INDIAN AFFAIRS COUNCIL
FINANCIAL AUDIT
FOR THE THREE YEARS ENDED JUNE 30, 1991

DECEMBER 1992

Financial Audit Division
Office of the Legislative Auditor
State of Minnesota

92-84

Centennial Office Building, Saint Paul, MN 55155 ● 612/296-4708

INDIAN AFFAIRS COUNCIL

FINANCIAL AUDIT
FOR THE THREE YEARS ENDED JUNE 30, 1991

Public Release Date: December 18, 1992 No. 92-84

OBJECTIVES:

- EVALUATE INTERNAL CONTROL STRUCTURE: Employee payroll expenditures, professional/technical contracts, Indian Business Loan Program revenues and expenditures, and travel disbursements.
- TEST COMPLIANCE WITH CERTAIN FINANCE-RELATED LEGAL PROVISIONS.

CONCLUSIONS:

We found four areas where the Council's internal control structure needed improvement:

- The Council should pursue a more cost effective means to support the executive director in both St. Paul and Bemidji.
- Controls over payroll processing need improvement.
- The Council needs to segregate employee duties over the Indian Business Loan Program.
- The Council did not follow proper contracting procedures with the Leech Lake Tribal Council Heritage Sites Program.

We found two areas where the Council had not complied with finance-related legal provisions:

- The Council established separate contracts for professional services instead of hiring an employee.
- The Council needs to deposit Indian Business Loan Program receipts in accordance with Minn. Stat. Section 16A.275.

Contact the Financial Audit Division for additional information.
(612) 296-1730

STATE OF MINNESOTA
OFFICE OF THE LEGISLATIVE AUDITOR
CENTENNIAL BUILDING, ST. PAUL, MN 55155 • 612/296-4708
JAMES R. NOBLES, LEGISLATIVE AUDITOR

Representative Ann Rest, Chair
Legislative Audit Commission

Members of the Legislative Audit Commission

Mr. Darrell Wadena, Chair
Indian Affairs Council

Members of the Indian Affairs Council

Mr. Roger Head, Executive Director
Indian Affairs Council

Audit Scope

We have conducted a financial related audit of the Indian Affairs Council as of and for the three years ending June 30, 1991. Our audit was limited to only that portion of the State of Minnesota financial activities attributable to the transactions of the Indian Affairs Council, as discussed in the Introduction. We have also made a study and evaluation of the internal control structure of the Indian Affairs Council in effect as of May 1992.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial activities attributable to the transactions of the Indian Affairs Council are free of material misstatements.

As part of our study and evaluation of the internal control structure, we performed tests of the Indian Affairs Council's compliance with certain provisions of laws, regulations, contracts, and grants. However, our objective was not to provide an opinion on overall compliance with such provisions.

Management Responsibilities

The management of the Indian Affairs Council is responsible for establishing and maintaining an internal control structure. This responsibility includes compliance with applicable laws, regulations, contracts, and grants. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objectives of an internal control structure are to provide management with reasonable, but not absolute, assurance that:

- assets are safeguarded against loss from unauthorized use or disposition;

- transactions are executed in accordance with applicable legal and regulatory provisions, as well as management's authorization; and

- transactions are recorded properly on the statewide accounting system in accordance with Department of Finance policies and procedures.

Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

Internal Control Structure

For purposes of this report, we have classified the significant internal control structure policies and procedures in the following categories:

- Indian Business Loan receipts and disbursements,
- payroll,
- consultant, professional, and technical services contracts, and
- travel disbursements.

For all of the internal control structure categories listed above, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation, and we assessed control risk.

Conclusions

Our study and evaluation disclosed the conditions discussed in findings 1 - 6 involving the internal control structure of the Indian Affairs Council. We consider these conditions to be reportable conditions under standards established by the American Institute of Certified Public Accountants. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control structure that, in our judgment, could adversely affect the entity's ability to record, process, summarize, and report financial data.

A material weakness is a reportable condition in which the design or operation of the specific internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial activities being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We believe the reportable condition described in finding 2 is a material weakness.

We also noted other matters involving the internal control structure and its operation that we reported to the management of the Indian Affairs Council at the exit conference held on November 10, 1992.

The results of our tests indicate that, except for the issues discussed in findings 1, 2 and 6, with respect to the items tested, the Indian Affairs Council complied, in all material respects, with the provisions referred to in the audit scope paragraphs. With respect to items not tested, nothing came to our attention that caused us to believe that the Indian Affairs Council had not complied, in all material respects, with those provisions.

Material instances of noncompliance are failures to follow requirements, or violations of prohibitions, contained in statutes, regulations, contracts, or grants that cause us to conclude that the aggregation of the misstatements resulting from those failures or violations is material to the financial activities being audited. The results of our tests of compliance disclosed the material instances of noncompliance noted in finding 2.

Pursuant to Minn. Stat. Section 3.975, findings 2 and 3 shall be referred to the Attorney General. 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 management of the Indian Affairs Council. This restriction is not intended to limit the distribution of this report, which was released as a public document on December 18, 1992.

We thank the Indian Affairs Council staff for their cooperation during this audit.

James R. Nobles
Legislative Auditor

John Asmussen, CPA
Deputy Legislative Auditor

End of Fieldwork: July 7, 1992

Report Signed On: December 14, 1992

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Audit Participation

The following staff from the Office of the Legislative Auditor prepared this report:

John Asmussen, CPA	Deputy Legislative Auditor
Tom Donahue, CPA	Audit Manager
Susan Rumpca, CPA	Auditor-in-Charge

Exit Conference

The findings and recommendations of this report were discussed with the following staff of the Indian Affairs Council at an exit conference on November 10, 1992:

Darrell Wadena	Chair
Roger Head	Executive Director
Charlotte White	Executive Assistant
JoAnne Stately	Assistant to the Director

We held a subsequent meeting with the following individuals on December 11, 1992:

Roger Head	Executive Director
Charlotte White	Executive Assistant
JoAnne Stately	Assistant to the Director
Rodney A. Honkanen	Attorney

Introduction

The Indian Affairs Council (IAC), formerly the Indian Affairs Intertribal Board, was created by the Legislature in 1963. The Council membership consists of the elected tribal chair of each of the eleven reservations throughout the state, two at large members and several ex officio members representing state agencies. In addition, legislation enacted in 1976 created an Urban Indian Advisory Council to advise the Indian Affairs Council on problems and concerns of urban Indians.

Laws of 1988, Chapter 629, Section 1 provided for the termination of the Indian Affairs Council and the Indian Advisory Council effective June 30, 1993. However, the 1991 Legislature revoked that expiration date.

The Council advises the Legislature on the nature of tribal governments, the relationship of tribal governments to the Indian people of Minnesota, and on other Indian affairs issues. The Council also serves as an intermediary through which Indian issues and concerns are addressed to various state agencies. The Council administers the Indian Business Loan Program (IBL), which offers Minnesota-based Indians the opportunity to establish or expand a business enterprise in Minnesota by providing low-interest loan capital.

The current IAC chair is Darrell Wadena. The Council appointed Roger Head, the current executive director, in 1981. The Council maintains staff and office space in Bemidji and St. Paul. The Indian Affairs Council received General Fund appropriations of $308,000, $313,000 and $313,000 for fiscal years 1989, 1990, and 1991, respectively. Financial activity of the Council for the audit period is presented below:

	Fiscal Year Ended June 30		
	1991	1990	1989
Revenues:			
Indian Business Loans	$157,273	$129,253	$131,184
Other	81,364	75,094	44,014
Total Revenues	$238,637	$204,347	$175,198
Expenditures:			
Payroll	$244,070	$231,828	$260,492
Indian Business Loans	99,401	219,066	183,245
Service Contracts	159,120	69,071	25,789
Instate Travel	34,580	35,125	30,823
Other	89,298	52,993	34,276
Total Expenditures	$626,469	$608,083	$534,626

Sources: Statewide Accounting System, Estimated/Actual Receipts Reports and the Manager's Financial Reports for fiscal years 1991, 1990, and 1989 as of the closing date.

Current Findings and Recommendations

1. The Council incurred significant travel costs by designating the executive director's work location as Bemidji instead of St. Paul.

The Council paid nearly $74,000 in travel expenses for the executive director during the past four years. It has designated the executive director's primary work location as Bemidji. However, most of the executive director's work duties occur in St. Paul. Our review shows that the executive director spends 90 percent of his time in St. Paul. The Council considers him to be in travel status while in St. Paul and reimburses him for travel expenses. We believe the Council's designation of Bemidji as the executive director's work location is inconsistent with state travel policies. Further, we believe the Council could be more cost effective and reduce its travel costs.

The legislature required that the Council establish a presence in both the Bemidji and St. Paul locations. Minn. Stat. Section 3.922, Subd. 5 mandates that the Bemidji office be the primary office for the Indian Affairs Council. The Council believes that the executive director's primary work location should be Bemidji as well. The Council reimbursed the executive director for the following travel expenses incurred for working in St. Paul:

	Fiscal Year					
	1989	1990	1991	1992	3 months FY 93	Total
Mileage	$4,865	$5,071	$4,738	$4,766	$1,280	$20,720
Meals	4,358	5,057	5,771	5,839	1,456	22,481
Hotel	3,902	8,210	6,771	9,189	2,591	30,663
Total	$13,125	$18,338	$17,280	$19,794	$5,327	$73,864

We do not believe that Minn. Stat. Section 3.922, Subd. 5 expressly directs that the executive director's primary work location is Bemidji. The law speaks to the primary office, not to the personal work location of employees. Actually, the Council has some staff stationed at each location. The executive director is the only Council employee who has a primary work location designated differently from where his principal work duties occur. Furthermore, we believe that state travel policies direct state agencies to define the work location based on the location where the employee performs most of his or her duties.

The Department of Finance recently raised this issue in a letter to the Council Chair dated June 24, 1992. To date, the Council has not acted on the letter. It continues to reimburse the executive director for travel expenses under the assumption that Bemidji is the executive director's work location.

There are more cost effective options available. For example, the Council could designate St. Paul as the primary work location and require the executive director to spend a predetermined amount of time in Bemidji. Thus, it would reimburse for expenses only when he is in travel status away from St. Paul.

Recommendations

- *The Council should pursue a more cost effective means to support the executive director in both St. Paul and Bemidji.*
- *Because our interpretation differs from the Council's interpretation of the law and state travel policies, we will ask the Attorney General for an interpretation.*

2. The Council established a series of contracts for professional and technical services instead of hiring an employee to perform those services.

For four years, the Council contracted with Ms. JoAnne Stately for services rather than hiring a full-time employee. We believe that under state law the Council should have hired an employee, rather than contracting for Ms. Stately's services. It resulted in a higher level of compensation, including payment for certain mileage reimbursements not provided for under the contract. Also, the Council experienced other technical problems with the contracts.

Although singularly, each of the six contracts with Ms. Stately generally complied with state law, collectively they indicate an employment relationship should have been established. Minn. Stat. Section 16B.17 Subd.2,(3) prohibits contracts that "establish an employment relationship between the state. . . and any persons performing under the contract." In form, the Council did not have a legal responsibility to pay employee benefits such as FICA, vacation or sick leave, health benefits, or retirement contributions. However, in substance several features of the Council's arrangement with Ms. Stately indicate an employment relationship should have been established.

- The Council paid Ms. Stately the equivalent of 40 hours a week for more than three years;
- The Council provided Ms. Stately with an office and equipment, including a computer, printer, long distance service, copy machine, telephone, etc.;
- Ms. Stately performed duties previously performed by a state employee;
- The Council indicated in a document that it wished to hire Ms. Stately as an employee in 1990; and,
- The Council ultimately hired Ms. Stately as an employee in August 1992.

Indian Affairs Council

The Department of Employee Relations' employment guidelines would not permit a salary level as high as the compensation level provided by the contract. The Council continued to contract for Ms. Stately's services at a compensation level higher than allowed by state employment guidelines for nearly four years.

We estimate the contracts cost the Council $40,000 - $50,000 more than if it had hired an employee. Included in this amount, is $8,863 in travel reimbursement that we believe was not allowed for under the contract. Ms. Stately was compensated for a large number of hours worked, and was provided with two supplemental contracts executed in fiscal years 1990 and 1991. The following summary shows the amounts paid under contracts.

	6 Months of FY 1989	Fiscal Year 1990	1991	1992	1 Month of FY 1993	Total
Compensation:						
836.7 hours x $29.50	$24,684					$24,684
2,053.6 hours x $29.50		$60,582				$60,582
2,196.8 hours x $29.50			$64,805			$64,805
1,831 hours x $29.50				$54,015		$54,015
179.5 hours x $29.50					$5,295	$5,295
Expenses:						
Estimated commute	$1,500	$2,948	$2,366	$2,049	0	$8,863
Other expenses	1,285	1,879	4,930	3,340	105	11,539
Total Expenses	$2,785	$4,827	$7,296	$5,389	$ 105	$20,402
Total	$27,469	$65,409	$72,101	$59,404	$5,400	$229,783

The contracts allowed for reimbursement of travel and subsistence expenses under the same rules which govern state employees. State travel policies determine eligibility for mileage reimbursements based on travel from the primary work location. While Ms. Stately was a contractor, she considered her primary work location to be her residence, where she indicated she maintained her office. As a result, she claimed mileage reimbursements when traveling from her residential office to the Council office. However, based on her work itinerary, she clearly spent the majority of her time working in the Council office. According to state travel policies, and thus for purposes of mileage eligibility, her primary work location was the Council office, not her residential office. Accordingly, we believe she was not eligible for the $8,863 the Council paid for her to travel from her home to the Council office.

The Council had other miscellaneous technical problems with the contracts such as:

- miscoding some expenditures on the statewide accounting system as compensation rather than expenses,
- failing to establish the contracts and to encumber the funds on a timely basis, and

- departing from the contract limits between the expense and compensation components, without executing a contract amendment.

Recommendations

- *The Council should comply with Minn. Stat. Section 16B.17 Subd. 2,(3) and refrain from establishing contracts in lieu of hiring employees.*

- *The Council should work with the Attorney General's Office to resolve the $8,863 mileage reimbursement to Ms. Stately for travel from her home to the Council office.*

- *The Council should comply with the technical fiscal procedures when contracting for services, including:*

  - *coding disbursements to the statewide accounting system properly,*
  - *establishing contracts and encumbering funds timely, and*
  - *amending contracts to adjust compensation and expense amounts.*

3. Controls over payroll processing need improvement.

The Council needs to improve controls over payroll processing in several areas. First, a series of coding errors resulted in excessive leave balances for four employees. The errors ranged from 3 to 33 hours. One former employee was overpaid $284 in severance pay as a result of the error. Another former employee was permitted to take more leave time then earned. The Council still employs the other two individuals.

Another coding error caused an employee to lose about eight hours of overtime compensation. The employee's bargaining agreement requires that overtime be compensated at the rate of time and one-half. The Council had only credited the employee with straight time for the overtime. This employee remains employed by the Council.

Recommendations

- *The Council should adjust vacation, sick, and compensatory time balances for current employees affected by the coding errors.*

- *The Council should collect the $284 overpayment from the former Council employee.*

4. The Council has not adequately separated duties over the Indian Business Loan Program.

One Council employee is responsible for all duties associated with the Indian Business Loan Program. The employee reviews the applications, authorizes disbursement of loans, posts loan disbursements in the accounting records, collects repayments, posts loan repayments in the accounting records, deposits loan repayments, and follows up on delinquent accounts. Good internal controls require that the same employee does not have access to receipts and to the accounting records. The Council should have a different employee record and restrictively endorse the checks as received.

Recommendation

- *The Council should separate the receipt handling function and the recordkeeping function for the Indian Business Loan Program.*

5. The Council did not follow proper contracting procedures for establishing professional and technical services contracts.

The Council did not properly contract with the Leech Lake Tribal Council (LLTC) Heritage Sites Program for professional and technical services. The Council began contract negotiations, but the executive director did not execute a final contract. In the meantime, the council employee responsible for Indian burials and reburials instructed the LLTC Heritage Sites Program to begin work. The LLTC Heritage Sites Program performed services and billed the Council. However, without a final contract, the Council had difficulty establishing the proper amount it owed for the work. After further analysis, it paid $8,633 for the services. Since the two parties failed to agree on a contract in writing, the Council never encumbered funds. Upon advice from the Department of Administration, the Council treated the payment as a grant rather than a service contract.

Recommendation

- *The Council should execute formal, written agreements prior to authorizing contractors to perform services.*

6. The Council is not depositing Indian Business Loan Program receipts in accordance with Minn. Stat. Section 16A.275, Subd. 1.

Indian Business Loan Program receipts are not deposited promptly. Currently, a Council employee routinely makes a deposit about once a week, regardless of the receipts on hand.

Indian Affairs Council

Minn. Stat. Section 16A.275, Subd. 1 provides in part that "an agency shall deposit receipts totaling $250 or more in the state treasury daily." Council employees should track the receipts on hand and make the deposit once the amount reaches $250.

Recommendation

- *The Council should deposit Indian Business Loan Program and all other receipts into the state treasury when they accumulate to $250 or more.*

State of Minnesota

INDIAN AFFAIRS COUNCIL

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December 14, 1992

James Nobles
Legislative Auditor
Centennial Building
St. Paul, Minnesota 55155

Dear Mr. Nobles:

In response to the Legislative Auditor's Report, the Indian Affairs Council is providing an official written response to those draft findings of our financial records for the past three years ending June 30 1991, and our discussion of those findings at an exit interview on November 10, 1992 and a subsequent meeting on December 11, 1992.

Auditor's finding #1, indicates that the Indian Affairs Council incurred significant travel costs by designating the executive director's work location as Bemidji instead of St. Paul.

Minnesota Statute 3.922, Subdivision 5 mandates that the Bemidji office be the primary office for the Indian Affairs Council. The Auditor indicates that the Indian Affairs Council paid nearly $74,000 in travel expenses of the executive director during the past four years and that the Council's designation of Bemidji as the main office is inconsistent with state travel policies.

The position of the Auditor's evidences a lack of understanding in the duties and authority of the Indian Affairs Council. The Indian Affairs Council has two principal tasks to be performed. The first task is to help state officials understand tribal governments and the unique nature of Indian policy questions within Indian Country. In order to accomplish this principal task it is necessary for the executive director to fulfill that portion of duties set out in Subdivision 6 of the statute. Those duties, as expressed through the leadership and direction of the executive director, are to clarify for the legislature and state agencies how tribal government works and what its intra-Indian relationships are with their own constituency. In furtherance of that task, it is the job of the Indian Affairs Council, acting through its executive director, to make recommendations to the Legislature regarding state legislation that may affect Indian communities both on or near reservations and the metropolitan areas of Minneapolis, St. Paul, and Duluth. In order to understand and implement those recommendations, it is necessary for the Council to operate as an effective conduit for the legislature and the legislative programs to ensure that those programs and policies do not have an adverse affect on Indian Country. In order to assist the state in delivering programs that are non discriminatory, it is important that the executive director have and maintain a full time working relationship with both Indian tribal council's and state agencies. In order to act as this liaison between local, state and national units of government in the delivery of services to Indian peoples it is necessary for the executive director to have offices both in St. Paul and Bemidji. Subdivision 13 of the Statue requires that the Council act as an intermediary between Indian interests and state agencies and departments to answer questions, solve problems and prevent conflicts. In accomplishing this task, it is necessary for the executive director to meet with, on a regular basis, persons in state agencies to ensure appropriate cooperation and consultation between state agencies and Indian governments. Subdivision 7 of the Statute indicates that in order to carry out the above objectives, it is necessary to ascertain Indian needs and then using that information to confer with the state and its officials in order to develop programs that are non discriminatory in nature to aid the significant Indian population in the State of Minnesota.

The Auditor's show a lack of understanding in the manner and method by which Indian governments work. First of all, Indian governments are basically in northern Minnesota. Within 100 miles of the city of Bemidji, there are three of the state's largest Indian reservations, those being, Red Lake, White Earth, and Leech Lake. Additionally, nearby are the other Minnesota Chippewa tribal reservations located as far away as Grand Portage. Likewise, the Nett Lake and Fond du Lac Reservations are located in northern Minnesota as well as Mille Lacs Reservation. In order to consult with Indian governments, it was established by the Legislature that the principal offices of the Indian Affairs Council would be located in Bemidji so as to provide easier access to the staff and provide information to the executive director of the Council on their needs and tribal concerns. The way for the executive director to use this information provided by tribal governments is to meet with, consult and act as a liaison with state government and its agencies. That government and its agencies are located in St. Paul. This required that the executive director travel between the two locations. The Legislature, in order to assure Indian Tribes that their voices would be heard and their concerns answered, established the primary office in northern Minnesota as a gesture of respect and concern to ally any fears that the majority culture would dominate the minority culture. The Legislature at that time knew well that the job of the executive director would be to consult with the members of the state government on a regular basis. Therefore, it was anticipated by the Legislature that these travel expenses would occur and that the Council would budget for this expense in its total programming efforts. The Council meets its mandated duties, administers its programs and continues to operate within budget. In fact, the Council, in managing its budget, has returned money back to the general fund for the past three years.

The Indian Affairs Council will meet with the Attorney General's Office for an interpretation and address the issue of cost effective means to support the executive director in both Bemidji and St. Paul with the Council directors.

In Audit Finding #2, the Auditor indicated that the Council established contracts for professional and technical services instead of hiring an employee to perform those services.

In reaching their Audit conclusions, the Auditor's fail to recognize that there was not one single continuous contract with Ms. Stately, but separate and distinct contracts for various performance requirements. The contracts varied from six months to one year, each with varying dollar amounts and limitations on the number of hours to be billed for completion of the contract. The first contract entered into between the Council and Ms. Stately ran from January of 1989 through June of 1989. This contract had a 30 hour per week billing restriction. This contract was entered into pursuant to the statute that allows the Council to enter into contracts in its own name and to hire agents and contractors as necessary to implement the legislative intent of the Indian Affairs Council. This contract, along with all other contracts was reviewed by the Commissioner of Administration, Commissioner of Finance and the Attorney General's Office of the State of Minnesota. Ms. Stately entered into these agreements as a private consultant. All of these departments reviewed and approved the contracts entered into. A separate contract was entered into between the parties effective between February 1989 through December 31, 1989. This contract was separate and apart from other contracts and was a HIV/AIDS liaison and education project. Reporting and billing for these contracts was also separate and distinct and not performed by previous employees. The next contract entered into between the Indian Affairs Council and Ms. Stately was an amendment to the first contract that was effective July 1, 1989 through December 31, 1989. Again, this contract was thoroughly reviewed by all of the necessary State departments and was approved. Its purpose was to develop certain infrastructures in Indian Country in order to allow the Council to implement the mandates of the legislature. Another contract was entered into between the parties beginning July 1, 1990 through June 30, 1991. This contract was to continue the HIV/AIDS liaison duties, provide technical assistance to state agencies, tribal and Indian organizations requesting such support, and design and implement new programs with regard to the Urban Indian Advisory Council. Again, this contact was reviewed and a separate contract approved by all necessary state government agencies. A separate contract was entered into between parties beginning August 1, 1990 through June 30, 1991. The purpose of this separate and distinct contract was to develop certain programs for adolescent youth regarding chemical dependency. The job required that the contractor plan, participate in and visit other states in order to determine the best treatment methodology and location of centers for Indians in Indian Country. Again, this contract was reviewed by all necessary state agencies and approved. The latest contract entered into between July 30 1991 through June 30 1992 between parties continued the HIV/AIDS prevention and education activities, work with the Urban Indian Advisory Council and their mandates, and chemical dependency program developments.

It should be pointed out that Ms. Stately is an enrolled member of the White Earth Band of Chippewa Indians and because of her unique position and education she was identified by the Indian Affairs Council as the best consultant to perform the specified contracted services that would positively impact programs affecting Indian governments and Indian people on the reservation and in urban areas. As I pointed out earlier, those governments and peoples are mainly located in northern Minnesota. The contracted services also required extensive work with Indian populations in the metropolitan areas of Minneapolis, St. Paul and Duluth.

The Auditor's comments conclude that because Ms. Stately utilized Council offices and equipment, that an employee relationship existed. It was necessary for Ms. Stately to have access to information that is available through the Council, and that the Council allowed for use of office equipment during this time period. However, Ms. Stately has use of her own office equipment, and such use of Council equipment does not make Ms. Stately a state employee. Nor was the specified level of contracted services provided by Ms. Stately previously performed by other state employees. It should also be noted that Ms. Stately's level of performance under those contracts exceeded the level of contracted services. The Indian Affairs Council did not control Ms. Stately's hours of work, days of work, location of work or any other item regarding her. She was free to contract for other work, which she did. Additionally, Ms. Stately did not earn any vacation, sick leave, retirement, nor was her portion of the FICA paid by the State, nor did she qualify or receive any health or life insurance.

From the comments of the Auditors on page 4 of the Report, it indicates that these contracts are high with regard to their compensation. It is the position of the Indian Affairs Council that the Auditors are not in the position to determine or evaluate what is unreasonable and what it costs to contract or hire people with the specialized knowledge and expertise to design and implement effective programs within Indian Country and working with tribal governments.

Finally, the draft Audit findings indicated that the Council should work with the Attorney General's Office to resolve the $8,863 in travel reimbursements to Ms. Stately. The various contracts as listed above had within their terms and condition monies set aside for mileage reimbursement. Ms. Stately did not collect any money that was not set aside for mileage and agreed to by the State Commissioner of Finance, State Commissioner of Administration and as approved by the Attorney General's office. Our office specifically asked for clarification of reimbursement for travel from Ms. Stately's residential office to the Council in performing the duties of the contract. The information provided back to the Council from numerous people from the Department of Finance including Richard Hoeft, our Executive Budget Office Tom Rice, and John Schorn, indicated that as the Executive Director, I had the authority to approve those expenses. There was no attempt to conceal those expenses by Ms. Stately and she was provided the approval to recover those expenses as part of her contractual agreements.

This matter is now being identified as an ineligible expense based on the Auditor determining that the Council has established an "employee relationship" and is using state guidelines to disallow this expense. The Indian Affairs Council does not agree with the method of determining an "employee relationship" to justify these findings. Each contract was completed on time within the contract limits and the standards of performance exceed the contract requirements. The Indian Affairs Council has already demonstrated that it did not overspend its operating budget during this time period.

To address the issue of the Council indicating in a document to hire Ms. Stately in 1990, a desire by the Council to hire a person for a position does not constitute an employee relationship. There was an official offer by the Council and acceptance by Ms. Stately to be hired for a specific job position at the end of July 1992. The salary level for a new job position that Ms. Stately has now been hired to fill is at $45,000 per year. The salary and the fringe benefits assigned to this newly developed job position would be very close to the contracted amounts. However, the duties and responsibilities are distinct from the contracted services. To assume that if an employee had been hired and that the costs to the Council would have been less is speculative.

The Indian Affairs Council will work with the Attorney General's Office to resolve the issue of identified mileage reimbursements for contracted services.

The Indian Affairs Council concurs with the recommendations and findings of the Auditor on numbers 3, 4, 5, and 6.

With regard to Audit Finding #3, the Council has taken steps to address the recommendations of the Auditor.

With regard to Audit Finding #4, the Council has taken the appropriate action.

With regard to Audit Finding #5, the Council will follow the recommendations of the Auditor.

With regard to Audit Finding #6, the Council will make the deposits of monies as suggested by the Auditor.

Sincerely,

Roger Head
Executive Director