

STATE OF WEST VIRGINIA

PRELIMINARY PERFORMANCE REVIEW OF THE

**DEPARTMENT OF PUBLIC SAFETY
WEST VIRGINIA STATE POLICE**

Retirement Bonus and Death
Benefit Accounts May Cause
Liability for State

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890**

April 2000

PE00-04-162

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April 2000

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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Antonio E. Jones, Ph.D.
Director

April 17, 2000

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Preliminary Performance Review of the *West Virginia State Police*, which will be reported to the Joint Committee on Government Operations on Monday, April 17, 2000. The issue covered herein is "*Special Bank Accounts for Retirement Bonuses and Death Benefits May Create Potential Liability for State and for Recipients.*"

We first met with the state police to inform them of this issue on March 15, 2000, and held an exit conference on April 7, 2000.

Should you have any questions, let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Antonio E. Jones".

Antonio E. Jones

AEJ/aml

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BACKGROUND

The Troopers of the West Virginia State Police voluntarily participate in two different programs administered by the State Police accounting section. The two programs are known as the "Voluntary Contribution Fund" (Contribution Fund) and "Voluntary Pledge Fund" (Pledge Fund).

The Pledge Fund was developed in 1963. It was designed to provide a participating member a sum of money upon retirement at \$5 per member. The amount was changed to \$10 per member in 1986. Those who did not wish to increase their contributions were allowed to stay in the \$5 Pledge Fund. The retirement payment is dependent on the number of participants at the time of retirement. If there are 400 members at the time of retirement, the retiree would receive \$4,000. There are currently 384 active participants and 49 non active, retiree, participants for a total of 433.

In 1994 and 1995 there was an increase in the amount of retirees due to changes in retirement benefits and retirement eligibility requirements. This put the payments to retirees in arrears. The State Police began deducting the Pledge Fund contributions from the participants paychecks on July 1, 1994. Retirees are billed each month for their contribution amounts.

The Contribution Fund provides a payment to the beneficiary of participating members upon their death. The required payment is \$5 per member. Unlike the *Pledge Fund*, the *Contribution Fund* does not make payroll deductions for contributions. The accounting section mails the notices to the retirees and faxes notices to the active members at each Troop upon the death of a participating member. There are currently 825 participants.

ISSUE AREA 1: Special Bank Accounts for Retirement Bonus And Death Benefits May Create Potential Liability for State and for Recipients.

The West Virginia State Police has operated a *retirement bonus* for its members, since before 1963, and a *death benefit fund* both based on voluntary membership of troopers. The bank accounts known as *Department of Public Safety Voluntary Pledge Fund* (Appendix A) is for the retirement bonus and the *Department of Public Safety Contribution Fund* is for death benefits.

These accounts were discovered by legislative auditors as questionable when a claim was filed by a current state trooper for wrongful or erroneous deductions from his paycheck. The Voluntary Pledge and the Contribution Funds are managed by the State Police Chief Financial Officer through *One Valley Bank* and lists their address at the State Police Headquarters, 725 Jefferson Road, South Charleston, West Virginia 25301. A designated employee in the benefits section of the Personnel Division within the West Virginia State Police is responsible for billing, collecting and recording all transactions for these two funds. It takes approximately four hours of this employee's time per week to process these transactions. The records are maintained at the State Police Headquarters in South Charleston.

CRITERIA

The Legislative Auditor's Office reviewed the West Virginia Code and could find no legal authorization for either the Contribution Fund or the Pledge Fund. Therefore, the Legislative Auditor concludes that the the Contribution Fund and the Pledge Fund are not authorized state operations, but instead are private endeavors ran by state employees on state time. The use of a state facility or services provided to either fund by state employees during hours of employment may violate the constitution as well as W. Va. Code §6B-2-5 (b) which prohibits an employee's use of public office for private gain. Payment of employees for performing unauthorized work violates §12-3-13 providing that salaries are not paid until services are rendered. Although the original goal of the Pledge Fund and Contribution fund, to provide a gift to retiring troopers and the family of troopers upon their death, may be laudable, the programs have not been legally established by the Legislature.

STATE POLICE REFUSED TO REFUND TROOPER FOR HIS CLAIM OF UNAUTHORIZED DEDUCTIONS

Periodically, state troopers receive a list of deductions from their paychecks for review and consent. A Trooper who either failed to notice his deductions included the special retirement fund, or the state police payroll office erred in transmitting his deductions to the State Auditor of \$10 per payroll. Sixteen months later, the trooper discovered what he thought was an unauthorized payroll deduction. The State Police's Chief Financial Officer refused to refund the \$320 to the trooper. Subsequently, the trooper filed a case with the Court of Claims.

Currently, the Voluntary Pledge Fund is over obligated to approximately 48 retired troopers who have not received their retirement bonus. Each member is owed approximately \$3200 to \$3300

for a total of \$158,400. A shortage was created in the fund in 1995 and 1996 when large numbers of troopers retired. The balance needed in the account upon the large number of retirements would have required each trooper to contribute a large amount of money. The troopers pay to the Contribution fund only upon the death of a trooper or civilian member that has participated in the fund.

CAUSE

During the 1980's, state agencies maintained local checking accounts to reimburse students for college loans, bookstore operations and other operations requiring cash to be available. The Legislative Auditor discovered that state agencies maintained numerous checking accounts, and the State Treasurer and State Auditor were unaware of these accounts. The accounts were set up in the name of the State of West Virginia (Appendix B) and were managed by state employees. The Legislative Auditor requested the Treasurer's Office to begin requiring state agencies to have these accounts approved by the Treasurer's Office so a list of local checking accounts could be maintained. During this period of time, some checking accounts were approved that were not state moneys; however, these accounts were maintained by state employees.

Following this effort to bring scattered accounts into the accountability of the state system, both the Pledge Fund and Contribution Fund accounts were approved by the Treasurer's Office on May 2, 1989, as State accounts.

EFFECTS ON STATE GOVERNMENT AND RECIPIENTS

The approval of the account by the State Treasurer and the name of the account "State of West Virginia" creates the possibility the State of West Virginia could be held accountable for these private funds. For example during the 1990s, the State Board of Risk Insurance Management was required to reimburse the WVU Foundation for funds embezzled by a state employee. This cost the State approximately \$354,000.

Since the name State of West Virginia was placed on the checking account by the State Treasurer's Office and a public employee manages the account on state time, a judge might rule that it is a state account, even though the account was never approved by the Legislature. If a retired trooper filed a claim for the \$3,200 to \$3,300 they are owed, it is possible that other retired troopers could also file a claim. If the claims were upheld, the state could be held accountable for the \$158,400 shortage.

In addition to the funds not being approved state funds, the funds are also not funds managed by a nonprofit organization in accordance with the Internal Revenue Service Code. Further, the Chief Financial Officer of the State Police told legislative auditors that his office has never issued IRS Form 1099 to recipients of the retirement bonus. Instead, the State Police has considered the payments to troopers as being gifts. However, not all State Troopers nor their families qualify for the retirement payments. Instead, only those State Troopers who choose to participate in the plan are eligible (Appendix C). Thus, the difference between the payment retired troopers or their

taxable income.

Finally, the State Police employee managing these two accounts makes \$31,382 per year, when her benefits are included. Since she spends four hours a week on these accounts, or approximately 10% of her time, management of the accounts is costing the state \$3,100 annually.

SIMILAR PROBLEMS MAY EXIST IN OTHER STATE AGENCIES

In addition to the possible liability of the state for the private funds managed by the State Police, there has been other indications that other private bank accounts had the label of State of West Virginia placed upon them during the late 1980s. Therefore, the State Treasurer's Office may need to examine the local bank accounts approved by the Treasurer's Office in the late 1980 as state accounts, to ensure that all such accounts, with the state's name on them, are authorized by law.

CONCLUSION

These two funds should be incorporated in accordance with the IRS Code and removed from state properties, since they are not authorized by law. The use of a state employee during state work hours on state property is in direct violation of the state constitution and WV Code §6B-2-5 and WV Code §12-3-13 and should cease immediately.

Recommendation 1:

The State Police should consider transferring the responsibility for the Pledge and Contribution Funds to a private organization such as the State Troopers Association.

Recommendation 2:

If the State Police chooses not to implement Recommendation 1, the State Police should establish an IRS approved non-profit organization, similar to the WVU Foundation, to administer these funds, or request the Legislature to statutorily establish these programs.

Recommendation 3:

The State Police should immediately cease the use of state employees to administer and maintain the records of these funds on state property and state time.

Recommendation 4:

The State Police should immediately eliminate the state's name from the accounts.

Recommendation 5:

The State Treasurer should consider having his office examine the local bank accounts which were established as state accounts in the late 1980s to ensure that the funds in these accounts are state funds as authorized by law.

APPENDIX A
Blank Check

STATE OF WV DEPARTMENT OF PUBLIC SAFETY
VOLUNTARY PLEDGE FUND
725 JEFFERSON ROAD
SOUTH CHARLESTON, WV 25309

0558

69-35/519

PAY TO THE
ORDER OF

VOID

19

\$

DOLLARS

ONE VALLEY
BANK NA
Charleston, WV 25326

FOR

⑆051900353⑆ 943 519 9⑈ 000558

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APPENDIX B
State Treasurer's Response



State of West Virginia

OFFICE OF THE STATE TREASURER
CHARLESTON, WV 25305

JOHN D. PERDUE
STATE TREASURER

JERRY SIMPSON
ASSISTANT STATE TREASURER

April 11, 2000

1-800-422-7498
304-558-5000
FAX 304-558-4097
WWW.WVTREASURY.COM

Dr. Antonio Jones, Director
Performance Evaluation and Research Division
West Virginia Legislature
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610

RECEIVED

APR 11 2000

RESEARCH AND PERFORMANCE
EVALUATION DIVISION

Dear Dr. Jones:

Our office is in receipt of the draft of a Preliminary Performance Review of the West Virginia State Police, relating to two special bank accounts used for retirement bonuses and death benefits for troopers. You have requested our review and response concerning the issue of state liability and the possibility of other accounts being operated similarly by various state agencies.

First, I would like to give a historical perspective as to how the Treasurer's Office became involved in monitoring and approving accounts maintained by state agencies that were not under the direct control of this office. During the mid 1980's, the Legislative Auditor's Post Audit Division came to our office seeking assistance in determining the number, purpose and amounts maintained in accounts under the direct control of state agencies. As a result of this request, our office began requiring all state agencies to request our approval for these accounts. Another purpose of this requirement was to ensure that these accounts were not funds that were due the state according to West Virginia Code §12-2-2. At that time, we made no attempt to determine if these funds were authorized by statute.

Another purpose was to ensure that these funds were fully collateralized. At that time we requested the FDIC to provide our office with their opinion as to whether these accounts would be covered individually by \$100,000 FDIC insurance or since these accounts were titled "State of West Virginia," whether they would be lumped together for FDIC insurance coverage. The FDIC declined to provide a definitive answer. Therefore, our office began requiring that every financial institution fully collateralize all accounts maintained in the name of the State of West Virginia.

Dr. Antonio Jones
Page 2
April 11, 2000

When State Treasurer John D. Perdue came into office in 1997, he made a determination that the procedures established in the mid 1980's should be codified. Therefore, West Virginia Code §12-2-3 was changed in 1997 in SB-563 by adding the following provision:

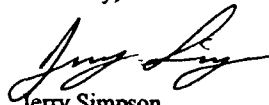
"All officials and employees of the state authorized to accept moneys that they have determined are not funds due the state pursuant to provisions of section two (§ 12-2-2) of this article, shall request the treasurer to approve the deposit of the funds into an approved depository. The request shall be made on forms and in accordance with procedures as the treasurer establishes. No funds shall be deposited until the written approval of the treasurer is obtained. The treasurer shall be the final determining authority as to whether these funds are funds due or not due the state pursuant to section two of this article. The treasurer shall on a quarterly basis provide the legislative auditor with a report of all accounts approved by him."

It should be noted that our office has not made a full determination as to whether all accounts authorized by our office since the mid 1980's are authorized by law. The original intent was just to determine what accounts the agencies had established and assist the Legislative Auditor in their auditing responsibilities.

Currently, we have requested all financial institutions to provide our office with a list of all accounts that have not previously been approved by our office.

If you have questions or require additional information, please call me.

Sincerely,


Jerry Simpson
Assistant Treasurer

JS:jh

**West Virginia State Treasurer's Office
Outside Bank Account Listing
Number of Accounts by Agency**

Org ID	Agency Name	Number of Approved Outside Bank Accounts
0221	PUBLIC DEFENDERS	1
0225	PUBLIC EMPLOYEES INSURANCE AGENCY	8
0306	GEOLOGICAL & ECONOMIC SURVEY	6
0313	ENVIRONMENTAL PROTECTION	12
0323	EMPLOYMENT PROGRAMS	10
0402	EDUCATION DEPARTMENT OF	3
0432	CULTURE & HISTORY DIVISION OF	1
0463	WEST VIRGINIA UNIVERSITY	12
0464	WVU AT PARKERSBURG	7
0465	POTOMAC STATE COLLEGE OF WVU	8
0471	MARSHALL UNIVERSITY	16
0475	GRADUATE COLLEGE	1
0476	OSTEOPATHIC MEDICINE SCHOOL OF	4
0482	BLUEFIELD STATE COLLEGE	9
0483	CONCORD STATE COLLEGE	10
0484	FAIRMONT STATE COLLEGE	14
0485	GLENVILLE STATE COLLEGE	15
0486	SHEPHERD COLLEGE	11
0487	SOUTHERN WV COMMUNITY COLLEGE	10
0488	WEST LIBERTY STATE COLLEGE	10
0489	NORTHERN COMMUNITY COLLEGE WV	6
0490	STATE COLLEGE WV	12
0491	WVU INSTITUTE OF TECHNOLOGY	15
0506	HEALTH DIVISION OF	1
0511	HUMAN SERVICES DIVISION OF	94
0601	SEC OF MILITARY AFFAIRS AND PUBLIC SAFETY	1
0603	ADJUTANT GENERAL	28
0608	CORRECTIONS DIVISION OF	42
0612	STATE POLICE	18
0613	VETERANS AFFAIRS	2
0615	REGIONAL JAIL & CORRECTIONAL FACILITY	17
0702	TAX DIVISION	6
0705	LOTTERY COMMISSION	1
0707	RACING COMMISSION	47
0803	HIGHWAYS DIVISION OF	2
0932	REHABILITATION SERVICES	1
1300	TREASURERS OFFICE	3
1400	AGRICULTURE DEPARTMENT OF	7
2400	SUPREME COURT	58
<i>Total Approved Outside Bank Accounts as of April 11, 200</i>		<i>529</i>

**PROCEDURES FOR REQUESTING APPROVAL FOR OPENING
AN OUTSIDE BANK ACCOUNT**

- | | |
|--------|---|
| Agency | <p>1. Completes form titled "Request of Approval for Opening an Outside Bank Account."
Note: You must receive approval before opening the outside bank account.</p> <p>2. Sends form to: State Treasurer's Office
Attn: Controller
Building 1, Suite E-145
State Capitol Complex
Charleston, West Virginia 25305</p> |
| STO | <p>3. Reviews form for completeness and determines if the funds involved are not funds due the State as defined by West Virginia Code §12-2-2.</p> <p>4. Returns approved copy to agency. Sends copy to:
Legislative Auditor's Office</p> |
| Agency | <p>5. Receives approved form and opens outside bank account. The name of the account must begin with "State of WV."</p> <p>6. Sends information identifying the bank and account number to the address in Step 2.
Note: If the bank account is closed, a notice must be sent to the STO.</p> |
| STO | <p>7. Receives notice and adds bank and account number to the STO outside bank account file.
Note: WV Code §12-1-4 requires the STO to collateralize all accounts maintained by the State or Agency of the State. All financial institutions provide the STO with a quarterly report of the balances of all accounts.</p> |
| STO | <p>8. Distributes Quarterly Reports to:
State Auditor's Office
Higher Education Central Office
Department of Administration – Financial
Accounting & Reporting Section
STO Internal Auditor</p> |

TO: State of West Virginia
Office of the State Treasurer

FROM: _____

SUBJECT: Request of Approval for Opening an Outside Bank Account

1. Request is hereby made to open an account in _____

(Depository) for the purpose of receiving and processing funds not due the State as defined by West Virginia Code §12-2-3.

These funds are described as follows: _____

2. This account is to be established on _____, 19__.

Signature of Requestor

Date

*3. The subject request has been reviewed and is approved by the West Virginia State Treasurer.

Approved Signature

Date

Distribution to be made after bank account number is confirmed.

*cc: Legislative Auditor's Office, Attn: _____

To be completed by requesting agency after approval by State Treasurer.

Bank Account Name: State of West Virginia
Office of State Treasurer

Bank Account Number _____

**State Treasurer Use Only*

TO: State of West Virginia
Office of the State Treasurer

FROM: _____

SUBJECT: Notice of Closing an Outside Bank Account

1. Name of Bank: _____

Account Number: _____

2. This account was closed on _____, 19____.

Signature of Requestor

Date

*cc: Legislative Auditor's Office, Attn: _____

APPENDIX C
Pledge Fund Agreement

WEST VIRGINIA STATE POLICE
RETIREMENT VOLUNTARY PLEDGE FUND

1. I, the undersigned employee of the West Virginia State Police, hereby promise to pay ten dollars (\$10) to each member and civilian employee of the West Virginia State Police who retires from the State Police while I am a member of the Voluntary Pledge Fund, subject to provisions 2 through 8.
2. Any member or civilian employee of the State Police will be eligible to receive benefits from the Retirement Voluntary Pledge Fund provided: (1) he or she has served twenty (20) years or more with the State Police; (2) regardless of length of service, if he or she is forced to retire from the State Police as a result of injuries received in line of duty and is retired by the Consolidated Public Retirement Board; (3) regardless of length of service, if he or she is forced to retire from the State Police as a result of illness or injury not received in line of duty and is retired by the Consolidated Public Retirement Board; (4) regardless of length of service, should the participating member die while an active member or civilian employee of the West Virginia State Police.
3. Any member or civilian employee who has retired or has been separated from the State Police and has received benefits from the Retirement Voluntary Pledge Fund shall not again be eligible if later reappointed, reinstated or reemployed. Former employees of the West Virginia State Police who have been reemployed may join the Retirement Voluntary Pledge Fund only if they were members of the fund during their original employment period.
4. Payments are to be made within fifteen (15) days after issuance of a Department Notice requesting said payment. All checks are to be made payable to the Department of Public Safety Pledge Fund. Commanding Officers are authorized to make collections from contributing members or civilian employees and forward them to the Accounting Office. Commanding Officers will be furnished with the names of all contributing members or civilian employees.
5. In the event any member fails to contribute, such member automatically eliminates himself from participating in the Retirement Voluntary Pledge Fund.
6. The payments herein promised are to be made only with respect to members and civilian employees of the West Virginia State Police who have executed this agreement.
7. The Accounting Office, under the supervision of the Superintendent, shall keep a proper and accurate account of all receipts and expenditures.
8. Arrangements will be made with the management of the depository whereby the signature of any two (2) Senior Staff, that is, the Superintendent, Lieutenant Colonel, Major(s), or the Comptroller, shall be honored on checks for withdrawal of said Retirement Voluntary Pledge Fund.

Signed this _____ day of _____, 19__

SIGNATURE

BENEFICIARY: _____

RELATIONSHIP: _____

APPENDIX D
Transmittal Letter to Agency

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



Antonio E. Jones, Ph.D.
Director

April 10, 2000

Colonel Gary L. Edgell, Superintendent
West Virginia State Police
725 Jefferson Road
South Charleston, West Virginia 25309-1698

Dear Colonel Edgell:

This is to transmit a copy of the Preliminary Performance Review of the West Virginia State Police dealing with the Voluntary Pledge Fund and the Voluntary Contribution Fund. As per our meeting in your office on Friday, April 7, 2000, this is the final version of the issue. This issue was also discussed with Lt. Colonel Powers and Major Bedwell on March 15, 2000. We would appreciate your response by April 13, 2000. If you have questions related to factual errors or need clarification on any part of the report, please let me know.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Antonio E. Jones".

Antonio E. Jones

Joint Committee on Government and Finance

APPENDIX E
Agency Response



West Virginia State Police
725 Jefferson Road
South Charleston, West Virginia 25309-1698
Executive Office

Cecil H. Underwood
Governor

April 13, 2000

Colonel Gary L. Edgell
Superintendent

Antonio E. Jones
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610

Dr. Jones:

This letter is submitted in response to your correspondence of April 10th, and the Preliminary Performance Review which was attached thereto (Voluntary Pledge Fund and Voluntary Contribution Fund).

As of this writing, I have only been able to explore your first recommendation, less than three days having elapsed since I received your report. I personally contacted the leadership of the West Virginia Trooper's Association, as you recommended, and after due deliberation they declined the opportunity to take responsibility for these programs.

Myself, and my staff are now actively considering any and all other options which appear viable. Given the longevity of these programs, 43 years, it is not likely that the optimal solution(s) will be found overnight. I am proceeding with all due caution in this endeavor, and would respectfully request that to the extent possible you do the same, so as to prevent unwarranted rumors as to the stability of these programs. Any adverse consequence which might arise, however unintentional, have the very real possibility of directly affecting over 1,000 individuals.

During the interim, it appears to be impossible to act on your third recommendation regarding staffing. As to recommendations four and five, I stand ready to act immediately in compliance with whatever directive the State Treasurer may chose to issue.

I hope I have clearly communicated the good faith efforts of the State Police in this matter, and will not be taking any of the Committee's time on Monday unless the Chair Persons are desirous of my presence.

Sincerely,

COLONEL GARY L. EDGELL
SUPERINTENDENT
WEST VIRGINIA STATE POLICE

Equal Opportunity Employer

