



FINANCIAL AUDIT DIVISION REPORT

Office of the Attorney General
Internal Control and Compliance Audit
January 1, 2007, through March 31, 2009

September 24, 2009

Report 09-33

FINANCIAL AUDIT DIVISION

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OFFICE OF THE LEGISLATIVE AUDITOR

State of Minnesota • James Nobles, Legislative Auditor

September 24, 2009

Senator Ann H. Rest, Chair
Legislative Audit Commission

Members of the Legislative Audit Commission

The Honorable Lori Swanson
Attorney General

This report presents the results of our internal control and compliance audit of the Office of the Attorney General for the period January 1, 2007, through March 31, 2009.

We discussed the results of the audit with the Office of the Attorney General's staff on September 11, 2009. The audit was conducted by Amy Jorgenson, CPA (Audit Manager) and Xin Wang, CPA (Auditor-in-Charge), assisted by auditors Kayla Borneman, CPA and Tracia Gimbut.

This report is intended for the information and use of the Legislative Audit Commission and the management of the Office of the Attorney General. This restriction is not intended to limit the distribution of this report, which was released as a public document on September 24, 2009.

We received the full cooperation of the Office of the Attorney General's staff while performing this audit.

/s/ James R. Nobles

James R. Nobles
Legislative Auditor

/s/ Cecile M. Ferkul

Cecile M. Ferkul, CPA, CISA
Deputy Legislative Auditor

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Report Summary

Conclusions

The Office of the Attorney General's internal controls were generally adequate to ensure that it safeguarded assets, produced reliable financial information, and complied with finance-related legal requirements. However, the office had some weaknesses in its internal controls related to procurement, physical inventory, receipts, personnel/payroll, and travel.

For the items tested, the Office of the Attorney General generally complied with finance-related legal requirements over its financial activity. However, the office had some instances of noncompliance regarding procurement, physical inventory, receipts, personnel/payroll, and travel requirements.

Key Findings

- The Office of the Attorney General did not ensure that certain purchases complied with the state's purchasing policies. ([Finding 1, page 7](#))
- The Attorney General's Office gave salary increases that, in aggregate, exceeded the limit stated in its compensation plan. ([Finding 3, page 8](#))
- The Attorney General's Office did not pay some employee expense reimbursements in accordance with state travel policies. ([Finding 5, page 9](#))

Audit Objectives and Scope

Objectives

- Internal Controls
- Legal Compliance

Period Audited

January 1, 2007, through March 31, 2009

Programs Audited

- Receipts
 - Payroll
 - Travel Expenditures
 - Other Administrative Expenditures
-

Office of the Attorney General

Agency Overview

Article V of the *Minnesota Constitution* established the Office of the Attorney General, which operates under *Minnesota Statutes* 2008, Chapter 8. The Attorney General is the state's chief legal officer and is elected for a four-year term. Following her election in November 2006, Lori Swanson began her term as Attorney General on January 2, 2007.

The office received most of its funding through General Fund appropriations. Appropriations for fiscal years 2007 through 2009 were about \$25.2 million, \$26.2 million, and \$27.1 million, respectively.

The office provided legal services to state agencies and, as allowed by statute, was reimbursed by the agencies for the full cost of legal service for activities not funded by the General Fund.¹ In addition, the office collected receipts that it deposited back to the state's General Fund for registrations of charities and clubs, fines, settlements, and restitutions.² Payroll was the most significant administrative cost for the office.

Table 1 summarizes the office's sources and uses of financial resources for the period July 1, 2007, through June 30, 2008.

¹ *Minnesota Statutes* 2008, 8.15, subd. 5.

² These nondedicated receipts reverted to the General Fund and were not available to fund the office's operations.

Table 1
Summary of Financial Activity
Fiscal Year 2008¹

Sources	General Fund²	Special Revenue Funds³	Agency Fund⁴	Federal Fund⁵
Operating Appropriation	\$25,767,000	\$ 395,000	\$ 0	\$ 0
Balance Forward	40,286	411,947	4,294,036	0
Transfers In	0	200,000	0	0
Fees for Legal Services Provided to Agencies (including transfers in)	9,120,550	0	0	0
Restitution, Settlements	1,500	0	897,227	0
Other Revenue ⁶	9,364	174,943	2,072	0
Federal Grants	0	0	0	1,087,636
Total Sources	\$34,938,700	\$1,181,890	\$5,193,335	\$1,087,636
Uses:				
Payroll	\$27,519,700	\$ 178,465	\$ 0	\$ 835,260
Rent	2,599,040	5,048	0	64,048
Other Administrative Expenditures ⁷	1,364,850	17,944	0	188,328
Restitution, Settlement Payments	65,000	37,800	2,941,678	0
Transfers Out ⁸	0	0	26,897	0
Balance Forward Out to FY 2009	3,390,110	942,633	2,224,760	0
Total Uses	\$34,938,700	\$1,181,890	\$5,193,335	\$1,087,636

¹ Our audit scope was January 1, 2007, through March 31, 2009. This scope included the last half of fiscal year 2007, all of fiscal year 2008, and nine months of fiscal year 2009. This table presents activity for the only full fiscal year in our audit scope (2008).

² The General Fund accounts for the office's state appropriation and financial operations.

³ This column consists of the Special Revenue Fund, Environmental Fund, and Remediation Fund.

⁴ The Agency Fund accounts for legal settlement and restitution claims.

⁵ The Attorney General received funding for its State Medicaid Fraud Control Unit under CFDA 93.775. The Office of the Legislative Auditor audited this program during its fiscal year 2008 audit of Medical Assistance. See Table 1 in the Office of the Legislative Auditor's Financial Audit Division Report 09-10, *Department of Human Services*, issued March 26, 2009.

⁶ Other Revenue includes receipts from other agencies' deposits, drug forfeiture, and ITC interest earnings.

⁷ Other Administrative Expenditures consists of travel, equipment, other operating costs, supplies, professional/technical services contracts, computer services, communications, repairs and alterations, and employee development.

⁸ Transfers Out consist of unclaimed restitution funds which revert to the General Fund per *Minnesota Statutes* 2008, 8.31, subd. 2(c).

Source: Minnesota Accounting and Procurement System.

Objectives, Scope, and Methodology

Our audit of the Office of the Attorney General's payroll, travel, administrative expenditures, and receipts focused on the following audit objectives for the period January 1, 2007, to March 31, 2009:

- Were the office's internal controls adequate to ensure that it safeguarded its assets, complied with legal requirements, and produced reliable financial data?
- Did the office comply with finance-related legal requirements?

To answer these questions, we gained an understanding of the controls related to the department's financial operations. In determining our audit approach we considered the risk of errors in the accounting records and potential noncompliance with finance-related legal requirements. We also analyzed accounting data to identify unusual transactions or significant changes in financial operations for further review. In addition, we selected a sample of financial transactions and reviewed supporting documentation to test whether the department's controls were effective and if the transactions complied with laws, regulations, policies, and grant and contract provisions.

We conducted the 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 used various criteria to evaluate internal control and compliance. We used, as our criteria to evaluate agency controls, the guidance contained in the *Internal Control-Integrated Framework*, published by the Committee of Sponsoring Organizations of the Treadway Commission.³ We used state laws, regulations, and contracts, as well as policies and procedures established by the departments of Management and Budget⁴ and Administration and the office's internal policies and procedures as evaluation criteria over compliance.

³ The Treadway Commission and its Committee of Sponsoring Organizations were established in 1985 by the major national associations of accountants. One of their primary tasks was to identify the components of internal control that organizations should have in place to prevent inappropriate financial activity. The resulting *Internal Control-Integrated Framework* is the accepted accounting and auditing standard for internal control design and assessment.

⁴ The Department of Management and Budget consists of the former departments of Finance and Employee Relations.

Conclusions

The Office of the Attorney General's internal controls were generally adequate to ensure that it safeguarded assets, produced reliable financial information, and complied with finance-related legal requirements. However, the office had some weaknesses in its internal controls related to procurement, physical inventory, receipts, personnel/payroll, and travel.

For the items tested, the Office of the Attorney General generally complied with finance-related legal requirements over its financial activity. However, the office had instances of noncompliance regarding procurement, physical inventory, receipts, personnel/payroll, and travel requirements.

The following *Findings and Recommendations* provide further explanation about the exceptions noted above.

Findings and Recommendations

The Office of the Attorney General did not ensure that certain purchases complied with the state's purchasing policies.

Finding 1

The office violated *Minnesota Statutes* by approving purchases that exceeded the Department of Administration's delegation of local purchase authority.⁵ One employee in the office had delegated authority to purchase certain goods and services up to \$10,000. However, the office made 14 purchases, from July 2007 through March 2009, totaling approximately \$1.5 million that exceeded this amount. Most of these purchases were for legal research service subscriptions, software maintenance and renewal, and systems training. In addition, the office did not submit to the Department of Administration its basis for determining that 13 of these purchases were from sole source vendors. The Department of Administration's single source procurement policy requires submission and approval of a sole source determination form if the purchase exceeds the certified purchaser's delegated authority.⁶

The office did not establish a lease amendment for leasehold improvements totaling about \$307,000 at its downtown Saint Paul location. According to the Department of Administration's leasing guide, all such projects over \$5,000 require a lease amendment. Negotiation of a lease amendment may have resulted in a sharing of the cost with the building owner.

The state has established policies for purchasing to ensure compliance with state law. By not following these policies, the office risks noncompliance with the laws.

Recommendations

- *The office should seek the Department of Administration's approval for purchases that exceed its delegated purchasing authority.*
- *The office should justify its designation of a sole source vendor to the Department of Administration.*
- *The office should secure lease amendments before incurring additional lease costs.*

⁵ *Minnesota Statutes* 2008, 16C.03, subd. 16.

⁶ Department of Administration ALP manual section 3.1 and 3.2.

Finding 2

The Office of the Attorney General did not perform a complete physical inventory of its fixed assets.

The office did not perform a complete physical inventory, as required by the Department of Administration. The Department of Administration's property management policy requires a complete physical inventory for fixed assets at least biennially.⁷ The office's internal policy mirrored the state's policy. However, the office only conducted annual spot checks for calendar years 2007 and 2008.

The lack of a complete physical inventory increased the risk of fixed assets being lost or stolen without detection.

Recommendation

- *The office should perform a complete physical inventory of its fixed assets, as required by the Department of Administration's policy and the office's internal policy.*

Finding 3

The Attorney General's Office gave salary increases that, in aggregate, exceeded the limit stated in its compensation plan.

The office did not use an accurate salary base in calendar year 2007 to determine the limit of pay increases for employees covered under the Attorney General's Office Compensation Plan. The plan allowed for salary increases, "...provided that the increase for all such employees does not exceed 3.5 percent of the aggregate salaries of all eligible employees..."⁸

When calculating the aggregate salaries of eligible employees, the office inadvertently included 14 ineligible employees and used incorrect salary amounts for approximately half of its 270 eligible employees. As a result, the office paid increases that totaled 3.62 percent of the correct aggregate salaries and exceeded the dollar limit by approximately \$20,500. The office correctly calculated employee increases in calendar year 2008.

Recommendation

- *The office should use an accurate salary base when determining pay increases for employees.*

⁷ User Guide to State Property Management – February 2006, section 2, III.

⁸ Office of the Attorney General's Compensation Plan, July 1, 2007, to June 30, 2009, page 11.

The Attorney General's Office did not always approve employee overtime in advance.**Finding 4**

The office did not consistently document overtime requests and approvals for its employees. State policy required advance approval for all nonemergency overtime to ensure the cost is justified and necessary.⁹ The office's internal policy required advance written approval for all overtime.¹⁰ From January 1, 2007, through March 31, 2009, the office incurred overtime costs totaling about \$186,000. The office did not have documentation to support advance approval for overtime for the six employees we tested.

Without a process in place to document special circumstances for overtime and provide management approval in advance, there is an increased risk that the office could incur unnecessary costs.

Recommendation

- *The office should require documentation of advance request and approval for employee overtime requests to ensure compliance with state policy.*

The Attorney General's Office did not pay some employee expense reimbursements in accordance with state travel policies.**Finding 5**

The Attorney General's Office did not adequately verify employee mileage claims to ensure compliance with state travel policies.¹¹ The office had the following exceptions:

- The office did not ensure employees complied with the state's policy for claiming mileage. Three employees overclaimed 96 miles in the 18 sample items that included mileage reimbursement claims.
- The office did not comply with the state's policy requiring separate reporting of city-to-city trip miles and local mileage. Separating these mileage readings allows a supervisor to better judge the reasonableness of miles claimed. The policy permits the use of internet mapping tools to measure point-to-point mileage for reimbursement claims.
 - One employee claimed 830 miles for a trip, which exceeded actual city-to-city mileage by 70 miles. Neither the employee nor the office

⁹ SEMA4 Policy PAY0012.

¹⁰ Office of the Attorney General's Compensation Plan, July 1, 2007, to June 30, 2009, page 16.

¹¹ SEMA4 Policy PAY0021.

provided written documentation with the expense report to justify the additional miles. The office verbally indicated that the additional 70 miles were, in fact, local miles.

- Another employee submitted several expense reports that overstated trip miles and did not report local miles. We reviewed 120 trips. Based on city-to-city mileage using the most direct route, the employee overclaimed 588 miles.

Recommendations

- *The office should require employees to claim miles as allowed by state policy, support mileage claims with point-to-point measurements and to separately report trip and local miles on expense reimbursement forms.*
- *The office should seek reimbursement for ineligible miles. For those employees who claim large mileage amounts, the office should look for other instances of excessive mileage claims and seek reimbursement from those employees as well.*

Finding 6

The Office of Attorney General did not always promptly deposit receipts.

The office did not always deposit receipts daily, as required by state statute. For example, in March 2009, the office did not promptly deposit receipts for four out of twenty-two business days; the delays ranged from two to five days. From January 2007 through March 2009, the office collected approximately \$5.9 million in receipts for registrations of charities and clubs, restitutions, settlements, and fines.

Minnesota Statutes state that, "...an agency shall deposit receipts totaling \$250 or more in the state treasury daily."¹² The office's deposit process included a verification of certain receipts that typically delayed deposits for several days. The delay in depositing these receipts increased the risk of loss or theft.

Recommendation

- *The office should promptly deposit daily receipts exceeding \$250 in accordance with Minnesota Statutes.*

¹² *Minnesota Statutes* 2008, 16A.275.



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

September 18, 2009

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Mr. James Nobles
Legislative Auditor
Office of the Legislative Auditor
First Floor South, Centennial Building
658 Cedar Street
St. Paul, MN 55155

Dear Mr. Nobles:

Thank you for your Internal Control Compliance Audit for the period of January 1, 2007 through March 31, 2009. We appreciate the thorough review undertaken by your staff.

Please accept this response to the Findings and Recommendations:

Finding 1:

The Office of the Attorney General did not ensure that certain purchases complied with the State's purchasing policies.

Response:

First, you note that 14 purchases over the 27 month audit period exceeded the \$10,000 delegation from the Department of Administration and that "sole source" documentation for these purchases was not filed with the Department. Almost all of this money was expended for legal and systems subscriptions, including: 1) continuation of Westlaw online legal services, 2) maintenance and updates to printed legal treatises such as Dunnells Minnesota Digest, Minnesota Civil Practice, Minnesota Statutes, Minnesota Rules, Northwest Reporter, Federal Reporter, Minnesota Digest, etc., 3) RIA online tax legal research service, 4) LexisNexis publications, 5) Bureau of National Affairs print and online legal reporter services, 6) ChoicePoint research library, and 7) software maintenance contracts necessary for the operation of a law firm.

I have been involved with all of the audits on behalf of this Office for the last 26 years. I have discussed the manner in which the Office makes the subscriptions and maintenance contract purchases with the auditors in numerous previous audits, and it was never suggested that these purchases should be made in a different manner. As a result, I was somewhat surprised at this recommendation.

Nonetheless, we appreciate your recommendation that the Department of Administration should give approval for these transactions and determine whether the contracts constitute sole



source transactions. Accordingly, we will in the future seek such approvals and determinations from the Department of Administration for these purchases.

Second, you note that the office did not establish a lease amendment for leasehold improvements at the Bremer Tower. We did not feel a lease amendment was prudent because economic conditions may present an opportunity to obtain a more favorable lease in the future and because any amendment to the lease might detrimentally affect negotiations or alternative options in the future.

Nonetheless, we appreciate your comments and will follow the Department of Administration policy of seeking a lease amendment in the future.

Finding 2:

The Office of the Attorney General did not perform a complete physical inventory of its fixed assets.

Response:

We appreciate that a comprehensive inventory of the office should be undertaken on a biennial basis and that our inventory was only undertaken on a spot check basis over the two year period. We recently completed a full scale inventory, and all fixed assets were located and properly accounted for. We will in the future conduct a biennial comprehensive inventory as opposed to a spot check inventory.

Finding 3:

The Attorney General's Office gave salary increases that, in aggregate, exceeded in the limit stated in its compensation plan.

Response:

You note that the Office filed a salary compensation plan which allowed an overall 3.5% increase in salaries but that there was an excess payment of \$20,500 in 2007, in part because the salaries of 14 employees who are not part of the compensation plan were inadvertently included in the total amount of salary increase. In other words, while no ineligible employee received a salary increase, the office inadvertently exceeded the compensation plan by about one-tenth of one percent (0.1%).

We appreciate the comment and will make sure to follow the method of calculation set forth in the compensation plan in the future.

Finding 4:

The Attorney General's Office did not always approve employee overtime in advance.

Response:

You note that the office incurred overtime expenses totaling approximately \$186,000 over the 27 month period. You note that, in some cases, written approval of the overtime was not documented in the file.

The Attorney General's Office issues reminders to the staff and supervisors about overtime requirements. We note that all of the overtime described in your report was incurred and had been approved prior to it being incurred, as required by State policy, but that in some cases the supervisor had not documented the approval in writing. This primarily relates to the use of investigators and trial support personnel in the criminal trial division. Criminal investigators and witness coordinators are often employed over lengthy durations at trials in remote rural locations, where overtime inevitably is necessary as part of the trial schedule. The supervisor of the investigators and trial paralegals is based in St. Paul and, in some cases, may be in trial himself elsewhere in the state. Accordingly, the supervisor often must approve the overtime by telephone.

We appreciate your recommendation and will in the future remind supervisors to document their oral approval in writing for the file.

Finding 5:

The Attorney General's Office did not pay some employee expense reimbursements in accordance with state travel policies.

Response:

The Attorney General's Office issues reminders to its staff about state mileage expenditures requirements. The audit report states that three employees "overclaimed" 96 miles and that some employees did not separately itemize the number of miles incurred in traveling to a remote trial or hearing location from the number of miles incurred within that location attending depositions, hearings, trials, witness interviews, and the like.

We are not aware of any employee receiving reimbursement for mileage which was not actually incurred by the employee. We note that, in some cases, the "point to point" mile schedules prepared by the State or available on search engines like MapQuest do not adequately account for detours due to road construction, alternative routes taken by the employee for a variety of reasons, or the need to pick up witnesses, evidence, trial exhibits, or other employees along the way. For example, MapQuest will sometimes recommend a route (such as a one-lane

highway) that may be shorter in distance but is longer in time due to a lower speed limit, more stoplights, etc. As a result, the employee may deem it more efficient to take the faster route, such as a freeway or two-lane highway. In other cases, the employees incurred all of the reported mileage but did not separately itemize their mileage to the city from their travel *within* the city.

We nevertheless appreciate the recommendations and will require attorneys to itemize mileage both on a “point to point” measurement to each destination and to thereafter separately itemize any mileage incurred within the city (i.e. mileage from a witness’s workplace to the courthouse, etc.)

Finding 6:

The Office of the Attorney General did not always promptly deposit receipts.

Response:

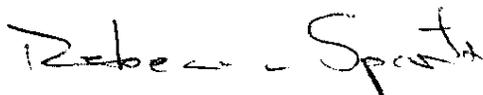
You note that deposit receipts should be deposited daily but that in March of 2009 there were four days when deposits were not made on the day of receipt. It is our understanding that total amount deposited for these days was under \$5,000.

I should note that all funds have at all times been deposited and properly accounted for. By way of explanation, the office accepts “club membership” registrations at the Bremer Tower. The intake person reviews the application materials and, if the documents are out of order, may reject the application. In some cases she will wait to deposit the check until she has a chance to review the application, which means that the check is not cashed on the first day. We believed it to be more prudent for the check to be returned on a deficient application rather than to cash it and then send a State check back to the applicant; otherwise, the cashing of the check may be used by the applicant to claim that the registration application was accepted.

Nonetheless, we appreciate the comments and have instructed the staff to make the deposits on a daily basis.

We appreciate the professional work that you and your staff have provided. If you have any questions, please contact me.

Sincerely,



REBECCA SPARTZ
Director of Administration