



A REPORT TO THE WEST VIRGINIA LEGISLATURE

Post Audits Subcommittee

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The Honorable Mike Hall
The Honorable Jeffrey V. Kessler

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The Honorable Tim Armstead
The Honorable Eric Nelson, Jr.
The Honorable Timothy Miley

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WEST VIRGINIA LEGISLATURE
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West Virginia State Senate
Post Audits Subcommittee, Co-Chair
Room 229 M, Building 1
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Charleston, WV 25306

The Honorable Timothy Armstead, Speaker
West Virginia House of Delegates
Post Audits Subcommittee, Co-Chair
Room 228 M, Building 1
State Capitol Complex
Charleston, WV 25306

Dear Mr. President and Mr. Speaker:

In compliance with the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, we conducted a compliance audit of the Office of the Chief Medical Examiner (OCME) for the period July 1, 2003 through June 30, 2014.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit disclosed certain findings, which are detailed in this report. A response to the audit findings from Bureau for Public Health is included at the end of the report.

Respectfully submitted,


Denny Rhodes

_____ *Joint Committee on Government and Finance* _____

TABLE OF CONTENTS

OBJECTIVES AND CONCLUSIONS	4
<u>OBJECTIVE ONE</u>	4
<u>OBJECTIVE TWO</u>	4
FINDINGS AND RECOMMENDATIONS.....	6
<u>FINDING 1: OCME ENTERED INTO AN UNWARRANTED, HANDWRITTEN, TEN YEAR CONTRACT WITH TRI-STATE MORTUARY SERVICES</u>	6
<u>FINDING 2: TRI-STATE MORTUARY SERVICES RECEIVED THE MAJORITY OF BODY TRANSPORT SERVICE ASSIGNMENTS AND WAS PAID OVER \$1.8 MILLION.....</u>	8
<u>FINDING 3: INEFFICIENT USE OF \$76,281 IN STATE MONEY PAID TO VENDORS.....</u>	11
<u>FINDING 4: CONFLICT OF INTEREST IN ASSIGNMENT OF COUNTY MEDICAL EXAMINERS/CORONERS</u>	13
APPENDIX A – AUDIT INFORMATION	15
<u>AUTHORITY</u>	15
<u>SCOPE</u>	15
<u>EXIT CONFERENCE</u>	16
<u>OVERALL SUFFICIENCY OF EVIDENCE</u>	16
<u>METHODOLOGY</u>	17
APPENDIX B -- WV ETHICS COMMISSION ADVISORY OPINION 2013-48.....	18
APPENDIX C – WV ETHICS COMMISSION ADVISORY OPINION 2014-22.....	21
APPENDIX D – BUREAU FOR PUBLIC HEALTH’S MANAGEMENT RESPONSE.....	25

OBJECTIVES and CONCLUSIONS

OBJECTIVE ONE

Review the usage of vendors selected for incoming and outgoing body transports to determine if services were invoiced and paid properly and if any vendor was shown preferential treatment.

Conclusion

The review of vendors selected for incoming and outgoing body transport services shows Tri-State Mortuary Services received 94% of all incoming transports assigned by OCME for FY12. An unjustified, hand-written, ten year contract was created between the owner of Tri-State and the former OCME Chief of Operations in what appears to be an effort to create a “sole source” contract and exclude other vendors.

Concerning proper invoicing and payment for body transport services, OCME paid an excess of \$76,281 in state money to multiple vendors due to miscalculations, billing errors, and a lack of policies or procedures in place to prevent overbilling.

Related Findings and Recommendations

FINDING 1: OCME ENTERED INTO AN UNWARRANTED, HANDWRITTEN, TEN YEAR CONTRACT WITH TRI-STATE MORTUARY SERVICES

- 1-1. The Legislative Auditor recommends consideration be given to the amendment of WV Code requiring the Department of Administration’s Purchasing Division to establish guidelines, policies or procedures with the intent of increasing oversight for exempt purchases in an effort to prevent vendor preferential treatment.

FINDING 2: TRI-STATE MORTUARY SERVICES RECEIVED THE MAJORITY OF BODY TRANSPORT SERVICE ASSIGNMENTS AND WAS PAID OVER \$1.8 MILLION

No recommendation at this time.

FINDING 3: INEFFICIENT USE OF \$76,281 IN STATE MONEY PAID TO VENDORS

No recommendation at this time.

OBJECTIVE TWO

Review payments to county medical examiners to determine if payments were made to any OCME death investigator.

Conclusion

The opportunity existed for OCME death investigators to use their position for personal gain. OCME death investigators were allowed to contract with OCME as county medical examiners/coroners. An advisory opinion was issued by the WV Ethics Commission on October 3, 2013 stating that OCME investigators “who have been delegated authority to select County Medical Examiners may not serve as County Medical

Examiners...” The practice ceased until procedures could be put into place to prevent possible conflicts of interest and a new advisory opinion was issued by the Ethics Commission on October 2, 2014 (after our audit period) allowing OCME investigators to contract with OCME under strict adherence to specific guidelines. (See Appendix B and C for a complete copy of both Advisory Opinions)

An additional conflict of interest existed due to a county medical examiner having the **same last name and address** as one of the OCME death investigators. This county medical examiner was the highest paid county medical examiner, receiving approximately 10% of all county medical examiner payments for FY12 through 14.

Related Findings and Recommendations

FINDING 4: CONFLICT OF INTEREST IN ASSIGNMENT OF COUNTY MEDICAL EXAMINERS/CORONERS

- 4-1. The Legislative Auditor will provide a copy of this finding to the Ethics Commission.

FINDINGS and RECOMMENDATIONS

FINDING 1: OCME ENTERED INTO AN UNWARRANTED, HANDWRITTEN, TEN YEAR CONTRACT WITH TRI-STATE MORTUARY SERVICES

The Office of the Chief Medical Examiner (OCME) is under the direction of the Department of Health and Human Resources' Bureau for Public Health. In WV, when a person dies from violence, apparent suicide, sudden unexpected death, in any suspicious, unusual or unnatural manner, or when unattended by a physician, OCME must be notified. Once notified, OCME dispatches a county medical examiner¹ to the location of the deceased to collect information about the condition of the body and apparent cause of death. This information is reported back to OCME which then determines if the body needs to be autopsied². If an autopsy is ordered, the body is transported to OCME by a funeral home or body transport service selected by OCME. Once the autopsy is complete, the family of the deceased selects a funeral home which transports the body from OCME to the funeral home. WV Code §61-12-10a requires OCME pay the cost of both incoming and outgoing body transport services³.

Unwarranted, Handwritten, Ten Year Contract

On May 16, 2008, a hand-written contract was created and signed by Chad Harding⁴, the owner of Tri-State Mortuary Services, and the former OCME Chief of Operations,⁵ agreeing that Tri-State would "...provide transportation service to the Office of the Chief Medical Examiner, State of WV thru the year 2018..." (See Figure 1).

Body transport service is an exempt purchase under Section 9 of the WV Purchasing Policies and Procedures Handbook; meaning, no bidding process, contract or approval by the Purchasing Division is required. The Purchasing

Figure 1. OCME's Handwritten Contract with Tri-State

The image shows a handwritten contract document. At the top, it reads "VI. EFFECTIVE DATE:" followed by a date. Below that, it says "Approved and Issued By:" followed by a signature and the date "5-16-08". Underneath, it says "Date signed: May 16, 2008". The main body of the document is a handwritten note: "AFTER A MEETING ON MAY 15TH, 2008 WITH DR KAPLAN, CHIEF MEDICAL EXAMINER, MIKE SCRAGG AND CHAD HARDING, OWNER OF TRI STATE MORTUARY SERVICES, MR. HARDING AGREES TO COMPLY WITH THE OCME TRANSPORTATION SERVICE POLICY AND FURTHER MORE AGREES TO PROVIDE TRANSPORTATION SERVICE TO THE OFFICE OF THE CHIEF MEDICAL EXAMINER, STATE OF WV THRU THE YEAR 2018 (APP. 104A. COMMENCE FROM THIS DATE)". At the bottom, there are two signatures with dates: "X [Signature] DATE 5-16-08" and "L [Signature] DATE 5-16-08". The first signature is identified as "OWNER TRI STATE MORTUARY SVC." and the second as "OCME".

OCME issued an unwarranted, handwritten, ten year contract with Tri-State Mortuary Services.

¹ County Medical Examiners are not employed by OCME; however, they are selected by OCME and are paid as a contractor.

² An autopsy can only be ordered by OCME or the prosecuting attorney assigned to any legal case involving the deceased.

³ Outgoing body transport services can only be billed up to the amount charged to bring the deceased body to OCME per WV Code §61-12-10a.

⁴ Chad Harding was President of the Board of Funeral Service Examiners during FY14 and FY15.

⁵ The former Chief of Operations retired from OCME on December 28, 2012.

Division requires the use of a purchase order on all purchases over \$2,500; however, body transport service is also exempt from this requirement according to the *WV Department of Revenue Expenditure Schedule Instructions*.

In a letter summarizing the hand-written contract it is stated that Tri-State “...agrees to be the sole transport company...” for OCME in what could be interpreted as an attempt to justify the contract as a “sole source procurement.” There was no necessity for a sole source contract since there were multiple vendors available and the service does not meet the WV Code of State Rules §148-1-7.5.1 standard that the item be “unique and not available from any other source.”

Since body transport services are exempt from WV Purchasing Policies and purchase order requirements, there was no justified need to exclude potential vendors by initiating a contract with Tri-State. An attempt to create a “sole source” contract for an exempt purchase gives the appearance that Tri-State was given preferential treatment by the former OCME Chief of Operations (*see Finding 2*).

Bureau for Public Health

The Bureau contends that it has never recognized the hand-written contract as a legal document and the previous Chief of Operations did not have the authority to enter into a contract on behalf of OCME. Additionally, the Bureau states it was unaware of the existence of the “purported” contract until the owner of Tri-State presented it.

Current Status

OCME continues to require the exemption for body transport services due to the unpredictable nature of when and to what extent transport services will be required and having no control over the selection of outgoing body transport vendors because those are selected by the family of the deceased. However, the current Administrator for OCME has established procedures for the selection of vendors for incoming body transports. Currently, OCME maintains a list of approved vendors that can provide transport services throughout the state and rotates the vendors as each case occurs. Additionally, OCME has developed a “Transport Agreement” that must be completed by each potential vendor and approved by DHHR before the vendor will be added to the list of approved vendors.

Recommendation

1-1. The Legislative Auditor recommends consideration be given to the amendment of WV Code requiring the Department of Administration’s Purchasing Division to establish guidelines, policies or procedures with the intent of increasing oversight for exempt purchases in an effort to prevent vendor preferential treatment.

FINDING 2: TRI-STATE MORTUARY SERVICES RECEIVED THE MAJORITY OF BODY TRANSPORT SERVICE ASSIGNMENTS AND WAS PAID OVER \$1.8 MILLION

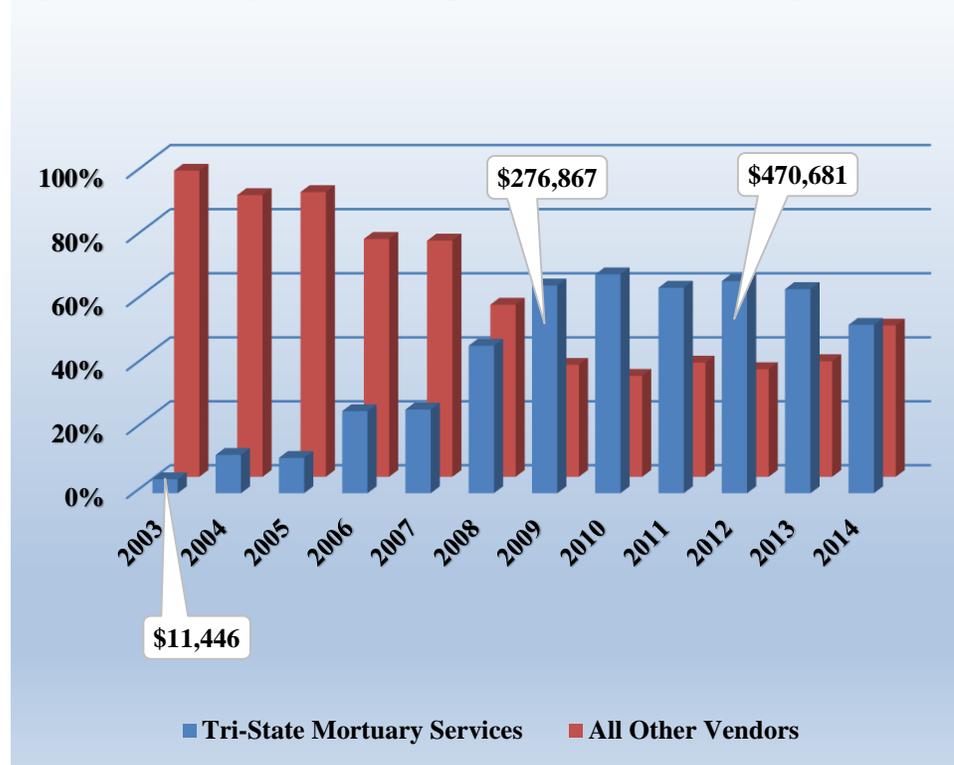
OCME appears to have given preferential treatment to Tri-State Mortuary Services by assigning the majority of all incoming body transports to Tri-State and by preparing invoices for the vendor.

Assignment of Body Transport Services

Tri-State Mortuary Services received \$1.8 million from FY09 to FY13 compared to \$967,000 for all other vendors.

An analysis of vendor payments for body transport services from FY03 through FY14 shows an overall dramatic increase in the percentage of body transport payments made to Tri-State from FY03 through FY09. By FY09, Tri-State received \$276,867, or 65%, of all transport business (see Figure 2 below) as compared to \$149,323 paid in total to 172 other vendors. The 2nd highest paid vendor during that fiscal year received \$58,145 (13% of the total). Tri-State continued to receive the majority of all body transport business through FY13. Tri-State received approximately \$1.8 million from FY09 to FY13 compared to \$967,000 for all other vendors.⁶

Figure 2: Percentage of Total Cost per Vendor for Body Transport Services



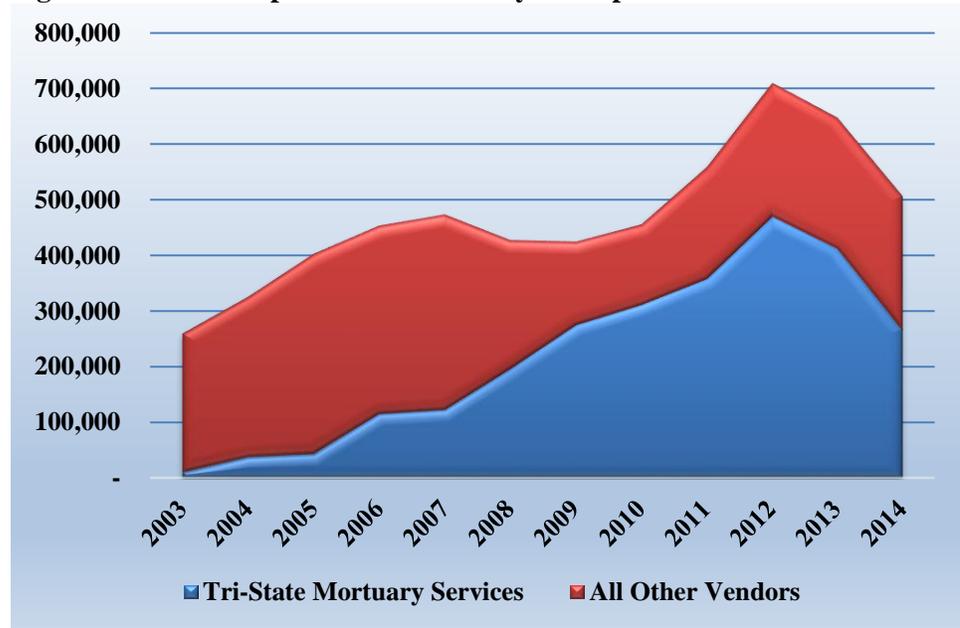
Even more curious is that the amount of money paid for body transport services decreased in FY08 and again in FY09, yet the amount paid to Tri-State continued to increase during those years (see Figure 3). Body transport service expenditures

⁶ In FY14, Tri-State’s overall percentage of total body transport service payments dropped to 53%. A new administrator was hired in April 2013 and developed new procedures to prevent vendor preferential treatment which allowed other funeral homes or livery services to participate as vendors.

Tri-State Mortuary Services' percentage of transport business continued to grow during FY08 and FY09 even though total transport business paid by OCME decreased.

decreased by \$45,564 in FY08 and an additional \$2,882 in FY09; however, the amounts paid to Tri-State increased by \$73,820 and an additional \$78,780 in FY08 and FY09, respectively. The hand-written contract between OCME and Tri-State noted in *Finding 1* does not account for the 59% increase in FY08 because it was only in affect for approximately two weeks.

Figure 3: Total Cost per Vendor for Body Transport Services



Additionally, the Legislative Auditor noted that total expenditures for body transport services in FY12 were much higher than at any other time. Upon reviewing these transactions in further detail, it was noted that Tri-State received approximately 94% of all incoming transport business assigned by OCME for the year⁷ as opposed to 23% of the outgoing transport business. Additional issues noted can be found in *Finding 3* of this report.

Tri-State Mortuary Services received 94% of all incoming transport business during FY12.

Preparing Invoices for the Vendor

Body transport incoming and outgoing service forms act as the invoice for payment to the vendor. They are reviewed and approved for payment by OCME and sent to the Bureau of Public Health for further approval and payment. Since FY11, body transport services completed by Tri-State have been billed on invoices listing multiple transactions instead of being billed per transport like other vendors. This is a very efficient way for a business to invoice for payment of services; however, Tri-State's invoices are generated by the Accounts Payable/Receivable Manager for the Bureau. Upon inquiry, the response from the Bureau employee was as follows:

Summary invoice is prepared for Tri State Mortuary because of the volume and number of invoices that they submit for payment.

⁷ Auditors selected FY12 invoices for review to isolate specific trends. See the Methodology section of the report in Appendix A for further details.

A summary invoice promotes efficiency and increases productivity within the BPH AP Unit. Tri State Mortuary is the only vendor that a summary invoice is created for by BPH AP.

Although the Bureau may deem a summary invoice for Tri-State more efficient to pay, it is not the responsibility of a state agency to prepare a vendor's invoices for them. By preparing Tri-State's invoices, the Bureau is providing a service to Tri-State that is not available to other vendors.

Conclusion

There is a strong appearance of preferential treatment toward Tri-State Mortuary Services when considering the "hand-written contract" for a service exempted by the Purchasing Division (*see Finding 1*), the extremely high percentage of transport business received by the vendor, and the preparation of invoices by a Bureau employee. WV Code prohibits such actions that may cause the lessening of competition among prospective vendors or cause one prospective vendor to be preferred over one or more other prospective vendors.

Few guidelines and little oversight for purchase of services considered exempt by the purchasing division.

There are few guidelines and very little oversight for the purchase of services and commodities considered exempt by the Purchasing Division under the state purchasing policies. Written agreements (purchase orders) are to be completed on an agency level for all purchases over \$2,500 within a 12 month consecutive period, regardless of exemption status; however, body transport services are also exempt from this according to the *Department of Revenue Expenditure Schedule Instructions*. Thus, with no safeguards in place to prevent preferential treatment of vendors, the likelihood of it occurring increases; particularly if there is a lack of management oversight or management is involved in the preferential treatment.

Current Status

The current administrator for OCME has established procedures for the selection of vendors for incoming body transports. OCME maintains a list of vendors that can provide transport services throughout the state and rotates the vendors called as each case occurs. Any licensed funeral home or livery service interested in transporting bodies can be approved and added to the list of transporters simply by contacting the OCME. OCME has created a "Transport Agreement" that must be completed by each potential vendor and approved by DHHR before the vendor will be added to the list of approved vendors. This agreement did not exist under the previous administration of OCME.

FINDING 3: INEFFICIENT USE OF \$76,281 IN STATE MONEY PAID TO VENDORS

Vendors received over \$76,000 more than necessary due to inefficient practices.

A review of body transport payments to all vendors for FY12 noted that OCME approved payment, and DHHR paid, approximately \$76,281 more than necessary to vendors for body transport services. Vendors were reimbursed per number of bodies transported instead of the established mileage rate. Vendors were paid excessive amounts for mileage due to a lack of procedures to prevent bodies from being transported to the OCME location furthest away and excessive mileage claims on invoices. OCME allowed a vendor to add additional charges to invoices for fees not established by OCME. Additionally, vendors were paid more than once for the same body transport.

Excess Payments of \$23,503 for Mileage and Tolls

During FY12, OCME cost the State approximately \$23,503 in excess expenses due to the incorrect calculation of body transport service payments on 109 invoices. If two or more bodies were transported together, OCME paid the established rate multiplied by the number of bodies. Additionally, if tolls were charged for the trip, OCME reimbursed tolls paid by the vendor multiplied by the number of bodies. The excess payments included \$74 in toll charges. By basing the payment on the number of bodies transported rather than the established mileage rate, OCME paid an inflated rate to the vendor for services provided.⁸

Excessive Mileage Amounts on Invoices Costing \$50,879

Bodies transported to furthest OCME location.

OCME paid in excess of approximately \$50,879 due to vendors claiming excessive mileage for body transport services. OCME has two offices that accept bodies for autopsy. The central office is located in Charleston and a second office is located in Morgantown at the WVU School of Medicine. During FY12, there were no procedures in place to dictate which location a body should be transported to costing the State \$41,170. For example, there were 20 body transports claiming mileage from Morgantown to the Charleston OCME location instead of the WVU School of Medicine. Additionally, in 279 instances, the mileage claimed on invoices by vendors was excessive based upon the locations documented on the intake forms, costing the State \$9,709.

Additional Fees and Billing Errors

OCME paid vendors more than once for transports costing the State an additional \$1,199. Additionally, on nine separate occasions a vendor (Tri-State) billed and received payment for “wait time at the scene,” totaling \$700. WV Code §61-12-10a states “...the reasonable cost of the transportation shall be paid...” and does

⁸ According to testimonial evidence, the policy during FY12 was to pay the established rate based upon mileage for the first body transported and 50% of that rate for each additional body transported in the same trip; however, this does not appear to be what was occurring at the time.

not include “wait time at the scene” which would be considered operational overhead for the vendor. The extra fee was hand-written on each of the invoices and in most cases was initialed by OCME management and subsequently paid. No other vendor was noted as billing or receiving payment for “wait time at the scene” for FY12. Paying additional fees to one vendor out of 209 gives the appearance of preferential treatment (*see Finding 2*).

Current Status

Current management at OCME has established a more reasonable rate policy. The “Transport Agreement” between the vendor and OCME clearly states:

Transport fees will be covered for loaded miles only; therefore, rate of payment is not contingent upon number of pickups and/or bodies transported.

This policy was effective July 1, 2014 and continues to be in place. “Wait time at the scene” is not an established fee. Additionally, a regional map created by OCME, is used to determine where bodies from specific areas of the state are to be transported based on the closer of the two locations, with only one exception. If the body is in a later stage of decomposition, it must be taken to the Charleston location. Finally, all invoices are compared to the database system and mileage is verified and recalculated for accuracy to prevent overpayments to vendors.

FINDING 4: CONFLICT OF INTEREST IN ASSIGNMENT OF COUNTY MEDICAL EXAMINERS/CORONERS

The opportunity existed for OCME investigators to use their position for personal gain. OCME investigators are responsible for selecting and dispatching a county medical examiner or county coroner to the scene of a death. From July 2012 to April 2014, five OCME investigators contracted with OCME as county medical examiners and/or county coroners⁹. On-duty investigators had the ability to assign cases to an off-duty co-worker or, depending on the timing and circumstances, withhold the case for themselves.

Almost 12% of the examinations by county medical examiners/coroners were assigned to the five OCME employees. An additional 10% of the examinations were assigned to an individual with the same last name and address of an OCME investigator. She was the highest paid county medical examiner during each of the three years reviewed. When combined, there was a potential conflict of interest for 22% of all county medical examiner/coroner assignments. WV Code prohibits employees from knowingly or intentionally using their office for personal gain.

Conflict of Interest

From FY12 through FY14, OCME investigators were paid an additional total of \$136,885 above their salaries for services as county medical examiners/coroners (see Table 1) accounting for approximately 12% of all amounts paid to county medical examiners/coroners for the three year period. One investigator received \$83,591 over the three years.

Table 1: Amounts Paid to Employees Acting as County Medical Examiners (Per Fiscal Year)				
OCME Investigators	FY12	FY13	FY14	Total
#1	\$35,121	\$29,227	\$19,243	\$83,591
#2	13,105	12,835	8,262	34,202
#3	1,938	5,550	635	8,123
#4	0	0	7,211	7,211
#5	1,651	2,107	0	3,758
Grand Total	\$51,815	\$49,719	\$35,351	\$136,885

Additionally, the highest paid county medical examiner/coroner for each of the three fiscal years had the same last name and billing address as Investigator #2. This individual was not an OCME employee, but she received approximately 10% of all county medical examiner/coroner payments for the three years totaling \$118,079. The opportunity existed and the amounts paid suggest the county

⁹ Only FY12 through FY14 OCME investigators were reviewed. Transactions prior to July 1, 2011 were not reviewed for this part of the audit; however, the practice was the same.

medical examiner benefited from the relationship with Investigator #2 and vice versa.

Ethics Commission Advisory Opinion

At the request of the current OCME management, an advisory opinion was issued by the WV Ethics Commission on October 3, 2013 stating that OCME investigators “...who have been delegated authority to select County Medical Examiners may not serve as County Medical Examiners...” citing WV Code §6B-2-5(h)(1) and §6B-2-5(d). The opinion also stated this situation “...is fraught with conflicts of interest...”¹⁰

Three OCME investigators continued to contract with OCME by finding a way to circumvent the ethics opinion. A county coroner acts in the same capacity as a county medical examiner except they are appointed by a county commission. The three OCME investigators became county coroners. These investigators provided services and received payment for 171 death investigations, totaling \$21,284, for an additional seven months after the opinion was issued.

Current Status

At the request of an OCME death investigator, the WV Ethics Commission issued an advisory opinion on October 2, 2014 stating as follows:

*... a State death investigator may provide medical examiner services to his State agency (1) when a co-worker selects him by strict adherence to the rotation list without subjective input and favoritism by the co-worker; (2) when there is no prohibited financial relationship between the investigator and the co-worker; (3) when the State investigator does not participate in the creation of the rotation list, and (4) when the investigator does not make recommendations to the chief concerning who should be placed on the list.*¹¹

OCME has indicated it currently has a process in place using a rotation list of appointed county medical examiners in compliance with the ethics opinion.

Recommendations

4-1. The Legislative Auditor is providing a copy of this finding to the Ethics Commission.

¹⁰ Refer to Appendix B for the complete WV Ethics Advisory Opinion No. 2013-48.

¹¹ Refer to Appendix C for the complete WV Ethics Advisory Opinion No. 2014-22.

APPENDIX A – AUDIT INFORMATION

AUTHORITY

The audit was conducted pursuant to WV Code §4-2, as amended, which requires the Legislative Auditor to “make post audits of the revenues and funds of the spending units of the state government, at least once every two years, if practicable, to report any misapplication of state funds or erroneous, extravagant or unlawful expenditures by any spending unit, to ascertain facts and to make recommendations to the Legislature concerning post audit findings, the revenues and expenditures of the State and of the organization and functions of the State and its spending units.”

The Post Audit Division of the Office of the Legislative Auditor is organized under the Legislative Branch of the State and the audits are reported to the Legislative Post Audits Subcommittee. This organizational structure has historically allowed the Division to be organizationally independent when audits are performed on an agency, Board, or program of the Executive Branch of the State.

This communication is intended solely for the information and use of the Post Audits Subcommittee, the members of the WV Legislature, management of OCME, and WV taxpayers. Once presented to the Post Audits Subcommittee this report is a matter of public record and its distribution is not limited. The reports are designed to assist the Post Audits Subcommittee in exercising its legislative oversight function, to provide constructive recommendations for improving State operations, and as a report of agency activities to the WV taxpayers.

SCOPE

The audit of the Office of the Chief Medical Examiner (OCME) included the period July 1, 2003 through June 30, 2014. The audit scope included a review of applicable internal control policies and procedures, compliance with the WV Code, WV State Purchasing Division’s Purchasing Handbook, Expenditure Schedule Instructions, Legislative Rules, best business practices and OCME internal policies and procedures applicable to the audit period necessary to answer the audit objectives.

The audit included examining, on a test basis, evidence of compliance with those requirements referred to above and performing other procedures, as necessary. The audit does not provide a legal determination of OCME’s compliance with those requirements.

OCME management is responsible for accurately and efficiently performing all duties mandated under applicable WV Code, the Code of State Rules, and its own internal policies. To achieve this OCME must create and maintain policies and procedures to ensure all duties mandated are performed. Additionally, it is the duty of OCME to accurately track and account for all State monies.

OCME management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved. Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected.

The scope over internal controls involved only assessing those controls that were significant to the audit objectives listed in this report. To conclude on the adequacy of internal controls regarding OCME as a whole was not a specific objective of this audit. Also, projections of any evaluation of internal control to

future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate. Any internal control weaknesses discovered have been reported in findings if they were significant to our audit objectives.

This report includes findings regarding significant instances of noncompliance with applicable laws, rules and regulations as related to the objectives. Instances of noncompliance deemed insignificant to warrant inclusion in the report or instances outside the scope of the audit but still meriting attention were communicated in a letter to OCME management.

In completing the audit, we did not audit OCME's quality of work in regards to investigating deaths, but only audited the operations of OCME related to the objectives of the audit.

EXIT CONFERENCE

A draft of the report was sent to the DHHR management on November 5, 2015 and the exit conference was held on November 9, 2015.

OVERALL SUFFICIENCY OF EVIDENCE

All testimonial evidence obtained by the audit team was evaluated for objectivity, credibility, and reliability and was obtained under conditions in which the employee was able to speak freely without intimidation. The employees had direct knowledge of their working area and there was no evidence employees were biased. Additionally, we assessed the sufficiency and appropriateness of computer processed information regardless of whether the information was provided to us or was independently extracted by using an Internal Control Questionnaire, assessing the reliability and integrity of data, performing analytical reconciliations, and testing the supporting documentation.

The auditors performed and documented an overall assessment of the collective evidence used to support findings and conclusions, including the results of any specific assessments conducted to conclude on the validity and reliability of specific evidence, according to Section 6.69 of the Yellow Book, by documenting internal controls, and performing tests of an appropriate size.

The overall evidence obtained was relevant to the objectives and findings. All evidence supported the findings, giving validity in having a reasonable basis for measuring what was being evaluated. The overall evidence was reliable when tested and can be verified and supported. In establishing the appropriateness of the evidence as a whole, the auditors tested reliability by obtaining supporting documentation, used original documents when available, verified the credibility of testimonial evidence, evaluated analytical review, assessed risk through an analytical risk assessment, and applied auditor judgment on the overall evidence.

When assessing the sufficiency and appropriateness of evidence, the auditors evaluated the expected significance of evidence to the audit objectives, findings, and conclusions, available corroborating evidence, and the level of audit risk as described in Section 6.71 of the Yellow Book, by using professional judgment to determine a sufficient quantity for the testing and to determine the type of evidence needed based on the audit objectives.

The auditors did not identify any limitations or uncertainties in evidence that were significant to the audit findings and conclusions. The evidence obtained in the course of the audit provides a reasonable basis for the findings and conclusions based on the audit objectives.

METHODOLOGY

OBJECTIVE ONE

To achieve our objective, we reviewed applicable internal controls and compliance with the WV Code, and OCME internal policies and procedures and reviewed the source documents.

In order to account for adequate documentation of program results and adequate accounting of expenditures, we designed and performed a test to determine if internal controls are functioning properly for body transport services, and in accordance with WV Code §61-12, and Legislative Rule Title 64, Series 84. The population consisted of 1,315 transactions totaling \$682,065. Due to the nature of the transactions and objectives of the audit, we decided to test 100% of the transactions which made our sample size a total of 1,315 transactions, or 3,176 transports, totaling \$682,065. Next, we reviewed each transaction based on the supporting documentation present in accordance with the test designed.

APPLICABLE LAWS, POLICIES, OR AGREEMENTS

- West Virginia State Code §61-12-10a
- Best Business Practices

OBJECTIVE TWO

In order to account for adequate documentation of program results and adequate accounting of expenditures, we reviewed payments made to Medicolegal Death Investigators that were also County Medical Examiners or County Coroners.

APPLICABLE LAWS, POLICIES, OR AGREEMENTS

- West Virginia State Code §61-12-3
- West Virginia State Code §61-12-7
- West Virginia State Code §61-12-8
- West Virginia State Code §61-12-9
- West Virginia State Code §61-12-10
- West Virginia State Code §61-12-14
- West Virginia Handbook For Performance of Death Investigation and Certification
- Legislative Rule, Department of Health and Human Resources, Title 64, Series 84
- West Virginia Ethics Commission Advisory Opinion 2013-48
- Best Business Practices

APPENDIX B - WV ETHICS COMMISSION ADVISORY OPINION 2013-48

ADVISORY OPINION NO. 2013-48

Issued On October 3, 2013 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Agency** asks whether its death investigators may also provide contract services as County Medical Examiners for the State Agency.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a State Agency which is responsible for investigating certain deaths, i.e., suspicious deaths and deaths in an unusual or unnatural manner. Pursuant to its enabling legislation, the Requester is authorized to appoint County Medical Examiners and assistants and pay them for their services. The Requester states that the relevant high ranking State Agency has delegated to its death investigators the authority to select which of the particular appointed County Medical Examiners to retain in each death case. The State Agency pays the County Medical Examiners \$127.00 per case. The Requester asks whether the death investigators employed by the State Agency may also serve as the County Medical Examiners who are awarded contracts by the State Agency, and more particularly by other death investigators in their office (co-workers). There are five death investigators, including one supervisor. Some of them have been appointed by the State Agency to serve as County Medical Examiners and their assistants. The investigators rotate shifts, and at least one investigator must be available to perform his or her duties at all times. This raises the potential for the on duty investigator to award contracts to his or her co-workers when they are off duty with the State Agency.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) reads, in relevant part:

A public official or employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or to another

W. Va. Code § 6B-2-5 (d) reads, in relevant part,

[N]o elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have **direct authority to enter into, or over which he or she may have control**: Provided, That nothing herein

A.O. 2013-48 (Page 1 of 3)

shall be construed to prevent or make unlawful the employment of any person with any governmental body. . . . (Emphasis added)

* * *

(3) If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

W. Va. Code § 6B-2-5(h) reads in relevant part:

(1) No full-time ... public employee may...be employed by...any person who:

* * *

(C) Is a **vendor** to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract including, but not limited to:

- (i) Drafting bid specifications or requests for proposals;
- (ii) Recommending selection of the vendor;

* * *

(2) Within the meaning of this section, the term "employment" includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor

* * *

(3) A full-time public official or employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibitions.

* * *

ADVISORY OPINION

The Ethics Act generally prohibits public employees from using their public office (including public resources), for their own private financial gain. W. Va. Code § 6B-2-5(b). Based upon this principle, the Ethics Act imposes limitations on secondary employment of public servants with vendors over whom they exercise authority or control over the selection of the vendor. W. Va. Code § 6B-2-5(h)(1).

A.O. 2013-48 (Page 2 of 3)

In this case, the State employees who work as death investigators are in a position to select their co-workers as vendors. As a result, the investigators are able to award contracts to one another.

Further, W. Va. Code § 6B-2-5(b) prohibits an employee of a state agency from knowingly and intentionally using his or her office or the prestige of his or her office for his or her own private gain or to another. Also, W. Va. Code § 6B-2-5(d) prohibits an employee from having a direct pecuniary interest in a contract over which he or she may have direct authority to enter into, or over which he or she may have control.

Here, the State Agency has delegated to its own investigators the authority to select County Medical Examiners to receive the contract work from the State. In short, the State investigators are in the position of awarding contracts to their coworkers (and, conceivably, themselves). This situation is fraught with conflicts of interest. Therefore, pursuant to W. Va. Code § 6B-2-5(h)(1) and § 6B-2-5(d), the Requester's employees who have been delegated authority to select County Medical Examiners may not serve as County Medical Examiners under these circumstances.

The Ethics Commission commends the Requester for seeking this opinion. If the Requester is unable to find qualified candidates to serve as County Medical Examiners, after a meaningful search, then it may return to the Commission to seek a Contract Exemption to retain the services of its death investigators. To do so requires the State Agency to prove that hiring anyone else would result in undue hardship, excessive cost, or substantial interference with government operations. Advisory Opinion 2012-04.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.*, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.


R. Kemp Morton, Chairperson

APPENDIX C – WV ETHICS COMMISSION ADVISORY OPINION 2014-22

ADVISORY OPINION NO. 2014-22

Issued On October 2, 2014, by the

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **State Death Investigator** asks whether he may be selected to provide medical examiner services as a vendor to the State agency by whom he is employed when his co-workers choose the vendors from a rotation list.¹

FACTS RELIED UPON BY THE COMMISSION

The State agency is responsible for investigating certain deaths, *e.g.*, suspicious deaths and those which occurred in an unusual or unnatural manner. Pursuant to the agency's enabling legislation, the chief of the State agency shall appoint county medical examiners and assistants to a rotation list and determine the pay for their contracted services. Therefore, the County medical examiners are vendors to the State agency, and are not county employees. The statute provides that one person may be appointed to serve as the county medical examiner for more than one county, and a county medical examiner need not be a resident of the county which he or she serves.

The Requester states that the State agency uses the rotation list in selecting a county examiner for each death case. The Requester states that when a death is reported, a State death investigator simply goes down the rotation list of appointed county medical examiners in the county where the death occurred. If no medical examiner in that county is available, the State investigator moves to the list of appointed medical examiners in the closest county. The Requester states that death investigators may not select themselves from the list. However, he asks whether the on-duty State investigator(s) may select his or her co-worker(s) as a medical examiner from the rotation list when they are off duty.

The chief of the State agency creates the rotation list. In order to be eligible, an applicant to the list must be a medical professional, *e.g.*, doctor, nurse, paramedic, or emergency medical technician, and must pass a test following a week-long class in death investigations which is conducted by the State agency. In practice, according to

¹ In a very similar Advisory Opinion, A.O. 2013-48, the Commission ruled, "In short, the State Investigators are in the position of awarding contracts to their co-workers (and, conceivably, themselves). This situation is fraught with conflicts of interest. Therefore, pursuant to W. Va. Code § 6B-2-5(h)(1) and § 6B-2-5(d), the Requester's employees who have been delegated authority to select County Medical Examiners may not serve as County Medical Examiners under these circumstances." The situation presented herein is distinguishable because it includes the use of a rotation list.

the Requester, in making appointments to the list the chief considers results from criminal background checks, resumes, references and recommendations from the State death investigators. The input from the State investigators is relevant because they have worked with some of the applicants in the field, according to the Requester.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) reads, in relevant part:

A public official or employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or to another

W. Va. Code § 6B-2-5(d) reads, in relevant part:

[N]o elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body. . . .

W. Va. Code § 6B-2-5(h) reads, in relevant part:

(1) No full-time ... public employee may...be employed by...any person who:

(C) Is a **vendor** to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to:

- (i) Drafting bid specifications or requests for proposals;
- (ii) Recommending selection of the vendor;
- (iii) Conducting inspections or investigations;
- (iv) Approving the method of manner of payment to the vendor;
- (v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or

(vi) Taking other nonministerial action which may affect the financial interests of the vendor.

* * *

(2) Within the meaning of this section, the term "employment" includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor

* * *

(3) A full-time public official or employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibitions.

ADVISORY OPINION

W. Va. Code § 6B-2-5(d) prohibits a public employee from having a direct pecuniary interest in a contract over which he or she may have direct authority to enter into, or over which he or she may have control. Of course, a State investigator may not select himself from the rotation list to provide medical examiner services to his State agency. However, absent a prohibited financial connection between the State death investigator and his or her co-workers, the death investigator does not have a pecuniary interest in the contracts which may be awarded to his or her co-workers.

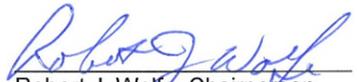
Further, W. Va. Code § 6B-2-5(b) prohibits an employee of a public agency from knowingly and intentionally using his or her office or the prestige of his or her office for private gain to himself or to another. However, if a State investigator selects his co-workers by strict adherence to the rotation list without his subjective input and without favoritism, a State death examiner could make selections of co-workers without violating W. Va. Code § 6B-2-5(b).

Finally, W. Va. Code § 6B-2-5(h) must be considered in relation to a State investigator's involvement in the creation of the rotation list of medical examiners when he or she is on the list. W. Va. Code § 6B-2-5(h)(1)(c)(ii) specifically prohibits a public employee from recommending the selection of a vendor when he or she works for a vendor. The Requester's recommendations could directly affect whether certain applicants are chosen by the chief officer. For example, the shorter the list, the more likely the Requester is to be selected for a specific case.

Therefore, a State death investigator may provide medical examiner services to his State agency (1) when a co-worker selects him by strict adherence to the rotation list without subjective input and favoritism by the co-worker; (2) when there is no prohibited financial relationship between the investigator and the co-worker; (3) when the State investigator does not participate in the creation of the

rotation list, and (4) when the investigator does not make recommendations to the chief concerning who should be placed on the list.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, et seq., and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.


Robert J. Wolfe, Chairperson
West Virginia Ethics Commission

APPENDIX D – BUREAU FOR PUBLIC HEALTH'S MANAGEMENT RESPONSE



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR PUBLIC HEALTH

Earl Ray Tomblin
Governor

Commissioner's Office
350 Capitol Street, Room 702
Charleston, West Virginia 25301
Telephone: (304) 558-2971 Fax: (304) 558-1035

Karen L. Bowling
Cabinet Secretary

November 13, 2015

Mr. Denny Rhodes, Director
Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Blvd, East
Charleston, West Virginia 25305-0610

Dear Mr. Rhodes:

Thank you for providing the opportunity to respond to the Post Audit Division's report on the West Virginia Department of Health and Human Resources (DHHR), Bureau for Public Health (BPH), Office of the Chief Medical Examiner (OCME). As you noted in the report, OCME has made significant progress in resolving the issues listed in the report and in fact, was implementing change during and before the Post Audit Division began their audit.

To facilitate the understanding of improvements that have been implemented, as well as to further address the report recommendations, the following comments are submitted:

- **DHHR Response to Finding #1: OCME Entered into an Unjustified, Handwritten, Ten Year Contract with Tri-State Mortuary Services**

Purported Contract.

In an effort to clarify the circumstances related to the handwritten document that Tri-State Mortuary Services purports to be a contract, BPH and OCME assert that neither recognize the purported contract described in Finding 1 as a legally binding contract, nor has OCME conducted the operation of the office in accordance with the terms of the purported contract. OCME does not intend to honor the terms of the purported contract. As a result of OCME's unwillingness to accept the purported contract with Tri-State Mortuary Services as a legally binding instrument, Tri-State Mortuary Services filed an action against DHHR and OCME with the West Virginia Court of Claims on April 6, 2015 seeking specific performance and monetary damages. That matter is styled Tri-State Mortuary Services – Chad Harding v. DHHR and the Office of the Chief Medical Examiner (CC-15-0561).

Recommendation 1.1.

In accordance with *West Virginia Code* §5A-3-10 and *West Virginia Code of State Rules* §148-1-4, it is not possible to obtain certain commodities and services through the competitive bidding process. Body transportation for corpses are exempt from competitive bidding per the West Virginia Purchasing Division Procedures Handbook § 9.10. OCME relies on this exemption for providing body transport services throughout the State from the death scene to either the Charleston location or the West Virginia University, Morgantown

location. Transporting bodies to and from OCME locations is open to any licensed funeral home or livery service based on interest and geographical areas they wish to cover.

In March 2013, OCME developed a "Transport Agreement" that must be completed by each potential vendor and approved by DHHR before the vendor will be added to the list of approved vendors. OCME maintains a list of approved vendors that can provide transport services throughout the State and rotates the vendors as each case occurs. This process provides increased oversight for exempt purchases in an effort to prevent vendor preferential treatment.

OCME is mandated under State Code to reimburse for the cost of body transports and cover costs for incoming transports to OCME locations, as well as outgoing transports to funeral homes. Outgoing transports would present a problem under the purchasing bid process since they are beyond the control of OCME. A family selects a funeral home to provide funeral services and that service provider transports the body from OCME to the funeral home. OCME is required by State Code to pay for the outgoing transport, up to the cost of the initial incoming transport. If the outgoing transport exceeds the distance of the incoming transport, the body transport vendor is responsible for billing the person entitled to possession of the decedent's body for miles that exceed the incoming transport distance. If the purchasing exemption were to be restricted or removed, outgoing transports could not be part of a global bid process due to lack of control by OCME.

Consequently, with implementation of the Transport Agreement and rotation of vendors, OCME has increased its internal oversight of the transport process to prevent preferential treatment.

- **DHHR Response to Finding #2: Tri-State Mortuary Services Received the Majority of Body Transport Service Assignments and was Paid over \$1.8 Million**

Transport Services.

In March 2013, OCME developed a Transport Agreement that must be completed by each potential vendor and approved by DHHR before the vendor will be added to the list of approved vendors. OCME maintains a list of approved vendors that can provide transport services throughout the State and rotates the vendors as each case occurs. This process provides increased oversight for exempt purchases in an effort to prevent vendor preferential treatment.

Figure 2 in the Post Audit Division's report demonstrates in the data shown for fiscal year 2014 that the implementation of this process has improved the distribution of transport assignments among all vendors. It should be noted, however, vendors that provide services statewide are limited. This, in part, accounts for increased services by one vendor. Many vendors have restricted service areas. If a vendor is unavailable when called, that refusal is documented and the next vendor on the list is contacted. These procedures have enabled OCME to more efficiently and effectively rotate services among all approved vendors.

Body Transport Invoices.

With respect to body transport invoices, the invoices are initiated between the investigator and vendor to establish the chain of custody. Multiple invoices for the same vendor are summarized and entered into the accounting system in an effort to reduce transactions in the system and to increase efficiency.

- **DHHR Response to Finding #3: Inefficient Use of 76,281 in State Money Paid to Vendors**

In 2013, OCME established an appropriate rate policy that clearly states transport fees will be covered for loaded miles only. Therefore, rate of payment is not contingent upon number of pickups and/or bodies transported. Because the autopsy facilities in Morgantown can only hold a limited number of cases at any given time, decedents may have to be transported to the OCME headquarters in Charleston. Additionally, decomposed cases cannot be sent to the Morgantown facility.

- **DHHR Response to Finding #4: Conflict of Interest in Assignment of County Medical Examiners/Coroners**

Violation of Ethics Commission Advisory Opinion.

BPH and the OCME believe it is important to point out that the Advisory Opinion 2013-48 issued by the West Virginia Ethics Commission on October 3, 2013, was at the request of the OCME. The OCME made the request for an Advisory Opinion in an effort to clarify whether or not an Investigator employed by OCME may also provide contract services as a County Medical Examiner. In its opinion, the Ethics Commission commends OCME for seeking the opinion.

On the basis of the Advisory Opinion, the OCME implemented procedures requiring State Death Investigators to utilize a rotation list of appointed County Medical Examiners in the county where a death occurred. If no Medical Examiner is available in that county, the Investigator moves to the list of appointed Medical Examiners in the closest county. Investigators are prohibited from selecting themselves from the list. The list is created by the Chief of the agency. The adoption of this rotation list was approved of by the Ethics Commission in *Advisory Opinion 2014-22*, which recognized the rotation list as an important fact that distinguishes the findings of *Advisory Opinion 2013-48* from that of *Advisory Opinion 2014-22*. (See footnote 1, *Advisory Opinion 2014-22*.)

It is also important to note, the Ethics Commission did not hold that OCME Investigators may not also contract with OCME as County Medical Examiners, but instead, the Advisory Opinion held that OCME employees, "who have been *delegated authority*" may not select co-workers to serve as County Medical Examiners. (See *Advisory Opinion 2013-48* p. 3. *Italics added*.)

Finally, West Virginia law does not prohibit an Investigator employed by the OCME to be appointed by a County Commission as a County Coroner. (See *W.Va. Code* § 61-12-14.) Such an appointment would constitute secondary employment; therefore, the employee must submit a secondary employment request. The secondary employment request requires

Mr. Denny Rhodes
November 13, 2015
Page 4

approval by the supervisor, BPH Commissioner or Deputy Commissioner, DHHR Office of Human Resources and the Division of Personnel.

Should you have questions regarding the above comments please feel free to contact Brian Skinner, General Counsel, at (304) 356-4122 or via email at brian.i.skinner@wv.gov.

Sincerely,



Rahul Gupta, MD, MPH, FACP
Commissioner and State Health Officer

RG:alf

cc: Karen L. Bowling, Cabinet Secretary
Brian Skinner
Barbara Taylor
Donald Raynes