

Special Review

Administration of State Funds by Women's Advocates, Inc.



Financial Audit Division

The Office of the Legislative Auditor (OLA) is a professional, nonpartisan office in the legislative branch of Minnesota State government. Its principal responsibility is to audit and evaluate the agencies and programs of state government (the State Auditor audits local governments).

OLA's Financial Audit Division annually audits the state's financial statements and, on a rotating schedule, audits agencies in the executive and judicial branches of state government, three metropolitan agencies, and several "semi-state" organizations. The division also investigates allegations that state resources have been used inappropriately.

The division has a staff of approximately fifty auditors, most of whom are CPAs. The division conducts audits in accordance with standards established by the American Institute of Certified Public Accountants and the Comptroller General of the United States.

Consistent with OLA's mission, the Financial Audit Division works to:

- Promote Accountability,
- Strengthen Legislative Oversight, and
- Support Good Financial Management.

Through its Program Evaluation Division, OLA conducts several evaluations each year and one best practices review.

OLA is under the direction of the Legislative Auditor, who is appointed for a six-year term by the Legislative Audit Commission (LAC). The LAC is a bipartisan commission of Representatives and Senators. It annually selects topics for the Program Evaluation Division, but is generally not involved in scheduling financial audits.

All findings, conclusions, and recommendations in reports issued by the Office of the Legislative Auditor are solely the responsibility of the office and may not reflect the views of the LAC, its individual members, or other members of the Minnesota Legislature.

This document can be made available in alternative formats, such as large print, Braille, or audio tape, by calling 651-296-1727 (voice), or the Minnesota Relay Service at 651-297-5353 or 1-800-627-3529.

All OLA reports are available at our Web Site: <http://www.auditor.leg.state.mn.us>

If you have comments about our work, or you want to suggest an audit, investigation, evaluation, or best practices review, please contact us at 651-296-4708 or by e-mail at auditor@state.mn.us



OFFICE OF THE LEGISLATIVE AUDITOR

State of Minnesota • James Nobles, Legislative Auditor

Representative Tim Wilkin, Chair
Legislative Audit Commission

Members of the Legislative Audit Commission

Mr. Rich Stanek, Commissioner
Department of Public Safety

Ms. Kathleen H. Corley, Interim Executive Director
Women's Advocates, Inc.

Members of the Women's Advocates, Inc. Board of Directors

We have conducted a special review of Women's Advocates, Inc.'s, financial management of per diem and grant funding from the Department of Public Safety, for the period July 2000 through September 2002. Women's Advocates, Inc., is a private nonprofit organization whose primary mission is to help women successfully leave violent relationships. For fiscal years 2001 through 2003, the state awarded nearly \$5 million of per diem and grants to the organization.

We conducted the review in response to concerns identified by the Department of Public Safety during a site visit of the organization. The department questioned several of the organization's management practices and was concerned about the support for and the appropriateness of the organization's use of state funds. Based on preliminary information obtained from the organization, we decided to pursue the matter further and issue this special report. The following summary highlights our objectives and conclusions. We discuss the issues more fully in the individual chapters of the report.

Pursuant to Minn. Stat. Section 3.975, we have referred this report to the Office of the Attorney General. The Office of the Attorney General has the responsibility to ensure the recovery of state funds, and in fulfilling that role, may negotiate the propriety of individual claims.

This report is intended for the information of the Legislative Audit Commission and the management of the Department of Public Safety. This restriction is not intended to limit the distribution of this report, which was released as a public document on September 5, 2003.

/s/ James R. Nobles

James R. Nobles
Legislative Auditor

/s/ Claudia J. Gudvangen

Claudia J. Gudvangen
Deputy Legislative Auditor

Report Signed On: September 2, 2003

Special Review
Administration of State Funds by Women's Advocates, Inc.

Table of Contents

	Page
Report Summary	1
Chapter 1. Introduction	3
Chapter 2. Per Diem and Grant Administration	5
Auditor's Comments on Women's Advocates, Inc.'s Response	15
Women's Advocates, Inc.'s Response	17
Department of Public Safety's Response	29

Audit Participation

The following members of the Office of the Legislative Auditor prepared this report:

Claudia Gudvangen, CPA	Deputy Legislative Auditor
Cecile Ferkul, CPA, CISA	Audit Manager
Marla Conroy, CPA, CISA	Director of Investigations
Jean Mellett, CPA, CFE	Investigator

Exit Conference

The following representatives from Women's Advocates, Inc., and the Department of Public Safety participated in the exit conferences held on July 28, 2003, and July 31, 2003:

Women's Advocates, Inc.:

Michael McGrane	Chair	Kathleen Corley	Interim Executive Director
Barbara Leigh-Kaplan	Board Member	Kathryn Bishop	Attorney
Mary Ann Jurney	Board Member	Ed Magarian	Attorney
Patricia Banks	Board Member	Katie Pfeifer	Attorney

Department of Public Safety:

Mary Ellison	Executive Director, Center for Crime Victim Services
Sue Perkins	Grants Specialist Coordinator
Lou Powell	Per Diem Coordinator
Robert Erickson	Accounting Supervisor Principal

Special Review

Administration of State Funds by Women's Advocates, Inc.

Report Summary

We have conducted a special review of Women's Advocates, Inc., a private, non-profit organization that received per diem and grant payments from the Minnesota Department of Public Safety. Women's Advocates, Inc. was incorporated in 1972 to help women successfully leave violent relationships, to teach children and youth to use non-violent alternatives when relating to others, and to change community attitudes about domestic violence through information and education. For fiscal years 2001 through 2003, the state provided the organization nearly \$5 million as per diem or grant awards.

Our objective in conducting this special review was to answer the following question:

- Did Women's Advocates, Inc. have appropriate internal controls to ensure that it expended grant funds in accordance with legal requirements and grant contract provisions and in a reasonable and prudent manner?

Key Conclusions

Women's Advocates, Inc. did not have appropriate controls to ensure that it spent state funds for reasonable and necessary costs of the program and in accordance with legal requirements and grant contract provisions. As explained in Finding 1, the board did not adequately oversee the operation of the organization to ensure that state funds were spent for the benefit of the program. The board's lack of sufficient controls allowed the executive director to borrow \$30,000 for short-term personal use. The board also did not set or monitor the executive director's compensation. The board did not formally evaluate the executive director's performance for at least two years and was not aware that the executive director had not evaluated other management staff. The board did not establish guidelines to ensure the appropriateness of expenditures. The organization expended \$1,300 for unauthorized political contributions and unreasonable home office furnishings that were not recovered. The board may need to repay the state for these transactions.

As discussed in Finding 2, the former executive director of Women's Advocates, Inc. supplemented her compensation by determining her own salary increases and bonuses, setting the employer contribution amount paid to her retirement fund, and cashing in excessive paid-time-off hours. The board recovered \$21,500 from the retirement fund as unauthorized compensation. She also supplemented the compensation of other staff by paying bonuses and allowing them to cash in excessive hours of paid-time-off beyond the terms agreed to by the board. From January 1, 2000, through September 30, 2002, staff received unauthorized compensation totaling nearly \$194,474. Women's Advocates, Inc. needs to repay the Department of Public Safety for the unauthorized and unreasonable costs.

Special Review
Administration of State Funds by Women's Advocates, Inc.

This page intentionally left blank.

Special Review

Administration of State Funds by Women's Advocates, Inc.

Chapter 1. Introduction

Background

We have conducted a special review of Women's Advocates, Inc., a private, non-profit organization that received the majority of its funding from per diem and grant payments through the Minnesota Department of Public Safety. Women's Advocates, Inc. was formed in 1972 to help women successfully leave violent relationships, to teach children and youth to use non-violent alternatives when relating to others, and to change community attitudes about domestic violence through information and education. The organization is licensed for 50 beds and is usually at capacity.

In 1977, legislation was passed establishing funding for maintenance and security costs for battered women's shelters through the general assistance program at the Department of Human Services. Effective July 1, 2000, the per diem program went from an entitlement program funded through general assistance to a capped General Fund appropriation currently administered by the Department of Public Safety's Crime Victims Services Division. Laws of Minnesota 2000, Chapter 445, Article 2 defined the per diem rate and program operations as follows:

Section 22, Subd. 6 Per Diem Rate:

"Per diem rate" means a daily charge per person for providing food, lodging, safety, and 24-hour coverage for battered women and their children.

Section 23, Subd. 1 Purpose:

The purpose of the per diem program is to provide reimbursement in a timely, efficient manner to local programs for the reasonable and necessary costs of providing battered women and their children with food, lodging, and safety. Per diem funding may not be used for other purposes. [Effective July 1, 2000]

Before 2001, the state required battered women's shelters to complete a per diem application that included a budget of allowable costs. At that time, the shelter's budget was used to determine its per diem rate. The budget document listed allowable costs and provided an explanation of what these costs included. For example, the budget allowed for food, further defined as "cost of food for all shelter residents, including formula and baby food." The budget also allowed for security and maintenance salaries and fringe benefits as follows:

Salaries of staff providing security and 24-hour coverage for women and children in the shelter.

Special Review

Administration of State Funds by Women's Advocates, Inc.

Salaries of staff responsible for the upkeep of the facility and grounds, purchase of groceries and supplies, preparation of food, bookkeeping, and clerical duties.

Fringe benefits include costs, other than salary, related to security and maintenance staff. Includes: social security, workers compensation, unemployment, health, life, and disability insurance, retirement plans, and other benefits.

The budget also provided for indirect costs which were defined as costs that were incurred for a common or joint purpose and which could not be readily and specifically identified with a particular project or activity. The indirect costs included salaries and fringe benefits of employees who did not separate hours worked by day or by project. A portion of the total indirect costs of a shelter could be allocated to the per diem budget.

Beginning in 2001, the state no longer required shelters to complete a per diem application or budget document when the funding changed from general assistance to a capped General Fund appropriation. Rather than each shelter providing budget information to calculate a per diem rate, the Center for Crime Victims Services determined the shelters' per diem rate based on the available funding. The center established a rate for metro area shelters and a rate for shelters located in greater Minnesota.

Representatives from the Department of Public Safety stated that although the method for determining the per diem rate changed over time, the purpose of the program and what the funds were to be used for had not. In March 2002, the Department of Public Safety held a training seminar for battered women's shelters. Before the training, the department had sent the training materials to Women's Advocates, including a "Program Guide For Allowability of Costs." The guide provided a list of budget line items that were either allowable or unallowable under the state and federal funded programs. The allowable and unallowable costs did not significantly vary from those identified prior to 2001. No staff from Women's Advocates attended the training.

The 2002 legislative session changed the per diem program to a grant program effective July 1, 2003.

For fiscal years 2001 through 2003, the Women's Advocates per diem rate was approximately \$80 per bed, or about \$1.5 million annually. The Department of Public Safety also provided a supplemental general operating grant of \$103,000 annually, partly funded by a federal program. In fiscal year 2001, the department provided additional federal funds to the organization through the Victims of Crime Act grants. The organization also received non-state funding through gifts and grants from foundations.

The organization received, on average, 80 percent of its funding from state per diem and grant payments. Table 1-1 summarizes state payments to Women's Advocates, Inc. for fiscal years 2001 through 2003.

Special Review

Administration of State Funds by Women's Advocates, Inc.

Table 1-1
State Payments Disbursed to the Women's Advocates, Inc.
Fiscal Years 2001 through 2003

	<u>2001</u>	<u>2002</u>	<u>2003</u> ⁽¹⁾
Per Diem	\$1,681,900	\$1,563,245	\$1,419,215
Supplemental Operating Grant (Federal/State)	103,000	103,000	103,000
Victims of Crime Act Grant (Federal)	<u>164,000</u>	<u>0</u>	<u>0</u>
Total	<u>\$1,948,900</u>	<u>\$1,666,245</u>	<u>\$1,522,215</u>

Note 1: Although the scope and review of transactions was through September 30, 2002, the table reflects fiscal year 2003 transactions through August 14, 2003, for comparison purposes.

Source: Minnesota Accounting and Procurement System.

The organization uses over half of its total funding to pay staff for program and managerial services. Other major expenditure areas include food and household services for shelter residents, professional fees and consultant expenses, insurance, utilities, and printing costs. The organization had an annual audit of its financial statements.

Since fiscal year 2000, state per diem funding to battered women's shelters has decreased. In fiscal year 2000, Women's Advocates received a state per diem of \$101 per resident. In fiscal year 2001, the state paid the organization a per diem of approximately \$80 per resident, resulting in Women's Advocates projecting a budget deficit of \$258,000. At its January 9, 2002, board meeting, the executive director's report indicated that the state would reduce funding by \$1 million dollars to battered women's shelters statewide. As a result of these proposed budget reductions, Women's Advocates laid off two employees and did not fill a vacancy. At its February 6, 2002, board meeting, the executive director provided members a copy of the fiscal year 2002 operating budget, which again projected a shortfall totaling \$129,000. At this time, the board discussed a possible need to use a portion of the organization's \$800,000 reserve to cover any deficit.

In September 2002, the Department of Public Safety asked the Office of the Legislative Auditor to review concerns it had resulting from a site visit at Women's Advocates, Inc. The site visit concerns were mainly about the lack of oversight by the organization's board, the compensation of staff, and the support for various expenditures. In response to the request, we conducted a preliminary assessment to determine whether the issues warranted further review. Based on preliminary information obtained from the association, we decided to pursue the matter further and issue a special report.

Special Review

Administration of State Funds by Women's Advocates, Inc.

Objective and Methodology

Our objective in conducting this special review was to answer the following question:

- Did Women's Advocates, Inc. have appropriate internal controls to ensure that it expended grant funds in accordance with legal requirements and grant contract provisions and in a reasonable and prudent manner?

We examined the accounting records of Women's Advocates, Inc. and interviewed selected employees, contractors, the board's attorney, and the current board chair. We reviewed relevant documents, including the grant agreements and reports. We also obtained additional information from the Department of Public Safety's Crime Victims' Services Division. Our review was not a full audit of the organization's financial records.

Women's Advocates, Inc. was able to provide supplemental information to alleviate some of the Department of Public Safety's concerns. However, as explained in Chapter 2, the organization lacked sufficient board oversight to ensure that it spent funds for reasonable and necessary costs of the program and in accordance with legal requirements and grant contract provisions. As a result of the lack of sufficient board oversight, the executive director supplemented her compensation and the compensation of other staff without board authorization. Our concerns relate primarily to the use of per diem funds.

Special Review

Administration of State Funds by Women's Advocates, Inc.

Chapter 2. Per Diem and Grant Administration

Chapter Conclusions

Women's Advocates, Inc. did not have appropriate controls to ensure it spent state funds for reasonable and necessary costs of the program and in accordance with legal requirements and grant contract provisions. The board did not adequately oversee the operation of the organization to ensure that it spent state funds for the benefit of the program. The former executive director of Women's Advocates, Inc. inappropriately supplemented her compensation by determining her own salary increases and bonuses, setting the employer contribution amount paid to her retirement fund, and cashing in excessive paid-time-off hours. She also supplemented the compensation of other staff by paying bonuses and allowing them to cash in excessive hours of paid-time-off beyond the terms agreed to by the board.

Pursuant to its by-laws, the Women's Advocates' board of directors consists of between seven and fifteen members. The board fills vacancies through evaluation of candidates nominated by board members. Historically, several staff members had served on the board. While this is generally not a good business practice, it does not violate legal requirements or grant agreements. The board generally met quarterly to discuss the organization's programs and to plan future operations. The board received budgetary and expenditure information, but appeared to rely extensively on the executive director in the conduct of its financial operations.

The executive director was a founding member of the organization and became its first executive director in 1985. She served in that role for nearly 17 years. In August 2002, the board placed her on temporary suspension as a result of the questions raised by a grant site visit by the Department of Public Safety. The board terminated the executive director's employment in September 2002.

Conclusions

Women's Advocates, Inc. did not have appropriate controls to ensure it spent state funds in a reasonable and prudent manner and in accordance with legal requirements and grant contract provisions. As explained in Finding 1, the board did not adequately oversee the operation of the organization to ensure that state funds were spent for the benefit of the program. As discussed in Finding 2, the former executive director of Women's Advocates, Inc. inappropriately supplemented her compensation by determining her own salary increases and bonuses, setting the employer contribution amount paid to her retirement fund, and cashing in excessive paid-time-off hours. She also supplemented the compensation of other staff by paying bonuses and

Special Review

Administration of State Funds by Women's Advocates, Inc.

allowing them to cash in excessive hours of paid-time-off beyond the terms agreed to by the board.

1. The Women's Advocates, Inc.'s board did not adequately oversee the operation of the organization.

The Women's Advocates, Inc.'s board did not adequately oversee the actions of the executive director relating to financial operation of the organization. As its appointee, the executive director is accountable to the board. However, the executive director was able to borrow funds from the organization without notification to or authorization from the board. In addition, the board did not set or monitor the executive director's compensation. The board also did not formally review the executive director's performance, was not aware that the executive director had not evaluated staff, and had not established guidelines to ensure the appropriateness of expenditures. Although the organization's by-laws provided the executive director with general and active management authority, this authorization did not relinquish the board from its fiduciary responsibilities.

When unable to access personal funds on September 11, 2001, due to the terrorist attacks, the executive director borrowed \$30,000 from the organization for a personal real estate transaction scheduled for that day. She did not seek authorization from the board nor did she inform the board about the transaction. She repaid the loan on September 24, 2001. The executive director, regardless of the extenuating circumstances, should not have used organization funds for a personal purpose, even on a temporary basis. The board could have established controls, such as requiring a board member's signature on checks over a certain amount, which would have better protected the organization's funds from unauthorized use.

The board did not set or monitor the executive director's compensation. The lack of board oversight allowed the executive director to set her own compensation at an unreasonably high level. For example, in fiscal year 2002, the executive director's total compensation, including her base salary, pension contributions, and other unauthorized compensation, exceeded \$170,000. We discuss the unauthorized and unreasonable compensation paid to the executive director in more detail in Finding 2.

The board had not formally reviewed the executive director's performance for at least two years. An integral part of an organization's annual cycle of review and planning should include a review of the executive director's performance. The board, in partnership with the executive director, should decide the process, time, and form of this review. An assessment of the executive director's performance may have included discussions with other organization staff, review of key financial indicators of the organization, and review of the executive director's hours, commitment, and compensation. Through such discussions, the board may have learned if there were staff concerns relating to the executive director's management practices. The board also may have learned of the compensation practices that increased the executive director's pay to unreasonable levels.

Special Review

Administration of State Funds by Women's Advocates, Inc.

The board was not aware that the executive director had not evaluated other management staff. It should have requested information about these other performance appraisals to ensure that the executive director regularly performed them. Conducting these performance appraisals is an important part of the executive director's responsibilities. Had the board been aware that the executive director had not conducted the performance appraisals, it could have intervened to ensure that the evaluations were completed. Also, the lack of evaluations may have served as a key indicator of the performance of the executive director. The organization's employee handbook provides that performance evaluations are scheduled to take place during February and March of each year.

The board did not establish guidelines to ensure the appropriateness of expenditures. Some purchases were for items that had questionable benefit to the organization and were made when the organization faced decreased state funding and budget deficits.

- In September 2001, the executive director purchased approximately \$4,600 of furniture and equipment for a home office before obtaining board approval. Even though the board subsequently authorized the executive director to purchase items for a home office, it did not anticipate the extent of the purchase. (After the executive director's termination, the board returned the furniture and obtained a partial credit on the organization's corporate credit card of about \$3,500.)
- In May 2002, Women's Advocates, Inc. made a \$100 contribution to a political campaign. In June 2002, the organization reimbursed the executive director an additional \$100 for a contribution she made to the same campaign. The organization made these payments from program accounts that received state funding. Political fundraising or lobbying activities are not a permitted use of state funds.
- The executive director also used the corporate credit card to pay for lunches. While she usually provided a receipt for the meal, she did not always indicate who attended the lunch with her, what the purpose of the meeting was, or why it was necessary to meet during a meal. This may have been an inappropriate use of state funds. On at least one occasion, the meal included alcoholic beverages, which are generally not a permitted use of state funds.
- Staff purchased a digital camera for \$435 and provided gift cards to selected residents as part of a reward system. In addition, the organization compensated a former resident \$900 for belongings it had discarded. While these may have been legitimate expenditures, the board should have guidelines establishing the allowability of these costs or staff should have sought express approval due to the unusual nature of the transactions.

Had the board established guidelines or procedures requiring its authorization for major or sensitive purchases, it could have questioned, and possibly, disallowed some or all of the expenditures.

Special Review

Administration of State Funds by Women's Advocates, Inc.

The board is responsible to ensure that the organization spends state funds in accordance with the grant agreement for reasonable and necessary expenses of the program. Money that the organization spends that does not contribute to the mission of the organization results in fewer funds being available for battered women and their children. The state and other supporters need to be confident that the board will manage their donations and gifts exclusively to further the organization's stated mission and objectives.

The executive director's long history with the organization may have distorted her relationship with the board. The executive director was an original founder of the organization and began her term as executive director in 1985. At least some of the problems may result from the inability of the organization to make a transition from a "founder driven" to a "board guided" organization.

After learning of the concerns raised by the Department of Public Safety, the board took immediate action. In August 2002, the board placed the executive director on an involuntary and indefinite leave without pay and took steps to prevent her access to the organization. The board subsequently terminated the executive director's employment in September 2002. The board also retained an attorney to represent the organization. They reorganized the composition of the board, removing staff from the board. They sought training for the board to better understand its role and responsibilities. They instituted a policy requiring two signatures on checks over \$500, with one signature being a board member. They hired an interim executive director, setting the salary range at about half of what the former executive director had been compensated. They curtailed the practices of allowing staff to cash in paid-time-off hours and receive bonuses. Based on these actions, the board appears to be taking appropriate steps to improve the operations of the organization.

Recommendations

- *The Department of Public Safety should monitor the progress of the Women's Advocates' Board of Directors to ensure that it continues to provide appropriate oversight to the organization, and that it expends state funds for their intended purposes.*
- *The Department of Public Safety should recover from Women's Advocates the state funded portion of the following unauthorized and unreasonable costs:*
 - *Political contributions totaling \$200.*
 - *Home office furniture totaling \$4,600. (The department may want to consider allowing the organization to use the \$3,500 credit to provide future services.)*

Special Review

Administration of State Funds by Women's Advocates, Inc.

2. The former executive director inappropriately supplemented her compensation and the compensation of other staff without board authorization.

The former executive director of Women's Advocates, Inc. supplemented her compensation by determining her own salary increases and bonuses, setting the employer contribution amount paid to her retirement fund, and cashing in excessive paid-time-off hours. She also inappropriately supplemented the compensation of other staff by paying bonuses and allowing them to cash in excessive hours of paid-time-off beyond the terms agreed to by the board. While the board generally granted the executive director broad management authority, it did formalize its personnel management policies in an employee handbook, approved in April 2000. The handbook allowed staff to cash in a limited number of paid-time-off hours and did not discuss or authorize staff bonuses.

The board did not set or monitor the executive director's compensation. The lack of board oversight allowed the executive director to inappropriately supplement her salary. Starting in 2000, the executive director determined her own salary increases. Effective January 1, 2000, the executive director increased her base salary by \$5,000. Effective January 1, 2001, she increased her base salary by an additional \$15,000.

The executive director also determined the amounts the organization would contribute to her 403(b) retirement fund. She directed the organization to make contributions to her retirement fund consisting of ten percent of her salary plus \$20,000 to be paid in 12 equal installments, effective January 1, 2001. Representatives of Women's Advocates told us that the executive director approached the board chair and requested the additional contributions to her retirement fund, indicating that it was a way to catch-up on inadequate contributions made in the past. At that time, the board chair told the executive director to consult with the organization's attorney, however the executive director did not follow the board chair's instructions and proceeded with the unauthorized contributions. In February 2002, she reduced the retirement fund contribution by the organization to ten percent of her salary. After her termination, the board was able to recover \$21,500 from the retirement fund as unauthorized contributions.

The executive director cashed in excessive amounts of paid-time-off hours. The employee handbook, approved by the board in April 2000, allowed employees to cash in 80 paid-time-off hours in any fiscal year. In fiscal year 2002, the executive director cashed in 520 hours of paid-time-off hours, often before she earned those hours.

The paid-time-off benefit provides hours for employees to use at their discretion for vacation, personal business, and, in certain circumstances, for illness or injury. The employee handbook allows staff 20-52 days of paid-time-off annually, based on years of seniority. The employee earns the paid-time-off hours on a bi-weekly basis. The employee can use paid-time-off after it is earned. At the end of a year, staff can carry over to the next year up to 80 hours of unused paid-time-off. An employee can also request to exchange up to 80 hours of earned paid-time-off for cash during any one fiscal year. (A revision to the policy, effective August 12, 2002, allowed an employee to cash in up to half of their earned but unused paid-time-off. However, board

Special Review

Administration of State Funds by Women's Advocates, Inc.

minutes do not indicate that the board discussed or approved this significant policy change.) Upon termination, an employee is paid for all earned, but unused, paid-time-off.

The executive director also determined and authorized her own bonuses. Although bonuses were reflected in budget documents, the board's personnel handbook did not discuss bonuses as a form of compensation. In addition, we found no evidence of the board specifically approving the executive director's bonuses at the amounts paid. In fiscal year 2002, the executive director received eight weeks pay as a bonus.

Table 2-1 shows the executive director's unauthorized and unreasonable compensation that she initiated for herself in fiscal year 2002. While the executive director's compensation in other periods included unauthorized amounts, during fiscal year 2002 the compensation clearly exceeded reasonable and necessary levels.

Table 2-1
Summary of the Executive Director's Unauthorized and Unreasonable Compensation
July 1, 2001, through June 30, 2002

Salary Increases ⁽¹⁾	\$20,000
Pension Contribution	21,500
Paid-Time-Off ⁽²⁾⁽³⁾	23,269
Bonus ⁽³⁾	<u>16,923</u>
Total	<u>\$81,692</u>

Note (1): Salary increases include a \$5,000 increase effective January 1, 2000, and an additional \$15,000 increase effective January 1, 2001.

Note (2): The paid-time-off amount reflects the hours, in excess of the 80 hours allowed for by the employee handbook, that were cashed in during the fiscal year.

Note (3): Paid-time-off and bonus amounts total \$40,192. This amount is also reflected in Tables 2-2 and 2-3.

Source: Auditor prepared schedules based on Women's Advocates, Inc.'s payroll information.

The executive director also supplemented the salaries of other staff beyond the terms agreed to by the board. Three managers and six other staff cashed in excessive amounts of paid-time-off hours. The managers cashed in between 360 and 420 paid-time-off hours. Other staff that exceeded the allowable 80-hour limit cashed in 120 and 240 paid-time-off hours. Employees seem to have used the paid-time-off benefit as a way to supplement their salaries rather than as intended, to allow flexibility for vacation or personal time off.

Compensation to the managers and other full-time staff also included bonuses. In fiscal year 2002, three managers received six weeks pay as a bonus; and other full-time staff received two weeks pay.

Table 2-2 summarizes the unauthorized compensation and Table 2-3 summarizes the unauthorized compensation by staff position. As the tables show, the executive director benefited the most from this unauthorized compensation, receiving nearly three times as much as the next highest paid staff.

Special Review

Administration of State Funds by Women's Advocates, Inc.

Table 2-2
Summary of Unauthorized Compensation
January 1, 2001, through September 30, 2002

Time Period	Cashed in Paid-Time-Off in Excess of 80 Hours	Bonuses	Unauthorized Compensation
1/1/01 thru 6/30/01	\$21,718	\$ 34,930	\$ 56,648
7/1/01 thru 6/30/02 ⁽¹⁾	54,604	52,974	107,578
7/1/02 thru 9/30/02	0	30,248	30,248
Totals	<u>\$76,322</u>	<u>\$118,152</u>	<u>\$194,474</u>

Note (1): The amounts include the \$40,192 paid to the former executive director in paid-time-off and bonus during fiscal year 2002.

Source: Auditor prepared schedules based on Women's Advocates, Inc.'s employee accrual records.

Table 2-3
Summary of Unauthorized Compensation, by Key Position ⁽¹⁾
January 1, 2001, through September 30, 2002

Position	1/1/01 thru 6/30/01	7/1/01 thru 6/30/02	7/1/02 thru 9/30/02	Totals
Executive Director ⁽²⁾	\$19,709	\$ 40,192	\$ 4,231	\$ 64,132
Manager 1	6,877	13,997	1,975	22,849
Manager 2	4,979	14,318	2,100	21,397
Manager 3	5,741	8,936	1,846	16,523
All Other Staff ⁽³⁾	19,342	30,135	20,096	69,573
Totals	<u>\$56,648</u>	<u>\$107,578</u>	<u>\$30,248</u>	<u>\$194,474</u>

Note (1): Amounts include payments to staff of paid-time-off in excess of 80 hours and/or bonuses.

Note (2): As shown in Table 2-1, for the period July 1, 2001, through June 30, 2002, the \$40,192 paid to the executive director includes the excessive paid-time-off and unauthorized bonus.

Note (3): Nineteen other staff received cash for paid-time-off in excess of 80 hours and/or bonuses. The average unauthorized compensation of these staff was nearly \$3,700.

Source: Auditor prepared schedules based on Women's Advocates, Inc.'s employee accrual records.

Although the organization received non-state funding for some of its activities, it charged most payroll costs to the state-funded per diem or supplemental operating grant program.

In August 2002, the board suspended the practices of cashing in paid-time-off and bonus compensation. The board's reaction indicates that it did not concur with the practice and did not consider it a part of the staff compensation as anticipated in the employee handbook. The board did not, however, pursue recovery of unauthorized compensation from staff. It is within the board's discretion to pursue or not pursue recovery of the unauthorized compensation. However, pursuant to state law, the purpose of the per diem program is to provide reimbursement for the reasonable and necessary costs of providing battered women and their children with food, lodging, and safety. Per diem funding is not to be used for other purposes. Therefore, the board

Special Review

Administration of State Funds by Women's Advocates, Inc.

should repay the unauthorized and unreasonable compensation to the Department of Public Safety.

Recommendation

- *The Department of Public Safety should recover the state funded portion of the following unauthorized and unreasonable compensation:*
 - *The former executive director's salary increases which she initiated on her own behalf, beginning January 1, 2000, through her date of termination.*
 - *The former executive director's retirement contribution totaling \$21,500. (Since the Women's Advocates, Inc. recovered these funds from the retirement account, the department may want to consider allowing the organization to use these funds to provide future services.)*
 - *Bonuses and paid-time-off paid to staff during 2001 and 2002, totaling \$194,474.*



Auditor's Comments on Women's Advocates, Inc.'s Response

Members of the Legislative Audit Commission:

Normally, an organization that has been audited by OLA responds directly to our report. In this case, Women's Advocates had Mr. Edward B. Magarian of Dorsey & Whitney LLP respond, and Mr. Magarian raised a wide range of objections. He argues against our conclusions and recommendations and asserts that Women's Advocates has been subjected to an illegal examination by the Legislative Auditor.

We do not think it necessary to respond to Mr. Magarian's arguments against our conclusions and recommendations. However, we do want to briefly address his assertion that the Legislative Auditor lacks legal authority to examine Women's Advocates use of state money.

OLA's principal audit focus is state agencies. However, some state agencies spend a large share of their budgets and accomplish their program objectives through contracts, grants, and reimbursements to non-governmental organizations. OLA's authority to examine how these non-governmental organizations use state money is firmly established in law and past practice. Indeed, without that authority, the Legislative Auditor could not fulfill the statutory mandate to "see that all provisions of law respecting the appropriate and economic use of public funds are complied with." That is undoubtedly why *Minnesota Statutes* 3.978, Subdivision 2, says:

All public officials and their deputies and employees, and all corporations, firms, and individuals having business involving the receipt, disbursement, or custody of public funds shall at all times afford reasonable facilities for examinations by the legislative auditor, make returns and reports required by the legislative auditor, attend and answer under oath the legislative auditor's lawful inquiries, produce and exhibit all books, accounts, documents, and property that the legislative auditor may desire to inspect, and in all things aid the legislative auditor in the performance of [the legislative auditor's] duties.

Because there are so many "corporations, firms, and individuals" beyond state agencies and employees that receive, disburse, or have custody of public funds, OLA makes very limited use of this authority. We typically act only when we obtain evidence of significant impropriety. As a general rule, we expect state agencies to ensure accountability for the money they spend through grants and contracts.

Sometimes, and often at the request of a state agency, OLA does review how a non-governmental organization has used public funds. Commission members may recall, for example, that earlier this year OLA examined how the Minnesota Waterfowl Association, a private, non-profit organization, had used state grant money. That review was requested by the Legislative Commission on Minnesota Resources.

Being a recipient of public funds entails accepting a measure of public accountability, even if you are a private, non-profit organization. As a recipient of a significant amount of public funding from the state, Women's Advocates cannot evade that obligation. It needs to make a constructive response to this report and establish a governance structure and administrative controls that protect public funds from misuse.

/s/ James R. Nobles

James R. Nobles
Legislative Auditor

/s/ Claudia J. Gudvangen

Claudia J. Gudvangen
Deputy Legislative Auditor

DORSEY & WHITNEY LLP

MINNEAPOLIS
SEATTLE
NEW YORK
WASHINGTON, D.C.
DENVER
LONDON
SOUTHERN CALIFORNIA
DES MOINES
SAN FRANCISCO
ANCHORAGE

SUITE 1500
50 SOUTH SIXTH STREET
MINNEAPOLIS, MINNESOTA 55402-1498
TELEPHONE: (612) 340-2600
FAX: (612) 340-2868
www.dorsey.com

EDWARD B. MAGARIAN
(612) 340-7873
FAX (612) 340-2807
magarian.edward@dorsey.com

TOKYO
PALO ALTO
FARGO
SALT LAKE CITY
GREAT FALLS
HONG KONG
MISSOULA
TORONTO
SHANGHAI
VANCOUVER

August 25, 2003

James R. Nobles
Legislative Auditor
Office of the Legislative Auditor
Room 140 Centennial Building
658 Cedar Street
St. Paul, Minnesota 55155-1603

Dear Mr. Nobles:

We have received your most recent draft of the Special Review of Women's Advocates, Inc. ("Women's Advocates") for the period July 2000 through September 2002. We have numerous concerns about this report, including, for example, the following: (1) the Legislative Auditor has acted beyond the scope of its statutory authority; (2) the report omits material facts which we highlighted to you in connection with our meeting and follow-up correspondence late last month and early this month; and (3) the report draws various conclusions that are unsupported.

Lack of Statutory Authority

As an initial matter, according to the Office of the Legislative Auditor, this Special Review was ostensibly conducted under the authority of Minnesota Statute § 3.971, which provides that "the legislative auditor shall see that all provisions of law respecting the appropriate and economic use of public funds are complied with" However, the cited language is taken out of context. That language is clearly limited by the rest of the statutory language which the Legislative Auditor did not quote. That language provides that the Legislative Auditor may "investigate allegations of noncompliance by employees of departments and agencies of the state government and the other organizations listed in this subdivision." *Id.* Women's Advocates is a private non-profit organization, and not a state department or agency; as such, the Legislative Auditor's authority under Minnesota Statute § 3.971 does not extend to it.

James R. Nobles
August 25, 2003
Page 2

Even if the Legislative Auditor had authority to issue this report, it omits material information and draws conclusions which are unsupported. By way of example only, the report misstates the level of guidance provided by the Department of Public Safety regarding the expenditure of funds; it fails to acknowledge that Women's Advocates has complied with the purpose of the per diem funding – "providing battered women and their children with food, lodging and safety"; it fails to highlight the many corrective measures adopted by the Board and implemented at Women's Advocates; and it ignores the fact that many of the challenged expenditures were reasonable and made under the authority of the Executive Director, as provided in the bylaws. Furthermore, the report makes recommendations suggesting that the Department of Public Safety may recoup the per diem funds allegedly spent for "unauthorized and unreasonable" costs and compensation, yet there is no discussion of the statutory or legal authority for such recommendations. The lack of discussion for such authority is especially troubling in light of the fact that per diem funds were (during the relevant timeframe) capped General Fund appropriations, rather than grant funds, which would have gone into Women's Advocates' own reserve, rather than being paid back to the state, if they had not been totally exhausted during the period of funding.

The Work of Women's Advocates

Before examining the deficiencies in the Legislative Auditor's Report, it is important to understand the work of Women's Advocates. Since its inception in 1972, Women's Advocates has strived to help women successfully leave violent relationships, to teach children and youth to use non-violent alternatives when relating to others, and to change community attitudes about domestic violence through information and education. To date, Women's Advocates has provided shelter, advocacy and support to more than 30,000 battered women and children in the Twin Cities community. On average, Women's Advocates serves approximately 1,200 women and children per year.

Women's Advocates is a private non-profit organization that was incorporated in 1972. According to the Articles of Incorporation, its stated purpose is to "promote the public interest and social welfare, including but not limited to providing information, channels for corrective action and pressure for social reform in various areas of sex discrimination and other concerns of women." Even prior to its incorporation, the women who would eventually form Women's Advocates were addressing the concerns of women by publishing a booklet that outlined the legal procedures and answered legal questions on custody, support and other separation issues.

From the beginning, Women's Advocates provided much needed services to the Twin Cities community. Women's Advocates' first project, a 24-hour crisis intervention, information and referral hotline, went live in 1972 and, since that time, has never been out of service. The

James R. Nobles
August 25, 2003
Page 3

crisis hotline currently averages over 1,500 calls each month. Two years later in 1974, Women's Advocates opened the first safe shelter in the United States for battered women and their children. The Women's Advocates' shelter, which has grown from a one-bedroom apartment to three homes in the Summit Hill area of St. Paul, Minnesota, was used as a model for other shelters across the nation.

Today, Women's Advocates' safe shelter is currently licensed for 50 beds and the average capacity rate is generally well over 100%. The organization is governed by an eight member Board of Directors and employs eighteen full-time and six relief staff members. Other services currently provided by Women's Advocates include child, youth and court advocacy; support services; transportation and child care for shelter residents; individual counseling; support groups; a health clinic; youth relationship violence prevention; and community outreach. Women's Advocates also publishes a quarterly newsletter, *Metamorphosis*, which is distributed to more than 1,900 groups, individuals, businesses and organizations.

Per Diem Funding

As the Legislative Auditor's Report points out, Women's Advocates is funded in part by the Department of Public Safety, Minnesota Center for Crime Victim Services ("the Department"). By an overwhelming percentage, Women's Advocates' main source of state funding during the relevant time frame was per diem funds. Through the per diem program, the state reimburses an organization for the cost of providing safe shelter to battered women and their children. To obtain reimbursement, an organization submits monthly invoices, which state the number of individuals served on a daily basis. The Department then reimburses the organization at a fixed per diem rate. For the time frame of this review, the reimbursement was not calculated from actual costs incurred, but rather from multiplication of the fixed per diem rate by the number of individuals served. As a result, if the actual cost of providing the services was greater than the per diem rate, the organization had to supplement its budget from other sources. Conversely, if the actual cost was less than the per diem rate, the organization was able to save the excess cash in reserves, or spend it as the organization decided was appropriate.

The Department took over administration of the per diem program from the Department of Corrections on July 1, 2000. Contrary to the Legislative Auditor's Report though, the Department did not implement clear spending guidelines after it took over in 2000. Rather, it abandoned the previous method for calculating per diem funds (which was explained in the report). In March 2002, the Department developed a "Program Guide for Allowability of Costs," which is cited in the report. There is no discussion in the "Program Guide" about what would constitute the expenditure of funds in a "reasonable and prudent manner," yet that is the focus of the Legislative Auditor's Report (and recommendations). Instead, this three-page chart advises

James R. Nobles
August 25, 2003
Page 4

whether general categories of expenses are allowable expenditures for per diem money, but it does not provide specific spending guidelines or restrictions on the organizations. For example, categories such as the cost of “advocates,” “relief staff,” “kitchen/housekeeping staff,” etc., are specifically allowable costs, but the decisions about the amount of these costs is left up to the discretion of the organization itself.

Changes Made At Women’s Advocates

In September 2002, the Department asked the Office of the Legislative Auditor to review concerns it had as a result of its site visit at Women’s Advocates. Although not mentioned by the Legislative Auditor’s Report, through its record keeping and documentation, Women’s Advocates was able to provide supplemental information to establish that many of the Department’s initial concerns were unfounded. In addition, Women’s Advocates has implemented many important changes in its management and administrative practices and procedures. As a result of its conscientious response to the Department’s concerns, the practices which form the focus of the Legislative Auditor’s Report are no longer in place at Women’s Advocates.

Specifically, after learning of the concerns raised by the Department, the Board conducted its own investigation into the financial and administrative irregularities identified by the Department. As a result, in August 2002, the Board placed the former Executive Director on an involuntary and indefinite leave without pay and denied her access to Women’s Advocates. In September 2002, the former Executive Director was terminated. Women’s Advocates subsequently hired an interim Executive Director with extensive non-profit management expertise. Significantly, the Board has already conducted an evaluation of the interim Executive Director.

In addition, the Board immediately reorganized its composition, removing staff members from their positions as Board members. Later, in December 2002, the Board amended the bylaws to permanently remove staff members from Board positions. The Board also began holding meetings on a more frequent basis, meeting weekly and then bi-weekly from August to December 2002. Other changes include training for both the Board and the staff of Women’s Advocates. The new Board training included sessions on the Board’s roles and responsibilities and on reading and understanding financial statements. With this training in place, the Board began reviewing monthly financial statements prepared at the direction of the interim Executive Director.

Other significant changes in the operation of the Board include the use of a committee structure. The Board appointed an Executive, Finance and Personnel Committee – with advisory members from the community on each (including one Certified Public Accountant and an

James R. Nobles
August 25, 2003
Page 5

individual with an Masters in Business Administration on the Finance Committee). In particular, the Finance Committee has been assigned an active role in reviewing monthly financial statements and in the budgeting process.

The Board made changes affecting Women's Advocates' personnel and financial policies and procedures as well. On the personnel side, new training goals and an evaluation policy were implemented and begun. Policies regarding the use of paid time-off, the accrual of paid time-off and bonus expectations were significantly changed. The Board also discussed the appropriate compensation for the Executive Director position and the remaining staff, eventually setting the salary range of the Executive Director at about half of what the former Executive Director had been compensated. The Board further suspended the employer contributions to the 403(b) retirement fund.

As for the financial policies, two signatures are now required for all checks over \$500, one of which must be a Board member. The Board has further changed controls around the use of petty cash, check signing, expense reimbursement and purchase of shelter supplies, as well as separating the functions of opening mail, making deposits, writing checks, recording expenses, and reconciling the checkbook. Payroll processing was also moved to an outside source. Finally, the Board chose a new auditor and clearly defined the auditor's relationship with, and responsibilities to, the Board.

Specific Responses to Legislative Auditor's Findings

Turning now to the Findings contained in the Legislative Auditor's Report, we will address both of the findings in turn.

A. Finding Number 1

The Women's Advocates, Inc.'s board did not adequately oversee the operation of the organization.

In Finding Number 1, the Legislative Auditor's Report concludes that Women's Advocates did not adequately oversee the operations of the organization because the former Executive Director was able to borrow funds from the organization without notification to or authorization from the Board, the Board did not set or monitor the Executive Director's compensation, the Board did not formally review the Executive Director's performance, and was not aware that the former Executive Director did not evaluate the staff, and the Board did not establish guidelines to ensure the appropriateness of expenditures. Although Women's Advocates does agree that some of its practices could have been improved (and have been), in many instances, the report fails to provide the entire background on the issues.

James R. Nobles
August 25, 2003
Page 6

1. The Executive Director's Personal Use of Funds

As the report notes, when the former Executive Director was unable to access personal funds on September 11, 2001, due to the terrorist attacks, she borrowed \$30,000 from Women's Advocates for a personal real estate transaction scheduled for that day. Women's Advocates agrees that such an action was inappropriate. However, the Legislative Auditor Report fails to note that the Executive Director did seek advice from Women's Advocates' outside auditor about the loan. Even though the outside auditor advised the Executive Director not to take the loan, the Executive Director nonetheless borrowed the \$30,000. Yet neither the Executive Director nor the outside auditor advised the Board about the request or the transaction, effectively concealing the transaction from the Board. Fortunately, that amount was repaid in full shortly thereafter.

The outside auditor was employed to help the Board monitor the financial operations of the organization and should have been communicating with the Board about such circumstances. Had the outside auditor alerted the Board either to the former Executive Director's request or to the fact that the transaction had occurred, the Board would have been in a better position to detect and evaluate the former Executive Director's subsequent actions.

In addition to recouping those funds, the Women's Advocates' Board of Directors has made changes to address this issue on a going forward basis so that it cannot happen again. Most importantly, Women's Advocates now requires two signatures on all checks over \$500; one of the required signatures must be that of a Board member. Women's Advocates has also retained a different outside auditor and has specifically defined its relationship with the outside auditor.

2. The Executive Director's Compensation

The report correctly states that the Board did not set or monitor the Executive Director's compensation; however, the Executive Director was given "general and active management authority" by the bylaws of the organization which provided her much discretion in the management of the organization. The report fails to recognize that this is a private non-profit organization with a voluntary Board of Directors. The role of any non-profit Board is to provide governance and policy direction. Responsibility for daily management lies with the Executive Director. Of necessity, the Board must rely upon the discretion and judgment of the Executive Director. The problems in this instance occurred because of the former Executive Director's own misguided behavior. Women's Advocates has nonetheless reevaluated and readjusted its compensation levels for the Executive Director position.

James R. Nobles
August 25, 2003
Page 7

3. Board Evaluation of the Executive Director

The report correctly notes that the Board had not formally reviewed the Executive Director's performance for at least two years. The Board took immediate actions to correct its oversight though and, since the initiation of the Special Review, Women's Advocates has made changes to address this issue on a going forward basis. Women's Advocates has adopted a new procedure for evaluation of the Executive Director and, in May and June of 2003, the Board of Directors conducted a formal evaluation of the current interim Executive Director who was hired in October 2002.

4. The Executive Director's Evaluation of the Staff

The report points out that the staff of Women's Advocates had not been formally evaluated by the former Executive Director in accordance with the employee handbook. Although the Women's Advocates' employee handbook designated that performance evaluations were scheduled to take place during February and March of each year, and although she did not conduct regular, formal evaluations, the former Executive Director was given "general and active management authority" by the bylaws of the organization, which would have given her the discretion regarding how and when to conduct evaluations of the staff. Nonetheless, since the initiation of this Special Review, Women's Advocates has made changes to address this issue on a going forward basis, including the adoption of a new procedure for evaluation of the staff.

5. Expenditure Guidelines

Finally, the Legislative Auditor's Report takes issue with the fact that the Board of Directors had not established expenditure guidelines for the organization. In fact, the Board approved the budget. In approving a budget, a Board establishes expenditure guidelines and constrains the Executive Director. As appropriate for any corporation, the Executive Director was given "general and active management authority" which allowed her to make purchases and expenditures that she saw as necessary. In general, a non-profit Board should avoid the kind of specific management decisions the Legislative Auditor's Report suggests were lacking. Rather than involve a Board of Directors, such guidelines should be properly developed and implemented by an Executive Director. Moreover, although the Legislative Auditor's Report is of the opinion that some of the purchases made by the Executive Director were for items that had questionable benefit to Women's Advocates, that opinion is made without the benefit of any real guidance from the Department on what represents a reasonable and prudent expenditure and there is no evidence that the Legislative Auditor conducted an independent evaluation regarding the opinions.

James R. Nobles
August 25, 2003
Page 8

Furthermore, on the issue of the digital camera, the gift cards, and the \$900.00 compensation to a former resident, even the Legislative Auditor concedes that they “may have been legitimate expenditures.” As such, these expenditures should not even be mentioned in the report as there is no evidence that they constitute anything other than a “reasonable and prudent” expenditure of funds.

Since the initiation of this Special Review, the Women’s Advocates’ Board of Directors has nonetheless made substantial changes to address these issues on a going forward basis, in addition to its efforts to recoup some of the funds. Most notably, Women’s Advocates has adopted new financial procedures and guidelines, including a policy which requires two signatures on all checks over \$500, one of which must be a Board member.

B. Finding Number 2

“The former executive director inappropriately supplemented her compensation and the compensation of other staff without board authorization.”

In Finding Number 2, the Legislative Auditor’s Report concludes that the former Executive Director inappropriately supplemented her compensation and the compensation of other staff without Board approval. This occurred in the form of increased salary or retirement contributions (for the former Executive Director), bonuses, and the practice of allowing staff to cash-out paid time-off hours. We will address each of these issues in turn.

1. The Executive Director’s Compensation

As already set out in Finding Number 1, the Board did not monitor or set the Executive Director’s compensation. The former Executive Director determined her own salary increases and also determined the amounts the organization would contribute to her 403(b) retirement fund. As noted in the report, though, in regard to the 403(b) retirement fund contributions, the former Executive Director did ask the Board Chair about the additional contributions – which she framed as a way to catch-up on past inadequate contributions – at which time the Executive Director was told that she would have to consult with Women’s Advocates’ attorney about the issue. The Executive Director nonetheless went ahead with the unauthorized contributions without following the Board’s instructions.

Since the initiation of this Special Review, though, the Women’s Advocates’ Board of Directors has made changes to address this issue on a going forward basis, as well as retrospectively, including reevaluating and readjusting its compensation levels for the Executive

James R. Nobles
August 25, 2003
Page 9

Director position, hiring a new outside auditor and, after the former Executive Director's termination, recovering \$21,500 from the 403(b) retirement fund as unauthorized compensation.

2. Paid Time-Off

The report next takes issue with the former Executive Director's practice of allowing staff to cash-out paid time-off benefits in excess of that allowed under the employee handbook. Some general background on the former Executive Director's management of the organization is necessary to understand this issue fully.

Under the management of the former Executive Director, the general rule was that staff were not allowed to take their paid time-off in the form of a vacation or other time-off. As a result, the practice instituted by the former Executive Director over the years was to allow staff to use the paid time-off benefit as a way to supplement their salaries rather than for vacation or personal time off. Nonetheless, the paid time-off benefits (whether exchanged for cash or used for actual vacation time or time off) were an obligation of Women's Advocates. The Executive Director may also have had authority pursuant to the bylaws to change this policy notwithstanding the employee handbook. The Legislative Auditor did not conduct a legal review of the Executive Director's authority in this regard.

After learning about the paid time-off practices of the former Executive Director, the Board suspended the practice of cashing out paid time-off. The practice was permanently eliminated in December 2002.

3. Bonuses

The report correctly notes that the former Executive Director paid bonuses to both the staff and herself. The report appears to consider these expenditures to be unreasonable because bonuses were not specifically authorized by the Board of Directors, even though the expenditures were included in the budget. However, the bylaws of the organization did not clearly require the Executive Director to discuss such bonus payments with the Board and, since the Executive Director has "general and active management" authority over the organization, it is our opinion that such authority would provide her the discretion to pay such bonuses.

Nonetheless, after learning about the bonus practices of the former Executive Director, the Board suspended the practice of paying bonuses. The practice was permanently eliminated in December 2002.

James R. Nobles
August 25, 2003
Page 10

C. The Legislative Auditor's Recommendations

The Legislative Auditor's Report concludes with recommendations, including that the Department should recover from Women's Advocates "the state funded portion of the following unauthorized and unreasonable" costs or compensation:

1. Political contributions totaling \$200.
2. Home office furniture totaling \$4,600. (The department may want to consider allowing the organization to use the \$3,500 credit to provide future services.)
3. The former executive director's salary increases which she initiated on her own behalf, beginning January 1, 2000 through her date of termination.
4. The former executive director's retirement contribution totaling \$21,500. (Since the Women's Advocates, Inc. recovered these funds from the retirement account, the department may want to consider allowing the organization to use these funds to provide future services.)
5. Bonuses and paid time-off paid to staff during 2001 and 2002, totaling \$194,474.

However, the Legislative Auditor's Report fails to cite any relevant authority which would allow the Department to try to recover these funds, especially given the lack of guidance from the Department as to the appropriate expenditure of per diem funds, the fact that Women's Advocates had other sources of income which may have covered the questioned expenses, and the fact that some items – such as the paid time-off benefits (whether paid out as cash or taken as actual leave) were likely a legal obligation of Women's Advocates. Moreover, since the per diem funds were (during the relevant timeframe) capped General Fund appropriations, rather than grant funds, they would have gone into Women's Advocates' own reserve, rather than being paid back to the state if they had not been totally exhausted during the period of funding. Finally, given the essential services provided by Women's Advocates, and that fact that many of the issues stem from the misguided behaviors of the former Executive Director, we believe it is not appropriate to suggest that the funds should be recouped from this private non-profit organization. Therefore, the Recommendations in the Legislative Auditor's Report are without legal or factual basis.

DORSEY & WHITNEY LLP

James R. Nobles
August 25, 2003
Page 11

In conclusion, while Women's Advocates certainly did benefit from the Legislative Auditor's Special Review in that the organization is now stronger and more efficient than it was just under one year ago, the Legislative Auditor, in conducting the Special Review and issuing this report, acted beyond its authority, and in certain respects omitted material information, and drew conclusions that are unsupported.

Very truly yours,

Edward B. Magarian

EBM/ds

cc: Claudia Gudvangen
Cecile Ferkul
Marla Conroy

DORSEY & WHITNEY LLP

James R. Nobles
August 25, 2003
Page 12

bcc: Kathy Bishop, Esq.
Kathleen Corley
Katie Pfeifer, Esq.

MINNESOTA DEPARTMENT OF PUBLIC SAFETY



Alcohol &
Gambling
Enforcement

Bureau of
Criminal
Apprehension

Capitol Security

Driver & Vehicle
Services

Emergency
Management/
Emergency
Response
Commission

Justice
Programs

State Fire
Marshal/
Pipeline Safety

State Patrol

Traffic Safety

Office of Justice Programs

444 Cedar Street, Suite 100, St. Paul, Minnesota 55101-5100
Phone: 651/284-3333 Fax: 651/284-3317 TTY: 651/282-6555
Internet website: www.dps.state.mn.us/ojp

August 26, 2003

James R. Nobles, Legislative Auditor
First Floor, Centennial Building
658 Cedar St.
St. Paul, MN 55155

RE: Special Review of Per Diem Funds Provided to Women's Advocates

Dear Mr. Nobles:

The Office of Justice Programs in the Minnesota Department of Public Safety is grateful to you and your staff for your work on the Women's Advocates special review and the opportunity that we had to discuss the results.

We concur with the findings in the report and plan to implement the recommendations. We are currently withholding in excess of \$190,000 in funds that would have been paid to Women's Advocates at the end of the 2003 fiscal year pending final negotiations with the Board of Directors.

Finding 1: The Women's Advocates, Inc. board did not adequately oversee the operation of the organization.

Recommendations:

► ***The Department of Public Safety should monitor the progress of the Women's Advocates Board of Directors to ensure that it continues to provide appropriate oversight to the organization, and that it expends state funds for their intended purpose.***

The Minnesota Office of Justice Programs, Crime Victim Services will continue to monitor the operations of Women's Advocates to insure compliance with fiscal, administrative and programmatic requirements of the programs for which they receive funding. This will include monitoring the oversight provided by the agency's board of directors. The monitoring will be done by structured on-site visits as well as desk audits of claimed expenditures. Training and technical assistance will be offered as appropriate.

Person Responsible: Cecilia Miller, Director of Crime Victim Grants
Timeframe: Current and on-going

► ***The Department of Public Safety should recover from Women's Advocates the state funded portion of the following unauthorized and unreasonable costs:***

- ***Political contributions totaling \$200***
- ***Home office furniture totaling \$4,600 (The department may want to consider allowing the organization to use the \$3,500 credit to provide future services).***

The Minnesota Office of Justice Programs, Crime Victim Services will collect up to \$4,800 in state funds used for ineligible and unreasonable costs. Consideration will be given to allowing the organization to use the \$3,500 mentioned above to provide future service. The amount determined to be owed the state will be deducted from funds that are currently being withheld from the organization.

Person Responsible: Cecilia Miller, Director of Crime Victim Grants
Timeframe: In progress.

Finding 1: The former executive director inappropriately supplemented her compensation and the compensation of other staff without board authorization.

Recommendation:

► ***The Department of Public Safety should recover the state funded portion of the following unauthorized and unreasonable compensation:***

- ***The former executive director's salary increases which she initiated on her own behalf, beginning January 1, 2000 through her date of termination.***
- ***The former executive director's retirement contribution totaling \$21,500. (Since the Women's Advocates, Inc. board recovered these funds from the retirement account, the department may want to consider allowing the organization to use these funds to provide future services.)***
- ***Bonuses and paid time off paid to staff during 2001 and 2002, totaling \$194,474.***

The Minnesota Office of Justice Programs, Crime Victim Services will determine the total state funded portion of the listed unauthorized and unreasonable compensation paid to employees of Women's Advocates. When the amount is determined, negotiations with the board of directors of the organization will be conducted to determine if any of the repayment amounts may be used to provide future services. The amount will then be deducted from funds that are currently being withheld and any additional amount will have to be repaid by the organization.

Person Responsible: Cecilia Miller, Director of Crime Victim Grants
Timeframe: Amounts determined, negotiations conducted and repayment made by November 1, 2003.

Again, thank you for your assistance in resolving this matter. Should you have any questions in regards to our response, please contact me at 651-297-7883.

Sincerely,

/s/ Mary Ellison

Mary Ellison
Acting Deputy Commissioner, Minnesota Department of Public Safety
Executive Director, Minnesota Office of Justice Programs

Cc: Commissioner Rick Stanek, Minnesota Department of Public Safety
Claudia Gudvangen, CPA, Deputy Legislative Auditor
Cecile Ferkul, CPA, CISA, Audit Manager
Cecilia Miller, Director, MCCVS Grant Unit