

PERFORMANCE AUDIT

Sportsmen's Wildlife Foundation

April 2008



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY

Department of Audit
Division of State Audit



Arthur A. Hayes, Jr., CPA, JD, CFE
Director

Deborah V. Loveless, CPA, CGFM
Assistant Director

Joseph Schussler, CPA, CGFM
Audit Manager

Judy W. Tribble, CPA, CFE
In-Charge Auditor

Chas Taplin, CPA, CFE
Staff Auditor

Amy Brack
Editor

Comptroller of the Treasury, Division of State Audit
1500 James K. Polk Building, Nashville, TN 37243-0264
(615) 401-7897

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STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DEPARTMENT OF AUDIT
DIVISION OF STATE AUDIT

SUITE 1500
JAMES K. POLK STATE OFFICE BUILDING
NASHVILLE, TENNESSEE 37243-0264
PHONE (615) 401-7897
FAX (615) 532-2765

April 3, 2008

The Honorable Ron Ramsey
Speaker of the Senate
The Honorable Jimmy Naifeh
Speaker of the House of Representatives
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the use of funds generated by sales of the sportsman specialty license plate and allocated to the Sportsmen's Wildlife Foundation. This audit was conducted in response to inquiries from numerous members of the General Assembly following newspaper articles published. Pursuant to Section 4-3-304(3), *Tennessee Code Annotated*, this office acted upon this correspondence and inquiries and initiated a performance audit of the Sportsmen's Wildlife Foundation and other issues related to specialty license plate allocations.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/js
08-029

State of Tennessee

A u d i t H i g h l i g h t s

Comptroller of the Treasury

Division of State Audit

Performance Audit

Sportsmen's Wildlife Foundation

April 2008

AUDIT OBJECTIVES

The objectives of the audit were

- to determine whether the public's contributions through the purchase of sportsman new specialty license plates have been used solely for the purposes stated in the law,
- to determine whether there are sufficient safeguards in the law to ensure that these public funds are used for the proper purposes,
- to determine what additional options exist for ensuring that these public funds are used properly and most beneficially,
- to determine whether these funds and the assets should and could be redirected,
- to determine what other specialty license plates are providing funding to private foundations or non-government organizations,
- to determine whether sufficient safeguards are in place to ensure that the public funds collected from the sale of other specialty and new specialty earmarked license plates are being used most beneficially in the public interest,
- to recommend possible alternatives for legislative or administrative action that may result in increased reporting by and increased accountability of recipients of funds from specialty license plate sales, and
- to examine any collateral issues.

ANALYSIS OF REVENUE AND EXPENSES

We traced the sportsman specialty license plate funds from the state to the foundation's bank accounts. From May 2001 through June 30, 2007, the state apportioned \$916,295.97 to the foundation. We reconciled the entire amount to revenue reported by the foundation. Total expenses through August 2007 were \$715,760. We traced expenses to supporting documentation and accounted for the balance of the revenue in the foundation's checking account and in a certificate of deposit. We examined purchases of goods and services for compliance with the statutory purpose of the foundation.

CONCLUSIONS

The construction of the lodge does not violate statute, nor does it, by itself, meet the legislative intent of the funding. However, the foundation states it intends to use the lodge to meet the legislative intent to “establish and administer programs.” While efforts have been inefficient and largely ineffective thus far, the facilities are near completion and there appears to be an increase in youth activities at the lodge.

There are not sufficient safeguards in statute over the use of funds from the sportsman license plate. The statute does not include clear, objective criteria to measure performance of the foundation, and there is no monitoring of the funds to provide adequate assurance that the foundation has used them appropriately or efficiently.

Options to provide for better accountability include reporting by the foundation and/or monitoring of the foundation’s financial and activity records. This would require determination of the type of reporting or monitoring to be required and the frequency thereof.

Specific authority to recover funds or assets from recipient organizations is not included in statute. Members of the General Assembly may wish to redirect future revenue from the sportsman license plate.

There are 22 different plates, including the sportsman plate, whose revenue is apportioned to non-government agencies. The number of each type of plate sold over the last five fiscal years, the organization funded by sales of each plate, and the amount apportioned to each recipient over the last five fiscal years are included in this report.

Statutes for other specialty plate funds do not contain clear, objective criteria to measure performance. These statutes also do not contain provisions to require monitoring of the recipients of those funds.

The General Assembly may wish to consider amending Title 55, Chapter 4, *Tennessee Code Annotated*, to provide accountability for specialty plate funds. Reporting requirements and monitoring of receiving organizations may need to be added to statutes, including provisions for the return of unspent or improperly spent funds.

Other issues include lack of planning, lack of compliance with nonprofit statutes by the foundation’s board of directors, and possible federal tax implications. The foundation did not initially plan for programs and at the outset lacked a formal business plan and a succession plan. Also, Sections 48-58-101 through 48-58-601, *Tennessee Code Annotated*, contain certain requirements of a nonprofit corporation’s board of directors with which the foundation’s board did not always comply. Finally, there may be federal tax implications related to 1099-MISC forms.

Performance Audit Sportsmen’s Wildlife Foundation

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| INTRODUCTION | 1 |
| Purpose and Authority for the Audit | 1 |
| Objectives of the Audit | 1 |
| Scope and Methodology of the Audit | 2 |
| Background and History of the Sportsman Specialty License Plate | 2 |
| History of the Sportsmen’s Wildlife Foundation | 4 |
| Land in Shelby County Donated to the Foundation | 5 |
| Land Purchased in Cumberland County | 6 |
| Construction of a Lodge in Cumberland County | 6 |
| Analysis of Revenues | 7 |
| Analysis of Expenses | 8 |
| INQUIRIES AND RESPONSES | 9 |
| 1. Have the public’s contributions through the purchase of sportsman specialty license plates (totaling more than \$900,000 as of August 31, 2007) been used solely for the purposes stated in the law enabling the sale of the license plates—exclusively to establish and administer programs to preserve the heritage of hunting and fishing for future generations? | 9 |
| 2. Are there sufficient safeguards in the law to ensure that these public funds are used for public purposes? | 13 |
| 3. What are the options for ensuring that these public funds and any future funds are used properly and most beneficially? | 14 |
| 4. Should, and in fact could, these funds and the assets they have purchased be redirected? | 14 |

TABLE OF CONTENTS (Cont.)

| | <u>Page</u> |
|--|-------------|
| 5. What other specialty license plates are providing funding to private foundations or non-government organizations? | 15 |
| 6. Are sufficient safeguards in place to ensure that the public funds collected from the sale of other specialty license plates are being used most beneficially in the public interest? | 20 |
| 7. Are there recommendations for possible alternatives for legislative or administrative action that may result in additional reporting by recipients and an increased accountability of apportioned funds from specialty license plate sales? | 20 |
| 8. Were there any collateral issues that arose during this audit? | 21 |
| Lack of Planning by the Board of Directors | 21 |
| Failure of the Board of Directors to Comply With State Statutes | 22 |
| Possible Federal Tax Implications | 25 |
| RECOMMENDATION SUMMARY | 26 |
| APPENDICES | 27 |
| A. Chapter 292, Public Acts of 1999 | 27 |
| B. Sportsman Specialty License Plate | 29 |
| C. Photographs of the Sportsmen’s Wildlife Foundation Lodge Facility | 30 |
| D. Estimated Building Cost From Tennessee Log Homes, Inc. (Provided as Part of Management’s Comments) | 33 |

Performance Audit Sportsmen's Wildlife Foundation

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Sportsmen's Wildlife Foundation was conducted in response to inquiries and correspondence from numerous members of the General Assembly following published newspaper articles. Pursuant to Section 4-3-304(3), *Tennessee Code Annotated*, this office acted upon this correspondence and inquiries and initiated a performance audit of the Sportsmen's Wildlife Foundation and issues related to specialty license plate allocations.

OBJECTIVES OF THE AUDIT

The objectives of the audit were

1. to determine whether the public's contributions through the purchase of sportsman specialty license plates (totaling more than \$900,000 as of August 31, 2007) have been used solely for the purposes stated in the law enabling the sale of the license plates—exclusively to establish and administer programs to preserve the heritage of hunting and fishing for future generations;
2. to determine whether there are sufficient safeguards in the law to ensure that these public funds are used for the proper purposes;
3. to determine what additional options exist for ensuring that these public funds are used properly and most beneficially;
4. to determine whether these funds and the assets should and could be redirected to better achieve the legislative intent for the license plates;
5. to determine what other license plates are providing funding to which private foundations or other non-government organizations;
6. to determine whether sufficient safeguards are in place to ensure that the public funds collected from the sale of other specialty license plates are being used most beneficially in the public interest;

7. to recommend possible alternatives for legislative or administrative action that may result in additional reporting by, and increased accountability of, recipients of funds from other specialty license plate sales; and
8. to examine any collateral issues that might arise during our audit.

SCOPE AND METHODOLOGY OF THE AUDIT

We reviewed the history of the Sportsmen's Wildlife Foundation from its incorporation in 1991 but concentrated on its activities and procedures from May 2001 (the month that the foundation initially received funds from the sales of specialty license plates) through August 2007. The audit was conducted in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States and included

1. review of applicable legislation, policies, procedures, and hearing tapes;
2. examination of the foundation's records, including IRS 990 filings, annual corporation reports, and property deeds;
3. compilation of data from sales of specialty license plates;
4. interviews with the founder of the foundation, Mr. H. E. Bittle, other foundation board members, the foundation attorney, the foundation accountant, others connected with the foundation, current and former legislators, a field agent of the Tennessee Wildlife Resources Agency, and Department of Revenue staff; and
5. visits to the lodge constructed with foundation funds and a tour of the property.

BACKGROUND AND HISTORY OF THE SPORTSMAN SPECIALTY LICENSE PLATE

In lieu of a standard license plate issued by the state, Tennessee citizens can choose from a variety of specialty license plates representing colleges and universities, special interest organizations, professional organizations, and nonprofit entities. Revenue from specialty license plate sales has been collected and distributed to government and non-government entities since the early 1990s.

During the 1999 session of the 101st General Assembly, Mr. H. E. Bittle, then state representative for the 14th district (Knox County), submitted House bill 584 for consideration. According to Mr. Bittle, other state legislators suggested he create a license plate to fund efforts to further his causes of hunting and fishing. The bill, sponsored by 38 representatives, and its companion Senate Bill, 1524, which was sponsored by nine senators, were passed on May 17, 1999. The bill became chapter 292 of the Public Acts of 1999 and amended Title 55, Chapter 4,

Tennessee Code Annotated “to authorize the issuance of a sportsman new specialty license plate.” According to statute, the apportioned funds “shall be used exclusively to establish and administer programs to ensure the protection, propagation, and conservation of fish and wildlife in Tennessee in order to assure the preservation of the heritage of hunting and fishing in this State for future generations.”

The revenue from the sale or renewal of the sportsman specialty plate is allocated in accordance with the provisions of Section 55-4-215, *Tennessee Code Annotated*. The same allocation percentages apply to all specialty earmarked license plates authorized after July 1, 1998, whose revenue goes to private foundations or non-governmental organizations. Of the \$35 paid for the specialty plate (in addition to the usual registration fee), the Department of Revenue (TDR) subtracts a fee for design, production, and marketing costs, and allocates it to the State General Fund. TDR then allocates 50% of the balance to the recipient entity. The remaining 50% is allocated according to statute: 40% to the Tennessee Arts Commission and 10% to the State Highway Fund. (Specialty earmarked license plates authorized before July 1, 1998, are allocated exclusive of the Tennessee Arts Commission and State Highway Fund.) For the sportsman plate revenue, the Department of Finance and Administration allocates the money monthly to the Tennessee Wildlife Resources Agency, which then distributes it to the foundation via electronic deposit. In 2007, the foundation received \$15.62 out of each \$35 fee paid to purchase or renew a sportsman plate, for a total of \$120,414.58 for the year ended June 30, 2007.

The creation and distribution of the sportsman license plate, in accordance with statutory requirements applicable to all specialty license plates authorized after July 1, 1998, but before July 1, 2002, was conditioned upon a minimum initial order of 500 plates. In order for the plates to be continued, minimal sales and renewals over the life of the plate cannot fall below 500 for two successive years. Due to the time required to meet the 500 pre-sold license plate threshold, and for the design and production of the license plates, the first allocations passed through TWRA to the Sportsmen’s Wildlife Foundation in May 2001. Since then, over \$900,000 has been transferred to the foundation from the sale and renewal of the plates.

The exact number of plates issued in the first year they were distributed, fiscal year 2001, is not available because of reasons discussed in a February 2003 Special Report issued by the Comptroller’s Office, *Specialty License Plates* (p.10),

Although we were able to trace the amounts allocated to the different funds back to the revenue amounts submitted by the Department of Safety, we were not able to confirm that the allocations matched the actual types of specialty plates issued. The Department of Safety requires the county clerks’ offices to submit quarterly license plate inventory reports to indicate the number and types of plates on hand. However, the department is currently unable to reconcile the number of plates that have been allocated to a county, the number of plates that have been issued, and the number of plates in inventory at a given time. Therefore, the department is not able to determine whether the county clerks’ offices properly reported the types of license plates issued. For example, the clerk’s office may issue an Agriculture specialty plate and incorrectly report it as a Radnor Lake specialty plate. In such a case, the department would receive the

correct amount of money, but the money would not be allocated to the correct fund.

This inaccuracy has since been corrected. Based on the amount of the plate revenue allocated in 2001, the number of plates sold the first year is estimated to be 7,179. The number of plates issued or renewed, and the revenue allocated to the foundation by fiscal year are shown in the table below.

| <u>Fiscal Year</u> | <u>Number of plates sold or renewed</u> | <u>Allocated to the foundation</u> |
|--------------------|---|------------------------------------|
| 2001 | (est.) 7,179 | \$75,379.50 |
| 2002 | 11,003 | \$115,531.50 |
| 2003 | 10,968 | \$155,724.00 |
| 2004 | 10,255 | \$158,952.50 |
| 2005 | 9,782 | \$150,597.64 |
| 2006 | 9,009 | \$139,696.25 |
| 2007 | <u>7,709</u> | <u>\$120,414.58</u> |
| Total | 65,905 | \$916,295.97 |

Source: Tennessee Department of Revenue.

HISTORY OF THE SPORTSMEN’S WILDLIFE FOUNDATION

“National Association of Sportsman Legislators”

The nonprofit corporation known today as the Sportsmen’s Wildlife Foundation was originally incorporated in November 1991, as the “National Association of Sportsman Legislators.” The corporation’s charter originally filed with the Secretary of State’s Office listed the agent of the corporation for service of process as Mr. Doug Jackson (State Senator from Dickson, Tennessee). Mr. Harley E. Bittle (State Representative from Knoxville, Tennessee) was listed as the incorporator. According to Senator Jackson, the original purpose of the nonprofit corporation was to facilitate the networking of legislators from other states interested in sportsmen’s issues. However, the envisioned role of a national organization or “sportsman caucus” was assumed by another entity soon afterward and therefore, according to Senator Jackson, he lost interest in the corporation and had no further contact or association with it. However, the corporate charter remained in force.

The corporation’s charter was amended in August 1992 by Mr. Bittle, to provide a broader range of purposes including wildlife conservation and education. Between 1992 and 1997, there was a lack of activity and filings with the Secretary of State’s Office. Then in June 1997, Mr. Bittle filed an annual report for the corporation and listed himself as president; Mr. Ronnie Davis (former state representative from Newport, Tennessee) as secretary; and Mr. Jackson, of Dickson, Tennessee, as treasurer.

“Sportsmen’s Legislative Foundation”

A September 1997 amendment to the charter changing the name to the “Sportsmen’s Legislative Foundation” was filed by Mr. Gilbert N. Smith, a businessman from Nashville, Tennessee. The corporation’s annual report filed in February 1998 listed Mr. Bittle as president; Mr. Smith as secretary; and Mr. Arles Greene, a businessman from Goodlettsville, Tennessee, as a member of the entity’s board of directors.

“Sportsmen’s Wildlife Foundation”

An August 1998 amendment to the charter changing the name to the “Sportsmen’s Wildlife Foundation” listed Mr. Gilbert N. Smith as the corporation’s secretary. According to Mr. Smith, the charter changes were made to give the corporation a better defining name.

Dissolution and Reinstatement of Corporate Charter

On September 17, 1999, the foundation was administratively dissolved by the Secretary of State’s Office for failure to file the corporation’s annual report. Mr. Smith resigned as treasurer and board director in December 2001. In December 2001, the foundation additionally stopped payments to its executive director, Mr. Robert D. Neel, of Knoxville. On December 10, 2001, the corporation was reinstated after Mr. Bittle filed the required application for reinstatement and the corporation’s annual report. The annual report listed Mr. Greene as president; Mr. Morris Clendenin, a businessman from Goodlettsville, Tennessee, as secretary and treasurer; and Mr. Bittle as Founder/CEO. The annual report filed for 2002 listed the board of directors of the corporation as Mr. Bittle, Mr. Greene, and Mr. Clendenin.

Increase in Number of Board Members; New Members Related to Mr. Bittle

The annual reports filed for 2003, 2004, 2005, and 2006 listed Mr. Bittle; Mr. Greene; and Mr. Steve R. Lewis, one of Mr. Bittle’s neighbors in Knoxville, Tennessee, as the board of directors. On October 1, 2006, with written consent of the directors, Mr. Bittle, Mr. Greene, and Mr. Lewis appointed five new board members, all related to Mr. Bittle. The new board, as listed on the 2007 annual report filed, consisted of Mr. Bittle; Mr. H. E. Bittle, III; Mrs. Sandi Bittle; Mrs. Barbara Bittle; Mr. Danny Overbey; and Mrs. Kim Overbey (H.E. Bittle’s daughter). All relatives, except Ms. Barbara Bittle, resigned from the board of directors in November 2007 and were replaced by non-family members.

Land in Shelby County Donated to the Foundation

According to Mr. Bittle, on December 18, 2001, a friend of his donated some property in Shelby County (Tennessee) to the foundation for the foundation to conserve the land. A letter from the donor, Loosahatchie North Land Company, LLC, documents that the company donated approximately 247 acres of wetlands along the Loosahatchie River and north of Memphis, Tennessee. The appraised value of the property prior to the donation was approximately \$925,000, according to state certified appraiser John R. Turner of Scott Collins Company. The

quitclaim deed assigned and transferred ownership of the property to the Sportsmen's Wildlife Foundation. According to Mr. Bittle, this property remains undeveloped and unused.

Land Purchased in Cumberland County

According to Mr. Bittle, in 2001 he was searching for property in East Tennessee to be used for hunting and fishing courses and wildlife and forestry projects for students. He found 329 acres of mountain land for sale in eastern Cumberland County. He stated that the acreage was greater than what he was looking for but the selling price was the cheapest of the properties he was considering. According to Mr. Bittle, the property contains various species of turkey and other fowl, boar, and bear. The property adjoins some 2,000 acres owned by the Tennessee Wildlife Resources Agency (near Luper Mountain) as well as land then owned by Bowater Incorporated, a producer of paper and wood products. Bowater has since sold the land to an investment group but maintained mineral rights.

Mr. Greene (corporate director from 1998 through 2006) confirmed that he also shared in Mr. Bittle's idea to build a facility to house kids and parents that were interested in learning about hunting. According to Mr. Greene, the intent was to build a first-rate facility that would draw people from the surrounding area. Mr. Greene stated that Mr. Bittle called him about acquiring the Cumberland County property on which to build the facility and he also thought it was a good deal. Mr. Greene said that he did not recall having any conversations about the property with Mr. Lewis, the other board member. Mr. Greene said that although the foundation had received some income from the sale of license plates, there was not enough money on hand at that time to purchase the property.

On December 21, 2001, Mr. Bittle signed an agreement with Laurel Properties, of Knoxville, to purchase the 329 acres for \$200,000. On behalf of the foundation, Mr. Bittle executed a \$180,000 mortgage in January 2002, to First Bank, a Tennessee state chartered bank with its principal office in Lexington, Tennessee. Mr. Bittle and Mr. Arles B. Greene, foundation board member, were personal guarantors on the mortgage. According to the property deed dated January 31, 2002, Laurel Properties, LLC, conveyed the Cumberland County property over to the Sportsmen's Wildlife Foundation.

Bowater representatives gave the foundation, free of charge, permission to access the foundation property via a road on the Bowater property and, separately, the foundation paid Bowater \$1,500 for a power line easement across the Bowater property. The foundation paid off the mortgage in March 2004 with funds received from the sale of the sportsman license plates.

Construction of a Lodge in Cumberland County

Mr. Bittle stated that his vision for the foundation was to house overnight groups of children and parents learning about hunting and conservation while on the Cumberland County property. He originally planned to build a basic structure on the property, but his plans changed after Mr. Burton Webb of Tennessee Log Homes, Incorporated, of Athens, Tennessee, offered to

donate the logs for the first floor of a log home package. Mr. Bittle constructed the lodge with paid and volunteer labor from family, neighbors, and other associates.

Construction on the foundation and basement of the lodge started in September 2002, according to the invoices for the concrete. Mr. Bittle purchased the upper sections of the log home package from Tennessee Log Homes, Incorporated, in May 2003 for \$24,439.80. The floor plan of the package lists the first floor at 2,564 square feet and the upper level floor at 1,664 for a total of 4,228 square feet. The original main floor plan calling for 2 bathrooms side by side, both with bathtubs, has been modified slightly. The current layout includes a bathroom on each side of the main floor, each having two showers rather than a bathtub. The lodge contains a total of five bedrooms and a full unfinished basement. Mr. Bittle stated he planned for the lodge to house 20 visitors for an overnight stay, ten children and ten adults.

The stonework, drywall, electrical, and plumbing were installed during 2004, 2005, and 2006. Construction of the facility took over six years. According to Mr. Bittle, the long period of construction was due to his careful attention to craftsmanship and the alternative energy sources he chose to provide electricity to the lodge (windmills and solar panels). Conventional electric service was not an option for the lodge due to the cost of constructing power lines, according to Mr. Bittle. Additionally, Mr. Bittle stated that he, along with family members and other hired individuals, provided much of the labor on the lodge. Although this construction method may have saved money, it also at least doubled the construction period that Mr. Bittle originally estimated to be two to three years and delayed any benefit of the funds to Tennessee's youth.

According to Mr. Bittle, one TWRA hunter-safety class was held at the lodge in 2007 and, as of January 2008, the lodge was completed enough to house guests overnight. A group of youths from Quail Unlimited utilized the lodge for an overnight event in late January 2008 and a Boy Scout group since then, according to Mr. Bittle. Mr. Bittle stated that he has additional plans to finish a large area of the basement for a classroom. Furthermore, Mr. Bittle stated that the lodge requires very little maintenance. He stated that he plans to maintain the lodge himself and may hire someone to clean the lodge after events.

ANALYSIS OF REVENUES

We traced the sportsman specialty license plate funds that passed via electronic deposit through the TWRA to the foundation's bank accounts. Since the first payment in May 2001 through June 30, 2007, the Tennessee Department of Revenue has apportioned \$916,295.97 to the foundation from the sale and renewal of the sportsman license plates. We traced all remittance amounts to foundation bank statements for May 2001 through July 2007 and reconciled the entire apportioned amount to reported revenue by the foundation. In other words, all of the funds were recorded in the foundation's books and had not been redirected elsewhere.

Other than the property in Shelby County, during the audit period the foundation received approximately \$40,000 in monetary donations from other entities and individuals. The

foundation received the majority of the donations in May 2001, with \$30,000 from Remington Arms Company, Inc.; \$1,000 from Triton Boat Company, L.P.; and \$750 from Jordan Outdoor Enterprises, Ltd. The remaining unspent funds were accounted for in the foundation checking account, the balance of which was \$147,525.79 on August 19, 2007, and in a \$100,000 certificate of deposit.

ANALYSIS OF EXPENSES

We examined files of foundation records readily provided by Mr. Bittle, the foundation’s attorney, and the foundation’s accountant. The files include vendor invoices; loan papers; corporate tax returns for 2004, 2005, and 2006; bank statements; credit card statements; and other related documents. Foundation representatives provided every item we requested. The majority of the invoices were for building materials, such as cement, rock, tile, drywall, doors, plumbing, lighting, and electrical fixtures. A few invoices were for furnishings such as bunk beds. We were able to verify numerous items described in the invoices during our tour of the building and grounds.

We examined bank statements, copies of checks, and invoices relating to the Sportsmen’s Wildlife Foundation for the period May 1, 2001, through August 19, 2007. We traced reported expenses to this documentation. We examined canceled checks to determine the payee and the purpose of the payment. We sorted the payments according to purpose and calculated amounts and percentages spent for land (including mortgage payments and property taxes), building materials, construction labor, administration, salaries, equipment, furnishings, and miscellaneous items. The table below shows the use of foundation funds, broken down by category and rounded to the nearest dollar.

**Sportsmen’s Wildlife Foundation
Expenses During the Period May 1, 2001, Through August 19, 2007**

| <u>Category</u> | <u>Amount</u> | <u>Percent of Total</u> |
|--|---------------|-------------------------|
| Land and property taxes | \$236,899 | 33.1% |
| Building materials | 198,013 | 27.6% |
| Construction labor | 114,107 | 15.9% |
| Administration | 75,020 | 10.5% |
| Salaries | 34,478 | 4.8% |
| Equipment | 34,066 | 4.8% |
| Furnishings | 12,684 | 1.8% |
| Miscellaneous | <u>10,493</u> | <u>1.5%</u> |
| Total Expenses | \$715,760 | 100.0% |
| Unused funds (in the foundation’s bank account or CD) | \$247,526 | |

Administrative costs include printing, Internet services for a former executive director of the foundation, professional fees paid to lawyers and accountants, and corporate fees. Salaries were paid to the former executive director (Mr. Bob Neel of Knoxville, Tennessee) from September 2001 through November 2001, and to the president (H. E. Bittle) from March 2007 forward. Equipment purchases include a tractor, tiller, mower, and blower, for use by the foundation. The miscellaneous expenses were for items such as food for those working on the lodge and gasoline for Mr. Bittle's vehicle. Both Mr. H. E. Bittle and Mrs. Barbara Bittle carry credit cards in the name of the foundation and use them to purchase building materials, gasoline, and food.

INQUIRIES AND RESPONSES

The correspondence from legislators that generated this audit includes six requests for specific information. Those requests are presented here as inquiries one to six, each followed by what our audit disclosed, followed by a seventh point summarizing our recommendations and an eighth point discussing collateral issues.

Inquiry One: Have the public's contributions through the purchase of sportsman specialty license plates (totaling more than \$900,000 as of August 31, 2007) been used solely for the purposes stated in the law enabling the sale of the license plates—exclusively to establish and administer programs to preserve the heritage of hunting and fishing for future generations?

Auditor Response: The construction of a hunting lodge does not violate statute. Nor does it, by itself, meet the legislative intent of “establishing and administering programs.” However, the proceeds were spent to purchase land and to construct of the lodge with the intent, according to Mr. Bittle, to provide benefits through future programs. While the use of the funding cannot be said to be wholly improper, the efforts to further the goals of the legislative intent have been inefficient and largely ineffective thus far. Until the lodge was near completion, the foundation did not “establish and administer” any programs with the funds, and the lodge has served only a minimal number of youth. Mr. Bittle stated that the lack of established programs is a result of his choice to focus solely on the construction of the lodge. Mr. Bittle also stated that once completed, the lodge could then be used for those programs yet to be developed. During the construction period, there were several visitors to the site, mostly interested in the alternative energy systems, but including forestry students from the University of Tennessee who prepared a plan for use of the property. The lodge has been used recently by one TWRA hunter-safety group and also housed several youth and parents involved in a Quail Unlimited overnight hunting activity. According to Mr. Bittle, a Boy Scout group has also used the lodge recently.

Although it is difficult to question the genuine intent of Mr. Bittle in furthering these worthwhile causes, he has placed himself in a difficult position: (1) he initiated the enabling

legislation that created funding for a private corporation which he admittedly controlled; (2) he has invested almost \$700,000 over six years, acquiring and developing real property over which his corporation has exclusive control; and (3) he and the board of directors have spent only minimal time developing programs or supporting existing programs that could further interests for which the license plates were authorized.

In addition, of the approximate \$500,000 spent since the acquisition of the land, used to improve the property and to cover administration and other items, \$35,412.65 (7%) has been paid to Mr. Bittle or a relative. The salary paid to Mr. Bittle, initiated in March 2007, totaled \$17,707.65 through August 2007. In addition, over the period audited (March 2004 through August 2007) one of Mr. Bittle's nephews, Mr. David M. Bittle, was paid \$17,705 for labor during construction of the lodge. Additionally, another 35 individuals were paid a total of \$96,402 for work performed on the lodge. According to Mr. Bittle, these individual laborers included members of one family living near the lodge in Cumberland County, and various people he hired after they were referred by contractors and others in the community.

At the time of determining whether the funds were used for public benefit, we also looked for indications that the funds, especially the lodge, were used for the personal benefit of Mr. Bittle, his family, the foundation board, or anyone else. The land in question is in a remote area of Cumberland County. The property's access road, off Millstone Mountain Road and three miles from Interstate 40, is blocked by a cable secured with a lock. On the property containing the access road is posted a "NO TRESPASSING" sign. There are no other signs indicating ownership of the property. It is difficult under these circumstances to know what activities may have taken place on the property. While it is possible Mr. Bittle or others had gone hunting or fishing on the property, Mr. Bittle stated that he had never hunted or fished on the property. During our review and visits to the lodge, nothing came to our attention that contradicted Mr. Bittle's statement. A review of expenses charged to the foundation did not disclose any expenses directly related to hunting or fishing. At the time of our initial visit to the property, the upstairs beds were not assembled, the ductwork was not complete, and the stove was not installed. That work had been completed at the time of our second visit to the property. However, there were no personal effects in the lodge either time we visited, and Mr. Bittle stated he has never stayed there except a few nights so he could get up early the next morning to resume work on the lodge.

According to Mr. Bittle, other state legislators suggested he create the license plate to help fund the promotion of hunting and fishing. He also stated that it was no secret that the funds would be directed to a foundation, of which he was the chief executive officer. In order to determine what disclosures were made regarding the foundation, we listened to tapes of Senate and House committee and subcommittee hearings that had the bill on the agenda, and we personally contacted several sponsors of the bill. We found that there was little discussion about the foundation on the tapes. However, it appears that Mr. Bittle did mention to at least two legislators that he was associated with the foundation. Of those former and current legislators interviewed, two stated that they knew, at that time, that then representative Bittle was associated in some manner with the foundation through conversations they had had with Mr. Bittle but did not specifically know that he held the position of chief executive officer. One other legislator stated that he was unaware that Mr. Bittle had any association with the foundation.

The Middle Tennessee area has several private lodges with hunting grounds and numerous public wildlife management areas that are open for hunting. Still, the foundation's property and lodge would have advantages to these alternatives, according to Mr. Matt Clarey, TWRA Hunter Education and Boating Safety Coordinator, Region III. Mr. Clarey stated that hunters must pay a fee for using private lodges, whereas they would not for hunting and lodging on the foundation's property. Additionally, Mr. Clarey stated that the public hunting areas can sometimes be overhunted, whereas the foundation's property would likely have more wildlife and fewer worries about other hunters.

While Mr. Bittle's efforts in constructing portions of the lodge himself, using local laborers, and obtaining donated services and equipment have saved money on the project, one may question whether the foundation's building a lodge and spending approximately \$500,000 over six years was the best use for the funds, since during the construction process, the youth of Tennessee have received minimal benefit. However, there appears to be an increase in youth activities at the lodge since construction reached substantial completion in early 2008.

Management's Comment

We concur that "the construction of the hunting lodge does not violate [the] statute." The audit correctly points out that the lodge was constructed "with the intent . . . to provide benefits through future programs." Utilization of the lodge has increased significantly since construction reached substantial completion.

The foundation also concurs with the finding that the auditors were able to trace "all remittance amounts to the foundation's bank statements for May 2001 through July 2007 and reconciled the **entire** apportioned amount to reported revenue by the foundation" (emphasis added). According to the March 26th audit, all of the money has been accounted for "in the foundation's books and had not been redirected elsewhere."

The foundation wants to point out the construction schedule for the lodge was not due to a lack of desire to offer programs, but a management decision to construct the facility in a cost-efficient manner, relying principally on donations and selective use of paid labor. The license plate proceeds also initially did not provide enough revenue to hire a contractor to build the lodge any faster.

The foundation spent only \$198,013 on materials and \$114,107 on labor (skilled and unskilled) to build the lodge. That totals \$312,120. Tennessee Log Homes provided the foundation with an estimate of how much it would cost to build the lodge using a contractor. The estimate is \$660,562; thus the foundation saved almost \$300,000. A copy of the estimate is attached as Appendix D on page 33.

Management's cost-efficient approach to building the lodge will allow the foundation to use the savings for future programs. This is very important because the foundation does not charge a fee for parents or kids to stay at the lodge or for any of the activities conducted on the property. The foundation is also mindful that it must use the license plate proceeds prudently because the revenue is diminishing.

The foundation was able to save \$300,000 because Mr. Bittle worked thousands of hours annually for six years without any compensation. During that period, Mr. Bittle built a road into the property, a large lake for fishing and a small lake for turbine power, wind mills and solar panels to provide electricity, and the three-story lodge. All of this work was done essentially by hand.

A lot of the building materials and craft work was donated, so the foundation had to work around the schedules of the donors. For instance, a local contractor hauled the rock for the road, which is four miles long, and the heating and air work was donated. The foundation could not demand when this work occurred because it was free. This obviously delayed the construction of the lodge, but it resulted in huge savings to the foundation.

The foundation also paid modest wages for labor, \$8.00 per hour, when help was needed. Mr. Bittle's nephew, David M. Bittle, likewise was paid only \$8.00 per hour; and, over the three-year period referenced in the audit, he averaged a mere \$5,900 per year for his work. There was nothing improper about that. There were 35 other skilled and unskilled laborers who helped build the lodge; thus it is clear that Mr. Bittle did not provide an unjust benefit to his nephew.

The foundation also concurs with the findings that two of the three legislators contacted by the auditors knew Mr. Bittle was connected with the foundation. The foundation submits that at the time Mr. Bittle was in the General Assembly, it was widely known that he founded the agency. Indeed, Mr. Bittle's position with the foundation has been a matter of public record in the Secretary of State's Office since the original entity was incorporated in 1991. One of the incorporators is currently a member of the Senate. One co-sponsor of the legislation was quoted in the September 21, 2007, edition of the Knoxville News Sentinel as saying he knew money from the plate was going to the foundation and that "[Mr. Bittle] was not personally benefiting from the money. . . ."

We also concur with the audit's finding that there is no evidence that the lodge has been used "for the personal benefit" of the foundation's president (Mr. Bittle), members of the board of directors or anyone else. The audit confirms that the foundation has not spent any money "related to hunting or fishing," and it states "[a]t the time of our initial visit to the property, the upstairs beds were not assembled, the ductwork was not complete, and the stove was not installed." It also states "there were no personal effects in the lodge either time we visited." Mr. Bittle denies ever hunting or fishing on the property. "During [the auditors'] review and visit to the lodge, nothing came to [their] attention that contradicted Mr. Bittle's statement."

The audit mentions the lack of a sign along Millstone Mountain Road identifying the property. The reason a permanent sign has not been erected is because the foundation does not

own the property along the road. That property is owned by the successor to Bowater Corporation. The foundation has only an easement for ingress and egress across the Bowater property. The foundation places temporary signs on the Bowater property when events are held at the lodge, but they have to be removed at the conclusion of the event.

Finally, the foundation reaffirms its intent to use license plate proceeds as intended. The lodge is ideally suited to hold programs designed to preserve the heritage of hunting and fishing for future operations. The TWRA Hunter Education Coordinator likewise confirmed to the auditors that the lodge provides “advantages” to the area because the foundation does not charge a fee for hunting or lodging and its wildlife areas are more pristine for such programs.

The foundation is administering programs consistent with the intent of the statute. A TWRA hunter-safety class was held on the property in October 2007 before the lodge was completed. Quail Unlimited held an over-night youth event and quail hunt at the lodge in January 2008, and the president of the foundation met with scout masters and scouts from approximately six troops on December 22, 2007, to establish a schedule for outings and projects in 2008. A group of school children visited the lodge in February 2008, and a group of Boy Scouts attended a four-day event at the lodge in mid-March 2008. A Knoxville Cub Scout troop has also accepted an invitation for a field day and fishing outing later in spring 2008.

All of the foregoing establishes that the foundation is using the license plate proceeds to preserve the heritage of hunting and fishing for future generations.

Inquiry Two: Are there sufficient safeguards in the law to ensure that these public funds are used for public purposes?

Auditor Response: There are not sufficient safeguards in the statutes. The statute does not include clear, objective criteria to measure performance of the foundation, or provisions that place reporting requirements on it. Secondly, there is no monitoring of these funds to provide adequate assurance that the funds allocated from sales of the sportsman specialty license plates are being properly or efficiently used for the public’s benefit. While foundation representatives stated that they are committed to using the license plate proceeds for the intended purposes, without controls there is no assurance other than this stated intent.

Management’s Comment

We concur that there are not sufficient safeguards in the statutes. The foundation encourages the General Assembly to adopt reasonable safeguards to ensure that license plate proceeds are used as intended.

Inquiry Three: What are the options for ensuring that these public funds and any future funds are used properly and most beneficially?

Auditor Response: We suggest two possible options available to provide assurance that the sportsman specialty plate funds are spent properly and benefit the public. One option is to require reporting by the foundation on its use of the funds. This would require determination of the type of reporting, frequency, and the agency to which the foundation should report, but could include a business plan and annual budget. A second option is to require monitoring of the foundation's financial and activity records. This would require determination of the type of monitoring, frequency, and the agency which should conduct the monitoring. This could include a periodic review or audit of the use of the funds, similar to this audit, or the foundation could be required to establish performance benchmarks for assessments.

The use of the funds should not be left to the sole discretion of the foundation. If such public funding is to continue, there should be the implementation of one or more of the mechanisms above to provide appropriate accountability. This will require additional legislation related to Title 55, Chapter 4, *Tennessee Code Annotated*. Legislators may also wish to consider provisions for the return of future unspent or improperly spent specialty license plate funds.

Management's Comment

We concur and encourage the General Assembly to adopt reasonable safeguards to ensure that license plate proceeds are used as intended. The foundation is willing to submit any reports required of it by the General Assembly.

The audit has not found and there is no evidence that the foundation has "improperly spent specialty license plate funds." Indeed, the audit clearly states that all of the license plate proceeds are properly accounted for in the foundation's books. Thus, there is no basis for requiring the foundation to return any funds.

Inquiry Four: Should, and in fact could, these funds and the assets they have purchased be redirected?

Auditor Response: Given that the state has already allocated over \$900,000 in public funds to the foundation without the funding resulting in any established programs until recently, inquiries regarding the recovery of unused funds or other assets are understandable. However, currently specific written authority to recover funds or assets from recipient organizations is not included in the statutes related to specialty license plates. Members of the General Assembly may wish to consider directing future collections elsewhere. This action would require amending Section 55-4-296, *Tennessee Code Annotated*.

Furthermore, the redirection of specialty license plate funds already issued to the foundation might be possible in the case of a critical default by the entity or gross improper actions on the part of management and/or the board of directors. Violations of the Tennessee nonprofit statutes are within the purview of the Attorney General’s Office. Although several procedural violations were noted and are discussed later in this report, those violations do not appear serious enough to warrant redirection of funds already distributed to the foundation.

Management’s Comment

We concur that there is no basis for “redirection” of any of specialty license plate funds. The foundation has properly accounted for all of the money received from the sportsman license plate. The lodge is now complete, and hunting and fishing programs are being administered for the benefit of Tennessee’s youth.

Inquiry Five: What other specialty license plates are providing funding to private foundations or non-government organizations?

Auditor Response: Major categories of license plates include cultural plates, specialty earmarked plates, and “new” specialty earmarked plates. The “specialty earmarked plates” are those plates authorized by statute prior to 1998 while the “new specialty earmarked plates” are those plates authorized by statute after July 1998. The main differences between the specialty plates issued prior to and those issued after July 1998 are the minimum annual sales required for issuance and the allocation of revenue discussed earlier. For the purpose of this inquiry, we looked for plates that fund private foundations or non-government organizations and excluded plates whose revenue goes to government agencies. Thus, we did not gather information on cultural plates because revenue from those 73 plates is allocated only to the Tennessee Arts Commission and the State Highway Fund. We also did not consider the following plates because their entire revenue goes to state or government agencies.

Specialty Earmarked Plates Where Statute Directs All Revenue to a Government Agency

License Plate

Specialty Earmarked Plates

Agriculture

CHILDREN FIRST!

Environmental/State Parks

“Helping Schools” Volunteer

New Specialty Earmarked Plates

Fish and Wildlife Species

University of Tennessee Lady Volunteers

NCAA National Championships

University of Tennessee National
Championship

Recipient of Revenue

Agricultural Development Fund, Department of
Agriculture

Children First Fund, Department of Human Services

Department of Environment and Conservation

General School Fund

Tennessee Wildlife Resources Agency

University of Tennessee-Knoxville General
Scholarship Fund

University of Tennessee-Knoxville General
Scholarship Fund

**Number of Specialty and New Specialty Plates Sold or Renewed Each Year
For Plates Whose Revenue Goes to Non-Government Agencies
For Fiscal Years 2003 to 2007**

| <u>License Plate</u> | Number Sold or Renewed Each Year | | | | |
|---|---|--------------------|--------------------|--------------------|--------------------|
| | <u>2003</u> | <u>2004</u> | <u>2005</u> | <u>2006</u> | <u>2007</u> |
| <i>Specialty Earmarked Plates</i> | | | | | |
| African-American Fraternity or Sorority (Eight different plates) | 1,556 | 2,204 | 2,641 | 2,824 | 3,429 |
| Ducks Unlimited | 4,871 | 4,229 | 3,729 | 3,258 | 3,147 |
| Friends of Great Smoky Mountains | 21,011 | 19,306 | 17,670 | 16,526 | 16,315 |
| Mothers Against Drunk Driving (MADD) | 847 | 756 | 736 | 685 | 627 |
| Watchable Wildlife | 12,920 | 11,458 | 10,309 | 8,896 | 8,563 |
| Olympic* | 654 | 602 | 551 | 462 | 461 |
| Saint Jude Children's Research Hospital (Memphis) | 2,968 | 3,186 | 3,586 | 3,956 | 4,852 |
| <i>New Specialty Earmarked Plates</i> | | | | | |
| Animal Friendly | 12,751 | 12,240 | 11,913 | 11,635 | 12,728 |
| Children's Hospital at Johnson City Medical Center | | | | | 647 |
| Choose Life | | | | | 4,289 |
| Eagle Foundation | | | 3,724 | 9,349 | 12,702 |
| East Tennessee Children's Hospital (Knoxville)* | | 721 | 877 | 836 | 1,078 |
| Le Bonheur Children's Medical Center (Memphis) | 803 | 747 | 804 | 820 | 883 |
| Masons | | | | | 1,672 |
| Prince Hall Masons (Memphis)* | | | 383 | 533 | 835 |
| Radnor Lake (Nashville) | 4,966 | 4,812 | 4,829 | 4,501 | 3,838 |
| Sons of Confederate Veterans | | 1,712 | 2,717 | 2,836 | 3,302 |
| Sportsman | 10,968 | 10,255 | 9,782 | 9,009 | 7,709 |
| Tennessee Titans | | 10,343 | 14,541 | 12,639 | 12,307 |
| Tennessee Wildlife Federation | | | | | 5,614 |
| International Association of Firefighters | | | | 2,266 | 2,598 |
| Vanderbilt Children's Hospital (Nashville) | | 486 | 1,105 | 1,284 | 1,610 |
| Total number issued or renewed | 74,315 | 83,057 | 89,897 | 92,315 | 107,206 |

* Discontinued in 2007

Source: State of Tennessee Comprehensive Annual Financial Report audit documentation, 2007 data from Tennessee Department of Revenue.

There remain 22 different plates that have revenue apportioned to non-government agencies. This number includes 7 specialty plates and 15 new specialty plates and considers the eight different African-American Fraternity or Sorority plates as one plate. The number of each type of plate sold over the last five fiscal years is shown in the following table.

The recipient funded by sales of each plate, and the amount apportioned to each recipient over the last five fiscal years, are shown in the following table.

**Revenue Apportioned to Non-government Agencies From Specialty and New Specialty Plates
For Fiscal Years 2003 to 2007**

| <u>License plate</u> | <u>Recipient of revenue</u> | <u>Amount Apportioned by Fiscal Year</u> | | | | |
|--|---|--|-------------------|-------------------|-------------------|-------------------|
| | | <u>2003</u> | <u>2004</u> | <u>2005</u> | <u>2006</u> | <u>2007</u> |
| <i>Specialty Earmarked Plates</i> | | | | | | |
| African-American Fraternity or Sorority | Tennessee Historically Black Colleges Fund | \$44,126.00 | \$68,324.00 | \$81,315.50 | \$87,670.51 | \$107,121.96 |
| Ducks Unlimited | Ducks Unlimited Fund | 136,841.00 | 131,099.00 | 114,842.75 | 101,017.97 | 98,312.28 |
| Friends of Great Smoky Mountains | Great Smoky Mountains Endowment Fund | 586,721.00 | 598,486.00 | 544,214.50 | 512,437.50 | 509,680.60 |
| Mothers Against Drunk Driving (MADD) | Tennessee Chapter of MADD | 23,797.00 | 23,436.00 | 22,661.50 | 21,240.15 | 19,587.48 |
| Watchable Wildlife | Watchable Wildlife Endowment Fund | 370,352.00 | 355,198.00 | 317,420.25 | 276,086.77 | 267,508.12 |
| Olympic | Olympic Committee Fund | 9,223.50 | 9,331.00 | 8,486.38 | 7,167.93 | 7,200.82 |
| Saint Jude Children's Research Hospital | St. Jude Children's Cancer Research Endowment Fund | 83,828.00 | 98,766.00 | 110,417.50 | 122,798.99 | 151,576.48 |
| <i>New Specialty Earmarked Plates</i> | | | | | | |
| Animal Friendly | Animal Population Control Endowment Fund | 180,715.50 | 189,720.00 | 183,429.38 | 180,464.70 | 198,811.36 |
| Children's Hospital at Johnson City Medical Center | Mountain States Health Foundation | | | | | 10,106.14 |
| Choose Life | New Life Resources | | | | | 66,994.18 |
| Eagle Foundation | Eagle Foundation | | | 57,256.50 | 145,218.47 | 198,405.24 |
| East TN Children's Hospital | East Tenn Children's Hospital | | 11,175.50 | 13,494.63 | 13,000.75 | 16,838.36 |
| Le Bonheur Children's Medical Center | Le Bonheur Children's Medical Center | 11,511.50 | 11,578.50 | 12,375.88 | 12,730.98 | 13,792.46 |
| Masons | Masonic Widows' and Orphans' Home of West Tennessee | | | | | 26,116.64 |
| Prince Hall Masons | Orange Mound Charities | | | 5,888.63 | 8,288.47 | 13,042.70 |
| Radnor Lake | Friends of Radnor Lake | 69,968.00 | 74,586.00 | 74,356.13 | 69,736.98 | 59,949.56 |
| Sons of Confederate Veterans | Tennessee Division of Sons of Confederate Veterans | | 26,536.00 | 41,810.88 | 44,072.43 | 51,577.24 |
| Sportsman | Sportsmen's Wildlife Foundation | 155,724.00 | 158,952.50 | 150,597.63 | 139,696.24 | 120,414.58 |
| Tennessee Titans | Tennessee Titans Foundation | | 160,316.50 | 223,798.00 | 195,943.34 | 192,235.34 |

| <u>License plate</u> | <u>Recipient of revenue</u> | <u>Amount Apportioned by Fiscal Year</u> | | | | |
|--|--|--|-----------------------|-----------------------|-----------------------|-----------------------|
| | | <u>2003</u> | <u>2004</u> | <u>2005</u> | <u>2006</u> | <u>2007</u> |
| Tennessee Wildlife Federation | Tennessee Wildlife Federation | | | | | 87,690.68 |
| International Association of Firefighters | Firefighters | | | | 35,193.53 | 40,580.76 |
| Vanderbilt Children's Hospital | Vanderbilt Children's Hospital of Vanderbilt University | | <u>7,533.00</u> | <u>17,011.50</u> | <u>19,954.41</u> | <u>25,148.20</u> |
| | | <u>\$1,672,807.50</u> | <u>\$1,925,038.00</u> | <u>\$1,979,377.54</u> | <u>\$1,992,720.12</u> | <u>\$2,282,691.18</u> |
| | Total Apportioned | | | | | |

Source: State of Tennessee Comprehensive Annual Financial Report audit documentation, 2007 data from Department of Revenue.

Management's Comment

We concur that many private foundations or non-governmental organizations receive proceeds from the sale of specialty license plates.

Inquiry Six: Are sufficient safeguards in place to ensure that the public funds collected from the sale of other specialty license plates are being used most beneficially in the public interest?

Auditor Response: As stated in inquiry two above, there are not sufficient safeguards in the statutes. The statutes do not include clear, objective criteria to measure performance of the recipient entity, or provisions that place reporting requirements on it. Secondly, there is no monitoring of these funds to provide adequate assurance that the funds apportioned from sales of specialty license plates are being properly or efficiently used for the public's benefit. Currently, the use of the funds is left to the discretion of the recipient entity, subject to oversight by the entity's management, board, or the public. The recipients are not accountable to any state agency for their use of the allocated funds. Generally, the more discretion given to an entity for the use of funds, the less accountability.

Management's Comment

We concur that there are not sufficient safeguards in the statutes. The foundation encourages the General Assembly to adopt reasonable safeguards to ensure that license plate proceeds are used as intended.

Inquiry Seven: Are there recommendations for possible alternatives for legislative or administrative action that may result in additional reporting by recipients and an increased accountability of apportioned funds from specialty license plate sales?

Auditor Response: Currently, there are not sufficient safeguards in the statutes to provide accountability by recipients of specialty license plate sales. This appears to be true for all nongovernmental entities receiving revenues from specialty tags. One option to increase accountability is to include requiring reporting by the receiving organization, including the use of funds, a business plan, or annual budget. A second option is to require monitoring of the receiving organization's financial and activity records. The receiving organization could also be required to establish performance benchmarks for monitoring assessments.

If such public funding is to continue, we recommend one or more of the mechanisms above be implemented to provide accountability. This will require additional legislation to Title 55, Chapter 4, *Tennessee Code Annotated*. Provisions for the return of unspent or improperly spent specialty license plate funds should also be considered in any revisions to legislation.

Management's Comment

We concur that the General Assembly could require either one of the two options identified in the audit response. The foundation does not object to the requirement of periodic audits of agencies that receive specialty license plates proceeds, but annual certified audits may not be feasible. Certified audits are expensive; therefore they may be cost prohibitive for some non-profit agencies. The foundation's books have previously been audited by an independent Certified Public Accounting firm.

Inquiry Eight: Were there any collateral issues that arose during this audit?

Auditor Response: The following three findings are based on other issues noted during the audit.

1. Lack of Planning by the Board of Directors

In accepting public funds, recipients have a responsibility to use those funds appropriately and in a timely manner. In the case of the foundation, this required planning and networking to establish programs, including obtaining instructors, and to secure contracts with other organizations. Additionally, the promotion of the heritage of hunting and fishing requires some type of marketing. However, Mr. Bittle confirmed during fieldwork that the foundation does not have written contracts with any state agencies; wildlife, hunting, or related organizations; or instructors for any classes, camps, or other events. Mr. Bittle also stated that while he had made some personal contacts, as of the end of our audit fieldwork he had not formally advertised the property as a place to be used by the Boy Scouts, church groups, or other organizations.

We also found during fieldwork that there was no formal business plan for the foundation and no succession plan in the case of loss of any key member(s) of management. A succession plan for the foundation appears critical as it has been under the sole direction of Mr. Bittle. In addition, the foundation relies almost entirely on allocated funds from the sale and renewal of the sportsman license plates. While this funding has sustained the foundation thus far, these funds have decreased over the last three fiscal years and may one day be insufficient to support the activities of the foundation.

The issues raised in this section were addressed by the board of directors of the foundation after the exit conference. At a board meeting held November 27, 2007, the board adopted a detailed business plan that included long-term goals, specific opportunities for use of the lodge, and intentions to create strategic partnerships with sportsman-related organizations. The business plan also has objectives for 2008-2009, including finishing construction of the lodge, designing and implementing a marketing plan, implementing a wildlife management plan, pursuing additional sources of funding, formulating a plan for the foundation's property in Shelby County, and pursuing federal land management programs under the 2008 Farm Bill. The board also adopted a succession plan at the same meeting. Additionally, letters were mailed by the foundation to prospective organizations that may be interested in using the facilities.

Recommendation

The foundation should continue to plan activities to utilize the lodge to the greatest extent possible, and should create relationships with potential users and potential co-sponsors of events.

Management's Comment

We concur that the “issues raised in this section were addressed by the board of directors of the foundation after the exit conference.” The foundation will continue to plan activities to utilize the lodge to the greatest extent possible and “will create relationships with potential users and potential co-sponsors of events.”

A copy of the minutes of the board of directors meeting wherein a detailed business plan was adopted is attached. [Space constraints prohibited the inclusion of management's exhibits. Go to http://www.comptroller1.state.tn.us/repository/SA/tswf_08/SWF_minutes.pdf to view the exhibits.] The business plan includes strategic long-term goals; specific opportunities for use of the lodge, including but not limited to TWRA hunter education classes, 4-H outings, Boy and Girl Scout outings, and Quail Unlimited events; and opportunities for strategic partnerships with the U.S. Sportsmen's Alliance Foundation, the National Shooting Foundation/The Hunting Heritage Partnership, and Families Afield.

The business plan also has objectives for 2008-2009, including finishing construction of the lodge, designing and implementing a marketing plan to increase public awareness of the foundation, implementing the wildlife management plan prepared by the University of Tennessee, pursuing additional sources of funding, formulating a plan for the foundation's property in Shelby County, and pursuing federal land management programs under the 2008 Farm Bill.

A succession plan was also adopted by the board on November 27, 2007, and it is included in the minutes that are attached. [To view the exhibits, go to http://www.comptroller1.state.tn.us/repository/SA/tswf_08/SWF_minutes.pdf.] Moreover, the foundation has shown by clear and convincing evidence that the sportsman license plate proceeds are being used for their intended purposes.

2. Failure of the Board of Directors to Comply With State Statutes

We found that the foundation's board of directors was not in compliance with state statutes governing the activities of nonprofit corporations. According to Sections 48-58-101 through 48-58-601, *Tennessee Code Annotated*, a board of directors of a nonprofit corporation is required to meet annually, elect other directors to replace original directors, and vote on actions to be carried out by the president and others. Statute also addresses conflicts of interests of board

members and requires decisions to be effected by non-interested directors. The foundation's bylaws state similar requirements.

During our fieldwork, we requested the minutes of all meetings of the foundation board of directors and received minutes of only one board meeting, held in December 2006. The lack of other board meetings or documented board decisions and results of voting raises concerns that the foundation's board of directors was not in compliance with these statutes and raises concerns that the foundation was operating under the sole control of its founder, Mr. Bittle. The determination of whether such noncompliance on the part of directors or officers of the foundation should result in actions toward the nonprofit corporation is beyond the scope of this audit.

We also noted during fieldwork that all but one of the directors were related by blood or marriage to Mr. Bittle, the chairman and president of the foundation. Mr. Bittle asserted that his family members were placed on the board because the original board members lost interest and family members were the only available choices to fill empty board positions. As listed on the board of directors' meeting minutes for December 2006, the members at that time, and their relationship to the president, were:

- H.E. Bittle, President
- Barbara Bittle (spouse of president), Secretary
- Kimberly Overbey (daughter of president), Vice Chair
- Rusty Bittle (son of president), Vice Chair
- Danny Overbey (son-in-law of president)
- Steve Lewis (neighbor)
- Sandi Bittle (daughter-in-law of president)

Those relatives, with likely direct or indirect interests in Mr. Bittle, voted to pay a monthly salary of \$3,541.67 to the president of the foundation (Mr. Bittle) beginning in March 2007. A conflict-of-interest transaction can be authorized/approved by a board of a nonprofit organization if it receives the affirmative vote of a majority of the directors who have no direct or indirect interest. The foundation has retained the services of an attorney to assist in compliance issues and to respond to questions raised by this audit, particularly replacing family members on the board. After the end of our fieldwork, the foundation's board of directors made some changes in an effort to be in compliance with statute and its own bylaws. Rusty Bittle, Kim Overbey, Sandi Bittle, and Danny Overbey resigned from the board. Board member Steve Lewis was appointed vice president of the foundation, and the following new directors were elected:

- Sharon P. Johnson, CPA
- Dick Conley, retired from TWRA
- Lee Gentry, Financial Planner
- David Robinette, Developer

All actions of the foundation and its president were subsequently ratified and approved on November 27, 2007, by this board, a majority of whose members are not related to the president

of the foundation. Furthermore, according to the minutes, the board engaged in extensive discussion regarding the issue of the president's salary. The board considered that the president spent several years and thousands of hours without compensation and continues to work countless hours each week on behalf of the foundation. The board considered the balance sheet of the foundation and compensation data from comparable non-profit organizations. The board ratified the payment of the salary to the president, which began in March 2007, and voted to increase the president's salary beginning January 1, 2008.

In January 2008, the foundation received and filed a signed conflict-of-interest statement from each board member. The board has taken essentially all recommended steps to correct past deficiencies and to act appropriately and in accordance with statute and its own bylaws.

Recommendation

Regular board meetings should continue and potential conflicts of interest of board members should be avoided. Members of the board of directors should submit annual disclosure statements of any conflicts of interest in accordance with Article VI of the foundation's conflict-of-interest policy.

Management's Comment

We concur with the finding that "[t]he board has taken essentially all recommended steps to correct past deficiencies and to act appropriately and in accordance with statute and its own bylaws." We do not concur with the audit's concern that the foundation violated state statutes or its by-laws as the issue of corporate governance is not within the scope of the audit and calls for a legal conclusion.

The foundation submits that it has not violated any statutes or its own by-laws. The reason family members were placed on the board is because none of the founders or other board members volunteered to work on the lodge. Mr. Bittle, his family and Mr. Lewis were the only people who volunteered to work. Mr. Bittle worked thousands of hours annually for six years without compensation. He accomplished more in those six years than the two full-time, paid executive directors accomplished together.

The independent members of the board of directors voted to pay Mr. Bittle a salary commensurate with the salaries of the former executive directors and the salaries paid by comparable agencies. There is nothing improper with Mr. Bittle's salary. Indeed, the lack of any temporal proximity between the passage of the statute in 1999 and Mr. Bittle receiving a modest salary starting in 2007 clearly shows that HB584 was not proposed by its 47 sponsors for anyone's personal benefit.

Finally, the foundation has shown by clear and convincing evidence that the sportsman license plate proceeds are being used for their intended purposes.

3. Possible Federal Tax Implications

There may also be federal tax implications to the paying of laborers during construction of the lodge. According to the Internal Revenue Service's "Instructions for a Form 1099-MISC," a nonprofit organization must file a 1099-MISC (1099) "for each person to whom you paid during the year . . . at least \$600 . . . in services, . . . other income payments," or one of several other categories. From our review of foundation expenses, we found 21 cases where the foundation paid at least \$600 during a year to an individual they classified as a "day laborer." We asked the foundation for copies of the 1099 forms they filed, and they provided copies of three 1099 forms and one W-2. The 1099 instructions include exceptions, and it is possible that in some of the 21 cases, the foundation is not required to report the payment on a 1099.

Recommendation

The foundation should take steps to ensure compliance with federal income tax regulations, particularly filing 1099 forms when required.

Management's Comment

We do not concur that the foundation may not have complied with very obscure Internal Revenue Service regulations regarding the preparation of 1099-MISC forms for individuals classified as a "day laborer." The foundation filed 1099 forms for some laborers; but, as the audit notes, there are exceptions for filing 1099s. The IRS regulations state the failure to file 1099 forms results in only a \$50.00 fine.

Rather than incur additional legal fees researching whether any of the exceptions apply to the day laborers used to construct the lodge, the foundation's accountant has prepared letters to send to the day laborers with W-9 forms for them to fill out and return to her. 1099 forms will be issued to the laborers as the forms are returned to the accountant.

RECOMMENDATION SUMMARY

The Sportsmen's Wildlife Foundation should address the following areas to improve the efficiency and effectiveness of its operations:

- Future foundation efforts should focus on expanding the number of opportunities for use of the facility by other organizations in addition to TWRA. The foundation's board of directors should continue to consider organizations and programs that could benefit from using the facility and seek out those opportunities.
- The foundation board of directors should comply with statutory requirements for nonprofit corporations and with the foundation's bylaws by holding meetings to vote on actions to be carried out by the president and others.
- Potential conflicts of interest of board members should be avoided.
- The foundation should comply with Internal Revenue Service regulations.

The General Assembly may wish to consider amending Title 55, Chapter 4, *Tennessee Code Annotated*, and other sections of the law as necessary to institute the following:

- The General Assembly may wish to redirect future collections from sales of the sportsman specialty license plate elsewhere by amending Section 55-4-296, *Tennessee Code Annotated*.
- The General Assembly may wish to require reporting or monitoring of financial and program activity records for the foundation and/or all recipients of specialty plate revenues. This would require determining the type, frequency, and the agency responsible for the monitoring and/or reporting. This may include a periodic review or audit of the use of the funds, or the recipient could be required to establish performance benchmarks and submit a business plan and annual budget. The reporting/monitoring process could also include posting reports on a state agency website for public inspection.
- If recommended controls over license plate funds do not result in satisfactory performance by a recipient, the General Assembly may wish to consider canceling the plate or redirecting those funds elsewhere. This may require adding provisions in the statutes for the return of unspent or improperly spent license plate funds.

Appendix A. - Chapter 292, Public Acts of 1999

PUBLIC ACTS, 1999

CHAPTER NO. 292

HOUSE BILL NO. 584

By Representatives Bittle, Ridgeway, McDaniel, Head, Kent, Odom, Todd, Pinion, Hargrove, Kisber, Garrett, Stulce, Curtiss, Buttry, Armstrong, Tidwell, Phelan, McAfee, Ford, Walker, Maddox, McDonald, Patton, Whitson, Godsey, David Davis, Fraley, Scroggs, Sargent, Mumpower, Gunnels, Dunn, Goins, Westmoreland, Fitzhugh, Bone, Hagood, Pleasant

Substituted for: Senate Bill No. 1524

By Senators Ramsey, Atchley, Burchett, Clabough, Haynes, Herron, Williams, McNally, Person

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 4, to authorize the issuance of a sportsman new specialty earmarked license plate.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 55-4-202(c)(7), is amended by adding the following as a new, appropriately designated subdivision:

() Sportsman;

SECTION 2. Tennessee Code Annotated, Title 55, Chapter 4, Part 2, is amended by adding the following as a new, appropriately designated section:

(a) Owners or lessees of motor vehicles who are residents of the State of Tennessee, upon complying with state motor vehicle laws relating to registration and licensing of motor vehicles and paying the regular fee applicable to the motor vehicle and the fee provided for in §55-4-203, shall be issued a sportsman new specialty earmarked license plate for a motor vehicle authorized by §55-4-210(c).

(b) The new specialty earmarked plates provided for in this section shall contain an appropriate image, design or logo that promotes and indicates support for the protection, propagation and conservation of fish and wildlife in Tennessee, including the importance of protecting and preserving for future generations the heritage of hunting and fishing in this State. Such plates shall be designed in consultation with the Executive Director of the Tennessee Wildlife Resources Agency and the Board of Directors of the Sportsmen's Wildlife Foundation.

(c) The funds produced from the sale of such sportsman new specialty earmarked license plates shall be allocated in accordance with the provisions of §55-4-215 to the Sportsmen's Wildlife Foundation. Such funds shall be used exclusively to establish and administer programs to ensure the protection, propagation and conservation of fish and wildlife in Tennessee in order to assure the preservation of the heritage of hunting and fishing in this State for future generations.

(d) If the new specialty earmarked plate authorized by this act fails to meet the minimum issuance requirements of §55-4-201(b)(3)(B) within one (1) year of the

PUBLIC ACTS, 1999

Chapter No. 292

effective date of this act, such plate shall not be issued and the commissioner shall notify the Tennessee Code Commission that sections of Tennessee Code Annotated relative to the issuance of such plate and the allocation of revenues produced from the sale of such plate are, on the basis of such inactivity, to be deemed obsolete and invalid.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 17, 1999

APPROVED this 26th day of May 1999

Appendix B. - Sportsman Specialty License Plate



Appendix C. – Photographs of the Sportsmen’s Wildlife Foundation Lodge Facility

Picture 1. Front view of Sportsmen’s Wildlife Lodge in Cumberland County.



Picture 2. Lodge kitchen.



Picture 3. Upstairs loft in lodge.



Picture 4. Lodge bedroom with bunk beds.



Picture 5. Windmill providing power to the lodge.



Appendix D. – Estimated Building Cost From Tennessee Log Homes, Inc. (Provided as Part of Management’s Comments)

Today's Date: October 05, 2007

H.c. Bittle

2537 Decatur Pike

Athens TN

Building Site Location: Athens, McMinn, TN

Estimated Starting Date:

| | |
|--|----------------------|
| TLH complete package from standard estimate - | \$ 182,339.19 |
| Sales Tax for McMinn, TN - | \$ 16,866.37 |
| Labor to install package (excluding any interior wall T&G deckings, interior rails, or stains) - | \$ 61,084.00 |
| Total installed package - | \$ 260,289.56 |

Estimated Turn Key Completion

| | |
|---|----------------------|
| Excavation and foundation - | \$ 59,100.00 |
| Well and/or septic tank if needed - | \$ 11,000.00 |
| Finished roofing (24 Gauge Metal) including insulation for conventional areas)- | \$ 20,450.00 |
| Gutters - | \$ 1,227.00 |
| Complete electrical with \$ 3,500.00 fixture allowance - | \$ 17,598.00 |
| Complete plumbing with \$ 10,000.00 fixture allowance - | \$ 19,100.00 |
| Heat/air system (Economical) - | \$ 20,140.00 |
| Interior walls/conventional roof ceiling finish: | |
| 11200 square feet of sheetrock interior with paint - | \$ 22,400.00 |
| 0 square feet of T&G labor (materials in package) - | \$ 0.00 |
| 0 square feet of T&G materials and labor - | \$.00 |
| Conventional Roof | \$ 0.00 |
| Interior trim materials and labor | |
| Average materials and labor | \$ 48,336.00 |
| Cabinets, counter tops, and vanities | |
| Above average quality with tile tops | \$ 15,000.00 |
| Finished flooring | |
| 3028 square feet of wood floors | |
| 1000 square feet of tile - | \$ 32,224.00 |
| Fireplaces - 1 # of units and style | |
| Full Masonry - | \$ 8,000.00 |
| Interior and exterior stains: - | \$ 13,207.50 |
| Appliance allowance - | \$ 3,000.00 |
| Exterior porch/deck railings - | \$ 1,200.00 |
| Exterior Walls Insulation - | \$ 1,286.25 |
| Exterior Stone Allowance - | \$ 10,000.00 |
| Full rear deck - | \$ 15,000.00 |
| Contractor's fee Full Service - | \$ 82,003.79 |
| Total estimated completion costs - | \$ 400,272.54 |
| Total estimated turn key construction - | \$ 660,562.10 |

Tennessee Log Homes is not agreeing to construct your home for the above pricing, but merely providing you an idea of what you might expect your home to cost.

The above estimate is only an estimate and is pending the completion of final TLH approved blueprints and placing an order of the TLH standard package. Any special engineering work, stamped architectural drawings (if needed) has not been included in the above estimate. Also, any permits, utility hook up fees, portable waste or bathroom facility rental fees has not been included. Finished driveway and landscaping has not been included but can be estimated after actual house site has been determined.

This estimate is valid for 30 days.

