

JOINT COMMITTEE ON GOVERNMENT AND FINANCE
WEST VIRGINIA OFFICE OF THE LEGISLATIVE AUDITOR

POST AUDIT DIVISION

LEGISLATIVE AUDIT REPORT

West Virginia Higher Education Policy Commission - Improper Contract with Former Chancellor

Legislative Auditor: Aaron Allred
Post Audit Division Director: Justin Robinson



GENERALLY ACCEPTED GOVERNMENT
AUDITING STANDARDS STATEMENT

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.

POST AUDIT DIVISION
Justin Robinson, Director

POST AUDIT DIVISION

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West Virginia Higher Education Policy Commission - Improper Contract with Former Chancellor

February 9, 2021

LEGISLATIVE AUDITOR'S

STAFF CONTRIBUTORS

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EXECUTIVE SUMMARY: PAGE 1

ISSUE 1: PAGE 3: *The HEPC Entered Into a Six-Month Sabbatical Contract with the Former Chancellor Upon His Retirement Without the Authority to Do So, Resulting in the Improper Payment of State Benefits During the Contract.*

APPENDIX A: PAGE 13
Report Transmittal Letter to HEPC

APPENDIX B: PAGE 14
Objective, Scope, Methodology

APPENDIX C: PAGE 16
HEPC Response to Audit Report

Executive Summary

The Legislative Auditor conducted this audit of the West Virginia Higher Education Policy Commission's Chancellor contracts pursuant to W.Va. Code §4-2-5. The objectives of this audit were to determine if HEPC is permitted to allow paid sabbaticals for the Chancellor of HEPC as well as other HEPC employees. Based on the permissibility of sabbaticals for HEPC Chancellors, determine if any payments for the sabbatical to the former Chancellor qualify based on the requirements for sabbatical as defined by HEPC, and quantify the total value of payments deemed ineligible based on those requirements.

Frequently Used Acronyms

HEPC: Higher Education Policy Commission

CSR: Code of State Rules

PEIA: Public Employees Insurance Agency

Report Highlights

Issue 1: The HEPC Entered into a Six-Month Sabbatical Contract with the Former HEPC Chancellor Upon His Retirement Without the Authority to Do So, Resulting in the Improper Payment of State Benefits During the Contract.

- HEPC authorized a six-month contract to pay approximately \$11,178 bi-weekly to former Chancellor Hill for a sabbatical without having the authority under W.Va. Code to do so.
- HEPC paid approximately \$47,000 in total for benefits during the contract, and for a three-month period after the contract, that the former chancellor was not eligible to receive.
- After the sabbatical contract the former chancellor was reimbursed approximately \$1,700 for travel expenses without having an active employment contract.
- As a result of the impermissible contract, HEPC expended a total of \$205,554.74. This total includes: \$156,492.89 in salary, \$47,214.20 in benefits, and \$1,847.65 in travel.

Recommendations

1. The Legislative Auditor recommends HEPC adhere to statutory requirements for employee and consulting contracts.
2. The Legislative Auditor recommends HEPC seek legal council to determine if they can seek reimbursement for the ineligible annual and sick leave, PEIA health insurance, and HEPC matched retirement benefits that were paid totaling \$47,214.20, or if the benefits must be reported as taxable income by issuing amended W-2s.
3. The Legislative Auditor recommends HEPC seek reimbursement for the travel expenses paid to Dr. Hill. In the event reimbursement from Dr. Hill is not received, HEPC should issue corrected W-2s for Dr. Hill and report the \$1,731.65 as taxable income.

4. The Legislative Auditor recommends HEPC comply with W.Va. Code §6B-2-5 and ensure all payments to individuals under contract with the HEPC are made during the specified contract period for work related to the contract.

Issue 1: The HEPC Entered into a Six-Month Sabbatical Contract with the Former HEPC Chancellor Upon His Retirement Without the Authority to Do So, Resulting in the Improper Payment of State Benefits During the Contract.

Background

In West Virginia, the coordinating board which guides and develops the public policy agendas of the public four-year higher education institutions in the state, is the Higher Education Policy Commission (HEPC). The HEPC was established under W.Va. Code §18B-1B-1 and consists of nine members, seven of whom are appointed by the governor, and two ex-officio members: the State Superintendent of Schools, and the Chairperson of the West Virginia Council for Community and Technical College Education. Under W.Va. Code §18B-1B-5, it states that the HEPC, “shall employ a Chancellor for Higher Education who is the Chief Executive Officer of the Commission and who serves at its will and pleasure.” The Chancellor is employed through a contract between the HEPC and the individual selected to serve as Chancellor. In paragraph 4 of the Chancellor’s contract, it states, “You (Chancellor) are responsible to the Commission and you will report to the Commission through its Chair.”

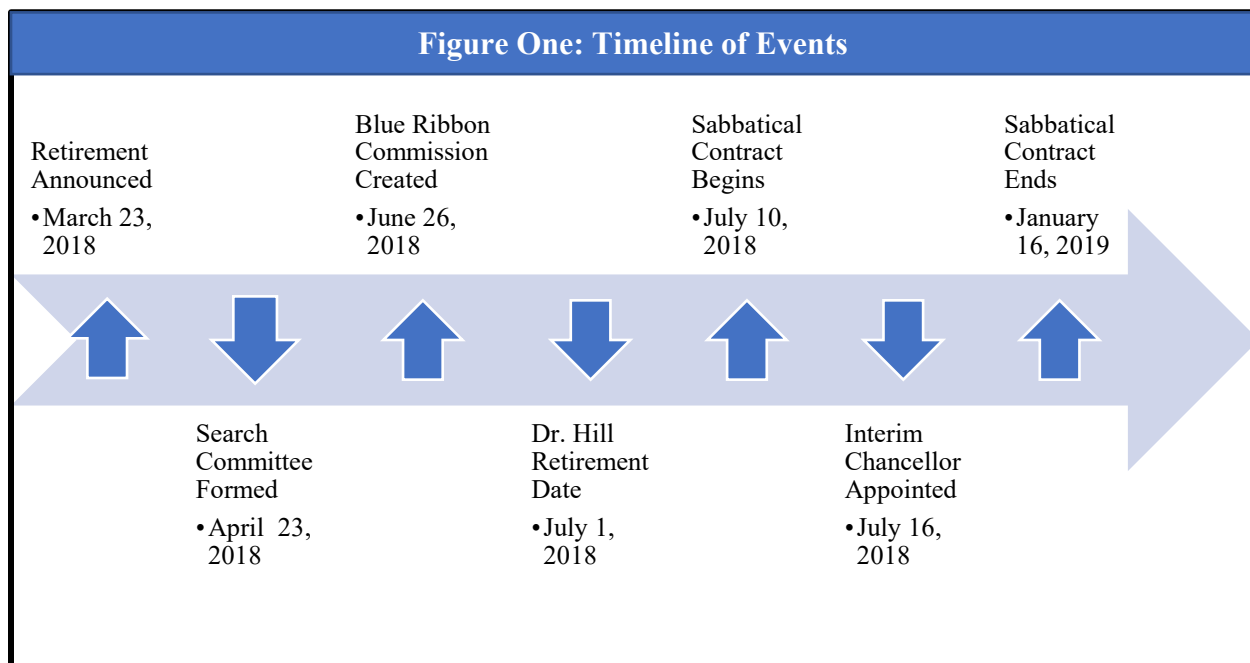
On January 15, 2012, Dr. Paul Hill was first appointed to the Chancellor position on an interim basis. On May 18, 2012, HEPC voted to appoint Dr. Hill as the Chancellor effective immediately, and the parties signed a three-year agreement. At the conclusion of this contract in 2015, the parties agreed to a new three-year contract effective from November 20, 2015 to July 1, 2018.

Impermissible Sabbatical Contract Granted to Former Chancellor

During the March 23, 2018 HEPC meeting, Chairman Michael Farrell announced that Chancellor Paul Hill planned to retire from his position on July 1, 2018 at the conclusion of his current contract. The Chairman stated that he planned to meet with the Commissioners of the HEPC to discuss the search process for a new Chancellor. On April 23, 2018, the Commission held a special meeting to create a Chancellor Search Committee. During another HEPC meeting on July 10, 2018, Commissioner Brown moved to approve a resolution authorizing Chairman Farrell to enter into a six-month contract for a sabbatical with Chancellor Paul Hill from July 10, 2018 through January 16, 2019. During this final contract, Dr. Hill continued to receive the same bi-weekly pay rate of approximately \$11,178, that he received as HEPC Chancellor.

According to the July 2018 meeting minutes, the reason for this six-month sabbatical was so that Chancellor Paul Hill could, “...work on matters for the Higher Education Policy Commission and support the work of the Blue Ribbon Commission on Four-Year Higher Education”. The Blue Ribbon Commission on Four-Year Higher Education was created by an executive order on June 26, 2018. The duty of the Commission is to study and assess the current state of four-year education in the state including, but not limited to, the adequacy of current funding levels, the current governance structure, the role and value of HEPC, the identification of bureaucratic inefficiencies that cause a negative impact, measures to be taken to facilitate the long-term viability of higher education delivery in communities across the state, and anything else the Commission deemed necessary to provide a thorough evaluation in preparation of its report. In a

letter response to the Legislative Auditor, Chairman Farrell stated, “I expected that the nuances of the funding formula would require a significant number of consultations with Dr. Hill before it would be presented to the 2019 Legislature and that we would also require consultation with him as the funding formula worked its way through the legislative process”. The timeline of the events from the announcement of Dr. Hill’s retirement through the end of his sabbatical contract are summarized in Figure One.



When the Legislative Auditor asked the HEPC under what authority HEPC granted this six-month sabbatical, HEPC cited W.Va. Code §18B-1B-5(e), which permits the HEPC to set the Chancellor’s salary. HEPC went on to state that, “The Commission chose to call this period of Dr. Hill’s employment a sabbatical, because that is the term of art used in higher education circles to describe a period of paid leave granted to a university professor or other employee for study and research.” HEPC also stated that, “...Since the Commission was employing Dr. Hill in an advisory capacity and asking him to research comparative models of higher education administration, financing, and governance, as well as funding formula models, it seemed appropriate to call such a period a sabbatical.” Legislative Services informed the Legislative Auditor that the HEPC is correct when it states that sabbaticals are an industry practice, or a term of art, among colleges and universities; however, the application is incorrect, primarily because the HEPC is neither a college nor a university.

According to W.Va. Code §18B-8-3 that pertains to sabbaticals for higher education, “A governing board may grant sabbatical leave to a faculty member at the state institution of higher education under its jurisdiction for the purpose of permitting him or her to engage in graduate study, research or other activities calculated to improve teaching ability.” The code section goes on to state, “A faculty member receiving a sabbatical leave is required to return and serve the institution granting the leave for at least one year or to repay to the institution the compensation received during leave.” Given the expectations placed upon faculty at higher education institutions

when they are granted sabbatical leave, it does not appear that, even if HEPC had the authority to enter into the contract with Dr. Hill, the contract would have met the requirements placed upon those granted sabbatical leave at institutions of higher education. According to the contract, during the six months Dr. Hill was to research and document comparative models of higher education administration, financing, and governance, as well as “provide advice and assistance to the Commission’s ongoing initiatives.” Dr. Hill was not performing this work to improve his teaching ability because the Chancellor held an administrative position, not a teaching position. The terms of the contract also did not require Dr. Hill to return to his position with HEPC to serve any length of time or to repay for his compensation received during this sabbatical, a significant departure from the requirements imposed on faculty of higher education institutions granted sabbaticals.

In drafting Dr. Hill’s sabbatical contract, HEPC did not incorporate typical contract terms that were present in Dr. Hill’s previous Chancellor contracts, nor did it incorporate terms consistent with the uniform rule in place for typical faculty sabbaticals. Rather, the HEPC made several distinct changes from language consistently present in such contracts since 2012, essentially creating a unique contract for Dr. Hill’s services. These changes involve specific information regarding work location, travel reimbursement, and reporting structure. The work location provision, unique to Dr. Hill’s sabbatical contract, authorized workspace through Marshall University’s South Charleston campus, or from Dr. Hill’s personal home. The travel reimbursement provision, also unique to the Dr. Hill’s sabbatical contract, authorized a \$10,000 stipend for travel, whereas the standard Chancellor contracts called for travel reimbursement in accordance with prevailing laws, regulations, and guidelines of HEPC. While the language of the contract indicated that Dr. Hill would receive a stipend for travel, the HEPC clarified that this was actually a budgeted amount for travel. Dr. Hill did not receive the funds upfront and the budgeted amount was used to reimburse travel occurring during the contract. The Legislative Auditor found no evidence that Dr. Hill received the stipend amount as a lump sum payment. The reporting structure provision in the previous Chancellor contracts have stated in paragraph 4, “You are responsible to the Commission and you will report to the Commission through its Chair.” However, the reporting structure provision contained in paragraph 4 of the sabbatical contract was changed to, “You will report to the Commission through its Chair and will provide advice and assistance to the Commission’s ongoing initiatives upon request by the Chair.”

When analyzing Dr. Hill’s sabbatical contract with the HEPC, the Legislative Auditor sought the legal opinion of Legislative Services to determine the legality of the contractual arrangement. According to Legislative Services, HEPC did not have the authority to enter a contract for a sabbatical with Dr. Hill. While sabbaticals are standard practice among colleges and universities, HEPC is neither a college nor a university. Additionally, HEPC is not a governing board of a college or university. This fact is further confirmed by Chairman Farrell in a letter to the Blue Ribbon Commission on Four-Year Higher Education where he states, “Higher Education Policy Commission is not a governing board nor does it fulfill its statutory and regulatory obligations as one.” Together, these facts confirm that while W.Va. Code §18B-8-3 authorizes a governing board to grant a request for sabbatical leave, this statute would not apply to HEPC because it is not a governing board.

HEPC does have the authority to determine the employment status of the Chancellor and HEPC can alter or extend the Chancellor's position pursuant to the employment contract. However, Dr. Hill already announced his intentions to retire at the end of his current contract during the March 2018 HEPC meeting. According to Legislative Services, by announcing his intentions to retire, this nullified the HEPC's ability to alter employment status because of the stipulation in paragraph 12 of the Chancellor's contract which states, "Contingent upon available funding, the Commission shall employ you as Chancellor or in some other capacity, in a position to be determined by it, at the Chancellor's salary provided for herein, for a term ending on July 1, 2018, and any extension of such term, unless you (a) voluntarily resign or retire, or (b) are terminated for cause, all as provided herein." In the March 2018 meeting minutes Chairman Farrell and Dr. Hill both announced the retirement of Dr. Hill. Dr. Hill was retiring from the Chancellor position up until the Blue Ribbon Commission was formed in July 2018 and Dr. Hill was subsequently entered into the sabbatical contract.

It is the opinion of Legislative Services that the employment status of Chancellor Hill was likely altered when given the six-month sabbatical in order for HEPC not to violate W.Va. Code §18B-1B-5(a), which states "The commission, created by §18B-1B-1 of this code, shall employ a Chancellor for Higher Education who is the Chief Executive Officer of the Commission and who serves at its will and pleasure." This was done because on July 10, 2018, the HEPC voted to authorize the six-month contract with Dr. Hill, while also appointing an Interim Chancellor effective July 16, 2018. Thus, if the Chancellor were to retain his employment status during the six-month contract, the HEPC would be violating W.Va. Code §18B-1B-5(a) by technically employing two Chancellors, the previous Chancellor Dr. Hill, and the Interim Chancellor. Beginning with the sabbatical contract, Dr. Hill appears to acknowledge this change in employment status when he received a \$116 reimbursement of travel expenses from HEPC where he begins indicating his position is "consultant", as seen in the figure below.



**West Virginia
Higher Education
Policy Commission**

TRAVEL EXPENSE ACCOUNT SETTLEMENT

RECEIVED BY WVHEPC

JUL 31 2018

FINANCE & FACILITIES

Name: Paul L. Hill		Title: Consultant	OASIS Vendor No.						
Home			TVE# 19-48856						
City/State/Zip: Charleston, WV 25302		Headquarters: Charleston	Normal Work Hours: N/A						
Dept: HEPC	Division: N/A	Section: N/A							
Purpose of Travel: Work on EPSCoR grants and program									
DATE	TIME	CITY/STATE	MILES	AMOUNT	PER	RENTAL CAR	MEALS	OTHER	TOTAL

The Legislative Auditor also requested to review all of Dr. Hill's work product and contributions. Given the complex nature of higher education administration, financing, governance and funding formulas, a large volume of information was anticipated to be provided. However, HEPC was unable to provide any documentary evidence of Dr. Hill's work, since it was neither written nor recorded, as it was received solely by Chairman Farrell verbally. Therefore, the

Legislative Auditor was unable to determine what, if any, work was performed by Dr. Hill during this sabbatical contract.

Based on the HEPC's responses, Dr. Hill was performing study and research for the HEPC on a temporary basis and providing advice and assistance as requested. Legislative Services also informed the Legislative Auditor that they believe from the information provided about the tasks and duties that Dr. Hill was given, his position would have changed from Chancellor to a temporary employee as defined in W.Va. CSR §133-55-4.4. Under W.Va. CSR §133-55-4.4 a temporary employee is defined as, "an employee hired into a position expected to last fewer than nine months of a twelve-month period. Temporary employees may be part-time temporary or full-time temporary. A temporary employee is not eligible for benefits." These benefits that temporary employees are not eligible for include, but are not limited to, health and welfare plans, retirement plans, pay for time not worked (i.e., sick leave, annual leave, holiday pay, etc.) and other employee perquisites, according to the CSR. During the sabbatical contract Dr. Hill continued accruing annual leave at the rate of two days per month, sick leave at the rate of one and a half days per month, and was a member of the PEIA health insurance program, as well as receiving a matching contribution to the retirement plan of HEPC.

The Legislative Auditor believes that not only should Dr. Hill's employment status have been changed to a temporary employee, but his job description and duties under the impermissible contract were more in line with the duties of a consultant. The Legislative Auditor believes that HEPC should have followed the guidelines for initiating a competitive bidding process for a consultant to aid with the Blue Ribbon Commission or should have sought out approval of a sole source contract for those services with Dr. Hill. CSR §133-30-8.14. delineates the competitive selection procedures HEPC must follow when seeking professional services, such as a consultant. This section also states that "greater weight is given to the ability to perform the service as reflected by technical training, education and experience." The Legislative Auditor recognizes that Dr. Hill very well may have met the qualifications for this role, but HEPC was required to follow the competitive bidding process none the less.

HEPC Incurred \$39,000 in Benefits Expenses During the Contract and an Additional \$7,900 After the Contract

As a further result of HEPC not following the competitive bid process, HEPC entered into the contract with Dr. Hill as if he was still a full-time permanent employee, allowing him to receive the same employee benefits he received previously as Chancellor of HEPC. These benefits would not have been paid under a typical contract for such services as these benefits are not paid to parties contracting with the state or HEPC. During the six months of Dr. Hill's sabbatical contract, HEPC continued matching Dr. Hill's retirement contributions, paying the employer portion of PEIA; however, Dr. Hill did not continue to accrue annual or sick leave. Table 1 provides a breakdown of the costs associated with the payment of these benefits during the six-month contract. In total, HEPC expended nearly \$40,000 for employee benefits Dr. Hill was ineligible to receive during the six-month contract.

Table 1: Cost of Benefits During Dr. Hill 6-month Contract	
PEIA	\$6,344.30
Retirement	\$9,349.48
Annual Leave	\$13,356.40
Employer FICA Match	\$10,248.55
Total	\$39,298.73
<i>Source: Obtained by reviewing Dr. Hill's payroll records</i>	

The Legislative Auditor also found that the HEPC incurred further expenses after the expiration of Dr. Hill's sabbatical contract. After the end of the contract, Dr. Hill's accrued and unused annual and holiday leave balances were paid out to him on a delayed schedule. Since HEPC paid Dr. Hill his accrued annual leave on an extended basis, rather than as a single lump sum, he also continued to receive matching contributions to his retirement account from HEPC during the duration. Additionally, during this period, Dr. Hill remained a participating member of PEIA, and HEPC continued to pay the employer premium payments for this health coverage. The breakdown of these contributions can be seen below in Table 2. Under W.Va. Code §21-5-4(b), there must be an agreement for the payment of accumulated leave to occur in subsequent installments on a payroll schedule. If there is not an agreement, the leave is to be paid out in a lump sum on or before the next regular payday. Under W.Va. CSR §143-1-14.3.f., an employee may elect to be paid in semi-monthly installments at his or her usual rate of pay, as if employment were continuing, until the pay period during which the accrued annual leave is exhausted. Since Dr. Hill is not a classified employee, W.Va. CSR §143-1-14.3.f. is not applicable. Further, none of the employment contracts between HEPC and Dr. Hill from 2012 to 2018 included provisions on how unused, accumulated leave would be paid out at the conclusion of Dr. Hill's employment.

Table 2: Cost of Benefits after Contract Expiration	
PEIA	\$1,942.00
Retirement	\$2,600.75
Employer FICA Match	\$3,372.72
Total	\$7,915.47
<i>Source: Obtained by reviewing Dr. Hill's payroll records</i>	

The Legislative Auditor understands that under W.Va. Code §21-5-4(b) the agreement between the employer and employee regarding unused leave payment installments does not have to be in writing. However, the code section does require that the conditions for later payment of the accrued fringe benefits be "ascertainable". It is the Legislative Auditor's opinion that without some form of documentation or a written agreement concerning the treatment of unused leave specific to Dr. Hill, the agreement is not ascertainable. HEPC did provide the Legislative Auditor a letter that was sent to Dr. Hill from Chairman Farrell at the conclusion of Dr. Hill's sabbatical contract. In this letter it states, "per your request, you will remain on the payroll until such time as your annual leave and holiday bank time balance is exhausted on March 28, 2019." The Legislative Auditor believes that since there was no longer an employment arrangement between Dr. Hill and HEPC after his sabbatical contract expired in January of 2019, this was simply a request Dr. Hill made and HEPC obliged. This arrangement in turn resulted in the HEPC incurring additional

expenses through the matching of retirement and continued PEIA coverage while this leave was exhausted.

Travel Reimbursements Without an Active Employment Contract

The Legislative Auditor also discovered a travel reimbursement of \$1,731.65 paid out on March 18, 2019 to former Chancellor Dr. Hill by HEPC. According to the written contract between HEPC and Dr. Hill, his contractual agreement ceased on January 16, 2019. The end date of the contractual agreement was also confirmed by HEPC in response to questions posed by the Legislative Auditor. The travel expenses reimbursed to Dr. Hill were incurred between February 24, 2019 and February 27, 2019; thus, Dr. Hill was no longer an employee when the travel expenses were incurred and the HEPC authorized payment of private expenses.

As indicated in the figure above, Dr. Hill notes on the travel reimbursement form he submitted that he was a consultant attending a conference. Dr. Hill also certified that this reimbursement was for costs incurred in connection with his assigned job duties. Since the travel that Dr. Hill was reimbursed for occurred after the completion of the contractual arrangement, he was neither an employee of HEPC, nor a consultant for HEPC, and there was no longer a valid contract between the two parties. Thus, he attended the conference in a private capacity. If a person's expenses are covered for travel that does not benefit a public agency, that could be considered private gain subject to the WV Ethics laws.

Reimbursing a private individual for an expense is a violation of W.Va. Code. Specifically, W.Va. Code §6B-2-5(b)(1) states, "A public official or public 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 that of another person." Under this provision, it is impermissible for an employee of a public institution to authorize payment of private expenses. As a result of HEPC authorizing this impermissible payment to Dr. Hill, he received compensation to which he was not entitled in the form of a travel reimbursement that occurred for travel after his contract had ended. It is the opinion of Legislative Services this payment may also be subject to review by the W.Va. Ethics Commission as a potential violation of W.Va. Code §6B-2-5(b)(1).

Conclusion

It is the opinion of the Legislative Auditor that HEPC entered into a contract for consulting services with former Chancellor Dr. Hill that was categorized as a sabbatical. In doing so, HEPC did not follow the competitive bidding process for such services and incurred expenses beyond what would typically be incurred for such services. The Legislative Auditor is unsure of the motives behind making such a decision which seems to be in violation of several provisions of W.Va. Code and the Code of State Rules. It appears the HEPC desired to retain Dr. Hill for his expertise to assist with the newly created Blue Ribbon Commission on Four-Year Higher Education. Since Dr. Hill had announced his retirement as Chancellor of the HEPC, this sabbatical contract was the HEPC's means to retain his services after his retirement. However, beyond having the former Chancellor on a retainer of sorts ready to share his expertise, it is unclear what, if any, benefit was received as a result of this contract, as HEPC is unable to provide any work product or results generated during the contract.

According to Legislative Services, HEPC did not have the legal authority to grant the Chancellor of HEPC sabbatical leave pursuant to W.Va. Code §18B-8-3 and W.Va. CSR §133-38-1. As a result of the impermissible contract, HEPC expended a total of \$205,554.74. This total includes: \$156,492.89 in salary, \$47,214.20 in benefits, and \$1,847.65 in travel.

Recommendations:

1. The Legislative Auditor recommends HEPC adhere to statutory requirements for employee and consulting contracts.
2. The Legislative Auditor recommends HEPC seek legal council to determine if they can seek reimbursement for the ineligible annual and sick leave, PEIA health insurance, and

HEPC matched retirement benefits that were paid totaling \$47,214.20, or if the benefits must be reported as taxable income by issuing amended W-2s.

3. The Legislative Auditor recommends HEPC seek reimbursement for the travel expenses paid to Dr. Hill. In the event reimbursement from Dr. Hill is not received, HEPC should issue corrected W-2s for Dr. Hill and report the \$1,731.65 as taxable income.
4. The Legislative Auditor recommends HEPC comply with W.Va. Code §6B-2-5 and ensure all payments to individuals under contract with the HEPC are made during the specified contract period for work related to the contract.

Appendix A

WEST VIRGINIA LEGISLATIVE AUDITOR'S OFFICE

Post Audit Division

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(304) 347-4880



Justin Robinson
Director

January 26, 2021

Michael Farrell, Esq., Chairman
West Virginia Higher Education Policy Commission
1018 Kanawha Boulevard, East - Suite 700
Charleston, WV 25301

Transmitted via email

Dear Chairman Farrell:

This is to transmit a draft copy of the Post Audit Division's report on the HEPC contracts with former Chancellor Dr. Hill. Typically, our reports are released at the interim meetings of the Post Audits Subcommittee. However, as a result of COVID-19, such interim meetings are not planned. Therefore, we plan to release this report at a future date not yet specified, but soon after the HEPC has had an opportunity to review the draft report. We will inform you of the date of the release in advance once it has been determined.

Please contact Mike Jones, Audit Manager, at kenneth.jones@wvlegislature.gov at your earliest convenience to schedule an exit conference to discuss the report and any questions or concerns you may have prior to its release. We would like to schedule this meeting no later than Friday, February 5, 2021. Additionally, should the HEPC wish to provide written comments on the report to be included in the final report, please provide those comments no later than Monday, February 8, 2021. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "Justin Robinson".

Justin Robinson

Attachment (Email)

Appendix B

Objectives, Scope, and Methodology

The Post Audit Division of the Office of the Legislative Auditor conducted this post audit as authorized by Chapter 4, Article 2, Section 5 of the West Virginia Code, as amended. The post audit was conducted in accordance with the standards applicable to performance audits contained in the 2018 generally accepted government auditing standards (GAGAS) issued by the Government Accountability Office. Those standards require the audit to be planned and performed to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. The Legislative Auditor believes that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Objectives

The objectives of this audit were to determine if HEPC is permitted to allow paid sabbaticals for the Chancellor of HEPC as well as other HEPC employees. Based on the permissibility of sabbaticals for HEPC Chancellors, determine if any payments for the sabbatical to the former Chancellor qualify based on the requirements for sabbatical as defined by HEPC, and quantify the total value of payments deemed ineligible based on those requirements.

Scope

The scope of this audit consisted of a review of the HEPC Chancellor contracts from 2010 through 2019.

Methodology

Audit staff obtained and analyzed several different sources of evidence. Documentary evidence was obtained in the form of HEPC Chancellor Contracts from 2010 to 2019, HEPC meeting minutes, and the HEPC New Employee and Division Handbook. Analytical evidence was obtained in the form of the payroll records and travel reimbursement forms for the previous chancellors. Testimonial evidence was obtained in the form of several letter responses from HEPC to Post Audit, and letters between HEPC and former Chancellors.

All HEPC Chancellor contracts from 2010 to 2019 were reviewed for contract terminology relating to sabbaticals. The current and former contracts were compared for any terminology relating to sabbaticals. A determination was made if sabbaticals were standard contract terminology contained in the HEPC Chancellor contracts, prior to the time when the sabbatical in question was granted. Internal policies were reviewed to determine if sabbatical terminology was in the internal policies. Payroll records were analyzed to determine if benefits were paid for during the sabbatical contract. Additional analysis of payroll records determined what benefits were paid during the sabbatical contract and the total cost incurred to the State as a result of those benefits. Travel expenditures for Dr. Hill were reviewed to determine when travel took place, the cost of the travel, and the expenditures were traced to source documentation.

Legal opinions were obtained from Legislative Services to determine the legal authority for HEPC granting sabbaticals to the HEPC Chancellor, HEPC allowing an employee to remain on payroll after retirement date, and HEPC reimbursing a former Chancellor for travel without a contract.

January 28, 2021

Mr. Justin Robinson
Director, Post Audit Division
Office of the Legislative Auditor
1900 Kanawha Boulevard, East
Room W-329
Charleston, West Virginia 25305-0610

Dear Mr. Robinson:

Thank you for the opportunity to review the draft audit report regarding the July 2018 employment contract for former Chancellor Paul Hill. Your division staff have closely reviewed the contract provisions and methodology for employing Chancellor Hill and identified possible deficiencies and noncompliance with regulations in the manner with which the West Virginia Higher Education Policy Commission employed him following his announced retirement.

At the time this contract was publicly approved by the Commission, it was prepared pursuant to the best interests of the state by allowing the Commission to retain Chancellor's Hill's expertise and counsel regarding the Commission's initiatives for a limited time, to support the funding model work of the Blue Ribbon Commission on Four-Year Higher Education, and to ensure a smooth transition in leadership of the agency. However, and as you have outlined in the report, we recognize that the former Chancellor's employment should have been extended through a different process.

Moving forward, your recommendations are duly noted and we intend to fully comply in the future should a similar situation arise. We will consult with legal counsel with regard to additional action we may need to take.

Sincerely,



Michael J. Farrell, Esq.
Chair



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