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PERFORMANCE REVIEW

DEPARTMENT OF EDUCATION AND THE ARTS EDUCATIONAL BROADCASTING AUTHORITY

AUDIT OVERVIEW

The Educational Broadcasting Authority Essentially Operates Two 501(c)(3) Non-Profit Corporations By Providing Significant Fund-raising and Administrative Support, and Violates State Purchasing and Travel Regulations By Directly Paying for Expenses from the Non-Profit Corporations' Accounts Which Are Not Regulated By the State

The Educational Broadcasting Authority Should Improve the Level and the Quality of Its Management Information In Order to Determine the Public's Needs



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WEST VIRGINIA LEGISLATIVE AUDITOR



PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

Aaron Allred
Legislative Auditor

John Sylvia
Director

Denny Rhodes
Research Manager

Samuel J. Calvert
Senior Research Analyst

Sarah J. Lynch
Research Analyst

Alysia Miller
Referencer

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EXECUTIVE SUMMARY

Issue 1: The Educational Broadcasting Authority Essentially Operates Two 501(c)(3) Non-Profit Corporations By Providing Significant Fund-raising and Administrative Support, and Violates State Purchasing and Travel Regulations By Directly Paying for Expenses from the Non-Profit Corporations' Accounts Which Are Not Regulated By the State.

In 1979 and in 1992, staff of the Educational Broadcasting Authority (EBA) incorporated the Friends of West Virginia Public Broadcasting, Inc. (Friends), and the West Virginia Public Broadcasting Foundation, Inc. (Foundation) respectively, for the purpose of soliciting and receiving donations, gifts and grants to be used by the EBA. These two 501(c)(3)s were incorporated by EBA staff, and state employees continue to perform administrative and fund-raising tasks for both non-profit organizations.

Although the EBA has statutory authority to receive donations and gifts from the general public, it does not have explicit authority to have its employees solicit donations on state time. The Legislative Auditor finds that much of the funds were raised, received, and used by the EBA. Upon receipt, donated funds are deposited into the accounts of the two nonprofit organizations rather than with the State Treasurer as mandated by West Virginia Code. This arrangement allows these moneys to be spent by the EBA essentially unregulated, resulting in the following negative effects:

- Circumvention of state purchasing regulations,
- Circumvention of travel regulations, and
- Loss of transparency to the Legislature and the public.

The EBA's use of the Friends and the Foundation bank accounts prevents it from being totally transparent. Millions of dollars of the agency's expenses are paid from these outside accounts without oversight by the State. While the Legislative Auditor did not find any expenses that seem fraudulent, some expenses would have been prohibited due to state regulations.

As a result of the EBA providing administrative support for the Friends and the Foundation, and being active in fund-raising, the Legislative Auditor identified three consequences that are likely unintended, which are as follows:

The Legislative Auditor finds that much of the funds were raised, received, and used by the EBA.

Millions of dollars of the agency's expenses are paid for from these outside accounts without oversight by the State.

- The Legislative Auditor questions whether the Friends of West Virginia Public Broadcasting, Inc. and the West Virginia Public Broadcasting Foundation, Inc. are separate legal entities from the Educational Broadcasting Authority.
- The Friends of West Virginia Public Broadcasting Inc. has a high cost of fund-raising as a result of the use of state employees.
- The Educational Broadcasting Authority's fund-raising activities have exceeded its statutory authority.

The Legislative Auditor concludes that the lines separating the EBA, the Friends and the Foundation are blurred, and the entities should operate as complete and separate entities with clearly defined and disconnected missions and financial accounts to protect the financial rights of the State and persons affected by the EBA's activities.

Issue 2: The Educational Broadcasting Authority Should Improve the Level and the Quality of Its Management Information In Order to Determine the Public's Needs.

The EBA has not conducted annual surveys as recommended in the Legislative Auditor's report released in September 2001. The proposed survey was to measure the usage, strengths, weaknesses, and comparability to commercial programs. The EBA has explored this recommendation but cites excessive survey costs as reasoning for not conducting annual surveys. The EBA calculated the cost of a paper survey to be mailed to approximately 20,000 West Virginia K-12 educators to be an estimated \$18,740. Utilizing statistical sampling, the Legislative Auditor contends that a valid survey at a confidence level of 99 percent could be conducted for roughly \$578.70. Also, the use of online survey tools would allow for large surveys at an even lesser cost. Additionally, online survey tools can be used for other surveys in order for the EBA to gain better management information for other programming efforts.

The EBA currently collects management information to assist the agency in making service and programming decisions. However, the Legislative Auditor opines that the information is initiated by users, is non-aggregated, and provides a limited view of the total population. Examples of this management information include: copies of evaluations by Teacherline and Ready To Learn workshop attendees that are submitted after the program is completed, solicited surveys from educators who use Chalkwaves, copies of greeting cards, drawings, and copies of donor comment forms. The Legislative Auditor found this information to be

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deficient due to the following reasons:

- Much of the feedback is initiated by the users of the EBA's services rather than the EBA being proactive in obtaining it.
- The data are not in an aggregated format, and was simply provided in piecemeal.
- Feedback was limited to actual users and/or donors of the agency's services, and the feedback only displayed a positive view of programming provided by the EBA.

The Legislative Auditor has identified several areas where the EBA can improve its utilization of management information. Currently, the majority of the EBA's management information is gained by user initiated feedback rather than the agency being proactive in obtaining it. Improved management information will provide the EBA with the management information that may assist it in determining areas where it can improve, what programs and services are needed in order for it to fulfill its mission, whether the users of its services are increasing or declining, and where to allocate its resources. The EBA should also establish benchmarks in its performance measures in order to determine whether it is meeting its performance goals.

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Recommendations

1. *The Legislative Auditor recommends that the Educational Broadcasting Authority, The Friends of Public Broadcasting, Inc., and the West Virginia Public Broadcasting Foundation, Inc., operate as complete and separate entities with clearly defined and disconnected missions and financial accounts to protect the financial rights of the State and persons affected by the agency's activities. The Educational Broadcasting Authority should follow the six recommended items listed below in order to ensure proper separation from the two non-profit corporations:*

- a. The EBA should discontinue providing administrative support for the Friends and the Foundation.*
- b. The EBA should discontinue allowing its offices to be used as an address for the Friends and the Foundation.*
- c. The EBA should discontinue directly paying for its expenses from the Friends and the Foundation bank accounts. Any moneys that the Friends or the Foundation wishes to provide the EBA should be donated to the EBA.*

- d. The EBA should discontinue all fund-raising or soliciting activity by its employees.*
- e. The EBA should follow Division of Purchasing regulations for all commodities and services that it procures.*
- f. The EBA should follow state travel regulations for reimbursing its employees for travel.*

2. The Legislative Auditor recommends that the Educational Broadcasting Authority review meal expenditures to determine whether amended W2's or 1099's should be issued to Educational Broadcasting Authority employees.

3. The Legislative Auditor recommends that the Educational Broadcasting Authority should become more proactive rather than reactive in obtaining management information from users and non-users of its services.

4. The Legislative Auditor recommends that the Educational Broadcasting Authority conduct needs assessment to determine what gaps need to be filled between current and desired/needed products.

5. The Legislative Auditor recommends that the Educational Broadcasting Authority conduct utilization assessment surveys of its educational services, and other programming. Cost effective options such as internet survey tools should be an option.

6. The Legislative Auditor recommends that the Educational Broadcasting Authority determine the reasons that non-users do not use its services by options such as surveying or conducting focus groups.

7. The Legislative Auditor recommends that the Educational Broadcasting Authority establish benchmarks for its performance measures.

OBJECTIVE, SCOPE & METHODOLOGY

The performance review of the Educational Broadcasting Authority is authorized by the West Virginia Performance Review Act, specifically §4-10-8(b)2 of the West Virginia Code, as amended. This review was conducted in conjunction with the 2009 Agency Review of the Department of Education and the Arts. The Educational Broadcasting Authority is statutorily required to provide the best educational training possible for all citizens of this state at the preschool, elementary, secondary and higher education and adult levels through the use of noncommercial educational radio, television and related media operating and originating from educational broadcasting.

Objective

The objectives of this review included an examination of the Educational Broadcasting Authority's relationship with the Friends of West Virginia Public Broadcasting, Inc. and the West Virginia Public Broadcasting Foundation, Inc. Specifically, the Legislative Auditor examined this practice from legal, regulatory, and transparency standpoints, including whether the Educational Broadcasting Authority has been circumventing state purchasing regulations and state travel regulations. An additional objective was to evaluate how the Educational Broadcasting Authority obtains and uses management information.

Scope

The scope of this review is September 2001 through May 2010. Areas of interest for this report were limited to the management information that is obtained by the Educational Broadcasting Authority, as well as the relationship between the Educational Broadcasting Authority and its two fund-raising 501(c)(3) organizations – the Friends of West Virginia Public Broadcasting, Inc. and the West Virginia Public Broadcasting Foundation, Inc.

Methodology

Information compiled in this report has been acquired through communication with and documentation from the Educational Broadcasting Authority. Additionally, information was obtained through the West Virginia Secretary of State's Office, Purchasing Division, and the United States Census Bureau. Every aspect of this review complied with Generally Accepted Government Auditing Standards (GAGAS) as set forth by the Comptroller General of the United States of America.

ISSUE 1

The Educational Broadcasting Authority Essentially Operates Two 501(c)(3) Non-Profit Corporations By Providing Significant Fund-raising and Administrative Support, and Violates State Purchasing and Travel Regulations By Directly Paying for Expenses from the Non-Profit Corporations' Accounts Which Are Not Regulated By the State.

Issue Summary

In 1979 and in 1992, staff of the Educational Broadcasting Authority (EBA) incorporated the Friends of West Virginia Public Broadcasting, Inc. (Friends), and the West Virginia Public Broadcasting Foundation, Inc. (Foundation) respectively, for the purpose of soliciting and receiving donations, gifts and grants to be used by the EBA. For many years the EBA has had several of its employees performing fundraising and administrative activities for these two private non-profit corporations in an effort to raise funds for the EBA. Although the intentions for creating this long-standing arrangement may have been for well-intended purposes, the leadership of the EBA has not come to a realization that this arrangement is improper for several reasons. First, the EBA has authority to receive donations and gifts from the general public; however, it does not have explicit authority to have its employees solicit donations on state time. Second, since the incorporated non-profit organizations are private and separate from the EBA, having EBA staff provide services for private organizations is beyond the EBA's statutory authority. Third, the EBA pays for general expenses directly from the funds of these two non-profit corporations.

According to the EBA's enabling statute, all gifts, donations and grants received by the EBA are to be deposited in an account with the State Treasurer. The Legislative Auditor finds that much of the funds raised for and used by the EBA are deposited into the accounts of the two non-profit organizations. The EBA then directly pays for its expenses from the non-profit's accounts, and enables it to circumvent state purchasing and travel regulations. Furthermore, the EBA's expenses are not transparent to the Legislature and the public. The Legislative Auditor concludes that the lines separating the EBA, the Friends and the Foundation are blurred, and the entities should operate as complete and separate entities with clearly defined and disconnected missions and financial accounts to protect the

Staff of the Educational Broadcasting Authority incorporated two nonprofit organizations. The EBA allows its staff to provide these nonprofit with administrative and fundraising support on state time. There is no authority that allows EBA staff to solicit donations or work for private organizations.

The Legislative Auditor finds that much of the funds raised for and used by the EBA are deposited into the accounts of the two non-profit organizations. The EBA then directly pays for its expenses from the non-profit's accounts, and enables it to circumvent state purchasing and travel regulations.

financial rights of the State and persons affected by the EBA's activities. It is recommended that the EBA: 1) discontinue any arrangement in which state employees are working for private organizations on state time; 2) discontinue all solicitation activities by EBA employees for donations and gifts; and 3) follow all state purchasing and travel regulations.

The Educational Broadcasting Authority Receives Funding From Three Primary Revenue Sources

The EBA receives funds from state appropriations, federal grants, and private donations through individuals, businesses, grantors, etc. Since 2006, the EBA has received an average of \$10,545,837 in funding annually from all sources. Table 1 displays complete budgetary data for fiscal years 2006 to 2008. On average the EBA receives 56 percent of its funds as an appropriation from the State, 39 percent from private funds, and 5 percent from the federal government.

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Table 1 Educational Broadcasting Authority Budget Information FY06 - FY08			
FY	2006	2007	2008
State Funds	\$5,681,835	\$5,655,951	\$6,235,373
Federal Funds*	\$369,155	\$208,061	\$1,103,562
Private Funds	\$4,199,146	\$4,131,908	\$4,052,519
Total	\$10,250,136	\$9,995,920	\$11,391,454
<i>Source: WV Educational Broadcasting Authority and Affiliates Independent Audits, Fiscal Years 2006-2008</i>			
<i>*Source: Legislative Auditor's Budget Division</i>			

Two Non-profit Organizations Have Been Established to Support the Educational Broadcasting Authority

Staff of the EBA established two 501(c)(3) corporations to solicit funds to support public broadcasting in the State of West Virginia, which ultimately benefits the EBA. **The Friends of West Virginia Public Broadcasting, Inc. (Friends)** was initially established in 1979 as the Friends of West Virginia Public Radio, Inc. for the purpose of furthering public and private use of public broadcasting. The Friends acquire and

administer funds and property that benefit the EBA. The Friends of West Virginia Public Radio and the Friends of Public Television were consolidated in 2007 into the current entity to encompass both radio and television services. **The West Virginia Public Broadcasting Foundation, Inc. (Foundation)** was created in 1992 to receive, hold, disperse, and invest moneys or property given, donated or appropriated by the general public or any other entity to the EBA for educational purposes related to the preservation, maintenance, promotion, development and growth of educational and public broadcasting.

Both the Friends and the Foundation were created to benefit the EBA.

The Friends solicit funds through individual giving such as pledges, direct mail, and annual membership. The EBA conducts seven on-air pledge campaigns on behalf of the Friends throughout the year, four for television and three for radio. Campaigns for television use special programming and gifts to increase donations. Radio campaigns are carried out during regular programming and also use gifts as incentives. Additionally, direct mailings are sent out every month to encourage renewal or notify supporters of lapsed donations. The Foundation raises funds for public broadcasting through corporate underwriting and grants along with receiving special gifts of stocks, pension, bequests, etc., from individuals. The Friends and the Foundation are the beneficiaries of four trusts and one private trust.

From fiscal years 2005 through 2008 the Friends and the Foundation corporations received donations of over \$4 million annually.

Based on independent audits of the West Virginia Educational Broadcasting Authority and Affiliates, from fiscal years 2005 through 2008, the Friends and the Foundation corporations received donations of over \$4 million annually, as shown in Table 2. Complete data for fiscal year 2009 was not complete at the time of the review.

Table 2				
Friends and Foundation Fund-raising Dollars				
FY05 – FY08				
FY	2005	2006	2007	2008
Foundation	\$2,818,123	\$2,890,532	\$2,834,349	\$2,809,300
Friends	\$1,391,205	\$1,308,614	\$1,297,559	\$1,243,219
Total	\$4,209,328	\$4,199,146	\$4,131,908	\$4,052,519
<i>Source: WV Educational Broadcasting Authority and Affiliates Independent Audits, Fiscal Years 2006-2008</i>				

The Educational Broadcasting Authority Is Essentially Operating the 501(c)(3) Organizations

West Virginia Code §10-5-4 allows the EBA to apply for and receive appropriations, gifts, bequests or grants from other government entities whether federal, state, or local, educational institutions, and other private individuals and corporations. Notably, the statute specifies that:

All such funds shall be deposited with the state treasurer of West Virginia...

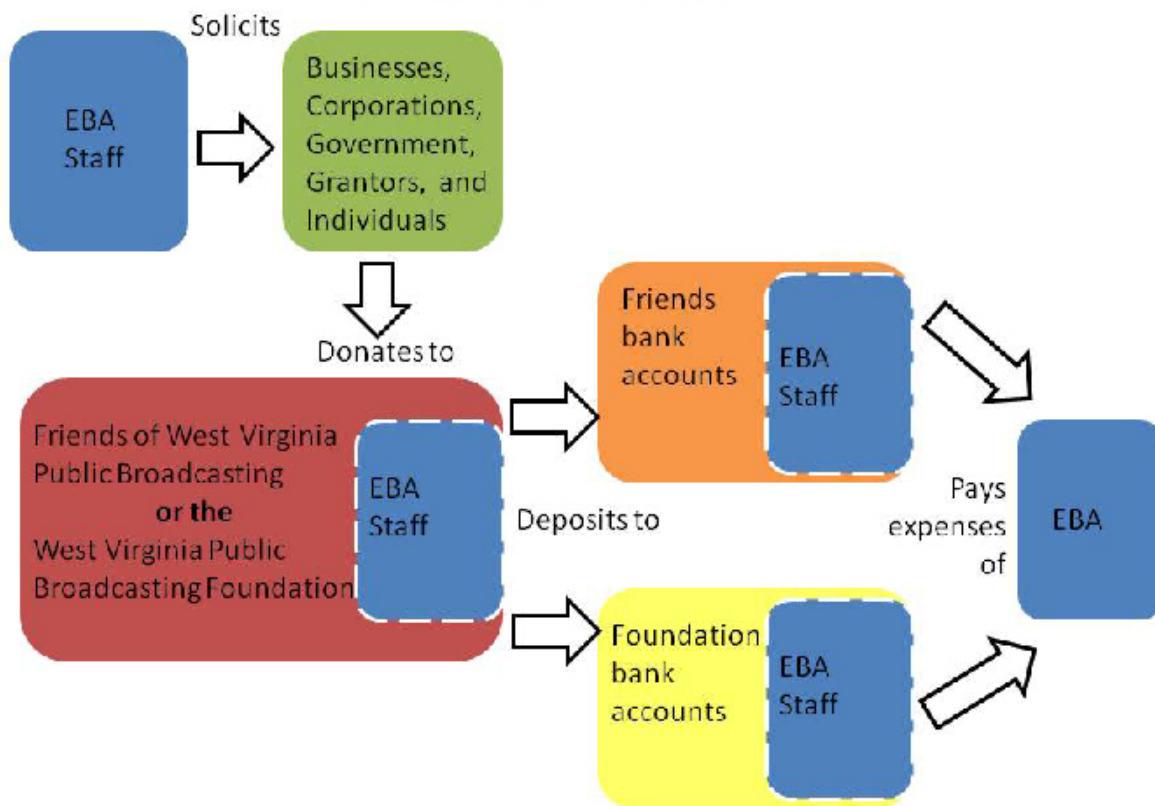
However, the EBA circumvents this statute because the majority of donations that are made to benefit the EBA are deposited into accounts of the aforementioned 501(c)(3) organizations – the Friends and the Foundation. From fiscal years 2005 through 2008, the EBA deposited \$1,892,863 listed as gifts and donations into state accounts. In comparison, \$16,592,901 was deposited into the Friends and the Foundation accounts to be expended by the EBA for fiscal years 2005 through 2008.

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Figure 1 displays the flow of donated funds which is explained below by a representative of the EBA.

Donations submitted on behalf of pledge and membership drives for the Friends of Public Broadcasting are received by EBA employees. Money is then deposited by EBA employees into the Friends of Public Broadcasting account. Other donations and funds received are also handled by EBA employees and then deposited accordingly to either the Friends or Foundation accounts.

Figure 1: Flow of Donated Funds



EBA staff are involved with all aspects of the flow of donated funds: soliciting funds, receiving funds, and expending funds for these two organizations. Neither the Friends nor the Foundation have paid employees, thus all fund-raising activities and administrative support associated with the Friends or the Foundation are performed by volunteers and employees of the EBA. Additionally, both the Friends and the Foundation use the EBA’s offices as their physical mailing address. The Legislative Auditor asked the EBA for this information with the following question:

Neither the Friends nor the Foundation have paid employees, thus all fund-raising activities and administrative support associated with the Friends or the Foundation are performed by volunteers and/or employees of the EBA.

Does the EBA provide state employees to staff the Friends of West Virginia Public Broadcasting and/or the West Virginia Public Broadcasting Foundation? If so, which EBA employees provided services to the two sister organizations and how much time was spent by state employees on state time during FY 2009 and FY 2010? Moreover, if the EBA provided staff to the two organizations, did the EBA bill the two organizations

for the services provided by EBA staff? Services would include, but are not limited to, administrative support and fund-raising on behalf of these entities.

The Executive Director's full response to this question is as follows:

All EBA staff are state employees. The Friends and the Foundation make direct transfers into special revenue for EBA salaries.

The EBA refused to provide any information regarding the number of employees who provide services to the two sister organizations, along with the amount of time spent. By stating that "All EBA staff are state employees," the Legislative Auditor concludes that a significant number of employees are conducting fund-raising and/or administrative work on behalf of the two non-profits on state time. For example, the EBA has a department that is devoted to development which coordinates membership services, individual and corporate donors for the Friends and the Foundation. Thus, in order to transfer money to cover the costs of state employees working on their behalf, the organizations would have to know how many staff, their salaries, and the daily time allotted to conducting business.

The Legislative Auditor finds that it is inappropriate for the EBA to provide staff for the Friends and the Foundation on state time.

The Legislative Auditor requested that the EBA provide the statutory authority that allows employees of the EBA to provide private, non-profit organizations any services on state time. The Executive Director stated:

The Executive Director is not qualified to cite statute. However, the current practices have been in effect since the inception of these 501c(3) organizations.

The Legislative Auditor finds that it is inappropriate for the EBA to provide staff for the Friends and the Foundation on state time. Thus, the practice of the EBA providing these entities with administrative support should be discontinued. Additionally, the EBA should discontinue allowing its offices to be used as an address for the Friends and the Foundation.

There Are Several Negative Effects of the Educational Broadcasting Authority's Current Handling of Donated Funds

The EBA has direct access to the bank accounts of the Friends and the Foundation. The EBA essentially maintains the checkbooks of the non-profits, and pays for EBA related expenses directly from the Friends and Foundation accounts. Payments include expenses for services and programs provided by the EBA, but also administrative expenses to operate the EBA. The Legislative Auditor has identified three negative effects resulting from the EBA paying directly for expenses from the accounts of the 501(c)(3) organizations. The effects are as follows:

- Circumvention of purchasing regulations,
- Circumvention of travel regulations, and
- Lack of transparency.

Circumvention of purchasing regulations

The Legislative Auditor concludes that the EBA has been able to circumvent state purchasing regulations because the agency has access to 501(c)(3) accounts which are not regulated by the State. Although the Friends and the Foundation are not state agencies, the Executive Director stated purchasing regulations are followed when the EBA uses moneys from the accounts of the 501(c)(3) organizations. However, the Legislative Auditor found several instances where purchasing regulations are not being followed. In 2006, the EBA placed importance on refreshing the West Virginia Public Broadcasting brand. The EBA stated that it sent Requests for Proposals to five companies and received a reply from three firms. The actual Requests for Proposals were not provided to the Legislative Auditor by the EBA, although they were requested. The contract was granted to Progressity Development Solutions to deliver the integrated marketing plan and to design a visual theme. This contract was for the amount of \$20,000 and stated that any additional work must be conducted by Progressity Development Solutions. The Purchasing Division did not have record of the contract. The contract was paid for by the Friends and the Foundation but the **contract was signed by the former Executive Director as a representative of the EBA**. At the completion of work, the total amount paid to Progressity Development Solutions was \$74,223.20. This amount included the cost to do the study,

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design and printing. The Legislative Auditor maintains that this contract was entered into by the EBA, and for the benefit of the EBA, and should have gone through the Purchasing Division.

Additionally, the EBA pays for printing and binding services from the funds of the 501(c)(3) organizations. Specifically, the EBA uses Morgantown Printing and Binding for its Pubcaster publication that is sent to donors as a “membership benefit.” The work for printing Pubcaster exceeds the \$25,000 Purchasing Division level of authority. Thus, the EBA should have used the services of the Purchasing Division to secure the printing of Pubcaster for the EBA, but the Purchasing Division does not have a contract on file with Morgantown Printing and Binding as one of its contracts for the EBA. **Furthermore, the EBA did not obtain other bids for the printing of Pubcaster.** A representative for the EBA stated:

We have not done this in the past because we have not paid for this printing cost out of the state funds, but used the money contributed by donors. This means we believe we were not required to annually obtain bids or provide documentation for such.

When the EBA expends donations from outside bank accounts it is an act of “receiving” the donations. Therefore, the funds should be deposited with the State and the expenditures should be in compliance with state purchasing regulations.

This statement shows the EBA’s misunderstanding, that by the agency expending these outside funds it is an act of “receiving” the donations. Therefore, the funds must be deposited in and expended from the state account. It must be noted that Pubcaster is edited and designed by EBA employees. Thus, in both cases the EBA has circumvented Purchasing Division regulations by using the accounts of the 501(c)(3) entities.

The Legislative Auditor also found that the EBA is not using statewide contracts. The EBA like other state agencies is required to follow the guidelines established by the Purchasing Division and must use statewide contracts that it establishes. West Virginia CSR §148-1-7.4:

...allows the state to secure open ended contracts to obtain commodities, services or printing to supply the repetitive needs of the State spending units. Use of these contracts by the agencies is mandatory.

The Legislative Auditor reviewed the expenses paid by the

EBA from the Friends and the Foundation accounts, and found several examples where the statewide contracts are not being used. One such statewide contract is with the West Virginia Association of Rehabilitation Facilities (WVARF). WVARF is contracted to handle several services for any state agency which include but are not limited to presorted mailings. The Friends issued several payments to DMW Worldwide, LLC which provides direct marketing services to businesses which include direct mailings. These services would not have been allowed because of existing statewide contracts negotiated by the Purchasing Division, but the EBA has circumvented Purchasing regulations by using funds from the Friends and the Foundation.

Moreover, the 501(c)(3) organizations have issued payments to Staples and Office Max which could be assumed were for office supplies. The Purchasing Division has a statewide contract with Office Max. Some payments to Staples were for less than \$100 but several were past the benchmark set by the statewide contract. The contract specifically states:

Agencies may make an emergency purchase of less than \$100 at any location and the Office Max store may match the contract price, but these must be the exception and not the normal purchasing procedure.

The Legislative Auditor understands that the Progressity Development Solutions contract and the Morgantown Printing and Binding contract along with other expenses were paid by a separate organization to benefit the EBA. A 501(c)(3) organization is not and should not be held to state purchasing regulations. However, the EBA is a state agency and all employees are state employees. The Friends and the Foundation use the resources of the EBA. Therefore, the EBA should use any statewide contracts that have been established by the Purchasing Division regardless of what entity is paying for it, and the Legislative Auditor finds that the EBA is in violation of Purchasing Division regulations. In conclusion, the EBA's funding arrangement with the Friends and the Foundation accounts enable it to pay for commodities and services from outside accounts, and circumvent the Purchasing Division regulations.

Circumvention of travel regulations

The Legislative Auditor concludes that the EBA has been able to circumvent state travel regulations because the agency has access to 501(c)(3) accounts which are not regulated by the State. The Legislative

The Legislative Auditor reviewed the expenses paid by the EBA from the Friends and the Foundation accounts, and found several examples where the statewide contracts are not being used including services provided by WVARF.

The EBA should use any statewide contracts that have been established by the Purchasing Division regardless of what entity is paying for it, and the Legislative Auditor finds that the EBA is in violation of Purchasing Division regulations.

Auditor analyzed 691 employee reimbursements for travel and related expenses from fiscal year 2008 through March of fiscal year 2010. These reimbursements were made from the outside bank accounts affiliated with the Friends and the Foundation. For the time period examined, which is less than three full years, the total travel expenses were \$166,254. This figure does not represent an additional \$23,186 that was direct billed. Direct billing was not included in the overall total because there was no documentation showing which account paid the expense. If also paid from a non-state account, the total of essentially unregulated travel reimbursement paid is \$189,440. A detailed cost breakdown can be found in Appendix B. It is the Legislative Auditor's concern that because these reimbursements were made from the Friends and the Foundation accounts, thus not going through the State Auditor's Office, that the reimbursements were not scrutinized like travel reimbursements of every other state agency would have been.

The total of essentially unregulated travel reimbursement paid from fiscal year 2008 through March of fiscal year 2010 is \$189,440.

The analysis of travel documents was conducted on a line-by-line basis and concentrated on 1) meals (per diem), 2) mileage, 3) lodging, 4) explanation of charges in the "Other" category, and 5) agency approval. Any of these areas could result in a request for reimbursement being rejected if reviewed by the State Auditor's Office. The category relating to meals, or per diem, yielded the most violations with 135. Meal violations were found in the form of reimbursement for meals on same-day travel and amounts exceeding the established daily maximum. The Travel Management Office does not permit meal reimbursement for travel without an overnight stay. Specifically, section 6.4 states in part that:

*Travel without an overnight stay will not qualify a traveler as being away from home for purposes of receiving **non-taxable** meal reimbursement.*

Regarding the established daily maximum reimbursement for meals, the Travel Management Office's Travel Rule 6.1 states that:

Meal expense reimbursement is limited to actual expenses for food, service and gratuities, not to exceed the Authorized Daily Rates as established by the U.S. General Services Administration (GSA).

It is by the GSA rates that the Legislative Auditor constructed Table 3. GSA meal and lodging rates fluctuate according to destination location and even the time of year in some instances. Also included in Table 3

are statistics from the “Other” category. Violations for reimbursement claimed in the “Other” category are from inadequate description given for those costs. **As shown in the table, 12.1 percent of the claims for meals by EBA employees were in violation of the State’s travel regulations.**

The line-by-line analysis of travel documents resulted in 174 travel regulation violations from fiscal year 2008 to March fiscal year 2010.

Table 3 Educational Broadcasting Authority’s Instances of Incompliance With State Travel Regulations FY08 – FY10								
FY	2008		2009		2010		Total	
	Number	%	Number	%	Number	%	Number	%
Meals	47	16.7	55	11.0	33	9.8	135	12.1
Other	21	10.2	11	4.0	7	4.9	39	6.2

Source: Legislative Auditor’s analysis of travel documents provided by the Educational Broadcasting Authority

In addition to violating state travel regulations, the EBA may not be complying with federal tax regulations. The Internal Revenue Service requires an employer to report reimbursement of meals for same-day travel as taxable income on employees’ W-2. Many of the instances illustrated in Table 3 are either interpreted as, or described on the reimbursement form as, compensation for meals occurring without an overnight stay and/or within the employees’ tax home. The Legislative Auditor requested all IRS-1099 forms for employees who received travel reimbursement during calendar years 2007, 2008, and 2009 from the EBA. In response the Executive Director stated that:

EBA has not sent an IRS 1099 form to employees who have been reimbursed for travel expenses. The expenses are either business related or the expenses are “de minimis” as defined by the IRS code.

In addition to violating state travel regulations, the EBA may not be complying with federal tax regulations.

It is the Legislative Auditor’s opinion that the EBA is not in compliance with Publications 15, 463 and 17 of the Internal Revenue Service and needs to report employee expense reimbursement for single day travel as taxable income. IRS publication 17 describes travel expenses that can be deducted. Under the Meals and Lodging section, these are described as... “your lodging and meals if your business trip is overnight or long enough that you need to stop for sleep or rest to properly perform your duties.” Considering these criteria, meal reimbursement for single day travel is subject to income tax withholding. Thus, the Legislative

Auditor recommends that the Educational Broadcasting Authority review meal expenditures to determine whether amended W2's or 1099's should be issued to employees for the past three years.

Lack of transparency

The Government Accountability Office has stressed the necessity of transparent governing processes. The July 2007 Revision of Government Auditing Standards states:

The principles of transparency and accountability for the use of public resources are key to our nation's governing processes.

The EBA's use of the Friends and the Foundation bank accounts prevent it from being totally transparent. Millions of dollars of the agency's expenses are paid for from these outside accounts without oversight by the public, the Legislature, Purchasing Division, and State Auditor's Office. While the Legislative Auditor did not find any expenses that seem fraudulent, some expenses such as those mentioned previously would be prohibited due to state regulations.

The Legislative Auditor recommends that the Educational Broadcasting Authority review meal expenditures to determine whether amended W2's or 1099's should be issued to employees for the past three years.

The Educational Broadcasting Authority's Fund-raising and Administrative Support of the Two 501(c)(3) Organizations Has Resulted in Several Unintended Consequences

As a result of the EBA providing administrative support for the Friends and the Foundation, and being active in fund-raising, the Legislative Auditor has identified three consequences that are most likely unintended. The unintended consequences are as follows:

- The Legislative Auditor questions whether The Friends of West Virginia Public Broadcasting, Inc. and The West Virginia Public Broadcasting Foundation, Inc. are separate legal entities from the Educational Broadcasting Authority.
- The Friends of West Virginia Public Broadcasting Inc. has a high cost of fund-raising as a result of the use of state employees.
- The Educational Broadcasting Authority's fund-raising activities have resulted in mission creep.

While the Legislative Auditor did not find any expenses that seem fraudulent, some expenses such as those mentioned previously would be prohibited due to state regulations.

The Legislative Auditor questions whether The Friends of West Virginia Public Broadcasting, Inc. and The West Virginia Public Broadcasting Foundation, Inc. are separate legal entities from the Educational Broadcasting Authority

The EBA is clearly intertwined with both the Friends and the Foundation 501(c)(3) organizations by providing a large portion of administrative support, and by conducting fund-raising for the two entities. According to the Secretary of State, both the Friends and the Foundation were incorporated as separate corporations from the state agency. The EBA was asked for its interpretation of whether the Friends and the Foundation are separate legal entities from the EBA since state employees are providing support on state time. The Executive Director responded by stating:

The Executive Director is not qualified to render a legal opinion.

The EBA was additionally asked what legal advantages exist for the EBA to use the Friends and the Foundation for fund-raising activities as opposed to simply having the EBA accept all donations directly. The Executive Director replied:

The Executive Director is not qualified to render a legal opinion. Individual contributors donate funds to support West Virginia Public Broadcasting in addition to the state funds it receives.

However, the Executive Director did state that an advantage to having funds deposited into the non-profit accounts rather than an account with the State is:

Many grantors require the receiving organization be a 501c(3) entity. For example, the Neighborhood Investment Program requires a 501c(3) to participate.

The Legislative Auditor was trying to establish a legal need for the separate non-profits. Specifically, would individuals still receive tax deductions by donating to a state agency rather than a charitable organization? According to the State Tax Department, individual donors would still receive a charitable deduction by donating to the EBA. The

The EBA is clearly intertwined with both the Friends and the Foundation 501(c)(3) organizations by providing a large portion of administrative support, and by conducting fund-raising for the two entities.

Acting State Tax Commissioner stated:

The answer is yes as long as the contribution to the agency is made solely for public purposes.

The full response from the Acting State Tax Commissioner is shown in Appendix C.

In addition to questioning what the legal advantages are for creating the non-profit organizations, the Legislative Auditor also questions whether the Friends and the Foundation are legal separate entities and subject to the Open Meetings Act and the Freedom of Information Act since their funding is raised with state resources, and administrative support is with state resources. In a West Virginia Supreme Court of Appeals case, the 4-H Road Community Association filed a Freedom of Information Act with the West Virginia University Foundation, Inc. The Supreme Court of Appeals held that non-profit corporations formed by private citizens pursuant to general corporate law for the purpose of assisting West Virginia University through fund-raising was not a “public body” subject to the Freedom of Information Act’s disclosure provisions. The Court’s decision partially based its opinion on the following criteria:

It (the WVU Foundation) is not located on state property; does not utilize state employees;...

However, this is not the case with the Friends or the Foundation since both entities use the physical address of a state agency, and both entities use state employees for their operation. The EBA did not offer a legal opinion as to whether the Friends or the Foundation were subject to the Open Meetings Act and the Freedom of Information Act. The Legislative Auditor finds that the Friends and the Foundation may be subject to the Acts, since they are being operated by public employees.

The Friends of West Virginia Public Broadcasting Inc. Has a High Cost of Fund-raising as a Result of the Use of State Employees

After further review of the independent audits performed on the EBA and Affiliates (the Friends and the Foundation), the Legislative Auditor found that the Friends account has experienced an extremely high cost of fund-raising. **The total costs to raise a dollar were \$0.58 per dollar for fiscal year 2008.** In fiscal year 2007, the EBA implemented a change in accounting policy to include the cost to publish Pubcaster.

According to the State Tax Department, individual donors would still receive a charitable deduction by donating to the EBA.

The total cost of the Pubcaster includes the cost of printing, postage and related expenses paid by the Friends, and salary and benefits provided by the State. If the cost of Pubcaster is added, then the cost of fund-raising would increase to \$0.65 per dollar raised for 2008 and \$0.64 per dollar raised for 2007.

Table 4 provides the fund-raising data and analysis. The total expenses listed are combined with the actual costs to the Friends and to the EBA. The state expenses include salaries, benefits, etc. The Friends expenses include “thank you” gifts, pledge drives, etc. For fiscal years 2002 through 2008, the Friends have seen decreased numbers of contributors, decreased revenue, and increasing expenses.

If the cost of Pubcaster is added, then the cost of fund-raising would increase to \$0.65 per dollar raised for 2008 and \$0.64 per dollar raised for 2007.

Table 4						
Friends Fund-raising Statistics FY02 - FY08						
FY	Contributors	Revenue	Expenses	Profit Margin	Costs to EBA per \$ Raised	Total Cost per \$ Raised
2002	19,471	\$1,461,189	\$607,021	\$857,168	\$0.18	\$0.42
2003	18,228	\$1,407,274	\$676,477	\$730,797	\$0.25	\$0.48
2004	17,944	\$1,451,690	\$746,135	\$705,555	\$0.26	\$0.51
2005	17,118	\$1,391,205	\$624,274	\$766,931	\$0.18	\$0.45
2006	16,059	\$1,308,614	\$637,289	\$671,325	\$0.23	\$0.49
2007	15,882	\$1,297,559	\$688,660	\$608,899	\$0.32	\$0.53
2008	15,571	\$1,243,219	\$720,109	\$523,110	\$0.34	\$0.58

Source: WV Educational Broadcasting Authority and Affiliates Independent Audit, Fiscal years 2006, 2008

Charity Navigator, which is an independent charity evaluator, evaluates the financial health of over 5,000 charities. It stated that public broadcasting and media charities have a higher median fund-raising efficiency of \$0.20 compared to the average non-public broadcasting charities of \$0.11. Fund-raising efficiency is the cost to raise \$1.00. The higher cost for public broadcasting charities is related to the expensive air time and a higher investment in their fund-raising efforts. The costs

to the Friends exceed this \$0.20 median dramatically. Charity Navigator did not specifically review the West Virginia Educational Broadcasting Authority, the Friends, or the Foundation.

The Educational Broadcasting Authority’s Fund-raising Activities Are an Example of Mission Creep

The Legislative Auditor finds that the mission of the EBA has expanded beyond its statutory authority to include matters, such as fund-raising, that are not explicitly specified in statute. The EBA’s enabling statute does not grant authority for the EBA to solicit funds. WVC §10-5-4 authorizes the EBA to “apply for and receive” donations, but does not authorize soliciting funds. “Apply for” is understood to mean applying for grants, since generally organizations do not apply for donations or gifts. However, the EBA currently places a significant importance on soliciting funds. The importance of soliciting is reflected by its activities with the Friends and the Foundation, but is also reflected in some of the EBA’s statements to the Legislative Auditor. For example, the Executive Director emphasized the agency’s importance of fund-raising by the following statement:

For public television, attracting new users of content is important, but it is also important to turn users of the content into contributing members of the station... The result of gaining a larger audience share is to increase the number of contributors in that small percentage of viewers that regularly contribute and become engaged with public media.

Additionally, an EBA representative stated in reference to obtaining the needs of EBA users:

Aside from the direct contact with viewers and listeners, membership campaigns are a vital method of gauging successful programming.

Finally, the EBA was asked for its performance measures. It included fund-raising as one of its five measures, as shown in Appendix D. The measure appears as follows:

The amount of private support for the organization as measured by:

Charity Navigator stated that public broadcasting and media charities have a higher median fund-raising efficiency of \$0.20 compared to the average non-public broadcasting charities of \$0.11.

The importance of soliciting is reflected by its activities with the Friends and the Foundation, but is also reflected in some of the EBA’s statements to the Legislative Auditor.

- a. *Number of individual donors*
- b. *Number of community sponsors*
- c. *Amount of private funding raised through donors and sponsors.*

The Educational Broadcasting Authority Has Begun to Address the Issues Raised by the Legislative Auditor

On June 2, 2010, the EBA's Board of Directors addressed some of the issues in the Legislative Auditor's report by passing a resolution to begin a separation process from the Foundation. The relationship between the Friends and the EBA was not addressed. The Board voted to

- deposit proceeds from underwriting contracts into the EBA's "other revenue" accounts rather than the Foundation accounts,
- prohibit EBA employees from writing checks from the Foundation's checking accounts,
- implement a consulting and agreement procedure whereby the Executive Director of the EBA may submit to the Foundation a list of budgetary items that the Foundation may choose to support,
- require the Executive Director of the EBA or designee enter into future contracts that were previously agreements of the Foundation, and
- keep the Mountain Stage production's checking accounts, contracts, and non-state funded activities with the Foundation, and EBA employees will have the authority to draw funds from the Foundation's Mountain Stage checking account.

The Legislative Auditor finds that the EBA, the Friends, and the Foundation should operate as complete and separate entities with clearly defined and disconnected missions and financial accounts to protect the financial rights of the State and persons affected by the agency's activities.

Conclusion

The Educational Broadcasting Authority is clearly intertwined with the Friends of West Virginia Public Broadcasting, Inc., and the West Virginia Public Broadcasting Foundation, Inc. **The Legislative Auditor finds that the EBA, the Friends, and the Foundation should operate as complete and separate entities with clearly defined and disconnected missions and financial accounts to protect the financial rights of the State and persons affected by the agency's activities.** Current operations do not clearly define the individual entities since all have the same address, EBA employees provide administrative support for all three entities, EBA employees participate in fund-raising for all three entities,

and EBA employees pay for expenses from accounts of all three entities. This causes the EBA's operations to not be completely transparent to the Legislature and to the public. In order to be separate from the Friends and the Foundation, the EBA needs to do the following:

Recommendations

1. *The Legislative Auditor recommends that the Educational Broadcasting Authority, The Friends of Public Broadcasting, Inc., and the West Virginia Public Broadcasting Foundation, Inc., operate as complete and separate entities with clearly defined and disconnected missions and financial accounts to protect the financial rights of the State and persons affected by the agency's activities. The Educational Broadcasting Authority should follow the six recommended items listed below in order to ensure proper separation from the two non-profit corporations:*

- a. The EBA should discontinue providing administrative support for the Friends and the Foundation.*
- b. The EBA should discontinue allowing its offices to be used as an address for the Friends and the Foundation.*
- c. The EBA should discontinue directly paying for its expenses from the Friends and the Foundation bank accounts. Any moneys that the Friends or the Foundation wishes to provide the EBA should be donated to the EBA.*
- d. The EBA should discontinue all fund-raising or soliciting activity by its employees.*
- e. The EBA should follow Division of Purchasing regulations for all commodities and services that it procures.*
- f. The EBA should follow state travel regulations for reimbursing its employees for travel.*

2. *The Legislative Auditor recommends that the Educational Broadcasting Authority review meal expenditures to determine whether amended W2's or 1099's should be issued to Educational Broadcasting Authority employees.*

Issue 2

The Educational Broadcasting Authority Should Improve the Level and the Quality of Its Management Information In Order to Determine the Public’s Needs.

Issue Summary

The EBA has not conducted annual surveys as recommended in the Legislative Auditor’s report released in September 2001. The agency has cited excessive costs as reasoning for not conducting annual surveys. Furthermore, the EBA has relied on reactive feedback instead of proactively seeking information from users and non-users. Currently, the EBA collects management information to assist the agency in making service and programming decisions. However, the Legislative Auditor opines that the information is initiated by users, is non-aggregated, and provides a limited view of the total population. The Legislative Auditor recommends the EBA become more proactive in obtaining management information, conduct needs assessment to determine what gaps need to be filled, conduct utilization assessment surveys of its educational services and other programming, determine the reasons that non-users do not use its services, and establish benchmarks for its performance measures.

The Legislative Auditor recommended that the EBA perform annual or biennial statewide surveys and explore other utilization assessment methods. The Legislative Auditor found that the EBA has not conducted surveys as recommended.

The Educational Broadcasting Authority Has Not Conducted Annual Surveys as Recommended in the Legislative Auditor’s Report From September 2001

In September 2001, the Legislative Auditor issued a report on the EBA that identified it did not adequately assess the usage of its programs within the preschool, primary or secondary classrooms to determine the programs’ strengths and weaknesses, nor determine where the programs stand compared to commercial programs. The Legislative Auditor recommended that the EBA perform annual or biennial statewide surveys and explore other utilization assessment methods. **The Legislative Auditor found that the EBA has not conducted surveys as recommended.** Staff from the EBA stated that:

The EBA did explore this recommendation thoroughly and decided against implementing additional surveys for these reasons: The annual cost of the instructional

*programming is approximately \$17,000. To conduct a **statistically** valid survey would require \$18,000 - \$20,000 each time, more than the cost to provide the programming.*
(emphasis added)

As a result of this statement, the Legislative Auditor requested that the EBA provide a breakdown of how the \$18,000 - \$20,000 figure was estimated. The Executive Director of the EBA responded with an estimated cost of \$18,740 for a survey of approximately 20,000 West Virginia K-12 teachers. This methodology appears to include sending a paper copy of a survey to all 20,000 teachers, and includes a self-addressed stamped envelope. The breakdown of the estimated costs is shown in Table 5.

While the Legislative Auditor agrees with the EBA for not conducting an annual survey with estimated costs of \$18,740 for a \$17,000 program, statistically valid surveys can be conducted for much lower costs.

Table 5	
The EBA's Estimated Costs for an In-House Survey of West Virginia K-12 Teachers	
Item	Cost
Staff time	\$840
Printing and mail preparation	\$3,500
Bulk rate mailing of survey	\$6,400
Return envelope postage	\$8,000
Total	\$18,740
<i>Source: Educational Broadcasting Authority</i>	

The EBA's explanation for the high cost is based on an ill-informed understanding of a statistically valid survey, which does not consist of surveying 100 percent of the population. While the Legislative Auditor agrees with the EBA for not conducting an annual survey with estimated costs of \$18,740 for a \$17,000 program, statistically valid surveys can be conducted for much lower costs. For a survey with a population of 20,000 individuals, the number of teachers necessary for a statistically valid survey is as follows:

- 90 percent confidence level - 267 teachers
- 95 percent confidence level - 377 teachers
- 99 percent confidence level - 643 teachers

Using the EBA's estimated survey cost calculations, it would cost approximately \$.90 for each survey. It must be noted that the Legislative Auditor did not include the \$840 staff time costs in the per survey

calculation since these costs are fixed, and are paid whether or not the staff are preparing a survey or working on other tasks. The estimated costs for surveying 643 teachers with a 99 percent confidence level would be \$578.70. The breakdown of the estimated costs is shown in Table 6.

Table 6 Estimated Costs for a Statistically Valid In-House Survey of 643 West Virginia K-12 Teachers	
Item	Cost
Printing and mail preparation	\$115.74
Bulk rate mailing of survey	\$205.76
Return envelope postage	\$257.20
Total	\$578.70
<i>Source: Legislative Auditor's analysis of the Educational Broadcasting Authority's estimated survey costs</i>	

The EBA did not appear to take into consideration other survey methodologies in order to lower its costs for conducting a survey, such as bulk mail or using Internet surveys.

The EBA did not appear to take into consideration other survey methodologies in order to lower its costs for conducting a survey, such as using a fax machine rather than the postal service, bulk mailing survey copies to county coordinators or each school rather than each teacher, or directing teachers to a website with survey questions. Notably the EBA did not appear to take into consideration the use of online survey tools that would allow for large surveys at a minimal cost. Additionally, online survey tools can be used for other surveys in order for the EBA to gain better management information for other programming efforts.

In addition to previous audit findings in 2001, the Legislative Auditor has found an overall lack of proactive management information and needs assessments conducted by the EBA.

The Majority of the Educational Broadcasting Authority's Management Information Is Obtained Reactively rather than Proactively

In addition to previous audit findings in 2001, the Legislative Auditor has found an overall lack of proactive management information and needs assessments conducted by the EBA. Additional methods of utilization assessment have been minimally performed to enhance management information to the EBA. In correspondence with the EBA regarding the agencies management information, a representative stated:

Internet surveys, direct feedback from teachers, day care

providers, and the Department of Education, pledge results, surveys of membership, professional workshops offered by PBS/NPR organizations, direct contact with viewers, and Nielsen/Arbitron ratings surveys have all been used to provide direction to the programs offered on WV PBS and WV PR.

Other examples of the EBA's methods of obtaining management information include:

- comments on the agency's Facebook and Youtube pages,
- e-mails from the agency's website,
- a toll-free telephone number with an answering service
- donor questionnaires to collect demographics and feedback, and
- pledge drives.

The Legislative Auditor requested documentation in support of the EBA's statement, and other examples of feedback. Included in the response were copies of evaluations by Teacherline and Ready To Learn workshop attendees that are submitted after the program is completed, copies of greeting cards, drawings, and copies of donor comment forms. Examples of the greeting cards and drawings are included in Appendix E. The Legislative Auditor assumes that these cards and drawings were unsolicited. The response also included solicited surveys from educators who use Chalkwaves, an educational program offered to school systems by the EBA. **Notably, the EBA did not provide any results of Internet surveys it said it conducted.**

The Legislative Auditor acknowledges that the EBA has developed some management information, which may provide limited assistance to the agency in making service and programming decisions.

The Legislative Auditor acknowledges that the EBA has developed some management information, which may provide limited assistance to the agency in making service and programming decisions. However, the EBA's response shows several deficiencies in its management information, such as,

1. Much of the feedback is initiated by the users of the EBA's services rather than the EBA being proactive in obtaining it.
2. The data are not in an aggregated format, and was simply provided in piecemeal.
3. Feedback was limited to actual users and/or donors of the agency's services, and the feedback only displayed a positive view of programming provided by the EBA.

Suggestions for Improving the EBA's Management Information

The Legislative Auditor maintains that if the EBA improves the types of management information that it receives, and modifies how the information is obtained or compiled then the EBA can improve its decision making. Thus, several suggestions are offered for improving the agency's management information. Overall, these suggestions require the EBA to become more proactive in collecting management information rather than relying on individuals to initiate contact.

Conduct Needs Assessments – The EBA should determine what gaps need to be filled between current and desired/needed products. For example, the EBA has expressed interest in expanding television news service, and is in the discussion stages of producing a 10 p.m. state-wide nightly news broadcast, as well as hourly news updates. The director estimated a nightly news broadcast would cost \$2 million annually, with start-up costs of \$300,000. **But, the EBA has not conducted market research to determine if there is a demand for these services.** The Executive Director of the EBA stated that:

...in the commercial broadcast industry 40% of a stations revenue comes from news broadcast. News is a very sellable commodity and will generate underwriters (advertisers)...

While this may be true, citizens of the state have several options for news, and the EBA should not make this kind of investment without determining if there is a void for statewide news before allocating resources to this venture. Additionally, if a needs assessment was conducted, and it was determined that there is a void for statewide news, then the EBA could use that data to attract underwriters.

Conduct Surveys - As recommended in 2001, the EBA should conduct surveys to assist in determining utilization of its educational services. Surveys could also be utilized in assessing its broadcasting as well. The Executive Director of the EBA stated that surveys would be beneficial to the agency, although funding may be an issue until the digital transition is complete. In the meantime, the EBA should consider cost-saving alternatives such as using online survey tools.

The EBA should determine what gaps need to be filled between current and desired/needed products.

As recommended in 2001, the EBA should conduct surveys to assist in determining utilization of its educational services. Surveys could also be utilized in assessing its broadcasting as well.

Evaluate Non-users – Currently, the feedback that the EBA receives is generally from users of its content. While the agency makes itself available to non-users by advertising its telephone numbers, email addresses and such, it does not make an effort to determine why individuals and school systems do not watch, listen to, or utilize its products. An example is the EBA’s Chalkwaves program that is offered to school systems. Chalkwaves is a media server with video content that is accessed from a school’s internal network. It doesn’t require an active broadband internet connection. In 2009, only 7.6 percent of K-12 students attended schools that subscribed to Chalkwaves. The EBA has surveyed some of the schools that subscribe to Chalkwaves, but has not conducted any studies or surveys to determine why schools have not subscribed to Chalkwaves or whether those schools are using a similar, competing product. Thus, evaluating non-users could determine what needs the agency can fill, and also where it can focus its resources. Suggestions for evaluating non-users include surveys, and also focus groups of non-users.

Evaluating non-users could determine what needs the agency can fill and also where it can focus its resources.

Include Benchmarks on Its Performance Measures – The EBA provided the Legislative Auditor with the agency’s performance measures (Appendix D). The performance measures do not include benchmarks for determining whether the agency is meeting its performance goals. For example, one performance measure is:

The number of students taking advantage of instructional media as measured by:

- a. The number of classrooms viewing instructional media for K – 12 college telecourses*
- b. The number of callers to Homework Hotline*

The old business adage applies in this case, “If you can’t measure it, you can’t manage it or improve it.” Thus, the Legislative Auditor recommends that the EBA establish benchmarks in its performance measures in order to determine whether it is meeting its performance goals.

Additionally, the EBA should compile data in an aggregated format which is summarized for management in order to review data over a period of time, rather than just responding and reading feedback on an individual basis. Improving in all these areas should assist the EBA with the management information that it has at its disposal, and should assist in making prudent decisions about its programming. Furthermore,

The Legislative Auditor recommends that the EBA establish benchmarks in its performance measures and compile data in an aggregated format to assist the EBA with management information.

improved management information may enable the agency to make decisions that will increase the number of users and the quality of its services.

Conclusion

The Legislative Auditor has identified several areas where the EBA can improve its utilization of management information. Currently, the majority of the EBA's management information is gained by user initiated feedback rather than the agency being proactive in obtaining it. Improved management information will provide the EBA with the management information that may assist it in determining areas where it can improve, what programs and services are needed in order for it to fulfill its mission, whether the users of its services are increasing or declining, and where to allocate its resources.

Recommendations

3. *The Legislative Auditor recommends that the Educational Broadcasting Authority should become more proactive rather than reactive in obtaining management information from users and non-users of its services.*
4. *The Legislative Auditor recommends that the Educational Broadcasting Authority conduct needs assessment to determine what gaps need to be filled between current and desired/needed products.*
5. *The Legislative Auditor recommends that the Educational Broadcasting Authority conduct utilization assessment surveys of its educational services, and other programming. Cost effective options such as internet survey tools should be an option.*
6. *The Legislative Auditor recommends that the Educational Broadcasting Authority determine the reasons that non-users do not use its services by options such as surveying or conducting focus groups.*
7. *The Legislative Auditor recommends that the Educational Broadcasting Authority establish benchmarks for its performance measures.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



John Sylvia
Director

May 27, 2010

Dennis Adkins, Executive Director
West Virginia Public Broadcasting
600 Capitol Street
Charleston, WV 25301

Dear Director Adkins:

This is to transmit a draft copy of the Performance Review of the Educational Broadcasting Authority. This report is scheduled to be presented during the June 7-9, 2010 interim meeting of the Joint Committee on Government Operations and the Joint Committee on Government Organization. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting by Wednesday, June 2, 2010. Please notify us to schedule an exact time. In addition, we need your written response by noon on Friday, June 4, 2010 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at (304) 340-3192 by Thursday, June 3, 2010 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

Enclosure

c: Kay Goodwin, Cabinet Secretary
Department of Education and the Arts

Joint Committee on Government and Finance

Appendix B: Travel Reimbursement Analysis

Detailed Cost Breakdown of Travel Reimbursements									
FY	Miles	Amount	Air	Meals	Lodging	Other	Direct	Total	Total
2008	29,173	\$12,778.70	\$3,810.09	\$9,119.21	\$17,121.08	\$11,421.36	\$2,603.27	\$56,662.67	
2009	34,443	\$16,828.09	\$1,728.40	\$18,023.85	\$13,272.08	\$23,078.24	\$12,610.10	\$73,004.66	
2010*	20,604	\$8,891.72	\$1,452.20	\$14,086.45	\$6,548.82	\$5,571.24	\$7,972.83	\$36,586.33	
Total	84,219	\$38,498.51	\$6,990.69	\$41,229.51	\$36,941.98	\$40,070.84	\$23,186.20	\$166,253.66	

*Fiscal year 2010 through March 2010.
 Source: Travel Reimbursement documentation provided by the Educational Broadcasting Authority

Appendix C: Explanation of Charitable Deductions from State Tax Department

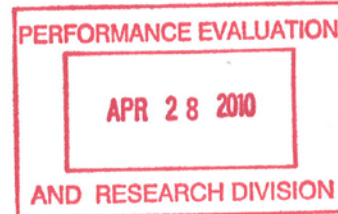


Joe Manchin III
Governor

STATE OF WEST VIRGINIA
Department of Revenue
State Tax Department

Craig A. Griffith
Acting State Tax Commissioner

April 27, 2010



Mr. John Sylvia
Building 2, Room W-314
1900 Kanawha Boulevard East
Charleston, WV 25305-0610

Dear Mr. Sylvia,

This is in response to your letter to Secretary Helton dated April 22, 2010 regarding donations to state agencies. Secretary Helton referred the matter to me and asked that I provide a response. Specifically, you ask: "If an individual or corporation chose to donate funds to a state agency such as the Educational Broadcasting Authority, would said donator still qualify for a federal tax deduction that would be similar or the same as if they had donated to a 501(c)(3) organization?"

The answer is yes as long as the contribution to the agency is made solely for public purposes.

I have enclosed a copy of IRS Publication 526 for your convenience. Page 2 of this document states that "You can deduct your contributions only if you make them to a qualified organization. To become a qualified organization, most organizations other than churches and governments, as described below, must apply to the IRS."

The document states the following under "Types of Qualified Organizations":

Generally, only the five following types of organizations can be qualified organizations.

1. A community chest, corporation, trust, fund, or foundation organized or created in or under the laws of the United States, any state, the District of Columbia, or any possession of the United States (including Puerto Rico). It must be organized and operated only for one or more of the following purposes.
 - a. Religious.
 - b. Charitable.
 - c. Educational.
 - d. Scientific.
 - e. Literary.
 - f. The prevention of cruelty to children or animals.

Certain organizations that foster national or international amateur sports competition also qualify.

TAX COMMISSIONER'S OFFICE
1001 LEE STREET, EAST, P.O. BOX 11771, CHARLESTON, WV 25339-1771
TELEPHONE (304) 558-0751
FAX (304) 558-8999

2. War veterans' organizations, including posts, auxiliaries, trusts, or foundations, organized in the United States or any of its possessions.
3. Domestic fraternal societies, orders, and associations operating under the lodge system.

Note. Your contribution to this type of organization is deductible only if it is to be used solely for charitable, religious, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

4. Certain nonprofit cemetery companies or corporations.

Note. Your contribution to this type of organization is not deductible if it can be used for the care of a specific lot or mausoleum crypt.

5. The United States or any state, the District of Columbia, a U.S. possession (including Puerto Rico), a political subdivision of a state or U.S. possession, or an Indian tribal government or any of its subdivisions that perform substantial government functions.

Note. To be deductible, your contribution to this type of organization must be made solely for public purposes.

Emphasis added.

A state agency is a political subdivision of a state and, as long as the donation is solely for public purposes, the contribution should be deductible as a charitable contribution.

Should you have any additional questions, please feel free to contact me at (304) 558-0751.

Sincerely,


Craig A. Griffith
Acting Tax Commissioner

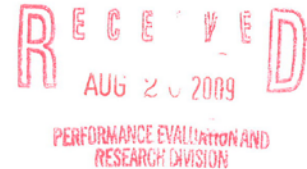
cc: Virgil T. Helton
Cabinet Secretary

Appendix D: EBA Performance Measures



August 17, 2009

Mr. Denny Rhodes, Research Manager
Bldg 1 Room W-314
1900 Kanawha Blvd E
Charleston WV 25305



Dear Mr. Rhodes:

Per your letter of August 13, 2009, I have provided you with performance measures for the Educational Broadcasting Authority.

1. The number of students taking advantage of instructional media as measured by:
 - a. The number of classrooms viewing instructional television for K-12 or college telecourses
 - b. The number of callers to Homework Hotline
2. The depth of the Ready To Learn service's Raising Readers initiative in at-risk counties, specifically McDowell and Clay counties. This is measured mostly through anecdotal evidence, but includes:
 - a. The level of improvement before and after specific programs are implemented (such as a Super Why reading camp)
 - b. Community involvement in offered initiatives (such as a Literacy Fair)
 - c. Adult "buy-in" (particularly parents) into "Anytime is Learning Time."
3. The amount of time users spend interacting with our Web site services such as streaming, news story downloads, and social media
4. The amount of private support for the organization as measured by:
 - a. Number of individual donors
 - b. Number of community sponsors
 - c. Amount of private funding raised through donors and sponsors
5. Local programs that are self-supporting and meet the organization's mission:
 - a. News and Public Affairs – multi-platform, timely, accurate
 - b. Classical Music – the only radio station offering daily, locally programmed productions, Classically Speaking Blog
 - c. Mountain Stage – West Virginia's cultural ambassador to the world

Please let me know if you need further information.

Sincerely,

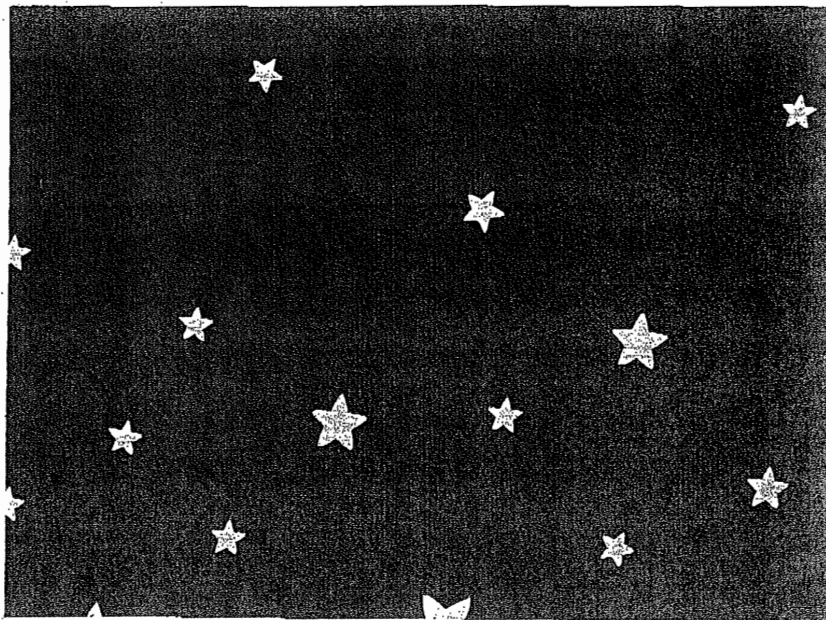
A handwritten signature in blue ink that reads 'Dennis Adkins'.

Dennis Adkins
Executive Director

Appendix E: Examples of Greeting Cards and Drawings

11:00AM WIND

Dear Debbie,
We would like to Thank you
For all the wonderful items
we received at the Train the
Trainer workshop!
Once again we want to
let you know that we appreciate
all the new training information
and networking opportunities.
We are enthusiastic
about sharing all the new
"Healthy Habit"!
Thanks again,
Alicia & Anne



Feb. 4. 2010 11:32AM

WNPB

No. 3999 P. 24

Dear Debbie,

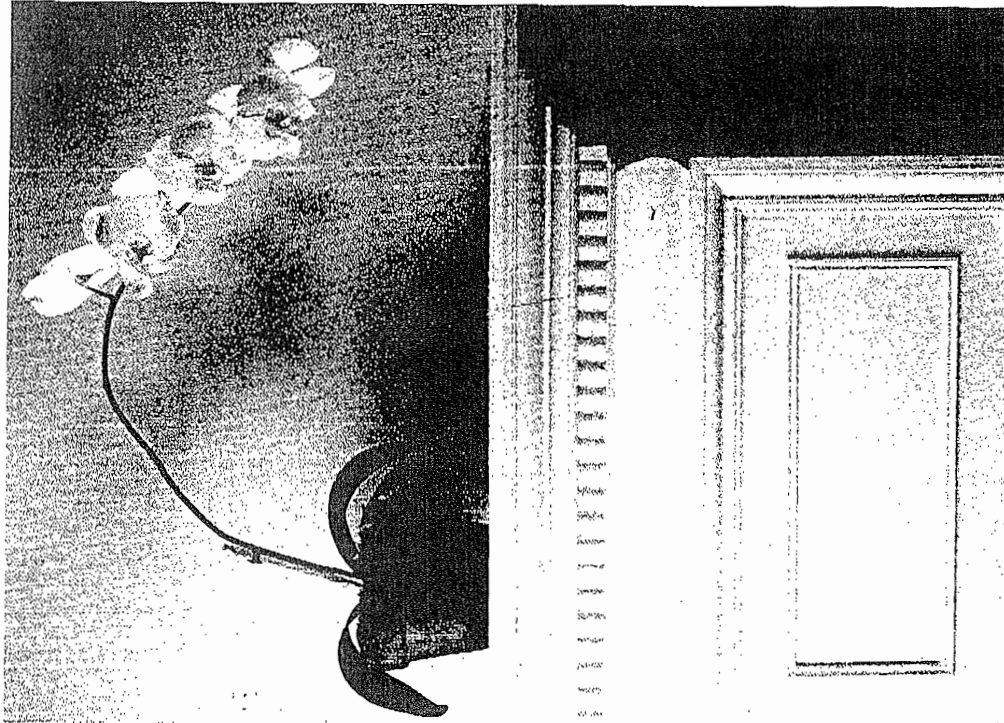
Thank you for making our first stop on the Electric Co. Community Events tour a memorable one! We appreciated you thoughtful, locally-crafted gifts and overall hospitality and professionalism.

Will always remember our trip to the New River Gorge and of course singing along to "Country Roads" as we journeyed home.

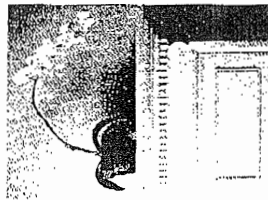
Looking forward to the opportunity to work with you again. Anna Shook Randle - Shenandoah - Shenandoah

Card 6
page 2

Card 7



Printed in China



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No. 3999 P. 27

F&B, 4, 2010 11:33AM WNPB

Feb. 4. 2010 11:33AM

WNPB

No. 3999 P. 26

October 2009

Dear Ms. Oleksa,

Thank you so much for the Electric Company Magazines for Wilsonburg Elementary. They are excellent for the students. Unfortunately for me, I started in Kanawha County on Sept. 14. My husband's job required relocation. I have traveled back and forth on the weekends and will just next week (Oct. 30) get into a home there. I do apologize for not writing to thank you.

Is there any way that I could get some copies of the magazine for my new school? Would you be able to e-mail me to let me know? Thank you for your help.

Deborah (Auntie) Hill
Wilsonburg

dblhill@access.k12.wv.us

Bridgeview Elementary
5100 Ohio Street
South Charleston, WV 25309

2. Feb 4 2010

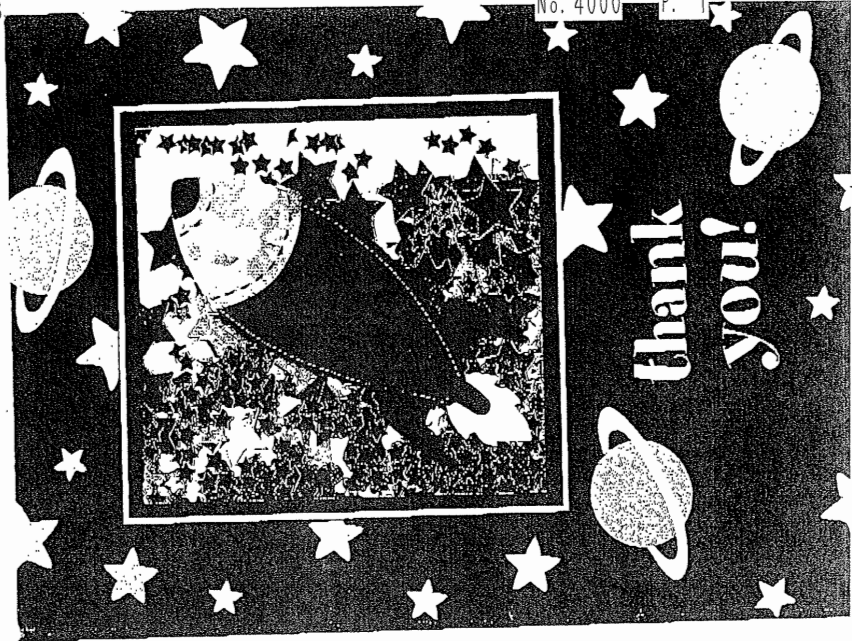


Feb. 4. 2010 11:35AM

WNPB

No. 4000

P. 1



Karen / Craig
one more card

Dear Debbie and Karen,

Another successful event! Thank you so much for helping the Youth Museum kick off our summer learning programs by bringing Curious George to Beckley.

The media coverage we received locally was wonderful. Curious made both the six o'clock and the eleven o'clock news with lengthy spots.

It is collaborative efforts such as this that enable the Youth Museum to build our capacity to address the literacy needs of our under-served rural audience.

We are looking forward to working together on the kick off for Raleigh County Read-Aloud and then the Electric Company's presentation on August 8th.

Thanks again for your continued support of the Youth Museum and our programs.

Leslie The Youth Museum

Card 5
page 2

NO. 5999 R. 11

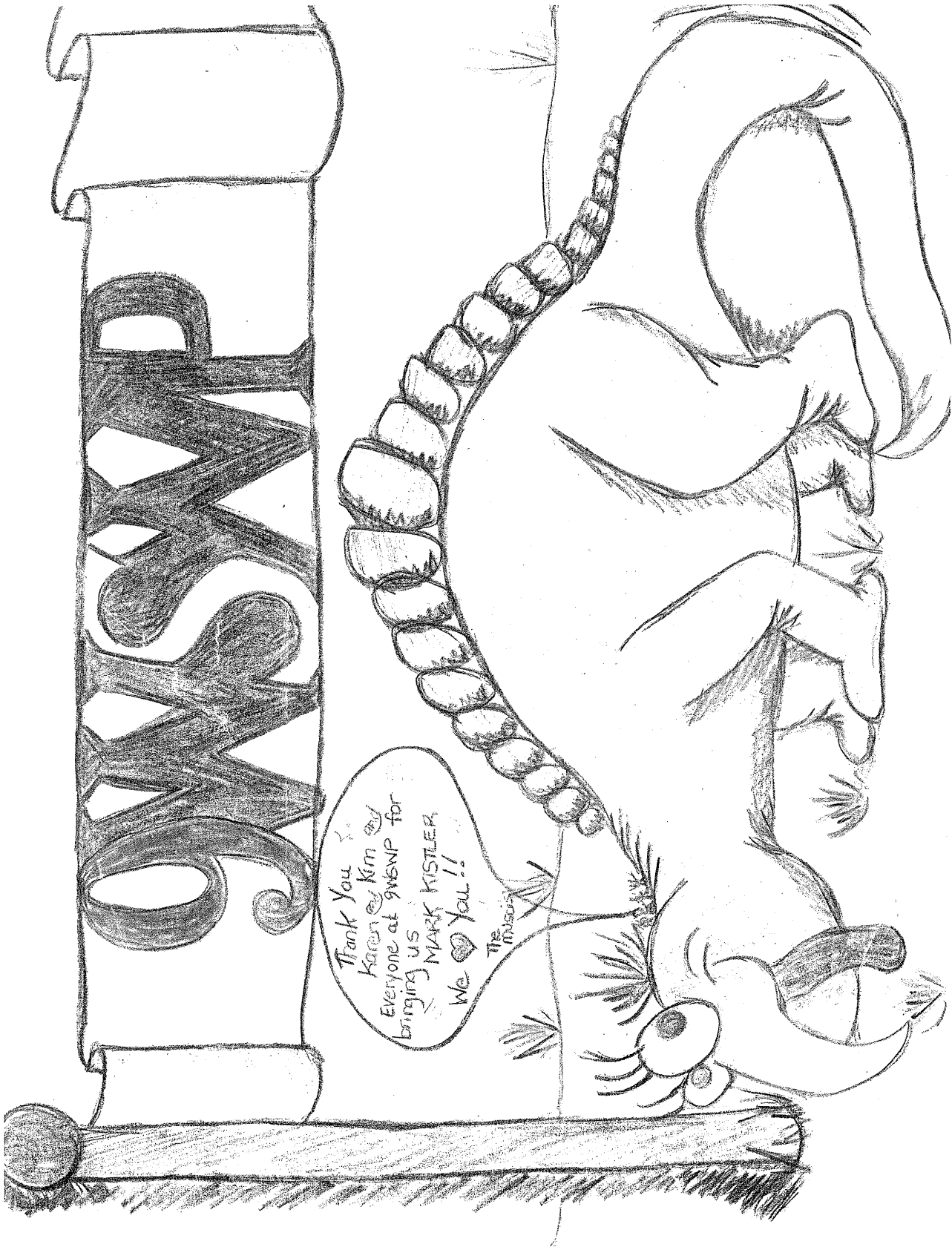
Feb. 4. 2010 11:31AM WNPB

Feb. 4. 2010 11:30AM WNPB

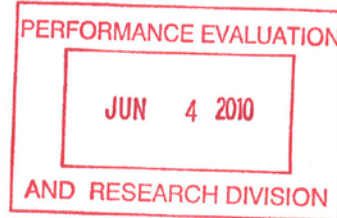
No. 3999 P. 3

page 1





Appendix F: Agency Response



June 4, 2010

John Sylvia, Director
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Mr. Sylvia:

The Educational Broadcasting Authority (EBA) has received and reviewed its Performance Review from the Performance Evaluation and Research Division.

The auditors outlined several areas of improvement under two issues and the EBA recognizes and acknowledges the need to make appropriate procedural and policy changes to bring about those improvements. The EBA will incorporate the auditor's suggestions as expeditiously and effectively as possible within available resources.

We acknowledge that the Legislative Auditor makes these specific recommendations:

1. *...that the Educational Broadcasting Authority, The Friends of Public Broadcasting, Inc., and the West Virginia Public Broadcasting Foundation, Inc., operate as complete and separate entities with clearly defined and disconnected missions and financial accounts to protect the financial rights of the State and persons affected by the agency's activities. The Educational Broadcasting Authority should follow the six recommended items listed below in order to ensure proper separation from the two non-profit corporations:*

- a. The EBA should discontinue providing administrative support for the Friends and the Foundation.*

The EBA is seeking an Advisory Opinion from the West Virginia Ethics Commission regarding the state law (6B-2-5(c)) that prohibits public officials and employees from soliciting gifts unless they are charitable in nature or have a specifically defined public purpose and resultant public benefit.

- b. The EBA should discontinue allowing its offices to be used as an address for the Friends and Foundation.*

The EBA will explore options for implementing this recommendation.

- c. The EBA should discontinue paying for its expenses from the Friends and the Foundation bank accounts. Any moneys that the Friends or the Foundation wishes to provide the EBA should be donated to the EBA.*

At its June meeting, the EBA enacted a resolution which addressed part of this concern in that all money in the Foundation, except for those required for Mountain Stage expenses, will be deposited in a state special revenue account. Additional steps toward this end will be taken as existing contracts expire and new ones are drawn up.

d. The EBA should discontinue all fundraising or soliciting activity by its employees.

Since 39% of the EBA budget is comprised of dollars raised through fundraising activity, some time and resource re-direction will be needed to implement this recommendation. The Advisory Opinion being sought from the WV Ethics Commission will also further inform the necessary actions for how the agency should proceed.

e. The EBA should follow Division of Purchasing regulations for all commodities and services that it procures.

The EBA is now in compliance with Division of Purchasing regulations and will exercise due diligence to do so in the future.

f. The EBA should follow state travel regulations for reimbursing its employees for travel.

The EBA is in compliance with state travel regulations and will exercise due diligence to do so in the future.

2. *The Legislative Auditor recommends that the Educational Broadcasting Authority review meal expenditures to determine whether amended W2's or 1099's should be issued to Educational Broadcasting Authority employees.*

The EBA has reviewed past meal expenditures and will review future meal expenditures and make the appropriate determination.

3. *The Legislative Auditor recommends that the Educational Broadcasting Authority should become more proactive rather than reactive in obtaining management information from users and non-users of its services.*

The EBA agrees with this recommendation.

4. *The Legislative Auditor recommends that the Educational Broadcasting Authority conduct needs assessments to determine what gaps need to be filled between current and desired/needed products.*

The EBA agrees with this recommendation.

5. *The Legislative Auditor recommends that the Educational Broadcasting Authority conduct utilization assessment surveys of its educational services, and other programming. Cost effective options such as internet survey tools should be an option.*

The EBA agrees with this recommendation.

6. *The Legislative Auditor recommends that the Educational Broadcasting Authority determine the reasons that non-users do not use its services by options such as surveying or conducting focus groups.*

The EBA agrees with this recommendation.



Page 3 of 3

- 7. The Legislative Auditor recommends that the Educational Broadcasting Authority establish benchmarks for its performance measures.*

The EBA agrees with this recommendation.

Respectfully submitted,



Dennis Adkins
Executive Director





WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | www.legis.state.wv.us/Joint/PERD/perd.cfm | fax: 1-304-347-4939