

## Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER)

Report to  
the Mississippi Legislature



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# State Entities' FY 2006 Advertising Expenditures

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During Fiscal Year 2006, state entities (i.e., state agencies, universities, and community colleges) spent \$14,345,385 on advertising services. Because of the lack of uniform procedures for the assessment of need and selection and evaluation of contractors, the state has few assurances that entities have utilized their best efforts at selecting advertising vendors. Specifically, PEER found:

- *State entities are subject to few controls on their use of advertising vendors.* The only state agency contracts that must be approved by the Personal Service Contract Review Board are those that exceed \$100,000. Universities' contracts are not subject to that board's review and only those contracts exceeding \$250,000 must be reviewed by the Board of Trustees of Institutions of Higher Learning. Community and junior colleges' contracts are governed by the procurement policies of each individual institution.
- *No state laws or regulations require entities to assess whether need exists prior to contracting for advertising services.* As a result, few entities utilize fully documented needs assessments with stated goals and objectives.
- *State agencies are not required to utilize a competitive selection process until contracts for professional services (such as advertising) exceed \$100,000.* For contracts for less than those amounts, agencies must utilize their own due diligence to procure services in the most efficient and effective manner.
- *No state laws or regulations require entities to identify criteria by which a vendor's performance should be evaluated after rendering the requested services.* As a result, state entities typically rely primarily on informal measures of effectiveness.

PEER recommends that the Legislature require that all contracts (of agencies employing state service employees) for advertising services, regardless of dollar value, be approved by the Personal Service Contract Review Board. PEER also recommends that the Board of Trustees of Institutions of Higher Learning and the individual boards of trustees of the community and junior colleges review their policies and procedures to ensure that they promote efficient and accountable expenditure of funds for advertising services.

October 10, 2007

## **PEER: The Mississippi Legislature's Oversight Agency**

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The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A joint committee, the PEER Committee is composed of seven members of the House of Representatives appointed by the Speaker and seven 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 four Representatives and four Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues that 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.

PEER provides a variety of services to the Legislature, 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 the 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.

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October 10, 2007

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On October 10, 2007, the PEER Committee authorized release of the report entitled **State Entities' FY 2006 Advertising Expenditures.**

A handwritten signature in cursive script that reads "Harvey Moss".

Representative Harvey Moss, Chair

**This report does not recommend increased funding or additional staff.**



## *Table of Contents*

|   |     |
|---|-----|
| Letter of Transmittal .....   | i   |
| Executive Summary .....   | vii |
| Introduction .....  | 1   |
| Authority .....   | 1   |
| Scope and Purpose.....  | 1   |
| Method .....  | 2   |
| Conclusions .....   | 8   |
| Overview .....  | 8   |
| State Entities' FY 2006 Expenditures on Advertising Services.....   | 10  |
| Controls Over Entities' Procurement of Advertising Services.....  | 11  |
| State Entities' Determination of Need for Advertising Services .....  | 16  |
| How State Entities Buy Advertising .....  | 21  |
| Measuring the Effectiveness of State Entities' Advertising Efforts.....   | 32  |
| Recommendations .....   | 36  |
| Appendix A:            Top Twenty-Three Entities Accounting for 87.25%<br>of Total Funds Spent on Advertising in FY 2006.....                                   | 39  |
| Appendix B:            Advertising Agencies Receiving More than \$100,000<br>from State Entities and University-Affiliated Organizations<br>During FY 2006..... | 40  |
| Appendix C:            PEER's Authority to Review University-Affiliated<br>Organizations.....   | 41  |
| Appendix D:            State Appropriations Units with FY 2007 and FY 2008<br>Appropriations Language Regarding Procurement of<br>Advertising Services .....    | 45  |
| Appendix E:            State Entity FY 2006 Procurement of Advertising<br>Services Utilizing the "Small Purchase" Method.....                                   | 46  |



*List of Exhibits*

State Entities' Advertising Expenditures in FY 2006, by Type of Funds Used.....10





# State Entities' FY 2006 Advertising Expenditures

## Executive Summary

### Introduction

In July 2006, at the request of the chair of the Joint Legislative Budget Committee, the Legislative Budget Office (LBO) staff surveyed state entities to determine the total amount expended on advertising services during FY 2006. LBO staff presented survey results to the Joint Legislative Budget Committee during September 2006 as part of that Committee's annual budget hearings.

Following receipt of the survey results, a member of the Joint Legislative Budget Committee requested that the PEER Committee review the efficiency of state entities' use of advertising services. Specifically, the requesting legislator had concerns regarding whether advertising dollars spent by state entities were for well-defined purposes or outcomes and were placed with the appropriate vendors to achieve maximum results.

In conducting this review, PEER sought to determine:

- what laws and/or regulations govern state entities' procurement of advertising services;
- whether state entities use a formal process to determine need for advertising services;
- methods state entities use to procure advertising services; and,
- methods state entities use to evaluate the effectiveness of advertising services received.

### The Legislative Budget Office's Survey

LBO's survey determined that state entities expended \$14,345,385 on advertising services during FY 2006. State entities reported advertising expenditures in the following categories and for the following total amounts:

- *Legal notice advertising*--This is advertising required by law and usually placed in newspapers (e.g., requests for proposals, notices of meetings). State entities reported a total of \$504,097 for this category (4% of all FY 2006 expenditures for advertising).
- *Recruitment advertising*--This is "help wanted" or other types of advertising to fill employment positions. State entities reported a total of \$2,347,594 for this category (16% of all FY 2006 expenditures for advertising).
- *Program advertising*--This is advertising used to promote the mission of the entity. State entities reported a total of \$11,493,694 for this category (80% of all FY 2006 expenditures for advertising).

### PEER's Use of the Survey Results

To address the concerns of the requesting legislator, PEER used LBO survey data as the foundation for this review. Because program advertising services accounted for a significant majority of all funds expended by state entities on advertising during FY 2006, PEER chose to focus on program expenditures.

PEER analyzed LBO's survey information for program advertising expenditures to identify those advertising agencies or vendors that had received the highest amount of cumulative payments during FY 2006 for advertising services rendered. In LBO's survey, state entities reported using sixty-two different advertising agencies or vendors to provide program advertising services, with the following seven vendors receiving cumulative payments in excess of \$100,000:

- Frontier Strategies: \$2,865,983;
- GodwinGroup: \$1,301,092;

- Covello Group: \$311,303;
- The Ramey Agency: \$774,303;
- TeleSouth Communications: \$1,210,874;
- Commnet Marketing: \$220,494; and,
- CFO Publishing Corporation: \$128,907.

PEER reviewed FY 2006 accounting data in the Statewide Automated Accounting System and identified nineteen state agencies that had made payments to one or more of the seven advertising vendors. PEER sent inquiry letters to the nineteen state agencies requesting information as to each agency's process for determining the need for advertising services, policies and procedures regarding procurement of advertising services, processes used to procure advertising services, and methods for evaluating the effectiveness of advertising services received.

Because universities and community colleges have no centralized accounting system to identify those institutions that had used the services of the seven advertising vendors listed above, PEER sent inquiry letters to all of the state's universities and community colleges requesting the same information as requested from state agencies.

PEER also requested the same information from the private, university-affiliated organizations and foundations. Although PEER challenges their assertion, eleven of the twenty-one organizations questioned PEER's authority to provide oversight of their organizations. Three organizations reported advertising expenditures for FY 2006, but did not respond to questions regarding needs assessment, procurement methods, or evaluation of effectiveness.

## Conclusions

**Because of the lack of uniform procedures for the assessment of need and selection and evaluation of contractors, the state has few assurances that entities have utilized their best efforts at selecting advertising vendors.**

Key elements of an effective contracting process involve a process to assess whether a need for a service actually exists, a competitive process to identify and select vendors who can provide the needed service, and an evaluation of a vendor's performance. In reviewing state entities' practices in light of these key elements, PEER found the following weaknesses:

- *State entities are subject to few controls on their use of advertising vendors.* The only state agency contracts that must be approved by the Personal Service Contract Review Board are those that exceed \$100,000. Universities' contracts are not subject to PSCRB's review and only those contracts exceeding \$250,000 must be reviewed by the IHL Board. Community and junior colleges' contracts are governed by the procurement policies of each individual institution.
- *No state laws or regulations require entities to assess whether need exists prior to contracting for advertising services.* As a result, few entities utilize fully documented needs assessments with stated goals and objectives.
- *State agencies are not required to utilize a competitive selection process until contracts for professional services (such as advertising) exceed \$100,000.* For contracts for less than those amounts, agencies must utilize their own due diligence to procure services in the most efficient and effective manner.
- *No state laws or regulations require entities to identify criteria by which a vendor's performance should be evaluated after rendering the requested services.* As a result, state entities typically rely primarily on informal measures of effectiveness.

## Recommendations

1. The Legislature should amend MISS. CODE ANN. Section 25-9-120 (1972) to require that the Personal Service Contract Review Board adopt rules and regulations governing the procurement of advertising and marketing support services by all agencies employing state service employees. Such rules and regulations should apply to contracts for such services without regard for the dollar value of the contracts.

Further, the amendment should require that all such contracts be approved by the Personal Service Contract Review Board prior to any agency making a payment for services under any such contract. Specifically, the board's rules should address the following:

- the development of goals and desired results for the campaign or marketing services;
- the development of a needs assessment outlining the methods by which the agency determined the need for the service. (Such should also establish that the goals could not be accomplished through the use of public service announcements.);
- competitive selection for services; and,
- evaluation criteria to determine whether the services met the goals established by the agency.

For purposes of this amendment, advertising should not include legal notices published in newspapers or recruitment notices to fill job vacancies.

2. The Board of Trustees of Institutions of Higher Learning and the individual boards of trustees of the community and junior colleges should review their policies and procedures to determine whether they address the requirements for procuring advertising services described in Recommendation 1 of this report. If such requirements are not currently in policy, the boards should adopt such requirements to ensure efficient and accountable expenditure of funds for advertising services.
3. The Board of Trustees of Institutions of Higher Learning should review its policy whereby service contracts in excess of \$250,000 must be approved by the board to determine whether the dollar limit should be lowered (possibly to \$100,000) to ensure more oversight of such procurements.

**For More Information or Clarification, Contact:**

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# State Entities' FY 2006 Advertising Expenditures

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## Introduction

### Authority

In response to a legislative inquiry, PEER reviewed the FY 2006 advertising expenditures of state entities, defined as including state agencies, universities, community and junior colleges. PEER conducted the review pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972).

### Scope and Purpose

In July 2006, at the request of the chair of the Joint Legislative Budget Committee (JLBC), the Legislative Budget Office (LBO) staff surveyed state entities to determine the total amount expended on advertising services during FY 2006. (See page 2 for more information on the survey.) LBO staff presented survey results to the Joint Legislative Budget Committee during September 2006 as part of that Committee's annual budget hearings.

Following receipt of the survey results, a member of the Joint Legislative Budget Committee requested that the PEER Committee review the efficiency of state entities' use of advertising services. Specifically, the requesting legislator had concerns regarding whether advertising dollars spent by state entities were for well-defined purposes or outcomes and were placed with the appropriate vendors to achieve maximum results.

In conducting this review, PEER sought to determine:

- what laws and/or regulations govern state entities' procurement of advertising services;
- whether state entities use a formal process to determine need for advertising services;

- methods state entities use to procure advertising services; and,
- methods state entities use to evaluate the effectiveness of advertising services received.

## Method

### The Legislative Budget Office's Survey

As noted on page 1, at the request of the Joint Legislative Budget Committee, in July 2006 the Legislative Budget Office (LBO) staff surveyed state agencies, universities, and community colleges to determine the total amount expended on advertising services during FY 2006. LBO did not survey university-affiliated organizations or foundations regarding their advertising expenditures.

For purposes of the survey, LBO defined "advertising" as expenditures for advertising purchased in newspapers; radio; television; billboards; pamphlets, brochures and flyers; professional publications; magazines; yellow pages and other telephone directories; Internet; and, any other similar category.

When conducting the survey, LBO staff instructed entities to categorize advertising expenditures by type—e. g., newspaper, radio, billboard--and to provide information regarding advertising agencies and vendors used to provide the services. Also, the survey requested entities to categorize the purposes of their advertising as either legal notice, recruitment, or program advertising. (See following subsection, page 3, for more information on the three categories of advertising surveyed by LBO.)

LBO also requested entities to identify the types of funds used for their advertising expenditure--e.g., general fund, federal funds, or other funds (i. e., any funds not categorized as general or federal funds, such as self-generated fee revenue).

LBO's survey determined that state entities expended \$14,345,385 on advertising services during FY 2006. LBO determined that the advertising expenditures of twenty-three entities accounted for 87% of all funds expended during FY 2006 for advertising (see Appendix A, page 39).



## Categories of Advertising in LBO's Survey and Their Roles in the Public Sector

As stated on page 2, the Legislative Budget Office's survey asked state entities to report FY 2006 advertising expenditures according to the following categories:

- legal notice advertising;
- recruitment advertising; or,
- program advertising.

The following paragraphs contain discussions of the roles of each of these categories of advertising within the public sector.

### *Legal Notice Advertising*

Various provisions in state law govern the placement and frequency of legal notice advertising, primarily in newspapers.

For example, MISS. CODE ANN. Section 31-7-13 (1972) states that all agencies and governing authorities purchasing commodities and printing; contracting for garbage collection or disposal; contracting for solid waste collection or disposal; contracting for sewage collection or disposal; contracting for public construction; and, contracting for rental must do so in a competitive manner—i. e., sealed bids. This section requires that public notice of the request for bids must be advertised once each week for two consecutive weeks in a regular newspaper published in the county or municipality in which the agency or governing authority is located.

As another example, MISS. CODE ANN. Section 63-11-53 (1972) allows a law enforcement agency to dispose of seized vehicles at a public auction after advertising the sale for at least once each week for three consecutive weeks in a newspaper having a general circulation in the county in which the vehicle was seized.

Statutory provisions relating to legal notice advertising are designed to ensure that citizens have adequate notice of certain meetings or actions of governmental entities.

The Legislative Budget Office determined that 4% (\$504,097) of state entities' FY 2006 advertising expenditures was for legal notice advertising.

### ***Recruitment Advertising***

With regard to recruitment advertising, the State Personnel Board recruits applicants for agencies or facilities under its purview. State agencies may also recruit for applicants on their own when a position is more specialized or when a suitable candidate does not appear on the State Personnel Board's Certificate of Eligibles. Such recruitment efforts may involve classified advertising in a local or general circulation newspaper. If an agency chooses to conduct its own recruitment, the agency's advertising efforts must be coordinated with the State Personnel Director to ensure that the agency's recruitment efforts are in accordance with the State Personnel Board's policies and procedures.

Recruitment efforts of universities and community and junior colleges are not under the purview of the State Personnel Board. These institutions often recruit applicants for vacant positions by posting announcements on websites or advertising in local newspapers or trade journals.

The Legislative Budget Office determined that 16% (\$2,347,594) of state entities' FY 2006 advertising expenditures was for recruitment advertising.

### ***Program Advertising***

One role of government is to perform those public services that are critical to the public interest. Another role is to provide necessary public services that neither the private sector nor the nonprofit sector want to handle or can handle with existing resources. State entities accomplish these two important functions of government through the design and implementation of programs and services.

Entities use various forms of advertising to disseminate information to the public and promote the entities' programs. For example, the Fair Commission coordinates the Mississippi State Fair and Dixie National Rodeo and promotes these events through television and radio advertising, as well as print media. As another example, the Department of Health designs and promotes programs, such as "Heart Attack Signs" and "Fight the Bite" mosquito prevention and protection campaigns, to educate Mississippians regarding pressing health issues. The Secretary of State's office attempts to assist citizens in protecting their personal assets by describing ways citizens may avoid bogus charity operations.

While it is essential that state entities carry out their responsibilities for designing and implementing programs

and services, it is vitally important that citizens be informed of such programs and services. Program advertising is the means by which such notification is accomplished.

The Legislative Budget Office determined that 80% (\$11,493,694) of state entities' FY 2006 advertising expenditures was for program advertising.

## **PEER's Use of the Survey Results**

To address the concerns of the requesting legislator, PEER reviewed the LBO survey data and used the information as the foundation for this efficiency review.

Because program advertising services accounted for a significant majority of all funds expended by state entities on advertising during FY 2006, PEER chose to focus its efficiency review on program expenditures.

PEER then analyzed LBO's survey information for program advertising expenditures to identify those advertising agencies or vendors that had received the highest amount of cumulative payments during FY 2006 for advertising services rendered. In LBO's survey, state entities reported using sixty-two different advertising agencies or vendors to provide program advertising services, with the following seven vendors receiving cumulative payments in excess of \$100,000:

- Frontier Strategies: \$2,865,983;
- GodwinGroup: \$1,301,092;
- Covello Group: \$311,303;
- The Ramey Agency: \$774,303;
- TeleSouth Communications: \$1,210,874;
- Commnet Marketing: \$220,494; and,
- CFO Publishing Corporation: \$128,907.

See Appendix B, page 40, for a list of the agencies that contracted with one or more of these seven advertising vendors in FY 2006 and the amounts of the contracts. (Expenditures to some of the seven vendors--primarily Frontier Strategies, GodwinGroup, and The Ramey Agency--represent pass-through payments to other vendors who provided advertising services to the entities.)

PEER reviewed FY 2006 accounting data in the Statewide Automated Accounting System (SAAS) and identified nineteen state agencies that had made payments to one or more of the seven advertising vendors. PEER sent inquiry letters to the nineteen state agencies requesting information as to each agency's process for determining the need for advertising services, policies and procedures regarding procurement of advertising services, processes used to procure advertising services, and methods for evaluating the effectiveness of advertising services received.

Because universities and community colleges have no centralized accounting system to identify those institutions that had used the services of the seven advertising vendors listed above, PEER sent inquiry letters to all of the state's universities and community colleges requesting the same information as that requested from state agencies. Four institutions of higher learning—Mississippi State University, University of Mississippi, University of Mississippi Medical Center, and University of Southern Mississippi—and two community colleges—Hinds and Holmes community colleges—reported using the services of at least one of the seven advertising vendors during FY 2006.

In addition to the information yielded from the LBO survey, PEER sought information on the advertising expenditures of private, university-affiliated organizations and foundations. The Special Assistant Attorney General for the universities requested that PEER contact these organizations directly for the information. Seven of the organizations reported that they did not have any expenditures or contractual relationships with the seven selected advertising vendors during FY 2006. Eleven of the organizations questioned the PEER Committee's authority to provide oversight of their organization,<sup>1</sup> but did go on record stating whether they had contracts with at least one of the seven selected advertising vendors during FY 2006. Three of the organizations—The Bulldog Foundation, the Mississippi State University Foundation, and the Mississippi University for Women Foundation—reported that they had expended funds with one of the seven selected vendors. However, none of these organizations responded to the questions posed by PEER regarding needs assessment, procurement methods, or evaluation of advertising effectiveness. Therefore, PEER did not include university-affiliated organizations and foundations in developing the conclusions on pages 8

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<sup>1</sup> As noted in the PEER Committee's report #500, *An Analysis of the Legal Status of University Foundations, Their Oversight, and the Authority of the PEER Committee to Review Foundations* (July 10, 2007), PEER contends that the Committee does have authority to review these organizations. Appendix C, on page 41 of this report, further clarifies the Committee's position.

through 35 of the report, but did include the expenditure information provided by these organizations in Appendix B, page 40.

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# Conclusions

## Overview

**Because of the lack of uniform procedures for the assessment of need and selection and evaluation of contractors, the state has few assurances that entities have utilized their best efforts at selecting advertising vendors.**

**Key elements of an effective contracting process involve a process to assess whether a need for a service actually exists, a competitive process to identify and select vendors who can provide the needed service, and an evaluation of a vendor's performance.**

As stated on page 1, the legislator who requested this project had concerns regarding whether advertising dollars spent by state entities were for well-defined purposes or outcomes and were placed with the appropriate vendors to achieve maximum results. PEER found that the answer to the legislator's concerns is not simple or straightforward because state entities vary considerably in their efforts to analyze need for advertising services, their methods or bases for selecting vendors, and their determinations of effectiveness of the vendor's services. Also, as illustrated in this report, state entities typically endeavor to comply with existing state laws and regulations regarding the procurement of professional services such as advertising. PEER does not question whether advertising vendors utilized by the various entities provided services expected by the entities in a satisfactory manner.

Key elements of an effective contracting process involve a process to assess whether a need for a service actually exists, a competitive process to identify and select vendors who can provide the needed service, and an evaluation of a vendor's performance. In reviewing state entities' practices in light of these key elements, PEER found the following weaknesses:

- *State entities are subject to few controls on their use of advertising vendors.* The only state agency contracts that must be approved by the Personal Service Contract Review Board are those that exceed \$100,000. Universities' contracts are not subject to PSCRB's review and only those contracts exceeding \$250,000 must be reviewed by the IHL Board. Community and junior colleges' contracts are governed by the procurement policies of each individual institution.
- *No state laws or regulations require entities to assess whether need exists prior to contracting*

*for advertising services. As a result, few entities utilize fully documented needs assessments with stated goals and objectives.*

- *State agencies are not required to utilize a competitive selection process until contracts for professional services (such as advertising) exceed \$100,000. For contracts for less than those amounts, agencies must utilize their own due diligence to procure services in the most efficient and effective manner.*
- *No state laws or regulations require entities to identify criteria by which a vendor's performance should be evaluated after rendering the requested services. As a result, state entities typically rely primarily on informal measures of effectiveness.*

To determine the extent of state entities' use of advertising services and to obtain information to make the above conclusions, PEER performed fieldwork to address these questions:

- How much did state entities spend on advertising services in FY 2006?
- Do state laws and regulations govern state entities' procurement of advertising services?
- Do state entities utilize formal processes to determine whether they have a need for advertising services?
- What methods do state entities use to procure advertising services?
- Do state laws and regulations require state entities to evaluate the effectiveness of advertising services?

The following sections contain answers to each of these questions and accompanying discussion.

## State Entities' FY 2006 Expenditures on Advertising Services

How much did state entities spend on advertising services in FY 2006?

*During FY 2006, state agencies, universities, and community colleges spent \$14,345,385 on advertising services.*

In FY 2006, state entities expended approximately 80% of their advertising dollars for program advertising.

According to LBO's survey results, state entities reported expending \$14,345,385 on advertising services during FY 2006. As noted previously, entities expended eighty percent (\$11,493,694) of their advertising dollars for program advertising.

Regarding the types of funds used to pay advertising expenditures, entities reported that they primarily used "other" funds (i. e., any funds not categorized as general or federal funds, such as self-generated fee revenue) to fund their advertising expenditures during FY 2006, as illustrated in the Exhibit below.

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### Exhibit: State Entities' Advertising Expenditures in FY 2006, by Type of Funds Used

| Type of Funds Used | Amount Expended in FY 2006 | Percent of All Funds Used |
|--------------------|----------------------------|---------------------------|
| General funds      | \$2,873,342                | 20%                       |
| Federal funds      | 4,471,359                  | 31%                       |
| Other funds        | 7,000,684                  | 49%                       |
| Total              | \$14,345,385               | 100%                      |

SOURCE: Advertising survey of state entities conducted by the Legislative Budget Office in July 2006.

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## Controls Over Entities' Procurement of Advertising Services

Do state laws and regulations govern state entities' procurement of advertising services?

*State entities are subject to few limits or controls on their use of advertising vendors. The only state agency contracts that must be approved by the Personal Service Contract Review Board are those that exceed \$100,000. Universities' contracts are not subject to the PSCRB's review and only those contracts exceeding \$250,000 must be reviewed by the IHL Board. Community and junior colleges' contracts are governed by the procurement policies of each individual institution.*

### State Agencies

*Other than the requirement to have contracts that exceed \$100,000 approved by the Personal Service Contract Review Board, state agencies are subject to few limits or controls on their use of advertising vendors.*

**No state laws specifically govern the procurement of advertising services by state entities.**

Presently, no state laws specifically govern the procurement of advertising services by state entities. The only statutory provisions relating to advertising services apply to state agencies (not to universities or community colleges) and are contained in MISS. CODE ANN. § 25-9-120 (3) (a) (1972), which establishes the Personal Service Contract Review Board. State law provides this board with authority to:

*. . .promulgate rules and regulations governing the solicitation and selection of contractual services personnel including personal and professional services contracts for. . .public relations, marketing, public affairs. . .*

CODE Section 25-9-120 (3) (b) (1972) further provides the Personal Service Contract Review Board with authority to approve all personal and professional services contracts involving the expenditures of funds in excess of \$100,000. On June 25, 1999, the Attorney General opined that state agencies must adhere to the rules and regulations of the Personal Service Contract Review Board when entering into personal services contracts.

*As required by state law, the Personal Service Contract Review Board has established rules and regulations for the solicitation and selection of vendors or individuals to provide professional services.*

After its creation in 1997, the Personal Service Contract Review Board began developing rules and regulations for the solicitation and selection of contractual services personnel. The board formally adopted its rules and regulations on January 26, 1998, and disseminated them to state agencies on January 30 of that year. The board revised Chapter 3 of its rules and regulations (“Source Selection and Contract Information”) on May 12, 2005.

In addition to a summary of relevant state laws, the rules and regulations contain information on source selection and contract formation, contract administration, legal and contractual remedies, and ethics in contracting for personal and professional services. The rules and regulations also contain appendices with sample requests for proposals, contracts, and other related forms.

*The board’s responsibility for contracts of \$100,000 or less is limited to setting rules and regulations. State law requires that the board approve all contracts exceeding \$100,000.*

With regard to the solicitation and selection of vendors to provide professional services, the board has established the following requirements.

- *Contracts of \$50,000 or less:* Agencies shall adopt operational procedures for entering into personal services contracts of \$50,000 or less. Such operational procedures shall provide for obtaining adequate and reasonable competition and making records to account properly for funds and to facilitate auditing of the transaction. The board does not approve contracts for less than \$50,000.
- *Contracts greater than \$50,000 but not exceeding \$100,000:* Agencies shall, at a minimum, solicit three written responses, which shall be made a part of the procurement file. The written responses shall, at a minimum, include the following information: statement of price; terms of the agreement; description of services offered by the contractor; and name, address, and telephone number of the offeror. In the event that the agency does not obtain three responses, the agency shall include a memorandum to the procurement file explaining why this was not accomplished. The board does not approve

contracts for greater than \$50,000 but less than \$100,000.

- *Contracts exceeding \$100,000:* Agencies shall procure personal services contracts with a value exceeding \$100,000 through the use of competitive sealed bidding or proposals. The board's rules and regulations include specific requirements regarding public notice, bid opening, and bid acceptance and evaluation. The board and its staff must review and approve personal services contracts exceeding \$100,000.

The Personal Service Contract Review Board has interpreted state law to mean a *cumulative* value in excess of \$100,000. For example, an agency could enter into a contract with a vendor to provide a service for a total of \$50,000 for one fiscal year. Such a contract would not be subject to the approval of the board. Should the agency choose to renew the contract for an additional fiscal year for \$51,000, resulting in a two-year contract for \$101,000, the contract would be subject to the approval of the board.

The board's rules and regulations also provide for sole-source and emergency procurement without competition when a need for such exists. Agencies using such method must document in writing the circumstances surrounding the selection of a personal services contractor through a non-competitive process.

## **Universities and Community/Junior Colleges**

*Universities and community colleges are not subject to regulations promulgated by the Personal Service Contract Review Board.*

**Because they do not employ state service personnel, universities and community colleges are excluded from the purview of the Personal Service Contract Review Board.**

As stated on page 11, MISS. CODE ANN. Section 25-9-120 (1972) establishes and empowers the Personal Service Contract Review Board to adopt regulations for the hiring of contract personal and professional services contractors. While the section is silent as to which agencies are regulated by the board, MISS. CODE ANN. § 25-9-107 (c) (x) (1972) establishes limitations on the scope of the board's regulatory powers. This section provides that agencies that employ state service personnel may only contract with personnel or professional services contractors if such contracts are in accordance with the regulations of the Personal Service Contract Review Board. Thus, the only agencies regulated by the board are those that hire state service personnel.

Because they do not employ state service personnel as defined by MISS. CODE ANN. § 25-9-107 (b) (1972), universities and community colleges (as well as non-executive branch governmental bodies such as the Legislature or the judiciary and local government agencies or entities) are excluded from the board's purview.

*Universities' contracts for advertising services exceeding \$250,000 are subject to approval of the Board of Trustees of Institutions of Higher Learning.*

**Policies of the Board of Trustees of Institutions of Higher Learning address the source of funding that universities may use for advertising services.**

Policies promulgated by the Board of Trustees of Institutions of Higher Learning require universities to obtain that board's prior approval of service contracts that require an aggregate total expenditure of more than \$250,000. The board's policies provide authority to institutional executive officers to execute service contracts with total expenditures of less than \$250,000. Therefore, the Board of Trustees provides formal oversight of service contracts, including those for advertising services, only when such contracts involve expenditures of more than \$250,000.

In addition to detailing dollar limits at which the Board of Trustees must provide approval of service contracts, the board's policies also address the source of funding that universities may use for advertising services:

*Paid advertising designed to promote an institution, separately budgeted unit, or a specific academic, research or public service purpose shall be funded by self-generated revenue. Announcements of program offerings, schedules and routine advertisements required by law may be funded in whole or part by appropriated funds.*

*The State Board for Community and Junior Colleges has not promulgated a policy regarding the procurement of advertising services by community colleges.*

**Advertising procurement at each community or junior college is subject to that institution's policies and procedures regarding such transactions.**

The State Board for Community and Junior Colleges sets no policy governing the procurement of advertising services by the state's two-year community and junior colleges. In reviewing the law creating the board, PEER notes that the board is not charged with the responsibility of managing and controlling the community colleges. Such responsibility is left to the individual community and junior college boards of trustees. (See MISS. CODE ANN. Section 37-4-1 et seq.) Therefore, advertising procurement at each community or junior college is subject to that institution's policies and procedures regarding such transactions.

## Recent Legislative Efforts to Strengthen Entities' Methods of Procuring Advertising Services

*The Legislature included language in the FY 2007 and FY 2008 appropriations bills for selected appropriations units that required those units to use certain criteria in the procurement of contracts for advertising services.*

In the 2006 Regular Session, the Legislature sought to bring some order to state entities' use of advertising services by adopting for FY 2007 several criteria that selected appropriations units were mandated to use in making decisions to procure advertising services.

While not mandating specific needs assessment or competitive selection procedures, the language in appropriations bills did require specific actions by twenty-nine selected appropriations units. (See Appendix D, page 45, for a list of those entities.) The following language was included in these appropriations bills:

*It is legislative intent to ensure beneficial information reaches as many Mississippians as possible. Further, it is legislative intent that the expenditure of public funds for this purpose be accomplished in an efficient and effective manner. Therefore, state agencies as standard procedure, will observe the following criteria:*

- 1) Develop goals and desired result for a campaign.*
- 2) Evaluate effectiveness through respected advertising standards, including market reach and cost effectiveness.*
- 3) Seek public service announcements, which would be aired by media without cost.*
- 4) Itemize and justify professional assistance and related expenses for creative and production costs outside of the actual media expenditures.*
- 5) Utilize Mississippi owned media companies when feasible.*

FY 2008 appropriations bills for these units also contained this language.

**The appropriations language places a duty upon the appropriations units to establish a method for setting a goal for an advertising campaign and evaluating its outcomes.**

While this language places a duty upon the appropriations units to establish a method for setting a goal for an advertising campaign and evaluating its outcomes, it does not ensure uniformity in the processes by which entities assess need, make selections, and evaluate performance. Consequently, some may carry out their duties with rigor while others may not. The lack of uniformity in processes and accompanying documentation hamper the ability to draw accurate conclusions about the relative efficiency or effectiveness of advertising campaigns.

## **State Entities' Determination of Need for Advertising Services**

**Do state entities utilize formal processes to determine whether they have a need for advertising services?**

### **State Agencies**

*Of the nineteen state agencies that made expenditures to one or more of the seven vendors that received more than \$100,000 from state agencies in FY 2006, only two of the agencies had fully documented needs assessments with stated goals and objectives.*

Generally, an effective contracting process ensures that an entity procures services (such as advertising services) that it cannot produce for itself with authorized staff, solicits and selects vendors competitively, and monitors the performance of contractors to ensure that contract deliverables are provided on a timely basis and meet the expectations of the contracting entity.

**A needs assessment process for the procurement of advertising services should involve the selection of a specific segment or demographic of the state's population as a target audience and analysis of data to determine the media that would reach the largest portion of the targeted audience.**

The first step of an effective contracting process requires an entity to conduct a needs assessment--i. e., identify whether a problem exists--and develop a scope of services or work to address the need. A needs assessment provides an overview of what tasks and services are needed and determines whether current staff can perform these tasks and provide these services. A needs assessment process for the procurement of advertising services should involve the selection of a specific segment or demographic of the state's population as a target audience and analysis of data to determine the media that would reach the largest portion of the targeted audience.

Presently, neither state law nor regulations of the Personal Service Contract Review Board require state agencies to conduct needs assessments prior to contracting for advertising services. Also, policies of the Board of Trustees of Institutions of Higher Learning regarding service contracts do not include a needs assessment

requirement. Therefore, agencies must use their own discretion as to whether to engage in a formal needs assessment process to identify a particular problem or need.

Specifically, with regard to advertising services for public entities, Philip Kotler and Nancy Lee, in their book *Marketing in the Public Sector*, advocate that public sector entities develop a marketing plan with objectives (e. g., increases in utilization of services, behavior change, compliance) and goals (i. e., intended results that are quantifiable, measurable, and specific). Also, a marketing plan for a public entity should profile the target audience of the advertising with regard to factors such as demographics, geographics, and behaviors.

*The Department of Transportation and the Department of Public Safety utilized formal needs assessment processes for procuring advertising services during FY 2006.*

During FY 2006, the Department of Transportation and the Department of Public Safety used formal needs assessment processes to procure advertising services, as described below.

- The Department of Transportation utilized consultants to determine that the state has a litter problem along Mississippi roadways. As part of the department's strategy to address the problem the department determined the need for an anti-littering advertising campaign. The department then entered into a contract with the GodwinGroup to design and implement a litter prevention campaign during 2005 and 2006.

The campaign focused on two target audiences: children, ages five through eleven, and males, ages eighteen through thirty-four. The campaign utilized television, radio, and movie theater advertising to reach the targeted audiences located in the following markets of the state: Biloxi/Gulfport; Columbus/Tupelo; Greenwood/Greenville; Jackson; Laurel/Hattiesburg; and Meridian. The campaign involved airing advertisements during specific periods to reach children--e. g., 3 p. m. to 8 p. m. Monday through Friday and 6 a. m. to 9 p. m. on Saturdays and Sundays--and in specific venues to reach males--e. g., sporting events broadcasts on television and radio stations.

- The Department of Public Safety created a multidisciplinary program (involving law enforcement, the judiciary, social service programs, and communities) for the purpose of preventing minors from consuming alcohol and driving under the influence of alcohol or other drugs.

The target population included citizens sixteen to twenty years old located primarily in communities with major university campuses. The advertising campaign utilized radio spots quoting college coaches during the live broadcasts of games. In addition to the radio spots, the campaign utilized educational materials for youths and law enforcement officers. The campaign also involved establishing community task forces, consisting of campus security chiefs and local police chiefs, to address underage drinking.

*During FY 2006, five state agencies procured advertising services without formal needs assessment processes in order to satisfy statutory mandates or respond to emergency situations.*

Of the nineteen state agencies that made expenditures to one or more of the seven vendors that received more than \$100,000 from state entities in FY 2006, five agencies procured their advertising services without formal, documented needs assessments. The entities' need for advertising services may be categorized as follows:

- *Statutory requirement to advertise:* Two of the five entities that did not utilize formal, documented needs assessments for advertising are required by law to advertise their programs. MISS. CODE ANN. Section 37-155-9 (dd) and Section 37-155-107 (l) (1972) require the College Savings Plan of Mississippi Board of Directors (administratively supported by the State Treasurer's Office) to solicit proposals for marketing the Mississippi Prepaid Affordable College Tuition (MPACT) and Mississippi Affordable College Savings (MACS) programs. Also, although staff of the Division of Medicaid state that the division is required by law to publicize its programs, they did not provide PEER with citations from state or federal law requiring such.
- *Dissemination of hurricane recovery information:* Following Hurricane Katrina, at least three entities designed and implemented advertising campaigns to assist with recovery



efforts. For example, the Department of Employment Security developed media plans to produce and broadcast radio and television public service announcements regarding the department's workforce-related programs and services. The Department of Mental Health advertised its Project Recovery program, which provided free crisis counseling services to people affected directly or indirectly by Hurricane Katrina. Finally, the Department of Rehabilitation Services contracted for the airing of 2,450 network messages providing information to clients and potential clients who had been displaced or evacuated from their coastal homes.

**Entities with statutory mandates or responsibilities for reacting to emergency situations have legitimate reasons to engage professional services without formally determining whether a need exists.**

Even though these departments did not engage in a formal needs assessment process, their advertising efforts were directed at a targeted audience--i. e., primarily those residents of counties designated as federal disaster areas subsequent to Hurricane Katrina.

Although a needs assessment process is an integral component of effective public contracting, entities with statutory mandates or responsibilities for reacting to emergency situations—e. g., a hurricane—have legitimate reasons to engage professional services without formally determining whether a need exists.

*Twelve state entities expended \$5.3 million to procure advertising services to promote their programs during FY 2006 without evidence of a formal needs assessment process.*

Of the nineteen state agencies that made expenditures to one or more of the seven selected vendors in FY 2006, twelve state agencies procured advertising services without evidence of formal, documented needs assessments. These agencies expended \$5.3 million on advertising services. The purposes for the entities' advertising services may be categorized as follows:

- *Dissemination of information to modify behavior:* Three entities reviewed by PEER designed and implemented advertising campaigns to modify behavior. For example, the Department of Environmental Quality aired information focused toward the adult population encouraging residents to conserve and protect Mississippi's environment. The Forestry Commission aired radio advertisements designed to raise the public's awareness concerning the threat of wildfire to life and property (primarily after Hurricane

Katrina). Finally, the Secretary of State designed and implemented an advertising campaign to educate residents regarding Mississippi's charitable organizations and warning them of bogus charities.

- *Dissemination of program information:* Nine entities reviewed by PEER designed and implemented advertising campaigns primarily to disseminate information regarding the entities' programs and services. For example, the Department of Human Services used advertising campaigns to disseminate information regarding the department's programs, services, and initiatives that are available to residents who meet eligibility requirements. As another example, the Department of Health used radio advertisements during FY 2006 to communicate information regarding various health issues, such as heart attacks, West Nile disease, and radon exposure.

Good stewardship of public dollars dictates that entities utilize a formal process to identify whether a need exists; determine what services or programs could best address such need; and, develop the best means to disseminate information to the public regarding services and programs.

## **Universities and Community/Junior Colleges**

*University and community colleges utilized their advertising vendors in FY 2006 to conduct research and identify needs and services to be addressed through advertising and promotion.*

As stated on page 14, policies of the Board of Trustees of Institutions of Higher Learning require board approval for service contracts in excess of \$250,000. The policies do not speak to the processes to be used by universities to determine the need for a contract, such as for advertising services. Also, because the State Board for Community and Junior Colleges does not set procurement policies for individual community and junior colleges, the colleges must adhere to their own institutions' policies, should any exist regarding needs assessments.

During FY 2006, at least two universities and one community college expended funds on advertising services, primarily to promote the missions of the institutions. In each instance, the advertising vendor contracted by the institutions assisted with the needs determination process, as described below.

- *University of Mississippi Medical Center (UMMC):* During FY 2006, UMMC entered into a contract with The Ramey Agency to develop a brand--i. e., name recognition--campaign for University Physicians. Part of the advertising vendor's work involved market research in the form of focus groups to identify perceptions of the institution and formulate media strategies.
- *University of Southern Mississippi (USM):* During FY 2006, USM had a website committee, composed of campus faculty, staff, and students, charged with the responsibility of improving the university's website navigation and design structure. Website committee members wanted the improved website to be consistent with the university's recent branding campaign, "Freeing the Power of the Individual," which had been developed by the GodwinGroup. The committee enlisted GodwinGroup again to assist with the website improvements primarily because that vendor was familiar with the university and its needs.
- *Hinds Community College (HCC):* Since 1995, HCC has had an ongoing relationship with GodwinGroup. The community college has utilized the advertising vendor to develop several marketing campaigns to recruit and retain students. In each of these campaigns, GodwinGroup has conducted research using surveys and focus groups to assess perceptions and brand acceptance of HCC by high school students, teachers, and counselors, as well as current HCC students, both traditional and nontraditional.

## How State Entities Buy Advertising

What methods do state entities use to procure advertising services?

### State Agencies

***During FY 2006, four state agencies utilized competitive methods to procure \$4.8 million in advertising services, while three state agencies utilized non-competitive methods--i.e., emergency or sole-source--to procure \$885,053 in advertising services. Sixteen state agencies used the "small purchase" method provided in state procurement regulations to procure \$548,838 in advertising services.***

As stated on page 12, the Personal Service Contract Review Board (PSCRB) has established rules and regulations for state agencies to follow when procuring professional

services, including advertising services. The regulations provide for the following procurement methods.

- *Competitive sealed bids or proposals:* Contracts for professional services for more than \$100,000 must be procured through the use of competitive sealed bids or proposals and must be approved by PSCRB.
- *Emergency procurement:* Contracts may be procured without competition when the entity determines that an emergency situation, as defined in the regulations, exists. Such contracts must be forwarded to the PSCRB within ten days if the contract amount is greater than \$100,000.
- *Sole-source procurement:* Contracts may be procured without competition when the entity determines that there is only one source for the required services. Entities must obtain prior approval of the PSCRB when sole-source contract amounts are greater than \$100,000.
- *Small purchases:* State agencies may enter into contracts of more than \$50,000 but less than \$100,000 after soliciting three written quotations. PSCRB approval is not required for these contracts. Agencies may procure contracts of \$50,000 or less using agency-adopted procedures and without PSCRB approval.

### ***Competitive Processes***

*State entities procured \$4,806,567 in advertising services during FY 2006 by using competitive processes.*

During FY 2006, four of the nineteen state agencies that procured advertising services through one or more of the seven vendors listed on page 5 expended public funds on advertising services through the use of a competitive process, as described below.

### **Mississippi Development Authority (Tourism)**

In 2004, the Mississippi Development Authority (MDA) developed a request for proposals (RFP) to locate a vendor to provide advertising services for the agency's tourism programs through a multi-year contract. In response to the RFP, MDA received submissions from seven advertising vendors. Nine MDA staff independently evaluated and scored the submissions based on criteria specified in the RFP. Those vendors receiving the three highest scores—Frontier Strategies, GodwinGroup, and The Ramey

Agency—were invited to make oral presentations to MDA managers, with Frontier Strategies being selected as the agency’s advertising vendor. (The Mississippi Development Authority’s appropriations bills for fiscal years 2004 through 2006 state that expenditure of agency funds in support of the Mississippi Tourism Advertising and Promotion program shall be exempt from MISS. CODE ANN. Section 25-9-120, the state law provision that established the Personal Service Contract Review Board [PSCRB]. Therefore, MDA’s contracts for advertising services are not within the purview of PSCRB.) MDA paid Frontier Strategies \$2,542,466 during FY 2006 to provide advertising services.

Subsequent to awarding a contract to Frontier Strategies, MDA determined that it needed additional advertising services and entered into contracts with the GodwinGroup and The Ramey Agency, since these vendors had been finalists in the selection process. During FY 2006, MDA paid \$1,069,659 and \$624,303 to the GodwinGroup and The Ramey Agency, respectively.

#### **State Treasurer’s Office (College Savings Plan of Mississippi)**

On March 21, 2005, the Board of Directors of the College Savings Plan of Mississippi (which is administratively supported by the State Treasurer’s Office) developed a request for proposals to locate a vendor to serve as a marketing consultant and advertising agency for the board. In response to the RFP, the board received submissions from five advertising vendors. The board’s marketing committee evaluated the submissions and selected three vendors to make presentations to the board. Board members evaluated the presentations based on criteria specified in the RFP and selected Frontier Strategies as the board’s marketing consultant and advertising vendor to market the college savings programs for the period July 1, 2005, through June 30, 2008. On July 14, 2005, the Personal Service Contract Review Board approved the board’s selection of Frontier Strategies. The board paid Frontier Strategies \$312,158 during FY 2006 to provide advertising services.

#### **Department of Health (Telephone Book Advertising Campaign)**

In May 2005, the Department of Health developed a request for proposals to locate a vendor to develop, manage, and implement a comprehensive and strategic telephone book advertising campaign. In response to the RFP, the department received one submission from CommNet Marketing. The Board of Health’s staff decided to enter into a contract with CommNet Marketing for the

contract. On July 14, 2005, the Personal Service Contract Review Board approved the department's selection of CommNet Marketing to manage telephone book advertisement for the period July 1, 2005, through June 30, 2008. The department paid CommNet Marketing \$220,494 during FY 2006 to provide advertising services.

### **Department of Transportation (Anti-Litter Advertising Campaign)**

In 2002, the Mississippi Department of Transportation (MDOT) developed a request for proposals to locate a vendor to develop public information and educational campaigns, including an anti-litter advertising campaign. In response to the RFP, the department received five submissions. MDOT formed a committee that evaluated and ranked the firms based on work-related criteria—qualifications, related experience, company infrastructure and staff resources, and understanding of the project. The committee recommended the selection of the GodwinGroup. The Transportation Commission authorized the department's Executive Director to execute a contract with the GodwinGroup as the agency of record for the "I'm Not your Mama" phase of the department's anti-litter campaign. The department paid GodwinGroup \$37,487 during FY 2006 to provide advertising services.

### ***Emergency Purchases***

*The Department of Employment Security expended \$400,800 during FY 2006 to procure the advertising services of TeleSouth Communications as an "emergency purchase."*

**For emergency purchases, written determination of the basis for the emergency and for the selection of the particular contractor must be included in the contract file.**

Regulations promulgated by the Personal Service Contract Review Board state that the head of a purchasing agency or designee may make or authorize others to make emergency procurements under emergency conditions. The regulations define "emergency" as any circumstances caused by "fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection. . . ." The regulations further state that emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor must be included in the contract file.

Following the landfall of Hurricane Katrina on August 29, 2005, the Department of Employment Security determined that it needed to notify residents who had lost their jobs of workforce-related programs and services offered by the department. To efficiently and effectively educate and communicate these programs and services to those

Mississippians who could benefit from them, the department developed several media plans to produce and broadcast radio and television public service announcements (PSAs).

According to the department's staff, the department requested private sector media companies and the Mississippi Public Broadcasting to submit proposals for broadcasting the PSAs. The department selected TeleSouth Communications as the advertising vendor to broadcast the PSAs and entered into two contracts with the vendor—one for the period September 19, 2005, through November 11, 2005, and another for the period November 14, 2005, through January 6, 2006. Both contracts were in the amount of \$200,400 each for a total FY 2006 expenditure of \$400,800. The department used federal funds for these expenditures.

The Personal Service Contract Review Board (PSCRB) approved the two contracts as emergency procurements during its meetings on September 29, 2005, and January 13, 2006. The Department of Employment Security's staff justified the emergency procurements on the basis of Governor Haley Barbour's "Hurricane Katrina State of Emergency" declaration dated September 26, 2005. The declaration instructed state agencies to discharge their emergency responsibilities as deemed necessary.

The PSCRB also approved a contract between the Department of Employment Security and Clear Channel Communications as an emergency procurement. The period of the contract was for August 29, 2005, through March 6, 2006, and required the vendor to broadcast radio announcements regarding department services. Clear Channel Communications was not one of seven advertising vendors reviewed by PEER because state entities did not report spending more than \$100,000 with the company during FY 2006.

### ***Sole Source Purchases***

*Without requiring the agencies to utilize a competitive process to identify potential advertising vendors, the Personal Service Contract Review Board allowed two entities—the Department of Health and the Department of Human Services—to procure advertising services from vendors the agencies declared as sole-source providers.*

Regulations promulgated by the Personal Service Contract Review Board state that entities should utilize a competitive process—either sealed bids or proposals—when an anticipated expenditure for a professional service will be more than \$100,000. The regulations contain specific requirements for issuing public notice, accepting and evaluating bids or proposals, and selecting the lowest and best bidder or proposer.

The regulations also provide for the procurement of professional services from a “sole source” without competition when the head of a purchasing agency or designee justifies in writing that there is only one source for the required service. With regard to the conditions for use of sole-source procurement, the regulations state the following.

*Sole-source procurement is not permissible unless a requirement is available from only a single supplier. The determination as to whether a procurement shall be made as a sole source shall be made and approved by the head of the purchasing agency or designee of such officer. . In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.*

PEER identified contracts with advertising vendors on which the Department of Health and Department of Human Services expended funds during FY 2006 that were deemed to be “sole source” suppliers.

*The Department of Health expended \$311,303 during FY 2006 on advertising services provided by Covello Group. The Personal Service Contract Review Board approved Covello Group as a sole source vendor without requiring the department to obtain competitive bids or proposals from other potential vendors.*

During its November 9, 2004, meeting, the Personal Service Contract Review Board considered the Department of



Health's request for an advertising contract with the Center for Risk Communications (now known as Covello Group) to develop a public awareness campaign for emergency preparedness education services. The department projected spending \$225,000 of federal funds during FY 2005 for advertising services provided by Covello Group.

The Department of Health's staff considered the Covello Group to be a sole-source provider because the company has a background in medical and public health, including experience in working with the Centers for Disease Control (CDC) and is considered a creator and leader in the new field of risk communications. The department's staff acknowledged that "any advertising firm" could bid on the contract, but the department was not able to find a firm with CDC experience, a medical background, and one that was considered a leader in risk communications.

**In considering an advertising contract for the Department of Health, a PSCRB member acknowledged that it would be impossible for the department to know whether another qualified contractor was available since the department had not advertised for the contract.**

According to the board's minutes, Personal Service Contract Review Board (PSCRB) members expressed concern with the department identifying the Covello Group as a sole-source provider. One board member acknowledged that it would be impossible for the department to know whether another qualified contractor was available since the department did not advertise for the contract. Despite reservations raised by its members, the board did not require the Department of Health to competitively bid the advertising contract but agreed to approve the Covello Group as a sole-source provider with the caveat that the Department of Health's staff make more diligent efforts in the future to identify other potential vendors. Board members encouraged the Department of Health's staff to network among their colleagues throughout the country and identify potential vendors for future such advertising contracts. The PSCRB also made its approval of the contract contingent upon the Covello Group qualifying to do business with the State of Mississippi (i. e., register with the Secretary of State's Office).

*The Department of Human Services expended \$172,950 during FY 2006 on advertising services provided by TeleSouth Communications. The Personal Service Contract Review Board approved TeleSouth Communications as a sole source vendor without requiring the department to obtain competitive bids or proposals from other potential vendors.*

During its July 30, 2004, meeting, the Personal Service Contract Review Board considered the Department of Human Services' request for "emergency procurement for broadcast services." The department projected spending \$155,000 of federal funds during FY 2005 for broadcast services provided by TeleSouth Communications.

In justifying the department's request to the PSCRB, department managers stated that federal mandates require the department to advertise annually and publicize certain programs of the department. The managers said:

*. . .this particular contract [with TeleSouth Communications] gives us an opportunity to share with some 660,000 customers across the state the kind of services that are available for them. These radio advertisements focus on particular communities and ethnicities.*

In a letter to the PSCRB's Special Assistant Attorney General, the Executive Director of the Department of Human Services, Don Taylor, described the various networks of TeleSouth Communications and stated:

*TeleSouth Communications, Inc. is the sole source provider and the only company that can provide these needed services to the Department.*

Members of the Personal Service Contract Review Board unanimously approved the department's request to designate TeleSouth Communications as its sole-source provider of broadcast services.

Since receiving the PSCRB's initial approval on July 30, 2004, the Department of Human Services has requested the board's approval of five modifications of its contract with TeleSouth Communications. One purpose of the modifications was to extend the ending date of the contract from June 30, 2005, to June 30, 2006. Also, the board approved increasing the maximum expenditure of the contract from \$155,000 to \$324,450, with the expenditures being paid from federal funds. During FY 2006, the department expended \$172,950 to receive services provided by TeleSouth Communications.

**When it approved a contract between the Department of Human Services and TeleSouth Communications, the PSCRB did not require the department to show evidence of its due diligence to locate through competitive means vendors that could provide statewide broadcast services.**

When discussing the department's initial and subsequent requests to utilize TeleSouth Communications as a sole-source provider, the then-chair of the Personal Service Contract Review Board asked Department of Human Services staff (and PSCRB staff) whether TeleSouth Communications is a "well documented sole source provider" and the only vendor with a statewide network. The department's and PSCRB's staff responded in the affirmative and described the various networks owned by TeleSouth Communications. The minutes of the Personal Service Contract Review Board do not indicate that the board required the department to show evidence of its due diligence to locate through competitive means vendors that could provide statewide broadcast services. The

board simply relied on the assertions of the Department of Human Services and its own staff to recognize TeleSouth Communications as a sole-source provider.

*During FY 2006, at least six state entities procured broadcast services from TeleSouth Communications as a sole-source provider.*

As noted previously, regulations of the Personal Service Contract Review Board do not require the board's approval of "small purchases" of professional services for \$50,000 or less. The regulations require the head of a purchasing agency to adopt operational procedures for "obtaining adequate and reasonable competition" for such purchases.

**The six entities that designated TeleSouth Communications as a sole-source provider provided no evidence to PEER that they had exercised due diligence in seeking other potential vendors.**

As shown in Appendix E, page 46, of the sixteen state entities that procured advertising services during FY 2006 as "small purchase" procurements, six entities-- Department of Environmental Quality, Department of Health, Department of Public Safety, Department of Rehabilitation Services, Division of Medicaid, and the Forestry Commission--explained to PEER that they chose TeleSouth Communications as a sole-source provider. Following are quotes from each agency's explanations to PEER justifying their selections of TeleSouth Communications as a sole-source provider.

- Department of Environmental Quality: *"the Mississippi News and Southern Urban Networks [which are owned by TeleSouth Communications] are the only statewide radio networks providing news programming to 96 affiliated stations in Mississippi. There are no other radio networks in Mississippi providing daily news programming."*
- Department of Health: TeleSouth Communications is *"a unique and exclusive service to over 100 hometown Mississippi radio stations that is not available through any other source of its kind in the State of Mississippi."*
- Department of Public Safety: TeleSouth Communications *"is the only statewide radio network that offers commercial radio programming and therefore is a sole source provider."*
- Department of Rehabilitation Services: *"Since MDRS maintains offices all over the state of Mississippi and we serve clients state-wide, we contracted with a company that could provide service announcements over the entire state. We contacted various potential providers to*

*determine their coverage areas and we found that TeleSouth was the only company which could provide us with the assurance that our message would be delivered statewide.” [MDRS staff could not provide PEER with information as to which advertising vendors other than TeleSouth Communications that the department contacted or the proposals offered by those vendors.]*

- Division of Medicaid: *“we use the TeleSouth network because unlike any other radio broadcast entity in the state, they have statewide networks that reach our prime demo[graphic]s.”*
- Forestry Commission: *“there are 101 radio stations that make up the Mississippi Network, which is part of TeleSouth Communications. These individual member stations are unique to Mississippi Network, making it a sole-source provider.”*

**PEER has no evidence that TeleSouth Communications did not provide in a satisfactory manner the services expected by the entities that utilized its services. However, prior to considering a vendor to be a sole source, an entity should exercise due diligence in seeking other potential vendors.**

PEER has no evidence that TeleSouth Communications did not provide in a satisfactory manner the services expected by the entities that utilized its services. However, prior to considering a vendor to be a sole source, an entity should exercise due diligence in seeking other potential vendors. Should other acceptable vendors not be found, the entity should document in writing and place in its procurement files its justification for selecting the vendor as a sole source provider. The six entities listed above provided no evidence to PEER that they had exercised due diligence in seeking other potential vendors before designating TeleSouth Communications as a sole-source provider.

One entity that utilized TeleSouth Communications during FY 2006--the Department of Mental Health--did exercise due diligence prior to procuring services from TeleSouth Communications. In an attempt to advertise the department’s Project Recovery program following Hurricane Katrina, department staff obtained price quotes from TeleSouth Communications, as well as four other providers of broadcast services. Based on this information, department staff concluded that it was more cost-effective to procure the services bundled from TeleSouth Communications rather than contracting directly with individual stations.

### **Small Purchases**

*During FY 2006, sixteen state agencies procured \$548,838 in advertising services through the “small purchase” method, which does not require a competitive process (either sealed bids or written quotations) for purchases less than \$50,000.*

With regard to “small purchases” of \$50,000 or less, regulations promulgated by the Personal Service Contract Review Board state the following:

*The head of a Purchasing Agency shall adopt operational procedures for making small purchases of \$50,000 or less. Such operational procedures shall provide for obtaining adequate and reasonable competition and for making records to properly account for funds and to facilitate auditing of the Purchasing Agency. No approval by the Personal Service Contract Review Board is required for these purchases.*

As shown in Appendix E, page 46, PEER identified sixteen state agencies that procured advertising services through the “small purchases” method. Each of these purchases were below the \$50,000 threshold, above which would have involved the agencies’ obtaining three written quotations from potential vendors.

### **Universities and Community/Junior Colleges**

***For funds expended on advertising services during FY 2006, universities and community colleges utilized non-competitive methods to procure their advertising vendors.***

As stated on page 14, policies of the Board of Trustees of Institutions of Higher Learning require board approval for service contracts in excess of \$250,000. The policies do not speak to the processes to be used by universities to procure a contract, such as advertising services. Also, because the State Board for Community and Junior Colleges does not set procurement policies for individual community and junior colleges, the colleges adhere to their own institutions’ policies, should any exist regarding specific procurement methods.

As detailed in Appendix B, page 40, four institutions of higher learning and two community colleges expended a total of \$424,292 on advertising services during FY 2006.

While none of the institutions of higher learning procuring advertising services during FY 2006--Mississippi State University, University of Mississippi, University of Mississippi Medical Center, and University of Southern Mississippi--procured them through competitive processes, the amounts expended on each contract during FY 2006 were below the \$250,000 level that would have required approval of the Board of Trustees of Institutions of Higher Learning.

Holmes Community College purchased \$1,750 in advertising services to notify district residents of upcoming registration dates. Hinds Community College expended approximately \$30,000 to purchase advertising services from GodwinGroup, a vendor with which the college has had a long business relationship.

In lieu of competitive selection processes, the universities and community colleges primarily based the selection of their advertising vendors on longstanding relationships with the vendor or reputation of the vendor for providing acceptable service to other clients.

## Measuring the Effectiveness of State Entities' Advertising Efforts

**Do state laws and regulations require state entities to evaluate the effectiveness of advertising services?**

### State Agencies

***State laws and regulations do not require state agencies to evaluate the effectiveness of the advertising services that they receive. In the absence of such requirement, state agencies rely primarily on informal measures of effectiveness.***

With regard to evaluating the effectiveness of advertising services provided to public entities, Philip Kotler and Nancy Lee, in their book *Marketing in the Public Sector*, advocate that public sector entities devise an evaluation plan as part of their overall marketing plan that includes the following components:

- purpose for and end user(s) of the evaluation;
- what will be measured (e. g., output, outcome, impact measures);
- how they will be measured; and,
- when they will be measured.

**The essence of an evaluation of advertising services should be to provide the entity a gauge with which to measure its return on investment.**

The essence of the evaluation should be to provide the entity a gauge with which to measure its return on investment in advertising services, answering some important bottom-line questions: Did the entity reach its goals? Can the entity link outcomes with program elements? How do costs stack up against benefits? What will the entity do differently next time, if there is a next time?

Presently, neither state law nor regulations promulgated by the Personal Service Contract Review Board require state agencies to evaluate the effectiveness of advertising services.

Rather than utilizing formal effectiveness measures, agencies reviewed by PEER primarily relied upon ad hoc measures to gauge the effectiveness of their FY 2006 advertising efforts. Most agencies required their advertising vendor, usually TeleSouth Communications, to provide them with invoices listing advertisements and the times, dates, and stations on which the advertisements were aired. Agencies also enlisted their staffs to monitor radio networks to listen for the airing of particular advertisements. At least three agencies--Department of Employment Security, Department of Public Safety, and Division of Medicaid--required their advertising vendor (TeleSouth Communications) to provide Arbitron and/or Nielsen ratings with which the agencies could gauge the effectiveness of their advertising efforts.

Of the nineteen state agencies that made payments in FY 2006 to one or more of the seven advertising vendors listed on page 5, PEER identified four agencies that utilized formal measures to evaluate the effectiveness of their FY 2006 advertising efforts, as described below.

- *Department of Public Safety:* The department utilized Pruesser Research Group to evaluate the effectiveness of its safe driving advertising campaign. The evaluation process involved telephone interviews as well as questionnaires administered at selected drivers' license stations around the state. The department concluded that the seatbelt usage rate increased from 50% in 2001 to 72% in 2006.
- *Department of Transportation:* The department established a reporting framework that documented the department's anti-litter campaign's financial investment and advertising activities, including advertisements placed, audience reached, and bonus advertising received as a result of negotiations

between the department's advertising vendor, GodwinGroup, and various media outlets used in the campaign.

- *Mississippi Development Authority:* MDA evaluates its advertisement campaign effectiveness through a study conducted by the TNS Travel & Transport. The study by TNS Travel & Transports surveys households to identify the proportion of households that are aware of the state's advertising, measures the increases in travel volume that may be attributed to MDA Tourism advertising campaigns, and evaluates trip satisfaction. Other tools measured are advertising awareness, intent to visit a destination, image ratings, and commitment.
- *State Treasurer's Office:* Frontier Strategies assists the College Savings Plan of Mississippi Board of Directors (which is administratively supported by the State Treasurer's Office) in the development and implementation of marketing strategies and advises on advertising themes. At the end of each enrollment period or campaign, Frontier conducts market research as directed by the board in order to quantify the results of Frontier's strategies for the preceding year.

## Universities and Community/Junior Colleges

***Universities and community and junior colleges should take the initiative to devise prudent methods of determining the efficiency and effectiveness of their advertising services.***

To ensure good stewardship of available funds, it is important that public entities evaluate advertising efforts to determine whether they are reaching their target audience in the most effective manner. As noted previously, each university and community or junior college is responsible for devising its own methods for procuring and monitoring contracts for advertising services.

Hinds Community College is an example of an institution that measured the effectiveness of advertising services received during FY 2006. Hinds Community College has utilized GodwinGroup to assist with the design and marketing of the college's promotional campaigns since 1995. According to the college's Vice President of Community Relations, the primary purpose of the college's program advertising is to increase the enrollment of traditional and non-traditional students. To determine the



success and effectiveness of the college's individual advertising campaigns, HCC staff track the number of "hits" or visits to the college's website in relation to the timing of each advertisement. HCC staff also measure the success of an advertising campaign by increases in student enrollment in relation to campaign costs. In addition, Hinds Community College surveys new students at orientation to determine why they chose HCC and which marketing tools were successful in recruiting them to the institution. The college utilizes focus groups to measure each campaign's success with the college's internal audience--e. g., student leadership groups and faculty. Finally, although not a scientific method, HCC staff monitor community response to and interaction with the college's marketing campaigns.

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## Recommendations

1. The Legislature should amend MISS. CODE ANN. Section 25-9-120 (1972) to require that the Personal Service Contract Review Board adopt rules and regulations governing the procurement of advertising and marketing support services by all agencies employing state service employees. Such rules and regulations should apply to contracts for such services without regard for the dollar value of the contracts.

Further, the amendment should require that all such contracts be approved by the Personal Service Contract Review Board prior to any agency making a payment for services under any such contract. Specifically, the board's rules should address the following:

- the development of goals and desired results for the campaign or marketing services;
- the development of a needs assessment outlining the methods by which the agency determined the need for the service. (Such should also establish that the goals could not be accomplished through the use of public service announcements.);
- competitive selection for services; and,
- evaluation criteria to determine whether the services met the goals established by the agency.

For purposes of this amendment, advertising should not include legal notices published in newspapers or recruitment notices to fill job vacancies.

2. The Board of Trustees of Institutions of Higher Learning and the individual boards of trustees of the community and junior colleges should review their policies and procedures to determine whether they address the requirements for procuring advertising services described in Recommendation 1 of this report. If such requirements are not currently in policy, the boards should adopt such requirements to ensure efficient and accountable expenditure of funds for advertising services.
3. The Board of Trustees of Institutions of Higher Learning should review its policy whereby service

contracts in excess of \$250,000 must be approved by the board to determine whether the dollar limit should be lowered (possibly to \$100,000) to ensure more oversight of such procurements.



**Appendix A: Top Twenty-Three Entities Accounting for 87.25% of Total Funds Spent on Advertising in FY 2006**

| Agency   | FY 2006 Expenditures |        |
|--|----------------------|--------|
| Mississippi Development Authority                | \$4,853,251.46       |        |
| Department of Employment Security                | 1,211,545.90         |        |
| Department of Transportation                     | 878,969.95           |        |
| Department of Health                             | 749,514.55           |        |
| Department of Public Safety                      | 530,680.30           |        |
| Mississippi Gulf Coast Community College         | 505,892.00           |        |
| Department of Mental Health                      | 376,945.87           |        |
| Hinds Community College                          | 322,034.22           |        |
| University of Mississippi Medical Center         | 278,806.92           |        |
| Department of Human Services                     | 271,626.88           |        |
| Department of Wildlife, Fisheries and Parks      | 257,577.44           |        |
| University of Mississippi (On-Campus)            | 237,732.68           |        |
| East Central Community College                   | 232,809.81           |        |
| Mississippi Valley State University              | 224,739.70           |        |
| Meridian Community College                       | 220,018.04           |        |
| Mississippi State University                     | 216,443.00           |        |
| Treasury Department (College Savings Plans)      | 215,324.00           |        |
| Holmes Community College                         | 210,071.11           |        |
| Jackson State University                         | 189,263.56           |        |
| University of Mississippi (Off-Campus)           | 174,633.74           |        |
| Jones County Junior College                      | 148,937.02           |        |
| Copiah-Lincoln Community College                 | 108,910.00           |        |
| University of Southern Mississippi (Hattiesburg) | 100,097.00           |        |
|  |                      |        |
| Subtotal for twenty-three agencies               | \$12,515,825.15      | 87.25% |
| Subtotal for remaining agencies in survey        | 1,829,559.89         | 12.75% |
|  |                      |        |
| Total funds spent on advertising in FY 2006      | \$14,345,385.04      | 100%   |

SOURCE: Advertising survey of state entities conducted by the Legislative Budget Office in summer 2006.

## Appendix B: Advertising Agencies Receiving More than \$100,000 from State Entities and University-Affiliated Organizations During FY 2006

|  | Frontier Strategies   | Godwin Group          | Covello Group       | Ramey Agency        | TeleSouth Communications | Commnet Marketing   | CFO Publishing      | Total                 |
|--|-----------------------|-----------------------|---------------------|---------------------|--------------------------|---------------------|---------------------|-----------------------|
| <b>State Agencies (19)</b>                     |                       |                       |                     |                     |                          |                     |                     |                       |
| Department of Agriculture                      |                       |                       |                     |                     | \$17,496.00              |                     |                     | \$17,496.00           |
| Department of Education                        |                       |                       |                     |                     | \$6,355.00               |                     |                     | \$6,355.00            |
| Department of Employment Security              |                       |                       |                     |                     | \$400,800.00             |                     |                     | \$400,800.00          |
| Department of Environmental Quality            |                       |                       |                     |                     | \$28,105.70              |                     |                     | \$28,105.70           |
| Department of Health                           |                       |                       | \$311,303.17        |                     | \$33,000.00              | \$220,494.00        |                     | \$564,797.17          |
| Department of Human Services                   |                       |                       |                     |                     | \$172,950.00             |                     |                     | \$172,950.00          |
| Department of Mental Health                    |                       |                       |                     |                     | \$10,480.00              |                     |                     | \$10,480.00           |
| Department of Public Safety                    |                       |                       |                     |                     | \$164,143.00             |                     |                     | \$164,143.00          |
| Department of Rehabilitation Services          |                       |                       |                     |                     | \$71,500.00              |                     |                     | \$71,500.00           |
| Division of Medicaid                           |                       |                       |                     |                     | \$56,809.46              |                     |                     | \$56,809.46           |
| Fair Commission                                |                       |                       |                     |                     | \$5,065.00               |                     |                     | \$5,065.00            |
| Forestry Commission                            |                       |                       |                     |                     | \$41,370.00              |                     |                     | \$41,370.00           |
| Governor's Office                              | \$11,358.69           |                       |                     |                     |                          |                     |                     | \$11,358.69           |
| MS Authority for Educational Television        |                       | \$8,405.16            |                     |                     |                          |                     |                     | \$8,405.16            |
| MS Department of Transportation                |                       | \$37,486.69           |                     |                     | \$52,000.00              |                     |                     | \$89,486.69           |
| MS Development Authority                       | \$2,542,466.38        | \$1,069,658.61        |                     | \$624,303.39        | \$6,750.00               |                     | \$128,907.60        | \$4,372,085.98        |
| Public Service Commission                      |                       |                       |                     |                     | \$25,000.00              |                     |                     | \$25,000.00           |
| Secretary of State                             |                       |                       |                     |                     | \$11,000.00              |                     |                     | \$11,000.00           |
| State Treasurer's Office                       | \$312,158.00          |                       |                     |                     |                          |                     |                     | \$312,158.00          |
|  | \$2,865,983.07        | \$1,115,550.46        | \$311,303.17        | \$624,303.39        | \$1,102,824.16           | \$220,494.00        | \$128,907.60        | \$6,369,365.85        |
| <b>Universities and Colleges (6)</b>           |                       |                       |                     |                     |                          |                     |                     |                       |
| Mississippi State University                   |                       |                       |                     |                     | \$1,000.00               |                     |                     | \$1,000.00            |
| University of Mississippi                      |                       |                       |                     |                     | \$96,000.00              |                     |                     | \$96,000.00           |
| University of Mississippi Medical Center       |                       |                       |                     | \$150,000.00        |                          |                     |                     | \$150,000.00          |
| University of Southern Mississippi             |                       | \$145,550.76          |                     |                     |                          |                     |                     | \$145,550.76          |
| Hinds Community College                        |                       | \$29,991.00           |                     |                     |                          |                     |                     | \$29,991.00           |
| Holmes Community College                       |                       |                       |                     |                     | \$1,750.00               |                     |                     | \$1,750.00            |
|  | \$0.00                | \$175,541.76          | \$0.00              | \$150,000.00        | \$98,750.00              | \$0.00              | \$0.00              | \$424,291.76          |
| <b>University-Affiliated Organizations (3)</b> |                       |                       |                     |                     |                          |                     |                     |                       |
| Mississippi State University Foundation        |                       |                       |                     |                     | \$9,300.00               |                     |                     | \$9,300.00            |
| Mississippi University for Women Foundation    |                       | \$10,000.00           |                     |                     |                          |                     |                     | \$10,000.00           |
| The Bulldog Foundation*                        |                       |                       |                     |                     |                          |                     |                     | \$0.00                |
|  | \$0.00                | \$10,000.00           | \$0.00              | \$0.00              | \$9,300.00               | \$0.00              | \$0.00              | \$19,300.00           |
| <b>Grand Totals</b>                            | <b>\$2,865,983.07</b> | <b>\$1,301,092.22</b> | <b>\$311,303.17</b> | <b>\$774,303.39</b> | <b>\$1,210,874.16</b>    | <b>\$220,494.00</b> | <b>\$128,907.60</b> | <b>\$6,812,957.61</b> |

\* No dollar amount provided by the organization

SOURCE: LBO survey of state agencies, universities, and colleges of FY 2006 advertising expenses. SAAS information for payments made to selected vendors.

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## Appendix C: PEER's Authority to Review University-Affiliated Organizations

As noted on page 6, PEER sought information from university-affiliated organizations to complete this review of state entities' use of advertising contractors.

### Summary of the Issue and Its Application to this Review

University-affiliated organizations are private, not-for-profit corporations (such as university foundations and alumni organizations) that perform functions for the state universities and in doing so use the name of the university to carry out their activities. All such organizations enter into agreements with their respective universities to provide certain services. For such an agreement to be effective, the Board Trustees of Institutions of Higher Learning (IHL) must approve the agreement. Some of the affiliated organizations receive public funds to help accomplish their missions.

In its report *An Analysis of the Legal Status of University Foundations, Their Oversight, and the Authority of the PEER Committee to Review University Foundations* (#500, July 10, 2007), the PEER Committee noted its authority to review such organizations. Since issuance of the report and in the context of this review of advertising expenditures, several of these affiliated organizations have questioned the Committee's authority to provide oversight of such organizations. Except in two instances, no theory for this position was offered, thereby making a counter-argument somewhat problematic. Nonetheless, the Committee offers this appendix to support once again PEER's authority to review university foundations and affiliated organizations.

### Status of IHL and the State Universities

In the aforementioned report, PEER set out its argument for having oversight of foundations and affiliated organizations of the universities. In so doing, the Committee noted that these entities are independent contractors of the universities and as such could be reviewed, as they carry out functions such as fundraising that were beneficial to the universities they serve. PEER's power to review such independent contractors of agencies is found in MISS. CODE ANN. Section 5-3-57 (b) (1972),

which states that, among other powers, the Committee has power:

*To conduct, in any manner and at any time deemed appropriate, a review of the budget, files, financial statements, records, documents or other papers, as deemed necessary by the committee, of any agency; to make selected review of any funds expended and programs previously projected by such agency; to investigate any and all salaries, fees, obligations, loans, contracts, or other agreements or other fiscal function or activity of any official or employee thereof (including independent contractors where necessary); and to do any and all things necessary and incidental to the purposes specifically set forth in this section.*

Although the report did not set out the fundamental suppositions supportive of this position, these are set out below.

#### **IHL and the subordinate institutions of higher learning are agencies of the state of Mississippi.**

Often questions arise regarding the status of an entity that receives a portion of public funding. Clearly the individual institutions of higher learning (e. g., the University of Mississippi) are state agencies. *See Bruner v. University of Southern Mississippi*, 501 So. 2d 1113 (Miss, 1987); see also *Board of Trustees, Institutions of Higher Learning v. Peoples Bank of Mississippi*, 538 So. 2d 361 (Miss, 1989). Also, see *Attorney General's Opinion to Bryant*, February 7, 1997, wherein the Attorney General opined that demand letters for lost inventory may be directed to individual universities when such property belongs to an individual university. As for the Board of Trustees of Institutions of Higher Learning, that body is also an agency of the executive branch of government. *See Van Slyke v. Board of Trustees, Institutions of Higher Learning*, *infra*.

**The case of *Allain v. Board of Trustees, Institutions of Higher Learning* places some fetters on executive or legislative control over the spending activities of IHL, but does not bar PEER from reviewing the activities of universities or their affiliated organizations.**

Two affiliated organizations responding to PEER's request for advertising expenditure information suggested that the case of *Allain v. Board of Trustees, Institutions of Higher*



*Learning*, infra, would provide the foundations and affiliated organizations with a shield from PEER oversight.

In 1980, the Mississippi Supreme Court rendered its decision in *Allain v. Board of Trustees, Institutions of Higher Learning*, 387 So 2d 89 (Miss, 1980). In *Allain*, the questions arose as to whether the State Building Commission (predecessor of the Department of Finance and Administration's Bureau of Building) could prohibit the Board of Trustees from using certain self-generated funds for construction projects at the Gulf Coast Research Laboratory. The court held that Section 213-A, MISSISSIPPI CONSTITUTION OF 1890, gave the Board of Trustees authority to manage and control self-generated funds, that construction activities carried out by approval of the Board of Trustees could not be regulated by the State Building Commission, and that the powers conferred upon the Building Commission by statute do not override the powers granted to the IHL Board by the constitution.

Over the years the scope of this decision has been the subject of several cases. In 1985, the Mississippi Supreme Court rendered a decision in *Board of Trustees, Institutions of Higher Learning v. Mississippi Publishers Corporation*, 478 So 2d 269 (Miss, 1985). The court made clear that the Board of Trustees of Institutions of Higher Learning is not beyond the general lawmaking powers of the Legislature. (See *Mississippi Publishers Corporation*, supra at 276.) This reflection was made in a case wherein the court held that the Board of Trustees could not devise policies that would conflict with the mandate of the open meetings laws. Further, the court noted that nothing in Section 213-A or the IHL statutes suggests that the Board of Trustees is beyond the reach of statutes that have general applicability to all agencies. Similarly in *Board of Trustees, Institutions of Higher Learning v. Peoples Bank*, supra, the Mississippi Supreme Court ruled that the State Budget Commission had the authority under statute to establish purchasing regulations for all state agencies, including the universities.

Finally, in *Van Slyke v. Board of Trustees, Institutions of Higher Learning*, 613 So 2d 872 (Miss, 1993), the Mississippi Supreme Court disposed of an argument that the IHL Board was an autonomous "fourth branch of government" and noted that the board was a constitutional agency in the executive branch of government.

## Conclusion Regarding PEER's Authority to Review University-Affiliated Organizations

When viewing these cases together, it appears to PEER that:

- The *Allain* case gives IHL broad authority over the expenditure of non-appropriated self-generated funds.
- Cases subsequent to *Allain* have made it clear that IHL and the universities are state agencies, that they carry out executive functions, and that they are not exempted by Section 213-A of the Constitution from statutes of general applicability (e. g., purchasing regulations, open meetings laws).
- PEER's statute is a general statute that extends to all agencies and their independent contractors when necessary.
- The *Allain* case speaks only to the constitutional status and powers of the Board of Trustees of Institutions of Higher Learning only. It does not confer any autonomy upon the individual universities, which are also state agencies.

While an independent contractor of a university such as a foundation might argue that it is expending its own funds and therefore is shielded from any form of oversight, PEER would assert that the character of the funds being expended does not exempt the foundations or other affiliated organization from oversight. Oversight can have many purposes other than control over the use and expenditure of self-generated funds. The Legislature may inform itself of the purposes toward which foundations and affiliated organizations direct their efforts so as to make decisions regarding any general laws that might be proposed governing the relations between the universities and their affiliated organizations. Of perhaps greater importance, the Legislature can always use organizations such as PEER to inform it of how well the universities are making use of all funds as an adjunct to the Legislature's power to make decisions on providing universities with general funds. In theory, wasteful spending practices utilizing self-generated funds could necessitate an increased need for general funds. Questions and their answers about the use of any form of spending or funding are critical to the legislative appropriations process.

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**Appendix D: State Appropriations Units With FY 2007 and FY 2008 Appropriations Language Regarding Procurement of Advertising Services**

|   |
|---|
| Alcorn State University-Agricultural Programs                       |
| Board of Animal Health  |
| Board of Chiropractic Examiners                                     |
| Department of Agriculture and Commerce                              |
| Department of Audit   |
| Department of Corrections   |
| Department of Information Technology Services                       |
| Department of Mental Health   |
| Department of Public Safety   |
| Egg Marketing Board   |
| Fair Commission-Livestock Show                                      |
| Fair Commission-Support   |
| Forest and Wildlife Research Center                                 |
| Institute for Forest Inventory                                      |
| Institutions of Higher Learning-Institutional Support               |
| Institutions of Higher Learning-Student Financial Aid               |
| Institutions of Higher Learning-Subsidiary Programs                 |
| Mississippi Agricultural and Forestry Experiment Station            |
| Mississippi Cooperative Extension Service                           |
| Mississippi Development Authority                                   |
| Mississippi Emergency Management Agency                             |
| Mississippi National Guard  |
| Mississippi State University-College of Veterinary Medicine         |
| Secretary of State  |
| State Board for Community and Junior Colleges-Administration        |
| State Board for Community and Junior Colleges-Institutional Support |
| Tennessee-Tombigbee Waterway Development Authority                  |
| University of Mississippi Medical Center                            |
| Veterans Affairs Board  |

SOURCE: Legislative Budget Office staff and Mississippi Legislature's Bill Status Website.

## Appendix E: State Entity FY 2006 Procurement of Advertising Services Utilizing the “Small Purchase” Method

| Agency   | Advertising Vendor       | FY 2006 Expenditures |
|--|--------------------------|----------------------|
| Department of Agriculture                        | TeleSouth Communications | \$17,496.00          |
| Department of Education                          | TeleSouth Communications | 6,355.00             |
| Department of Environmental Quality              | TeleSouth Communications | 28,105.70            |
| Department of Health                             | TeleSouth Communications | 33,000.00            |
| Department of Mental Health                      | TeleSouth Communications | 10,480.00            |
| Department of Public Safety*                     | TeleSouth Communications | 164,143.00           |
| Department of Rehabilitation Services            | TeleSouth Communications | 71,500.00            |
| Division of Medicaid                             | TeleSouth Communications | 56,809.46            |
| Fair Commission                                  | TeleSouth Communications | 5,065.00             |
| Forestry Commission                              | TeleSouth Communications | 41,370.00            |
| Governor’s Office                                | Frontier Strategies      | 11,358.69            |
| Mississippi Authority for Educational Television | GodwinGroup              | 8,405.16             |
| Mississippi Department of Transportation**       | TeleSouth Communications | 52,000.00            |
| Mississippi Development Authority                | TeleSouth Communications | 6,750.00             |
| Public Service Commission                        | TeleSouth Communications | 25,000.00            |
| Secretary of State                               | TeleSouth Communications | 11,000.00            |
| <b>Total</b>                                     |                          | <b>\$548,838.01</b>  |

Note: Personal Service Contract Review Board regulations allow state agencies to procure professional services of \$50,000 or less without obtaining written quotations or competitive bids—i.e., “small purchases.” Expenditure amounts listed above for some agencies represent multiple contracts or campaigns for those agencies with cumulative totals greater than \$50,000.

\* The Department of Public Safety’s FY 2006 expenditures to TeleSouth Communications include \$70,243 in prior year expenses.

\*\* The Mississippi Department of Transportation is not under the purview of the Personal Service Contract Review Board.

SOURCE: PEER analysis of Legislative Budget Office survey data, Statewide Automated Accounting System (SAAS) data, and agency information.

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