

**Tennessee Board of Regents
Tennessee State University**

**Review of Issues Related to Dr. James Smith's
Tenure as Athletics Director at
Tennessee State University**

April 2004

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**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY**

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John G. Morgan
Comptroller

April 7, 2004

The Honorable Phil Bredesen, Governor
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and

The Honorable Charles W. Manning, Chancellor
Tennessee Board of Regents
1415 Murfreesboro Road, Suite 350
Nashville, Tennessee 37217

and
Dr. James A. Hefner, President
Tennessee State University
3500 John A. Merritt Boulevard
Nashville, Tennessee 37209

Ladies and Gentlemen:

Transmitted herewith is a special report on the review of issues related to Dr. James L. Smith's tenure as Athletics Director at Tennessee State University (TSU), which hired Dr. Smith as the university's Athletics Director on August 30, 1999. Twenty-one months later, on June 1, 2001, TSU terminated Dr. Smith's employment, effective July 1, 2001. On June 4, 2001, Dr. Smith's attorney provided information to this office regarding Dr. Smith's allegations relating to possible misappropriation of funds and mismanagement at TSU.

On June 7, 2001, three state representatives issued a press release calling upon the Office of the Comptroller and other state entities to review allegations regarding the Athletics Department at TSU. Also on June 7, 2001, the Chancellor of the Tennessee Board of Regents (TBR) requested that the Office of the Comptroller undertake a review of TSU's Athletics Department.

Division of State Audit staff began a review of TSU's Athletics Department in June 2001. The auditors interviewed Dr. Smith on multiple occasions and also communicated with him by telephone and fax. The auditors conducted interviews with Dr. James A. Hefner, TSU's President, and other TSU senior management officials and staff personnel. In addition, the auditors interviewed TSU Foundation staff and individuals associated with but not employed by TSU. The auditors reviewed relevant documentation related to the issues under review. The auditors also reviewed reports issued by TSU's internal auditors

related to TSU's Ticket Office and TSU's contract with Summitt Management Corporation, located in Memphis, Tennessee.

In his initial interviews, Dr. Smith made serious allegations that some TSU senior management officials, including TSU's President, had received kickbacks from companies that did business with TSU. With regard to kickbacks, Dr. Smith speculated that the kickbacks had been paid as quid pro quo for approving contract terms disadvantageous to the university; paying a vendor although the vendor had provided little of value; allowing a company to improperly retain revenues that should have been provided to the university; inappropriately approving one vendor instead of a competitor; and enabling a corporation to overbill the university for food services. Dr. Smith made additional serious allegations that some TSU senior management officials, other TSU staff, and individuals associated with but not employed by TSU had committed thefts. Dr. Smith also described various methods by which the thefts were supposedly perpetrated. Further, Dr. Smith provided allegations of mismanagement by TSU officials. His comments pertained primarily to contract administration, performance, and cost issues associated with several Athletics Department contracts.

Dr. Smith acknowledged that he did not have any direct firsthand evidence of misconduct by any of the individuals whom he had named and also that none of the individuals had at any time stated to him that they had engaged in misconduct. Moreover, he acknowledged that none of the individuals had ever solicited him to participate in misconduct.

In subsequent interviews nearly a year later in April and May 2002, Dr. Smith modified his statements relating to his allegations of misconduct, after the auditors indicated to him that they were having difficulty substantiating some of his concerns. Dr. Smith stated that he had made his earlier statements in June 2001 out of anger and frustration. Dr. Smith stated that he wanted to tone down his allegations and that he wanted his statements to be regarded as observations and concerns, which he acknowledged were based on his speculations regarding contract terms and arrangements and on secondhand information.

When the auditors interviewed Dr. Hefner, TSU's President, he provided information related to deficiencies in Athletics Department operations that had occurred during Dr. Smith's tenure as Athletics Director. The matters that were considered within the purview of this review are included in the report. These matters included unapproved purchases, unpaid vendors, failure to fund the TSU *Coaches' Show* through the sale of advertising time, and unapproved initiatives by Dr. Smith related to Revelation Corporation of America, headquartered in Memphis, Tennessee.

Based on presently available information, which was derived from review procedures considered appropriate under the circumstances and in light of the nature of the information provided to this office, the auditors concluded that there was no evidence of kickbacks or thefts on the part of TSU officials, staff, or individuals associated with but not employed by TSU. This conclusion was based, in part, on a failure on the part of the individuals who had allegedly provided the basis for Dr. Smith's statements to furnish the auditors with credible information; Dr. Smith's basing his inferences on incomplete information or not fully understanding the information in his possession; and alleged improprieties that were errors. In addition, the conclusion was based on the results of audit procedures, including examination of relevant documents and interviews, that provided evidence that disproved Dr. Smith's allegations with respect to kickbacks and thefts.

Although Dr. Smith's allegations relating to kickbacks and thefts were not substantiated, one of Dr. Smith's many allegations was that ARAMARK Corporation, the university's food service vendor,

paid for Dr. Hefner to attend the 2001 Super Bowl in Tampa, Florida. This allegation was substantiated. The auditors determined that because Dr. Hefner was not on the selection committee, did not have contact with selection committee members during their deliberations, and did not affect the contract award recommendation, his receipt of the tickets was not in exchange for the awarding of a contract and thus was not a kickback. Instead, the auditors concluded that Dr. Hefner exploited his position, the university's relationship with ARAMARK, and his familiarity with ARAMARK officials to obtain an improper benefit for him and his family.

Moreover, the auditors determined that Dr. Hefner materially misrepresented to them significant aspects of the ticket transaction. Dr. Hefner initially stated that he had asked for and received two tickets. In a subsequent interview, he acknowledged receiving four tickets, two of which were counterfeit. Dr. Hefner initially stated that he paid for the tickets. Later, he acknowledged that the tickets had been provided to him free of charge. Dr. Hefner also initially stated that he had personally paid \$200 in cash to an ARAMARK official when the official visited the TSU campus about a week after the 2001 Super Bowl game. Dr. Hefner subsequently acknowledged that his account was not true and that he had mailed the ARAMARK official \$200 in cash in 2003, about two years later, when the auditors asked him about the matter. Dr. Hefner substantially revised his earlier statements only when the auditors confronted him with documentation from ARAMARK and interview statements by other parties to these transactions.

ARAMARK officials provided the auditors documentation that showed that ARAMARK's then-regional vice president had paid \$5,000 for Dr. Hefner's four tickets for the 2001 Super Bowl. The former regional vice president confirmed that no repayment was expected or discussed for the tickets when they were provided to Dr. Hefner. It is clear that the value of the 2001 Super Bowl tickets greatly exceeded \$200.

Furthermore, Dr. Hefner initially stated that he had received two tickets to the 2000 Super Bowl in Atlanta, Georgia, from the "Bud Adams organization" (Tennessee Titans). In later correspondence, Dr. Hefner acknowledged that he had actually received the tickets from ARAMARK. ARAMARK documentation provided to the auditors showed that ARAMARK's then-regional vice president paid \$4,500 for Dr. Hefner's tickets for the 2000 Super Bowl and an additional \$359.72 for his Atlanta hotel expenses related to his attendance at the Super Bowl game. In addition to receiving Super Bowl tickets, Dr. Hefner also acknowledged in February 2004 that he and his wife had attended some events at the 1996 Olympics in Atlanta, Georgia, as guests of ARAMARK and had stayed at an Atlanta hotel during part of the Olympics at ARAMARK's expense. ARAMARK officials did not have cost information related to Dr. Hefner's 1996 Olympics trip.

Also questionable were the activities of Mr. Clay Harkleroad, TSU's Vice President for Business and Finance, in relationship to the benefits he received from ARAMARK. Mr. Harkleroad acknowledged that he and his wife had attended some events at the 1996 Olympics in Atlanta as guests of ARAMARK and had stayed at an Atlanta hotel during part of the Olympics at ARAMARK's expense. Mr. Harkleroad further acknowledged that at his request, ARAMARK's then-regional vice president had provided him with two Atlanta Braves complimentary tickets in 1997 or 1998; four Atlanta Braves complimentary tickets in 1999; and four tickets to the Tennessee vs. Florida football game in Gainesville, Florida, in 2001. According to ARAMARK officials, the Atlanta Braves tickets, which were purchased as part of a corporate season ticket package, were worth \$27 each. Mr. Harkleroad told the auditors that he paid for the Tennessee vs. Florida football tickets, and he provided the auditors with a copy of his \$100 check to ARAMARK. The auditors contacted the University of Tennessee's (UT) Athletics Department, and a UT official confirmed that the tickets in question cost \$25 each. Therefore, by paying \$100, Mr. Harkleroad paid the actual cost of the four tickets. In addition, Mr. Harkleroad informed the auditors that he had on

rare occasion played golf with ARAMARK officials and employees from other TBR universities during work hours without taking leave, but he could not recall the last time he had done so. Like Dr. Hefner, Mr. Harkleroad was not on the food services selection committee, and the committee members stated that he did not have any input into their recommendation for ARAMARK.

The auditors reviewed the selection process that ultimately resulted in the 2001 contract between TSU and ARAMARK. The review included examination of TSU's contract files for ARAMARK, maintained by TSU's Purchasing Department, and interviews with members of the food services selection committee. Neither Dr. Hefner nor Mr. Harkleroad was on the selection committee that recommended ARAMARK for the contract. It appears that the ARAMARK contract was handled routinely and neither Dr. Hefner nor Mr. Harkleroad exerted undue influence on the process.

The actions of Dr. Hefner and Mr. Harkleroad in accepting benefits in the form of tickets and hotel accommodations from ARAMARK represent a potential violation of TBR's personnel policies relating to misconduct as well as TSU's *Code of Ethical Conduct*.

The review of the Ticket Office disclosed significant deficiencies in its management and operations. These deficiencies pre-dated Dr. Smith's tenure at TSU, existed during his tenure, when the Ticket Office was under his direct supervision, and continued after Dr. Smith's employment at TSU was terminated. After Dr. Smith's termination, TSU hired an experienced Ticket Office manager, who established effective procedures and controls to safeguard funds and other assets and to provide for timely, accurate, and complete financial reporting.

With regard to other concerns expressed by Dr. Smith, although his allegations were not substantiated, examination of the areas he had identified disclosed deficiencies in management practices and noncompliance with TBR and TSU policies and procedures, which he had not identified. Some of these deficiencies resulted from the action, or inaction, of Dr. Hefner and other university staff, while other deficiencies resulted from the activities of Dr. Smith and Athletics Department staff. In some cases, the responsibility for the deficiencies was shared.

As examples of deficiencies that occurred prior to Dr. Smith's hire as Athletics Director in 1999, Dr. Hefner, the Purchasing Director, and the Athletics Director failed to properly execute an amendment to the contract with Summitt Management Corporation (Summitt) that formalized the change in the revenue base used to calculate Summitt's payment to TSU for the Southern Heritage Classic football games and also failed to include the required termination clause in the contract. Also prior to Dr. Smith's tenure, as a result of a coding error by Athletics Department staff, Tom Jackson & Associates was overpaid \$5,754.75 because one payment was not correctly coded as a charge to the contract. Instead, the expense was paid through a "debit voucher" and thus was not tabulated as a contract expense. Because the expense was incorrectly coded, it was not properly accumulated with correctly coded expenses, which ultimately allowed the specified contract amount to be exceeded.

As examples of shared responsibilities, Dr. Hefner, Dr. Smith, and the Purchasing Director failed to ensure that the advertising contract with Tom Jackson & Associates of Nashville, Tennessee, was rebid, as required by TBR and TSU purchasing policies. The contract was renewed during Dr. Smith's tenure. Moreover, although the Tom Jackson & Associates contract pre-dated Dr. Smith's tenure and was renewed during his tenure, neither the President's office, nor the Athletics Department, nor the firm maintained sufficient documentation of the firm's performance related to the contract terms. A deficiency attributable to Athletics Department staff during Dr. Smith's tenure was that they failed to deposit a \$126,175 check from Summitt in a timely manner.

The review disclosed that Dr. Smith had undertaken several significant fund-raising initiatives involving TSU and Revelation Corporation of America (Revelation America), headquartered in Memphis, Tennessee, without Dr. Hefner's knowledge or approval. Dr. Smith had also arranged for public announcements that misrepresented that TSU had received a \$100,000 donation from Revelation America and that the university and Revelation America had formally agreed to a downpayment assistance program for university faculty and staff. In addition, Dr. Smith had initiated a debit card program in partnership with Revelation America without the knowledge or approval of the university's top management or TBR staff.

During Dr. Smith's tenure, some Athletics Department staff arranged for vendors to provide goods and services without following TSU's purchasing policies and procedures. Further, the Athletics Department was substantially in arrears in paying vendors with whom proper contractual arrangements had been executed. Dr. Smith also advised Dr. Hefner that he would obtain sufficient funding for the TSU *Coaches' Show* in its first year of operation, but he failed to do so. In addition, he gave advertisers free air time on the *Coaches' Show*. Moreover, Athletics Department staff, with Dr. Smith's knowledge, improperly deposited funds in the amount of \$8,500 into a TSU Foundation account in order to circumvent the business office when the funds should have been deposited into a TSU account .

Overall, the voluminous nature and seriousness of Dr. Smith's issues, whether expressed as allegations of significant misconduct or as speculative "concerns," as well as the material problems in the Athletics Department identified by Dr. Hefner, were indicative of a power struggle between Dr. Hefner and Dr. Smith for control of the Athletics Department's resources and spending. Clearly, Dr. Hefner and Dr. Smith distrusted each other. As is evident from the review of Dr. Smith's initiatives related to Revelation America's \$100,000 donation to the Athletics Department, downpayment assistance program, and debit card program, Dr. Smith materially misrepresented his activities to Dr. Hefner. With regard to the issue of the proposed funding of the TSU *Coaches' Show* through corporate purchases of advertising time, Dr. Smith provided a misleading assessment to Dr. Hefner that the show would be self-supporting in its first year. Dr. Smith exhibited a lack of understanding and appreciation of the need to inform Dr. Hefner about his proposed initiatives; to obtain appropriate advice and approval; or to seek appropriate guidance about legal and contractual issues. In these matters, Dr. Smith exhibited minimal consideration of the requirements or ramifications of his actions.

Regarding his issues related to kickbacks and thefts, Dr. Smith was willing to give substantial credence to rumors and unsubstantiated allegations brought to him by other individuals. For instance, Dr. Smith told the auditors that the "word around campus" was that a robbery of the university bookstore, which resulted in the loss of \$30,000, was a cover-up, and that Dr. Hefner actually received the money that was taken. In fact, the bookstore manager was held up by an armed robber, who was later arrested, convicted of aggravated assault and aggravated robbery, and sentenced to 30 years in prison. His accomplice, a bookstore employee, was also arrested, convicted of aggravated robbery, and sentenced to five years' intensive probation. Because of his actions, his distrust of Dr. Hefner, and his willingness to believe and repeat allegations, Dr. Smith presented significant supervisory problems for Dr. Hefner.

For his part, in some instances, Dr. Hefner took actions that had the appearance of diminishing the authority and control of the Athletics Director. As examples, Dr. Hefner by letter apparently transferred the responsibility for supervising the Tom Jackson & Associates contract from the Athletics Department to the President's Office; and Dr. Hefner also approved the transfer of \$32,190 from the Football Events account under the Athletics Department to the President's Events account under the President's Office without notifying Dr. Smith. However, in other matters, Dr. Hefner was very clear and specific in his directives to Dr. Smith as well as his questions and his statements related to Dr. Smith's

fiduciary and management responsibilities. During the course of the review, Dr. Hefner's most serious breach of his responsibilities was his use of the university's relationship with ARAMARK to obtain Super Bowl tickets and hotel accommodations for himself and his failure to be forthcoming about those activities with the auditors.

The review resulted in 40 recommendations, including 35 related to university controls and management. Three recommendations are related to the Tennessee Board of Regents and staff; and two recommendations address possible statutory changes for consideration by the Tennessee General Assembly.

The matters discussed in this report have been referred to the appropriate authorities.

Sincerely,

A handwritten signature in black ink that reads "John G. Morgan". The signature is written in a cursive style with a long horizontal flourish at the end.

John G. Morgan
Comptroller of the Treasury

JGM/gmk
01/23

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Special Report

**Tennessee Board of Regents
Tennessee State University**

**Review of Issues Related to Dr. James Smith's Tenure
as Athletics Director at Tennessee State University**

April 2004

ORIGIN OF THE REVIEW

On June 1, 2001, Dr. James A. Hefner, President of Tennessee State University (TSU), terminated the employment of Dr. James L. Smith, TSU's Athletics Director, with 30 days' notice. On June 4, 2001, an attorney representing Dr. Smith met with the Comptroller of the Treasury and members of his audit staff regarding Dr. Smith's allegations relating to possible misappropriation of funds and mismanagement at TSU. Dr. Smith was not present at the June 4 meeting. On June 7, 2001, three state representatives held a news conference on TSU Athletics and issued a press release. In their press release, the representatives called upon the Tennessee Board of Regents, the Tennessee Higher Education Commission, the Office of the Comptroller, and possibly the Tennessee Bureau of Investigation, to review allegations regarding Dr. Smith's inability to lead the Athletics Department and the turnover of athletics directors at TSU. Also on June 7, 2001, the Chancellor of the Tennessee Board of Regents requested that the Office of the Comptroller undertake a review of TSU's Athletics Department. We began our review of TSU's Athletics Department in June 2001.

OBJECTIVES OF THE REVIEW

Our review had the following objectives:

- to determine the nature and extent of allegations related to misappropriation of funds and mismanagement associated with the termination of TSU's Athletics Director on June 1, 2001;
- to determine, based on presently available information, whether funds were misappropriated, possible illegal acts occurred, or administrative matters were mismanaged;

- to make recommendations related to strengthening TSU's internal financial controls and administrative processes; and
- to refer the results of our review to the appropriate authorities.

SCOPE OF THE REVIEW

The review included interviews with current and former TSU staff as well as with individuals associated with, but not employed by, TSU. We examined relevant documentation related to financial transactions, contracts, sole-source letters, purchase orders, purchase requisitions, and TSU's summer youth program. We also reviewed correspondence and relevant information from personnel files.

ORGANIZATION OF THE REPORT

The report is organized into three main sections: *Introduction*, *Details of the Review*, and *Recommendations*. Our analysis is contained in the *Details of the Review* section, which is divided into two parts. Part I presents the issues raised by Dr. Smith, and Part II presents the issues raised by Dr. Hefner.

RESULTS OF THE REVIEW

In his initial interviews, Dr. Smith made serious allegations that some TSU senior management officials, including TSU's President, had received kickbacks from companies that did business with TSU. With regard to kickbacks, Dr. Smith speculated that the kickbacks had been paid as quid pro quo for approving contract terms disadvantageous to the university; paying a vendor although the vendor had provided little of value; allowing a company to improperly retain revenues that should have been provided to the university; inappropriately approving one vendor instead of a competitor; and enabling a corporation to overbill the university for food services. Dr. Smith made additional serious allegations that some TSU senior management officials, other TSU staff, and individuals associated with but not employed by TSU had committed thefts. Dr. Smith also described various methods by which the thefts were supposedly perpetrated. Further, Dr. Smith provided allegations of mismanagement by TSU officials. His comments pertained primarily to contract administration, performance, and cost issues associated with several Athletics Department contracts.

Dr. Smith acknowledged that he did not have any direct firsthand evidence of misconduct by any of the individuals whom he had named and also that none of the individuals had at any time stated to him that they had engaged in misconduct. Moreover, he acknowledged that none of the individuals had ever solicited him to participate in misconduct.

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acknowledged were based on his speculations regarding contract terms and arrangements and on secondhand information.

When the auditors interviewed Dr. Hefner, TSU's President, he provided information related to deficiencies in Athletics Department operations that had occurred during Dr. Smith's tenure as Athletics Director. The matters that were considered within the purview of this review are included in the report. These matters included unapproved purchases, unpaid vendors, failure to fund the TSU *Coaches' Show* through the sale of advertising time, and unapproved initiatives by Dr. Smith related to Revelation Corporation of America, headquartered in Memphis, Tennessee.

Based on presently available information, which was derived from review procedures considered appropriate under the circumstances and in light of the nature of the information provided to this office, the auditors concluded that there was no evidence of kickbacks or thefts on the part of TSU officials, staff, or individuals associated with but not employed by TSU. This conclusion was based, in part, on a failure on the part of the individuals who had allegedly provided the basis for Dr. Smith's statements to furnish the auditors with credible information; Dr. Smith's basing his inferences on incomplete information or not fully understanding the information in his possession; and alleged improprieties that were errors. In addition, the conclusion was based on the results of audit procedures, including examination of relevant documents and interviews, that provided evidence that disproved Dr. Smith's allegations with respect to kickbacks and thefts.

Although Dr. Smith's allegations relating to kickbacks and thefts were not substantiated, one of Dr. Smith's many allegations was that ARAMARK Corporation, the university's food service vendor, paid for Dr. Hefner to attend the 2001 Super Bowl in Tampa, Florida. This allegation was substantiated. The auditors determined that because Dr. Hefner was not on the selection committee, did not have contact with selection committee members during their deliberations, and did not affect the contract award recommendation, his receipt of the tickets was not in exchange for the awarding of a contract and thus was not a kickback. Instead, the auditors concluded that Dr. Hefner exploited his position, the university's relationship with ARAMARK, and his familiarity with ARAMARK officials to obtain an improper benefit for him and his family.

Moreover, the auditors determined that Dr. Hefner materially misrepresented to them significant aspects of the ticket transaction. Dr. Hefner initially stated that he had asked for and received two tickets. In a subsequent interview, he acknowledged receiving four tickets, two of which were counterfeit. Dr. Hefner initially stated that he paid for the tickets. Later, he acknowledged that the tickets had been provided to him free of charge. Dr. Hefner also initially stated that he had personally paid \$200 in cash to an ARAMARK official when the official visited the TSU campus about a week after the 2001 Super Bowl game. Dr. Hefner subsequently acknowledged that his account was not true and that he had mailed the ARAMARK official \$200 in cash in 2003, about two years later, when the auditors asked him about the matter. Dr. Hefner substantially revised his earlier statements only when the auditors confronted him with documentation from ARAMARK and interview statements by other parties to these transactions.

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Overall, the voluminous nature and seriousness of Dr. Smith's issues, whether expressed as allegations of significant misconduct or as speculative "concerns," as well as the material problems in the Athletics Department identified by Dr. Hefner, were indicative of a power struggle between Dr. Hefner and Dr. Smith for control of the Athletics Department's resources and spending. Clearly, Dr. Hefner and Dr. Smith distrusted each other. As is evident from the review of Dr. Smith's initiatives related to Revelation America's \$100,000 donation to the Athletics Department, downpayment assistance program, and debit card program, Dr. Smith materially misrepresented his activities. With regard to the issue of the proposed funding of the TSU *Coaches' Show* through corporate purchases of advertising time, Dr. Smith provided a misleading assessment to Dr. Hefner that the show would be self-supporting in its first year. Dr. Smith exhibited a lack of understanding and appreciation of the need to inform Dr. Hefner about his proposed initiatives; to obtain appropriate advice and approval; or to seek appropriate guidance about legal and contractual issues. In these matters, Dr. Smith exhibited minimal consideration of the requirements or ramifications of his actions.

Regarding his issues related to kickbacks and thefts, Dr. Smith was willing to give substantial credence to rumors and unsubstantiated allegations brought to him by other individuals. For instance, Dr. Smith told the auditors that the “word around campus” was that a robbery of the university bookstore, which resulted in the loss of \$30,000, was a cover-up, and that Dr. Hefner actually received the money that was taken. In fact, the bookstore manager was held up by an armed robber, who was later arrested, convicted of aggravated assault and aggravated robbery, and sentenced to 30 years in prison. His accomplice, a bookstore employee, was also arrested, convicted of aggravated robbery, and sentenced to five years’ intensive probation. Because of his actions, his distrust of Dr. Hefner, and his willingness to believe and repeat allegations, Dr. Smith presented significant supervisory problems for Dr. Hefner.

For his part, in some instances, Dr. Hefner took actions that had the appearance of diminishing the authority and control of the Athletics Director. As examples, Dr. Hefner by letter apparently transferred the responsibility for supervising the Tom Jackson & Associates contract from the Athletics Department to the President’s Office; and Dr. Hefner also approved the transfer of \$32,190 from the Football Events account under the Athletics Department to the President’s Events account under the President’s Office without notifying Dr. Smith. However, in other matters, Dr. Hefner was very clear and specific in his directives to Dr. Smith as well as his questions and his statements related to Dr. Smith’s fiduciary and management responsibilities. During the course of the review, Dr. Hefner’s most serious breach of his responsibilities was his use of the university’s relationship with ARAMARK to obtain Super Bowl tickets and hotel accommodations for himself and his failure to be forthcoming about those activities with the auditors.

The matters discussed in this report have been referred to the appropriate authorities.

RECOMMENDATIONS

The review resulted in 40 recommendations, including 35 related to university controls and management. Three recommendations are related to the Tennessee Board of Regents and staff; and two recommendations address possible statutory changes for consideration by the Tennessee General Assembly.

**Tennessee Board of Regents
Tennessee State University**

**Review of Issues Related to Dr. James Smith's Tenure
as Athletics Director at Tennessee State University**

April 2004

TABLE OF CONTENTS

	Page
INTRODUCTION	1
Origin of the Review	1
Objectives of the Review	1
Scope of the Review	2
Background	2
DETAILS OF THE REVIEW	10
I. Issues Raised by Dr. Smith	10
TSU Ticket Office	10
Summitt Management Corporation	22
Tom Jackson & Associates, Inc.	30
National Youth Sports Program	43
Tiger Pride Account	63
Transfer of Funds From the Athletics Department to the President's Office	64
Dr. Smith's Concerns About Kickbacks	65
Dr. Smith's Concerns Regarding Possible Thefts	68
Diversion of Funds to the TSU Foundation	87
II. Issues Raised by Dr. Hefner	89
Revelation Corporation of America	89
Unauthorized Purchases	103
Failure to Pay Invoices for Authorized Services	115
The TSU <i>Coaches' Show</i>	121
RECOMMENDATIONS	129

**Tennessee Board of Regents
Tennessee State University**

**Review of Issues Related to Dr. James Smith's Tenure
as Athletics Director at Tennessee State University**

April 2004

INTRODUCTION

ORIGIN OF THE REVIEW

On June 1, 2001, Dr. James A. Hefner, President of Tennessee State University (TSU), terminated the employment of Dr. James L. Smith, TSU's Athletics Director, with 30 days' notice.

On June 4, Mr. David L. King, an attorney representing Dr. Smith, met with the Comptroller of the Treasury and members of his audit staff regarding Dr. Smith's allegations relating to possible misappropriation of funds and mismanagement at TSU. Dr. Smith was not present at the June 4 meeting.

On June 7, State Representatives Ulysses Jones, Jr.; Barbara W. Cooper; and Joe Towns, Jr., held a news conference on TSU Athletics and issued a press release. In their press release, the representatives called upon the Tennessee Board of Regents, the Tennessee Higher Education Commission, the Office of the Comptroller, and possibly the Tennessee Bureau of Investigation, to review allegations regarding Dr. Smith's inability to lead the Athletics Department and the turnover of Athletics Directors at TSU.

Also on June 7, Chancellor Charles Manning of the Tennessee Board of Regents requested that the Office of the Comptroller undertake a review of TSU's Athletics Department. In addition, Chancellor Manning issued a press release that recapitulated his request to the Comptroller.

We began our review of TSU's Athletics Department in June 2001.

OBJECTIVES OF THE REVIEW

Our review had the following objectives:

- to determine the nature and extent of allegations related to misappropriation of funds and mismanagement associated with the termination of TSU's Athletics Director on June 1, 2001;

- to determine, based on presently available information, whether funds were misappropriated, possible illegal acts occurred, or administrative matters were mismanaged;
- to make recommendations related to strengthening TSU's internal financial controls and administrative processes; and
- to refer the results of our review to the appropriate authorities.

SCOPE OF THE REVIEW

The review included interviews with current and former TSU staff as well as with individuals associated with, but not employed by, TSU. We examined relevant documentation related to financial transactions, contracts, sole-source letters, purchase orders, purchase requisitions, and TSU's summer youth program. We also reviewed correspondence and relevant information from personnel files.

BACKGROUND

Organization of the Athletics Department

At TSU, the Athletics Director reports to the President. The Athletics Director administers the Athletics Department, which includes the management, administrative support, coaching, and training staff associated with TSU's athletic teams. The Athletics Director is also responsible for the TSU Ticket Office.

TSU hired Dr. Smith to be TSU's Athletics Director starting August 30, 1999. After approximately two years, TSU terminated Dr. Smith's employment effective July 1, 2001, as detailed below. After Dr. Smith's termination, Ms. Teresa Phillips, previously the Associate Athletics Director under Dr. Smith, was appointed Interim Athletics Director. On April 30, 2002, Ms. Phillips was named the Athletics Director.

TSU Terminates Dr. Smith's Employment as Athletics Director

On June 1, 2001, Dr. James A. Hefner, TSU's President, sent a letter to Dr. James L. Smith, TSU's Athletics Director, stating that under the terms of Dr. Smith's employment contract, his services with TSU would be terminated effective July 1, 2001. According to Section 4 of Dr. Smith's "Notice of Appointment and Agreement of Employment," signed by Dr. Hefner on August 20, 1999, and by Dr. Smith on August 24, 1999, Dr. Smith's employment could be terminated with 30 days' notice.

In his June 1 letter, Dr. Hefner stated that his decision to terminate Dr. Smith's services as Athletics Director was based upon several factors. As presented in the letter, the paramount factor was votes of no confidence by eight TSU Athletics Department staff. These staff included

five coaches, an Associate Athletics Director, an Assistant Athletics Director, and the Head Trainer. Dr. Hefner stated that the votes of no confidence alone would justify removal. He further stated that consideration of the votes of no confidence in conjunction with deficiencies related to budget, management, and fund-raising, as itemized in the letter, led him to the conclusion that the university needed to seek alternative management and leadership for the Athletics Department.

With respect to budgetary issues, Dr. Hefner's letter stated that Dr. Smith failed to adequately manage the Athletics Department budget, resulting in shortfalls and inability to cover costs, and also that he failed to comply with Dr. Hefner's request that he attend scheduled meetings with TSU's Budget Director. With regard to fund-raising matters, Dr. Hefner stated that Dr. Smith failed to meet his minimum fund-raising mandates for fiscal years 1999-2000 and 2000-2001, and also that he failed to secure corporate sponsorship to fund the TSU *Coaches' Show* and to defray production costs. In addition, Dr. Hefner faulted Dr. Smith for failure to originate and submit a satisfactory fund-raising plan. Further, Dr. Hefner cited Dr. Smith for misrepresenting that \$100,000 of his fiscal year 2000-2001 fund-raising mandate had been satisfied by a donation from Revelation America to TSU and for failing to provide correspondence and documentation relative to a partnership between Revelation America and TSU.

In his letter, Dr. Hefner instructed Dr. Smith not to report to work after June 1. Dr. Hefner also stated that pursuant to Dr. Smith's contract, his letter constituted the required 30-day notice of separation from state service and that Dr. Smith should contact TSU's Office of Human Resources for information related to separation procedures and continuation of health insurance benefits.

Dr. Smith's Attorney Contacts the Office of the Comptroller

On May 31, 2001, one day prior to the transmittal of Dr. Smith's termination letter, Mr. David L. King, an attorney representing Dr. Smith, contacted the Office of the Comptroller to discuss matters relating to TSU, the Athletics Department, and the Athletics Director. On June 4, Mr. King met with the Comptroller of the Treasury and members of his audit staff. Dr. Smith was not present at the June 4 meeting. During that meeting, Mr. King stated that Dr. Smith had been fired, and he relayed information that had been provided to him by Dr. Smith relative to allegations of misappropriation of funds and mismanagement at TSU. These issues are discussed further below.

State Representatives Hold a News Conference on TSU Athletics

On June 7, 2001, State Representatives Ulysses Jones, Jr.; Barbara W. Cooper; and Joe Towns, Jr., held a news conference on TSU Athletics in Nashville, Tennessee. Present at the news conference were representatives of Channels 2, 4, and 5 of Nashville, the Nashville *Tennessean*, the *Urban Journal* of Nashville, and the *City Paper* of Nashville, as well as other reporters. At the news conference, the three representatives issued a press release that stated their hope that the allegations regarding Dr. Smith's inability to lead the Athletics Department were not based on subjective impressions by other directors and coaches at TSU. Their press

release also noted that during Dr. Hefner's leadership, TSU had had "a dramatic transition relative to athletics directors." In their press release, the three representatives called upon the Tennessee Board of Regents, the Tennessee Higher Education Commission, the Office of the Comptroller, and possibly the Tennessee Bureau of Investigation, to intervene in the aforementioned concerns. In their press release, the representatives proposed that if all means to facilitate an efficient and effective Athletics Department at TSU had been exhausted, then TSU's Athletics Department should be contracted to a private entity.

TBR Chancellor Requests Review of TSU's Athletics Department

By letter dated June 7, 2001, to the Comptroller of the Treasury, Chancellor Charles Manning of the Tennessee Board of Regents (TBR) requested that the Office of the Comptroller undertake a review of TSU's Athletics Department. In his letter, Chancellor Manning indicated that his request was prompted by the serious nature of the concerns raised by legislators and others about the operation of the Athletics Department at TSU in the wake of the dismissal of Dr. Smith as Athletics Director. Chancellor Manning stated that both he and Dr. Hefner believed that a review was warranted and was also the best way to determine, to the public's satisfaction, whether or not there were or had been significant problems with the department's operations. Chancellor Manning pledged the full cooperation of both TBR and TSU in any review undertaken by the Comptroller's Office.

Also on June 7, 2001, Chancellor Manning issued a press release that recapitulated the information in his letter to the Comptroller.

Dr. Smith Files Suit Against TBR, TSU, and Dr. Hefner

On March 19, 2002, Dr. Smith filed a lawsuit against the Tennessee Board of Regents, Tennessee State University, and Dr. Hefner in Chancery Court for the State of Tennessee, 20th Judicial District, Davidson County. His Complaint stated, in part,

Dr. Smith was terminated as a result of his reporting of, and for his refusal to participate in or remain silent about, numerous problems and irregularities which he had encountered within and affecting the TSU Athletics Department, including (a) evidence of apparent violations of state or federal laws, rules, regulation, policies and/or procedures which had or would have had a material and adverse effect on TSU programs operations or integrity; (b) evidence of apparent fraud against TSU; (c) evidence of possible willful misappropriation of state resources and/or (d) evidence of gross mismanagement of TSU programs and operations, gross waste of state and federal funds, or gross abuse of authority.

On April 19, 2002, the State of Tennessee Attorney General's Office filed a Notice of Removal from the Chancery Court to the United States District Court for the Middle District of Tennessee. The Notice of Removal stated that the United States District Court was the proper court to hear Dr. Smith's Title IX and civil rights claims. On April 25, 2002, the Chancery Court accepted the removal. Dr. Smith did not object to the removal and his Complaint remained the same. The Attorney General's Office filed an answer to Dr. Smith's Complaint on April 30,

2002, and discovery for the case ensued. On March 12, 2003, Dr. Smith voluntarily dismissed his lawsuit against TBR, TSU, and Dr. Hefner. As of the date of this report, Dr. Smith has not pursued any further legal action against TBR, TSU, or Dr. Hefner.

Summary of Dr. Smith's Allegations

Information Provided by Dr. Smith's Attorney

On June 4, 2001, Mr. David L. King, the attorney representing Dr. Smith, met with the Comptroller of the Treasury and members of his audit staff. Dr. Smith was not present at the June 4 meeting. According to Mr. King, Dr. Smith's allegations relating to Tennessee State University included the following items:

1. On November 3, 1999, TSU reported a cash shortage in the TSU Ticket Office of \$50,019.50 resulting from potential employee misfeasance. The matter had been turned over to TSU's Internal Audit office for investigation, but no Internal Audit report had been issued, and the loss had not been resolved after one and a half years. TSU's administration was not interested in determining who took the money or how the loss occurred.
2. TSU's Budget and Fiscal Planning Office improperly transferred \$32,190 from the Football Events account to the President's Events account. Therefore, money that should have been available in the Football Events account was not available, and there was no information as to how the money was used after it was transferred to the President's Events account.
3. With regard to the Richard Dent Golf Tournament, the participants were supposed to pay a fee, but no money was collected, receipted, or deposited. As a result, Athletic Department funds in the amount of \$6,253.04 were used to cover the costs of the golf tournament.
4. The National Youth Sports Corporation paid TSU \$75,000 to conduct a summer National Youth Sports Program. The program did not have any participants or activities; the staff was paid for doing nothing; and some employees were double dipping because they were on the payroll for another function.
5. Over the objections of Dr. Smith, TSU entered into a contract with Tom Jackson & Associates for \$50,000. The contract was not bid as required. Tom Jackson & Associates did not do anything for the money, and the activities for which Tom Jackson & Associates were responsible were performed in-house by TSU staff.
6. In November 1999, TSU's Ticket Office improperly issued at least three duplicate tickets to its homecoming football game.
7. Pursuant to a directive from the National Collegiate Athletic Association (NCAA), the bank account associated with the Tiger Pride Athletic Association was supposed

to have been closed. However, the account was still open as of April 9, 1999, as evidenced by a withdrawal of \$2,664.76 from that account.

8. Budweiser, for years, gave TSU \$8,500 per year. However, TSU financial records do not show receipt of Budweiser contributions for several years.

Mr. King also provided several documents pertaining to the allegations itemized above. The auditors requested that Mr. King provide any other documents in his possession that he deemed relevant to the matters listed above, or to any other matters, and he agreed to do so. He described the documents in his possession as voluminous in nature. However, as of the date of this report, Mr. King had not provided us any additional documentation.

Because of the nature and the number of the allegations, and because of the importance of obtaining information firsthand from Dr. Smith, including all relevant documentation, we requested that Mr. King schedule a meeting between Dr. Smith and the auditors as quickly as possible. Mr. King facilitated that meeting, which occurred on June 15, 2001, at Dr. Smith's home.

Information Provided by Dr. Smith

In his initial interviews, Dr. Smith stated that some TSU senior management officials, including TSU's President, other TSU staff, and individuals associated with, but not employed by, TSU had received kickbacks from companies that did business with TSU or had committed thefts. Dr. Smith named Dr. James Hefner, TSU's President; Mr. Clay Harkleroad, TSU's Vice President for Business and Finance; Mr. Bob Hughes, TSU's then-Director of Budget and Fiscal Planning; and Dr. Jesse James, a TSU Assistant Professor of Health, Physical Education, and Recreation and Director of TSU's National Youth Sports Program (NYSP) as having received kickbacks. Dr. Smith named five companies as the sources of kickbacks: Summitt Management Corporation, ARAMARK Corporation, Coca-Cola Company, Tom Jackson & Associates, and Cumberland Stadium LP (Adelphia Coliseum). With regard to thefts, Dr. Smith named Dr. Hefner, TSU's President; Ms. Teresa Phillips, TSU's then-Interim Athletics Director; Mr. Carl Pillow, TSU's then-Assistant Athletics Director for Operations; Mr. James Reese, TSU's Head Football Coach; Mr. Johnny Franks, TSU's then-Associate Director of Athletics, Sports Information, and Marketing; Ms. Rechelle Esaw, TSU's then-Ticket Office Cashier; Ms. Edwina Hefner, Dr. Hefner's wife; and Mr. Clinton Gray, a Nashville businessman, as having committed thefts. Dr. Smith described various methods by which the thefts were supposedly perpetrated.

Dr. Smith acknowledged that he did not have any direct firsthand evidence of misconduct by any of the individuals whom he had named. He also acknowledged that none of the individuals had at any time stated to him that they had engaged in misconduct. He further acknowledged that none of the individuals had ever solicited him to participate in misconduct. It was evident that his statements resulted from a combination of his reading and interpretation of TSU financial information and contracts, secondhand information from other individuals, and speculative inferences, rather than direct knowledge.

In subsequent interviews on April 30 and May 1, 2002, Dr. Smith modified his statements relating to allegations of misconduct. He stated that he had made his earlier statements in June 2001 out of anger and frustration. He acknowledged that making allegations without verification and documentation would be slander, and he stated that he wanted his statements to be regarded as observations and concerns. He acknowledged that his observations and concerns were based on his speculations regarding contract terms and arrangements and on secondhand information. With regard to Tom Jackson & Associates, Dr. Smith stated that his concern was the apparent excessive cost of the contract.

Based on his April 30, 2002, interview, Dr. Smith's modified position was that he had concerns that kickbacks might have been paid to Dr. James A. Hefner, President; Mr. Clay Harkleroad, Vice President for Business and Finance; Mr. Bob Hughes, Director of Finance and Accounting; and Dr. Jesse James, Assistant Professor of Health, Physical Education, and Recreation, and also Activity Director for the National Youth Sports Program. According to Dr. Smith, kickbacks might have been paid by the Coca-Cola Company, Summitt Management Corporation, Cumberland Stadium LP (Adelphia Coliseum), and ARAMARK Corporation.

Based on his May 1, 2002, interview, Dr. Smith's modified position was that he had concerns that thefts might have been committed by Dr. Hefner, President; Ms. Teresa Phillips, the current Athletics Director; Mr. Carl Pillow, Assistant Athletics Director; Mr. James Reese, Head Football Coach; Mr. Johnny Franks, the former Sports Information Director; Ms. Rechelle Esaw, the former temporary Cashier Supervisor at the TSU Ticket Office; Ms. Edwina Hefner, Dr. Hefner's wife; and Mr. Clinton Gray, businessman and volunteer chairperson of the John Merritt Classic Committee.

Dr. Smith expressed concern that thefts had occurred at various TSU athletics-related events, such as the Marcus Robertson Gala and Midnight Madness, because reconciliations were not performed and he was unaware of what happened to the money collected. Dr. Smith also indicated a concern that TSU had failed to pay him the proper amount for a trip he made to Florida. Moreover, Dr. Smith indicated his concern that some professors in TSU's Engineering Department had stolen student checks and cashed them for personal gain.

Dr. Smith stated a number of concerns relative to the Athletics Department budget; pro rata charges and encumbrances associated with various TSU accounts; gender equity issues; concessions; Pell Grants; transfer of funds from Athletics Department accounts; contract terms and administration; and management of the Ticket Office. With reference to TSU's Internal Auditors, Dr. Smith stated that they had not resolved the \$50,000 shortage in the Ticket Office, which occurred in September 1999, one month after he became TSU's Athletics Director. Dr. Smith's observation was that the length of time indicated a lack of concern by TSU's administration in investigating a possible theft.

Subsequent Information

Dr. Smith

On September 4, 2001, Dr. Smith contacted State Audit with information that all the cash from TSU's Ticket Office had been used to pay the performers for a university-sponsored concert on Sunday, September 2, at the university's Gentry Center. According to Dr. Smith, such an action posed procedural, reconciliation, and auditing problems.

We last spoke with Dr. Smith on May 17, 2002. Any comments he made at that point, including explanations of his own conduct and comments on our difficulties in substantiating his accusations, are included in this report. We have not sought further comment from him on these issues.

Dr. Hefner

On September 20, 2001, Dr. Hefner provided State Audit information related to problems in the Athletics Department that occurred during Dr. Smith's tenure. Dr. Hefner identified several additional issues. First, Athletics Department staff arranged for services from some vendors without following TSU purchasing procedures. Second, the Athletics Department was substantially in arrears in paying some vendors' bills. Third, the Athletics Department failed to secure the promised corporate sponsorship for the newly established TSU *Coaches' Show* on Channel 5.

Issue Selection Considerations

Because of the large number of issues presented to us for review by both the university and by Dr. Smith, we developed selection criteria to focus our audit effort. We selected the areas for examination based on the following seven considerations:

1. the areas were directly related to the financial operations of the Athletics Department;
2. Dr. Hefner provided us specific information that indicated problems related to corporate sponsorships, contracts, purchases, and past-due invoices;
3. Dr. Smith provided us documents or directed us to documents that indicated potential problems;
4. Dr. Smith stated that he had received information indicating a problem from an individual who had firsthand knowledge, and Dr. Smith identified the individual;
5. Dr. Smith stated that he had received information indicating a problem from an individual who had secondhand knowledge, and Dr. Smith identified the individual;
6. Dr. Smith identified potential problems in areas that were directly under his jurisdiction as Athletics Director; and

7. Dr. Smith identified potential problems based on his direct observation.

Organization of the Report

The report is organized into three main sections: *Introduction*, *Details of the Review*, and *Recommendations*. Our analysis is contained in the *Details of the Review* section, which is divided into two parts. Part I presents the issues raised by Dr. Smith, and Part II presents the issues raised by Dr. Hefner.

DETAILS OF THE REVIEW

I. ISSUES RAISED BY DR. SMITH

TSU TICKET OFFICE

Dr. Hefner and Dr. Smith both stated concerns related to TSU's Ticket Office. Dr. Smith's concerns related to the overall management of the office and problems with reconciling ticket sales with deposits. In addition, Dr. Smith expressed his concern that a \$50,019.50 shortage in Ticket Office revenues, reported on November 3, 1999, by TSU's Vice President for Business and Finance, remained unresolved as of June 4, 2001, nineteen months later, and that the shortage indicated a significant theft.

Dr. Hefner also stated concerns related to TSU's Ticket Office, specifically the overall management of the ticket office, the reconciliation of ticket sales with deposits, and the development of up-to-date policies and procedures.

With regard to the shortage, on November 3, 1999, Mr. Clay Harkleroad, TSU's Vice President for Business and Finance, notified Mr. John Rudley, the Vice Chancellor for Business and Finance for the Tennessee Board of Regents (TBR), of a possible \$50,019.50 shortage by means of an official TBR form called a *Notification of Potential Employee Misfeasance*. According to Mr. Mike Batson, TSU's Internal Audit Director, Mr. Harkleroad began making inquiries of Dr. Smith, TSU's Athletics Director, in late September 1999, regarding the status of the revenue account for the first football game of the season. The first football game was Tennessee State University vs. Alabama State University at Adelphia Coliseum in Nashville, Tennessee, on September 5, 1999. After determining that no reconciliation had been completed by Athletics Department staff, Mr. Harkleroad assigned Ms. Cynthia Brooks, TSU's Director of Finance and Accounting, to assist Athletics Department staff in performing the reconciliation.

On October 29, 1999, Ms. Brooks completed a reconciliation of the first football game, season tickets, and parking passes, and submitted the results of her reconciliation to Mr. Harkleroad. The reconciliation compared Ticketmaster sales reports to receipts recorded in TSU's Financial Records System (FRS). Ms. Brooks' report reflected shortages of \$15,083.50 in ticket sales for the first football game, \$29,167.00 in season ticket sales, and \$5,769.00 in parking sales, for a total shortage of \$50,019.50. Her report concluded that the shortages for the first game and season ticket sales were likely attributable to voided tickets not processed and transfer vouchers not processed. Her report also indicated that the shortage for parking sales was likely attributable to an incorrect sales volume provided by Athletics, as well as transfer vouchers not recorded by Ticket Office staff. After receiving Ms. Brooks' report, Mr. Harkleroad sent the *Notification of Potential Employee Misfeasance*, dated November 3, 1999, to Mr. Rudley.

In addition to his concern about the possible \$50,019.50 shortage, Dr. Smith notified us on September 4, 2001, that all the cash in the Ticket Office had been used to pay the performers for a TSU-sponsored concert on Sunday, September 2, 2001, at TSU's Gentry Center. According to Dr. Smith, such an action was improper.

Dr. Smith placed particular emphasis on TSU's failure, during his period of employment at TSU, to resolve the reported shortage of \$50,019.50 from the TSU Ticket Office in support of his concern that TSU staff were stealing from the Ticket Office. Dr. Smith also indicated his concern that TSU's Internal Auditors might be covering up thefts from the Ticket Office because they seemed to be unnecessarily prolonging their investigation.

Shortage of \$50,019.50

No Evidence of Theft or Misfeasance

TSU's Department of Internal Audit reported the results of its investigation of the shortage reported in the Athletics Ticket Office for the 1999-2000 football season in a separate Internal Audit report, *Investigation of Athletics Ticket Office Shortages, For the Year Ended June 30, 2000*, dated January 3, 2002. The Internal Audit report was issued seven months after Dr. Smith's termination, which occurred on June 1, 2001, and twenty-six months after the *Notification of Potential Employee Misfeasance* report was submitted to TBR. Based on our review of the work performed by Internal Audit, we concurred with the conclusions stated in its report.

TSU's Department of Internal Audit directly addressed the \$50,019.50 shortage, initially reported November 3, 1999. The Internal Audit report stated that its investigation found no evidence of theft or misfeasance in relationship to the reported \$50,019.50 shortage associated with the first football game of the 1999 season, or in relation to revenues for all 1999-2000 football games. The Internal Audit report stated that based on the results of their reconciliation process, the shortage for the first football game had been reduced from \$15,085.50 to \$2,457. The reconciliation process for season tickets and all football games for the 1999-2000 season resulted in an overage of \$4,887. According to a schedule prepared by TSU's Department of Internal Audit in support of its Internal Audit report, the season ticket shortage of \$29,167 had been revised, through the reconciliation process, to a \$6,421.45 overage. The Internal Audit report concluded that the unreconciled differences appeared to be due to the failure to properly and completely process each transaction, as well as the failure to maintain adequate documentation and the lack of policies and procedures over ticket sales. An earlier reconciliation report, prepared in April 2000 by Mr. Larry Wakefield, TSU's Associate Vice President for Business and Finance, indicated that the variance related to parking passes had been reduced from \$5,769 to \$4. The reconciliation appeared appropriate.

Breakdowns in Ticket Office Procedures

TSU's Ticket Office staff is responsible for promptly canceling voided tickets through the on-campus Ticketmaster system so that the sales revenues associated with voided tickets can be deducted from total sales revenues recorded in the Ticketmaster system. As a result of the

failure to promptly void tickets, reported sales revenues (based on tickets printed) would exceed actual sales revenues (funds collected) because the number of tickets printed would exceed the number of tickets actually sold.

With respect to transfer vouchers, university departments are responsible for promptly initiating transfer vouchers, and TSU's Ticket Office staff is responsible for promptly processing transfer vouchers. University departments use transfer vouchers to purchase tickets for guests. Through a transfer voucher, a university department account is charged for the tickets, and the dollar amount of the sale is transferred from the department's account to the appropriate Ticket Office account. In the case of transfer vouchers, the Ticket Office staff either distributed tickets without a transfer voucher in hand or received a transfer voucher and distributed the tickets but failed to process the transfer voucher. As with voided tickets, as a result of the failure to promptly initiate and process transfer vouchers, reported sales revenues would exceed actual sales revenues because the number of tickets printed would exceed the number of tickets for which revenues had been collected.

With regard to parking sales, the sale of single game parking passes was not recorded on the Ticketmaster system, and the Ticket Office staff was solely responsible for reporting parking sales. Any overstatement of parking sales by Ticket Office staff would result in an overstatement of reported sales revenues as compared with actual sales revenues.

The combined effect of these three types of errors would be the appearance of a shortage when reported sales were compared with actual sales revenues, until the errors were rectified.

Thus, the *Notification of Potential Employee Misfeasance*, dated November 3, 1999, and sent by Mr. Harkleroad, TSU's Vice President for Business and Finance, to Mr. Rudley, TBR's Vice Chancellor for Business and Finance, was preliminary in nature because TSU's Ticket Office staff had not completed processing voided tickets and transfer vouchers and had not reconciled parking decals sold to parking sales. It is important to emphasize that the *Notification* indicated potential, not actual, employee misfeasance, and that the *Notification* was based on the appearance of a shortage. The report indicated that the shortages were likely attributable to delays in processing voided tickets and transfer vouchers and to errors in parking sales data.

Revised Shortage Report

According to the Internal Audit report, on December 21, 1999, Mr. Larry Wakefield, TSU's Associate Vice President for Business and Finance, issued a status report on the ticket reconciliations to Dr. Hefner, TSU's President. The status report stated that TSU's Ticket Office Supervisor, Mr. Carl Pillow at that time, acknowledged that he had not voided all applicable tickets or collected all accounts receivable (transfer vouchers) and had not taken the action needed to reduce the discrepancies. (Mr. Pillow's responsibilities for Ticket Office operations were later removed.) In his December 21, 1999, status report, Mr. Wakefield stated that he had identified two major factors in the variance: (1) adjustments needed to be made in the Ticketmaster system (voids, errors, etc.); and (2) tickets were sold without funds being collected (corporate accounts, stadium suites, campus departments, etc.). With regard to his reconciliation report, Mr. Wakefield stated, "I am willing to help in any reasonable way, however, I do not

believe any further reconciliation efforts by the Business and Finance staff are justified until the already identified discrepancies are corrected.” With reference to the Ticket Office’s role in resolving the variances, Mr. Wakefield provided the following observations:

I have had little effect in my attempt to guide this cleanup effort. There has been only minor reduction in the variance since I began my involvement on November 16, 1999. From an accounting standpoint, I can identify the discrepancies, but I have no way of knowing how much, if any, of the variance can be resolved. Carl [Pillow] has acknowledged he has tickets to void and accounts to collect, but has not taken the action needed to reduce the discrepancies.

At that time, according to Mr. Mike Batson, TSU’s Internal Audit Director, Dr. Hefner requested TSU’s Department of Internal Audit assist in the reconciliation process.

Internal Audit Report

The Internal Audit report stated that the Internal Auditors discovered that numerous adjustments were required in this particular situation for such items as tickets not properly voided, returned checks, transfer vouchers not processed, transfer vouchers processed incorrectly, errors in posting to TSU’s Financial Records System, and changes in ticket prices. The Internal Auditors also determined that the Athletics Department had not collected some payments from sponsors, even though these sponsors had received tickets. In addition, the Internal Auditors discovered that a significant number of tickets had been issued without the required transfer vouchers.

According to the Internal Audit report, when true amounts could be determined, those amounts were used as adjusting items relative to the shortages in first game sales, season ticket sales, and parking sales. The Internal Audit report stated that based on the results of their reconciliation process, the shortage for the first football game was \$2,457. The reconciliation process for all football games for the 1999-2000 season resulted in an overage for all game accounts (including season ticket sales) of \$4,887. The Internal Audit report concluded that the unreconciled differences appeared to be due to the failure to properly and completely process each transaction, as well as the failure to maintain adequate documentation and the lack of policies and procedures over ticket sales.

With regard to the \$2,457 shortage in actual sales revenues compared with reported printed tickets for the first football game, the analysis by TSU’s Internal Auditors indicated that the shortage could be attributed to a number of factors, including failure to properly record cash and check sales by Ticket Office staff; failure to process voided tickets; and failure to obtain and process applicable transfer vouchers.

The \$4,887 overage for all games and season ticket sales could be attributable to situations where departments or corporate sponsors would pay for tickets but would not pick up all the tickets paid for. In those situations, the Ticket Office would record ticket sales revenues in excess of the number of tickets issued, resulting in the overage. Because the overage was not identified by Ticket Office or Athletics Department staff, proper adjustments were not made, and

the additional income above actual ticket sales remained with the Athletics Department instead of being properly refunded.

Role of the Internal Auditors

During our review, TSU's Department of Internal Audit consisted of the Director of Internal Audit, a senior-level auditor, and a part-time auditor. For a portion of Dr. Smith's tenure, the Department of Internal Audit consisted of one auditor. In addition to fraud investigations, the Internal Auditors had other audit responsibilities as directed by Dr. Hefner and TBR staff.

The \$50,019.50 shortage was reported on November 3, 1999, through a *Notification of Potential Employee Misfeasance*. TSU's Department of Internal Audit issued its report related to the shortage on January 3, 2002, over two years later and seven months after Dr. Smith's termination on June 1, 2001. The Internal Audit report directly addressed the shortage and found no evidence of theft or misfeasance. The Internal Auditors attributed the extended time required in reaching conclusions in this matter to (1) a total lack of supervision and control of the Athletics Ticket Office on the part of the Athletics Department, and (2) limited cooperation from the Athletics Department in the course of the review.

Reasons for Length of Review

In its report, TSU's Department of Internal Audit indicated that the Athletics Department, which was responsible for the Ticket Office and for reconciling Ticketmaster information with TSU financial information, was not able to complete the reconciliation task. In addition, the Internal Auditors stated that they received only limited cooperation from the Athletics Department in their review and reconciliation. The Internal Audit report stated that the disorganization of the Ticket Office, the incompleteness and inaccuracy of Ticket Office records, and the lack of interest and cooperation of the Athletics Department resulted in the extensive time required in concluding the review.

We concluded that the extended time taken to complete the review was not due to an attempt by TSU's Internal Auditors to cover up thefts from the Ticket Office, as indicated by Dr. Smith. Instead, the length of time taken to resolve the matter was related to (1) the absence of basic internal financial controls, such as reconciliations, in the Ticket Office; (2) the lack of cooperation on the part of Athletics Department staff; (3) the volume and complexity of the transactions in question; (4) other Internal Audit assignments, which were given a higher priority; (5) limited staff resources; and (6) staff turnover.

Serious Deficiencies in Operations, Management, and Financial Reporting

The Internal Audit report listed the following serious deficiencies in Ticket Office operations, management, and financial reporting:

1. There were virtually no internal controls over ticket sales.

2. The Athletics Ticket Guidelines were outdated and irrelevant.
3. Ticket office staff were not supervised and were not knowledgeable of the Ticketmaster system or TSU policies and procedures.
4. Necessary documents were either not processed or were processed incorrectly.
5. Documentation that did exist was not secured in a central location and was not organized.
6. Excessive errors were made in the issuance of tickets, preparation of deposits, and allocation of receipts to the proper accounts.
7. Tickets were voided, exchanged, and refunded without a system of approvals or accountability.
8. When the Athletics Director (Dr. Smith) reduced the price of 1999 football season tickets for faculty and staff by 50% after ticket sales had begun, the tickets were sold at the reduced rate before the price was changed in the Ticketmaster system. No one tracked the number of tickets sold at the reduced rate. Thus, this change caused Ticketmaster sales to be greater than actual Ticket Office receipts by an undeterminable amount.
9. Deposits were not made on a timely basis. For example, on August 19, 1999, the Ticket Office made eight separate deposits, which included combinations of cash, checks, and credit cards. The Daily Checklist associated with each deposit contained checks dated from July 12, 1999, through August 13, 1999, meaning that the oldest check was not deposited until 38 days after it was apparently written.
10. Deposits were not always accurate because Ticket Office staff credited receipts to incorrect accounts. For example, on September 29, 1999, the Ticket Office made a deposit of \$3,772.50 in credit card sales to the Alabama State University game account. Analysis of the deposit determined that only \$954 should have been credited to the Alabama State game account, meaning that this account was overstated by \$2,818.50. The \$2,818.50 should have been credited to season ticket sales (\$2,331), the Florida A&M University game account (\$425), and the Murray State University game account (\$62.50).
11. Deposits did not include adequate supporting documentation. The available Ticket Office files did not always include copies of the credit card receipts, and the Daily Checklist did not include a description of the transaction. The Ticket Office staff did include a transaction description (i.e., identified the game account to be credited) on the credit card receipts, but no information was recorded relative to cash or check sales. Thus, it was virtually impossible to determine which game account to credit for ticket sales made with checks or cash.

12. In most instances, Ticket Office staff neither signed nor initialed the documents they prepared, making it very difficult to obtain information from staff regarding transactions and documents.
13. Daily sales reports for the Ticketmaster system were neither generated by the Ticket Office nor requested from Ticketmaster. As a result, reconciliations with Ticketmaster on a daily or per-game basis were not possible.
14. There was no evidence that Ticket Office staff attempted to reconcile daily deposits to daily Ticketmaster sales. In addition, the monthly Report of Transactions, provided to TSU's Athletics Department by TSU's Department of Finance and Accounting, was not reviewed by Athletics Department staff to ensure accuracy or to reconcile to ticket sales.
15. Specific game accounts did not receive credit for tickets paid for by two corporate sponsors.
16. Interdepartmental transfer vouchers, used to obtain complimentary tickets for guests of the university, were not processed properly or timely, and in some instances, were not processed at all.
17. In some instances, the Ticket Office issued tickets without either a supporting request form or transfer voucher. In one instance, \$1,250 in season tickets were issued based on a handwritten note, but the university office that requested the tickets was not charged for the tickets, and the ticket sales revenue was not recorded.
18. The cost of tickets was calculated incorrectly on the transfer voucher in several cases, which resulted in the incorrect amount being credited to the game accounts.
19. Many ticket requests accompanied by transfer vouchers did not state the purpose for which the tickets were requested, as required by TBR Guideline B-043. The individual who was to receive the tickets did not sign for the tickets in most cases. In some instances, transfer vouchers were duplicated, overstating revenue for the affected game account.
20. The Ticket Office permitted the return and exchange of tickets, although the face of the ticket clearly stated, "No Refunds, No Exchanges." In addition, the returned tickets were not timely and properly voided.
21. In one instance, the failure to properly void tickets resulted in the duplicate sale of tickets. In this instance, several individuals arrived at a football game with tickets for the same seats.
22. Tickets were issued without payment, and the related receivables were not billed in a timely manner.

23. State amusement tax returns were not filed in a timely manner. For the fiscal year ended June 20, 2000, TSU paid \$3,401 in late penalties because the Athletics Department did not file the returns on time.

Lack of Supervision, Control, and Cooperation

The TSU Department of Internal Audit was critical of the performance of the Athletics Department under the leadership of Dr. Smith with regard to supervision, monitoring, and control of the Athletics Ticket Office. As an overall conclusion, the Internal Audit report noted:

It appears that there is a total lack of supervision and control of the Athletics Ticket Office on the part of the Athletics Department. Personnel in the Athletics Department were not aware of the above deficiencies until after the Office of Business and Finance initially attempted to reconcile ticket sales, a function that should have been performed by Athletics Department staff. The potential for financial losses, the absence of policies and procedures, the Interim Ticket Office Supervisor's lack of experience with Ticketmaster, and the use of temporary staff necessitated that the Ticket Office operations be closely monitored by the Athletics Department. We found no evidence that the Ticket Office was under any supervision or monitoring by the Athletics Department until potential losses had been discovered by Business and Finance and then the Athletics Department was very slow to implement controls over the operations.

Moreover, the Internal Audit report stated:

We received limited cooperation from the Athletics Department in the course of our review. For example, commitments from the Athletics Department to invoice for uncollected ticket sales, as well as to process unrecorded transactions such as transfer vouchers and voids were not completed in a timely manner. A commitment from the Athletics Department to implement relevant policies and procedures during the football season when they would have had a positive effect on the situation took almost six months to complete. Internal Audit discovered numerous items such as tickets not voided and transfer vouchers not processed after we were informed that these issues had been resolved by the Ticket Office. It appears that the Athletics Department in general and the Ticket Office specifically had little interest in the resolution of the variances in ticket sales or in strengthening internal controls over the Ticket Office. These factors contributed greatly to the extended time required reaching conclusions in this matter.

Recommendations

The Internal Audit report included two pages of detailed recommendations. The recommendations focused on the development of comprehensive, up-to-date policies and procedures for the operation of the Ticket Office to address the internal control weaknesses noted in the Internal Audit report. The Internal Audit report also recommended that the Ticket Office

should be adequately and permanently staffed. In addition to these overall recommendations, the Internal Audit report included the following detailed recommendations:

1. The Ticket Office Supervisor should report to the Associate Athletics Director for Finance to ensure hands-on supervision of the Ticket Office by the Athletics Department, and the Associate Athletics Director for Finance should receive sufficient training in the Ticketmaster system to be able to facilitate the operation and supervision of the Ticket Office.
2. The Associate Athletics Director for Finance should reconcile FRS and Ticketmaster reports on a weekly basis and provide copies of the reconciliation to the President's Office, the Athletics Director, the Vice President for Business and Finance, and the Director of Internal Audit.
3. The Athletics Department should cease the practice of pre-printing game tickets, except as required to accommodate visiting teams.
4. The Athletics Department should begin using the Ticketmaster equipment in the auxiliary Ticket office located in the Floyd-Payne Campus Center.
5. The Ticket Office Supervisor should ensure that staff are assigned their own Ticketmaster account numbers and that each staff member uses a separate petty cash fund and cash drawer for ticket sales.
6. The Athletics Department should set a March 1 deadline to determine the rates for football and basketball season and individual game tickets.
7. The Ticket Office should make deposits on a daily basis as required by TSU and TBR policy, and the reconciliations between the deposit records and Ticketmaster daily sales reports should be completed daily.
8. The Ticket Office should maintain complete and accurate supporting documentation for all deposits and transactions, including transaction descriptions on the daily list of checks and the credit card receipts, as well as the Ticketmaster reports to support the daily ticket sales. Ticket Office staff should sign and date all documents, and all applicable documentation should be maintained in an organized manner and be readily available in the Ticket Office.
9. The Athletics Department should develop a procedure for issuing tickets to corporate sponsors, which includes contracts with sponsors delineating the obligations of both TSU and the sponsor and the deadlines for performance and payment.
10. No tickets should be issued prior to payment.
11. The Athletics Department should cease the practice of allowing refunds or exchanges of tickets, and all voided tickets should be maintained for documentation purposes.

12. The Athletics Department should ensure that the amusement taxes are paid to the Tennessee Department of Revenue prior to the due date.
13. The University should consider prohibiting the acceptance of checks for payment or should charge a fee for payments made by check.
14. The Athletics Department should establish a procedure for the collection of ticket revenues for TSU tickets sold at other universities as secondary box offices. In addition, the Athletics Department should establish procedures for the billing and collection of game guarantees and for tickets allocated to other universities on a consignment basis.
15. The University should consider outsourcing the Ticket Office operations to a private firm.

The Athletics Department concurred with the conclusions and recommendations contained in the January 3, 2002, Internal Audit report, which was released seven months after Dr. Smith's termination. Prior to the completion of the Internal Audit report, the Athletics Department had filled the Ticket Office Supervisor position on September 10, 2001.

Isley Brothers Concert

Performers Paid in Cash

On September 4, 2001, Dr. Smith contacted us with information that all of the cash from TSU's Ticket Office had been used to pay the performers for a TSU-sponsored concert on Sunday, September 2, 2001, at TSU's Gentry Center. On September 17, Dr. Smith provided us a letter, dated September 5, from Mr. Ken Martin, TSU's then-Associate Athletics Director for Finance, to Ms. Phillips, TSU's Interim Athletics Director. In his letter, Mr. Martin stated that when he contacted the Ticket Office to see if a deposit had been made for prior sales, he was informed that all cash had been used to pay the performers for Sunday's concert. The reason that Mr. Martin was asking about the deposit was that, due to an illness, he had not been able to make the deposit for Thursday, August 30, 2001, which was his responsibility. Mr. Martin wrote that if cash in the Ticket Office had been used to pay performers, it was a serious problem that posed procedural, reconciliation, and auditing problems. Since Dr. Smith's employment had been terminated on June 1, 2001, this event occurred after he had left TSU's employment.

Review Methodology

In collaboration with TSU's Department of Internal Audit, we initiated a review of the cash payments related to the Isley Brothers concert. Our conclusions were reported in the State Audit financial and compliance audit report *Tennessee Board of Regents, Tennessee State University, For the Year Ended June 30, 2001*, dated March 19, 2002.

We interviewed TSU staff and non-TSU individuals involved and examined available documentation related to the cash transaction on September 2. We also examined other ticket

office documentation, including summary of deposits forms, check lists, credit card sales reports, credit card receipts, official cash receipt forms, and Ticketmaster reports.

Results of Review

Our review determined that in July 2001, TSU entered into a contract with Spot Light Entertainment, Inc., (Spot Light) located in Lawrenceville, Georgia. As specified in the contract, Spot Light was to provide a "Live R&B Concert" at TSU's Gentry Center on Sunday, September 2, 2001, for \$88,000. Spot Light, a talent promotion company, represented the Isley Brothers and a performer known as "CASE" (the opening act). On August 1, 2001, TSU paid Spot Light half the contract amount (\$44,000) by wire transfer. Pursuant to the contract, the balance of the contracted price (\$44,000) was to be paid by TSU to Spot Light on the engagement date, payable in cash, cashier's check, or other certified check.

TSU's Gentry Center Director, Ms. Eunice Bell, arranged with Ms. Teresa Andrews, a Spot Light partner, to have a \$44,000 check ready on Saturday, September 1, in Nashville. The plan, arranged between Ms. Bell and Ms. Andrews, was for Ms. Bell to accompany Ms. Andrews to a local bank to cash the check. Ms. Bell obtained a \$44,000 check from TSU's Business Office on Friday, August 31. However, because of bad weather and heavy traffic, Ms. Andrews did not arrive in Nashville before the bank closed. Thus, Ms. Andrews did not obtain the cash Spot Light needed to pay the performers.

On Sunday morning, September 2, Ms. Andrews informed Ms. Bell that the performers would not leave their hotel, and thus would not perform, until they were paid in cash. Ms. Andrews also informed Ms. Bell that Spot Light did not have the cash to pay the performers. This action by Spot Light placed TSU in the difficult position of either securing the cash itself or having the concert cancelled because the performers refused to perform.

Ticket Office staff determined that there was about \$36,000 in cash in the Ticket Office safe. The cash was made up of two components. The first component was cash sales from Thursday, August 30, which should have been deposited on Friday, August 31. However, the deposit was not made because Mr. Martin, the Associate Athletics Director for Finance, who was responsible for making the deposits, was sick on Friday. The second component was cash sales from Friday, August 31, which were being held in the safe for deposit on Tuesday, September 4. (The deposit could not be made on Monday, September 3, because Monday was Labor Day and a state holiday.) It should be noted that the cash in the safe represented not only sales for Isley Brothers concert tickets, but also sales for football game tickets and game parking decals.

Besides the cash in the safe, TSU staff expected additional cash to be collected from concert ticket sales the night of the concert. These ticket sales were for cash only. Thus, TSU staff reasonably anticipated that the \$44,000 cash amount needed might be provided through a combination of the existing cash in the Ticket Office safe and Sunday's cash ticket sales.

Having been informed that a substantial portion of the needed cash amount was in the Ticket Office safe, and not wanting to cancel the concert, Dr. Hefner authorized the payment of all cash in the Ticket Office to Spot Light. During the evening of September 2, the Ticket

Office's head cashier disbursed \$43,672 to Spot Light in three separate transactions. A written receipt documented each transaction. The transactions were for \$32,000, \$4,000, and \$7,672, respectively. The \$43,672 amount included all of the cash sales for August 30 and 31 and September 2 (the Ticket Office was closed September 1), as well as all available petty cash, except for loose coins. Because the total amount due was \$44,000, Spot Light later submitted an invoice to TSU for the remaining \$328. TSU paid Spot Light the \$328 on October 29, 2001.

Conclusions Relating to the Ticket Office

Based on our review of the transactions related to the Isley Brothers concert and the work of TSU's Department of Internal Audit related to the \$50,019.50 shortage, we included a list of internal control deficiencies in the Division of State Audit's financial and compliance audit report *Tennessee Board of Regents, Tennessee State University, For the Year Ended June 30, 2001*, dated March 19, 2002. We pointed out that in the absence of timely, complete, accurate, and documented reconciliations, TSU could not be assured that its financial assets were being appropriately protected, properly classified, correctly recorded, and promptly deposited. We further stated that such reconciliation activities are properly the responsibility of the Ticket Office and the Athletics Department. Review of Ticket Office transactions by Internal Auditors, Business Office staff, and external auditors becomes inordinately time-consuming and resource-intensive when the Ticket Office and the Athletics Department fail to fulfill their responsibilities. An additional consequence of lack of control over an area that processes a high volume of cash, checks, and credit cards is the increased risk of errors and irregularities.

We concluded that Ticket Office staff did not exercise appropriate control over the counting, disbursing, and recording of the cash payments to Spot Light for the Isley Brothers concert. Our review disclosed that the TSU staff associated with the Ticket Office made several significant errors related to the cash payments. The cash count that occurred on September 2 (Sunday morning) was not documented; when the cash was disbursed, the amounts noted on the receipts provided by Ms. Andrews were not checked for correctness; and only one of the three receipts was retained. (We obtained the two remaining receipts subsequently from Ms. Andrews.) In addition, the daily sales for the three days in question could not be reconciled with the Ticketmaster reports, and two of the three daily sales reports were not prepared correctly. These two reports overstated ticket sales. The lapses in controls described above contributed to questions about the amount of cash in the safe, the extent of cash sales on Sunday, and the amount of cash disbursed. However, based on presently available information, there was no evidence of theft of university funds.

In the course of our review of the Isley Brothers concert, we also determined that Ms. Bell, the Gentry Center Director, allowed several women's basketball team coaches to sell parking passes to individuals attending the Isley Brothers concert. The weaknesses associated with this informal parking arrangement were that the passes were not controlled and no reconciliation was performed to ensure that passes had not been given away for free or that some of the cash collected had not been misappropriated. There were no records maintained to support how much money was collected.

According to Ms. Eunice Bell, the Gentry Center Director, and Ms. Jennifer Bell, the assistant women's basketball coach who supervised the parking activity, they had agreed to divide the money between the Gentry Center account and a TSU Foundation account for women's basketball. (Based on information provided by TSU, Ms. Eunice Bell and Ms. Jennifer Bell are not related.) The TSU records show that \$1,260 was deposited for parking. Half the money (\$630) was deposited into the Gentry Center account, and the remaining half (\$630) was deposited into a TSU Foundation account for women's basketball. However, the second \$630 was not deposited until one and a half months after the Isley Brothers concert. According to Ms. Bell, the assistant women's basketball coach, she placed the cash in a file cabinet in her office and forgot about the money until the next event that involved parking, which was TSU's Homecoming. She stated that at that time she remembered the money in her file cabinet and deposited the money into the Foundation account.

Recommendations

The Division of State Audit's financial and compliance audit report *Tennessee Board of Regents, Tennessee State University, For the Year Ended June 30, 2001*, dated March 19, 2002, contained a number of recommendations related to the Ticket Office. The overall recommendation was that in light of the nature and extent of the weaknesses in Ticket Office operations, TSU's President should strive to ensure that the Athletics Director, the Associate Athletics Director for Financial Affairs, the Ticket Office Manager, and the cashiers possess sufficient pertinent business experience and expertise related to Ticket Office management and internal controls. The recommendation further stated that TSU's President should establish a routine monitoring presence related to the Ticket Office to promptly identify deficiencies and to strengthen accountability.

The Athletics Department concurred with the finding and recommendations contained in the March 19, 2002, financial and compliance audit report, which was released over nine months after Dr. Smith's termination. Prior to the completion of the financial and compliance audit report, the Athletics Department had filled the Ticket Office Supervisor position on September 10, 2001.

SUMMITT MANAGEMENT CORPORATION

Dr. Smith's Concerns Relating to Summitt Management Corporation

Dr. Smith raised five concerns relating to TSU's contract with Summitt. His first concern related to possible misconduct pertained to whether the contract was bid pursuant to Tennessee Board of Regents and TSU purchasing policies and procedures.

Second, Dr. Smith was concerned that Summitt may have paid kickbacks to Dr. Hefner because he believed that the contract terms were disadvantageous to TSU. Dr. Smith based this concern on three observations: (1) in his view, TSU should have been receiving a base of \$400,000 per game instead of \$100,000; (2) he objected to the deletion of the contract provision that provided for TSU to receive a percentage of the revenues; and (3) he took the position that TSU should produce the Southern Heritage Classic independent of Summitt.

Third, Dr. Smith expressed his concern that after TSU's expenses were deducted, TSU gained little revenue from the Southern Heritage Classic.

Fourth, Dr. Smith stated that Ms. Phillips, the then-Interim Athletics Director, told him that she had signed and backdated the 2000-2004 contract after he became Athletics Director because she had been told to do so. According to Dr. Smith, Ms. Phillips did not indicate who had told her to sign and backdate the contract.

Fifth, Dr. Smith expressed his concern that Summitt was paying Mr. Edward Graves, the TSU Band Director, "under the table" for the band's performance at the Southern Heritage Classic, and that Mr. Graves had not remitted the money to TSU.

Results of Review

Issue No. 1: Contract Not Bid

With respect to Dr. Smith's first concern, the application of competitive bidding procedures for the purchase of goods and services from state funds, TSU's Internal Audit report concluded that competitive bidding requirements did not apply because TSU entered into the contract as an invited guest of the Southern Heritage Classic and no state funds were paid to Summitt. According to the Internal Audit report, this was not a contract for the purchase of goods and services, and TSU was not required to pay any funds to Summitt. In fact, the contract required Summitt to pay TSU.

Issue No. 2: Summitt Paid Kickbacks to Dr. Hefner

With regard to Dr. Smith's second concern, other than his statement that, in his opinion, the contract terms related to payments were disadvantageous to TSU in that he believed that TSU should have received a greater amount of revenue, Dr. Smith did not provide any other information as a basis for his concern that Summitt may have paid kickbacks to Dr. Hefner.

We contacted Mr. Fred Jones, President of Summitt, and asked him to provide our office with details regarding any benefits, gratuities, gifts, or items of value provided to Dr. Hefner, to members of Dr. Hefner's immediate family, or to any other TSU officials or staff. Mr. Jones responded by letter on February 11, 2004, and stated that Dr. Hefner received the following items from Summitt pursuant to the TSU-Summitt contract:

- Complimentary hotel accommodations for the Southern Heritage Classic
- Complimentary tickets to the game, coaches' luncheon, presidents' reception, and parking at the game
- Ground transportation to and from the game and complimentary tickets and catering for the president's box at the game

These items appear to be incidental to TSU's relationship with Summitt and do not appear to constitute an improper benefit, gratuity, gift, or item of value.

Because Dr. Smith did not provide any other information related to kickbacks from Summitt, his concern could not be substantiated.

Issue No. 3: Little Revenue Gain From Summitt Contract

With respect to Dr. Smith's third concern that TSU received little financial benefit as a result of the Summitt contract, we requested that TSU's Internal Audit Office determine the expenses incurred by TSU to participate in the Southern Heritage Classic for 2000. According to information provided by Mr. Mike Batson, TSU's Internal Audit Director, TSU incurred \$39,343.13 in Classic-related expenses in 2000. The expenses included transportation, lodging, and meals for TSU's football team and band. Since reported revenues were \$228,600 in 2000, revenues exceeded expenses by \$189,256.87. Thus, for 2000, Dr. Smith's statement that TSU gained little financial benefit from the Southern Heritage Classic was not substantiated.

Issue No. 4: Contract Backdated

With reference to Dr. Smith's fourth concern that Ms. Phillips, the Interim Athletics Director at that time, told him that she signed and backdated the 2000-2004 contract after Dr. Smith became Athletics Director, we reviewed the 2000-2004 contract, and we interviewed Ms. Phillips specifically about this issue. Based on presently available information, Dr. Smith's concern was not substantiated.

We examined the TSU-Summitt contract document for 2000-2004. Ms. Phillips' signature is on the contract, but her signature is not dated. The contract did not contain date lines, and none of the other signatures were dated. The other signatories were Dr. Hefner; Mr. Thomas Martin, TSU's Vice President for Student Affairs; and Mr. Fred Jones, Jr., Summitt's President.

We obtained a copy of the executed contract letter for the 2000-2004 TSU-Summitt contract from Mr. Frank Battle, TSU's Director of Purchasing. The executed contract letter is the transmittal letter sent by TSU to Summitt that forwards the fully executed copy of the agreement between TSU and Summitt. The date of the letter is February 23, 1999, and the letter is copied to Ms. Phillips. Therefore, the contract was signed and transmitted six months before Dr. Smith became Athletics Director on August 30, 1999.

In direct contradiction to Dr. Smith, Ms. Phillips stated that she signed the contract when she was TSU's Interim Athletics Director, probably in February 1999, before Dr. Smith became Athletics Director on August 30, 1999. Ms. Phillips stated that backdating a contract was against her ethics and that she would not honor such a request from anyone. Ms. Phillips stated that neither Dr. Hefner nor anyone else had directed her to backdate the contract. She further stated that she had not told Dr. Smith that she had been directed to backdate the Summitt contract or that she had done so. Moreover, Ms. Phillips stated that when she signed the contract, no one

pressured her in any way, she had sufficient time to review the contract before signing it, and she felt that the contract terms were appropriate at that time.

Issue No. 5: Improper Payments to Band Director

As to Dr. Smith's fifth concern, we determined that Summitt wrote checks to the TSU band, mailed those checks to Mr. Edward Graves, TSU's Band Director, and Mr. Graves remitted the checks for deposit to either the TSU Foundation Office or the TSU Business Office for 1999, 2000, and 2001, the three years we reviewed. We examined the checks and the deposit documentation (Official Cash Receipts). In 1999, the band received two checks totaling \$20,000 related to the Southern Heritage Classic. In 2000 and 2001, the band received one check for \$20,000 for each year. All four checks were deposited within 12 days of the date on the check. Therefore, based on presently available information, Dr. Smith's concern was not substantiated.

According to Dr. Smith, Mr. Graves stated in a meeting that Summitt had been paying the band \$20,000 a year. Dr. Smith stated that this information was a complete surprise to him and the other meeting participants, including Mr. Harkleroad, TSU's Vice President for Business and Finance. In contrast to Dr. Smith, Mr. Graves stated that he did not recall such a meeting or anyone expressing surprise that Summitt paid a portion of TSU's band expenses. Moreover, Mr. Graves stated that the fact that Summitt paid the band was not a secret. Mr. Harkleroad also stated that he did not recall such a meeting, and further, that he knew that the band received money from Summitt to cover the band's expenses related to the Southern Heritage Classic and thus would not have expressed surprise at that information.

We noted that starting in 2001, the \$20,000 Summitt band payment was deposited into a TSU account instead of a TSU Foundation account. According to Mr. Harkleroad, it was his opinion that since the 2000-2004 contract between TSU and Summitt provided for the \$20,000 band payment, the payment should be deposited into a TSU account. Prior to the 2000-2004 contract, the band payment had not been included in the contract terms and conditions, although Summitt had paid a portion of the band's expenses. Those checks were deposited into the TSU Foundation. Both Mr. Harkleroad and Mr. Graves agreed that Mr. Harkleroad instructed Mr. Graves to deposit the Summitt payment into a TSU account beginning with the 2001 payment.

Internal Audit Report

At the request of members of the State Legislature, TSU's Department of Internal Audit, under the direct supervision of Mr. John Rudley, the then-Vice Chancellor for Business and Finance at the Tennessee Board of Regents, performed an audit of the contracts between TSU and Summitt for the Southern Heritage Classic football game for the six years 1995-2000. The results of the audit were reported in a separate TSU Internal Audit report, *Review of the Contracts between Tennessee State University and Summitt Management Corporation for the Southern Heritage Classic 1995-2000*, dated September 14, 2001.

Summitt Management Corporation

The Internal Audit report stated that Summitt Management Corporation is a for-profit Delaware corporation specializing in event management and promotion that was incorporated in 1986. Summitt is located in Memphis, Tennessee, and hosts the annual Southern Heritage Classic football game at the Liberty Bowl Memorial Stadium in Memphis. For each of the eight years (1994-2001), TSU and Jackson State University participated in the game at the invitation of Summitt. Jackson State University is located in Jackson, Mississippi. TSU has signed two five-year contracts with Summitt for participation in the Southern Heritage Classic. The current contract covers the years 2000-2004.

Southern Heritage Classic

According to the Internal Audit report, the term “Classic” with respect to football games at Historically Black Colleges refers to a series of football games that are similar to NCAA College Bowl Games, such as the Fiesta Bowl, where two teams are invited by an independent host organization that is responsible for the event. The host organization brings together two Historically Black Colleges that typically do not participate in the same conference. In most cases, the host organization will schedule games in major cities which have large populations of African-Americans who would attend such an event as a means of providing financial support to Historically Black Colleges and to local host organizations which fund student scholarships from the proceeds of the Classic. The Internal Audit report stated that beginning in 1990, Summitt invited TSU and Jackson State University to participate in the Southern Heritage Classic at the Liberty Bowl Memorial Stadium in Memphis. Since 1990, TSU and Jackson State University have played as rivals in the Southern Heritage Classic each year, except for 1991 and 1993, when Mississippi Valley State and Grambling State University, respectively, were TSU’s opponents.

Contract Between TSU and Summitt Management Corporation

As indicated in the Internal Audit report, the contract between TSU and Summitt for the 1995-1999 Southern Heritage Classics provided that TSU’s football program would receive a game guarantee of \$100,000 per year, plus 33% of ticket sales exceeding \$500,000 after taxes. The current contract (2000-2004) requires that Summitt pay TSU a game guarantee of \$200,000, with no percentage of ticket sales. It also requires that Summitt donate \$20,000 annually to TSU’s marching band. Under the contract, Summitt is responsible for all aspects of the game except for team travel and arrangements for game officials. The team designated as the home team secures game officials, and Summitt provides the funds to pay the officials.

Payments by Summitt Management Corporation to TSU

The Internal Auditors reported that Summitt paid TSU \$1,164,988 for the six-year period 1995-2000, an average of \$194,165 per year. The smallest amount was \$163,786 in 1995, while the greatest amount was \$228,600 in 2000. Summitt’s payments to TSU included game revenue, band and television revenue, and reimbursement for game officials.

Internal Audit Report Findings

The Internal Audit report contained four findings. First, the Internal Auditors determined that Summitt Management Corporation had not paid the applicable sales taxes and also had not filed a State of Tennessee Sales Tax Return for the six-year period reviewed (1995-2000). The Internal Auditors took the position that Summitt was either liable to the state for the taxes or liable to TSU for its portion of the revenue pursuant to the contract. The Internal Auditors calculated an estimated tax liability of \$305,682.38 for the five-year period 1995-1999 and reasoned that contingent upon resolution of the matter, Summitt might be liable to TSU for 33% of that amount, or \$100,875.18. This amount would represent TSU's share of the revenue if a determination were made that Summitt did not owe sales taxes. The estimated tax liability of \$305,682.38 was calculated by multiplying the applicable tax rate of 8.5% by the gross ticket sales for 1995-1999.

On February 14, 2002, we referred the issue of non-payment of sales taxes to the Division of Tax Enforcement in the Department of Revenue. State statutes specify that all information related to the review of a taxpayer's returns remain confidential. Pursuant to Section 67-1-1702, *Tennessee Code Annotated*,

Notwithstanding any provision of law to the contrary, returns, tax information and tax administration information shall be confidential and, except as authorized by this part, no officer or employee of the state and no other person (or officer or employee thereof) who has or had access to such information shall disclose any such information obtained by such officer or employee in any manner in connection with such officer's or employee's service as an officer or employee, or obtained pursuant to the provisions of this part, or obtained otherwise.

Title 67, Section 1, contains exceptions to this confidentiality rule; however, none of the exceptions allow for the information to be disclosed in an audit report.

The second finding was that the revenue base for payment by Summitt to TSU was adjusted upward from \$500,000 to \$520,000, but the two parties did not execute an amendment to the contract incorporating this adjustment. Under this adjustment, the university would receive 33 1/3 % of the game income exceeding \$520,000 rather than \$500,000. The revision was contained in a letter from Mr. Fred Jones, Summitt's President, to Mr. Howard Gentry, TSU's Athletics Director, in January 1995. Mr. Jones' letter was copied to Dr. Hefner. According to the Internal Audit report, examination of Mr. Jones' letter indicated that there was an offer but no official acceptance by TSU. According to TSU's Internal Auditors, in October 1999, when Summitt was asked about the upward adjustment in the revenue base, Summitt provided the letter, dated January 4, 1995. However, university officials could not locate the letter in university files, and they indicated that there was no official response. The university accepted subsequent payments that were based upon the requested change by Summitt. The payments Summitt made to TSU each year from 1995 through 1999 were calculated based upon the \$520,000 threshold referred to in the letter.

The Internal Auditors pointed out that since the upward adjustment had not been approved, it appeared that Summitt owed TSU the amount TSU should have received based on the \$500,000 threshold. According to the Internal Auditors, since a contract amendment was never officially executed, the university should either acknowledge and confirm the change or contact Summitt and request \$29,785 in settlement. This amount represents the difference in revenue between the original threshold of \$500,000 and the subsequent threshold of \$520,000 and equals approximately \$5,957 per year for the five-year period 1995-1999.

The third finding was that the TSU Athletics Department did not deposit a Summitt game settlement check promptly, as required by TSU's Business and Finance policies and procedures. On September 21, 2000, Summitt sent a game settlement check for the 2000 game in the amount of \$126,175 to Dr. Smith, with a courtesy copy to Dr. Hefner. Although the Athletics Department was not able to provide information concerning the date it received the check, the President's Office received the courtesy copy on September 25, 2000. The Athletics Department did not deposit the \$126,175 check until 17 days later, on October 12, 2000, after Summitt's president contacted Dr. Hefner, who then called Dr. Smith to tell him to deposit the check.

The fourth finding was that prior to Dr. Smith's tenure at TSU, university officials failed to ensure that the five-year contract between Summitt and TSU for 2000-2004 included the termination clause required by Tennessee Board of Regents Guidelines. The early termination clause allows either party to the contract to terminate the contract by giving written notice to the other within a specified period of time before the effective date of such termination. The early termination clause also provides for the contractor to receive just and equitable compensation for any satisfactory authorized work completed as of the termination date. The termination clause would have enabled TSU to cancel its contract with Summitt on a year-by-year basis.

The university officials who signed the contract included Dr. Hefner, President; Ms. Teresa Phillips, Interim Athletics Director; and Mr. Thomas Martin, Vice President for Student Affairs. TSU's Purchasing Office staff also reviewed the contract. In January 1999, TSU sent a signed copy of the contract to Summitt that contained the required termination clause in an addendum. In February 1999, Summitt submitted a revised contract to TSU which did not include the addendum and which did not contain the termination clause. All items in the addendum were incorporated into the revised contract except for the termination clause. The TSU officials named above signed the revised contract. The Internal Auditors concluded that the exclusion of a provision for termination occurred because TSU officials did not follow proper internal control procedures that are designed to strengthen the university's ability to modify contracts, if conditions warrant, during the performance of a multi-year contract.

When we asked Dr. Hefner about the deletion of the termination clause, he stated that he was unaware of the clause's deletion, that he relied on Purchasing Office staff at TSU for careful review of contracts, and that the signing of the contract without the proper termination clause was an oversight on the part of the reviewers.

We questioned Mr. Battle, TSU's Director of Purchasing, about the deletion of the required termination clause. Mr. Battle stated that he had included the termination clause in the contract addendum, which was sent to Summitt for approval. According to Mr. Battle, Summitt

sent a revised contract, which combined the original contract and the addendum into one document. The revised contract, which was sent directly to Dr. Hefner's office, did not contain the required termination clause. Mr. Battle stated that the revised contract came to his office after it had been signed by Dr. Hefner, Mr. Martin, and Ms. Phillips. According to Mr. Battle, the material submitted to his office at that time included a letter from Mr. Jones, Summitt's President, which stated that Summitt's legal counsel had determined that the agreement met all TBR requirements, especially the term requirements.

Mr. Battle told us that he noted that the termination clause had not been included in the revised contract but that he processed the contract because it had been signed by Dr. Hefner and was accompanied by the supporting letter that referenced the opinion of Summitt's legal counsel.

Subsequent to the execution of the 2000-2004 contract, TBR's Chancellor waived the requirement that the currently effective Summitt contract contain a termination clause, but he stated that the waiver would be effective only for the duration of the current contract.

The Internal Audit report contained recommendations associated with each finding, and TSU's management concurred with the audit recommendations.

Internal Audit Report Observations

The Internal Audit report also contained three observations related to (1) whether the 2000-2004 contract should have been open for vendor bids and whether the five-year term of the contract was in violation of Tennessee Board of Regents Guidelines; (2) Summitt's failure to maintain a record or perform a reconciliation of the complimentary game tickets; and (3) the necessity to include in future contracts a provision that the game guarantee is secured with a letter of credit, a performance bond, or insurance to ensure payment to TSU. With regard to the first observation, the Internal Audit report concluded that it was not necessary for the contract to be competitively bid because TSU entered into the contract as an invited guest of the Southern Heritage Classic, and no state funds are paid to Summitt. As to the five-year term of the contract, the Internal Audit report concluded that such a multi-year contract was allowable under TBR Guidelines. With respect to the second observation, the Internal Audit report recommended that Summitt maintain a log of complimentary tickets issued and that future contract negotiations should address the need to set contractual limits for the issuance of complimentary tickets. With reference to the third observation, the Internal Audit report recommended that TSU consider requiring that all contracts for "Classics" include a provision that the game guarantee is secured with a letter of credit, a performance bond, or insurance by the contractor.

TSU management concurred with the Internal Audit report recommendations. However, we identified a general weakness in the Internal Audit resolution process in that management is not required to provide follow-up to Internal Audit reports regarding actions taken in the areas under audit. Follow-up reports are currently not required, regardless of whether the internal audit was conducted at the request of university management or at the request of TBR. Management should provide follow-up reports to the Department of Internal Audit that detail the actions management has taken in response to the recommendations contained in the Internal

Audit report. The lack of follow-up by management renders the Internal Audit report ineffective as a tool for monitoring the integrity of internal controls.

TOM JACKSON & ASSOCIATES, INC.

Dr. Smith's Concerns Relating to Tom Jackson & Associates, Inc.

We examined Dr. Smith's issues relating to Tom Jackson & Associates, Inc. (TJ&A), in Nashville, Tennessee. Dr. Smith expressed six concerns related to the contract for marketing consulting services between TSU and TJ&A.

Dr. Smith's first concern was that TSU had not bid the TJ&A contract. His second concern was that TSU had paid TJ&A \$98,000 but had received little service in return. Dr. Smith's third concern was that the work that TJ&A performed for TSU could have been done in-house at much less cost. Dr. Smith's fourth concern was that although TJ&A was paid through the Athletics Department budget, TJ&A was not supervised by the Athletics Department but instead was supervised by the President's Office. Dr. Smith's fifth concern was that he had objected to signing a purchase requisition but that Dr. Hefner had placed him in such a position that he felt he had no option but to sign the requisition, although he opposed it. Dr. Smith's sixth concern was that the Tennessee Board of Regents hired TJ&A to perform a study but failed to obtain bids.

Results of Review

Issue No. 1: Contract Not Bid

One of Dr. Smith's concerns was that the TJ&A contract was not bid. Although the TJ&A contract was not bid in 1999, the contract was supported by a sole-source letter signed by Dr. Hefner, TSU's President; Mr. Martin, TSU's Vice President for Student Services; and Ms. Phillips, at that time TSU's Interim Athletics Director. Ms. Phillips also provided a sole-source justification memorandum dated March 18, 1999, which explained the basis for the contract on the grounds of immediate need, reasonable cost, company experience, and accessibility.

In the same month (March 1999) that TSU first entered into a contract with TJ&A, TSU issued a "Request for Proposal" related to promotion of the inaugural John Merritt Classic football game. However, the RFP process ultimately did not produce a successful bid, and TSU amended the TJ&A contract to include promotion of the football classic and other additional services.

When the first TJ&A contract expired in March 2000, TSU executed a second one-year contract with TJ&A for the 2001 fiscal year. Mr. Battle, TSU's Purchasing Director, stated that a second contract with a company hired on a sole-source basis was in compliance with TSU and TBR policies. However, Business and Finance staff at the Tennessee Board of Regents concluded that the subsequent awards should have gone through the Request for Proposal process.

When the second TJ&A contract expired on June 30, 2001, Ms. Phillips, once again the Interim Athletics Director after Dr. Smith's termination, chose not to renew the contract on the grounds that the Athletics Department needed to develop its own marketing and public relations expertise. Thus, based on presently available information, the first TJ&A contract was appropriately awarded on a sole-source basis. However, the second contract, which should have been competitively bid, was also awarded on a sole-source basis as an extension or continuation of the first contract. According to Mr. Battle, TSU's Purchasing Director, he made the decision to proceed with the second contract on the basis that it was an extension of the first contract. When we asked Dr. Hefner about the matter, he stated that he had relied on Mr. Battle in this area, that no one raised the issue of sole-source vs. competitive bidding, and that he was unaware that the second TJ&A contract should have been competitively bid.

The TSU-TJ&A Interim Consulting Agreement

In March 1999, TSU entered into an interim consulting agreement with TJ&A on a sole-source basis. On March 18, Ms. Phillips, the Interim Athletics Director, wrote a sole-source justification memorandum to Mr. Thomas Martin, TSU's Vice President for Student Services. In her memorandum, Ms. Phillips stated that after careful review of the needs of the Athletics Department in the area of marketing, particularly during the preparation for the TSU football games to be played in the NFL Titans Stadium (Adelphia Coliseum), she recommended that TSU contract the services of TJ&A.

Ms. Phillips provided four reasons for her recommendation: (1) there was an immediate need for the development and implementation of a marketing plan, and TJ&A was readily available; (2) the cost was in line for this type of service; (3) TJ&A was experienced in developing corporate sponsorships, fund-raising, and marketing programs for institutions and athletics components; and (4) TJ&A was a local agency and was easily accessible. Both Mr. Martin and Dr. Hefner approved contracting with TJ&A on a sole-source basis. Ms. Phillips, Mr. Martin, and Dr. Hefner either signed or initialed the sole-source letter, the Interim Consulting Agreement, and the Addendum to the Agreement.

According to the Interim Consulting Agreement (with Addendum), the period of the agreement was one year, from March 19, 1999, to March 18, 2000, and the maximum TSU liability was \$7,500. The agreement specified that TJ&A would bill its services on an hourly basis. The TJ&A hourly rate sheet showed costs ranging from \$45 per hour for clerical services and \$60 per hour for research services to \$135 per hour for creative and account executive services performed by senior staff.

As indicated in the agreement, TJ&A's services would include, but would not be limited to, the following:

- Assistance in negotiations with the Nashville Sports Authority and the Tennessee Titans
- Development of a ticket pricing plan

- Blending ticket plan with plan to support fundraising efforts for the Athletics and academic efforts
- Development of an ongoing marketing plan for football and other sports
- Development of a plan and assistance with securing corporate sponsors and support
- Ongoing consulting for public information as related to athletics
- Supporting the overall efforts of the university

The agreement stated that payment to TJ&A would be made only after receipt of invoices for services performed.

TSU Attempts to Hire a Promoter

March 31, 1999, Request for Proposal - On March 31, 1999, TSU issued a “Request for Proposal to Promote Football Classic” for its inaugural football game in the NFL Tennessee Titans Stadium (Adelphia Coliseum) on September 4, 1999. The Request for Proposal (RFP) set a bid opening date of April 23, 1999.

According to its March 31 letter to prospective promoters, TSU desired to acquire the services of a qualified promoter to promote, advertise, and market the university’s football classic. The letter stated that the RFP was to select the best-qualified responsive and responsible promoter who could perform the services requested.

The RFP contained 17 pages of information, including sections on general information, scope of services and requirements, contract terms and conditions, authentication, RFP-processing calendar, campus stadium location, and stadium layout. Under “Required Services,” the RFP listed advertising, promotion, marketing, other services, ticket sales projections, hospitality and lodging, sponsorships, and coordination. TSU sent the letter and RFP to 11 prospective promoters: (1) Jefferson Development, LLC (Jubilee); (2) A. Williams Entertainment Group, LLC; (3) Summitt Management Group; (4) 100 Black Men of Middle Tennessee; (5) Dye, Van Mol & Lawrence; (6) Smith Productions; (7) NationsBank Community Development Banking Group; (8) Tom Jackson & Associates; (9) McNeely, Piggot & Fox; (10) Jarrard-Ingram; and (11) Tennessee Managed Care Network.

Bid Proposals - Of the 11 promoters solicited, two submitted bid proposals: Jefferson Development, LLC, (Jubilee) and A. Williams Entertainment Group, LLC. Tom Jackson & Associates did not submit a bid proposal.

Bid Evaluation - On May 13, 1999, Dr. Hefner appointed a three-member Football Classic Proposal Advisory Committee to review and evaluate the bid proposals received. The three committee members appointed were Ms. Teresa Phillips, Interim Athletics Director and Chair of the Proposal Advisory Committee; Mr. Johnny Franks, Associate Director of Athletics, Sports

Information, and Marketing; and Mr. Carl Pillow, Assistant Athletics Director. Dr. Hefner directed the committee to submit its recommendations to him for his review and approval by May 20, 1999.

Each advisory committee member completed a “Bid/Proposal Evaluation Sheet” and an “RFP Requirements Checklist.” Based on their review, the committee members submitted a summary report containing their evaluations and recommendation for promotion of the football classic. The advisory committee recommended that neither proposal be accepted. The advisory committee recommended that talks begin with the A. Williams Entertainment Group, LLC, to form a partnership on certain entertainment events to complete the weekend.

The advisory committee stated the basis for its decision in its report to Dr. Hefner. With reference to Jefferson Development, LLC (Jubilee), the advisory committee stated that the company had no prior experience in promoting sporting events; the company’s plan lacked sufficient plans and strategy for advertising and solicitation; the organization chart and qualifications of employees were incomplete; and the proposed promoter’s fee of \$300,000 was “inconceivable.” With respect to the A. Williams Entertainment Group, the advisory committee stated that the gross revenue projection plan was not realistic for 1999; detailed plans for solicitation for advertising and sponsorships were missing; and a promoter fee of \$50,000 was not considered acceptable.

Decision Not to Readvertise the RFP - On June 14, 1999, Ms. Phillips, the advisory committee chair, transmitted the advisory committee’s report to Dr. Hefner. Her memorandum stated that the advisory committee recommended that the RFP be re-advertised because neither vendor met all of the RFP requirements. On June 17, 1999, Dr. Hefner responded that he had elected not to readvertise due to time constraints. The inaugural Classic Football game was scheduled for September 4, 1999, at Adelphia Coliseum.

Amendment to TSU-TJ&A Agreement

In June 1999, TSU and TJ&A executed an amendment to the TSU-TJ&A Interim Consulting Agreement. The amendment included additional services related to ticket marketing, sponsorship, contributions, game-day plans, the VIP program, and production services. In addition, through the amendment, TJ&A agreed to assist TSU with the planning and implementation of the first Classic football game. Under the terms of the amendment, the maximum university liability was raised from \$7,500 to \$51,000. The amendment did not change the other terms of the agreement. Ms. Phillips, Mr. Martin, and Dr. Hefner signed the amendment.

Both Ms. Phillips and Mr. Bo Roberts, TJ&A’s President and Chief Operating Officer and manager for the TSU account, stated that TSU entered into a contract with TJ&A on an interim basis, that TSU’s RFP process did not result in a promoter, and that TSU then turned to TJ&A to perform the advertising, marketing, and planning activities associated with the first Classic football game. The principal considerations were that TJ&A was already under contract to TSU, TJ&A’s experience and expertise, the failure of the RFP process to result in a promoter, and the short time-frame until the Classic football game.

Subsequent TSU-TJ&A Agreement

The initial TSU-TJ&A Interim Consulting Agreement expired on March 18, 2000. Effective July 1, 2000, TSU and TJ&A executed a subsequent TSU-TJ&A Interim Consulting Agreement. According to the agreement (with addendum), the period of the agreement was one year, from July 1, 2000, to June 30, 2001, and the maximum TSU liability was \$17,400. As with the previous agreement, this agreement specified that TJ&A would bill its services on an hourly basis. The TJ&A rate sheet included the same per-hour cost rates as the prior TJ&A rate sheet. Dr. Smith, Mr. Martin, and Dr. Hefner signed the agreement and the addendum.

According to Mr. Battle, TSU's Purchasing Director, a subsequent contract with a company initially hired on a sole-source basis was in compliance with TSU and TBR policies. Mr. Battle stated that, because the first contract was awarded on a sole-source basis, the second contract could be awarded that way as well based on his interpretation of TBR and TSU policies. Mr. Battle was unable to locate a sole-source letter for the subsequent awards. He stated that at the time, he regarded the second contract as an extension of the first contract, and therefore the second contract did not need to be bid. Mr. Battle stated that he could not recall anyone asking his advice before the decision was made to award the subsequent agreements with TJ&A. Mr. Battle also stated that he did not feel pressure to approve the form of the agreements, and he had no objections to the subsequent agreements being awarded to TJ&A. Mr. Battle pointed out that his role as Purchasing Director was to review contracts for compliance with TSU and TBR policies.

Mr. Battle stated that, in the future, contracts of this type would go through the bid process, although he did not feel that he made a mistake in determining that the subsequent awards in this case could be made based on the first agreement because of the circumstances involved (time factor and lack of acceptable bids from first agreement). Mr. Battle also stated that no one communicated to him that he made a mistake. However, Business and Finance staff at the Tennessee Board of Regents concluded that the subsequent awards should have gone through the Request for Proposal process. Consequently, in this matter, the TSU Purchasing Director failed to correctly apply TBR and TSU policies. When we asked Dr. Hefner about the matter, he stated that he had relied on Mr. Battle in this area, that no one raised the issue of sole-source versus competitive bidding, and that he was unaware that the second TJ&A contract should have been competitively bid.

As indicated in the agreement, TJ&A's services would include, but would not be limited to, the following:

- Design of the 2000 Football and the 2001 Basketball season-ticket brochures
- Completion of the Tiger Pride program brochure
- Assisting with press conference for the John Merritt Classic
- Assisting with securing sponsorships for the John Merritt Classic

- Negotiating with the Nashville Convention and Visitors Bureau for housing program and advertisements (as it relates to the John Merritt Classic) in various markets throughout the Southeast
- Assisting the Athletics Department with negotiations for corporate sponsorships
- General marketing services as approved by the Athletics Department

As with the initial agreement, this agreement stated that payment to TJ&A would be made only after receipt of invoices for services performed.

Effective January 1, 2001, TSU and TJ&A executed an amendment to the agreement. Per the amendment, TJ&A agreed to perform two additional services: (1) secure sponsors for the John A. Merritt Classic, and (2) assist with general marketing services as requested by the John A. Merritt Classic Coordinator. Under the terms of the agreement, the total university liability was raised from \$17,400 to \$35,400. However, the rate of compensation was not to exceed \$3,000 monthly. The amendment stated that TJ&A was to be reimbursed 15% of the value of any sponsorship acquired by TJ&A, except that no hours would be billed for direct sponsorship sales. The amendment further stated that the effective date and term for the additional consulting services to be provided by TJ&A would be from January 1, 2001, to June 30, 2001. Dr. Smith and Dr. Hefner signed the amendment. The amendment did not include a signature line for Mr. Martin despite the fact that Mr. Martin had signed the previous amendments and agreements with TJ&A. According to Mr. Mike Batson, TSU's Director of Internal Audit, the reason for the removal of Mr. Martin as a signatory was that Dr. Smith's relationship had changed from reporting directly to Mr. Martin to reporting directly to Dr. Hefner.

Cost of TJ&A Contracts

The total liability under the agreements with TJ&A was not to exceed \$86,400. However, TSU's payment history for TJ&A showed that TSU paid TJ&A a total of \$92,154.75 for the 1999 and 2000 contracts, which resulted in a difference of \$5,754.75. We discussed this with Mr. Battle, TSU's Director of Purchasing, who stated that a purchase requisition dated August 5, 1999, for \$18,942.62 was paid through a "debit voucher." Mr. Battle stated that debit vouchers are used to pay items quickly, and items stamped as debit vouchers are paid immediately. In this instance, the purchase requisition did not reference the existing purchase order, so a debit voucher was used by the Purchasing Office staff. The requisition was signed by Ms. London, Assistant to the Athletics Director; Ms. Phillips, Interim Athletics Director; and Dr. Freeman, Executive Assistant to the President. The purchase requisition was supported by a letter from Dr. Freeman to Mr. Harkleroad, Vice President of Business and Finance. The letter, dated August 9, 1999, requested approval of a manual check payable to TJ&A and stated that Mr. Jackson, TJ&A's Chief Executive Officer, had submitted three separate sets of invoices for services rendered to TSU. According to the letter, Dr. Hefner had instructed that payment for the services be expedited immediately.

Mr. Battle stated that the debit voucher payment would not have been compared to the contract or the purchase order and would not have been recorded as a cost to the contract. Mr. Battle also stated that the originating party, in this case the Athletics Department staff, was responsible for entering the purchase order number on the purchase requisition. He provided a copy of the purchase order that was in effect at the time the purchase requisition was submitted. The purchase requisition did not reflect the existing purchase order. According to Mr. Battle, he authorized payment because the purchase requisition contained the appropriate signatures, in this case the signatures of Ms. London, Ms. Phillips, and Dr. Freeman.

Athletics Department staff should have determined whether a purchase order existed and ensured that the purchase order number was appropriately reflected on the purchase requisition. Because of the staff's failure to do this, the charges were not recorded as a cost to the contract, and TSU ultimately paid in excess of the amount allowed under the contract.

Non-Renewal of TSU-TJ&A Agreement

Ms. Phillips became the Interim Athletics Director after Dr. Smith's termination. Ms. Phillips stated that she decided not to renew the TSU-TJ&A Agreement after it expired on June 30, 2001, on the grounds that the Athletics Department needed to develop its own marketing and public relations expertise in-house.

Issue No. 2: TSU Paid TJ&A \$98,000 but Received Little Service in Return

Dr. Smith stated that another concern he had was that TJ&A provided little service to TSU. Specifically, Dr. Smith stated that he didn't see what TJ&A did except provide a few signs and the smoke that the football players ran through when they emerged from the tunnel onto the field at Adelphia Coliseum. In other interviews, Dr. Smith took the more extreme position that TJ&A didn't do anything but get a check. We examined the TJ&A contract terms and requested documentation of contract performance from TJ&A and TSU's Athletics Department.

With reference to Dr. Smith's concern that TSU received little or nothing from TJ&A, based on presently available information, TJ&A provided several specific deliverables and other nontangible services to TSU. TJ&A provided billboards and other signs, but not the smoke the football players ran through as they entered the coliseum. Moreover, the cost of the TJ&A contracts was \$92,154.75, not the \$98,000 cited by Dr. Smith. However, because of the lack of documentation for some of TJ&A's activities and the broad categories related to some of those activities, we could not confirm the full nature and extent of TJ&A's contract performance.

The scope of our review of TJ&A's contract performance was limited because not all information was available for examination and because some of the contract terms did not include specific deliverables. Mr. Roberts provided us all existing TJ&A documentation related to its TSU contracts, but he noted that the company had changed locations and some records had been misplaced, including some TSU-related records. In addition, TSU personnel involved with overseeing the TJ&A contracts could not locate records relating to all aspects of the contract terms.

We identified six specific deliverables. These items were (1) a season ticket marketing plan for the 1999 football season, (2) a season ticket marketing brochure for the 1999 football season, (3) a season ticket marketing brochure for the 2000 football season, (4) a report containing analysis and recommendations related to corporate sponsorships, (5) a report containing analysis and recommendations related to the proposed Tiger Pride Booster Club, and (6) a draft promotional flyer for the proposed Tiger Pride Booster Club. In addition to these items, Mr. Pillow, who was at the time the liaison between the Athletics Department and TJ&A, stated that he recalled receiving a copy of a game-day plan from TJ&A, but he was unable to locate his copy three years later, when we asked for it. Moreover, we determined that TJ&A arranged 33 contracts with Nashville-area hotels for blocks of rooms for the 1999 John Merritt Classic because TJ&A provided the contracts to us.

The TJ&A contracts included some services that were nontangible in nature. The 1999 contract included such activities as (1) blending ticket plan with the plan to support fundraising efforts for the Athletics and academic efforts, (2) ongoing consulting for public information as related to athletics, (3) supporting the overall efforts of the university, (4) assisting with the planning and implementation of the first Classic football game, and (5) assisting the Athletics Director in all aspects of the Classic weekend. For the 2000 contract, these activities included such items as (1) assisting with press conference for the John Merritt Classic, (2) assisting in securing sponsorships for the John Merritt Classic, (3) negotiating with the Nashville Convention and Visitors Bureau for the housing program and advertisements (as it relates to the John Merritt Classic) in various markets throughout the Southeast, (4) assisting the Athletics Department with negotiations for corporate sponsorships, and (5) general marketing services as approved by the Athletics Department.

We noted correspondence between TJ&A and TSU that addressed some of these issues, such as development of the housing program for the 1999 Classic and contracting for the rooms as well as negotiations with the Nashville Sports Authority and the Tennessee Titans, blending of the ticket plan and fundraising plan, development of ongoing marketing plans for TSU sports, development of a corporate sponsor plan, providing ongoing consulting, and supporting the overall efforts of TSU. In addition, Mr. Pillow recalled TJ&A's assistance with the 1999 Classic weekend as well as TJ&A's assistance with press conferences, sponsorships, and advertising through the Nashville Convention and Visitors Bureau for the 2000 Classic. Mr. Pillow also recalled that TJ&A provided assistance with general marketing services.

However, with regard to these nontangible activities, neither the TJ&A invoices nor the documentation provided by TJ&A and the university indicated the full nature and extent of the services provided. For instance, a TJ&A invoice for \$2,117.90, dated October 17, 2000, included as a description of activities performed, "October consulting services." As another example, a TJ&A invoice for \$3,662.15, dated April 21, 1999, included as a description of activities performed, "Labor for 1-15 April, 1999" and "Film and Development of Film for Photo of TSU Stadium." No other breakdown of the nature and extent of TJ&A activities for the two invoices was included in the materials provided to us by either TJ&A or the university.

Issue No. 3: TJ&A Work Could Have Been Done In-House at Much Less Cost

Dr. Smith also stated his concern that the services provided by TJ&A could have been provided by Athletics Department staff at much less cost. He estimated that Athletics Department staff could have performed the same services for half the cost. Mr. Derell Stinson, then-Marketing Director for the Athletics Department, also stated that TJ&A's costs were exorbitant. However, both Ms. Phillips, at that time an Associate Athletics Director, and Mr. Pillow, the designated liaison between the Athletics Department and TJ&A, stated that the Athletics Department possessed neither the staff resources nor the expertise to provide the services required.

With regard to the cost issue, we contacted three Nashville-based public relations firms to determine comparable costs. One firm did not respond to our inquiry. The other two firms declined to provide any cost figures because of the number of variables involved, including the size of the public relations firm, the types of services requested, and issues related to the quality of the products and the level of effort required.

For the 1999 Classic, the cost of the additional work provided by TJ&A was \$43,500 (\$51,000 limit from amendment minus \$7,500 limit from the original agreement). Two bids were submitted for the 1999 Classic, one for \$300,000 and one for \$50,000. The \$300,000 bid was rejected based on the amount and because not all of the required information was submitted with the bid. The \$50,000 bid was also rejected based on the amount and because not all of the required information was submitted with the bid. The \$43,500 cost from TJ&A is lower than either of the two bids received. Based on presently available information, Dr. Smith's concern could not be substantiated.

Issue No. 4: TJ&A Was Not Supervised by the Athletics Department

Dr. Smith stated his concern that although TJ&A was paid through the Athletics Department budget, TJ&A was not supervised by the Athletics Department but instead was supervised by the President's Office. Based on presently available information, both Dr. Hefner and Mr. Bo Roberts, the Tom Jackson & Associates representative responsible for the TSU contract, regarded the Athletics Department, and thus the Athletics Director, as the responsible party for overseeing the TJ&A contract. Their perspective is supported by the fact that Dr. Smith, during his tenure, signed the TJ&A contracts and also signed all but one of the 14 TJ&A invoices submitted during his tenure, which authorized payment to TJ&A for services rendered. The one invoice (dated April 9, 2001) not signed by Dr. Smith was signed by Mr. Pillow, Assistant Athletics Director. Mr. Pillow stated that he signed this invoice because he was TSU's coordinator with TJ&A at that time. For the 13 invoices that were approved by Dr. Smith, 5 contained only Dr. Smith's signature on the invoice, and 8 were paid through one purchase requisition which contained Dr. Smith's signature and Dr. Hefner's signature. By placing his signature on the invoices and the purchase requisition, Dr. Smith implied that he had some degree of authority over the approval of the goods or services listed.

Dr. Smith stated that at one of his staff meetings he questioned the services provided by TJ&A. He said that he told Mr. Roberts, who was present at the meeting, "We don't really need

you.” Dr. Smith said that Mr. Roberts then contacted Dr. Hefner, and Dr. Hefner then called Dr. Smith and stated, “These people are my people. They will report to me from now on.” However, Mr. Roberts did not recall Dr. Smith’s supposed statement to him and, in direct contradiction to Dr. Smith, Dr. Hefner stated that he had never made the statements attributed to him by Dr. Smith.

Dr. Hefner acknowledged that TJ&A had been hired prior to Dr. Smith’s employment at TSU. Subsequently, TJ&A was retained to do work related to the John Merritt Classic. According to Dr. Hefner, his objective was to support the John Merritt Classic to the level where it would enjoy the same success as the Atlanta and Memphis Classics, which drew 50,000 attendees each. The average attendance per year at the John Merritt Classic from 1999 to 2003 was 22,072. He said that he regarded TJ&A as a good choice because the company had a very good knowledge base related to Nashville and also had extensive contacts in the Nashville community. In addition, TJ&A was engaged in a fund-raising study for TBR, and Mr. Tom Jackson, TJ&A’s owner, Chairman, and Chief Executive Officer, was a former TBR board member. Dr. Hefner pointed out that marketing support for the John Merritt Classic was critical because the university was sponsoring the John Merritt Classic for the first time and was attempting to promote attendance and corporate sponsorships from the Nashville community.

Dr. Hefner stated that the Athletics Department was responsible for oversight of the TJ&A contract and that he never reassigned that responsibility. Dr. Hefner said that he never told Dr. Smith that TJ&A were his people and that they would be reporting to him. After Dr. Smith’s appointment as Athletics Director, Dr. Hefner said that both Mr. Jackson and Mr. Roberts occasionally would call him and complain that Dr. Smith would promise to do things but would not follow through. According to Dr. Hefner, these comments were very disturbing to him because they indicated that Dr. Smith was working against the company that had been hired to work on behalf of the Athletics Department to market and promote the John Merritt Classic.

Mr. Roberts stated that he recalled attending meetings with Dr. Smith and his staff but did not recall Dr. Smith making the statement to him that he was not needed. Mr. Roberts said that in his mind, the Athletics Director was responsible for the TJ&A contract. He also said that the company never received direction from Dr. Hefner or anyone in Dr. Hefner’s office. He indicated that at first Mr. Pillow was the liaison between the Athletics Department and TJ&A and that later Dr. Smith shifted the liaison responsibilities to Mr. Stinson. He noted that because of the importance of the first John Merritt Classic, Dr. Hefner asked that TJ&A submit weekly progress reports to him and that TJ&A did so. However, Dr. Smith did not assume his role as Athletics Director until August 30, 1999, and the first John Merritt Classic was held on September 4, 1999. As a result, TJ&A’s reports on the status of the first Classic would not have come to him because the work relating to the Classic was substantially completed when Dr. Smith assumed his role as Athletics Director.

Mr. Roberts stated that as time progressed, it became obvious to him that Dr. Smith did not want TJ&A to do any work for the Athletics Department. He said that, for its part, TJ&A became extremely frustrated with Dr. Smith because of Dr. Smith’s inaction related to TJ&A recommendations and proposals. Mr. Roberts characterized Dr. Smith’s behavior as a pattern of promises made with no follow-through. Mr. Roberts indicated that he did not have an

explanation for Dr. Smith's behavior other than speculation. Mr. Roberts also indicated that he or Mr. Jackson may have mentioned their frustration with Dr. Smith to Mr. Pillow and Dr. Hefner, although he could not specifically recall having done so himself. Contrary to Dr. Smith's statement that TJ&A did little work except for a few signs and the smoke that the players ran through when they emerged onto the field at the coliseum, Mr. Roberts remarked that TJ&A did not arrange for the smoke at the coliseum.

Mr. Pillow confirmed that in his view Dr. Smith was responsible for overseeing the TJ&A contract. As an Associate Athletics Director at the start of Dr. Smith's tenure, he was transferred in fall 2000 to TSU's Office of University Relations and Development. He said that while he was an Associate Athletics Director, he was the liaison between the Athletics Department and TJ&A, until prior to his transfer, when Dr. Smith reassigned his liaison responsibilities to Mr. Stinson, the newly hired Marketing Representative for the Athletics Department. Mr. Pillow stated that Dr. Smith later transferred the liaison functions back to him. He stated that when he was the liaison, TJ&A representatives may have mentioned problems with Dr. Smith, but he did not remember them asking for his assistance in resolving those problems. Mr. Pillow also stated that from his point of view, TJ&A fulfilled the contract terms for all of its contracts with TSU.

Mr. Pillow stated that he had no contact with TJ&A during the time that Mr. Stinson was the liaison. The reason for his shift to University Relations was to enable him to work year-round on the John Merritt Classic, he explained; he split time between University Relations and Athletics, and all his salary was paid from Athletics. Mr. Pillow said that he was transferred back to the Athletics Department after Dr. Smith's termination.

According to Mr. Stinson, when he joined the Athletics Department, Mr. Pillow was the liaison between TSU and TJ&A. Mr. Stinson stated that Dr. Smith appointed him as liaison in fall 2000 for two or three weeks. At that time, Dr. Hefner transferred Mr. Pillow to University Relations, and Mr. Pillow again became the liaison. However, according to Mr. Pillow, he again became the liaison at the direction of Dr. Smith. Mr. Stinson stated that supervision of the TJ&A contract was entirely removed from the Athletics Department, but the Athletics Department was responsible for paying the TJ&A invoices. With regard to the invoices, Mr. Stinson stated that no one in the Athletics Department signed any of the purchase requisitions authorizing payment of TJ&A invoices. However, Dr. Smith signed the TJ&A contract, the only purchase requisition, and 13 of the 14 TJ&A invoices. Dr. Smith signed the contract, which was effective July 1, 2000, and the contract amendment, which was effective January 1, 2001. One invoice was signed by Mr. Pillow.

Review of correspondence between Dr. Hefner and Dr. Smith disclosed a letter from Dr. Hefner to Dr. Smith, dated October 9, 2000, which in plain text clearly transferred Mr. Pillow from the Athletics Department to the Office of University Relations; assigned Mr. Pillow primary and ongoing responsibility for working with TJ&A; and directed that Mr. Pillow report to Mr. Homer Wheaton, Interim Vice President for University Relations and Development, and to Dr. Hefner.

Effectively immediately, I wish to reassign Mr. Carl Pillow primary and ongoing responsibility for working with Jackson and Associates and my office in coordinating fundraising activities for the annual John Merritt Classic football game and associated activities. Mr. Pillow is to work on the John Merritt Classic solely and exclusively and shall report to Mr. Homer Wheaton, interim vice president for university relations, and development and me.

On October 20, 2000, Dr. Smith requested permission to hire an individual to replace Mr. Pillow in the Athletics Department and to pay the new hire from the funds used to pay Mr. Pillow. In response, by letter dated October 31, 2000, Dr. Hefner denied Dr. Smith's request.

In response to your October 20th letter requesting permission to fill a position from funds currently used for the salary of Mr. Carl Pillow, I do not wish to permit this action. Mr. Pillow, although now reporting to Mr. Homer Wheaton, continues in his role as fundraiser for athletics-related events.

Mr. Pillow's responsibilities are exclusively related to raising funds for the annual Merritt Classic and, accordingly, should remain on the Department of Athletics budget.

Based on these two letters from Dr. Hefner to Dr. Smith, it appears evident from the letters' contents that Dr. Hefner transferred Mr. Pillow from Athletics to University Relations; assigned him primary responsibility for the TJ&A contract; directed that he report to both Mr. Wheaton and himself; and allocated Mr. Pillow's salary costs to the Athletics Department. On this basis, Dr. Smith could have reasonably concluded that the Athletics Department was responsible for paying for the TJ&A contract, but the responsibility for overseeing the TJ&A contract had been transferred to University Relations and the President's Office.

When we asked Dr. Hefner about these two letters, he acknowledged that the letters' contents clearly indicated the conclusions noted above. However, Dr. Hefner stated that his intent was not to transfer responsibility for overseeing the TJ&A contract from Dr. Smith to Mr. Wheaton and himself. Instead, Dr. Hefner explained that his letters grew out of his frustration with Dr. Smith's failure to effectively supervise the Ticket Office. He said that when he would question Dr. Smith about problems in the Ticket Office, Dr. Smith would point to Mr. Pillow as the source of the problems as well as the individual unable to resolve them. According to Dr. Hefner, his intent was to fix responsibility clearly on Dr. Smith, whom he regarded as ultimately responsible for resolving the Ticket Office problems, and to remove the possibility of Dr. Smith transferring the blame to Mr. Pillow. Dr. Hefner stated that consequently he transferred Mr. Pillow from Athletics to University Relations.

The evident mismatch between language and intent in Dr. Hefner's letters resulted in substantial miscommunication between Dr. Hefner and Dr. Smith and also substantial misunderstandings as to roles and responsibilities.

Issue No. 5: Dr. Hefner Forced Dr. Smith to Sign a TJ&A Purchase Requisition

Dr. Smith stated his concern that Dr. Hefner placed him in a position where he felt he had no option but to sign a TJ&A purchase requisition, although he opposed it. However, Dr. Hefner, Mr. Harkleroad, and Mr. Martin stated that they did not recall Dr. Smith objecting to signing any purchase requisitions related to TJ&A. Moreover, Dr. Hefner noted that Dr. Smith did not raise any objections to signing the TJ&A contracts. Dr. Hefner also pointed out if Dr. Smith objected to either the contract or the purchase requisitions, Dr. Smith could have recorded his objections, and the bases for them, in writing. However, Dr. Hefner stated that he had not received any written objections from Dr. Smith. Based on presently available information, Dr. Smith's concern that he felt pressured by Dr. Hefner to sign a TJ&A purchase requisition could not be substantiated.

Issue No. 6: The Tennessee Board of Regents Failed to Obtain Bids When It Hired TJ&A

Dr. Smith expressed his concern that the Tennessee Board of Regents entered into a contract with TJ&A but failed to obtain bids. Based on presently available information, the Tennessee Board of Regents (TBR) executed two contracts with TJ&A. For both contracts, TBR staff issued requests for proposals, received bid proposals, analyzed those proposals, and selected TJ&A. Therefore, Dr. Smith's concern was not substantiated.

The first contract between TBR and TJ&A, signed October/November 1999, was for TJ&A to evaluate the effectiveness of fund-raising activities at the six TBR universities. The contract was for the period November 1, 1999, to February 1, 2000, and the total amount of the contract was \$41,000. TBR staff issued the Request for Proposal (RFP) on August 17, 1999, and sent Invitations to Bid to 15 vendors. TBR received five proposals. A four-member review team analyzed the proposals on the basis of experience, effectiveness, knowledge, and cost and selected TJ&A. In this instance, TJ&A had the lowest of the five bids submitted.

The second contract between TBR and TJ&A, signed in August 2000, was for TJ&A to evaluate the effectiveness of fund-raising activities at 13 TBR community colleges and technical institutes and 27 Tennessee Technology Centers. The contract was for the period August 1, 2000, to November 1, 2000, and the total amount of the contract was \$115,000. TBR staff issued the RFP on June 28, 2000, and sent Invitations to Bid to the same 15 vendors. TBR received three proposals. A four-member review team analyzed the proposals on the basis of experience, effectiveness, knowledge, and cost and selected TJ&A. In this instance, TJ&A had the next-to-lowest of the three bids submitted.

With reference to the first contract, TJ&A submitted five invoices totaling \$41,000, and TBR paid TJ&A \$41,000. For the second contract, TJ&A submitted nine invoices totaling \$109,747.80, and TBR paid TJ&A \$109,747.80.

Both contracts required TJ&A to submit written reports to TBR. TJ&A submitted its report related to the first contract on June 22, 2000, and its report related to the second contract on December 5, 2000.

Tom Jackson's Status as a Former TBR Board Member

Dr. Hefner stated to us that Mr. Tom Jackson was a former TBR board member. We referred this issue to Ms. Lisa Atkins, Assistant General Counsel at TBR, to determine whether any conflict-of-interest issues existed because of Mr. Jackson's status as a former board member and a contractor with both TSU and TBR. According to Ms. Atkins, Mr. Jackson was appointed to the board in 1991 by Governor Ned McWherter and served on the board until 1997.

Ms. Atkins stated that TBR policy does not prohibit current or former board members from providing services to TBR or to any of its schools. According to Ms. Atkins, Section 8-42-101(3) (A) *Tennessee Code Annotated*, defines a state employee as including any person who is a state official. Since board members are gubernatorial appointees, they are presumptive state employees for purposes of this statute and are therefore subject to state employee conflict-of-interest statutes. According to Section 12-4-103, *Tennessee Code Annotated*, state officials cannot contract with the state during their employment or during the first six months after they separate from service.

According to Ms. Atkins, the earliest TJ&A contract on file with TSU was in 1999. The earliest TJ&A contract on file with TBR was in 2000. Since both of these dates are more than six months after 1997, no violation of state law occurred.

Dr. Smith's Concerns Regarding Kickbacks

In his initial interviews, Dr. Smith expressed concern that individuals at TSU were receiving kickbacks from TJ&A. He later retracted his statement.

We contacted Mr. Bo Roberts, President of TJ&A, and asked him to provide our office with details regarding any benefits, gratuities, gifts, or items of value provided to Dr. Hefner, to members of Dr. Hefner's immediate family, or to any other TSU officials or staff. Mr. Roberts responded by letter on January 8, 2004, that no such items had been provided to those individuals.

In an interview, Dr. Hefner denied receiving anything of value from TJ&A.

Because Dr. Smith did not provide any other information related to kickbacks from TJ&A, his concern could not be substantiated.

NATIONAL YOUTH SPORTS PROGRAM

Dr. Smith's Concerns Relating to the National Youth Sports Program

We examined Dr. Smith's issues concerning the National Youth Sports Program (NYSP). Dr. Smith raised six issues related to the program at TSU.

First, Dr. Smith stated that, based on his direct observation, the number of participants in the NYSP was overstated in that the NYSP was reporting to the federal government that there

were 500 participants, when in actuality there were only 200. Dr. Smith stated that based on his observation, the number of NYSP participants was substantially inflated because he could determine the size of a group “in a hot second.” Dr. Smith also indicated that the NYSP enrollment list contained many fictitious names and he provided us two fictitious names: April Jones and February (no last name was provided). The names had been given to him by an individual who had suspicions of having been given fictitious names to include on the roster.

Second, Dr. Smith stated his concern that overstating the number of participants allowed the NYSP program to overbill the federal government because the NYSP Activity Director hired more staff than the program needed, and these extra staff had nothing to do.

Dr. Smith’s third concern was that the Activity Director conspired with the ARAMARK Corporation, the company that provided meals and snacks, because the company claimed reimbursement for providing food for 500 participants, when the company in actuality only provided food for 200. Dr. Smith indicated his concern that kickbacks were being paid by ARAMARK to Dr. Hefner, TSU’s President; Mr. Harkleroad, TSU’s Vice President for Business and Finance; and Dr. Jesse James, the NYSP Activity Director and TSU Assistant Professor, for their participation in this scheme.

Fourth, Dr. Smith stated his concern that Dr. James violated relevant nepotism rules because he hired his son and daughter to work in the NYSP. Dr. Smith based his comment on his observation that the NYSP staff listing included the names Jared James and Michelle James.

A fifth concern for Dr. Smith was that Dr. James and other NYSP staff were double dipping in that they were employed and paid by both TSU and the NYSP at the same time.

Sixth, Dr. Smith stated that he asked Dr. James for a complete account of the participants, staffing, budget, revenues, and expenses, but Dr. James never provided any information about the NYSP to him.

The National Youth Sports Program

According to NYSP’s Internet site and an article from *The City Paper* in Nashville dated June 29, 2001, the National Youth Sports Program (NYSP), established in 1968, is a federally funded program that provides summer activities over a five-week period for children 10-16 years of age. At TSU, Dr. Jesse James, a TSU Assistant Professor of Health, Physical Education, and Recreation, heads the NYSP. As of June 2001, TSU had been associated with the NYSP for 32 years, since 1969. Typically, according to enrollment information, the program has about 500 participants per summer. According to a 2002 public announcement about the NYSP, the program exposes children to campus life and teaches them physical fitness and career opportunities in sports. An application and a medical examination are required for each participant.

The NYSP targets participants from low-income areas. For summer 2000, the NYSP at TSU employed 35 staff (including Dr. James, the Activity Director) and cost \$72,480.73.

Results of the Review

Issue No. 1: The Number of NYSP Participants Was Significantly Overstated

Issue No. 2: The NYSP Program Overbilled for Excess Staff

Issue No. 3: The ARAMARK Corporation Overbilled for Food and Paid Kickbacks to TSU Officials

We combined Issues 1-3 because the basic determination is whether the number of NYSP participants was overstated. If no overstatement occurred, the number of NYSP staff would not have been in excess, ARAMARK would not have overbilled for food, and ARAMARK would not have had an incentive to pay kickbacks.

Dr. Smith stated that the NYSP staff overstated the number of participants in that they reported to the federal government that there were 500 participants when in actuality there were only 200. Dr. Smith based his statement on his ability to quickly determine the size of a group. Dr. Smith expressed his concern that Dr. James, the NYSP Activity Director, hired excess staff based on the inflated enrollment. Dr. Smith also stated his concern that the ARAMARK Corporation conspired with Dr. James and other NYSP staff to overbill for food and that ARAMARK paid kickbacks to Dr. Hefner, Dr. James, and Mr. Harkleroad.

Based on presently available information, the number of participants for the summer 2000 NYSP at TSU was not overstated.

To determine the number of participants, we examined the NYSP summer 2000 participant list, the handwritten roll book (which was compiled from daily attendance cards maintained for each participant), application forms, medical examination forms, daily meal counts, and ARAMARK invoices. We selected a random sample of 30 participant names and traced those names to supporting documentation. We also attempted to contact the parents or guardians of the 30 children. We reviewed the participant lists for both summer 2000 and summer 1999 for the two supposedly fictitious names provided to us by Dr. Smith: April Jones and February (no last name was provided). We matched the names on the participant list with Tennessee birth records. We interviewed five NYSP staff, including Dr. James, the Activity Director, as well as ARAMARK staff.

Participant List

The computerized participant list for the summer 2000 NYSP at TSU showed the names of 505 participants. The handwritten roll book also showed the names of 505 participants. TSU's NYSP submitted a "Final Attendance Report" to the NYSP Corporation that showed 505 participants, with an average attendance of 431. According to this report, the lowest daily attendance was 402, and highest daily attendance was 462.

We determined that the names on the computerized participant list did not match the names in the roll book in 43 instances. According to Dr. James, the most likely explanation is that as children dropped out of the program, other children were added to replace them.

Random Sample

Using computer-based random selection software, we randomly selected 30 of the 505 children on the computerized list of participants. In our sample, we included three strata: (1) first-time participants; (2) returning participants; and (3) late additions to the participant list. Since Dr. Smith's concern was that 300 of 500 participants (60%) were fictitious, we reasoned that the required supporting documentation would not be available for about 60% of our sample (18 names). We requested that Dr. James provide us with the supporting documentation he had for the 30 names in our sample. We received a completed application form for 29 of the 30 and a completed medical examination form for all 30 in our sample. The documents were filled out in different handwriting, and the parent or guardian signatures appeared to be unique. In addition, no children's names and no parent or guardian names were duplicated. According to Dr. James, the one missing application could be attributed to misfiling. Therefore, based on presently available information, the 30 participants' names could be traced to adequate supporting documentation.

Attempt to Contact Parents or Guardians

We attempted to contact the parent or guardian of each of the 30 participants. We called the home telephone number shown on the application form. When we were not successful in reaching an individual at a home telephone number, we called his or her work telephone number, if such a number was provided. In the cases where the home or work telephone number did not work, we attempted to reach the emergency contact telephone number shown on the application form. We were successful in reaching 11 of 30 (37%) of the listed parents or guardians. The 11 parents or guardians confirmed that their children had attended the summer 2000 NYSP at TSU.

However, we regarded this procedure as inconclusive because some telephone numbers had been disconnected and some of our telephone voice mail messages were not returned. Moreover, when we called work numbers, some of the individuals were no longer employed at the places of business on file.

Search for Identified Fictitious Names

We reviewed the participant lists for both summer 2000 and summer 1999 for the two fictitious names provided to us by Dr. Smith: April Jones and February (no last name was provided). We found no such names or combinations of those names, or any other names containing months of the year.

Match of Participant Names With Birth Records

We matched the 505 participant names with available birth records from 1981 through 2001 maintained by the Bureau of Health Statistics of the Tennessee Department of Health. These birth records are only for children born in Tennessee. Of the 505 participants listed on the NYSP participant list, 324 (64%) were matched with birth records. The NYSP does not require that a child be born in Tennessee to participate. Consequently, a number of the NYSP participants at TSU may have been born in other states.

For the reason noted above, we were not able to confirm that all participant names corresponded to valid birth records and thus were genuine names, but we were able to confirm that 64% of the summer 2000 NYSP participant names corresponded to valid Tennessee birth records and were genuine names, not fictitious names.

Estimates by NYSP Staff

To obtain estimates as to the number of participants, we interviewed five NYSP staff: Dr. James, Activity Director; Ms. Lizzie Cleveland, auxiliary staff; Ms. Michelle Flowers, professional staff; Ms. Yvonne Sanders, support staff; and Mr. Ed Gooding, auxiliary staff. Auxiliary staff included liaisons and medical and educational specialists; professional staff consisted of teachers who taught the various activities; and support staff included data input and security personnel and bus drivers. Their estimates were as follows: Dr. James, 500-505; Ms. Cleveland, 600; Ms. Flowers, 430-450; Ms. Sanders, 500; and Mr. Gooding, 510-520. These estimates fell within the range that we would expect for a program with about 500 enrollees and an average daily attendance of 431. Dr. James pointed out that the largest number of participants would be seen together during the dinner meal; at other times, the participants would be broken up into smaller groups for various activities. Thus, the participant groups observed around the TSU campus would be much smaller than 500.

We asked the NYSP staff directly if they had any knowledge of fictitious participants. All five stated that they had no knowledge of any fictitious participants.

Meal Counts and ARAMARK Invoices

We determined that Mr. Gooding, an NYSP counselor, counted each participant at each meal period using a mechanical counter. Mr. Gooding counted both students and counselors. His meal count occurred twice a day, at 8:55 a.m. and 2:20 p.m. Mr. Gooding recorded his count on a daily "NYSP certification of service form" and signed the form. According to Ms. Kathryn Nelson, ARAMARK's Office Manager assigned to the TSU program, an ARAMARK employee also counted each participant at each meal period using a mechanical counter. Ms. Nelson stated that the count was entered on an "NYSP 2000" form. Both Ms. Nelson and Mr. Gooding signed the "NYSP 2000" form attesting to the correctness of the count. Ms. Nelson stated that the numbers on the daily "NYSP 2000" forms were directly reflected on ARAMARK's invoices to NYSP at TSU. Both Mr. Gooding and Ms. Nelson stated that to their knowledge the number of participants was not inflated in any way. They also stated they were not solicited to inflate the number of participants and that they had not heard any speculation about inflated numbers.

We confirmed that the invoice numbers matched the "NYSP 2000" numbers and that the "NYSP 2000" numbers matched the "NYSP certification of service" numbers for each of the 25 days of the summer 2000 NYSP at TSU. ARAMARK submitted seven invoices totaling \$35,911.78 for the breakfast and lunch meals associated with the NYSP at TSU.

Based on presently available information, because the meal counts were confirmed by two parties, Mr. Gooding for the NYSP, and Ms. Nelson for ARAMARK, and the documents were prepared contemporaneously with their counts, we regard the documented counts as an

accurate reflection of the number of NYSP participants. It should be noted that the meal counts match the daily attendance numbers reported on NYSP's "Final Attendance Report."

Alleged ARAMARK Payment of Dr. Hefner's Super Bowl Expenses

Initial Allegation

Dr. Smith stated that he asked Mr. John Tate, ARAMARK's food services manager at TSU, for \$17,000 for class rings for some TSU athletes. According to Dr. Smith, Mr. Tate responded that he couldn't provide any money for the class rings because he had just given Dr. Hefner \$35,000 to attend the 2001 Super Bowl. Dr. Smith did not provide any additional information related to the alleged improper payment by Mr. Tate to Dr. Hefner.

Interview With Mr. John Tate

When we contacted Mr. Tate, he directly denied that he had ever had a conversation with Dr. Smith about class rings for TSU athletes or any payment by him to Dr. Hefner to attend a Super Bowl game. Furthermore, Mr. Tate stated that he had no knowledge of any payments by ARAMARK to Dr. Hefner or anyone else at TSU related to a Super Bowl game.

Initial Inquiry by TSU's Internal Auditor

We contacted TSU's Internal Auditor and requested that he ask Dr. Hefner if he had attended any Super Bowls at ARAMARK's expense. On August 2, 2002, TSU's Internal Auditor responded in writing that Dr. Hefner stated that he had received two game tickets from ARAMARK for both the 2000 and 2001 Super Bowls.

Because of concern over whether Dr. Hefner paid for the tickets or received them as a gift, we requested that TSU's Internal Auditor ask Dr. Hefner if he had paid for the Super Bowl tickets. In a written response dated March 6, 2003, TSU's Internal Auditor stated,

Dr. Hefner stated that he received two game tickets from the Tennessee Titans for the 2000 Super Bowl in Atlanta. He stated that he did not recall paying for those tickets. Dr. Hefner stated that he bought two tickets to the 2001 Super Bowl in Tampa, Florida from Mr. John Packer. Mr. Packer arranged for someone in Tampa to provide Dr. Hefner with the tickets, and Dr. Hefner paid Mr. Packer approximately \$200 the week after the Super Bowl. Dr. Hefner stated that although Mr. Packer was an employee of Aramark, Mr. Packer stated that he did not provide the tickets on behalf of Aramark.

Initial Interviews With Dr. Hefner

We interviewed Dr. Hefner in March 2003 about his receipt of Super Bowl tickets from ARAMARK.

Dr. Hefner stated that he had received tickets from the Titans organization to attend the 2000 Super Bowl, which was played in Atlanta, Georgia, between the Tennessee Titans and the Saint Louis Rams at the Georgia Dome on January 30, 2000. Dr. Hefner explained his change in his account of the 2000 Super Bowl tickets by saying he had checked with his wife, and she had reminded him that they had received tickets from the Titans, not ARAMARK.

We asked Dr. Hefner if he had received tickets from Mr. Tate or ARAMARK for the 2001 Super Bowl game, which was played in Tampa, Florida, between the Baltimore Ravens and the New York Giants at Raymond James Stadium on January 28, 2001. Dr. Hefner stated that he did not receive any tickets from either Mr. Tate or ARAMARK.

However, Dr. Hefner stated that after various unsuccessful attempts on his part to buy two tickets to the 2001 Super Bowl, he contacted Mr. John Packer, at that time an ARAMARK Regional Vice President and the ARAMARK official responsible for the region that included Tennessee. Mr. Packer was located in Atlanta, Georgia. Dr. Hefner stated that he asked Mr. Packer to obtain two tickets for him. Dr. Hefner explained that he wanted to attend the Super Bowl, and his wife wanted to visit her sister who lived in Tampa. According to Dr. Hefner, he called Mr. Packer as a last resort two or three weeks before the game. Dr. Hefner explained that he might have heard from other presidents of Historically Black Colleges and Universities (HBCUs) at a National Association for Equal Opportunity (NAFEO) meeting in Washington, D.C., that ARAMARK might be a source for Super Bowl tickets. He further stated that he had heard that other presidents had received tickets from Mr. Packer, and he felt that Mr. Packer could obtain the tickets for him.

Dr. Hefner stated that he probably contacted Mr. Packer two or three weeks before the 2001 Super Bowl game and because of the short time frame, it was difficult for Mr. Packer to acquire the tickets. However, Mr. Packer was ultimately successful in arranging for two tickets for him. Dr. Hefner stated that Mr. Packer arranged for Dr. Hefner to meet an individual in Tampa to pick up the tickets. Dr. Hefner stated that he did not know the identity of the individual who physically provided the tickets to him in Tampa. Dr. Hefner confirmed that he and his wife attended the 2001 Super Bowl game.

Dr. Hefner stated that he paid \$200 total in cash for the two tickets (\$100 per ticket), but he did not recall the composition of his cash payment. Dr. Hefner stated that Mr. Packer did not indicate to him that the tickets had been discounted in any way, and his understanding was that Mr. Packer had paid \$200 for the tickets. According to Dr. Hefner, he personally paid Mr. Packer within a week or so of the 2001 Super Bowl game, when Mr. Packer was on TSU's campus.

Dr. Hefner encouraged us to contact Mr. Packer, and he provided us Mr. Packer's home phone number in Atlanta.

Dr. Hefner stated that the selection of ARAMARK to provide food services at TSU was made through a TSU committee, and he had no influence on the selection process. Dr. Hefner stated that his acquisition of tickets from Mr. Packer was not done in exchange for selecting ARAMARK as TSU's food service provider or for any other quid-pro-quo arrangement. Dr.

Hefner stated that at the time he saw Mr. Packer as someone who could obtain Super Bowl tickets for which he (Dr. Hefner) would pay, and he saw nothing wrong with that. However, he stated that he would not obtain tickets in this manner in the future to ensure that there would be no questions of favoritism or bias relating to his or TSU's relationship with ARAMARK.

Contact With ARAMARK

In our attempts to contact Mr. Packer, we reached his voice mail and left messages; on one occasion, we reached a woman who identified herself as his wife and left a message with her. However, Mr. Packer failed to return our phone calls.

We contacted ARAMARK officials in Atlanta and were referred to ARAMARK's general counsel, located in Philadelphia, Pennsylvania. ARAMARK's general counsel, Mr. Jack Wixted, informed us that ARAMARK had retained the services of Mr. Ernie Williams of Franklin, Tennessee, as outside counsel in this matter.

Letter From Mr. Williams

On July 3, 2003, Mr. Williams submitted by letter the results of ARAMARK's investigation of whether any ARAMARK official had provided Super Bowl tickets to Dr. Hefner.

According to the letter, at the specific request of Dr. Hefner, ARAMARK's former Southern Regional Vice President, Mr. John Packer, provided Dr. Hefner with two tickets to the 2000 Super Bowl and two tickets to the 2001 Super Bowl.

Further, the letter stated that according to Mr. Packer, Dr. Hefner's 2000 Super Bowl tickets were purchased from Tickets Rightaway, and the cost of the tickets was claimed on Mr. Packer's expense report.

A copy of Mr. Packer's expense report was included as an attachment to the letter. Mr. Packer's expense report for the week ending January 28, 2000, listed an entertainment expense of \$4,500. On the explanation page associated with his expense report, Mr. Packer identified the \$4,500 expense as "Super Bowl Tickets (Dr. Hefner & Spouse--TN State University President)." Mr. Packer's \$4,500 expense was supported by a credit card receipt. Mr. Packer's expense report also included a hotel charge of \$359.72. The explanation for the hotel charge was "Hotel for Dr. Hefner, TN State Univ Pres." The hotel charge was not supported by a hotel receipt or any other proof of charges. Mr. Packer signed his expense claim. According to Mr. Williams, ARAMARK paid Mr. Packer's expense claim.

Mr. Williams' letter further stated that for the 2001 Super Bowl held in Tampa, Mr. Packer obtained two Super Bowl tickets from a ticket broker. The letter stated that Mr. Packer paid for the tickets with a personal check made payable to Charles Dickens and claimed the costs of the tickets on his expense report.

A copy of Mr. Packer's \$5,000 check to Charles Dickens and a copy of Mr. Packer's expense report were included as attachments to the letter. Mr. Packer's expense report for the week ending January 5, 2001, listed an entertainment expense of \$5,000. In the space provided for explanation of entertainment charges, Mr. Packer identified the \$5,000 expense as "Super Bowl Tkts--Dr. Hefner and family, President of TSU." Mr. Packer's expense claim did not include any hotel charges for Dr. Hefner. Mr. Packer signed his expense claim. According to Mr. Williams, ARAMARK paid Mr. Packer's expense claim.

Moreover, Mr. Williams' letter stated that in early 2003, Dr. Hefner made contact with Mr. Packer and explained that he had recently fired the Athletics Director at Tennessee State University. According to the letter, Dr. Hefner indicated that the Athletics Director had accused him of taking gifts from vendors such as ARAMARK.

The letter described the following transaction related to payment for the 2001 Super Bowl tickets:

Dr. Hefner told Mr. Packer that the State was also looking at some other issues related to Hefner. The purpose of Dr. Hefner's call to Mr. Packer was to advise Mr. Packer that Hefner wanted to reimburse Packer for the Super Bowl tickets. Mr. Packer indicated that it would be okay for Dr. Hefner to do that but he did not give Dr. Hefner a dollar figure. According to Mr. Packer, Dr. Hefner sent \$200.00 in the form of two (2) \$100.00 bills placed in an unmarked white envelope. Mr. Packer, upon receiving the envelope from Dr. Hefner, took it to the Regional Office and opened it in front of two (2) other individuals. The two (2) \$100.00 bills had a small white piece of paper folded over them. Mr. Packer believes that his assistant deposited the cash in a Regional account at a bank. In fact, she did not deposit the cash. Instead, she had this cash secured in a locked drawer in her desk. That envelope has recently been sent to me and has been secured in my office. Again, Mr. Packer's assistant corroborates this series of events.

Referral to the Tennessee Bureau of Investigation

We referred the matter of the Super Bowl tickets to the Tennessee Bureau of Investigation (TBI) because confirmation of the results of ARAMARK's investigation would involve conducting some interviews with individuals who lived outside Tennessee and because of the potential issues of bribery or extortion.

After receiving authorization from the Davidson County District Attorney General to proceed, TBI agents interviewed six ARAMARK employees who had information about the Super Bowl tickets in question. The individuals interviewed were Mr. John Packer, the former Southeast Regional Vice President; Mr. Tim Benbow, Region Finance Director of Southern Region Campus Services; Ms. Shirley Lane, Administrative Assistant of Southern Region Campus Services; Mr. Arthur Sternberg, Food Service Director, Texas A&M University; Mr. Brian Chiulli, District Manager of Southern Region Campus Dining Services; and Mr. John Tate, Food Service Director, Tennessee State University. We were present at the interview with Mr.

Packer, which occurred in Nashville, and the interview with Mr. Tate, which occurred in Franklin.

With several exceptions, the six individuals interviewed confirmed the information contained in Mr. Williams' letter as described above. First, Mr. Packer stated that he thought he had offered the tickets to Dr. Hefner for both the 2000 and 2001 Super Bowl games, and Dr. Hefner had not asked for the tickets. Second, with reference to Dr. Hefner's phone call to him in early 2003, Mr. Packer stated that when Dr. Hefner asked him, "How much do I owe you?" he responded, "Send a couple hundred dollars." Thus, Mr. Packer stated during his interview that he proposed the dollar amount that Dr. Hefner then paid. Third, Mr. Packer stated that he arranged for Dr. Hefner to receive four tickets for the 2001 Super Bowl, rather than two, as initially indicated. He stated that after the game, Dr. Hefner called him to complain that two of the four tickets were counterfeit. According to Mr. Packer, Dr. Hefner told him that his sister-in-law and brother-in-law had been turned away because their tickets would not scan.

Mr. Tate acknowledged that he knew that Dr. Hefner had received Super Bowl tickets for the 2001 game when we first contacted him. When asked why he did not provide us this information initially, he explained that we had not asked about Super Bowl tickets but about payments to Dr. Hefner to attend the Super Bowl, and he did not know anything about payments to Dr. Hefner for that purpose. Clearly, during our initial interview with him, Mr. Tate should have been forthcoming about what he knew.

Interview With Dr. Hefner

Since we had information that contradicted his earlier statements to us, we again interviewed Dr. Hefner about his receipt of Super Bowl tickets. In that interview, we confronted him with the results of the interviews with the ARAMARK employees identified above. During the interview, Dr. Hefner signed a written affidavit regarding the Super Bowl tickets.

In his affidavit, Dr. Hefner acknowledged that he had asked John Tate, the ARAMARK dining hall manager at TSU, if Mr. Tate could help him obtain tickets to the Super Bowl game in Tampa, Florida, in 2001. Dr. Hefner stated that John Packer, the ARAMARK regional vice president, arranged for him to get four tickets. Dr. Hefner stated that he received four tickets from an individual the morning of the Super Bowl. Dr. Hefner said that he and his wife and his brother-in-law and sister-in-law went to the Super Bowl. He stated that two of the tickets were counterfeit. He said that he and his wife attended the game, but his brother-in-law and sister-in-law returned home without attending the game because their tickets were bogus. Dr. Hefner confirmed that he had called Mr. Packer to complain about the bogus tickets, but his phone call occurred after he had returned to Nashville, not immediately after the game as Mr. Packer had stated.

Dr. Hefner further acknowledged that sometime during the time period February-March 2003, he had called Mr. Packer. Dr. Hefner stated that he told Mr. Packer that Dr. Smith, the former athletic director, was making allegations about ARAMARK "taking care of him" [Dr. Hefner] for the Atlanta and Tampa Super Bowl games and that he was being audited. Dr. Hefner

said that he told Mr. Packer that the auditors had indicated that Dr. Smith was wrong on everything else, and he felt that for Dr. Smith to be right on this would be problematic.

According to Dr. Hefner's affidavit, Mr. Packer proposed that Dr. Hefner give him \$200 and that Dr. Hefner could then say that he had paid Mr. Packer for the tickets. Dr. Hefner acknowledged that, shortly thereafter, he mailed Mr. Packer \$200 in cash and that he placed the money in a sealed envelope and mailed that envelope inside another envelope. According to Dr. Hefner, it was obvious to both him and Mr. Packer that when asked by the auditors, Mr. Packer would say that Dr. Hefner had paid right after the Tampa Super Bowl.

In his interview, Dr. Hefner stated that his wrong behavior was attempting to arrange with Mr. Packer to misrepresent to us the time period when he paid for the tickets and how the payment amount was determined. Dr. Hefner stated in his affidavit that what he did was wrong, that he shouldn't have done it, and that he regretted it. He further stated that the tickets had nothing to do with the ARAMARK contract and that there was no quid pro quo whatsoever. Dr. Hefner stated that he had no influence over who is selected for the food services selection committee, had no contact with committee members while they were doing their review, and had no approval authority over the evaluations of vendor proposals.

With regard to the Super Bowl game in Atlanta, Georgia, in 2000, Dr. Hefner stated that when he talked with Mr. Packer, he asked him if Mr. Packer had provided him Super Bowl tickets for Atlanta. According to Dr. Hefner, Mr. Packer's response was that he had not, and on that basis Dr. Hefner had told us that ARAMARK did not provide him tickets for Atlanta. Dr. Hefner indicated that he did not recall how he obtained tickets for Atlanta. He said that he would research the matter and inform us of what he found. Dr. Hefner stated that he did not know the cost of the tickets and that he would pay for them.

Dr. Hefner's Letter Regarding the Atlanta Super Bowl Tickets

By letter dated February 5, 2004, Dr. Hefner stated that he had also received two tickets from ARAMARK for the 2000 Super Bowl game. Dr. Hefner stated that he and his wife traveled to Atlanta in their personal vehicle and did not request reimbursement for any of their expenses.

With regard to the Tampa Super Bowl tickets, Dr. Hefner had stated in a prior interview that ARAMARK had not paid any of his travel expenses related to Tampa.

Interviews With Individuals Associated With the Selection Process

Because of questions as to whether there was a quid pro quo between Dr. Hefner and ARAMARK regarding the rebidding of the food services vendor contract, which occurred in 2001, we interviewed every member of the selection committee, except one, who could not be contacted, as well as the university's purchasing director and vice president for business and finance. Dr. Hefner was not a member of the selection committee.

The selection committee reviewed two proposals, one from ARAMARK and one from Thompson Hospitality.

The selection committee consisted of eight members. The members included the then-Dean of the Center of Extended Operations (Avon Williams campus), a professor in the Department of Family and Consumer Sciences, the Dean of Students and Director of Residence Life, the head of the Department of Family and Consumer Sciences, the Director of Conferences and Special Events, the then-Associate Athletics Director for Finance, and two student representatives from the Student Government Association. The individuals appeared to be logical choices for the committee because of their various types of involvement with food services at TSU. For example, one appointee was a longstanding member of the university's food service committee and the only registered dietitian on campus; another appointee was in charge of conferences and special events at the university and thus a frequent user of food services for catering; and a third appointee was a student who was the chairperson of the student government association's (SGA) campus food service committee.

We were unable to interview the former Associate Athletics Director for Finance because we could not locate him. We obtained his most recent home address and telephone number from TSU. We confirmed that information with his driver's license information on record with the Department of Safety. We called his home telephone number several times and left voice mail messages, but he never returned our calls. We also drove to his home address. The individual who answered the door stated that we had the wrong address because no one with his name lived at the house.

The seven committee members, the purchasing director, and the vice president for business and finance were consistent in their recollections of the proposal review process, and each stated that ARAMARK was the committee's ultimate recommendation. Further, each stated that there was no actual or attempted influence by Dr. Hefner or any other individual to sway the decision toward ARAMARK.

We recalculated the score on the bid/proposal evaluation sheet completed by each selection committee member. Seven of the eight committee members completed a bid/proposal evaluation sheet; the committee chair did not complete a separate bid/proposal evaluation sheet. The committee chair prepared an overall summary sheet, which tabulated and averaged the scores. Except for minor math errors, the scores were calculated correctly by the committee members. Their original calculations and our revisions to their calculations indicated that ARAMARK received the higher overall score in both cases. Every selection committee member rated ARAMARK higher than Thompson Hospitality.

By memorandum, the committee had recommended to the university's purchasing director and vice president for business and finance that ARAMARK be awarded the food services contract. The purchasing director submitted a memorandum to the vice president for business and finance that stated that he had reviewed the advisory committee's evaluation and recommendation report and that he concurred with the committee's recommendation. The vice president for business and finance checked the "Approved" box and signed and dated his approval on the memorandum.

Dr. Hefner signed the contract between TSU and ARAMARK on August 3, 2001. The effective date of the contract was July 1, 2001, through June 30, 2002, with an option to renew on a yearly basis until June 30, 2006. As of the date of this report, the contract is still in effect.

The 1996 Olympics in Atlanta

Mr. Williams' letter stated that ARAMARK had also arranged for Dr. Hefner to attend the 1996 Olympics in Atlanta, Georgia. Mr. Williams was not able to provide any further information related to Dr. Hefner's presence at the Olympics. ARAMARK personnel stated that their records pertaining to the 1996 Olympics were no longer available.

In our interview with him, Dr. Hefner stated that he did attend that 1996 Olympics as a guest of ARAMARK, but he did not recall anything about the occasion, such as the events he attended, the number of days involved, or whether ARAMARK paid for his hotel, travel, and meal expenses. Dr. Hefner stated that he would check with his wife. By letter dated February 5, 2004, Dr. Hefner stated,

I talked with my wife about the 1996 trip to the Olympics and she and I recall receiving two tickets and there was a hotel that was designated by ARAMARK, but that is all we remember. We traveled to Atlanta in our own automobile.

Because we had asked Dr. Hefner whether he had received any items of value from ARAMARK in a previous interview, and he had responded that he had not, except for the Super Bowl tickets (discussed above), we asked him why he had not disclosed the 1996 Olympics to us during our initial interviews. In response, Dr. Hefner stated that he had not recalled the 1996 Olympics at that time. Dr. Hefner stated that, except for the items indicated, he had not received anything else of value from ARAMARK.

During our interview, Dr. Hefner informed us that Mr. Clay Harkleroad, the university's vice president for business and finance, also had attended the 1996 Olympics as ARAMARK's guest.

Interview With Mr. Harkleroad

We interviewed Mr. Harkleroad, and he confirmed that he had attended the 1996 Olympics as ARAMARK's guest. According to Mr. Harkleroad, he received a written invitation from ARAMARK with a list of athletic events that he could attend. Mr. Harkleroad said that he picked the top three events that he was interested in, but he was not provided tickets to the events he had selected. Instead, he was provided tickets to a wrestling event, a track and field event, and a gymnastics exhibition. Mr. Harkleroad said that he and his wife attended the events. He said that he and his wife drove to Atlanta, stayed two nights in a hotel designated by ARAMARK, and then returned to Nashville. Mr. Harkleroad stated that he thought his trip occurred over a weekend in August or September of 1996. He stated that ARAMARK paid for his hotel room but not for his travel or meals. He said that he and Mr. Packer and their wives went to a restaurant for dinner at the invitation of Mr. Packer and that Mr. Packer paid for the dinner. According to Mr. Harkleroad, his understanding was that ARAMARK was the food

services vendor for the Olympics, and ARAMARK had extended invitations to other university officials across the country.

With regard to other benefits received from ARAMARK, Mr. Harkleroad stated that he had received two Atlanta Braves complimentary tickets in 1997 or 1998 and four Atlanta Braves complimentary tickets in 1999. He further stated that he had arranged with Mr. Packer to receive four tickets to the Tennessee vs. Florida game in Gainesville, Florida, scheduled for September 15, 2001. According to Mr. Harkleroad, he paid Mr. Packer \$100 by check for the four tickets. Mr. Harkleroad provided us with a copy of his check to ARAMARK for \$100, dated September 17, 2001. Mr. Harkleroad stated that the game was postponed because of 9/11 and rescheduled, and he did not attend the rescheduled game but instead gave his tickets to a family member. The rescheduled Tennessee vs. Florida game was played on December 1, 2001.

Regarding the Atlanta Braves tickets, ARAMARK personnel stated that the tickets, which were purchased as part of a corporate season ticket package, were worth \$27 each in 1997, 1998, and 1999. Mr. Harkleroad did not pay for these tickets, and consequently he received a benefit of \$54 in 1997 or 1998 and a benefit of \$108 in 1999.

We contacted the University of Tennessee's Athletics Department, and a university official stated that the 2001 Tennessee vs. Florida tickets cost \$25 each. Based on this information, Mr. Harkleroad paid face value for the Tennessee vs. Florida tickets.

Mr. Harkleroad further acknowledged that he had on occasion played golf with ARAMARK officials and employees from other TBR universities during working hours without taking leave, but he could not recall the last time he had done so. Mr. Harkleroad estimated that this kind of golf outing had occurred five times or less over the three calendar years ending December 31, 2003. He explained that he saw his golf activities as part of furthering good business relationships with ARAMARK officials.

Because we had asked Mr. Harkleroad in a previous interview whether he had received any items of value from ARAMARK and he had responded that he had not, we asked him why he had not disclosed the 1996 Olympics, the two Atlanta Braves games, the Tennessee/Florida football game, or the golf outings to us. Mr. Harkleroad stated in response that he did not think of these events at the time we asked him our question. Mr. Harkleroad further stated that because we had indicated that ARAMARK-sponsored events for groups (such as ARAMARK-hosted dinners at conferences) were outside the scope of our question, he did not think that he needed to disclose ARAMARK-funded events that involved groups of individuals.

Mr. Harkleroad stated that at the time he did not think that what he was doing violated either TBR or TSU policies or state statutes, and he did not intend to violate any policies or laws. He stated that he did not think that he did anything wrong by accepting the benefits provided by ARAMARK. However, Mr. Harkleroad stated that he would not engage in such activity in the future.

Mr. Harkleroad stated that the ARAMARK benefits that he received had no effect whatsoever on his decision-making relating to ARAMARK and the ARAMARK contract. Mr.

Harkleroad pointed out that he was not on the selection committee, although he had approved the recommendation of the selection committee relative to the university's food services vendor. The committee members stated that Mr. Harkleroad did not have any influence on their recommendation for ARAMARK.

TBR Conflict of Interest Policy in Effect until June 2002

Tennessee's conflict of interest statutes, including *Tennessee Code Annotated*, Section 12-3-106, are incorporated by reference into TBR conflict of interest policy (No. 1:02:03:10). Although the statute, Section 12-3-106, does not specifically include service contracts under its prohibitions for receiving gifts or items of monetary value, the current TBR policy does. Section 12-3-106 (a) states,

No officer or employee of the department of general services, nor any member of the board of standards, nor any head of any state department, institution or agency, nor any employee of any state department, institution or agency charged with the responsibility of initiating requisitions, shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract for the purchase of materials, supplies, or equipment for the State of Tennessee may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation, or contract for future rewards or compensation.

According to Opinion No. 01-073 of the Office of the Tennessee Attorney General, this statute only applies to contracts for the purchase of materials, supplies, or equipment. Legal staff in TBR's Office of General Counsel stated that their interpretation of Section 12-3-106 was consistent with that of the Attorney General's Office in regarding the statute as applying only to contracts for materials, supplies, and equipment. Consistent with this statute, in 2001, TBR's gift-related conflict of interest policy also applied only to contracts for materials, supplies, and equipment. Since the ARAMARK contract was a services contract, it was not covered by either the statute or by TBR's conflict of interest policy. According to TBR legal staff, in 2001, an agency head's receipt of football tickets as a gift from a services contract vendor would not have violated the law or TBR policy.

TBR Conflict of Interest Policy in Effect after June 2002

In June 2002, TBR revised its conflict of interest policy by including services contracts as well as contracts for materials, supplies, and equipment. Under Section 7.1d, "Acceptance of gifts, gratuities, or favors," the current policy states,

Under the terms of T.C.A. Section 12-3-106, no employee or member of the TBR or employee of any TBR Institution, charged with the responsibility or authority for initiating requisitions or selecting the vendor from which any purchase of goods or services will be made, shall accept or receive, directly or indirectly, from any person, firm, vendor or corporation to whom any contract for the purchase of materials, goods, supplies, equipment or services [Emphasis added] for the State

of Tennessee may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation, or contract for future rewards or compensation. By virtue of this policy, the prohibitions of T.C.A. Section 12-3-106 are extended to persons with contract oversight responsibility.

Under this policy, no person to whom this policy applies shall solicit or accept anything of value whatsoever for services performed within the scope of his or her job duties, other than that compensation, reimbursement or expenses or other remuneration paid or approved by the TBR and its constituent Institutions. Nor shall any employee accept anything of value whatsoever from a party or entity other than the TBR and its constituent Institutions intended to influence that employee's discharge of his or her job duties.

Thus, TBR's conflict of interest policy in effect since June 2002 is broader than the state's conflict of interest statute, Section 12-3-106, and it prohibits the solicitation or receipt of Super Bowl tickets, Olympics tickets, Atlanta Braves tickets, tickets to other athletic events, or golf outings on the part of institution presidents and other TBR system institution officials and staff.

TBR and TSU Policies Effective Throughout the Period in Question

General Personnel Policy. Under TBR's policy no. 5:01:00:00, *General Personnel Policy*, gross misconduct, which may result in termination, includes such actions as any work-related conduct which would subject the employee to criminal conviction (such as for official misconduct) or dishonesty. TSU's personnel policy no. 6.9 includes identical language to TBR's general personnel policy with regard to gross misconduct.

TSU's Code of Ethical Conduct. Relevant to the issues of receipt of gifts and misrepresentation is TSU's *Code of Ethical Conduct*, which states that it is incumbent upon faculty, administrators, and staff "to conduct their business and personal activities in a manner that does not compromise the values, integrity, reputation, and public trust enjoyed by the University." Under the "Standards of Conduct," section, the *Code* states that university employees "are expected to demonstrate and maintain the highest standards of decency, personal integrity, truthfulness and honesty and shall, through personal conduct, inspire public trust and confidence in the University."

The *Code* further includes the standard of conduct that university employees "must recognize that personal gain from public service is limited to respect, recognition, salary and normal employee benefits contracted with Tennessee State University and Tennessee Board of Regents." TSU's *Code of Ethical Conduct* includes procedures for the resolution of ethical conflicts.

Conclusions Relating to the Actions of Dr. Hefner and Mr. Harkleroad

We determined that Dr. Hefner materially misrepresented to us significant aspects of the ticket transaction. Dr. Hefner initially stated that he had asked for and received two tickets. In a

subsequent interview, he acknowledged receiving four tickets, two of which were counterfeit. Dr. Hefner initially stated that he paid for the tickets. Later, he acknowledged that the tickets had been provided to him free of charge. Dr. Hefner also initially stated that he had personally paid \$200 in cash to an ARAMARK official when the official visited the TSU campus about a week after the 2001 Super Bowl game. Dr. Hefner subsequently acknowledged that his account was not true and that he had mailed the ARAMARK official \$200 in cash in 2003, about two years later, when we asked him about the matter. Dr. Hefner substantially revised his earlier statements only when we confronted him with documentation from ARAMARK and interview statements by other parties to these transactions.

Also questionable were the activities of Mr. Harkleroad in relationship to the benefits he received from ARAMARK. Those benefits, according to Mr. Harkleroad, included event tickets and lodging for the 1996 Olympics in Atlanta, tickets to Atlanta Braves baseball games, and tickets to the 2001 Tennessee vs. Florida football game in Gainesville. In addition, Mr. Harkleroad stated that he on occasion played golf with ARAMARK officials and employees from other TBR institutions during work hours and without taking leave. Mr. Harkleroad could have been more forthcoming in providing us with the full details relating to any benefits that he received from ARAMARK.

The matters discussed in this section that relate to possible inappropriate actions on the part of Dr. Hefner and Mr. Harkleroad have been referred to the Office of the State Attorney General for its review. Also, we recommend that TBR board members and staff review Dr. Hefner's and Mr. Harkleroad's receipt of gifts from ARAMARK and consider appropriate actions.

Alleged Kickbacks by ARAMARK Corporation to TSU Officials for Inflating the Number of Youth Participants and for Overbilling for Food

When we questioned Dr. James, Dr. Hefner, and Mr. Harkleroad with regard to receipt of kickbacks, Dr. James stated that he had never received anything of value from a vendor. Dr. Hefner and Mr. Harkleroad did receive items of value from ARAMARK as previously discussed.

Because the number of youth participants did not appear to be inflated, and because the ARAMARK meal counts reasonably correlated to expected attendance on a daily basis, there did not appear to be any incentive for ARAMARK to pay kickbacks, and thus that issue was not pursued further.

Issue No. 4: Dr. James Violated Nepotism Rules by Hiring His Son and Daughter

Dr. Smith stated his concern that Dr. James violated relevant nepotism rules because he hired his son and daughter to work in the NYSP. According to Dr. Smith, the NYSP staff listing included the names Jared James and Michelle James.

Based on presently available information, Dr. James hired his son, Jared James, and his daughter, Michelle James, to work in the NYSP, but he did not violate any nepotism rules by doing so. NYSP has no formal guidelines on hiring relatives but has an informal practice

allowing the hiring of relatives as long as one level of supervision exists between family members. The NYSP at TSU included a staff level between Dr. James and his son and daughter.

We reviewed the NYSP staff listings for 1999 and 2000. Our review of the 2000 Schedule of Staff Members Paid by Grant Funds disclosed that Jared James was paid \$1,800 for support services. Jared James' address corresponded to Dr. James' address. Our review also disclosed that Michelle James was paid \$1,000 for support services. We determined that Jared James and Michelle James were also listed on the 1999 Schedule with the same addresses and payment amounts, respectively.

We interviewed Dr. James specifically about this issue. According to Dr. James, Jared James is his son and Michelle James is his daughter. Both Jared and Michelle acted as support staff for the NYSP at TSU. Based on discussion with Dr. James and with Ms. Jeannie Burke, the Director of Youth Sports for the NYSP with the National Youth Sports Corporation (which is based in Indianapolis, Indiana, and administers the NYSP nationally), the NYSP has no rules against nepotism. According to Ms. Burke, the NYSP does not prohibit the hiring of relatives. Ms. Burke also stated that hiring relatives is a common practice at many schools. Ms. Burke stated the NYSP recommends that employees do not directly supervise relatives but that even those situations are not prohibited.

Dr. James stated that he was aware of the NYSP position pertaining to hiring and supervising relatives and that in response he deliberately created a staff level between himself and the NYSP support staff, which included Jared and Michelle, so that Jared and Michelle would not be under his direct supervision. The NYSP organizational chart, provided to us by Dr. James, reflected a staff level between Dr. James and the NYSP support staff. Ms. Burke told us that she was aware that Dr. James had created an intermediate staff level so that he would not be in a direct supervisory relationship over his son and daughter.

It would appear that if Dr. Smith had questions about nepotism, he should have contacted the NYSP national staff to resolve the matter. Moreover, it would appear that Dr. Smith's prior experience as NYSP Director at Fisk University would have acquainted him with the NYSP position pertaining to the hiring and supervision of relatives.

Issue No. 5: NYSP Staff Double Dipped by Working for Both TSU and NYSP at the Same Time

Dr. Smith stated his concern that Dr. James and other NYSP staff were double dipping because both TSU and the NYSP simultaneously employed them.

Based on presently available information, Dr. James and other NYSP staff did not double dip when both TSU and the NYSP simultaneously employed them. Tennessee Board of Regents (TBR) and TSU policies and procedures permit outside employment as long as such employment does not interfere with the employee's regular job duties and is disclosed and approved in advance by appropriate supervisors. In addition, TSU employees who engage in additional work must attest that in the event regular work-time is interrupted in the fulfillment of outside employment, annual leave will be requested, as necessary. For the summer 2000 NYSP program, ten TSU staff, including Dr. James, worked in the NYSP. We determined that all ten

TSU staff were in compliance with TBR and TSU policies and procedures relating to outside employment, extra service pay, and extra compensation limits.

We examined the documentation related to Dr. James' regular and outside employment, including his regular full-time TSU employment contract, notices of summer appointment, addendum to summer contracts, extra service pay action forms, extra service pay verification of additional work forms, and payroll information. Those documents disclose that in 2000 Dr. James worked for TSU under a nine-month academic contract. Dr. James also signed contracts for summer session instructor, NYSP Activity Director, and USDA food monitor. Dr. James' extra service pay action forms for his NYSP and USDA work were signed as approved by his Department Head or Director, his Vice President or Dean, the Director of Finance and Accounting, and the President. His supervisor signed Dr. James' verification of additional work forms.

TSU's "extra service pay action form" is used to authorize a TSU employee to engage in outside employment. The form contains a description of the service to be performed, the time period, the rate of pay and total pay, the source of funds, and signature lines for approving authorities. TSU's "verification of additional work form" is used to indicate the employee's duties, the name of the grant or research project, the total compensation, and the proposed work schedule. In addition, the employee's signature signifies that the outside employment will not interfere with his or her regularly assigned TSU job duties.

According to TBR Policy 5:01:05:00, *Outside Employment and Extra Compensation*, outside employment is permitted as long as it does not interfere with the employee's regular job duties. This policy is reiterated in TSU Policy 6.26, *Outside Employment*. For each year reviewed, Dr. James' summer employment records contained a statement signed by Dr. James stating that his duties with the NYSP would not interfere with his regular job duties at TSU.

Dr. James stated that he was not aware of any double dipping by TSU employees through their work for the NYSP. To his knowledge, all TSU employees had completed the required forms and had obtained the appropriate authorizing signatures for their NYSP work. He further stated that TSU would not pay TSU employees for their NYSP work unless such documentation had been completed.

Examination of the 2000 NYSP Schedule of Staff Members Paid by Grant Funds disclosed that nine additional TSU employees also worked for the NYSP. Their NYSP services included duties as project aides, auxiliary staff, professional staff, and support staff. We obtained summer employment records for each of the nine TSU employees. TSU's Human Resource staff located the required signed forms for six of the nine employees but could not locate the forms for the remaining three employees. However, Ms. Linda Spears, TSU's Human Resources Director, noted that for those three employees, payment would not have been authorized unless the forms had been provided, and she indicated that she thought the forms had been misfiled after the payroll payments had been authorized.

We also reviewed outside employment payments to Dr. James and the other nine TSU employees to determine whether those payments were in compliance with TBR policies with

reference to limits on extra compensation. Dr. James' total compensation was within the extra comp limit for the academic year, including summer sessions and NYSP. The total compensation for each of the nine other TSU employees was also within the TBR policy limit.

It would appear that if Dr. Smith had concerns about the appropriateness of the compensation for TSU employees who also worked for the NYSP, he should have expressed his concerns to appropriate TSU officials and should have ensured that his concerns were promptly resolved.

Issue No. 6: Dr. James Failed to Provide Dr. Smith With Requested Information

Dr. Smith stated that he asked Dr. James in writing for a complete account of the NYSP participants, staffing, budget, revenues, and expenditures. Dr. Smith further stated that within half a day, he received a telephone call from Dr. Hefner asking him, "What's this all about?" and that he never received any information about the NYSP from Dr. James. Dr. Smith characterized this as an attempt to undermine his authority as Athletics Director.

Based on presently available information, Dr. James responded promptly and completely to Dr. Smith's request for information about the NYSP.

We reviewed a copy of Dr. Smith's letter to Dr. James, dated January 24, 2000. In his letter, Dr. Smith stated,

This correspondence is to request a list of all funds (state, federal or other funds) that the University is receiving for sponsoring the National Youth Sports Program. In view of the fact that I am ultimately responsible for the National Youth Sports program, I am requesting this information.

Dr. Smith specifically requested the following information: (1) the National Youth Sports Program budget for fiscal year 1999/2000; (2) a list of personnel with salary; (3) a list of activities being offered; (4) a list of participants in each activity; (5) a list of guest speakers and amount being paid; (6) the actual expenditures as of 1/24/00; and (7) the balance as of 1/24/00. Dr. Smith noted that he had directed a National Youth Sports Program while at Fisk University, and he offered to assist Dr. James in any way. Dr. Smith copied his letter to Dr. Hefner and Dr. Everette Freeman, Dr. Hefner's Executive Assistant.

When we interviewed Dr. James specifically about this issue, he confirmed that Dr. Smith had asked him for NYSP information in writing. Dr. James stated that he responded promptly to Dr. Smith's request for information. In support of his statement, Dr. James provided us a copy of his February 1, 2000, letter to Dr. Smith. In his letter, Dr. James stated,

This correspondence is referencing your memo dated January 24, 2000. Enclosed you will find the materials directly related to National Youth Sports Program. All of the information you requested is contained within.

Dr. James indicated in his letter that Dr. Smith's experience as National Youth Sports Program Director at Fisk University was invaluable and stated that he looked forward to working with Dr. Smith. Dr. James included as attachments the following information: (1) TSU's 1999 NYSP Final Financial Report; (2) the 1999 Project Visitation Report; (3) the 1999 NYSP Evaluation Narrative Report; (4) a letter from Ed Thiebe, National Program Director (2000); and (5) the 2000 State Coordinator Confirmation Letter. Like Dr. Smith, Dr. James copied his letter to Dr. Hefner and Dr. Freeman. Dr. James stated that he personally delivered his response to Dr. Smith's office and that he did not hear from Dr. Smith again about his information request.

Based on presently available information, Dr. Smith's concern that he did not receive the requested NYSP information from Dr. James appears to be without merit.

TIGER PRIDE ACCOUNT

Dr. Smith stated that the NCAA (National Collegiate Athletics Association) instructed TSU to close the Tiger Pride bank account but that the bank account was still open, and thus TSU was in violation of a specific NCAA directive. According to Mr. Clinton Gray, a Nashville businessman and Tiger Pride account signatory, Tiger Pride was set up as an Athletics booster club to handle concessions. As support for his statement that the Tiger Pride account had not been closed as required, Dr. Smith provided us a bank account statement for an account named "Tiger Pride Athletics Association" at Citizens Bank on 1917 Heiman Street in Nashville, Tennessee. The bank statement was for the period March 24, 1999, through April 27, 1999.

According to the bank statement provided by Dr. Smith, the beginning balance on March 23 was \$43.76. One deposit of \$2,621.00 was made on April 8, and one withdrawal of \$2,664.76 occurred on April 9. Thus, the ending balance on April 27 was zero.

Dr. Smith also provided us a copy of an April 9 check for \$2,664.76 payable from the Tiger Pride Athletics Association to Citizens Bank, and a copy of an April 9 Citizens Bank Cashier's Check for \$2,664.76 payable to the TSU Foundation. Based on documentation provided by Ms. Delorse Lewis, the TSU Foundation Director, the April 9 Citizens Bank Cashier's Check for \$2,664.76 from the Tiger Pride Athletics Association to the TSU Foundation was receipted by the TSU Foundation on May 4, 1999, and was deposited into the Athletics Administration Foundation account.

We contacted Citizens Bank to determine the status of the Tiger Pride Athletics Association account. By letter dated April 25, 2002, a bank representative responded that the Tiger Pride Athletics Association account had been closed on April 9, 1999.

Because Mr. Clinton Gray was the signatory on the April 9 check for \$2,664.76, we contacted him about the Tiger Pride account. Mr. Gray stated that he closed the account and transferred the full account balance by cashier's check to the TSU Foundation because he understood that the NCAA had directed TSU to close the Tiger Pride account.

We attempted to confirm the NCAA directive to TSU. TSU staff could not locate any document that contained a written NCAA directive to TSU to close the Tiger Pride account.

However, an April 8, 1999, letter from TSU's Compliance Coordinator to the NCAA stated that TSU itself had determined that the Tiger Pride Athletics Association, as constituted, violated NCAA bylaws, and, as a result, had been dissolved. By letter dated September 17, 1999, an NCAA Enforcement Representative responded that based on the information submitted by TSU, it did not appear that a violation had occurred and that no further action by the NCAA was warranted at that time.

Based on presently available information, the evidence provided to us by Dr. Smith to show that the Tiger Pride account was still open was in fact the record of the transactions to close the account. In addition, we received confirmation from the bank that the account had been closed on April 9, 1999, the same day as the last transaction. Moreover, based on written correspondence, the NCAA deemed the actions taken by TSU to have been appropriate.

Based on the documents in his possession, Dr. Smith could have surmised that the transactions in question were related to closing the Tiger Pride account. To determine the account's status, Dr. Smith could have inquired by contacting TSU's Compliance Coordinator, who was an Athletics Department staff member. Dr. Smith also could have contacted the account signatory, Mr. Gray. In this situation, failure to make reasonable inquiry resulted in an unsupported allegation.

TRANSFER OF FUNDS FROM THE ATHLETICS DEPARTMENT TO THE PRESIDENT'S OFFICE

Dr. Smith stated that TSU's Budget and Fiscal Planning Office had improperly transferred \$32,190 from the Football Events account to the President's Events account. Therefore, funds which should have been available to the Athletics Department were not available. Dr. Smith also stated that no information was available as to how the funds were used after they were transferred to the President's Events account.

We reviewed documentation provided by TSU's Business Office and determined that a transfer voucher was executed on July 21, 2000, for \$32,190. Dr. Hefner and Mr. Bob Hughes, at that time the Director of TSU's Budget and Fiscal Planning Office, signed the transfer voucher, which resulted in the transfer of \$32,190 from the Football Events account to the President's Events account.

According to Mr. Hughes, he processed a budget revision, which was signed by Dr. Hefner, to revise the Athletics Department budget in July 2000 to include \$32,190 in expenditures and \$32,190 in matching revenues. Mr. Hughes stated that the reason for these adjustments was that the university planned various activities associated with the John Merritt Classic to be coordinated by Dr. Everette Freeman, the Executive Assistant to Dr. Hefner. The estimated cost of these activities was \$32,190. The expectations were that the activities would increase attendance at the football game and that the increased attendance would translate into increased revenues through ticket sales.

Mr. Hughes explained that from an accounting and budgetary standpoint, it made sense to show the expected increase in revenues and the associated expenditures, which contributed to the

increased revenues, in the Athletics Department's budget. According to Mr. Hughes, since the effect of the revision on the Athletics Department's budget was zero (i.e., the increase in revenues matched the increase in expenditures), he did not discuss the matter with any Athletics Department staff. In addition, Mr. Hughes stated that the budgetary revisions and the related transfer voucher were discussed with Mr. Harkleroad, TSU's Vice President of Business and Finance, and with Dr. Hefner, TSU's President, and the rationale behind the budgetary revisions and the transfer voucher was explained to them before the adjustments were made.

At the same time that the budgetary adjustments were made, Dr. Hefner authorized the transfer voucher, which charged \$32,190 to the Football Events account and credited the President's Events account with \$32,190. The transfers enabled Dr. Freeman to authorize purchase requisitions from the President's Events account for the additional activities related to the John Merritt Classic. As expenditures were incurred, the \$32,190 credit was reduced. Mr. Hughes stated that when Dr. Smith, the Athletics Director; and Ms. London, the Assistant to the Athletics Director, questioned the budgetary revisions and the transfer, he personally explained to them the transactions and their rationale. Mr. Hughes said that Dr. Smith and Ms. London appeared to understand the transactions and their purpose but voiced dissatisfaction in that they were not informed of the changes in advance.

According to information provided by TSU, the funds were used in the President's Events account to pay additional costs associated with the 2000 John Merritt Classic, including transportation; hotel fees; signage; radio advertisements; receptions and banquets; sound equipment; entertainment; rental of tents, chairs, and tables; fundraising expenses; and golf tournament expenses. A document provided to us by Dr. Smith showed the uses of the funds by item and dollar amount. The document had been included as an attachment to a memo regarding the Football Events account dated December 20, 2000, from Ms. London to Dr. Smith. The document showed a balance of \$2,833.88. According to information provided by Mr. Hughes, the balance reverted to the university's general fund at fiscal year-end.

Based on presently available information, the transfers were appropriately authorized, and information regarding the uses of the funds after the transfers was available to Dr. Smith.

DR. SMITH'S CONCERNS ABOUT KICKBACKS

Dr. Smith raised a number of concerns related to the possibility that kickbacks had been paid to Dr. Hefner, Mr. Harkleroad, Mr. Hughes, and Dr. James. Dr. Smith specifically identified the Summitt Management Corporation, the ARAMARK Corporation, the Coca-Cola Company, and Cumberland Stadium LP (Adelphia Coliseum). He initially identified Tom Jackson & Associates as a potential source of kickbacks but later retracted those statements.

Based on presently available information, Dr. Smith's concerns were based on his dissatisfaction with contract terms and conditions, his dissatisfaction with vendor performance, secondhand information, insufficient information, and speculation. Dr. Smith's concerns related to Summitt Management Corporation, ARAMARK Corporation, and Tom Jackson & Associates have been addressed in separate sections.

It is one matter to point out that in one's view the contract terms and conditions are disadvantageous to the university. It is quite another matter to speculate that because, in one's view, the contract terms and conditions are disadvantageous, it is possible that certain university officials received kickbacks from the companies in question. Based on our interviews with Dr. Smith, this second type of reasoning appeared to be the basis for several of his concerns. Although individuals obviously can speculate about what they believe are the motives of decision-makers related to what they perceive to be disadvantageous contract terms and conditions, such speculation, without relevant, reliable evidence, does not provide predication, in general, for further audit inquiry.

When we attempted to obtain firsthand information by contacting Dr. Smith's source relating to the Coca-Cola Company, the individual confirmed having spoken with Dr. Smith but declined to provide us the basis for such statements or any other information. We also examined Dr. Smith's concerns relating to Adelphia Coliseum and determined that his issue concerning lack of parking revenue was based on his insufficient understanding of parking-related financial information. Dr. Smith's issues pertaining to the Coca-Cola Company and Adelphia Coliseum are addressed below.

The Coca-Cola Company

Dr. Smith stated his concern that Coca-Cola paid Dr. Hefner a \$125,000 kickback to obtain the TSU contract instead of Pepsi. Dr. Smith stated that he based his concern on information provided to him by another individual. Dr. Smith provided us the name of his source. In a subsequent interview, Dr. Smith stated that a Coca-Cola employee had told his informant that Coca-Cola gave \$125,000 to either Dr. Hefner or TSU to sign the contract.

We contacted Dr. Smith's source, who stated that the information came from someone else. However, the informant did not want to provide us with the name of the other person or to provide any details of their conversations. Dr. Smith's source agreed to contact the person and, if the person so desired, ask the person to contact us. As of the date of this report, no one had contacted us, and no further information regarding the alleged payment had been provided to us.

We requested all agreements or contracts between TSU and Coca-Cola from TSU's Purchasing Department. The Purchasing Department provided us 19 agreements between the Coca-Cola Bottling Co. Consolidated and TSU for the period July 1989 through June 2002. None of the agreements, including those executed during Dr. Smith's tenure as TSU's Athletics Director, contained any provisions for inducements, incentives, or signing bonuses to be paid to Dr. Hefner, any other TSU employee, or TSU.

We contacted Mr. Keith Burnette, Director of On-Premises Sales for Coca-Cola Bottling Company Consolidated in Brentwood, Tennessee, and asked him to provide our office with details regarding any benefits, gratuities, gifts, or items of value provided to Dr. Hefner, to members of Dr. Hefner's immediate family, or to any other TSU officials or staff. Mr. Burnette responded by letter on January 30, 2004, that no such items had been provided to those individuals.

Because Dr. Smith did not provide any other information related to kickbacks from Coca-Cola, his concern could not be substantiated.

Adelphia Coliseum

Dr. Smith stated his concern that Adelphia Coliseum paid Dr. Hefner and Mr. Harkleroad kickbacks because he did not see parking revenues for football games played at Adelphia in TSU's financial records.

We requested and received the settlement schedules prepared by Adelphia from TSU's Business Office. We also obtained TSU's financial summaries and financial recaps of TSU football games at Adelphia. The sources of revenue for Adelphia were parking fees, concession sales, and ticket sales. Adelphia incurred expenses for staff, scoreboards, setup costs, cleanup and trash removal, sound system, insurance, utilities, parking, and elevator and escalator services.

The Adelphia settlement schedules showed revenues and expenses and the net amount (positive or negative) after expenses were subtracted from revenues. If revenues exceeded expenses, the net amount would be remitted to TSU. However, if expenses exceeded revenues, TSU would be responsible for paying Adelphia the amount due. As a result, there were not separate, clearly identifiable checks from Adelphia to TSU for parking revenues.

Based on Adelphia's settlement schedules, Adelphia's parking revenues due TSU for the 2000 and 2001 fiscal years were \$20,623.23 and \$10,671.47, respectively. In fiscal year 2000, Adelphia's total revenues exceeded Adelphia's total expenses, and Adelphia owed TSU \$53,323.55. Adelphia paid TSU \$53,323.55 on March 27, 2000. In fiscal year 2001, Adelphia's total expenses exceeded Adelphia's total revenues, and TSU owed Adelphia \$23,277.16. TSU paid Adelphia \$23,277.16 by check on June 29, 2001. Dr. Smith signed both the financial recap for the 2000 season and the purchase requisition on April 9, 2001. The financial recap showed only total revenues and expenditures for each game; it did not show revenues and expenditures for individual areas such as parking. However, details on revenues and expenditures were readily available from TSU's Business Office.

It should be noted that TSU obtained other revenues related to university activities at Adelphia Coliseum through season ticket sales, individual game ticket sales, parking fees, and fund-raising. Therefore, based on consideration of all revenue for games played at Adelphia, TSU had net revenues of \$429,581.56 in 1999 and \$125,036.95 in 2000.

We contacted Mr. Steve Underwood, General Counsel for Tennessee Football, L.P. (operators of the Tennessee Titans) and Cumberland Stadium, L.P. (operators of Adelphia Coliseum), located in Houston, Texas, and asked him to provide our office with details regarding any benefits, gratuities, gifts, or items of value provided to Dr. Hefner, to members of Dr. Hefner's family, or to any other TSU officials or staff. Mr. Underwood responded by letter on January 27, 2004, and stated that the following items had been provided to Dr. Hefner, his family, or other TSU officials or staff:

- Dr. Hefner and his wife were guests of Mr. Bud Adams, owner of the Tennessee Titans, in his private suite for two games at Adelphia Coliseum.
- As part of TSU's relationship with Adelphia Coliseum, a suite is provided to TSU for its use at TSU and Tennessee Titans games.
- Dr. Hefner has received gift boxes from Mr. Adams and his wife at Christmas.
- Dr. Hefner's son, Chris Hefner, was employed in custodial services by Tennessee Football, LP, from August 23, 1999, until May 23, 2002.

Based on Mr. Underwood's response, these items appear to be incidental to TSU's relationship with Adelphia and do not appear to constitute an improper benefit, gratuity, gift, or item of value. According to TBR legal staff, the employment of Dr. Hefner's son by Tennessee Football, LP, did not violate TBR policy.

Based on presently available information, Dr. Smith did not understand Adelphia's method of accounting for revenues and expenses because he evidently drew the erroneous conclusion that TSU was not receiving parking revenues for football games played at Adelphia. Because Dr. Smith's concern about kickbacks was based on his misunderstanding, and he did not provide any other information related to kickbacks, his concern could not be substantiated.

Interviews With Dr. Hefner, Mr. Harkleroad, Mr. Hughes, and Dr. James Regarding Vendor Kickbacks

We interviewed the individuals identified by Dr. Smith as having possibly received kickbacks from vendors. These individuals included Dr. Hefner, TSU's President; Mr. Harkleroad, TSU's Vice President of Business and Finance; Mr. Hughes, TSU's Director of Business and Finance; and Dr. James, Assistant Professor of Health, Physical Education, and Recreation and director of TSU's NYSP program.

Dr. Hefner and Mr. Harkleroad both stated that they had received items of value from ARAMARK. This is addressed in a separate section above. Mr. Hughes and Dr. James both stated that they had never received anything of value from a vendor during their respective tenures at TSU.

Because Dr. Smith did not provide us with any additional information to substantiate his concerns regarding possible kickbacks, we regarded his concerns as unsubstantiated.

DR. SMITH'S CONCERNS REGARDING POSSIBLE THEFTS

Dr. Smith stated a number of concerns regarding possible theft of TSU funds and identified several individuals by name. Dr. Smith specifically named Dr. James Hefner, TSU's President; Ms. Teresa Phillips, TSU's then-Interim Athletics Director; Mr. Carl Pillow, TSU's Assistant Athletics Director for Operations; Mr. James Reese, TSU's Head Football Coach; Mr. Clinton Gray, a Nashville businessman; Ms. Edwina Hefner, wife of Dr. Hefner; Mr. Johnny

Franks, TSU's Associate Director of Athletics, Sports Information, and Marketing; and Ms. Rechelle Esaw, Ticket Office Cashier.

If Dr. Smith provided us information relating to possible theft of TSU funds, we interviewed current and former TSU staff and non-TSU individuals and examined relevant documentation. We also contacted Dr. Smith's sources when he identified them to us.

The informants were not able to provide any credible information about thefts such as documents evidencing thefts or firsthand knowledge of thefts. Based on presently available information, we did not find that individuals employed by or associated with TSU had misappropriated TSU funds.

Dr. Smith was particularly concerned about the possible theft of TSU funds from the Ticket Office because of the lack of effective internal controls. The internal control issues related to the Ticket Office have been addressed in detail above. As noted in the section "Ticket Office," both TSU's Department of Internal Audit and the Division of State Audit determined, based on presently available information, that there was no evidence of theft. However, both reviews determined that there were material internal control deficiencies in Ticket Office management, operations, and financial reporting. Because the Ticket Office is a part of the Athletics Department at TSU, Dr. Smith, in his role as Athletics Director, was responsible for the controls in the Ticket Office.

The other specific instances raised as concerns by Dr. Smith are addressed below.

1. Mr. Carl Pillow and Complimentary Tickets

Dr. Smith stated his concern that Mr. Carl Pillow, who for a time was responsible for the TSU Ticket Office as the Assistant Athletics Director for Operations, had stolen complimentary tickets and sold them on the street for personal gain. Mr. Pillow oversaw the Ticket Office during the summer and fall of 1999.

We asked Dr. Smith the basis for his concern, and he responded that his information was secondhand but that Mr. Pillow's purported illegal activity was widely known in the community. We asked Dr. Smith to contact his sources for more specific information because establishing such activity would require, in part, testimony from direct witnesses: individuals who had bought complimentary tickets from Mr. Pillow or who had witnessed such improper transactions.

On August 7, 2001, Dr. Smith called us with the name and telephone number of an individual who supposedly knew two other individuals who had purchased complimentary tickets from Mr. Pillow. On August 7, we called the individual identified by Dr. Smith. The informant stated that it was a known fact "on the street" that Mr. Pillow would sell complimentary tickets and pocket the money. The individual stated, "If you wanted tickets, you made a call. Mr. Pillow brought you the tickets. You paid him cash." The informant agreed to contact the two witnesses and call us if the witnesses were willing to provide any information.

As of the date of this report, we have not received any further information from Dr. Smith, the informant, or any other individuals related to this matter.

We interviewed Mr. Pillow on July 7, 2001, and asked him specifically whether he had ever sold complimentary tickets for personal gain. Mr. Pillow directly denied that he had ever taken complimentary tickets and sold them for personal gain. He also directly denied taking complimentary tickets and giving them away for free.

Based on presently available information, Dr. Smith's concern that Mr. Pillow sold complimentary tickets for personal gain could not be substantiated.

2. Engineering Professors and Student Checks

Dr. Smith stated his concern that several professors in the Engineering Department had stolen student checks and cashed them for personal gain. He indicated that the source of his information was several engineering students. Dr. Smith told us that he would talk to the students and see if they would come forward and provide documentation.

On June 18, 2001, Dr. Smith told us that one of the students was mailing him some documentation. On June 25, 2001, Dr. Smith indicated that he was going to talk to a professor in the Engineering Department about the matter. However, he could not recall the professor's name.

As of the date of this report, we have not received any further information from Dr. Smith, engineering students, engineering professors, or any other individuals related to this matter.

Based on presently available information, Dr. Smith's concern that some engineering professors had stolen student checks for personal gain could not be substantiated.

3. Ms. Rechelle Esaw and Ticket Office Funds

Dr. Smith stated his concern that Ms. Rechelle Esaw, a Ticket Office Cashier, may have stolen Ticket Office revenues because after she left TSU employment, she purchased brand new furniture for her apartment. Dr. Smith indicated his concern that Ms. Esaw had paid for her new furniture with cash from the Ticket Office. Dr. Smith stated that he heard about Ms. Esaw's furniture purchase from another individual. That individual stated to us that she had observed the new furniture purchased by Ms. Esaw.

Ms. Esaw left TSU employment in September 2001. She had been employed on a temporary basis as the Ticket Office Supervisor.

When we interviewed Ms. Esaw specifically about this matter, she directly denied that she had taken any money from the Ticket Office. She confirmed that she had recently purchased new furniture from Rooms To Go, a Nashville furniture store. She stated that she had not paid cash for the furniture but had purchased the furniture on credit, and she agreed to provide us

documentation. Ms. Esaw provided us a sales receipt from Rooms To Go that showed that, after a deposit, her purchases were on credit.

Based on presently available information, including our analysis of Ticket Office operations, Dr. Smith's concern that Ms. Esaw had misappropriated money from the Ticket Office and used that money to purchase new furniture for herself from Rooms To Go was not substantiated.

4. Ms. Teresa Phillips and Dr. Smith's Travel Advance Check

Dr. Smith stated that Ms. Teresa Phillips, at the time the Associate Athletics Director, had improperly taken his travel advance check, cashed it, and put the money into her personal bank account. Dr. Smith remembered the check amount as \$700. Dr. Smith stated that he had to ask Ms. Phillips several times to return the money and that she finally did so by check after a long period of time. He further stated that Ms. Phillips did not pay him the full amount of his travel advance check because she shorted him several cents.

We obtained a copy of the travel advance check in question from TSU. The check, in the amount of \$736.60, was dated September 22, 1999. The check was payable to "Smith, James" and it was apparently endorsed on the back by Dr. James Smith and Teresa L. Phillips.

When we presented Dr. Smith with a copy of the cancelled check, he confirmed that he had endorsed it. When we presented Ms. Phillips with the same copy, she stated that Dr. Smith had endorsed the check in her presence and that her signature on the back of the check was authentic.

Dr. Smith could recall few details related to the handling of his check. However, Ms. Phillips recalled the circumstances relating to the check in detail. Ms. Phillips stated that the check was a travel advance for a trip to Tucson, Arizona, made by both Dr. Smith and herself. She stated that Dr. Smith approached her and asked her to cash the check for him before the trip because he did not have a bank account and because he didn't have time to cash the check himself. Ms. Phillips further stated that she took the check to her credit union and that a credit union representative told her that she could deposit the check but not cash it. She stated that she therefore deposited the check into her credit union account, and immediately upon returning to the university, she informed Dr. Smith that she had deposited the check. She stated that Dr. Smith indicated that he didn't mind, and they planned for her to give him back the money after the trip. Ms. Phillips stated that several weeks after the trip to Tucson, Dr. Smith was preparing his travel claim and approached her about the travel advance check. Ms. Phillips stated that she immediately paid Dr. Smith the money.

Ms. Phillips provided us a copy of her personal check for \$736 payable to "Dr. James Smith" and dated October 11, 1999. The back of the check was endorsed with the name "James Smith."

Based on presently available information, we concluded that Dr. Smith approved Ms. Phillips' action in depositing his travel advance check into her account; that she paid him within

three weeks, not a long period of time later; and that she underpaid him by \$0.60. When we presented this information to Dr. Smith, he stated that he was satisfied with the explanation and had no further questions about the matter. He then stated that at that point he didn't think that anything wrong had happened in relationship to his \$736.60 travel advance check.

Obviously, if Dr. Smith had a concern about his travel advance check, he could have taken the same steps we did to resolve the matter: (1) obtain a copy of the front and back of the travel advance check from TSU's Business Office, (2) discuss the matter with Ms. Phillips, and (3) obtain a copy of her check to him. Since the two transactions in question occurred in September/October 1999, and Dr. Smith was TSU's Athletics Director until June 1, 2001, he had at least 19 months to research and resolve the matter.

5. Ms. Teresa Phillips and Reimbursement for Car Repair

Dr. Smith expressed concern over a car repair reimbursement in the amount of \$3,163.21 made to Ms. Teresa Phillips on March 7, 1997. Ms. Phillips was Interim Athletics Director at the time. An individual who pointed out the possible impropriety to Dr. Smith noted the reimbursement in Ms. Phillip's vendor account during a review of TSU's Financial Records System (FRS) reports.

Ms. Phillips' TSU vendor file showed a \$3,163.21 payment on March 7, 1997, for "Repair S1NT91." TSU's Business Office located the purchase order that matched the vendor payment. Dated March 7, 1997, the purchase order was issued to Dean's Body Shop, 1803 Buchanan Street, Nashville, Tennessee, for the "Repair of a state vehicle, lic. no. S1-NT91, 1995 Buick for the Safety and Security Department at Tennessee State University." The "total cost not to exceed" amount was \$3,163.21. However, TSU's vendor file for Dean & Sons' Body Shop did not show the payment for \$3,163.21.

We contacted Mr. Dean Stewart, the owner of Dean's Body Shop. Mr. Stewart reviewed his records and confirmed that his company had completed repair work on a 1995 Buick, license number S1-NT91, owned by TSU; had received payment from TSU in the amount of \$3,163.21; and had deposited the full amount in the company's bank account on March 10, 1997. Mr. Stewart provided us a copy of his bank statement, which confirmed the deposit of \$3,163.21 on March 10, 1997. TSU's Business Office provided us a copy of the \$3,163.21 check. The check, dated March 7, 1997, was made out to Dean's Body Shop as the payee. Mr. Stewart, not Ms. Phillips, endorsed the back of the check.

Based on presently available information, the inclusion of the car repair payment in TSU's vendor file for Ms. Phillips appeared to be the result of a coding error. The check was not made out to Ms. Phillips; Ms. Phillips did not receive, endorse, or deposit the check; and the repair was not made to Ms. Phillips' car. Since Dean's Body Shop completed the repair on a TSU vehicle and the payment clearly went to Dean's Body Shop, the most plausible explanation is human error. The payment should have been coded to TSU's vendor file for Dean's Body Shop. Therefore, Dr. Smith's concern that Ms. Phillips received TSU reimbursement for a personal car repair was not substantiated.

6. TSU's Reimbursement of Dr. Smith's Travel Claim

Dr. Smith stated his concern that TSU had not paid him for a January 2001 travel claim. Dr. Smith claimed that TSU owed him \$800. Later, Dr. Smith stated that he had received a TSU check for \$350, which was not the full amount due him.

We obtained Dr. Smith's travel claim in question from TSU's Business Office. Dated May 8, 2001, the travel claim pertained to Dr. Smith's travel to Florida on January 5-9, 2001. The total travel claim was for \$1,466.39. The travel claim showed two adjustments to the total: (1) a travel advance of \$895.94; and (2) airline tickets of \$199.50, which had been prepaid by TSU. The two deductions amounted to \$1,095.44. Thus, the amount due Dr. Smith was \$370.95: the \$1,466.39 total minus the deductions of \$1,095.44.

Dr. Smith signed the Travel Requisition, which contained the \$895.94 travel advance amount, and he also endorsed the TSU travel advance check for \$895.94. In addition, Dr. Smith signed his travel claim, which stated that the "Amount Due Employee" was \$370.95. (Dr. Smith's amount due on his travel claim was adjusted upward from \$360.45 to \$370.95 to reflect the appropriate meal allowance for one day.) It should be noted that Dr. Smith completed his travel claim nearly four months after his travel occurred, although both TBR and TSU policy require claims for reimbursement of travel expenses to be submitted no later than 30 days after completion of the travel.

When we showed the documents associated with his travel claim to Dr. Smith and walked him through the calculations, Dr. Smith stated that he had thought previously that he was short \$700 to \$1,000, but now he was satisfied with his travel claim payment. Dr. Smith deposited TSU's travel claim payment to him for \$370.95 on July 27, 2001.

Based on presently available information, Dr. Smith's concern that TSU had paid him less than he was due for his Florida travel claim was erroneous.

7. Golf Tournaments

Dr. Smith expressed concern that funds associated with golf tournaments sponsored by the Athletics Department, such as the James Reese Golf Tournaments and the Richard Dent Golf Tournaments, were being misappropriated by individuals involved with the tournaments. He said that he based his concern on the fact that he did not see the money being deposited into a TSU Foundation account. He also questioned one of the payments made to cover expenses for the 2000 Richard Dent Golf Tournament.

7A *James Reese Golf Tournaments*

The James Reese Golf Tournament is held in the spring as a fundraiser for TSU's football program. The tournament is named for TSU's current head football coach, Mr. James Reese. Mr. Reese, along with other members of the football coaching staff, is responsible for planning the tournament. The proceeds of the tournament are intended to be used for Athletics scholarships.

We examined revenues and expenses related to the two James Reese Golf Tournaments during Dr. Smith's tenure. Based on information received from TSU's Business Office, we noted deposits of entry fees, sponsorships, and donations totaling \$11,967.56 in 2000 and \$14,975.00 in 2001. The deposits were based on the sum of checks and cash for each year.

Mr. Reese stated that he provided all checks and cash to the Foundation. He further stated that he did not prepare a listing of amounts by participants, sponsors, and donors. However, Mr. Reese stated he and his staff logged each payment pursuant to TSU policy and provided the original of the log to the Foundation as required. For both years, deposits were made to a TSU Foundation account entitled "L.C. Cole Golf Tournament." The account was set up for the golf tournaments held by the prior head football coach, Mr. L.C. Cole, and still carried his name.

Based on our examination of TSU's Official Cash Receipts, the log of checks and cash received, and TSU financial reports, we determined that these documents reconciled without exception.

For the 2000 golf tournament, expenses exceeded revenues by \$1,949.35. For the 2001 golf tournament, expenses exceeded revenues by \$616.96. Expenses, including the excess over revenues, were paid from the "L.C. Cole Golf Tournament" Foundation account.

7B Richard Dent Golf Tournament

The Richard Dent Golf Tournament is held each fall as part of the John Merritt Classic. The tournament is named for Richard Dent, a former TSU football player who later played for the Chicago Bears. The Richard Dent Golf Tournament is a relatively new tournament in that it was initiated in 1999 as an activity event associated with the inaugural John Merritt Classic football game. The John Merritt Classic Committee plans the tournament, and the proceeds are intended to be used for Athletics scholarships.

Dr. Smith questioned a payment in the amount of \$6,253.04, which was used to cover some of the expenses associated with the 2000 Richard Dent Golf Tournament. He stated that participants were supposed to pay a fee, but because he did not see participant fees being credited to an Athletics Department account, he speculated that no money was receipted and no deposits occurred. He expressed concern that money that should have been collected was not collected.

We examined revenues and expenses related to the fall 2000 Richard Dent Golf Tournament about which Dr. Smith expressed concern. Unlike the James Reese Golf Tournament, there was no Foundation account for Richard Dent Golf Tournament revenues and expenses. Instead, all Richard Dent Golf Tournament revenues and expenses were recorded in the university's President's Events account.

Based on information received from TSU's Business Office, we noted deposits of entry fees, sponsorships, and donations totaling \$2,490 for the fall 2000 tournament. As with the James Reese Golf Tournament, the checks and cash received were logged. According to Mr.

Clinton Gray, a Nashville businessman and Chair of the John Merritt Classic Committee (Mr. Gray was not a TSU employee), Mr. Carl Pillow, Assistant Athletics Director, was responsible for receiving and depositing the money. Mr. Pillow stated he could not recall that a breakdown of revenues by participants, sponsors, and donors was prepared. He said that the cash, checks, and logs were provided to the Business Office for deposit.

Based on our examination of TSU's Official Cash Receipts, the log of checks and cash received, and TSU financial reports, we determined that these documents reconciled without exception.

For the fall 2000 Richard Dent Golf Tournament, expenses exceeded revenues by \$5,200.54. For the tournament, the costs not covered by entry fees, sponsorships, and donations were paid by TSU from the President's Events account.

The \$6,253.04 payment cited by Dr. Smith was an August 20, 2000, payment to Hermitage Golf Course for the entry fees and luncheon for participants in the September 1, 2000, Richard Dent Golf Tournament. The payment was made from the President's Events account. Since all revenues were deposited into the account, and all expenses were paid from that account, it would appear appropriate for the Hermitage Golf Course expenses to have been paid from the President's Events account. The only other expense related to the golf tournament was a payment, also from the President's Events account, of \$1,427.50 on August 28, 2000, to P.A.I.N. Enterprises LLC for prizes and awards for the tournament.

Conclusions Relating to the Golf Tournaments

Based on presently available information, entry fees, sponsorships, and donations were appropriately recorded and deposited for both the James Reese and Richard Dent Golf Tournaments. Receipts for the James Reese Golf Tournaments were deposited into a TSU Foundation account, while receipts for the Richard Dent Golf Tournament were deposited into the President's Events account. Expenses exceeded revenues for both the James Reese Golf Tournaments and the Richard Dent Golf Tournament. The costs not covered by entry fees, sponsorships, and donations were paid by either the Foundation or by TSU. Therefore, Dr. Smith's concern that funds associated with these golf tournaments were being misappropriated by individuals involved with the tournaments could not be substantiated.

8. Dr. Hefner and TSU Bookstore Funds

Dr. Smith also expressed his concern that Dr. Hefner was taking money from TSU's bookstore. He stated that the basis for his concern was that Mr. Gillette, the Bookstore Manager, told him that Dr. Hefner took money from the bookstore. During a subsequent interview, Dr. Smith indicated that during his tenure as Athletics Director, someone supposedly robbed the bookstore and took \$30,000. He said that the word around campus was that the \$30,000 shouldn't have been there; the robbery was a cover-up; and Dr. Hefner got the money.

We interviewed Mr. Steve Gillette, the only "Gillette" in TSU's employee directory, who stated that he was not the Bookstore Manager; rather, he was the Director of Campus Planning

and had no direct involvement with the bookstore. Mr. Gillette stated that he knew Dr. Smith but had minimal contact with him during his tenure at TSU. Mr. Gillette also stated that he had not witnessed Dr. Hefner removing funds from bookstore cash registers and had not made this statement to Dr. Smith or anyone else. Mr. Gillette stated that he did not know why Dr. Smith would make such a statement. He surmised that Dr. Smith might have confused him with Mr. Steve Treece, the Bookstore Manager, because their first names were the same. Follett Corporation operated the bookstore through a contract with TSU, and Mr. Treece was a Follett contract employee.

We interviewed Mr. Treece, the Bookstore Manager currently and during Dr. Smith's tenure, who stated that he had no knowledge of funds being removed from bookstore cash registers by any management-level university staff and had not made such a statement to Dr. Smith or anyone else. He also stated that Mr. Gillette had not made such a statement to him. Mr. Treece stated that he would prosecute, and has prosecuted, anyone who inappropriately removed funds from bookstore cash registers. Mr. Treece stated that Mr. Gillette came to the bookstore to buy snacks and to peruse magazines and was also present when construction projects were in progress in the bookstore because of his role as Director of Campus Planning. Mr. Gillette verified this. Mr. Treece stated that he knew Dr. Smith during his tenure at TSU and had encountered no problems with Dr. Smith or the Athletics Department

We again contacted Dr. Smith about his incorrect identification of the bookstore manager. During the interview, Dr. Smith substantially revised his statements to us. Dr. Smith stated that Gillette had not told him anything and further that the Bookstore Manager had never told him that Dr. Hefner took money from the bookstore. Dr. Smith stated that his information and the name "Gillette" were provided to him by another individual who had heard it from two other individuals. Dr. Smith declined to name his source. However, he stated that he would contact his informant and would ask the individual about contacting us. Dr. Smith also stated that he would try to obtain for us the names of the other two individuals, who had left Nashville. As of the date of this report, neither Dr. Smith's source, the other two individuals, nor any other individuals have contacted us about the bookstore issue. Based on presently available information, Dr. Smith's concern that Dr. Hefner was taking money from TSU's bookstore could not be substantiated.

With regard to Dr. Smith's concern that Dr. Hefner took \$30,000 from the bookstore and arranged a robbery as a cover, we reviewed the incident report filed with TSU's Security Office; the incident report filed with the Nashville Metro Police Department; the handwritten statements by Mr. Treece (the individual who was robbed) and two witnesses to the robbery; and Mr. Treece's affidavit for a warrant for the arrest of the robbery suspect, Mr. Andre Hicks. Dr. Smith had indicated to us that we should obtain the police reports as part of our review.

According to these documents, on December 6, 2000, Mr. Treece obtained \$30,000 in cash from a bank to have cash on hand to purchase used textbooks from students at the upcoming book buyback. As he was returning to the bookstore, a male wearing a ski mask met him at a TSU elevator. The individual pulled a gun, pushed Mr. Treece into the elevator, and punched the second floor button. The individual aimed the gun at Mr. Treece and pulled the trigger, but the gun failed to fire. The individual then took the money and fled. As Mr. Treece and a TSU

Security Officer chased the suspect, the individual pulled up his ski mask and looked back at them, which enabled Mr. Treece to identify him.

Because only bookstore employees would have known that Mr. Treece was carrying such a large amount of cash, Mr. Treece suspected that a bookstore employee had tipped off the robber. Subsequently, Mr. Hicks and his girlfriend Ms. Larita Lyons, who was a bookstore employee, were arrested. According to the final order documents obtained from the Davidson County Criminal Court Clerk, Mr. Hicks was tried by a jury in October 2002 and found guilty of aggravated assault and aggravated robbery. He was sentenced in December 2002 to 30 years in prison. Ms. Lyons was tried by a jury as Mr. Hicks' codefendant and found guilty of aggravated robbery. She was sentenced in December 2002 to five years' intensive probation. Mr. Treece stated that none of the bookstore's money was recovered.

Based on the documentation cited above, the loss of \$30,000 was attributed to an armed robbery, and the robbery was not a cover story. Therefore, Dr. Smith's concern was not substantiated.

9. Ms. Edwina Hefner's Travel Claims

Dr. Smith expressed his concern that TSU had improperly paid the travel expenses for Mrs. Edwina Hefner, Dr. Hefner's wife. Dr. Smith provided us with a printout from TSU's Financial Records System (FRS) that showed that TSU had paid \$4,605.23 in travel expenses for Mrs. Hefner for travel during the period December 13, 1993, through November 22, 2000. According to Dr. Smith, the printout was provided to him by an individual with access to FRS.

At our request, TSU's Department of Internal Audit provided us with documentation related to Mrs. Hefner's travel for calendar years 1999 and 2000. There were no travel claims for Mrs. Hefner for January 2001 through June 2001, which marked the end of Dr. Smith's employment at TSU. Overall, TSU paid \$2,159 for the trips. The travel dates and travel expenses were as follows: (1) July 26, 1999, for \$195; (2) February 6, 2000, for \$237; (3) February 17, 2000, for \$609; (4) April 30, 2000, for \$479; (5) September 27, 2000, for \$239; and (6) November 22, 2000, for \$400. For four of the six trips, Mrs. Hefner's travel expenses included both airfare and per diem; for the remaining two trips, Mrs. Hefner's travel expenses consisted of airfare only.

Associated with Mrs. Hefner's travel were six signed travel authorizations (the travel authorization form is entitled "Travel Requisition") and six travel claims. Dr. Hefner signed as the approving authority for all six travel authorizations and all six travel claims.

According to the travel authorization forms, Mrs. Hefner's travel was related to official university business. The official purposes for her trips were to (1) participate in the Christian A. Johnson Educational Leadership Seminar for College and University Presidents in Badford, Pennsylvania; (2) accompany Dr. Hefner to an Educational Leadership Conference in Sea Island, Georgia; (3) accompany Dr. Hefner and participate in a National Association for Equal Opportunity in Higher Education Conference in Washington, D.C.; (4) accompany Dr. Hefner to the Midwest Regional Annual Alumni Conference in St. Louis, Missouri; (5) accompany Dr.

Hefner on a New York alumni trip related to fundraising and recruiting; and (6) accompany Dr. Hefner to the annual meeting of the American Association of State Colleges and Universities in Phoenix, Arizona, and participate in spousal workshops.

We asked TBR Business and Finance staff to review Mrs. Hefner's travel paid by TSU. Ms. Lisa Hall, TBR's Assistant Director for Systemwide Financial Accounting, stated that TBR did not have a policy that specifically addressed travel of a President's spouse. Ms. Hall stated that Mrs. Hefner's travel was allowable because it had been paid with Foundation rather than institutional funds. Mrs. Hefner's travel claims were paid from a university-restricted account called the President's Allocation account. The source of funds for the account is unrestricted donations to the Foundation.

Ms. Hall stated that based on her review, the travel claims appeared to be legitimate claims in that the travel appeared to be for legitimate university purposes.

Ms. Delorse Lewis, then the Foundation's Director, confirmed that the Foundation was the source of all funds placed in the President's Allocation account. She also confirmed that the President's Allocation account was a restricted university account, which meant that the funds in the account could only be used for certain purposes. Ms. Lewis stated that annually the university would request an amount from the Foundation for the President's Allocation account through the university's budgetary process. The Foundation's Board of Directors would formally review the university's request and approve the transfer of funds. She further stated that the funds were to be used to pay for things that Dr. Hefner needed to do to promote the university but for which state funds could not be used. She identified such items as memberships, Dr. Hefner's travel, and Mrs. Hefner's travel. She said that Mrs. Hefner's travel would qualify only if her travel was university related. According to minutes of the Foundation's board of trustees, in October 1995, the board considered and approved the transfer of funds to the President's Allocation account specifically for Mrs. Hefner's travel.

We noted that five of the six travel authorizations were not approved in advance as required by TBR and TSU travel policies. Instead, the travel authorizations were approved the same day the travel claims were approved, after the travel had occurred. For the one remaining travel authorization, Dr. Hefner signed the form before the travel occurred.

Based on presently available information, because Mrs. Hefner's travel expenses were appropriately related to legitimate university purposes and they were paid in an appropriate manner, Dr. Smith's concern was unsubstantiated.

10. Mr. Johnny Franks and Corporate Sponsor Checks

Dr. Smith expressed his concern that Mr. Johnny Franks, TSU's Associate Director of Athletics, Sports Information, and Marketing, had instructed companies to make out their corporate sponsorship checks to Johnny Franks as the payee and that Mr. Franks had then cashed the checks and kept the money.

Mr. Franks was terminated by TSU effective May 10, 2001. In a termination letter dated May 10, 2001, Dr. Hefner, TSU's President, cited the reason for Mr. Franks' termination as failure to return to work after the expiration of a period of approved leave.

Dr. Smith stated that the basis for his concern was that Mr. Stinson stated that he had received a Shoney's check made out to Johnny Franks after Mr. Franks left TSU's employment. Mr. Stinson confirmed that he had received a Shoney's check made out to Johnny Franks and that he had returned the check to Shoney's and had obtained a new check from Shoney's made out to an Athletics account under the Foundation. Besides Shoney's, Dr. Smith and Mr. Stinson listed several other companies that could have provided corporate sponsorship checks made out to Johnny Franks, including Budweiser, Blue Cross Blue Shield, Uncle Bud's, Coca-Cola, and Access Med Plus.

Since both Dr. Smith and Mr. Stinson specifically mentioned a Shoney's check, we contacted the legal office of Shoney's in Nashville and requested a list of Shoney's checks to TSU for the period January 1, 1999, through July 30, 2001. We also asked for a list of all checks made out to Johnny Franks. The legal office provided us a list of four Shoney's checks to TSU totaling \$15,750. According to the list, the checks were made out to "TSU Department of Athletics." Based on information provided by TSU's Financial Records System, TSU received the entire \$15,750. One check for \$7,250 was deposited into an Athletics Department account called "Athletics Fundraising," while three checks for \$8,500 were deposited into a Foundation account called "Athletics Administration." Shoney's legal office stated that they found no record of any checks made out to Johnny Franks. As all the checks were accounted for and there was no record of any that were made out to Johnny Franks, we concluded that Mr. Franks had not misappropriated Shoney's checks to TSU.

Dr. Smith also focused on the checks from Budweiser. The local distributor for Anheuser-Busch located in Nashville is the Ajax Turner Company. We contacted Mr. Todd Williams, the Vice President of Ajax Turner, and requested a list of Ajax Turner checks to TSU for the period January 1, 1999, through July 30, 2001, as well as a list of all checks made out to Johnny Franks. Mr. Williams provided us a list of 10 Ajax Turner checks to TSU totaling \$16,970, and he also provided us faxed copies of the front and back of each check. Each check was made out to "Tennessee State University Department of Athletics Ticket Office" as the payee. Each check also included TSU's full official mailing address. Based on the Ajax Turner information, TSU received the entire \$16,970 because the back of each check showed a stamp that said "For Deposit Only - Tennessee State University" and included TSU's operating account number. In addition, each check was deposited with AmSouth Bank, TSU's bank. We confirmed that the account number on the back of each check corresponded to TSU's actual operating account number. Mr. John Batte, Controller of Ajax Turner Company, stated that they found no checks made out to Johnny Franks. As all the checks were accounted for and there was no record of any that were made out to Johnny Franks, we concluded that Mr. Franks had not misappropriated Ajax Turner checks to TSU.

In our interview with Mr. Franks, he stated that he had never received a check made to him or to any other individual from a corporate sponsor during his employment at TSU. Mr. Franks stated that, on occasion, a corporate sponsor would provide a check made to the university with the words "Attention Johnny Franks" on the face of the check, and his name

would appear on the check in this manner. Mr. Franks stated that he presented all checks that he received to either Athletics Department staff or to Business Office staff for deposit.

Because we confirmed that none of the Shoney's or Ajax Turner checks had been misappropriated, we did not extend our audit procedures to the other companies named by Dr. Smith and Mr. Stinson. Based on presently available information, the concern of Dr. Smith and Mr. Stinson that Mr. Franks had misappropriated corporate sponsorship checks was unsubstantiated.

11. Mt. Zion and Rental of Gentry Center

Dr. Smith expressed his concern that TSU was due funds as a result of its agreement with Mt. Zion Baptist Church (Mt. Zion). He stated that Mt. Zion paid TSU \$5,000 per week to use TSU's Gentry Center for Sunday worship services, but the Athletics Department did not receive the money.

According to Mt. Zion's Web site, in the mid-1990's, the church began to outgrow its facility on Jefferson Street in Nashville, Tennessee, where it had been holding services since 1866. In 1996, Mt. Zion began holding Sunday worship services at the World Baptist Center. In 2000, Mt. Zion approached TSU about holding Sunday worship services at the Gentry Center until its new facility on Old Hickory Boulevard was completed.

We examined the contractual agreements between TSU and Mt. Zion for Sunday services and the record of Mt. Zion's payments to TSU. The two agreements, dated May 2000 and August 2001, respectively, provided for Mt. Zion's use of the Gentry Center for the purpose of holding Sunday church services. The agreements covered the period from June 4, 2000, to October 14, 2001, a total of 72 Sundays. The fee per Sunday was \$1,900. The total value of the agreements for all 72 Sundays was \$136,800.

Pursuant to the agreements, Mt. Zion paid TSU \$126,200, as of January 31, 2003, which left an amount due of \$10,600. Mt. Zion's last check was written on August 17, 2001, and its payments to TSU were deposited into the university's account for the Gentry Center. The Gentry Center is under the Department of University Relations and Development, not the Athletics Department. We obtained copies of the front and back of all Mt. Zion checks to TSU. The checks were made out to TSU and were stamped on the back "For Deposit Only – Tennessee State University." In addition, all the stamped endorsements contained TSU's operating account number at the bank.

The Gentry Center billed Mt. Zion for a past-due amount of \$8,700 on June 26, 2002. Pursuant to the agreements, the past-due amount would have been \$10,600, but Mt. Zion did not hold church services in the Gentry Center for one of the contracted Sundays in July 2001, and therefore the total amount owed was reduced by the \$1,900 per-Sunday fee. According to Ms. Eunice Bell, TSU's Gentry Center Director, as of February 6, 2003, the amount owed to TSU by Mt. Zion had not been paid. Ms. Bell stated that she had not sent another bill to Mt. Zion but had spoken personally with Mt. Zion personnel on several occasions since June 2002. According to a memorandum to Ms. Bell from Elder K. Edwin Bryant at Mt. Zion, Mt. Zion personnel had researched the matter and determined that the invoiced amount of \$8,700 was not correct. Mt.

Zion calculated that the amount owed to TSU was \$4,900, and TSU agreed to this amount. However, the official cash receipt from the TSU bursar's office shows a deposit of only \$4,500, which was made on September 22, 2003. On February 25, 2004, TSU billed Mt. Zion for the balance due of \$400.

Based on presently available information, Mt. Zion's payments to TSU were appropriately deposited into the university's account for the Gentry Center. Because the Gentry Center account was not under the Athletics Department, Dr. Smith would not have seen the Mt. Zion revenue when he reviewed the Athletics Department accounts. However, Dr. Smith could have requested his fiscal staff to review payments made by Mt. Zion to TSU. Based on that information, he would have been able to determine that Mt. Zion had made payments to TSU and that the Mt. Zion revenues were deposited into the Gentry Center account. Dr. Smith's concern that the Mt. Zion payments may have been misappropriated was unsubstantiated.

12. Mr. Clinton Gray and Concessions

Dr. Smith stated his concerns that Mr. Clinton Gray, a Nashville businessman, operated concessions at TSU games without a contract with TSU and that Mr. Gray misappropriated concession revenues. Dr. Smith stated that he based his concern on the facts that there was no contract between TSU and Mr. Gray for concessions and that TSU's financial records did not show any concession revenues, except for a one-time payment of \$10,000. Dr. Smith indicated that the small amount of concession revenues led him to question whether all such revenues were being submitted to TSU.

Dr. Smith stated that when he became Athletics Director (on August 30, 1999), he discovered that Mr. Gray was in charge of concessions without a contract with TSU. He further stated that, after discussing the matter with Mr. Battle, TSU's Purchasing Director, he ended Mr. Gray's involvement with concessions and arranged for concessions to be operated by the ARAMARK Corporation.

Mr. Battle stated that he did not recall any conversations between himself and Dr. Smith about concessions, Mr. Gray, or ARAMARK. He stated that he would have agreed with Dr. Smith that ARAMARK should operate concessions instead of Mr. Gray because ARAMARK managed the university's food services and thus could do a better job than an individual. Mr. Battle stated that he knew at the time that Mr. Gray had some involvement with concessions but that he did not know the nature of Mr. Gray's involvement.

When we interviewed Mr. Gray specifically about concessions, he stated that around 1994, he participated in a meeting with TSU officials regarding whether the university itself could operate concessions instead of an outside contractor. Mr. Gray said that some time later, Mr. Howard Gentry, who was then the Athletics Director, asked him if he would be interested in concessions at TSU's home football and basketball games. According to Mr. Gray, he owns Gray's Service Company, which provides janitorial and lawn-mowing services.

Mr. Gentry stated that he could recall few details about events eight years ago. As the Athletics Director at that time, he was involved with arranging for concessions, but he said he couldn't remember how Mr. Gray's name was brought to his attention as a candidate for

handling concessions. Mr. Gentry stated that he could not recall who approached Mr. Gray, but he considered Mr. Gray a logical choice because he knew that Mr. Gray had handled concessions at other places.

Mr. Gray stated that he operated concessions without a contract with TSU; instead, he was paid by TSU as a game-day worker on a per-game basis. He said that he was paid more than a typical game-day worker, about \$9 to \$10 per hour, whereas other game-day workers were paid \$6 to \$8 per hour. He said that he was not under contract as a game-day worker. Mr. Gray also stated that he hired concession stand workers from the local churches and that they also were paid as game-day workers.

Mr. Gray said that he purchased his supplies through TSU's open purchase orders with Robert Orr-Sysco and Coca-Cola Bottling Company Consolidated (Coca-Cola). According to TBR Policy 4:02:10:00, Section II-B, *Purchasing Policy and Procedures*, certain services or combinations of goods and services, such as charter services, may be procured based on an Invitation to Bid if the end product is more important than the service that goes toward its production or where the vendor has little discretion in determining its actual content or form. A purchase order may be used to finalize the purchase. The open purchase orders with Robert Orr-Sysco and Coca-Cola were obtained in this manner.

In explanation, Mr. Gray said that he submitted his supply lists to Mr. Carl Pillow, at that time the TSU Ticket Office Manager, and that Mr. Pillow would fill out and submit the required purchase requisitions to obtain the supplies. He said that he ordered his supplies on an as-needed basis to replenish his supplies to levels that he determined necessary and that the levels varied by event. For example, if the number of M&M bags should be 30 and he counted 20 after an event, he would order 10 more to bring his supply back to 30. He said that he would store nonperishable goods in the concession stand at TSU and that he would place perishable goods, such as hotdogs, in the Gentry Center refrigerator. Mr. Gray said that he did not reconcile sales revenues with supplies used.

Mr. Gray stated that he would obtain a change fund from the Business Office and that he signed for the change fund. He said that all sales were for cash only. He said that at the end of the event, he would turn all the money over to a Ticket Office employee, whom he identified as Mr. Art Wilcox. He said that Mr. Wilcox would deposit the money with TSU's Business Office. If the Business Office was not open, the money would be placed in the Ticket Office safe. Mr. Gray said that he did not have the combination to the safe. He said that he counted the cash, but he did not document his cash count because the Business Office did not require him to do so. He also stated that Mr. Wilcox did not provide him a receipt. Further, Mr. Gray said that he did not reconcile his cash counts with university financial records of deposits; thus, he was not in a position to verify that his cash counts and the deposits matched. With regard to expenses and revenues, Mr. Gray stated that he did not know which account paid for the concession supplies or to which account the revenues were deposited.

With respect to his removal from concessions, Mr. Gray stated that he found out that he had been removed from responsibility for concessions when he arrived at an exhibition basketball game, found that ARAMARK was operating the concessions, and was told by Ms. Phillips, then an Associate Athletics Director under Dr. Smith, that Dr. Smith had replaced him

with ARAMARK. Mr. Gray said that he had not intended to operate concessions at the exhibition but was attending the basketball game as an observer. He stated that no one in the Athletics Department ever contacted him later about his removal from concessions and also that he did not question Dr. Smith's decision. According to Mr. Gray, he was removed from concessions about four months after Dr. Smith became Athletics Director on August 30, 1999.

Ms. Phillips confirmed that she was the one who informed Mr. Gray that he would no longer be providing concessions services for TSU. She said that she knew from a staff meeting that Dr. Smith intended to go in a different direction with concessions, a direction that did not include Mr. Gray. She also stated that she was not aware that Dr. Smith had arranged for ARAMARK to provide concessions services until the basketball game in question.

Mr. Pillow confirmed that at the outset, Mr. Gray would submit supply lists to him and that he would order the supplies from Robert Orr-Sysco and Coca-Cola pursuant to TSU's blanket purchase orders with those companies. He said that later that responsibility was transferred to Mr. Mike Covington, the Assistant to the TSU Budget and Finance Director. Mr. Pillow stated that because of the passage of time, he no longer recalled the account used to record expenses and also that he did not know to which account revenues were deposited because he did not make the deposits. He said that the Ticket Office employee who normally received the concessions money from Mr. Gray was Mr. Art Wilcox, who was no longer a TSU employee and had been gone for quite a while. Mr. Pillow further stated that he did not perform any reconciliation that determined food ordered, sold, and remaining in stock, and he doubted that anyone else performed such reconciliations.

Mr. Battle stated that the ARAMARK contracts allowed TSU to utilize ARAMARK for concessions. In addition, TSU's contracts with Adelphia provided for Adelphia to operate concessions and remit a percentage of concession sales to TSU. Starting with the 1999 football season, Adelphia operated concessions at TSU's home football games. The contract with Adelphia was executed in May 1997, before the Coliseum was completed, and more than two years before Dr. Smith was hired as Athletics Director.

We examined the university account identified by Dr. Smith as the concessions account for the period July 1, 1998, through June 30, 1999 (the fiscal year immediately prior to Dr. Smith's tenure). The account identified by Dr. Smith is a subsidiary ledger account that records only the expenditures for concessions. Therefore, to determine all transactions related to concessions, we examined the general ledger account, which records both revenues and expenditures. The general ledger account showed net revenues (revenues minus expenditures) for fiscal year 1999 of \$10,556.74. Total revenues were \$38,999.54, and total expenditures were \$28,442.80.

Because no inventory records were kept on items purchased, sold, and remaining, we could not reconcile items sold to sales revenues to determine whether all sales revenues were properly deposited into the university's account. For the 1999-2000 football season, Adelphia, not Mr. Gray, operated concessions for home football games. Dr. Smith removed Mr. Gray from responsibility for concessions at the start of 1999-2000 basketball season.

In his first interview, Dr. Smith stated that TSU had a secret bank account with thousands of dollars in it. When we questioned him further, he stated that the secret bank account related to “missing concessions money.” We determined that appropriate internal controls were not in place in the concessions area when Mr. Gray operated it. However, no evidence was brought to our attention that would indicate that concessions money was misappropriated and placed in a secret bank account, nor did Dr. Smith provide any additional information, other than his concern that concessions revenues were not an adequate amount.

Based on presently available information, Dr. Smith raised a concern about the concessions area that he resolved at the start of his tenure as Athletics Director. After Dr. Smith became Athletics Director, the concessions were structured through contracts with ARAMARK and Adelphia. However, before Dr. Smith’s tenure, the concessions area was not structured by a contract. Instead, a private businessman, paid on a per-game basis as a game-day worker, ordered supplies through TSU open purchase orders with Robert Orr-Sysco and Coca-Cola, operated concessions at home football and basketball games, and submitted sales revenues through a TSU Ticket Office employee to TSU’s Business Office. We determined that there were internal control weaknesses in that earlier system in that no reconciliations were performed to ensure that the supplies ordered were accounted for or that sales revenues matched supplies used. We could not substantiate Dr. Smith’s concerns that Mr. Gray had misappropriated concessions revenues or that misappropriated concessions revenues had been placed in a secret bank account.

13. Midnight Madness, Marcus Robertson Gala, and Step Shows

Dr. Smith stated his concern that the monies collected for various Athletics booster events held in the Gentry Center, such as Midnight Madness, the Marcus Robertson Gala, and the Step Shows, had been misappropriated because roll tickets were used, no reconciliations were prepared, and no revenues were deposited into TSU accounts.

Midnight Madness

We discussed these events with Mr. Aaron Jerome, TSU’s Ticket Office Manager, who stated that Midnight Madness events were free, and thus no tickets were sold, no revenues were collected, and no reconciliations needed to be performed. According to Mr. Jerome, Midnight Madness involved a scrimmage among the members of TSU’s basketball team. Ms. Bell, TSU’s Gentry Center Director, confirmed that the Midnight Madness events were free events.

Marcus Robertson Gala

Ms. Bell stated that the Marcus Robertson Gala was hosted one time by Marcus Robertson Home Team Sports Marketing as a university fund-raiser, and admission was through tickets purchased from Ticketmaster. Ms. Bell provided documentation for the April 23, 2001, Marcus Robertson Gala that showed ticket revenues of \$723.00 and Ticketmaster expenses of \$201.20, resulting in a Ticketmaster payment to TSU of the net amount of \$521.80. We observed a copy of the check from Ticketmaster to TSU for \$521.80, dated April 26, 2001. The check was endorsed to TSU’s account at AmSouth Bank. According to the receipt from the Bursar’s Office, the funds were credited to the Ticket Manager’s account. Ms. Bell stated that

she used these funds for clean-up associated with the event. Ms. Bell further stated that no tickets were sold at TSU for the Gala and that the only money she received was the check from Ticketmaster. She provided us Ticketmaster's reconciliation of tickets sold with ticket sales revenue for the event.

Step Shows

With respect to the Step Show events, Mr. Jerome stated that such shows were sponsored by various individuals and were structured by contracts. According to a March 22, 2002, article in the *Kansas City Star*, stepping is a complex and competitive high-energy dance genre created by Black fraternities and sororities. The article quotes an expert in stepping as stating that stepping has evolved to incorporate many cultural influences, including military drilling, Black social dances, African-American children's games, cheerleading, vocal choreography, martial arts, the precision marching of historically Black college bands, South African "gumboot" dancing, music video, acrobatics, and tap dancing.

Mr. Jerome stated that the tickets for the Step Shows were sold through Ticketmaster and that ticket buyers could buy their tickets from TSU's Ticket Office as well as other Ticketmaster outlets. Mr. Jerome said that the contract would call for the sponsor to pay a fee to rent the Gentry Center and that the sponsor would pay a deposit on the rent prior to the event. Mr. Jerome stated that he prepared a reconciliation for each event that matched ticket sales revenues as shown on the Ticketmaster reports with TSU's Business Office deposits. Mr. Jerome also stated that he prepared a "Night of Show Settlement Schedule," which listed the total amount collected that day, expenses deducted from the total amount collected, and the resulting total amount due the promoter. According to Mr. Jerome, he would provide the amount due to the promoter in cash.

We reviewed Mr. Jerome's "Night of Show Settlement Schedule" for the March 16, 2002, Step Show. The settlement schedule showed the total amount collected the night of the show, deductions for ticket manager and building fees, and the amount due the promoter. Regarding ticket manager fees, Gentry Center staff would arrange payment to Mr. Jerome for his services, which were outside his normal job duties. As noted on the settlement schedule, Mr. Jerome provided the net revenues (total revenues minus expenses) to the event's promoter, and the promoter signed the settlement schedule as having received the money. The ticket manager and building fees were deposited with TSU's Business Office into the Gentry Center account. Mr. Jerome also provided us documentation that reconciled ticket sales and deposits on a daily basis for all days on which tickets were sold. According to Mr. Jerome, Gentry Center staff would total sales from TSU's Ticket Office and any check from Ticketmaster for the sales at other Ticketmaster outlets, deduct outstanding expenses, and remit the remaining money to the promoter. Mr. Jerome stated that he did not prepare, and was not responsible for preparing, an overall event summary that showed total revenues, expenses, deposits, and payments.

Mr. Jerome started his employment at TSU on September 10, 2001, after Dr. Smith's termination. He stated that he could not find in the Ticket Office any record of settlement schedules, Ticketmaster reports, or reconciliations for Step Shows that occurred during Dr. Smith's tenure.

Ms. Bell stated that the Step Shows during Dr. Smith's tenure were operated in the manner described by Mr. Jerome in that ticket sales revenues were collected, fees were deposited into the Gentry Center account, and all remaining money was paid to the event promoter. Ms. Bell also stated that the promoter paid the fees specified in the contract by check made out to the Gentry Center. Ms. Bell further stated that the only documentation that she received from the Ticket Office was the Ticketmaster audit report for the event that showed total ticket sales by type and amount. Ms. Bell said that she did not receive a "Night of Show Settlement Schedule" or documentation of reconciliations of ticket sales recorded on the Ticketmaster computer system with deposits. Ms. Bell said that she provided the Ticketmaster audit reports to TSU's Business Office as support for the payment to the event's promoter.

Conclusions Relating to Midnight Madness, Marcus Robertson Gala, and Step Shows

Based on presently available information, with respect to the Midnight Madness events, Dr. Smith's concern was unsubstantiated because no tickets were sold and thus no revenues were collected. As regards the Marcus Robertson Gala, we determined that tickets were sold only through Ticketmaster outlets outside the university, and sales revenues were relatively small. Ticketmaster performed the reconciliation and paid TSU the net revenue amount after Ticketmaster fees were subtracted from total sales.

With respect to the Step Show events that occurred during Dr. Smith's tenure, no documentation was provided to us that indicated that reconciliations were being performed that matched sales revenues per Ticketmaster reports with deposits. In addition, no documentation was provided to us that showed an overall event summary of total revenues, expenses, deposits, and payments.

Gentry Center staff determined total ticket revenues from Ticketmaster audit reports (which showed total ticket sales by event) and then calculated the amount due the Gentry Center (3% of gross revenues) and the amount due the promoter (all remaining revenues). Typically, the promoter would pay all fees related to the event to the Gentry Center prior to the event.

With reference to the Step Shows, Dr. Smith's concern that no reconciliations were performed for the Step Shows during his tenure was substantiated. Such reconciliations were not being prepared as of July 31, 2002, the end date of our review of this area. The performance of overall reconciliations would enable Gentry Center staff to confirm that deposits matched reported ticket sales and that the distribution of ticket revenues was consistent with contract terms. It should be noted that reconciliations related to these types of events were not the responsibility of the Ticket Office staff; rather the reconciliations were the responsibility of the Gentry Center staff.

DIVERSION OF FUNDS TO THE TSU FOUNDATION

Circumvention of Payment Procedures by Athletics Department Staff

Dr. Smith and Mr. Stinson both stated that they used TSU Foundation accounts to pay operating expenses for the Athletics Department out of desperation in an effort to pay vendors who were demanding payment on invoices that were past due.

Mr. Stinson stated that he believed that TSU's Business Office would receipt corporate sponsor checks into the Athletics Department's accounts and then wrongly move the money immediately to other university accounts. Thus, he stated, the money was not available to the Athletics Department and could not be applied to the department's bills. Consequently, to avoid losing the money, he stated that when the Athletics Department received a corporate sponsor check, the department would deposit the check into one of the Athletics accounts under TSU's Foundation. Then, he stated, when a vendor submitted a bill, the Athletics Department would simultaneously deliver to TSU's Business Office both a request to pay the vendor (a purchase requisition) and a request to transfer money from the Foundation account to the Athletics Department account in order to ensure that money was available to pay the vendor. Mr. Stinson described this practice as an "end-around" to circumvent the Business Office's practice of taking Athletics Department funds for non-Athletics Department purposes.

In an interview on May 1, 2002, Dr. Smith stated that these activities were carried out with his knowledge and approval. He could not recall who first suggested handling payments in this manner but thought it was either Mr. Ken Martin, the former Associate Athletics Director for Finance; or Ms. Perianne London, the Assistant to the Athletics Director.

We interviewed Ms. London regarding this matter, and she stated that she was most likely the person who suggested handling payments through the Foundation. She stated that she sometimes received corporate sponsorship checks, and she would either take the checks to the Foundation herself or send them with someone else to be placed in the athletics administration Foundation account. She would then put the athletics administration Foundation account number on the purchase requisition and submit the purchase requisition and invoice to the Foundation for payment. According to Ms. London, she came up with the idea of handling payments this way after noting that some of the coaches used Foundation accounts associated with their respective sports to pay bills. She stated that no one at TSU ever told her that depositing corporate sponsorship checks with the Foundation was inappropriate, and none of the checks or invoices were ever rejected. She stated that she was not trying to circumvent the TSU Business Office, and she also stated that she would have stopped handling payments in this manner if someone had told her that it was inappropriate.

After Dr. Smith was terminated in June 2001, Ms. London was transferred from the Athletics Department to the Office of Student Services.

We were unable to locate Mr. Martin and thus were unable to interview him regarding this matter. We obtained his most recent home address and telephone number from TSU and confirmed that information with his driver's license information on record with the Department

of Safety. We called his home telephone number several times and left voice mail messages, but he never returned our calls. We also drove to his home address. The individual who answered the door stated that we had the wrong address because no one with Mr. Martin's name lived there.

Policy Relating to the Foundation and Institutional Funds

TBR Policy 4:01:07:02, *Foundations*, states that "no institutional funds, including contributions to the institution, may be transferred directly or indirectly to the foundation." By virtue of the fact that corporate sponsorship agreements obligate the university, any funds received from corporate sponsors pursuant to corporate sponsorship agreements are institutional funds and as such should be deposited into a university account rather than a Foundation account.

According to TBR Business and Finance staff, the policy further states that "it is understood that instances may occur where a donor inadvertently directs a contribution to the institution which is intended for the foundation. Procedures shall be established to clarify donor intent." TBR staff agreed that the TSU Athletics Department, in conjunction with the TSU Business Office, should have established at the outset of the corporate sponsorship agreement whether donations would be deposited with the university or with the TSU Foundation.

Deposit of Corporate Sponsorship Checks With the Foundation

Mr. Stinson provided us copies of five corporate sponsorship agreements that he negotiated during his tenure at TSU. We provided the corporate sponsorship agreements to TSU's Business Office and requested that payments from those corporations be traced to determine whether any corporate sponsorship payments had been improperly deposited into a Foundation account during fiscal year 2001.

Business Office staff identified three payments totaling \$8,500 from Shoney's that were deposited into a Foundation account called "Athletics Administration." Two deposits were made on March 16, 2001, and one deposit was made on April 24, 2001. Pursuant to the corporate sponsorship agreement, in exchange for the \$8,500, Shoney's would receive season tickets, an Athletics Department newsletter subscription, sponsorship opportunities, scoreboard recognition, invitations to special functions, foursomes in Athletics Department-sponsored golf tournaments, and advertising in the game programs and at the sports facilities.

Business Office staff also determined that the corporate checks associated with three of the remaining four corporate sponsorship agreements were not deposited into any Foundation accounts. These checks were deposited in a university account entitled "Athletics Fundraising." As regards the fourth corporate sponsor, we determined that the company did not issue a check to TSU.

Payment of Institutional Obligations From the Foundation

Business Office staff identified four payments totaling \$4,600 to The Third Eye, a Nashville media production company, made from the Athletics Administration Foundation account. All four payments were made on February 9, 2001, and all four were for overdue invoices. The invoice due dates, all in 2000, were November 16, November 23, November 30, and December 7. The number of days past due ranged from 94 days to 116 days. The purchase requisition was signed by Mr. Stinson; Dr. Smith; Ms. Lewis, Foundation Director; and Dr. Hefner. At that time, The Third Eye was under contract to TSU to provide production services for the TSU *Coaches' Show* on Channel Five. Consequently, payment of The Third Eye invoices was a contractual obligation of the university.

Business Office staff reviewed all payments from Foundation accounts for fiscal year 2001 and did not find any other payments to vendors whose invoices had been identified as past due upon Dr. Smith's termination or were related to obligations incurred by Mr. Stinson. The vendors included Hemphill Entertainment Services (a bus leasing company); 92Q Radio; WUXP-UPN 30/WZTV-Fox 17 Television; Marfac, Inc.; Sam Jordan Photography; News Channel Five; The Third Eye; and Cinema Seven Productions.

Conclusions Relating to the TSU Foundation

Based on presently available information, Athletics Department staff, with the knowledge and approval of Dr. Smith, improperly deposited three corporate sponsor checks from Shoney's, obtained pursuant to a corporate sponsorship agreement, into a Foundation account called "Athletics Administration" in noncompliance with TBR policy. The misclassification of university revenues as Foundation revenues resulted in understating university revenues and overstating Foundation revenues. Athletics Department staff also paid department expenses incurred pursuant to a contract between TSU and The Third Eye from a Foundation account. Neither TBR nor TSU policy prohibits the use of Foundation account funds to pay Athletics Department expenses as long as no donor restrictions are violated. However, payment of legitimate university expenses from Foundation accounts that incorrectly contain university revenues resulted in understating university expenses. University revenues should be properly deposited into university accounts, and payment of university obligations should be made from university accounts.

II. ISSUES RAISED BY DR. HEFNER

REVELATION CORPORATION OF AMERICA

Summary of Dr. Hefner's Concerns Relating to Dr. Smith and Revelation Corporation of America

We examined Dr. Hefner's issues concerning Dr. Smith's representations and actions related to Revelation Corporation of America (hereinafter referred to as Revelation America). Dr. Hefner presented three primary issues. The first issue was that Dr. Smith represented to Dr.

Hefner that Revelation America would donate \$100,000 to TSU and that the \$100,000 donation would count towards the Athletics Department's \$175,000 fund-raising goal for fiscal year 2000-2001.

On February 24, 2001, during the halftime of a men's basketball game between Tennessee State University and Austin Peay State University, Dr. Smith and Mr. John B. Lowery, the Executive Vice President for Revelation America, participated in a public presentation of a \$100,000 ceremonial check from Revelation America to TSU, which represented the purported \$100,000 donation. Dr. Hefner stated that the \$100,000 ceremonial presentation was a surprise to him because Dr. Smith had neither obtained his approval nor advised him in advance about the presentation. Dr. Hefner further stated that when he specifically asked Mr. Lowery after the presentation when the money would be available, Mr. Lowery told him that the \$100,000 would not be available in fiscal year 2000-2001 but would apply to the following year.

Dr. Hefner's second issue was that Dr. Smith, without informing Dr. Hefner and without obtaining his approval, publicized a Revelation America-sponsored downpayment assistance program for TSU faculty and staff. On February 24, 2001, also during the halftime of the TSU vs. APSU men's basketball game, Dr. Smith, Mr. Lowery, and Mr. Jeff Reynolds, then the Director of Metropolitan Nashville-Davidson County's Division of Affordable Housing, participated in a public presentation of a \$250,000 ceremonial check from Revelation America to TSU, which represented the purported \$250,000 funding for downpayment assistance for TSU faculty and staff. As with the \$100,000 ceremonial presentation, Dr. Hefner stated that the \$250,000 ceremonial presentation was a surprise to him because Dr. Smith had neither obtained his approval for the program nor advised him in advance about the presentation.

Dr. Hefner's third issue was that Dr. Smith failed to provide him information, which he had requested in writing, relative to a TSU-Revelation America partnership. Three days after the basketball game, on February 27, 2001, Dr. Hefner wrote Dr. Smith a letter in which he stated that it was imperative that Dr. Smith inform him in detail of the TSU-Revelation America partnership arranged by Dr. Smith, including Revelation America's solicitation of credit cards and other financial products, as soon as possible.

After not receiving any information from Dr. Smith, Dr. Hefner wrote a second letter to Dr. Smith dated March 8, 2001, in which he repeated his request for details relating to the TSU-Revelation America partnership. In his March 8 letter, Dr. Hefner stated that the TSU-Revelation America partnership must be carefully reviewed to weigh its legal and administrative ramifications. Dr. Hefner also directed Dr. Smith to neither accept nor transmit to TSU any payment from Revelation America arising from the proposed TSU-Revelation America partnership until Dr. Smith had provided the documentation requested.

In his written response to Dr. Hefner on March 15, 2001, Dr. Smith provided some limited information relating to Revelation America and stated that he would accept no payment from Revelation America until Dr. Hefner and his legal counsel determined that the initiatives were legal.

However, despite Dr. Hefner's directive to Dr. Smith of March 8, and Dr. Smith's assurance to Dr. Hefner on March 15, Dr. Smith on March 20, 2001, transmitted a \$20 check he had received from Revelation America to TSU's Business Office for deposit. Revelation America paid TSU \$20 for TSU's participation in Revelation America's debit card program. The \$20 check represented payment for two debit card activations. Dr. Hefner stated that Dr. Smith had neither informed him about the Revelation America debit card program nor obtained his approval.

These three issues are discussed in more detail below.

Revelation Corporation of America

Corporation

According to the company's Web site, Revelation Corporation of America (Revelation America) was formed in 1996. We conducted an Internet search for articles pertaining to "Revelation Corporation of America" and found several articles, including a February 3, 1997, article in *Christianity Today*. The article described Revelation America as a partnership among corporations, churches, and charities. According to the article, five African-American denominations, representing more than 15 million members in 43,000 churches, had organized a merchandising plan that would not only give to their home churches a portion of money spent by members of their congregations, but also would finance a home-ownership program. The article stated that denominational shareholders included (1) The National Baptist Convention, USA, Inc.; (2) the National Baptist Convention of America, Inc.; (3) the Progressive National Baptist Convention, Inc.; (4) the African Methodist Episcopal Zion Church; and (5) the Christian Methodist Episcopal Church. According to the article, these five denominations own 70% of Revelation America and represent nearly half of the African-American population.

According to the company's Web site, Revelation America is a for-profit Delaware corporation that provides job opportunities and offers numerous products and services to its membership, and the company is headquartered in Memphis, Tennessee.

Plan of Operation

The *Christianity Today* article described Revelation America's plan as follows. When the members of a church or organization purchase Revelation-endorsed products or services, a sales commission is paid to Revelation America. (The article did not describe the percentage or amount of the commission.) Of that commission, 30% is paid to the participating church or organization; the remaining 70% is placed in a fund designed to help moderate-income residents buy new homes in their local neighborhoods. According to Revelation America's Chief Operating Officer, cited in the article, the plan would create jobs in African-American communities, stabilize property values, and increase community pride. The 1997 article indicated that Revelation America was involved with insurance, mortgage, and mail-order catalog partners, and had recently initiated the distribution of over a million grocery coupon books.

Revelation America's Initiatives Relating to TSU

Based on interviews and review of relevant documents, we determined that Revelation America officials, Dr. Smith, and other Athletics Department staff were involved with three separate and distinct initiatives. The first initiative was a proposed \$100,000 donation by Revelation America to TSU directly associated with Revelation America's "Get in the Game" program. The second initiative was a program to provide home downpayment assistance to TSU faculty and staff. The third initiative related to Revelation America's new debit card program developed in conjunction with Western Union.

Proposed \$100,000 Donation and "Get in the Game" Program

According to both Dr. Smith and Mr. Lowery, the Executive Vice President for Revelation America, Revelation America's proposed \$100,000 donation to TSU was directly related to Revelation America's "Get in the Game" program. At that time, Mr. Lowery was located at the company's corporate headquarters in Memphis, Tennessee.

Dr. Smith's and Mr. Lowery's description of the "Get in the Game" program is presented below. The program is based on the observation that some universities, such as Tennessee State University and the University of Memphis, play games in venues that are so large that there are many empty seats at each game. The program also is based on the concept that it would be a positive experience for inner-city minority youth who are members of Revelation America-affiliated churches to be able to attend university-level games at no cost. From these considerations was born Revelation America's program of donating money to a university in exchange for seats at games, seats that would otherwise not be filled. Once the program was in place, Revelation America would contact its member churches, and the churches would arrange for their youth to attend the games, along with parent chaperones. Included in the program were tailgate parties and gifts such as t-shirts and ball caps.

University of Memphis

Both Mr. Lowery and Dr. Smith stated that Revelation America and the University of Memphis (UOM) had participated in a "Get in the Game" program while Dr. Smith was employed as an Assistant Athletics Director at UOM, immediately prior to Dr. Smith's employment as Athletics Director by TSU.

We contacted Ms. Karen L. Parkes, one of three Associate Athletics Directors at UOM's Athletics Department and Dr. Smith's direct supervisor for several years prior to Dr. Smith's appointment as Athletics Director by TSU. Ms. Parkes' period of supervision of Dr. Smith included the period of the UOM-Revelation America relationship. According to Ms. Parkes, Dr. Smith's responsibilities at UOM related to student athlete matters and special projects. Ms. Parkes stated that Dr. Smith did not have any assigned responsibilities related to Revelation America during his tenure at UOM. According to Mr. Kevin Grothe, UOM's Associate Athletics Director for Marketing, he was the individual at UOM responsible for interacting with Revelation America. Mr. Grothe stated that Dr. Smith did not report to him and that Dr. Smith had no connection or relationship with Revelation America as a UOM employee. Mr. Lowery of

Revelation America confirmed that Mr. Grothe was his primary UOM contact and that Dr. Smith was not involved in the Revelation America-UOM partnership.

According to information provided to us by UOM's Athletics Department, Revelation America promised to donate \$110,000 to UOM for Revelation America's "Get in the Game" program for the 1998-1999 season. Revelation America paid UOM \$50,000 on October 22, 1998. For its part, UOM made thousands of seats available to Revelation America. In total, UOM provided 23,000 vouchers and tickets. Vouchers or tickets were provided for six games: one football game, four men's basketball games, and one women's basketball game. For instance, UOM provided 10,000 vouchers for the UOM vs. East Carolina football game on November 21, 1998. The typical number of vouchers or tickets provided was 2,000.

However, Revelation America did not pay UOM the remaining \$60,000 for the 1998-1999 season. In a September 3, 1999, letter to Mr. Grothe, UOM's Associate Athletics Director for Marketing, Mr. Lowery wrote that in reference to Revelation America's "Get in the Game" program, Revelation America agreed to donate an additional \$150,000 to UOM. Mr. Lowery stated that the \$150,000 included \$50,000 for the 1998-1999 season and \$100,000 for the 1999-2000 season. Mr. Lowery's letter stated the \$150,000 would be paid in 10 equal installments of \$15,000 each and that the payments would commence in September 1999.

Although Revelation America committed to providing an additional \$150,000 to UOM, Revelation America only made one payment of \$5,000 to UOM on November 11, 1999. According to Mr. Grothe, Revelation America did not make any further payments to UOM. Mr. Lowery told us that the reason Revelation America did not make any further payment was that the company's investments were not performing at a level that would allow the company to meet its obligation. During the 1999 football season, UOM made seats available to Revelation America for two games by providing 10,000 vouchers for the UOM vs. Louisville game on October 16, 1999, and another 10,000 vouchers for the UOM vs. Army game on November 13, 1999. But, as a result of the corporation's nonpayment, after the 1999 football season, UOM's Athletics Department stopped its participation in Revelation America's "Get in the Game" program.

UOM credited Revelation America's two payments totaling \$55,000 (\$50,000 and \$5,000) against the corporation's initial commitment of \$110,000 for the 1998-1999 season. On this basis, UOM established a receivable for the remaining \$55,000 due for the 1998-1999 season. After Revelation America failed to provide any payments related to the following season, 1999-2000, UOM established a second receivable for \$15,000 for the estimated value of the vouchers, which UOM had distributed for the two football games played during the 1999-2000 season in anticipation of payment. Overall, UOM received a total of \$55,000 from Revelation America, and the total receivable due UOM from Revelation America was \$70,000, as of the date of this report. There was no written contract formalizing the Revelation America-UOM "Get in the Game" program.

Proposed Downpayment Assistance Program

Mr. Jeff Reynolds, then Director of Metropolitan Nashville-Davidson County's Division of Affordable Housing, stated that he discussed Metro's downpayment assistance program with Mr. Lowery. Metro's program is named HoME, which stands for Homeownership for Metro Employees. Mr. Lowery said that Revelation America was not involved with Metro's HoME program, which provides a maximum of \$6,000 towards downpayment and closing costs for a home in Davidson County. Metro employees and the home properties must meet certain eligibility criteria. The program is available only to employees who are not currently homeowners in Davidson County, whose household income is at or below 80% of the area median, and who will purchase homes priced at or below \$135,000. The downpayment assistance program is characterized as a forgivable loan in that if the homeowner remained a Metro employee and resided in the home for five years, the loan would be forgiven in its entirety.

According to HoME's program description, the Nashville Housing Fund, in partnership with Affordable Housing Resources, administers the program under the supervision of Metro's Division of Affordable Housing. The Nashville Housing Fund and Affordable Housing Resources are local nonprofit organizations. Mr. Reynolds stated that the program was established through a contract between Metro and the Nashville Housing Fund.

According to Mr. Lowery, Mr. Reynolds, and Dr. Smith, they discussed Metro's downpayment assistance program and the possibility of developing such a program for TSU faculty and staff. They also discussed including Fisk University and Meharry University, but those avenues were not pursued. Based on these discussions, Mr. Reynolds developed a draft brochure that described the proposed program. The program was tentatively named HoUSE-TSU, which stood for Homeownership for University-Staff Employees - Tennessee State University.

As presented in the draft brochure developed by Mr. Reynolds, the HoUSE-TSU program would be similar in design and conditions to Metro's HoME program. The HoUSE-TSU program would have provided up to \$5,000 to help pay downpayment or closing costs for the purchase of a home in Davidson County. TSU faculty and staff, as well as the home properties, would be required to meet certain eligibility criteria. The HoUSE-TSU program would be available to individuals who had not owned a house during the last three years, whose household income was at or below \$37,650 (household of one or two persons), and who would purchase homes at or below \$125,000. As with Metro's HoME program, the HoUSE-TSU downpayment assistance program would be characterized as a forgivable loan program in that if the homeowner remained a TSU faculty or staff employee and resided in the home for five years, the loan would be forgiven in its entirety.

The draft brochure stated that two local nonprofit organizations would administer the HoUSE-TSU program for Revelation America and TSU: (a) the Nashville Housing Fund, and (b) Residential Resources, Inc. The Nashville Housing Fund would administer the funding, and Residential Resources, Inc., would process the applications. The proposed source of funding would be Revelation America.

Mr. Reynolds stated that his draft brochure was preliminary in nature and for discussion purposes only. Mr. Reynolds further stated that all the conditions and terms and criteria would need to be developed and approved by TSU management. The proposed downpayment assistance program was not approved during Dr. Smith's tenure at TSU, and no further developments related to the program had occurred as of the date of this report.

Proposed Western Union Debit Card

In a February 17, 2000, letter to Mr. Grothe, the Associate Athletics Director for Marketing at the University of Memphis, Mr. Lowery stated that the Revelation America-Western Union debit card would debut April 1, 2000. In his letter, Mr. Lowery wrote that Revelation America had entered into an agreement with Western Union whereby Western Union would provide a debit card which would allow anyone to have an account without a credit check. The debit card also would enable cardholders to make purchases via e-commerce. According to Mr. Grothe, UOM did not enter into an agreement with Revelation America relative to the proposed debit card program.

In his letter and in his interviews, Mr. Lowery explained that the debit card would provide the "unbanked" community (those who do not qualify for a bank account) access to all of the marketplace that is available to the "banked" community (those who do qualify for a bank account). Mr. Lowery stated that an individual could open a debit card account without any credit check by depositing a minimum of \$25. Western Union would issue that individual a debit card, and the individual could then withdraw or charge any amount up to the amount in his or her account. Deposits and withdrawals could be made at ATM machines located at Western Union locations.

In addition, the debit card (which would have a MasterCard emblem) would be accepted anywhere MasterCard is accepted, including grocery stores, retail stores, gas stations, restaurants, and ATM machines. Mr. Lowery stated that an individual's account would be updated every 15 minutes, and he also pointed out that an account holder would be provided a monthly statement, which would serve as an educational money management tool. For these services, Western Union would charge administrative and processing fees, but these fees, according to Mr. Lowery, would be significantly lower than fees for similar services charged by banks.

Mr. Lowery stated that once an organization, such as a church or a university, agreed to participate in its debit card program, Revelation America typically would send the organization debit card program brochures, which would contain a telephone number unique to the organization. An individual calling that telephone number would reach a national call center. All debit card accounts opened through that unique telephone number would be credited to the organization. The telephone number, in addition, functioned as the organization's account code. Mr. Lowery also stated that once an individual opened an account and deposited at least \$25 (the minimum), Revelation America would pay the participating organization a \$10 activation fee. According to Mr. Lowery, the participating organization and Revelation America would enter into a contract relating to the debit card program.

Results of Review

Issue No. 1: Proposed \$100,000 Donation and "Get in the Game" Program

Based on presently available information, Dr. Smith and other Athletics Department staff failed to understand the contingent nature of Revelation America's proposed donation and, as a consequence, misrepresented the underlying uncertainties associated with the donation. Moreover, there is a significant difference between Mr. Lowery on the one hand, and Dr. Smith and Mr. Derrell Stinson, the marketing representative for TSU's Athletics Department, on the other, as to the content of their discussions. Mr. Lowery stated that he clearly explained to Dr. Smith the contingent nature of Revelation America's proposed donation, whereas Dr. Smith stated that Mr. Lowery did not indicate that the donation was dependent on market conditions.

Dr. Smith represented to Dr. Hefner that Revelation America was prepared to immediately donate \$100,000 to TSU and that the \$100,000 would count towards the Athletics Department's \$175,000 fund-raising goal for fiscal year 2000-2001. Dr. Smith's representations occurred in written correspondence to Dr. Hefner on January 24, 2001, and March 15, 2001, in response to Dr. Hefner's concerns about the availability of the Revelation America funds. In his January 24 letter to Dr. Hefner, Dr. Smith wrote,

I did in fact "estimate" a fund-raising projection of \$175,000, but that was just an "estimate," and I had every intention of raising that amount. I am still going to secure the \$100,000 from Revelations, which would increase the fund-raising revenue from \$24,000 to \$124,000.

In his March 15 letter to Dr. Hefner, with reference to the \$100,000 donation, Dr. Smith wrote,

The money can and will be used to fulfill my fund-raising obligation during this year, if you will agree to have the University accept the money. I am sure that I can convince Mr. Lowery of this.

Dr. Smith stated to us that Mr. Lowery, the Executive Vice President of Revelation America, told him that \$100,000 would be available to TSU during fiscal year 2000-2001. Dr. Smith stated that Mr. Lowery said that there would be no problem in making the money available and that the money would be available on or about April 15, 2001. In addition, Dr. Smith asserted that Mr. Lowery never said that the donation was a promise only, or that it was dependent on investment income, or that the corporation's investments were doing poorly. Mr. Stinson, the marketing representative for TSU's Athletics Department, supported Dr. Smith's position by stating that Mr. Lowery, and also Mr. John Freeman, a Revelation America employee, had assured Dr. Smith and himself that the funds would be available in fiscal year 2000-2001.

However, Mr. Lowery directly contradicted Dr. Smith and Mr. Stinson. Mr. Lowery stated that he told Dr. Smith that the \$100,000 was a promise only, that the money would not be immediately available, and that he did not know when the money would be available because its availability was tied to the performance of invested funds that had not been doing very well.

According to Mr. Lowery, what he told Dr. Smith was that Revelation America's ability to make contributions was contingent on the market, and that as soon as the market improved and the corporation could make a donation, it would do so. Mr. Lowery stated that he never spoke directly with Mr. Stinson, although Mr. Stinson may have been present during his conversations with Dr. Smith, which occurred in face-to-face meetings and by telephone. Mr. Lowery pointed out that Mr. Freeman was a corporation employee at that time, not an officer, and thus could not have spoken for or obligated the corporation. When we told Mr. Lowery that we wanted to speak with Mr. Freeman, Mr. Lowery stated that Mr. Freeman had left Revelation America employment and had relocated. Mr. Lowery said that he didn't know Mr. Freeman's address or phone number.

When we asked Mr. Lowery how the February 24 ceremonial presentation came about, he replied that Dr. Smith had contacted him by phone and that Dr. Smith was "desperate" because he and Dr. Hefner were at odds and Dr. Smith was afraid of losing his job. According to Mr. Lowery, Dr. Smith was trying to demonstrate to Dr. Hefner that he was capable of raising funds for the university. Mr. Lowery stated that he told Dr. Smith at that time that Revelation America would agree to contribute the money but that the contribution would be a function of market conditions.

With respect to the proposed \$100,000 donation, Revelation America and the TSU Athletics Department did not execute a donor agreement, a contract, a letter of commitment, a schedule of payment, or any other type of written document. Mr. Lowery stated that the only formalization of the arrangement was the \$100,000 ceremonial check, which was presented during halftime at the Tennessee State-Austin Peay men's basketball game on February 24, 2001.

Mr. Lowery further stated that during the February 24 basketball game, when Dr. Hefner asked him when the money would be available, he told Dr. Hefner that the donation was contingent on market conditions, that he didn't know when the money would be available, and that he didn't expect the money to be available by the end of the school year.

According to Dr. Hefner, Dr. Smith did not inform him that there would be a presentation of a \$100,000 ceremonial check at the basketball game halftime. Dr. Hefner confirmed Mr. Lowery's statements to him. Dr. Hefner stated that he was surprised to learn from Mr. Lowery that the actual donation would not be forthcoming. Dr. Hefner further stated that he regarded the ceremonial presentation as unethical because it represented to the TSU community that the donation was imminent when in fact it was not going to occur in the current year and the corporation could not commit to when the money would be available.

Mr. Lowery told us that Revelation America was carrying the \$100,000 donation to TSU as a contingent liability on the corporation's balance sheet. He stated that once the market improved, the corporation intended to honor its commitment to TSU as well as other institutions, including the University of Memphis.

Issue No. 2: Proposed Downpayment Assistance Program for TSU Faculty and Staff

Based on presently available information, we determined that Dr. Smith participated in the development of the proposed Revelation America-sponsored downpayment assistance program for TSU faculty and staff without the knowledge or approval of Dr. Hefner. We also determined that Dr. Smith arranged for Mr. Lowery to present a ceremonial check for \$250,000 during halftime at the February 24 Tennessee State-Austin Peay men's basketball game without the knowledge and consent of Dr. Hefner. The \$250,000 represented Revelation America's purported commitment to the downpayment assistance program, not a payment to TSU. The \$250,000 ceremonial check was in addition to the \$100,000 check discussed above.

There are significant differences between Dr. Smith, on the one hand, and Dr. Hefner and Mr. Thomas Martin, TSU's Vice President for Student Affairs, on the other, about the content of any discussions they might have had about the downpayment assistance program prior to the February 24 basketball game. Dr. Smith asserted that he had received approval to proceed with the downpayment assistance program from Dr. Hefner, while both Dr. Hefner and Mr. Martin stated that Dr. Hefner had not approved the program or the presentation.

Dr. Smith stated that he participated with Revelation America and Metropolitan Nashville-Davidson County's Division of Affordable Housing in developing the downpayment assistance program for TSU faculty and staff. The draft program included up to \$5,000 towards downpayment assistance or closing costs for TSU faculty and staff who met certain eligibility criteria and who wanted to purchase a home in Davidson County. Dr. Smith further stated that he discussed the downpayment assistance program with Dr. Hefner and Mr. Martin prior to the February 24 basketball game. Dr. Smith stated that Dr. Hefner then approved the program.

However, Dr. Hefner stated that no such discussion occurred, that he had not approved the program or the presentation at the basketball game, and that he was surprised when the presentation occurred. Dr. Hefner formalized his understanding at that time in a letter to Dr. Smith on February 27, 2001:

Let me commend you on the one hand, for your preliminary work with Jeff Reynolds, director of the Metropolitan Nashville-Davidson County Affordable Housing Program, and admonish you, on the other hand, for not informing me in advance of this presentation that concerns University employees. As you know, Metro's plan to provide homebuying assistance to Tennessee State University employees is a University-wide initiative.

In his February 27 letter to Dr. Smith, Dr. Hefner stated that he had assigned Mr. Harkleroad, TSU's Vice President for Business and Finance; and Mr. Howard Gentry, TSU's Vice President for University Relations and Development, to serve as the official liaisons between the President's Office and the Mayor's Office. Dr. Hefner further stated that Mr. Harkleroad's first action would be to follow up with the Tennessee Board of Regents to ensure that any board concerns were properly addressed, and that Mr. Gentry would further study the plan as a civic initiative and keep Dr. Hefner apprised of its implementation. In his letter, Dr. Hefner stated that Dr. Smith should direct any communication regarding this program to either

Mr. Harkleroad or Mr. Gentry. Dr. Hefner also instructed Dr. Smith to forward to him any existing documentation related to the proposed program.

Mr. Martin, TSU's Vice President of Student Affairs, stated that neither he nor Dr. Hefner had approved the program or the presentation. Mr. Martin said that he recalled vaguely that Dr. Smith talked with him and Dr. Hefner about a housing program prior to the February 24 basketball game but that the details weren't clear. Mr. Martin described Dr. Smith's information as confusing and said that they simply didn't know enough about the program to make any decisions. Mr. Martin stated that Dr. Smith's presentation of the program at the basketball game surprised him.

Mr. Lowery stated that Dr. Smith told him that he had obtained the appropriate approvals for TSU's participation in the program. Mr. Lowery further stated that the only reason he came to Nashville from Memphis to make the presentation of the ceremonial check for \$250,000 on February 24, 2001, was that Dr. Smith had assured him that Dr. Hefner had given the program the "green light." Dr. Smith confirmed that he told Mr. Lowery that Dr. Hefner had given the downpayment assistance program the "green light." Dr. Smith also agreed that Mr. Lowery would not have come to Nashville to make the presentation unless he had told Mr. Lowery that the program had been approved.

Mr. Reynolds, Metro's Director of Affordable Housing, stated that TSU Athletics Department representatives, either Dr. Smith or Mr. Stinson, had assured him that the appropriate approvals had been obtained. Mr. Reynolds further stated that Mr. Freeman, a Revelation America employee, had assured him that TSU was committed to the program. As with Mr. Lowery, Mr. Reynolds indicated that he agreed to make the presentation related to the housing program at the February 24 basketball game because he had been assured that the program had been approved. Mr. Reynolds stated that he attended the basketball game and was present at the presentation of the \$250,000 ceremonial check at halftime. Mr. Reynolds stated that he was embarrassed to find out from Dr. Hefner at the game that Dr. Hefner knew nothing about the program.

Both Dr. Smith and Mr. Stinson stated that they were not the one who had told Mr. Reynolds that the program had been approved by TSU's administration.

Mr. Lowery told us that Revelation America had funds available in February 2001 and as of May 16, 2002, (the date of the interview) that could be contributed to the downpayment assistance program for TSU faculty and staff. He explained that the housing assistance funds were derived from a different source than the corporation's donations. Mr. Lowery also stated that following Dr. Smith's termination, no one from TSU had contacted him regarding the proposed downpayment assistance program for TSU faculty and staff.

Issue No. 3: Proposed Revelation America-Western Union Debit Card Program

Based on presently available information, Dr. Smith authorized the establishment of a Revelation America-Western Union debit card program without the knowledge or approval of Dr. Hefner. One of Dr. Hefner's primary issues was that Dr. Smith failed to provide him

information, which he had requested in writing, relative to a TSU-Revelation America partnership. Three days after the basketball game, on February 27, 2001, Dr. Hefner wrote Dr. Smith a letter in which he stated that it was imperative that Dr. Smith inform him in detail of the TSU-Revelation America partnership arranged by Dr. Smith, including Revelation America's solicitation of credit cards and other financial products, as soon as possible. After not receiving any information from Dr. Smith, Dr. Hefner wrote a second letter to Dr. Smith dated March 8, 2001, in which he repeated his request for details relating to the TSU-Revelation America partnership. In his March 8 letter, Dr. Hefner stated that the TSU-Revelation America partnership must be carefully reviewed to weigh its legal and administrative ramifications.

In addition, in his March 8 letter, Dr. Hefner directed Dr. Smith to neither accept nor transmit to TSU any payment from Revelation America arising from the proposed TSU-Revelation America partnership until Dr. Smith had provided the documentation requested. In his written response to Dr. Hefner on March 15, 2001, Dr. Smith provided some limited information relating to Revelation America and stated that he would accept no payment from Revelation America until Dr. Hefner and his legal counsel determined that the initiatives were legal.

However, despite Dr. Hefner's directive to Dr. Smith of March 8 and Dr. Smith's assurance to Dr. Hefner on March 15, Dr. Smith on March 20, 2001, transmitted a \$20 check he had received from Revelation America to TSU's Business Office for deposit. Revelation America paid TSU \$20 for participation in the debit card program. The \$20 check represented payment for two debit card activations. With regard to the debit card program, Dr. Hefner stated that Dr. Smith had neither informed him about the program nor obtained his approval.

Mr. Harkleroad, TSU's Vice President for Business and Finance, also stated that he had received no information about the debit card program prior to receiving Dr. Smith's March 20 letter to him and the accompanying \$20 check. Thus, the existence of the debit card program first came to the attention of TSU's Business Office when Dr. Smith sent a Revelation America check for \$20 for two debit card activations to the TSU Business Office for deposit. Dr. Smith's transmittal letter stated,

Enclosed is the original \$20.00 check along with a copy of the correspondence received from Revelation as it relates to the Western Union MasterCard Program. If you have any questions, please contact me.

Mr. Harkleroad's March 20 written response to Dr. Smith reflected Mr. Harkleroad's lack of knowledge about the Revelation America debit card program and his attempt to obtain further information:

Reference is made to the attached letter from you related to a \$20 check received in my office today. What is the Western Union MasterCard Program? In checking with the University's contract officer, there has been no contract executed for this program. Therefore, what is the basis for Revelation Corporation of America sending these funds to the University?

Your immediate attention to this matter is requested.

According to Mr. Harkleroad, he never received a response from Dr. Smith to his March 20 information request. When we asked Mr. Harkleroad about the \$20 Revelation America check, he stated that he had not deposited the check, and he provided the original check to us.

Dr. Smith stated that he saw the debit card program as a beneficial quid pro quo for TSU in that TSU Athletics Department staff would distribute the brochures at TSU Athletics events and then TSU would receive \$10 for each activation. He stated that any individual could enroll in the debit card program, not just TSU students. According to Dr. Smith, the debit card program represented a low-cost fund-raising activity that would benefit both the Athletics Department, through the \$10 payment for each activation, and also unbanked individuals at TSU and in the community who would not qualify for a bank account for various reasons, such as poor credit ratings or previously overdrawn bank accounts.

According to Mr. Lowery, Revelation America established a TSU-specific telephone number, which also served as TSU's account number, and in addition sent 10,000 brochures to the Athletics Department at the direction of Dr. Smith. Mr. Lowery stated that a partnership such as the Revelation America-TSU partnership typically would be structured by a contract but that he initiated the program without obtaining a contract because Dr. Smith said that he would sign such a contract. Mr. Lowery said that he intended to obtain a contract at a later time. Dr. Smith denied that he told Mr. Lowery that he would sign a contract. However, he acknowledged that he may have said, "We can do that" or something similar in relationship to the debit card program.

Both Dr. Smith and Mr. Stinson stated that their plan was to distribute the brochures by placing them in the seats at Adelphia Coliseum and at other Athletics games. They both confirmed that Revelation America had sent brochures to the Athletics Department but stated that the brochures were never distributed. Mr. Stinson stated that some of the brochures had been handed out at an Athletics Department staff meeting. He said that the reason the brochures were not distributed was that Dr. Hefner by letter had directed Dr. Smith not to proceed with any TSU-Revelation America initiatives. We attempted to find the brochures that had been sent to TSU, but TSU personnel could not locate them.

However, two individuals evidently enrolled in the Revelation America debit card program under TSU's account number because Mr. John Miller, Revelation America's CEO, on March 13, 2001, sent Dr. Smith a letter about two activations under TSU's marketing (account) code and a \$20 check made out to TSU as the payee. The \$20 check represented Revelation America's payment to TSU of \$10 each for two debit card activations.

There is a significant difference between the discussions of Dr. Smith and Mr. Stinson, the Athletics Department's marketing representative, related to Revelation America's debit card program. Both Dr. Smith and Mr. Stinson agreed that Dr. Smith delegated to Mr. Stinson the responsibility for determining the appropriate policies and procedures to follow related to obtaining approvals for the debit card program. In addition, both agreed that, at the direction of

Dr. Smith, Mr. Stinson discussed the proposed program with Mr. Battle, TSU's Director of Purchasing; and Ms. Dorothy Lockridge, TSU's Dean of Student Affairs.

Mr. Stinson said that he met with both Mr. Battle and Ms. Lockridge. Mr. Stinson stated when he described the program to Mr. Battle, Mr. Battle said that a debit card program was not within his jurisdiction. When we contacted Mr. Battle, he could not recall meeting with Mr. Stinson about the proposed debit card program, but he agreed that he would have told Mr. Stinson that such a program was not within his jurisdiction. Both Mr. Stinson and Mr. Battle agreed that he did not approve the program in any manner.

Mr. Stinson stated that Mr. Battle then sent him to Ms. Lockridge because the debit card program related to students. He said that when he met with Ms. Lockridge, he described the debit card program to her in general terms. He stated that he did not ask her whether the program was legal or consistent with TSU or TBR policies and procedures. In fact, in a strange twist, according to Mr. Stinson, he told Ms. Lockridge that he didn't see a scenario when the debit card would be used. In addition, he said he told Ms. Lockridge that if the Athletics Department decided to pursue the program further, and if the department needed to have her involved, he would get back in contact with her. Ms. Lockridge confirmed that she and Mr. Stinson discussed the debit card program in a general way and also that their discussion did not address legal, contractual, or policy and procedure issues. According to Ms. Lockridge, she would not have opined on those matters in any case because she was not over the Athletics Department. Both Mr. Stinson and Ms. Lockridge agreed that she did not approve the program in any manner. Mr. Stinson stated that he never told Dr. Smith that Mr. Battle and Ms. Lockridge had approved the debit card program.

Dr. Smith exhibited confusion about his conversation with Mr. Stinson regarding the proposed debit card program. During an early interview, Dr. Smith stated that he never heard back from Mr. Stinson; therefore he presumed that the debit card program had been approved because Mr. Stinson would have informed him if there had been a problem with the program. During a later interview, Dr. Smith stated that Mr. Stinson told him that Mr. Battle and Ms. Lockridge had approved the program.

Conclusions Relating to Revelation America

Based on presently available information, with regard to the proposed Revelation America donation and the "Get in the Game" program, Dr. Smith failed to obtain a clear understanding of the contingent nature of the donation, the uncertainties associated with the source of funds, and the donation's timing. Dr. Smith also failed to obtain an appropriate written commitment. Based on his lack of understanding, Dr. Smith misrepresented the actuality of the donation to Dr. Hefner in written correspondence and to TSU supporters through a misleading public presentation at the February 24, 2001, men's basketball game between TSU and APSU.

With respect to both the proposed downpayment assistance program and the debit card program, Dr. Smith exhibited a lack of understanding and appreciation of the need to inform Dr. Hefner about the proposed initiatives and to obtain advice and approval. Dr. Smith also exhibited a lack of understanding and appreciation regarding the necessity to seek appropriate

guidance about legal and contractual issues. Based on his lack of understanding, Dr. Smith misrepresented that the university and Revelation America had formally agreed to a downpayment assistance program for university faculty and staff. In addition, Dr. Smith had initiated a debit card program in partnership with Revelation America without the knowledge or approval of the university's top management or TBR staff.

Moreover, Dr. Hefner's letters to Dr. Smith after the February 24 game clearly put Dr. Smith on notice that his initiatives involved university-wide matters and had serious TBR, legal, and administrative ramifications. However, when Dr. Hefner requested in writing that Dr. Smith provide him information about the proposed donation and downpayment assistance programs, Dr. Smith provided minimal information and referred Dr. Hefner to Mr. Lowery. Proposals of the scope and magnitude of the downpayment assistance program involve legal and contractual issues and a high level of detailed development. Because of his position, Dr. Smith should have been sensitive to the need to develop sufficient explanatory information and to obtain appropriate guidance, review, and approval before proceeding further with any commitments to a corporation such as Revelation America or a governmental entity such as Metro's Division of Affordable Housing.

In several situations, Dr. Smith's recollections differ significantly from the recollections of other parties to the same discussions. Dr. Smith, in light of his position, should have taken the initiative to make sure he fully understood what his staff had found out about applicable university requirements. He apparently knew these initiatives were significant since he dispatched his staff to explore any necessary university requirements. Under those circumstances, he should have taken steps to remove any doubt in his mind about what was required, such as asking to see pertinent policies or following up with other university officials. It would appear to be a prudent business practice when dealing with important proposals and program elements to secure appropriate written confirmation of key decisions and commitments. Dr. Smith did not follow this business practice.

All three initiatives entailed involvement of TSU staff and, if successful, would have had significant impact on the university's Athletics programs, staff, students, and support communities. Obviously, such proposed programs should be thoroughly researched and discussed at the highest level by TSU management. It would be inappropriate for the Athletics Director and other Athletics Department staff to unilaterally engage in the development of initiatives and programs that pertain to university affairs as a whole. The fact that Dr. Smith promoted these initiatives with apparently minimal consideration of the requirements and ramifications called into question his credibility and his ability to function effectively as Athletics Director.

UNAUTHORIZED PURCHASES

Dr. Hefner's Information Relating to Unauthorized Purchases

Dr. Hefner provided us information that indicated that the Athletics Department, during Dr. Smith's tenure, had engaged several vendors to provide athletics-related services without following TSU purchasing procedures, without executing contracts, and without obtaining

purchase orders. The Athletics Department also did not follow the required bid process in some cases. In addition, due to these improprieties, the Athletics Department was not able to pay these vendors when they presented their invoices for payment. Mr. Battle, TSU's Director of Purchasing, stated that such services should have been purchased pursuant to properly executed contracts or properly approved purchase orders, and that some of the purchases should have been bid in compliance with TSU's purchasing procedures.

Review Methodology

We interviewed Athletics Department staff and vendor personnel and examined vendor invoices, purchase requisitions, and TSU payment information.

Results of Review

Vendors and Invoices

After Dr. Smith's termination, TSU's Athletics Department staff and Business Office staff identified five improper arrangements with (1) Hemphill Entertainment Services; (2) 92Q Radio; (3) WUXP-UPN 30/WZTV-Fox 17 Television; (4) Marfac, Inc.; and (5) Sam Jordan Photography. These vendors invoiced TSU for \$21,313.40.

The five vendors submitted a total of 19 invoices to the Athletics Department during Dr. Smith's tenure. The Athletics Department authorized payment of 2 of the 19 invoices in April 2001. After Dr. Smith's termination on June 1, 2001, TSU paid the remaining 17 invoices in full on June 30, 2001.

The 17 invoices were paid an average of 218 days after the invoice dates. The quickest time to payment was 122 days, while the longest time to payment was 303 days. Ms. Phillips, the Interim Athletics Director at that time, and Business Office staff identified the 17 past-due invoices after Dr. Smith's termination, and Dr. Hefner made the decision to honor the obligations incurred by Athletics Department staff.

The invoices were discovered in the Athletics Department after Dr. Smith left TSU's employment. According to Athletics Department staff, some invoices were sent to the Business Office and subsequently returned to the Athletics Department because of insufficient funds in Athletics Department accounts. Other invoices had been held in the Athletics Department because Athletics Department staff believed that the Business Office would not pay the invoices.

Hemphill Entertainment Services

Hemphill Entertainment Services provides buses for small groups. Hemphill submitted six invoices totaling \$11,335.49. The dates and amounts of the invoices were as follows: (1) November 2, 2000, for \$700.00; (2) November 10, 2000, for \$952.84; (3) November 14, 2000, for \$1,962.84; (4) November 14, 2000, for \$797.84; (5) November 14, 2000, for \$700.00; and (6) November 29, 2000, for \$6,221.97. The three invoices dated November 14, 2000, covered the

period from November 17 to November 19, 2000, and included bus trips to Chattanooga and Murfreesboro, Tennessee, and to Fayetteville, Arkansas.

Based on TSU purchasing policies, invoices must be supported by both a *purchase order* and a *purchase requisition*. According to TSU's purchasing policies, an approved purchase order should be obtained from TSU's Purchasing Office, where it is kept on file. The purchase order creates an account for the vendor and serves as authorization to pay the vendor's invoices. When the vendor submits an invoice, the department receiving the invoice prepares a purchase requisition and submits both the invoice and the purchase requisition to TSU's Business Office for payment. The purchase requisition serves as the request to pay the vendor's invoice. The Business Office matches the requisition with the approved purchase order on file in the Purchasing Office and processes the invoice for payment.

The Hemphill invoices were supported by purchase requisitions but not purchase orders. TSU's Business Office paid the first two invoices (for November 2 and 10) in full with one check on April 16, 2001, 157 to 165 days after the invoice dates. The purchase requisition associated with the payment and signed by Dr. Smith and by Dr. Hefner referenced the attached Hemphill invoices for bus leases. TSU's Business Office paid the remaining four invoices (for November 14 and 29) in full with a second check on June 30, 2001, 213 to 228 days after the invoice dates. The purchase requisition associated with the payment, which was signed by Dr. Hefner and by Ms. Phillips as Interim Athletics Director, stated that the payment was for bus leases.

Ms. Heather Odean, Hemphill's Assistant Operations Manager, stated that Mr. Stinson (the Athletics Department Marketing Representative) was the individual who had contacted her to initiate the services. According to Ms. Odean, Mr. Stinson told her that he had contacted Grayline Tours, with whom TSU had a contract, and since he needed buses for smaller groups, Grayline had referred him to Hemphill. Ms. Odean stated that Mr. Stinson and Dr. Smith came to Hemphill's facility and looked at the buses available. She said that Mr. Stinson then arranged for the buses and said that he was working on the purchase order. Both Ms. Odean and Ms. Jeanie Umfleet, a Hemphill account clerk, stated that they were under the impression that Mr. Stinson would provide Hemphill with a purchase order.

According to Ms. Odean, because she thought the purchase order was in process, she authorized the lease of the buses. She stated that she called Mr. Stinson repeatedly about the purchase order and that he would promise to provide her the purchase order, but he never did. Ms. Odean stated that she knew that TSU was a big customer of Grayline, Hemphill's sister company, and had a good history of paying its Grayline bills, and therefore she did not want to jeopardize the TSU-Grayline relationship.

Mr. Stinson agreed with Ms. Odean's recollection. In explaining the Hemphill bus leases, Mr. Stinson stated that for the first football road trip, he had leased a bus from Cinderella Coaches in Nashville because he had leased buses from Cinderella Coaches before he was employed at TSU. He said that after the trip, Ms. Margaret Robinson, a Purchasing Agent with TSU's Purchasing Department, contacted him and questioned why he leased a bus from Cinderella Coaches when TSU had an open purchase order with Grayline Tours. Mr. Stinson

said that he responded that he was unaware of the Grayline open purchase order and that he would use Grayline in the future. He said that for the next trip, he called Mr. Joe Jones, a Grayline leasing agent. Mr. Stinson said that, because of the small size of his group, Mr. Jones referred him to Hemphill because Hemphill had buses better suited to smaller groups. According to Mr. Stinson, Mr. Jones referred to Hemphill as a “sister company,” and therefore he assumed that Hemphill would be covered under TSU’s open purchase order with Grayline.

Mr. Jones stated that, at the time these events took place, both Grayline and Hemphill were owned by VecTour, Inc., a Pennsylvania-based motorcoach operator. According to Mr. Jones, VecTour filed for bankruptcy in early 2002. Grayline is now a privately owned company, and Hemphill is now owned by the Hemphill brothers who founded the company.

According to TBR Policy 4:02:10:00, Section II-B, *Purchasing Policy and Procedures*, certain services or combinations of goods and services, such as charter services, may be procured based on an Invitation to Bid if the end product is more important than the service that goes toward its production or where the vendor has little discretion in determining its actual content or form. A purchase order may be used to finalize the purchase. The open purchase order with Grayline was obtained in this manner.

In a memorandum from Mr. Stinson to Mr. Ken Martin, Associate Athletics Director for Financial Affairs, Mr. Stinson explained the Hemphill invoices by stating that Mr. Jones gave him a contact person at Hemphill and told him that Grayline already had a purchase order number from TSU’s Athletics Department and that he would share it with Ms. Odean at Hemphill. Mr. Jones confirmed that he had discussed leasing buses with Mr. Stinson and that he had referred Mr. Stinson to Ms. Odean at Hemphill. However, Mr. Jones directly denied that he had told Mr. Stinson that he would provide Grayline’s purchase order number to Hemphill or that Hemphill was included under the Grayline purchase order.

Mr. Stinson stated that, based on his assumption that TSU’s open purchase order with Grayline extended to Hemphill, he leased Hemphill buses for Athletics Department media personnel to travel to sporting events to obtain footage for the *TSU Coaches’ Show*. He stated that he did not find out that TSU’s open purchase order with Grayline did not extend to Hemphill, although Hemphill was a related company of Grayline, until after the trips had already been made and he had received the first invoices for payment. The arrangement with Hemphill was not confirmed by a written agreement. Mr. Stinson said that Ms. Odean informed him that TSU’s open purchase order with Grayline did not cover Hemphill. However, Ms. Odean directly denied having told Mr. Stinson that TSU’s open purchase order with Grayline did not extend to Hemphill. Ms. Odean stated that the problem for her was that Mr. Stinson continually promised to provide her with a purchase order number but never did.

Mr. Stinson said that, although he had the Hemphill invoices, he did not have the proper supporting purchase order or contract. Mr. Stinson stated that he thought that the first two invoices had been paid from a Foundation account. However, the two invoices were paid from a TSU account. The other four invoices remained unpaid until June 30, 2001, when Dr. Hefner authorized the payment of past-due invoices.

Mr. Battle, TSU's Director of Purchasing, confirmed that TSU had an open purchase order with Grayline but that the open purchase order did not include Hemphill.

We determined that the first two Hemphill invoices were paid from the Athletics Administration account, not a Foundation account. The two invoices were paid pursuant to a purchase requisition subsequently signed by Dr. Smith and by Dr. Hefner. Dr. Hefner authorized this payment because Hemphill had provided the service, a university employee had arranged for the bus leases, and the invoices were significantly past due.

Mr. Stinson should have verified that TSU had in place an appropriate contract and purchase order relating to Hemphill before procuring the services of the company. His failure to do so resulted in an improper TSU obligation of \$11,335.49. Hemphill personnel should have confirmed the existence of an approved TSU purchase order prior to providing services.

92Q Radio

Nashville's 92Q Radio submitted four invoices totaling \$4,140.00, which TSU paid with one check on June 30, 2001. The dates and amounts of the invoices were as follows: (1) August 31, 2000, for \$750.00; (2) December 31, 2000, for \$2,500.00; (3) January 31, 2001, for \$125; and (4) February 28, 2001, for \$765.00.

TSU's Business Office paid the radio station's four invoices in full on June 30, 2001, from 122 to 303 days after the invoice dates. One invoice was for advertisements for the 2000 John Merritt Classic Football Game, while the other three invoices were for basketball advertisements. The purchase requisition associated with the payment, which was signed by Dr. Hefner and by Ms. Phillips as Interim Athletics Director, stated, "92Q Radio Advertisements for Basketball." The invoices were not supported by a purchase order or a contract.

Mr. Wendell Wilcox, a 92Q salesman, stated that he generally dealt with several individuals at TSU when arranging for advertisements for Athletics and special events, including Mr. Carl Pillow, TSU's Assistant Athletics Director. He stated that he could not recall whether he personally dealt with Mr. Pillow for the 2000 John Merritt Classic advertisements, but he stated that he dealt with Mr. Stinson (the Athletics Department Marketing Representative) for the basketball advertisements. Mr. Wilcox stated that 92Q provided the airtime for these ads without purchase orders because of a long-standing business relationship with TSU and because he had known Mr. Pillow for a long time. However, Mr. Wilcox stated that he believed the lack of purchase orders delayed payment. He also stated that as a result of this experience, 92Q instituted a new policy that required a purchase order number to enter a transaction into its billing system. Mr. Wilcox commented that until TSU paid these invoices, 92Q turned down orders from other TSU departments. He further stated that, as a result of TSU's failure to pay the invoices in a timely manner, his commission was reduced pursuant to 92Q's policy on late payments. When an account is 90 days past due, Mr. Wilcox's commission is reduced. He stated that he continues to experience difficulties in receiving payment from TSU. Mr. Wilcox stated that he could not recall a time in the three years prior to February 2003 when TSU had paid an invoice in a timely manner, and he stated that most payments were from 90 to 180 days late.

Mr. Pillow stated that he could not recall whether he discussed the 2000 John Merritt Classic advertisements in question with Mr. Wilcox but that he may have spoken with him. He stated that some advertisements with 92Q were arranged by Athletics Department staff without his knowledge. He said that he obtained purchase orders in advance for all ads that he initiated and that his office (University Relations) paid for all advertisements it initiated.

Mr. Stinson told us that he arranged for both the football and the basketball ads in question. Mr. Stinson stated that Mr. Battle, TSU's Purchasing Director, had informed Athletics Department staff that the Coca-Cola Bottling Company Consolidated (located in Brentwood, Tennessee) had made marketing dollars available to TSU and that requests to use those funds needed to be made to Dr. Everette Freeman, Executive Assistant to the President. Mr. Stinson stated that he submitted the required form for season ticket advertisements to Dr. Freeman and that Dr. Freeman approved the expenditures of \$5,000 each for radio and television advertisements. Mr. Stinson stated that he thought that Dr. Freeman would submit the signed form to Coca-Cola for its approval and that Dr. Freeman would ensure that the invoices submitted later would be paid. Mr. Stinson said that when he submitted the first invoice and a purchase requisition to Dr. Freeman's office, the requisition form was sent back to him as not needed. Based on this information, he assumed that no purchase requisition or purchase order was required. He said that he found out later from the vendor that the invoice had not been paid, but the matter was not resolved by the time that he and Dr. Smith left TSU in the summer of 2001.

Mr. Stinson provided us a copy of the form he had submitted to Dr. Freeman. The form, entitled "Marketing Incentives Request," stated, "We need \$5,000 each in radio and television," and was signed as approved by Dr. Freeman on September 12, 2000.

We contacted Dr. Freeman about this matter. Dr. Freeman left TSU's employment in May 2001, and he is currently Senior Vice President and Provost at the University of Indianapolis. Dr. Freeman confirmed that Coca-Cola had agreed to make marketing money available to TSU. In addition, he confirmed that he had signed the "Marketing Incentives Request" form provided to us by Mr. Stinson. He explained that his approval on the form was only the first step in the approval process. The next step was for the signed form to be submitted to Coca-Cola for approval. Dr. Freeman stated that he thought Mr. Frank Battle, TSU's Director of Purchasing, submitted the completed form to Coca-Cola, but he was unsure of this.

However, Mr. Battle stated that Dr. Freeman was responsible for submitting the form to Coca-Cola. Once a Coca-Cola official approved the expenditure, the form would be returned to TSU. At that point, Athletics Department staff would obtain an approved purchase order and hire a vendor. After the vendor provided services, the vendor would send an invoice to the Athletics Department. Athletics Department staff would then submit the invoice and an approved purchase requisition to TSU's Business Office. As the final steps in the process, the Business Office would submit the invoice to Coca-Cola, and Coca-Cola would pay the vendor.

Dr. Freeman noted that the form provided to us by Mr. Stinson had not been signed as approved by Coca-Cola and, also, that nothing on the form indicated that it had been submitted

to Coca-Cola for review and approval. Furthermore, Dr. Freeman said that he did not recall making any statements to Mr. Stinson about not needing purchase requisitions with the invoices.

Dr. Freeman stated that he had specifically discussed the Coca-Cola marketing money and the steps in the approval, billing, and payment process with Dr. Smith. However, Dr. Freeman said that he had not had any discussions with Mr. Stinson about the Coca-Cola marketing funds or the approval and payment process. It is evident from Mr. Stinson's statements that he did not understand the approval, billing, and payment process. If Mr. Stinson had understood the process, he would have been aware that Dr. Freeman's signature alone was not sufficient authorization to engage 92Q to provide radio advertisements. It is also evident from the statements of Mr. Battle, Dr. Freeman, and Mr. Stinson that there was confusion as to who was responsible for sending the "Marketing Incentives Request" form to Coca-Cola for approval. In the absence of a clear understanding on this important matter, the form was not submitted to Coca-Cola, and appropriate approval for the expenditures was not obtained. Personnel at 92Q should have confirmed the existence of an approved TSU purchase order prior to providing services.

WUXP-UPN 30/WZTV-Fox 17 Television

WUXP-UPN 30/WZTV-Fox 17 Television in Nashville submitted six invoices totaling \$3,992.25, which TSU paid with one check on June 30, 2001. The dates and amounts of the invoices were as follows: (1) August 31, 2000, for \$493.00; (2) September 3, 2000, for \$467.50; (3) October 22, 2000, for \$641.75; (4) November 10, 2000, for \$1,110.00; (5) December 10, 2000, for \$50.00; and (6) December 24, 2000, for \$1,230.00. The invoices were for television commercials related to the basketball season ticket promotion for the 2000-2001 season.

TSU's Business Office paid the six invoices in full on June 20, 2001, from 188 to 303 days after the invoice dates. The purchase requisition associated with the payment, which was subsequently signed by Dr. Hefner and by Ms. Phillips as Interim Athletics Director, stated, "A requisition to pay invoice basketball season ticket promotion for the 2000-01 season." The invoices were not supported by a purchase order or a contract.

Mr. Kenny Griffin, an account executive with WUXP, stated that he handles the advertising account with the Athletics Department regarding promotionals (commercials) that WUXP prepares and airs for TSU each year. According to Mr. Griffin, he initially contacted TSU in July 2000 and spoke with various TSU personnel from August through October, including Mr. Stinson; Mr. Carl Pillow, Assistant Athletics Director; and Mr. Kindell Stephens, Sports Information Director. Mr. Griffin stated that his contact for basketball season ticket advertisements was Mr. Stinson. Mr. Griffin stated that prior to his contact with Mr. Stinson, WUXP had always obtained purchase orders from TSU. He stated that Mr. Johnny Franks, TSU's former Sports Information Director, had provided the purchase orders up to that time, and he expected that Mr. Stinson would provide a purchase order. However, according to Mr. Griffin, Mr. Stinson did not provide a purchase order. Mr. Griffin stated that, because of WUXP's long-standing business relationship with TSU, WUXP scheduled airdates, prepared and aired the commercials, and submitted invoices to TSU without obtaining a purchase order. Mr.

Griffin further stated that he thought the lack of purchase orders caused payment problems later because it took WUXP a long time to obtain payment.

With regard to WUXP, Mr. Stinson provided the same explanation as for 92Q. Mr. Stinson's lack of understanding related to the appropriate approval, billing, and payment process was discussed above in the section on 92Q Radio. As with 92Q, WUXP-UPN 30/WZTV-Fox 17 personnel should have confirmed the existence of an approved TSU purchase order prior to providing services.

Marfac, Inc.

Marfac, Inc., a Nashville business marketing firm, submitted an invoice for \$1,068.16 dated May 2, 2001. The original date shown on the invoice was November 1, 2000, the due date was December 1, and \$1,068.16 was listed in the column for amounts that were 120 days past due. Marfac's invoice did not contain any information as to the services provided.

On June 30, 2001, TSU's Business Office paid Marfac's invoice in full, 241 days after the original invoice date. The purchase requisition associated with the payment, which was signed by Dr. Hefner and by Ms. Phillips as Interim Athletics Director, stated, "Pay for Services rendered for Internet Services."

However, Mr. Stinson stated that his discussions with Marfac personnel did not involve Marfac charging for Internet services. Mr. Stinson stated that Marfac personnel initiated contact with him regarding a TSU web site after he met a member of Marfac's staff while visiting Nashville Gas regarding a corporate sponsorship. Mr. Stinson stated that Nashville Gas and Marfac had offices in the same building. According to Mr. Stinson, Marfac at that time was proposing to market TSU merchandise, such as shirts and hats, over the Internet and receive a commission on sales. Mr. Stinson stated that when he proposed Internet marketing through Marfac to Mr. Battle, TSU's Director of Purchasing, Mr. Battle rejected the proposal on the grounds that TSU's bookstore should sell such products because it held the licensing rights to sell TSU-related merchandise. Mr. Battle confirmed his discussion with Mr. Stinson. Mr. Stinson stated that at some point after his discussion with Mr. Battle, he told Marfac personnel that the Internet marketing proposal had not been approved. Mr. Stinson stated that he had no relation to anyone at Marfac, and he was not aware of the company's existence until his encounter with a Marfac staff member at Nashville Gas.

Mr. Stinson stated that Marfac's invoice was not for Internet services but was for stonewashed denim shirts that he had ordered for TSU Athletics Department broadcast personnel and interns. Mr. Stinson provided us a copy of an itemized invoice from Marfac dated November 1, 2000, for \$1,068.16 for stonewashed denim shirts. Mr. Stinson also stated that he had submitted all of Marfac's invoices to the TSU Foundation for payment and that when he left TSU's employment in July 2001, there were no unpaid invoices to his knowledge. Mr. Stinson questioned whether the \$1,068.16 invoice was paid twice: once by the Foundation and again by TSU.

We identified two additional Marfac invoices paid by TSU. Both clearly indicated that they were invoices for shirts. The first invoice, dated April 5, 2001, was for \$482.15 for 50 "Staff Golf Tournament Shirts." The second invoice, dated September 12, 2001, was for \$347.64 for 13 herringbone sport shirts. Mr. James Reese, TSU's Head Football Coach, placed both orders. Mr. Reese stated that he became aware of Marfac when Mr. Greg Brewer, a sales representative from Marfac, visited the Athletics Department with samples of products. Mr. Reese stated that he ordered the shirts from Marfac because Marfac's prices were lower than those of other vendors. The purchase requisitions accompanying both invoices, dated June 6, 2001, and October 24, 2001, respectively, contained the signatures of Coach Reese; Ms. Teresa Phillips, TSU's Interim Athletics Director; and Dr. Hefner, TSU's President. The invoices were paid on July 25, 2001, and October 31, 2001, respectively. According to documentation provided by Mr. Battle, both purchases were authorized and paid properly. However, the invoices were not paid in a timely manner. The two invoices for shirts and the one invoice for Internet services constitute all the invoices in TSU's Marfac vendor file. (See table below.)

We made several attempts to contact Marfac officials by telephone and e-mail but were unsuccessful. We identified Marfac's telephone number from its invoices, the telephone white pages, and Marfac's Internet Web site. Marfac's business telephone number was no longer in service. We identified Marfac's e-mail address from its Internet Web site, but when we sent Marfac an e-mail, we received no response. We asked Mr. Stinson for a telephone number for Marfac, and he provided us the cell phone number for Ms. Laura McBee, Marfac's President. We called Ms. McBee's cell phone, reached her voice mail, and left a message, but she did not return our call. For Ms. McBee, the only other telephone number we could locate was in the telephone white pages. Her number was the Marfac business number, which we had determined previously was no longer in service.

On January 9, 2002, we went to Marfac's official address on its invoice, in the telephone book white pages, and on its Internet site. The building, at 665 Mainstream Drive in Nashville, housed the Nashville Gas Company and other smaller companies, but not Marfac. A security guard at the building told us that Marfac had filed for bankruptcy prior to Christmas 2001 and had moved out of the building.

We obtained a list of all Foundation payments to Marfac from Ms. Delorse Lewis, TSU's Foundation Director. We then obtained the supporting documentation for those payments from TSU's Purchasing Department. Three payments totaling \$2,732.71 were made from the Foundation to Marfac between March 15, 2001, and April 19, 2001. The payments were for Athletics-related merchandise such as sport shirts, jackets, and travel bags. The purchase requisitions for the sport shirts and the travel bags, dated April 16, 2001, and February 21, 2001, respectively, were signed by Mr. James Reese, TSU's Head Football Coach; Dr. Smith; and Ms. Delorse Lewis, TSU's Foundation Director. The purchase requisition for the jackets, dated March 31, 2001, was signed by Mr. Stinson; Ms. Perianne London, Assistant to the Athletics Director; Dr. Smith; and Ms. Lewis. None of the Foundation payments to Marfac related to the \$1,068.16 invoice. (See table below.)

Table of Payments to Marfac

<i>Date</i>	<i>Paid by university</i>	<i>Date</i>	<i>Paid by Foundation</i>
June 30, 2001	\$1,068.16	March 15, 2001	\$1,179.00
July 25, 2001	\$482.15	March 20, 2001	\$152.90
October 31, 2001	\$347.64	April 19, 2001	\$1,400.81
<i>Grand Total</i>	\$1,897.95		\$2,732.71

We asked Ms. Phillips, who authorized payment, the basis for her determination that the invoice was for Internet services. Ms. Phillips stated that she couldn't recall how she came to that conclusion. She said that she was aware at the time from discussions with Marfac personnel and also through review of documentation and observation of the Web site that Marfac was operating a "Teams TSU" Web site that sold TSU-related merchandise and also included a chat room, and therefore she may have concluded from that information that the invoice was for Internet services. She pointed out that Marfac's original invoices included descriptions of services or products provided and the amount due but that Marfac's subsequent past-due invoices included only the amount due without any description. Based on this observation, she noted that the invoice for which she authorized payment was one of the company's past-due invoices, which only included the amount due. As previously noted, the invoice amount of \$1,068.16 was listed in the column for amounts that were 120 days past due.

Based on review of the invoice for the stonewashed denim shirts ordered by Mr. Stinson and the invoices for the golf tournament shirts and the herringbone sport shirts ordered by Coach Reese, the invoices do not appear to be for the same items. The dates, amounts, and item descriptions on the invoices do not match each other.

Based on presently available information, the \$1,068.16 invoice was for stonewashed denim shirts; the invoice was paid only once; it was paid from a TSU account; and the TSU purchase requisition was in error when it characterized the invoice as for Internet services. Clearly, TSU staff should understand the nature of the services or products provided before authorizing payment of vendor invoices. Moreover, TSU's Business Office staff should not process payment for any invoice unless the invoice clearly describes the goods or services provided.

Sam Jordan Photography

Sam Jordan Photography submitted two invoices totaling \$777.50, which TSU paid with one check on June 30, 2001. The first invoice, dated November 11, 2000, was for \$467.50 for "Mens [*sic*] and Womens [*sic*] Basketball Headshots." The second invoice, also dated November 11, 2000, was for \$310.00 for "Women's Basketball Media Guide Cover."

On June 30, 2001, TSU's Business Office paid both invoices in full, 231 days after the invoice dates. The purchase requisition associated with the payment, dated June 29, 2001, and which was signed by Dr. Hefner and by Ms. Phillips as Interim Athletics Director, stated, "Pay

Sam Jordan for his work done through the year with Athletics.” According to Mr. Frank Battle, TSU’s Purchasing Director, a written agreement was not necessary because the items were below the bid amount threshold. However, the invoices were not supported by a purchase order.

According to Mr. Sam Jordan, the owner of Sam Jordan Photography, he did photography work for TSU’s Athletics Department. Mr. Jordan stated that he received his assignments from either Mr. Kindell Stephens or Mr. Wallace Dooley, who were staff members of the Athletics Department’s Sports Information Office. Mr. Jordan also stated that the assignments for which he submitted the invoices in question were not received from Mr. Stinson or Dr. Smith.

At that time, Mr. Stephens was the Assistant Sports Information Director. He stated that he was not the person who arranged for the Sam Jordan Photography work because he was sick at the time and was on extended sick leave from TSU. He said that during his absence, Mr. Derek Smith, TSU’s Public Information Officer, also worked in Sports Information and may have arranged for the Sam Jordan work. However, Mr. Smith stated that he did not arrange for the Sam Jordan Photography work because he was not a TSU employee at the time.

When we recontacted Mr. Stephens, he then stated that Mr. Wallace Dooley, the Sports Information Coordinator, would have been the individual who assigned work to Sam Jordan. When we contacted Mr. Dooley, he stated that he was the one who had authorized the Sam Jordan work. He explained that he arranged for the work on a rush basis without a purchase order but that he discussed the matter with Ms. Perianne London, the Assistant to the Athletics Director. He said that he was under the impression that there was a contract with Sam Jordan but that he had never seen the contract. He said that based on his discussion with Ms. London, he believed that she would submit the proper paperwork to initiate payment to Sam Jordan. Mr. Dooley stated that Sam Jordan had fulfilled the requirements of the assignment.

Ms. London stated that she had had a long-standing problem with Sports Information staff in that they would bring individuals on campus to perform work without prior authorization, without contracts, and without purchase orders. With regard to Sam Jordan Photography, she said that she would learn that Mr. Jordan had performed work for Sports Information when Mr. Jordan’s wife, Ms. Valencia Jordan, TSU’s Women’s Basketball Coach, would bring her the invoices for payment. Ms. London stated that, in the absence of a contract or purchase order, she would prepare a purchase requisition, staple the invoice to the purchase requisition, and give the documents to Ms. Jordan. Ms. London said that from that point the matter was out of her hands, and she did not know what happened or whether the invoices were ever paid. The two Sam Jordan Photography invoices were paid on June 30, 2001, after Dr. Smith’s termination. In the fall of 2001, Ms. London was transferred from her position as Assistant to the Athletics Director to the position of Assistant to the Vice President of Student Affairs.

With regard to the fact that Mr. Jordan and Ms. Jordan are married, there was no conflict of interest because Ms. Jordan had no approval authority in hiring Mr. Jordan or in approving payment to Mr. Jordan. Mr. Dooley stated that he was never solicited by Ms. Jordan to use Mr. Jordan for photography work, and he was never told by anyone to use Mr. Jordan because he was Ms. Jordan’s husband. Mr. Dooley also stated that the university had used Mr. Jordan for

photography work on prior occasions, and Mr. Dooley stated that he hired Mr. Jordan because he did good work.

Based on presently available information, Athletics Department staff failed to follow appropriate purchasing procedures by failing to obtain the required purchase orders.

Dr. Smith's Explanation Regarding Unauthorized Purchases

We asked Dr. Smith specifically about the unauthorized purchases discussed above. According to Dr. Smith, his marketing representative, Mr. Stinson, was responsible for ensuring that appropriate contracts, purchase orders, and purchase requisitions were utilized for all purchases by the Athletics Department for these services. Dr. Smith stated that Mr. Stinson should have known to follow proper procedures related to contracts, purchase orders, and purchase requisitions. Dr. Smith said that he did not know that purchases had occurred without proper authorization and that he never gave Mr. Stinson permission to circumvent TSU's contracting and purchasing requirements. Dr. Smith concurred that such purchases without appropriate authorization would be improper. With regard to the leasing of buses from Hemphill Entertainment Co., Dr. Smith stated that Mr. Stinson had told him a separate contract between TSU and Hemphill was not needed because Hemphill was a part of Grayline and TSU had a contract with Grayline. At the outset of our review of this area, Dr. Smith stated that we needed to contact Mr. Stinson for any details about the questionable purchases.

Conclusions Regarding Unauthorized Purchases

Based on presently available information, we determined that Dr. Smith, in general, delegated several purchasing matters to Mr. Stinson, the Athletics Department's marketing representative, and that he assumed that Mr. Stinson followed the appropriate procedures. For four vendors, Mr. Stinson, apparently with little or no knowledge of the purchasing process to be employed and without proper approval, arranged for the vendors to provide services to the Athletics Department without following proper procedures. Specifically, Mr. Stinson (a) failed to arrange for services pursuant to a previously approved contract; (b) failed to comply with the appropriate bid process; (c) failed to obtain executed contracts; and (d) failed to obtain approved purchase orders.

Mr. Stinson stated that he misunderstood the TSU-vendor relationship with regard to Hemphill Entertainment Services because he mistakenly presumed that Hemphill was included under the TSU-Grayline open purchase order. However, by arranging for Hemphill to provide buses, Mr. Stinson circumvented the invitation to bid and contract award process. Mr. Stinson's selection of Hemphill to provide buses was inappropriate because TSU already had an open purchase order with Grayline Tours of Nashville to provide buses for university travel, and the open purchase order did not extend to Hemphill, although Hemphill was a related company of Grayline.

With respect to 92Q and Fox 17, Mr. Stinson evidently misunderstood that the Athletics Department needed to obtain approval from Coca-Cola Bottling Company Consolidated before obligating Coca-Cola's marketing dollars. Moreover, Mr. Stinson circumvented TSU's

purchasing policies and procedures because the services provided should have been obtained through the bid process, and written agreements should have been executed.

As for Marfac, Mr. Stinson engaged Marfac to provide stonewashed denim shirts for TSU media personnel. TSU paid the invoice, even though it did not contain a description of the goods or services provided. The invoice was not supported by a purchase order. Instead, after Mr. Stinson's resignation, the invoice was incorrectly characterized by Ms. Phillips, the Interim Athletics Director, as being for Internet services and was paid from an Athletics Department account. Mr. Stinson expressed concern that the invoice had been paid twice, once by TSU and once by the Foundation. We examined all Marfac invoices paid by TSU or by the Foundation during Dr. Smith's tenure (six invoices total) and concluded that none of the invoices, including the invoice in question, had been paid twice.

With regard to Sam Jordan Photography, Mr. Dooley in the Athletics Department's Sports Information Office engaged Sam Jordan Photography to provide photographs of TSU's basketball teams. The invoice was not supported by a purchase order.

Mr. Stinson should have obtained appropriate guidance from TSU's Purchasing Director before proceeding to make arrangements that obligated the university. Likewise, Mr. Dooley should have obtained appropriate approvals prior to arranging for photography services. As Athletics Director, Dr. Smith should have ensured that Athletics Department staff followed appropriate purchasing procedures in that they obtained bids when required, executed contracts, obtained approved purchase orders, and obtained approved purchase requisitions. Moreover, contrary to prudent business practices, it is apparent from the number of invoices that were paid long after they were due that Athletics Department staff obligated the university to pay for goods and services without reasonable assurance that funding would be available when payment was due. Businesses should confirm the existence of an approved TSU purchase order before providing goods and services to TSU.

FAILURE TO PAY INVOICES FOR AUTHORIZED SERVICES

Past-Due Invoices

Dr. Hefner provided us information that indicated that the Athletics Department was substantially in arrears in paying some vendors with whom it had executed contracts or otherwise arranged for services. TSU paid all the outstanding invoices on its list of past-due invoices on June 30, 2001, after Dr. Smith's termination.

These vendors differ from the vendors discussed in the preceding section in that these vendors had entered into a proper contractual relationship with TSU, whereas the vendors discussed above had not.

Based on information provided by TSU's Business Office, TSU paid three vendors and six game-day workers a total of \$83,357 on June 30, 2001, for 23 past-due invoices. The vendors were News Channel Five, Cinema Seven Productions, and Tennessee Orthopedic Alliance. The game-day workers included six individuals who worked at TSU's basketball

games. According to TSU's schedule of invoices past due, the number of days after the invoice date ranged from a low of 61 days to a high of 279 days, with an average of 183 days. Of the 23 invoices, two invoices from Cinema Seven Productions contained a total of \$637.50 in late charges.

News Channel Five

TSU contracted with News Channel Five, a Nashville television station, to provide a televised *Coaches' Show* for football and basketball on News Channel Five's cable channel, News Channel Five Plus, as well as a radio show on News Channel Five's radio station, AM 1430. The contract was initiated by Mr. Stinson. It was signed by Dr. Hefner, TSU's President; Mr. Thomas Martin, TSU's Vice President for Student Affairs; Dr. Smith, TSU's Athletics Director; and Ms. Debbie Turner, General Manager for the News Channel Five Network, on June 23, 2000. The contract amount was \$48,650.

TSU's Purchasing Department staff could not locate a sole-source letter to support the June 23, 2000, contract. Mr. Battle, TSU's Purchasing Director, confirmed that the contract was executed as a sole-source contract and that there should have been a sole-source letter in the vendor file. According to Mr. Battle and Ms. Lisa Atkins of TBR's legal staff, the contract with News Channel Five was appropriate for sole-source treatment because of the uniqueness of services to be provided and the fact that News Channel Five has the only cable channel of Nashville's major network stations.

News Channel Five submitted 20 invoices for \$31,450 with invoice dates ranging from September 24, 2000, to April 30, 2001. The invoice amounts ranged from \$250 to \$4,800. However, Athletics Department staff did not obtain an approved purchase order or approved purchase requisitions during Dr. Smith's tenure. Both an approved purchase order and an approved purchase requisition are necessary for payment. The 20 invoices were not paid until June 30, 2001, after Dr. Smith's termination. The longest time to payment was over nine months. These invoices were discovered by university personnel in the Athletics Department after Dr. Smith left TSU's employment.

Cinema Seven Productions

A sole-source letter dated October 3, 2000, supported TSU's contract with Cinema Seven Productions of Nashville, which was dated October 13, 2000. The contract was signed by Dr. Hefner, Dr. Smith, Mr. Stinson, and Mr. Mark Jackson, the owner of Cinema Seven Productions. The "not to exceed" amount specified in the contract was \$84,888. Mr. Jackson stated that TSU contracted with him to provide production elements for the TSU *Coaches' Show*.

According to TSU's schedule of past-due invoices, Cinema Seven submitted an invoice dated April 12, 2001, for \$2,632. However, Athletics Department staff did not obtain an approved purchase order or an approved purchase requisition for this invoice during Dr. Smith's tenure. The invoice was not paid until June 30, 2001, after Dr. Smith's termination. The time to payment was two months.

Our review disclosed 12 additional invoices from Cinema Seven totaling \$35,874.50. The invoice dates ranged from September 11, 2000, to February 5, 2001. TSU paid one invoice in a timely manner and paid the remaining 11 invoices from 25 to 199 days past the invoice date. Although Athletics Department staff obtained approved purchase requisitions for each payment, none of the payments were supported by an approved purchase order. An approved purchase order should have been obtained prior to arranging for the services to be performed. Therefore, TSU's Business Office authorized payment without the requisite approved purchase order. The purchase requisitions were signed by various TSU personnel, including Ms. Perianne London, Assistant to the Athletics Director; Mr. Stinson; Ms. Phillips, Interim Athletics Director; Dr. Smith; and Dr. Hefner, TSU's President.

We also determined that because TSU did not pay Cinema Seven in a timely manner, Cinema Seven was unable to pay one of its vendors on time and finance charges were assessed against TSU. TSU paid \$637.50 in late charges.

In a letter to Dr. Smith dated March 6, 2001, Dr. Hefner wrote,

Once again, your inability to secure sufficient funds to meet previous financial commitments to vendors and others has placed Tennessee State University (TSU) in a precarious legal position. I have approved the payment of \$7,437.50 to Cinema Seven Productions – purchase requisition number 23930 enclosed – despite the fact that you have inadequate funds in your departmental account to meet this obligation. As you know, I am making yet another dispensation that places your department in a further deficit position to avoid litigation that Cinema Seven Productions threatens to initiate unless payment is immediately received.

The payment of \$7,437.50 was made by check on March 6, 2001. The payment covered six invoices from the months of October 2000, November 2000, and February 2001, and included charges for studio time for the *Coaches' Show* and finance charges incurred by Cinema Seven because of late payments that resulted from TSU's inability to pay Cinema Seven in a timely manner. The purchase requisition, dated March 5, 2001, was signed by Ms. London, Assistant to the Athletics Director; Dr. Smith; and Dr. Hefner.

We further noted that the contract period specified in the contract was from September 2, 2000, through March 31, 2001. However, both the sole-source letter and the final signature on the contract were obtained after the start of the contract period. As indicated above, the sole-source letter was dated October 3, 2000, and the final contract signature was obtained October 13, 2000. Prudent business practices as well as TSU and TBR policies require that approved agreements be in place prior to the vendor providing services and the university incurring liability for payment.

Tennessee Orthopedic Alliance

TSU's list of past-due invoices included one for the Tennessee Orthopedic Alliance (Tennessee Orthopedic). The TSU schedule noted that the contract period should have been July

1, 2000, through June 30, 2001. However, no contract or purchase order had been approved during Dr. Smith's tenure.

Tennessee Orthopedic provides sports medicine-related services to TSU, including clinical and surgical services for sports-related injuries. Tennessee Orthopedic also furnishes a team doctor for Athletics events. Tennessee Orthopedic enters into contracts with TSU each year to provide these services.

We reviewed TSU's contracts with Tennessee Orthopedic for fiscal years ending June 30, 1999, through June 30, 2002, to determine whether the contracts contained the appropriate approval signatures. Two contracts were signed prior to Dr. Smith's tenure at TSU. One contract was signed by Dr. Smith, and the other contract was signed by Ms. Phillips, the Interim Athletics Director, immediately after Dr. Smith's termination. Dr. Smith became Athletics Director in August 1999, which was during the 2000 fiscal year, and was terminated in June 2001, which was during the 2001 fiscal year. The total cost under the contracts reviewed was approximately \$47,000 per year, which included a \$37,000 retainer fee as well as charges for games and physical exams. The exams were billed at \$1,400 each; home games were billed at \$1,500 each; and away games were billed at \$4,000 each.

For the contract covering the 2001 fiscal year in question, the invoice for \$46,808 was dated July 3, 2000. The invoice was paid approximately one year later by TSU on June 30, 2001. The purchase requisition was signed by Ms. London, Assistant to the Athletics Director; Ms. Phillips, Interim Athletics Director; Dr. Smith; and Dr. Hefner. Dr. Smith signed the purchase requisition on April 30, 2001, and Ms. Phillips signed it on June 29, 2001; the signatures of Dr. Hefner and Ms. London were not dated. Under Section B-2 of the contract, payment is due only after services have been performed and upon receipt of an itemized invoice. Under these terms, the payment on June 30, 2001, for services under the contract for the 2001 fiscal year did not appear to be improper because the services were delivered throughout the fiscal year.

We discussed the issue of Tennessee Orthopedic's past-due invoice with Ms. Faye Cothron, Tennessee Orthopedic's Chief Operating Officer. Ms. Cothron stated that Tennessee Orthopedic did not regard the invoice as past-due because the firm routinely billed the entire amount of the contract at the beginning of the fiscal year. She stated that Tennessee Orthopedic did not expect payment until on or after the end of the fiscal year because services were provided throughout the year. Mr. Greg Spurlock, Tennessee Orthopedic's Executive Director, confirmed Ms. Cothron's statements.

During our review, we noted that for each of the four contracts reviewed, the final signature on the contract was not obtained until a number of months, in one case over a year, after the start of the contract period. Moreover, the initial signatures were not obtained until after the start of the contract period. Final approvals ranged from 172 days to 424 days after the start of the contract period. The information on a per-contract basis is presented below:

- For the contract period beginning July 1, 1998, the initial signature was dated January 25, 1999, while the final signature was dated February 12, 1999. The final signature was obtained 226 days after the start of the contract period.
- For the contract period beginning July 1, 1999, the initial signature was dated January 17, 2000, while the final signature was dated April 20, 2000. The final signature was obtained 294 days after the start of the contract period.
- For the contract period beginning July 1, 2000, the initial signature was dated April 3, 2001, while the final signature was dated August 29, 2001. The final signature was obtained 424 days after the start of the contract period. For this contract, TSU paid Tennessee Orthopedic's invoice before obtaining the final signature on the contract.
- For the contract period beginning July 1, 2001, the initial signature was dated November 28, 2001, while the final signature was dated December 20, 2001. The final signature was obtained 172 days after the start of the contract period.

The fact that no contract was in place at the start of the contract period for each of the years reviewed reflects an inadequate business practice relating to contracting with Tennessee Orthopedic on the part of the Athletics Department and TSU. Two contracts should have been properly executed before Dr. Smith's tenure (fiscal years 1999 and 2000); one contract should have been properly executed during Dr. Smith's tenure (fiscal year 2001); and one contract should have been properly executed after Dr. Smith's tenure (fiscal year 2002). Thus, the continuing failure to execute contracts with Tennessee Orthopedic in a timely manner covered multiple years and multiple occupants of the Athletics Director or Interim Athletics Director positions. Dr. Smith became Athletics Director in August 1999, which was during the 2000 fiscal year, and was terminated in June 2001, which was during the 2001 fiscal year.

Final approval, according to Tennessee Board of Regents Guideline G-030, Section I, is obtained from the president of the institution unless otherwise stated. Guideline G-030, Section I, states,

The purpose of a written contract is to embody the complete agreement in writing. No relevant terms should be left to an unwritten "understanding" or verbal agreement; no oral representation of any official agent, or employee of either party, either before or after the execution of an agreement is binding on the parties. The document should be explicit and clearly state the rights and duties of each party and clearly identify all parties.

The lack of an authorized contract at the start of the contract period could lead to questions as to whether the university is obligated to pay costs incurred in connection with the services provided by the vendor. In addition, questions could arise regarding the exact nature of the arrangement that could adversely affect both the university and the vendor.

Game-Day Workers

Six individuals worked as game-day workers at TSU's basketball games. Game-day workers submitted six invoices, all dated April 5, 2001, and totaling \$3,195. The services of the game-day workers were procured through an open purchase order. However, Athletics Department staff did not obtain an approved purchase requisition to pay these game-day workers during Dr. Smith's tenure. The purchase requisition, dated June 29, 2001, was signed by Mr. Wallace Dooley, TSU's Sports Information Coordinator, and by Ms. Phillips. The game-day workers were not paid until June 30, 2001, after Dr. Smith's termination. The time to payment for the game-day workers was 86 days.

Dr. Smith's Explanation Regarding the Failure to Pay Invoices for Authorized Services

We asked Dr. Smith specifically about the non-payment of vendors. Dr. Smith stated that the primary reason was the lack of money. Dr. Smith attributed the lack of financial resources to the failure by the university to allocate sufficient funds to the Athletics Department. However, because Dr. Smith was unable to provide specific information relating to any questionable allocation procedures on the part of the university, we did not undertake a review of the university's allocation procedures with respect to the Athletics Department.

Conclusions Regarding the Failure to Pay Invoices for Authorized Services

Based on presently available information, during Dr. Smith's tenure at TSU, Athletics Department staff in some cases did not submit approved purchase orders, approved purchase requisitions, contracts, or sole-source letters of justification prior to Dr. Smith's termination. In addition, 22 of the 23 questioned invoices were paid late. TBR and TSU policies and prudent business practices require that sole-source letters be provided, contracts be executed, and approved purchase orders and purchase requisitions be obtained as integral aspects of the procurement and payment processes. Late payment of legitimate invoices can erode business relationships between TSU and its vendors. The results may be vendors who refuse to do business with TSU, vendors who impose late payment fees or interest charges, or vendors who require payment in advance.

For News Channel Five, Athletics Department staff obtained a properly executed contract but failed to submit a sole-source letter; failed to obtain an approved purchase order; failed to obtain approved purchase requisitions; and failed to pay many of Channel Five's invoices in a timely manner prior to Dr. Smith's termination.

With respect to Cinema Seven Productions, Athletics Department staff submitted the required sole-source letter, obtained a properly executed contract, and obtained approved purchase requisitions for 12 of 13 invoices, but failed to obtain an approved purchase order prior to Dr. Smith's termination. We determined that the sole-source letter and contract were dated after the start of the contract period. We further determined that 11 of 13 invoices were past due at the time of payment; the latest payment was made 199 days after the invoice date, and 10 of the 11 past due invoices were paid more than 30 days after the due date. An additional issue raised in our review was that TSU's late payments resulted in late charges to TSU of \$637.50.

With regard to the Tennessee Orthopedic Alliance, Athletics Department staff failed to execute contracts in a timely manner. For fiscal year 2001, the Athletics Department staff failed to execute a contract or a purchase order; failed to obtain an approved purchase requisition; and failed to pay the invoice prior to Dr. Smith's termination. However, the firm itself did not consider its invoice past due because its normal business practice was to bill at the beginning of the contract period for services to be rendered during the contract period. Payment was not expected until the end of the contract period. However, our examination of the Tennessee Orthopedic Alliance's contracts disclosed that final approval by the university was not obtained until long after the start of the contract period. In one case, final approval was only secured after the contract period had ended and payment had been made. As with late payments, late execution of contracts may impair the business relationships between TSU and its vendors.

For game-day workers, we determined that six workers were not paid in a timely manner prior to Dr. Smith's termination. Instead, the time to payment was 86 days, and they were paid after Dr. Smith's termination.

THE TSU COACHES' SHOW

Conflicting Views

Based on our interviews, we determined that there was a significant conflict regarding the funding of the *Coaches' Show* between the recollections of Dr. Smith and Mr. Stinson on the one hand, and Dr. Hefner, Mr. Hughes, and Mr. Martin on the other. The crux of the matter was whether Dr. Smith made a commitment to Dr. Hefner to obtain corporate sponsorship funding to finance the full cost of the *Coaches' Show* during the first contract period. According to Mr. Batson, TSU's Director of Internal Audit, Dr. Hefner, Mr. Hughes and Mr. Martin constituted the budget committee for reviewing the Athletics Department's budget.

TSU contracted with News Channel Five in June 2000 for a media package that included 11 televised TSU football coaches' shows and 11 football radio broadcasts, plus 16 televised TSU basketball coaches' shows and 29 basketball radio broadcasts. The cost under the contract for the media package was \$48,650. The contract was signed by Dr. Hefner, TSU's President; Mr. Martin, TSU's Associate Athletics Director for Finance; Dr. Smith, TSU's Athletics Director; and Ms. Debbie Turner, General Manager for the News Channel Five Network, on June 23, 2000. Because the contract between TSU and News Channel Five did not provide for television production services, TSU contracted separately with two additional companies—The Third Eye and Cinema Seven Productions—to provide production services and deliver the taped television shows to News Channel Five for broadcast.

During his interviews, Dr. Smith provided us with several different versions of what he told Dr. Hefner and the other members of the budget committee. Dr. Smith first stated that he said that the *Coaches' Show* was like any start-up venture and that it would not pay for itself in the first year or even in the second year. However, in the same interview, Dr. Smith later stated that he might have said that the *Coaches' Show* could break even in the first year. Obviously, there is a significant difference between stating that the show would not pay for itself the first year and stating that the show might break even.

According to Ms. Teresa Phillips, TSU's current Athletics Director; and Mr. James Reese, TSU's Head Football Coach, some TSU football coaches had TV shows in prior years. Coach John Merritt had a show in the late 1970s and early 1980s, and Coach Bill Thomas had a show in the 1980s; the shows for Coach Merritt and Coach Thomas aired on Channel Five. Coach L.C. Cole had a show in 1996 that aired on WNAB Channel 58 in Nashville. Neither Ms. Phillips nor Mr. Reese knew how payment was made for the shows.

Mr. Stinson stated that the concept of the latest TSU *Coaches' Show* was born at News Channel Five when he worked at the station prior to his employment at TSU and prior to TSU's hiring of Dr. Smith as Athletics Director. According to Mr. Stinson, the idea was that TSU would buy the airtime from News Channel Five, arrange with other companies to produce the show, and sell the advertising to finance the show. In his interview in January 2002, Mr. Stinson exhibited the same inconsistencies in his statements as noted with Dr. Smith. He first stated that the Athletics Department probably would not be able to generate sufficient advertising revenue to cover the cost of the show in the show's first year. He also said that Dr. Smith asked him how much he thought could be generated annually and that he replied that once everything was in place, the show could make \$150,000 per year. Later in the interview, Mr. Stinson stated that their (Mr. Stinson and Dr. Smith's) expectation and goal was to break even the first year. According to Mr. Stinson, their idea was that the university would cover the initial cost of the show and that the Athletics Department would obtain sufficient advertising revenue during the year to cover the university's outlay.

In an August 2002 interview, Mr. Stinson stated that he didn't know what Dr. Smith told the TSU Budget Committee or Dr. Hefner. However, Mr. Stinson stated that he attended a meeting with Dr. Hefner, Dr. Smith, and Mr. Martin, TSU's Vice President of Student Affairs, in which the *Coaches' Show* proposal was discussed. In this interview, Mr. Stinson stated that he and Dr. Smith clearly stated that the *Coaches' Show* was not an activity where corporate sponsors were likely to "jump on the bandwagon" and that the Athletics Department would have to prove itself in this area. Mr. Stinson asserted that there was no possibility of Dr. Hefner or Mr. Martin misunderstanding the fact that TSU would have to fund the *Coaches' Show* in its first year.

Dr. Hefner stated to us that Dr. Smith asserted that he would obtain sufficient corporate funding to finance the *Coaches' Show* in the first year. Dr. Hefner further stated that Dr. Smith did not indicate that TSU funding might be needed as start-up money for the new activity. Dr. Hefner stated that he was disappointed to find that Dr. Smith had not obtained any corporate funding for the *Coaches' Show*. As a consequence of Dr. Smith's failure to secure corporate funding, Dr. Hefner stated that he had to authorize the payment of the expenses related to the *Coaches' Show* from other university funds.

Mr. Hughes, TSU's Director of Budget and Fiscal Planning at that time and a member of TSU's Budget Committee, stated that Dr. Smith assured the committee that the show would more than pay for itself the first year. The actual comments made at the meetings could not be confirmed because minutes were not taken.

Mr. Martin, TSU's Vice President of Student Affairs, stated that he recalled attending meetings with Dr. Hefner and Dr. Smith at which the *Coaches' Show* and other Athletics Department issues were discussed. According to Mr. Martin, he did not recall any specific comments by individuals and he did not have any notes related to those meetings. However, Mr. Martin stated that his sense of things was that there was always a mindset that the *Coaches' Show* would pay for itself. Mr. Martin said that he could not recall whether the *Coaches' Show* was to pay for itself in its first year of operation, or whether the university would be required to subsidize the *Coaches' Show*. He pointed out that the university operated on an annual budget basis in which the budget would have to balance; that is, expenditures would have to match revenues each year. Mr. Martin explained that the university normally did not operate with the idea that programs could pay for themselves in future years.

In an attempt to further determine the understanding between Dr. Hefner and Dr. Smith, we reviewed their correspondence and identified several letters pertinent to the issue of the funding of the *Coaches' Show*. These letters were written in December 2000 and January 2001, approximately four months after the *Coaches' Show* was first aired on News Channel 5 Plus. In a December 21, 2000, letter to Dr. Smith, Dr. Hefner stated:

As a follow-up to our discussion about payment of the Coaches Show, I wish to impress upon you the importance of securing the resources to meet these obligations as you promised earlier this year. You will recall that you committed to raising the \$59,000 needed through corporate sponsorships and other sources. [Emphasis added] For me to reasonably consider providing compensation to individuals for services rendered in connection with the telecasts, I shall need firm, written, commitment from sponsors who you have secured that have pledged to specific amounts to you for telecast related costs. This itemization should note which sponsors shall be contributing which amounts and for what purposes.

In a December 27, 2000, letter to Dr. Hefner, Dr. Smith described the total known obligations of the Athletics Department at that time. Dr. Smith's schedule listed eight items totaling \$179,455, including \$59,000 for "Channel Five News and Radio." In his letter, Dr. Smith requested Dr. Hefner's assistance in dealing with these obligations and other financial issues.

On January 3, 2001, Dr. Hefner responded in writing to Dr. Smith's December 27, 2000, letter requesting assistance in meeting outstanding obligations amounting to \$179,455. In his letter, Dr. Hefner stated,

I wish to remind you of your fiduciary responsibility as Tennessee State University (TSU) Director of Athletics to carefully monitor expenditures in relation to revenue. At the time of your hiring, you were made aware that a central component of your job responsibilities involved fund-raising. This responsibility was communicated during the interview, at the time of your appointment, and subsequently.

Based on these letters, Dr. Hefner clearly communicated to Dr. Smith that it was Dr. Smith's responsibility to ensure that expenditures did not exceed revenues and that he expected Dr. Smith to cover his outstanding obligations through fund-raising. It is apparent that Dr. Hefner considered the Athletics Department responsible for covering the costs of the *Coaches' Show* through fund-raising, including corporate sponsorships. If Dr. Smith believed that he would not be able to cover the costs of the *Coaches' Show* through fund-raising, it would appear to have been incumbent upon Dr. Smith to clarify Dr. Hefner's understanding about this important point at that time. However, in a subsequent letter to Dr. Hefner dated January 24, 2001, Dr. Smith indicated that he expected the Athletics Department to realize \$244,000 from a combination of a Revelation America donation and various game guarantees from the Cincinnati Riverfront City Classic and Kansas State University.

No Corporate Sponsorship Funding

We viewed tapes of the existing episodes of the *Coaches' Show* for the 2000 football season. The show was not continued into the basketball season. Based on our review, we noted commercials for (1) Budweiser, (2) Shoney's, (3) Blue Cross Blue Shield of Tennessee, (4) J&P Men's Wear, (5) the NCAA, (6) the TSU Bookstore, and (7) the TSU *Tiger Talk* radio show.

According to the individuals we interviewed, the source of funding for the *Coaches' Show* was intended to be corporate sponsorships, in particular, payment by companies for commercials aired during the show. Thus, we reviewed the Athletics Department's files for corporate sponsorship agreements with Budweiser, Shoney's, Blue Cross Blue Shield, and J&P Men's Wear. We found sponsorship agreements for Budweiser, Shoney's, and Blue Cross Blue Shield. However, none of the sponsorship agreements contained any provision for funding the *Coaches' Show* or for advertisements during the show. Instead, for Budweiser, Shoney's, and Blue Cross Blue Shield, the sponsorship agreements pertained to the purchase of season and single-game tickets. The agreements also included advertisements in the printed game programs, radio advertisements, parking passes, subscriptions to the Athletics Department monthly newsletter, and access to pre- and post-game receptions. Representatives of the three companies stated that their sponsorship agreements did not include television advertising associated with the *Coaches' Show*. These representatives included Mr. Todd Williams, Vice President of Ajax Turner Company, the local Anheuser-Busch distributor; Mr. Ed Odom, Regional Marketing Director for Shoney's; and Ms. Janet McConnell, Manager for Advertising and Marketing Communications at Blue Cross Blue Shield of Tennessee. Consequently, these companies received free advertising during the *Coaches' Show* although their sponsorship agreements did not specify advertising for the *Coaches' Show*.

For J&P Men's Wear, Athletics Department staff could not locate a written sponsorship agreement. However, Athletics Department staff provided us a copy of a letter dated September 7, 2000, from Mr. Stinson to Mr. James Webb, the owner of J&P Men's Wear. As stated in the letter, the Athletics Department would match J&P Men's Wear "dollar for dollar on clothing in exchange for advertisement." The details of this arrangement are discussed below.

Men's Suits and Accessories

According to Mr. Webb, he furnished two suits and accessories to TSU's head football coach, Mr. James Reese. Mr. Webb also stated that he furnished two suits and accessories to the show's host, Mr. Ernie Allen. The accessories included shirts, ties, and pocket handkerchiefs.

Based on receipts obtained from Mr. Webb, the retail value of the four suits and accessories was \$1,407.12. Mr. Webb stated that the clothing items were given in exchange for advertising. He said that the advertising included 60-second commercial spots on the TV show, mention in the show's credits as the wardrobe supplier, and an advertisement on the Jumbotron during each home game at Adelphia Coliseum. He stated that the agreement was purely a barter-type agreement and that he paid no cash in exchange for advertising.

Mr. Reese confirmed that he had received two suits and accessories from J&P Men's Wear to wear for his appearances on the *Coaches' Show*. Mr. Reese said that he had the suits in his possession. He brought the suits to our interview and gave the suits to us. Likewise, Mr. Allen confirmed that he had received two suits and accessories from J&P's Men's Wear to wear for his appearances on the *Coaches' Show*. We asked Mr. Allen to provide us the suits and accessories, but he declined to do so until the issue of the ownership of the items was settled.

Because of speculation by some TSU management staff that Dr. Smith and Mr. Stinson had also received suits free of charge from J&P Men's Wear, we interviewed Mr. Webb, Dr. Smith, and Mr. Stinson about the matter. Mr. Webb stated that he had not provided suits or accessories free of charge to either Dr. Smith or Mr. Stinson. Both Dr. Smith and Mr. Stinson stated that they had not received any items free of charge from J&P Men's Wear but that they had purchased suits and accessories from the store. Dr. Smith provided a J&P Men's Wear receipt that indicated a cash payment in February 2001 for a suit and tie. Mr. Stinson provided a bank statement for October 2000 that showed a purchase from J&P Men's Wear.

Based on presently available information, the suits and accessories were provided in exchange for advertising on a televised *Coaches' Show* produced pursuant to a university contract. Therefore, the clothing items belong to TSU, not to the individuals who initially received them. Clearly, individuals (whether employed by TSU or not) should not benefit personally by maintaining possession of clothing that resulted from a letter of agreement between TSU and a vendor. Athletics Department staff should have receipted the suits and accessories, accounted for them on a property listing, recorded their assignments to Mr. Reese and Mr. Allen, and secured their return upon the conclusion of the *Coaches' Show*. Alternatively, the Vice President of Business and Finance should consider reporting the items to the Internal Revenue Service as individual income for the recipients of the items.

Based on presently available evidence, no advertising funds were generated in relationship to the *Coaches' Show*. As a result, TSU paid all the costs associated with the show.

Corporate Sponsorship Agreements Not Signed by Dr. Hefner

Tennessee Board of Regents Guideline G-030, *Contracts and Agreements*, specifies the format to be used for contracts and agreements. The guideline states that “the President of an institution governed by the Tennessee Board of Regents . . . is the final approving authority within the system for any contract which is prepared consistent with these guidelines.” It also states that “The president's signature, or his designee's signature, must be affixed to all contracts.” Corporate sponsorship agreements with TBR system universities fall within the framework of Guideline G-030 because such agreements are contracts that impose performance and financial obligations on both parties. Under the G-030, the written agreement must record detailed information relating to the amount of the company’s contribution and TSU’s corresponding obligations. When completed, the agreement constitutes a legally binding contract between TSU and the company.

During our review of corporate sponsorship agreements and other documentation related to the *Coaches’ Show*, we found wide variation in the written form of the agreements and in the number and level of authorizing signatures. For instance, the Budweiser agreement was prepared by Budweiser and signed by Dr. Hefner, Dr. Smith, and Mr. Johnny Franks, TSU’s former Sports Information Director, on behalf of TSU. However, with regard to Blue Cross/Blue Shield, both TSU and the company prepared agreement forms. The TSU form was signed by a Blue Cross/Blue Shield representative but not by a TSU official, while the Blue Cross/Blue Shield form was signed by both Mr. Stinson for TSU and a Blue Cross/Blue Shield representative. Further, with respect to J & P Men’s Wear, the documentation of the agreement to exchange clothing for advertising was a letter from Mr. Stinson to Mr. Webb, the store’s owner. Although the letter stated, “For accounting purposes, please sign this letter and fax it back to me as confirmation of our agreement,” Athletics Department staff could not locate a returned fax confirmation.

According to TBR legal staff, based on TBR Guideline G-030, such agreements must be signed by TSU’s President because they are contracts between TSU and the various corporate sponsors. To the extent that TSU opts to sign an agreement that is not one of its standard forms, it is incumbent upon personnel in the initiating department to review the form, make whatever changes are necessary to bring the agreement into compliance with G-030, and to route it through the standard internal approval process to be signed by the president. Ideally, the form of the corporate sponsorship agreements should be standardized. However, in the event that a sponsor presents a non-standard agreement, it must be modified to conform to G-030’s requirements, executed by the president, and, if the contract exceeds \$100,000, by the TBR Chancellor.

Moreover, we noted in our review that the cost of each element of the agreement was not specified. For example, the Shoney’s agreement, dated August 31, 2000, included the following items: football and basketball season tickets, banner advertisements, scoreboard recognition, sponsorship of game radio broadcasts, greens fees for a foursome in the Richard Dent Golf Classic 2000, a subscription to the official Athletics Department monthly newsletter, parking passes, access to the hospitality room, listing in the game programs, and other items. None of these elements were costed separately. The agreement only listed the total cost of the

sponsorship, which was \$8,500. If the cost of the items was specified separately, TSU's Athletics Department and TSU's Business Office would be able to correctly allocate funds received by category.

Unauthorized Amendments

Our review of the contract between TSU and News Channel Five disclosed that Dr. Smith approved two amendments to the contract without obtaining approval from Dr. Hefner. As cited above, TBR Guideline G-030 requires contracts to be approved by the president of the institution unless otherwise stated. No exceptions pertained to the News Channel Five contract.

The original contract between TSU and News Channel Five was signed by both Dr. Hefner and Dr. Smith on June 23, 2000. The contract provided for football and basketball coaches' shows, radio broadcast of the football and basketball games, a banner ad on News Channel Five's Web site with a link to TSU's Web site for seven months, and promotional announcements for the *Coaches' Shows* and the games.

However, the original contract did not include the *Tiger Talk* call-in radio show. On August 29, 2000, a sales manager for News Channel Five Plus wrote Dr. Smith a letter requesting approval to air the *Tiger Talk* show that day and also acknowledgement that TSU would pay for the airtime in the amount of \$300. The sales manager noted that he needed Dr. Smith's authorization because the *Tiger Talk* addendum had not yet been approved. Dr. Smith signed the letter indicating his approval on August 29. Furthermore, on September 19, 2000, Dr. Smith signed a second letter from the sales manager indicating his acknowledgement that News Channel Five was airing the radio call-in show *Tiger Talk* at \$300 per show and that TSU was responsible for payment for all *Tiger Talk* shows that aired.

These two letters signed by Dr. Smith on August 29 and September 19, 2000, respectively, revised the contract terms to include payment for the *Tiger Talk* radio shows. In violation of TBR Guideline G-030, Dr. Smith signed these letters, which amended the original contract, without Dr. Hefner's approval. News Channel Five, pursuant to the *Tiger Talk* amendment, submitted four invoices for \$4,800 for the added *Tiger Talk* shows and received payment for the shows from TSU on June 30, 2001. When we asked Dr. Hefner about the two contract amendments, he stated that Dr. Smith had not informed him about the amendments and that the two amendments had been executed without his knowledge and approval.

Conclusions Regarding the TSU *Coaches' Show*

Based on presently available information, Dr. Smith represented to Dr. Hefner that the *Coaches' Show* would be funded through corporate sponsorships in the current year, but Dr. Smith and other Athletics Department staff failed to secure any corporate funding related to the *Coaches' Show*. As a consequence, Dr. Hefner was required to spend university funds in the amount of \$46,682 to fulfill TSU's contractual obligations. Moreover, several companies received free advertising on the *Coaches' Show* because Athletics Department staff did not execute appropriate corporate sponsorship agreements that required payment for advertising.

We determined that J&P Men's Wear provided suits and accessories free of charge to Mr. Reese and Mr. Allen in exchange for advertising. Since the clothing items were obtained pursuant to a university agreement, the clothing items belong to the university. We also determined that J&P Men's Wear did not provide suits and accessories free of charge to Dr. Smith or Mr. Stinson. We further determined that several corporate sponsorship agreements were not signed by Dr. Hefner, as required, and that Dr. Smith improperly executed two contract amendments.

RECOMMENDATIONS

Our review resulted in the following recommendations:

TSU Staff

University President

The university's President should:

1. Require appropriate, timely reconciliations by Ticket Office staff and should assign specific responsibility for the prompt, complete, and accurate reporting of ticket sales and the reconciliation of university information with Ticketmaster reports and other relevant information on a daily basis. Both the count and the reconciliation should be documented, with signatures and dates, and the documentation should be retained. Exceptions should be explained and documented. A "Summary of Deposits" form should be prepared contemporaneously with the count.
2. Ensure that the Ticket Office staff properly account for parking decals for home football games and all other sales transactions. Prior to the sale of parking decals, Ticket Office staff should determine the number of decals available for sale. Once the sale of decals has been initiated, Ticket Office staff should record the decals sold and reconcile the decals sold with decal sales revenue on a daily basis. Ticket Office staff also should account for all decals distributed on a complimentary basis. Ticket Office staff should periodically conduct a complete review of decal sales to determine whether any decals, or decal revenues, are missing. Ticket Office staff should properly secure parking decals in the Ticket Office to prevent loss since the decals have monetary value.
3. Strive to ensure that the Athletics Director, the Associate Athletics Director for Financial Affairs, the Ticket Office Manager, and the cashiers possess sufficient pertinent business experience and expertise related to Ticket Office management and internal controls in light of the nature and extent of the identified weaknesses in Ticket Office operations. In addition, the university's President should establish a routine monitoring presence related to the Ticket Office to promptly identify deficiencies and to strengthen accountability.
4. Consider the propriety of allowing university athletic team staffs to collect parking fees that are associated with university events and that are based on the use of university resources, as well as the propriety of depositing those funds into Foundation accounts.
5. Reconsider future contract terms and the method and timing of payments to avoid a cash crisis with promoters and performers in the future. The university's President should ensure that appropriate planning takes place for the timely, complete, and proper payment of promoters and performers. The university's President should ensure that any disbursements of cash are documented, the amounts noted on the receipt are checked for correctness, and

the receipts are retained. When unusual circumstances occur, the participants should prepare written accounts that provide a detailed chronology and explanation, including who was present, the nature of the transactions, and the process followed. The written accounts should include, as attachments, all the relevant documentation, such as “Summary of Deposits” forms, Ticketmaster reports, “Official Cash Receipt” forms from the Bursar’s Office, and receipts from third parties.

6. Establish the proper tone at the top for accountability, funding, controls, and contracts that ensures adherence to TBR and TSU policies and procedures and that appropriately safeguards university assets.
7. Ensure that appropriate university officials develop written policies and procedures to implement effective internal controls to govern the issuance of payments through the debit voucher process. The written policies and procedures should clearly identify the responsibilities of both TSU Purchasing Department and TSU Business Office staffs with respect to their review and approval of debit voucher transactions.
8. Ensure that pertinent university officials and staff do not execute contracts or purchase orders unless there is a reasonable likelihood that funds will be available when payment is due so that the resulting invoices can be paid in a timely manner.
9. Ensure that pertinent university officials and staff determine that approved agreements are in place prior to a vendor providing services or goods to the university and the university incurring liability for payment.
10. Ensure that pertinent university officials and staff determine that all university contracts contain the required provisions in compliance with TBR and TSU policies. In addition, appropriate timely signatures should be obtained for all contract amendments, and all changes to contracts should be made in writing to eliminate uncertainties about the exact terms of the contract.
11. Ensure, along with the university’s Purchasing Director, that all contracts, to the extent possible, contain appropriate compliance criteria (deliverables) so that the nature and extent of contract compliance can be determined. Further, all items relating to contracts, including evidence of work performed under the terms of the contract, should be maintained for an appropriate length of time in accordance with TBR policy.
12. Ensure, along with the university’s Purchasing Director, that sole-source procurement policies and procedures are followed, specifically, that letters of justification are appropriately prepared and approved prior to purchases being made, and the letters are retained for management review and audit purposes. Once a sole source contract has been completed, subsequent awards should be made in compliance with the Request for Proposal process, where appropriate, pursuant to TBR and TSU purchasing policies and procedures.
13. Ensure that pertinent university officials and staff approve Travel Authorizations in advance of the travel.

14. Ensure that when Business Office or Purchasing Department staff becomes aware that a purchase has been made through the Athletics Department without the required contract or purchase order, the Business Office and Purchasing Department staffs should promptly inform, in writing, the President, the Athletics Director, and the Director of Internal Audit for their review and follow-up. Moreover, the individuals responsible for initiating and approving the purchase should be reported to their supervisors, and appropriate disciplinary action should be taken. The notification and the resolution should be documented, and the documentation should be retained for management review and audit purposes.
15. Ensure that TSU's Business Office staff routinely scrutinize deposits to, and expenditures from, both the Foundation accounts on behalf of the Athletics Department and the Athletics Department's accounts to ensure that Athletics Department staff are appropriately classifying revenues and expenditures. In addition, the university's President should direct that TSU's Internal Audit staff periodically examine deposits to, and expenditures from, both Foundation and Athletics Department accounts to determine whether revenues and expenditures have been appropriately classified and allocated.
16. Ensure that pertinent university officials and staff take prompt and appropriate steps to resolve any issues of funds owed to the university. Entities that contract with and owe money to the university, such as the Mt. Zion Baptist Church, should be promptly billed, and any issues related to the amounts due should be promptly resolved.
17. Ensure that pertinent university officials and staff provide follow-up reports to the Department of Internal Audit that detail the actions management has taken in response to the recommendations contained in the Internal Audit reports. The lack of follow-up by management, such as was the case with the internal audit findings related to the Summitt Management Corporation, renders the Internal Audit reports, and the Internal Audit function, ineffective as a tool for monitoring the integrity and effectiveness of internal controls.
18. Ensure that appropriate university officials and staff review the university's conflict of interest and purchasing policies and consider revising those policies, as necessary, to extend prohibitions on receipt of gifts from vendors to include all vendors and contractors with the institution and individuals in upper management level positions.

University Athletics Director

The university's Athletics Director should:

19. Ensure that Ticket Office staff, in conformance with the university President's directive, prepare appropriate, timely reconciliations and should assign specific responsibility for the prompt, complete, and accurate reporting of ticket sales and the reconciliation of university information with Ticketmaster reports and other relevant information on a daily basis. Both the count and the reconciliation should be documented, with signatures and dates, and the documentation should be retained. Exceptions should be explained and documented. A "Summary of Deposits" form should be prepared contemporaneously with the count.

20. Ensure that the Ticket Office staff properly account for parking decals for home football games and all other sales transactions. Prior to the sale of parking decals, Ticket Office staff should determine the number of decals available for sale. Once the sale of decals has been initiated, Ticket Office staff should record the decals sold and reconcile the decals sold with decal sales revenue on a daily basis. Ticket Office staff also should account for all decals distributed on a complimentary basis. Ticket Office staff should periodically conduct a complete review of decal sales to determine whether any decals, or decal revenues, are missing. Ticket Office staff should properly secure parking decals in the Ticket Office to prevent loss since the decals have monetary value.
21. Ensure that Ticket Office staff prepare and submit deposits on a daily basis in accordance with TSU policy to lessen the possibility of misappropriation of funds and the risk of lost earnings on deposits.
22. Ensure that Ticket Office staff, in conjunction with Gentry Center staff, perform overall reconciliations for Step Shows and other similar events held at the Gentry Center. The reconciliations should show total revenues, expenses, deposits, and payments.
23. Consistent with the approach of the university's President, establish the proper tone at the top for the Athletics Department in relation to accountability, funding, controls, and contracts that ensures adherence to TBR and TSU policies and procedures and that appropriately safeguards university assets.
24. Ensure that Athletics Department staff do not execute contracts or purchase orders unless there is a reasonable likelihood that funds will be available when payment is due so that the resulting invoices can be paid in a timely manner.
25. Ensure that the university's President and other appropriate TSU and TBR staff are consulted in advance about any proposed financial or promotional programs related to the university. Such proposed programs should be thoroughly researched and discussed at the highest level by TSU management. The Athletics Director and other Athletics Department staff should not proceed unless specifically authorized by the President to do so.
26. Ensure that arrangements for the provision of goods and services by vendors are structured by duly approved contracts or purchase orders. For arrangements structured by contracts, the Athletics Director should ensure that purchase orders are promptly completed and approved. When contracts and purchase orders have been approved, the Athletics Director should ensure that purchases are initiated through approved purchase requisitions and that the purchase requisitions and supporting invoices are promptly submitted to the Business Office for payment. In addition, purchase requisitions should reference the appropriate purchase order.
27. Ensure that Athletics Department staff determine the nature of the services or products provided by a vendor before authorizing payment of a vendor's invoices. In addition, TSU's Business Office staff should not process payment for any invoices unless the invoices clearly describe the goods or services provided.

28. Ensure that donations are properly memorialized through donor agreements, letters of commitment, schedules of payments, or other written documentation with respect to promised corporate donations.
29. Ensure that Athletics Department staff prepare corporate sponsorship agreements in accordance with TBR and TSU policies, procedures, and guidelines because such agreements obligate the university.
30. Ensure that Athletics Department staff, at the outset of corporate sponsorship agreements, make a determination as to whether the funds should be deposited with the university or with the Foundation consistent with TBR and TSU policies. Such determinations should be reviewed and approved by the university's Business Office staff.
31. Ensure that corporate sponsorship checks and other donations are written to the Athletics Department or to the university as the payee, not to an individual.
32. Ensure that Athletics Department staff reconcile each corporate sponsorship agreement with both the payments received from the corporation and the goods and services provided by the university. In addition, the Athletics Director should ensure that Athletics Department staff prepare periodic written summaries of all corporate sponsorship agreements, the agreement terms, the payments received to date, the amounts due, and the goods and services provided by the university. The Athletics Director should ensure that these documents are retained for management review and audit purposes.
33. Ensure that Athletics Department staff follow appropriate procedures in relation to property items obtained pursuant to corporate agreements. Such property items should be properly receipted, promptly placed on a property listing, assigned to specific individuals, if appropriate, and adequately safeguarded as university property.
34. Ensure that Athletics Department staff deposit corporate sponsorship checks with the university in a manner that clearly identifies the corporation, the amount of the check, and the purpose for which the check was written, so that all payments by a corporation can be directly traced, tabulated, and reconciled with both the corporation's and the Athletics Department's records.
35. Ensure that Athletics Department staff, who are responsible for processing corporate checks received by the Athletics Department pursuant to duly authorized corporate sponsorship agreements, deposit those checks into either an appropriate university Athletics Department account or a Foundation athletics account, consistent with the provisions of the corporate sponsorship agreement and TBR and TSU policies.

Tennessee Board of Regents (TBR)

TBR board members and staff should:

1. Review Dr. Hefner's and Mr. Harkleroad's receipt of gifts from ARAMARK, as well as the other management issues detailed in the review, and consider appropriate actions.
2. Review TBR's conflict of interest and purchasing policies and consider revising those policies, as necessary, to extend prohibitions on receipt of gifts from vendors to include all vendors and contractors with the board and its institutions and individuals in upper management level positions.
3. Review possible inappropriate transactions between vendors and other Board of Regents and institution officials and staff.

Legislative

The Tennessee General Assembly may wish to:

1. Consider revising the state's "Conflict of Interest" statute, Section 12-3-106, *Tennessee Code Annotated*, to include contracts for services.
2. Consider revising the state's "Official Misconduct" statute, Section 39-16-404, *Tennessee Code Annotated*, to specify the dollar value and limit of a "trivial benefit incidental to personal, professional, or business contact."