

**REPORT OF THE
ADVERTISING AND PROMOTION COMMISSION
INDEPENDENT REVIEW COMMITTEE**

March 30, 2007

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BACKGROUND INFORMATION

A.. FORMATION OF THE INDEPENDENT REVIEW COMMITTEE

In January 2007, Little Rock Mayor Mark Stodola asked seven (7) Little Rock citizens to serve on a committee to review the operation of the Little Rock Advertising and Promotion Commission. The following people agreed to serve on the committee:

John Plegge, Chair
Orville Abrams
Paula Casey
Dr. Marian G. Lacey
Jack Murphy
Mike Schaufele
John Steuri

The committee considered purchasing practices, management, accountability and audits. John Plegge asked that committee members Abrams, Schaufele and Steuri investigate and report on matters of accountability and audits. Committee members Casey, Lacey, and Murphy were assigned to investigate and report on purchasing practices and management.

Meetings of the committee were held on January 19, January 26, February 9, February 23, March 16, and March 30, 2007.

SUMMARY OF REPORT

Following weeks of interviews and reviews of documents, the Committee concluded that:

-The Advertising and Promotion Commission and the Little Rock Visitors Bureau have made significant, positive contributions to the City of Little Rock;

-The Advertising and Promotion Commission lacks by-laws, long-range planning, and ethics rules that are necessary for organizations entrusted with collecting and spending public money;

-The Little Rock Convention and Visitors Bureau suffered from management problems and engaged in business practices that are unacceptable for an organization entrusted with collecting and spending public money.

II. THE STRUCTURE AND AUTHORITY OF THE ADVERTISING AND PROMOTION COMMISSION

A. LEGAL AUTHORITY

1. Findings

Arkansas law permits certain municipalities to levy a tax of three percent or less on gross receipts of temporary lodging and prepared foods.¹ Municipalities that levy a tax under this authority are required to create an advertising and promotion commission consisting of seven members.² Three of the members must be owners or managers of hotels, motels, or restaurants and two members must be members of the governing body of the municipality. The remaining member is an at-large member.³

An Advertising and Promotion Commission was created by Little Rock City Ordinance 17-100. Under that ordinance, funds credited to the Advertising and Promotion Commission fund "...shall be used for advertising and promoting the city and its environs or for the construction, reconstruction, extension, equipment, improvement, maintenance, repair and operation of a convention center, convention centers, advertising and promotion facilities and facilities necessary for, supporting, or otherwise pertaining to, a convention center or convention centers, or for the payment of the principal of, interest on, and fees and expenses in connection with, bonds issued under state law as shall be determined by the commission. The ordinance also authorizes the commission to engage such personnel and agencies and incur administrative costs that it deems necessary to conduct its business. The commission is the body that determines the use of the City Advertising and Promotion Fund. The commission is authorized to use or pledge all or any part of the revenues derived from the tax levied hereunder, for the

¹A.C.A. Sec. 26-75-602.

²A.C.A. Sec. 26-75-605.

³Id.

purposes prescribed herein.”⁴ The City of Little Rock levies a two percent tax under the authority of state law.⁵

2. Recommendations

-The current A & P Commission and City Board should consider the length of service of A & P Commission members. The Committee recommends that there be some type of “term limits” be implemented. Commission members should serve no more than two terms. Terms should be staggered to ensure overlap and continuity.

B. ADVERTISING AND PROMOTION COMMISSION BY-LAWS

1. Findings

The Advertising and Promotion Commission has no by-laws. CEO Dan O’Byrne is in the process of drafting by-laws for the commission to approve and adopt.

2. Recommendations

-The Advertising and Promotion Commission should move as quickly as possible to adopt by-laws.

-The proposed by-laws should be reviewed by legal counsel.

-The proposed by-laws should be reviewed and discussed in a public meeting prior to adoption.

-Members of the Advertising and Promotion Commission should be provided copies of the by-laws when they begin service on the Commission.

C. ADVERTISING AND PROMOTION COMMISSION COMPLIANCE WITH FOIA

⁴Little Rock City Ordinance No. 17-100(d).

⁵Little Rock City Ordinance No. 12,353.

1. Findings

The Advertising and Promotion Commission, as an entity created pursuant to state law and authorized to expend public funds is clearly subject to the State's FOIA (Freedom of Information Act).⁶ The FOIA requires that the specific purpose of an executive session be announced publicly before a group meets in executive session.⁷ The minutes of the Advertising and Promotion Commission do not reflect that such announcements were made.

2. Recommendations

-The purpose of executive sessions should be reflected in the minutes of the Advertising and Promotion Commission.

-Members of the Advertising and Promotion Commission should be briefed on the application of the FOIA and provided a copy of the law.

D. APPLICATION OF THE CODE OF ETHICS

1. Findings

The City of Little Rock has an ordinance that addresses ethical considerations in the conduct of the public's business. The code "...shall be applicable to members of the city board of directors, members of all boards and commissions of the city..."⁸ The plain language of the ordinance certainly seems to include members of the Advertising and Promotion Commission.

The same ordinance permits the city attorney to issue opinions, either formally or

⁶ "...all public records shall be open to inspection and copying by any citizen of the State of Arkansas..." A.C.A. Sec. 25-19-105 (a)(1). Public records are defined as "...writings..electronic or computer-based information,..required by law to be kept or otherwise kept, and which constitute a record of the performance or lack of performance of official functions which are or should be carried out by a public official or employee, a government agency, or any other agency wholly or partially supported by public funds or expending public funds....." A.C.A. sec. 25-19-103(5)(A).

⁷ "The specific purpose of the executive session shall be announced in public before going into executive session. A.C.A. Sec. 25-19-105(c)(1).

⁸Little Rock City Ordinance 2-334.

informally, concerning questions of conflicts of interest.⁹ According to Little Rock City Attorney Tom Carpenter, no requests for opinions have been made concerning any member of the Advertising and Promotion Commission.

⁹Little Rock City Ordinance 2-336.

Members subject to the code of ethics are required to disclose conflicts of interest and abstain from participating in commission business where a conflict exists.¹⁰ The minutes of a meeting where a conflict disclosure is made are required to reflect the disclosure. A person who has a conflict is required to physically leave the meeting until deliberation and action on the item have been completed. There is no requirement that written conflicts disclosures be made by commission members.

Arkansas law states that “No officer or employee elected or appointed in any city shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or service to be furnished or performed for the city unless the board of directors of the city shall have enacted an ordinance specifically permitting an officer or employee to conduct business with the city and prescribing the extent of this authority...”.¹¹ Although the language of this code section seems to apply to A & P Commission members and some A & P Commission members received money through businesses they owned or had an interest in, no Commission member ever sought approval of the City Board of Directors. In fact, it appears that Commission members were unaware of the existence of this code section.

Under current purchasing practices, purchases from operating funds up to fifteen thousand (\$15,000) can be approved by the CEO and may never be disclosed to the A & P Commission. It is possible for the CEO to approve an expenditure to a business without knowing that a commission member or employee is involved in the business. Commission members, including the member receiving the benefit of the business, may not be aware of the transaction. The likelihood that unintentional violations may occur is increased by the legal requirements that the board consist of four (4) members who are owners or managers of hotels, motels, or restaurants.

The business practices of the A & P Commission and the Convention and Visitors Bureau led to several specific instances of conflicts of interest that should not have happened. Those instances include the practice of the CVB doing business with a restaurant owned by the then-Chairperson of the Commission, the lease of a sales office in west Little Rock, and the purchase of an automobile by the former CEO Barry Travis. The instances are discussed more fully in section “VIII. Additional Observations and Recommendations” *infra*.

2. Recommendations

-The CVB staff and/or legal counsel should review the ethics ordinances and state laws with new commission members and employees.

¹⁰Little Rock City Ordinance 2-335.

¹¹A.C.A. 14-47-137(a)(1).

-The CVB should hold periodic training sessions on ethics ordinances and state laws for CVB employees and A & P Commission members.

-The A & P Commission should require Commission members and employees of the Convention and Visitors Bureau to file written conflicts disclosures and keep them current.

-Legal counsel should develop an appropriate conflicts form.

-The CVB should establish a procedure within the Purchasing Department to require that purchases be checked against conflicts. Purchases from organizations that are owned by commission members or Convention and Visitors Bureau employees should be approved by the CEO and disclosed to the A & P Commission on a monthly basis.

-The current and future A & P Commission members and staff must be mindful and diligent regarding the concept of the appearance of conflicts of interest and improprieties, even when there are no actual conflicts or improprieties.

III. PURCHASING PRACTICES

1. Findings

A. REVIEW OF PURCHASES AND PURCHASING RESOLUTIONS

Arkansas state law requires that cities using the city manager form of government require competitive bidding for the purchase of supplies, materials, equipment, service contracts, construction, and other goods.¹² Cities, through ordinances, may establish purchasing procedures, set minimum requirements and waive competitive bids under exceptional circumstances. When the A & P Commission was established (*see Sec. A.1, supra*) it was made subject to all fiscal and purchasing policies of the City of Little Rock.¹³ Statutory requirement concerning bidding and purchasing were enacted to ensure that public funds are spent prudently and efficiently without favor or gain to the persons entrusted with them.

B. PURCHASING MANUAL / PURCHASING PROCEDURES

The purchasing manual originally furnished to this committee was nine-years old and had

¹²Arkansas Code Annotated Sec. 14-47-138.

¹³Little Rock Revenue Code Sec. 17-100c (1988).

not been comprehensively updated since written. Changes and revisions were simply hand-written. At the time the committee began its review of the A & P Commission, CEO Dan O'Byrne had begun a comprehensive revision of the purchasing manual.

The purchasing manuals of the City of Little Rock and the A & P Commission are very similar. Major requirements included in the A & P Commission manual include the following:

- compliance with state and city law and regulations;
- competitive bidding for major expenditures;
- searches for new sources of supplies and services;
- assurances that the executive director of the Convention and Visitors Bureau

authorizes all contractual arrangements.

According to the A & P Commission purchasing manual currently under revision, a purchase or procurement that implicates purchasing policy is defined as the acquisition of goods or services when specific competition exists in the marketplace and the expenditure exceeds \$2,500 dollars. A purchase or procurement is the solicitation and selection of sources and the preparation and award of a contract.

A purchase or procurement not involving purchasing policy is the acquisition of goods and services when no specific competition exists in the marketplace for goods or services specifically identified, for example, as follows:

- sponsorship expenditures;
- business development expenditures;
- dues, subscriptions, advertising in select newspaper and magazine publications

(these purchases and procurements do not require quotes).

C. PURCHASING LIMITS

Certain employees of the Convention and Visitors Bureau are authorized by the A & P Commission to spend funds in operating accounts without prior approval of the Commission provided that the expenditures are within the following limits:¹⁴

POSITION

PURCHASE LIMIT¹⁵

¹⁴For purposes of comparison, the purchasing limits for the City of Little Rock are \$50,000 for the city manager, \$20,000 for purchasing agents, \$10,000 for purchasing assistants, \$5,000 for purchasing buyers. Purchases above \$50,000 require approval of the City Board of Directors.

¹⁵The purchase limit is for annual aggregate purchases from one source.

CEO	\$ 15,000
CFO	5,000
COO	5,000
Department Heads	1,000
Other	500

Purchases from operational funds in excess of \$15,000 requires the approval of the A & P Commission. All purchases from reserve accounts require the approval of the A & P Commission.

D. BID PURCHASES

The A & P Commission revised its bidding policies in November 2005. Purchases below \$1,000 simply require that the buyer exercise discretion to obtain the best available price. Purchases above \$1,000 but less than \$2,500 require purchase order. Telephone quotes are required for purchases between \$2,500 and \$4,999 although the purchasing office has authority to require or waive the telephone bids on purchases between \$1,000 and \$2,500. Three written quotes are required for purchases between \$5,000 and \$25,000. Any purchases above \$25,000 require competitive bids and advertising.

The State of Arkansas and the City of Little Rock authorize the A & P Commission to use their competitive bids to acquire goods and services. Convention and Visitors Bureau employees and City employees who were interviewed as part of this process confirm that state and city bids are utilized to purchase a variety of items such as office and other supplies, fuel, and machinery. It is also possible for the Convention and Visitors Bureau to obtain new vehicles at state and city bid prices.

The nature of the business conducted by the A & P Commission through the Convention and Visitors Bureau makes it difficult in some cases to obtain timely quotes or formal bids. Consequently, Bureau employees sometimes need wide discretion. However, nothing excuses the need for the employee to make a bona fide effort to secure a reasonable “best price available” before the purchase or expenditure is made. Documentation concerning the need to proceed without quotes or formal bids must be made at the time of the purchase.

2. Recommendations

-Contemporaneous documentation of the need to dispense with quotes and formal bids must be made at the time of the purchase.

-Purchases of \$10,000 and more that are made without quotes and formal bids should be

reviewed monthly by the A & P Commission.

-A binding contract, letter of agreement, or standard form should be executed at the time of fiscal commitment. This document should indicate authority, budget inclusion, amounts or projections, dates, and other requirements and should be forwarded to the CEO, finance department, and, when required, to the A & P Commission for action.

-All payments and reimbursements for no bid expenditures must be made to the client organization and not to individuals. Accounting support for all expenditures must be made through invoice, formal written requests, canceled checks, or other documentation.

E. PURCHASING PROCEDURES AND CONTROLS

1. Findings

A & P Commission's purchasing policies and procedures work well, when properly applied, in the purchase of many items.¹⁶ There is a perception that the following problems exist:¹⁷

-Most purchasing and spending problems emanate in the marketing - entertainment and sponsorship areas.

-Decisions and commitments are sometimes made without proper authorization and follow-up documentation.

¹⁶For example, the following purchases complied with established purchasing policies: February 2004, \$40,500 for consultants for stage rigging authorized in the A & P minutes and in Resolution 32; June 6, 2005, \$58,675 for marquee sign authorized by Resolution #35, three bids were received; August 24, 2005, \$23,890 for 4-ton air handler authorized by A & P minutes, purchase was an emergency so bids were waived; March 2006, \$8,492 for cable in computer room, authorized by CEO and 3 written quotes were received.

¹⁷For example, the following purchases did not comply with established purchasing policies: November 2004, \$26,087 to Cajun's Wharf for party in connection with Clinton Library opening, the payment was within the CEO's authority at the time (\$35,000) but there is no reference in Commission minutes and no advance approval on payments records, only a check request; February 2006, \$3,080 for paint, only one telephone quote; March 2006, \$32,283 for *Arkansas Times* payment for printing dining guide, no documentation to justify "only source" and no approval in minutes; August 2006; \$2,831 for ten radios, no telephone quotes; October 2006, \$18,500 to Stone Ward Company as payment for plan and public relations over a four month period for River Market Tenth Anniversary Celebration, expenditure exceeded the CEO's \$15,000 limit.

-Purchase order requirements are not always fulfilled.

-CEO's have not always approved contractual arrangements as required.

-Evidence of marketing, travel, and entertainment expenditures are not fully documented and forwarded for payment on timely basis.

The Convention and Visitors Bureau purchasing agent was recently placed under the direct supervision of the CEO. This is a step in the right direction that should improve the accountability of the office.

2. Recommendations

-Purchasing should be centralized under the authority and responsibility of one person to provide for greater control, accountability, and efficiency of operation.

-Complete the travel expense policy that is currently under review.

-A & P Commission's annual audit should be expanded to include investigation of a substantial number of purchases and transactions to ensure compliance with established policies. Special attention should be directed to expenditures for marketing, promotion, entertainment and similar expenditures.

-Staff should develop policies and procedures for cash management, accounting and reporting similar to those used by the City of Little Rock.

-The purchasing manual should clarify that purchasing limits are subject to annual aggregate limitations with respect to each vendor.

-Staff should receive training on purchasing policies and rules on a regular basis.

F. PROFESSIONAL SERVICE CONTRACT AWARD REQUIREMENTS

1. Findings

The City of Little Rock Ordinance 15,221 provides for the competitive selection of professional services. Professional services specifically included are: architect/engineer; construction management; legal; audit; accounting; appraisal; information system services consultants. Professional services awarded through a request for qualifications process require approval from the A & P Commission when the contract amount exceeds \$25,000. This

ordinance details the required elements of the selection as follows:

1. Selection of a review committee;
2. Preparation of a proposal and advertising;
3. Establishment of selection criteria;
4. Establishment of process of review;
5. Contract negotiations.

Contracts have been awarded for engineering, architectural and legal services with authority given the CEO to extend these contracts annually for up to four years. Such contract renewals are not reviewed or approved by the A & P Commission.

2. Recommendations

-Consider changing auditors every three years for the purpose of obtaining a fresh and different look at the financials.

-Any contract exceeding \$25,000 that is extended by the CEO must be reviewed and approved by the A & P Commission.

IV. MANAGEMENT ISSUES

A. ORGANIZATIONAL STRUCTURE

1. Findings

The previous CEO of the Convention and Visitors Bureau accomplished many things during his thirty year tenure. However, during that time the A & P Commission and the Convention and Visitors Bureau grew into an organization that now needs some major management and structural changes. CEO Dan O'Byrne was hired four and half (4 ½) years ago to be the Chief Marketing Officer. Two years ago O'Byrne was hired to replace the retiring CEO but the CEO was allowed to stay for one (1) year in an emeritus status. O'Byrne has effectively functioned as CEO of the organization for only one year.

Prior to the change in management, there was little serious inspection or supervision by the CEO or the A & P Commission. Some employees in key roles did not possess the necessary skills needed to perform their jobs. There were allegations of partisanship in management and widespread dissatisfaction among employees.

CEO O'Byrne has restructured the Convention and Visitors Bureau into three departments. Those departments are Real Estate Operations, Finance Administration and

Compliance, and Destination Marketing. The restructuring will require that employees in key positions report directly to O'Byrne.

There was a lack of adequate reporting of budgets and performance against budgets (*see Audit...infra*) which made it difficult for the A & P Commission to exercise adequate review and oversight.¹⁸ CEO O'Byrne has revised the method for reporting budgets and expenditures, first by dividing the department into separate functions to facilitate comparisons.¹⁹

The A & P Commission has functioned without a Finance Subcommittee. Creating a Finance Subcommittee would facilitate Commission oversight of both tax collections and expenditures.

2. Recommendations

-The A & P Commission should create a Finance Subcommittee.

V. ACCOUNTABILITY

A. TAX COLLECTION

1. Findings

The two percent (2%) tax revenue collected has grown significantly from \$7,028,424 in

¹⁸ For example, the minutes of the A&P Commission meeting held on July 17, 2002, reflect that then Chairman Mary Beth Ringgold requested that "Curran Hall be treated as an additional Bureau facility that needs its own operating budget." This was not done until CEO Dan O'Byrne became CEO.

¹⁹The functions are: LRCVB operating departments; administrative and marketing; non-operating; parking operations rc; net operations Robinson Center; Statehouse Center; Curran Hall; net operations - meeting & technical services; executive; finance and administration; sales and marketing; facility management; non-operating expense

2002 to \$9,244,370 in 2006. That is an increase of 31.53% in the past four years or an annual increase of 7.88%. This tremendous growth significantly exceeds the prior four-year period and reflects the accomplishments of the A & P Commission coupled with Dan O’Byrne’s arrival in 2002 to get the marketing function going.

Collection of delinquent tax revenues is a problem that has not been adequately addressed by the A & P Commission and the CEO of the Bureau. The very small staff, consisting of only two people (and occasionally a third employee), that is responsible for collection of the 2% tax appears to be diligent in their efforts to identify new restaurants and hotels and collect taxes in a timely manner.²⁰ However, the collection staff needs assistance from the CEO and the A & P Commission to improve and streamline the cumbersome collection procedure. Inadequate staffing results in delays in collections and limited actions against delinquent tax filers. Many businesses are paying the taxes over a six- month collection cycle with little or no penalty or interest under existing procedures. A number of accounts are consistently delinquent. In February 2007, the following accounts were outstanding:

<u>Number of businesses delinquent</u>	<u>Time delinquent</u>	<u>Amount</u>
52	30 days	\$28,805.
39	60 days	16,472
32	90 days	10,165
27	120 days	11,280
16	150 days	4,333
14	180	5,620

The top twenty delinquent accounts total \$156,030 and approximately one-third of that amount will be uncollectible owing to bankruptcies and business closures.

Under current collection procedures, collection letters are sent to delinquent businesses every thirty days and calls are made to attempt to collect taxes. After 120 days, a property assessment is sent and a final assessment letter is sent after 150 days. After 180 days a Certification of Indebtedness is filed with the state by the legal counsel for the A & P Commission.

2. Recommendations

-Move the responsibility for the data entry of tax payments to the Tax Collection Department to improve the efficiency by housing all functions of the tax collection process in

²⁰ The tax collection process appears to operate under the management of two, departments within the CVB. Data entry of tax payments is performed by personnel within the office of the Chief Financial Officer (Janet Charles) rather than the Tax Collections Department.

one department.

-Consider increasing the Tax Collections department to include a tax collections manager, two tax revenue collectors, and one assistant tax collections manager.

-A monthly report on delinquent tax filers and actions being taken should be presented to the A & P Commission at each monthly meeting, allowing the members to be proactive and consistent in the collection of delinquent accounts before they become write-offs.

-The A & P Commission, through a Finance Subcommittee, should adopt guidelines for payment plans for delinquent tax filers so that payment plans are consistent.

-Approval of payment plans for delinquent tax filers should be discussed and endorsed by the A & P Commission members and the new Finance Subcommittee, not the Chief Financial Officer.

-The A & P Commission should implement new procedures for collecting delinquent taxes. Staff should research collection methods used by other government entities in an attempt to find the best practices.²¹

-The A & P Commission should investigate assessing interest and penalties on businesses that are more than 30 days delinquent.

-The A & P Commission should investigate publishing lists of businesses that are more than 45 days delinquent.

-The A & P Commission should post notices of impending closure on businesses more than 90 days delinquent.

-Collection procedures should include provisions for closure letters to be issued to delinquent businesses, which can be accomplished by revoking the city business license. A company would be required to bring the tax account current before being re-licensed to operate.

-The Tax Collection department should acquire monthly listings of new applicants for licenses from the following organizations:

- Arkansas Department of Health
- Arkansas Alcohol Beverage Control
- City of Little Rock

²¹For example, the City of North Little Rock closes businesses that are 90 days delinquent in tax remittance.

-Arkansas Sales Tax Department

These listings should be used to update tax records, thereby providing a tracking mechanism to ensure that all taxes are collected.

-The A & P Commission should request that the existence of the 2% city tax be incorporated into the handbooks and brochures published by the Secretary of State's Office and the Department of Finance and Administration concerning establishing and operating a business.

-The A & P Commission should explore the possibility of the City of Little Rock Attorney's Office providing the legal services currently being provided by a private law firm. If it is not feasible for the City Attorney's Office to provide legal services, a competitive bid process for legal services should be implemented.

B. FUNDS MANAGEMENT

1. Findings

The A& P Commission adopted investment guidelines for investment policy in November 1993. A copy of the guidelines was provided to the Committee for review. Current strategies and investment practices are not consistent with the investment guidelines.

Prior to 2000, the A & P Commission had a year-end cash balance of \$3.1 million in the Operating and Reserve accounts. In two years, these accounts had a year end balance of only \$.5 million. The investment policy during this time-frame allowed the A & P Commission to purchase CDs (certificates of deposit) in a competitive bid process. These investments were held in the reserve investment account. CDs were purchased according to the highest rate of return. The A & P Commission used the funds from the investment account to cover the rising costs of repairs and maintenance of A & P Commission managed facilities. In 2000, the investment fund totaled one million dollars (\$1,000,000). By the end of 2002, the balance was zero and the practice of purchasing CDs was discontinued. From 2000 to 2002, the A & P Commission's expenditures exceeded revenue resulting in deficit spending. During each of these years the deficit spending increased by 180% from 2000 to 2001 and 105% from 2001 to 2002. By the end of 2003, deficit spending had been reversed to show a surplus of revenues over expenditures.

When Dan O'Byrne was appointed CEO, he re-established a true investment fund policy for each line item as opposed to the former practice of placing funds in an investment account. Funds were set aside in reserve accounts resulting in an actual budget for each new budget year. The following reserve line items were established:

- (1) repairs and maintenance of boiler and machinery;
- (2) repairs and maintenance regular;

- (3) furniture, fixtures, equipment and building reserve;
- (4) repairs and maintenance music hall;
- (5) marketing reserve;
- (6) destination development reserve;
- (7) art fund reserve; and
- (8) technology reserve.

A capital needs budget was established and the reserve line items were created. Additionally, O'Byrne established a "current needs request calendar" to forecast projected capital expenditures. The purpose of the reserve accounts and the calendar is to ensure that adequate reserves will be available each year. By the end of 2006, each of the eight reserve accounts had funds available.

In 2005, an Invitation to Bid for A & P banking services (Bid #5009) was issued. Six local banks responded. First Security was awarded the contract. Beginning January 1, 2006 and continuing until December 31, 2008, all of A & P Commission banking services and accounts will be provided by First Security Bank.

2. Recommendations

-Update the investment guidelines to reflect current A & P Commission strategies and current investment practices, including changes that have taken place in the organization during the past 90 days.

-Monthly financial reports on reserve accounts and expenditures should be presented to Commission members at the monthly meeting to ensure that reserve levels are never depleted.

-The A & P Commission should continue the competitive bid process for banking services to ensure the best return on investments.

VI. AUDITS

A. AUDIT PRACTICES

1. Findings

Audits for the Advertising and Promotion Commission for 2004 and 2005 were conducted by BKD, LLC. Kevin Kemp, the BKD partner in charge of the audits, reviewed the audits, particularly payables and cash disbursements, with the Committee.

Audits were conducted according to GASB (Governmental Auditing Standards Board). When BKD began auditing the A&P Commission, the Commission operated on a cash accounting method.²² The Commission changed to an accrual system²³ in 2005 and is now on a full accrual system recognizing both receivables as well as payables for income and expense items.

Management letters were issued after the 2001 and 2004 audits. Following the issuance of the 2004 management letter, the A & P Commission hired a staff member of the BKD firm to oversee expense reports and credit card purchases. This change provided better accountability and BKD determined that a management letter was not necessary for the 2005 audit.

Presently the books of the A & P Commission do not contain all the assets and liabilities of the Commission. Omitted items include all fixed assets, various bank accounts restricted by the bond issues and long term debt. Monthly reports given to the Commission are an income statement, data on tax collections, information on certain bank accounts and capital expenditure requests.

2. Recommendations

- Fixed assets, long term debt, and special funds should be reflected on the general ledger.
- Monthly financial reports should include a complete balance sheet and income statement.
- Monthly financial reports should include a statement of “cash flow” and any other information requested by the Finance Committee of the A&P Commission.

B. SALES AND MARKETING - TRAVEL AND ENTERTAINMENT

²²In a cash basis of accounting, “revenues and expenses are recorded in the period in which they are actually received or expended in cash. Use of the cash basis of accounting is generally not considered to be in conformity with Generally Accepted Audit Procedures and is therefore used only in selected situations, such as for very small businesses and (when permitted) for income tax reporting. www.ventureline.com/glossary. Site last visited on February 21, 2007.

²³In an accrual basis of accounting, “revenues and expenses are received in the period in which they are earned or incurred regardless of whether cash is received or disbursed in that period. This is the accounting basis that is generally required to be used in order to conform to Generally Accepted Accounting Procedures in preparing financial statements for external users.

EXPENSES

1. Findings

The Committee reviewed with CEO Dan O'Byrne the policies for sales and marketing and travel and entertainment expenses, approval of expense reports, classification of expenses, dissemination of information to other managers, comparison of expenses to budget, and expense tracking by project.

The Commission has no or inadequate procedures and policies regarding entertainment expenses. There is no formal procedure to inform the mayor and City Board members of requests for Advertising and Promotion Commission involvement in functions at the request of a City Board member or city staff member, either before or after the event. There is no requirement to document the reason or purpose for expenditure of Advertising and Promotion Commission funds for jointly sponsored functions.

2. Recommendations

-Establish policies regarding entertainment functions financed by the Advertising and Promotion Commission. This policy may include categorizing restaurants that meet certain needs, such as private rooms, parking, and quality of food. Restaurants within each category should be used on a rotating basis to avoid the appearance of favoritism.

-The purpose for expenditure of Advertising and Promotion Commission funds for functions jointly sponsored with other entities, including city commissions and boards, should be adequately documented.

-All functions jointly sponsored by the Advertising and Promotion Commission and other city boards and commissions should be reviewed by the Marketing Committee of the Advertising and Promotion Commission and be preapproved.

-If a member of the City Board of Directors or city staff member requests that the Advertising and Promotion Commission sponsor or jointly sponsor a function, the mayor and City Board should be advised of the request and the reason for Advertising and Promotion Commission involvement.

C. REORGANIZATION OF THE SALES AND MARKETING DEPARTMENTS

1. Findings

The Committee met with CEO Dan O’Byrne concerning the structure of the Sales and Marketing Department, the goals of the department, and the relationship between that department and the Accounting Department. Janet Charles, Chief Financial Officer of the Convention and Visitors Bureau, was also interviewed concerning how the accounting department records expenses for the Sales and Marketing Division. At present the expenses are recorded in various general categories. Expenses are not tracked by project. The general nature of the categories allows the same type of expense, i.e. air travel, to be recorded in numerous categories. The determination of the category is normally done by the accounting department.

CEO Dan O’Byrne has two goals for the Sales and Marketing Department. The first, a goal shared by other Advertising and Promotion Commissions, is to sell Little Rock as a destination for conventions and group meetings. The second goal is to promote Little Rock to the residents of the central Arkansas area. O’Byrne plans to reorganize the Sales and Marketing Department into two divisions to better achieve these two goals. Under the present accounting system the cost and effectiveness of these divisions cannot be tracked.

2. Recommendations

-Do away with the existing Sales and Marketing function and instead establish two new divisions in the accounting system, one for the Destination Travel Department and one for the Central Arkansas Marketing and Communication Department.

D. RELATIONSHIP BETWEEN THE SALES AND MARKETING AND THE ACCOUNTING DEPARTMENT

1. Findings

The Sales and Marketing Department representatives currently establish internal budgets and some cost allocations for some projects. However, this information is not presently provided to the Accounting Department.

When actual expenses are recorded by Accounting, there is no way to track the expenses to provide Sales and Marketing with data to compare actual expenditures to their budget. Similarly, there is no way to compare the overall cost for projects with the revenue that they may generate. Thus, it is not possible to accurately measure the results of individual Sales and Marketing representatives.

Sales and Marketing representatives are authorized to offer incentives to attract groups to Little Rock for conventions and meetings. Information about these incentives or “deals” is not shared with accounting.

2. Recommendations

-Sales and Marketing representatives should establish internal budgets and cost allocations for all projects.

-Sales and Marketing representatives should provide internal budget and cost allocation information to Accounting.

-The CFO should attend all Sales and Marketing meetings to ensure that Accounting is aware of all potential projects.

-Accounting should set up a new chart of accounts, develop procedures to track actual expenses of individual projects, and provide that information to Sales and Marketing.

-Sales and Marketing commitments to provide items or share expenses for functions and events should be approved by the CMO and/or CEO, according to an established policy. A policy should also be established for handling commitments that exceed the preauthorized spending limit of the CFO. Information about commitments and expenses should be shared with accounting and reported appropriately.

-Accounting should review the capabilities of its existing accounting software with the goal of adding project or client codes to each of the accounts. This would enable Accounting to track the actual cost of each project.

-Project and client codes should be issued and maintained by Accounting, and should be used by Sales and Marketing. No expense should be paid by accounting unless the project or client is identified by this code.

-Actual expenses for the two Sales and Marketing Divisions should be reported to the Finance Committee of the Advertising and Promotion Commission in the same format as the budget. The expenses should be reported to the Marketing Department by Project.

-When a project or event is completed, Accounting should prepare a comparison of the estimated and actual costs and the estimated revenue generated.

F. SALES AND MARKETING EXPENSE REPORTS

1. Findings

The Committee reviewed actual expense reports for 2006. All expenses for meals, travel, lodging, and items purchased were supported by a receipt. Not all reports included adequate information about the purposes of the expenditures. Expense reports are not designed to track costs by expense category, leaving the classification of costs to be done by Accounting

employees who lack the necessary information for classification. Mileage expense reimbursement forms lack explanations of reasons for travel and destinations. There is no comprehensive travel and expense procedure. CEO Dan O'Byrne is implementing a new travel request form, requiring Sales and Marketing representatives to submit requests for preapproval.

2. Recommendations

- Sales and Marketing expense reports should include all pertinent information about the purposes of expenditures.

- Expense reports should be redesigned so that costs can be classified by the proper expense category as well as project code.

- Mileage reimbursement forms should include information about the reason for travel and the destination.

- A comprehensive travel and expense procedure should be developed with input from Sales and Marketing representatives. This policy should include the following:

 - information about all forms of travel expenses including airfare, train fare, rental cars, mileage reimbursement, etc.

 - information concerning acceptable hotel categories and costs;

 - a definition of reasonableness in entertaining with prudent judgment in spending public money;

 - flexibility to permit Sales and Marketing representatives to deviate from Commission travel policies in appropriate circumstances. Any deviation should be documented and explained;

 - a policy concerning reimbursement for mileage driven in Little Rock.

- The Commission should review the feasibility of using a travel agency which would ensure compliance with Commission travel policies.

- New travel request forms should be completed, requiring preapproval for travel. The forms should include project codes and anticipated expenses. Copies of the form should be provided to Accounting so that actual cost can be compared to anticipated costs and major discrepancies between anticipated and actual costs can be reviewed by the Division Directors.

- After new expense categories are established (see E.2, supra) expense reports for Sales

and Marketing representatives should be revised to reflect those categories. Representatives should be able to complete and submit expense reports on-line with pull-down menus for expense categories. Adequate space to document reasons for expenses and other information should be included in the forms.

-All expense reports should be reviewed at the appropriate management level. Accounting should compare projected and actual costs and ensure that all required information is completed on each report. The reports should be compared to the recommended travel and entertainment policy, should one be created.

-Internal auditors for the City of Little Rock should audit expense reports on a quarterly basis initially, gradually decreasing the audit frequency to annual audits.

VII. COMPARISON OF LITTLE ROCK OPERATIONS TO OTHER CITIES

1. Findings

The Committee compared the Little Rock Convention and Visitors Bureau to other bureaus around the country. No two bureaus operate exactly the same. Little Rock is one of only about 5% of convention and visitors bureaus nationwide that operate convention centers and parking decks. The Committee compared sales and marketing percentages of various other bureaus in cities and communities of comparable size. The convention and visitors bureaus in Virginia Beach, Virginia and Raleigh, North Carolina were the closest. In those two cities, the percentage of budgets targeted for sales and marketing and executive finance and administration are very similar to those in Little Rock. The Little Rock sales and marketing percentage of the total budget is 36% or approximately \$3,281,000. This compared favorably with the other two cities examined.

The Little Rock Convention and Visitors Bureau is different than most other CVBs in that Little Rock issues permits to the businesses subject to the tax and is also responsible for collecting the taxes. In most other cities, permits are issued and taxes are collected by local or state government and remitted to the CVB. Little Rock also owns substantial convention properties (Robinson Center, Double Tree, Peabody, State House Convention Center and three parking decks) and CVB operates them.

VIII. ADDITIONAL RECOMMENDATIONS AND OBSERVATIONS

-Parking Facilities. The parking facilities operated for the City by the Bureau staff appear to be well-managed and well-operated. The facilities should continue to operate under the current arrangements. There is no good reason to change. They are operating profitably and

are a strong marketing tool in the Commission's efforts to attract convention business.

-Curran Hall. The Curran Hall issue was very poorly handled and resulted in a major public relations disaster. For now, the issue has been resolved with the lease to the Quapaw Quarter Association for one year with options for two more. It is not clear to the Committee why the A & P Commission singled-out Curran Hall and its annual operating deficit of some \$101,157 in 2006 when at the same time the operating deficit for Robinson Center was \$747,139 and the operating deficit for the Statehouse Convention Center was \$208,379. The Committee's view is that none of these entities should be classified as "profit centers" but rather should be structured as "cost centers." While the goal should be to minimize or eliminate the operating deficits for each one, the costs of each should be viewed in the context of their overall worth to the A & P Commission's mission as well as their overall importance and contribution to the City's efforts in promoting the arts, culture and tourism and for the benefit of the general public.

-Recommendation: The A & P Commission should develop a strategic planning process that identifies their mission, their short-term and long-term goals and agreed-upon measures of success.

-Business conflicts. The CVB did business with Cajun's Wharf and Capers restaurants during the years that Mary Beth Ringgold, who owns a substantial interest in both restaurants, served on the A & P Commission. During a three-year period payments totaling \$141,000 were made to the two businesses. In addition to the lease of office space (noted below), the A & P Commission paid more than \$16,000 to the Holiday Inn Select and Signature Transportation, companies in which Blair Allen has an interest, during the time that Blair Allen served on the A & P Commission. The commission members were unaware of A.C.A. 14-47-137 which requires them to seek approval of the City Board in order to conduct business. (*See* section II.D *infra*).

The law requires that four A & P Commission members be restaurant or hotel owners which makes it likely that such conflicts will occur in the future.²⁴ Banning A & P Commission members from receiving any business through the CVB would solve the problem but would likely deter the participation of some potential Commission members. A better alternative would be to require conflicts disclosure of A & P Commission members; require disclosure at Commission meetings of any payments made to businesses in which Commission members have an interest; and to establish a system to ensure that CVB business is rotated among eligible establishments to avoid favoritism and the appearance of favoritism. (*See* Section VI.B Audits , *supra*).

Recommendations: Require A & P Commission members to file conflicts disclosures.

²⁴A.C.A. Sec. 26-75-602.

Require disclosure at A & P Commission meetings of payments made to businesses in which A & P Commission members have an interest. Establish a system to rotate CVB business among eligible establishments.

-West Little Rock Office. CEO Dan O’Byrne felt that the Little Rock Convention and Visitors Bureau was “downtown” focused when he arrived here in 2002. His assessment was shared by the director of sales and marketing that CEO O’Byrne hired after he became CEO. They believed that a west Little Rock office was clearly needed to promote and support the hotel and restaurant industry in that part of the city which has a different convention and visitors draw than the downtown area. In CEO O’Byrne’s opinion, many of the customers who were interested in booking events in suburban areas were reluctant to come downtown to conduct business. CEO O’Byrne wanted to open a second sales office to have a visible presence to customers and constituents outside the downtown area.²⁵

A third party real estate firm looked at several site possibilities in West Little Rock and the Commission selected the one that best fit their needs. When it became apparent that the A & P Commission was about to select the site on Chenal Parkway, Commissioner Blair Allen indicated that he had a partnership interest in the site and recused himself from the meeting discussion and vote. Although the A & P Commission approved the lease of the Chenal property, Commissioner Allen never sought approval from the City Board of Directors nor did anyone ever advise him that such approval was necessary. The A & P Commission failed to obtain bids as required by law and failed to follow its own purchasing policies. The lease on the property expired recently and was not renewed because Blair Allen preferred to rent the property to another tenant. CEO O’Byrne still believes that a west Little Rock sales office would be beneficial.

The office on Chenal was labeled “Visitor Center” although there were no signs to direct visitors to the site. And, despite the proximity of the office to nearby hotels, the location would be difficult for pedestrian access because of heavy traffic in the area. CEO O’Byrne said that visitor information was made available at the site for the convenience of people in west Little Rock. Although the purpose of the office was for sales, furnishing visitor information required no additional expense. Although the office was not heavily used for visitor information²⁶ CEO

²⁵According to CEO O’Byrne, the majority of revenues from hotel rooms (37%) come from west Little Rock hotels. Thirty-four percent of hotel revenues are derived from downtown hotels. Forty percent of restaurant revenues are from west Little Rock with only eight percent coming from downtown restaurants.

²⁶In 2006, 3,625 people visited the West Little Rock office compared to 17,272 at Curran Hall and 43,715 at the Little Rock Airport. Curran Hall was closed during February and March of 2006.

O'Byrne believes that it was useful and the visitor information was provided at no additional cost.

Recommendation: If another sales office is established in west Little Rock, the A & P Commission should devise a method for assessing its effectiveness. The CVB staff should advise the A & P Commission members of the procedures for entering into a lease and ensure that such procedures are followed.

-Automobile purchase. During former CEO Barry Travis's last year with the CVB, the Chevrolet Suburban (which belonged to the CVB) stopped running. Travis asked Mary Beth Ringgold, who was then Chairman of the A & P Commission, for permission to purchase a new automobile. He also asked for permission to trade in the Suburban as part of the deal. The car dealer valued the Suburban at \$1500 which was credited toward the purchase of the new car, a Malibu. The title to the Malibu was held in Travis's name. Monthly payments on the Malibu were \$452.63. The payment book was given to the CVB staff and Ringgold instructed the CVB staff to pay \$1,000 per month to the lien holder. The payments were made for a total of nine months, eight months in 2005 and one month in 2006 before Travis retired. Private contributions were solicited from various people to pay the remaining debt on the Malibu as a retirement gift for Travis. When the transaction was reported in the *Arkansas Democrat Gazette*, Travis repaid the \$1500 trade-in credit.

Because of the press coverage of the car transaction, CFO Janet Charles reports that she reviewed Travis's W-2 and discovered that the \$1,000 payments were not included as compensation to Travis although they should have been. A substitute W-2 (Form W-2c) was issued on November 30, 2006 for the 2005 tax year. Travis repaid \$104.01 to compensate for the impact that the error had on the CVB's Medicare account. The \$1,000 payment that was made in 2006 was included on Travis's 2006 W-2. The error on the 2005 W-2 was not that no automobile allowance was included, but rather that the employee who prepared the W-2 incorrectly calculated the "value method" to determine the amount and was unaware that the car actually belonged to Travis.

There is universal agreement that the automobile acquisition was wrong and should not have happened. Either the CVB should have acquired another automobile for Travis to drive during his last nine months of employment or Travis should have acquired his own automobile and received the customary car allowance for use of a personal automobile.²⁷ The Committee Chairperson was clearly wrong to verbally approve the trade-in transaction in the first place and apparently did not carefully consider the potential consequences and legal and ethical ramifications.

²⁷At the request of the Committee, CFO Janet Charles estimated the monthly cost to own and operate a 2007 Chevrolet Impala at \$688.50 which includes \$467 lease payment, \$84 for insurance, \$104.50 for gasoline and \$33 for maintenance.

Currently, CEO Dan O'Byrne is furnished a CVB automobile as part of his employment compensation package. A percentage of the lease value is credited as personal income to him for tax purposes. COO Jim Rice and CFO Janet Charles each receive an automobile allowance of \$500 per month and drive personal automobiles.

-**Recommendation:** The A & P Commission should establish a policy concerning the provision of automobiles for CVB employees. The policies should include procedures for acquiring automobiles that comply with city purchasing policies. The policies should be reviewed and approved by the A & P Commission.

-**Legal Counsel.** The A & P Commission retains counsel to advise the Commission and the CEO of the Convention and Visitors Bureau. An agreement with Mitchell, Williams, Selig, Gates and Woodyard, P.L.L.C. is in effect until the end of 2007 and may be extended for four additional annual periods.²⁸ Counsel for the A & P Commission is obligated to attend each Commission meeting and to offer advice and opinions. During the past several years legal counsel has worked with the CVB staff to update the tax procedures ordinance, expand the ordinance to cover food prepared for off-site consumption, negotiated labor contracts, and performed various other legal services. The instances of questionable practices, i.e. the car transaction and business conflicts, raise issues about the attorney/client relationship. Except for the lease of the west Little Rock office, these matters were not raised or discussed at Commission meetings which legal counsel is required to attend nor was the advice of legal counsel sought outside the Commission meetings. Commission members and the CEO must inform legal counsel of issues and potential problems in order to obtain appropriate advice. The relationship between legal counsel and the Commission should be clearly defined to ensure accountability.

-**Concerns of Restaurant Owners.** The 2% A & P tax that is collected comes from more than 600 restaurants and more than 60 hotels. In 2006, the restaurant industry collected approximately \$6.8 million of the 2% tax or roughly 75% of the tax collected in 2006. There appear to be a number of concerns in the restaurant group regarding the 2% tax and their recognition and economic benefits from same, or lack thereof, in A & P tourism priorities and programs. Since they collect and remit some 75% of the total /A & P tax receipts from their customers, they feel strongly that they should have a fair voice in the deployment of those funds.

It is the Committee's recommendation going forward that three of the four (75%) industry representatives on the A & P Commission come from the restaurant industry and one

²⁸The A & P Commission reserves the right to use other legal firms and services from time to time and has done so for various matters since the Mitchell firm began general representation. See "Legal Services Letter of Agreement" dated January 12, 2007.

from the lodging industry. It is also the Committee's recommendation that Mayor Stodola appoint a separate Restaurant Association Review Committee to hear the concerns of the local restaurant industry and report back their findings and recommendations to both the City Board and the current A & P Commission. This review committee should include restaurant industry representation in its makeup, from both locally-owned restaurants and national chain restaurants. It is important to note, however, that some of the restaurant industry's issues such as reduction or elimination of the 2% tax presents a formidable if not impossible task due to the fact that these tax funds guarantee the long-term facilities' bonded indebtedness of the A & P Commission. In addition, there are 75 and 80 year leases on the Double Tree and Peabody, respectively, that obligate the city to maintain certain properties. Those lease obligations also present a formidable obstacle to the repeal of the tax. However, other concerns of this group deserve a fair hearing.

Finally, it should be noted that the current CEO Dan O'Byrne is very sensitive to the needs and concerns of the restaurant industry in greater Little Rock, especially those that are not located in the immediate downtown convention area but yet collect a significant amount of the 2% tax. He is in the process of dividing the marketing effort of the A & P Commission staff into two groups, one of which will be working to better promote the restaurant industry in Little Rock.

Recommendation: Consider appointing restaurant industry people to three of the four designated A & P Commission slots. Establish a Restaurant Association Review Committee to consider the concerns of the local restaurant industry and report to the City Board and the A & P Commission.

-Accomplishments of the A & P. In recent years the A & P Commission and the City of Little Rock working together have accomplished some very major tourism events and activities to the benefit of Little Rock and the entire State of Arkansas. Some of these accomplishments include the development and opening of the new Statehouse Convention Center, creating tourism events surrounding the opening of the Alltel Arena and the development/expansion of the River Market District and the River Rail System. They also worked tirelessly on creating tourism events surrounding the opening of the Clinton Library complex and the upcoming completion of the Heifer International project. They also made a major and wise diversion away from depending heavily and primarily on advertising (e.g. the *Big on Little Rock* campaign) to actively researching and marketing directly to large groups nationally to hold their conventions here in Little Rock. They are to be applauded for significant progress and accomplishments in leveraging the above areas to help make Little Rock a more saleable and attractive destination city. The current CEO, Dan O'Byrne, has played a major positive role in this, starting when he became the head of Marketing for the CVB and continuing now in his role as CEO.

-Recognition of Tourism Pioneers. The Committee suggests that current A & P Commission and the City of Little Rock consider some type of appropriate recognition for two very active pioneers in the promotion of Little Rock as a convention destination - Finley Vinson

(deceased) and Doyle Rogers. They developed what is now the Peabody Hotel property, including the original convention facilities underneath the hotel. Both were (and in Doyle's case still is) very active promoters and supporters of the City of Little Rock. Part of the new Statehouse Convention Center was named after Wally Allen, who played a major role as Chairman of the A & P Commission during his very long tenure. At the same time, Finley Vinson and Doyle Rogers were real pioneers in the City's tourism efforts and should be appropriately recognized for their many early and ongoing efforts that evolved in to what we have today.

-Media Coverage. In reflecting on the *Arkansas Democrat-Gazette's* involvement in bringing to light many of these issues, the Committee concludes that, overall, the investigative reporting by Cindy Murphy and her associates has been quite beneficial to the A & P Commission and the City Board. Significant changes and improvements in procedures, documentation and operations are underway, led by Dan O'Byrne and the current A & P Commission members and staff. However, in fairness, it must be noted that well before all the negative press reports (initiated in part by disgruntled former A & P staff employees), that some major changes were already underway in the Commission's operations. It is also interesting to note that a review of the Commission's minutes indicate very little or no press coverage of the Commission's monthly meetings for most of the eighteen months leading up to the issues reported in the *Arkansas Democrat-Gazette* – a period during which some major positive and needed changes were underway.

There was also some naivete in the comparisons of a Little Rock with a Houston. Some mistakes, inaccuracies and misrepresentations by the press were acknowledged or corrected and others were not, which is unfortunate for all concerned. Frankly, some of the editorial staff's work was considered a bit over the top, somewhat unsubstantiated and certainly not balanced. Overall, however, the media properly reported on problems and issues that needed correction and attention and work to be done. This work is being done and significant, positive changes are underway. The Committee's view is that we now all need to (1) get behind and support the new team and give them a chance to prove themselves; and, (2) let them focus their primary mission of promoting tourism in Little Rock and throughout Central Arkansas.