STATE OF WEST VIRGINIA

SPECIAL REPORT
OF

CONSOLIDATED PUBLIC RETIREMENT BOARD
WEST VIRGINIA TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM

FOR THE PERIOD

JULY 1, 1991 - SEPTEMBER 30, 1998

OFFICE OF THE LEGISLATIVE AUDITOR

CAPITOL BUILDING

CHARLESTON, WEST VIRGINIA 25305-0610

SPECIAL REPORT

CONSOLIDATED PUBLIC RETIREMENT BOARD

WEST VIRGINIA TEACHERS' DEFINED CONTRIBUTION

RETIREMENT SYSTEM

FOR THE PERIOD

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CONSOLIDATED PUBLIC RETIREMENT BOARD

WEST VIRGINIA TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM

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EXIT CONFERENCE

We held an exit conference on December 8, 1998 with the Executive Secretary of the Consolidated Public Retirement Board and all findings and recommendations contained within the Special Report on the Teachers' Defined Contribution Retirement System were reviewed and discussed. The above official did not respond in writing to our findings.

WEST VIRGINIA LEGISLATURE

Joint Committee on Government and Finance

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CHARLESTON, WEST VIRGINIA 25305-0610

To the Joint Committee on Government and Finance:

In compliance with the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, we have examined the accounts of the Teachers' Defined Contribution Retirement System as administered by the Consolidated Public Retirement Board.

Our examination covers the period July 1, 1991 through September 30, 1998. The results of this examination are set forth on the following pages of this report.

Respectfully submitted,

Thedford L. Shanklin

Thedford L. Shanklin, CPA, Director
Legislative Post Audit Division

November 20, 1998

Auditors: Michael A. House, CPA, Supervisor
Neil M. McEachron, Jr., CPA, Auditor-in-charge
Peter J. Maruish, Jr., CPA
Noah E. Cochran, CPA

CONSOLIDATED PUBLIC RETIREMENT BOARD

WEST VIRGINIA TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM

INTRODUCTION

Consolidated Public Retirement Board

Effective July 1, 1991, Chapter 5, Article 10D of the West Virginia Code created the Consolidated Public Retirement Board (CPRB). The Board's duties are to administer all State Retirement Systems. It shall have all the powers, duties, responsibilities and liabilities of the Public Employees Retirement System (PERS); the Teachers Retirement System (TRS); the Teachers' Defined Contribution Retirement System (TDCRS); the Death, Disability and Retirement System (Plan A) of the Department of Public Safety; and the Judges' Retirement System (JRS). Subsequent to July 1, 1991, the Board also began administering (in addition to the aforementioned retirement systems) the West Virginia State Police Retirement System (Plan B) on March 12, 1994 and the Death, Disability and Retirement Fund for Deputy Sheriffs on July 1, 1998.

The Board consists of 14 members as follows: the Governor; State Treasurer; State Auditor; Secretary of the Department of Administration; four residents of the State who are not members, retirants or beneficiaries of any of the retirement systems; a member, annuitant or retirant of the Public Employees Retirement System who is or was a State employee; a member, annuitant or retirant of the Public Employees Retirement System who is not or was not a State employee; a member, annuitant or retirant of the Teachers Retirement System; a member, annuitant or retirant of the Department of Public Safety Death, Disability and Retirement System; a member, annuitant or retirant of the Deputy Sheriff's Death, Disability and Retirement System; and, a member, annuitant or retirant of the Teachers' Defined Contribution Retirement System.

The Board shall elect from its own number a Chairman and Vice Chairman. The Board shall appoint an Executive Secretary who shall be the chief administrative officer of all the systems. The Executive Secretary shall, with Board approval, employ such employees as are required for the proper operation of the systems. Also, the Board is empowered to employ a state retirement actuary or actuarial firm.

The Board shall meet at least once every three months and five voting trustees constitute a quorum. All Board meetings shall be public. Members shall serve without compensation for their services, provided that each member shall be reimbursed, upon Board approval, for any necessary expenses incurred by them in carrying out their duties. No public employee member may suffer any loss of salary or wages on account of their service as a trustee.

West Virginia Teachers' Defined Contribution Retirement System

The West Virginia Teachers' Defined Contribution Retirement System was created by an Act of the 1990 Legislature during the Third Extraordinary Session. In addition to providing retirement benefits for regular retirants, TDCRS makes provision for members who suffer total and permanent disability and provides certain survivor benefits to the beneficiaries of deceased members. Currently, members of this system contribute 4.5% of their gross wages and employers contribute a matching amount equivalent to 7.5% of employees' gross salaries.

Retirement benefits are based solely upon the amounts contributed by the employee and employer plus any earnings. Currently, there are seven investment options available to members for investment of their retirement contributions. The investment options from which members can choose include: money market fund, bond fund, stock fund, fixed annuity, balanced fund, value stock fund and S&P 500 index fund. Members are allowed to invest their monies in multiples of 20%. At the beginning of each calendar quarter, members can either elect to change current investment options on future contributions or to reallocate their existing account balances for reinvestment in other options. Upon retirement, members can elect to receive their contributions either as a lump sum distribution or in monthly installments.

Members who terminate their employment and file an application with the Board to withdraw from the system are eligible to receive a lump sum distribution consisting of 100% of their employee contributions and related earnings as well as the appropriate portion (if applicable) of employer contributions and related earnings. However, the amount of employer contributions and related earnings a member is eligible to receive depends on the number of years the member has vested in the system as illustrated by the following table:

Before completing 6 years	No employer contributions
After completing 6 years	1/3 of employer contributions
After completing 9 years	2/3 of employer contributions
After completing 12 years	All employer contributions

In the event of a member's death, the member's designated beneficiary shall be eligible to receive all funds contributed to or accumulated in the deceased member's annuity account regardless of years of service. Also, if a member is granted a permanent and total disability retirement by the Board, the member is entitled to receive all funds contributed to or accumulated in the member's annuity account regardless of years of service.

CONSOLIDATED PUBLIC RETIREMENT BOARD

WEST VIRGINIA TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM

CONSOLIDATED PUBLIC RETIREMENT BOARD MEMBERS AND STAFF

AS OF SEPTEMBER 30, 1998

Governor Cecil Underwood	Ex Officio
Joseph Markus, Secretary of Department of Administration	Ex Officio
Glen B. Gainer, III, State Auditor	Vice Chairman - Ex Officio
John Perdue, Treasurer	Ex Officio
William McGinley	State Resident
Janet Wilson	State Resident
David Wyant	Chairman - State Resident
Carl Guthrie	State Resident
James P. Quarles	State Employee Member Public Employees Retirement System
Elizabeth Poundstone	Non-State Employee Member Public Employees Retirement System
Beatrice Gladwell	Teachers Retirement System Member
Mary Lou Munoz	Teachers' Defined Contribution Retirement System Member
S.S. Satterfield	Department of Public Safety's Death, Disability and Retirement Fund Member
Rodney Miller	Deputy Sheriff's Death, Disability and Retirement Fund Member

STAFF

Betty S. Ireland	Executive Secretary (08/01/98 - Present)
James L. Sims	Executive Secretary (07/01/91 - 07/31/98)
Becky Jones	Administrative Assistant
James L. Sims, Manager	Teachers' Defined Contribution Retirement System
Robert Nichols, Manager	Data Processing Section
Lori Cottrill	Accountant

CONSOLIDATED PUBLIC RETIREMENT BOARD

WEST VIRGINIA TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM

SUMMARY OF FINDINGS

No Effective System of Internal Controls

1. During our examination it became apparent to us, based on observed instances of noncompliance with the West Virginia Code, the Board did not have an effective system of internal controls in place to ensure compliance with applicable State laws. We believe the Board having an effective system of internal controls in place would make the management aware of instances of noncompliance with the West Virginia Code at an earlier date and they would be able to take corrective action in a more timely fashion.

Remittance of Retirement Contributions to Investment Firms

2. We examined a total of 433 deposits of employee and employer contributions processed by the Board during the period July 1, 1995 through September 30, 1998. Of these we were able to trace the receipt of monies remitted by 294 of the 433 employers examined to quarterly statements provided by each investment company indicating when these monies had been invested. Using average quarterly rates of return, we estimated plan participants lost approximately $5,400 in investment earnings due to the time lag between the date

employees were actually paid and remittance of related retirement contributions to the investment companies.

Remittance of State Aid Monies

3. Monthly, the Board receives a lump sum payment from the Department of Education representing employer contributions for both the Teachers Retirement System and the Teachers' Defined Contribution Retirement System. These monies are deposited to the Board's School Aid Formula Holding Account. During our examination of employer contributions, we noted the Board did not transfer the appropriate amount of State Aid Monies from its Holding Account to the Teachers' Defined Contribution (DC) Plan's Employer Contribution Fund for the month of May 1996. The amount transferred for May 1996 was understated by $227,223.78. Using average quarterly rates of return, we estimated plan participants lost approximately $11,200 in investment earnings as a result of these monies not being invested on behalf of plan members.

Forfeiture of Employer Contributions

4. When a member withdraws from the system, any employer contributions plus earnings the member was not eligible to receive are transferred to the Board's suspension account. After five years, if the member has not been rehired by a participating employer, then the forfeited employer

contributions can be utilized on behalf of the member's former employer to reduce that employer's future contribution requirement. However, as of September 30, 1998, we noted the Board has transferred $105,929.11 of forfeited employer contributions to the Teachers' Defined Benefit (DB) Plan instead of utilizing these monies to reduce the future contribution requirement of affected employers in the DC Plan.

Contract with Third Party Administrator

5. During our examination of contractual expenditures, we noted the Board did not consistently follow State purchasing regulations when contracting with a third party administrator to administer the TDCRS. Our examination revealed the following items: the Board paid the third party administrator $59,733.00 for services rendered subsequent to December 31, 1997 when there was no valid contract in effect between the parties; the Board paid the third party administrator $37,660.00 for additional services outside the scope of the contract during the period October 1, 1995 through September 30, 1997; and, total payments made to the third party administrator for services rendered during the contract period of October 1, 1996 through September 30, 1997 exceeded the contract amount of $200,000.00 by $11,934.75.

Lump Sum Distributions

6. During the period July 1, 1995 through September 30, 1998, the Board processed 1,385 transactions involving the issuance of lump sum distributions to withdrawing members. We examined 15 of these transactions. We noted one member was underpaid employee contributions and related investment earnings amounting to $160.15.

Reallocation of Member Account Balances

7. At a regular meeting held on March 17, 1998, the Board unanimously passed a motion to allow members to invest their retirement contributions in the investment options offered by the Board in multiples of 5% rather than 20% to better able members to diversify their annuity accounts. The Board made this change without going through the legislative rule-making process.

CONSOLIDATED PUBLIC RETIREMENT BOARD

TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM

GENERAL REMARKS

INTRODUCTION

We have completed an examination of the Teachers' Defined Contribution Retirement System. The examination covered the period July 1, 1991 through September 30, 1998.

COMPLIANCE MATTERS

Chapter 18, Article 7B of the West Virginia Code generally governs the Teachers' Defined Contribution Retirement System. We tested applicable sections of the above plus other applicable chapters, articles, and sections of the West Virginia Code as they pertain to fiscal matters. Our findings are discussed below.

No Effective System of Internal Controls

During our examination it became apparent to us, based on observed instances of noncompliance with the West Virginia Code, the Board did not have an effective system of internal controls in place to ensure compliance with applicable State laws.

Chapter 5A, Article 8, Section 9(b) of the West Virginia Code states in part:

> "The head of each agency shall... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed

to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities...."

This law requires the agency head to have in place an effective system of internal controls in the form of policies and procedures set up to ensure the agency operates in compliance with the laws, rules and regulations which govern it.

During our examination of the TDCRS, we noted the following noncompliance with the West Virginia Code: **(1)** We examined a total of 433 deposits of employee and employer contributions processed by the Board during the period July 1, 1995 through September 30, 1998. Of these we were able to trace the receipt of monies remitted by 294 of the 433 employers examined to quarterly statements provided by each investment company indicating when these monies had been invested. Using average quarterly rates of return, we estimated plan participants lost approximately $5,400 in investment earnings due to the time lag between the date employees were actually paid and remittance of related retirement contributions to the investment companies. **(2)** Monthly, the Board receives a lump sum payment from the Department of Education representing employer contributions for both the Teachers Retirement System and the Teachers' Defined Contribution Retirement System. These monies are deposited to the Board's School Aid Formula Holding Account. During our examination of employer contributions, we noted the Board did not transfer the appropriate amount of State Aid Monies from its Holding Account to the DC Plan's Employer Contribution Fund for the month of May 1996. The amount transferred for May 1996 was understated by $227,223.78. Using average quarterly rates of return of all the available investment options, we estimated plan participants lost approximately $11,200 in investment earnings as a result of these monies not being invested on behalf of plan members. **(3)** When a member withdraws from the system, any employer contributions plus earnings the member was not eligible to receive are transferred to the Board's suspension account. After five years, if the member has not been rehired by a participating employer, then the forfeited employer contributions can be utilized on behalf of the member's former employer to reduce that employer's future contribution requirement. However, as of September 30, 1998, we noted the Board has transferred $105,929.11 of forfeited employer contributions to the DB Plan instead of utilizing these monies to reduce the future contribution requirement of affected employers in the DC Plan. **(4)** During our examination of contractual expenditures, we noted the Board did not consistently follow State purchasing regulations when contracting with a third party administrator to administer the TDCRS. Our examination revealed the following items: the Board paid the third party administrator $59,733.00 for services rendered subsequent to December 31, 1997 when there was no valid contract in effect between the parties; the

Board paid the third party administrator $37,660.00 for additional services outside the scope of the contract during the period October 1, 1995 through September 30, 1997; and, total payments made to the third party administrator for services rendered during the contract period of October 1, 1996 through September 30, 1997 exceeded the contract amount of $200,000.00 by $11,934.75. **(5)** During the period July 1, 1995 through September 30, 1998, the Board processed 1,385 transactions involving the issuance of lump sum distributions to withdrawing members. We examined 15 of these transactions. We noted one member was underpaid employee contributions and related investment earnings amounting to $160.15. **(6)** At a regular meeting held on March 17, 1998, the Board unanimously passed a motion to allow members to invest their retirement contributions in the investment options offered by the Board in multiples of 5% rather than 20% to better able members to diversify their annuity accounts. The Board made this change without going through the legislative rule-making process.

We believe the Board having an effective system of internal controls in place would make the management aware of this noncompliance with State law at an earlier date and they would be able to take corrective action in a more timely fashion. The following pages of this report contain additional information regarding specific instances of noncompliance with State law which came to our attention.

Remittance of Retirement Contributions to Investment Firms

We examined a total of 433 deposits of employee and employer contributions processed by the Board during the period July 1, 1995 through September 30, 1998. Of these we were able to trace the receipt of monies remitted by 294 of the 433 employers examined to quarterly statements provided by each investment company indicating when these monies had been invested. We were unable to trace the remaining 139 deposits (initially processed during fiscal year 1996) to investment statements because the necessary records were unavailable. These records were unavailable because the third party administrator did not have the capability to provide the Board with that information until July 1996 and thereafter.

Using average quarterly rates of return of all the available investment options, we estimated plan participants lost approximately $5,400 in investment earnings due to the time lag between the date employees were actually paid and remittance of related retirement contributions to the investment companies. The following table provides detailed information on the results of our examination:

Number of Days Elapsed Before Monies Invested	Number of Deposits	Percent	Average Number of days to be Processed	Estimated Dollar Amount of Lost Earnings
0 - 30	206	70.07%	16	$2,000
31 - 60	48	16.33	43	1,300
61 - 90	11	3.74	73	1,700
over 90	29	9.86	114	400
Total	294	100.00%		$5,400

Employee contributions received by the Board are to be accounted for in accordance with Chapter 18, Article 7B, Section 9 of the West Virginia Code, as amended, which states in part:

> "Each employee who is a member of the defined contribution system shall contribute four and one-half percent of his or her gross compensation by salary reduction. Such salary reductions shall be made by the employer at the normal payroll intervals and shall be remitted within five working days to the private pension, insurance, annuity, mutual fund, or other qualified company or companies designated by the board to administer the day-to-day operations of the system...."

Employer contributions are to be accounted for in accordance with Chapter 18, Article 7B, Section 10 of the West Virginia Code, as amended, which states in part:

> "Each participating employer shall annually make a contribution equal to seven and one-half percent of each member's gross compensation. The pro rata share of this amount shall be paid upon each date that a member contribution is made and shall be

> remitted as provided for in section nine [§18-7B-9] of this article for credit to the member's annuity account. Each participating employer has a fiduciary duty to its employees to ensure that the employer contributions are timely made...."

For each payroll period, participating employers will enter all relevant payroll data on the computer system maintained by the Regional Education Service Agency (RESA). Prior to this payroll data being finalized, this data is sent to the RESA which then electronically transmits the data to the third party administrator. Once the payroll data is finalized by the employer, the employer will remit the following to the Board: total employee contributions withheld from employees' gross compensation, employer's matching share and a computer listing itemizing all members and related contribution data. The finalized payroll data has to be mailed to the Board in the form of a computer printout because the Board does not have the capability of linking with each employer's computer system.

Frequently, however, there are discrepancies between the payroll data sent to the third party administrator and of that sent to the Board. These discrepancies are the result of timing differences between the payroll data initially sent to the third party administrator and the finalized payroll data reflecting any adjustments remitted to the Board. The third party administrator reconciles the payroll data it receives against the monies remitted to the Board before instructing the Board how to allocate the retirement contributions collected to the investment companies.

Thus, any deposits remitted to the Board which the third party administrator is unable to reconcile against their payroll data will remain in the Board's accounts until any discrepancies are resolved. The third party administrator works in conjunction with both the Board and the affected employer to resolve these discrepancies. Once these discrepancies have been resolved, the third party administrator will then instruct the Board how to allocate the deposit among the various investment companies.

When we spoke with agency personnel, we learned plan participants do not accrue any earnings on their retirement contributions until the monies are actually invested with the investment companies. As a result, plan participants are not accruing any investment earnings while these monies reside in the Board's accounts.

Remittance of State Aid Monies

During our examination of employer contributions, we noted the Board did not transfer the appropriate amount of State Aid Monies from its Holding Account to the DC Plan's Employer Contribution Fund for the month of May 1996. The following table illustrates the understatement of employer contributions for this month:

Actual Amount Transferred	Recalculated Amount	Amount Understated
$1,025,336.27	$1,252,560.05	($227,223.78)

Using average quarterly rates of return of all the available investment options, we estimated plan participants lost approximately $11,200 in investment earnings as a result of these monies not being invested on behalf of plan members.

Monthly, the Board receives a lump sum payment from the Department of Education representing employer contributions for both the Teachers Retirement System and the Teachers' Defined Contribution Retirement System. These monies are deposited to the Board's School Aid Formula Holding Account. Using the TDCRS deposit records, the Board's accountant will determine the proper amount of these State Aid Monies to transfer to the DC Plan's Employer Contribution Fund. The remaining monies in the Holding Account are then transferred to TRS.

Employer contributions are to be accounted for in accordance with Chapter 18, Article 7B, Section 10 of the West Virginia Code, as amended, which states in part:

> "Each participating employer shall annually make a contribution equal to seven and one-half percent of each member's gross compensation. The pro rata share of this amount shall be paid upon each date that a member contribution is made and shall be remitted as provided for in section nine [§ 18-7B-9] of this article for credit to the member's annuity account. Each participating employer has a fiduciary duty to its employees to ensure that the employer contributions are timely made...."

When we spoke with the Board's accountant, we learned this understatement occurred as the result of a clerical error. As a result of this error, there are less monies available in the Employer Contribution Fund to be invested on behalf of plan participants.

Forfeiture of Employer Contributions

When a member withdraws from the system, any employer contributions plus earnings the member was not eligible to receive are transferred to the Board's suspension account. After five years, if the member has not been rehired by a participating employer, then the forfeited employer contributions can be utilized on behalf of the member's former employer to reduce that employer's future contribution requirement. However, as of September 30, 1998, we noted the Board has transferred $105,929.11 of forfeited employer contributions to the DB Plan instead of utilizing these monies to reduce the future contribution requirement of affected employers in the DC Plan.

The utilization of forfeited employer contributions after the passage of five years is addressed by Chapter 18, Article 7B, Section 11 of the West Virginia Code which states in part:

> "...The remaining balance, if any, in the member's account after the distribution shall be remitted and paid into a suspension account, hereby created, to be administered by the board. The board shall promulgate rules regarding the distribution of any balance in the special account created by this section: Provided, That any funds in the account shall be used solely for the purpose of reducing employer contributions in future years.

Any account balances remitted to the suspension account herein shall be maintained by the board in said suspension account in the name of the terminated employee for a period of five years following initial remittance to the suspension account. For each said terminated employee at the culmination of the aforesaid five-year period, the board shall certify in writing to each contributing employer the amount of the account balances plus earnings thereon attributable to each separate contributing employers previously terminated employees' accounts which have been irrevocably forfeited due to the elapse of a five-year period since termination pursuant to section sixteen [§ 18-7B-16] of this article.

Upon certification to the several contributing employers of the aggregate account balances plus earnings thereon which have been irrevocably forfeited pursuant to this section, the several contributing employers shall be permitted in the next succeeding fiscal year or years to reduce their total aggregate contribution requirements pursuant to section seventeen [§ 18-7B-17] of this article, for the then current fiscal year by an amount equal to the aggregate amounts irrevocably forfeited and certified as such to each contributing employer.

Upon the utilization of the amounts irrevocably forfeited to any contributing employer as a reduction in the then current fiscal year contribution obligation and upon notification provided by the several contributing employers to the board of their intention to utilize irrevocably forfeited amounts, the board shall direct the distribution of said irrevocably forfeited amounts from the suspension account to be deposited on behalf of the contributing employer to the member annuity accounts of its then current employees pursuant to section seventeen of this article."

The forfeiture of employer contributions is also discussed in Chapter 18, Article 7A, Section 18a of the West Virginia Code which states in part:

"...(b) There shall be an annual allocation from the state general revenue fund to the reserve fund, created by section eighteen [§ 18-7A-18] of this article, equal to the sum of seven and one-half percent of the aggregate compensation totals of subdivisions one and two, subsection (a) of this section.

There shall be an additional allocation in each year an amount equal to the total of all irrevocably forfeited amounts in the suspension account established in section eleven [§18-7B-11], article seven-b of this chapter plus earnings thereon which have been certified to the several contributing employers as irrevocably forfeited in the prior fiscal year and subsequently utilized by said contributing employers to reduce their total aggregate contribution requirements pursuant to section seventeen [§18-7B-17], article seven-b of this chapter.

(c) The additional allocation provided in this section represents a funding method by which a part of a rational amortization plan will be established to amortize the current unfunded liability of the teachers retirement system created by this article...."

This Code section requires an additional allocation amount equal to the total amount of all irrevocably forfeited employer contributions (available in the DC Plan's suspension account) be deposited to the DB Plan's Reserve Fund to help reduce the DB Plan's unfunded liability. Simultaneously, the actual amount of irrevocably forfeited employer contributions available in the suspension account are to be used to reduce the future contribution requirement of affected participating employers in accordance with §18-7B-11 of the West Virginia Code.

When we spoke with agency personnel, we learned the Board's interpretation of State law is to transfer irrevocably forfeited employer contributions as they become available from the suspension account over to the DB Plan to help reduce that plan's unfunded liability. We believe the Board's interpretation of State law conflicts with §18-7B-11 of the West Virginia Code. As a result of the Board's practice, the participating employers who initially contributed these employer contributions to the Board are being denied the use of these monies. Thus, these employers are paying the Board more employer contributions than required.

Contract with Third Party Administrator

We noted several problems with the ongoing contractual relationship between the Board and the third party administrator. First, there was no valid contract in effect between the parties for services provided subsequent to December 31, 1997. We noted an invoice in the amount of $60,430.75 for services provided by the third party administrator during the period April 1, 1998 through June 30, 1998 had not been approved for payment as of September 30, 1998. The State Auditor's Office rejected this payment request because there was no valid contract on file. The Agency Purchasing Procedures Manual of the Department of Administration's Purchasing Division prescribes procedures for contractual services over $10,000 as follows:

> "Section 3.1 **Purchases Over $10,000:** All requisitions for products and services over $10,000 must be submitted to the Purchasing Division using **TEAM** or **FORM WV-35**. The Purchasing Division will review the bid specifications, select prospective bidders (*in addition to those recommended by the agency*), advertise in the ***West Virginia Purchasing***

> *Bulletin*, request and receive bids, evaluate bids, and award the purchase to the lowest responsible bidder. State agencies may also be requested to evaluate the bids and recommend an award...."

Even though the Board issued a Request for Proposal (RFP) and evaluated bids from prospective vendors as they had done in attaining previous contracts, the Division of Purchasing refused to approve the contract stating proper purchasing procedures had not been followed. Without a valid contract, we noted the Board paid this service provider $59,733.00 for services provided to the Board during the period January 1, 1998 through March 31, 1998. This expenditure was approved for payment by the State Auditor's Office. Currently, the Board is seeking an emergency request for third party administrative services for the period January 1, 1998 through December 31, 1998 be approved by the Division of Purchasing.

Another problem we noted involved payment by the Board to the third party administrator for additional services which were outside the scope of the contract. These additional services included the printing and insertion of a rate of return summary with quarterly statements issued to members, general consultation and other miscellaneous services. For the period October 1, 1995 through September 30, 1997, we noted the Board paid a total of $37,660.00 to this service provider for services outside the scope of the contract.

Finally, we noted total expenditures paid by the Board to the third party administrator on one particular contract had exceeded the contract price. The Board's usual practice is to contract with the third party administrator in one-year periods which start on October 1 and conclude on September 30. For the contract period of October 1, 1996 through September 30, 1997, we noted the total expenditures against the contract exceeded the contract amount of $200,000.00 by $11,934.75. Section 6.1 of the Agency Purchasing Procedures Manual addresses changes to outstanding contracts as follows:

> "**CHANGES**: Occasionally, it becomes necessary to amend, clarify, change or cancel purchasing documents. Depending upon the type of change required and the original document submitted, the document used to accomplish the change may vary...Changes to the original purchase order must be sequentially numbered in the appropriate space. **FORM WV-79** changes that affect the contract specifications, terms, price, quality, etc., require written concurrence from the vendor."

We learned after speaking with agency personnel the Board does not have adequate procedures in place to monitor expenditures against an outstanding contract. Also, we could not find any evidence indicating the Board had requested the Division of Purchasing approve a change order to increase the initial contract amount of $200,000.00 in order to cover the excess expenditures above the original contract price.

Lump Sum Distributions

During the period July 1, 1995 through September 30, 1998, the Board processed 1,385 transactions involving the issuance of lump sum distributions to withdrawing members. We examined 15 of these transactions. We noted one member was underpaid employee contributions and related investment earnings amounting to $160.15.

Chapter 18, Article 7B, Section 11 of the West Virginia Code states in part:

> "...Any member whose employment with a participating employer terminates prior to the completion of six complete years of employment service shall be eligible to terminate his or her annuity account and receive a distribution from the member's annuity account, in an amount equal to the member's contribution plus any earnings thereon...."

Records obtained from the third party administrator indicate the amount of employee contributions plus earnings present in the member's annuity account at the time of his withdrawal totaled $1,114.01. However, upon examination of his refund file we noted the member was only paid a total of $953.86.

When we spoke with agency personnel, we learned the underpayment of employee contributions to this member resulted from an oversight on the part of the third party administrator for the TDCRS. The third party administrator failed to inform the Board that this member was still due employee contributions plus earnings amounting to $160.15. Even though the third party administrator is contractually responsible for maintaining participant accounts, we believe it is the Board's responsibility to ensure the appropriate amount of employee contributions plus earnings is distributed to withdrawing members. As a result of this oversight, the member was underpaid by $160.15.

Reallocation of Member Account Balances

The Board's authority to promulgate rules and regulations concerning the administration of the TDCRS is addressed by Chapter 18, Article 7B, Section 6 of the West Virginia Code which states in part:

> "The board has all powers necessary to effectuate the purposes of this article. The board shall contract with a private pension, insurance, annuity, mutual fund or other qualified company or companies to administer the day-to-day operations of the system. In selecting such company or companies the board shall take into account as its highest duty, the proper safeguard and protection of the member and employer contributions and the interest dividends, or other return thereon. The board shall promulgate rules regarding the proper investment of funds...."

The rules and regulations promulgated by the Board concerning the administration of the TDCRS became effective on August 4, 1993. Title 162, Series 3, Section 5.1 of the Legislative Rule promulgated for the TDCRS addresses member investment of retirement contributions as follows:

> "Investments. The amounts allocated to the employer account and member account of each member's annuity account shall be invested by the Board in one or more investment options elected by the member. Each member may elect, in writing, at least fifteen (15) days before the beginning of each calendar quarter, to have the balance accumulated in his or her annuity account invested by the Board in one or more investment options made available by

> the Board. The investment options may include: (1) a money market fund; (2) a bond fund; (3) a stock fund, and (4) other investment options offered by the Board. If the member elects more than one investment option, the member's and employer's contributions shall be allocated to each investment option in increments of twenty percent (20%) of the total contribution."

At a regular meeting held on March 17, 1998, the Board unanimously passed a motion to allow members to invest their retirement contributions in the investment options offered by the Board in multiples of 5% rather than 20% to better able members to diversify their annuity accounts. However, this change did not go through the legislative rule-making process in accordance with Chapter 29A, Article 3 of the West Virginia Code and, thus, we believe the implementation by the Board of this change in investment multiples was inappropriate.

STATE OF WEST VIRGINIA

OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:

I, Thedford L. Shanklin, CPA, Director of the Legislative Post Audit Division, do hereby certify that the report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this 11th day of January 1999.

Thedford L Shanklin

Thedford L. Shanklin, CPA, Director
Legislative Post Audit Division

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the Consolidated Public Retirement Board; Governor; Attorney General; and, State Auditor.