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STATE COMPTROLLER



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ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

April 6, 2000

Mr. Elliot Spitzer
Attorney General
Department of Law
Agency Building 4
Empire State Plaza
Albany, NY 12224-0341

Re: Report 99-S-54

Dear Mr. Spitzer:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have audited the Department of Law's Confidential Fund for the period April 1, 1998 through July 31, 1999.

A. Background

State agencies, commissions and task forces have money available to them to pay informants, witnesses, dealers in narcotics and stolen property, bills for electronic surveillance and various other expenses incurred in conducting investigations. These monies are placed in confidential fund accounts enabling agencies to make payments without revealing sensitive information that could possibly jeopardize the investigators or the results of the investigations. The Office of the State Comptroller authorizes the accounts and the agencies generally maintain their authorized fund balances in checking accounts from which account managers make disbursements to investigators. Reimbursement for confidential expenditures is subsequently obtained by submitting a special voucher to the State Comptroller.

Confidential Fund expenditures are not required to undergo the same pre-audit process required for other State expenditures. The special vouchers submitted to the State Comptroller's Office show only the amount to be reimbursed so as not to compromise the confidential nature of the expenditures. Responsibility for the adequate documentation and proper use of Confidential Fund expenditures rests primarily with agency management, who review and approve the special vouchers before they are submitted to the State Comptroller for reimbursement. Management of each agency that administers Confidential Funds has a special duty to ensure that internal controls

over the accounts are strong and that all transactions are proper. Agency management must, therefore, establish the necessary internal controls to ensure transactions are proper, adequately supported, and in compliance with existing laws, rules and regulations, procurement policies and legislative and budgetary intent.

Agencies authorized to administer confidential fund accounts include: Division of Parole, Division of Criminal Justice Services, Office of the Attorney General, Department of Environmental Conservation, Education Department, Department of Health, Department of Family Assistance, Department of Taxation and Finance, Office of the Welfare Inspector General, Temporary Commission of Investigation, Office of Parks, Recreation and Historic Preservation, Department of Correctional Services, Department of Motor Vehicles, Division of State Police, and the Division of Alcoholic Beverage Control.

Our audit focused on the Attorney General's Office and the Division of State Police. This report contains the results of our audit at the Attorney General's Office. Our audit results at the Division of State Police are presented in a separate report (Report 99-S-5).

As of March 31, 1999, outstanding Confidential Fund advances to the Attorney General's Office totaled \$254,000, including \$148,000 for the Central Office, \$65,000 for the Organized Crime Task Force, \$40,000 for the Medicaid Fraud Control Bureau and \$1,000 for Confidential Computer Crime.

B. Audit Scope, Objectives and Methodology

We audited the Confidential Fund accounts for the Attorney General's Office for the period April 1, 1998 through July 31, 1999. The objectives of our financial-related audit focused on whether management at the Attorney General's Office has established an effective and efficient system of internal controls for administering and utilizing these accounts. To accomplish our objectives, we evaluated compliance with applicable laws, rules, regulations, policies, and procedures, interviewed agency management and staff, reviewed agency records and tested transactions for accuracy, authorization, validity, and accountability. We selected a judgmental sample of two fund accounts at the Organized Crime Task Force in White Plains and two fund accounts at the Central Office.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations of the Attorney General's Office which are included within the audit scope. Further, these standards require that we understand the Attorney General's internal control structure and compliance with those laws, rules, and regulations that are relevant to the operations which are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments, and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions, and recommendations.

We use a risk-based approach to select activities for audit. We therefore focus our audit efforts on those activities we have identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, we use finite audit resources to identify where and how improvements can be made. We devote little audit effort reviewing operations that may be relatively efficient or effective. As a result, we prepare our audit reports on an "exception basis." This report, therefore, highlights those areas needing improvement and does not necessarily address activities that may be functioning properly.

C. Internal Control and Compliance Summary

Internal controls are the integration of the activities, plans, attitudes, policies and efforts of the people of an organization working together to provide reasonable assurance that the organization will achieve its mission. Our evaluation of internal controls did not identify any significant weaknesses at the Central Office or at the Organized Crime Task Force.

D. Results of Audit

Our audit found that the Attorney General's Office has a strong system of internal controls over the use of its Confidential Fund. Except for the items described below, we found that the internal control system in the Attorney General's Office ensures that transactions are proper and adequately supported. Our audit also found that fund transactions were for authorized purposes and adequately supported.

We recommend that Confidential Fund bank reconciliations be prepared timely and accurately, and that checking account interest be forwarded to the State Comptroller's Office for deposit into the State's General Fund.

1. Use of Funds

Our audit found that the Attorney General's Office has a strong system of internal controls over Confidential Fund accounts to ensure that all monies are used in an appropriate manner. We audited receipts and disbursements for a judgmental sample of four confidential fund accounts for two randomly selected units within the Attorney General's Office at Albany and White Plains, New York. We randomly selected four months within our audit scope period April 1, 1998 through July 31, 1999 and tested all transactions during those months for each account. We tested 65 disbursements totaling \$185,225 and 28 receipts totaling \$270,744. We found all transactions were in compliance with applicable policies and procedures.

2. Bank and Fund Reconciliations

According to New York State's Accounting System User Procedure Manual, bank statement reconciliations should be made as soon as possible after receiving bank statements, and bank accounts should be reconciled by an employee independent of both the cashing and bookkeeping functions. The Attorney General's procedures state that reconciliations will be

performed on a monthly basis by an employee not involved in recording the receipts and disbursements. We found that, at the Organized Crime Task Force Headquarters in White Plains, the bank reconciliations are prepared by the same person responsible for recording the receipts and disbursements, and the bank reconciliations for two accounts were not accurately prepared.

We also found that the Attorney General's Office has not assigned staff to review the bank reconciliations to ensure that they are prepared timely and accurately and to aggregate and compare individual accounts to the total fund balance. As a result, the Attorney General's Office has been unable to accurately account for its total fund balance. Had the accounts been reconciled to the total fund balance, officials would have determined that their fund balance exceeded its authorized level by the interest earned on its checking accounts. However, nothing came to our attention during our audit of the internal control system and tests of transactions which would cause us to believe that the Confidential Fund was used inappropriately.

Pursuant to the State Finance Law, checking account interest is to be remitted periodically to the State Comptroller's Office for deposit into the State's General Fund. This was not being done.

Recommendations

1. *Assign appropriate staff, who are independent of the cashiering and bookkeeping functions for the Confidential Fund, to prepare monthly bank reconciliations. Also, individual fund accounts should be aggregated and reconciled to the total authorized fund balance.*
2. *Remit checking account interest to the State Comptroller's Office for deposit into the State's General Fund in accordance with the State Finance Law.*

Draft copies of this report were provided to the Attorney General's Office for their review and comment. Their comments have been considered in preparing this report and are included as Appendix A. The Attorney General's Office agreed with our recommendations and stated that they are in the process of implementing them.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Attorney General shall report to the Governor, the State Comptroller and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Major contributors to this report were Abe Markowitz, Brian Lotz, William Hughes, Deb Spaulding, Amy Pertgen and Betsy Guillmen.

We wish to thank the management and staff of the Attorney General's Office for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

William P. Chalice
Audit Director

cc: Charles Conaway



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ELIOT SPITZER
Attorney General

RICHARD E. WARNKE
Deputy for Administration

March 24, 2000

Mr. William P. Challice
Audit Director
NYS Office of the State Comptroller
Division of Management Audit and State Financial Services
270 Broadway, 19th Floor
New York, NY 10007

Dear Mr. Challice:

This letter is in response to your draft Audit Report 99-S-54 of the Department of Law's Confidential Fund. We have reviewed the audit and are pleased that your "evaluation of internal controls did not identify any significant weaknesses at the central office or at the Organized Crime Task Force."

The two recommendations you made are already being implemented. We have assigned a staff member who is independent of the cashiering and bookkeeping functions to prepare monthly bank reconciliations for the Confidential Fund. Also, fund accounts shall be aggregated and reconciled to the total authorized fund balance.

In the future, we will remit any checking account interest to the State Comptroller for deposit into the State's General Fund.

Thank you for the cooperation and courtesies extended by your staff during this audit.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Warnke", written over a horizontal line.

Richard E. Warnke
Deputy for Administration

REW/ts