



June 2013  
PE 13-01-537

## SPECIAL REPORT VENDOR REGISTRATION STUDY

### AUDIT OVERVIEW

State Agencies Paid at Least \$14,000 to Vendors Not Properly Registered With the Secretary of State From January 7- January 11, 2013



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WEST VIRGINIA LEGISLATIVE AUDITOR

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## EXECUTIVE SUMMARY

The Legislative Auditor conducted a study to determine whether vendors doing business with state agencies are registered with the Secretary of State as required by West Virginia Code.

### Report Highlights

#### **Issue 1: State Agencies Paid at Least \$14,000 to Vendors Not Properly Registered With the Secretary of State From January 7- January 11, 2013.**

- The Secretary of State was able to verify the registration of 208 of 355 sampled vendors and contacted the remaining 147 by mail to inform them of registration requirements for corporations and limited liability companies.
- At least 5 of the 147 should have been registered. Payments to these agencies totaled over \$14,000 during the five-day evaluated timeframe.
- The majority of organizations failed to respond to the Secretary of State's mailing. The Secretary of State sent a repeat mailing to these organizations, but does not have enforcement authority to pursue the matter further. Although the Purchasing Director has indicated the Purchasing Division also does not have such authority, a legal opinion obtained by the Legislative Auditor indicates that the Purchasing Division does have enforcement authority to ensure vendors comply with registration requirements.
- The Legislative Auditor's inquiries revealed that there is some confusion as to what defines "doing business in the state."

### Recommendation

1. *The Legislative Auditor recommends that the Purchasing Division review the status of the vendors identified in this report to ensure that they comply with registration requirements or verify that they qualify for exemption from these requirements.*



## ISSUE1

### **State Agencies Paid at Least \$14,000 to Vendors Not Properly Registered With the Secretary of State From January 7- January 11, 2013.**

#### **Issue Summary**

The Legislative Auditor obtained a list of all 4,023 vendors receiving payments from state agencies from January 7-January 11, 2013 to determine whether organizations doing business with the state are registered with the Secretary of State as required by West Virginia Code. Of the sampled vendors, the names of 355 that could not be found in the Secretary of State's Business Organization Database indicated that they were operating as corporations or limited liability companies, and should be registered.

Of the 355 vendors whose registration could not be verified by the Legislative Auditor:

- The registration of 208 was verified by the Secretary of State.
- The Secretary of State contacted the remaining 147 by mail to inform them that, if they are operating in the state as corporations or limited liability companies, they must register as such.

Information from this mailing revealed the following:

- At least five organizations that should have been registered but were not had received payments from state agencies during the evaluated timeframe. Payments to these organizations totaled about \$14,000.
- The majority, or 100 of the 147 organizations, failed to respond to this mailing. Although the Secretary of State's Office followed up with a repeat mailing to these 100 nonresponsive organizations, the office does not have enforcement authority to pursue the matter further.

This review also revealed that there is some confusion as to what defines "doing business in the state." A legal opinion obtained by the Legislative Auditor found that the Purchasing Division has the authority to require vendors registering with the Division to comply with the Secretary of State's registration requirements. Therefore, the Purchasing Division should review the status of the vendors identified in this report to ensure that they comply with statutory requirements or verify that they qualify for exemption from these requirements. The Legislative Auditor will follow up with the Secretary of State and the Purchasing Division at a later date to determine the status of the vendors who have not registered

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*A legal opinion obtained by the Legislative Auditor found that the Purchasing Division has the authority to require vendors registering with the Division to comply with the Secretary of State's registration requirements.*

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with the Secretary of State and what resolution has been reached to better define what is meant by “doing business in the state” for registration purposes.

### **At Least Five Organizations Not Properly Registered With the Secretary of State Received Payments From State Agencies During the Evaluated Timeframe**

West Virginia Code §31B, §31D, §31E, and §47 require corporations to be authorized by the Secretary of State to conduct business in the state and restrict the use of corporate titles such as “corporation”, “incorporated”, and “limited”, to corporations registered as such with the Secretary of State. Additionally, West Virginia Code §5A-3-12 and West Virginia Code of State Rules §148-1-6 require all vendors except purchasing card vendors providing travel services or receiving an aggregate yearly payment less than \$25,000 from a spending unit to register with the Purchasing Division of the West Virginia Department of Administration. The Legislative Auditor’s Office sought to determine whether corporate vendors doing business with state agencies are registered with the Secretary of State as required by state code. In order to do this, a list of all vendors receiving payments from state agencies from January 7 – January 11, 2013 was obtained from the West Virginia State Auditor’s Office. Of the 4,023 vendors listed, 1,376 were individuals and 353 were government agencies and so would not be required to register with the Secretary of State. The remaining 2,294 vendors were compared with the Business Organization Database available on the Secretary of State’s website. Of these, 1,302 were listed as registered.

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*The Legislative Auditor’s Office sought to determine whether corporate vendors doing business with state agencies are registered with the Secretary of State as required by state code.*

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Of the remaining 992, there were 355 vendors with names indicating that they were operating as corporations or limited liability companies and should be registered. These 355 vendors were forwarded to the Secretary of State for their registration status to be verified. The Secretary of State found that 208 of the 355 are registered as required. The Secretary of State’s Office contacted the remaining 147 organizations in March 2013 to inform them that if they are conducting business in West Virginia as a corporation or limited liability company that they must be registered with the Secretary of State. A sample of this letter is provided in Appendix C. As of May 16, 2013, the registration status of those 147 vendors is as follows:

- Twenty-eight organizations provided proof of registration.
- One organization whose registration had been revoked corrected its status and is now in good standing.
- Four responded to the Secretary of State’s mailing with information that indicated they should be registered. These vendors were sent a follow-up letter on May 10, 2013 instructing them to do so. A sample of this letter is provided in Appendix D.



- Fourteen indicated that they do not conduct business in the state of West Virginia and so are not required to register, however, six of these organizations are registered as vendors with the Purchasing Division.
- One hundred organizations failed to respond to the Secretary of State’s mailing. A follow-up letter was sent to these organizations on May 10, 2013. A sample of this letter is provided in Appendix E.

*Though the lack of responsiveness from the majority of organizations makes it impossible to know the exact number, at least 5 and possibly as many as 119 organizations who were not properly registered with the Secretary of State’s office as required by West Virginia Code received payments from state agencies in a five-day period.*

Though the lack of responsiveness from the majority of organizations makes it impossible to know the exact number, at least 5 and possibly as many as 119 organizations who were not properly registered with the Secretary of State’s office as required by West Virginia Code received payments from state agencies in a five-day period. If this five-day sample of vendors is indicative of the universe of vendors doing business with the state, hundreds or even thousands of businesses that do not comply with statutory registration requirements could possibly be receiving money from state agencies throughout the course of a year. Table 1 provides the amount of payments received by the five organizations that were not registered during the evaluated timeframe.

Table 1 Payments Received by Organizations That Should Have Been Registered With the Secretary of State		
Vendor Name	Status	Amount Received January 7 – January 11, 2013
Charleston School of Beauty Culture	In good standing as of 3-27-13	\$ 6,790.00
Forensic Psychology Center Inc	Notified of need to register by Secretary of State 5-10-13	\$ 5,172.50
Four Roses Distillery LLC	Notified of need to register by Secretary of State 5-10-13	\$ 368.97
Land Grant University Tax Education Foundation, Inc.	Notified of need to register by Secretary of State 5-10-13	\$ 597.61
Valley Orthotic Specialists, Inc.	Notified of need to register by Secretary of State 5-10-13	\$ 1,120.12
<b>Total</b>		<b>\$14,049.20</b>
Source: Status information was provided by the Secretary of State. Payment amounts were provided by the West Virginia State Auditor.		

Although 14 vendors responded to the Secretary of State’s mailing indicating that they do not conduct business in the state, 6 of these are registered as vendors with the Purchasing Division. Table 2 lists those six vendors. The Legislative Auditor’s inquiries have shed light on the

problem that a question exists in what exactly defines “doing business in the state.” Some of these out-of-state organizations receive payments from West Virginia CHIP or Medicaid for West Virginia residents that are seen as patients and it is unclear whether or not these should be required to register with the Secretary of State, the West Virginia Tax Department, and other regulatory agencies. The Legislative Auditor will follow up with these agencies at a later date to determine what steps have been taken to resolve this definition issue and ensure that all vendors who should be registered are doing so.

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*The Legislative Auditor’s inquiries have shed light on the problem that a question exists in what exactly defines “doing business in the state.”*

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<b>Table 2</b>	
<b>Registered Vendors Who Indicate That They Do Not Conduct Business in West Virginia</b>	
<b>Vendor Name</b>	<b>Vendor FEIN</b>
First Union Rail Corp	561920602
Garrett Orthopedic Physical Therapy & Rehab llc	522097227
Grand Touring Vodka llc	272046048
Interstate Commodities Inc	141285564
Natl Captioning Institute Inc	521144663
Sodexo Inc & Affiliates	522208632

Table 3 provides a list of the 100 organizations who failed to respond to the Secretary of State’s mailing. As has been pointed out by the Legislative Auditor in the past, the Secretary of State has no enforcement powers in requiring organizations to register.

**Table 3**  
**Unregistered Organizations That Did Not**  
**Respond to the Secretary of State's Mailing**

A Hardy Usa Ltd	Law Office Of Daniel R Grindo PLLC
Ag Processing Inc	Leader Technologies Inc
Alltranstek LLC	Leo P Pajarillo Md Inc
Am Eagle Instruments Inc	Lexisnexis Risk Data Management Inc
Am Fidelity Trading Ltd	Livertext Inc
Am Institute For Justice Inc	Lockheed Martin Desktop Solutions Inc
Am Intl Mailing Inc	Maramba L C Md Inc
American Intercontinental University Inc	Marietta Health Care Physicians Inc
Aquatic Habitats Inc	Medcopy Inc
Ast Corp	Mercy Life Center Corp DbA Mercy Behavioral Health
Attain LLC	Midwest Exams Inc
Bay Product Development LLC	Midwest Railcar Corp
Bhirud Ravin Md Inc	Montebello Brands Inc
Bodek & Rhodes Inc	Moore Entertainment Inc
Byard Eugene V Trust United Bank Inc Trustee	Moores Car Wash Inc
Cambium Learning Inc	Natl Consumer Law Center Inc
Canon Usa Inc	Norfolk Southern Corp
Cep Inc	Nova Safety & Health Consulting Inc
Charles Jacquin Et Cie Inc	Ntelos Inc
Cincinnati Bell Technology Solutions Inc	Ocs America Inc
Closet Books LLC	Ohio Valley Pathology Assoc Inc
Colorado Personnel Resources Inc	Orchid Cellmark Inc
Community Action Agency Of Columbiana County Inc	Paetec Software Corp
Cyphanie Inc	Par Inc
D'andrea Wine & Liquor Imports Inc	Pilgrims Pride Corp
Developmental Therapy Ctr Inc	Precision Time Systems Inc
Epic Card Services LLC	Premier Innovations Group Inc
Exposure Assessment Inc	Prestons Beauty Academy LLC
Express Scripts Inc	Radiation Solutions Inc
Fifth Generation Inc	Railcar Management LLC
Global Telecom & Technology Inc	Reni Publishing Inc
Greenbrier Management Services LLC	Rr Donnelley Receivables Inc
Health@Work LLC	Safetystratus Inc
Hearing Aid Services Inc	Scientific Computer Applications Inc

Higher One Inc	Square One Organic Spirits LLC
Hite Co Inc	Stoller Wholesale Wine
Ibm Corp	T T X Company
Icf Macro Inc	Tapper Group Inc
Idmworks Inc	Tekscan Inc
Ifees Inc	Transmetric America Inc
Integra York Pa Inc	Tres Agaves Products Inc
Intl Telecomm Services Inc	Tri State Community Health Center Inc
Itasca Consulting Group Inc	Trinity Industries Leasing Co
Itc Systems Inc	Usalco Ashtabula Plant LLC
Ivans Inc	Valley Physician Enterprise Inc
J S Lattas Inc	Vendors Exchange Intl Inc
Kavo Dental Technologies llc	Virginia Brain & Spine Center Inc
Kids Place Inc	Wellingtons Cafe & Catering Co
Klin Spirits LLC	Western Maryland Health System Corp
L S & S LLC	Wvncc Foundation Inc

West Virginia Code §5A-3-12 and West Virginia Code of State Rules §148-1-6.1.7 require vendors selling goods or services to the State of West Virginia to be registered with the West Virginia Purchasing Division (Division) unless the vendor is a purchasing card vendor providing travel related services or receiving less than \$25,000 aggregate total yearly from a spending unit. The Legislative Rule governing purchasing specifically requires vendors to comply with all registration requirements:

*§CSR 148-1-6.1.7 The vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or other state agencies or political subdivisions...*

The Legislative Auditor's Office contacted the Purchasing Division to determine whether the Division verifies that vendors are registered with the Secretary of State and other agencies as part of the Division's vendor registration process. The Division indicated the following:

*Please be advised that the Legislative rule...requires vendors to be licensed and in good standing, [however] it does not state this must be completed in order to be registered as a vendor with the Purchasing Division... Accordingly, we believe we lack legal authority to require this action in order to be registered with the Purchasing Division. There is no express requirement that the*

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***The Legislative Rule governing purchasing specifically requires vendors to comply with all registration requirements.***

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***The Purchasing Division conducts some checks to verify vendors are registered with regulatory agencies.***

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*Purchasing Division verify registration status with the numerous state and local authorities that may require registration.*

The Division indicates that it does voluntarily conduct some checks, including the following:

*[The Purchasing Division performs] certain checks with certain buying West Virginia state agencies to assure vendors are properly and legally registered with various regulatory West Virginia state agencies prior to award of a contract by the Purchasing Division. We additionally require state agencies under our authority to perform the same checks for delegated purchases made by those state agencies directly...*

*The Purchasing Division notifies all vendors at the time of registration, through express language on the required vendor registration form, and notifies all bidders, through the standard terms and conditions included with each solicitation, that vendors are required to be licensed and in good standing with various state and local agencies...*

In spite of these checks, at least 5 and as many as 119 vendors who were not registered with the Secretary of State's Office received payments from state agencies from January 7 – January 11, 2013. The Legislative Auditor obtained a legal opinion concerning the responsibility of the Purchasing Division in ensuring that vendors comply with registration requirements. That opinion stated the following:

*First, although the West Virginia Code does not explicitly list registration with the Secretary of State as a requirement for registration, it is implicitly required for corporations. Vendors are delineated as individuals, firms, or corporations "created under the laws of this state or authorized to do business in this state." Registration with the Secretary of State is a necessary prerequisite to forming a corporation or doing business in the State of West Virginia. Second, the requirement to be in good standing with the Secretary of State is contained within the section of the rule entitled "Registration of Vendors," and contained within a list of requirements and exceptions to the registration procedures for vendors. Third, as the Code states, the director of purchasing has not only the power, but the duty, to suspend the right and privileges of vendors when the director has evidence such vendor has violated any provision of purchasing law or the rules*

*and regulations of the director. One of those legislatively-approved rules is very clearly that the vendor be in good standing with the Secretary of State, and thus, the director has the power to suspend a vendor who does not comply with this requirement, and does not impose a specific time-frame on that suspension. Accordingly, if the director is aware that a vendor is not in compliance with the registration requirement, it then becomes his duty to suspend that vendor's right to bid on contracts. Thus, although it could be more clearly stated within the Code and Rules, it does appear that the director of purchasing has the authority to require corporations registering as vendors to meet the registration requirements of the Secretary of State's office before allowing them to register, and the duty to ensure that contracts are only awarded to those vendors who meet the requirements, and the authority to implement a system to ensure that those requirements are met.*

It should be noted that the director may waive registration requirements for corporations listed on a nationally recognized stock exchange or for sole source commodities. One of the organizations that responded to the Secretary of State's mailing indicating that it should be registered as a limited liability company is a vendor registered with the Purchasing Division. Additionally, six of the vendors who indicate that they do not conduct business in the state are registered state vendors, as are 45 of the vendors who failed to respond to the Secretary of State's mailing. In a memorandum sent to state agency procurement officers on May 22, 2013, the Purchasing Director stated the following:

*Pursuant to West Virginia Code of State Rules §148-1-7.16.2, the Director of the Purchasing Division is authorized to cancel a contract for any reason or no reason by providing a vendor with 30 days notice of the cancellation.*

The Legislative Auditor obtained a legal opinion concerning the ability of the Purchasing Division to cancel contracts. Legal counsel agreed that West Virginia Code and the Code of State Rules grant the Purchasing Director this authority.

Because the Purchasing Division has enforcement power that the Secretary of State does not, **the Legislative Auditor recommends that the Purchasing Division review the status of the vendors identified in this report to ensure that they comply with registration requirements or verify that they qualify for exemption from these requirements.** The Legislative Auditor sent the Department of Administration a letter on June 12, 2013 listing the registered vendors identified in this study

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*One of the organizations that responded to the Secretary of State's mailing indicating that it should be registered as a limited liability company is a vendor registered with the Purchasing Division. Additionally, six of the vendors who indicate that they do not conduct business in the state are registered state vendors, as are 45 of the vendors who failed to respond to the Secretary of State's mailing.*

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that are not registered with the Secretary of State's Office. A copy of this letter is in Appendix F. The Legislative Auditor will follow up with the Purchasing Division and the Secretary of State regarding the status of these vendors at a later date.

## **Conclusion**

It is vital that organizations properly register with the Secretary of State to prevent citizens and other entities from entering into contracts or agreements with fraudulent organizations, potentially not receiving the expected goods or services and being defrauded out of money. Because they are accountable for the use of public funds, it is of particular importance that state agencies only conduct business with legitimate vendors. A legal opinion obtained by the Legislative Auditor stated that the Purchasing Division has the authority to require vendors registering with the Division to comply with the Secretary of State's registration requirements. Therefore, the Purchasing Division should review the status of the vendors identified in this report to ensure that they comply with statutory requirements. The Legislative Auditor will follow up with the Secretary of State and the Purchasing Division at a later date to determine the status of the vendors who have not registered with the Secretary of State and what resolution has been reached to better define what is meant by "doing business in the state" for registration purposes.

## **Recommendation**

1. *The Legislative Auditor recommends that the Purchasing Division review the status of the vendors identified in this report to ensure that they comply with registration requirements or verify that they qualify for exemption from these requirements.*





## Appendix A: Transmittal Letters

### WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

June 12, 2013

Ross Taylor, Acting Cabinet Secretary  
West Virginia Department of Administration  
1900 Kanawha Boulevard, East  
Room E-119  
Charleston, WV 25305

Dear Secretary Taylor:

This is to transmit a draft copy of the Special Report on Vendor Registration. This report is scheduled to be presented to the Joint Committee on Government Operations and the Joint Committee on Government Organization at 10:00 AM on June 21, 2013 at the Wheeling Island Hotel in Wheeling, WV.

If you would like to provide a written response to be included in the final report, please provide it to our office by noon on Friday, June 14, 2013. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at (304)340-3192 to make arrangements. We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

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*Joint Committee on Government and Finance*

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**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

June 12, 2013

Natalie Tennant, Secretary of State  
Bldg. 1, Suite 157-K  
1900 Kanawha Blvd. East  
Charleston, WV 25305-0770

Dear Secretary Tennant:

This is to transmit a draft copy of the Special Report on Vendor Registration. This report is scheduled to be presented to the Joint Committee on Government Operations and the Joint Committee on Government Organization at 10:00 AM on June 21, 2013 at the Wheeling Island Hotel in Wheeling, WV.

If you would like to provide a written response to be included in the final report, please provide it to our office by noon on Friday, June 14, 2013. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at (304)340-3192 to make arrangements. We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

*Joint Committee on Government and Finance*

## Appendix B: Objective, Scope and Methodology

### Objective

Pursuant to West Virginia Code §4-2-5, the Legislative Auditor conducted a study to determine whether vendors doing business with state agencies are registered with the Secretary of State as required by West Virginia Code §31B, §31D, and §31E.

### Scope

This report focused on the registration statuses of all vendors receiving payments from state agencies from January 7-January 11, 2013. The Secretary of State provided updated registration statuses for 147 vendors as of May 16, 2013.

### Methodology

The Legislative Auditor obtained a list from the West Virginia State Auditor's Office of all 4,023 vendors receiving payments from state agencies from January 7-January 11, 2013 and checked the Secretary of State's Business Organization Database to determine whether the vendors were listed as being registered. The Legislative Auditor corresponded with the Secretary of State's Office to determine the status of the 355 vendors that did not appear in the Business Organization Database, but have company names which indicate that they are operating as corporations or limited liability companies. The Legislative Auditor also corresponded with the Purchasing Division of the Department of Administration and obtained a legal opinion concerning the Purchasing Division's role and responsibility in verifying and ensuring compliance with registration requirements. In the interest of full disclosure, it should be noted that Aaron Allred, the Legislative Auditor, is the spouse of the Chief Counsel of the Secretary of State's Office.



## Appendix C: Sample Letter Informing Unregistered Businesses of Registration Requirements



Secretary of State  
Bldg. 1, Suite 157-K  
1900 Kanawha Blvd. East  
Charleston, WV 25305-0770

**Natalie E. Tennant**  
Secretary Of State  
State Of West Virginia

Phone: 304-558-8000  
877-826-2954  
Visit us online:  
[www.wvsos.com](http://www.wvsos.com)

March 19, 2013

To Whom It May Concern:

We have received information that your organization may be conducting business in West Virginia as a limited liability company, or as a corporation.

West Virginia Code §31B (limited liability companies), §31D (business corporations) & §31E (non profit corporations) indicate that in order to transact business in West Virginia as one of these entities you must register with the Office of Secretary of State.

If your organization is not conducting business as a limited liability company, or as a corporation, please provide within **two weeks** of receipt of this letter, documentation of what type of business structure you are.

If you are not conducting business at all in West Virginia please provide, within **two weeks** of receipt of this letter, documentation of that as well.

If you are conducting business with or in the State of West Virginia then appropriate forms and fees will need to be submitted to the West Virginia Secretary of State's Office. The forms may be obtained online at [www.wvsos.com](http://www.wvsos.com) or by contacting our office at 304-558-8000.

Thank you for your attention in this matter. If you have questions regarding registration requirements, please contact our office and ask to speak with a member of our Business and Licensing staff.

Sincerely,

A handwritten signature in cursive script that reads "Penney Barker".

Penney Barker  
Manager, Business and Licensing Division  
West Virginia Secretary of State's Office



## Appendix D: Sample Letter to Unregistered Organizations That Responded to Initial Mailing Indicating They Need to Register



Secretary of State  
Bldg. 1, Suite 157-K  
1900 Kanawha Blvd. East  
Charleston, WV 25305-0770

**Natalie E. Tennant**  
Secretary Of State  
State Of West Virginia

Phone: 304-558-8000  
877-826-2954  
Visit us online:  
[www.wvsos.com](http://www.wvsos.com)

May 10, 2013

To Whom It May Concern:

This letter is a follow up to the letter our office sent to you on March 19, 2013, with regard to inquiring as to if your organization is conducting business in West Virginia or conducting business with the State of West Virginia, as a limited liability company, or as a corporation.

***Based on the information you provided to our office it does appear that your organization would need to file a Certificate of Authority with our office.***

West Virginia Code §31B (limited liability companies), §31D (business corporations) & §31E (non profit corporations) indicate that in order to transact business in West Virginia as one of these entities you must register with the Office of Secretary of State.

The forms may be obtained online at [www.wvsos.com](http://www.wvsos.com) or by contacting our office at 304-558-8000. Or you can same time and filing online at [www.business4wv.com](http://www.business4wv.com).

Thank you for your attention in this matter. If you have questions regarding registration requirements, please contact our office and ask to speak with a member of our Business and Licensing staff.

Sincerely,

A handwritten signature in cursive script, appearing to read "Penney Barker".

Penney Barker  
Manager, Business and Licensing Division  
West Virginia Secretary of State's Office





## Appendix E: Sample Follow Up Letter to Unregistered Organizations That Did Not Respond to Initial Mailing



**Secretary of State**  
Bldg. 1, Suite 157-K  
1900 Kanawha Blvd. East  
Charleston, WV 25305-0770

**Natalie E. Tennant**  
Secretary Of State  
State Of West Virginia

Phone: 304-558-8000  
877-826-2954  
Visit us online:  
[www.wvsos.com](http://www.wvsos.com)

May 10, 2013

To Whom It May Concern:

This letter is a follow up to the letter our office sent to you on March 19, 2013, with regard to inquiring as to if your organization is conducting business in West Virginia or conducting business with the State of West Virginia, as a limited liability company, or as a corporation.

West Virginia Code §31B (limited liability companies), §31D (business corporations) & §31E (non profit corporations) indicate that in order to transact business in West Virginia as one of these entities you must register with the Office of Secretary of State.

If your organization is not conducting business as a limited liability company, or as a corporation, please provide by May 24, 2013, documentation of what type of business structure you are.

If you are not conducting business at all in West Virginia or, with the State of West Virginia, please provide, by May 24, 2013 documentation of that as well.

If you are conducting business with, or in the State of West Virginia then appropriate forms and fees will need to be submitted to the West Virginia Secretary of State's Office immediately. The forms may be obtained online at [www.wvsos.com](http://www.wvsos.com) or by contacting our office at 304-558-8000.

Thank you for your attention in this matter. If you have questions regarding registration requirements, please contact our office and ask to speak with a member of our Business and Licensing staff.

Sincerely,

A handwritten signature in cursive script, appearing to read "Penney Barker".

Penney Barker  
Manager, Business and Licensing Division  
West Virginia Secretary of State's Office



## Appendix F: Follow Up Letter to the Department of Administration

### WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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June 12, 2013

Ross Taylor, Acting Cabinet Secretary  
West Virginia Department of Administration  
1900 Kanawha Boulevard, East  
Room E-119  
Charleston, WV 25305

Dear Secretary Taylor:

As you are aware, the Legislative Auditor's Office is exploring the issue of whether vendors receiving payments from state agencies are properly registered with the West Virginia Secretary of State as required by West Virginia Code. In the course of this evaluation, we encountered several vendors that are registered with the Purchasing Division but have not registered with the Secretary of State as corporations or limited liability companies. The Secretary of State's office has been in contact with these vendors via mail and has had minimal success at bringing them into compliance. One vendor, Four Roses Distillery, LLC (FEIN 061636822), responded to the Secretary of State's mailing and was notified May 10, 2013 of the need to register as a limited liability company. Six vendors indicated that, although they received payments from state agencies from January 7-January 11, 2013 and are registered as vendors with the Purchasing Division, that they do not conduct business with the State of West Virginia and so do not need to register. These vendors are listed in the table below.

Vendor Name	Vendor FEIN
First Union Rail Corp	561920602
Garrett Orthopedic Physical Therapy & Rehab llc	522097227
Grand Touring Vodka llc	272046048
Interstate Commodities Inc	141285564
Natl Captioning Institute Inc	521144663
Sodexo Inc & Affiliates	522208632

Forty-five vendors did not respond to the Secretary of State's mailing. Those vendors are listed in the table below.

*Joint Committee on Government and Finance*

<b>Vendor Name</b>	<b>Vendor FEIN</b>
Am Fidelity Trading Ltd	541364046
A Hardy Usa Ltd	363916012
Alltranstek Llc	364336290
Bhirud Ravin Md Inc	550667286
Bodek & Rhodes Inc	231920612
Canon Usa Inc	132561772
Charles Jacquin Et Cie Inc	232940003
Colorado Personnel Resources Inc	731628901
Community Action Agency Of Columbiana County Inc	346565185
D'andrea Wine & Liquor Imports Inc	251414768
Developmental Therapy Ctr Inc	550379624
Epic Card Services Llc	743207188
Fifth Generation Inc	742737688
Health@Work Llc	342014438
Hearing Aid Services Inc	540856293
Higher One Inc	061578063
Hite Co Inc	231328562
Ibm Corp	130871985
Itc Systems Inc	582062369
Ivans Inc	133142765
J S Lattas Inc	550684238
Klin Spirits Llc	202942513
Lockheed Martin Desktop Solutions Inc	541315551
Marietta Health Care Physicians Inc	311375125
Medcopy Inc	311429936
Mercy Life Center Corp Dba Mercy Behavioral Health	251604115
Midwest Exams Inc	562605241
Midwest Railcar Corp	371380288
Montebello Brands Inc	520990671
Moore Entertainment Inc	541365869
Ocs America Inc	132254224
Pilgrims Pride Corp	751285071
Premier Innovations Group Inc	651301000
Prestons Beauty Academy Llc	760834075
Scientific Computer Applications Inc	730781531
Square One Organic Spirits Llc	202495770
Transmetric America Inc	980467481
Tres Agaves Products Inc	263466066



Usalco Ashtabula Plant llc	271125383
Vendors Exchange Intl Inc	340908173
Virginia Brain & Spine Center Inc	262447091
Wellingtons Cafe & Catering Co	300608104
Western Maryland Health System Corp	520591531
Tri State Community Health Center Inc	521516829
Leo P Pajarillo Md Inc	550595731

The Purchasing Division is given authority in West Virginia Code §5A-3-3(8) to suspend the right of a vendor to bid on state purchases if the vendor has violated any provisions of the purchasing law or rules and regulations of the director. Additionally, West Virginia Code §5A-3-12 states that no bids may be received from a vendor unless the vendor has paid the required annual fee and filed the appropriate disclosure certificates. West Virginia Code of State Rules §148-1-6.1.7 states that all vendors (with certain exceptions) must register with the Purchasing Division and that the director shall not award any contract to any vendor not properly registered. The Rule further states the following:

*The vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or other state agencies or political subdivisions. The vendor must provide all necessary releases to obtain information necessary to verify that the vendor is licensed and in good standing with the above entities.*

Additionally, in a memorandum sent to state agency procurement officers on May 22, 2013, the Purchasing Director stated the following:

*Pursuant to West Virginia Code of State Rules §148-1-7.16.2, the Director of the Purchasing Division is authorized to cancel a contract for any reason or no reason by providing a vendor with 30 days notice of the cancellation.*

The Legislative Auditor obtained a legal opinion concerning the ability of the Purchasing Division to cancel contracts. Legal counsel agreed that West Virginia Code and the Code of State Rules grant the Purchasing Director this authority. Given these duties and requirements, please respond to the following:

1. Has the Purchasing Division accepted bids from any of the 52 vendors listed above?
2. Have any of the 52 vendors listed above been awarded contracts by the Purchasing Division?
3. In prior correspondence, the Purchasing Director indicated that the Purchasing Division does not have authority to require vendors to meet licensing and registration requirements with other agencies as a condition of registration as a vendor with the Purchasing Division. Since vendors may therefore be registered without meeting the conditions required in order to bid on or be awarded contracts for state purchases, how does the Division ensure that no bids are received by or contracts awarded to

registered vendors that do not meet other statutory registration requirements?

Thank you in advance for the information. We would appreciate your response by noon on Friday, June 21, 2013. Should you have any questions, please contact Tina Baker, the research analyst assigned to this project, at 304.347.4890.

Sincerely,



Denny Rhodes  
Research Manager

## Appendix G: Agency Response



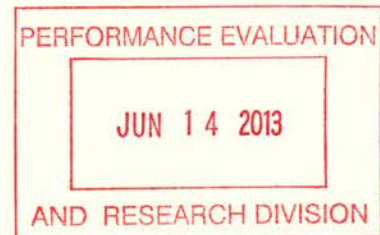
STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION  
OFFICE OF THE CABINET SECRETARY

EARL RAY TOMBLIN  
GOVERNOR

ROSS TAYLOR  
CABINET SECRETARY

June 14, 2013

John Sylvia  
West Virginia Legislature  
Performance Evaluation and Research Division  
Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, WV 25305



Dear Mr. Sylvia,

I am in receipt of your letter dated June 12, 2013, regarding the special report on vendor registration. I provided this report to my Purchasing Director, David Tincher, and his response is attached.

If you have any questions, or need any additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Ross Taylor" followed by a stylized flourish.

Ross Taylor  
Cabinet Secretary

Enclosure



**Natalie E. Tennant**  
Secretary of State  
State of West Virginia

Office of the Secretary of State  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, West Virginia 25305

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June 17, 2013

John Sylvia  
Director  
Performance Evaluation and Research Division  
Building 1, Room W-314  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0610

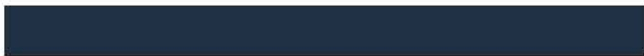
Dear Mr. Sylvia:

Thank you for providing the West Virginia Secretary of State's Office with a draft copy of the Special Report on Vendor Registration. The Business and Licensing Staff of the Secretary of State's Office was glad to be of service to your staff during the research into this report and appreciate their efforts.

Sincerely,

Natalie E. Tennant  
West Virginia Secretary of State





WEST VIRGINIA LEGISLATIVE AUDITOR

## PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | [www.legis.state.wv.us/Joint/PERD/perd.cfm](http://www.legis.state.wv.us/Joint/PERD/perd.cfm) | fax: 1-304-347-4939