OKLAHOMA ETHICS COMMISSION

FOR THE PERIOD JANUARY 1, 2007 THROUGH DECEMBER 31, 2008

OPERATIONAL AUDIT

Oklahoma State Auditor & Inspector

Audit Report of the Oklahoma Ethics Commission

For the Period January 1, 2007 to December 31, 2008

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February 12, 2010

TO THE OKLAHOMA ETHICS COMMISSION

This is the audit report of the Oklahoma Ethics Commission for the period January 1, 2007 to December 31, 2008. The Office of the State Auditor and Inspector is committed to serving the public interest by providing independent oversight and by issuing reports that serve as a management tool to the State. Our goal is to ensure a government that is accountable to the people of the State of Oklahoma.

We wish to take this opportunity to express our appreciation to the agency's staff for the assistance and cooperation extended to our office during the course of our engagement.

Sincerely,

STEVE BURRAGE, CPA
STATE AUDITOR & INSPECTOR

Background

The Oklahoma Ethics Commissions (hereinafter referred to as Commission) was originally created by statute in 1986, and then by Article 29 of the Oklahoma Constitution in 1991 to: (a) serve as the official repository for statements of financial interests, statements of organization, campaign contribution and expenditure reports, statements of inactivity, and lobbyist expenditure reports; (b) accept and file any information voluntarily supplied; (c) make available and distribute forms to all candidates, committees, officers and employees required to submit such forms; (d) conduct random reviews of reports; (e) make registrations, statements and reports available to the public; (f) preserve reports for a period of at least five years from date of receipt; (g) issue ethics interpretations when requested; (h) hold hearings, subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and subpoena records; (i) conduct investigations; (j) prosecute violations per civil proceedings in district court; (k) enter into settlement agreements; (l) educate the public and persons within its jurisdiction; (m) promulgate constitutional rules; (n) enforce and collect late fees provided for in the Ethics Commission Act; and (o) issue an annual report on its activities of the preceding year.

Oversight is provided by five Commissioners appointed by the Governor, Attorney General, President Pro Tempore of the Senate, Speaker of the House of Representatives, and Chief Justice of the Supreme Court who are registered voters of this State.

Commission members for October 13, 2006 to October 12, 2007 were:
James Loy .... Chairman
Don Bingham .... Vice Chairman
Ken Elliott .... Commissioner – term expired July 1, 2007
John Raley .... Commissioner
Bernice Shedrick .... Commissioner

Commission members for October 12, 2007 to October 17, 2008 were:
Don Bingham .... Chairman
John Raley .... Vice Chairman
James Loy .... Commissioner
Jo Pettigrew .... Commission
– appointed by the Governor to replace Ken Elliott on December 4, 2007
Bernice Shedrick .... Commissioner - resigned April 14, 2008

Commission members for October 17, 2008 to December 31, 2008 (end of the audit period) were:
John Raley .... Chairman
Jo Pettigrew .... Vice Chairman
James Loy .... Commissioner
Don Bingham .... Commissioner
Vacant .... Commissioner

Table 1 summarizes the agency's sources and uses of funds for state fiscal years 2007 and 2008 (July 1, 2006 through June 30, 2008).

Table 1 - Sources and Uses of Funds for SFY 2007 and SFY 2008

	2007	2008
Sources:		
State Appropriations	$503,732	$517,960
Other Licenses, Permits & Fees	64,902	59,804
Printing Including Sale of Publications	24,510	11,400
Copies of Other Documents	4,418	1,993
Reimbursements for Personal Services	0	312
Other - Contributions	3,000	0
Total Sources	$600,562	$591,469
Uses:		
Personnel Services	$518,149	$499,480
Professional Services	10,898	11,733
Travel	6,066	8,179
Miscellaneous Administrative Expense	32,343	19,693
Rent Expense	3,242	2,714
Maintenance and Repair Expense	1,278	2,277
General Operating Expense	3,521	4,681
Inter/Intra Agency Payments - Administrative	875	12,985
Office Furniture & Equipment	13,083	3,229
Library Equipment - Resources	40	50
Total Uses	$589,495	$565,021

Source: Oklahoma PeopleSoft Accounting System (unaudited, for informational purposes only)

Authority, Scope, and Sample Methodology

This audit was conducted in response to 74 O.S. § 212, which requires the State Auditor and Inspector's Office to audit the books and accounts of state officers whose duty it is to collect, disburse or manage funds of the state.

The audit period covered was January 1, 2007 through December 31, 2008.

We selected our samples in such a way that whenever possible, the samples are representative of the populations and provide sufficient evidential matter. Sample methodologies can vary and are selected based on the audit objective and whether the total population of data was available. Random sampling is the preferred method; however, we may also use haphazard sampling (a methodology that produces a representative selection for non-statistical sampling), or judgmental selection when data limitation prevents the use of the other two methods. We identified specific attributes for testing each of the samples. When appropriate, we projected our results to that population.

We conducted this performance 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. This report is a public document pursuant to the Oklahoma Open Records Act (51 O.S. § 24A.1 et seq.), and shall be open to any person for inspection and copying.

- **Objective 1 - To** Determine whether the agency's internal controls provide reasonable assurance that revenues and expenditures were accurately reported in the accounting records, and financial operations complied with 62 O.S. § 7.1.C.2. and 2.a, Oklahoma Constitution Article XXIX § 2.B, Oklahoma Constitution Article 29 § 4, 74 O.S. § 4256.D, and 74 O.S. Chapter 62 Appendix 257:1-1-11(c).

Conclusion

The Commission's internal controls do not provide reasonable assurance that revenues and expenditures were accurately reported in the accounting records.

With respect to the items tested, the Commission complied with Oklahoma Constitution Article XXIX § 2.B – Commissioners' travel reimbursement.

The Commission was found to be not in compliance with the following statutes and Oklahoma Constitution Article:

- 62 O.S. § 7.1.C.2 – Depositing daily or receipts of $100 or less within 5 business days;
- 62 O.S. § 7.1.C.2.a - adequate safekeeping of receipts awaiting deposit;
- Oklahoma Constitution Article 29 § 4 – Fines shall be deposited in the general revenue fund of the State;
- 74 O.S. § 4256.D – Late filing fees collected shall be deposited in the general revenue fund of the State; and
- 74 O.S. Chapter 62 Appendix 257:1-1-11(c) – forfeiture, fine, reimbursement, penalty, fee or other property collected by the commission as a penalty or assessment shall be deposited in the general revenue fund of the State.

Methodology

To accomplish our objective, we performed the following:

- Documented internal controls related to the receipting and expenditure (including payroll) processes which included discussions with Commission personnel, observation, and review of documents;
- Tested controls which included:
  - Reviewing a random sample of 3 months of payroll funding sheets, timesheets, and leave sheets to ensure accuracy and approval;
  - Determining all payroll changes were approved by the Executive Director and any changes to the Executive Director's payroll was approved by the Commission.
  - Reviewing six months of payroll information in the CORE accounting system to ensure the Executive Director's annual salary did not exceed that approved by the Commission. The Commission has approved that the Executive Director's salary shall not exceed that of a District Attorney's salary, which is set by State statute.
- Performed analytical procedures over twelve months of travel reimbursements to Commission members to determine if compensation was being received as outlined in Oklahoma Constitution Article XXIX § 2.B. In addition, we scanned the Office of State Finance 6-Digit Expenditure Report and investigated expenses that appeared excessive based on our analysis.

Observation

<u>Inadequate Safekeeping of Receipts Awaiting Deposit – Repeat Finding</u>

62 O.S. § 7.1.C.2.a states, "Each state agency that has custody of receipts of less than One Hundred Dollars ($100) shall provide adequate safekeeping of such receipts."

An effective internal control system restricts access to assets that are susceptible to misappropriation. In order to preserve proper safeguarding of assets and establish proper asset accountability, it is vital that access to assets be limited to the fewest number of people reasonably possible.

The Commission has not established an adequate system of internal control over its daily receipts. We noted that cash was kept in the Administrative Technician's desk drawer and checks to be deposited were kept in a filing cabinet. Both the desk and filing cabinet are accessible to anyone in the office. Misappropriation of assets could occur and not be detected in a timely manner.

Recommendation

We recommend the Commission keep all receipts secured to reduce the risk of theft or misappropriation.

Views of Responsible Officials

The Administrative Assistant's desk is over 20 years old and the key has been lost. Previously, receipts for photocopies have been kept in a cash box in her desk drawer. We have now moved the box to a file cabinet that is always locked, unless in use.

Checks to be deposited are kept in one of the Principal Assistant's filing cabinets next to her desk, which is always locked nightly. This file cabinet is now locked all the time, unless the Principal Assistant is using it.

Observation

<u>Inadequate Segregation of Duties Related to Receipts – Repeat Finding</u>

An effective internal control system provides for adequate segregation of duties.

The Principal Assistant is responsible for preparing the deposit; posting the deposit into PeopleSoft; and reconciling the deposits.

The Commission has an insufficient number of employees trained to perform these functions. Misappropriation of assets could occur and not be detected in a timely manner.

Recommendation

We recommend management design and implement procedures to ensure the person preparing the deposit is not also the person responsible for entering the deposits into the PeopleSoft Accounting System and for performing the monthly reconciliation.

Views of Responsible Officials

With only seven (7) employees -- soon to be six (6) due to a necessary Reduction- In-Force ["RIF"] -- the Ethics Commission is critically understaffed. This affects every phase of our operations. All of our FTE have <u>very</u> distinct duties and their own heavy workloads. This applies to our Executive Director, General Counsel, Investigator, Principal Assistant, Information Systems Network Administrator, Information Systems Applications Specialist and Administrative Assistant. It is very difficult to segregate our financial duties. Only our Principal Assistant is trained for these tasks. She has an accounting background. However, the agency has tried to segregate some of these duties by training our Administrative Assistant. We already have a policy where our

Administrative Assistant opens the mail, endorses and photocopies all checks immediately upon receipt. She hands them over to our Principal Assistant, who safeguards them in a locked file cabinet overnight, awaiting deposit. We were in the process of training our Administrative Assistant to enter the deposits into the PeopleSoft Accounting System, which would help to segregate these duties. However, our Administrative Assistant is the position we are abolishing due to our RIF. Therefore, it will be necessary to train another employee to assist with this process.

Auditor's Response Even with the Commission's current statutory restriction of 7 FTE, mitigating controls could be implemented to reduce the risks associated with a lack of segregation of duties. We suggest that the Commission reevaluate and realign the job duties of its current staff to determine if certain job duties could be reassigned in order for the Commission to reduce these risks. One mitigating control the agency could implement would be for the Executive Director, another employee, or a Commission member to perform the monthly reconciliations.

Observation

<u>Inadequate Segregation of Duties Related to Expenditures – Repeat Finding</u>

An effective internal control system provides for adequate segregation of duties.

The Principal Assistant is responsible for purchasing, posting disbursements, receiving purchases, receiving the warrants from Office of State Finance (OSF), mailing the warrants, and reconciling expenditures.

The Commission has an insufficient number of employees trained to perform these functions. Misappropriation of assets could occur and not be detected in a timely manner.

Recommendation We recommend management design and implement procedures to ensure the purchasing and receiving functions are properly segregated and that the reconciliation is performed by someone independent of this process.

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Views of Responsible Officials As previously stated, the Ethics Commission only has seven (7) employees -- soon to be six (6) -- all with very specific duties, different from each other. We were in the process of training our Administrative Assistant to assist with purchasing and accounts payable. But, as mentioned previously, that position is being abolished due to our RIF. Therefore, it will be necessary to train another employee to assist with these duties. This problem is inherent in an understaffed agency. We have very reliable people, however, with little turn-over in personnel. In the 22 years this Director has headed staff, there have been no issues or problems of the kind described.

Auditor's Response Even with the Commission's current statutory restriction of 7 FTE, mitigating controls could be implemented to reduce the risks associated with a lack of segregation of duties. We suggest that the Commission reevaluate and realign the job duties of its current staff to determine if certain job duties could be reassigned in order for the Commission to reduce these risks. Mitigating controls the agency could implement include assigning personnel other than the Principal Assistant (i.e., the Executive Director or another employee) to: perform the receiving function; receive and mail warrants; or perform the monthly expenditure reconciliation.

Observation

The Commission is not Assessing Fines

Oklahoma Constitution Article 29 § 4 states in part, "…Fines paid shall be deposited in the general revenue fund of the State." According to 74 O.S. § 4256.D regarding Late Filing Fees, "…Fees collected pursuant to the provisions of this section shall be deposited with the State Treasurer to the credit of the General Revenue Fund." 74 O.S. Chapter 62 Appendix 257:1-1-11 (c) states, "**Penalties to General Revenue Fund.** A forfeiture, fine, reimbursement penalty, fee, or other property collected by the Commission as a penalty or assessment under this title shall be deposited with the State Treasurer to the credit of the General Revenue Fund. Tangible personal property other than money collected as a penalty or assessment under this title shall be deposited with and liquidated by the State Treasurer and the proceeds thereof deposited to the credit of the General Revenue Fund."

Fines and late filing fees required to be collected by the Commission and deposited to the credit of the general revenue fund of the State have not been assessed for approximately the past 2 years. The Principal Assistant stated that the fines have not been assessed because the Commission does not have the time. The State is not receiving revenue from fines for which it is the Commission's duty to collect.

Recommendation

We recommend the Commission immediately start assessing and collecting fines and late filing fees as required by Oklahoma Constitution Article 29 § 4, 74 O.S. § 42, and 74 O.S. Chapter 62 Appendix 257:1-1-11 (c).

Views of Responsible Officials

This is another problem inherent with an understaffed agency. The process for assessing late fees is time-consuming and expensive. There are hundreds of potential assessments each year. Since late fees are assessed according to how many days late a report is filed, the date each report was received has to be double checked for accuracy to ensure that the assessments are correct. Then, individual assessments are calculated, assessment letters generated and mailed by certified mail. Respondents may request a hearing to appeal their assessment. That requires retaining a hearing officer. Hearings must be scheduled with our hearing officer during a brief window of time - within 30 days of the request, but with 20 days notice of the date of the hearing. Complete files of all reminder notices, late letters and reports received are photocopied and mailed to the hearing officer. Once the hearings are held, his Findings of Facts and Conclusions of Law must be reviewed and mailed to respondents. All assessment information is maintained in lists, including name of person assessed, amount assessed, request for hearing information, date scheduled, outcome of hearing and payment received, along with a summary sheet of all the information. All payments received must be deposited. This is a synopsis of the tasks involved with making a single assessment.

It costs the agency money to make these assessments. Certified mail is now approximately $5.50 per letter. The Commission must pay our hearing officer. This makes assessing late fees not only time-consuming, but expensive. The revenue collected for late fee assessments is deposited into the General Revenue Fund. After an appeal to the hearing officer -- and a second appeal to our five (5) member Commission -- assessments garner little revenue. In FY-07, for instance, it was $25,425. For FY-06, it was $14,900. These figures are before subtracting the expense of certified mail and paying our hearing officer.

Over the years, it has been found to be more cost and time efficient to assess late fees on an annual basis, rather than after each individual reporting period. Four or five reports are due during each year, and sometimes the same committee is late on more than one report. By assessing on a yearly basis, only one letter is produced and mailed by certified mail, and only one hearing is conducted by our hearing officer (if requested) should a committee be late on more than one report during the year. This saves both time and money.

Late fees were last assessed in the spring and summer of 2007 for calendar year 2006. In May 2007, a long-time employee retired and was not replaced until November 2007. In February 2008, another employee resigned. He was not replaced until late June 2008. This left an already understaffed agency even more short-handed.

Among her many duties, the Principal Assistant handles all personnel matters. She had to deal with the recruitment for these two positions. After the new employees were hired, she processed all the paperwork and assisted with training. Whenever there are vacancies for long periods of time, it puts a tremendous stress on the existing staff -- particularly the Principal Assistant. During this period there were two vacancies, one right after the other. The year 2008 was also an election year, which greatly increases the workload for all of our staff. Because of this, the Principal Assistant was not able to process late fee assessments in 2008. In 2009, although the late fee assessment process was started, the Principal Assistant had several special projects which prevented her from being able to work on the assessments further.

In order to stay current, the Commission needs one (1) FTE working on assessments full time. Year after year we ask the Legislature for additional staff. Each year, that request is ignored. The Commission needed a staff of 10 FTE when the agency was re-constituted as a constitutional body -- with expanded duties -- in 1991. We were given seven (7). Over the past 18 years, the Commission's work load has increased five fold. We still have a staff of seven (7).

At this time, the Ethics Commission lacks the funds to process late fee assessments -- even if we had the time. For FY-2010, our budget was cut 7%, with an additional cut of 5% from August through November and 10% for December 2009 and January 2010. The shortfall reduction will be at least 5% for the remainder of FY-2010 (February through June) and perhaps more. We are having to exhaust our revolving funds in order to offset these cuts. And, we have recently determined that it is necessary to implement a Reduction-In-Force. In doing so, we are having to abolish our Administrative Assistant position. In addition, if the predicted 20% across the board cuts are given for FY-2011, we will be looking at furloughing all employees at least 15 to 20 days in FY-2011.

Since several of our employees are eligible to retire in the next year or two, we had planned to use our excess revolving funds to pay their accumulated annual leave upon retirement. All of them have accumulated in excess of the maximum leave of 480 hours (3 months). This has accrued because workloads have kept staff from being able to take their leave. If we exhaust our revolving fund, we won't have the funds to pay the accumulated leave, and it will be necessary for our employees to take three months leave before they retire. Since we cannot have more than one full time equivalent ["FTE"] in any position at the same time -- and we wouldn't have the funds to pay their replacements anyway -- their positions cannot be filled for those three months. When this occurs (at the retirement of even one FTE), agency operations will be crippled.

For the last couple of years, the Commission has asked for additional FTEs in our budget request, one being an Administrative Assistant I. The main duty of this FTE would be the processing of late fee assessments. If and when granted by the Legislature, assessments can again be made.

Auditor's Response: We realize the Commission is currently statutorily restricted to 7 FTE. However, we suggest the Commission reevaluate and realign the job duties of its current staff to comply with their statutory requirements for assessing and collecting fines.

Observation

Daily Depositing – Repeat Finding

The Commission does not deposit receipts in accordance with 62 O.S. § 7.1.C.2, which states that receipts of $100 or more should be deposited daily or if receipts are less than $100, they can accumulate to $100 or be deposited within 5 days. Based on interviews with Commission personnel, they feel they do not have enough personnel to meet these requirements. We reviewed four deposits which ranged from seven days to twenty days between receipt and deposit. The Commission does not have enough staff cross-trained to perform necessary functions.

Recommendation

We recommend the Commission cross train employees so the receipts may be deposited in a timely manner and in accordance with State statute.

Views of Responsible Officials

During most of the year, the Ethics Commission receives various fees daily, usually totaling $100 or more. With the Principal Assistant's current workload, it is difficult for her to process deposits daily. The agency was in the process of training our Administrative Assistant II to assist with processing deposits. However, since that position is being abolished due to a RIF, it will be necessary to train another employee to assist with deposits.

Additional Procedures Performed

Methodology

As a result of the control deficiencies identified under objective 1 of this report, the following procedures were performed:

- Reviewed the expenditure population with special focus on unusual vendor names and payments to employees of the Commission. See exceptions noted below.
- Reviewed 100% of expenditures with account code 561130 - employee reimbursement (non travel). We noted one expenditure paid using account code 561130, which is noted in the finding below.
- A year-to-year comparison of expenditures by vendor and by account code to identify any unreasonable increases or decreases. No exceptions were noted as a result of applying these procedures.
- A three year comparison of the Board's revenues to ensure there are no unusual trends. No exceptions were noted as a result of applying these procedures.

Observation

Purchases were not Made in Accordance with State Statute

74 O.S. § 90.2 states: "No money shall be expended by any agency, board, commission, department or institution of the state for postage stamps or post office box rent except on vouchers made payable to United States Post Office and the warrant or check shall be endorsed by the postmaster from where the purchase is made."

Based on review of the CORE 6-Digit Expenditure Report, we noted payments were made to employees using account code of 531120 (postage). We noted 15 of 54 payments for postage were made to individuals rather than the Post Office. The total amount of inappropriate payments was $421.07. In addition, we noted one payment for $19.20 was made using account code 561130 (employee reimbursements – non travel) and this payment also appears to be for postage expense.

Failure to comply with 74 O.S. § 90.2 could result in misappropriation of assets due to the possibility of personal items being mailed using State funds.

Recommendation

We recommend the Commission only mail items using Department of Central Services or by direct payment to the United States Post Office.

Views of Responsible Officials

All of our mail is processed using the Department of Central Services – Interagency Mail ["DCS-Mail"], with one exception. The staff produces an administrative report monthly for our Commissioners. It is mailed one week prior to each Commission meeting, usually held on Fridays. DCS-Mail picks up our mail no later than 2:00 p.m. each day. Most of the time, our administrative report, a multiple page mail-out varying between two to five inches thick, is not complete and ready to mail until after 5:00 p.m. In order for our Commissioners to receive it for their review on Saturday, or at the very latest on Monday prior to our Friday meeting, it must be mailed on Friday evening. Therefore, one of our employees, either our Investigator or Executive Director, takes the five (5) administrative report packets to the post office and pays the postage out of personal funds. They are later reimbursed for this postage.

Until recently -- when the Office of State Finance requested that a correction of the account code on a postage reimbursement claim be made -- the Principal Assistant was not aware that there was an account code for "employee reimbursements – non travel" and had previously been using the account code for "postage" for these reimbursements. She was told to use, instead, the account code "employee reimbursements – non travel" for these reimbursements. She was <u>not</u> told at the time of the above request and was not aware that 74 O.S. Section 90.2 states that "no money shall be expended by any agency, board, commission, department or institution of the state for postage stamps or post office box rent except on vouchers made payable to United States Post Office and the warrant or check shall be endorsed by the postmaster from where the purchase is made" until this audit finding was submitted for her review and response.

In the future, the Commission will no longer mail our administrative report using personal funds and then reimbursements.

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