



Thomas A. Schweich
Missouri State Auditor

**OFFICE OF
ADMINISTRATION**

Missouri Ethics Commission

August 2011
Report No. 2011-44



<http://auditor.mo.gov>



Thomas A. Schweich
Missouri State Auditor

CITIZENS SUMMARY

Findings in the audit of the Office of Administration, Missouri Ethics Commission

Access to Investigations, Audits, and Review Files	Because the State Auditor's Office is not authorized to review files of investigations, audits or reviews, we were unable to determine if the Missouri Ethics Commission (MEC) complied with state laws and internal procedures related to complaint investigations. Currently state law does not provide the State Auditor's Office with access to such files. The MEC should work with the General Assembly to provide the State Auditor's Office access to these files.
Compliance Monitoring	MEC has not fully employed its new oversight powers or fulfilled the new responsibilities given to it during the 2010 legislative session. The Executive Director of MEC explained that additional staffing would be required to do so. It should be noted that the Missouri Supreme Court is currently considering the constitutionality of the senate bill which introduced these new powers and responsibilities. The MEC should continue to monitor the legal status of the new statutory requirements and use a risk based approach to be more proactive in its investigative approach and maximize available staffing.
Transparency Improvements	The MEC has made significant improvements to the data available to the public through its website, but additional improvements, such as improving search capabilities or posting a list of late/non-filers, could provide useful information to users, increase accountability and transparency, and possibly deter wrongdoing.

In the areas audited, the overall performance of this entity was **Good**.*

American Recovery and Reinvestment Act 2009 (Federal Stimulus)	The Office of Administration, Missouri Ethics Commission did not receive any federal stimulus monies during the audited time period.
--	--

*The rating(s) cover only audited areas and do not reflect an opinion on the overall operation of the entity. Within that context, the rating scale indicates the following:

- Excellent:** The audit results indicate this entity is very well managed. The report contains no findings. In addition, if applicable, prior recommendations have been implemented.
- Good:** The audit results indicate this entity is well managed. The report contains few findings, and the entity has indicated most or all recommendations have already been, or will be, implemented. In addition, if applicable, many of the prior recommendations have been implemented.
- Fair:** The audit results indicate this entity needs to improve operations in several areas. The report contains several findings, or one or more findings that require management's immediate attention, and/or the entity has indicated several recommendations will not be implemented. In addition, if applicable, several prior recommendations have not been implemented.
- Poor:** The audit results indicate this entity needs to significantly improve operations. The report contains numerous findings that require management's immediate attention, and/or the entity has indicated most recommendations will not be implemented. In addition, if applicable, most prior recommendations have not been implemented.

All reports are available on our website: <http://auditor.mo.gov>

Office of Administration

Missouri Ethics Commission

Table of Contents

State Auditor's Report	2
------------------------	---

Management Advisory Report - State Auditor's Findings	1. Access to Investigations, Audits, and Review Files.....4 2. Compliance Monitoring5 3. Transparency Improvements8
---	---

Organization and Statistical Information	10
---	----

Appendixes

A Comparative Statement of Receipts, 2 Years Ended June 30, 2010.....	11
B Comparative Statement of Appropriations and Expenditures, 2 Years Ended June 30, 2010.....	12
C Comparative Statement of Expenditures (From Appropriations), 5 Years Ended June 30, 2010.....	13



THOMAS A. SCHWEICH

Missouri State Auditor

Honorable Jeremiah W. (Jay) Nixon, Governor
and
Members of the Missouri Ethics Commission
and
Julie A. Allen, Executive Director
Missouri Ethics Commission
Jefferson City, Missouri

We have audited certain operations of the Office of Administration, Missouri Ethics Commission, in fulfillment of our duties under Chapter 29, RSMo. The scope of our audit included, but was not necessarily limited to, the years ended June 30, 2010 and 2009. The objectives of our audit were to:

1. Evaluate the commission's internal controls over significant management and financial functions.
2. Evaluate the commission's compliance with certain legal provisions.
3. Evaluate the economy and efficiency of certain management practices and operations, including certain financial transactions.

Our methodology included reviewing minutes of meetings, written policies and procedures, financial records, and other pertinent documents; interviewing various personnel of the commission, as well as certain external parties; and testing selected transactions. Section 105.955.17, RSMo, prohibits the State Auditor's Office from reviewing any file or document pertaining to any particular investigation, audit, or review by the Missouri Ethics Commission. As a result, we could not audit certain information because of the limitations this statute imposed on the scope of our audit.

We obtained an understanding of internal controls that are significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. We also obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of contract or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions.

Except as discussed in the second paragraph, we conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

The accompanying Organization and Statistical Information is presented for informational purposes. This information was obtained from the commission's management and was not subjected to the procedures applied in our audit of the commission.

For the areas audited, we identified (1) no significant deficiencies in internal controls, (2) no significant noncompliance with legal provisions, and (3) the need for improvement in management practices and procedures. The accompanying Management Advisory Report presents our findings arising from our audit of the Office of Administration, Missouri Ethics Commission.



Thomas A. Schweich
State Auditor

The following auditors participated in the preparation of this report:

Director of Audits:	John Luetkemeyer, CPA
Audit Manager:	Robert Showers, CPA
In-Charge Auditor:	Robert L. McArthur II
Audit Staff:	Robert Graham

Office of Administration - Missouri Ethics Commission

Management Advisory Report

State Auditor's Findings

1. Access to Investigations, Audits, and Review Files

State statutes prohibit the State Auditor from reviewing investigation files, audits, or reviews conducted by the Missouri Ethics Commission (MEC). As a result, the State Auditor's office was unable to determine if the MEC fully complied with state laws and internal policies and procedures pertaining to complaint investigations.

The MEC receives complaints regarding violations of state laws related to lobbying, personal financial disclosure, and campaign finance disclosure, as well as violations of code of conduct and instances of conflicts of interest by employees of the State or political subdivisions. State law provides the commission the authority to audit and/or investigate the allegations and determine, by a vote of at least four members of the commission, whether there are reasonable grounds to believe that a violation has occurred. During the 2 years ended June 30, 2010, the MEC received approximately 390 complaints and completed over 280 investigations.

Per Section 105.955.17, RSMo, the State Auditor may audit the MEC and inspect materials relating to its functions to determine whether appropriations were spent within the intent of the General Assembly. However, the audit "shall not extend to review of any file or document pertaining to any particular investigation, audit or review by the commission, an investigator or any staff or person employed by the commission or under the supervision of the commission or an investigator." As a result, our access to these investigations was limited to the final actions taken by the commission; and we could not fully determine if the commission complied with state law regarding the timeliness of pending complaint determinations and could not adequately review the performance of the investigations process.

Based on our review of state laws and regulations of the states surrounding Missouri and inquiries with representatives of other state ethics entities, none of those states have any provisions specifically prohibiting their respective auditor from gaining access to investigation complaints. All eight contiguous states have strict confidentiality requirements related to complaint investigations, and representatives in five of these states indicated their state law and/or constitution, in their opinion, would or could prohibit their respective auditor from looking at investigation files. However, three other states indicated their respective auditor would only temporarily be prohibited, if at all, from looking at ongoing investigation files during the course of an audit.

Limiting the State Auditor's office access to investigation records reduces the level of transparency and accountability of the MEC. Any confidentiality concerns related to the contents of these records would be addressed by Section 29.070, RSMo, which requires examiners appointed by the State Auditor to take an oath of confidentiality.



Recommendation

The MEC work with the General Assembly to provide the State Auditor the necessary access to complaint investigation files to ensure the MEC properly investigates complaints received.

Auditee's Response

The Missouri Ethics Commission provided the following written response:

As noted in this finding, state law establishes confidentiality requirements for the Commission and staff as well as what records the State Auditor may access. During the course of the audit the Commission provided the State Auditor's Office access to the following:

- *Listing of the case numbers; for those cases currently in progress, the case numbers were provided without identifying the individual(s)/entity(s) under investigation;*

For those cases that were requested by the auditor, the auditor received the following:

- *Timing of complaint notifications, established in Section 105.961, RSMo*
- *Timing of investigative notices, established in Section 105.959, RSMo*
- *Timing of Commission decisions, established in Section 105.961, RSMo*
- *The Commission's final decisions and orders*

The only items not accessible to the State Auditor's Office were the actual investigative files, containing investigative reports, documents, and interviews.

The Commission will continue following the confidentiality requirements established in Missouri law.

2. Compliance Monitoring

The passage of additional ethics law requirements in 2010 provided the MEC with additional oversight responsibilities and powers. However, according to MEC officials, the commission's ability to utilize the new oversight powers provided by the legislation is limited due to insufficient staff resources.

New legislation

During the 2010 legislative session Senate Bill (SB) 844 was passed enacting several new ethics law requirements for the MEC to oversee and providing additional oversight powers. New provisions include:

- Allows investigations to be initiated by the MEC, without receipt of a formal complaint, after receiving the approval of all six commissioners.
- Prohibits persons from filing for office until the existing candidate committee or any committee where the person served as a treasurer or deputy treasurer pays all previous fees assessed by the MEC. New



Office of Administration - Missouri Ethics Commission
Management Advisory Report - State Auditor's Finding

provisions prohibit persons from forming a new committee or serving as deputy treasurer of any committee unless all prior campaign finance disclosure reports from prior elections have been filed and previous fees assessed by the MEC have been paid. In addition, prohibitions were added against candidates who have been previously disqualified as a candidate for office in the 1) primary election from being selected by a party nominating committee for the same office in the same primary election or in the corresponding general election, and 2) general election from being selected by a party nominating committee for the same office in the same general election. Finally, a successful candidate is prohibited from taking office until the existing candidate committee or any committee where the person served as a treasurer or deputy treasurer pays related fees assessed by the MEC. All of these new rules must be monitored for compliance.

- Authorizes the MEC to assess late filing fees for campaign finance disclosure reports, including statements of limited activity. In addition, the MEC is now required to send notice of failure to file or timely file campaign finance reports within 7 business days of the failure to file and to send notice to any candidate and the treasurer of the campaign finance committee.
- Requires certain officials or candidates to report contributions greater than \$500 received during regular legislative session within 48 hours, subject to the assessment of late fees.
- Prohibits political action committees, previously referred to as continuing committees, from receiving funds from various sources.

The MEC has adopted procedures to fulfill some of the new responsibilities under SB 844. However, according to MEC officials, limited staff resources have not allowed the MEC to fully implement certain requirements of the new law. Based on discussions with the Executive Director, the ability to initiate investigations would require additional staffing.

The ability to take a risk-based approach in initiating investigations can help identify areas of noncompliance in a timely manner. The early identification of noncompliance can help reduce errors and reduce future noncompliance.

Constitutionality of SB 844

The constitutionality of SB 844 is currently in question. The legislation was deemed unconstitutional by the Cole County Circuit Court. The circuit court's ruling has been appealed to the Missouri Supreme Court. As a result, the circuit court's ruling has been stayed until the Missouri Supreme Court decides on the matter.



Office of Administration - Missouri Ethics Commission
Management Advisory Report - State Auditor's Finding

Limited resources

MEC officials told us the agency's ability to effectively perform its duties was already limited, even before the passage of SB 844, due to the limited resources available.

MEC reporting specialists are currently assigned to perform all review procedures, in addition to other duties such as handling phone calls. This includes review of approximately 1,100 monthly lobbyist reports, 9,000 annual personal financial disclosure reports, and 18,000 campaign finance disclosure reports in election years (about 8,000 reports are received in other years).

During the 2 years ended June 30, 2010, the MEC performed 313 reviews of campaign finance reports, 52 of which resulted in investigations. Pursuant to Section 105.955.14(4), RSMo, it is the duty and responsibility of the MEC to perform reviews and crosschecks of certain filed reports. If potential problems were identified in the reviews or crosschecks, further review was performed by obtaining supporting documentation such as bank documentation. These reviews and crosschecks may not be completed for 6 to 8 months after an election and mistakes and/or non-compliance may not be caught in a timely manner. Over this timeframe, the same mistakes may occur several times without being identified.

While the agency's fiscal year 2012 budget request included a request for seven additional staff positions, five of which related to the implementation of SB 844, only two additional staff positions were approved. Performing expanded reviews on a larger number of reports in a more timely manner would provide more assurance as to the accuracy and completeness of the reporting process and possibly act as a deterrent and prevent inaccurate or fraudulent reporting.

Lobbyist registration fees

According to the National Conference of State Legislatures, Missouri's current lobbyist registration fee of \$10 per year is one of the five lowest registration fees in the nation (of states with lobbyist registration fees). The national average registration fee is approximately \$100 per year.

Recommendation

The MEC monitor the legal status of, and ensure compliance with, new statutory requirements and use a risk-based approach in the review and investigation processes in an effort to be more proactive and maximize available staffing.

Auditee's Response

The Missouri Ethics Commission provided the following written response:

The Commission will continue working with the Legislature in obtaining required resources, as noted in this audit finding. The Commission will also continue consistently enforcing the law and effectively using resources, including working to conduct risk-based analysis.



3. Transparency Improvements

While the MEC has made significant improvements in the information available to the public, opportunities exist to make additional information available to the public.

The MEC has recently made improvements to the data available electronically via its website, including:

- Search capabilities to identify candidates and respective candidate committees for specific elections.
- Committee expenditures by candidate reports that show expenditures in support of or opposition to a specific candidate.
- Reports of contributions over \$500 made to a General Assembly member or statewide elected official during the regular legislative session.
- Reports of campaign committees that identify ballot measures supported or opposed for a specific election.
- Reports of campaign finance committee contributions over \$5,000.
- Search capabilities for final actions of the commission.

We accessed the websites of surrounding states to determine if those states provided additional useful data and/or database search capabilities to website users. Our efforts disclosed the following examples of information the MEC should consider incorporating in its website:

- The MEC website does not currently provide a list of late/non-filers of various reporting forms. The Kansas website provides links to campaigns and lobbyists that failed to file or filed reports containing errors and/or omissions. The Iowa website provides links to listings of committees, individuals, or organizations that failed to file a required report. In addition, the Oklahoma website provides links to candidate, non-candidate, and state lobbyist reports that were not submitted on time for the previous year.
- Search capabilities on the MEC website do not currently allow the user to search lobbyist expenses paid on behalf of his/her principal. A survey of other state websites found seven of the eight states had lobbyist expenditures by principal available. We identified five contiguous states that had the ability to search expenditures by principal.

Incorporating further improvements into the MEC website would provide additional useful information to users of the site and provide more



Office of Administration - Missouri Ethics Commission
Management Advisory Report - State Auditor's Finding

accountability and transparency in ethics law reporting. In addition, disclosing lists of late/non-filers may also possibly serve as a deterrent and prevent late and/or non-filing.

Recommendation

The MEC consider implementing further website improvements to provide additional useful data and search capabilities to its users.

Auditee's Response

The Missouri Ethics Commission provided the following written response:

The Commission appreciates the State Auditor's report making note of the significant improvements made in information available to the public and other stakeholders. Shortly after the State Auditor's Office completed field work, the Commission released the search capability allowing the user to search lobbyist expenses paid on behalf of his/her principal. The Commission will continue identifying and providing improvements.

Office of Administration

Missouri Ethics Commission

Organization and Statistical Information

The Missouri Ethics Commission (MEC) was created by the Missouri Ethics Law of 1991 (Section 105.955, RSMo). The MEC is charged with enforcement of conflicts of interest and lobbying laws (Sections 105.450-498, RSMo) and campaign finance disclosure laws (Chapter 130, RSMo). The MEC is assigned to the Office of Administration for budgeting purposes only.

The MEC receives and reviews complaints alleging violations of the conflict of interest and lobbying statutes and the campaign finance disclosure statute. After investigation of these complaints, the MEC either dismisses the case when reasonable grounds are not found that a violation occurred, refers the case to the MEC's general counsel in preparation of a hearing (i.e. when reasonable grounds are found that a violation occurred), or refers the case to a prosecuting attorney for violations of criminal law.

The MEC reviews and investigates reports required by the campaign finance disclosure law, the financial interest disclosure laws, and the lobbying registration and reporting laws. The MEC acts as the public repository for such reports. The MEC provides information and assistance to lobbyists, elected and appointed officials, employees of the state and political subdivisions, and the general public.

The MEC is composed of six members, not more than three of whom may be the same political party. These members must be from different congressional districts, and no more than three can be from an odd- or even-numbered congressional district. The governor appoints the members of the MEC with the advice and consent of the Senate. The commission elects a biennial chair. Members of the Missouri Ethics Commission as of June 30, 2010, were:

Commissioners

Name and Title	Term Expires
Jim Wright, Chair	March 15, 2012
James R. Tweedy, Vice Chair	March 15, 2012
Jeffrey B. Davison	March 15, 2012
Dennis Rose	March 15, 2014
Louis J. Leonatti	March 15, 2014
Vernon Dawdy	March 15, 2014

Julie Allen has served as the Executive Director since being appointed by the commission in October 2008. The MEC employs 20 full-time personnel.

American Recovery and Reinvestment Act of 2009 (Federal Stimulus)

The MEC did not receive any federal stimulus monies for the 2 years ended June 30, 2010.

Appendix A

Office of Administration
Missouri Ethics Commission
Comparative Statement of Receipts
General Revenue Fund

	Year Ended June 30,	
	2010	2009
Lobbyist registration fees	\$ 10,640	12,000
Penalties	59,232	61,168
Vendor refunds	300	173
Fees for copying public records	581	370
Other	0	2,610
Total	\$ 70,753	76,321

Appendix B

Office of Administration
 Missouri Ethics Commission
 Comparative Statement of Appropriations and Expenditures

	Year Ended June 30,					
	2010			2009		
	Appropriation Authority	Expenditures	Lapsed Balances*	Appropriation Authority	Expenditures	Lapsed Balances*
General Revenue Fund						
Personal service	\$ 892,672	809,684	82,988	895,672	799,882	95,790
Expense and equipment	303,167	299,234	3,933	318,412	270,175	48,237
Payment of real property leases, related services, utilities, systems furniture, structural modifications, and related expenses - expense and equipment	91,535	91,310	225	116,183	91,356	24,827
Total General Revenue Fund	\$ 1,287,374	1,200,228	87,146	1,330,267	1,161,413	168,854

* The lapsed balances include the following withholdings made at the Governor's request:

	Year Ended June 30,	
	2010	2009
General Revenue Fund		
Payment of real property leases, related services, utilities, systems furniture, structural modifications, and related expenses - expense and equipment	\$ 0	23,910
Total General Revenue Fund	\$ 0	23,910

Appendix C

Office of Administration
 Missouri Ethics Commission
 Comparative Statement of Expenditures (From Appropriations)

	Year Ended June 30,				
	2010	2009	2008	2007	2006
Salaries and wages	\$ 809,683	799,882	781,601	761,816	808,566
Travel, in-state	25,981	34,053	41,539	20,072	32,653
Travel, out-of-state	2,547	5,828	2,061	2,583	1,035
Fuel and utilities	19,098	18,036	19,085	11,833	17,159
Supplies	63,523	42,736	38,925	37,694	25,786
Professional development	8,298	5,030	3,271	4,624	1,736
Communication services and supplies	17,076	25,038	14,543	19,684	27,865
Services:					
Professional	105,122	98,571	114,162	81,831	73,239
Housekeeping and janitorial	10,192	10,508	6,958	6,009	6,566
Maintenance and repair	45,301	9,963	6,623	55,973	14,650
Equipment:					
Computer	16,386	26,933	19,575	46,150	5,275
Office	10,309	20,095	924	11,989	3,416
Other	947	513	0	0	0
Real property rentals and leases	63,787	63,264	62,130	63,579	59,787
Equipment rental and leases	168	0	0	0	961
Miscellaneous expenses	1,690	694	1,029	4,753	3,007
Refunds	120	269	92	120	84
Total Expenditures	\$ <u>1,200,228</u>	<u>1,161,413</u>	<u>1,112,518</u>	<u>1,128,710</u>	<u>1,081,785</u>