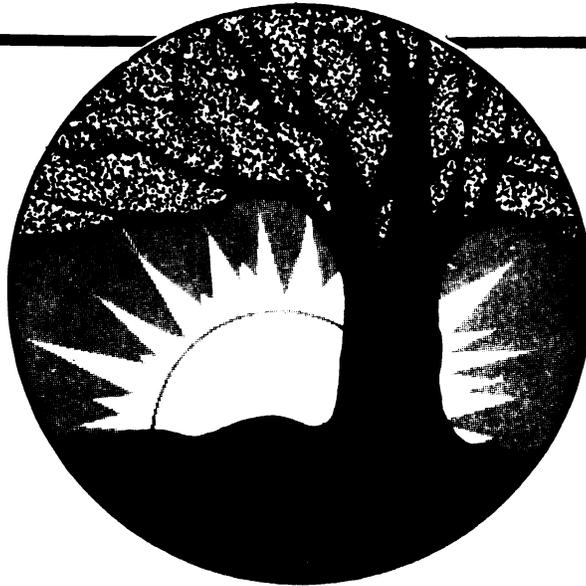


PERFORMANCE AUDIT

Tennessee Registry of Election Finance
February 2009



Justin P. Wilson
Comptroller of the Treasury



State of Tennessee
Comptroller of the Treasury
Department of Audit
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February 25, 2009

The Honorable Ron Ramsey
Speaker of the Senate
The Honorable Kent Williams
Speaker of the House of Representatives
The Honorable Jack Johnson, Chair
Senate Committee on Government Operations
The Honorable Susan Lynn, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Tennessee Registry of Election Finance. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the Registry should be continued, restructured, or terminated.

Sincerely,

Arthur A. Hayes, Jr., CPA
Director

AAH/dww
08-074

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
Tennessee Registry of Election Finance
February 2009

AUDIT OBJECTIVES

The objectives of the audit were to determine whether the Registry is complying with the statutory requirement to notify candidates for state office 14 days before the filing deadline; whether the Registry is complying with the statutory requirement to review all filed disclosures for compliance with disclosure laws; and the number of sworn complaints received since July 1, 2004, and their complainant and disposition.

FINDINGS

The Registry Lacks Formal Complaint-Handling Policies, Procedures, and Organization to Ensure Fair Treatment of All Sworn Complaints and to Prescribe the Circumstances Where the Registry Could Initiate Its Own Investigation of Possible Violations

Despite statutory requirements to investigate any alleged violation upon sworn complaint or upon its own motion, the Registry has not developed uniform, written complaint-handling policies and procedures to ensure consistent treatment of all sworn complaints by Registry employees. Also, the Registry provides no easy-to-find information on its website regarding a citizen's right to file complaints and the process for filing, and the staff do not log and track complaints. In

addition, the Registry lacks procedures prescribing the circumstances where the Registry could initiate its own investigation of possible violations of campaign finance laws (page 7).

The Registry's Office Staff and Board Operate Without Any Written Policies and Procedures That Ensure Staff and Board Members Conduct Registry Business in a Timely, Consistent, and Equitable Manner

The Registry of Election Finance has no written policies and procedures governing the office's day-to-day operations or board operations. There are no operational policies and procedures detailing how the Registry staff fulfill and perform statutory

duties on a day-to-day basis; no quorum policy for the board; no conflict-of-interest policy; no complaint-handling policies; and no civil-penalty-assessment policies. Without such policies, the Registry staff and board cannot ensure that duties are fulfilled in a timely, consistent, and equitable manner. Written policies and procedures assist in mitigating the effects of staff and board turnover, potential personal agendas, and potential conflicts of interest (page 11).

The Registry May Not Be Providing Adequate Notice of Its Public Meetings

The board of the Registry of Election Finance meets approximately 11 times a year. However, the only notice of these meetings is on the Registry's website. According to the Open Meetings Act, Section 8-44-103, *Tennessee Code Annotated*, governmental bodies should give "adequate" notice of their meetings. The state's Attorney General has opined that solely publishing notice on the Internet may not satisfy the requirement of "adequate notice." A U.S. Census Bureau report released in 2005 found that 49% of Tennessee households in 2003 had Internet access. If a large number of the state's households may not have Internet access, the requirement of "adequate" notice of public meetings may necessitate publication of notices in public places other than the Registry's webpage (page 13).

The Registry's Board Members Do Not Complete an Annual Conflict-of-Interest Disclosure That Adequately Affirms That They Are Complying With the Numerous Statutory Restrictions Placed on Them and Free of Other Potential Non-Financial Conflicts

The disclosures required to be filed with the Tennessee Ethics Commission do not require Registry members to attest that they comply with the many other restrictions placed on them by statute or to disclose potential conflicts-of-interest such as family ties, previous employment, employment of immediate family members, and other matters that may influence decisions or could give the appearance of influencing decisions (page 14).

There Is No Documentation That the Registry's Board Members Serving Between July 2004 and May 2008 Met All the Numerous Statutory Requirements for the Office

We reviewed the Secretary of State's Open Appointments books and requested any available appointment documentation from the Registry, the Governor's office, and the House and Senate Republican and Democratic Caucuses. Neither the Registry, the Governor's office, nor any of the caucuses had any documentation showing that they had confirmed that their candidates met all statutory requirements for office prior to appointment (page 15).

Performance Audit Tennessee Registry of Election Finance

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Performance Audit Tennessee Registry of Election Finance

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Tennessee Registry of Election Finance was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-230, the Registry is scheduled to terminate June 30, 2009. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the agency and to report to the Joint Government Operations Committee of the General Assembly. The audit is intended to aid the committee in determining whether the Registry should be continued, restructured, or terminated.

OBJECTIVES OF THE AUDIT

The objectives of the audit were

1. to determine whether the Registry is complying with the statutory requirement to notify candidates for state office 14 days before the filing deadline;
2. to determine whether the Registry is complying with the statutory requirement to review all filed disclosures for compliance with disclosure laws; and
3. to determine the number of sworn complaints received by the Registry since July 1, 2004, and their complainant and disposition.

SCOPE AND METHODOLOGY OF THE AUDIT

The activities of the Tennessee Registry of Election Finance were reviewed for the period July 2004 through May 2008. 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 and policies and procedures;
2. examination of the entity's records, reports, and information summaries; and
3. interviews with department staff and staff of other state agencies that interact with the agency.

HISTORY AND STATUTORY RESPONSIBILITIES

In Section 2-10-201 et seq., *Tennessee Code Annotated*, the General Assembly established the Tennessee Registry of Election Finance. Originally, the Registry had the jurisdiction to administer and enforce the provisions of the following statutes:

- the Campaign Financial Disclosure Act of 1980 (Section 2-10-101 et seq.),
- the Campaign Contribution Limits Act of 1995 (Section 2-10-301 et seq.),
- the Tennessee Lobbyist Registration and Disclosure Act of 1975 (Section 3-6-101 et seq.), and
- the Conflict of Interest Disclosure Act of 1972 (Section 8-50-501 et seq.).

However, on February 15, 2006, the General Assembly passed the Comprehensive Governmental Ethics Reform Act that created the Tennessee Ethics Commission that now administers and enforces the last two of the above-listed statutes regarding lobbyists and conflict-of-interest disclosure.

Candidates for state public office or their political campaign committees are required to file a statement of all contributions received and all expenditures made by or on behalf of the candidate or committee. Candidates for a local election and their campaign committees are required to file with the county election commission a statement of all contributions received and all expenditures made by or on behalf of the candidate.

The Registry is statutorily required to

- develop disclosure forms that are as simple and understandable as possible for both candidates and the general public;
- develop an Internet-based electronic filing process for use by all candidates for state public office and all political campaign committees required to file statements and reports with the registry;
- develop a filing, coding, and cross-indexing system;
- make reports available, during regular office hours, for public inspection and copying at the expense of the person requesting copies;
- review all filed statements to ensure compliance with the respective disclosure laws;
- prepare and publish a manual for all candidates and committees describing the requirements of the law;
- provide an annual report to the Governor and the General Assembly;
- investigate any alleged violation upon sworn complaint or upon its own motion;

- preserve all disclosure reports for five years from date of filing, absent any pending investigation by the Registry or other law enforcement agency or administrative or court proceeding;
- notify all candidates for state public office in a state election of the requirements for filing required disclosure statements 14 days before any fixed deadline; and
- conduct audits.

The Registry has the power by statute to

- promulgate rules and regulations;
- hold hearings, conduct audits, subpoena witnesses, administer oaths, and compel production of books, correspondence, paper, and other records;
- issue written advisory opinions;
- conduct contested case hearings;
- issue an appropriate order following a determination; and
- assess late filing fees and other civil penalties.

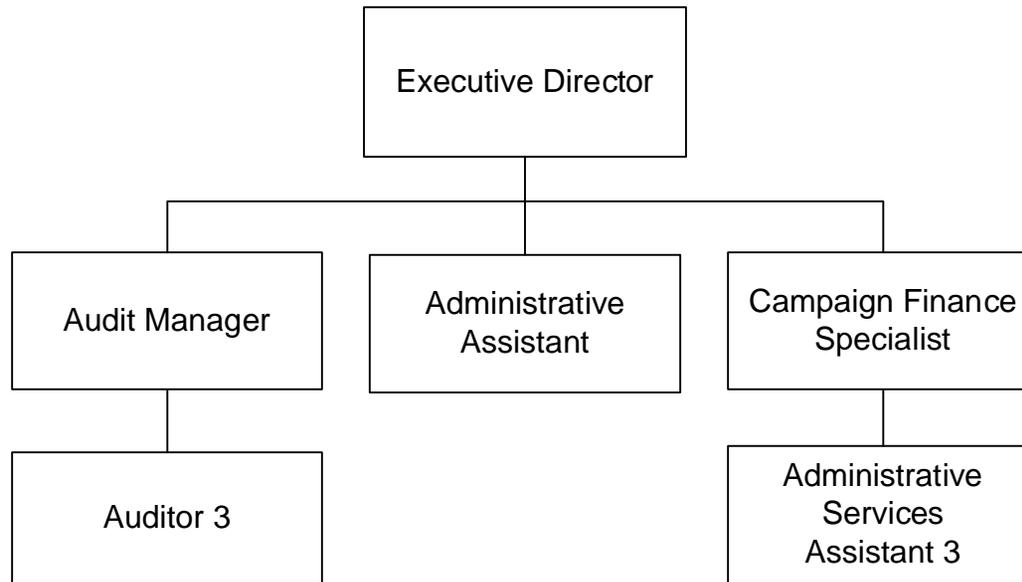
ORGANIZATION

According to *Tennessee Code Annotated*, Section 2-10-203, the Registry consists of six members. The Governor appoints two members—one from a list of three nominees submitted by the state executive committee of the majority party and one from a list of three nominees submitted by the state executive committee of the minority party. The Senate appoints two members—one chosen by the members of the Senate Democratic Caucus and one by the members of the Senate Republican Caucus. The House of Representatives appoints two members—one chosen by the members of the House Democratic Caucus and one by the members of the House Republican Caucus. Of the six members appointed, at least one is to be a female and one is to be black (these two requirements cannot be fulfilled by one appointee).

The statutes do not specify the number of meetings to be held each year, but the Registry members meet at least 11 months of the year. While the Registry has no policy regarding what constitutes a quorum, between July 2004 and March 2008, the Registry has always had at least a majority plus one at its monthly meetings.

The Registry has six employees: an executive director, a campaign finance specialist, an audit manager, an auditor, an administrative services assistant, and an administrative assistant. The Registry is administratively attached to the Department of State. (See organization chart on the following page.)

Registry of Election Finance Organization Chart



REVENUES AND EXPENDITURES

Revenues by Source For the Fiscal Year Ending June 30, 2007

<i>Source</i>	<i>Amount</i>	<i>% of Total</i>
State	\$556,200	92%
Other*	45,200	8%
Total Revenue	\$601,400	100%

* Other - non-political-party PAC annual fees, civil penalties, copies
Source: *The Budget*, Fiscal Year 2008-2009

Expenditures by Account For the Fiscal Year Ending June 30, 2007

<i>Source</i>	<i>Amount</i>	<i>% of Total</i>
Payroll	\$422,700	70%
Operational	178,700	30%
Total Revenue	\$601,400	100%

Source: *The Budget*, Fiscal Year 2008-2009

Estimated Revenues For the Fiscal Year Ending June 30, 2008

<i>Source</i>	<i>Amount</i>	<i>% of Total</i>
State	\$585,400	94%
Other	35,000	6%
Total Revenue	\$620,400	100%

* Other - non-political-party PAC annual fees, civil penalties, copies
Source: *The Budget*, Fiscal Year 2008-2009

Number of Penalties Assessed Reason for Penalty

109	Failure to File
72	Filed Late
13	Failed to Report Contribution
2	Personal Use of Campaign Funds
1	Accepted Contribution During Session
1	Audit – Improper Recordkeeping
1	Exceeded Contribution Limits
1	Failed to Document Contribution
1	Lobbyist Gift
1	Accepted Lobbyist Gift

Dollar Amount of and Number of Penalties

\$0	1	\$250	22	\$1,000	5
\$25	3	\$300	4	\$1,275	1
\$50	27	\$325	1	\$1,500	1
\$75	4	\$400	2	\$2,500	2
\$100	35	\$425	2	\$3,000	1
\$123.94	2	\$475	1	\$5,000	4
\$150	9	\$500	16	\$10,000	26
\$175	3	\$570	1	\$120,000	1
\$200	9	\$625	1		
\$225	4	\$750	14		

FINDINGS AND RECOMMENDATIONS

1. The Registry lacks formal complaint handling-policies, procedures, and organization to ensure fair treatment of all sworn complaints and to prescribe the circumstances where the Registry could initiate its own investigation of possible violations

Finding

Despite statutory requirements to investigate any alleged violation upon sworn complaint or upon its own motion, the Registry has not developed uniform, written complaint-handling policies and procedures to ensure equitable treatment of all sworn complaints by Registry employees.

The auditor reviewed Registry documentation on the 36 sworn complaints (against 33 individuals) received between July 2004 and March 2008. Only four individuals from these complaints were assessed civil penalties as the final decision of the board; ten complaints were immediately dismissed by the board upon first reading; one complaint appears never to have been brought before the board, based on the board minutes. Reasons for dismissal included, for example, that the complaints were for a period whose disclosure report had been filed more than 180 days previously, the alleged incident involved an allowable expense, there was a lack of jurisdiction, or there was lack of facts or evidence.

During the review process, the auditor found the following:

- The Registry has no formal process for processing and documenting complaints. There are no written policies, procedures, or formal rules governing complaint handling by the Registry. Because of this, complaints are not all handled the same way, which could result in inadequate, inconsistent, and untimely investigation and resolution (dismissal or civil penalties of varying amounts up to \$10,000).
- The Registry provides no easy-to-find information on the Registry's website regarding a citizen's right to file complaints and the process for filing such complaints concerning potential and perceived violations of campaign finance laws. One must navigate to the "Candidate" page and look at Question 28 in the "FAQ" (Frequently Asked Questions) section, "How does the Registry of Election Finance begin an investigation?" This section explains that the Registry may investigate based on its own initiative or in response to a sworn complaint by a Tennessee citizen filed with the Registry in the case of a candidate for state office or with the local district attorney in the case of a candidate for local office. Without a clear presentation of the right to complain and the complaint process, the Registry effectively deprives the public of

key information regarding how to make their concerns regarding campaign finance known.

- Registry staff do not log complaints as they come in and track them through to closing; the only time official identification numbers are assigned to any Registry business is when a show-cause notice is issued (year and next number in sequence).
- The Registry has no standard, centralized filing system for sworn complaints. Staff sometimes create a separate complaint file for sworn complaints and accompanying documentation; sometimes they file complaints and documentation in a candidate's file with disclosure reports, etc. Sometimes documentation is even found among the general office correspondence. The Registry also does not maintain complainant receipt notification correspondence in candidate or complaint files but in with the general correspondence. The auditor also did not always find documentation that the Registry had notified the complainant that it had received the complaint.
- The complaint documentation maintained by the Registry does not clearly designate what documentation was a result of research and investigation by Registry staff and what was provided by the complainant. Almost no documentation was present showing any preliminary or in-depth investigation by the Registry of any complaint received between July 2004 and March 2008 that confirmed or denied the allegations sworn to in the complaint.
- The Registry does not always file documentation of its findings or official notice of resolution in a complaint file or a candidate's file.

In addition, the Registry lacks procedures prescribing the circumstances where the Registry could initiate its own investigation of possible violations of campaign finance laws. Such procedures could enhance the Registry's enforcement of these laws. The board's chair states that he is passionate about not accepting complaints from persons with no firsthand knowledge of the alleged violation (i.e., a third-party takes a media report and attaches it to a sworn complaint). However, the board could initiate its own investigation based on a media report or other source. One citizen filed all but 9 of 36 sworn complaints during the four-year period we reviewed. The board initiated none of the remaining nine formal complaints. The board, however, did initiate action and assess a small civil penalty against one individual (not formally named in a complaint) when documentation regarding a complaint against others showed an alleged violation by this individual.

For the complaint process to be effective, the Registry needs to clearly inform the public about how and where to file a complaint. Time frames for response and resolution are needed as benchmarks to check the progress of complaint resolution and to evaluate the process. Without adequate complaint procedures, the Registry cannot assure that a good-faith effort has been made to afford due process to all citizens making complaints.

Recommendation

The Registry's executive director, in consultation with the board, should implement a centralized, standardized system for handling complaints. This system should

- be governed by written policies, procedures, and rules to ensure adequate, consistent, and timely complaint investigation and resolution;
- clearly inform the public via the Registry's website and other available media of the complaint-filing process;
- formally log and track complaint receipt, status, and resolution;
- store complaints and their accompanying documentation in a standard, centralized fashion;
- provide clear documentation of the investigation conducted and sources of evidence; and
- produce files that contain the complete history of the Registry's receipt, handling, and resolution of complaints.

The Registry should also establish procedures for initiating complaints and investigations on its own authority.

Management's Comment

We concur in part. The Registry does not maintain separate written sworn complaint policies and procedures other than those set out in the *Tennessee Code Annotated* and Registry Rules. However, the Registry does handle each sworn complaint "to ensure equitable treatment of all sworn complaints."

The Registry ensures the equitable treatment of each sworn complaint by handling each sworn complaint in exactly the same manner. Each valid sworn complaint is presented to the Registry at the next regularly scheduled meeting after the complaint is filed. Based on the information in the complaint, the Registry makes a decision on whether to proceed with the sworn complaint by issuing a show-cause notice pursuant to Registry Rule 0530-1-1-.11 or dismissing the complaint. This has been the Registry's procedure for sworn complaints and all other matters subject to civil penalties since it began operations in 1990.

The Registry has three locations on its website that discuss the filing of a sworn complaint. Sworn complaint information is located in both the candidate and PAC section of the Registry's website. In addition, the Registry has recently added a section entitled "Citizen's Guide" which explains the procedure for filing a sworn complaint in more detail.

The Registry does not log complaints as they are filed. The Registry has never seen the need to create a complaint log. As stated elsewhere in this response, as soon as a valid sworn complaint is received, the Registry staff files the complaint and places it on the Registry's next agenda. The Registry has not seen the value in creating a complaint log.

One of the purposes for creation of the Registry was to provide information to the public. In order to meet that goal, the Registry ensures that all files are complete and open to the public. Based on this goal, the Registry feels the most appropriate place to file a sworn complaint is in the candidate's or PAC's existing file. By filing the information in the candidate's or PAC's existing files, the information is not hidden in a separate file that may not be requested when an individual requests to examine a particular candidate or PAC file. In the event that a complaint is filed against an individual or group that does not have a file, a separate file is created for the information.

As noted above, the Registry maintains complaints in the appropriate files. On the occasion that research or investigation is required by the Registry staff, the information is added to the file and is distinguishable from the complaint.

The Registry makes every attempt to file all information concerning each sworn complaint in the appropriate file. Resolution for each sworn complaint is documented in the Registry's meeting minutes.

T.C.A. § 2-10-214 requires new Registry members to receive training from the office of the State Attorney General on the statutes enforced by the Registry and their responsibilities in enforcing these statutes. Thus each board member is aware of the Registry's authority to initiate an investigation on its own motion pursuant to T.C.A. § 2-10-2-6(a)(7) and that a majority vote is all that is required of the Registry to initiate such an investigation.

In conclusion, the Registry has added to its website a "Citizen's Guide" that describes the procedure to file a sworn complaint with the Registry. As has been discussed above, the Registry handles all valid sworn complaints in the same expedient manner by placing them on the Registry's next scheduled meeting agenda. The complaints are then handled in the same manner as all other matters on the Registry agenda. Beyond the campaign finance statutes and Registry Rules that are in place, the Registry does not see the need to adopt additional written policies.

2. The Registry's office staff and board operate without any written policies and procedures that ensure staff and board members conduct Registry business in a timely, consistent, and equitable manner

Finding

The Registry of Election Finance has no written policies and procedures governing the office's day-to-day operations or board operations. There are no personnel policies (the executive director states that the Registry follows the Secretary of State's administrative and fiscal policies), no operational policies and procedures detailing exactly how the Registry staff fulfill and perform statutory duties on a day-to-day basis; no quorum policy for the board as a whole (such a policy exists only in the charter for the audit committee), no conflict-of-interest policy; no complaint-handling policies; and no civil penalty assessment policies. Without such policies, the Registry staff and board cannot ensure that duties are fulfilled in a timely, consistent, standardized, fair, and equitable manner. The existence of written policies and procedures assists in mitigating the effects of staff and board turnover, potential personal agendas, potential conflicts of interest, etc.

Also, in the fall of 2006, the Registry board created an audit committee (composed of the board as a whole) and a charter. That charter requires the audit committee to establish for the board and staff a code of conduct, including a conflict-of-interest policy. As of May 2008, a code of conduct has not yet been approved by the audit committee or board.

The audit committee charter also requires that the committee develop a formal process for assessing the risk of fraud at the Registry, including documentation of the results of the assessments and assuring that internal controls are in place to adequately mitigate those risks. The audit committee is then supposed to review and approve management's risk assessment and internal control structure. As of May 2008, a risk assessment had not yet been performed.

Recommendation

The Registry's executive director and board should create written policies and procedures to ensure that staff and board duties are fulfilled in a timely, consistent, and equitable manner. The policies should establish standard procedures for day-to-day activities of the board in fulfillment of statutory duties.

The audit committee should establish a code of conduct for Registry members and staff and develop a formal process for assessing the risk of fraud.

Management's Comment

We concur in part. The Registry does not maintain separate written policies and procedures other than those set out in the *Tennessee Code Annotated* and Registry Rules. However, all Registry business is handled in a timely, consistent, and equitable manner.

The Registry, since its creation in 1990, has always relied upon the campaign finance statutes and Registry Rules as its written policies. The Registry has never seen the need to waste state resources on creating written procedures and then continually updating these policies for day-to-day operations of the agency. The Registry is a very small agency consisting of only six employees. The Registry staff functions as a team, with employees not only knowing their job responsibilities but also the responsibilities of all the other employees of the agency. This is accomplished by giving all new employees extensive training on the Registry's entire operations, not just their job's main responsibilities. This method of operation allows the Registry to function in the most efficient manner. This also mitigates the need for written day-to-day procedures due to the entire staff knowing the office's day-to-day requirements and procedures.

Upon its creation, the Registry adopted a policy to rely upon the Secretary of State's personnel policies and personnel staff. Pursuant to T.C.A. § 2-10-203(b)(1), the Registry is administratively attached to the Secretary of State's office. Based upon this statute, the Registry has always relied upon the personnel policies of the Secretary of State. The Registry has seen no need to waste state resources to create separate personnel policies for just six employees when the intent of T.C.A. § 2-10-203(b)(1) was clearly designed to prevent such waste.

The Registry has always handled its duties in a timely, consistent, fair, and equitable manner. As previously stated, each new staff member undergoes extensive training. This training ensures that the staff understand their job responsibilities and carry them out in a timely, consistent, and equitable manner. T.C.A. § 2-10-214 requires new Registry members to receive training from the office of the State Attorney General on the statutes enforced by the Registry and their responsibilities in enforcing these statutes. No member may participate in a Registry meeting until this training is completed. This ensures that the Registry members understand their duties and carry them out in a timely, consistent, and equitable manner.

The Registry approved a risk assessment, code of conduct, and conflict-of-interest policies at its June 11, 2008, meeting. The passage of these policies is adopted in the Registry's minutes.

3. The Registry may not be providing adequate notice of its public meetings

Finding

The board of the Registry of Election Finance meets approximately 11 times a year. However, according to the executive director, the only notice of these meetings is found on the Registry's website.

According to the Open Meetings Act, Section 8-44-103, *Tennessee Code Annotated*, governmental bodies should give "adequate" notice of their meetings. The state's Attorney General has opined (Opinion 90 issued in May 2000) that solely publishing notice on the Internet may not satisfy the requirement of "adequate notice." A U.S. Census Bureau report released in 2005 found that only 54.7% of U.S. households in 2003 had Internet access. In the southern region, that number fell to 51.7%; in Tennessee, approximately 49%. While the number of persons with Internet access has undoubtedly grown in the five years since the census report, if a large number of the state's households may not have Internet access, the requirement of "adequate" notice of public meetings would seem to necessitate publication of such notices in public places other than the Registry's webpage.

Recommendation

The Registry should post meeting notices in additional media outlets and public sites where the greatest possible number of citizens can become aware of such notices.

Management's Comment

We do not concur. As stated in the audit finding, the Registry posts its monthly agenda meeting on the Registry's website. The Registry also maintains a list of individuals or organizations that request to receive the agenda by mail. These notices along with the Registry setting a regular time and place for its meeting pursuant to T.C.A. § 2-10-203(f) are adequate notice of meetings.

Before the development of the Registry's website, the Registry posted the agenda at the legislative plaza but found that by the next day the agenda had either been covered up or removed and therefore served no real purpose.

The Registry has recently moved to the first floor in its office building and now posts a notice of its meetings in the building lobby.

Auditor's Comment

In light of the Attorney General's opinion, we believe it wise to point out weaknesses the Registry should address. Solely posting meeting notices on its website and notifying individuals and organizations that have already requested to be notified of meetings does not ensure that the Registry is providing adequate notice to the general public. In addition, lack of adequate notice could result in legal challenges to the actions and decisions of the Registry of Election Finance.

4. The Registry's board members do not complete an annual conflict-of-interest disclosure that adequately affirms that they are complying with the numerous statutory restrictions placed on them and free of other potential non-financial conflicts

Finding

Beginning February 2006, under Sections 8-50-501 and 8-50-502, *Tennessee Code Annotated*, the members of the Registry of Election Finance must file a "short form" Statement of Disclosure of Interests (Form No. SS-8005) with the Tennessee Ethics Commission by January 31 of each year. This disclosure form asks for disclosures regarding sources of income, investments, lobbying, professional services, retainer fees, bankruptcy, and loans.

However, these disclosures do not require Registry members to attest that they comply with the many other restrictions placed on them by statute or that they are free of other types of potential conflicts of interest such as family ties, previous employment, employment of immediate family members, and other matters that may influence decisions or could give the appearance of influencing decisions. Under Section 2-10-203(h), *Tennessee Code Annotated*, board members and their immediate families cannot

- hold or qualify for elective office to any state or local public office;
- be an employee of the state or any political subdivision of the state;
- be an officer of any political party or political committee;
- permit their name to be used or make campaign contributions in support of or opposition to any candidate or proposition (immediate family exempted);
- participate in any way in an election campaign;
- lobby or employ a lobbyist; or
- be employed by any elected officeholder, either in an official capacity or as an individual, or be employed by a business in which an elected officeholder has any direct input concerning employment decisions.

Without comprehensive annual conflict-of-interest disclosures, the Registry cannot ensure that board members are recusing themselves from decision-making as needed.

Recommendation

The board members should supplement the Tennessee Ethics Commission's Statement of Disclosure of Interests with another statement, to be kept on file at the Registry, that asserts board member compliance with statutory restrictions and allows for disclosure of other types of potential conflicts of interest such as family ties, previous employment, employment of immediate family members, and other matters that may influence decisions or could give the appearance of influencing decisions.

Management's Comment

We concur. While Registry members have always been advised of the restrictions placed on them by the T.C.A. § 2-10-203(h), the Registry now has on file a statement from each Registry member stating his or her compliance with T.C.A. § 2-10-203(h).

5. There is no documentation that the Registry's board members serving between July 2004 and May 2008 met all the numerous statutory requirements for office

Finding

According to Section 2-10-203, *Tennessee Code Annotated*, the Registry consists of six members. The Governor appoints two members—one from a list of three nominees submitted by the state executive committee of the majority party and one from a list of three nominees submitted by the state executive committee of the minority party. The Senate appoints two members—one chosen by the members of the Senate Democratic Caucus and one by the members of the Senate Republican Caucus. The House of Representatives appoints two members—one chosen by the members of the House Democratic Caucus and one by the members of the House Republican Caucus.

Additionally, by statute, the six board members appointed must meet the following conditions that are far more extensive than for most boards:

- at least one must be female,
- at least one must be black (a black female cannot satisfy this and the preceding requirement),
- must be at least 30 years of age,
- must have been legal state residents for five years immediately prior to appointment,
- must be registered voters in Tennessee,
- must not be announced candidates for public office,

- must not be members of a political party's state executive committee,
- shall not have been convicted of an election offense, and
- shall be persons of high ethical standards who have an active interest in promoting fair elections.

Board members and their immediate families are also restricted, during Registry membership, from

- holding or qualifying for elective office to any state or local public office;
- being an employee of the state or any political subdivision of the state;
- being an officer of any political party or political committee;
- permitting their name to be used or making campaign contributions in support of or opposition to any candidate or proposition (immediate family exempted);
- participating in any way in an election campaign;
- lobbying or employing a lobbyist; or
- being employed by any elected officeholder, either in an official capacity or as an individual, or being employed by a business in which an elected officeholder has any direct input concerning employment decisions.

To determine whether documentation existed that board members serving since July 1, 2004, met these requirements **when appointed**, the auditor reviewed the Secretary of State's Open Appointments books and requested any available appointment documentation from the Registry, the Governor's office, and the House and Senate Republican and Democratic Caucuses. Neither the Registry, the Governor's office, nor any of the caucuses had any documentation showing that they had confirmed that their candidates met all statutory requirements for office prior to appointment. Post-appointment information provided by the Registry to the Secretary of State's office for printing in the Open Appointments books allowed the auditor to confirm compliance with gender and ethnicity requirements. However, information on board member ages was only available for half of the members serving since July 1, 2004. Neither the Registry nor any of the appointing authorities had documentation confirming pre-appointment compliance of board members with statutory requirements concerning state residency, registered voting, party executive committee membership, convicted election offenses, employment, and immediate family activities. The auditor could not find any documentation of the appointment of one member, the representative of the House Democratic Caucus since February 2005. As of May 2008, there was no documentation of three members' reappointment; one term expired at the end of 2004 and two at the end 2007. However, the executive director stated that he was notified by telephone of two of the reappointments. Members continue to serve until reappointment.

Recommendation

The Registry should obtain and maintain documentation on board members and their compliance with statutory requirements for that office.

Management's Comment

We concur in part. The Registry does not verify or maintain information concerning the qualifications placed on Registry appointees pursuant to T.C.A. § 2-10-203. The Registry and its staff have no knowledge of who is appointed to the Registry until after the appointment has been made. Therefore, the verification of the qualifications underlined in T.C.A. § 2-10-203 for a potential appointee to the Registry would be the responsibility of the appointing authority.

As previously addressed in Finding 4, the Registry now has on file a statement from each board member stating his or her compliance with T.C.A. § 2-10-203(h).

OBSERVATIONS AND COMMENTS

RESULTS OF ADDITIONAL AUDIT WORK

We reviewed Registry electronic and paper files to determine whether the Registry was complying with statutory requirements to notify state election candidates 14 days before filing deadlines and to review all filed disclosures for compliance with laws. The Registry appears to be in compliance with statutory requirements.

RECOMMENDATIONS

ADMINISTRATIVE

The Registry of Election Finance should address the following areas to improve the efficiency and effectiveness of its operations.

1. The Registry's executive director, in consultation with the board, should implement a centralized, standardized system for handling complaints. This system should
 - be governed by written policies, procedures, and rules to ensure adequate, consistent, and timely complaint investigation and resolution;
 - clearly inform the public via the Registry's website and other available media of the complaint-filing process;
 - formally log and track complaint receipt, status, and resolution;
 - store complaints and their accompanying documentation in a standard, centralized fashion;
 - provide clear documentation of the investigation conducted and sources of evidence; and
 - produce files that contain the complete history of the Registry's receipt, handling, and resolution of complaints.
2. The Registry should also establish procedures for initiating complaints and investigations on its own authority.
3. The Registry's executive director and board should create written policies and procedures to ensure that staff and board duties are fulfilled in a timely, consistent, and equitable manner. The policies should establish standard procedures for day-to-day activities of the board in fulfillment of statutory duties.
4. The audit committee should establish a code of conduct for Registry members and staff and develop a formal process for assessing the risk of fraud.
5. The Registry should post meeting notices in additional media outlets and public sites where the greatest possible number of citizens can become aware of such notice.
6. The board members should supplement the Tennessee Ethics Commission's Statement of Disclosure of Interests with another statement, to be kept on file at the Registry, that asserts board member compliance with statutory restrictions and allows for disclosure of other types of potential conflicts of interest such as family ties,

previous employment, employment of immediate family members, and other matters that may influence decisions or could give the appearance of influencing decisions.

7. The Registry should obtain and maintain documentation on board members and their compliance with statutory requirements for that office.

APPENDIX

**Tennessee Registry of Election Finance
Staff Ethnicity and Gender
By Job Position
May 2008**

Title	Gender		Ethnicity	
	<i>Male</i>	<i>Female</i>	<i>White</i>	<i>Black</i>
Executive Director	1	0	1	0
Campaign Finance Specialist	0	1	1	0
Audit Manager	1	0	1	0
Auditor 3	0	1	1	0
Administrative Services Assistant 3	1	0	1	0
Administrative Assistant	0	1	1	0
Total	3	3	6	0

**Tennessee Registry of Election Finance
Registry Ethnicity and Gender
May 2008**

	Gender		Ethnicity	
	<i>Male</i>	<i>Female</i>	<i>White</i>	<i>Black</i>
Registry Members	3	3	5	1