

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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MEMORANDUM

To: Joint Committee on Government and Finance – Post Audit Subcommittee Members

From: Aaron Allred, Legislative Auditor
Stacy L. Sneed, CPA, CICA, Director, Legislative Post Audit Division
Michelle Hodge, CICA, Audit Manager, Legislative Post Audit Division
Annamarie Short, Auditor I, Legislative Post Audit Division
Betsy Smith, Auditor I, Legislative Post Audit Division

Date: September 15, 2009

Subject: Coach Beilein’s Resolution and Termination Agreement

Mr. John P. Beilein, former West Virginia University (WVU) Basketball Coach, terminated employment with WVU on April 3, 2007 and accepted a coaching position with the University of Michigan. At the time of terminating employment with WVU, Mr. Beilein’s Employment Agreement with WVU had five years remaining.

The Employment Agreement between the WVU Board of Governors and Mr. Beilein included a provision that in lieu of breaching the contract, Mr. Beilein would be responsible for paying WVU damages. The Employment Agreement, stated in part,

“...if Coach terminates the agreement for any reason without breach of the Agreement by University, in addition to all other forfeitures and penalties provided herein, Coach will pay **University** a sum equal to Five Hundred Thousand Dollars (\$500,000.00) per year for the remainder of the Agreement’s term, subject to proration for any partial year. This sum shall be deemed liquidated damages and extinguish all rights of University to any further payment from Coach....” (**Emphasis Added**).

We reviewed the Resolution and Termination Agreement (the termination agreement) entered into on April 26, 2007 between the WVU Board of Governors and Mr. Beilein, which stated in part,

“...Coach shall pay the sum of One Million, Five Hundred Thousand Dollars (\$1,500,000.00) to the **West Virginia University Foundation** for the use of the Mountaineer Athletic Club payable in five (5) annual payments of Three Hundred Thousand Dollars (\$300,000.00) each. The parties agree that payments due and owing under this Paragraph 4 may be made through Coach’s assignee; provided, however, that any such assignment shall not relieve Coach of his personal and contractual obligations under this Agreement. The first annual payment is due on April 3, 2008...” **(Emphasis Added)**.

The Legislative Services’ Attorney determined payments due under the Employment Agreement with Mr. Beilein were property of WVU, a state entity, and there was no legal basis justifying the transfer by WVU of its right to receive the aforementioned \$1.5 million to the WVU Foundation, a private entity. A representative of the WVU Foundation told us the Foundation has received two payments from Mr. Beilein pursuant to the termination agreement between WVU and Mr. Beilein, as follows:

<u>Date of Payment</u>	<u>Amount of Payment</u>
April 25, 2008	\$290,000.00*
April 08, 2009	<u>300,000.00</u>
Total Payments	<u>\$590,000.00</u>
<i>*Net of \$10,000.00 earned incentive payments</i>	

A representative of the WVU Foundation informed us the payments were recorded as settlement payments and the Foundation did not issue a gift receipt to Mr. Beilein for the payments.

Although the WVU Foundation has a close working relationship with WVU, the Foundation itself is not a state entity. State entities are subject to the Freedom of Information Act (FOIA) laws that allow the public to have access to information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The Supreme Court of Appeals ruling between the 4-H Road Community Association and the WVU Foundation reaffirmed “...the Foundation is not a “public body” subject to the FOIA provisions of W.Va. Code, 29B-1-1 to 29B-1-6...” Therefore, the public does not have access to information regarding the settlement payments made to the WVU Foundation.

We recommend the aforementioned payments and any future payments pertaining to Mr. Beilein’s termination agreement be immediately transferred to WVU.

Spending Unit’s Response

- 1. In structuring the settlement agreement with Coach Beilein, WVU sought to resolve a time-sensitive and delicate personnel situation in an effective and expeditious manner. The original decision to place Coach Beilein’s payments into the WVU Foundation reflects these considerations. Mr. Beilein received written notice that these payments were not considered gifts.*

2. *In agreement and compliance with your findings and recommendation, the University will request the transfer of \$300,000 (the amount of Mr. Beilein's April 2009 payment) from the Foundation to University accounts immediately.*
3. *In further agreement and compliance with your findings and recommendation, the University will work with the Foundation to transfer to the University all future payments (three more payments of \$300,000 each, due in April 2010, April 2011, and April 2012) made to the Foundation under the terms of Mr. Beilein's Resolution and Termination Agreement.*
4. *Mr. Beilein's payment from April 2008 in the amount of \$290,000 has been expended to reimburse the University for Coliseum renovation work.*
5. *If the University had received a Freedom of Information Act (FOIA) request for information regarding the settlement with Mr. Beilein and the use of funds received from Mr. Beilein, we would have provided that information. It was not, and is not, the University's intent to withhold public information.*