



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY**



BUREAU OF ETHICS AND CAMPAIGN FINANCE

Performance Audit Report

September 2015

Justin P. Wilson, Comptroller



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September 11, 2015

The Honorable Ron Ramsey
Speaker of the Senate
The Honorable Beth Harwell
Speaker of the House of Representatives
The Honorable Mike Bell, Chair
Senate Committee on Government Operations
The Honorable Jeremy Faison, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and
Mr. Drew Rawlins, Executive Director
Bureau of Ethics and Campaign Finance
404 James Robertson Parkway, Suite 104
Nashville, Tennessee 37243

Ladies and Gentlemen:

We have conducted a performance audit of selected programs and activities of the Bureau of Ethics and Campaign Finance for the period July 1, 2012, through April 30, 2015. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

Our audit disclosed certain findings which are detailed in the Objectives, Methodologies, and Conclusions section of this report. Management of the bureau has responded to the audit findings; we have included the responses following each finding. We will follow up the audit to examine the application of the procedures instituted because of the audit findings.

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

Sincerely,

Deborah V. Loveless, CPA
Director

DVL/jd
15/036

State of Tennessee

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
Bureau of Ethics and Campaign Finance
September 2015

AUDIT SCOPE

We have audited the Bureau of Ethics and Campaign Finance for the period July 1, 2012, through April 30, 2015. Our audit scope included a review of internal control and compliance with laws and regulations in the areas of sworn complaints; civil penalties; statements of disclosure of interests; audits of campaigns and lobbyists; public meetings; statutory requirements for board members; risk assessments and written policies; and information systems. Management of the Bureau of Ethics and Campaign Finance is responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, and provisions of contracts and grant agreements.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient, appropriate audit evidence to support the conclusions in our report. We present more detailed information about our methodologies in the individual report sections.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

CONCLUSIONS

FINDINGS

Management did not complete an annual risk assessment for calendar year 2014 or submit annual Financial Integrity Act reporting packages as required by statute

Based on our review, bureau management did not annually assess its risks and systems of internal controls. We also found that management did not submit annual Financial Integrity Act reports to the Commissioner of the Department of Finance and Administration and the Comptroller of the Treasury as required by state law (page 16).

The bureau did not provide adequate internal controls in two specific areas

The bureau did not design and monitor internal controls in two specific areas. Ineffective implementation of internal controls increases the likelihood of errors, data loss, and the inability to continue operations (page 17).

OBSERVATION

The bureau should ensure that online notifications of public meetings of its board of directors, the Tennessee Ethics Commission, and the Tennessee Registry of Election Finance are posted timely and are properly documented (page 11).

Performance Audit Bureau of Ethics and Campaign Finance

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Performance Audit Bureau of Ethics and Campaign Finance

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Bureau of Ethics and Campaign Finance was conducted pursuant to the Tennessee Governmental Entity Review Law, Title 4, Chapter 29, *Tennessee Code Annotated*. Under Section 4-29-237, the Bureau of Ethics and Campaign Finance is scheduled to terminate June 30, 2016. 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. This audit is intended to aid the committee in determining whether the Bureau of Ethics and Campaign Finance should be continued, restructured, or terminated.

ORGANIZATION AND STATUTORY RESPONSIBILITIES

Through Chapter 556 of the Public Acts of 2009, the General Assembly created the Bureau of Ethics and Campaign Finance and redefined the Tennessee Registry of Election Finance and the Tennessee Ethics Commission as divisions of the bureau. The bureau is governed by a board of directors that is composed of the six members of the registry and the six members of the ethics commission. The bureau's board of directors is responsible for

- appointing an Executive Director;
- approving the Executive Director's recommendations regarding other employees; and
- reviewing proposals for rules and regulations initiated by members of the registry or the ethics commission.

Aside from the administrative actions handled by the bureau's board of directors, the registry and the ethics commission operate independently and remain solely responsible for regulating the activities originally assigned to them by state statutes.

As a result of the merger of the two entities, the bureau's staff of 10 employees (including the Executive Director) handle day-to-day duties of the registry and the ethics commission. The bureau is administratively attached to the Department of State and receives assistance in administrative matters such as receipts, disbursements, budget, travel, personnel, information services, and audits from the department.

Tennessee Registry of Election Finance

The Tennessee Registry of Election Finance is responsible for the enforcement of the following laws:

- the Campaign Financial Disclosure Act (Section 2-10-101 et seq., *Tennessee Code Annotated*);
- the Campaign Contribution Limits Act (Section 2-10-301 et seq., *Tennessee Code Annotated*); and
- the Gubernatorial Inauguration Finance Disclosure Act (Section 2-10-401 et seq., *Tennessee Code Annotated*).

The main goal of the registry is to ensure that candidates seeking office file campaign financial disclosure reports required by the Campaign Financial Disclosure Act in a timely and accurate manner. In addition to checking for minor disclosure errors, the registry cross-checks disclosure reports to ensure that all contributions reported as given by Political Action Committees (PACs) are reported as received by candidates. The registry also reviews campaign disclosure reports for compliance with the Campaign Contribution Limits Act, which sets limits on the amount of contributions a candidate may receive from individuals and PACs.

Tennessee Ethics Commission

The 2006 Extraordinary Session of the Tennessee General Assembly enacted the Comprehensive Governmental Ethics Reform Act of 2006. The Act created an independent Tennessee Ethics Commission to interpret and enforce the Tennessee Ethics Commission Act of 2006, which includes the following statutes:

- Title 3, Chapter 6, *Tennessee Code Annotated*, “Ethics and Lobbying”;
- Title 8, Chapter 50, Part 5, *Tennessee Code Annotated*, “Disclosure Statements of Conflict of Interests”; and
- Sections 2-10-122 through 2-10-130, *Tennessee Code Annotated*, which relate to public officials’ disclosure requirements and penalties for the receipt of fees, commissions, and other form of compensation for consulting services.

The ethics commission maintains a website where lobbyists and employers of lobbyists must register within seven days of becoming a lobbyist or an employer of a lobbyist. A lobbyist must register each calendar year for each employer, and employers must register for each lobbyist that they hire. Throughout the registration year, each lobbyist or employer of a lobbyist must update a registration statement if any event or circumstance renders their statement inaccurate or incomplete. Each employer of a lobbyist is also required to file an Employer Disclosure Report within 45 days after the end of each six-month reporting period.

Pursuant to the Tennessee Ethics Commission Act, the ethics commission must also conduct various ethics training for members of the General Assembly, certain state officials, and

lobbyists. In addition, and in furtherance of its public mission, the ethics commission is obligated to conduct education programs and outreach whenever possible.

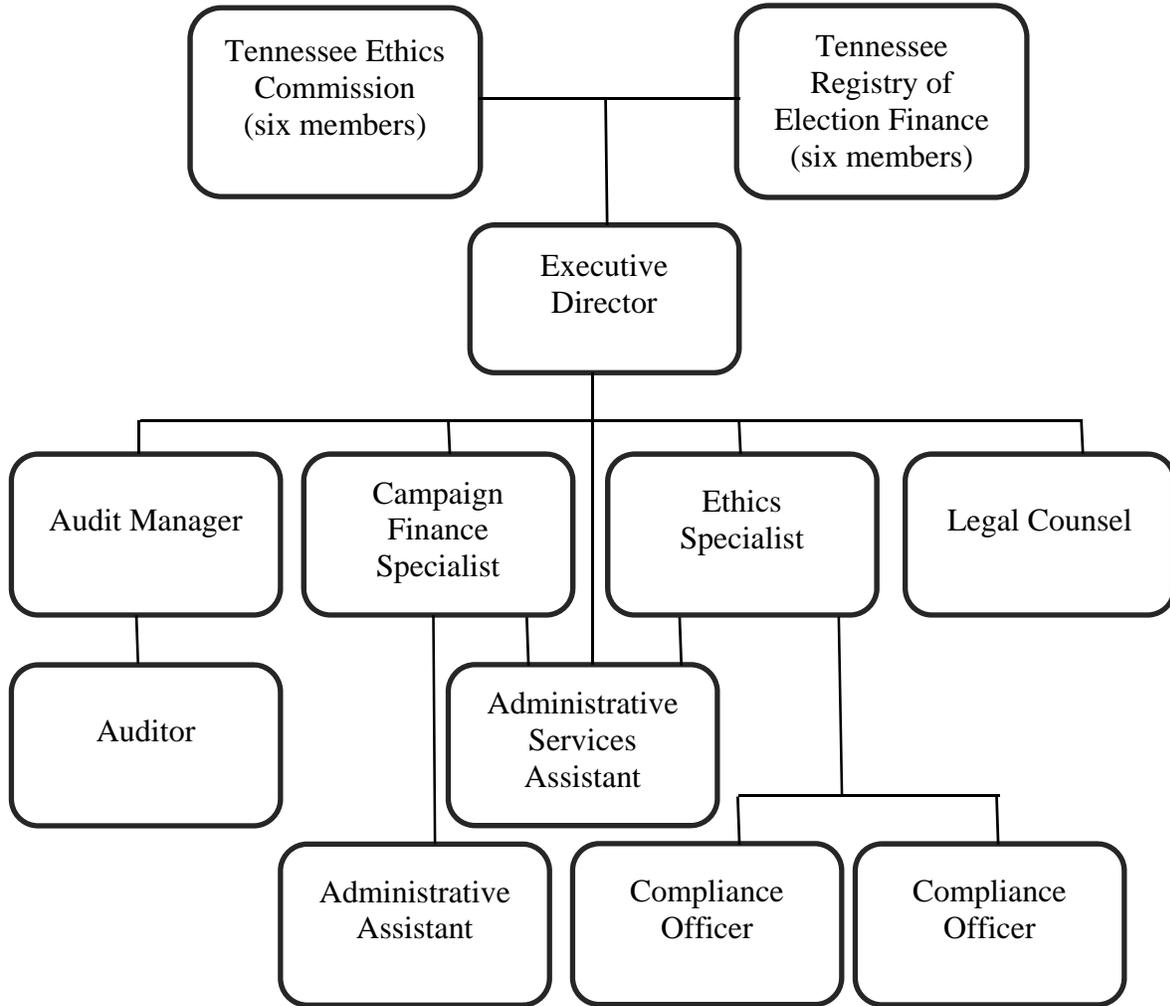
Finally, the ethics commission obtains annual statements disclosing conflicts of interest from the following: state officeholders;¹ other state officials;² local elected officials; and candidates for state and local offices.

The Bureau of Ethics and Campaign Finance's business unit code in Edison is 305.07. An organization chart of the bureau is on the following page.

¹ Members of the General Assembly; the Governor; the Governor's Cabinet; constitutional officers; and candidates and appointees to those positions.

² This group includes Tennessee Supreme Court justices, judges of the Court of Appeals, judges of the Court of Criminal Appeals, the attorney general, district attorneys, public defenders, the president of the University of Tennessee, chancellors of the University of Tennessee campuses, the chancellor of the Board of Regents, presidents of the colleges and universities administered by the Board of Regents, members of the Board of Probation and Parole, members of the Alcoholic Beverage Commission, members of the Tennessee Registry of Election Finance, members of the State Election Commission, members of the Tennessee Ethics Commission, and the state election coordinator.

**Bureau of Ethics and Campaign Finance
Organizational Chart
April 2015**



AUDIT SCOPE

We have audited the Bureau of Ethics and Campaign Finance for the period July 1, 2012, through April 30, 2015. Our audit scope included a review of internal control and compliance with laws and regulations in the areas of sworn complaints; civil penalties; statements of disclosure of interests; audits of campaigns and lobbyists; public meetings; statutory requirements for board members; risk assessments and written policies; and information systems. Management of the bureau is responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, and provisions of contracts and grant agreements.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient appropriate audit evidence to support the conclusions in our report. We present more detailed information about our methodologies in the individual report sections.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

PRIOR AUDIT FINDINGS

Section 8-4-109, *Tennessee Code Annotated*, requires that each state department, agency, or institution report to the Comptroller of the Treasury the action taken to implement the recommendations in the prior audit report. The prior audit report on the Tennessee Registry of Election Finance, dated February 2009, was issued before July 1, 2009, when the General Assembly merged the registry with the Tennessee Ethics Commission and created the Bureau of Ethics and Campaign Finance. There were no prior audits of the Tennessee Ethics Commission, and this is the first audit of the Bureau of Ethics and Campaign Finance since its creation in 2009. The Bureau of Ethics and Campaign Finance filed its report (related to the audit of the Tennessee Registry of Election Finance) with the Comptroller of the Treasury on October 23, 2009. A follow-up of all prior audit findings was conducted as part of the current audit.

The current audit disclosed that the Bureau of Ethics and Campaign Finance has corrected the previous audit findings related to the Tennessee Registry of Election Finance concerning complaint-handling policies, procedures, and organization; written policies and procedures; annual conflict-of-interest disclosures; and board members' statutory requirements for office.

The prior audit report for the registry also contained a finding concerning the registry's notice of public meetings. The current audit disclosed that although improvements have been made, the bureau still needs to improve its process to provide notice. The finding has been downgraded to an observation.

OBJECTIVES, METHODOLOGIES, AND CONCLUSIONS

SWORN COMPLAINTS

Pursuant to state statutes, the Tennessee Registry of Election Finance and the Tennessee Ethics Commission are required to investigate sworn complaints³ within their respective jurisdictions:

- the registry is responsible for violations of the state campaign finance laws concerning candidates for state offices; and
- the ethics commission is responsible for violations of state statutes regarding certain required disclosures, conflict-of-interest statements, and lobbying activities.

After the Bureau of Ethics and Campaign Finance receives a complaint, bureau staff sends the information to the registry or the ethics commission, depending on the nature of the complaint. Based on the results of any investigation, the registry or the ethics commission may assess civil penalties as appropriate.

The objectives of our review of sworn complaints were to determine whether

- the registry and the ethics commission have developed formal complaint-handling procedures to ensure consistent and fair treatment for all sworn complaints; and
- the registry and the ethics commission could improve their complaint-handling processes based on a review of the processes in other states.

To gain an understanding of the complaint-handling process, we reviewed the bureau's *Policies and Procedures* manual, which contains policies and procedures for both the ethics commission and the registry; interviewed the bureau's Executive Director; and reviewed the complaint files for all 46 sworn complaints received by the bureau from July 1, 2012, through December 31, 2014, which consisted of

- 27 sworn complaints alleging campaign finance law violations; and
- 19 sworn complaints alleging violations of the laws on lobbying and conflict-of-interest disclosures.

³ A sworn complaint requires the facts and allegations contained in the complaint to be sworn to and signed before a notary public.

We also reviewed online information for eight other states' ethics and election finance offices to gain an understanding of their complaint processes.

Based on our interviews, reviews, research, and testwork performed, we determined that

- the registry and the ethics commission have developed formal complaint-handling policies and procedures that ensure consistent and fair treatment of all sworn complaints; and
- the registry and the ethics commission use complaint-handling processes similar to those in other states, and no new recommendations were made based on our review of other states.

CIVIL PENALTIES

The Tennessee Registry of Election Finance has the authority to assess civil penalties for violations of the Campaign Financial Disclosure Act and the Contribution Limits Act. The Tennessee Ethics Commission has similar authority for violations of the Comprehensive Governmental Ethics Reform Act of 2006.

Tennessee Registry of Election Finance

The Campaign Financial Disclosure Act (Section 2-10-101 et seq., *Tennessee Code Annotated*) requires candidates for state office, multi-candidate committees (Political Action Committees), and single measure committees to file campaign finance reports with the registry. Candidates and committees filing reports up to 30 days late are subject to civil penalties of \$25 per day. Reports filed over 30 days late or other violations of the Campaign Financial Disclosure Act are subject to civil penalties of up to \$10,000.

Violations of the Campaign Contribution Limits Act (Section 2-10-301 et seq., *Tennessee Code Annotated*), which sets limits on the amount of contributions a candidate may receive from individuals and Political Action Committees, are subject to civil penalties of up to \$10,000 or 115% of the amount of all contributions made or accepted in excess of the limitations.

Tennessee Ethics Commission

Pursuant to the Comprehensive Governmental Ethics Reform Act of 2006 (Chapter 1 of the Extraordinary Session Public Acts of 2006), lobbyists and employers of lobbyists are subject to civil penalties of up to \$25 per day up to a maximum of \$750 for failing to

- timely register or timely update, correct, or otherwise modify registration statements;
- timely pay registration fees; or
- file employer disclosure reports.

Additionally, lobbyists and the employers of lobbyists may be assessed civil penalties of up to \$10,000 for

- filing inaccurate or incomplete information with the ethics commission;
- engaging in lobbying activities even though the registrations for the lobbyists' employers have expired or have been rejected, suspended, or revoked by the ethics commission; or
- utilizing the services of lobbyists while the registrations for the lobbyists have expired or have been rejected, suspended, or revoked by the ethics commission.

Finally, lobbyists, employers of lobbyists, candidates for public office, officials in the legislative or executive branch, or immediate family members of candidates or officials who knowingly violate the prohibitions on lobbying activities and gifts in Sections 3-6-304 and 3-6-305, *Tennessee Code Annotated*, are subject to civil penalties of up to \$10,000.⁴

The objectives of our review were to determine whether

- the registry and the ethics commission assessed civil penalties in a consistent and equitable manner;
- the registry and the ethics commission conducted adequate follow-up to ensure the collection of civil penalties assessed; and
- the maximum civil penalty amounts that the registry and the ethics commission may assess pursuant to *Tennessee Code Annotated* were comparable to the amounts prescribed by statutes in other states.

We interviewed key personnel to obtain an understanding of the Bureau of Ethics and Campaign Finance's processes for assessing and collecting civil penalties. From a list of 286 civil penalty cases reviewed by the registry and ethics commission boards from July 1, 2012, through April 30, 2015, we tested a nonstatistical random sample of 60 cases⁵ to determine whether the penalties assessed by the registry and the ethics commission were consistent for similar violations and whether the registry and the ethics commission took adequate follow-up action to ensure that civil penalties were paid. We compared the maximum civil penalty amounts set forth in *Tennessee Code Annotated* with the penalty amounts in other states to determine whether statutory restrictions prevented the bureau from assessing civil penalties as large as those that can be assessed in other states.

Based on our interviews, reviews, and testwork, we determined that

- the registry and the ethics commission assessed civil penalties in a consistent and equitable manner;

⁴ For an initial violation of the state statute regarding prohibited gifts, the ethics commission may only assess a civil penalty of 200% of the value of any gift or \$25, whichever is greater.

⁵ We tested 20 of the 93 civil penalty cases reviewed by the Tennessee Registry of Election Finance and 40 of the 193 civil penalty cases reviewed by the Tennessee Ethics Commission.

- the registry and the ethics commission conducted adequate follow-up to ensure the collection of civil penalties assessed; and
- the maximum civil penalty amounts that the registry and the ethics commission may assess pursuant to *Tennessee Code Annotated* are comparable to the amounts prescribed by statutes in other states.

STATEMENTS OF DISCLOSURE OF INTERESTS

Title 8, Chapter 50, Part 5, *Tennessee Code Annotated*, requires public officials and candidates to file statements with the Tennessee Ethics Commission disclosing potential conflicts of interests, such as

- major investments and sources of income;
- associates who perform compensated lobbying;
- interests in or retainer fees from entities attempting to influence the passage of legislation;
- bankruptcies; and
- loans of more than \$1,000.

In order to identify the candidates who must disclose potential conflicts of interest, bureau staff obtain a list of the scheduled elections from the Department of State's Election Division at the end of each calendar year. The bureau staff use the list to obtain the names of local candidates from county election offices. The bureau staff also receive updates on the list of local officeholders from county election offices. In addition, the bureau staff contact the appropriate agencies, mayors' offices, County Technical Assistance Services, and Municipal Technical Assistance Services to obtain information about planning commissioners. Bureau staff verify contact information for state officeholders by email, phone, or online searches. As the ethics commission's electronic system is updated with current information about the state and local officeholders and candidates, bureau staff send notices to these individuals, reminding them that they must file disclosure statements. Pursuant to statute, the ethics commission is responsible for prescribing the form of the disclosures and for making them available to the public.

The objective of our review was to determine whether the ethics commission adequately ensured that the applicable public officials and candidates filed disclosure statements.

We interviewed bureau staff to obtain an understanding of how they identify public officials and candidates who must file disclosure statements. We obtained a list of 10,257 public officials and candidates who were required to file statements during calendar year 2014. We tested a nonstatistical random sample of 60 of these public officials and candidates to determine if the bureau notified them of the annual disclosure requirement and whether the bureau ensured that they filed disclosure statements.

Based on our interviews, reviews, and testwork, we determined that applicable public officials and candidates received notification from the bureau concerning an annual disclosure requirement, and we determined that the bureau received disclosure notices from applicable public officials and candidates.

AUDITS OF CAMPAIGNS AND LOBBYISTS

Pursuant to statute, the divisions of the Bureau of Ethics and Campaign Finance, the Tennessee Registry of Election Finance and the Tennessee Ethics Commission, are required to audit campaigns' financial reports and lobbyists' registrations.

According to Section 2-10-212, *Tennessee Code Annotated*, "the registry of election finance shall conduct audits and field investigations of reports and statements filed with the registry." Specifically, the registry is required to audit

1. each gubernatorial candidate who receives more than 10% of the vote in the general election;
2. two percent of all candidates for General Assembly;⁶
3. one candidate each from the Supreme Court, Court of Appeals, and Court of Criminal Appeals, selected at random each election cycle; and
4. candidates' unitemized campaign contributions, if such contributions for a reporting period⁷ exceed \$5,000 and 30% of total contributions.

In addition, Section 3-6-308, *Tennessee Code Annotated*, states that it is the ethics committee's duty to "audit each year the registration statements, amendments to registration statements and reports of no more than four percent (4%) of all lobbyists."

The objectives of our review of the bureau's audits were to determine whether

- the bureau completed audits of campaigns and lobbyists in accordance with state statute; and
- the bureau's audits ensured that the registration statements, amendments, and reports filed by campaigns and lobbyists were timely, accurate, complete, and otherwise in compliance with statute.

To gain an understanding of the audits of campaigns and lobbyists, we interviewed key personnel and reviewed state statutes and the bureau's audit files. We also reviewed the bureau's audit reports and supporting working papers for all 72 audits conducted during our audit period including

⁶ According to Section 2-10-212, *Tennessee Code Annotated*, "districts shall be randomly drawn until a total of approximately two percent (2%) of all candidates for the general assembly have been selected."

⁷ Candidates are required to file biannual financial disclosure statements during non-election years and quarterly financial statements during election years, as well as pre-primary and pre-general financial disclosure statements.

- 8 campaign finance audits performed from July 1, 2012, through April 30, 2015;
- 23 unitemized campaign contribution audits performed during calendar years 2013 and 2014; and
- 41 lobbyist audits performed during calendar years 2013 and 2014.

Based on our interviews, reviews, and testwork, we determined that

- the bureau completed audits of campaigns and lobbyists in accordance with state statute; and
- the bureau's audits ensured that the registration statements, amendments, and reports filed by the campaigns and lobbyists were timely, accurate, complete, and otherwise in compliance with statute, with minor exceptions.

PUBLIC MEETINGS

The board of directors for the Bureau of Ethics and Campaign Finance, which is composed of members of the Tennessee Registry of Election Finance and the Tennessee Ethics Commission, meets approximately once a year; the registry meets eight times a year; and the ethics commission meets four times a year. Section 8-44-103, *Tennessee Code Annotated*, requires that the bureau's board of directors, the registry, and the ethics commission give the public adequate notice of their meetings.

The objective of our review of this section was to determine whether the bureau provided adequate notice of its public meetings.

To determine the standards for providing adequate notice of public meetings, we reviewed *Tennessee Code Annotated* and Attorney General Opinion No. 00-090. We also interviewed key personnel in other states' ethics, campaign, election, and government accountability offices. To obtain an understanding of the bureau's process for notifying the public of upcoming meetings, we reviewed the bureau's *Policies and Procedures* manual and interviewed the Executive Director. We also reviewed the websites for the registry and the ethics commission and the bulletin boards in the Legislative Plaza to determine when the bureau's staff posted notices of upcoming meetings.

Based on our interviews and reviews, we determined that the bureau should improve its practices for notifying the public of its public meetings (see Observation below).

Observation - The bureau should improve its practices for notifying the public of its upcoming meetings

The Bureau of Ethics and Campaign Finance relies primarily on website postings to inform the public of upcoming meetings. According to the bureau's Executive Director, he and his staff also post meeting agendas at Legislative Plaza and on the websites for the registry and

the ethics commission approximately seven days before their meetings. Title 8, Chapter 44, Part 1, *Tennessee Code Annotated*, states that governing bodies should give adequate notice of their public meetings but does not define what constitutes adequate notice. Attorney General Opinion No. 00-090 states that “whether posting a meeting notice on an Internet site would be ‘adequate public notice’ . . . would depend on all the facts and circumstances, particularly whether that location would be one where members of the community could become aware of the notice.” During the prior audit, we cited a U.S. Census Bureau report stating that only 54.7% of U.S. households had Internet access in 2003; by 2013, this percentage had grown to 74.4% of U.S. households. While the significant increase in households with Internet access also increases the bureau’s probability that the public will become aware of the meeting notices, there is still the risk that posting meeting notices online may not be sufficient notice to the public. In addition, we were unable to determine that the bureau complied with its policy of posting agendas online and in Legislative Plaza “approximately seven (7) days before the meeting” in several instances:

- The “News & Updates” page on the ethics commission’s website has dated notices indicating that the public was given timely notice of some of its meetings; however, there were no entries on the page proving that the public received advance notice of the ethics commission’s July 2012, November 2012, August 2013, or September 2013 meetings.

We were also unable to locate the agenda for the ethics commission’s April 2, 2015, meeting during our visit to Legislative Plaza on March 31, 2015. Although the Executive Director stated that the agendas are often covered up or removed within one day of posting, the ethics commission’s policy does not require posting paper copies of the agendas in other locations or posting new agendas in Legislative Plaza as necessary.

- The bureau staff do not track when they post notice of the registry’s meetings online. Through our review of the registry’s websites during our audit fieldwork from January 26, 2015, to May 28, 2015, we noted that the bureau staff did not post the agenda for the registry’s March 11, 2015, meeting until the day before the meeting. The Executive Director stated that there was an oversight in posting the agenda that was not identified until the day before the meeting.

In addition, we were unable to locate the agenda for the registry’s March 11, 2015, meeting during our visit to Legislative Plaza on March 9, 2015.

- Although we verified that the bureau posted the agenda for the May 2015 meeting of its board of directors in Legislative Plaza, management did not post the agenda or the date for the meeting online. The bureau maintains two separate websites, one for the registry and one for the ethics commission, but does not have its own website where meeting dates and agendas can be posted.

In order for the bureau’s actions to be transparent, open to the public, and in compliance with their own policies and procedures, management must ensure that meeting notices are posted timely to their websites, as well as in Legislative Plaza, and that the online postings are properly documented.

STATUTORY REQUIREMENTS FOR BOARD MEMBERS

Pursuant to statute, the Tennessee Registry of Election Finance and the Tennessee Ethics Commission are each composed of six members: two appointed by the Governor, two appointed by the Senate, and two appointed by the House of Representatives. Each appointing authority must appoint one Republican and one Democrat.

Board member qualifications are prescribed by statute and are more extensive than for most boards. The registry and the ethics commission must each have at least one female member and one black member. (A black female cannot satisfy both requirements.) Additionally, board members must

- be at least 30 years of age,
- be legal state residents for five years immediately prior to appointment,
- be registered voters in Tennessee,
- not be announced candidates for public office,
- not be members of a political party's state executive committee, and
- not permit their names to be used or make campaign contributions in support of or opposition to any candidate or proposition.

Board members and their immediate families cannot

- hold or qualify for elective offices to any state or local public offices;
- be employees of the state or any political subdivision of the state;
- be officers of any political parties or political committees;
- participate in any way in election campaigns;
- lobby or employ lobbyists; or
- be employed by any elected officeholders, either in an official capacity or as individuals, or be employed by businesses in which elected officeholders have any direct input concerning employment decisions.

According to Section 2-10-203, *Tennessee Code Annotated*, registry appointees “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.” Similarly, Section 3-6-103, *Tennessee Code Annotated*, states that each member of the ethics commission shall “not have been convicted of a felony” and shall “be a person of high ethical standards who has an active interest in promoting ethics in government.”

The objectives of our review were to determine whether

- the registry and the ethics commission each had one female and one black appointee; and
- the registry and ethics commission appointees otherwise met the statutory requirements for office.

To gain an understanding of how bureau management ensured that registry and ethics commission appointees met the statutory requirements, we interviewed the Executive Director and reviewed the bureau's *Policies and Procedures* manual. We obtained a list of all individuals who served on the registry and the ethics commission from July 1, 2012, to April 30, 2015, and we reviewed whether the two boards met the statutory requirements related to gender and ethnicity. We also tested all of the individuals on the list to determine whether the appointees signed code of conduct forms attesting that they met the statutory requirements.

Based on our interviews, reviews, and testwork, we determined that

- the registry and the ethics commission each had one female and one black appointee; and
- bureau management ensured that registry and ethics commission members complied with statutory restrictions by requiring the appointees to complete code of conduct forms for calendar years 2014 and 2015.⁸

RISK ASSESSMENTS AND WRITTEN POLICIES

Section 9-18-104, *Tennessee Code Annotated*, requires the head of each state agency and higher education institution to conduct an assessment of the risks and systems of internal control in accordance with the guidelines established by the Department of Finance and Administration, in consultation with the Comptroller of the Treasury. According to Section 9-18-102, *Tennessee Code Annotated*,

The objectives of this risk assessment are to provide reasonable assurance of the following:

- (1) Accountability for meeting program objectives;
- (2) Promoting operational efficiency and effectiveness;
- (3) Improving reliability of financial statements;
- (4) Strengthening compliance with laws, regulations, rules, and contracts and grant agreements; and
- (5) Reducing the risk of financial or other asset losses due to fraud, waste, and abuse.

⁸ Bureau management could not provide us with the registry and commission members' code of conduct forms for calendar years 2012 and 2013.

Section 9-18-104 also requires the head of each state agency and higher education institution to submit an annual Financial Integrity Act report to the Commissioner of the Department of Finance and Administration and the Comptroller of the Treasury by December 31 of each calendar year. In this report, management of the agency or institution (1) acknowledges responsibility for establishing, implementing, and maintaining an adequate system of internal control and (2) states whether an assessment of risk performed by the agency or institution provides reasonable assurance of compliance with the objectives of the assessment as specified in statute. In addition to the management report, the *State of Tennessee's Management's Guide to Risk Management and Internal Control*, published by the Department of Finance and Administration, requires that state agencies and higher education institutions include completed checklists and documentation of the risk assessments in their Financial Integrity Act report packages.

In addition to annual risk assessments, the Bureau of Ethics and Campaign Finance's staff and board of directors must be able to refer to written policies in order to fulfill their duties in a timely, consistent, and equitable manner throughout each year. As noted in the finding in the February 2009 audit on the Tennessee Registry of Election Finance, written policies mitigate the risks of staff and board turnover, as well as potential personal agendas and conflicts of interest.

The objectives of our review were to determine whether

- management formally assessed the bureau's risks of errors, fraud, waste, and abuse as required by Section 9-18-104, Tennessee Code Annotated; and
- the bureau corrected the prior audit finding by developing written policies governing personnel, operations, quorums for board meetings, conflicts of interest, complaint-handling, and the assessment of civil penalties.

To obtain an understanding of the bureau's risk assessment process, we interviewed key personnel and reviewed the bureau's most recent risk assessment. To determine whether the bureau had adequate written policies, we reviewed the prior audit finding and discussed it with the Executive Director. We also reviewed the bureau's *Policies and Procedures* manual and its code of conduct forms, which included provisions related to conflicts of interest.

Based on our interviews and review, we determined that

- management did not prepare an annual risk assessment in calendar year 2014 or submit annual Financial Integrity Act report packages to the Department of Finance and Administration and the Comptroller of the Treasury (see Finding 1); and
- the bureau resolved the prior audit finding and had written policies governing personnel, operations, quorums for board meetings, conflicts of interest, complaint-handling, and the assessment of civil penalties.

Finding 1 - Management did not complete an annual risk assessment for calendar year 2014 or submit annual Financial Integrity Act reporting packages as required by statute

Condition

Management of the Bureau of Ethics and Campaign Finance did not complete a risk assessment for calendar year 2014 or submit annual Financial Integrity Act report packages to the Commissioner of the Department of Finance and Administration and the Comptroller of the Treasury.

Criteria

Pursuant to Section 9-18-104(a), *Tennessee Code Annotated*, the head of each state agency must submit a report of management's assessment of risk to the Commissioner of the Department of Finance and Administration and the Comptroller of the Treasury by December 31 of every year. Additionally, the State of Tennessee's *Management's Guide to Risk Management and Internal Control* states that management must submit a Financial Integrity Act reporting package consisting of the management report, a completed copy of the report checklist in the guide, and the entity's risk assessment.

Cause

The bureau's audit manager, who prepared a risk assessment at the end of calendar year 2013, stated that he was unaware that the bureau was required to assess risks annually and submit reporting packages with the risk assessments to the Commissioner of the Department of Finance and Administration and the Comptroller of the Treasury. The Executive Director stated that he thought that risk assessments had been completed but was unable to locate any correspondence documenting that he or his staff sent reporting packages to the Commissioner of the Department of Finance and Administration and the Comptroller of the Treasury.

Effect

Without performing an annual risk assessment, management cannot be assured that it has identified its current risks and developed internal controls to mitigate these risks. Additionally, the bureau is not in compliance with state statute unless it submits Financial Integrity Act reporting packages to the Department of Finance and Administration and the Comptroller of the Treasury by December 31 of each year.

Recommendation

The Executive Director should ensure that the bureau prepares an annual risk assessment and submits it, along with management's report and the completed report checklist form, to the Commissioner of the Department of Finance and Administration and the Comptroller of the Treasury by December 31 of each year.

Management's Comment

We concur. The bureau staff was unaware that the information was required to be filed every year. The 2014 information was filed with the Department of Finance and Administration and Comptroller of the Treasury while the audit was in progress.

INFORMATION SYSTEMS

The Bureau of Ethics and Campaign Finance relies on various information systems, databases, and applications to capture and maintain information that supports its activities. The bureau is administratively attached to the Department of State, which provides information technology and desktop support to bureau staff. The bureau's three critical applications (Conflict, iLobby, and TNCAMP) are web-based systems hosted by the Department of Finance and Administration's Office for Information Resources (OIR) and administered by NIC, Inc., an OIR-contracted vendor.

The objectives of our review of the bureau's information systems were to determine whether management followed best practices for the information systems industry.

To determine whether management followed industry best practices, we compared management's internal control activities to industry best practices.

Based on the procedures performed, we determined that management did not follow best practices for the information systems industry in two specific areas (see Finding 2).

Finding 2 – The bureau did not provide adequate internal controls in two specific areas

The Bureau of Ethics and Campaign Finance did not design and monitor internal controls in two specific areas. Ineffective implementation of internal controls increases the likelihood of errors, data loss, and inability to continue operations. The details of this finding are confidential pursuant to Section 10-7-504(i), *Tennessee Code Annotated*. We provided the office with detailed information regarding the specific conditions we identified, as well as the related criteria, causes, and our specific recommendations for improvement.

Recommendation

Management should ensure that these conditions are remedied by the prompt development and consistent implementation of internal controls in these areas. Management should implement effective controls to ensure compliance with applicable requirements; assign staff to be responsible for ongoing monitoring of the risks and mitigating controls; and take action if deficiencies occur.

Management's Comment

We concur. The bureau has internal controls in place to ensure compliance with the applicable requirements; however, due to the small size of the bureau staff these policies were not in written format. These internal controls are now in written format.

APPENDIX

DEMOGRAPHIC INFORMATION

**Bureau of Ethics and Campaign Finance
Board of Directors by Gender and Ethnicity
April 2015**

Appointee to	Gender		Ethnicity	
	<i>Male</i>	<i>Female</i>	<i>White</i>	<i>Black</i>
Tennessee Ethics Commission	5	1	5	1
Tennessee Registry of Election Finance	4	2	5	1
Total	9	3	10	2

**Bureau of Ethics and Campaign Finance
Staff by Gender and Ethnicity
April 2015**

Title	Gender		Ethnicity	
	<i>Male</i>	<i>Female</i>	<i>White</i>	<i>Black</i>
Executive Director	1	0	1	0
Audit Manager	1	0	1	0
Campaign Finance Specialist	0	1	1	0
Compliance Officer	1	0	1	0
Ethics Specialist	0	1	1	0
Legal Counsel	1	0	1	0
Administrative Services Assistant 3	0	1	1	0
Administrative Assistant 2	0	1	1	0
Total	4	4	8	0