



U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

August 7, 2008

Honorable Brad Johnson
Secretary of State
P.O. Box 202801
Helena, Montana 59620-2801

Dear Secretary Johnson:

Enclosed is the management decision of the U.S. Election Assistance Commission regarding the findings pertaining to the administration of Help America Vote Act funds contained in the Single Audit of the State of Montana for the Year ended June 30, 2007 (Report No. E-HP-MT-29-08).

Please provide a response to the management decision by September 8, 2008. If you, or members of your staff, have any questions about this matter, please contact Mr. Edgardo Cortés, Acting Director, Division of HAVA Payments and Grants, at (202) 566-3126.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Wilkey", written over the word "Sincerely,".

Thomas R. Wilkey
Executive Director

Enclosure

cc: Inspector General



EAC MANAGEMENT DECISION:

Resolution of Single Audit Report for the Year Ending June 30, 2007,
Report No. E-SA-MT-29-08

SUMMARY OF DECISION

The Montana Office of the Secretary of State (Office) must submit to the U.S. Election Assistance Commission (Commission or EAC) a copy of its policies and procedures for training employees to properly administer and monitor Federal programs.

BACKGROUND

The EAC is an independent, bipartisan agency created by the Help of America Vote Act of 2002 (HAVA). It assists and guides state and local election officials in improving the administration of elections for Federal office. This includes distributing HAVA funds to States for the acquisition of voting systems, the establishment of a statewide voter registration list, and other activities to improve the administration of elections for Federal office. EAC also monitors State use of HAVA funds to ensure funds distributed are being used for authorized purposes. To help fulfill this responsibility, the EAC determines the necessary corrective actions to resolve issues identified during Single Audit Act and Office of Inspector General (OIG) audits of state administration of HAVA funds. The EAC OIG has established a regular audit program to review the use of HAVA funds by states. The OIG's audit plan and audit reports can be found at www.eac.gov.

The Audit Follow-up Policy approved by the Commission authorizes the EAC Executive Director to issue the management decision for audits of Federal funds to state and local governments, non-profit organizations, and for-profit organizations (external audits) and single audits conducted by state auditors and independent public accountants. The Executive Director has delegated the evaluation of final audit reports provided by the OIG and single audit reports to the EAC Election Administration Support Division (EASD). The EASD provides a recommended course of action to the Executive Director for resolving questioned costs, administrative deficiencies, and other issues identified during an audit. The EAC Executive Director issues the EAC Management Decision that addresses the findings of the audit and details corrective measures to be taken by the state.

When an audit identifies questioned costs, the EAC considers not only whether the state followed proper procedures, but also whether the expenditures actually served to further the goals of HAVA. Generally, the EAC has identified three methods of resolution regarding questioned costs: (1) expenditures that were identified as permissible under HAVA and Federal cost principles, but did not follow appropriate procedures do not have to be repaid; (2) expenditures that lacked adequate documentation to substantiate that the funds were used for HAVA purposes must be repaid to the state election fund, which was created in accordance with HAVA section 254(b)(1); and (3) expenditures that were clearly not permissible under HAVA or Federal cost principles must be repaid to the U.S. Treasury. In addition to repayment of funds, the EAC may require future reporting by a state to ensure that proper internal controls and procedures have been established to prevent future problems.

States may appeal the EAC management decision. The EAC Commissioners serve as the appeal authority. A state has 30 days to appeal the EAC management decision. All appeals must be made in writing to the Chair of the Commission. The Commission will render a decision on the appeal no later than 60 days following receipt of the appeal or, in the case where additional information is needed and requested, 60 days from the date that the information is received from the state. The appeal decision is final and binding.

AUDIT HISTORY

Montana's Legislative Audit Division issued a Single Audit Act audit of the State for the year ending June 30, 2007, that included HAVA funds provided to the Office. The OIG transmitted the single audit to EAC on June 30, 2008 and highlighted one finding related to HAVA funds. The OIG Assignment Number used to track this audit is E-SA-MT-29-08.

AUDIT RESOLUTION

The audit finding and the EAC decision for resolving the finding are as follows:

1. Finding No. 2-8: Election Assistance Commission

The audit reported that the Office did not use competitive procedures for the purchase of local newspaper advertisements to describe changes to voting procedures. According to the report, the Office paid one vendor \$27,728 and another vendor \$51,182 for the ads.

The auditors wrote that State policy requires "the Secretary of State's Office . . . to solicit formal bids, or have sole source documentation, when payments for goods or services exceed \$25,000." Since the Office did not select the vendors using the competitive bid process, the audit report questioned the \$78,910 (\$27,728 plus \$51,182) in advertising costs. According to the report, the cause of the non-compliance was the Office's "unfamiliarity with federal compliance requirements and state policy"

The Legislative Audit Division recommended that the "Office provide training and develop procedures to properly administer its federal programs." The Office replied that it had developed policies and procedures to make sure its employees are properly trained and that the current Office administration has followed "state procurement rules and procedures for the various purchases made since the current administration assumed office."

The EAC Office of Inspector General (OIG) recommended that the EAC (1) ensure that the Office has developed the policies and procedures to administer its Federal programs and (2) resolve the \$78,910 of questioned costs.

EAC Management Decision

The EAC agrees with the audit finding, recommendations, and reported corrective actions. To satisfy the OIG's recommendation, however, the Office must submit a copy of the above referenced policies and procedures to the EAC for an assessment of their sufficiency. In regard to the questioned costs of \$78,910, no repayment is required because the advertisements were within the purview of the HAVA. All the same, the Office must not use HAVA funds in the future for unjustified sole-source procurements because such purchases provide no assurance that the prices paid are fair and reasonable.

STATE RIGHTS OF APPEAL

If the Office believes that anything in this final management decision is an adverse action and the state does not agree, the state shall have 30 days to appeal EAC's management decision. The appeal must be made in writing to the Chairman of the EAC. Within 30 days of receiving the appeal, the EAC may hold a hearing to consider the appeal, take evidence or testimony related to the appeal, and render a decision on the appeal, if appropriate at that time. The EAC will render a final and binding decision on the appeal no later than 60 days following the receipt of the appeal or the receipt of any requested additional information. If the state does not file an appeal, this decision will become final and binding at the expiration of the appeal period.