

Human Rights Commission

June 1999

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June 15, 1999

The Honorable John S. Wilder
Speaker of the Senate
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Speaker of the House of Representatives
The Honorable Kenneth N. (Pete) Springer, Chair
Senate Committee on Government Operations
The Honorable Mike Kernell, 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 Human Rights Commission. 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 commission should be continued, restructured, or terminated.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/dww
98-112

Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit
Human Rights Commission
June 1999

AUDIT OBJECTIVES

The objectives of the audit were to determine the authority and responsibility mandated to the commission by statute and the extent to which the commission has fulfilled that mandate and complied with applicable laws and regulations; to assess the efficiency and effectiveness of management's organization and use of resources; and to make recommendations that might result in more efficient and effective operation of the commission.

FINDINGS

The Commission Has Not Resolved Employment Complaints in a Timely Manner*

The commission's failure to resolve employment discrimination charges in a timely manner prevents complainants from obtaining remedies for their situations and encourages continued discriminatory practices. As of September 30, 1998, the commission had a backlog of 1,090 cases—747 (68%) of which were 270 days or older, including six 1991 cases and one 1990 case (page 10).

Management of Staff Needs Improvement*

The commission has had problems managing its staff in the past and has taken some actions to improve productivity. The executive director, in office since November 1997, has suspended some employees for unsatisfactory job performance, unprofessional behavior, and unauthorized leave and job abandonment. He has also addressed continuing conflicts between employees. However, staff are still not properly accounting for their time and are not receiving feedback on job performance (page 12).

The Commission Does Not Have a Formal, Written Conflict-of-Interest Policy for Commissioners and its Policy for Staff Is Not Comprehensive*

There is no formal, written conflict-of-interest policy for commission members and the policy adopted for commission staff only addresses potential financial interest conflicts. Current or prior affiliation with or interest in the person or companies involved in a complaint could create a conflict of interest for commission members, for staff investigating discrimination charges, and for administrative staff. Identifying potential conflicts regularly will help avoid questions concerning impartiality and independence after a charge has been received, after a decision is rendered, or as the commission conducts its daily business (page 13).

The General Assembly Needs to Review the Commission's Responsibilities for the Title VI Program

The commission has undertaken a number of tasks related to Title VI, including receiving complaints, reviewing implementation plans, and assisting state agencies in meeting their Title VI responsibilities. (Current statutes only specifically provide for the commission to receive and investigate Title VI complaints.) Some persons have expressed concern that the program is understaffed. Title VI staff currently consists of the program coordinator, a secretary who also functions as the commission's receptionist, and an administrative staff person who serves as the commission's personnel officer (page 15).

* Related issues were also discussed in the October 1995 performance audit of the commission.

OBSERVATIONS AND COMMENTS

The audit also discusses the following issues: the HUD cooperative agreement, the cost-benefit analysis of federal work-sharing agreements, and commission membership and meeting attendance (page 7).

ISSUES FOR LEGISLATIVE CONSIDERATION

The General Assembly may wish to consider amending *Tennessee Code Annotated* to expand or reconstitute commission membership from its current 15 Governor-appointed members to a combination of Governor and legislative appointments (page 18).

The General Assembly may wish to consider amending *Tennessee Code Annotated* to require the removal of any commission member who regularly fails to attend commission meetings (page 18).

The General Assembly may wish to review the Human Rights Commission's statutory authority and responsibilities for the Title VI program and recommend improvements (page 18).

The General Assembly may wish to consider amending Section 4-21-901, *Tennessee Code Annotated*, to require agencies to submit their annual Title VI compliance reports and implementation plan updates to the Human Rights Commission. The General Assembly may also wish to consider amending Section 4-21-901 or adding a new section setting forth specific responsibilities of the Human Rights Commission to

- review the annual reports and implementation plans,
- hold public hearings on each agency's plan to allow for legislative and public input,
- make recommendations to state agencies when plans are found deficient,
- follow up to ensure revised plans are submitted,
- review investigation reports on complaints received and investigated by state agencies, and
- report annually to the General Assembly on the status of the implementation plans and the status of complaints filed with the commission and state agencies (page 18).

"Audit Highlights" is a summary of the audit report. To obtain the complete audit report which contains all findings, recommendations, and management comments, please contact

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Performance Audit Human Rights Commission

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Performance Audit Human Rights Commission

INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the Human Rights Commission was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-221, the Human Rights Commission is scheduled to terminate June 30, 2000. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the commission 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 commission should be continued, restructured, or terminated.

OBJECTIVES OF THE AUDIT

The objectives of the audit were

1. to determine the authority and responsibility mandated to the commission by statute and the extent to which the commission has fulfilled its legislative mandate and complied with applicable laws and regulations;
2. to assess the efficiency and effectiveness of management's organization and use of resources to accomplish the commission's mandate; and
3. to develop possible alternatives for legislative and administrative actions that could result in more efficient and/or effective operation of the commission.

SCOPE AND METHODOLOGY OF THE AUDIT

The activities of the Human Rights Commission were reviewed for the period January 1996 through September 1998. The audit was conducted in accordance with generally accepted government auditing standards and included

1. review of applicable statutes and rules and regulations;
2. examination of commission files, documents, policies and procedures, the work-sharing agreement with the federal Equal Employment Opportunity Commission, and

the cooperative agreement with the U.S. Department of Housing and Urban Development;

3. review of prior performance audit and financial and compliance audit reports and audit reports from other states; and
4. interviews with commission staff and members, personnel of the federal Equal Employment Opportunity Commission, and staff of human rights organizations in the state.

STATUTORY RESPONSIBILITIES

Section 4-21-202, *Tennessee Code Annotated*, provides for the Human Rights Commission to promote the creation of local human rights commissions and enter into working cooperative agreements with them; receive, initiate, investigate, seek to conciliate, hold hearings on and pass upon complaints alleging civil rights violations; furnish technical assistance on request to help organizations further their compliance; and cooperate with the federal Equal Employment Opportunity Commission in its enforcement of the Civil Rights Act of 1964 and with the U.S. Department of Housing and Urban Development in its enforcement of the Fair Housing Act of 1968. Under *Tennessee Code Annotated*, Section 4-21-905, a person alleging discrimination under Title VI of the Civil Rights Act of 1964 may file a complaint with the state agency receiving the federal funds or with the commission.

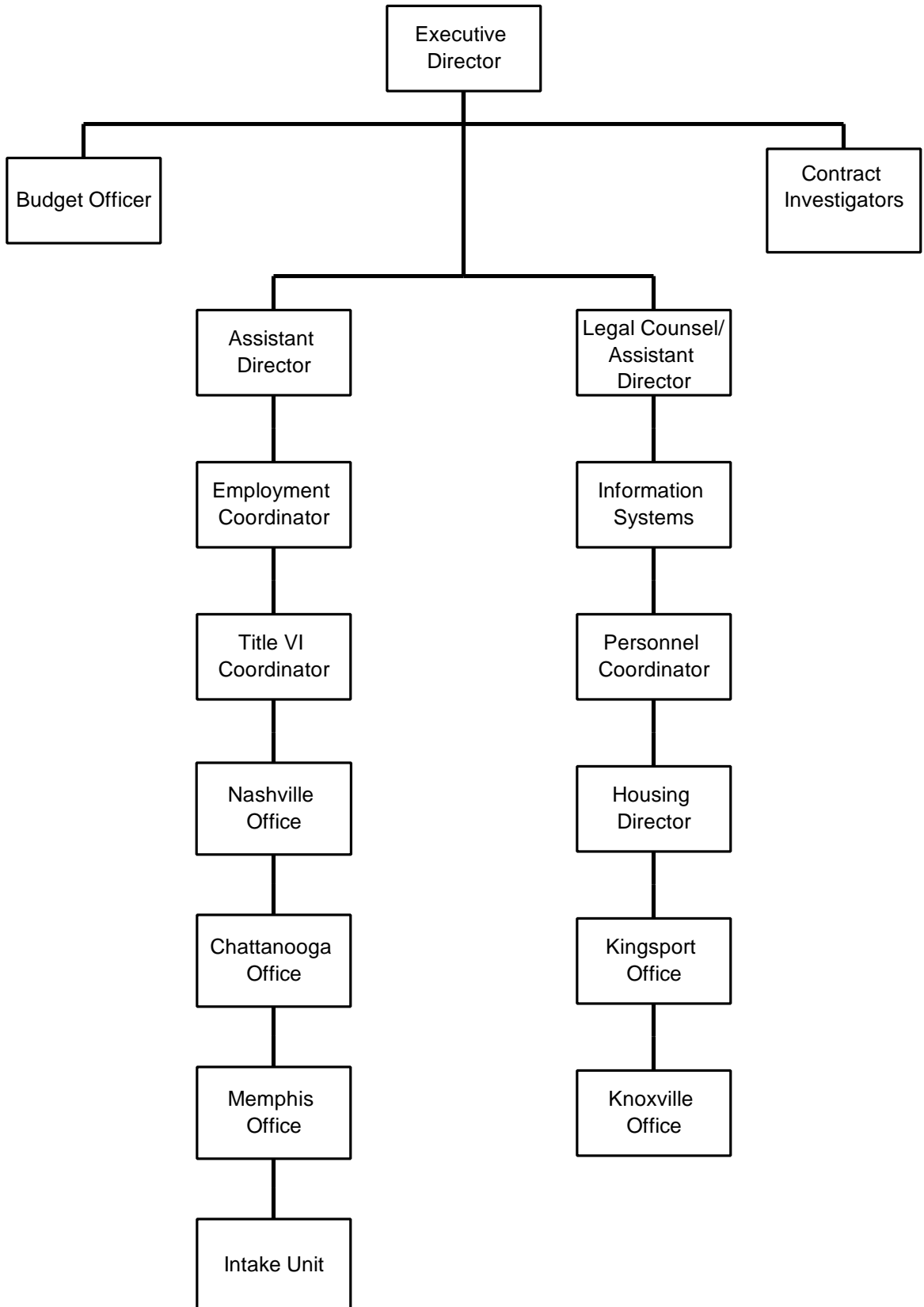
COMMISSION COMPOSITION AND STAFF

The commission has 15 members appointed by the Governor, five from each grand division of the state. The members are to be appointed on a nonpartisan basis and be broadly representative of employees, proprietors, trade unions, religious groups, human rights groups, and the general public. Commissioners are appointed for six-year terms and may be reappointed. The commission meets bimonthly.

Section 4-21-202(3) gives the commission the authority to annually appoint an executive director and set his compensation, as well as to maintain offices in Shelby, Davidson, Knox and Hamilton Counties and other offices as necessary. The current executive director was appointed in November 1997.

The central office is in Nashville with regional offices in Memphis, Knoxville, Chattanooga, and Kingsport. The commission has eleven full-time, two part-time, and three contract investigator positions. (See organization chart on the following page.) Some investigators handle both employment and housing cases, while others are only assigned to employment cases. Title VI complaints filed with the commission have been investigated by the

Human Rights Commission



state agency against which the complaint was filed. The Title VI program coordinator serves as a resource to the state agency during the process and monitors the progress of the investigation.

REVENUES AND EXPENDITURES

The commission had total expenditures of \$1,291,307 for the year ended June 30, 1998. The budget for the fiscal year ending June 30, 1999, is \$1,582,600. In that budget, \$1,001,300 (63%) will be funded from state appropriations and \$426,700 (27%) will be federal revenue under agreements with the Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development. Revenues of \$154,600 (10%) are expected to be received from state agencies receiving assistance from the commission's Title VI program.

INTERACTION WITH FEDERAL AGENCIES

The staff investigate charges of discrimination under federal jurisdiction through a contract with the federal Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development. Federal jurisdiction complaints are dual-filed—one copy of the complaint is sent to the state and another is sent to the relevant federal agency.

Equal Employment Opportunity Commission

The Equal Employment Opportunity Commission (EEOC) is responsible, under federal law, for enforcing laws against employment discrimination when the employer charged has 15 or more employees. Under state statute, an employer must have eight or more employees before charges of discrimination can be made. Pursuant to a work-sharing agreement, renewed annually, employment-related complaints in Tennessee are filed with both the commission and the EEOC. The EEOC pays the commission \$500 for each complaint resolved and provides additional funds annually for travel expenses. The EEOC provides guidelines for resolving and investigating complaints. Cases are reviewed by the EEOC after submission for credit against the work-sharing agreement.

U. S. Department of Housing and Urban Development

The U.S. Department of Housing and Urban Development (HUD) is responsible for enforcing federal Fair Housing laws. Under a cooperative working agreement, HUD pays the commission \$1,700 for each housing discrimination complaint investigated and closed and additional amounts for training and administrative costs. HUD also provides guidelines for resolving complaints and reviews cases submitted by the commission for compliance with the guidelines.

ANNUAL TITLE VI REPORT

The commission is responsible for submitting a Title VI report by June 30 of each year to the Comptroller's Office pursuant to Section 4-21-901 of *Tennessee Code Annotated*. The commission submitted reports on the following dates

Date Plan Due	Date Plan Submitted
June 30, 1994	December 8, 1994
June 30, 1995	August 4, 1995
June 30, 1996	October 14, 1996
June 30, 1997	December 15, 1997
June 30, 1998	July 1, 1998

COMPLAINT-HANDLING PROCESS

Sections 4-21-302 through 311, *Tennessee Code Annotated*, describe the process for filing and handling charges of discrimination. Persons who believe they have been discriminated against may charge discrimination, or a commission member may bring charges on behalf of someone. The charge is a written, sworn complaint stating a discriminatory practice has occurred. A description of the alleged discriminatory act and facts sufficient to enable commission staff to identify the person or persons charged (respondent) are included. Statute requires that a complaint be filed within 180 days of the alleged discriminatory act and that the commission furnish the respondent a copy of the complaint within ten days.

In Memphis and Nashville, where the EEOC has offices, complainants often file their employment discrimination complaints with the EEOC instead of the commission. Because the EEOC does not have an office in East Tennessee, the number of complaints filed with the commission in East Tennessee is higher. The work-sharing agreement allows the commission to process all complaints filed in East Tennessee.

The Nashville office received 195 employment complaints; Chattanooga, 90; Memphis, 28; and Knoxville, 220—a total of 533—for the federal fiscal year ending September 30, 1998. The number of housing cases each office received in the federal fiscal year was not available, although 95 cases were open as of October 11, 1998. From November 1997 through September 1998, the commission received nine Title VI complaints.

A central intake unit was opened in January 1998 in the Nashville office to handle the intake process for the commission. The unit is staffed with two full-time and two temporary staff in Nashville, assisted by a full-time position in Knoxville. The intake unit is responsible for taking the initial complaint, notifying respondents, receiving position statements from respondents, and transmitting complainant and respondent rebuttals to the opposing party. Once these steps are completed, an assistant director assigns the case to an investigator. The executive director and

two assistant directors set caseloads and closure goals and communicate this information to staff through meetings, memoranda, and individual contact with investigators.

The investigators are responsible for obtaining the necessary information to make a determination. They review the complaint and the position statement from the respondent and interview the complainant, the respondent, and any witnesses. Then the investigator determines whether discrimination has occurred and what action to take. Employment and housing cases can be closed using the following types of closures:

- Administrative Closures—charges closed by the commission for failure to cooperate, withdrawn by the complainant, lack of jurisdiction, or inability to locate the complainant.
- Settlement Agreements—agreements between the complainant and the respondent reached prior to the commission’s investigation of the case or determination of cause.
- No-Cause Finding—the commission has determined after investigation that there is no reasonable cause to believe the respondent has engaged in a discriminatory practice.
- Conciliated Settlement—agreement between the complainant and the respondent after the commission has completed an investigation and reached a cause finding.
- Hearing—if a conciliated settlement cannot be reached, a hearing is scheduled before the commissioners. They can dismiss the complaint or issue a cease and desist order to the employer. Either party can appeal the decision to Chancery Court if dissatisfied.

OTHER HUMAN RIGHTS AGENCIES

Three Tennessee cities have agencies that offer services to citizens charging employment, housing, or Title VI discrimination. The majority of services are in the form of mediation only, because most of these agencies do not have enforcement powers.

The city of Chattanooga’s Human Rights and Human Relations Commission offers mediation services to complainants and respondents in discrimination cases. The commission has jurisdiction only within the city and has no sanctioning power. According to its staff, the Chattanooga commission does not work jointly with the Tennessee Human Rights Commission in any programs. Mediation is available to citizens from the city Chamber of Commerce and Hamilton County. Legal assistance is provided by the Chattanooga Bar Association Lawyer Referral Service and the Southeast Tennessee Legal Service.

The city of Knoxville has a Fair Housing Assistance Program (FHAP) and local law mirrors federal legislation. The city has a cooperative agreement with HUD to take complaints, investigate them, and provide mediation and conciliation between complainant and respondent. The city does have sanctioning power under the agreement. The agreement allows the city to conduct outreach to promote fair housing to various public groups. Staff also participate in HUD-provided training programs. Jurisdiction under the agreement is solely within the city limits. Housing complaints received by the city of Knoxville involving Knox County are sent to

the Human Rights Commission's regional office in Knoxville. The commission's regional office forwards any complaints involving the city of Knoxville to the city. No public or private entity in the state other than the city of Knoxville and the Human Rights Commission have cooperative agreements with HUD. The city does not have an agreement with the EEOC.

The city of Knoxville opened a Title VI program office on June 1, 1998. According to procedures established by the city, Title VI coordinators in the respondent city department investigate complaints first. If no resolution is obtained at the departmental level within a specified number of days, the case is sent to the Title VI officer and the city's law department. Knoxville's Title VI plan includes sanctions that can be imposed on parties found to have discriminated. Sanctions may include contract termination and debarment from further city contracts and grants.

Nashville's Human Relations Commission receives complaints from the Metropolitan Government and individuals in Davidson County regarding racial, housing, and employment discrimination. The commission acts as a mediator and conciliator between parties but has no sanctioning power. Any complaints outside the city's geographic jurisdiction are forwarded to the appropriate federal agencies or the Tennessee Human Rights Commission. The commission expressed a desire to work with and be complementary to the commission, but no formal plans have been made.

The Metropolitan Government of Nashville and Davidson County has recently opened a Title VI office to conduct investigations; procedures are currently under review by the legal department. This office has no sanctioning power. The office contacts the Tennessee Human Rights Commission when guidance and assistance are required.

OBSERVATIONS AND COMMENTS

The topics discussed below did not warrant a finding but are included in this report because of their effect on the operations of the Human Rights Commission and on the citizens of Tennessee.

HUD COOPERATIVE AGREEMENT

HUD conducted on-site assessments of the commission in 1992 and 1994. Those assessments pointed out deficiencies and suggested corrective actions. In March 1996, HUD denied certification to the commission. According to commission management, in late 1996 or early 1997, oversight of the commission was transferred from the Atlanta HUD office to the Kansas City HUD office. The Kansas City office provided commission staff training to help them improve their performance. Subsequently, in February 1997, the commission entered into a

contract with HUD. That contract contained a Special Requirements section stating that the commission, among other things, had to reduce “aged” complaints 25% each quarter; develop a housing unit (within 60 days) with six full-time staff; and establish a quality control unit for review.

In July 1997, the acting executive director reported to the commissioners that the commission was having difficulty meeting the Specialized Requirements in the HUD contract. One example he gave the commissioners was that although there were 167 aged cases, only one case had been closed since the start of the current contract in February 1997. In addition, the contract called for six full-time housing staff positions and the commission only had three. He referred to letters from HUD to the commission stating specific problems HUD had with the commission’s performance.

A review of correspondence confirms the problems reported to the commissioners. The April 1997 letter cites several problems including an ineffective complaint-tracking system, lack of timely processing of cases, negotiation of settlements without complainant input, and complainants who said that they were treated rudely and were provided misleading information about their cases. HUD stated that it would decertify the commission unless “aggressive and immediate” steps were taken to resolve these problems. In May 1997, after HUD requested specific information regarding the commission’s performance on the Special Requirements Section of the agreement, HUD suspended funding for not complying with the request.

The acting executive director also told the commissioners that HUD staff sent to Nashville in June 1997 could locate only 33 of the 92 case files while in the commission’s office. (The commission staff later located another 52.) The acting executive director said that HUD contacted its Office of Investigations about ending the contract and considering charges of fraud, waste, and mismanagement.

Later in July 1997, four commission staff (including the acting executive director) met with HUD staff in Kansas City. HUD offered to help if the commission would make an effort to alleviate problems. HUD wanted the commission to add two investigators. If not, according to the report made to the commissioners at their meeting, the contract would be terminated and HUD would ask for any financial draws on the contract to be returned. In addition, HUD said it would actively consider referring charges against the commission to the U.S. Department of Justice.

In October 1997, the acting executive director reported that after efforts by commission staff to improve the housing program, the commission had been reinstated for reimbursement under the housing contract. (The commission remained decertified, however.) Investigators had been able to complete several cases and HUD was complimentary of the effort. In September 1997, the commission received a draw for 158 completed cases. The current executive director requested a draw for another 25 cases at \$1,700 per case in September 1998 and has signed an agreement for 63 cases. However, according to management, the commission continues to be on a probationary status with HUD. (HUD plans a visit to assess the commission’s performance in Spring 1999.) As of October 11, 1998, the commission had 95 open cases, seven of which were dated calendar year 1993.

COST-BENEFIT ANALYSIS OF FEDERAL WORK-SHARING AGREEMENTS

The 1995 performance audit of the commission recommended that it determine the cost per employment case investigated. The commission did calculate a per-case cost prior to hiring contract investigators to reduce the backlog of employment cases. The analysis did not take into consideration administrative costs or management costs in reviewing cases and managing staff. The current budget officer is reviewing the commission's cost center categories and cost allocation plan. The commission should continue its efforts to determine whether the amounts it receives under the federal work-sharing agreements are sufficient to cover the cost of the cases. Only about 7.5% of the cases the commission handles are solely under state jurisdiction. Commission staff estimates that approximately 40 employment complaints a year are state jurisdiction only, compared to 533 employment complaints received for the federal fiscal year ending September 30, 1998. However, 63% of the commission's budget is state appropriations. If the cost to process and close cases exceeds the amount of the reimbursement, the commission may want to pursue actions to limit the cost of a case or to request a higher reimbursement rate from the EEOC.

COMMISSION MEMBERSHIP AND MEETING ATTENDANCE

In accordance with Section 4-21-201, *Tennessee Code Annotated*, the commission has 15 members (appointed by the Governor) from various backgrounds and interests including religious groups, human rights groups, and the general public. However, there is no legislative representation on the commission. Other commissions such as the Commission on Aging, the Tennessee Advisory Commission on Intergovernmental Relations, and the Tennessee Wildlife Resources Commission have legislative representation in addition to those members appointed by the Governor. The General Assembly may wish to consider amending *Tennessee Code Annotated* to expand or reconstitute commission membership from its current 15 Governor-appointed members to a combination of Governor and legislative appointments.

We reviewed minutes of commission meetings from January 1996 through July 1998. The commissioners met 16 times during that period. One commissioner was not present at any of the 16 meetings. Another commissioner attended three of the 16, and a third commissioner attended five of the 16 meetings. (Their terms made them eligible to attend all 16 meetings.) Another commissioner attended two of seven meetings held during his term. The statute does not provide for removal of a commissioner for any reason. The commission's bylaws permit the chair to request the resignation of any commissioner who misses three consecutive meetings. However, no member has been asked to resign. The commission chair should exercise this authority to improve meeting attendance. Alternately, the General Assembly may wish to consider amending *Tennessee Code Annotated* to require the removal of any commission member who regularly fails to attend commission meetings.

FINDINGS AND RECOMMENDATIONS

1. The commission has not resolved employment complaints in a timely manner

Finding

The commission has not resolved employment discrimination charges in a timely manner. This practice prevents complainants from obtaining remedies for their situations and encourages continued discriminatory practices.

As of July 21, 1998, the commission had a backlog of 1,272 cases—937 (74%) were 270 days or older. The backlog at that time included cases dated 1987, 1988, and 1989. As of September 30, 1998, the commission had a backlog of 1,090 cases—747 (68%) of which were 270 days or older, including six 1991 cases and one 1990 case.

During fiscal years 1996 through 1998, the commission submitted the following number of closed cases to the EEOC for credit and payment.

Federal Fiscal Year Ending September 30	Number of Cases Credited
1996	605
1997	609
1998	504 (expected)

(In fiscal year 1997, the EEOC paid for more cases than the contract required.) Although the commission closed the number of cases required by the respective contracts (577 cases in 1997 and 504 cases in 1998), new complaints continue to arrive. The number of new cases submitted in the federal fiscal year ending September 30, 1998, was 533, more than the number of closed cases required under the contract.

From June 1 through August 31, 1998, the commission closed 281 employment cases—74 by four full-time investigators in Nashville, 68 by the three contractors (two in Nashville and one in Knoxville), 50 by two of three full-time investigators in Memphis, 44 by two full-time investigators in Chattanooga, and 44 by one full-time and one part-time investigator in Knoxville.

Tennessee Code Annotated, Section 4-21-302, requires that all complaints be filed within 180 days of the discriminatory action; that the respondent be notified within 10 days of the filing of a complaint; and that the investigation commence within 30 days of the complaint's file date. Statute does not specify the number of days in which a case is to be completed. EEOC's time guideline for completion of a case is no more than 270 days.

The commission has set its own time guidelines regarding the intake unit's initial steps. According to the commission's case action report, respondent notification letters are to be sent

within five days of filing; respondents then have ten days to respond to notices and requests for information; and both the complainant and the respondent have ten days to provide position statements and rebuttals. We requested the 30 cases submitted to the EEOC for April 1998 to review for compliance with these time guidelines. The commission was able to find only 15 of those cases, although their procedures call for copies to be kept of all cases submitted to the EEOC. Of the 15 files reviewed, the average number of days for the commission to notify respondents after the complaint was filed was 27. Respondents took an average of 210 days to provide position statements after the commission had sent them a notification letter. The commission took an average of 66 days to send position statements to the complainants for rebuttal after it had received the position statement from the respondent. The entire process took an average of 697 days from complaint filing date to determination. All 15 case closures were administrative closures (i.e., closed for failure to cooperate, lack of jurisdiction, inability to locate the complainant, or withdrawn by the complainant). The absence of ongoing investigations (according to case files) after the position statements were received suggests these cases could have been closed sooner.

Since his appointment in November 1997, the executive director has taken steps to reduce the backlog. The commission has used interns during the summer and has hired three contractors to work on the backlog of employment cases. From June through August 1998, these three contractors completed 68 employment cases.

Management has also instituted a case closures target per month per investigator, weekly staff meetings where staff report on cases and work completed, and weekly written reports to management.

Recommendation

Management should continue its efforts to reduce the backlog of cases and to review the progress of its efforts. The commission should continue to find methods to reduce the amount of time to investigate a case. It should identify cases appropriate for administrative closure early in the investigative process so these cases can be closed quickly and the time spent on more serious cases.

Management's Comment

We concur. As noted in the auditor's finding, steps have been taken to reduce the backlog of cases. We have implemented an intake review process, which examines every new complaint filed with the agency to ascertain whether or not the complaint should be handled by the agency. Investigators have also been instructed to process cases on a first-in, first-out basis.

2. Management of staff needs improvement

Finding

The commission has had problems managing its staff in the past and has taken some actions to improve productivity. The executive director, in office since November 1997, has suspended some employees for unsatisfactory job performance, unprofessional behavior, and unauthorized leave and job abandonment. He has also addressed continuing conflicts between employees. However, staff are still not properly accounting for their time and are not receiving feedback on job performance to help improve.

Time and Attendance

We reported in the commission's October 1995 performance audit that staff did not always account for their time properly. The commission's policies and procedures manual requires all employees to adhere to the established policies on leave and attendance as defined by the Departments of Personnel and Finance and Administration and by the commission. The personnel officer issued a memorandum in May 1995 reminding staff of their responsibility to sign in and out using the log and noted that the commission was receiving complaints from respondents and complainants about the unavailability of staff. The commission's policy requires that all blanks on the official sign-in/sign-out log in each office be completed. The logs are to include the time the employee arrived at and departed from work and a description and the time of any absence (including lunch) from the office during the workday.

Staff have not always complied with this policy. Since November 1997, upper management has issued six memoranda to staff emphasizing commission policy and acceptable attendance and leave practices. According to the minutes of four staff meetings, the executive director has reiterated these policies. We reviewed attendance paperwork for three different pay periods in 1998 and sign-in/sign-out sheets for the Nashville, Chattanooga, and Memphis offices. (The personnel officer did not have the logs for the Knoxville office when we were reviewing paperwork.) In each pay period, half or over half the employees did not complete the logs each day of the pay period and there were differences between entries in the sign-in/sign-out logs and the attendance/leave forms. When staff do not accurately account for their time, tracking their work becomes difficult.

Evaluations

The current executive director instituted a policy in November 1997 requiring quarterly performance evaluations in addition to the annual evaluations required by the Department of Personnel. We reviewed the personnel files of all 25 current employees and found that none had a quarterly performance evaluation. For 1995, six of the 15 current employees also employed in 1995 did not have an annual performance evaluation. For 1996, ten of the 21 current employees also employed at that time lacked an evaluation. Twelve of the 21 current employees also employed in 1997 lacked a 1997 evaluation. In fact, three employees did not have an evaluation in 1995, 1996, or 1997.

Job Qualifications

We reviewed the Department of Personnel's job specifications for the commission's staff positions and compared the requirements to staff's personnel records. The commission could not document that six of the 27 full-time and part-time employees met the minimum requirements of their positions. Seven files did not contain a state application. Without this documentation, there is no assurance that staff are qualified for their positions. Also, the job description the commission wrote for a noncivil service position does not include education or work experience requirements. Job descriptions should serve as guidelines to help ensure the applicant can perform the job duties.

Recommendation

Management should continue its efforts to improve staff productivity, including ensuring that the commission's time and attendance policies are followed and that employees receive required performance evaluations. Evaluations should reflect employees' adherence to time and attendance policies. Management should ensure staff meet minimum job requirements.

Management's Comment

We concur. Procedures have been implemented to ensure proper recording of time utilizing the time log sheets. As reported in the auditor's findings, management has emphasized the importance of properly documenting time and attendance. Management will exercise appropriate options to improve this area.

Also, in addition to adhering to the Department of Personnel's evaluation schedule, the agency intends to conduct its own performance evaluations on a semi-annual basis. This differs from a previous policy of quarterly evaluations, which were never fully implemented. Future evaluations reflect time and attendance as well as performance of outlined duties. The agency will conduct a complete review of personnel files to ensure proper documentation is contained in each employee's file.

3. The commission does not have a formal, written conflict-of-interest policy for commissioners and its policy for staff is not comprehensive

Finding

The Human Rights Commission does not have a formal, written conflict-of-interest policy for commission members. The conflict-of-interest policy adopted for commission staff only addresses potential financial interest conflicts. Current or prior affiliation with or interest in the person or companies involved in a complaint could create a conflict of interest for commission members, for staff investigating discrimination charges, and for administrative staff. Identifying potential conflicts regularly will help avoid questions concerning impartiality and independence

after a charge has been received, after a decision is rendered, or as the commission conducts its daily business.

A draft policy for the commissioners was prepared by the commission's legal counsel and presented in the September 1995 commission meeting. The last mention of the policy was in the January 1996 meeting minutes when the commission discussed changes that had been made to the draft policy. Apparently, there has been no further discussion or action since that time.

The executive director instituted a conflict-of-interest policy for commission staff in July 1998. The policy addresses only financial interests and requires employees who "regulate, inspect, audit, or procure goods or services or administer tax laws" to disclose financial interests of \$5,000 or more. However, there are other types of conflicts. Staff may have relationships with companies and persons involved in complaints. For instance, one employee is related to an EEOC employee who works with the commission in completing cases pursuant to its EEOC contract. The commission's executive director is an elected official of a local government. These types of conflicts have received attention by press and commission staff. Disclosure through the use of a formal, written policy would alleviate some of the concerns raised. Examples of conflicts of interest would help investigators determine when they should recuse themselves from investigating a particular charge.

Recommendation

The commission should develop and adopt a written conflict-of-interest policy for commissioners. In addition, the commission should expand the current policy for staff to disclose all potential conflicts of interest, not only those of a financial nature. Providing staff with examples of potential conflicts of interest would raise their awareness. The commission should require commissioners and staff to update disclosures annually. Information contained in the disclosures should be considered in all relevant activities of the commission. Commissioners and staff should take the initiative to declare potential conflicts whenever those relationships could be perceived to impair objectivity.

Management's Comment

We concur. The agency legal staff will conduct a thorough review of its conflict-of-interest policy for agency staff. A policy will be developed for Commissioners. We will follow the auditors' recommendation to expand the existing staff policy to disclose all potential conflicts for staff and Commissioners.

4. The General Assembly needs to review the commission's responsibilities for the Title VI Program

Finding

The commission has undertaken a number of tasks related to Title VI, including receiving complaints, reviewing implementation plans, and assisting state agencies in meeting their Title VI responsibilities. However, not all of these tasks are specified in state law. Title VI of the 1964 Civil Rights Act declares, "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." *Tennessee Code Annotated*, Section 4-21-901, requires all state agencies subject to Title VI to develop an implementation plan, including their subrecipients of federal funds, to protect persons from discrimination on the basis of race, color, or national origin. State law requires agencies to send their Title VI implementation plans and plan updates by June 30 of each year to the Department of Audit which publishes a review indicating the dates submitted and the complaints filed. An executive order issued in 1994 required agencies also to submit the implementation plans to the Department of Finance and Administration's State Planning Office for review. When the State Planning Office was abolished, the Governor did not formally transfer the review responsibility. However, the Human Rights Commission's Title VI office and the Tennessee Legislative Black Caucus review implementation plans and hold public hearings with state agencies annually.

Tennessee Code Annotated, Section 4-21-905, provides for persons claiming discrimination to file a complaint with the accused state agency or the commission within 180 days of the alleged act. The program coordinator created complaint procedures and investigation manuals to train investigators to handle Title VI cases. According to the commission's executive director, the Title VI office plans to investigate Title VI complaints when staff is available. Employment and housing investigators will not be cross-trained to handle Title VI complaints, according to the executive director. As of October 1998, the Title VI office did not have any investigators. The only Title VI staff, other than the program coordinator, is a secretary who also functions as the commission's receptionist and an administrative staff person who currently serves as the commission's personnel officer.

Complaints are investigated by the state agency or by the commission's Title VI office, if requested by the state agency. To date, one request has been received. Twenty-one Title VI complaints have been filed with agencies since July 1, 1994. The commission received nine complaints from November 1997 through September 1998 that were referred to state agencies. The program coordinator monitors the cases the various agencies are handling and provides technical assistance and information as needed.

Although statute only provides for the commission to receive and investigate Title VI complaints, the Title VI office has been active in educating state agencies about the law's requirements. The program coordinator has informed state agencies of the Title VI program, established formal relations with state agency Title VI coordinators, and worked with the Department of Finance and Administration to establish a fee system to allow agencies to be charged for assistance from the commission's Title VI program.

The Title VI office has developed a two-phase strategic plan. The first phase is awareness in the form of educational outreach and technical assistance necessary to effectively enforce Title VI. The second phase is accountability, which includes steps for complaint investigation and monitoring of state agency officials after they are aware of their responsibilities and citizens are informed of their rights. According to the program coordinator, her intention is to make the Title VI office in the Human Rights Commission the source of information and assistance for state agency Title VI coordinators.

A 1996 report on federal Title VI enforcement by the United States Commission on Civil Rights expressed concern that federal agencies have not acted to ensure that Title VI is enforced in the increasing number of state-administered federally assisted programs. However, the report did acknowledge that the federal government and particularly the U.S. Department of Justice had taken initial steps in recent years to renew its commitment to carry out Title VI. However, needed funds or personnel essential for Title VI enforcement had not been provided.

One group of black contractors contends that the office is ineffective in enforcing Title VI and that the state is not taking Title VI seriously because the office consists of only one person. Based on meeting minutes, commissioners appear to agree that the Title VI program needs additional staff. According to the program coordinator, the commission's plan for the program called for four full-time employees (two investigators, an attorney, and a secretary) in addition to the program coordinator. However, the program coordinator has been the only staff member since the office was created in late 1995. No additional budgeted staff positions were created or have been subsequently added for this office. Currently, it is the intent of the executive director to conduct the Title VI program with existing staff. However, redirecting staff efforts to Title VI may deplete resources dedicated to other commission programs.

Recommendation

The General Assembly may wish to review the Human Rights Commission's statutory authority and responsibilities for the Title VI program and recommend improvements.

The General Assembly may wish to consider amending Section 4-21-901, *Tennessee Code Annotated*, to require agencies to submit their annual Title VI compliance reports and implementation plan updates to the Human Rights Commission. The General Assembly may also wish to consider amending Section 4-21-901 or adding a new section setting forth specific responsibilities of the Human Rights Commission to

- review the annual reports and implementation plans,
- hold public hearings on each agency's plan to allow for legislative and public input,
- make recommendations to state agencies when plans are found deficient,
- follow up to ensure revised plans are submitted,
- review investigation reports on complaints received and investigated by state agencies, and

- report annually to the General Assembly on the status of the implementation plans and the status of complaints filed with the commission and state agencies.

The commissioners and executive director should evaluate the program, its future direction, and the level of staffing needed in order to determine how best to accomplish the goals set for the program. If given additional Title VI responsibilities by the General Assembly, the Human Rights Commission staff should be increased. Consideration should be given to cross-training investigators in employment, housing, and Title VI to broaden the base of staff available to investigate complaints received by the commission.

Management's Comment

We concur.

RECOMMENDATIONS

LEGISLATIVE

This performance audit identified the following areas in which the General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the Human Rights Commission's operations.

1. The General Assembly may wish to consider amending *Tennessee Code Annotated* to expand or reconstitute commission membership from its current 15 Governor-appointed members to a combination of Governor and legislative appointments.
2. The General Assembly may wish to consider amending *Tennessee Code Annotated* to require the removal of any commission member who regularly fails to attend commission meetings.
3. The General Assembly may wish to review the Human Rights Commission's statutory authority and responsibilities for the Title VI program and recommend improvements.
4. The General Assembly may wish to consider amending Section 4-21-901, *Tennessee Code Annotated*, to require agencies to submit their annual Title VI compliance reports and implementation plan updates to the Human Rights Commission. The General Assembly may also wish to consider amending Section 4-21-901 or adding a new section setting forth specific responsibilities of the Human Rights Commission to
 - review the annual reports and implementation plans,
 - hold public hearings on each agency's plan to allow for legislative and public input,
 - make recommendations to state agencies when plans are found deficient,
 - follow up to ensure revised plans are submitted,
 - review investigation reports on complaints received and investigated by state agencies, and
 - report annually to the General Assembly on the status of the implementation plans and the status of complaints filed with the commission and state agencies.

ADMINISTRATIVE

The following areas should be addressed to improve the efficiency and effectiveness of the Human Rights Commission's operations.

1. Management should continue its efforts to reduce the backlog of cases and to review the progress of its efforts. The commission should continue to find methods to reduce the amount of time to investigate a case. It should identify cases appropriate for administrative closure early in the investigative process so these cases can be closed quickly and the time spent on more serious cases.
2. Management should continue its efforts to improve staff productivity, including ensuring that the commission's time and attendance policies are followed and that employees receive required performance evaluations. Evaluations should reflect employees' adherence to time and attendance policies. Management should ensure staff meet minimum job requirements.
3. The commission should develop and adopt a written conflict-of-interest policy for commissioners. In addition, the commission should expand the current policy for staff to disclose all potential conflicts of interest, not only those of a financial nature. Providing staff with examples of potential conflicts of interest would raise their awareness. The commission should require commissioners and staff to update disclosures annually. Information contained in the disclosures should be considered in all relevant activities of the commission. Commissioners and staff should take the initiative to declare potential conflicts whenever those relationships could be perceived to impair objectivity.
4. The commissioners and executive director should evaluate the program, its future direction, and the level of staffing needed in order to determine how best to accomplish the goals set for the program. If given additional Title VI responsibilities by the General Assembly, the Human Rights Commission staff should be increased. Consideration should be given to cross-training investigators in employment, housing, and Title VI to broaden the base of staff available to investigate complaints received by the commission.