



OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

Financial Audit Division Report

ClearWay Minnesota
July 1, 2003, to June 30, 2006



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 forty 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.

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.

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OFFICE OF THE LEGISLATIVE AUDITOR
State of Minnesota • James Nobles, Legislative Auditor

Representative Rick Hansen, Chair
Legislative Audit Commission

Members of the Legislative Audit Commission

Mr. Kirby Erickson, Chair
ClearWay Minnesota

Members of the Board of Directors
Clearway Minnesota

Mr. David Willoughby, Chief Executive Officer
ClearWay Minnesota

We conducted an audit of ClearWay Minnesota for the period July 1, 2003, through June 30, 2006. Our audit scope included financial management, grant expenses, payroll, and other expenses. Our objectives focused on a review of the corporation's internal controls over these financial activities and its compliance with applicable legal provisions.

The enclosed Report Summary highlights our overall audit conclusions. The specific audit objectives and conclusions for each area are contained in the individual chapters of this report.

We would like to thank the staff from ClearWay Minnesota for their cooperation during this audit.

/s/ James R. Nobles

James R. Nobles
Legislative Auditor

/s/ Cecile M. Ferkul

Cecile M. Ferkul, CPA, CISA
Deputy Legislative Auditor

End of Fieldwork: May 18, 2007

Report Signed On: September 10, 2007

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Audit Participation

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

Cecile Ferkul, CPA, CISA	Deputy Legislative Auditor
Tom Donahue, CPA	Audit Manager
Joan Haskin, CPA, CISA	Auditor-in-Charge
David Westlund	Auditor

Exit Conference

We discussed the results of the audit with the following staff of ClearWay Minnesota at an exit conference on August 30, 2007:

Kirby Erickson	Chair
David Willoughby	Chief Executive Officer
Paul Orman	Chief Financial Officer
Andrea Mowery	Director of Marketing and Communications
Jeri Lyn Reinhardt	Legal Services Manager

Report Summary

Conclusion:

ClearWay Minnesota's internal controls were adequate, and the organization complied with material finance-related legal provisions related to financial management, grant expenses, and payroll. However, we identified some concerns with other expenses.

This report contains three findings related to internal control and other expenses.

Findings:

- ClearWay had expenses that may have been unnecessary, unreasonable, and not adequately authorized or documented. ([Finding 1, page 15](#))
- ClearWay did not execute some contract amendments in a timely way. ([Finding 2, page 17](#))
- ClearWay did not always complete purchase orders in advance of purchases. ([Finding 3, page 18](#))

The prior audit report contained six findings that have been resolved.

Audit Scope:

Period Audited:

July 1, 2003, to June 30, 2006

Activities Audited:

- Financial Management
 - Grant Expenses
 - Payroll
 - Other Expenses
-

Agency Background:

Clearway Minnesota was originally named the Minnesota Partnership for Action Against Tobacco (MPAAT). It was incorporated as a Minnesota nonprofit corporation on September 21, 1998, under *Minnesota Statutes* Chapter 317A. MPAAT was created with a limited 25-year life. Its mission is to enhance life in Minnesota by reducing tobacco use and exposure to secondhand smoke through research, action, and collaboration. In August 2006, MPAAT changed its name to ClearWay Minnesota. The corporation is under the direction of a 19-member board of directors. ClearWay funds its operations through the tobacco settlement and associated investment earnings.

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Chapter 1. Introduction

On May 8, 1998, a lawsuit brought by the State of Minnesota and Blue Cross Blue Shield of Minnesota against several companies that produced tobacco products ended in a settlement agreement. Among its provisions, the agreement required the tobacco companies to provide \$202 million to fund two accounts. A tobacco cessation account was to receive a one-time lump sum payment of \$102 million by December 31, 1998. The national research account was to receive \$10 million annually for ten years beginning on June 1, 1998. The agreement was approved by the District Court, Second Judicial District (Ramsey County) on August 27, 1998.

The agreement directed the Minnesota Attorney General's Office to develop a plan for the administration of the two funds. The plan that the Attorney General developed and the court approved provided for a private, nonprofit corporation to administer the funds. The corporation was established on September 21, 1998, as Minnesota Partnership for Action Against Tobacco (MPAAT). It operates as a tax exempt, independent, nonprofit corporation under the Internal Revenue Code, Section 501 (c) (3).

Under the court approved plan, MPAAT has authority to operate for 25 years under the direction of a 19-member board of directors. Two directors are appointed by the Speaker of the House, two directors are appointed by the Senate Majority Leader, two directors are appointed by the Governor, two directors are appointed by the Attorney General, and eleven at-large directors are elected by a vote of a majority of the directors in office. At-large members are elected on the basis of their expertise in a variety of areas, including nonprofit management, finance, tobacco and health, community organizing, public affairs, and human resources. In November 2000, the board hired David Willoughby as the chief executive officer. In August 2006, MPAAT changed its name to ClearWay Minnesota (ClearWay).

ClearWay operates on a fiscal year that ends on June 30. ClearWay is not a state agency and receives no benefits or services from the state. As such, its accounting records and payroll information are not part of the state's reporting systems. However, the State of Minnesota has shown ClearWay (formerly MPAAT) as a discretely presented component unit in its Comprehensive Annual Financial Report since 1999. The Minnesota Department of Finance has determined, for financial reporting purposes, that the state's financial statements would be misleading or incomplete if ClearWay were excluded.

A public accounting firm annually audits ClearWay's financial statements. ClearWay has received unqualified reports each fiscal year of its existence. Table 1-1 shows information from ClearWay's audited Statement of Financial Position as of June 30, 2006.

Table 1-1
Statement of Financial Position
As of June 30, 2006

Assets:	
Cash	\$ 25,932
Accounts receivable	36,917
Prepaid expenses	43,239
Investments	162,838,687
Settlement receivable	10,000,000
Equipment and leasehold improvements, net	<u>68,011</u>
Total Assets	<u>\$173,012,786</u>
Liabilities:	
Accounts payable	\$ 1,189,213
Accrued expenses	52,935
Grants payable	<u>5,266,666</u>
Total Liabilities	<u>\$ 6,508,814</u>
Net Assets:	
Unrestricted - Designated for tobacco cessation	\$ 72,467,384
Unrestricted - Designated for tobacco research	<u>94,036,588</u>
Total Unrestricted	<u>\$166,503,972</u>
Total Liabilities and Net Assets	<u>\$173,012,786</u>

Source: ClearWay Minnesota's audited financial statements as of June 30, 2006.

ClearWay's operations are funded through the tobacco settlement and associated investment earnings. ClearWay's mission is to "enhance life in Minnesota by reducing tobacco use and exposure to secondhand smoke through research, action, and collaboration."¹ To achieve this, ClearWay provides grants to health, community, and academic organizations throughout the state in support of research, intervention, and related program activities.

Audit Approach

We conducted our audit in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we obtain an understanding of ClearWay's internal controls relevant to the audit objectives. We used the guidance contained in *Internal Control-Integrated Framework*, published by the Committee of Sponsoring Organizations of the Treadway Commission,² as our criteria to evaluate ClearWay's controls. The standards also require that we plan the audit to provide reasonable assurance that

¹ ClearWay 2005-2006 annual report, page 1.

² The Treadway Commission and its Committee of Sponsoring Organizations (COSO) was established in the mid-1980s by the major national associations of accountants. One of their primary tasks was to identify the components of internal control that organizations should have in place to prevent inappropriate financial activity.

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ClearWay complied with financial-related legal provisions that are significant to the audit. In determining ClearWay's compliance with legal provisions, we considered requirements of laws, regulations, contracts, and grant agreements.

To meet the audit objectives, we gained an understanding of ClearWay's financial policies and procedures. We considered the risk of errors in the accounting records and noncompliance with relevant legal provisions. We analyzed accounting data to identify unusual trends or significant changes in financial operations. We examined a sample of evidence supporting ClearWay's internal controls and compliance with laws, regulations, contracts, and grant provisions.

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Chapter 2. Financial Management

Chapter Conclusions

ClearWay's internal controls provided reasonable assurance that it operated within available resources and in compliance with its authorized budget. ClearWay's internal controls provided reasonable assurance that its investment policies were followed, and that investments and investment earnings were appropriately recorded in the accounting system.

Objectives

Our review of ClearWay's overall financial management focused on the following questions:

- Did ClearWay operate within its available resources and in compliance with its authorized budget?
- Did ClearWay's internal controls provide reasonable assurance that its investment policies are appropriately followed and reviewed, and investments and investment earnings are appropriately accounted for within each of the two accounts in the accounting system?

Background

ClearWay's articles of incorporation and bylaws provide the financial foundation to guide ClearWay's day-to-day operations. The court approved plan provides that the members of the board of directors should each have no affiliation with the tobacco industry. ClearWay's bylaws provide that directors must serve without per diem or other compensation, except for reasonable out-of-pocket expenses actually incurred. In addition, Article VI of ClearWay's bylaws addresses issues of conflicts of interest and requires that officers and directors fully disclose to the organization the nature and extent of any conflicts of interest.

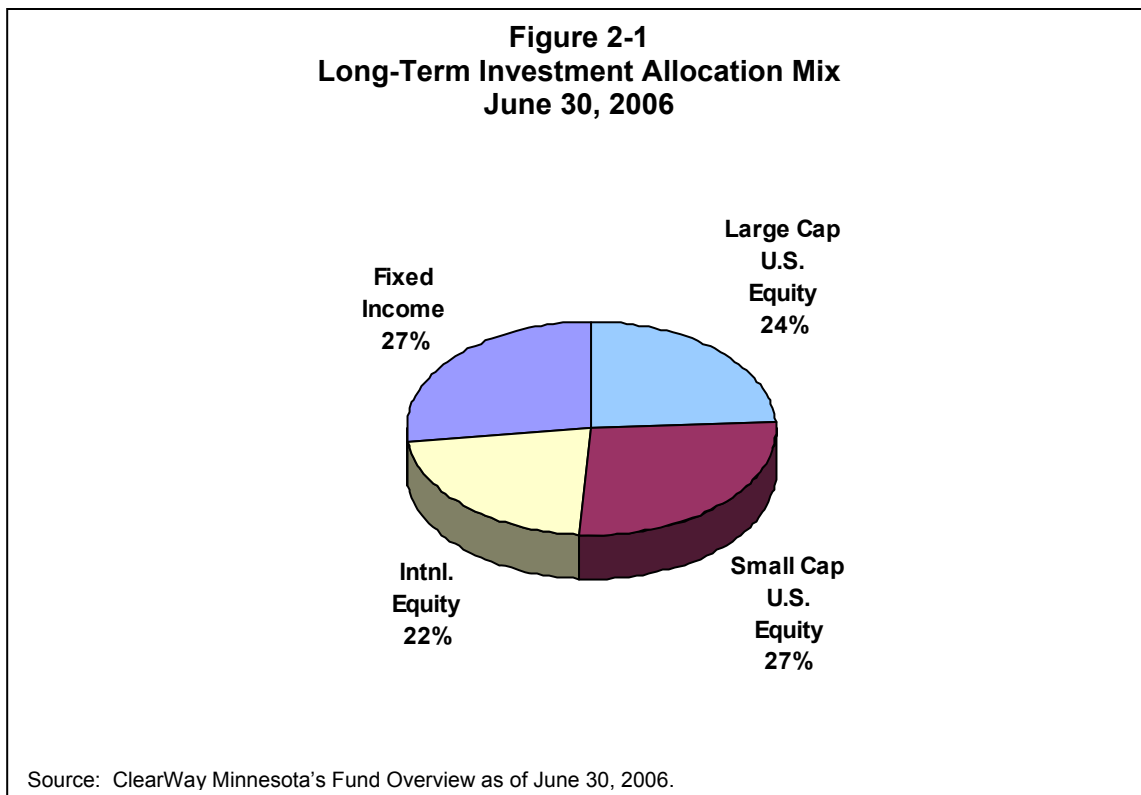
The board of directors developed and approved policies and procedures addressing, among other things, fiscal management policies and procedures. These policies provided guidance concerning the budget process, grant and program activities, the management of expenses and revenues, investment policies, and accounting practices.

The board of directors established a number of board committees, including an Audit/Finance Committee. The Audit/Finance Committee consists of up to seven board members and has responsibility for overseeing ClearWay's financial and investment activities. ClearWay also established an Investment Advisory Committee to provide advice to the Audit/Finance Committee. The Investment Advisory Committee is comprised of no more than five people

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appointed by the Chair of the Board of Directors. In addition, ClearWay contracted with an investment consulting firm to develop and recommend an investment policy and structure. ClearWay's investment policy outlines the types of authorized investments.

ClearWay maintains accounts at a local bank, including a checking account and a miscellaneous account for employee cafeteria benefit plan reimbursements. The checking account functions as ClearWay's operating account. ClearWay also maintains an investment account with a national bank. ClearWay transfers funds from its investment account to the operations account as needed. ClearWay contracts with investment managers to manage various ClearWay investment activities. The market value of ClearWay's investments at June 30, 2006, was \$162,838,687, including \$8,598,954 in money market and short-term investment funds. Net investment income for fiscal year 2006 was \$16,888,346. Figure 2-1 shows ClearWay's long-term investment allocation mix.



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The chief executive officer has ultimate responsibility for Clearway's day-to-day operations. He and his staff are guided by the policies and procedures established by the board. ClearWay annually prepares a detailed revenue and expense line item budget, cash flow projection, and capital budget. The budget is reviewed and approved by the Audit/Finance Committee and subsequently recommended for adoption to the board. Clearway's staff provides the Audit/Finance Committee with monthly financial reports and statements. The full board receives summary financial statements when it meets.

There were no findings in the financial management area.

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Chapter 3. Grant Expenses

Chapter Conclusions

ClearWay's internal controls provided reasonable assurance that grant expenses were appropriate and properly authorized, documented, and recorded in the accounting system.

In addition, for the items tested, ClearWay complied with its board policies and applicable finance-related legal provisions over its grant expenses and reviewer reimbursements.

Objectives

Our audit of ClearWay's grant expenses, including reimbursements for reviewer expenses, focused on the following questions:

- Did ClearWay's internal controls provide reasonable assurance that grant expenses were appropriate and properly authorized, documented, and recorded in the accounting system?
- Did ClearWay comply with its board policies and applicable finance-related legal provisions over its grant expenses?

Research Grants

Pursuant to the court approved Consent Agreement, ClearWay's research account has received \$10 million annually since June 1, 1998. As of June 30, 2006, ClearWay had deposited \$90 million into its research account. These funds are to be used for research and other tobacco control purposes. For fiscal years 2004 through 2006, ClearWay spent approximately \$7.4 million on research program grants and contracts.

ClearWay awards seven types of research grants ranging from scientifically rigorous research to encouraging relationships between community-based organizations and academic research. The grant period for research grants awarded ranged from 18 months to three years.

Intervention and Community Development Grants

ClearWay received \$102,000,000 from the tobacco settlement in December 1998 and deposited the funds to its cessation (intervention) account. These funds are to be used to support and fund effective smoking intervention strategies. For the fiscal years 2004 through 2006, ClearWay spent approximately \$10.3 million on cessation (intervention) program grants and contracts. Intervention grants and contracts were used to support individual cessation programs and fund

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community-based efforts to pass smoke-free public policies. Community development grants and contracts provided communities with funding for populations that have been targeted by tobacco companies or for whom mainstream cessation programs do not work.

ClearWay prepared “requests for proposals” for both the research and the intervention grants. Applicants for grants submitted letters of intent that summarized their proposed project. All potential grantees who submitted a letter of intent along with all of the required information were asked to submit a full application. ClearWay recruited independent review panels to review the full proposals and score those proposals. All proposals that met the minimum acceptance level were forwarded to the grant committee. The committee reviewed the grants and made its recommendations to the board, and the board made the final funding decisions. Grantees are required to submit progress and financial reports according to timelines specified in the grant contract. The disbursement of funds occurs during the grant period according to payment schedules in the grant contract.

Reviewer Expenses

ClearWay established policies and procedures over its review of grant proposals. The review process includes an external review by experts in the field the application addresses. ClearWay compensated reviewers for their time through honorariums and reimbursed them for any out-of-pocket expenses for food, travel, and lodging. ClearWay’s policies limit the meal reimbursement to the U.S. General Services Administration’s per diem daily amounts. Reviewers completed an honorarium form and submitted an expense report for out-of-pocket expenses to ClearWay for payment. Reviewers received honorariums ranging from \$350 to \$750 based on the number of proposals reviewed and the time commitment for the review. During fiscal years 2004 through 2006, total payments for grant reviewer honorariums and expenses were \$195,812. Table 3-1 shows reviewer expenses by grant type and fiscal year.

	<u>2004</u>	<u>2005</u>	<u>2006</u>
Research	\$26,989	\$30,727	\$69,272
Intervention and Community Development	31,217	32,880	4,727
Total	<u>\$58,206</u>	<u>\$63,607</u>	<u>\$73,999</u>

Source: ClearWay Minnesota’s trial balances for fiscal years 2004, 2005, and 2006.

There were no findings in the grant expenses area.

Chapter 4. Payroll and Other Expenses

Chapter Conclusions

ClearWay's internal controls provided reasonable assurance that payroll expenses were appropriate and properly authorized, documented, and recorded in the accounting system. ClearWay's internal controls generally provided reasonable assurance that its other expenses were appropriate and properly authorized, documented, and recorded in the accounting system.

For the items tested, ClearWay complied with its board policies and applicable finance-related legal provisions regarding payroll and other expenses. However, the chief executive officer's administrative expense guidelines were not approved by the board, and some allowed expenses may not have been reasonable and necessary to ClearWay's mission.

Objectives

Our audit of ClearWay's payroll and other expenses focused on the following questions:

- Did ClearWay's internal controls provide reasonable assurance that its payroll and other expenses were appropriate, properly authorized, documented, and recorded in the accounting system?
- Did ClearWay comply with board policies and applicable finance-related legal provisions over payroll and other expenses?

Payroll

As of April 2007, ClearWay had 25 employees who served at will.³ ClearWay employees were not represented by employee bargaining units.

ClearWay's personnel handbook explains employee classification, attendance, benefits, and termination policies. Benefits included sick leave, vacation leave, and personal leaves of absence, insurance coverage, and retirement benefits. ClearWay employees were paid on the 15th and last day of the month. All employees had paychecks directly deposited. Each employee completed a timesheet, which was signed by the employee and the supervisor. ClearWay contracted with a private vendor to process its employee payroll checks, provide reports, and file

³ An employee may be terminated at any time with or without cause without subjecting ClearWay to claim for breach of contract.

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various wage detail reports. The vendor also delivered the payroll check stubs and reports to ClearWay. ClearWay's personnel expenses for fiscal years 2004, 2005, and 2006 were \$1,227,380, \$1,651,710, and \$2,034,098, respectively.

Other Expenses

Our review of other expenses included payments for nonpayroll items, such as consultants, evaluation and professional fees, printing, conferences and meetings, and public relations and education. Table 4-1 shows the other expenses by fiscal year.

Table 4-1
Other Expenses
Fiscal Years 2004, 2005, and 2006

	<u>2004</u>	<u>2005</u>	<u>2006</u>
Public relations/education	\$3,945,943	\$4,422,217	\$6,509,696
Evaluation fees	609,423	533,355	560,212
Conferences/meetings	229,009	124,415	321,898
Professional fees	134,438	365,657	172,479
Consultants	103,677	149,242	263,810
Printing	108,150	87,687	99,048
Other	<u>310,720</u>	<u>336,217</u>	<u>379,441</u>
Total	<u>\$5,441,360</u>	<u>\$6,018,790</u>	<u>\$8,306,584</u>

Source: ClearWay Minnesota's trial balances for FY 2004, 2005, and 2006.

ClearWay has written policies and procedures for purchasing. Purchasing procedures state that to initiate a purchase, staff should complete a purchase order/request form, have their supervisor approve it, and then send it to the finance department to have a purchase order number assigned. Once goods or services have been received, the supervisor matches the purchase order to the invoice, codes the invoice, and then submits both the purchase order and the invoice to the finance department for payment.

ClearWay has a board-approved policy it follows to reimburse employees and board members for their actual expenses while traveling in the performance of ClearWay business activities. Board members do not receive per diems or other compensation but they are reimbursed for their actual expenses. Eligible expenses include mileage, at the rate prescribed by the Internal Revenue Service, meal expenses, lodging, transportation, and related expenses at actual costs. Reimbursement for meals is limited to the daily per diem amounts established for the U.S. General Services Administration. Alcohol is an ineligible expense for reimbursement.

ClearWay uses corporate purchasing cards to pay for employee expenses such as airfare, hotels, and registrations, as well as other small administrative expenses. Thirteen staff members have cards. Employees with cards sign an agreement governing the use of the card. Each employee receives a monthly statement of their charges. The employee reviews the statement and submits it to the finance department with original receipts attached. The employee also completes an

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expense form to support the charges. The employee's supervisor approves the form. The finance department reviews the invoices, receipts, and reimbursement forms before paying the invoice.

We found that:

1. ClearWay had expenses that may have been unnecessary and unreasonable, not authorized by a board approved policy, and not adequately documented.

As a private, nonprofit organization, ClearWay is not legally required to follow the spending limits and procedures state agencies must follow. Nevertheless, ClearWay was created by state government to fulfill a public purpose and given a large amount of public money to support research and tobacco cessation programs. As a trustee of public resources, ClearWay's expenditures should be reasonable and necessary to its mission. Indeed, the court approved state plan that authorized ClearWay's creation said its administrative costs should be "reasonable." It must also uphold the same standard as a 501c (3) nonprofit organization.

Some of ClearWay's expenses were not consistent with this standard. For example:

- In April 2006, ClearWay paid lodging costs of almost \$3,000 for a directors' retreat at a hotel in Lake Elmo. According to ClearWay management, the objectives of the retreat were to "increase the organization's ability to achieve an ambitious agenda by building personal awareness of resilience, stress, and the ability to recharge. The retreat would use the long-term vision of the organization to guide choices about short-term strategies and priorities." The chief executive officer, the chief financial officer, and four program directors attended the retreat. Management stated that they stayed overnight in the metropolitan area because the nature of the meeting was team building, and they wanted a retreat environment without going too far. ClearWay rented a suite for the retreat for four nights (including the night before the start of the retreat and the night after the retreat) at a cost of \$1,700.⁴ The chief executive officer stayed overnight in the suite for two nights during the retreat. Five other staff attending the retreat stayed overnight for two nights at a cost of \$1,267. In addition, ClearWay paid \$245 for a dinner that was part of the retreat.
- ClearWay purchased flowers totaling \$321 for staff, a board committee member, a contractor, and a reviewer. The expenditure was recorded as office supplies.
- ClearWay purchased 300 holiday cards totaling \$1,127. The cards were sent to current and former board members, committee members, grantees, and vendors. ClearWay management stated that it was a public relations expense for relationship building.

In addition, during the six-month period ended June 30, 2006, Clearway spent nearly \$7,700 for meals at various functions. While some amount of spending on meals may be necessary and

⁴ ClearWay rented the suite the night before the retreat because it needed the room in the morning before the normal check-in time. Since the retreat did not end until after checkout time, the corporation had to rent the room for another night.

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reasonable, the amount ClearWay spent was excessive, in part because a significant amount of the spending on meals was at staff functions. For example:

- ClearWay regularly provided breakfast for its weekly program directors meetings. These meetings were typically held at 8:30 a.m. and attended by the four program directors, the chief executive officer, his assistant, and the chief financial officer. In addition to breakfast, ClearWay sometimes provided a snack or lunch for directors meetings.
- ClearWay paid \$820 for a dinner for some of its grant reviewers, who were provided an honorarium for their services and reimbursed for their travel expenses. ClearWay did not document who attended the dinner, but other records indicate that 15 people attended and that the review panel had nine reviewers.
- ClearWay provided meals to various staff on 22 occasions. These included 13 lunches the chief executive officer had with individual employees. Other “staff only” meals included \$220 for lunch for a staff meeting, \$163 for a “business meeting” with the program directors, and the \$245 for the retreat dinner mentioned earlier.
- ClearWay spent \$625 to provide a holiday luncheon for staff in January 2006 and \$502 to cater a picnic for staff and board members in May 2006.

In addition to these expenses, ClearWay paid for food provided to staff and board members during board and committee meetings, meals at meetings between the chief executive officer and the board chair, and meals provided to all staff at functions to welcome new staff.

Again, some amount of spending for meals—even at an occasional staff function, such as a training or staff recognition event—could be justified as necessary and reasonable. But ClearWay’s pattern of spending for meals, particularly during routine staff activities, is excessive. In addition, the guidelines used to authorize the spending were established by ClearWay’s chief executive officer without approval or review by the board, and the board did not control the amount of spending on meals and other special expenses by approving a line item in ClearWay’s operating budget.

Guidelines that may be perceived to directly benefit ClearWay staff, and especially its chief executive officer, should be subject to public scrutiny and formal approval as a board policy. What that policy authorizes should take into account ClearWay’s public purpose and responsibility to prudently spend public money. In addition, the board should limit those expenses through approving a line item amount in ClearWay’s operating budget and requesting period reports on how those funds were used.

Finally, documentation for the meals and other expenses discussed in this finding was inadequate. Typically, the purpose of the function or necessity of the expenditure was only vaguely explained and, typically, there was no documentation of who attended the function. Documentation is a fundamental element of proper financial control and accountability.

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Table 4-2 recaps the meal and food expenses ClearWay incurred during the six-month period ended June 30, 2006.

Table 4-2
ClearWay Meal and Food Expenses
January 1, 2006 – June 30, 2006

<u>Type of Meal</u>	<u>Amount</u>
Board and Committee Meetings	\$2,849
Program Director Meetings	1,229
Reviewers Dinner	820
Staff Only Lunches	1,192
Holiday Luncheon	625
Picnic	502
Meetings with Board Chair	337
Welcome Lunches for New Employees	141
Total	<u>\$7,695</u>

Source: ClearWay Minnesota expense reimbursement forms and receipts.

Recommendations

- *ClearWay's board should set appropriate limits for expenses, especially meals and other special expenses, to ensure that all expenses are necessary and reasonable to ClearWay's mission.*
- *ClearWay should document who was present at events where food or other costs are paid for by ClearWay, and why the expense was necessary.*

2. ClearWay did not execute some contract amendments in a timely way.

ClearWay did not promptly sign amendments for 3 of 18 consultant agreements tested. The time period between the expiration of the original agreements and the signing of the amendments ranged from 18 to 40 days. The consultants continued to provide services under the expired agreements while ClearWay executed the amendments. The consultants evaluated grants, provided an annual independent summary of ClearWay's progress towards its goals and objectives, and evaluated ClearWay's activities pertaining to cessation programs.

Good business practices require having amendments executed before the current agreement expires. It is important that contracts and their amendments are properly executed to avoid misunderstandings and to provide legal options if consultants do not provide satisfactory services. ClearWay's consultant agreements state that amendments must be in writing and must be signed to be effective. Allowing consultants to provide services without an amendment increases the risk that ClearWay may not have any legal options should services provided be unsatisfactory.

In addition, amendments for two of the agreements repeated the same services as had been agreed to in the original agreement. The only changes in the agreements were the effective dates

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and the amount of compensation without any explanation of any change in the scope of work. The amendments may have been for legitimate reasons, but the consultant agreements did not provide that information. The amendment for one of the agreements extended its terms by six months and \$24,999. Amendments for another agreement extended the term by eight months and \$8,500.

Recommendations

- *ClearWay should execute amendments before the consultant agreements expire.*
- *ClearWay should include explanation of any change in the scope of work in amendments.*

3. ClearWay did not always complete purchase orders in advance of purchases.

ClearWay did not complete a purchase order/request form before making some purchases. Five sample items tested required such a form. Staff completed the form after the purchase had been made for all five sample items. The purchases included web design and programming, brochures, a catered lunch for staff during training, and holiday cards. Purchase amounts ranged from \$223 to \$4,130.

ClearWay's purchasing procedures state that to initiate a purchase of direct supplies or service program purchases, staff should complete a purchase order/request form, have their supervisor approve it, and then send it to the finance department. The finance department assigns a purchase order number and gives the form back to the requestor. Once goods or services have been received, the supervisor matches the purchase order to the invoice, codes the invoice, and then submits both the purchase order and the invoice to the finance department for payment.

Office practice, however, was to complete the form after the purchase had been made and goods/services and the invoice had been received. ClearWay used the form to approve payment of invoices. Not having proper approval of purchases prior to their purchase, increases the risk that inappropriate purchases may be made.

Recommendation

- *ClearWay should complete and approve the purchase order/request forms before making any purchases.*

Status of Prior Audit Issues
As of May 18, 2007

May 2001, Legislative Audit [Report 01-24](#) covered the period September 21, 1998, through December 31, 2000. The scope of the audit included financial management, grant expenses, payroll, and other administrative expenses. The report contained six findings. The findings related to the corporation's checking account balance, grant reviewers' scoring sheets and honorarium and expenses, lack of documentation for some noncompetitive grants, authorization and documentation of some administrative expenses, and internal controls over payroll have been resolved.

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September 10, 2007

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

Re: Legislative Audit report on ClearWay MinnesotaSM

Dear Mr. Nobles:

Thank you for the report on your recent audit of ClearWay Minnesota. We are pleased to see that there were no findings in the chapters covering financial management and grant expenditures, and that the report endorses our basic operating principles and procedures, and indicates that our financial management, record-keeping and grant-making practices are appropriate and sound.

As your report indicates, ClearWay Minnesota is not a state program or agency, but rather a self-governing nonprofit corporation operating under the jurisdiction of the Ramsey County District Court. We are committed to operating ethically and transparently, and we hold ourselves to the highest standard of nonprofit governance best practices, referring to the recommended guidelines of the Minnesota Council of Nonprofits and the Minnesota Council on Foundations as models for our operations. We are held accountable in many ways other nonprofit organizations are not, from our ongoing oversight by the Court and our own Board of Directors (eight of whom are legislative, gubernatorial and Attorney General appointees) to our compliance with the Data Practices Act and Open Meeting Law, and our proactive adoption of relevant sections of the Sarbanes-Oxley Act of 2002. As such, we appreciate your perspective and input, and will give your recommendations the most serious consideration.

As Chief Executive Officer, I am responsible for the resolution of any audit findings.

1) Expense necessity and documentation

We believe all our expenses are reasonable, germane to our institutional mission and customary for a nonprofit organization. However, we will consider the report findings in this area very carefully. Our Board of Directors will review the organizational spending guidelines that were created by the CEO to reflect our Board-approved travel and expense policy and ensure that only reasonable expenses are reimbursed. This will be done in concert with a broader review of all fiscal policies, procedures and guidelines, which will also address appropriate expense documentation.

Also, for the fiscal 2007-2008 budget year, a separate account covering employee recognition, meals and administrative expenses that do not fit into other expense categories has been included in the operating budget, which was approved by the full Board this past June.

Expected completion date: For fiscal policy review – June 2008; for separate expense account – completed.

2) **Contract amendments**

We have noted that your report indicates some contract amendments were signed late. At ClearWay Minnesota, we have thorough and rigorous contract management practices in place to protect the organization from business risks and ensure that only acceptable work is paid for as part of contracted services. To address the issue noted in your report, we have incorporated a more thorough contract summary, justification and checklist into our contract procedures, and have also implemented new procedures.

Expected completion date: Completed.

3) **Purchase orders**

Your report also indicates that some purchase orders were not signed before purchases were made. To address this issue, we are currently reviewing and updating our purchasing policy as part of the broader fiscal policy review noted in Item (1) above. After the ClearWay Minnesota Board of Directors revisits this policy, staff will be appropriately trained to follow it consistently.

Expected completion date: For fiscal policy review – June 2008.

Again, as an organization committed to transparency, openness and ethical conduct, we thank you for the time you spent in conducting this audit and preparing your report. The overall findings and conclusions of the report confirm that ClearWay Minnesota is on the right track as an organization, and is succeeding in its mission to serve Minnesota by using research, action and outreach to reduce the harm tobacco causes its residents. We will continue to improve all aspects of our operations, and to provide Minnesotans the best possible resources to reduce tobacco's harm.

Sincerely,



David J. Willoughby, M.A.
Chief Executive Officer
ClearWay MinnesotaSM