

**SOUTH CAROLINA
COMMISSION ON INDIGENT DEFENSE**

COLUMBIA, SOUTH CAROLINA

STATE AUDITOR'S REPORT

JUNE 30, 1997

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INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES

July 13, 1998

The Honorable David M. Beasley, Governor
and
Members of the Commission
South Carolina Commission Indigent Defense
Columbia, South Carolina

We have performed the procedures described below, which were agreed to by the governing body and management of South Carolina Commission on Indigent Defense, solely to assist you in evaluating the performance of the Commission for the fiscal year ended June 30, 1997, in the areas addressed. This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the specified users of the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose. The procedures and the associated findings are as follows:

1. We tested selected recorded non-payroll disbursements to determine if these disbursements were properly described and classified in the accounting records; were bona fide disbursements of the Commission; and were paid in conformity with State laws and regulations and if accounting procedures and internal accounting controls over the reporting of the tested disbursement transactions were adequate to provide proper control over these transactions. The items selected for testing were chosen randomly. The total of the selected items was 16.5 percent of the aggregate amount of all recorded non-payroll disbursements. Our finding as a result of these procedures is presented in Post Conviction Relief Case Expenditures in the Accountant's Comments section of this report.
2. We tested selected recorded payroll disbursements to determine if the tested payroll and fringe benefits were properly described, classified, and distributed in the accounting records; persons on the payroll were bona fide employees; and payroll transactions including employee payroll deductions were properly authorized by the employees and were in accordance with existing legal requirements and if accounting procedures and internal accounting controls over the reporting of the tested payroll transactions were adequate to provide proper control over these transactions. The items selected for testing were chosen randomly. The total of the selected items was 8.5 percent of the aggregate amount of all recorded payroll disbursements. We found no exceptions as a result of the procedures.

The Honorable David M. Beasley, Governor
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South Carolina Commission on Indigent Defense
July 13, 1998

3. We tested recorded journal entries and appropriation transfers to determine if these transactions were properly described and classified in the accounting records; the accounting procedures and internal accounting controls over the reporting of these transactions were adequate to provide proper control over these transactions; and they agreed with the supporting documentation, were adequately documented and explained, were properly approved, and were mathematically correct. We found no exceptions as a result of the procedures.
4. We tested selected entries and monthly totals in the subsidiary records of the Commission to determine if the amounts were mathematically accurate; the numerical sequences of selected document series were complete; the selected monthly totals were accurately posted to the general ledger; and the accounting procedures and internal accounting controls over the tested transactions were adequate to provide proper control over the books of original entry and the general ledger. The items selected for testing were chosen randomly. Our finding as a result of these procedures is presented in General Ledger in the Accountant's Comments section of this report.
5. We obtained all monthly reconciliations prepared by the Commission for the year ended June 30, 1997, and tested selected reconciliations of balances in the Commission's accounting records to those in the State's accounting system (STARS) as reflected on the Comptroller General's reports to determine if they were accurate and complete. For the selected reconciliations, we recalculated the amounts, agreed the applicable amounts to the Commission's general ledger, agreed the applicable amounts to the STARS reports, determined that reconciling differences were adequately explained and properly resolved, and determined that necessary adjusting entries were made in the Commission's accounting records or STARS. The reconciliations selected for testing were chosen randomly. Our finding as a result of these procedures is presented in Reconciliations in the Accountant's Comments section of this report.
6. We tested the Commission's compliance with all applicable financial provisions of the South Carolina Code of Laws, Appropriation Act, and other laws, rules, and regulations for fiscal year 1997 by performing the applicable tests and procedures listed on the State Auditor's Office's Appropriation Act 1997 work program. We found no exceptions as a result of the procedures.
7. We reviewed the status of the deficiencies described in the findings reported in the Accountant's Comments section of the State Auditor's Report on the Commission resulting from our engagement for the fiscal year ended June 30, 1995, to determine if adequate corrective action has been taken. We applied no procedures to the Commission's accounting records and internal controls for the year ended June 30, 1996. Our findings as a result of these procedures is presented in Reconciliations in the Accountant's Comments section of this report.
8. We obtained copies of the accompanying schedules of expenditures - budget and actual for the year ended June 30, 1997, and notes thereto prepared by the Commission and agreed the amounts by line-item appropriation within budgetary fund category thereon to the accounting records of the Commission. We checked the schedules and notes for mathematical accuracy. We found no exceptions as a result of the procedures.

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9. We obtained copies of all closing packages as of and for the year ended June 30, 1997, prepared by the Commission and submitted to the State Comptroller General and reviewed them to determine if they were prepared in accordance with the Comptroller General's GAAP Closing Procedures Manual requirements; if the amounts were reasonable; and if they agreed with the supporting workpapers and accounting records. We found no exceptions as a result of the procedures.

We were not engaged to, and did not, perform an audit, the objective of which would be the expression of an opinion on the specified areas, accounts, or items and on the effectiveness of the internal control structure over financial reporting described in paragraph one and procedures one through nine of this report. Accordingly, we do not express such an opinion. Had we performed additional procedures or had we conducted an audit or review of the Commission's financial statements or any part thereof, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the use of the specified users and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes. However, this report is a matter of public record and its distribution is not limited.

Edgar A. Vaughn, Jr., CPA
State Auditor

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Schedule of Expenditures -
 Budget and Actual - Budgetary General Fund
For the Year Ended June 30, 1997

	<u>Legal Basis Budget</u>	<u>Actual on Budgetary Basis</u>	<u>Variance</u>
Expenditures:			
Personal Services	\$ 124,348	\$ 119,378	\$ 4,970
Employer Contributions	25,958	25,958	-
Other Operating Expenses	172,865	67,213	105,652
<i>Special Items:</i>			
Death Penalty Trial Funds	75,000	69,136	5,864
Conflict Fund	-	-	-
Defense of Indigents	<u>2,129,635</u>	<u>2,129,634</u>	<u>1</u>
Total Expenditures	<u>\$2,527,806</u>	<u>\$2,411,319</u>	<u>\$116,487</u>

The accompanying notes are an integral part of this schedule.

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE
 Schedule of Expenditures -
 Budget and Actual - Other Budgeted Funds
For the Year Ended June 30, 1997

	<u>Legal Basis Budget</u>	<u>Actual on Budgetary Basis</u>	<u>Variance</u>
Expenditures:			
Personal Services	\$ -	\$ -	\$ -
Employer Contributions	-	-	-
Other Operating Expenses	-	-	-
<i>Special Items:</i>			
Death Penalty Trial Funds	2,750,000	2,089,450	660,550
Conflict Fund	1,000,000	989,787	10,213
Defense of Indigents	<u>4,372,672</u>	<u>2,020,191</u>	<u>2,352,481</u>
Total Expenditures	<u>\$8,122,672</u>	<u>\$5,099,428</u>	<u>\$3,023,244</u>

The accompanying notes are an integral part of this schedule.

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Schedule of Expenditures -
 Budget and Actual - Total Budgeted Funds
For the Year Ended June 30, 1997

	<u>Legal Basis Budget</u>	<u>Actual on Budgetary Basis</u>	<u>Variance</u>
Expenditures:			
Personal Services	\$ 124,348	\$ 119,378	\$ 4,970
Employer Contributions	25,958	25,958	-
Other Operating Expenses	172,865	67,213	105,652
<i>Special Items:</i>			
Death Penalty Trial Funds	2,825,000	2,158,586	666,414
Conflict Fund	1,000,000	989,787	10,213
Defense of Indigents	<u>6,502,307</u>	<u>4,149,825</u>	<u>2,352,482</u>
Total Expenditures	<u>\$10,650,478</u>	<u>\$7,510,747</u>	<u>\$3,139,731</u>

The accompanying notes are an integral part of this schedule.

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Notes to Schedules

June 30, 1997

NOTE 1 - BUDGET POLICY

The South Carolina Commission on Indigent Defense is granted an annual appropriation for operating purposes by the General Assembly. The appropriation as enacted becomes the legal operating budget for the Commission. The Appropriation Act authorizes expenditures from funds appropriated from the General Fund of the State and authorizes expenditures of total funds. The Total Funds column in the Appropriation Act for each individual budgetary unit authorizes expenditures from all budgeted resources. A revenues budget is not adopted for individual budgetary units. The General Assembly enacts the budget through passage of line-item appropriations by program within budgetary unit within budgetary fund category, State General Fund or other budgeted funds. Budgetary control is maintained at the line-item level of the budgetary entity. Agencies may process disbursement vouchers in the State's budgetary accounting system only if enough cash and appropriation authorization exist.

Transfers of funds may be approved by the State Budget and Control Board under its authority or by the agency as set forth in 1997 Appropriation Act Proviso 72.9. as follows: Agencies are authorized to transfer appropriations within programs and within the agency with notification to the Board's Division of Budget and Analyses and to the State Comptroller General. No such transfer may exceed 20 percent of the program budget. Transfers from personal services accounts or from other operating accounts may be restricted to any level set by the Board.

During the fiscal year-end closeout period in July, agencies may continue to charge vendor, interagency, and interfund payments for the fiscal year to that fiscal year's appropriations. Any unexpended State General Fund monies as of June 30 automatically lapse to the General Fund of the State on July 31 unless authorization is received from the General Assembly to carry over the funds to the ensuing fiscal year. State law does not require the use of encumbrance accounting.

State law does not precisely define the budgetary basis of accounting. The current Appropriation Act states that the General Assembly intends to appropriate all State funds and to authorize and/or appropriate the use of all other monies to operate State government for the current fiscal year. The State's annual budget is prepared primarily on the modified accrual basis of accounting with several exceptions, principally the cash disbursements basis for payroll expenditures.

The schedules of expenditures - budget and actual present actual expenditures on the budgetary basis of accounting compared to the legally adopted and modified budget on a line-item expenditure basis. The level of legal control for each agency for each fiscal year is reported in a publication of the State Comptroller General's Office titled A Detailed Report of Appropriations and Expenditures.

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Notes to Schedules

June 30, 1997

NOTE 2 - STATE APPROPRIATIONS

The following is a reconciliation of the 1997 Appropriation Act as originally enacted by the General Assembly to amounts available for the Commission's budgetary general fund expenditures as reported on Schedule 1 for the year ended June 30, 1997.

Original Appropriation	\$2,378,410
State Budget and Control Board Allocations:	
Employee Base Pay Increases and Related	
Employee Benefits (Proviso 17C.19.)	3,156
Employer Contributions (Proviso 72.17.)	53
Supplemental Appropriation from 1996 Surplus	
State General Fund Revenues from Part V of	
the 1997 Act for Administration	<u>1,500</u>
Revised Appropriation - Legal Basis	2,383,119
Plus: 1996 Appropriation Brought Forward	
(1997 Proviso 72.44.)	<u>144,687</u>
Legal Basis Appropriation Available for 1997	
Expenditures	<u>\$2,527,806</u>

Pursuant to Proviso 72.44. of the 1998 Appropriation Act, the Commission carried forward \$116,487 of unspent State General Fund appropriations from the current year into the next fiscal year. This amount included \$5,865 originally appropriated for Death Penalty Trial Funds and Defense of Indigents special items authorized by Proviso 14.1. of the 1997 Appropriation Act. This proviso authorized a maximum carry-forward of 10 percent of an agency's original appropriation with certain limitations for reductions and separate carry-forward authority.

ACCOUNTANT'S COMMENTS

SECTION A - MATERIAL WEAKNESSES AND/OR VIOLATIONS OF STATE LAWS, RULES OR REGULATIONS

The procedures agreed to by the agency require that we plan and perform the engagement to obtain reasonable assurance about whether noncompliance with the requirements of State Laws, Rules, or Regulations occurred and whether internal accounting controls over certain transactions were adequate. Management of the entity is responsible for establishing and maintaining an internal control structure. A material weakness is a condition in which the design or operation of one or more of the specific internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Therefore, the presence of a material weakness or violation will preclude management from asserting that the entity has an effective internal control structure.

The conditions described in this section have been identified as material weaknesses or violations of State Laws, Rules, or Regulations.

RECONCILIATIONS

We selected the July 1997 (FM13) and April 1997 reconciliations to test. The Commission's July 1997 reconciliations for cash, revenues, and expenditures, and the April 1997 cash reconciliation were available and complete. However, we found that the reconciliations were not signed and dated by the preparer and had not been independently reviewed. We also found that month-end reconciliations for April 1997 revenues and expenditures had not been prepared.

The Commission does not have procedures in place that require month-end reconciliations for revenues and expenditures or that require the reconciliations be signed and dated by the preparer or be independently reviewed. Instead of preparing month-end reconciliations for these accounts, the accountant compares daily transaction registers (e.g., STARS CSA443 and CSA444) to the agency's transaction register. The Commission's procedures are inadequate because the process focuses primarily on the transaction amount and not the account coding and does not adequately document or explain differences between STARS and the agency's accounting records.

Section 2.1.7.20 of the Comptroller General's Policies and Procedures Manual (STARS Manual) states,

To ensure adequate error detection and to satisfy audit requirements, such reconciliations must be:

- Performed at least monthly on a timely basis (i.e., shortly after month-end).
- Documented in writing in an easily understandable format with all supporting working papers maintained for audit purposes.
- Signed and dated by the preparer.

- Reviewed and approved in writing by an appropriate agency official other than the preparer.

We recommend the Commission develop and implement procedures to ensure timely reconciliations of its accounting records in accordance with Section 2.1.7.20 of the STARS Manual.

GENERAL LEDGER

The Commission does not maintain a double entry accounting system. Its current accounting system is comprised of spreadsheets that are not linked and integrated. This system is inadequate and does not ensure that accounting transactions are accurately processed, summarized, and recorded. While we were able to reconcile the agency's year-end expenditure balances to STARS expenditure reports we found several discrepancies with the agency's accounting records (e.g., source documents not agreeing to the accounting records, numerical sequence of documents were incomplete, etc.). The accounting system is further weakened because of weaknesses in the agency's reconciliation procedures.

We recommend the Commission purchase an accounting system that will meet its accounting requirements. We recommend the Commission contact other State agencies of similar size to determine what accounting systems are available. Knowing what is available and obtaining some insight and assistance from other agencies should help the Commission in selecting the proper accounting system.

POST CONVICTION RELIEF CASE EXPENDITURES

The Commission currently uses Death Penalty Fund resources to pay expenditures related to post conviction relief cases. Section 14.1 of the 1996-97 Appropriation Act states, "Within the amount of money established for indigent defense services, the State shall set aside \$2,750,000 (Death Penalty Trial Fund) annually exclusively for use of the defense in capital cases pursuant to Section 16-3-26 of the 1976 Code, and for the expenses of the operation of the Commission on Indigent Defense." Agency personnel told us that the post conviction relief cases do not relate to death penalty cases and, in our opinion, the expenditures do not meet the definition of operating expenses (i.e., administrative costs of the agency).

We recommend the Commission request an Attorney General opinion to determine if it can use Death Penalty Fund resources to pay post conviction case expenditures. If it is determined not to be a proper use of Death Penalty Fund resources, we recommend that the Commission request additional appropriations to pay post conviction relief case expenditures.

SECTION B - STATUS OF PRIOR FINDINGS

During the current engagement, we reviewed the status of corrective action taken on each of the findings reported in the Auditor's Comments section of the State Auditor's Report on the Commission for the fiscal year ended June 30, 1995, and dated July 31, 1996. We applied no procedures to the Commission's accounting records and internal controls for the year ended June 30, 1996. We determined that the Commission has taken adequate corrective action on each of the deficiencies except for the finding described in Reconciliations which we have repeated in Section A of this report.

MANAGEMENT'S RESPONSE

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

September 10, 1998

Edgar A. Vaughn, Jr., CPA
State Auditor
1401 Main Street, Suite 1200
Columbia, South Carolina 29201

RE: Preliminary Draft of Audit Report covering Fiscal Year 1996-1997

Dear Mr. Vaughn:

This letter will acknowledge receipt of the above document and will acknowledge that our review of the report has been completed. You are authorized to release the final version of this report. I am enclosing a listing of the names and addresses of our present Commissioners as you requested. This office has discussed the preliminary findings of the above audit with personnel from your office and I do not believe that it will be necessary to request a formal exit conference.

I have reviewed the Accountant's Comments in the draft and make the following responses:

1. **RECONCILIATIONS:** We have instituted a procedure to insure that these reports are timely performed and subsequently reviewed each month. This is basically a "tickler" system to remind both the preparer and reviewer that it is time to complete this function.
2. **BOOKKEEPING PROCEDURES:** During the progress of the audit, personnel from the State Auditor's Office made us aware of a software program which had been developed by USC and has been used by some small agencies. This program supposedly incorporates both STARS and GAP procedures. Because of this agency's need to not only account for funds under its control but also to analyze the data contained in each request to be paid, we have avoided "off the shelf" accounting programs. Based on our discussions with your office, we have made attempts to contact the developers of this program in order to determine if it can be modified to suit our needs. Because of the limited size of this office, we do not want to go to the use of two systems which require multiple entries of the same information. We are in hopes that this system which is already developed can be modified so that we can use it. In addition we have examined several "off-the-shelf" accounting software programs to see if we can use them. The problem encountered with most of them is that do not allow us to gather the statistical information we need at the same time the financial data is entered. We will

try to have some sort of standardized system in place next year as we recognize this makes the procedure easier for the auditors to determine what has occurred during the audit year.

3. AUTHORITY TO PAY CERTAIN EXPENSES FROM THE DEATH PENALTY FUND:
This is an issue in which we disagree with the findings of the auditors. The main issue involved is the payment of Post Conviction Relief (PCR) cases from funds designated as being deposited in the "Death Penalty Trial Fund". These were paid under the authority of Proviso 14.1 of Act 458 of 1996 (The 1996-1997 Appropriation Act). The pertinent language in this Proviso has not been changed since this Agency's creation and remains the same in subsequent Appropriation Acts.

The language in this Proviso sets up the working funds of this Agency and breaks them down into the "Conflict Fund" and "The Death Penalty Trial Fund". The "Conflict Fund" is restricted to the payments of "...fees and expenses of private counsel appointed in non-capital cases pursuant to Section 17-3-50 (Conflict Fund)." Counsel appointed in PCR cases are appointed pursuant to Section 17-27-60 therefore excluding their payments from the "Conflict Fund".

However, that same Statute, §17-27-60, mandates that the costs and expenses of PCR actions, including legal services, are to be paid "...in amounts and to the extent funds are made available to indigent defendants by the General Assembly." This being the case, the question then becomes one of from what source are they to be paid? The fund approved for Public Defender Offices is restricted to that purpose. The agency's general operating funds are also restricted and are totally insufficient for this purpose. This only leaves the "Death Penalty Trial Fund". The language of Proviso 14.1 restricts its use "...and for the expenses of the operation of the Commission on Indigent Defense." [Emphasis added] I understand that the auditors take the position that this language must mean expenses in the nature of day-to-day operating expenses of the Office of Indigent Defense. But if that were the case, I submit that the Legislature would have used the term "Office of Indigent Defense" rather than the more inclusive designation of "Commission on Indigent Defense" of which the Office is only the operational arm. Sections 17-3-310, -320, and -330, the sections of the Code which created the Commission and Office of Indigent Defense, were initially passed along with the original Proviso 14.1 and were all part of the Appropriation Act of 1993-1994, thereby indicating that the Legislature intended the use of these funds to be for all payments by the Commission and not just for Office expenses.

Section 17-27-60 directs that these obligations are to be paid. There is no separate line item set up for their payment but only the direction that they be paid from funds set aside for indigent defense. The only funds presently appropriated for indigent defense are the funds I have described above. Therein lies the quandary. Are they to be paid from this source which seems to be the legislative intent or are they not to be paid, thereby ignoring the mandate of the statute?

Because we differ in our interpretation of this Proviso 14.1, we are preparing a formal request to have the Attorney General issue an opinion on this matter. I should point out that because the Attorney General prosecutes all Post Conviction Relief cases, he may take the position that he has a conflict of interest in issuing an opinion in this matter.

Vaughn, Jr., Edgar A., State Auditor
RE: Preliminary Draft of Audit Report covering Fiscal year 1996-97
Date: September 9, 1998
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As I stated above, I am also including a listing of the present Commissioners with their mailing addresses. Please note that there is a vacancy for the position of Chairman. Elizabeth C. Fullwood, the Commissioner from the Second Congressional District is the acting Chair. Also, a successor has not been appointed for the Honorable L. Ross Hall, the Commissioner from the Sixth Congressional District and she remains as that representative until such time as the Governor fills that appointment.

If you have any questions, please feel free to contact me.

With best regards, I remain

Very truly yours,

Tyre D. Lee, Jr.
Executive Director

TDL/cp

Enclosure:
List of Commissioners