

Office of the State Auditor

Division of State Audit

Office of
Attorney General
Bismarck, North Dakota

Audit Report for the
Two-Year Period Ended June 30, 2008
Client Code 125

Robert R. Peterson
State Auditor



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Contents

<i>Transmittal Letter</i>	<i>1</i>
<i>Executive Summary</i>	<i>2</i>
<i>Introduction</i>	<i>2</i>
<i>Responses to LAFRC Audit Questions</i>	<i>2</i>
<i>LAFRC Audit Communications</i>	<i>3</i>
<i>Audit Objectives, Scope, and Methodology</i>	<i>5</i>
<i>Discussion and Analysis</i>	<i>7</i>
<i>Financial Summary</i>	<i>7</i>
<i>Analysis of Significant Variances Between Final Budgeted and Actual Expenditures</i>	<i>7</i>
<i>Financial Statements</i>	<i>8</i>
<i>Statement of Revenues and Expenditures</i>	<i>8</i>
<i>Statement of Appropriations</i>	<i>9</i>
<i>Internal Control</i>	<i>13</i>
<i>Compliance With Legislative Intent</i>	<i>14</i>
<i>Operations</i>	<i>16</i>
<i>Management Letter (Informal Recommendations)</i>	<i>17</i>

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Transmittal Letter

March 11, 2009

The Honorable John Hoeven, Governor
Members of the North Dakota Legislative Assembly
The Honorable Wayne Stenejhem, Attorney General, Office of Attorney General

We are pleased to submit this audit of the Office of Attorney General for the two-year period ended June 30, 2008. This audit resulted from the statutory responsibility of the State Auditor to audit or review each state agency once every two years. The same statute gives the State Auditor the responsibility to determine the contents of these audits.

In determining the contents of the audits of state agencies, the primary consideration was to determine how we could best serve the citizens of the state of North Dakota. Naturally we determined financial accountability should play an important part of these audits. Additionally, operational accountability is addressed whenever possible to increase efficiency and effectiveness of state government.

The in-charge auditor for this audit was Kevin Scherbenske, CPA. Cindi Pedersen, CPA, was the audit supervisor. Inquiries or comments relating to this audit may be directed to the audit supervisor (701) 328-4743. We wish to express our appreciation to Mr. Stenejhem and his staff for the courtesy, cooperation, and assistance they provided to us during this audit.

Respectfully submitted,

A handwritten signature in cursive script that reads "Bob Peterson".

Robert R. Peterson
State Auditor

Executive Summary

INTRODUCTION

The Attorney General is the chief legal counsel and advisor to state government in North Dakota. He represents and defends the interests of the state and the people of North Dakota in civil and criminal actions. He may take legal action to protect the rights of North Dakotans, defend the actions of state officials, and ensure public order.

The Attorney General is a member of numerous boards and commissions, including the Board of University and School Lands, Industrial Commission (which oversees all state-owned industries), Drug and Alcohol Commission, Judicial Council and Pardon Advisory Board.

The Office is comprised of fourteen divisions: Attorney General Administration, Bureau of Criminal Investigation, Civil Litigation, Consumer Protection, Crime Lab, Criminal and Regulatory, Finance and Administrative, Fire Marshal, Gaming, Information Technology, Licensing, Lottery, Natural Resources and Indian Affairs, and State and Local Government.

RESPONSES TO LAFRC AUDIT QUESTIONS

The Legislative Audit and Fiscal Review Committee (LAFRC) requests that certain items be addressed by auditors performing audits of state agencies.

1. What type of opinion was issued on the financial statements?

Financial statements were not prepared by the Office of Attorney General in accordance with generally accepted accounting principles so an opinion is not applicable. The agency's transactions were tested and included in the state's basic financial statements on which an unqualified opinion was issued.

2. Was there compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning?

Yes.

3. Was internal control adequate and functioning effectively?

Yes.

4. *Were there any indications of lack of efficiency in financial operations and management of the agency?*

No.

5. *Has action been taken on findings and recommendations included in prior audit reports?*

The Office of Attorney General has implemented all recommendations included in the prior audit report.

6. *Was a management letter issued? If so, provide a summary below, including any recommendations and the management responses.*

Yes, a management letter was issued and is included on page 17 of this report, along with management's response.

LAFRC AUDIT COMMUNICATIONS

1. *Identify any significant changes in accounting policies, any management conflicts of interest, any contingent liabilities, or any significant unusual transactions.*

There were no significant changes in accounting policies, no management conflicts of interest were noted, no contingent liabilities were identified or significant unusual transactions.

2. *Identify any significant accounting estimates, the process used by management to formulate the accounting estimates, and the basis for the auditor's conclusions regarding the reasonableness of those estimates.*

The Office of Attorney General's financial statements do not include any significant accounting estimates.

3. *Identify any significant audit adjustments.*

Significant audit adjustments were not necessary.

4. *Identify any disagreements with management, whether or not resolved to the auditor's satisfaction relating to a financial accounting, reporting, or auditing matter that could be significant to the financial statements.*

None.

5. *Identify any serious difficulties encountered in performing the audit.*

None.

6. *Identify any major issues discussed with management prior to retention.*

This is not applicable for audits conducted by the Office of the State Auditor.

7. *Identify any management consultations with other accountants about auditing and accounting matters.*

None.

8. *Identify any high-risk information technology systems critical to operations based on the auditor's overall assessment of the importance of the system to the agency and its mission, or whether any exceptions identified in the six audit report questions to be addressed by the auditors are directly related to the operations of an information technology system.*

ConnectND Finance, Human Resource Management System (HRMS), Licensing System, Gaming System, and Legal Billing System are high-risk information technology systems critical to the Office of Attorney General.

Audit Objectives, Scope, and Methodology

Audit Objectives

The objectives of this audit of the Office of Attorney General for the two-year period ended June 30, 2008 were to provide reliable, audited financial statements and to answer the following questions:

1. What are the highest risk areas of the Office of Attorney General's operations and is internal control adequate in these areas?
2. What are the significant and high-risk areas of legislative intent applicable to the Office of Attorney General and are they in compliance with these laws?
3. Are there areas of the Office of Attorney General's operations where we can help to improve efficiency or effectiveness?

Audit Scope

This audit of the Office of Attorney General is for the two-year period ended June 30, 2008. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Office of Attorney General has operations in the following locations. Each location will be included in the audit scope:

- The central office in the Capitol Building.
- Crime Lab in downtown Bismarck
- Bureau of Criminal Investigations in north Bismarck

Audit Methodology

To meet the objectives outlined above, we:

- Prepared financial statements from the legal balances on the state's accounting system tested as part of this audit and the audit of the state's Comprehensive Annual Financial Report and developed a discussion and analysis of the financial statements.
- Performed detailed analytical procedures including computer assisted auditing techniques. These procedures were used to identify high risk transactions and potential problem areas for additional testing.
- Tested internal control and compliance with laws and regulations which included selecting representative

samples to determine if controls were operating effectively and to determine if laws were being followed consistently. Nonstatistical sampling was used and the results were projected to the population. Further where applicable, populations were stratified to ensure that particular groups within a population were adequately represented in the sample, and to improve efficiency by gaining greater control on the composition of the sample.

- Interviewed appropriate agency personnel.
- Queried the ConnectND (PeopleSoft) ERP system.
- Observed Office of Attorney General's processes and procedures.

In aggregate there were no significant limitations or uncertainties related to our overall assessment of the sufficiency and appropriateness of audit evidence.

Confidential or Sensitive
Information Omitted

Any personal information, including social security numbers and names of any BCI agents, has been excluded from the workpapers.

Discussion and Analysis

The accompanying financial statements have been prepared to present the Office of Attorney General's revenues and expenditures on the legal (budget) basis. The accompanying financial statements are not intended to be presented in accordance with generally accepted accounting principles (GAAP).

For the two-year period June 30, 2008, operations of the Office of Attorney General were primarily supported by appropriations from the state's general fund. This is supplemented by federal funding and fees credited to the agency's operating fund.

FINANCIAL SUMMARY

Revenues consisted primarily of lottery proceeds, pull tab/gaming taxes, federal funds, as well as lawsuit settlement fees and legal services. Other revenues during the audited period included various license/permit fees, background checks, and other miscellaneous revenue. These all remained fairly constant for the Office of Attorney General, increasing only slightly. Total revenues were \$39,144,552 for the year ended June 30, 2008 as compared to \$37,429,017 for the year ended June 30, 2007.

The increase noted in fines-forfeitures-escheat amounts is due to two large legal settlements received in fiscal year 2008. Also, bingo card excise tax is new revenue for fiscal year 2008 as it was previously collected by the Tax Department.

Total expenditures for the Office of Attorney General were \$33,415,926 for the year ended June 30, 2008 as compared to \$30,694,048 for the prior year. The increase in total expenditures for the audited period reflects primarily building construction for the new Crime Lab facilities. All other expenditures remained fairly constant.

ANALYSIS OF SIGNIFICANT VARIANCES BETWEEN FINAL BUDGETED AND ACTUAL EXPENDITURES

The excess of capital assets appropriations over actual expenditures during the 2006-2007 biennium were due to the delay in construction of the new Crime Lab building until fiscal year 2008.

Financial Statements

STATEMENT OF REVENUES AND EXPENDITURES

	<u>June 30, 2008</u>	<u>June 30, 2007</u>
<u>Revenues and Other Sources:</u>		
Lottery Proceeds	\$14,665,047	\$16,225,652
Pull Tab Excise Tax	6,078,381	5,996,998
Gaming Tax	3,117,501	2,929,510
Revenue from Federal Government	2,704,728	2,802,886
Fines-Forfeitures-Escheat	2,039,948	337,696
Legal Services	1,312,805	870,442
Other License, Permits, and Fees	722,106	607,292
Background Checks	572,910	385,850
Bingo Card Excise Tax	730,769	
Fire Marshall	156,287	103,756
Interest Earnings	63,836	89,292
Miscellaneous Revenue	301,417	267,662
Transfers In	6,678,817	6,811,981
Total Revenues and Other Sources	<u>\$39,144,552</u>	<u>\$37,429,017</u>
<u>Expenditures and Other Uses:</u>		
Salaries and Benefits	\$11,042,790	\$ 9,904,970
Lottery Prizes	5,254,551	5,772,649
Building Construction	2,714,936	133,400
Fees – Professional Services	2,657,909	2,569,414
Operating Fees and Services	1,171,936	849,847
Grants, Benefits, and Claims	1,024,852	1,101,358
IT – Data Processing/Repairs/Software	1,008,423	1,101,988
Rent of Building Space	451,934	388,791
Travel	450,361	351,728
Miscellaneous Expenditures	1,552,584	1,716,390
Transfers Out	6,085,650	6,803,513
Total Expenditures and Other Uses	<u>\$33,415,926</u>	<u>\$30,694,048</u>

STATEMENT OF APPROPRIATIONS

For The Fiscal Year Ended June 30, 2008

Expenditures by Line Item:	<u>Original Appropriation</u>	<u>Adjustments</u>	<u>Final Appropriation</u>	<u>Expenditures</u>	<u>Unexpended Appropriation</u>
Salaries and Benefits	\$ 22,427,935	\$ 267,964	\$ 22,695,899	\$ 10,399,643	\$ 12,296,256
Operating Expenses	10,596,526	33,102	10,629,628	3,697,040	6,932,588
Capital Assets	2,569,731	3,289,720	5,859,451	2,858,957	3,000,494
Grants	4,197,000		4,197,000	1,089,985	3,107,015
Litigation Fees	50,000		50,000	30,890	19,110
Medical Examinations	500,000		500,000	73,000	427,000
North Dakota Lottery	3,930,589		3,930,589	1,329,988	2,600,601
Arrest and Return of Fugitives	17,000		17,000	14,883	2,117
Gaming Commission	6,141		6,141	1,626	4,515
Computerized Registrations	1,046,080		1,046,080		1,046,080
Totals	<u>\$ 45,341,002</u>	<u>\$ 3,590,786</u>	<u>\$ 48,931,788</u>	<u>\$ 19,496,012</u>	<u>\$ 29,435,776</u>
Expenditures by Source:					
General Fund	\$ 24,432,081	\$ 226,215	\$ 24,658,296	\$ 11,892,353	\$ 12,765,943
Other Funds	20,901,921	3,371,571	24,273,492	7,603,659	16,669,833
Totals	<u>\$ 45,334,002</u>	<u>\$ 3,597,786</u>	<u>\$ 48,931,788</u>	<u>\$ 19,496,012</u>	<u>\$ 29,435,776</u>

Appropriation Adjustments:

The \$267,964 in additional appropriation authority in the salary line was due to two increases. \$218,464 was the result of the equity pool increase granted by Senate Bill 2189 for classified state employees. \$49,500 was approved by the Emergency Commission to accept additional federal funds for temporary employees to train law enforcement on new breathalyzer machines.

The \$33,102 in additional appropriation authority in the operating line was due to two increases. \$25,000 was for the purpose of reimbursing witness fees to counties and cities. \$8,102 was to allow additional funds for the implementation of new breathalyzer machines. Both adjustments were approved by the Emergency Commission.

The \$3,289,720 in additional appropriation authority in the capital assets line was due to two increases. \$3,147,322 was carryover from the previous biennium, approved in Senate Bill 2003 of the 2007 Legislative session. \$142,398 was approved by the Emergency Commission to accept additional federal money to purchase breathalyzers.

Expenditures Without Appropriations Of Specific Amounts:

Asset Forfeiture Fund has a continuing appropriation authorized by NDCC section 54-12-14 (\$139,803 of expenditures for fiscal year 2008).

Attorney General Refund Fund has a continuing appropriation authorized by NDCC section 54-12-18 (\$49,209 of expenditures for fiscal year 2008).

Lottery Operating Fund has a continuing appropriation authorized by NDCC section 53-12.1-09 (\$13,622,534 of expenditures for fiscal year 2008).

Special Operations Team Reimbursement Fund has a continuing appropriation authorized by NDCC section 54-12-23 (\$5,745 of expenditures for fiscal year 2008).

Insurance recoveries have a continuing appropriation authorized by NDCC section 54-44.1-09.1 (\$522 of expenditures for fiscal year 2008).

Multijurisdictional Drug Task Force Fund has a continuing appropriation authorized by NDCC section 54-12-26 (\$98,017 of expenditures for fiscal year 2008).

For The Biennium Ended June 30, 2007

Expenditures by Line Item:	<u>Original Appropriation</u>	<u>Adjustments</u>	<u>Final Appropriation</u>	<u>Expenditures</u>	<u>Unexpended Appropriation</u>
Salaries and Benefits	\$ 19,549,735		\$ 19,549,735	\$ 18,232,632	\$ 1,317,103
Operating Expenses	8,483,795	\$ 43,000	8,526,795	6,612,722	1,914,073
Capital Assets	5,418,741		5,418,741	1,287,729	4,131,012
Grants	5,944,056		5,944,056	3,523,593	2,420,463
Litigation Fees	50,000	36,140	86,140	86,140	
State School Finance System	240,000	200,030	440,030	440,030	
North Dakota Lottery	3,899,191		3,899,191	2,181,514	1,717,677
Arrest and Return of Fugitives	10,000		10,000	6,633	3,367
Gaming Commission	5,039		5,039	4,533	506
ND Children's Advocacy Centers	100,000		100,000	100,000	
Totals	<u>\$ 43,700,557</u>	<u>\$ 279,170</u>	<u>\$ 43,979,727</u>	<u>\$ 32,475,526</u>	<u>\$ 11,504,201</u>
Expenditures by Source:					
General Fund	\$ 19,212,156	\$ 279,170	\$ 19,491,326	\$ 19,482,806	\$ 8,520
Other Funds	24,488,401		24,488,401	12,992,720	11,495,681
Totals	<u>\$ 43,700,557</u>	<u>\$ 279,170</u>	<u>\$ 43,979,727</u>	<u>\$ 32,475,526</u>	<u>\$ 11,504,201</u>

Appropriation Adjustments:

Senate Bill 2023 of the 2007 Legislative session authorized the following in additional appropriation authority - \$43,000 in the operating line, \$21,140 in litigation fees line, and \$103,030 in state school finance system line.

The remaining \$15,000 in additional appropriation authority for the litigation fees line was for increased costs associated with this program and was approved by the Emergency Commission.

The remaining \$97,000 in additional appropriation authority for the state school finance system was required due to higher than expected lawsuit costs. The adjustment was approved by the Emergency Commission.

Expenditures Without Appropriations Of Specific Amounts:

Asset Forfeiture Fund has a continuing appropriation authorized by NDCC section 54-12-14 (\$58,128 of expenditures for fiscal year 2007).

Attorney General Refund Fund has a continuing appropriation authorized by NDCC section 54-12-18 (\$79,035 of expenditures for fiscal year 2007).

Lottery Operating Fund has a continuing appropriation authorized by NDCC section 53-12.1-09 (\$14,625,968 of expenditures for fiscal year 2007).

Special Operations Team Reimbursement Fund has a continuing appropriation authorized by NDCC section 54-12-23 (\$6,257 of expenditures for fiscal year 2007).

Internal Control

In our audit for the two-year period ended June 30, 2008, we identified the following areas of the Office of Attorney General's internal control as being the highest risk:

Internal Controls Subjected To Testing

- Controls surrounding the processing of revenues.
- Controls surrounding the processing of expenditures.
- Controls effecting the safeguarding of assets.
- Controls relating to compliance with legislative intent.
- Controls surrounding the ConnectND (PeopleSoft) system.
- Controls surrounding the following information system:
 - Licensing System
 - Gaming Tax System
 - Legal Billing System
- Controls surrounding the following operational areas:
 - Background checks procedures
 - Cold medicine signature list
 - Attorney General deposit procedures

The criteria used to evaluate internal control is published in the publication *Internal Control – Integrated Framework* from the Committee of Sponsoring Organizations (COSO) of the Treadway Commission.

We gained an understanding of internal control surrounding these areas and concluded as to the adequacy of their design. We also tested the operating effectiveness of those controls we considered necessary based on our assessment of audit risk. We concluded internal control was adequate.

Auditors are required to report deficiencies in internal control that are significant within the context of the objectives of the audit. A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect (1) misstatements in financial or performance information, (2) violations of laws and regulations, or (3) impairments of effectiveness or efficiency of operations, on a timely basis. Considering both qualitative and quantitative factors, we did not identify any significant deficiencies in internal control. However, we noted other matters involving internal control that we have reported to management of Office of Attorney General in a management letter dated March 11, 2009.

Compliance With Legislative Intent

In our audit for the two-year period ended June 30, 2008, we identified and tested Office of Attorney General's compliance with legislative intent for the following areas that we determined to be significant and of higher risk of noncompliance:

Legislative Intent Included In Our Audit Scope

- Conduct required background checks for employees of licensed gaming organizations or distributors (North Dakota Century Code section 54-12-08).
- Received adequate incident reports from insurance companies to report fire losses (North Dakota Century Code section 18-01-05).
- Establishment of a sobriety program pilot project (2007 North Dakota Session Laws SB2003, section 11).
- Proper use of the following legally restricted funds:
 - Asset forfeiture fund.
 - Attorney General refund fund.
 - Special operations team reimbursement fund.
 - Multijurisdictional drug task force fund.
 - Gaming and excise tax allocation fund.
- Application of proper statutory rates relating to revenue.
- Proper use of the State Treasurer (State Constitution, article X, section 12).
- Compliance with appropriations and related transfers (2005 North Dakota Session Laws chapter 3 and 2007 North Dakota Session Laws Chapter 30).
- Compliance with OMB's Purchasing Procedures Manual.
- Travel-related expenditures are made in accordance with OMB policy and state statute.
- Adequate blanket bond coverage of employees (NDCC section 26.1-21-08).
- Compliance with fixed asset requirements including record keeping, surplus property, lease and financing arrangements in budget requests, and lease analysis requirements.
- Compliance with payroll related laws including statutory salaries for applicable elected and appointed positions, and certification of payroll.

The criteria used to evaluate legislative intent are the laws as published in the *North Dakota Century Code* and the *North Dakota Session Laws*.

Government Auditing Standards requires auditors to report all instances of fraud and illegal acts unless they are inconsequential within the context of the audit objectives. Further, auditors are required to report significant violations of provisions of contracts or

grant agreements, and significant abuse that have occurred or are likely to have occurred.

The results of our tests disclosed no instances of noncompliance that are required to be reported under *Government Auditing Standards*. Thus, we concluded there was compliance with the legislative intent identified above.

While we did not find any items that were required to be reported in accordance with *Government Auditing Standards*, we noted an inconsequential or insignificant instance of non-compliance that we have reported to management of the Office of Attorney General in a management letter dated March 11, 2009.

Operations

This audit did not identify areas of the Office of the Attorney General's operations where we determined it was practical at this time to help to improve efficiency or effectiveness.

Management Letter (Informal Recommendations)

March 11, 2009

The Honorable Wayne Stenejhem
Attorney General
Office of the Attorney General
600 E. Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Stenejhem:

We have performed an audit of the Office of Attorney General for the two-year period ended June 30, 2008, and have issued a report thereon. As part of our audit, we gained an understanding of the Office of Attorney General's internal control structure to the extent we considered necessary to achieve our audit objectives. We also performed tests of compliance as described in the same report.

Our audit procedures are designed primarily to enable us to report on our objectives including those related to internal control and compliance with laws and regulations and may not bring to light all weaknesses in systems and procedures or noncompliance with laws and regulations which may exist. We aim, however, to use our knowledge of your organization gained during our work to make comments and suggestions which we hope will be useful to you.

In connection with the audit, gaining an understanding of the internal control structure, and tests of compliance with laws and regulations referred to above, we noted certain conditions we did not consider reportable within the context of your audit report. These conditions relate to areas of general business practice or control issues that have no significant bearing on the administration of federal funds. We do, however, want to present our recommendations to you for your consideration and whatever follow-up action you consider appropriate. During the next audit we will determine if these recommendations have been implemented, and if not, we will reconsider their status.

The following present our informal recommendations.

CASH

Informal Recommendation 08-1: We recommend the Office of Attorney General ensure someone independent of requesting federal draws reconcile deposits to receipts/requests.

LEGISLATIVE INTENT

Informal Recommendation 08-2: We recommend the Office of Attorney General follow NDCC 44-08-04 when reimbursing employees for travel costs. No reimbursement of travel costs is allowable when traveling for funeral leave.

PAYROLL

Informal Recommendation 08-3: We recommend the Office of Attorney General ensure someone independent of Personal Action Forms (PAF) processing receive the updated PAF forms and reconcile the payroll change.

Management of Office of Attorney General agreed with these recommendations.

I encourage you to call myself or an audit manager at 328-2241 if you have any questions about the implementation of recommendations included in your audit report or this letter.

Sincerely,

A handwritten signature in black ink that reads "Kevin Scherbenske". The signature is written in a cursive, slightly slanted style.

Kevin Scherbenske
Auditor in-charge