

**STATE OF WEST VIRGINIA**

**SPECIAL REPORT**

**OF**

***GOVERNOR'S OFFICE***

***COMPENSATORY TIME AND ANNUAL LEAVE***

**FOR THE PERIOD**

**JANUARY 1, 1997 - JANUARY 16, 2001**



**OFFICE OF THE LEGISLATIVE AUDITOR**

**CAPITOL BUILDING**

**CHARLESTON, WEST VIRGINIA 25305-0610**

**GOVERNOR'S OFFICE**  
**COMPENSATORY TIME AND ANNUAL LEAVE**  
**FOR THE PERIOD**  
**JANUARY 1, 1997 - JANUARY 16, 2001**

**GOVERNOR'S OFFICE**

**COMPENSATORY TIME AND ANNUAL LEAVE**

**TABLE OF CONTENTS**

Exit Conference . . . . . 1

Introduction . . . . . 2

Administrative Officers . . . . . 3

Letter to the Joint Committee on Government  
and Finance - Methodology of Study . . . . . 4

Summary of Findings and Recommendations . . . . . 6

General Remarks . . . . . 10

Certificate of Director  
Legislative Post Audit Division . . . . . 27

**GOVERNOR'S OFFICE**  
**COMPENSATORY TIME AND ANNUAL LEAVE**  
**EXIT CONFERENCE**

We held an exit conference on February 12, 2001 with the Chief of Staff and other representatives of the current Governor's Office administration. All findings were reviewed and discussed.

## GOVERNOR'S OFFICE

### COMPENSATORY TIME AND ANNUAL LEAVE

#### INTRODUCTION

The Governor is vested with the chief executive powers of the State, recommends to the Legislature, by message at the commencement of each session thereof, the passage of such measures as he deems expedient; appoints, by and with the advice and consent of the Senate, certain officers of State Government, who may be removed by him for cause; may remit fines and penalties, grant reprieves, commute sentences and pardon and parole after conviction; is Commander-in-Chief of the military forces of the State and, as such, may call out the National Guard to enforce laws, suppress insurrection and repel invasion. The Governor's annual salary is \$90,000 and he is elected for a four-year term.

The Governor's Office Mission Statement, as provided for in the Governor's Executive Budget, states as follows:

"The Governor's Office develops policies and goals to achieve the Governor's vision and mission for West Virginia. The mission of the Underwood administration is to grow the West Virginia economy and enhance the quality of life for every West Virginian. The five key areas of focus of the administration are: technology, economic development, education, health care and government efficiency. Achieved improvements in those five areas will help grow the economy and improve the lives of West Virginians."

**GOVERNOR'S OFFICE**

**COMPENSATORY TIME AND ANNUAL LEAVE**

**ADMINISTRATIVE OFFICERS**

Cecil H. Underwood . . . . . Governor  
James Teets . . . . . Chief of Staff  
Nancy Hobbs . . . . . Special Assistant  
Michael Greer . . . . . Assistant to Governor,  
Policy Director  
Nicholas Demarco . . . . . Assistant to Governor,  
Operations  
Phyllis Cole . . . . . Assistant to Governor,  
City, County, Federal Liaison  
Phillip Daniel Page . . . . . Assistant to Governor,  
Communications  
Jimmy Joe Wedge . . . . . Assistant to Governor,  
Administration  
Edward Tiffey . . . . . General Counsel  
Elizabeth Morgan . . . . . Assistant to Governor,  
Special Affairs  
Dallas Bailey . . . . . Family Resource Coordinator  
Samuel Tully . . . . . Chief, Office of Technology

WEST VIRGINIA LEGISLATURE  
*Joint Committee on Government and Finance*

Theodford L. Shanklin, CPA, Director  
Legislative Post Audit Division  
Building I, Room W-329  
1900 Kanawha Blvd., E.



Area Code (304)  
Phone: 347-4880  
Fax: 347-4889

CHARLESTON, WEST VIRGINIA 25305-0610

To the Joint Committee on Government and Finance:

The objectives of this special report were to obtain an understanding of the Governor's Office policies and procedures for personal services -- particularly for compensatory and annual leave -- and to review payroll and leave transactions for compliance with such policies and procedures as well as State and Federal statutory requirements. Our special report of the Governor's Office covered the period January 1, 1997 through January 16, 2001.

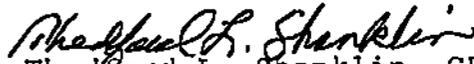
To achieve the above objective, we performed the following:

- a. Obtained an understanding of the Governor's Office policies and procedures for personal services transactions, particularly for compensatory and annual leave;
- b. Determined statutory requirements for employee compensation and annual leave accruals as promulgated in the West Virginia Code and the federal "Fair Labor Standards Act" (FLSA);
- c. Compared the accrual or earned date of compensatory time to the date it was paid.
- d. Reviewed the EPICS payroll to determine whether any controls were in place to limit or review payments for compensatory time or lump-sum annual leave.
- e. Reviewed annual and compensatory leave accrual records to determine if leave earned, taken, and carried forward from year-to-year was in compliance with Governor's Office policy, and properly supported and authorized by time sheets.
- f. Reviewed overtime payments for compliance with the Governor's Office policy, and determined that such payments were supported and authorized by time records.

- g. Reviewed payroll transactions for the period January 1, 1997 to January 16, 2001 to identify any payments made to employees other than the regular semi-monthly compensation. Determined the nature of other payments and if payments were properly supported by time sheets or Form WV-11 for salary increases.

The results of our work are contained in the General Remarks section of this Special Report.

Sincerely yours,



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

February 9, 2001

Auditors: Michael A. House, CPA, Supervisor  
Jean Ann Krebs  
Noah Cochran, CPA  
Melanie Nuckols, CPA

**GOVERNOR'S OFFICE**  
**COMPENSATORY TIME AND ANNUAL LEAVE**  
**SUMMARY OF FINDINGS AND RECOMMENDATIONS**

**Payment of Compensatory Time**

1. During the period June 15, 2000 through January 16, 2001, 26 employees received a total of approximately \$208,626 as payment for compensatory time accrued. We noted approximately \$158,357 of the amount paid was for hours accrued in prior fiscal years. The Governor's Office Policy does not permit payment for compensatory time and the West Virginia Code does not permit payment for hours accrued in prior fiscal years from a current year appropriation.

**Auditor's Recommendation**

We recommend controls be implemented to identify and help prevent improper payments. We further recommend the Governor's Office use all methods available to them under Chapter 14, Article 1 of the West Virginia Code to recover the overpayments.

**Lump Sum Annual Leave Payments**

2. In several instances employees who had annual leave balances which exceeded the allowable carry forward amount were paid lump annual leave payments. In other

instances employees were allowed to carry forward more hours than allowed according to policy. We noted overpayments of approximately \$18,500 resulting from these practices.

**Auditor's Recommendation**

We recommend the Governor's Office comply with the West Virginia Code and the applicable policies of that office. We further recommend the Governor's Office use all methods available to them under Chapter 14, Article 1 of the West Virginia Code to recover the overpayments.

**Undocumented Payments**

3. During our test of termination pay, we noted according to documentation available to us, two employees were overpaid a total of \$4,675.18 when their employment ended in March 2000.

**Auditor's Recommendation**

We recommend the Governor's Office comply with Chapter 12, Article 3, Section 3 of the West Virginia Code as amended. We further recommend the Governor's Office use all methods available to them under Chapter 14, Article 1 of the West Virginia Code to recover the overpayments.

**Incorrect Calculation of  
Overtime and Compensatory Time**

4. The employees in the Governor's Office consistently recorded overtime and compensatory hours in instances where they had not yet worked 40 hours in a workweek.

**Auditor's Recommendation**

We recommend the Governor's Office comply with their leave policy.

**Incomplete Time Records**

5. When we reconciled overtime payments and compensatory time accrual to employee time records, we noted numerous cases of missing time records. There were also several time sheets that were not approved by the employee's supervisor. Since time records could not be located or were unsigned, we could not verify the accuracy of overtime payments and compensatory time accruals in many instances.

**Auditor's Recommendation**

We recommend the Governor's Office comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code.

**Incorrect Accrual and Use of Annual Leave**

6. During our review of annual leave records, we noted some employees were accruing annual leave at incorrect rates and some employees had negative leave balances at various times.

**Auditor's Recommendation**

We recommend the Governor's Office comply with the West Virginia Code and the applicable leave policy.

**Improper Use of Compensatory Time**

7. We noted several instances of compensatory time being used by employees when annual leave should have been used according to policy.

**Auditor's Recommendation**

We recommend the Governor's Office comply with their leave policy.

**GOVERNOR'S OFFICE**  
**COMPENSATORY TIME AND ANNUAL LEAVE**  
**GENERAL REMARKS**

**INTRODUCTION**

We have completed an examination of the personal services transactions for the Governor's Office. This examination covered the period January 1, 1997 through January 16, 2001.

**GENERAL REVENUE ACCOUNT**

The Governor's Office was appropriated funds for personal services in the following account during the period of examination:

<b><u>Account Number</u></b>	<b><u>Description</u></b>
0101-001 . . . . .	Personal Services

**COMPLIANCE MATTERS**

We tested applicable sections of the "Leave Policy, Office of the Governor" and other applicable chapters, articles and sections of the West Virginia Code as they pertain to employee compensation and leave benefits. Our findings are discussed below.

**Payment of Compensatory Time**

During the period June 15, 2000 through January 16, 2001, 26 employees received a total of \$208,626 as payment for compensatory time accrued. Compensatory time was accrued for hours

worked in excess of 40 during a work week. With only one exception all employees who were paid compensatory time are listed as exempt employees on the payroll expenditure schedule.

The "LEAVE POLICY OFFICE OF THE GOVERNOR" states in part:

" "Overtime" is generally defined as "hours worked in excess of forty (40) in any workweek." A workweek is a fixed and regularly recurring period of 168 hours - seven (7) consecutive twenty-four (24) hour periods. Employers are required to pay eligible employees for overtime.

Salaried employees are not eligible for overtime compensation. Actual duties performed distinguish whether a particular employee is exempt from overtime provisions. It is important to remember that an employee's work title does not necessarily determine whether an employee is eligible for overtime. Salaried employees are:

those employees exempted from overtime under Regulation 3, Section 301 of the West Virginia Minimum Wage and Maximum Hours Standards for Employees and the FLSA with exemptions based on specific job descriptions or duties. Such employees are categorized as executive, administrative or professional, and those individuals who, in accordance with the provisions the FLSA, are not subject to the civil service laws of either the state, political subdivision, or agency which employs them.

Salaried employees shall not be paid overtime for hours worked in excess of 40 hours in a workweek; however, professional discretion may be exercised as far as work hours are concerned. Administrative, executive or professional employees working unusual or excessive hours should be allowed to adjust their work schedules, where practical, as partial compensation for additional work

hours. If such employee takes more than two consecutive days off, the employee must take annual leave days for each day in excess of two...."

A letter dated January 31, 2001 received from the former Governor's Chief of Staff in response to our written inquiry about any other policies which may have been in effect at the time, outlined the following unwritten policy which states in part:

" First, we did have a policy in place concerning the accrual and use of compensatory time by the employees in our office. In February 1998, the Governor's Office adopted a policy that required all employees in the office to maintain a record of hours worked. This specifically included senior staff, which had not always been the case in prior administrations. The Underwood administration recognized that all employees in the Governor's Office should account for time worked, and be compensated accordingly. It was common for staff members to work in excess of 40 hours per week during the legislative session and natural disasters and at other times to meet the public's demands and expectations.

The Underwood administration treated all employees, except Senior Staff, as nonexempt under the Fair Labor Standards Act guidelines and consequently they were paid overtime (time and one-half) for the time they worked in excess of 40 hours per week on an ongoing basis. The administration permitted senior staff to accrue compensatory time to reflect hours worked in excess of 40 hours per week, which they could use in the future.

Office employees were responsible for compiling their own time sheets. At the end of each pay period, the individual employees had their time verified by their appropriate supervisor, a member of the senior staff, who, in turn, submitted them to the payroll office. In the case of senior staff members, they were responsible for compiling, verifying and submitting their own time sheets, without

further verification. It was the administration's policy that employees be paid for all time worked regardless of title or position.

Only in certain special instances would a member of the Senior Staff have their individual time sheets verified by me. Such an occasion could have resulted from my asking a certain individual to work over a weekend at some special project, for example.

The state Division of Personnel advised the Governor's Office in June 2000 that paying senior staff for all time worked is permissible under state and federal law. That memo was a major factor in my determining that payments for compensatory time were entirely proper.

The Underwood administration made its first compensatory time payment to a senior staff member in June 2000. No public official with fiscal oversight responsibility notified the Governor's Office of any problems regarding that payment or subsequent payments. Had the appropriate state official notified the Governor's Office about perceived problems with compensatory time payments, the Governor's Office could have addressed the issue before Gov. Underwood left office."

In effect, allowing employees to accrue compensatory time over several months or several years and then paying them for that accrued time is nothing other than a delayed payment of straight time overtime for hours worked over 40 in a workweek. According to the aforementioned written policy, salaried employees shall not be paid overtime. The policy does allow the employee to adjust his or her work schedule as partial compensation for excessive or unusual hours worked. We found no instances of employees being paid for accrued compensatory hours prior to June 15, 2000. During the period June 15, 2000 through January 16, 2001, we identified

payments for compensatory time totaling approximately \$198,926 in fiscal year 2001 and \$9,700 in fiscal year 2000.

Since the unused compensatory time balances earned in fiscal year 2001, attributable to those employees who received payment for their accrued balance, had a dollar value of only approximately \$42,569, the remaining payments made in fiscal year 2001 totaling \$156,357 were for time accrued in prior fiscal years. One individual was paid approximately \$9,700 in June 2000 from fiscal year 2000 funds. Only \$7,700 of the amount related to time accrued in fiscal year 2000 and the other \$2,000 was for time earned in previous fiscal years.

All payments for accrued compensatory time were in noncompliance with the aforementioned written policy and, in total, approximately \$158,357 of the \$208,626 paid for compensatory hours was in noncompliance with the West Virginia Code §12-3-17.

Chapter 12, Article 3, Section 17 of the West Virginia Code, as amended, states in part:

"... Except as provided in this section, it shall be unlawful for any state board, commission officer or employee: (1) To incur any liability during any fiscal year which can not be paid out of the then current appropriation for such year or out of funds received from an emergency appropriation: or (2) to authorize or to pay any account or bill incurred during any fiscal year out of the appropriation for the following year:..."

It should be noted, that approximately ninety-three percent (93%) of the total paid for accrued compensatory time was

paid to employees whose salaries exceeded \$50,000 per year with the other seven percent (7%) being paid to employees whose salaries ranged between \$27,000 per year and \$39,000 per year.

There are several contributing factors which allowed the payments to go undetected and unchallenged for several weeks. There was not a system of controls in place in the Governor's Office to ensure that the policies of that office were followed even though the primary responsibility for ensuring that payments are appropriate and within budgetary constraints must rest with the spending unit.

The controls in the Department of Administration which are designed to ensure the spending units do not exceed their quarterly allotments did not function properly. According to the Department of Administration's Budget Director, the WVFIMS system will stop any payment that exceeds the quarterly allotment, but it is common practice to release quarterly allotments early to facilitate the expeditious processing of payrolls. Additionally, the Department of Administration was apparently in noncompliance with West Virginia Code §5A-2-29, as amended, which states,

"A requisition for payment of personal services shall upon receipt by the director be checked against the personnel schedule of the spending unit making the requisition. The director shall approve a requisition for personal services only if the amounts requested are in accordance with the personnel schedule of the spending unit."

There are no controls in place in the State Auditor's Office to prevent or control this type of payroll payment and no such controls are required or authorized under West Virginia Code §12-3-1 and §12-3-5. In addition, any controls that might be added to EPICS' payroll system would be suspect since current controls to limit amounts entered into the semi-monthly salary and hourly rate of pay fields do not seem to be functioning properly.

Correspondence dated September 22, 2000 from the State Auditor's Office addressed to "Payroll Administrators" indicates controls have been added to the EPICS payroll system to prevent entries exceeding \$144 per hour in the hourly rate field or \$12,500 in the semi-monthly salary field. The EPICS payroll manager in the State Auditor's Office stated the only controls in EPICS were maximums of \$100,000 and \$150,000 for salary as entered into the 001 regular pay field. The \$150,000 was established for WVU and the \$100,000 applies to other state agencies. The aforementioned controls apply only to semi-monthly salary and hourly rate fields. There are no controls for the fields where compensatory time, lump sum annual leave, overtime hourly rate or any other items are entered for payment.

It has become apparent, as we reviewed the payments for compensatory time, that the lack of effective controls throughout the state system leaves open the possibility of an individual receiving a paycheck for an unlimited amount. For example in

September of 2000 a paycheck in the amount of \$733,087.52 was processed through the spending unit, the Department of Administration and the State Auditor's Office. This occurred when the spending unit entered the employee's semi-monthly salary in the hourly rate of pay field. This error was detected by the State Treasurer's Office before the check was released to the employee, even though that office is not responsible for questioning the amount of the warrant.

We recommend the Governor's Office establish controls to ensure all policies and procedures of that office are followed. We also recommend the Department of Administration strengthen existing controls to make certain they function as intended and ensure they can not be easily circumvented. Additionally, we recommend consideration be given to taking appropriate action to ensure controls are established in the System, as deemed appropriate, to monitor payrolls and establish guidelines regarding what amounts may be processed through the system. Finally, we recommend The Governor's Office use all methods available to them under Chapter 14, Article 1 of the West Virginia Code to recover the overpayments.

**Lump Sum Annual Leave Payments**

In several instances employees who had an annual leave balance which exceeded the allowable carryover received a lump sum annual leave payment for the excess days. Additionally, in several

instances the leave for which the employees were paid was also carried over to the next year. In other instances annual leave days which exceeded the allowable carry over and should have been lost were simply carried forward to the next year. The practice of allowing annual leave days in excess of the allowable carryover amount to be carried forward was first noted for leave carried forward from 1998 to 1999 but no lump sum payments for those excess days were noted prior to the end of calendar year 2000. Allowing annual leave in excess of the specified amount to be carried forward is in noncompliance with the "LEAVE POLICY OFFICE OF THE GOVERNOR." Paying lump sum annual leave to employees who have not terminated employment is in noncompliance with West Virginia Code §5-5-3.

The "LEAVE POLICY OFFICE OF THE GOVERNOR" states in part:

"...The table below lists rates of accrual according to an employee's length of service category and the number of hours of annual leave that may be carried forward from one calendar year to another.

Qualifying service for length of service category is based on State government employment. No tenure credit will accrue for periods during which an employee is in no-pay status, except for qualifying periods as provided in law.

LENGTH OF SERVICE CATEGORY	ACCRUAL RATE: HOURS EQUAL TO	CARRY FORWARD: HOURS EQUAL TO
Less than 5 years	1.25 days / month	30 days
5 years but less than 10	1.50 days / month	30 days
10 years but less than 15	1.75 days / month	35 days
15 years or more	2.00 days / month	40 days"

Chapter 5, Article 5, Section 3 of the West Virginia Code states in part:

"Every eligible employee, as defined in section one (5-5-1) of this article, at the time his or her active employment ends due to resignation, death, retirement or otherwise, may be paid in a lump sum amount, at his or her option, for accrued and unused annual leave at the employees' usual rate of pay at such time...."

Both of the aforementioned practices have resulted in employees receiving pay they were not entitled to receive according to Governor's Office policies and the West Virginia Code. We noted five employees were paid approximately \$8,777 for annual leave that could not be carried forward from 2000 to 2001; however, in some instances the days were carried forward even after the employee was paid. We also noted five employees were allowed to carry forward 347.5 hours of annual leave which according to policy should have been lost. The value of the days improperly carried forward and later included in lump sum annual leave payments to terminating employees was approximately \$10,751. We also noted 10 employees, who are still on the payroll, carried forward a total of 610.5 hours, with a dollar value of \$11,236.06 which exceeded the allowable carry forward amount.

A letter dated January 31, 2001 received from the former Governor's Chief of Staff in response to our written inquiry about any other policies which may have been in effect at the time outlines the following unwritten policy which states in part:

"We also had a policy that allowed persons having days of annual leave in excess of the amount allowed to be carried from one year to the next to be paid for them prior to the end of any particular year. This only affected a very few employees since most of them weren't long time state government employees."

It was noted that several employees seemed to be unaware of the unwritten policy since they lost annual leave at the end of the calendar year because their accrued total exceeded the allowed carry forward amount.

We recommend the Governor's Office comply with the West Virginia Code and with the applicable policies of that office. We also recommend the Governor's Office use all methods available to them under Chapter 14, Article 1 of the West Virginia Code to recover the approximate \$10,751 overpayment for lump sum annual leave payments to terminating employees and approximately \$8,777 for lump sum annual leave payment to employees who remained on the payroll as well as adjusting annual leave balances of those still on the payroll to reflect the correct carry forward totals.

**Undocumented Payments**

During our test of termination pay, we noted two employees who chose to remain on the payroll while exhausting their accrued annual leave and compensatory time were overpaid by a total amount of \$4,675.18. According to documentation made available to us, one employee who should have been removed from the payroll at noon on March 29, 2000 remained on the payroll through April 15,

2000 and was overpaid \$2,385.23. The second employee should have been removed from the payroll on March 16, 2000 but remained on the payroll through March 31, 2000 and was overpaid \$2,289.85. We also noted one senior staff member was overpaid in the amount of \$1,081.73 as the result of using compensatory time to account for 30 hours in one pay period even though his leave records indicated he had no accrued compensatory time balance.

Payments made after annual leave and compensatory time had been exhausted were in noncompliance with the West Virginia Code §12-3-13, as amended, which states,

"No money shall be drawn from the treasury to pay the salary of any officer or employee before his services have been rendered."

We found no explanation in the records we examined to explain the payments made after accrued annual leave and compensatory time had been exhausted.

We recommend the Governor's Office comply with West Virginia Code §12-3-13, as amended. We further recommend they use all methods available to them under Chapter 14, Article 1 of the West Virginia Code to recoup the overpayments.

**Incorrect Calculation of  
Overtime and Compensatory Time**

The employees in the Governor's Office consistently recorded both compensatory time and overtime before having worked forty hours in a workweek. For example when an employee worked on Saturday or Sunday, the first two days of the workweek, or on a

Monday holiday, all hours worked on those days was recorded as overtime or compensatory time. Also when an employee worked in excess of eight hours on any day the hours worked over eight were recorded as overtime or compensatory time. Overtime or compensatory hours should only be recorded when the employee has worked in excess of 40 hours in a workweek.

The "LEAVE POLICY OFFICE OF THE GOVERNOR" states in part:

" "Overtime" is generally defined as "hours worked in excess of forty (40) in any workweek." A workweek is a fixed and regularly recurring period of 168 hours - seven (7) consecutive twenty-four (24) hour periods. Employers are required to pay eligible employees for overtime.

Salaried employees are not eligible for overtime compensation. Actual duties performed distinguish whether a particular employee is exempt from overtime provisions. It is important to remember that an employee's work title does not necessarily determine whether an employee is eligible for overtime. Salaried employees are:

those employees exempted from overtime under Regulation 3, Section 301 of the West Virginia Minimum Wage and Maximum Hours Standards for Employees and the FLSA with exemptions based on specific job descriptions or duties. Such employees are categorized as executive, administrative or professional, and those individuals who, in accordance with the provisions the FLSA, are not subject to the civil service laws of either the state, political subdivision, or agency which employs them.

Salaried employees shall not be paid overtime for hours worked in excess of 40 hours in a workweek; however, professional discretion may be exercised as far as work hours are concerned. Administrative, executive or

professional employees working unusual or excessive hours should be allowed to adjust their work schedules, where practical, as partial compensation for additional work hours. If such employee takes more than two consecutive days off, the employee must take annual leave days for each day in excess of two...."

The recording of overtime or compensatory hours before 40 hours have been worked in a workweek may result in the incorrect accrual of compensatory time or the incorrect payment of overtime.

We recommend the Governor's Office comply with the leave policy.

#### **Incomplete Time Records**

According to staff in the Governor's Office time records were not maintained for employees until February 1, 1998. We were told that prior to that date employees simply sent a memo or letter to the payroll section to claim overtime and compensatory time. While we were reviewing time records in an attempt to reconcile overtime payments and compensatory time accrual to employee time sheets we noted many instances of missing records. We also noted numerous time sheets which were not signed by the reporting employees' supervisor. In nearly all cases, employees who were receiving compensatory time, the time sheets were not approved by a supervisor. The majority of time sheets for employees receiving overtime were approved by a supervisor but several were not. In addition, in many instances applications for leave could not be located to support recorded leave usage. By not maintaining

accurate and complete records the Governor's Office was in noncompliance with West Virginia Code §5A-8-9, as amended, which 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...."

Since time records could not be located or were not approved by a supervisor to support overtime paid or compensatory time accrued in many instances, we were unable to verify the accuracy of those payments and accruals.

We recommend the Governor's Office comply with West Virginia Code §5A-8-9, as amended.

#### **Incorrect Accrual and Use of Annual Leave**

During our review of annual leave records, we noted the accrual rate for some employees was incorrect and we also noted some occasions of employees being allowed to carry a negative annual leave balance. We noted two employees who were accruing annual leave at an incorrect rate. This resulted in one employee with 12 years of service credit accruing 1.25 days per month when he should have been earning 1.75 days according to policy, and the other who had one year service credit earned 1.5 days per month but

should have earned 1.25 days per month. This is not in compliance with the "LEAVE POLICY OFFICE OF THE GOVERNOR" which states in part:

"...The table below lists rates of accrual according to an employee's length of service category and the number of hours of annual leave that may be carried forward from one calendar year to another. Qualifying service for length of service category is based on State government employment . No tenure credit will accrue for periods during which an employee is in no-pay status, except for qualifying periods as provided in law.

LENGTH OF SERVICE CATEGORY	ACCRUAL RATE: HOURS EQUAL TO	CARRY FORWARD: HOURS EQUAL TO
Less than 5 years	1.25 days / month	30 days
5 years but less than 10	1.50 days / month	30 days
10 years but less than 15	1.75 days / month	35 days
15 years or more	2.00 days / month	40 days"

In addition, we noted 11 employees were allowed to take more annual leave than they had accrued creating a negative leave balance. In effect allowing an employee to take leave in excess of the accrued amount results in payment of a benefit that has not been earned. Also accruing leave at an incorrect rate may have the same result. In both situations the result is noncompliance with West Virginia Code §12-3-13, as amended, which states,

"No money shall be drawn from the treasury to pay the salary of any officer or employee before his services have been rendered."

We recommend the Governor's Office comply with West Virginia Code §12-3-13, as amended, and with the applicable leave policy.

Improper Use of Compensatory Time

We noted the use of compensatory time by employees when policy required the use of annual leave. We found examples of employees using compensatory time when they took more than two consecutive days off.

The "LEAVE POLICY OFFICE OF THE GOVERNOR" states in part:

"...Salaried employees shall not be paid overtime for hours worked in excess of 40 hours in a workweek; however, professional discretion may be exercised as far as work hours are concerned. Administrative, executive or professional employees working unusual or excessive hours should be allowed to adjust their work schedules, where practical, as partial compensation for additional work hours. If such employee takes more than two consecutive days off, the employee must take annual leave days for each day in excess of two...."

This results in employees saving annual leave which can increase termination pay or benefits at an additional cost to the spending unit or to the Public Employees Retirement System.

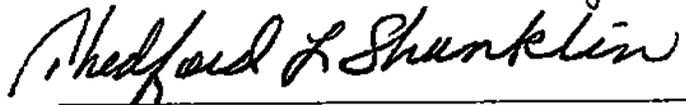
We recommend the Governor's Office comply with their leave policy.

**STATE OF WEST VIRGINIA**

**OFFICE OF LEGISLATIVE AUDITOR, TO WIT:**

I, Thedford L. Shanklin, CPA, Director of the Legislative Post Audit Division, do hereby certify that the Special 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 copy of said Special Report.

Given under my hand this 12<sup>th</sup> day of February 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 the Governor; Attorney General; and, State Auditor.