OKLAHOMA

STATE AUDITOR & INSPECTOR

OKLAHOMA REAL ESTATE COMMISSION

Operational Audit

For the period of March 1, 2013 through June 30, 2018

Cindy Byrd, CPA

State Auditor & Inspector

Audit Report of the Oklahoma Real Estate Commission

For the Period March 1, 2013 through June 30, 2018

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July 24, 2019

TO THE OKLAHOMA REAL ESTATE COMMISSION

We present the audit report of the Oklahoma Real Estate Commission for the period March 1, 2013 through June 30, 2018. The goal of the State Auditor and Inspector is to promote accountability and fiscal integrity in state and local government. Maintaining our independence as we provide this service to the taxpayers of Oklahoma is of utmost importance.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during our engagement.

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.

Sincerely,

Cindy Byrd

CINDY BYRD, CPA
OKLAHOMA STATE AUDITOR & INSPECTOR

MAY 2019

Oklahoma Real Estate Commission

Performance Audit Report

Executive Summary

Objective

The objective of this audit was to determine whether the Real Estate Commission's internal controls provided reasonable assurance that revenues and expenditures (both miscellaneous and payroll) were accurately reported in the accounting records, and financial operations complied with applicable finance-related laws and regulations.

Engagement Background

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 all state agencies whose duty it is to collect, disburse, or manage funds of the state. We focused on the major financial-related areas of operations based on assessment of materiality and risk for the period March 1, 2013 through June 30, 2018. During our planning process, concerns were brought to our attention by several parties regarding the audit period executive director's timekeeping and presence at the agency, and additional detailed procedures were developed to address those concerns.

What We Found

- **Audit Period Executive Director Overpaid at Least $42,000 Due to Absenteeism and Unreported Leave**

  We compared evidence of the director's hours worked to available timekeeping and leave usage records. In the 14-month period for which the pertinent records were available, the director was out of the office without taking leave and without appearing to be on Commission business for 798 total hours, or an average of 11 days per month. This resulted in overpayment of over $42,000 based on the director's salary and benefits for just the 14 months analyzed.

  This urgent information was presented to the Real Estate Commission in December 2018, and the director immediately resigned.

- **Internal Control Weaknesses**

  We identified several weaknesses in segregation of financial duties and related documentation and reviews. It is important to note that the director's regular absence impacted the overall environment at the Agency and elevated risk in various ways. This disrupted the effectiveness of key internal control activities and reviews, contributing to the numerous areas for improvement in the audit report.

  In addition, fines imposed by the commission were not tracked in a clear and reliable manner, and the agency had experienced delays in sending 61 orders imposing fines to the Attorney General's (AG) for a required approval. These fines totaled over $100,000 and had case dates ranging from 2016 to 2019.

- **Spending and Transfers from Oklahoma Education and Recovery Fund in Excess of Statutory Limits**

  $20,949 in agency-appropriate but non-fund related expenditures, as well as a transfer of $41,754 to the agency's revolving fund, were made from the Education and Recovery Fund while the fund's balance was under the statutory threshold of $250,000 for such actions. This occurred under the Agency's previous CFO.

What We Recommend

We recommend the Commission:

- Provide improved oversight over executive director's attendance and timekeeping.
- Update policies and procedures to reflect expectations for the director's time and attendance, as well as permitted alternate work schedules and telecommuting.

We further recommend management and key staff:

- Make specific improvements to financial control processes as outlined in the report, to ensure duties are properly segregated or mitigating reviews are in place and properly documented.
- Formally track the balance in the Oklahoma Education and Recovery Fund to ensure expenditures and transfers from the fund are made as allowed by statute.
- Track fines imposed by the Commission in a central location, taking steps to ensure the list of fines actively due is complete, and ensure orders imposing fines are sent to the AG's office for approval and processed in a timely manner.

The Commission and newly appointed executive director were very cooperative and expressed plans to improve the environment and processes at the agency, as detailed in their responses throughout the report.

Background

The Oklahoma Real Estate Commission (the Agency) is the regulatory agency for the Real Estate License Act, which became effective in January 1950. They conduct examinations for applicants for sales associate and broker licenses and grant or deny licenses. The commission also conducts hearings on complaints within the industry and makes rulings on such complaints.

The Agency's mission is "to safeguard the public interest and provide quality services by assisting and providing resources; encouraging and requiring high standards of knowledge and ethical practices of licensees; investigating and sanctioning licensed activities; and through the prosecution of any unlicensed person who violates the Oklahoma License Code and Rules." They also express the vision "to be the center point for the consumer and the real estate professional by providing quality education, support resources, and by providing guidance in regulation compliance."

Oversight is provided by seven commissioners (the Commission) appointed by the Governor with the advice and consent of the Senate. Five members are licensed real estate brokers with at least five years active experience, one member is a lay person, and one is a representative of an approved Oklahoma real estate school. Each serves a term of four years.

Commission members as of April 2019 are:

Charles "Mack" Barnes .... School member
Steve Burris .... Broker member
Dr. J. David Chapman .... Broker member
Douglas Emde .... Broker member
Rodger Erker .... Broker member
Julie Tetsworth .... Broker member
Monica Wittrock .... Lay member

The following table summarizes the Agency's sources and uses of funds for fiscal years 2017 and 2018 (July 1, 2016 through June 30, 2018).

Sources and Uses of Funds for FY 2017 and FY 2018

	2017	2018
Sources:		
Licenses, Permits, Fees	$1,613,717	$1,623,488
Income from Money and Property	13,442	15,436
Other Revenues	461	516
Total Sources	**$1,627,620**	**$1,639,440**
Uses:		
Personnel Services	$1,035,193	$1,008,460
Professional Services	329,847	338,675
Travel	42,899	52,347
Administrative Expenses	139,353	133,300
Property, Furniture, Equipment	5,840	336
Assistance, Payments to Local Govn'ts	112,687	10,455
Transfers and Other Disbursements	257	276
Total Uses	**$1,666,076**	**$1,543,849**

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

Scope and Methodology

Our 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 all state agencies whose duty it is to collect, disburse, or manage funds of the state.

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.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessment of materiality and risk for the period March 1, 2013 through June 30, 2018. Unless otherwise noted in the report, detailed audit procedures focused on the period of July 1, 2016 through June 30, 2018, addressing the most current financial processes and providing the most relevant and timely recommendations for management.

Our audit procedures included inquiries of appropriate personnel, inspections of documents and records, and observations of the Real Estate Commission's operations. As discussed on the next page, due to limitations in the Agency's record keeping for tracking fines, we were unable to gain sufficient and appropriate evidence to conclude as to their compliance with state statutes 59 O.S. § 858-402 and 59 O.S. § 858-602. Further details regarding our scope and methodology are included throughout the report and in the appendix.

We utilized sampling of transactions to achieve our objectives. To ensure the samples were representative of the population and provided sufficient, appropriate evidence, the random sample methodology was used. We identified specific attributes for testing each of the samples.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, errors or fraud may occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

OBJECTIVE	Determine whether the Agency's internal controls provide reasonable assurance that revenues and expenditures (both miscellaneous and payroll) were accurately reported in the accounting records, and financial operations complied with applicable finance-related laws and regulations.

Conclusion

The Agency's internal controls do not provide reasonable assurance that revenues, miscellaneous expenditures, or payroll expenditures were accurately reported in the accounting records.

Financial operations did not comply with:

- 59 O.S. § 858-602, detailing the transfer of fiscal year end balances over $250,000 from the Education and Recovery Fund to the Agency's revolving fund.
- 59 O.S. § 858-601, requiring claims from the Education and Recovery Fund be approved by the director of OMES.
- 59 O.S. § 858-605, requiring the Education and Recovery Fund have a cash balance of at least $250,000 before allowable education-related expenditures can be made.
- 59 O.S. § 858-207, requiring reporting of all fees charged, collected, and received at the end of the fiscal year to the Governor's Office and the Office of the State Auditor and Inspector.

Due to serious weaknesses in internal controls over revenues and tracking of fines issued, we had difficulty in concluding on the Agency's compliance with certain related statutes.

- We were able to conclude that, with regard to the deposits and transfers tested, the Agency complied with the portion of 59 O.S. § 858-207 requiring the transfer of 10% of gross fees charged, collected, and received to the state general revenue fund. However, revenue control weaknesses heightened the risk that not all funds received were deposited and therefore included in the 10% transfer.
- We were unable to conclude on the Agency's compliance with the fund deposit requirements outlined in 59 O.S. § 858-402 and 59 O.S. § 858-602. See further discussion on page 8.
- We were unable to conclude on the Agency's compliance with fine guidelines in 59 O.S. § 858-402 or confirm fines issued were collected. See further discussion beginning on page 14.

Financial operations complied with 74 O.S. § 3601.2.A, setting limits on the director's salary. However, discussion of the director's salary is complicated by the issues discussed in our first finding on the next page.

Due to the extensive procedures performed in this engagement, our detailed methodology is presented in the appendix at the end of this report.

Policies and Procedures

To support any changes made as a result of the recommendations in this report, we suggest management, with the oversight of the Commission, update relevant Agency policies and procedures. Policies and procedures in general should include internal control plans and be reviewed and updated at least annually, in line with guidance listed in Oklahoma's Statewide Accounting Manual.

FINDINGS AND RECOMMENDATIONS

Executive Director Overpaid at Least $42,000 Due to Absenteeism and Unreported Leave

Concerns regarding the executive director's regular absence from the Real Estate Commission's office and related timekeeping issues were brought to our attention by multiple parties during our planning process. We developed procedures to compare evidence of the director's hours worked to timekeeping records, related use and accrual of annual and sick leave, and any related policies and procedures.

We reviewed the director's electronic computer log, building access records, and Employee Monthly Leave Accrual Reports from the state-wide accounting system. According to these records, for the period between September 1, 2017 and October 31, 2018[1] the director was out of the office without taking leave and without having any other substantiated work-related activity for approximately 798 hours. In other words, the director was absent from the office on average 11 days a month without using annual or sick leave for those days.

We reviewed the director's email records and found that occasionally there was a minimal number of emails sent on days the director was absent from the office. However, these instances are not considered days worked in our analysis, as the Agency does not have a teleworking policy in place and the director was not given permission by the Commission to telework. Our findings are based upon the Agency's current policy that all employees are expected to work from 8:00AM to 4:30PM.

The director's annual salary plus benefits for the time period noted above was $111,528. This salary equates to $53.62 an hour, bringing the calculated overpayment to the director for the 14-month period analyzed to $42,788.[2] While our analysis only covered 14 months, multiple Agency staff indicated the director's absenteeism had been an issue for the length

[1] Building access records were only available for this 14-month period; therefore, the scope was limited to the procedure performed.
[2] Hourly salary calculation: $111,528/2080 annual working hours. Overpayment calculation: 798 hours at $53.62 per hour.

of her tenure at the Agency, so in reality the overpayment may be higher. However, we did not calculate an overpayment for the entire time of the Director's tenure because complete detail of records was unavailable for review.

It was determined by SA&I management that the information regarding the director's frequent absences from work should be presented to those charged with governance prior to the completion of the audit.[3] Our office met with the Real Estate Commission on December 12, 2018 at a regularly scheduled Commission meeting and presented the information regarding the director's attendance and leave usage. After the presentation was completed, the director's resignation was given effective immediately to the chairman and the Commission's attorney.

> *The director's regular absence impacted the overall environment at the Agency and elevated risk in various ways. This disrupted the effectiveness of key internal control activities and reviews, contributing to the numerous areas for improvement in this report.*
>
> *The Agency's staff, by all indications hard working and committed to the Agency, will only benefit from the leadership of a present and attentive director.*

Impact on the Agency

An organization's "control environment"[4] is the set of standards, processes, and structures that provide the basis for carrying out internal control (factors that detect or prevent risk) across the organization. The board of directors and senior management establish the tone at the top regarding the importance of internal control, including expected standards of conduct. Management reinforces expectations at the various levels of the organization.

The control environment comprises:

- the integrity and ethical values of the organization
- the parameters enabling the board of directors to carry out its governance oversight responsibilities
- the organizational structure and assignment of authority and responsibility
- the process for attracting, developing, and retaining competent individuals

[3] According to Government Auditing Standards section 6.78, "For some matters, early communication to those charged with governance or management may be important because of their relative significance and the urgency for corrective follow-up actions."

[4] Definition and related information per standards set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) *Internal Control - Integrated Framework.*

- the rigor around performance measures, incentives, and rewards to drive accountability for performance.

The resulting control environment has a pervasive impact on the overall system of internal control.

Tone at the top and throughout the organization is fundamental to the functioning of an internal control system. Without a strong tone at the top to support a strong culture of internal control, awareness of risk can be undermined, responses to risk may be inappropriate, control activities may be ill defined or not followed, information and communication may falter, and feedback from monitoring activities may not be heard or acted upon. Therefore, tone can be either a driver or a barrier to internal controls.

The findings discussed in the remainder of this report may relate to other Agency personnel, because it is their duty and responsibility to perform the everyday functions of the Agency. However, it is ultimately management's responsibility to ensure those duties and responsibilities are functioning at an adequate level and controls are designed and operating effectively to carry out the mission of the Agency.

Recommendation

The Commission should provide sufficient oversight of the executive director's work hours to ensure accountability and accurate timekeeping. This may include requiring the director to complete a timesheet or leave request documents. Evidence of the Commission's oversight should be documented and retained.

The Agency's policies and procedures should be updated to reflect expectations and requirements specific to the director's timekeeping. They should also be updated to include any allowed alternate work schedules or teleworking procedures. In updating the policies, consideration should be given to maintaining an effective control environment and ethical tone at the top of the Agency.

Views of Responsible Officials

These findings are related to an employee that is no longer employed at the Commission. Policy and procedure modifications of the Executive Director position and all other Commission staff now require timekeeping requirements that document the number of hours worked each day of each pay period. In addition, a policy will be implemented to address alternate work schedules and teleworking procedures.

Revenue at Risk Due to Inadequate Segregation of Duties and the Need for Reliable Reconciliation

The United States Government Accountability Office's *Standards for Internal Control in the Federal Government* (2014 version)[5] states that in designing control activities to achieve objectives and respond to risks, "Management divides or segregates key duties and responsibilities among different people to reduce the risk of error, misuse, or fraud. This includes separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets so that no one individual controls all key aspects of a transaction or event."

The GAO Standards further require that "Management considers segregation of duties in designing control activity responsibilities so that incompatible duties are segregated and, where such segregation is not practical, designs alternative control activities to address the risk."

The Agency receptionist is responsible for receipting revenues. At times during the audit period, various individuals with licensing responsibilities filled in for this position.

The business manager is responsible for preparing the deposit, taking the deposit to the Treasurer's Office, and reconciling the bank deposit slip to the deposit entry made by Agency Business Services (ABS)[6] in the state-wide accounting system. In addition to these responsibilities, the business manager has access to make changes to financial records in the Agency's licensing database. While the director of the Agency signs the monthly clearing account reconciliation form, the business manager is responsible for reconciling that form to state-wide accounting reports.

This arrangement of duties creates opportunities for the business manager, and at times other individuals receiving funds, to misappropriate receipts and conceal the theft by making inappropriate adjustments in the Agency's licensing database. In addition, the director's cursory review of monthly financial activity does not include a comparison of licensing activity to funds deposited.

Impact on Statutory Compliance

As noted on page 4, due to this inadequate segregation of duties and a lack of reliable recordkeeping, we were unable to determine whether the Agency complied with statutes 59 O.S. § 858-402 and § 858-602, which require all monies received by the Commission resulting from administrative fines and license fees be deposited to the Oklahoma Real Estate Education and Recovery fund. Given our review of deposit reports, both internal and from the state-wide accounting system, it appears the Agency is generally transferring fines and portions of license fees into the

[5] Although this publication (GAO Standards) addresses controls in the federal government, this criterion can be treated as best practices. The theory of controls applies uniformly to federal or state government.

[6] The Agency contracts with the ABS division of the Office of Management and Enterprise Services to provide certain financial support services, including posting deposits and expenditures to the statewide accounting system.

Oklahoma Education and Recovery Fund as required by statute. However due to the failure to adequately track fines (discussed later in the report) and revenue process weaknesses, we were unable to perform effective detailed procedures to conclude on statutory compliance.

Recommendation

We recommend that the business manager not have access to make changes in the Agency's licensing database. If there is not a "read only" option in the Agency's licensing database, we recommend another individual, such as the receptionist, print the needed reports for the business manager to process the deposit. The business manager may then perform an independent comparison of licensing activity to funds included in the deposit.

Management should ensure there are adequate records of fines that have been approved by the Commission, including their dollar amount, and payments resulting from those fines have been collected and deposited in the Oklahoma Education and Recovery Fund.

Additionally, we recommend the director perform a detailed review of the monthly reconciliation and accompanying state-wide accounting reports. This could include a random comparison of daily revenue reports to bank deposit slips, to ensure deposits were complete.

Views of Responsible Officials

The Commission has modified the duties and processes of the Business Manager and Receptionist relating to their allowable access to our licensing system, AMANDA. The Business Manager's access has been adjusted to a Read-Only. The Receptionist will update licensing records relating to payments made to a license record. The Business Manager will then be able to print a report the following morning and reconcile all payments posted. In addition, the Summary of Receipts and Disbursements is reviewed monthly by the Executive Director with all records documented and retained.

Unauthorized Payments May Occur Due to Inadequate Segregation of Duties

The business manager is responsible for some aspects of purchasing and receiving, as well as forwarding invoices to ABS for payment.

The director signs off on invoices before payment, and reportedly reviews a detailed expenditure report as part of her other duties. However, this review is not documented. In addition, the director's regular absence from the Agency during the audit period increased the chances an unauthorized invoice could be submitted to ABS for payment, and decreased her familiarity with day-to-day activities, decreasing the effectiveness of her review.

This creates the opportunity for the business manager to sign and forward an unauthorized invoice to ABS, and for the business manager or ABS to make an error that is not detected.

As noted earlier, GAO Standards state that in designing control activities to achieve objectives and respond to risks, "Management divides or segregates key duties and responsibilities among different people to reduce the risk of error, misuse, or fraud. This includes separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and handling any related assets so that no one individual controls all key aspects of a transaction or event."

Recommendation

We recommend the current director (appointed after the audit period) or another knowledgeable party independent of the payment process review a line-item detailed expenditure report (such as the 6-Digit Detail of Expenditure Report from the statewide accounting system) to ensure all payments are authorized. This review could be performed monthly or on a random, unannounced basis, and the report should be provided to the reviewer in a reliable, unedited format. Evidence of this review should be retained with the date and signature of the reviewer included.

Views of Responsible Officials

The recommendation of the audit report indicated the Executive Director should review a line-item detailed expenditure report, such as the 6-Digit Detail of Expenditure Report from the statewide accounting system. This report is now reviewed by the Director in comparison with an expenditure spreadsheet maintained by the Business Manager. This review is acknowledged by the Director with a date and signature and retained by the Director.

Payroll Approvals Not Adequately Documented

The Agency does not have a documented process in place to ensure employees' time is approved by a supervisor. While staff related that supervisors approve employees' leave reporting within the statewide accounting system, this process does not produce a record that is then retained. Through discussions with OMES Human Capital Management (HCM) personnel, we determined payroll can be run without employees' leave being internally approved in the system. This creates an opportunity for employees to take unauthorized time off without the use of leave.

In addition, we evaluated 15 payroll change transactions, comprising all changes from fiscal years 2017 and 2018 that had a financial impact (such as hires, terminations, and pay raises). For five of those payroll changes, the Agency was unable to provide approved documentation for the change. Failure to properly document and approve payroll change transactions increases the likelihood that changes could be made, by mistake or purposefully, without authorization.

GAO Standards emphasize the importance of segregation of duties, as discussed in the two previous findings. In addition, the Standards state that in order to use quality information to achieve their objectives, "Management obtains relevant data from reliable internal and external sources in a timely manner based on the identified information requirements. Reliable internal and external sources provide data that are reasonably free from error and bias and faithfully represent what they purport to represent. Management evaluates both internal and external sources of data for reliability."

Recommendation

We recommend the director perform a detailed review of payroll claims and verify all employees' leave has been properly approved within the statewide accounting system as part of this review process. Documentation of this review and approval should be retained. The director's time should be reviewed as deemed appropriate by the Commission; see recommendation on page 7.

In addition, we recommend documentation of all payroll change authorizations be retained and reflect appropriate approvals.

Views of Responsible Officials

The Executive Director has initiated a detailed review of all payroll claims by receiving a copy of the payroll report from OMES and retaining the documentation. Also, all staff timesheets are reviewed by their supervisor and compared to the employee calendar. Once approved by the supervisor, the timesheet will be compared to the employee's reported time record by the Office Manager. The time records input into Peoplesoft will be authorized by the Executive Director.

Unallowable Expenditures Made from the Oklahoma Education and Recovery Fund

The main purpose of the Oklahoma Education and Recovery Fund according to 59 O.S. § 858-601 is to reimburse any claimant who has been awarded a judgment after "suffering monetary damages by an Oklahoma real estate licensee in any transaction for which a license is required under The Oklahoma Real Estate License Code." 59 O.S. § 858-605 permits that "any time when the total amount of monies deposited in the Oklahoma Real Estate Education and Recovery Fund exceeds Two Hundred Fifty Thousand Dollars ($250,000.00), the Commission in its discretion may expend such excess funds each fiscal year for educational purposes."

We reviewed the beginning cash balances and expenditures from the Education and Recovery Fund in detail for each month of fiscal years 2017 and 2018. The beginning cash balance was below $250,000 for all ten months from November 2016 through August 2017. During that time, expenditures other than reimbursements to claimants continued to be made, totaling nearly $21,000 for the ten-month period.

Month	Cash Balance	Non-Judgment Expenditures
Nov 2016	$ 224,277	$ 3,920
Dec 2016	205,313	740
Jan 2017	189,079	390
Feb 2017	181,303	385
Mar 2017	182,699	582
Apr 2017	180,134	963
May 2017	180,834	933
Jun 2017	177,776	6,806
Jul 2017	177,912	1,781
Aug 2017	165,786	4,449
	Total	$ 20,949

The Agency does not formally track the cash balance in the Oklahoma Education and Recovery Fund, and as a result made these expenditures that were not allowable under state statute. The Agency also made a transfer from the Education and Recovery Fund to its revolving fund that appears to have been unallowable due to the fund balance during this time period; see finding beginning on page 13.

Additionally, 59 O.S. § 858-601 requires claims paid from the Oklahoma Education and Recovery Fund be approved by an authorized employee of the Commission and the director of OMES.

The Agency does not currently seek the approval of the director of OMES for payments from the Oklahoma Education and Recovery Fund. While this technically places the Agency out of compliance with state statute 59 O.S. § 858-601, the requirement for such high-level approval appears unusual given our experience with state agencies and given the relatively low dollar value of expenditures from the fund.

Recommendation

We recommend the Agency formally track the cash balance in the Oklahoma Education and Recovery Fund and ensure the amount exceeds

$250,000 before using the fund for purposes other than reimbursements to claimants. While this could be difficult to calculate on a day-to-day basis due to financial timing issues, the individual approving expenditures could, for example, ensure the month's beginning balance was over $250,000.

We also recommend management seek legal advice regarding updating the statutory requirement that the OMES director approve claims from the Oklahoma Education and Recovery Fund. Because this could be a lengthy process, we recommend that in the meantime management seek written authority from the Commission and director of OMES to make purchases below an agreed-upon threshold, as the fund balance permits.

Views of Responsible Officials

The expenditures made during FY 17 and FY 18 were made by a former OREC employee. The Business Manager now reviews the Education and Recovery balance on a monthly basis from the Allotment Budget and Available Cash report received from OMES. This balance is also included in the financial report provided to the Commissioners at each Commission meeting.

Each claim made upon the fund requires approval of the Commission. We are seeking legal advice from our counsel to pursue an amendment to the additional requirement of OMES director approval. Until that time, we will seek approval of all claims from the OMES director.

Unallowable Transfers Made from Oklahoma Education and Recovery Fund

According to state statute, the Agency can expend funds from its Education and Recovery Fund for specific legal and educational purposes discussed in detail on page 11. 59 O.S. § 858-602 states that at fiscal year end, the Commission is then to transfer any remaining balance over $250,000 (adjusting for remaining allowable expenditures already in process) into the Oklahoma Real Estate Commission Revolving Fund.

The cash balance in the Oklahoma Education and Recovery Fund was not above $250,000 at the close of fiscal year 2017. However, the Agency still made a transfer out of the fund for that fiscal year, conducted in November 2017. The transfer was made by OMES as requested in a letter signed by the Agency director, stating that the transfer was for fiscal year 2017.

Although the fund balance at June 30, 2017 was only $177,776.42, the Agency requested and was granted a transfer to its revolving fund of $41,754.37. The letter did not include adequate details for us to evaluate the related calculation.

This transfer was not allowable under the requirements of 59 O.S. § 858-602, and may have resulted in funds that were statutorily permitted only for the specific purposes of the Education and Recover Fund being used for other Agency expenditures.

Recommendation

In concert with our recommendation beginning on page 12, we recommend the Agency formally track the cash balance in the Oklahoma Education and Recovery Fund as needed to ensure the final amount exceeds $250,000 as of the end of the fiscal year before making transfers to the revolving fund. We recommend the director verify the cash balance as part of the process of approving the transfer request letter, and retain documentation reflecting the calculation process.

Views of Responsible Officials

Previous transfers from the Education and Recovery fund were made by a former OREC employee who failed to adhere to the written requirements of only transferring funds over $250,000. The current Business Manager and Director now independently review the monthly Allotment Budget and Available Cash report in order to track the Education and Recovery fund cash balance.

Fines Not Adequately Tracked by Agency, and Over $100,000 in Fines Not Processed in a Timely Manner

59 O.S. § 858-402 permits the Oklahoma Real Estate Commission to impose administrative fines on any licensee licensed pursuant to the Oklahoma Real Estate License Code and sets limits on the dollar amounts of those fines. By executive order from Governor Mary Fallin, administrative fines must be approved by the Attorney General's Office (AG) once imposed by the Commission.

The Agency does not have a clear and reliable tracking process in place to ensure administrative fines charged by the Commission are progressing appropriately and collected in a timely manner and in the appropriate amount. Staff admittedly piece-meals information together in order to process and collect fines, with information spread across many documents and systems, with no one document or system housing all pertinent information relating to the cost and status of a single fine.

Staff further reported there are orders imposing fines that have been awaiting approval by the AG's office for over two years. Further discussion with the AG's office and current Agency management revealed this was because the Agency had not forwarded the orders for approval. The list provided by the Agency as of February 2, 2019 totaled 61 orders imposing fines still waiting to be sent for approval, with order dates ranging from 2016 to 2019 and totaling $116,750.

We selected a random sample of four months from FY 2017 and 2018 and found 24 fines imposed by the Commission during those months. Of the 24 orders imposing fines, 15 had not yet been sent for approval by the

AG's Office; we evaluated the available documentation for the remaining nine fines.

- The Agency was able to provide documentation of the fine having been receipted for only two cases.
- For each of the other seven cases, the Agency provided a memo listing dates for issuance, approval, and collection but no evidence of receipt and deposit of the fine. Due to difficulty generating reports and information regarding fines in the Agency's AMANDA database system, coupled with revenue control weaknesses described elsewhere in this report, it is difficult to reliably verify these receipts.

As a result of these issues, we were unable to determine whether the Agency is in compliance with 59 O.S. § 858-402. The failure to adequately track fines and the subsequent receipts puts the Agency at risk for misstating revenues and failing to collect or deposit fines in the Oklahoma Education and Recovery Fund, without detection.

This weakness, along with the lack of timely forwarding of orders to the AG's office, delays the collection of revenues that are then used to make certain expenditures, as well as transfers to the Agency's general fund. In addition, the delay in approving and officially issuing fines may cause confusion and hardship among respondents who know they are subject to fines but who must wait an unpredictable length of time to learn the final amount and due date.

Recommendation

We recommend management perform an exhaustive review of fines that have been imposed by the Commission, determining a reasonable timeframe of years to be included in such a procedure, to ensure the Agency's record of fines is accurate and complete. One method for such a procedure would be to review the minutes of each commission meeting going back a number of years, tracing each case to its conclusion. We also strongly recommend the Agency ensure all relevant information pertaining to each fine and its status is centralized to one spreadsheet or tracking system. Fine receipting should be properly documented and maintained to reflect collection.

The Agency should continue to make process changes would enable fines to be forwarded to the AG's Office and processed in a timely manner.

Views of Responsible Officials

A review of all pending cases was performed by the Executive Director resulting in a spreadsheet of all pending orders requiring review by the Attorney General's office. Each fine ordered by the Commission was included on the spreadsheet identified by case number and respondent name. Sixty-six cases were identified requiring action by the Commission. Efforts are being made to work through the spreadsheet by preparing a written request seeking approval of each order from the Attorney General's office. In addition, a policy was established wherein each Commission approved order will be submitted to the Attorney General's office within 10 days of adoption by the Commission.

Fee Report Not Submitted to the Governor's Office and the Office of the State Auditor and Inspector

State statute 59 O.S. § 858-207 requires that "the Commission shall at the close of each fiscal year file with the Governor and State Auditor and Inspector a true and correct report of all fees charged, collected and received during the previous fiscal year."

The Agency does not prepare an annual submission specifically documenting fees charged, collected, and received. Management previously believed submission of the Agency's Annual Report to the governor satisfied this requirement. While fees are incorporated in the lump sum revenue figure included in the report, the Annual Report does not meet the specific requirements of 59 O.S. § 858-207 and is not submitted to the State Auditor's Office.

Recommendation

We recommend the Oklahoma Real Estate Commission comply with 59 O.S. § 858-207 by submitting a report of all fees charged, collected, and received during the previous fiscal year to the Governor's Office and the Office of the State Auditor and Inspector. If the Agency believes this requirement is overly cumbersome or unnecessary, we recommend they seek legal advice regarding potential changes to the relevant statute.

The Agency should strive to correct the internal control deficiencies discussed elsewhere in this report, to ensure all revenues received by the Agency are deposited and included in the reported figures.

Views of Responsible Officials

According to the proposed recommendations, the Commission should collect monthly data from the Paid Fees spreadsheet and the AMANDA report of received fees. In years past, the Commission has submitted an annual report to the Governor and the State Auditor and Inspector which included a report of the total fees collected. However, it appears the interpretation is now that this report should include an itemized report of fees, for which we will comply.

APPENDIX: Detailed Audit Methodology

To accomplish our objective, we performed the following:

- Evaluated significant internal controls and process factors related to revenues and miscellaneous expenditures; see results in related findings.
- Evaluated significant internal controls related to payroll and tested those controls as appropriate, which included:
    - Reviewing all 15 payroll changes with a financial impact that occurred in FY 17 and 18 to ensure they were properly documented and approved by the Agency director. Exceptions were noted, as discussed in the related finding.
- Gained an understanding of issues related to the executive director's timekeeping, leave usage, and degree of presence in the office through discussion with staff and review of documentation. Compiled related data using the director's e-mail records, building access records, and leave usage reports from the statewide accounting system, as well as other supporting documents. Due to the urgency of the resulting concerns, immediately provided relevant information to those charged with governance as discussed in the related finding.
- Evaluated the Agency's processes related to the Education and Recovery Fund, including deposits to the fund, transfers from the fund, and expenditures from the fund, and tested them for compliance to the extent possible, which included:
    - Analyzing expenditures from the fund and the corresponding monthly cash balance of the fund to determining whether monthly expenditures complied with the statutory requirement that non-claimant payments only be made when the balance exceeded $250,000.
    - Testing 100% of payments from the fund coded as reimbursements to claimants to ensure they were for that statutorily permitted purpose.
    - Testing 20% of non-payroll payments from the fund under any other account code to ensure they were for statutorily permitted educational purposes and coded appropriately.
    - Testing payroll payments from the fund to ensure they were paid to individuals involved in the fund's activities as outlined in statute and proportionate to the employee's job duties.
    - Determining the frequency and nature of transfers out of the fund and corresponding cash balances in the fund.
    - Reviewing any available support for the Agency's fiscal year 2017 transfer from the Education and Recovery Fund

to the revolving fund and determining whether the cash balance at June 30, 2017 was appropriate for the transfer to take place.

- Recalculated the amount transferred to the state's general revenue fund for all months during the audit period and compared to records from the Statewide Accounting System to ensure 10% of appropriate fees deposited by the Agency were transferred as required by 59 O.S. § 858-207.
- Compared the director's salary for fiscal years 2014-2018 (per the statewide accounting system) to guidance established by 74 O.S. § 3601.2.A, and confirmed the salary was within statutory limits.
- Evaluated the Agency's process for tracking and collecting fines, and attempted to test fines for compliance with 59 O.S. § 858-402, which included:
    - Reviewing fines issued by the Commission during four randomly selected months to determine their status and dollar value, comparing to guidelines in 59 O.S. §, 858-402.
- Evaluating reports provided by the Agency and its Attorney General to ascertain the dollar value and age of orders imposing fines not yet forwarded for approval at the AG's Office.
- Evaluated the Agency's process related to the reporting of all fees charged, collected and received at the end of the fiscal year to be submitted to the Governor's Office and the Office of the State Auditor and Inspector as required by statute 59 O.S. §, 858-207.

Exceptions resulting from these procedures were noted as discussed in the related findings.

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