

Preliminary Performance Review

**Commission For The
Deaf and Hard-of-Hearing**

**The Commission Provides Necessary Ongoing
Services to Deaf and Hard-of-Hearing Citizens**

**A Legal Opinion Indicates that the Commission
Does not Have Clear Statutory Authority to Use
General Revenue to Award Grants and Loan
Telephonic Devices**

**The Commission is Receiving Grants But
Purposes of those Grants Have Been Largely
Fulfilled by General Revenue Funds**



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January 9, 2005

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The Honorable J.D. Beane
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Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Preliminary Performance Review of the *Commission for the Deaf and Hard-of-Hearing*, which will be presented to the Joint Committee on Government Operations on Sunday, January 9, 2005. The issues covered herein are "The Commission Provides Necessary Ongoing Services to Deaf and Hard-of-Hearing Citizens;" "A Legal Opinion Indicates that the Commission Does Not Have Clear Statutory Authority to Use General Revenue to Award Grants and Loan Telephonic Devices;" and "The Commission is Receiving Grants But Purposes of those Grants Have Been Largely Fulfilled by General Revenue Funds."

We transmitted a draft copy of the report to the Commission for the Deaf and Hard-of-Hearing on December 27, 2004. We held an Exit Conference with the Commission for the Deaf and Hard-of-Hearing on December 28, 2004. We received an agency response on December 29, 2004.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

JS/tlc

Joint Committee on Government and Finance

Contents

Executive Summary	5
Review Objective, Scope and Methodology	7
Issue 1: The Commission Provides Necessary Ongoing Services to Deaf and Hard-of-Hearing Citizens.....	11
Issue 2: A Legal Opinion Indicates that the Commission Does Not Have Clear Statutory Authority to Use General Revenue to Award Grants and Loan Telephonic Devices.....	21
Issue 3: The Commission is Receiving Grants But Purposes of those Grants Have Been Largely Fulfilled by General Revenue Funds.....	27

List Of Tables

Table 1: 2004 Workshop Schedule.....	15
Table 2: 2004 WVCDHH Annual Report: Record of Contacts.....	16
Table 3: General Revenue Budget.....	18
Table 4: Grants Awarded.....	21
Table 5: Telephonic Device Loan Program 1999-Present.....	24
Table 6: Telephonic Communication Device Loan Program Expenditures.....	24
Table 7: Grants Received into Special Revenue Account 5052.....	27
Table 8: Special Revenue Account Balance 5052.....	28

List Of Appendices

Appendix A: Transmittal Letter to Agency.....	29
Appendix B: Agency Response.....	31

Executive Summary

Issue 1: The Commission Provides Necessary Ongoing Services to Deaf and Hard-of-Hearing Citizens.

The Commission for the Deaf and Hard-of-Hearing was created by the Legislature to provide an ongoing service for the citizens of West Virginia.

According to the commission, there are approximately 268,000 deaf and hard-of-hearing individuals in the state.

The Commission for the Deaf and Hard-of-Hearing was created by the Legislature to provide an ongoing service for the citizens of West Virginia. It provides issue awareness and education services to the deaf and hard-of-hearing as well as to public and private agencies that serve the deaf and hard-of-hearing. According to the commission, there are approximately 268,000 deaf and hard-of-hearing individuals in the state. It is the opinion of the Legislative Auditor that the commission provides an organizationally unique and valuable service to the citizens of the state of West Virginia. Consequently, the Legislative Auditor concludes that there would be discernable adverse effects should the commission cease to exist.

The commission is in compliance with most of its statutory provisions. However, in some cases, federal law prevents the commission from being able to properly execute its mandates. For this reason, the Legislative Auditor has identified the need for changes to be made to the code.

The commission is in compliance with most of its statutory provisions.

Issue 2: A Legal Opinion Indicates that the Commission Does Not Have Clear Statutory Authority to Use General Revenue to Award Grants and Loan Telephonic Devices.

Currently, the commission is in the practice of carrying out two functions that are not allowed by the code.

Currently, the commission is in the practice of carrying out two functions that are not allowed by the code. First, the commission has awarded monetary grants to non-governmental agencies. Second, the commission is in the practice of loaning telephonic communication devices to deaf and hard-of-hearing individuals who are in need. The Legislative Auditor has obtained a legal opinion that indicates that the code does not provide the commission with such powers. The Legislative Auditor recommends that the commission end the awarding of grants, and that the Legislature consider changing the code so that the commission would be allowed to loan telephonic communication devices. If the Legislature does not amend the code, the commission should discontinue the loan program.

Issue 3: The Commission is Receiving Grants But Purposes of those Grants Have Been Largely Fulfilled by General Revenue Funds.

The commission receives grants from various entities to provide services and programs.

The commission receives grants from various entities to provide services and programs. The grants are deposited into a non-appropriated special revenue account. However, the Legislative Auditor finds that in large part, the requirements of the grants have been fulfilled by general revenues. The Legislative Auditor recognizes a need for the commission to spend the special revenue as expenditures are incurred rather than spending general revenue for the fulfillment of the grants. Because of improper accounting of special revenues, the commission has used general revenue to fulfill grant requirements. As a result, the special revenue account has accumulated to the sum of \$61,649.

Recommendations

Improper accounting practices have resulted in the commission's use of general revenue to fulfill grant purposes while the special revenue account has accumulated to the sum of \$61,649.

- 1. The Legislative Auditor recommends that the commission be continued.*
- 2. The Legislative Auditor recommends that the Legislature consider amending the commission's statute to remove the mandates of developing a census, registry, and determining the condition of the deaf and hard-of-hearing population, since these mandates are unattainable due to federal law.*
- 3. The Legislative Auditor recommends that the commission request the secretary of the Department of Health and Human Resources immediately promulgate the rules, required by the code, that ensure the adoption of standards and ethics for interpreters for the deaf and hard-of-hearing.*
- 4. The Legislative Auditor recommends the commission discontinue the practice of issuing grant awards.*
- 5. The Legislative Auditor recommends that the Legislature consider changing the statute so that the commission is authorized to carry out the telephonic device loan program.*

6. *The Legislative Auditor recommends that the commission follow appropriate accounting practices to account for expenditures from special revenue that are used to fulfill requirements of grants received.*

7. *The Legislative Auditor recommends that the commission exhaustively expend special revenue for the purposes of fulfilling grant requirements and avoid the practice of expending general revenue to meet grant requirements.*

Review Objective, Scope and Methodology

Objective

This Preliminary Performance Review of the West Virginia Commission for the Deaf and Hard-of-Hearing was conducted in accordance with the West Virginia Sunset Law, Chapter 4, Article 10 of the West Virginia Code, as amended. This Preliminary Performance Review is intended to update issues of previous legislative audits, provide the Legislature with a performance evaluation of the commission and its programs, and determine if any discernable adverse effects would arise should the commission be terminated.

Scope

The scope of this Preliminary Performance Review of the West Virginia Commission for the Deaf and Hard-of-Hearing included the examination of the agency in whole form. It encompassed two separate time spans. First, this review examined the commission's telephonic device loans from 1999 to 2004. However, for all other materials, including the study of the general and special revenue accounts, grants, and programs other than the telephonic device loan program, the audit followed a scope beginning in fiscal year 2003 and ending in fiscal year 2005.

Methodology

The information reported in this document was compiled from the *West Virginia Code*, interviews, meeting minutes, budget reports, commission records and reports, the attendance of one meeting of the commission, sampled telephonic device loan program files, and communication with the commission staff. Every aspect of this preliminary performance review followed the Generally Accepted Government Auditing Standards (GAGAS) as prescribed by the Comptroller General of the United States.

Issue 1

The Commission Provides Necessary Ongoing Services to Deaf and Hard-of-Hearing Citizens.

Issue Summary

The Commission provides a necessary ongoing service.

There are some legislative mandates that the commission cannot perform because of federal law.

The Legislative Auditor recommends that the commission be continued.

The Commission for the Deaf and Hard-of-Hearing was created by the Legislature to provide *ongoing* services for deaf and hard-of-hearing citizens of West Virginia. According to the commission, there are 268,000 deaf and hard-of-hearing individuals in the state. West Virginia is one of 35 states that have a state organization to serve the deaf and hard-of-hearing population. The commission primarily operates from general revenue appropriations. In FY 2004, the commission expended \$246,167 of these funds. In addition to general revenue funds, the commission has received various grants that have been deposited into a special revenue account. During the previous three fiscal years, the commission has received \$49,656 in grants. The commission provides issue awareness, educational services, and outreach material to familiarize the public with the rights and needs of the deaf and hard-of-hearing population. The commission regularly offers training workshops for interpreters, it assists in the certification process of interpreters, and it developed a directory of certified interpreters to coordinate interpreter services statewide for courts, state and local government agencies, as well as for private sector entities such as physicians. There are some legislative mandates that the commission is prohibited from performing because of federal law. The Legislature should consider amending the commission's statute to clarify its mandates in light of current federal law. In general, the services the commission provides are ongoing and they facilitate the communication between the deaf and hard-of-hearing and the hearing populations. **Therefore, the Legislative Auditor recommends that the commission be continued.**

Legislative Findings; Mandates

The commission's authority is derived from the statutory provision found in Section 1, Article Fourteen, Chapter Five of the West Virginia Code. The Legislature finds that:

(a) There is a need for West Virginia to adequately identify the hearing-impaired population and provide efficient and effective services to such population;

(b) Hearing-impaired people need to be more involved in the decisions and programs that affect their lives by soliciting and seriously considering their collective opinion on appropriate matters;

(c) Cooperation among state and local agencies must be facilitated in an effort to ensure that adequate and appropriate services are available and provided;

(d) In order to further the aforementioned goals it is necessary to determine what services exist and what services can be developed in order to match services to individual needs;

(e) A rubella epidemic from one thousand nine hundred sixty-three to one thousand nine hundred sixty-five caused a number of infants in West Virginia to be born hearing-impaired. These individuals are approaching the ages where they will no longer be eligible for educational services, thus requiring services as young adults. The Legislature, therefore, declares that there is an unprecedented and imperative need to plan and prepare for the multiplicity of services required in order to ensure a life-long continuum of services to this particular population;

(f) There must be more emphasis on the use of interpreters for deaf and hard-of-hearing people and on the quality control of such services;

(g) There must be more emphasis on the use of telecommunication devices for the deaf (tdds) and means to provide them for hearing-impaired people;

(h) Through the implementation of the provisions of this article, the deaf and hard-of-hearing population of West Virginia will be aided in their efforts to live independent and productive lives.

The commission has been charged with several mandates according to section five, article fourteen, chapter five of the code. The fulfillment of these mandates will effectuate in the completion of the aforementioned findings of the Legislature. The mandates are as follows:

- 1. Maintain a complete register of persons who are deaf or hard-of-hearing;*
- 2. Conduct and maintain a census; maintain a clearinghouse of information;
Establish, maintain and coordinate a statewide service to provide courts, state and local legislative bodies and others with a list of qualified and certified interpreters;*

The Directory of Communication Access Services and American Sign Language Teachers helps to coordinate interpreters services for the deaf and hard-of-hearing among state courts and local governments.

3. *Develop an outreach program to familiarize the public with the rights and needs of hearing-impaired people and of available services;*
4. *Investigate the condition of the hearing-impaired in this state;*
5. *Determine the means the state possesses for establishing group homes for its hearing-impaired citizens and the need for additional facilities;*
6. *Determine the advisability and necessity of providing services to the multi-handicapped hearing-impaired.*

The commission maintains a clearinghouse of information by making pertinent materials available to the public through its office directly and through its website. In addition, the commission has published and distributed the *Directory of Communication Access Services and American Sign Language Teachers*, which is used to coordinate statewide services of interpreters for the state's courts and local governments. Finally, the commission fulfills outreach through conducting seminars and workshops for the deaf and hard-of-hearing and interpreters for the deaf and hard-of-hearing.

Programs of the Commission

1. *Directory of Communication Access Services and American Sign Language Teachers*

The commission provides agencies with resources that will allow them to equitably serve the deaf and hard-of-hearing.

The commission emphasizes that it must provide agencies with the resources that will allow them to equitably serve the the deaf and hard-of-hearing population. The commission is largely concerned with ensuring that agencies such as courts and police departments have the proper resources and awareness necessary so that they may accommodate deaf and hard-of-hearing citizens. For example, if a deaf or hard-of-hearing individual is ever party to a court proceeding, the court can consult the commission's directory of interpreters in order to find a qualified individual to serve as an interpreter for the court proceeding. Recently, the commission printed 2,500 copies of the directory for distribution over three years. It is made available to the general public, the deaf and hard-of-hearing population, and public agencies that serve the deaf and hard-of-hearing population. The directory is also available online through the commission's website. In addition to the directory and website, the commission offers information in person through the office. This document provides all interested parties with the proper resources that are needed for communication when deaf or hard-of hearing citizens of West Virginia interfaces with the courts and legislative bodies at all levels of government.

The Legislative Auditor contacted the Administrative Office of the West Virginia Supreme Court of Appeals in order to gain perspective as to the court's usage of interpreter qualifications as determined by the commission. An official from that agency stated:

The Supreme Court of Appeals used the directory 78 times in fiscal year 2004 as a resource for contracting interpreters.

The court system [relies] on the West Virginia Commission for the Deaf and Hard-of-Hearing's 2004-2006 Directory of Communication Access Services & American Sign Language Teachers in order to contract interpretation services which are required for certain court proceedings.

Since the Court requires interpreters with certain qualifications, it depends on the qualification determinations which are made by the Commission and published in the directory. The Court actually follows the qualification recommendations set forth by the WVCDHH - Levels III, IV or V or RID for a legal setting.

Telephonic Device Loan Program allows needy deaf and hard-of-hearing West Virginians to borrow telephonic equipment that will facilitate their communication with the hearing.

According to the same source, the court contracted services with interpreters 78 times during 2004 fiscal year, all of whom were referred through the directory. Although the actual interpretation certifications are awarded by a national association and not the commission, it is the commission that filters through the list of certified candidates in order to compile a list of those qualified for interpreting in the state.

2. Telephonic Device Loan Program

The commission implements the Telephonic Device Loan Program that allows needy deaf and hard-of-hearing West Virginians to borrow telephonic equipment that will facilitate their communication with the hearing. It is only necessary that these individuals meet certain income requirements, and have a qualifying hearing condition in order to take part in the program. At one time these devices were given away by the commission. In 1998, the Legislative Auditor took exception to this practice because it was illegal to use general revenue in such a manner. The commission implemented the Legislative Auditor's recommendations to restructure the program into a "loan" program.

The commission sponsors and takes part in various workshops and seminars each year.

3. Workshops and Seminars

As well, the commission sponsors and takes part in various workshops and seminars each year in order to provide information and sponsor training for interpreters of the deaf. It is in the opinion of the Legislative Auditor that both hearing and deaf and hard-of-hearing West Virginians would notice discernable

The commission is visible to the public through the use of a website.

adverse effects should the Commission for the Deaf and Hard-of-Hearing be terminated. The commission presentations on technological offerings for the deaf and hard-of-hearing and telephonic and electronic accessory displays at the commission office help to provide information and educational services to the deaf and hard-of-hearing. Table 1 shows the various workshops that have been held during the last calendar year that fulfill outreach initiatives.

4. Website

The commission is visible to the public through the use of a website. The commission uses this website in order to make itself accessible and visible to the public. As well, the public can be kept informed of the commission's current activities. For this service, the commission should be commended.

The commission provides the public with a clearinghouse of information.

5. Clearinghouse of Information

The code requires that commission provide the public with a clearinghouse of information for the deaf and hard-of-hearing. The commission is performing this requirement. Such information can be obtained through the *2004-2006 Directory of Communication Access Services and American Sign Language Teachers*. This publication provides the public with applicable federal and state laws, information on health care, law enforcement, information for the courts, information for and about interpreters, and information on sign language teachers to name a few items.

2004 Workshop Schedule		
Date	Location	Topic
April 17, 2004	Weston	Skill Building I
April 24, 2004	Morgantown	Deaf Body Language
May 15, 2004	Beckley	Professional Conduct
June 4-5, 2004	South Charleston	Certified Deaf Interpreters
June 5, 2004	Parkersburg	Signing to Voice
June 12, 2004	Wheeling	Skill Building I
June 26, 2004	Romney	Deaf Body Language

Source: 2004 West Virginia Commission for the Deaf and Hard-of-Hearing Annual Report

Usage Log

The commission is maintaining a usage log of contact with the general public. This procedure provides the commission with statistics that can better allow it to make an assessment as to the areas of service that are used the most. Table 2 shows the usage statistics according to the 2004 annual report of the commission:

Table 2								
2004 WVCDHH Annual Report: Record of Contacts								
	1997	1998	1999	2000	2001	2002	2003	2004
Total Contacts (On and Off Site)	981	601	683	5420	5990	5,246	N/A	2950
Referrals (including Interpreter referral services)	473	372	476	609	1,641	1,423	N/A	***
Training or Seminars (including interpreter workshops)	6	3	3	1	7	6	2	8
Education to the Public	N/A	N/A	N/A	58	155	193	N/A	156
Town Hall Meetings	0	0	0	11	1	1	0	1
Visitors to the Commission	N/A	N/A	N/A	42	443	467	N/A	71
Visitors at Other Sites	N/A	N/A	N/A	108	95	323	N/A	328
*** The commission no longer makes referrals for interpreters but does provide a listing of interpreters upon request or through the directory.								
Source: 2004 West Virginia Commission for the Deaf and Hard-of-Hearing Annual Report								

Some Mandates are Prohibited by Prevailing Federal Law

The code requires that the commission perform two functions that have become prohibited because of changes in federal law.

The code requires that the commission perform two functions that have become prohibited because of changes in federal law. One function is for the commission to investigate the condition of the deaf and hard-of-hearing, and the second function is to conduct a census and registry on that population. However, these two mandates are prohibited by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This federal statute prohibits medical professionals from releasing information about patients. In this case, the commission is unable to receive specific demographic information from medical professionals about the deaf and hard-of-hearing population under medical care.

The voluntary registry represents only 0.002% of the deaf and hard-of-hearing population. As a result, it may not have any usefulness because of the limited number of participants.

The census and registry cannot be implemented with any semblance to the original intent of the Legislature.

The commission has reduced the number of personnel.

Since the commission cannot require that a physician provide them with information about a patient, nor can a physician be required to relinquish information about a patient to the commission, the commission has gathered such information from individuals who volunteer the information through the commission website, in person through the commission's office, through participation in contests and special programs, deaf clubs, the Division of Rehabilitation Services, and senior centers. The information gathered by these sources include degree of hearing loss, type of hearing loss, cause of the hearing loss, method of communication, and other relevant information. To date, the commission's voluntary registry consists of approximately 525 individuals. However, the population of the deaf and hard-of-hearing is estimated to be 268,000 individuals. The voluntary registry is limited in the degree to which it represents the actual population. As well, the data that have been collected thus far represent only 0.002% of the population of the deaf and hard-of-hearing. Because of the prohibitive federal laws that are in place, **it is in the opinion of the Legislative Auditor that the census and registry cannot be implemented with any semblance to the original intent of the Legislature.** When created in 1989, the commission was envisioned to have the authority, with the help of reporting medical professionals, to identify the condition of the overall population of deaf and hard-of-hearing individuals. Essentially, the voluntary census may not have any usefulness because of the limited number of participants. The commission has drafted legislation that would remove the census/registry mandate from the statute; it hopes to find a sponsor for the proposed changes during the 2005 session. **The Legislative Auditor recommends that the Legislature consider amending the commission's statute to remove mandates that are inapplicable due to federal law.**

The Commission has Reduced Personnel Costs

The commission's operating budget comes from the state's general revenue fund. Table 3 organizes the commission's budget for the current and past two fiscal periods. These data do not indicate *actual* expenditures for fiscal year 2005 because they were not available at the time of the publication of this report. Recently, the commission has reduced its personnel base in efforts of reducing personnel costs. Previously, the commission had employed up to five persons. Now, however, the commission is staffed by three full-time staff members at a reduced personnel cost while still performing necessary tasks. Also indicative of fiscal responsibility is that, for at least during the scope of this audit, the commission has not exceeded its budgetary appropriations.

The commission regularly receives grants from various organizations in a manner and for a purpose consistent with the code. The Legislative Auditor

believes that the commission is being exemplary in its resourcefulness by securing grants in order to effectuate the provisions set forth by the code. However, there is an accounting issue with respect to grant funds that is discussed in Issue 3.

Table 3			
General Revenue Budget			
Fiscal Year	Requested	Actual	Budgeted
2003	\$274,361	\$235,531	\$282,086
2004	\$265,690	\$246,167*	\$283,136
2005	\$288,032	Not Available	\$313,473*
<i>*Figures will appear in the FY 2006 Operating Detail (not yet published)</i>			
<i>Source: West Virginia Executive Budget Operating Detail FY 2003, FY 2004, FY 2005</i>			

Failure to Promulgate Rules

The code states that the secretary of the Department of Health and Human Resources shall promulgate rules concerning interpreter qualifications and ethics. This has not been done. The Legislative Auditor recognizes that this is a responsibility of the Department of Health and Human Resources. However, this mandate exists within and specific to the code citation for the commission.

The commission no longer serves as an evaluation and certification authority.

The Commission No Longer Certifies or Evaluates Interpreters

Following the 1998 report of the Legislative Auditor, the code was amended so that the commission would have the authority to serve as a certification and evaluation authority for interpreters serving in the state. This change, however, did not mandate that the commission perform this duty. The Code states in §5-14-5 that:

The commission may conduct national association of the deaf interpreter evaluations and collect and expend funds with regard thereto.

Formerly, the commission did provide this service. Currently, however, the commission does not perform these evaluations and certifications for interpreters of the deaf. National organizations such as the National

Association for the Deaf (NAD) and the Registry for Interpreters of the Deaf (RID) provide a set of nationalized standards for which to base the competency of interpreting skills posed by interpreters. Recently the two organizations agreed that RID would be the only organization that would continue to administer the certification of interpreters. As well, the National Council on Interpreting (NCI) is considering the city of Charleston as a location for the administration of the certification examinations.

The rationale for the commission's decision not to perform these evaluations may be understood by the following quote from the commission:

...after careful research the Commission feels that it would be redundant and not cost-effective to certify interpreters... The Registry of Interpreters for the Deaf, Inc. provides national certification at [a] relatively low-cost [sic]. To develop our own tests, pay test administrators and evaluators, [to] monitor the certification would be expensive and could create perceptions of unfairness because performance exam evaluation calls for subjective judgements. RID does all [of] this and provides us with information regarding certified interpreters throughout West Virginia and in neighboring states at no cost to the Commission. RID certification is nationally recognized and its interpreters meet the strictest standards both for certification and professional behavior. RID investigates complaints and de-certifies interpreter who violate the Code of ethics or do not otherwise maintain certification standards.

The Registry of Interpreters of the Deaf provides nationwide standards for certification.

The change in procedure ensures that state general revenue funds are not being spent on the certification of out-of-state interpreters, which the Legislative Auditor took issue with in 1998. As well, the national organizations possess a national set of standards and ethics that ensure interpreters will be operating under that same guidelines in all states.

The commission does not have the statutory authority to place sanctions upon individuals found to be taking part in malfeasant behavior as an interpreter. Although it can make recommendations to the national organizations, it does not possess the ability to remove the certification that an individual may have. It is with regards to this fact that the rules not promulgated by the Department of Health and Human Resources could grant more authority for regulation of interpreters.

The Commission Should Be Continued

The commission provides an organizationally unique service.

The commission was created to provide an ongoing service; the need of which, will continue to exist indefinitely. Despite the impossibilities that the commission faces in its efforts of fulfilling all of its legislative mandates, **it is the opinion of the Legislative Auditor that the commission still provides an organizationally unique and valuable service to the citizens of the state of West Virginia.** As a consequence, the Legislative Auditor concludes that there would be discernable adverse effects should the commission cease to exist. Such adverse effects would include the absence of outreach programs for the deaf and hard-of-hearing, a lack of in-state training opportunities for interpreters for the deaf, the non-existence of a clearinghouse of issue awareness and educational materials, and the inability to provide courts, state and local governments as well as *private* service providers with a concise directory of information pertaining to equitable service provisions for the deaf and hard-of-hearing. As well, the Legislative Auditor recognizes the *need* for the presence of the commission in order to serve as a forum for the hearing impaired and hearing individuals to express their concerns. Should these functions take place as a duty of an *office* within a state agency, concerns of the aforementioned citizens could be lost.

Recommendations

1. *The Legislative Auditor recommends that the commission be continued.*
2. *The Legislative Auditor recommends that the Legislature consider amending the commission's statute to remove the mandates of developing a census, registry, and determining the condition of the deaf and hard-of-hearing population, since these mandates are unattainable due to federal law.*
3. *The Legislative Auditor recommends that the commission request the secretary of the Department of Health and Human Resources immediately promulgate the rules, required by the code, that ensure the adoption of standards and ethics for interpreters for the deaf and hard-of-hearing.*

Issue 2

A Legal Opinion Indicates that the Commission Does Not Have Clear Statutory Authority to Use General Revenue to Award Grants and Loan Telephonic Devices.

The commission has provided general revenue funds, in the form of grants, to two non-governmental entities for use in their special programs.

The money provided to the two non-governmental entities was not from funds received from grants that had been awarded to the commission.

Issue Summary

The commission has provided general revenue funds, in the form of grants, to two non-governmental entities for use in their special programs. The code clearly states that the commission may *receive* grants, but the code does not clearly state that the commission can *award* grants. In addition to this practice, the commission operates a telephonic loan device program that is not permitted by the commission's statute. In a past report, the Legislative Auditor identified that this program lacked true controls that would qualify it as a loan program.

The Commission Does Not Have Authority to Award Grants

The Legislative Auditor was able to determine that the money provided to the two non-governmental entities was not from funds received from grants that had been awarded to the commission. This was determined due to the fact that the grants received during this same time period were earmarked by the commission as having alternative purposes. Instead, the grants were awarded through the disbursement of general revenue. Table 4 identifies the grants that have been awarded during the scope of this audit.

Grants Awarded			
Recipient	Purpose	Fiscal Term	Amount
West Virginia Association for the Deaf	Biennial Conference in Bluefield, WV	FY 2004	\$3,000
Fairmont State College	Deafywood Performance	FY 2004	\$400
Total			\$3,400

Source: West Virginia Commission for the Deaf and Hard-of-Hearing

Although the amounts granted are relatively small, there is concern that the commission could grant larger amounts.

Although the amounts granted are relatively small, there is concern that the commission could grant larger amounts. For example, staff of the Legislative Auditor's Office observed a non-governmental entity petitioning the commission for sponsorship of special programs. The commission, at that time, did not approve a grant award; however, the Legislative Auditor is concerned that non-governmental entities might see the commission as a source for funding when in fact it has no such authority.

In order to clarify this concern as to the commission's non-authority in the granting of general revenue funds to non-governmental entities, the Legislative Auditor obtained a legal opinion from Legislative Services. Legal counsel stated:

Nothing...supports the position that the Commission may provide funds as a contribution towards the operational expenses of non-governmental programs.

I find nothing that supports the position that the Commission may provide funds as a contribution towards the operational expenses of non-governmental programs. The statute neither expressly gives the Commission that authority, nor, in my opinion, is the authority necessarily or reasonably incident to any of the powers specifically provided. Consequently, it is my opinion that the mmission does not have the authority to provide funds as a contribution towards the operational expenses of non-governmental programs [1998 Legal Opinion].

Although the amounts awarded as grants are relatively small, the commission should discontinue this practice.

The commission continues to conduct its Telephonic Device Loan Program for those individuals who are in need of such devices.

The Commission Does Not Have Authority to Implement the Telephonic Device Loan Program

The commission continues to conduct its Telephonic Device Loan Program for those individuals who are in *need* of such devices. These devices make telephonic communication between the hearing and deaf and hard-of-hearing possible. In 1998, the Legislative Auditor took exception to the commission's practice of giving away telephonic devices that were purchased with general revenues. The 1998 report included a legal opinion stating that the program was not allowed for by the statute. In addition, the Legislative Auditor took issue with the commission's lack of criteria for distribution of the devices. The commission has since developed a standardized criteria for the awarding of the loans. In order to qualify for the loan one must have monetary and documented health need.

The Legislative Auditor obtained copies of loan files with activity during the 2003-2004 calendar years. *Activity* means not only an origination of a loan; but the possible return of a device or the replacement of one. Since the latter two circumstances were present in the audited loan files, some devices were found to be loaned under, what is now, improper circumstance (ex: non-qualifying income). If the application was made prior to the implementation of the new qualifying rules for the loan, and the actual loan transaction took place post implementation of new procedures, the applicant would be eligible. In effect, loans which may have been made years ago prior to the implementation of new loan requirements may lack eligibility for the program today. Yet, they are still able to keep the devices.

The Telephonic Loan Program is well managed and proper controls are in place.

The commission manages the loan program well. The information contained in the application case files indicates that good accounting procedures are in place for the loan program. The commission keeps a master list for all loans as well as the dates and transaction history for each loan. The Legislative Auditor found that the commission was in proper possession of all corresponding case files. In each file, there was found to be the existence of the following:

1. Personal Information for the Applicants
2. Audio-gram or Medical Endorsement (*where Applicable*)
3. Statement of Income (*where Applicable*)
4. Original Loan Application
5. Correspondence between Commission and Applicant
6. Loan Affidavit
7. Serial Number of Loan Device

All indications suggest that the commission is knowledgeable of the location of its loaned equipment since the information for each loan is complete.

All indications suggest that the commission is knowledgeable of the location of its loaned equipment since the information for each loan is complete. In addition to the information found in the case files, the commission communicated to the Legislative Auditor that each telephonic device under loan has placed upon it a *paper-type* label indicating that the unit is the property of the West Virginia Commission for the Deaf and Hard-of-Hearing. Tables 5 and 6 present the total number of units that have been loaned since the program's inception and the total expenditures on this program for the previous three fiscal periods, respectively.

Table 5			
Telephonic Device Loan Program 1999-Present			
	Amplified Phones	TTYs	Total
Loaned Devices	221 (61%)	140 (39%)	361 (100%)
Units Returned	7 (54%)	6 (46%)	13 (100%)
Units Replaced	11 (61%)	7 (39%)	18 (100%)

Source: West Virginia Commission for the Deaf and Hard-of-Hearing

361 telephonic devices have been loaned. Since then, only 13 units have been returned.

It is of some concern that these devices are rarely returned to the commission. For this reason, it is wondered if this program can legitimately be called a *loan* program. Since the program's inception, 361 telephonic devices have been loaned. Since then, only 13 units have been returned because they either became dysfunctional or the program participant was moving out-of-state. As long as individuals remain residents of the state, they may keep the units as long as they wish. Even when the program clearly became a bona fide loan program, individuals that already possessed the equipment were not required to return that equipment and reapply under the new guidelines.

Table 6				
Telephonic Communication Device Loan Program Expenditures				
Vendor	FY 2003	FY 2004	FY 2005	Total
Potomac Technology, Inc	---	\$24,647	---	\$24,647

Source: West Virginia Commission for the Deaf and Hard-of-Hearing; and Department of Administration Crystal Reporting

The Code does not grant statutory authority to use general revenue funds to distribute such devices. The Code states in §5-14-1(g) that:

there must be more emphasis on the use of telecommunication devices for the deaf (tdds) and means to provide them for hearing-impaired people;

The Legislative Auditor took issue with this program when the devices were being given away. Still, even though program controls have been created, the legal opinions indicate that the law does not allow for even a loan program. The Legislative Auditor requested that Legislative Services counsel update its opinion given the devices are loaned instead of given away. The new opinion states:

Legal opinions indicate that the law does not permit the commission's loan programs.

I find nothing that specifically authorizes the program. The statute neither expressly gives the Commission that authority, nor, in my opinion, is the authority to conduct such a program necessarily or reasonably incident to any of the powers specifically provided. Consequently, it is my opinion, regardless of how admirable the purposes of the Program may be, that the Commission does not have the authority to use general revenue funds to purchase telephonic devices and loan the devices to other entities or individuals[2004 legal opinion].

The Legislative Auditor recognizes the **need for clarification of the code or the loan program be discontinued** so that the will of the Legislature is better defined for the commission and the citizens of the state.

Although the 1998 report recommended that the commission “develop a loan program for the purpose of distributing TDD’s,” the Legislative Auditor made the recommendation as a means to eliminate the unauthorized act of “giving” the equipment away. Furthermore, the Legislative Auditor envisioned a loan program in which the loaned items would actually be returned. It appears that the equipment is loaned out indefinitely. However, an updated legal opinion suggests that the program, even as a loan program, is outside the boundary of the commission’s statutory authority. Therefore, the Legislative Auditor recommends that the commission discontinue the loaning of telephonic communication devices unless the statute is amended.

The statute neither expressly gives the Commission that authority, nor, in my opinion, is the authority to conduct such a program.

Recommendations

4. *The Legislative Auditor recommends the commission discontinue the practice of issuing grant awards.*
5. *The Legislative Auditor recommends that the Legislature consider changing the statute so that the commission is authorized to carry out the telephonic device loan program.*

Issue 3

The Commission is Receiving Grants But Purposes of those Grants Have Been Largely Fulfilled by General Revenue Funds.

The commission regularly receives grants from organizations for the completion of various programs and projects.

The commission regularly receives grants from organizations for the completion of various programs and projects. Table 7 identifies the grants that have been received during the scope of this audit. Table 8 organizes the revenues, expenditures, and balances for the special revenue account during the same time period.

Table 7				
Grants Received into Special Revenue Account 5052				
Donor	Purpose	Fiscal Year Awarded	Duration	Amount
Gallaudet University Washington, DC	Interpreter Training	2003	October 1, 2001 - September 30, 2002	\$4,000
Gallaudet University Washington, DC	Interpreter Training	2003	October 1, 2002 - September 30, 2003	\$4,000
West Virginia Maternal, Child and Family Health	Educational Interpreter Training	2004	July 1, 2003 - June 30, 2004	\$20,000
West Virginia Maternal Child and Family Health	Training, Workshops	2004	*July 1, 2004 - June 30, 2005	\$20,000
Gallaudet University Washington, DC	Educational Interpreter Training	2005	**	\$1,656
Total				\$49,656
<i>*The time period of usage for this grant has not yet expired.</i>				
<i>**This grant was deposited to the special revenue and expended immediately and in whole form.</i>				
<i>Source: West Virginia State Legislature, Budget Division; and West Virginia Commission for the Deaf and Hard-of-Hearing</i>				

Table 8			
Special Revenue Account Balance 5052			
Fiscal Year	Revenues	Expenditures	Balance
2003	\$8,000	\$492.50	\$24,103.69
2004	\$40,040	\$751.26	\$63,392.43
2005	\$1,656	\$3,399.42	\$61,649.01*
<i>*Balance as of 12/9/04</i>			
<i>Source: West Virginia State Legislature, Budget Division</i>			

Grants have durations of one per year.

Grant requirements are being fulfilled through the expenditures of general revenues.

The commission receives grants that have durations of one year. Evidence suggests that the services required in the grant specifications have been provided by the commission. However, it is evident from Table 6 that the amount of expenditures from the special revenue account is substantially lower than the amounts received in grants. This suggests that much of the grant requirements are being fulfilled through the expenditures of general revenues. It may occur that the grant funds in the special revenue account may be spent down over the next few fiscal years; nevertheless, in the meantime it is general revenue that is being used to accomplish the purposes of the grants. While this is happening, the general revenue funds appropriated by the Legislature are being spent while grant monies are accumulating in a non-appropriated special revenue account. The commission should attempt to draw down special revenue for grant purposes at the time expenditures are made. The Legislative Auditor recognizes that the commission staff receive salaries from general revenue and perform functions that can fulfill the mandate of the agency as well as inadvertently fulfilling grant requirements. However, when staff expenditures such as travel, meals, contracts, rent, etc., are made to fulfill grant purposes, those expenditures should be paid for by grant funds.

Recommendations

6. *The Legislative Auditor recommends that the commission follow appropriate accounting practices to account for expenditures from special revenue that are used to fulfill requirements of grants received.*

7. *The Legislative Auditor recommends that the commission exhaustively expend special revenue for the purposes of fulfilling grant requirements and avoid the practice of expending general revenue to meet grant requirements.*

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

December 27, 2004

Deanna Stone, Executive Director
WV Commission for the Deaf and Hard-of-Hearing
Capitol Complex, Building 6, Room 863
Charleston, WV 25305

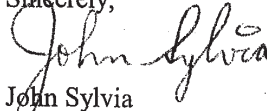
Dear Ms. Stone:

This is to transmit a draft copy of the Preliminary Performance Review of the Commission for the Deaf and Hard-of-Hearing. This report is scheduled to be presented at the January 9, 2005 interim meeting of the Joint Committee on Government Operations between 4:00 pm and 6:00 pm in room 215-E. 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 committee 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 on Tuesday, December 28, 2004. Please notify us to schedule an exact time. In addition, we need your written response by noon on Thursday, December 30, 2004 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 340-3192 by Thursday, January 6, 2005 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,


John Sylvia

Enclosure
c: Cabinet Secretary Paul Nusbaum

Joint Committee on Government and Finance

Appendix B: Agency Response



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Bob Wise
Governor

West Virginia Commission for the Deaf and Hard of Hearing
Capitol Complex Building 6, Room 863
Charleston, West Virginia 25305
(866) 461-3578 or (304) 558-1675 (v/tty)
FAX: (304) 558-0937

Paul L. Nusbaum
Secretary

December 29, 2004

Mr. John Sylvia
West Virginia Legislature
Performance Evaluation and Research Division
Building 1 Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

R E C E I V E D
DEC 29 2004

PERFORMANCE EVALUATION AND
RESEARCH DIVISION

Dear Mr. Sylvia:

RE: Preliminary Performance Review

The West Virginia Commission for the Deaf and Hard-of-Hearing accepts the Preliminary Performance Update of the Commission for the Deaf and Hard-of-Hearing completed by the Office of the Legislative Auditor. This review process provided an invaluable service to the Commission by encouraging a reevaluation of the Legislative mandates and will assist the Commission in its goal of strengthening its programs and improving its performance.

In this response, only those recommendations that reflect noncompliance are addressed.

Response to Recommendations:

Recommendation 2: The Legislative Auditor recommends that the Legislature consider amending the commission's statute to remove the mandates of developing a census, registry, and determining the condition of the deaf and hard-of-hearing population, since the mandates are unattainable due to federal law.

The Commission agrees that it cannot meet these statutory requirements. In conjunction with the Office of the Secretary of the West Virginia Department of Health and Human Resources, a bill has been drafted to amend the statute as recommended by the Legislative Auditor.

Recommendation 3: The Legislative Auditor recommends that the commission request the secretary of the Department of Health and Human Resources immediately

promulgate the rules, required by code, that ensure the adoption of standards and ethics for interpreters for the deaf and hard-of-hearing.

The Commission contacted Mr. John Law and Ms. Emily Hopta of the Office of the Secretary in November 2004, requesting the promulgation of these rules. The Office of the Secretary is complying with this request.

Recommendation 4: The Legislative Auditor recommends the commission discontinue the practice of issuing grant awards.

The Commission will discontinue the practice of issuing grant awards.

Recommendation 5: The Legislative Auditor recommends that the Legislature consider changing the statute so that the commission is authorized to carry out the loan program.

The Commission will request the assistance of the West Virginia Department of Health and Human Resources to draft a bill to comply with this recommendation to formally establish a telephonic communication device loan program. The Commission will continue to distribute the telephonic devices that were purchased during FY2004 following the established guidelines. Once the devices in stock have been distributed, no further TTYs or amplified phones will be purchased with general revenue funds unless the program is authorized by the Legislature.


Recommendation 6: The Legislative Auditor recommends that the commission follow appropriate accounting practices to account for expenditures from the special revenue that are used to fulfill the requirement of grants received.

The Commission will fully comply with this request.

Recommendation 7: The Legislative Auditor recommends that the commission expend special revenue exclusively for the purposes of fulfilling the grant requirements and avoid the practice of expending general revenue to meet grant requirements.

The FY2005 budget has allocated \$50,000 of the special revenue account to be spent during this fiscal year. The budget includes \$40,000 for training and development and \$10,000 for out-of-state training and development for employees. Grant awards received during FY2005 will be expended to meet grant requirements during this fiscal year.

The performance review has provided insight and guidance to the board and staff of the Commission. The Commission sincerely appreciates your recommendation that the Commission be continued. We are grateful for the dedication, thoroughness and consideration of your staff, especially Mr. Michael Keeney.

Sincerely,

Deanna Stone
Executive Director

kp

cc: Paul Nusbaum, Secretary, West Virginia Department of Health and Human Resources
Doug Godfrey, Chair, West Virginia Commission for the Deaf and Hard-of-Hearing

