

STATE OF WEST VIRGINIA

SPECIAL REPORT

OF

***WEST VIRGINIA UNIVERSITY
BOOKSTORE OPERATIONS***

FOR THE PERIOD

JULY 1, 1997 - JUNE 30, 2000



OFFICE OF THE LEGISLATIVE AUDITOR

CAPITOL BUILDING

CHARLESTON, WEST VIRGINIA 25305-0610

WEST VIRGINIA UNIVERSITY
BOOKSTORE OPERATIONS
FOR THE PERIOD
JULY 1, 1997 - JUNE 30, 2000

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 West Virginia University's Bookstore Operations.

Our examination covers the period July 1, 1997 through June 30, 2000. The results of this examination are set forth on the following pages of this special report.

Respectfully submitted,


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

June 7, 2001

Auditors: Michael E. Sizemore, CPA, Supervisor
Neil M. McEachron, Jr., CPA, Auditor-In-Charge
David L. Penix

WEST VIRGINIA UNIVERSITY

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WEST VIRGINIA UNIVERSITY

EXIT CONFERENCE

We held an exit conference on June 7, 2001 with the Chief of Staff for the President of West Virginia University and other representatives of West Virginia University and all findings and recommendations were reviewed and discussed. The University's responses are included in bold and italics in the Summary of Findings, Recommendations and Responses and after our findings in the General Remarks section of this report.

WEST VIRGINIA UNIVERSITY

INTRODUCTION

Established in 1867, West Virginia University (WVU) is the state's major research, doctoral degree-granting, land-grant institution. WVU provides high quality programs of instruction, offering 166 degree programs at the undergraduate, graduate, and first-professional levels, including the state's only law school; fosters basic and applied research and scholarship; and engages in and encourages other creative and artistic work. A wide range of health science programs are taught at WVU's Robert C. Byrd Health Sciences Center through schools of medicine, dentistry, nursing, and pharmacy, including allied health programs and graduate programs in basic health sciences.

WVU combines the breadth of academic opportunities offered by a major research institution with the atmosphere of a small school; the undergraduate student/faculty ratio is 17:1. Enrollment in one of the University's 13 colleges and schools offers students the warmth and friendliness of a small academic community. The University encourages diversity and promotes social justice in all of its activities.

The Downtown Campus is linked to the Evansdale Campus and the Robert C. Byrd Health Sciences Center by the Personal Rapid Transit (PRT) system, which uses automated, electric-powered cars that operate on a concrete and steel guideway and permits quick and easy access to major locations within the University and downtown Morgantown.

The diversity of WVU's student body is apparent in the fall 1999 enrollment of 22,238 students, as all 55 counties of West Virginia, 48 of 50 states, and 96 other countries are represented. WVU has had 25 Rhodes Scholars, 13 Truman Scholars, 17 Goldwater Scholars, and one British Marshall Scholar.

WVU is one of only 43 public universities that serve their states as research and land-grant institutions. The term "land grant" derives from the Congressional act of 1862 that gave federally-owned land to each state, to be sold for funds to begin colleges offering programs in agriculture and engineering. Since its founding in 1867, WVU has developed into the center of graduate and professional education, research, and extension programs in West Virginia. Coal and energy are a major focus of University research because of WVU's location in the eastern coal fields.

WVU campuses combine traditional and modern architectural styles, and 11 campus buildings are listed on the National Register of Historic Places. Many of these original buildings, including Stalnaker Hall, have been restored and renovated.

Current library holdings include 1.4 million volumes; 2.2 million microforms; 7,453 subscriptions; 20,482 linear feet of archival materials (in excess of 5,000,000 items); 38,670 audiovisuals; and various electronic databases. All libraries are automated with the NOTIS system.

WVU programs and services are accessibly located throughout West Virginia. Regional campuses include West Virginia University at Parkersburg, Potomac State College of West Virginia University, and West Virginia University Institute of Technology. WVU operates the Charleston Division of the Robert C. Byrd Health Sciences Center and the Wheeling Division of the School of Medicine. In addition, there are six extended learning regional centers at Charleston, Clarksburg, WVU-Parkersburg, Potomac State College, Shepherd College, and West Liberty State College.

West Virginia University operates eight experimental farms in Hardy, Jefferson, Monongalia, Monroe, and Preston counties; five experimental forests in Monongalia, Preston, Randolph, and Wetzel counties; a geology camp in Greenbrier County; and the state 4-H Camp and a museum of mid-nineteenth century life at Jackson's Mill.

WEST VIRGINIA UNIVERSITY
ADMINISTRATIVE OFFICERS AND STAFF
AS OF JUNE 30, 2000

Dr. David C. Hardesty, Jr. President

Dr. Scott C. Kelley Vice President for Administration and
Finance and Human Resources

Terry R. Ondreyka Associate Vice President for Finance

Lisa Mitchell Director of Research, Tax and Payroll Accounting

Barbara E. Gabel Manager Expert Business Operations

William R. Quigley, CPA Director of Internal Audit Office

WEST VIRGINIA UNIVERSITY

BOOKSTORE OPERATIONS

SUMMARY OF FINDINGS, RECOMMENDATIONS AND RESPONSES

Lack of Effective System of Internal Controls

1. During the course of our examination, it became apparent to us, based on the observed noncompliance with the West Virginia Code, West Virginia University (WVU) did not have an effective system of internal controls in place over bookstore operations to ensure compliance with applicable State laws, rules and regulations. We believe an effective system of internal controls would have alerted management to these violations at an earlier date and allowed more timely corrective action.

Auditors' Recommendation

We recommend WVU comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended and establish a system of internal controls.

University's Response

West Virginia University believes its system of internal controls over bookstore operations is adequate. (See pages 9-11)

**Contracting of Bookstore
Operations to Qualified Vendor**

2. WVU entered into a contract with a private vendor (Barnes & Noble) to operate the WVU Bookstore. The Circuit Court of Kanawha County ruled on March 15, 1991 that WVU was authorized under law to do so

Deposit and Use of Guaranteed Payments

3. WVU deposited \$2,889,686.37 in guaranteed payments from Barnes & Noble into the Special Services Fund, instead of following the provisions of Chapter 18B, Article 10, Section 14, as amended and Chapter 18B, Article 5, Section 2a of the West Virginia Code. As a result, the West Virginia Legislature did not get to exercise its authority to control the use of the guaranteed payments.

Auditors' Recommendation

We recommend WVU comply with Chapter 18B, Article 10, Section 14, as amended and Chapter 18B, Article 5, Section 2a of the West Virginia Code.

University's Response

West Virginia University believes the provisions of Chapter 18B, Article 10, Section 14 of the West Virginia Code do not apply to the WVU Bookstores. (See pages 13-15)

Receipt of Guaranteed Payments

4. One quarterly guaranteed payment from Barnes & Noble totaled \$222,186.37 rather than the scheduled \$250,000.00 because WVU and Barnes & Noble agreed orally to share the cost of certain renovations to the Potomac State College Bookstore. Barnes & Noble then withheld WVU's share of the renovation costs from the next guaranteed payment. Also, we noted three payments from the vendor were received up to 11 days after the due date.

Auditors' Recommendation

We recommend WVU comply with both the Price Adjustment and Annual Guaranteed Revenues Provisions of the current contract between WVU & Barnes & Noble.

University's Response

We are now in compliance with the audit recommendation. (See pages 15-19)

Vendor Reimbursements of Monthly Expenses Initially Paid by WVU on Behalf of Vendor

5. We noted several instances where reimbursements due under the Bookstore contract were not being remitted timely and in the correct amounts. As a result, WVU has overbilled Barnes & Noble by a net amount of \$7,350.90 through November 30, 2000.

Auditors' Recommendation

We recommend both WVU and Barnes & Noble comply with all provisions of the current contract regarding the monthly billing for and reimbursement of payroll costs, telephone service, postage and other miscellaneous expenses.

University's Response

We have now complied with the audit recommendation. (See pages 19-24)

Contract Monitoring

6. WVU did not conduct a Contract Compliance Audit and a Customer Satisfaction Survey during the fourth year of the current Barnes & Noble bookstore contract.

Auditors' Recommendation

We recommend WVU comply with the Monitoring Contract Performance provision of the current contract to ensure Barnes & Noble is fully complying with the terms and conditions of the contract.

University's Response

West Virginia University believes the provision was discretionary and, subject, to the University's option. (See pages 24-26)

Sales to the General Public

7. Barnes & Noble is making sales to the general public from the WVU Bookstore although State law prohibits such sales.

Auditors' Recommendation

We recommend WVU comply with Chapter 18B, Article 10, Section 14 of the West Virginia Code until such time as the statute is amended to allow sales to the general public.

University's Response

West Virginia University did not respond directly to our audit recommendation.
(See pages 27 and 28)

WEST VIRGINIA UNIVERSITY

BOOKSTORE OPERATIONS

GENERAL REMARKS

INTRODUCTION

We have completed a special report of West Virginia University's bookstore operations. The special report covered the period July 1, 1997 through June 30, 2000.

COMPLIANCE MATTERS

Chapter 18B, Article 10, Section 14 of the West Virginia Code, as amended, generally governs the West Virginia University (WVU) Bookstore. We tested applicable sections of the above plus other applicable chapters, articles, and sections of the West Virginia Code as they pertain to financial matters. Our findings are discussed below.

Lack of Effective System of Internal Controls

During the course of our special report, it became apparent to us, based on the observed noncompliance with the West Virginia Code, West Virginia University did not have an effective system of internal controls over bookstore operations in place to ensure compliance with applicable State laws. Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended, 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 special report of West Virginia University's bookstore operations, we found the following noncompliance with State laws or other rules and regulations: (1) Guaranteed payments totaling \$2,889,686.37 were not transferred into a special efficiency surplus fund and expended through Legislative appropriation or transferred into another account using the procedures required by the West Virginia Code. (2) There was one (1) quarterly payment received from Barnes & Noble in the amount of \$222,186.37 which did not conform to the payment schedule as set forth in the contract between WVU and Barnes & Noble. We also noted three (3) quarterly payments totaling \$722,186.37 which were not received by WVU until after the required due date set forth in the contract. (3) Under the current contract between WVU and Barnes & Noble, WVU pays certain expenses on behalf of Barnes & Noble. WVU submits monthly billings to Barnes & Noble for the reimbursement of these expenses. During our examination of the reimbursements received from Barnes & Noble for the period July 1998 through November 2000, we noted the following instances of noncompliance with the current bookstore contract: 21 instances of reimbursement payments totaling \$719,862.14 remitted late by Barnes & Noble; ten instances of payroll credits totaling \$7,516.19 not being applied by WVU to the monthly billings submitted for payment to Barnes & Noble; a cumulative underpayment of \$175.29 by Barnes & Noble as of November 30, 2000 due to Barnes & Noble not paying the exact amounts billed from April 1, 2000 through November 30, 2000; one (1) instance where WVU overbilled Barnes & Noble by \$10.00 due to the wrong payroll credit amount being applied against the March 1999 billing; and five (5) instances of reimbursement

payments totaling \$275,919.84 which were accounted for as revenues rather than as expenditure reductions. As a result of these errors, WVU has overbilled Barnes & Noble by a net amount of \$7,350.90 through November 30, 2000. (4) During the examination period, WVU was in noncompliance with the Monitoring Contract Performance provision of the contract. This provision of the bookstore contract requires WVU to conduct both a Contract Compliance Audit and a Customer Satisfaction Survey during the second and fourth years of the current contract. A Contract Compliance Audit and Customer Satisfaction Survey were conducted in the second year of the contract; however, neither was conducted by WVU in the fourth year of the contract. (5) The policy of Barnes & Noble who is responsible for managing WVU's bookstore operations is to allow sales to the general public. This policy is in conflict with Chapter 18B, Article 10, Section 14, as amended, of the West Virginia Code which prohibits sales to the general public.

We recommend WVU comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code, as amended, and establish a system of internal controls.

University's Response

WVU contends that it has an effective system of internal controls as supported by our responses to the findings of this audit. The institution has deposited the revenues from this contract in compliance with §18B-10-15. The institution has a Bookstore Advisory Board that regularly meets with the Bookstore Manager and WVU's Administrative Contract Office responsible for day-to-day management of the Bookstore contract. WVU has collected all revenues due to the University and has received all services described in the contract.

**Contracting of Bookstore
Operations to Qualified Vendor**

WVU has entered into a contract with Barnes & Noble to operate the WVU Bookstore. The initial contract was for the period May 1, 1991 through April 30, 1996, and subsequently, renewed for the period May 1, 1996 through April 30, 2001.

The operation of bookstore facilities at a State college or university is governed by Chapter 18B, Article 10, Section 14 of the West Virginia Code, as amended, which states in part,

“The appropriate governing board of each state institution of higher education shall have the authority to establish and operate a bookstore at the institution. . . .”

All moneys derived from the operation of the store shall be paid into a special revenue fund as provided in section two [§ 12-2-2], article two, chapter twelve of this code. Each governing board shall, subject to the approval of the governor, fix, and from time to time, change the amount of the revolving fund necessary for the proper and efficient operation of each bookstore.

Moneys derived from the operation of the bookstore shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the store....”

We asked WVU officials on several occasions what authority WVU had to contract the operations of the WVU Bookstore since Chapter 18B, Article 10, Section 14 of the West Virginia Code does not specifically authorize such arrangements, but we received no information outlining their authority to do so. Subsequently, the Legislative Services Division of the Legislative Manager's Office determined the question of WVU's authority to issue a “Request for Proposal” inviting the submission of proposals for the operation of the WVU Bookstore was addressed in a decision rendered in the Circuit Court of Kanawha County on March 15, 1991 which states in part,

" . . . One must construe, in *pari materia*, W.Va. Code §18B-10-14 and §18B-1-7 in determining whether or not WVU is legally authorized to issue a "Request for Proposal" for the operation of the WVU Bookstores by a private company or entity. **Based on these two statutes, the answer must be in the affirmative.**" (Emphasis added)

Deposit and Use of Guaranteed Payments

Under the terms of the current contract between WVU and Barnes & Noble, WVU is to receive \$1,000,000.00 in guaranteed payments during each year of the contract. During the period July 1, 1997 through June 30, 2000, WVU collected \$2,972,186.37 in guaranteed payments from Barnes & Noble. Of this amount, \$82,500.00 was allotted to Potomac State College and \$2,889,686.37 was allotted to WVU. WVU deposited its portion into the Special Services Fund.

Revenues generated from bookstore operations are governed by Chapter 18B, Article 10, Section 14 of the West Virginia Code, as amended, which states in part,

"The appropriate governing board of each state institution of higher education shall have the authority to establish and operate a bookstore at the institution. . . ."

All moneys derived from the operation of the store shall be paid into a special revenue fund as provided in section two [§ 12-2-2], article two, chapter twelve of this code. Each governing board shall, subject to the approval of the governor, fix, and from time to time, change the amount of the revolving fund necessary for the proper and efficient operation of each bookstore.

Moneys derived from the operation of the bookstore shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the store...."

However, we believe the use of the guaranteed payments relating to the contract would also be governed by the provisions of Chapter 18B, Article 5, Section 2a of the West Virginia Code which states in part,

“ (a) In accordance with the provisions of section seventeen, article two, chapter five-a of this code, the transfer of amounts between items of appropriations, or the transfer of moneys in a special account established for a particular purpose into another account for expenditure for another purpose, are specifically authorized for a spending unit under the jurisdiction of the governing boards subject to the following conditions:

(1) The president or other administrative head of a state institution of higher education submits a written request to the appropriate governing board. The appropriate governing board approves the request for the transfer and submits a written request for the transfer to the secretary of education and the arts. The legislative auditor and the legislative oversight commission on education accountability are to be furnished a copy of the request;

(2) The secretary of education and the arts, after consultation with the appropriate governing board, gives written approval to a request for a transfer and follows such procedures as may be required by the secretary of administration, the auditor and the treasurer to effect the transfer prior to any expenditure of the moneys so transferred;

(3) Such a transfer does not:

(A) Expand a program, establish a new program or provide capital for an expense that cannot be paid during the current fiscal year;...

(c) If, due to increased efficiency in operations, a state institution of higher education accumulates balances in any of its accounts, or accounts established for the institution by its governing board, which are in excess of the amounts needed to accomplish the purposes for which the accounts were established, either general or special revenue, the institution may employ the transfer provisions established in subdivisions (1) and (2), subsection (a) of this section to transfer such excess balances into a special efficiency surplus revolving fund which shall be created in the state treasury for the institution and which shall be carried forward into the subsequent fiscal years: Provided, That expenditures from any special efficiency surplus fund shall only be made upon line item appropriation by the Legislature. . . .”

We believe WVU should have deposited the guaranteed payments into the Bookstore Fund instead of the Special Services Fund and then transferred the moneys into a special efficiency surplus fund or into another account using procedures outlined in Chapter 18B, Article 5, Section 2a of the West Virginia Code. By depositing and , subsequently, expending these moneys from the

Special Service Fund, WVU did not follow the West Virginia Code and the West Virginia Legislature did not get to exercise its authority to control the use of the guaranteed payments.

We recommend WVU comply with Chapter 18B, Article 10, Section 14, as amended, and Chapter 18B, Article 5, Section 2a of the West Virginia Code.

University's Response

§18B-10-14 applies to bookstores operated by a state institution of higher learning. WVU has no management responsibility for and in no way operates the on-campus bookstore. The bookstores at WVU are operated by Barnes & Noble.

WVU receives rental income from Barnes & Noble for the use of campus facilities. In this manner, WVU is providing a special service (a private bookstore on campus) to its students. Therefore, the rental income derived from the contract with Barnes & Noble is deposited in Special Services Fund per §18B-10-15.

Section §18B-10-15 provides WVU with the authority to provide special services and to fix and collect special fees and charges therefor. All rents received by WVU, in relation to the Barnes & Noble contract, have been placed into the Special Services Fund. Since §18B-10-15 stipulates where rent is collected for special services should be deposited, and WVU has placed the money into this account, it has complied with all applicable West Virginia law.

Receipt of Guaranteed Payments

Currently, WVU has an exclusive contract with Barnes & Noble allowing Barnes & Noble to operate WVU's various bookstores. This contract became effective on May 1, 1996 and is due to expire on April 30, 2001. For each year of the contract, the vendor agreed to remit \$1,000,000.00 in guaranteed payments to WVU with payments of \$250,000.00 to be made quarterly.

As part of our examination of the bookstore contract, we reviewed the quarterly payments received by WVU during the period July 1, 1997 through June 30, 2000. On May 10, 2000, WVU received a quarterly payment from Barnes & Noble in the amount of \$222,186.37 rather than the usual amount of \$250,000.00. Upon inquiry of a WVU official, we were told this reduced payment was the result of an agreement between WVU and Barnes & Noble relating to WVU's share of the bookstore improvement costs incurred by Barnes & Noble to renovate the bookstore located at Potomac State College.

During the summer of 1999, Potomac State College's bookstore facility was relocated from the basement of the Library to the Student Union facility. Potomac State College wanted to expand and improve the quality of library services offered to students and needed this additional space to accomplish these goals. Also, Potomac State College wanted to relocate the bookstore to the Student Union facility to replace a food service operation which was losing money. To compensate the students for the loss of the food service area, administration officials decided during the planning process to include a limited convenience store and prepackaged food and drink service in the new bookstore location.

Having determined this relocation as beneficial to both parties, Barnes & Noble offered to share in the cost of the relocation. Both parties verbally agreed to share all bookstore improvement costs equally. Total renovation costs amounted to \$55,627.35 which were initially paid by Barnes & Noble. A representative for WVU signed an acknowledgment form prepared by Barnes & Noble agreeing to the deduction of WVU's share of the renovation costs from the next scheduled contract payment due WVU. WVU's share of the renovation costs amounted to \$27,813.67. Thereafter, this amount was deducted from the May 2000 contract payment remitted to WVU to cover WVU's share of the renovation costs.

Proposed changes to the contract payment schedule are addressed by the Price Adjustment Provisions of the current contract which state,

“Price Adjustment Provisions

The terms and conditions of this contract are intended to provide successful bookstore operations which will be mutually beneficial to both parties through a spirit of partnership. The University and Barnes & Noble recognize that significant changes in enrollment or other significant events may cause unintentional and undue harm to either party and may warrant adjustment to the contract. Requests for adjustment must be made in writing at least 60 days in advance of the next contract year. Requests for adjustments made by the University should be presented to Barnes & Noble’s Vice President for Campus Relations. Requests for adjustments made by Barnes & Noble should be presented to the University’s Associate Vice President for Finance. A written response (indicating acceptance or rejection with appropriate justification) must be provided within 30 days of receipt of the request. Requests for adjustment may result in amendment to the contract, may be rejected in part or in entirety, or may result in termination of the contract.”

By authorizing Barnes & Noble to net WVU’s share of the renovation costs against one of the scheduled quarterly payments due WVU without amending the current contract through a change order, we believe WVU was in noncompliance with the Price Adjustment Provisions of the bookstore contract. As a result, WVU was underpaid by \$27,813.63 regarding the remittance of the quarterly contract payment made by Barnes & Noble during May 2000.

We met with WVU’s Director of Business and Procurement Services; however, she was unable to cite any portion of the contract which would allow for this type of reduction of the quarterly rent payments. She further stated that under normal circumstances, the contract would be amended through a change order to keep track of any transactions affecting the existing terms and conditions of the contract. She concluded by stating that it had been decided no change order was

needed for this transaction since the contract does not specifically prohibit the reduction of the quarterly rent payments in this manner. Thus, both parties agreed that WVU would pay its share of the renovation costs through a one-time reduction of the quarterly rent payment.

During our examination, we also noted three (3) quarterly payments totaling \$722,186.37 were not received by WVU from Barnes & Noble until after the required due date set forth in the contract. Two (2) payments totaling \$472,186.37 were received ten days late, while one (1) payment of \$250,000.00 was received 11 days late. Concerning the due date by which payments are to be received by WVU, the bookstore contract addresses this issue as follows:

"Annual Guaranteed Revenues

. . . Payments are to be made quarterly and are due no later than the last day of each quarter. . . "

We believe Barnes & Noble remitting quarterly payments to WVU beyond the required due date may result in WVU losing interest revenue on these monies. WVU personnel were unable to provide us with a reasonable explanation for the late receipts of the quarterly payments.

We recommend WVU comply with both the Price Adjustment and Annual Guaranteed Revenues Provisions of the current contract between WVU and Barnes & Noble.

University's Response

The acknowledgement form documenting the mutual agreement to share the costs of renovation to the Potomac State College Bookstore was signed by a designee of the Associate Vice President for Finance. WVU maintains that it was under no obligation to process a change order to the contract when both parties had mutually agreed to a reduction in rent payment as the authority to make price adjustments was expressly authorized by the terms and conditions of the agreement between the University and Barnes & Noble which had been approved by the Attorney General's Office.

WVU agrees that several payments from Barnes & Noble were deposited late. However, these payments were delayed when WVU moved responsibility for deposit of these checks to a different office prior to notifying Barnes & Noble that the checks should be sent to a new address. WVU recognized that the check deposit process was being delayed by receiving these checks in a unit other than the unit responsible for their deposit and notified Barnes & Noble that the checks should be delivered to the deposit location. This situation has been addressed and corrected.

Vendor Reimbursement of Monthly Expenses
Initially Paid by WVU on Behalf of Vendor

Under the current contract between WVU and Barnes & Noble, WVU pays certain expenses on behalf of Barnes & Noble. These expenses include payroll costs, telephone service and postage. WVU submits monthly billings to Barnes & Noble for the reimbursement of these expenses. During our examination of the reimbursements received from Barnes & Noble for the period July 1, 1998 through November 30, 2000, we noted both WVU and Barnes & Noble are in noncompliance with the contract.

Specifically, we noted 21 instances of reimbursement payments totaling \$719,862.14 remitted late by Barnes & Noble; ten (10) instances of payroll credits totaling \$7,516.19 not being applied by WVU to the monthly billings submitted for payment to Barnes & Noble; a cumulative underpayment of \$175.29 by Barnes & Noble through November 30, 2000 which occurred because the vendor was not paying the exact amounts billed by WVU from April 1, 2000 through November 30, 2000; one (1) instance where WVU overbilled Barnes & Noble by \$10.00 due to the wrong payroll credit amount being applied against the March 1999 billing; and five (5) instances of reimbursement payments totaling \$275,919.84 which were accounted for as revenues rather than as

expenditure reductions. As a result of these errors, WVU has overbilled Barnes & Noble by a net amount of \$7,350.90 through November 30, 2000.

We believe the aforementioned instances where WVU owed Barnes & Noble for certain payroll credits would be in noncompliance with the Vacation and Sick Leave Balances of State Funded Employees portion of the WVU Bookstore Contract which states in part,

“Vacation and sick leave balances accrued by WVU employees prior to commencement of the initial contract term at May 1, 1991 are the financial responsibility of the University. The University will allow a credit against payroll reimbursements due from the Vendor for these vacation and sick leave balances when taken. The value of the credit will be determined by multiplying the leave time taken by the 5/1/91 hourly rate of the employee...”

In addition, we believe the aforementioned instances where Barnes & Noble did not properly reimburse WVU would be in noncompliance with the Vendor Reimbursement of University Expenses Paid on Vendor's Behalf portion of the contract which states,

“Expenses paid initially by the University on behalf of the Vendor are the financial responsibility of the Vendor. These might include, but are not limited to, salaries, wages, fringe benefits, telephone and postage. The University will invoice the Vendor for payroll costs within five business days of each payday and for all other expenses on a monthly basis within ten business days of the end of the month in which expenses are posted to the University's accounting system.

Payment must be forwarded to the WVU Controller's Office, P.O. Box 6001, Morgantown, WV 26506-6001 and is due the University within thirty days of the invoice date. **Late payments may be assessed a 1.5% monthly fee.**” (Emphasis added)

The effect of Barnes & Noble remitting payments late and WVU not invoicing Barnes & Noble from November 1999 through March 2000 resulted in WVU losing interest revenue on monies they were entitled to receive. Also, WVU treating the reimbursement payments as revenues may overstate revenues received resulting in misleading financial statements.

The Assistant Director of Sponsored Research Accounting explained that Barnes & Noble is not invoiced for payroll costs within five (5) business days of each payday because WVU's former computer system (CUFS) could only generate billings on a monthly basis. WVU's new computer system (MAPS) possesses the capability to generate billings on a weekly basis; however, both parties decided to continue the billing process on a monthly basis since each party was satisfied with this method.

Concerning the late payments made by Barnes & Noble, this WVU official told us that he was not aware of the reason these payments were not being received within 30 days of the invoice date as required by the contract. He further explained that he is unaware of any discussions between WVU personnel and Barnes & Noble regarding this issue. He added that WVU has had a very good working relationship with the vendor and that Barnes & Noble would be contacted if payment was delinquent in excess of 60 days. These late payments were received by WVU from one (1) to 47 days after the due date set by the contract. We noted WVU has not assessed Barnes & Noble any late fees as the result of these reimbursement payments being remitted late even though the contract provides late payments may be assessed a 1.5% monthly fee.

We were also told WVU was unable to properly invoice Barnes & Noble from November 1999 through March 2000 because WVU was having problems fully implementing the software to run its new computer system (MAPS). WVU required several months to establish its account structure within the new system. Once established, WVU resumed billing Barnes & Noble on a monthly basis at the end of April 2000.

In accordance with the current contract, WVU is responsible for the sick and annual leave accrued by bookstore employees prior to the commencement of the initial contract (May 1,

1991) with the vendor. Under CUFS, usage of this leave was recognized as a credit against the amount Barnes & Noble was invoiced. However, with the implementation of the new computer system in November 1999, WVU was unable to incorporate these payroll credits into the monthly billing process. Currently, WVU has still been unable to resolve this issue. Thus, Barnes & Noble has been cumulatively overbilled a total of \$7,516.19 for payroll credits from November 1999 through November 2000. WVU personnel told us as soon as payroll credits can be incorporated into the billing process that the total amount of outstanding payroll credits will be applied against a future billing.

Concerning the cumulative underpayment of \$175.29, we learned Barnes & Noble elected to make estimated payments starting in May 2000 as the result of WVU's difficulty in billing Barnes & Noble on a consistent basis. Since Barnes & Noble's fiscal year ends on April 30, Barnes & Noble needed to reimburse WVU for these expenses so their budget would not be adversely affected by WVU's inability to invoice them in accordance with the contract. Barnes & Noble estimated the amount needed to cover these expenses and remitted this amount. Finally, WVU personnel told us the overbilling of Barnes & Noble by \$10.00 on its March 1999 billing was the result of a data input error when entering the payroll credit information into the computer system.

We recommend both WVU and Barnes & Noble comply with all provisions of the current contract regarding the monthly billing for and reimbursement of payroll costs, telephone service, postage and other miscellaneous expenses.

University's Response

We agree that WVU was not in compliance of the terms of its contract with Barnes & Noble in regard to billing of monthly expense incurred by the University and payable by Barnes & Noble. These situations have been addressed and corrected.

We concur that 21 payments made by Barnes and Noble were late. WVU did not choose to exercise its option to charge interest on these payments. Subsequent to this report all of Barnes & Noble's payments have been on time.

We agree that Barnes & Noble was overbilled in the amount of \$7,516.19 due to non-application of payroll credits. These payroll credits have been applied to Barnes & Noble's May 2001 invoice.

Barnes & Noble did pay \$175.29 less than they were invoiced during the period audited. They had been invoiced for inappropriate charges (primarily telephone) which they disallowed. WVU's invoices were not adjusted to reflect the inappropriate charge resulting in the appearance of underpayment .

We agree that Barnes & Noble was overbilled by \$10 in March 1999. A credit was issued to Barnes & Noble for this amount on its May 2001 invoice.

When the University first implemented its financial system in November of 2000, the process for posting expenditure reductions was not fully operational. As a result, payroll reimbursement payments were recorded as revenues instead of expenditure reductions. WVU has taken corrective action to ensure that the transactions that were posted as revenue will be reflected as expenditure reductions and not revenue on the University's audited financial statements. WVU has developed a process to record expenditure reductions within the Oracle system

WVU agrees that it is not billing Barnes & Noble for payroll costs within five business days of each payday. As stated, WVU's former financial system could not generate these billings in accordance with that requirement. When WVU implemented its current financial system a business decision was made to continue billing Barnes & Noble on a monthly basis for

the convenience of WVU. A change order to the contract should have been made to document this decision. WVU is currently operating under a new contract with Barnes & Noble which does not require billing within five business days of each payday.

Contract Monitoring

During our examination of the bookstore contract between WVU and Barnes & Noble, we noted WVU was in noncompliance with the Monitoring Contract Performance provision of the contract. This provision of the bookstore contract requires WVU to conduct both a Contract Compliance Audit and a Customer Satisfaction Survey during the second and fourth years of the contract.

A Contract Compliance Audit was conducted by WVU's Internal Audit Office in the second year of the current contract; however, such an audit was not conducted in the fourth year of the current contract. The compliance report prepared by the Internal Audit Office indicated that Barnes & Noble had substantially complied with the terms and conditions of the contract. A Customer Satisfaction Survey was also conducted in the second year of the current contract. The faculty portion of this survey was conducted by Barnes & Noble, while the student portion was conducted by WVU. Barnes & Noble achieved high scores on both the faculty and student portion of this survey. However, this same survey was not conducted by WVU during the fourth year of the current contract.

We believe the decision by WVU officials to forego the Contract Compliance Audit and Customer Satisfaction Survey during the fourth year of the current contract is in noncompliance with the Monitoring Contract Performance provision of the bookstore contract which states,

“West Virginia University is authorized and responsible for conducting both a Contract Compliance Audit and a Customer Satisfaction Survey during the second and fourth contract renewal years. The Vendor is required to cooperate with the University and provide any necessary information. The Contract Compliance Audit will be performed by the WVU Internal Audit Office and is intended to ensure that the terms and conditions of the contract are substantially complied with. The Customer Satisfaction Survey is intended to provide feedback from students, faculty and staff regarding the level of satisfaction with bookstore products and services (textbooks, hours, service, etc.). West Virginia University is responsible for all costs in conducting both the audit and the survey.”
(Emphasis added)

By neglecting to perform the Contract Compliance Audit and the Customer Satisfaction Survey in the fourth year of the current bookstore contract, WVU has not sufficiently monitored the performance of Barnes & Noble during this contract period to ensure Barnes & Noble has substantially complied with the terms and conditions of the contract. A lack of adequate contract monitoring may lead to the same vendor being awarded subsequent contracts who may be in noncompliance with the current contract and may be providing unsatisfactory service to bookstore customers.

In addition, allowing Barnes & Noble to devise and conduct the faculty portion of the Customer Satisfaction Survey could lead to a lack of confidence by independent observers that the results accurately reflect the level of faculty satisfaction with the bookstore’s products and services. We believe WVU should have performed this portion of the Customer Satisfaction Survey as well since the contract assigns the responsibility for conducting the survey to WVU.

WVU personnel explained to us that administrative officials did not believe that it was necessary to conduct either the Contract Compliance Audit or the Customer Satisfaction Survey in the fourth year of the current contract because the contract was coming up for rebid. We were also

told WVU officials were satisfied with the level of service being provided by Barnes & Noble. The time frame when the audit and the survey would have been conducted was the same time that the contract was being rebid.

We were also informed by WVU personnel that Barnes & Noble regularly conducts Faculty Satisfaction Surveys at other college bookstores which they manage and thus volunteered to conduct the faculty portion of the Customer Satisfaction Survey. Before conducting the faculty portion of the Customer Satisfaction Survey, Barnes & Noble submitted their questionnaire to WVU's Bookstore Advisory Board for approval. The advisory board subsequently reviewed and approved Barnes & Noble's faculty survey questionnaire.

We recommend WVU comply with the Monitoring Contract Performance provision of the current contract to ensure Barnes & Noble is fully complying with the terms and conditions of the contract.

University's Response

We maintain that the Institution was not required to conduct either the Contract Compliance Audit or the Customer Satisfaction Survey. This provision was requested by WVU to be exercised at its discretion and was not intended to be a contract requirement.

WVU had several mechanisms in place to ensure that Barnes & Noble was performing as required by the contract. The institution has a Bookstore Advisory Board that meets regularly to assess the service provided by the bookstore and make recommendations for improvements to both Barnes & Noble and senior administrators. In addition, an Administrative Contract Officer is in place for the bookstore who is responsible for day-to-day contract management issues. These vehicles provided adequate assurance that Barnes & Noble was substantially compliant with the terms of their agreement.

Sales to the General Public

During our examination of the bookstore contract between WVU and Barnes & Noble, we noted Barnes & Noble is making sales to the general public. The general manager of WVU's bookstores, who is employed by Barnes & Noble, explained to us that all merchandise with the exception of computer software is available for sale to the general public. Computer software is not available for sale to the general public since it is sold to WVU students and faculty at a great discount. To purchase software, the customer must show bookstore personnel their University Identification Card.

We believe this policy is in noncompliance with Chapter 18B, Article 10, Section 14 of the West Virginia Code, as amended, which states in part,

“The appropriate governing board of each state institution of higher education shall have the authority to establish and operate a bookstore at the institution. The bookstore shall be operated for the use of the institution itself, including each of its schools and departments, in making purchases of books, stationery and other school and office supplies generally carried in college stores, and for the benefit of students and faculty members in purchasing such products for their own use, but *no sales shall be made to the general public....*”
(Emphasis added.)

Sales to the general public may lead to non-students purchasing textbooks that were intended for sale to students, which could result in an insufficient number of textbooks on hand for purchase by students. Also, making sales to the general public puts WVU's Bookstore in competition with private vendors which currently is specifically prohibited by State Law. The General Manager of the WVU Bookstore explained to us that Barnes & Noble's policy does not prohibit sales of bookstore merchandise (with the exception of computer software) to the general public. He further stated the various bookstores have had no problems in providing textbooks to students.

We recommend WVU comply with Chapter 18B, Article 10, Section 14 of the West Virginia Code until such time as the statute is amended to allow sales to the general public.

University's Response

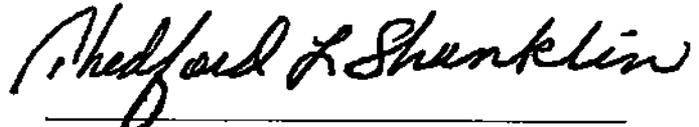
WVU believes that Barnes & Noble, as a private enterprise, is under no requirement to comply with §18B-10-14. Barnes & Noble does not advertise off-campus or in any other way seek business from the general public. Sales to the general public are incidental. Therefore, we are in compliance with §18B-10-14 if it is applicable. It is also important to note that Barnes & Noble is responsible for paying all state and local taxes. Barnes & Noble receives no special tax treatment as a result of its rental agreement with WVU.

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 10th day of June 2001.



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 West Virginia University; Higher Education Policy Commission; Governor; Attorney General; and, State Auditor.