

# STATE OF WEST VIRGINIA

## UPDATE OF THE PRELIMINARY PERFORMANCE REVIEW OF THE

## TOURISM COMMISSION

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Full Compliance except for Approval of  
Direct Advertising Grants for Internet  
Advertising

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**OFFICE OF LEGISLATIVE AUDITOR**  
**Performance Evaluation & Research Division**  
**Building 1, Room 314-W**  
**State Capitol Complex**  
**CHARLESTON, WEST VIRGINIA 25305**  
**(304) 347-4890**

PE98-18-110

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Performance Evaluation and Research Division

Harvey Burke, Research Manager  
Shannon Riley, Research Analyst

**November 1998**

**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

Building 1, Room W-314  
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Antonio E. Jones, Ph.D.  
Director

November 15, 1998

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 an Update of the Preliminary Performance Review of the *Tourism Commission*, which will be reported to the Joint Committee on Government Operations on Sunday, November 15, 1998. The issue covered herein is "*Full Compliance except for Approval of Direct Advertising Grants for Internet Advertising.*"

We conducted an exit conference with Tourism on October 30, 1998 and received an agency response on November 10, 1998.

Should you have any questions, let me know.

Sincerely,

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

Antonio E. Jones

AEJ/wsc



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## INTRODUCTION

The Tourism Commission was created within the West Virginia Development Office to enhance West Virginia as a tourist destination. One of the most important functions of the Tourism Commission is their responsibility to issue grants to tourism industries from the **Cooperative Tourism Promotion Fund (CTPF)**. The fund helps public and private sector tourism entities reach new markets through grants for direct advertising. According to the *West Virginia Code*, direct advertising refers to “*advertising which is limited to television, radio, mailings, newspaper, magazines and outdoor billboards, or any combination...*” Further, the program encourages tourism related businesses and organizations to form partnerships to promote a specific region or product. Tourism businesses and organizations are to combine efforts within their region in an effort to stretch their advertising budgets and reach markets they could not afford to reach on their own. Regional advertising is also an attempt to help tourists identify attractions surrounding a single destination.

The Legislative Auditor’s Office conducted a performance evaluation of the Tourism Commission in 1996 which determined: *improvements in administration of Cooperative Tourism Promotion Fund Grants are needed; weak cash controls exist in telemarketing unit and; promotional stamp program is not cost beneficial.* In this update, the following categories are used to describe the degree of compliance by the Tourism Commission with the recommendations of the original performance evaluation.

| <b>Levels of Compliance</b>  |
|--|
| <u>In Compliance</u> - The Commission has corrected the problems identified in the performance evaluation.   |
| <u>Partial Compliance</u> - The Commission has partially corrected the problems identified in the performance evaluation.  |
| <u>Planned Compliance</u> - The Commission has not corrected the problems but has provided sufficient documentary evidence to find that they will do so in the future. |
| <u>In Dispute</u> - The Commission does not agree with either the problem identified or the proposed solution.   |
| <u>Non-Compliance</u> - The Commission has not corrected the problem identified in the performance evaluation.   |
| <u>Requires Legislation</u> - Cannot be addressed by the Commission because statutory change is necessary.   |





**Issue Area 1:           The Tourism Commission Approves Grant Activities That Are Not Defined In Code**

In the 1996 report, the Legislative Auditor’s Office found that *West Virginia Code* §5B-2-12 directs that funds in the Cooperative Tourism Promotion Fund be used for direct advertising of travel and tourism. Subsection a defines direct advertising as “*advertising which is limited to television, radio, mailings, newspaper, magazines and outdoor billboards, or any combination thereof.*” However, the Commission approved grants that included expenditures for activities not included in the definition, such as advertising on the Internet, research, promotional items and various gatherings of persons active in the tourism industry. While these activities may present opportunities for cost effective marketing of West Virginia as a tourist destination, they are not included in the statutory definition of direct advertising.

**1996 Recommendation 1.1**

*The Legislature should consider revising the definition of direct advertising to include other forms of advertising not previously listed. Expanding the definition of direct advertising to include other forms of advertising in the West Virginia Code would allow grant recipients to take advantage of technological advancements and standard industry practices beyond the current definition. The use of other forms of effective advertising may increase awareness and interest in West Virginia as a tourist destination.*

**1998 Level of Compliance: Non Compliance - Requires Legislation**

The Legislative Auditor reviewed 166 grant applications for this 1998 update. Thirty-one approved grants included funding for web-site links, maintenance and development. Of these grants, the Commission approved \$243,000.00, for advertising which is not permitted by the *Code’s* strict definition of allowable activities.

**1998 Recommendation**

*The Legislature should consider updating the definition of direct advertising to include forms of advertising common in keeping up with technological advances.*

**1996 Recommendation 1.2**

*The Procedural Rules should reflect the Code’s definition of direct advertising.*

**1998 Level of Compliance: Non Compliance - Requires Legislation**

The Division of Tourism filed a procedural rule, effective on January 1, 1998 governing the application and award criteria for disbursement of direct advertising grants for regional advertising from the Tourism promotion fund. Title 144-2-7.1 provides for the following eligible expenses.

*Eligible expenditures are those directly related to direct advertising. Direct Advertising include, but is not limited to, advertising on television, radio, or other telecommunications medium, i.e. Internet: advertisements in newspaper, magazines or other print media; direct mail advertising; official highway signing; and outdoor advertising, i.e. billboards; or any combination thereof.*

Ineligible expenditures include:

*Administrative costs of the applicant, including travel costs. Any costs associated with preparation of the direct advertising grant application. The rental or purchase of real estate. Construction costs. Political or Lobbying activities of any kind. Membership fees or dues to any organization. Costs associated with the start up of any business or publication although it may be partially or totally devoted to tourism in the state. The purchase of any audio-visual equipment. The costs of alcoholic beverages. Any expenditure not identified within the project application unless the Commission grants prior approval in writing.*

The Division of Tourism is in compliance with the spirit of the recommendation, however, the new procedural rule does not reflect the statute. The statute still prohibits technologically advanced forms of direct advertising. The counsel for the Legislative Rule-Making Review Committee stated:

*The definition of "direct advertising" relates to the expenditure of state funds, which grants or denies a specific benefit and would therefor need to be amended by legislative rule. However, it is also my opinion that even a legislative rule is not sufficient in this instance. A legislative rule must be in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific and may not conflict with a provision of the code.(See **Appendix A** for the full body of the letter.)*

The INTERNET presents a new way for consumers to receive information about tourist attractions and businesses in West Virginia. INTERNET users learn about state attractions without waiting for a pamphlet in the mail. State Tourism Commission grants which support INTERNET advertising are logical, however, at this time these expenditures are still illegal. As technology advances, opportunities for cost-effective advertising will increase. The state should be poised to take advantage of these advances, which are currently beyond the statutory authority for the Commission's direct advertising efforts.

### **1998 Recommendation 1**

*The Legislature should consider revising the definition of direct advertising to include modern forms of advertising not previously included in the West Virginia Code.*

**Issue Area 2: Incomplete Grant Applications Are Being Approved by the Tourism Commission**

In the 1996 report, the Legislative Auditor's Office found that Procedural Rule §144-2-3.2 sets forth the guidelines for the submission of grant applications.

*The application shall include the complete advertising or marketing plan, in sufficient detail to permit evaluation against the required criteria. The application shall include a complete media plan with run dates and advertising costs as well as a complete description of the project, event, fair or festival. The information shall be broken out by individual publications with ad size, specific broadcast stations, billboard locations, advertising agency fees, printing costs, production supplier/vendor costs and any other applicable costs.*

Procedural Rule §144-2-4.1 requires that "The Division shall review all applications for completeness and conformance to guidelines. Applications deemed not complete or not in conformance with guidelines by the Division shall be returned to the applicant for additional information." The guidelines list the elements necessary for applications to be deemed complete. However, analysis of 40 approved grant applications revealed that 27 were not written in conformance to the guidelines.

**1996 Recommendation 2.1**

*The Commission should enforce the grant application guidelines listed in the Procedural Rules.*

**1998 Level of Compliance: Full Compliance**

In the 1996 report, the Legislative Auditor identified six areas in which application guidelines were deficient. Guidelines establish a system to ensure that adequate information exists in the grant proposal to fully evaluate the viability of the request. To test compliance with the 1996 recommendation, the Legislative Auditor reviewed 166 grant applications. Only four approved grants had guideline deficiencies. This amounts to \$551,409 or less than ten per cent of total grant awards. In 1996, the Legislative Auditor reported that over fifty per cent of all grants and expenditures were awarded despite guideline deficiencies. The Tourism Commission also rejects or tables incomplete grant applications. The Legislative Auditor's Office finds that the Tourism Commission has significantly improved its enforcement of guidelines since 1996.



**Issue Area 3:           The Tourism Commission and its Cooperative Tourism Promotion Fund Committee Do Not Maintain Proper Records**

The process for allocating grants to tourism entities includes meetings of the CTPF Committee and the consideration of various documents. However, in 1996, the Legislative Auditor found that the CTPF Committee did not keep minutes of its proceedings. Further, the score sheets and evaluation findings of the grant applications generated by the CTPF Committee and considered by the Tourism Commission are not maintained in a central location. Finally, grant applications that are rejected or returned to applicants for further clarification are not kept on file by either the CTPF Committee or the Tourism Commission.

**1996 Recommendation 3.1**

*The Cooperative Tourism Promotion Fund Committee should document decision making in meeting minutes.*

**1998 Level of Compliance: Full Compliance**

In the 1996 report, the Legislative Auditor identified that the Cooperative Tourism Promotion Fund (CTPF) Committee did not keep minutes of its proceedings, thus violating the Open Governmental Proceedings Act [*West Virginia Code §6B-2-5(d)*], which states: “*Each governing body shall provide for the preparation of written minutes of all of its meetings.*” The Cooperative Tourism Promotion Fund provided the Legislative Auditor with recorded meeting minutes from January 1997 to August 1998. **Decision making is documented in the minutes.**

**1996 Recommendation 3.2**

*Committee Members’ score sheets, evaluation findings and copies of rejected grants applications should be maintained together and kept at the Tourism Commission offices.*

**1998 Level of Compliance: Full Compliance**

The Division of Tourism, under the direction of the Tourism Commission, established procedural rules requiring all grant applicants to submit applications by the fifteenth of the month prior to the scheduled Commission meeting. Individual commissioner’s scores, group scores, findings and recommendations are recorded in the Cooperative Tourism Promotion Fund meeting minutes. These are maintained at the Division of Tourism.



**Issue Area 4: Grant Evaluation Reports Are Not Being Submitted To The Tourism Commission**

In June 1996, the Tourism Commission amended the Procedural Rules to include a provision that requires grant recipients to track and evaluate the effectiveness of their grant award. Rule §144-2-8.3 states, “*Approved grant recipients shall provide to the Division quarterly written evaluations of the advertising program supported by the grant.*” However, for the period of July 1 to November 15, 1996, only 18.6% of the quarterly reports due have been submitted by grant recipients. In addition, the Commission has not established a formal requirement that grant recipients provide final completion reports detailing the impact of their subsidized advertising effort. Accordingly, no final completion reports have been submitted.

**1996 Recommendation 4.1**

*The Tourism Commission should notify grant recipients about their responsibility for submission of quarterly evaluation and final completion reports in grant award notification letters. Further, the Tourism Commission should consider amending the procedural rules to make expense reimbursements contingent on submission of evaluation information.*

**1998 Level of Compliance: Full Compliance**

Approved grant recipients are required to provide the Division with quarterly and/or final written evaluations. In the original report, the Legislative Auditor recommended that the Commission establish some form of enforcement for this provision. In the new procedural rule, the Commission expanded section 8 to make expense reimbursements contingent on submission of evaluation information. §144-2-8.4 states:

*Grant Awards must be closed within 90 days of the projects end date unless an extension is approved in writing by the Commission. Final reimbursements shall not be made prior to the receipt of the final report required by 8.3 of these rules.*

The Legislative Auditor finds this rule and its enforcement control satisfies the need for evaluation reports.





**Issue Area 5:           The Telemarketing Unit Has Inadequate Cash Control Procedures for 800 Service Subscribers and Label Customers**

In 1996, the Legislative Auditor found that the telemarketing unit did not provide staff with cash management responsibilities, job descriptions or policy statements defining their duties and responsibilities. One person handled a variety of tasks in the cash management process resulting in a weak control environment. Finally, the lack of cash reconciliation also contributed to a weak cash control environment.

**1996 Recommendation 5.1**

*The Director of Administration should work with management in the Telemarketing Unit to document the invoicing and reconciliation procedures and employee's responsibilities for cash transactions for 800 service subscribers and label customers. (The Telemarketing Unit has complied with this recommendation.) At the very least, the Director of Administration should establish procedures that require a mail room person to log incoming cash, checks and should identify a person responsible for reconciliation of receipts, deposits and billing.*

**1998 Level of Compliance: Full Compliance**

The Telemarketing billing and depositing of funds is now handled by the Administrative Section of the Division of Tourism. Responsibility for billing is handled by an Accounts Payable Clerk. Deposits are prepared by the Administrative Services Assistant in the Administration Section who is independent of the billing process. All checks are sent to the Administrative Services Assistant who deposits receipts through WVFIMS. Copies of all checks along with check stubs, remittances, etc. are attached to the agency deposit sheet and forwarded to the accounts payable/billing clerk for posting to customer accounts. Copies of all checks and deposits are then filed. Reconciliation of proper posting is under the direction of the Director of Administration.



**Issue Area 6:           The Promotional Stamps Program has a Weak Internal Control System for Cash Transactions**

The Promotional Stamp Program began in 1992. It consists of eight series of decorative stamps that show images of the state and its wildlife. Each series consists of a sheet containing 30 to 36 stamps and is sold for \$3.00. The program's printing costs are paid for out of the Commission's advertising budget. In 1996, the Director of the Promotional Stamp Program performed all duties associated with the program including invoicing and receiving. There was no reconciliation process to verify the cash management of the process. Also, in 1996, the mail room did not open the checks, nor did they complete a daily log of the checks received. In the 1996 Performance Review, the Legislative Auditor was concerned that the weak control environment raised the potential for a loss of resource

**1996 Recommendation 6.1**

*The Commission should establish a control procedure that includes logging checks in the mail room and reconciliation of transactions by someone other than the Director of the program.*

**1998 Level of Compliance: Full Compliance**

Since 1996, according to the Director of Administration for the Division of Tourism:

*The Director of the Stamp Program no longer receives receipts for deposit. Stamp Program receipts are handled in the same fashion as described above, however a copy of the check deposit is forwarded to the Director for his records. Reconciliation of proper postings is performed by the Director of Administration.*

The Legislative Auditor reviewed deposit cover sheets and copies of checks. These internal controls satisfy recommendations regarding cash transactions of the Promotional Stamp Program.



**APPENDIX A**

**Letter from Counsel  
Committee on Legislative Rule-Making Review**





**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee**

*State Capitol - Room MB-49  
Charleston, West Virginia 25305  
(304) 347-4840*

*Senator Mike Ross, Co-Chairman  
Delegate Mark Hunt, Co-Chairman  
Debra A. Graham, Counsel*

*Joseph A. Altizer, Associate Counsel  
Rita Pauley, Associate Counsel  
Teri Anderson, Administrative Assistant*

October 13, 1998

**RECEIVED**

**OCT 14 1998**

**RESEARCH AND PERFORMANCE  
EVALUATION DIVISION**

Shannon L. Riley  
Research Analyst  
West Virginia Legislature  
Performance Evaluation and Research Division  
Building 1, Room W-314

Dear Shannon:

This letter is in response to your request for my opinion as to whether or not the Tourism Commission may amend the definition of "direct advertising" as it is set forth in W.Va. Code §5B-2-12(a) through a procedural rule. It is my opinion that the only way this definition may be amended is by amending section 12(a).

To begin with, if it were possible to amend the definition through rule-making, it is my opinion that it would have to be done by legislative rule. W.Va. Code §29A-1-2 defines a "Legislative Rule" as "every rule which, when promulgated after or pursuant to authorization of the Legislature, has (1) the force of law, or (2) supplies a basis for the imposition of civil or criminal liability, or (3) grants or denies a specific benefit." The definition of "direct advertising" relates to the expenditure of state funds, which grants or denies a specific benefit and would therefore need to be amended by legislative rule.

However, it is also my opinion that even a legislative rule is not sufficient in this instance. A legislative rule must be in conformity with the legislative intent of the statute which the rule is intended to implement, extend, apply, interpret or make specific and may not conflict with a provision of the code. W.Va. Code §5B-2-12(a) defines direct advertising as follows "Direct advertising means advertising **which is limited** to television, radio, mailings, newspaper, magazines and outdoor billboards, or any combination thereof." The use of the phrase, "which is limited to," in my opinion shows that the intent of the Legislature was to limit direct advertising to those mediums specified. Had the legislature intended the definition to be subject to interpretation by the

Shannon L. Riley  
Page 2  
October 13, 1998

Tourism Commission, it would have used the terminology "includes, but is not limited to."  
Additionally, **if the definition were proposed by a legislative rule, it would be in conflict with the statute.**

If I can be of further assistance, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Debra A. Graham", followed by a long horizontal line extending to the right.

Debra A. Graham  
Counsel

DAG/tla



**APPENDIX B**  
**Agency Response**





West Virginia Division of Tourism  
2101 Washington St., E. • PO Box 50312 • Charleston, WV 25305-0312  
Ph: 304-558-2200 • 1-800-CALL-WVA  
Fax: 304-558-0108  
www.state.wv.us/tourism

November 10, 1998

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NOV 10 1998

RESEARCH AND PERFORMANCE  
EVALUATION DIVISION

Mr. Antonio Jones  
Performance Evaluation & Research Division  
West Virginia Legislature  
Building 1, Room W-134  
Charleston, West Virginia 25305-0610

Dear Mr. Jones:

With regard to the follow-up performance evaluation review, I hereby make the following response on behalf of the Tourism Commission.

The Commission is appreciative of the time and effort on the part of your associates in their evaluation of their activities and those performed by the Tourism Commission.

We would like to address specifically the following issues:

**Issue Area 1:** The Tourism Commission approves grant activities that are not defined in the Code.

West Virginia Code §5B-2-12 Subsection (b) states the balance of the monies deposited in the fund shall be issued for direct advertising within the state's travel regions as defined by the Commission. In other words, it has been interpreted by the Commission to mean that the Commission has discretion as to the definition of direct advertising for the funds distributed to applicants.

However, during the 1998 Legislature, the Tourism Commission, in close cooperation with the House Government Organization Committee, help formulate language to be added to the current legislation that would expand the direct advertising definition to include the Internet and other typical tourism promotion activities.

We completely concur with the recommendations provided by the performance evaluators. Since the Tourism industry is largely made up of small and medium-sized businesses, the Commission believes that the use of the Internet is an extremely cost-efficient direct advertising method of reaching a large audience to promote travel to West Virginia. The Commission is of the opinion that it would

*Equal Opportunity Employer*

Antonio Jones  
November 10, 1998  
Page 2

be detrimental to the industry to not include Internet advertising as part of the Cooperative Tourism Promotion Fund program.

If you have questions or need additional information, please feel free to contact me. Thanks.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Reintsema". The signature is written in a cursive, flowing style.

Robert A. Reintsema  
Commissioner

RAR/b