonwork time. -- Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the

time effectively for his own time are not hours worked.

9.3. Work time. -- The employee whose time is spent in physical or mental exertion under control and direction of the employer constitutes hours worked."

We noted the OMHST utilizes the full eight hour workday when computing employees overtime worked for compensation. According to the OMHST policies, the office work hours are 8:00 a.m. to 4:30 p.m. The basic workweek is 40 hours. However, during the period from January 1, 1993 through June 30, 1995, the employees were required to work 7.5 hours per day or 37.5 per week. The office workday includes a one hour lunch period, and two ten minute smoke breaks. Thirty minutes of the lunch period is considered paid work time by the agency.

Sections 9.8 and 9.9 of the Rules define mealtime and rest periods as follows.

"9.8. Mealtime. -- Bona fide meal periods are not work time.

9.9. Rest Periods. -- Rest periods of short duration, running from five (5) to twenty (20) minutes, must be counted as hours worked."

We believe the inclusion of the 30 minute paid portion of the lunch period in the agency's computations of hours worked is an **extravagant** method of compensating employees for hours worked in excess of their normal workweek. Also, based upon the definition of nonwork time, we believe the entire one hour lunch period should be classified as nonwork time and not used in the calculation of hours worked.

We determined from the West Virginia Auditor's Office Payroll Register employees were paid a total of \$5,652.22 in overtime pay during the period January 1, 1993 through June 30, 1995. We calculated employees were paid a total of \$1,723.67 in overtime due to one-half hour of the one hour lunch period being treated as work time.

Based upon our calculation, we believe approximately 30% of the total overtime paid to employees during this period may be attributable to one-half hour of the lunch period being used to compute the employee's hours worked.

However, as noted in the previous finding in this report, one employee refunded \$1,893.40 to the OMHST. This reduced the total overtime paid to \$3,758.82. We calculated approximately \$1,146.27 in overtime pay was due to one-half hour of the lunch period being treated as time worked.

We recommend the OMHST comply with Chapter 21, Article 5C, Section 3, Subsection (a) of the West Virginia Code. We also recommend the OMHST comply with Title 42, Series 8, Section 9 of the Department of Labor Legislative Rules in determining hours worked.

Agency's Response

Response:

The agency follows the Division of Personnel's position that employees on their ½ hour paid lunch break are subject to being called back to work, hence this ½ hour is considered work time.

Annual Report

Chapter 22A, Article 1, Section 4, Subsection (b) of the West Virginia Code states in part:

"The director of the office of miner's health, safety, and training has full charge of the division. The director has the power to:

...(8) Make annually a full and complete written report of the administration of the office to the governor and the Legislature of the state for the year ending the thirtieth day of June. The report shall include... the total funds of the office from all sources identifying each source of such funds, the expenditures of the office, (and) the surplus or deficit of the office at the beginning and end of the year..."

The OMHST submits annual reports to the Governor and the Legislature that are prepared on a calendar year basis. We noted the reports do not identify the sources of funds, the expenditures nor do they include the beginning and ending balances of the office.

We were told by agency personnel, the reason the annual reports are based on the calendar year is because the industry standard for mining reports are based on a calendar year. Also, the United States Department of Labor's Mine Safety and Health Administration (MSHA) also reports on a calendar year basis. We were told the OMHST believes because the annual reports are based on the calendar year, this lends comparability with MSHA and industry reports.

We recommend the OMHST comply with Chapter 22A, Article 1, Section 4, Subsection (b) of the West Virginia Code.

Agency's Response

Response:

The agency currently prepares our annual report on a calendar basis to coincide with the mining industry and federal statistical reports.

Corrective Action:

A separate report will be issued that is in full compliance with the West Virginia Code.

Leave Usage

Each full-time employee is entitled to annual leave with pay and benefits. Annual leave accrual for part-time employees shall be computed in proportion to hours worked during the pay period based on the proper length of service category. Section 15.03 of the Division of Personnel's Administrative Rules allows employees occupying full-time positions to accrue annual leave on the following basis:

Less than 5 years service: 1.25 days/month,
maximum carryover - 30 days;

5 but less than 10 years' service: 1.50
days/month, maximum carryover - 30 days

10 but less than 15 years' service: 1.75
days/month, maximum carryover - 35 days

15 or more years' service: 2.00 days/month,
maximum carryover - 40 days.

Accrued annual leave shall be granted at such times as will not materially affect the agency's efficient operation. Generally, all annual leave must be approved in advance. Annual

leave may not be granted in advance of the employee's accrual of the leave.

Annual leave shall be used in circumstances when sick leave or the sick leave allowance for an employee's immediate family is exhausted. The same rules regarding the necessity for a physician's statement when sick leave is used apply when annual leave is used under these circumstances. An employee who separates from employment for any reason shall be paid for all accrued and unused annual leave.

According to the rules, accrued sick leave shall be granted for incapacitating illness or injury of the employee, death in the immediate family of the employee, exposure to a contagious disease, incapacity due to pregnancy, routine medical appointments for the employee, and illness and/or routine medical and dental appointments of the employee's immediate family (not to exceed 40 hours per calendar year). When an employee retires, all accrued sick leave may be applied towards extended insurance coverage or to acquire additional credited service in the retirement system.

Section 15.05. of the Division of Personnel's Administrative Rules states:

"Suspected Leave Abuse: When an employee appears to have a pattern of leave abuse, including such frequent use of sick leave as to render the employee's services undependable, the appointing authority may request appropriate substantiation of the employee's claim for leave, for example, verification of an illness of less than three days. Prior written notice of the requirement for appropriate substantiation must be given to the employee."

We could not test the aforementioned section of the handbook because the OMHST has not defined "a pattern of sick leave abuse". However, we believe this section may be subject to any interpretation and this condition could lead to extravagant use of sick leave. Also, we believe this particular section of the Rules may permit various interpretation to be made on the part of management.

Physician's statements are required when an employee is released to work on limited duty. It must state the reasons for and the dates of the imposed limitations. An employee shall furnish a written statement from the attending physician for all consecutive days of sick leave granted beyond three workdays. For extended periods of sick leave, a physician's statement must be submitted every 30 days. When an employee's absence is caused by exposure to a contagious disease, a physician must state in writing that the employee's presence on duty may jeopardize the health of others.

The results of the above leave policies for the period July 1, 1992 through June 30, 1995 are shown below:

<u>ANNUAL</u>	<u>TOTAL SICK</u>	<u>TOTAL</u>	<u>ANNUAL</u>	<u>YEARLY AVERAGE SICK</u>	<u>TOTAL</u>
<u>\$908,203</u>	<u>\$462,158</u>	<u>\$1,370,361</u>	<u>\$302,734</u>	<u>\$154,053</u>	<u>\$456,787</u>

Our examination of sick and annual leave usage included all OMHST employees (109) that accrued leave for the period July 1, 1992 through June 30, 1995. The cost of all leave for the OMHST was \$1,370,361 for the period of our examination. The average

yearly usage for the leave was 26.26 days. The OMHST had a 1.12 full time equivalent employee for all leave taken during the period. This means the OMHST needed 109 employees to complete the work expected of 98 employees.

The OMHST employees used 5,310 days of annual leave for the period. Annual leave cost \$908,203 or an average \$302,734 per year. The average usage ranged from 10.63 days for employees with less than five years of service, to 23.94 for employees with 15 years or more years of service. Costs are based on average salary during the period plus 30% of the average salary for the related benefits. The OMHST had a full-time equivalent employee of 1.08 for all annual leave taken.

The employees used a total of 2,733 sick days for the period. The OMHST had a 1.04 full-time equivalent employee for all sick leave used. The cost of all sick leave was \$462,158 or an average of \$154,053 per year for the period examined. The total sick leave included 848 days of sick leave which had verification (physician's statement).

From our review of the OMHST records, it appears the employees with lower salaries took less sick leave than higher salaried employees. The average salary of all employees who accrue sick and annual leave at the OMHST is \$32,104. The employees with salaries below the average took an average of eight days of sick leave per year. The employees with salaries above \$32,104 appeared to have taken an average of nine and one-third days of sick leave per year.

It appears employees with 10 to 15 years of service have the highest sick leave usage rate. These employees took a total of 946 days of sick leave, or an average of 11 days per year during the audit period. It appears employees with less than five years of service take the least amount of sick leave. These employees took 632 days of sick leave during our audit period, or an average of six and one-fourth days per year.

We performed a detailed analysis of the employees sick leave usage which was verified based on the employee's word. We will refer to this sick leave as "integrity sick leave". Our analysis revealed the following information for integrity sick leave days used.

<u>EMPLOYEE SERVICE YEARS</u>	<u><5</u>	<u>5<10</u>	<u>10<15</u>	<u>15+</u>	<u>Total</u>
Number of Employees	39	16	28	26	109
Integrity Days	490	241	532	622	1,885
Average Integrity Leave Days Per Year	5.05	5.02	6.34	8.04	6.11
Total Cost of Leave	\$73,076	\$44,000	\$91,181	\$106,654	\$314,911
Full Time Equivalent	1.02	1.02	1.03	1.03	1.03
Average Salary	\$29,738	\$35,210	\$32,901	\$32,880	\$32,104
Employees Needed	38	16	27	25	106

We noted the OMHST's employees used 1,885 days of sick leave that was verified by the employee's integrity for the period July 1, 1992 through June 30, 1995. Although no violations of the Division of Personnel's Rules, this amount of employee integrity leave may represent an extravagant use of sick leave. The days of

sick leave used, which was based on the integrity of the employee, represented 69% of all sick leave while 31% of the sick leave taken was verified through some other source, namely physician's statements. The OMHST had a full-time equivalent employee of 1.03 for sick leave used which was based on the integrity of the employee. This means the OMHST needed 109 employees to perform the duties of 106 employees.

We recommend the OMHST define what a pattern of sick leave abuse means in the West Virginia Division of Personnel Administrative Rules in order to minimize any extravagant use of sick leave and to avoid any misunderstandings of sick leave abuse.

Agency's Response

Response:

All requests for leave are approved by the employees immediate supervisor and recorded to a leave card. The individual supervisor has used their discretion in handling suspected abuse of sick leave.

Corrective Action:

The agency has obtained a copy of the Division of Administration's policy regarding the use of sick leave and will use this policy as a guide to issue a formal written policy to all employees.

Also we have obtained sample warning letters from the Division of Personnel to use in the event of suspected sick leave abuse.

The payroll office is in the process of establishing a management report detailing employee leave usage.

Equipment Inventory

Chapter 5A, Article 3, Section 36 of the West Virginia Code states in part:

"The director shall have the power and duty to: (1) Make and keep current an inventory of all removable property belonging to the State. Such inventory shall be kept on file in the office of the director as a public record...."

We noted the following purchases made during the period October 15, 1991 through June 30, 1995, were not added to the OMHST inventory listing.

<u>DATE PURCHASED</u>	<u>DESCRIPTION</u>	<u>COST</u>
06/05/95	Toshiba Lap Top Computer	\$1,990.00
06/08/95	IRMA 3 Convertible ISA	744.00
01/24/95	Express writer Dictaphone	464.00
10/17/94	Provista 5 Computer	1,070.00
08/10/94	Telex Copyette Duplicator	495.95
08/10/94	Minolta Camera	<u>423.95</u>
		<u>\$5,187.90</u>

Without accurate inventory records, the OMHST will have no means to effectively manage their inventory. We were told the employee in charge of maintaining the inventory purchased during our audit period is no longer with the agency. These duties had not been reassigned as of the date of our examination.

Chapter 5A, Article 3, Section 35 of the West Virginia Code States in part:

"The head of every spending unit of state government shall, on or before the fifteenth day of July of each year, file with the

director an inventory of all real and personal property, and of all equipment, supplies and commodities in its possession as of the close of the last fiscal year, as directed by the director."

We noted the OMHST has not filed the required annual inventory with the Director of the Purchasing Division of the West Virginia Department of Administration. We were unable to determine the reason the listing has not been submitted. The Director of the Purchasing Division is unable to obtain an overview of the OMHST inventory if the annual inventory is not filed.

We recommend the OMHST comply with Chapter 5A, Article 3, Section 36 of the West Virginia Code and update the inventory to the current status. We also recommend the OMHST comply with Chapter 5A, Article 3, Section 35 of the West Virginia Code.

Agency's Response

Response:

The agency agrees with the finding.

Corrective Action:

The duties of maintaining the agency's inventory has been assigned to the Administrator of Finance and Personnel and equipment purchases are being reviewed and added property forms are being prepared. Also, the annual inventory will be completed as required. The agency's Safety Information System also includes an inventory tracking system which will be revised and updated.

Late Deposits

Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended, states in part:

"All officials and employees of the state authorized by statute to accept moneys due the state of West Virginia shall keep a daily itemized record of such money so received for deposit in the state treasury and shall deposit within twenty-four hours with the state board of investments all moneys received or collected by them for or on behalf of the state for any purpose whatsoever..."

We examined 54 deposits selected from the OMHST assessment records. We noted 53 of 54 deposits were not made within twenty-four hours as required by statute. The OMHST receives assessment payments in each of its' regional offices. The checks for assessments received in these offices are not deposited until they are sent to the Charleston office. We noted the deposits are made on an average of eight days from receipt in the Charleston office. Total assessment receipts for the 53 late deposits during the period October 1, 1991 through June 30, 1995 totalled \$786,064.87. Applying the results of this test to the entire population of \$4,739,680.22 in assessment revenues over the audit period, we estimated interest losses to the State of West Virginia to be approximately \$4,000.00.

We examined 38 deposits from the Test Fees Fund 3350. We noted nine deposits contained receipts totaling \$4,145.24 were not deposited within twenty-four hours. The deposits ranged from two to twenty-one days after receipt of the moneys. The OMHST lost the use of the receipts for these days. We estimate the State of West Virginia lost approximately \$90.00 when our examination results are applied to the entire test fee population.

We also examined 28 deposits from the Permit and Certification Fees Fund 0277. We noted three deposits contained receipts totaling \$10,800.00 that were not deposited within twenty-four hours. The deposits ranged from two to seven days after receipt of the moneys. The OMHST lost the use of these funds for these days. Applying the results of our examination to the entire population of certification fees, we estimate the State lost approximately \$37.00 in interest because of the late deposits. We were not able to determine the reason for the late deposits.

We recommend the OMHST comply with Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended.

Agency's Response

Response:

The agency agrees, that the current system of collection inherently results in late deposits however, a strong effort will be made to ensure timely deposits are made according to state policies.

Corrective Action:

The finance section will apply the Total Quality Management technique to review and modify the deposit procedures to comply with the West Virginia State Code deposit requirements.

Safety Instructors

Chapter 22A, Article 1, Section 9 of the West Virginia Code states in part:

"The office shall employ eleven or more mine safety instructors...."

Our review of OMHST records indicates there were nine safety instructors employed during fiscal year 1995, ten during fiscal year 1994, seven during fiscal year 1993, and six during fiscal year 1992.

We were told by agency personnel the OMHST considers themselves as presently having ten safety instructors on their staff, comprised of nine safety instructors and one central office coordinator. According to agency personnel, the OMHST has been unable to acquire federal funding necessary to employ 11 safety instructors.

However, Chapter 22A, Article 7, Section 6 of the West Virginia Code states in part:

"... The director is authorized and directed to utilize such state and federal moneys and personnel as may be available to the office for educational and training purposes in the implementation of the provisions of the this article."

The OMHST estimates ten percent of the inspectors' time is related to training activities to ensure a proper amount of training is provided. We believe without the 11 safety instructors, the OMHST may not be able to carry out the safety training as set out in Chapter 22A of the West Virginia Code.

We recommend the OMHST comply with Chapter 22, Article 1, Section 9 of the West Virginia Code. We also recommend the OMHST comply with Chapter 22A, Article 7, Section 6 of the West Virginia Code.

Agency's Response

Response:

The agency employees nine (9) full time mine safety instructors and one (1) full time mine foreman examiner who certifies mine foremen/fire bosses, assistant mine foremen, underground and surface foremen, also surface construction supervisors and certification changes.

The mine foreman examiner also supervises and trains state mine rescue teams, judges mine rescue contests, and designs and plans mine rescue competition.

Also, the Administrator of Training and Mine Rescue conducts hands-on training as well as supervising the mine safety instructors.

In addition the mine inspectors spend a minimum of ten percent (10%) of their time in training related activities.

We feel that the inclusion of the Training Administrator and the state mine foreman examiner complies with the code requirement.

Annual Increment

Chapter 5, Article 5, Section 2 of the West Virginia Code, as amended, states in part:

"Effective for the fiscal year beginning the first day of July, one thousand nine hundred eighty-five, every eligible employee with three or more years of service shall receive an annual salary increase equal to thirty-six dollars times the employees' years of service, not to exceed twenty years of service. In each fiscal year thereafter and on the first day thereof, each such employee shall receive

an annual increment increase of thirty-six dollars for such fiscal year...."

We noted three employees whose years of service were not calculated correctly for annual increment payment. The first employee was employed by the State on July 1, 1982. We calculated the employee's years of service for fiscal years 1992, 1993, 1994 and 1995 to be 10, 11, 12 and 13 years, respectively. However, the OMHST has calculated the years of employment to be 9, 10, 11 and 12 years, respectively. We believe this employee was underpaid \$144 in increment payments.

The second employee was employed by the State on June 16, 1988. We calculated the employee's years of service for fiscal years 1992 and 1993 to be 4 and 5 years, respectively. The OMHST calculated the years of employment to be 3 and 4 years, respectively. However, we noted the OMHST calculated fiscal years 1994 and 1995 to be 6 and 7 years. We were able to locate a memorandum dated November 12, 1993 that indicated \$36.00 was owed for fiscal year 1993, but we were unable to obtain supporting documentation for actual payment. We believe this employee was underpaid \$72.00 in annual increment payments. The OMHST did not know why the underpayments were made.

We noted a third employee was employed March 20, 1990, according to the employees' employment history. The employee was paid \$108.00 in increment payments in July 1992. We believe this employee was not employed for three years as required by the West Virginia Code, therefore was not eligible for the 1992 increment

payment. We were unable to determine the reason for the calculation error.

We recommend the OMHST comply with Chapter 5, Article 5, Section 2 of the West Virginia Code, as amended. Also, we recommend the OMHST compensate the employees \$144.00 and \$72.00, respectively, for accrued annual increment underpayments. We recommend the OMHST attempt to collect \$108.00 for the ineligible increment payment.

Agency's Response

Response:

Payroll office is reviewing the underpayment and overpayment increments.

Corrective Action:

The agency will attempt to compensate the employees underpaid and collect the amount overpaid. The payroll officer is updating all employee records and instituting a computerized system to insure compliance.

Board Members - Per Diem Travel Reimbursement

Chapter 22A, Article 7, Section 4(d) of the West Virginia Code, as amended states in part:

"Each appointed member of the board shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties..."

Chapter 4, Article 2A, Section 7 of the West Virginia Code, as amended, states in part:

"Each member of the Legislature who does not commute daily shall receive the sum of eighty-five dollars per day as per diem allowance in connection with any regular, extended, extraordinary session, interim assignment or for any member so authorized by the presiding officer. Any member of the Legislature who does commute daily shall receive the sum of forty-five dollars per day as said per diem allowance and, in addition to such allowance, shall be reimbursed for overnight commuting expenses at the mileage rate equal to the amount paid by the travel management office of the department of administration for the most directly traveled route... Provided, That the total of this per diem allowance plus travel expense for a daily commuting member shall not exceed eighty-five dollars per day..."

We noted two members of the Board of Miner Training, Education and Certification were reimbursed for travel in excess of \$85.00 per day. One board member was reimbursed \$130.50, which included \$85.50 for 300 miles traveled at \$.285 per mile, and a per diem of \$45.00. The other board member was reimbursed \$112.36, which included \$59.86 for 210 miles traveled at \$.285 per mile, per diem of \$45.00 and toll charges of \$7.50. It appears the board members were overpaid \$45.50 and \$27.36, respectively.

We recommend the OMHST comply with Chapter 22A, Article 7, Section 4 and Chapter 4, Article 2A, Section 7 of the West Virginia Code, as amended. Also, we recommend the OMHST obtain reimbursement of the \$45.50 and \$27.36, respectively, from these employees for the excess travel reimbursements they received.

Agency's Response

Response:

The agency is reviewing this finding and will attempt to recoup from those individuals any overpayments made.

Corrective Action:

The state code governing the payment of board members per diem is being reviewed and a memorandum concerning the allowable per diem limits will be issued to all board members.

INTERNAL CONTROLS AND ACCOUNTING SYSTEM

As part of our examination, we reviewed and tested the system of internal accounting control to the extent we considered necessary to evaluate the system as required by generally accepted auditing standards. Under these standards the purpose of such evaluation is to establish a basis for reliance thereon in determining the nature, timing and extent of other auditing procedures that are necessary for expressing an opinion on the financial statements.

The objective of internal accounting control is to provide reasonable, but not absolute, assurance as to the safeguarding of assets against loss from unauthorized use or disposition, and the reliability of financial records for preparing financial statements and maintaining accountability for assets. The concept of reasonable assurance recognizes the cost of a system of internal accounting control should not exceed the benefits derived and also recognizes that the evaluation of these factors necessarily requires estimates and judgments by management.

There are inherent limitations that should be recognized in considering the potential effectiveness of any system of internal accounting control. In the performance of most control procedures, errors can result from misunderstanding of instructions, mistakes of judgment, carelessness or other personal factors. Control procedures whose effectiveness depends upon segregation can be circumvented by collusion. Similarly, control procedures can be circumvented intentionally by management with respect either to the execution and recording of transactions or with respect to the estimates and judgments required in the preparation of financial statements. Further projection of any evaluation of internal accounting control to future periods is subject to the risk the procedures may become inadequate because of changes in conditions and the degree of compliance with the procedures may deteriorate.

Our study and evaluation of the system of internal accounting control for the period July 1, 1991 to June 30, 1994, which was made for the purpose set forth in the first paragraph above, would not necessarily disclose all weaknesses in the system. However, such study and evaluation disclosed conditions we believe to be weaknesses.

STRENGTHEN INTERNAL CONTROLS OVER COMPLIANCE

As indicated by the items noted in the "Compliance Matters" section of this report, we believe the OMHST should strengthen internal controls in the area of compliance with the West Virginia Code and various rules and regulations which control

the OMHST's operations. We believe weaknesses in the internal control structure exist in the following areas as evidenced by the compliance findings:

1. Collection of Assessment Fees;
2. Overtime Approval; and,
3. Annual Increment Payments.

We recommend the OMHST strengthen or establish the necessary internal controls to better ensure compliance with the West Virginia Code and other administrative rules and regulations which govern the operations of the OMHST.

INDEPENDENT AUDITORS' OPINION

The Joint Committee on Government and Finance:

We have audited the state of appropriations/cash receipts, expenditures/disbursements and changes in fund balances of the West Virginia Office of Miners' Health, Safety and Training for the years ended June 30, 1995 and June 30, 1994. The financial statement is the responsibility of the management of the West Virginia Office of Miners' Health, Safety and Training. Our responsibility is to express an opinion on the financial statement based on our audit.

Except as discussed in the following paragraph, we conducted our audit in accordance with generally accepted auditing standards. 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 included 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.

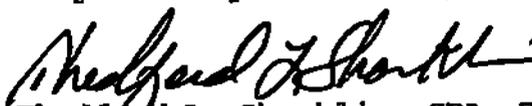
Our audit disclosed the revenues shown in the accounting records of the Office of Miners' Health, Safety and Training could not be reconciled with deposits recorded in the West Virginia State Treasury. As a result, we were unable to determine that all revenues collected by the agency were deposited in the State Treasury and all fees, fines and assessments had been properly recorded. We were unable to apply alternative auditing procedures to satisfy ourselves as to the fairness of the revenues collected.

As described in Note A, the financial statement was prepared on the cash and modified cash basis of accounting, which are comprehensive bases of accounting other than generally accepted accounting principles.

In our opinion, except for the effects, if any, as might have been determined had we been able to reconcile the revenues collected by the West Virginia Office of Miners' Health, Safety and Training with the deposits made with the West Virginia State Treasury, referred to in paragraph three above, the financial statement referred to above presents fairly, in all material respects, the appropriations and expenditures and revenue collected and expenses paid of the West Virginia Office of Miners' Health, Safety and Training for the years ended June 30, 1995 and June 30, 1994, on the bases of accounting described in Note A.

Our audit was conducted for the purpose of forming an opinion on the basic financial statement taken as a whole. The supplemental information is presented for purposes of additional analysis and is not a required part of the basic financial statement. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statement and, in our opinion, except for the effects, if any, of our inability to reconcile revenues collected with deposits as discussed in paragraph three above, is fairly stated in all material respects in relation to the basic financial statement taken as a whole.

Respectfully submitted,



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

December 11, 1995

Auditors: Nick Arvon, Supervisor
Ethelbert Scott, Jr., Auditor-in-Charge
Rhonda L. Combs
Stanley D. Lynch

**WEST VIRGINIA OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING
STATEMENT OF APPROPRIATIONS/CASH RECEIPTS, EXPENDITURES/
DISBURSEMENTS AND CHANGES IN FUND BALANCES**

	<u>Year Ended June 30, 1995</u>			<u>Combined Totals</u>
	<u>General Revenue</u>	<u>Special Revenue</u>	<u>Federal Revenue</u>	
Appropriations/Cash Receipts:				
Appropriations	\$4,422,584.00	\$0.00	\$0.00	\$4,422,584.00
Permit Fees	226,204.00	0.00	0.00	226,204.00
Test Fees	0.00	97,675.50	0.00	97,675.50
Assessment Fees	0.00	1,075,889.78	0.00	1,075,889.78
Transfer from Division of Environmental Protection	0.00	0.00	0.00	0.00
United States Department of Labor Grants	0.00	0.00	437,112.01	437,112.01
	<u>4,648,788.00</u>	<u>1,173,665.28</u>	<u>437,112.01</u>	<u>6,259,465.29</u>
Expenditures/Disbursements:				
Personal Services	3,083,340.74	412,691.23	236,673.70	3,712,705.67
Employee Benefits	903,449.06	111,468.81	91,073.61	1,105,991.48
Current Expenses	182,618.22	607,614.81	39,882.97	830,116.00
Repairs and Alterations	0.00	2,428.81	644.38	3,073.19
Equipment	70,388.73	84,884.71	62,116.93	217,388.37
Other Extraordinary Expenses	0.00	0.00	0.00	0.00
Refund	0.00	500.00	0.00	500.00
Transfers to General Revenue	226,204.00	0.00	0.00	226,204.00
	<u>4,445,998.75</u>	<u>1,219,688.37</u>	<u>430,391.69</u>	<u>6,095,978.71</u>
Appropriations/Cash Receipts Over (Under) Expenditures/ Disbursements				
	202,789.25	(46,023.09)	6,720.42	163,486.58
Expirations and Expenditures After June 30				
	(202,789.25)	0.00	0.00	(202,789.25)
Beginning Balance				
	0.00	291,667.66	24,137.23	315,704.89
Ending Balance				
	<u>\$0.00</u>	<u>\$245,544.57</u>	<u>\$30,857.65</u>	<u>\$276,402.22</u>

See Notes to Financial Statement

General Revenue	Year Ended June 30, 1994		Combined Totals
	Special Revenue	Federal Revenue	
\$4,301,554.00	\$0.00	\$0.00	\$4,301,554.00
6,720.00	0.00	0.00	6,720.00
0.00	83,491.75	0.00	83,491.75
0.00	1,250,312.35	0.00	1,250,312.35
0.00	61,362.50	0.00	61,362.50
0.00	0.00	<u>533,685.13</u>	<u>533,685.13</u>
4,308,274.00	1,395,166.60	533,685.13	6,237,125.73
2,942,382.14	357,088.94	306,723.45	3,606,194.53
846,730.63	121,156.68	94,868.55	1,062,855.86
259,214.53	735,665.89	112,793.36	1,107,693.78
0.00	4,300.50	2,643.64	6,944.14
0.00	63,388.52	4,672.86	68,261.38
12.86	0.00	0.00	12.86
0.00	0.00	0.00	0.00
6,720.00	0.00	0.00	6,720.00
<u>4,055,060.16</u>	<u>1,281,620.53</u>	<u>522,001.86</u>	<u>5,858,682.55</u>
283,213.84	113,546.07	11,683.27	378,443.18
(253,213.84)	0.00	0.00	(253,213.84)
0.00	178,021.59	12,453.86	190,475.65
<u>\$0.00</u>	<u>\$291,567.66</u>	<u>\$24,137.23</u>	<u>\$316,704.89</u>

**WEST VIRGINIA OFFICE OF MINERS' HEALTH,
SAFETY AND TRAINING
NOTES TO FINANCIAL STATEMENT**

Note A - Accounting Policies

Accounting Method: The modified cash basis of accounting is followed for the General Revenue Fund. The major modification from the cash basis is that a 31-day carry-over period is provided at the end of each fiscal year for the payment of obligations incurred in that year. All balances of the General Revenue Fund Appropriations for each fiscal year expire on the last day of such fiscal year and revert to the unappropriated surplus of the fund from which the appropriations were made, except that expenditures encumbered prior to the end of the fiscal year may be paid up to 31 days after the fiscal year-end; however, appropriations for buildings and land remain in effect until three years after the passage of the act by which such appropriations were made. The cash basis of accounting is followed by all other funds. Therefore, certain revenue 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.

Expenditures paid after June 30 in the carry-over period and expirations were as follows:

	<u>EXPENDITURES</u>		<u>EXPIRATIONS</u>	
	<u>PAID AFTER JUNE 30,</u>		<u>JULY 31,</u>	<u>JULY 31,</u>
	<u>1995</u>	<u>1994</u>	<u>1995</u>	<u>1994</u>
Personal Services	\$ 35,565.72	\$ -0-	\$3,813.54	\$108,385.13
Employee Benefits	154,586.44	23,210.36	-0-	121,563.74
Unclassified	6,919.62	40.50	463.93	14.11
Annual Increments	<u>-0-</u>	<u>-0-</u>	<u>1,440.00</u>	<u>-0-</u>
	<u>\$197,071.78</u>	<u>\$23,250.86</u>	<u>\$5,717.47</u>	<u>\$229,962.98</u>

Combined Totals: The combined totals contain the totals of similar accounts of the various funds. Since the appropriations and cash receipts of certain funds are restricted by various laws, rules and regulations, the totaling of the accounts is for memorandum purposes only and does not indicate that the combined totals are available in any manner other than that provided by such laws, rules and regulations.

Note B - Pension Plan

All eligible employees are members of the West Virginia Public Employees' Retirement System. Employee contributions are 4½% of their annual compensation and employees have vested rights under certain circumstances. The West Virginia Office of Miners' Health, Safety and Training matches contributions at 9½% of the compensation on which the employee made contributions. West Virginia Office of Miners' Health, Safety and Training pension expenditures were as follows:

	<u>YEAR ENDED JUNE 30,</u>	
	<u>1995</u>	<u>1994</u>
General Revenue	\$290,223.97	\$281,553.83
Special Revenue	36,360.30	35,404.19
Federal Programs	<u>27,587.93</u>	<u>29,367.87</u>
	<u>\$354,172.20</u>	<u>\$346,325.89</u>

Note C - Intra-Account Transactions

The following intra-account transactions have been eliminated:

	<u>YEAR ENDED JUNE 30,</u>	
	<u>1995</u>	<u>1994</u>
<u>\$-0-</u>		<u>\$8,211.36</u>

SUPPLEMENTAL INFORMATION

**WEST VIRGINIA OFFICE OF MINERS' HEALTH,
SAFETY AND TRAINING
STATEMENT OF APPROPRIATIONS AND EXPENDITURES
GENERAL REVENUE**

	<u>Year Ended June 30.</u>	
	<u>1995</u>	<u>1994</u>
<u>Personal Services - Fund 0277-001</u>		
<u>(Account 4780-0)</u>		
Appropriations	\$3,075,183.00	\$2,981,617.00
Expenditures:		
Personal Services	3,029,854.74	2,913,402.14
Employee Benefits	<u>5,949.00</u>	<u>(40,170.27)</u>
	<u>3,035,803.74</u>	<u>2,873,231.87</u>
	39,379.26	108,385.13
Transmittals Paid After June 30	<u>0.00</u>	<u>0.00</u>
Balance	<u>\$39,379.26</u>	<u>\$108,385.13</u>

**WEST VIRGINIA OFFICE OF MINERS' HEALTH,
SAFETY AND TRAINING
STATEMENTS OF APPROPRIATIONS AND EXPENDITURES
GENERAL REVENUE**

	<u>Year Ended June 30,</u>	
	<u>1995</u>	<u>1994</u>
<u>Annual Increment - Fund 0277-004</u>		
<u>(Account 4780-66)</u>		
Appropriations	\$31,536.00	\$28,980.00
Expenditures	<u>30,096.00</u>	<u>28,980.00</u>
	1,440.00	0.00
Transmittals Paid After June 30	<u>0.00</u>	<u>0.00</u>
Balance	<u>\$1,440.00</u>	<u>\$0.00</u>
<u>Unclassified - Fund 0277-099</u>		
<u>(Account 4780-17)</u>		
Appropriations	\$270,986.00	\$273,542.00
Expenditures:		
Personal Services (Without Deductions)	3,390.00	0.00
Employee Benefits	7,207.50	14,260.00
Current Expenses	189,537.84	259,255.03
Repairs and Alterations	0.00	0.00
Equipment	70,386.73	0.00
Other Extradinary Disbursements	<u>0.00</u>	<u>12.86</u>
	<u>270,522.07</u>	<u>273,527.89</u>
	463.93	14.11
Transmittals Paid After June 30	<u>6,919.62</u>	<u>40.50</u>
Ending Balance	<u>\$7,383.55</u>	<u>\$54.61</u>

**WEST VIRGINIA OFFICE OF MINERS' HEALTH,
SAFETY AND TRAINING
STATEMENTS OF APPROPRIATIONS AND EXPENDITURES
GENERAL REVENUE**

	<u>Year Ended June 30,</u>	
	<u>1995</u>	<u>1994</u>
<u>Employee Benefits - Fund 0277-010</u>		
<u>(Account 4780-35)</u>		
Appropriations	\$1,044,879.00	\$1,017,415.00
Expenditures	<u>1,044,879.00</u>	<u>895,851.26</u>
	0.00	121,563.74
Transmittals Paid After June 30	<u>154,586.44</u>	<u>23,210.36</u>
Balance	<u>\$154,586.44</u>	<u>\$144,774.10</u>
<u>Operating Permit Fees - Fund 0277-545</u>		
<u>(Account 4780-83)</u>		
Beginning Balance:		
State Treasury	\$0.00	\$0.00
Cash Receipts:		
Permit Fees	<u>226,204.00</u>	<u>6,720.00</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$226,204.00</u>	<u>\$6,720.00</u>
Transfers to General Revenue		
Fund of West Virginia	\$226,204.00	\$6,720.00
Ending Balance:		
State Treasury	0.00	0.00
TOTAL CASH ACCOUNTED FOR	<u>\$226,204.00</u>	<u>\$6,720.00</u>

**WEST VIRGINIA OFFICE OF MINERS' HEALTH,
SAFETY AND TRAINING
STATEMENTS OF CASH RECEIPTS AND DISBURSEMENTS
SPECIAL REVENUE**

	<u>Year Ended June 30,</u>	
	<u>1995</u>	<u>1994</u>
<u>Test Fees Fund - Fund 3350-640</u>		
<u>(Account 8345-28)</u>		
Cash Receipts:		
Test Fees	\$97,675.50	\$83,491.75
Disbursements:		
Employee Benefits	0.00	8,973.36
Current Expenses	3,297.13	82,120.20
Repairs and Alterations	0.00	273.04
Equipment	<u>44,873.57</u>	<u>1,928.02</u>
	<u>48,170.70</u>	<u>93,294.62</u>
Cash Receipts Over (Under) Disbursements	49,504.80	(9,802.87)
Beginning Balance	<u>39,580.06</u>	<u>49,382.93</u>
Ending Balance	<u>\$89,084.86</u>	<u>\$39,580.06</u>
<u>Miners' Health, Safety and Training Fund -</u>		
<u>Fund 3351-640 (Account 8345-28)</u>		
Cash Receipts:		
Assessment Fees	\$1,075,889.78	\$1,250,312.35
Disbursements:		
Personal Services	417,696.00	349,680.39
Employee Benefits	111,443.45	111,181.22
Current Expenses	604,317.68	653,565.69
Repairs and Alterations	2,428.81	4,027.46
Equipment	40,011.14	61,460.50
Operating Funds Transfer	<u>0.00</u>	<u>8,211.36</u>
	<u>1,175,897.08</u>	<u>1,188,126.62</u>
Cash Receipts (Under) Over Disbursements	(100,007.30)	62,185.73
Beginning Balance	<u>188,292.76</u>	<u>126,107.03</u>
Ending Balance	<u>\$88,285.46</u>	<u>\$188,292.76</u>

**WEST VIRGINIA OFFICE OF MINERS' HEALTH,
SAFETY AND TRAINING
STATEMENTS OF CASH RECEIPTS AND DISBURSEMENTS
SPECIAL REVENUE**

	<u>Year Ended June 30,</u>	
	<u>1995</u>	<u>1994</u>
<u>Payroll Clearing Fund - Fund 3352-840</u>		
<u>(Account 8345-77)</u>		
Cash Receipts:		
Operating Funds Transfer	\$0.00	\$8,211.36
 Disbursements:		
Personal Services	(5,004.77)	7,408.55
Employee Benefits	<u>25.36</u>	<u>1,002.10</u>
	<u>(4,979.41)</u>	<u>8,410.65</u>
 Cash Receipts Over (Under) Disbursements	4,979.41	(199.29)
 Beginning Balance	<u>2,332.34</u>	<u>2,531.63</u>
 Ending Balance	<u>\$7,311.75</u>	<u>\$2,332.34</u>
 <u>Surface Reclamation Bonds Mine Openings Fund</u>		
<u>Fund 3353-553</u>		
Cash Receipts:		
Transfer from Division of Environmental Protection	\$0.00	\$61,362.50
 Disbursements:		
Refund	<u>500.00</u>	<u>0.00</u>
	<u>500.00</u>	<u>0.00</u>
 Cash Receipts (Under) Over Disbursements	(500.00)	61,362.50
 Beginning Balance	<u>61,362.50</u>	<u>0.00</u>
 Ending Balance	<u>\$60,862.50</u>	<u>\$61,362.50</u>

**WEST VIRGINIA OFFICE OF MINERS' HEALTH,
SAFETY AND TRAINING
STATEMENT OF APPROPRIATIONS AND EXPENDITURES
FEDERAL FUNDS**

	<u>Year Ended June 30,</u>	
	<u>1995</u>	<u>1994</u>
<u>Consolidated Federal Funds General</u>		
<u>Administration Fund - Fund 8709-096</u>		
<u>(Account 7868-17)</u>		
Appropriations	\$556,504.00	\$582,984.00
Expenditures:		
Personal Services	236,673.70	306,723.45
Employee Benefits	91,073.61	94,968.55
Current Expenses	39,882.97	112,793.36
Repair and Alterations	644.38	2,643.64
Equipment	<u>62,116.93</u>	<u>4,872.86</u>
	<u>430,391.59</u>	<u>522,001.86</u>
	126,112.41	60,982.14
Transmittals Paid After June 30	<u>0.00</u>	<u>0.00</u>
Balance	<u>\$126,112.41</u>	<u>\$60,982.14</u>

**WEST VIRGINIA OFFICE OF MINERS' HEALTH,
SAFETY AND TRAINING
STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS
CASH CONTROL - FUND 8709-700 (ACCOUNT 7868-99)**

	<u>Year Ended June 30,</u>	
	<u>1995</u>	<u>1994</u>
Beginning Balance:		
State Treasury	\$24,137.23	\$12,453.96
Cash Receipts:		
United States Department of Labor Grants	437,112.01	533,685.13
TOTAL CASH TO ACCOUNT FOR	<u>\$461,249.24</u>	<u>\$546,139.09</u>
<u>Expenditures:</u>		
Personal Services	\$203,081.70	\$306,723.45
Employee Benefits	88,506.49	94,968.55
Current Expenses	39,882.97	112,793.36
Repair and Altertions	644.38	2,643.64
Equipment	<u>62,116.93</u>	<u>4,872.86</u>
	394,232.47	522,001.86
Add Transmittals Paid July 1-31		
Beginning; and (Less) Transmittals		
Paid July 1-31 Ending		
Personal Services	0.00	0.00
(Personal Services)	33,592.00	0.00
Employee Benefits	0.00	0.00
(Employee Benefits)	<u>2,567.12</u>	<u>0.00</u>
	<u>36,159.12</u>	<u>0.00</u>
	<u>430,391.59</u>	<u>522,001.86</u>
Ending Balance:		
State Treasury	<u>30,857.65</u>	<u>24,137.23</u>
TOTAL CASH ACCOUNTED FOR	<u>\$461,249.24</u>	<u>\$546,139.09</u>

STATE OF WEST VIRGINIA

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 of audit 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 15th day of September,
1996.

Thedford L. Shanklin

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

Copy forwarded to the Secretary of Administration to be filed as a public record. Copies forwarded to West Virginia Office of Miners' Health, Safety and Training; Governor; Attorney General; and, State Auditor.