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Report To

The Mississippi Legislature

DEFICIT SPENDING IN MISSISSIPPI STATE GOVERNMENT

February 18, 1991

The PEER Committee takes exception to the Department of Finance and Administration's permitting deficit spending by state agencies. State statutes clearly prohibit deficit spending and the Mississippi Constitution provides the Legislature with sole authority to set spending limits. This report constitutes a warning to agency directors that PEER will take exception to any expenditure made by an agency in excess of its legal spending authority in a given year and may recommend recovery of misspent funds from responsible officials in each case.

The Department of Finance and Administration *approved* payment of $1,173,617 in Department of Corrections obligations incurred during fiscal year 1990 with funds appropriated for fiscal year 1991.

Cecil Brown, the former Executive Director of the Department of Finance and Administration, suggested that this deficit spending practice has had the blessing of the Legislature in the past, that strict adherence with the law might "shut down" state government since many agencies indulged, and that the statutes are not clear with regard to the legality of such expenditures.

The PEER Committee

PEER: THE MISSISSIPPI LEGISLATURE'S OVERSIGHT AGENCY

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

An extension of the Mississippi Legislature's constitutional prerogative to conduct examinations and investigations, PEER is authorized by law to review any entity, including contractors supported in whole or in part by public funds, and to address any issues which may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

As an integral part of the Legislature, PEER provides a variety of services, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

DEFICIT SPENDING IN MISSISSIPPI STATE GOVERNMENT

February 18, 1991

The PEER Committee

Mississippi Legislature

The Mississippi Legislature

Joint Committee on Performance Evaluation and Expenditure Review

PEER Committee

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February 18, 1991

HONORABLE RAY MABUS, GOVERNOR
HONORABLE BRAD DYE, LIEUTENANT GOVERNOR
HONORABLE TIM FORD, SPEAKER OF THE HOUSE
MEMBERS OF THE MISSISSIPPI STATE LEGISLATURE

At its meeting of February 18, 1991, the PEER Committee authorized release of the report entitled **Deficit Spending in Mississippi State Government.**

Robert G. Huggins

Senator Robert Huggins, Chairman

This report does not recommend increased funding or additional staff.

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DEFICIT SPENDING IN MISSISSIPPI STATE GOVERNMENT

INTRODUCTION

On September 11, 1990, during the Department of Corrections' (DOC) budget hearing, Corrections officials acknowledged that the Department of Finance and Administration had approved the payment of DOC obligations incurred during fiscal year 1990 with funds appropriated for fiscal year 1991. As a result of PEER's concern regarding the legality of such expenditures, the Committee conducted inquiries of officials with the Department of Finance and Administration (DFA).

In his letter of January 17, 1991, the former Executive Director of the Department of Finance and Administration responded to PEER's inquiry and outlined the department's position regarding deficit spending (see Exhibit, page 2). PEER also held a hearing on January 22, 1991, concerning the issue of deficit spending. This report summarizes PEER's conclusion regarding the outcome of the hearing.

BACKGROUND

Prior to June 30, 1990, the Department of Corrections incurred $1,173,617 in obligations in excess of its FY 1990 appropriation authority. The department submitted these obligations to DFA after June 30 to be paid out of fiscal year 1991 appropriations, and as such, chose to use subsequent year appropriations. DFA approved the deficit spending practice without question.

Corrections officials acknowledged through interviews with PEER that DOC has been incurring year-end obligations in excess of appropriations authority and paying them out of subsequent year appropriations for fifteen years. The Deputy Commissioner of Corrections for Administration and Finance stated that these types of deficit expenditures have always been approved by the state's financial control division.

STATE OF MISSISSIPPI

DEPARTMENT OF FINANCE AND ADMINISTRATION
RAY MABUS
GOVERNOR

January 17, 1991

John W. Turcotte, Executive Director
Joint Committee on Performance Evaluation
and Expenditure Review
P. O. Box 1204
Jackson, MS 39215-1204

Dear Mr. Turcotte:

This letter is in response to your letter of January 7, 1991, regarding concerns expressed by the Joint Committee on Performance Evaluation and Expenditure Review on year-end spending practices of the Department of Corrections.

Before answering each question addressed to me, I would like to point out that the Department of Finance and Administration has been concerned for quite some time about the problem of agencies using new year funds to pay old year's expenditures. On August 29, 1988, I talked on the telephone with Jack Gordon and Charlie Capps regarding the payment of travel and other expenses incurred prior to June 30, 1988, from FY 89 appropriations. I described the problem to both chairmen and they agreed that the requisitions should be honored, the bills should be paid, and we would collectively work out recommendations to the Legislature for corrective action.

Regretfully, to date no action has been taken. The staff of Finance and Administration has talked to some other states about the situation. Arizona, Kansas and Nevada appear to have what could be a solution. If an invoice is under a threshold amount ($300 to $1,000) the state allows the use of new year funds. Items above this amount go to a claims committee which reviews the claims, approves the payments and requires the agency to request a supplemental appropriation. A copy of a document Lynda Babin received on August 1, 1989 from the State of Nevada is enclosed. On Page 185-186, under STALE CLAIMS, you will find Nevada's solution to this problem.

I fully endorse the concept that agencies should pay all obligations of a fiscal year with the corresponding years appropriation bill. In practice, however, that sometimes is difficult to do. Section 7-7-23, Miss. Code Ann. (1972) requires that all purchase orders to be paid for out of funds appropriated for any fiscal year shall be executed by June 30 of the fiscal year. If an agency fails to encumber sufficient funds within this five day period, the law prohibits the use of old year funds to make a payment. For example, if an attorney delays sending an invoice for work done prior to June 30 until August 2 and the accounting office had not done a purchase order for such work, then technically that attorney could not be paid with old year funds even though the state received the benefits of that attorney's services, and the State is legally liable for this debt. In addition, many vendor invoices are received after the lapse period has expired and thus the agency ends up paying the debt with new year funds. We believe that it is an exception basis, rather than the general rule, for an agency to run out of cash and/or expenditure authority and carry over the payments into the new year. This practice though seemed to have the blessing of the legislature because of the long-term discussion in legislative committees and on the floors of the practice of postponing Medicaid payments from one year to the next.

Decisions such as these are often crucial to the operations of an agency. For instance, do you refuse to authorize the payment of a utility bill at Corrections because its too late to pay it out of the proper year and risk all the lights being turned off at the prison?

The questions you have addressed to me and their answers are as follows:

Question #1

Are you aware that the Department of Corrections spent $1,173,617 during fiscal year 1990 but submitted the bills for payment out of fiscal year 1991 appropriations?

Answer #1

We became aware of this just before the Department of Corrections LBC hearing and instructed them to tell the LBC and request a deficit.

Question #2

Under what authority did the Department of Finance and Administration (DFA) approve this deficit spending? Please cite specific statute or other source of authority.

Answer #2

Section 27-104-25, Miss. Code Ann. (1990) states that "Contractual obligations, such as salary contracts, shall be considered as incurred within the fiscal period in which they are to be paid ....." This statute would appear to allow the disbursement of funds in the next fiscal year if vendor invoices had not yet been received at the close of the prior year.

Limited expenditures of this type by agencies have been approved by our Office of Financial Management because this had been a long-term practice, instituted out of necessity.

In addition, there is no specific language in the statutes or the Constitution which prevent the payment of a valid state debt of one year from the next year's funds. The only related language relates to the time period in which an appropriation bill remains applicable. An appropriation bill and a debt are two separate entities. A debt remains an obligation of the state long after the appropriation has lapsed.

If you were to say that only expenditures incurred (meaning goods and/or services were received) within a fiscal year could be paid with that year's appropriation bill, then Section 7-7-23 should not be applied, which allows for a disbursement from prior year funds as long as a purchase order is filed within five working days after June 30.

Question #3

Are you aware of any other state agencies that incurred obligations during fiscal year 1990 but submitted bills for payment out of fiscal year 1991 appropriations? Please provide names and amounts, if known.

Answer #3

Yes, we conducted a very limited and unstatistical sample of July and August expenditures. Out of over 90,000 warrants issued during this time period, we examined 929 payment vouchers. Of these 929, we found 84 payment vouchers paid in FY 91 which in some way related to FY 90 expenditures. This week we went back and documented these for you. Please see attached schedule.

Question #4

You acknowledged, in a letter to the chairman of the Joint Legislative Budget Committee on October 26, 1990, that this type of year-end spending has been a problem for several years. During this period, has DFA developed and presented any specific proposals for corrective action to the Legislature? If not, why? If yes, please provide copies.

Answer #4

No

Question #5

Now that you are aware of the year-end spending practices of the Department of Corrections, will DFA continue to approve the payment of prior year expenditures held over to subsequent fiscal years?

Answer #5

I believe that, we must seek a solution to this problem. We cannot, for instance, endanger the safety of our State's citizens because the electricity will be cut off at Parchman because of a failure to process the required documents in a timely manner. We have brought this matter to the attention of the legislature in years past and are looking for their guidance in the solution of this problem.

A reasonable solution should be sought. We will be glad to assist your staff in any way to remedy this problem. Please contact me if you would like to discuss this matter further.

Sincerely,

Cecil C. Brown

Cecil Brown
Chief of Staff

CB:bt

Enclosure

DEPARTMENT OF FINANCE AND ADMINISTRATION'S POSITION

Cecil Brown, the former executive director of DFA, appeared before the PEER Committee at its January 22, 1991, meeting to discuss the year-end spending practices of DOC and other state agencies. Brown acknowledged that this type of year-end spending has been a problem for several years, but Department of Finance and Administration officials were not aware of the extent of DOC's deficit spending practices until after June 30, 1990.

DFA officials provided three primary reasons for their approval of deficit spending by state agencies:

- The practice seemed to have the blessing of the Legislature because of long-term discussion in legislative committees and on the floor of the practice of postponing Medicaid payments from one year to the next.

- DFA believed that disallowance of these types of expenditures might "shut down" state government.

- DFA concluded that the statutes are not clear with regard to the legality of such expenditures.

THE PEER COMMITTEE'S POSITION

The PEER Committee takes exception to the position of the Department of Finance and Administration regarding deficit spending by state agencies. State statutes clearly provide that deficit spending is not legal, and agencies, particularly the Department of Finance and Administration, must rely on legislative mandates (state statutes) rather than legislative discussions to determine legal compliance requirements.

DFA's primary responsibility is the approval or disapproval of agency expenditures based on whether the related obligations are incurred in compliance with state laws and regulations. The criteria for determination of compliance are statutes and/or regulations, not the impact of disapproval on the agency. Agency directors and management bear the responsibility for the impact on their respective agencies if they fail to spend funds in a proper manner.

State statutes speak clearly to the subject of deficit spending in relation to the responsibilities of both state agencies and DFA. MISS. CODE ANN. Section 27-104-25 provides that:

> *The executive head and business manager of each state agency shall be responsible for all obligations or indebtedness*

incurred in the name of the agency. . . .No obligations or indebtedness shall be incurred by any such person during any allotment period in excess of the amount of the estimate approved by the state fiscal management board or in the agency appropriation bill.

. . . .

If obligations or indebtedness shall be incurred contrary to the provisions hereof, then neither the state of Mississippi nor the agency shall have any liability therefor, and the person, firm or corporation to whom the obligation or indebtedness is due may recover the amount of the obligation or indebtedness and twenty-five percent (25%) of the amount as liquidated damages from the responsible officers, either personally or upon their official bonds, either severally of [sic] *jointly.*

MISS. CODE ANN. Section 27-104-23 directs DFA as follows:

The. . .State Fiscal Officer, shall maintain his records and accounts in such a manner that, insofar as funds paid from the State Treasury are concerned, only the amounts approved by the State Fiscal Officer or authorized in the agency appropriation bill shall be available for expenditure during any allotment period by the state agency entitled thereto. The. . .State Fiscal Officer. . .shall be liable on his official bond for any failure on his part to fully comply with the provisions of this section.

The Mississippi Constitution provides the Legislature with the sole authority to provide spending limits for agencies through the appropriations process. Appropriations bills passed by the Legislature represent the consensus spending limit established by lawmakers for a specific fiscal year. The Legislature directs agencies to adhere to these legal spending limits.

RECOMMENDATION

The PEER Committee recommends that agencies adhere to spending limits established through the appropriations process. PEER will take exception to the legality of any expenditure made by an agency in excess of its legal spending authority in a given year and may recommend recovery of misspent funds from the responsible officials in each case.

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● *Indicates project manager*

• *Indicates staff with primary assignment to this project*

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