

Post-Conviction Defender Commission

May 2007

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STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
State Capitol
Nashville, Tennessee 37243-0260
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John G. Morgan
Comptroller

May 15, 2007

Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and
The Honorable Richard McGee, Chair
Post-Conviction Defender Commission
530 Church Street, Suite 600
Nashville, Tennessee 37243
and
Mr. Don Dawson
Post-Conviction Defender
530 Church Street, Suite 600
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the financial and compliance audit of the Post-Conviction Defender Commission for the period February 1, 2004, through February 28, 2007.

The review of internal control and compliance with laws and regulations resulted in no audit findings.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/to
07/050



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DEPARTMENT OF AUDIT
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March 7, 2007

The Honorable John G. Morgan
Comptroller of the Treasury
State Capitol
Nashville, Tennessee 37243

Dear Mr. Morgan:

We have conducted a financial and compliance audit of selected programs and activities of the Post-Conviction Defender Commission for the period February 1, 2004, through February 28, 2007.

We conducted our audit in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. These standards require that we obtain an understanding of internal control significant to the audit objectives and that we design the audit to provide reasonable assurance of the Post-Conviction Defender Commission's compliance with laws, regulations, and provisions of contracts or grant agreements significant to the audit objectives. Management of the Post-Conviction Defender Commission is responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, and provisions of contracts and grant agreements.

Our audit resulted in no audit findings.

Sincerely,

Arthur A. Hayes, Jr., CPA
Director

AAH/to

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Financial and Compliance Audit
Post-Conviction Defender Commission
May 2007

AUDIT SCOPE

We have audited the Post-Conviction Defender Commission for the period February 1, 2004, through February 28, 2007. Our audit scope included a review of internal control and compliance with laws and regulations in the areas of expenditures, equipment, payroll and personnel, and payment cards. The audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. Tennessee statutes, in addition to audit responsibilities, entrust certain other responsibilities to the Comptroller of the Treasury. Those responsibilities include approving accounting policies of the state as prepared by the state's Department of Finance and Administration and participating in the negotiation and procurement of services for the state.

AUDIT FINDINGS

The audit report contains no findings.

Financial and Compliance Audit Post-Conviction Defender Commission

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Financial and Compliance Audit Post-Conviction Defender Commission

INTRODUCTION

POST-AUDIT AUTHORITY

This is the report on the financial and compliance audit of the Post-Conviction Defender Commission. The audit was conducted pursuant to Section 4-3-304, *Tennessee Code Annotated*, which requires the Department of Audit to “perform currently a post-audit of all accounts and other financial records of the state government, and of any department, institution, office, or agency thereof in accordance with generally accepted auditing standards and in accordance with such procedures as may be established by the comptroller.”

Section 8-4-109, *Tennessee Code Annotated*, authorizes the Comptroller of the Treasury to audit any books and records of any governmental entity that handles public funds when the Comptroller considers an audit to be necessary or appropriate.

BACKGROUND

The Post-Conviction Defender Commission is an independent agency. It is the mission of the Post-Conviction Defender Commission to ensure that a qualified attorney is appointed to the position of Post-Conviction Defender and to prepare, administer, and oversee the annual budget of the Office of the Post-Conviction Defender. The Office of the Post-Conviction Defender was created “to provide for the representation of any person convicted and sentenced to death in this state who is unable to secure counsel due to indigence, and that legal proceedings to challenge that conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgments of its courts may be regarded with the finality to which they are entitled in the interests of justice.”

The Post-Conviction Defender is to guarantee the highest quality of legal representation of all indigent individuals facing execution by the State of Tennessee to ensure that the death penalty is not imposed or carried out in an arbitrary manner and that individuals charged with or convicted of capital crimes are afforded all constitutional protections to which they are entitled.

The Post-Conviction Defender Commission is accounted for in allotment code 308.00.

AUDIT SCOPE

We have audited the Post-Conviction Defender Commission for the period February 1, 2004, through February 28, 2007. Our audit scope included a review of internal control and compliance with laws and regulations in the areas of expenditures, equipment, payroll and personnel, and payment cards. The audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. Tennessee statutes, in addition to audit responsibilities, entrust certain other responsibilities to the Comptroller of the Treasury. Those responsibilities include approving accounting policies of the state as prepared by the state's Department of Finance and Administration and participating in the negotiation and procurement of services for the state.

PRIOR AUDIT FINDINGS

There were no findings in the prior audit report.

OBJECTIVES, METHODOLOGIES, AND CONCLUSIONS

EXPENDITURES

The objectives of our review of expenditure controls and procedures in the Post-Conviction Defender Commission were to determine whether

- recorded expenditures for goods and services were adequately supported, properly approved, and correctly recorded in the state's accounting records,
- payments to vendors were made promptly,
- payments for travel were made in accordance with the Comprehensive Travel Regulations, and
- the commission's records were reconciled with reports from the state's accounting system.

We reviewed the applicable laws and regulations, interviewed key personnel, and reviewed supporting documentation to gain an understanding of the commission's procedures and controls over expenditures and to determine whether commission records were reconciled

with reports from the state's accounting system. We also tested a nonstatistical sample of expenditures for the period February 1, 2004, through December 31, 2006, to determine whether expenditures were adequately supported, properly approved, and correctly recorded in the state's accounting records; payments to vendors were made promptly; and travel expenditures complied with regulations.

Based on our reviews, interviews, and testwork, we determined that recorded expenditures for goods and services were adequately supported, properly approved, and correctly recorded in the state's accounting records; payments to vendors were made promptly; and payments for travel were made in accordance with the Comprehensive Travel Regulations, with minor exceptions. Also, commission records were reconciled with reports from the state's accounting system.

EQUIPMENT

The objectives of our review of equipment controls and procedures were to determine whether equipment could be located, was properly accounted for on the commission's property listing, and was adequately safeguarded.

We interviewed key personnel and reviewed supporting documentation to gain an understanding of the commission's procedures and controls over equipment. We selected and tested a nonstatistical sample of equipment; the items were located or confirmed, and the description, tag number, and location were compared to the property listing. We observed and discussed the safeguarding of equipment with commission personnel.

Based on the reviews, interviews, and testwork, we determined that equipment could be located, was properly accounted for on the commission's property listing, and was adequately safeguarded.

PAYROLL AND PERSONNEL

The objectives of our review of payroll and personnel controls and procedures were to determine whether

- the State Employee Information System (SEIS) payroll transactions agreed to the State of Tennessee Accounting and Reporting System (STARS) and appeared reasonable,
- newly hired employees were qualified for their positions and their initial wage was correct,
- terminated employees' final pay was accurate, and
- supplemental pay was appropriate.

We interviewed key personnel and reviewed supporting documentation to gain an understanding of the commission's procedures and controls over payroll and personnel. We obtained the commission's payroll transactions for the period March 1, 2004, through December 31, 2006, from SEIS. The listing was reconciled to STARS and was reviewed for reasonableness. For newly hired employees during the period, we reviewed personnel files and initial payroll registers to determine if the employees met the job qualifications and their initial wage was correct. For terminated employees, we reviewed personnel files and final payroll registers to determine if the employees' final pay was accurate. We reviewed supporting documentation for all supplemental payroll payments for the period March 1, 2004, through December 31, 2006.

We determined that the SEIS payroll transactions reconciled to STARS and appeared reasonable, newly hired employees were qualified for their positions and their initial wage was correct, terminated employees' final pay was accurate, and supplemental pay was appropriate.

PAYMENT CARDS

The objectives of our review of the payment card controls and procedures in the Post-Conviction Defender Commission were to determine whether

- cardholders were properly approved,
- purchases made using payment cards were adequately supported and recorded on the transaction log,
- payment card purchases appeared reasonable and necessary for the conduct of state business and did not exceed the single-purchase dollar limit,
- payment card purchases complied with the Department of General Services' purchasing policies and procedures, and
- payment card transaction logs were properly approved and reconciled to the statements and receipts.

We reviewed the applicable laws and regulations, interviewed key personnel, and reviewed supporting documentation to gain an understanding of the controls and procedures over payment cards. We obtained a listing of cardholders and reviewed documentation to determine if the cardholders had received the required approvals to be valid cardholders. We tested a nonstatistical sample of payment card purchases for the audit period for adequate documentation, reconciliation to the transaction log, and compliance with the Department of General Services' purchasing policies and procedures. We also tested for purchases which exceeded the single-purchase dollar limit and to determine if the purchases appeared reasonable and necessary for the conduct of state business. We reviewed a sample of transaction logs for proper approvals and reconciled them to the statements and receipts.

Based on our interviews, review of supporting documentation, and testwork, we determined that cardholders were properly approved; purchases were adequately supported and recorded on the transaction logs; purchases appeared reasonable and necessary to conduct state business and did not exceed the single-purchase dollar limit; purchases complied with the Department of General Services' purchasing policies and procedures; and payment card transaction logs were properly approved and reconciled to the statements and receipts.

OBSERVATIONS AND COMMENTS

MANAGEMENT'S RESPONSIBILITY FOR RISK ASSESSMENT

Auditors and management are required to assess the risk of fraud in the operations of the entity. The risk assessment is based on a critical review of operations considering what frauds could be perpetrated in the absence of adequate controls. The auditors' risk assessment is limited to the period during which the audit is conducted and is limited to the transactions that the auditors are able to test during that period. The risk assessment by management is the primary method by which the entity is protected from fraud, waste, and abuse. Since new programs may be established at any time by management or older programs may be discontinued, that assessment is ongoing as part of the daily operations of the entity.

Risks of fraud, waste, and abuse are mitigated by effective internal controls. It is management's responsibility to design, implement, and monitor effective controls in the entity. Although internal and external auditors may include testing of controls as part of their audit procedures, these procedures are not a substitute for the ongoing monitoring required of management. After all, the auditor testing is limited and is usually targeted to test the effectiveness of particular controls. Even if controls appear to be operating effectively during the time of the auditor testing, they may be rendered ineffective the next day by management override or by other circumventions that, if left up to the auditor to detect, will not be noted until the next audit engagement and then only if the auditor tests the same transactions and controls. Furthermore, since staff may be seeking to avoid auditor criticisms, they may comply with the controls during the period that the auditors are on site and revert to ignoring or disregarding the control after the auditors have left the field.

The risk assessments and the actions of management in designing, implementing, and monitoring the controls should be adequately documented to provide an audit trail both for auditors and for management, in the event that there is a change in management or staff, and to maintain a record of areas that are particularly problematic. The assessment and the controls should be reviewed and approved by the head of the entity.

FRAUD CONSIDERATIONS

Statement on Auditing Standards No. 99 promulgated by the American Institute of Certified Public Accountants requires auditors to specifically assess the risk of material misstatement of an audited entity's financial statements due to fraud. The standard also restates the obvious premise that management, not the auditors, is primarily responsible for preventing and detecting fraud in its own entity. Management's responsibility is fulfilled in part when it takes appropriate steps to assess the risk of fraud within the entity and to implement adequate internal controls to address the results of those risk assessments.

During our audit, we discussed these responsibilities with management and how management might approach meeting them. We also increased the breadth and depth of our inquiries of management and others in the entity as we deemed appropriate. We obtained formal assurances from top management that management had reviewed the entity's policies and procedures to ensure that they are properly designed to prevent and detect fraud and that management had made changes to the policies and procedures where appropriate. Top management further assured us that all staff had been advised to promptly alert management of all allegations of fraud, suspected fraud, or detected fraud and to be totally candid in all communications with the auditors. All levels of management assured us there were no known instances or allegations of fraud that were not disclosed to us.

AUDIT COMMITTEE

On May 19, 2005, the Tennessee General Assembly enacted legislation known as the "State of Tennessee Audit Committee Act of 2005." This legislation requires the creation of audit committees for those entities that have governing boards, councils, commissions, or equivalent bodies that can hire and terminate employees and/or are responsible for the preparation of financial statements. Entities, pursuant to the act, are required to appoint the audit committee and develop an audit committee charter in accordance with the legislation. The ongoing responsibilities of an audit committee include, but are not limited to:

1. overseeing the financial reporting and related disclosures, especially when financial statements are issued;
2. evaluating management's assessment of risk and the agency's system of internal controls;
3. formally reiterating, on a regular basis, to the board, agency management, and staff their responsibility for preventing, detecting, and reporting fraud, waste, and abuse;
4. serving as a facilitator of any audits or investigations of the agency, including advising auditors and investigators of any information it may receive pertinent to audit or investigative matters;
5. informing the Comptroller of the Treasury of the results of assessment and controls to reduce the risk of fraud; and

6. promptly notifying the Comptroller of the Treasury of any indications of fraud.

The commission has appointed a three-member audit committee, and the audit committee first met on November 20, 2006. The audit committee charter has been approved by the commission members and submitted for approval to the Comptroller of the Treasury. At the end of audit fieldwork on March 7, 2007, management had not started risk assessment procedures.