

Audit Report

Office of the Attorney General

March 2019



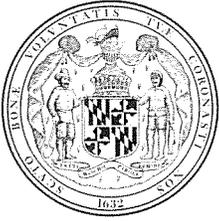
OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber
Executive Director

Gregory A. Hook, CPA
Legislative Auditor

March 8, 2019

Senator Craig J. Zucker, Co-Chair, Joint Audit Committee
Delegate Shelly L. Hettleman, Co-Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have conducted a fiscal compliance audit of the Office of the Attorney General (OAG) for the period beginning July 18, 2014 and ending May 8, 2018. OAG is a public office established under the Constitution of Maryland, and acts as legal counsel to the governor, the General Assembly, the Judiciary, and State agencies. OAG also enforces antitrust, consumer protection and securities laws; prosecutes Medicaid provider fraud; and monitors residential juvenile facilities.

Our audit disclosed that OAG could not provide documentation that it had properly procured certain services and goods, and could not verify the vendor costs from associated invoices that totaled approximately \$2.1 million during our audit period. Also, the OAG's procedures and controls over certain aspects of its cash receipts processing were not effective.

Our audit also included a review to determine the status of the finding contained in our preceding audit report. We determined that OAG did not satisfactorily address this cash receipts finding; therefore, it is repeated in this report.

OAG's response to this audit is included as an appendix to this report. In accordance with State law, we have reviewed the response and, while OAG generally agrees with the recommendations in this report, we identified an instance in which statements in the response conflict with or disagree with the report findings. In this instance, we reviewed and reassessed our audit documentation, and reaffirmed the validity of our finding. In accordance with generally accepted government auditing standards, we have included an "auditor comment" within OAG's response to explain our position. We will

advise the Joint Audit Committee of any outstanding issues that we cannot resolve with OAG.

We wish to acknowledge the cooperation extended to us during the audit by OAG, and its willingness to address the audit issues and implement appropriate corrective actions.

Respectfully submitted,

A handwritten signature in black ink that reads "Gregory A. Hook". The signature is written in a cursive, flowing style.

Gregory A. Hook, CPA
Legislative Auditor

Background Information

Agency Responsibilities

The Office of the Attorney General (OAG) is a public office established under the Constitution of Maryland. OAG operates under the provisions of Title 6 of the State Government Article. OAG acts as legal counsel to the Governor, General Assembly, Judiciary, State agencies, boards, and commissions, and represents the State in all legal matters of interest to the State. OAG also reviews legislation passed by the General Assembly; enforces antitrust, consumer protection, and securities laws; prosecutes Medicaid provider fraud; and monitors residential juvenile facilities. According to the State's records, OAG's operating expenditures totaled approximately \$37.7 million during fiscal year 2017.

Status of Findings From Preceding Audit Report

Our audit included a review to determine the status of the finding contained in our preceding audit report dated March 4, 2015. We determined that OAG did not satisfactorily address this finding; therefore, it is repeated in this report as Finding 2.

Findings and Recommendations

Procurements

Finding 1

The Office of the Attorney General (OAG) could not document that it had properly procured certain services and goods totaling approximately \$2.1 million.

Analysis

OAG could not provide documentation that it had properly procured temporary staffing services and law books, and could not verify that the proper rates were charged on the associated invoices. We tested 12 payments totaling approximately \$430,000 and identified 3 payments—one to a temporary staffing company and two to law book publishers—totaling \$51,000 that did not have adequate procurement documentation. Consequently, there was a lack of assurance that these items were obtained at the lowest cost and that the payments

made were in the appropriate amounts. Payments to the three related vendors totaled approximately \$2.1 million during our audit period.

- OAG repeatedly obtained temporary staffing services totaling \$815,000 from the same vendor during the period from July 2014 through April 2018, without the benefit of a written contract. OAG also did not solicit competitive bids or, in lieu of a competitive procurement, document in writing a legitimate sole source justification. Formal agreements or purchase orders, as required by State procurement regulations, did not exist to establish the scope of services and rates, and for invoice verification. Although we were advised by OAG management officials that resumes and documentation of the rates to be paid for these temporary staffing personnel had been obtained, this documentation was not retained. State procurement regulations generally require a formal written competitive procurement for procurements exceeding \$15,000 as well as written justifications for sole source procurements.
- Formal agreements did not exist to establish the agreed-upon products, quantities, and prices for various law book purchases totaling \$1.3 million from the other two vendors. We were informed by OAG management officials that these law books are purchased based on a standing order, are supported by a line item in its annual budget, and are only available from limited vendors. These officials also informed us that entering into contracts with the publishers and book vendors from whom such books may be purchased is both impractical and counterproductive, although the OAG could not support that contention. Nevertheless, OAG should prepare required contract documents, retain documentation to support the items purchased and prices charged, and review this documentation when approving invoices for payment.

State procurement regulations establish specific requirements for various types of purchases and also require certain control agency approvals. For example, Board of Public Works approval is required for service contracts over \$200,000, and Department of General Services' approval is required for commodities contracts over \$200,000.

Recommendation 1

We recommend that OAG

- a. comply with State procurement regulations by soliciting competitive bids or providing sole source justifications, executing written contracts, and obtaining control agency approvals as appropriate for each purchase; and**

- b. use those procurement documents and written contracts to verify the propriety of related vendor billings.

Cash Receipts

Finding 2

OAG did not effectively safeguard, account for, and ensure timely deposit of collections.

Analysis

OAG cash receipts, which totaled approximately \$18.5 million during fiscal year 2017 according to State records, were not adequately safeguarded, accounted for, and timely deposited. These collections, which included certain registration fees and lawsuit settlements, were initially received in the various OAG divisions, and were subsequently forwarded to its Fiscal Division for deposit.

- Established procedures for the independent deposit verifications of Consumer Protection Division receipts, which according to agency records totaled \$7.5 million in fiscal year 2017, were not being consistently performed. Specifically, the designated independent employee responsible for verifying cash collections to deposit did not perform any deposit verifications for the period from September 2, 2016 through May 8, 2018. Cash collections totaled \$9.8 million during this period. OAG management advised us that staffing and workload issues contributed to this situation. While we found that another deposit verification was performed by a different employee, this employee had access to checks and, therefore, was not independent. In addition, this employee did not use the initial recordation documentation in the verification process but, rather, used a summary report of collections for this purpose. A similar condition regarding the lack of adequate independent deposit verifications for Consumer Protection Division collections was commented upon in our preceding audit report.
- Collections received by the Securities Division, which according to agency records totaled \$8.7 million in fiscal year 2017, were not sufficiently safeguarded prior to transfer to the Fiscal Division for deposit. Specifically, checks received in the mail were left on an employee's desk throughout the day and were accessible to numerous employees. Furthermore, checks were not restrictively endorsed and recorded until all mail for the day had been processed. A similar condition relating to the safeguarding of checks by the Consumer Protection Division was commented upon in our preceding audit

report, wherein we recommended that the OAG ensure that collections be adequately safeguarded.

- Collections were not always deposited timely. We tested 20 judgmentally selected deposits made by the Fiscal Division for collections received by various OAG divisions during the period between December 2016 and April 2018, which totaled approximately \$9 million. Our test disclosed that 8 deposits totaling approximately \$1.1 million were not made the next business day as required. Rather, these 8 deposits were made between two to seven days after receipt. As with the aforementioned independent deposit verification condition, OAG management advised us that staffing issues also contributed to this situation.

As a result of these conditions, funds could be lost or misappropriated without detection. The Comptroller of Maryland's *Accounting Procedures Manual* requires that a reconciliation of the initial recordation of collections to the amount deposited be performed by an employee independent of the cash receipts function. Additionally, the *Manual* requires that receipts be adequately safeguarded until deposited, and that the deposit occur no later than the first working day after the day of receipt.

Recommendation 2

We recommend that OAG ensure that appropriate personnel are dedicated to critical cash receipts processes. Specifically, we recommend that OAG

- a. ensure that collections are verified to deposit by an employee independent of the cash receipts functions and that the initial record of collections is used during the deposit verification process (repeat),**
- b. adequately safeguard collections prior to deposit (repeat),**
- c. record and restrictively endorse all checks immediately upon receipt, and**
- d. ensure that deposits are made no later than the first working day after the day of receipt.**

We advised OAG on accomplishing the necessary separation of duties using existing personnel.

Audit Scope, Objectives, and Methodology

We have conducted a fiscal compliance audit of the Office of the Attorney General (OAG) for the period beginning July 18, 2014 and ending May 8, 2018. The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to

obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine OAG's financial transactions, records, and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of significance and risk. The areas addressed by the audit included procurements and disbursements, cash receipts, special funds, and payroll. We also determined the status of the finding contained in our preceding audit report.

To accomplish our audit objectives, our procedures included inquiries of appropriate personnel, inspections of documents and records, observations of OAG's operations, and tests of transactions. Generally, transactions were selected for testing based on audit judgment, which primarily considers risk. Unless otherwise specifically indicated, neither statistical nor non-statistical audit sampling was used to select the transactions tested. Therefore, the results of the tests cannot be used to project those results to the entire population from which the test items were selected.

We also performed various data extracts of pertinent information from the State's Financial Management Information System (such as revenue and expenditure data) and the State's Central Payroll Bureau (payroll data). The extracts are performed as part of ongoing internal processes established by the Office of Legislative Audits and were subject to various tests to determine data reliability. We determined that the data extracted from these various sources were sufficiently reliable for the purposes the data were used during this audit. Finally, we performed other auditing procedures that we considered necessary to achieve our objectives. The reliability of data used in this report for background or informational purposes was not assessed.

OAG's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes findings relating to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect OAG's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. These findings are also regarded as significant instances of noncompliance with applicable laws, rules, or regulations. Other less significant findings were communicated to OAG that did not warrant inclusion in this report.

OAG's response to our findings and recommendations is included as an appendix to this report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise OAG regarding the results of our review of its response.

APPENDIX

BRIAN E. FROSH
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March 6, 2019

Gregory A. Hook, CPA
Legislative Auditor
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301 W. Preston Street, Room 1202
Baltimore, MD 21201

Dear Mr. Hook:

Thank you for your letter regarding the draft audit report for the Office of the Attorney General (OAG) for the period beginning July 18, 2014 and ending May 8, 2018. Enclosed is the OAG's response to your report.

Should you need additional information or clarification, please contact Beverly Pivec, Director of Administration by email at bpivec@oag.state.md.us or by telephone at 410-576-6442.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian E. Frosh".

Brian E. Frosh
Attorney General

Finding 1

The Office of the Attorney General (OAG) could not document that it had properly procured certain services and goods totaling approximately \$2.1 million.

We respectfully disagree with this finding regarding the Office's long-standing practices regarding the purchase of law books and temporary staffing services for lawyers and legal assistants. However, in the spirit of cooperation, there are steps we can and will take to satisfy the legislative auditors' concerns without compromising our ability to carry out our constitutional responsibilities.

As an initial matter, it is important to make clear that the goods and services in question were purchased and received by our Office pursuant to our Office's standard and longstanding procedures for obtaining those types of goods and services. What is being questioned is not whether we in fact obtained the needed services but rather whether those goods and services should have been procured according to different process under Maryland's procurement law and documented in a different way.

The two categories of goods and services at issue are (1) law books and (2) temporary staffing services for lawyers and legal assistants. Unlike the purchase of typical categories of goods and services such as office supplies, computers, and desks, the purchase of law books and temporary staffing services are directly tied to our Office's ability to carry out our core constitutional functions of representing and providing legal advice for the State of Maryland and its agencies. We thus need greater flexibility and discretion to find and procure necessary law books and temporary staffing services than for other types of goods and services. Perhaps for that reason, our processes for obtaining books and temporary legal services has not been an issue previously, despite the fact that we have been following the same basic processes and procedures for the purchase of those categories for more than 45 years.

Funding for the purchase of law books is a line item in the OAG budget, which has been approved by the Department of Budget & Management, the Governor, and the General Assembly. Consistent with the longstanding practice of this Office, our librarian purchases needed law books for our attorneys. In general, our book purchases are available from a single publisher, at a set cost. In addition, in some cases, the purchases are of single books (like treatises or other secondary sources) made on a case-by-case basis according to specific needs that arise on an ad hoc and unpredictable basis. Given the unpredictable need for some law books, the generally set price for law books, and the fact that the books are generally offered for sale by one source (the publisher), the OAG believes that entering into contracts with each publisher and book vendor from whom such books may need to be purchased is not only impractical, but also does nothing to further the purposes for which the competitive procurement laws exist.

Auditor's Comment: We continue to believe that formal agreements should exist for the purchase of law books. These agreements are needed to establish agreed-upon products, quantities, and prices and are essential for verifying the propriety of related vendor billings when reviewing invoices for payment.

The Office also maintains that the appropriate determination of which particular legal books must be purchased to carry out our constitutional responsibilities should reside with the Office of the Attorney General, not a control agency such as the Department of General Services (DGS). Subjecting our purchases of legal research materials to the Board of Public Works and/or DGS approval could impinge on the AG's constitutional responsibilities. *See 74 Opinions of the Attorney General 230 (1989)* (“[s]ubjecting to approval by officials other than the Attorney General the determination of whether, when, and for what purpose the assistance of expert witnesses or other consultants is needed and the choice of the consultant who will provide those services in connection with litigation might impinge upon the Attorney General’s constitutional duty to exercise ultimate supervision over the conduct of the State’s legal business”); *74 Opinions of the Attorney General 263 (1989)* (subjecting a State's Attorney’s to the fiscal and purchasing policies of a county is not per se unconstitutional, but would violate the Constitution if the county exercises that oversight in a way that prevents the State’s Attorney from exercising his or her constitutional functions).

Nonetheless, to address the concerns of the Office of the Legislative Auditor (OLA), we requested that DGS delegate to us the ability to purchase our own law books, and they have done so.

Similarly, with respect to temporary legal staffing services, we have never been required to have a contract and have always had discretion to choose the resume of the particular person who best meets the acute need for a particular case or area of responsibility. We utilize temporary staffing services when circumstances demand immediate support. We will, however, follow OLA’s recommendation and, going forward, issue an RFP for temporary staffing services.

Finding 2

OAG did not effectively safeguard, account for, and ensure timely deposit of collections.

The OAG is pleased to note that the legislative audit did not find any evidence of unaccounted-for receipts.

The OAG has established procedures for an independent deposit verification of Consumer Protection Division (CPD) receipts. The independent verification of deposits was not being consistently performed due to the increased workload as a result the implementation of the Statewide Personnel System and because we have so few staff members who are independent of any part of the deposit process. We are working very hard to ensure that the independent verification is performed by someone independent of the deposit process.

The OAG has established procedures requiring collections to be restrictively endorsed and recorded upon receipt. The Securities Division will restrictively endorse the collections upon receipt. Although each check is already always recorded on the related paperwork as the piece of mail is opened, the Securities Division staff will also maintain initial recordation documentation.

The delayed deposits in the Consumer Protection Division occurred following the departure of the person responsible for sending the deposits to the Fiscal Unit and prior to the training of her replacement. The replacement of staff and addition of staff should eliminate the delay in processing checks. CPD now has a person who is primarily responsible for processing the checks and another new person who is not otherwise involved in handling the checks as a back-up check processor. CPD should be delivering the checks to the Fiscal Unit within 24 hours of receipt.

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